

**From:** Bill Nicklas  
**To:** 'TimMcConville'; Deborah Keating; Steve Irving (irvconst@comcast.net);...  
**Date:** 2/5/2014 6:43 PM  
**Subject:** Re: DeKalb 2020 - College Town Partners

Thanks, Tim.

>>> "Struthers, Tim" <tstruthers@castlebank.com> 2/5/2014 11:07 AM >>>

Hello All,

A quick update on status of our project.

Largely things remain on track much the same as we were late in 2013. The delay is all around the establishment of an entity with a structure that meets our short term needs, long term needs, the needs of the University, CRA, and individual investors.

I am nearing the engagement of law firm in Chicago that specializes in this kind of work and believe we have a solution that would allow for equity capital, owners, and still be considered a "not for profit." The entity type is an "L3C." More to come on this in the next week or two. I also need to have sufficient dollars allocated to create this entity, we have already piled up a fair amount of organizational expenses.....

One house remains on the market and the selling agent has assured me we will get the last look. I have not received an update for a while on the FSB foreclosures but suspect early Spring is still the time frame we absolutely need some money in the drawer.

Please let me know if you have questions / concerns. Otherwise I will continue down the path.

Tim

**From:** "Struthers, Tim" <tstruthers@castlebank.com>  
**To:** "Bill Nicklas" <fnicklas@niu.edu>, "Ronald Walters" <rwalters@niu.edu>  
**Date:** 3/7/2014 12:29 PM  
**Subject:** FW: Execution Version - Memorandum of Understanding - College Town Partners, LLC (CH 3\_7\_14).doc  
**Attachments:** Memorandum of Understanding -College Town Partners, LLC (CH 3\_7\_14).doc

Hello All,

I understand the properties in foreclosure in the John / College neighborhood may be available for purchase as soon as April of this year.

To begin our initiative the purchase of these units is critical. To that end we need to get our organization established and funded relatively soon.

I have engaged Clark Hill to develop the entity. Attached is a memorandum of understanding that I would like to use as the base to develop the organizational structure.

Please review and provide comments. I will look to establish a meeting in the next 10 days to work through outstanding issues so we can get an agreement completed.

Thanks for your patience and commitment on what should prove to be a transformational project.

Tim

-----Original Message-----

**From:** Cannon, Meridith G. [mailto:MCannon@ClarkHill.com]  
**Sent:** Friday, March 07, 2014 09:55 AM Central Standard Time  
**To:** Struthers, Tim  
**Subject:** Execution Version - Memorandum of Understanding - College Town Partners, LLC (CH 3\_7\_14).doc

Dear Tim – A clean, execution version, as modified this morning, is attached.

Meridith G. Cannon  
CLARK HILL PLC  
150 N Michigan Ave | Suite 2700 | Chicago, Illinois 60601  
312.985.5936 (direct) | 312.985.5976 (fax) | 773.580.3265 (cell)  
mcannon@clarkhill.com <mailto:mcannon@clarkhill.com> | www.clarkhill.com <http://www.clarkhill.com/>

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Memorandum of Understanding – College Town Partners

This Memorandum of Understanding (“MOU”) with respect to the formation of an entity that for purposes of this MOU will be referred to herein as “College Town Partners” is made as of the 7<sup>th</sup> day of March, 2014 (“Effective Date”) by and among the undersigned parties (at times, the undersigned parties are singularly referred to as “Party” and collectively as “Parties”).

	<u>TOPIC</u>	<u>ISSUES</u>
1.	<b>Parties</b>	First National Bank of Omaha Community Development Corporation (“FNBO”) First State Bank (“FSB”) Northern Illinois University (“NIU”) Stephen P. Irving (“Irving”)
2.	<b>Mission/Purpose of Partnership</b>	<ul style="list-style-type: none"><li>• Form special purpose entity, likely a limited liability company, in order to further the mission of the “Bold Futures” initiative and purchase real property to be rented to low to moderate-income individuals, including students.</li><li>• Revitalize distressed neighborhoods and further community development within and around the campus of NIU, while improving the environment for living and learning for students, faculty, residents, and business owners, consistent with NIU’s mission.</li><li>• College Town Partners is intended to be a collaborative effort between the private sector, City of DeKalb, and NIU. There will be multiple phases to the project including flood mitigation, infrastructure improvements, housing stabilization, and new business creation.</li><li>• The focus is on community development activities under the Community Reinvestment Act (12 U.S.C. section 2901 et seq.) as follows: (1) affordable housing and for low to moderate-income people, (2) community services to low to moderate-income people. The initial phase will include the purchase of housing units with the</li></ul>

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		<p>initial plan to rent to low to moderate-income individuals, including students. The project will be centered in neighborhoods that are in low to moderate-income census tracts.</p> <ul style="list-style-type: none"><li>• The governing documents will make clear that the primary goal of College Town Partners is not to generate profits, <i>rather</i>, the intent is more charitable insofar as it will provide a vehicle for investment in a socially beneficial, for-profit venture, with future profits, if any, likely reinvested in projects or other entities with missions or charitable purposes consistent with that of College Town Partners and NIU.</li><li>• Funding for the project will be in the form of contributions to establish permanent equity combined with debt issuance qualified for Community Reinvestment Act investments by commercial banks.</li><li>• Each Party will contribute time, knowledge and/or make financial investments in order to further the mission.</li></ul>																				
3.	<b>Capital Contributions and Ownership</b>	<p><u>Initial Capital Contributions:</u></p> <table><tr><td></td><td><b>Cash</b></td></tr><tr><td>FNBO</td><td>\$500,000.00</td></tr><tr><td>FSB</td><td>\$250,000.00</td></tr><tr><td>NIU</td><td>\$250,000.00</td></tr><tr><td>Irving</td><td>\$100,000.00</td></tr><tr><td><b><u>TOTAL</u></b></td><td><b>\$1.1 million</b></td></tr></table> <p><u>Percentage Ownership Interest:</u></p> <table><tr><td>FNBO</td><td>45.45%</td></tr><tr><td>FSB</td><td>22.73%%</td></tr><tr><td>NIU</td><td>22.73%</td></tr><tr><td>Irving</td><td>9.09%%</td></tr></table>		<b>Cash</b>	FNBO	\$500,000.00	FSB	\$250,000.00	NIU	\$250,000.00	Irving	\$100,000.00	<b><u>TOTAL</u></b>	<b>\$1.1 million</b>	FNBO	45.45%	FSB	22.73%%	NIU	22.73%	Irving	9.09%%
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FSB	22.73%%																					
NIU	22.73%																					
Irving	9.09%%																					

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		<p><u>TOTAL</u>      <b>100%</b></p> <p><u>Use of Proceeds:</u> First to fund the purchase of houses near NIU's campus that will be rented to low to moderate-income individuals, including students. Also implementation of multiple phases to the project including flood mitigation work, infrastructure improvements, housing stabilization, and new business creation on or near NIU's campus. All members will be notified of the expenditures for legal, third party property management services, land planning and floodplain mitigation reports. Distributions as outlined below will cover the identified and documented expenses.</p> <p><u>Distributions:</u></p> <p>Distributions will be made in the following order of priority:</p> <ul style="list-style-type: none"><li>• first, in the discretion of management, an amount sufficient to cover the highest estimated tax liability (including federal, state and local taxes) likely imposed on a typical member as a result of profits generated by College Town Partners;</li><li>• second, subject to approval and declaration by the management, to the Parties until their respective capital contributions have been returned; and</li><li>• third, subject to approval and declaration by the management, to the Parties in proportion to their respective percentage ownership interests.</li></ul> <p><u>Voting Rights:</u></p> <p>Party voting rights will be based on percentage ownership. The operating agreement or other governing document will contain a procedure to require the Parties to resolve deadlocks on selected issues.</p> <p><u>Additional Capital:</u></p> <p>College Town Partners will incorporate into the operating agreement, assuming it is a LLC, a capital call process for</p>
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		<p>funding projects approved by management.</p> <p><u>Additional Members:</u></p> <p>The operating agreement will provide for the admission of new members if so approved by the members then holding a majority of the percentage ownership interests. The admission of new members may result in the dilution of an existing member's percentage ownership interest.</p>
4.	<b>Liability</b>	College Town Partners will provide liability protection for the Parties to the fullest extent possible.
5.	<b>Non-compete</b>	During the life of College Town Partners, the Parties will not individually participate in outside projects within the scope of College Town Partners' mission unless the other members have waived any interest in participating.
6.	<b>Intellectual Property Issues</b>	IP acquired or licensed by College Town Partners will be held for the use of College Town Partners or any subsidiary entity established to accomplish the purpose for which the IP was acquired.
7.	<b>Governance</b>	<p>College Town Partners will be manager-managed and a board of managers will be authorized in the operating agreement. Initially, the board of managers will consist of four managers, with one appointed by each Party (each, a "Founder's Manager"). Only the appointing Party may fill any vacancy for its designated Founder's Manager. Each Party, on an annual basis, may determine who its appointed Founder's Manager shall be and each Party shall have the power to remove its appointed Founder's Manager at any time. The operating agreement will provide that the members may, by at least majority vote, increase the size of the board of managers, with the additional managers to be appointed by majority vote of all of the members. Each manager, whether a Founder's Manager or a later appointed manager, shall have equal rights in the management.</p> <ul style="list-style-type: none"><li>• The initial manager appointed by NIU shall be F. Williams Nicklas. The initial manager appointed by FNBO shall be Timothy Struthers. The remaining Parties shall appoint their respective</li></ul>

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		<p>managers in due course.</p> <ul style="list-style-type: none"> <li>• Except as otherwise provided in the governing document of College Town Partners, the board will vote by majority vote (greater than 50%).</li> <li>• The operating agreement or other governing document will contain a procedure to require the board to resolve deadlocks on selected issues. If such deadlock cannot be resolved by the managers, then the members shall, by majority vote in accordance with their percentage ownership interests, break such deadlock.</li> <li>• The board may appoint officers to promote and implement the activities as set forth by the board.</li> </ul>
8.	<b>Management Details</b>	<ul style="list-style-type: none"> <li>• The manager(s) will have complete management control of College Town Partners, including the right to make distributions and enter contracts, each as approved by the board, as well as act in all other ways to operate the businesses of College Town Partners, <i>except</i> as otherwise provided in the governing document of College Town Partners, which will require that the members vote to approve certain actions of the company, including, but not limited to, incurring debt and selling or acquiring assets.</li> <li>• Initially, board meetings will occur monthly.</li> <li>• Officers appointed by the board will report to the board.</li> <li>• All contracts must be approved by the board unless the board specifically grants authority to one or more officers.</li> </ul>
9.	<b>Insurance</b>	College Town Partners will obtain suitable insurance covering its operations and properties.
10.	<b>Accounting</b>	An independent accounting firm will be engaged to provide review annually, although an audit review will not be mandatory.
11.	<b>Property Management</b>	The manager(s) shall select a reputable third party property management/maintenance company to manage

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		and service the acquired properties, as needed. This will include property maintenance, as well as tenant and leasing services.
12.	<b>Transfers</b>	No Party may transfer his/her interest in College Town Partners to any other entity or person without offering the interest to the other Parties under a right first refusal to be set forth in an operating or buy/sell agreement among the Parties. Additional transfer restrictions will be set forth in the operating agreement.
13.	<b>Legal Effect</b>	The transactions contemplated by this MOU are subject to the negotiation, execution and delivery of mutually satisfactory definitive agreements, the terms and conditions of which shall be subject to each of the Party's sole discretion. Each Party acknowledges that he/she has an opportunity to seek the advice of his/her own legal counsel in connection with the review and negotiation of the definitive agreements. In the event that any Party chooses not to enter into definitive agreements, it may do so without liability to the other, except as otherwise provided for in this MOU.
14.	<b>Expenses</b>	Except as otherwise provided for in this MOU, the Parties will bear their own costs related to the transactions contemplated by this MOU and for all costs during the negotiation, finalization and execution of the definitive agreements, if any.
15.	<b>Governing Law</b>	This MOU will be construed and enforced in accordance with, and will be governed by, the laws of the State of Illinois excluding choice of law principles.
16.	<b>Confidentiality</b>	<ul style="list-style-type: none"> <li>• The operating agreement or other governing document of College Town Partners will contain customary provisions to require members to keep non-public information about College Town Partners and its operations confidential.</li> <li>• Until the formation of College Town Partners and execution of the definitive agreements, confidential or non-public information about College Town Partners' mission, as well as the existence and terms of this MOU, shall not be</li> </ul>

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		disclosed to any third party without the consent of the other Parties, except as may be (i) reasonably necessary to consummate the transactions contemplated by this MOU or (ii) required by law.
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17.	<b>Expiration/Termination</b>	This MOU may be terminated upon the mutual written agreement of the Parties. This MOU shall expire without further action of the Parties if definitive agreements are not entered by the Parties on or prior to <b><u>March 31, 2014</u></b> .
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Except for the confidentiality obligations set forth herein, which obligations shall survive the expiration or other termination of this MOU, this MOU is not legally binding on the Parties. To the extent any material terms are missing from any agreement to agree set forth herein, those material terms must be agreed upon by the Parties in order to form an agreement with respect thereto.

The Parties' original signatures to this MOU may be transmitted by facsimile or email which for all purposes shall be deemed and constitute original signatures and this MOU, may be executed in counterparts, each of, which shall be deemed an original, but all of which together shall constitute one and the same instrument. This MOU shall not be effective until the execution and delivery between each of the Parties of at least one set of the counterparts.

This MOU constitutes the entire agreement, both written and oral, with respect to the subject matter hereof, and supersedes all prior or contemporaneous understandings, representations, proposals or agreements, whether written or oral, between the Parties with respect to such subject matter. This MOU may only be amended in writing signed by the Parties.

*(Signature page to follow.)*

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**Agreed and accepted as of the date set forth above:**

**First National Bank of Omaha Community Development Corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**First State Bank**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Northern Illinois University**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
**Stephen P. Irving**

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**From:** Bill Nicklas  
**To:** Terry.foegler@gmail.com  
**CC:** Douglas Baker; Ronald Walters  
**Date:** 3/10/2014 7:21 AM  
**Subject:** Fwd: FW: Execution Version - Memorandum of Understanding - College Town Partners, LLC (CH 3\_7\_14).doc  
**Attachments:** FW: Execution Version - Memorandum of Understanding - College Town Partners, LLC (CH 3\_7\_14).doc

Good morning, Terry,

I hope you are well. I would appreciate your insight into the topic I want to introduce today--a matter that will have some energy behind it this week at NIU. The attached e-mail correspondence and draft MOU involving the "College Town Partners" working on the John/Harrison and W. Lincoln Highway redevelopment areas in DeKalb were generated by Tim Struthers of Castle Bank. The Nebraska holding company that owns Tim's local bank represents the most significant private interest in the redevelopment areas to date, and is pressing to establish both the legal shell and the financial contributions needed to support some initial action steps (e.g. the acquisition of foreclosed properties; floodplain engineering and mitigation, etc.). NIU has already made it clear to the potential partners that our early contributions should be seen as going toward the engineering and floodplain work. Over time, I would suspect such distinctions will get blurred.

In any case, would you consider reviewing the draft MOU to see if it poses any notable difficulties for NIU and the NIU Foundation going forward?

Best,

Bill

222

**From:** "Struthers, Tim" <tstruthers@castlebank.com>  
**To:** "fnicklas@niu.edu"  
<fnicklas@niu.edu>,"tmconville@firststatebank.biz"<tmconville@firststatebank.biz>,"Steve Irving  
(irvconst@comcast.net)"<irvconst@comcast.net>  
**Cc:** Jerry Blakemore <jblakemore@niu.edu>,"Ronald Walters  
(rwalters@niu.edu)"<rwalters@niu.edu>  
**Subject:** College Town Partners  
**Received(Date):** Wed, 12 Mar 2014 00:22:10 +0000

Hello All,

I would like to wrap up any edits to the MOU and begin drawing the LLC organizational papers this Friday (3/14). If you should have comments please let me know by the end of the week.

The goal then is to have the corporate papers for your review by March 17 and an organizational meeting the next week and funding by March 27.

Please let me know of your questions / concerns.

Tim

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**From:** Bill Nicklas  
**To:** Douglas Baker; Jerry Blakemore; Ronald Walters  
**Date:** 3/21/2014 6:48 PM  
**Subject:** Fwd: #200341063v6\_ClarkHill\_ - Memorandum of Understanding - College Town Partners LLC (Client Rev 3\_20\_14)  
**Attachments:** #200341063v6\_ClarkHill\_ - Memorandum of Understanding - College Town Partners LLC (Client Rev 3\_20\_14)

Colleagues,  
Are we ready to support this framework?

Bill

**From:** Bill Nicklas  
**To:** Douglas Baker; Jerry Blakemore  
**Date:** 4/11/2014 9:07 AM  
**Subject:** Fwd: College Town Partners  
**Attachments:** College Town Partners

Colleagues,  
Can we meet soon to determine the university's opinion of the agreement and the development model it supports?

Bill

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**From:** Cheryl Ross  
**To:** Hooker, Dori  
**Date:** 4/18/2014 4:11 PM  
**Subject:** Re: College Town Partners Agreement

Jerry is gone April 23-25 and Bill says Jerry (General Counsel) is essential since this is a Memorandum of Understanding. I believe all parties have previously received draft copies of the MOU for review. I should have a copy of the most up-to-date version on Monday from Tim Struthers' assistant at Castle Bank which I can distribute to everyone.

Bill's note to me on setting up the meeting says Ron (if he is in town) so I think it is not essential for him to be here in person. Ron can always make red-line edits to the draft document which the others can review on the 28th.

Hope this works.  
Cheryl

>>> Dori Hooker 4/18/2014 3:44 PM >>>  
Cheryl:

Ron is leaving campus the 25th in the afternoon. Maybe a late meeting at 5pm or dinner on Wed, the 23rd or early breakfast on Thurs at 7am?

Just a thought.

dh

>>> Cheryl Ross 4/18/2014 3:12 PM >>>  
Back to the drawing board. How about Monday, April 28th, at 3 PM

\*\*\*\*\*  
\*\*\*\*\*

Everyone:

Bill has asked me to set up a meeting with:

President Baker  
Ron Walters  
Jerry Blakemore  
Mike Malone  
Bill Nicklas

to discuss the College Town Partners Agreement which Tim Struthers of Castle Bank is pushing. Bill says the meeting should happen sooner rather than later.

Would Thursday, April 24, from 2-3 PM work?

Cheryl

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**Operating Agreement**  
**of**  
**College Town Partners, LLC**  
**An Illinois Limited Liability Company**  
**Employer Identification Number \_\_\_\_\_**

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### Securities Law Disclosure

The Membership Interests of College Town Partners, LLC (Company) have not been and will not be registered under the Securities Act of 1933, as amended (Securities Act); under any other federal securities laws; or under the securities laws of any state. The Membership Interests are offered and sold without registration based on exemptions from the registration requirement of the Securities Act and laws and regulations enacted by the Securities and Exchange Commission.

The Company will not be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, and will not file reports, proxy statements, or other information with the Securities and Exchange Commission or with any state securities commission.

The Membership Interests of the Company may not be offered for sale, sold, pledged, or otherwise transferred unless registered or qualified under applicable securities laws, or unless exempted from registration or qualification. Counsel for the owner of the interest must appropriately register or qualify that interest or establish any applicable exemption from registration or qualification; this opinion of counsel must be reasonably satisfactory to the Company.

No Member may register any interest in the Company under any federal or state securities law without the express written consent of all Members.

The Members understand that some of the restrictions inherent in this form of business, and specifically set forth in this Agreement, may have an adverse impact on the fair market value of the Membership Interests if a Member attempts to sell or borrow against the Membership Interest in the Company.

## **Member Acknowledgment**

By signing this Agreement, each Member agrees to the following provisions:

### **Exempt from Registration**

Investment in the Company involves a high degree of risk and is suitable only for sophisticated investors. Membership Interests are being offered in reliance upon one or more exemptions from registration under the Securities Act, and any Securities Act of Illinois.

### **Member's Personal Investment**

The Member is purchasing the Interest for the Member's own investment and with no intent to distribute or resell to any other person.

### **Transferability Restrictions**

By this Agreement, the Company has disclosed to the Members and each Member acknowledges that the transferability of the Membership Interest is severely limited. Each Member will bear the economic risk of investment for an indefinite period, as the Membership Interests have not been registered under the Securities Act or any state securities laws and cannot be offered or sold unless subsequently registered or unless an exemption from registration is available.

### **Registration or Opinion of Counsel before Transfer**

In addition to other prohibitions and restrictions on transfer under this Agreement, the Membership Interests will not be sold publicly without registration under the Securities Act and any applicable state securities law. Before any public sale, the selling Member must first obtain opinion of counsel that registration is not required in connection with any transaction; this opinion must be satisfactory to the Company. In no event may any Membership Interest be sold within twelve (12) months of original issue to that Member.

### **Member's Principal Address**

This Agreement notes each Member's principal address. Each Member shall notify the Company in writing within five (5) days of any change to this address.

### **Access to Facts**

Each Member has had and continues to have access to all material facts regarding the Membership Interest and is satisfied as to the advisability of making this investment.

### **No Commission or Remuneration**

No commission or other payment may be paid to any person in connection with the offer or sale of any Membership Interest.

### **No Right to Registration**

No Member may require the Company to register any Membership Interest under federal or state securities laws at any time, or to join in any future registration.

### **Hold Harmless**

Each Member agrees to hold the Company and its Manager, Members, Member Principals, Organizers, controlling Persons (as defined in the Securities Act), and any persons affiliated with any of them or with the distribution of the Membership Interest, harmless from all expenses, liabilities, and damages (including reasonable attorneys' fees) arising from a disposition of the Membership Interest in any manner that violates the Securities Act, any applicable state securities law, or this Agreement.

200458362.5 45221/171129

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**College Town Partners, LLC**  
**an Illinois Limited Liability Company**

**Article 1**  
**Company Formation**

**Section 1.01 The Limited Liability Company**

This Limited Liability Company Operating Agreement of the Company is dated April \_\_\_, 2014, the date on which the Company was established as a limited liability company under the laws of the State of Illinois. The Company became effective upon the filing of Articles of Organization as required by Illinois. The Company was created under the Illinois Limited Liability Company Act, 805 ILCS 180/1 et seq. The Members and their respective Membership Interests are identified in the schedule attached to this Agreement as Exhibit A. This Agreement sets forth the rights, duties, obligations, and responsibilities of the Members regarding the Company.

In consideration of the mutual promises, obligations, and agreements set forth in this Agreement, the parties to this Agreement agree to be legally bound by its terms.

**Section 1.02 The Company's Name**

The Company's name is College Town Partners, LLC. The Board of Managers may change the name of the Company or operate the Company under different names.

**Section 1.03 Company to Be Taxed as a Partnership**

The Members intend to establish an entity that is subject to taxation as a partnership.

**Section 1.04 Company's Purpose and Scope**

The Company is organized to conduct any lawful purpose permitted under the Act. In order to accomplish these purposes, the Company may own, acquire, manage, develop, operate, buy, sell, exchange, finance, refinance, and otherwise deal with real, personal, tangible, and intangible property, and any type of business, as the Board of Managers determines from time to time to be in the best interests of the Company; and conduct any lawful business and investment activity permitted under the laws of Illinois and in any other jurisdiction in which the Company may have a business or investment interest in order to accomplish these objectives.

Notwithstanding the foregoing, the Members acknowledge and agree that the Company provides a vehicle for investment in a socially beneficial, for-profit venture, with future profits, if any, likely reinvested in projects or other entities with missions or charitable purposes consistent with that of the Company, the City of DeKalb (the "City") and Northern Illinois University ("NIU").

In furtherance thereof, the Company's purpose shall focus on community development activities and projects under the Community Reinvestment Act (12 U.S.C. section 2901 et seq.) as follows: (1) affordable housing for low and moderate income people, and (2) community services to low and moderate income people. The Company's investments will be centered in neighborhoods

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that are in low to moderate income census tracts such as a distressed neighborhood near the campus of NIU. The “neighborhood” is broadly defined as parts of John Street, Harrison Street, Locust Street, and College Avenue in the City. Further, the Company desires to facilitate a physical connection between NIU, the Historic District, and Downtown DeKalb to improve the tax base and quality of community life for students, faculty, residential and business owners, consistent with NIU’s mission. It is believed that this revitalization endeavor will occur in multiple phases, including flood mitigation, infrastructure improvements, housing stabilization, and new business creation. The initial phase will include the purchase of housing units with the plan to rent to low to moderate income individuals, including students.

The Company may engage in any other activities that are related or incidental to these purposes, as the Board of Managers may determine within its sole and absolute discretion.

#### **Section 1.05 Purpose of Company Restrictions**

Capital is material to the business and investment objectives of the Company and its federal tax status. An unauthorized transfer of a Membership Interest could create a substantial hardship to the Company, jeopardize its capital base, and adversely affect its tax structure. As a result, certain restrictions expressed in this Agreement attach to and affect the ownership and transfer of Membership Interests. These restrictions are not intended to penalize, but are intended to protect and preserve the existing trust-based relationships, the Company’s capital, and the Company’s financial ability to continue to operate.

#### **Section 1.06 The Company’s Principal Office and Location of Records**

The street address of the principal office in the United States where the Company maintains its records is:

Northern Illinois University  
300 Altgeld Hall, Division of University Relations  
DeKalb, Illinois 60115  
Attn: Bill Nicklas

or where the Board of Managers otherwise determines. The records maintained by the Company must include all records that the law requires the Company to maintain. The Company must maintain a records office in any jurisdiction that requires a records office and the Company must maintain all records required by applicable law at each records office.

#### **Section 1.07 Registered Agent and Registered Office**

The Company’s initial registered agent is Tim Struthers, and the Company’s initial registered office is located at:

121 W. Lincoln Highway  
DeKalb IL 60115

#### **Section 1.08 The Company’s Term**

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The Company's duration is perpetual. The Company begins on the date the Articles of Organization are filed with the Secretary of State of Illinois and continues until terminated or dissolved by this Agreement.

## **Article 2 Tax Matters**

### **Section 2.01 Tax Classification**

Unless the Members elect not to be treated as a partnership for federal income tax purposes, the federal income tax basis of a Member's Membership Interest and all other matters relating to the distributive share and taxation of items of income, gain, loss, deduction, depreciation, and credit will be as established by Internal Revenue Code Subchapter K.

But if the Company has only one Member, or for any reason may not be taxed as a partnership, the Board of Managers may classify the Company as a corporation, sole proprietorship, disregarded entity, or any other type of entity that the tax-matters partner determines to be most advantageous to the Company and its Members.

### **Section 2.02 The Tax-Matters Partner**

If the Company is required to have a tax-matters partner, First National Nebraska Community Development Corporation shall be the tax-matters partner. The Board of Managers may replace the tax-matters partner at their discretion.

#### **(a) Legal and Accounting Costs for Tax Matters**

The Company must pay all legal and accounting costs associated with any Internal Revenue Service proceeding regarding the Company's tax returns.

#### **(b) Discretion as to Tax Matters**

The tax-matters partner shall notify all of the Members upon receipt of any notice regarding any examination by any state, federal, or local authority regarding the Company's tax compliance. Subject to its fiduciary duty to the Members, the tax-matters partner may determine whether to contest any proceedings, how to pursue any proceedings, and whether and on what terms to settle any dispute with the Internal Revenue Service.

#### **(c) Tax Classification as a Partnership**

Unless the Members elect not to be treated as a partnership for federal income tax purposes, the tax-matters partner shall take all steps reasonably necessary to classify the Company as a partnership for tax purposes under the Code and Regulations. The tax-matters partner shall, if appropriate, prepare and file any forms necessary or appropriate to classify the Company as a partnership under the laws of any jurisdiction in which the Company transacts business.

### **Section 2.03 Tax Elections**

The Board of Managers may make any applicable or available tax elections on behalf of the Company.

## **Article 3 Membership Interests**

### **Section 3.01 Membership Interest in the Company**

Each Member's Membership Interest is the percentage interest set forth on the attached Exhibit A, as amended from time to time to reflect changes in Membership Interests in accordance with the terms hereof, including, but not limited to, adjustments to account for non pro rata Additional Capital Contributions and non pro rata distributions to Members. If non pro rata contributions or distributions are made, each Member's Membership Interest will then be determined by dividing the Capital Account of each Member by the aggregate of the then-existing Capital Accounts, after adjusting the Members' Capital Accounts to reflect the fair market value of the contributed property.

To determine the respective voting rights of the Members, adjustments to Membership Interests of the Members resulting from Additional Contributions or Distributions will be effective the first day of the month immediately following the contribution or distribution date. The Board of Managers shall maintain a correct record of all Members and their Membership Interests together with amended and revised schedules of ownership caused by changes in the Members and changes in Membership Interests.

### **Section 3.02 Valuing Membership Interests in the Company**

For all purposes, the value of the Company as an entity and of Membership Interests will be their respective book values. For purposes hereof, "book value" shall mean the net value of the Company and its business after liabilities have been deducted from the assets according to the accounting records of the Company.

## **Article 4 Capital Contributions and Capital Accounts**

### **Section 4.01 Initial Capital Contributions**

As their Initial Capital Contributions to the Company, the Members shall contribute all of their right, title, and interest in and to the property described in Exhibit A. The Members agree that the property described in Exhibit A has the fair market value (net of liabilities assumed or taken subject to or by the Company) listed opposite the scheduled property.

Each Member's Capital Account will be credited with an initial contribution equal to the fair market value as specified in Exhibit A.

### **Section 4.02 Voluntary Additional Capital Contributions**

The Members may make Additional Capital Contributions to the Company. Any Additional Capital Contribution must be made pro rata according to the Member's Membership Interest, unless otherwise agreed by the unanimous written consent of the Members.

The fair market value of any property other than cash or publicly traded securities to be contributed as an Additional Capital Contribution will be as agreed upon by the contributing Member and a majority in interest of the Members at the time of contribution. Alternatively, a disinterested appraiser selected by the Board of Managers may determine the fair market value of any contributed property.

#### **Section 4.03     Mandatory Additional Capital Contributions Prohibited**

The Company has no authority to require Additional Capital Contributions.

#### **Section 4.04     Establishing and Maintaining Capital Accounts**

A Capital Account will be established for each Member and will be maintained at all times during the existence of the Company in compliance with the Internal Revenue Code and applicable Treasury Regulations. Each Member's Interest will be credited with the fair market value of the Member's contribution of cash or other property, the Member's distributive share of profits, and the amount of any Company liabilities that are assumed by the Member. Each Member's Capital Account will be debited the amount of cash and the fair market value of any property distributed to the Member under this Agreement, the Member's share of losses, and the amount of any liabilities of the Member that are secured by any property contributed by the Member to the Company. If assets of the Company other than cash are distributed to a Member, the Board of Managers shall adjust the Capital Accounts of the Members to reflect the hypothetical book gain or loss that would have been realized by the Company if the distributed assets had been sold at book value in a cash sale in order to reflect unrealized gain or loss.

#### **Section 4.05     No Interest or Return of Capital**

Despite any other provision of this Agreement, no Member is entitled to any interest on its Capital Account or Membership Interest or on the Member's Capital Contribution. No Member may demand or receive the return of all or any portion of the Member's Capital Account, Membership Interest, or Capital Contribution.

#### **Section 4.06     Power to Modify Capital Account Provisions**

If, in the Board of Managers' reasonable judgment, the modification is not likely to have a material effect on the amounts distributable to any Member under this Agreement, the Board of Managers may modify the manner in which the Capital Accounts are computed in order to comply with Treasury Regulation Section 1.704-1(b). The Board of Managers shall make any necessary or appropriate adjustments to maintain equality between the Members' Capital Accounts and the amount of Company Capital reflected on the Company's balance sheet, as computed for book purposes under Treasury Regulation Section 1.704-1(b)(2)(iv)(g), relating to adjustments to book value.

#### **Section 4.07     Certain Property Considered to Be Loans**

If for any reason the Company would otherwise be deemed an investment company within the meaning of Internal Revenue Code Section 351, the Members intend to comply with the requirements of Internal Revenue Code Section 721(b), so that contributions of property to the Company will not cause recognition of any gain or loss to any Member. Accordingly, if any contribution of property would cause the recognition of gain or loss to any Member under Internal Revenue Code Section 721(b), then that property will be considered to have been loaned to the Company. Any loan will bear interest at the minimum interest rate required under Internal Revenue Code Section 7872. The Board of Managers shall return any property loaned to the Company under this provision to its lender within ninety (90) days of the lender's demand.

#### **Section 4.08     Negative Capital Accounts**

If the Company or a Member's Membership Interest is liquidated, no Member will be required to restore a deficit in his or her Capital Account.

#### **Section 4.09     Assignment of Capital Account**

Except as otherwise required by the Internal Revenue Code or Treasury Regulations, if any Membership Interest is assigned under this Agreement, the Assignee will succeed to the Capital Account of the Assignor to the extent that it relates to the assigned Membership Interest. If the assignment of an interest in the Company causes a termination of the Company under Internal Revenue Code Section 708(b)(1)(B), the Capital Account that carries over to the Assignee will be adjusted according to Treasury Regulation Section 1.704-1(b)(2)(iv)(e).

### **Article 5       Allocations and Distributions**

#### **Section 5.01     Allocating Profits and Losses**

Subject to the provisions of Section 5.02 and Section 5.03, all items of income, gain, loss, deduction, and credit, whether resulting from the Company's operations or in connection with its dissolution, must be allocated to the Members in proportion to their respective Membership Interests.

If the special allocations have substantial economic effect as required by applicable federal tax law, the Members, acting unanimously, may enter into agreements providing for the special allocation of items of income, gain, loss, deduction, or credit.

The Members may agree to allocate net profits and net losses in a way that conforms to adjustments made to the Membership Interests because of:

- any loans made to the Company that have been converted to Capital Contributions;
- any distributions of cash; or
- any liquidated distributions.

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If the Membership Interest of a Member is not the same throughout a given Taxable Year, the Board of Managers shall determine the allocation of net profits and net losses to the Members, taking into account the Members' varying Membership Interests during the year. The Board of Managers shall make the determination consistent with the requirements of Internal Revenue Code Section 706(d).

The Board of Managers has the authority to change the allocation provisions of this Section if the Company's legal counsel advises the Company that this change is required under the Internal Revenue Code based on the manner in which the Members have agreed to bear losses and to share profits and distributions under this Agreement.

### **Section 5.02     Allocating to Avoid Capital Account Deficit**

The Board of Managers must not allocate net losses in a way that causes a Member to have a Capital Account deficit at the end of any Taxable Year. Any Company net losses that cannot be allocated to one or more of the Members without creating a negative Capital Account will be allocated to the remaining Members in proportion to their Capital Accounts until all Members have a Capital Account of zero. When all Members have a Capital Account of zero, net losses will be allocated proportionately among the Members according to their respective Membership Interests. If some but not all of the Members would have a deficit in their Capital Accounts because of loss allocations, the Board of Managers shall allocate the maximum permissible losses to each Member on a Member-by-Member basis under Treasury Regulation Section 1.704(b)(2)(ii)(d). The Board of Managers shall allocate any remaining net losses to the Members according to the Members' respective Membership Interests.

### **Section 5.03     Special and Regulatory Allocations**

The Board of Managers shall make special and regulatory allocations, if necessary, in compliance with the Internal Revenue Code and applicable Treasury Regulations.

#### **(a)     Allocations Related to Contributed Property**

For any property contributed to the capital of the Company, the Board of Managers shall allocate income, gain, loss, and deductions among the Members under Internal Revenue Code Section 704(c) to account for any variation between the adjusted basis of the property to the Company for federal income tax purposes and its fair market value on the contribution date. If the Board of Managers adjusts the fair market value of any Company asset, then in making subsequent allocations of income, gain, loss, and deductions regarding that asset, the Board of Managers shall account for any variation between the adjusted basis of the asset for federal income tax purposes and the asset's fair market value in the same manner provided under Internal Revenue Code Section 704(c).

#### **(b)     Allocation Consistent with Distributions**

The Board of Managers shall allocate net profits and net losses in a manner consistent with:

the requirements for distributions of cash described elsewhere in this Agreement;

the requirements for distribution of Company assets upon its dissolution and winding up strictly in accordance with Capital Account balances as specified in the procedures described below; and

the requirements of applicable Regulations under Internal Revenue Code Section 704(b).

**(c) Allocations to Comply with Regulations and Intentions of Members**

The allocations of net income, gains, net losses, and deductions set forth in this Agreement are intended to comply strictly with Treasury Regulation Section 1.704-1(b), Treasury Regulation Section 1.704-1(b)(4)(iv), and Treasury Regulation Section 1.704-2, and are intended to have substantial economic effect within the meaning of those Regulations.

The allocations may not be consistent with the intentions of the Members to allocate distributions. Accordingly, the Board of Managers is authorized to allocate net profits, net losses, and other economic items among the Members to prevent the allocations from distorting the manner in which distributions are intended to be divided among the Members under this Article. In general, the Members anticipate that these allocations will be accomplished by specially allocating other net profits, net losses, and items of income, gain, loss, and deductions among the Members so that the net amount of the allocations and any special allocations to the Member is zero. If, for any reason, the Board of Managers determines that the allocation provisions of this Agreement are unlikely to be recognized for federal income tax purposes, the Board of Managers may amend this Agreement's allocation provisions to the minimum extent necessary to effect the plan of allocations and distributions in this Agreement.

**Section 5.04 Determining Net Profits and Net Losses**

For purposes of this Article, the terms net profits and net losses mean the amount of the Company's taxable income or loss for any year or period, determined under Internal Revenue Code Section 703(a). All items of income, gain, loss, or deduction required under Section 703(a)(1) to be stated separately will be included in taxable income or loss. This determination of net profits and net losses includes the following items: (i) any income of the Company that is exempt from federal income tax that is not otherwise taken into account in computing taxable income or loss under this Article; (ii) any expenditures of the Company described in Internal Revenue Code Section 705(a)(2)(B) relating to nondeductible expenses that are not otherwise taken into account in computing taxable income or loss, and (iii) if any Company asset's value is adjusted, the amount of the adjustment will be taken into account as gain or loss from the disposition of the asset.

Any other items that are specially allocated under this Article will not be taken into account in computing net profits and net losses.

## **Section 5.05 Distributions to Members**

The Company's primary intent is to retain Company funds in amounts determined in the Board of Managers' sole and absolute discretion to meet the reasonable needs of the business or investments of the Company and other needs as provided in this Agreement. No Member may demand distributions of any Company funds or assets.

When making any distributions of funds or other Company assets, the Board of Managers, in its sole and absolute discretion, shall make those distributions in the following order of priority:

- (1) to the Members in an amount sufficient to cover the highest estimated tax liability (including federal, state and local taxes) likely imposed on a typical Member as a result of profits generated by the Company;
- (2) to the Members until their respective Capital Contributions have been returned; and
- (3) to the Members on a pro rata basis according to the Member's Membership Interest.

### **(a) Cash from Capital Transactions**

The proceeds of any capital transaction will be applied to payment of all expenses incurred in connection with the transaction and, to the extent specified in the terms of any capital transaction, to the payment of any indebtedness secured by the asset involved in the capital transaction.

### **(b) Distribution Allocations**

Except as otherwise provided in this Agreement, distributions will be allocated to the Members in proportion to their Membership Interests.



**(c) Return of Distribution**

Any distribution made to the Members will be considered to comply with applicable law if the distribution is made from available Company assets. If a court of competent jurisdiction finds that a distribution violates applicable law and the request for return of the distribution is approved by Seventy-Five Percent (75%) of the Members, the Members must return their respective share of that distribution.

**Article 6  
Company Management**

**Section 6.01 Manager's General Authority**

The Company will be manager-managed by a board of appointed managers (the "Board of Managers"). Subject to the specific rights given to the Members in this Agreement, the Board of Managers may make all decisions concerning any matter affecting or arising out of the Company's business conduct, and the Board of Managers has the exclusive right and full authority to manage, conduct, and operate the Company business.

The Board of Managers shall manage and administer the Company according to this Agreement and as provided by the laws of the State of Illinois.

**Section 6.02 A Majority in Interest of Managers Required to Control**

When more than one Manager is acting, the concurrence of a Majority of the Board of Managers controls in all matters pertaining to the Company's administration. When only two Managers are acting, the concurrence and joinder of both is required.

**Section 6.03 Limitations on the Board of Managers' Authority**

The written consent of Members owning Seventy-Five Percent (75%) of all the Membership Interests is required to:

confess a judgment against the Company or to file or consent to filing a petition for or against the Company under any federal or state bankruptcy, insolvency, or reorganization act;

sell all or substantially all of the assets and property in liquidation or otherwise or cease the Company's business before the Company's actual termination;

admit any substitute or Additional Members into the Company except as otherwise permitted by this Agreement;

amend this Agreement, except under Section 1.01;

dissolve and liquidate the Company; or

redeem, liquidate, purchase, or otherwise acquire the Membership Interest of any Member.

As long as any delegation of power is in effect, the Board of Managers to whom the power is delegated may unilaterally exercise the delegated powers with the same force and effect as if the delegating Manager had personally joined in the exercise of the power.

#### **Section 6.04 Delegation to Agents and Others**

The Board of Managers may employ agents, employees, accountants, attorneys, consultants, and other persons necessary or appropriate to carry out the business and affairs of the Company, whether or not the person or persons are Affiliated Persons, or are employed by an Affiliated Person. The Board of Managers may direct the Company to pay reasonable fees, costs, expenses, salaries, wages, and other compensation as the Board of Managers determines to be appropriate as an expense of the Company. Those expenses may include payment or reimbursement for all fees, costs, and expenses incurred in the formation and organization of the Company. The Board of Managers may delegate management functions to any corporation, partnership, limited liability company, or other entity qualified to manage the property and to conduct the business activities of the Company. Delegation of management powers will not relieve the Board of Managers from personal liability for management decisions and operations of the Company. Any delegation of authority is to be considered in compensating the Board of Managers for services to the Company.

#### **Section 6.05 Appointment of Officers**

The Board of Managers may, in its sole and absolute discretion, appoint one or more persons as officers of the Company. In the event any such officers are appointed, the Board of Managers will define the duties and authority of such officers. The officers will report to the Board of Managers. All contracts must be approved by the Board of Managers unless the Board of Managers specifically grants authority to one or more officers.

The term of office of all officers will commence upon their election or appointment and will continue until their respective successors are elected or appointed and qualified or until their resignation or removal. Any officer may be removed from office by the Board of Managers with or without cause. An officer may resign by written notice to the Company. The resignation will be effective upon its receipt by the Company or at a subsequent time specified in the notice of resignation.

#### **Section 6.06 Powers**

In pursuing its lawful purposes, the Company may do all things that limited liability companies are permitted to do under the Act.

#### **Section 6.07 Authorization to Sign Certain Instruments**

Regarding all obligations, powers, and responsibilities under this Agreement, the Board of Managers may sign and deliver any notes and other evidence of indebtedness, contracts,

agreements, assignments, deeds, leases, loan agreements, mortgages, and other security instruments and agreements in any form on behalf of the Company as the Board of Managers determines to be proper, subject to the specific rights given to the Members in this Agreement.

## **Article 7**

## **The Board of Managers**

### **Section 7.01 Composition of the Board of Managers**

The Board of Managers shall manage and administer the Company's property and perform all other duties prescribed for a Manager by Illinois law. A Manager need not be a Member. Initially, the Board of Managers will consist of five (5) Managers, with one appointed by each Founding Member (each, a "Founder's Manager"). Only the appointing Founding Member may fill any vacancy for its designated Founder's Manager. Each Founding Member, on an annual basis, may determine who its appointed Founder's Manager shall be and each Founding Member shall have the power to remove its appointed Founder's Manager at any time for any reason. Each Manager shall have equal rights in the management. No other person may act for or bind the Company except as permitted in this Agreement or as required by law. No Manager will be personally liable for the obligations of the Company.

If a Founding Member or other appointing Member is an entity, university or municipality, then the highest ranking executive or official (e.g., President, Mayor, etc.) of such Member shall have the power to appoint the Manager or the Founder's Manager, as the case may be, on behalf of the Member with the right to appointment.

The initial Founder's Managers shall be: Timothy Struthers, as appointed by First National Nebraska Community Development Corporation; Stephen Irving, as appointed by Stephen Irving; \_\_\_\_\_, as appointed by First State Bank; F. William Nicklas, as appointed by NIU; and Anne Marie Gaura, as appointed by the City.

### **Section 7.02 Extent and Scope of Services; Fiduciary Duties**

The Board of Managers shall adequately promote the interest of the Company and the mutual interest of the Members, and shall commit the necessary time and effort to do so. The Board of Managers is not required to devote full-time hours to Company business.

In carrying out the duties of Manager under this Agreement, each member of the Board of Managers shall act as a fiduciary for the Members. In fulfilling this fiduciary duty, each member of the Board of Managers shall act in good faith and loyalty in a manner the Board of Managers reasonably believes to be in the best interests of the Company and its Members, and with such care as an ordinary prudent person in a similar position would use under similar circumstances.

Accordingly, the Board of Managers may not:

act in any manner contrary to this Agreement;

receive extra compensation not provided in this Agreement;

commingle Company funds;

take a Company opportunity for personal benefit;

fail to disclose material facts involving transfers to or from the Company; or

derive any personal profit from dealing with the Company.

Each Manager must account to the Company for any benefit received by him/her without the consent of the Members from any transaction connected with the formation, conduct, or liquidation of the Company, or from any use by the Manager of Company property. The Manager shall hold any benefits he or she receives under this provision as trustee for the benefit of the Company.

### **Section 7.03     Manager's Power to Amend**

The Board of Managers may, without the consent of the Members, amend any provision of this Agreement or the Articles of Organization, and prepare and deliver any documents necessary to reflect:

a change in the Company's name or its principal office location;

the admission, substitution, or termination of Members according to this Agreement;

a change that the Board of Managers, with sole discretion, determines to be necessary or advantageous to qualify or to maintain qualification as a limited liability company or a company in which the Members have limited liability under the laws of any jurisdiction, or to ensure that the tax treatment of the Company does not change, other than under Article Two;

a change that does not adversely affect the Members in any material respect or that is required or contemplated by this Agreement; or

any other similar amendments.

Any other amendments require the written consent of the holders of a Majority of the Membership Interests unless other provisions of this Agreement require a higher percentage of the Members (such as liquidating the Company before its term expires).

### **Section 7.04     Indemnification and Hold-Harmless Provision**

To the extent possible, this provision is intended to supersede any provision of Illinois law to the contrary.

The Board of Managers, or a Member thereof, is not liable to any Member for any loss or damage incurred on behalf of the Company because of any act, omission, or forbearance if the Board of Managers acted in good faith, in a manner that the Board of Managers reasonably believed to be for the best interests of the Company, and within the scope of the authority granted to the Board of Managers by this Agreement. The Board of Managers is not personally

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liable for the return of any portion of any Member's Capital Contribution. Any return of capital will only be made from Company assets.

The Company shall indemnify and hold the members of the Board of Managers harmless from, and advance expenses related to the defense of, any and all claims, loss, expense, or damage, including reasonable attorney's fees, resulting from any act, omission, or forbearance of the Board of Managers, or a Manager, as the case may be, conclusively presumed to have been in good faith, relating to the Company. Any such indemnification and advancement of expenses shall only be from Company assets.

The Company is not required to indemnify the Board of Managers for any loss, claim, expense, or damage incurred because of the Board of Managers' willful misconduct, gross negligence, or fraud. A Manager is personally liable and shall not be indemnified by the Company if the Manager is guilty of fraud, intentional breach of this Agreement, gross negligence, or willful misconduct regarding an act, omission, or forbearance.

#### **Section 7.05     Manager's Voluntary Resignation**

Subject to any contract between the Company and a Manager, a Manager may resign at any time by giving written notice to the Members. Any resignation will take effect on the date the notice is received or later if specified in the resignation notice. Unless otherwise specified, acceptance of the resignation notice is not required to make the Manager's resignation effective. A Manager's resignation will not prejudice the Company's rights under any contract entered by the Manager on behalf of the Company prior to such resignation.

#### **Section 7.06     Manager Removal**

Consistent with Section 7.01, each Founding Member, on an annual basis, may determine who its appointed Founder's Manager shall be and each Founding Member shall have the power to remove its appointed Founder's Manager at any time, with or without cause. All other Managers may be removed, at any time and with or without cause, by the holders of a Majority of the Membership Interests.

#### **Section 7.07     Events Not Considered Withdrawal of Manager**

Despite any provision in the Act, neither of the following events automatically causes a withdrawal:

the Board of Managers becoming the subject of an order for relief or being declared insolvent in any federal or state bankruptcy or insolvency proceeding, nor

an entity Manager's charter revocation and the expiration of the 90-day reinstatement period or revocation without a reinstatement of its charter.

#### **Section 7.08     Additional Managers**

Members may, by Majority vote, increase the size of the Board of Managers, with the additional Managers to be appointed by Majority vote of all of the Members on an annual basis, subject to such Manager's earlier resignation and the Members' right to remove the additional Manager upon Majority consent.

#### **Section 7.09     Vacancy in the Office of Manager**

Only the appointing Founding Member may fill any vacancy for its designated Founder's Manager. All other vacancies, if any, shall be filled by Majority vote of all of the Members.

#### **Section 7.10     Compensation and Expenses of Manager**

The Board of Managers shall not receive compensation for services provided. The Board of Managers is entitled to reimbursement for reasonable costs and expenses the Board of Managers incurs in conducting Company business.

#### **Section 7.11     Manager's Responsibility to File Necessary Forms and Make or Terminate Elections**

The Board of Managers shall take all action necessary to assure prompt and timely filing of: the Articles of Organization and any amendments thereto according to this Agreement; all required state and federal tax returns, reports, and forms; and all state and federal tax elections or election terminations as determined by the Board of Managers to be in the best interest of the Company.

### **Article 8**

### **The Members**

#### **Section 8.01     Members' Names and Addresses**

The Board of Managers shall maintain an updated list of all past and present Members of the Company, and their last known mailing addresses. The list must be kept as part of the Company records.

#### **Section 8.02     Limited Liability of Members**

Except under Article Four, no Member will be required to contribute capital to the Company for the payment of any losses or for any other purposes, and no Member will be responsible or obligated to any third party for any debts or liabilities of the Company in excess of the amount of:

that Member's unpaid required contributions to the Company's capital;

unrecovered contributions to the Company's capital; and

that Member's share of any undistributed Company profits.

#### **Section 8.03     No Right to Participate in Management**

No Member may participate in the management and operation of the Company's business and its investment activities or bind the Company to any obligation or liability whatsoever. But a Member may exercise any power authorized by the Act that a Member may exercise without being considered to be taking part in the control of the business of the Company.

#### **Section 8.04     Restrictions on Withdrawal Rights**

No Member, and no Assignee where applicable, may withdraw from the Company or receive a return of any contributions to the Company until the Company is terminated and its affairs wound up according to the Act and this Agreement. Any Member, and where applicable, any Assignee, who does any of the following has breached this Agreement:

- attempt to withdraw from the Company;
- interfere in the management of the Company affairs;
- engage in conduct that results in the Company losing its tax status as a Company;
- engage in conduct that discredits the Company;
- own a Membership Interest that becomes subject to a charging order, attachment, garnishment, or similar legal proceedings;
- breach any confidentiality provisions of this Agreement;
- bring any legal action against the Company to force the dissolution of the Company, to force any distribution of Company assets, or to appoint a receiver; or
- fail to discharge a legal duty to the Company.

Any Member or Assignee who breaches this Agreement is liable to the Company for damages caused by the breach, including attorney's fees and expenses of litigation. The Company may offset damages against any distributions or return of capital to the Member who has breached this Agreement.

#### **Section 8.05     No Right to Cause Dissolution**

No Member may cause the dissolution and winding up of the Company by court decree or otherwise.

#### **Section 8.06     Partition Waiver**

Each Member, individually and on behalf of the Member's successors and assigns, expressly waives any right to have any Company property partitioned.

#### **Section 8.07     Member Expulsion**

not disclose it to any person other than another Member without the consent of the other Members, except for disclosures:

compelled by law (but the Member must notify the Board of Managers promptly of any request for that information before disclosing it, if practicable);

to a Member's advisors or representatives, but only if they have agreed to be bound by the provisions of this Section; or

that the Member also has received from a source independent of the Company that the Member reasonably believes was obtained without breach of any obligation of confidentiality.

**(b) Enforcement through Specific Performance**

The Members acknowledge that disclosure of confidential information may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the provisions of this Section may be enforced by specific performance.

**Section 8.10 Non-Compete**

For as long as the Company is in existence, the Members shall not individually, or through another entity, participate in projects that are within the territory of the Company's business and purpose unless first approved by the Majority of the other Members. The territory, for purposes hereof, is considered to be the neighborhood surrounded by John Street, Harrison Street, Locust Street, and College Avenue in DeKalb, Illinois.

**Article 9**

**Meetings and Notice**

**Section 9.01 Special Meetings**

Special meetings of the Members or Managers may only be called by a Majority in Interest of the Members or Managers. Special meetings of the Members or Managers may only be called upon delivery to the Members or Managers of notice of a special meeting of the Members or Managers given according to this Agreement. The Board of Managers shall endeavor to meet at least monthly during the first year after the Company's formation.

**Section 9.02 Meeting Notice**

The Board of Managers shall deliver notice to each Member or Manager of record entitled to vote at the meeting at the address as appears in the Company records at least two but no more than thirty (30) days before the meeting date. The notice must state the date, time, and place of any meeting of the Members or Managers and a description of the meeting's purpose.

**Section 9.03 Waiving Meeting Notice**



The Company may only expel a Member for violating this Agreement or for failing to make the Capital Contributions as required in Article Four. A Member may only be expelled on the unanimous consent of all Members, excluding the Member to be expelled, under Section 6.03(b). If a Member to be expelled is a Founding Member, the Founder's Manager will first be removed as a Manager under Section 7.06.

An expelled Member loses all rights as a Member of the Company, and the expelled Member's Interests are converted to that of an Assignee.

### **Section 8.08 Voting**

Members shall vote in accordance with their respective Membership Interests. Members may only vote on the following matters:

- appointing a Manager as set forth in Section 7;
- removing a Manager, subject to the provisions of Section 7.06;
- electing a successor Manager;
- resolving a deadlock of the Board of Managers, subject to the provisions of Section 9.08;
- terminating and dissolving the Company;
- amending this Agreement; and
- any matter requiring the vote of the Members as set out elsewhere in this Agreement or in the Act.

Members may vote by written consent, with or without a formal meeting. Assignees may not vote.

### **Section 8.09 Access to Information**

Subject to the provisions of this Section, each Member is entitled to all information regarding the Company under the circumstances and subject to the conditions stated in this Agreement and the Act. Assignees have no right to information regarding the Company. All Members and any Assignees who obtain any information are subject to the confidentiality provisions of this Section.

#### **(a) Confidential Information**

The Members acknowledge that they may receive confidential information regarding the Company, the release of which may be damaging to the Company or to persons with whom it does business. Each Member shall hold in strict confidence any information regarding the Company that is confidential, and may

A Member or Manager may waive notice of any meeting, before or after the date and time of the meeting as stated in the notice, by delivering a signed waiver to the Company to include in the minutes. If a Member or Manager attends any meeting in person or by proxy, the Member or Manager waives objection to lack of notice or to defective notice of the meeting, unless the Member or Manager objects to holding the meeting or transacting business at the meeting. The Member or Manager waives objection to consideration of a particular matter at the meeting that is not within the purposes described in the meeting notice, unless the Member or Manager objects to considering the matter when it is presented.

#### **Section 9.04     Voting by Proxy**

The Members or Managers may appoint a proxy to vote or otherwise act for the Members or Managers under a written appointment form signed by the Member Managers, or the person's attorney in fact. A proxy appointment is effective when received by the secretary or other Officer or agent of the Company authorized to tabulate votes. A fiduciary's general proxy is given the same effect as the general proxy of any other Member or Manager. A proxy appointment is valid for 11 months unless otherwise specifically stated in the appointment form, or unless the authorization is revoked by the Member or Manager who issued the proxy.

#### **Section 9.05     Action by Consent**

Any Action required or permitted to be taken at a meeting of the Members or Managers may be taken without a meeting if the action is taken by all the Members or Managers entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken. These consents, in the aggregate, must be signed by all of the Members or Managers entitled to vote on the action and delivered to the Company to be included in the minutes.

#### **Section 9.06     Quorum**

For any meeting of the Members, a quorum requires the presence of Members holding at least two-thirds of the Membership Interests.

#### **Section 9.07     Voting by the Board of Managers**

Unless otherwise provided in this Agreement, the Board of Managers will take action by the affirmative vote of a Majority of the Managers. In the event of a deadlock of the Managers, the Members shall, by Majority vote in accordance with their Membership Interests, break such deadlock.

#### **Section 9.08     Presence**

Any Member or Manager may participate in any meeting through the use of any means of communication by which all Members or Managers participating may simultaneously hear each other during the meeting. Any Member or Manager participating in this way will be considered present in person at the meeting.

#### **Section 9.09     Conduct of Meetings**

At any meeting of the Members or Managers, the Board of Managers presides and the Members appoint a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting, to be kept with the Company records.

### **Section 9.10 Approval or Consent of Members**

Unless provided otherwise by the Act or this Agreement, any action of the Members requires a vote or written consent of a Majority of the Membership Interests in favor of the action.

## **Article 10 Books, Records, and Bank Accounts**

### **Section 10.01 Books and Records**

The Board of Managers shall keep books of account regarding the operation of the Company at the principal office of the Company, or at any other place the Board of Managers determines. All Members and their duly authorized representatives will have access to the books at all reasonable times. The Board of Managers shall keep the following records:

- a current list of the full name and last known address of each Manager and Member;

- a copy of the Articles of Organization (together with any amendments) and copies of any powers of attorney under which any certificate has been signed;

- copies of the Company's federal, state, and local income tax returns and any reports for the three most recent years;

- copies of this Agreement (together with any amendments);

- copies of any financial statements of the Company for the three most recent years; and

- any other documents required by law.

### **Section 10.02 Accounting and Taxable Year**

The Board of Managers shall, with the assistance of an independent account firm, as necessary, keep books of account consistent with any method authorized or required by the Internal Revenue Code and as determined by the Board of Managers. The Board of Managers shall close and balance the books at the end of each Company year. The Company's Taxable Year is the period authorized or required by the Internal Revenue Code, and as determined by the Board of Managers.

### **Section 10.03 Reports**

Within a reasonable time after the end of each Taxable Year, the Board of Managers shall provide all Members with the information necessary to prepare and file their respective tax returns. The Board of Managers shall prepare all financial statements at the Company's expense.

#### **Section 10.04 Bank Accounts and Company Funds**

The Board of Managers shall deposit all cash receipts in the Company's depository accounts. All accounts used by or on behalf of the Company are property of the Company, and will be received, held, and disbursed by the Board of Managers for the purposes specified in this Agreement. The Board of Managers must not commingle Company funds with any other funds.

### **Article 11 Admitting Additional Members**

#### **Section 11.01 Admission by Approval of Members; Prerequisites**

Additional Members may only be admitted as Members after the approval of the Members then holding a Majority of the Membership Interests. Before being admitted as a Member, a prospective Member must first:

- provide evidence satisfactory to the Board of Managers that admission of the prospective Member will not violate any applicable securities law, cause a termination of the Company under applicable provisions of the Code, or alter the status of any tax election made by the Company;

- pay all reasonable expenses connected with admission as a Member, including professional fees incurred in obtaining opinions or valuations; and

- agree to be bound by all of the terms of this Agreement by signing the Agreement.

The Members hereby acknowledge that the admission of new Members may result in the dilution of an existing Member's Membership Interest.

#### **Section 11.02 Capital Contributions and Fair Market Value**

Other than contributions of cash or publicly traded securities, the fair market value of any property to be contributed by an Additional Member as the initial Capital Contribution will be determined as agreed upon by the Additional Member and the holders of a Majority of the Membership Interests before the contribution is made. In the alternative, the Board of Managers will appoint a disinterested appraiser to determine the value of the property to be contributed.

The Board of Managers may adopt and revise rules, conventions, and procedures as the Board of Managers determines to be appropriate regarding the admission of Members to reflect the Membership Interest at the end of the year in accordance with the intentions of the Members.

#### **Section 11.03 Admissions Must Not Violate This Article**

Any attempt to admit an Additional Member that violates this Article will be null and void.

## **Article 12 Transfer of Membership Interests by a Member**

### **Section 12.01 Transfer Restrictions**

Except as provided in this Article, no Member may transfer any Membership Interest either voluntarily or involuntarily by any means without the consent of the Board of Managers. The Board of Managers is not required to consent to any attempted transfer and will not be subject to any liability for withholding consent. Any attempted transfer of a Membership Interest or the admission of a Substitute Member in violation of this Article is null and void.

### **Section 12.02 Transfer of Interest**

No Member may transfer any Membership Interest without first offering in writing to sell the Interest to the Company and to all other Members as provided in this Section.

#### **(a) Notice**

A Member who intends to transfer a Membership Interest must first give written notice of the intent to transfer to the Company and to all other Members ("Notice of Intent to Transfer"). Any Notice of Intent to Transfer must include the following information.

##### **(1) Writing Explaining Terms of Offer**

If the Member received a written offer, a copy of that written offer must be attached to the notice. If the Member received only an oral offer, a written explanation of the oral offer must be attached to the notice. The written explanation must completely detail the purchase price and payment terms.

##### **(2) Certification of Genuine Offer**

The Board of Managers shall certify in the written notice that the offer is genuine to the best of the Board of Managers' knowledge.

#### **(b) Company's Priority Right to Purchase**

The Company has the first right to purchase all or any portion of the Membership Interest according to the terms of any written Notice of Intent to Transfer except as the Company may elect to modify the terms under Section 12.02(d) below. The Company may exercise this first right to purchase by giving written notice of the Company's intent to purchase to the selling Member within sixty (60) days of receiving the written Notice of Intent to Transfer.

**(c) Other Members' Priority Right to Purchase**

If the Company does not provide written notice of an intent to purchase all of the Membership Interest within sixty (60) days of receiving the written Notice of Intent to Transfer or if the Company provides written notice of an intent not to purchase the Membership Interest, any Member may purchase any portion of the Membership Interest according to the terms of the Notice of Intent to Transfer except as the Member may elect to modify the terms under Section 12.02(d) below. A Member may exercise this right to purchase by giving notice of intent to purchase to the selling Member within forty-five (45) days of receiving the written Notice of Intent to Transfer.

If more than one Member exercises the right to purchase the same Membership Interest, each Member may purchase a pro rata share of the Membership Interest in proportion to each Member's respective Membership Interest in the Company before the offer of sale.

**(d) Payment Terms under Company's or Members' Priority Right to Purchase**

If the Company or a Member exercises the priority right to purchase a Membership Interest as provided above, then the Company or purchasing Member may, at the buyer's discretion, pay the purchase price according to the payment terms specified in the written notice of the offer provided by the selling Member.

**(e) Closing on Purchase by the Company or a Member**

The closing of any purchase of a Membership Interest under this Section will occur at the Company's principal office within one hundred twenty (120) days from the date of the Notice of Intent to Transfer.

**(f) Transfer to Third Party after Non-Exercise of Priority Right**

If neither the Company nor any Member exercises their respective priority right to purchase the Membership Interest, the selling Member may transfer its Membership Interest to the party that made the original offer for the purchase price and on the terms in the original offer.

The closing on any transfer to a third party under this Section must occur within sixty (60) days from the earlier of:

the expiration of the Company's and the other Members' priority rights to purchase; and

the date on which the Company and all other Members have provided written notice of their intent not to exercise their respective priority rights to purchase.

If the Membership Interest is not sold to the prospective purchaser within the specified time, the Company and the other Members will again be offered an opportunity to exercise their respective priority rights to purchase the Membership Interest under Section 12.02(b) and Section 12.02(c) above.

### **Section 12.03 Additional Transfer Restrictions**

If any proposed transfer of Membership Interests or addition of a Substitute Member will terminate the Company under either Internal Revenue Code Section 708(b) or the Act, then the transfer is prohibited unless the Board of Managers specifically approves the transfer. If not approved by the Board of Managers, the attempted transfer will be disregarded and void ab initio.

But the Board of Managers may not approve any transfer or addition of a Substitute Member that violates any applicable federal or state securities law.

### **Section 12.04 Transferee Treated as an Assignee until Admitted as a Substitute Member**

The transferee of a Membership Interest will hold the interest only as an Assignee until the transferee satisfies all the requirements of Section 12.05 to become a Substitute Member. As an Assignee, the transferee will have only those rights in Section 12.06.

This Section does not apply to any Membership Interest purchased under Section 12.09, Section 12.10, or Section 12.11.

### **Section 12.05 Admission of a Substitute Member**

An Assignee will not become a Substitute Member and will not have any rights as a Member until all of the conditions, consents, and procedures in this Section have been fully satisfied. All Members other than the assigning Member, and the Board of Managers must consent in writing to the admission of the Assignee as a Substitute Member. The assigning Member and the Assignee shall sign, acknowledge, and deliver instruments of transfer and assignments to the Company, in the form and substance satisfactory to the Company. These instruments include the written acceptance and adoption by the Assignee of this Agreement. The effective date of an admission as a Substitute Member is the date on which all the remaining Members and Manager vote to accept the Assignee as a Substitute Member under this Agreement and the substitute Member has executed all documents required in connection with the admission.

### **Section 12.06 Assignee's Rights and Limitations**

An Assignee is entitled to receive distributions from the Company to the same extent that the transferring Member would receive distributions under this Agreement. Until the effective date that an Assignee is admitted as a Substitute Member, an Assignee has substantially fewer rights than a Member. Assignees only hold a right to receive economic benefits when distributed from the Company in respect to the assigned Membership Interest. Other limitations on Assignees' rights include:

access only to those Company records and information specifically authorized for the Assignees under the Act;

no right to vote in any Company matters; and

no other legal or economic rights.

#### **Section 12.07 Permitted Transfers**

A Member may only transfer a Membership Interest without the Board of Managers' consent to a trust for his or her benefit, so long as the proposed transfer does not:

cause the Company to terminate for federal income tax purposes;

result in any event of default as to any secured or unsecured obligation of the Company;

cause a reassessment of any real property owned by the Company;

or cause other adverse material impact to the Company.

The transferee of a Membership Interest transfer permitted by this Section will be admitted as a Substitute Member without the necessity of compliance with Section 12.05, but the Company may require the transferee to accept this Agreement in writing.

#### **Section 12.08 Amending Operating Agreement and Articles of Organization**

If required by law, the Board of Managers shall amend the Operating Agreement or the Articles of Organization to reflect any substitution of Members or Additional Members. Until the Operating Agreement or Articles of Organization are amended under this Section, an Assignee will not become a Substitute Member.

#### **Section 12.09 Death or Disability of a Founding Member**

If a Founding Member dies or becomes totally disabled and continues to be totally disabled for a period of six (6) months, the Company may elect to redeem, and the disabled Founding Member or the deceased Founding Member's Legal Representative—or the deceased Founding Member's heirs, distributees, or beneficiaries, as the case may be—must sell, if the Company gives written notice of its intention to redeem, all of the deceased or disabled Founding Member's Membership Interest in the Company upon the terms in this Section. This redemption must occur within one hundred eighty (180) days after the expiration of the aforementioned six-month Disability period or the date of the Founding Member's death, as the case may be (the "Redemption Period").

The terms total Disability and Disability mean a Founding Member's inability to perform the material and substantial duties of his or her regular occupation.



The redemption price for the disabled or deceased Founding Member's Membership Interest will be determined under Section 12.12; the date for determining the redemption price is (i) in the event of a Disability, the end of the six-month period described above, or (ii) in the event of a Founding Member's death, the date of death.

If the deceased or disabled Founding Member's Membership Interest is redeemed under this Section, the Company will pay the redemption price to the disabled Founding Member or deceased Founding Member's Legal Representative, as the case may be, in cash or by certified check, within the Redemption Period.

Upon receipt of the redemption price, the disabled Founding Member or the deceased Founding Member's estate, as the case may be, will deliver an assignment to the Company of said Founding Member's Membership Interest, together with any other instruments required by the Company, including inheritance tax waivers, so that full and complete title to the Membership Interest can be transferred on the Company's books.

Until the redemption is complete, the agent of a disabled Founding Member acting under a durable power of attorney or the Legal Representative of a deceased or disabled Founding Member may exercise all of the Founding Member's rights and voting authority, including appointing such Founding Member's Founder's Manager, and is entitled to receive distributions of cash or other property from the Company on behalf of the Founding Member, but only if the agent or Legal Representative is a person or entity specifically listed as a permitted transferee in Section 12.07. An agent of a disabled Founding Member acting under a durable power of attorney or the Legal Representative of a deceased or disabled Founding Member may consummate the redemption under this Section, including signing all necessary documents on the disabled or deceased Founding Member's behalf and collecting any payment on behalf of the disabled or deceased Founding Member. If more than one agent or Legal Representative is entitled to act for a disabled or deceased Founding Member, the Board of Managers will designate in writing which agent or Legal Representative may act on behalf of the disabled or deceased Founding Member.

If a redemption by the Company is not completed, and except for transfers to those persons or entities specifically listed as permitted transferees in Section 12.07, any Membership Interest that is transferred because of a Member's death will be an Assignee interest.

A transferee of any transfer under this Section will be bound by all of the terms of this Agreement.

**Section 12.10 Intentionally Omitted.**

**Section 12.11 Intentionally Omitted.**

**Section 12.12 Purchase Price**

For purposes of a redemption of a Membership Interest in the Company referring to this Section, the redemption price for a Member's Membership Interest in the Company will be the book

value, according to Generally Accepted Accounting Principles (GAAP), of the Founding Member's Membership Interest determined under this Section.

### **Section 12.13 Voting Rights of Transferred Interests**

A Member who transfers a Membership Interest to an Assignee will continue to hold all voting rights associated with the assigned Interest until the Assignee of the transferred Interest satisfies all of the requirements to become a Substitute Member under Section 12.05.

In the case of an Assignee who holds a Membership Interest received because of the death of a Member, the voting rights associated with the transferred Membership Interest will be suspended and disregarded for purposes of calculating votes until the Assignee of the transferred Membership Interest satisfies all of the requirements to become a Substitute Member under Section 12.05.

### **Section 12.14 Non-Recognition of an Unauthorized Transfer or Assignment; Accumulation of Amounts to Be Distributed**

The Company is not required to recognize the purported Interest of any transferee or Assignee who alleges to have received any Membership Interest other than by an authorized transfer or Assignment under this Agreement.

### **Section 12.15 Intentionally Omitted.**

### **Section 12.16 Company's Unilateral Purchase Option for Membership Interest Acquired without Consent**

The Company will have the unilateral option to purchase any Membership Interest acquired by any transferee under this Section. For purposes of establishing the value of the Membership Interest under this provision, the Interest will be considered the Interest of an Assignee.

#### **(a) Circumstances Triggering Purchase Option**

Any of the following circumstances will trigger the Company's unilateral right to purchase a transferee's Interest. Collectively these events are referred to as triggering events:

Any individual, entity, organization, or agency obtains a Member's Interest, whether inclusive or exclusive of voting rights because of:

any valid court order that the Company is required by law to recognize;

being subject to a lawful charging order by a court of competent jurisdiction;

a levy, voluntary or involuntary bankruptcy proceeding, or other transfer of a Membership Interest, with voting rights, that the Company has

not approved but that the Company is required by law to recognize; or

any decree of divorce or equitable division or property that transfers a Membership Interest in the Company.

If the Company's unilateral purchase option is exercised, the Company will purchase the affected Membership Interest of the transferee for the book value of the Membership Interest, valued as the Membership Interest of an Assignee.

If the Membership Interest is transferred subject to a divorce decree or equitable division of property, the Company's unilateral option as to the transferred Membership Interest will be suspended for a period of sixty (60) days, and the divorcing Member will have all of the rights of the Company in this Section. If the divorcing Member fails to initiate exercise of the option within the sixty (60) day period, the Company's unilateral option right will be restored.

**(b) Terms and Conditions of Exercisable Purchase Option**

If the Company elects to exercise its unilateral purchase option, the following terms and conditions will apply to the transaction.

**(1) Written Notice of Intent to Purchase**

The Company will provide written notice to the Assignee or transferee within sixty (60) days of the triggering event that the Company intends to purchase the Membership Interest. If the Company does not provide written notice within sixty (60) days of the triggering event, the Company's unilateral purchase option will lapse.

**(2) Exercise of Option and Date of Valuation**

If the Company provides written notice of its intent to exercise its purchase option, then the Company may exercise the option within sixty (60) days from the first day of the month following the month in which the Company provided the notice. The valuation date for the Membership Interest to be purchased will be the first day of the month following the month in which notice is delivered.

**(3) No Voting Rights during Purchase Option Period**

Until the closing, the transferee will not be allowed to exercise any vote attributable to the Membership Interest that is subject to the purchase option. The transferee will be entitled to all items of income, deduction, gain, or loss from the Interest. The transferee of the Membership Interest will be an Assignee unless all conditions have been satisfied for the transferee to become a Substitute Member as described in Section 12.05.

**(4) Location and Date of Closing**

Closing of any sale under this Section will occur at the principal office of the Company within thirty (30) days of the date on which the Company provides written notice of its intent to exercise its purchase option. The purchase price shall be paid in cash or by certified check.

**Section 12.17 Assignee Assumes Tax Liability**

The Assignee of a Membership Interest shall report income, gains, losses, deductions and credits regarding the interest for the period in which the Assignee Interest is held.

**Article 13 Dissolution and Termination**

**Section 13.01 Dissolving the Company**

The Company will be dissolved only if an event described in this Section occurs.

**(a) Date Designated by the Board of Managers**

The Company will be dissolved on a date designated by the Board of Managers with the unanimous written consent of the Members.

**(b) Judicial Dissolution**

The Company will be dissolved upon the entry of a decree of judicial dissolution by a court of competent jurisdiction.

After dissolution, the Company shall conduct only activities necessary to wind up its affairs.

**Section 13.02 Liquidating the Company Property**

After dissolving the Company, the Board of Managers, or a liquidator appointed by a majority of the Members, shall liquidate the Company property; apply and distribute the proceeds from the liquidation of the property under this Agreement; and cause the cancellation of the Company's Articles of Organization.

**(a) Creditor Payment and Provision for Reserves**

First, the proceeds from the liquidated property will be applied toward or paid to any non-Member creditor of the Company in the order of payment required by applicable law. After paying liabilities owed to non-Member creditors, the Board of Managers, or liquidator shall set up a reserve of assets as the Board of Managers, or liquidator determines is reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company.

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**(b) Distributing Property after Paying Liabilities and Establishing Reserves**

After paying liabilities and establishing reserves, the Board of Managers, or liquidator shall satisfy any debts owed to Members with any remaining net assets of the Company, and then distribute any remaining assets to the Members in proportion to their respective positive Capital Account balances until all such balances are reduced to zero, and thereafter to the Members in proportion to their respective Membership Interests.

**(c) Non-Cash Assets**

If any part of the net assets distributable to the Members consists of notes, accounts receivable, or other non-cash assets, the Board of Managers, or liquidator may take whatever steps it considers to be appropriate to convert the assets into cash or any other form to facilitate distribution. If any in-kind assets of the Company are to be distributed, those assets will be distributed using their book value at the distribution date, as determined by the Board of Managers, or liquidator.

**Section 13.03 Company Property Sole Source**

Company property is the sole source for the payment of any debts or liabilities owed by the Company. Any return of Capital Contributions or liquidation amounts to the Members or Assignees (or both if the Company has Members and Assignees) will be satisfied only to the extent that the Company has adequate assets. If the Company does not have adequate assets to return the Capital Contributions, neither the Members nor Assignees will have any recourse against the Company or any other Members or Assignees, except to the extent that other Members may have outstanding debts or obligations owing to the Company.

**Article 14 Dispute Resolution Provisions**

The provisions of this Article supersede any rules governing mediation or arbitration under the law of Illinois or any other jurisdiction.

**Section 14.01 Resolving Disputes among Members and within the Company**

Any controversy or claim arising out of or relating to this Agreement which cannot be otherwise resolved pursuant to the terms hereof or through non-binding mediation, or any breach of this Agreement, shall be resolved by arbitration, except as provided in Section 8.09 and 8.10 (breaches of Non-compete and Confidentiality). The arbitration shall be held in DeKalb, Illinois and, except to the extent inconsistent with this Agreement, shall be conducted in accordance with the Rules of the American Arbitration Association (the "AAA") in effect at the time of the arbitration. In the event that the AAA will not accept jurisdiction over the dispute, then the dispute shall be submitted to an arbitration panel of at least three arbitrators for timely disposition in accordance with the provisions hereof and under the then applicable rules of the

arbitration organization. The arbitration proceedings, all documents and all testimony, whether written or oral, produced in connection therewith, and the arbitration award shall be confidential. In such an arbitration, the arbitration panel shall consist of a panel of neutral arbitrators, designated as provided in the then effective Rules of the AAA or other arbitration organization, and the arbitrators shall permit discovery of documents and witnesses to the extent permitted under United States Federal Rules of Civil Procedure 26 through 34, provided that each party shall be limited to ten depositions and all depositions shall be limited to six hours in duration (excluding objections and cross examination), unless otherwise ordered by the arbitrator upon good cause shown.

In addition to the authority conferred on the arbitrator by the applicable rules of the AAA and by law, the arbitrators shall have the authority to order such discovery and production of documents in addition to that provided above, and to make such orders for interim and final relief, including injunctive relief, as he may deem just and equitable. Notwithstanding the foregoing, the arbitrators shall be empowered only to interpret and apply the terms of this Agreement, and shall not be empowered to revise or amend any provision in this Agreement, or to make a decision based on any such revision or amendment. The arbitral award shall state the reasons for the award and relief granted, shall be final and binding on the parties to the arbitration, and may include an award of costs, including reasonable attorneys' fees and disbursements. Any award rendered may be confirmed, judgment upon any award rendered may be entered, and such award of the judgment thereon may be enforced, in any court of any state or country having jurisdiction over the parties and/or their assets. The parties recognize that they have agreed to arbitrate all disputes in DeKalb, Illinois and further agree that any and all lawsuits which relate to or arise directly or indirectly out of this Agreement, or the performance or exercise by either party of any right or obligation under this Agreement which are not arbitrable or arise out of enforcement of the agreement to arbitrate or an arbitration award, must be brought solely in a court of competent subject matter jurisdiction within Cook County, Illinois, all objections to the jurisdiction and venue of which are hereby waived by the parties to this Agreement.

#### **Section 14.02 Right to Seek Equitable Relief**

If a party materially breaches this Agreement and if the other parties determine in good faith that immediate relief is necessary, the parties alleging the material breach may seek temporary restraining orders, preliminary injunctions, or similar temporary and equitable relief in a court of competent jurisdiction.

### **Article 15**

### **General Matters**

#### **Section 15.01 Successors and Assigns**

Subject to the restrictions on transfer in this Agreement, this Agreement binds and inures to the benefit of the Members, and to their respective successors, personal representatives, heirs, and assigns.

#### **Section 15.02 Intentionally Omitted**

#### **Section 15.03 No Waiver**

Any Member's failure to insist upon strict performance of any provision or obligation of this Agreement, irrespective of the length of time for which the failure continues, is not a waiver of that Member's right to demand strict compliance in the future. An express or implied consent to or waiver of any breach or default in the performance of any obligations under this Agreement is not a consent to or waiver of any other breach or default in the performance of the same or any other obligation.

#### **Section 15.04 Definitions**

For purposes of this Agreement, the following terms have the following meanings.

**(a) Act**

Act means the Illinois Limited Liability Company Act, 805 ILCS 180/1 et seq., as amended from time to time.

**(b) Additional Member**

Additional Member means a Member who is admitted to the Company after this Agreement is signed, but who is not a Substitute Member.

**(c) Additional Capital Contribution**

See Capital Contribution.

**(d) Affiliated Person**

Affiliated Person means a Member, a member of an individual Member's Immediate Family, a Legal Representative, successor, Assignee, or trust for the benefit of a Member and members of the Immediate Families of the individual Member, and any corporation or other legal entity of which a majority of the voting interest is owned by any one or more Affiliated Persons.

**(e) Agreement**

Agreement means this Operating Agreement, as amended from time to time.

**(f) Articles of Organization**

Articles of Organization means the Articles of Organization filed with the Secretary of State of Illinois as required by the Act, or any other similar instrument required to be filed by the laws of any other state in which the Company intends to conduct business.

**(g) Assignee**

Assignee means the recipient of a Membership Interest by Assignment.

**(h) Assignment**

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Assignment means any method—direct or indirect, voluntary or involuntary—by which the legal or beneficial ownership of any interest in the Company is transferred or changed, including:

- any sale, exchange, gift, or any other form of conveyance, assignment, or transfer;

- a change in the beneficial interests of any trust or estate that holds any interest in the Company and a distribution from any trust or estate;

- a change in the ownership of any Member or Assignee that is a corporation, partnership, limited liability company, or other legal entity, including the dissolution of the entity;

- a change in legal or beneficial ownership or other form of transfer resulting from the death or divorce of any Member or Assignee or the death of the spouse of any Member or Assignee;

- any transfer or charge under a charging order issued by any court; and

- any levy, foreclosure, or similar seizure associated with the exercise of a creditor's rights in connection with a mortgage, pledge, encumbrance, or security interest.

Assignment does not include any mortgage, pledge, or similar voluntary encumbrance or grant of a security interest in any Interest in the Company.

**(i) Bankrupt**

Bankrupt means filing a petition in voluntary bankruptcy, an assignment taken voluntarily or involuntarily by a Member for the benefit of creditors, or other action under any federal or state law for the benefit of an insolvent party. Bankrupt does not include filing a petition of involuntary bankruptcy against a Member if the petition is dismissed within forty-five (45) days from the filing date, nor does it include the issuance of a charging order against a Member's Interest if the charging order is removed within ten (10) days of being served.

**(j) Capital Account**

Capital Account means the account established and maintained for each Member under Section 4.04 and under Treasury Regulation Section 1.704- 1(b)(2)(iv), as amended from time to time.

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**(k) Capital Contribution**

Capital Contribution means the total cash and other consideration contributed and agreed to be contributed to the Company by each Member. Each Initial Capital Contribution is shown in Exhibit A, attached and incorporated into this Agreement. Additional Capital Contribution means the total cash and other consideration contributed to the Company by each Member other than the Initial Capital Contribution. Any reference in this Agreement to the Capital Contribution of a current Member includes any Capital Contribution previously made by any prior Member regarding that Member's Interest. The value of a Member's Capital Contribution is the amount of cash plus the fair market value of other property contributed to the Company.

**(l) Cash-Flow Earnings**

Cash-Flow Earnings means the net income, including capital gains income, realized by the Company for the Taxable Year, reduced or increased according to the following guidelines.

**(1) Net Income Reductions**

Net income will be reduced by the actual payment of items that are not deductible by the Company for federal income tax purposes, including nondeductible travel and entertainment expenses, charitable contributions, nondeductible interest payments, the payment of debt principal and interest, the acquisition of depreciable property during the Taxable Year to the extent that the cost is not fully deductible in the year of acquisition, and any other payment that represents an actual decrease in the cash available to the Company.

**(2) Net Income Increases**

Net income will be increased by the amount expended for intangible expenses for federal income tax purposes. Intangible expenses include depreciation, depletion, and amortization costs reported as deductions for federal income tax purposes, but do not include depreciation reported as an expense that is deductible under Internal Revenue Code Section 179.

**(3) Treatment of Gain on Asset Sale**

The gain from the sale of a Company asset will be included in determining the Company's net income for distribution purposes to the extent of payments of the gain amount actually received by the Company for the Taxable Year. Deferred payments of gain under an installment sale or other deferred payment arrangement will be considered income in the year a payment is actually received.

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The computation of Cash-Flow Earnings does not include income from a partnership, trust, limited liability company, or other organization classified by federal tax law as a pass-through entity to the extent that distributions of income from the pass-through entity are not actually received during the Taxable Year or within sixty (60) days after the close of the Taxable Year. Subsequent distributions to the Company from a pass-through entity that are attributable to income realized and reported for a prior year will increase the Cash-Flow Earnings for distribution purposes.

Cash-Flow Earnings determined for distribution purposes do not include reasonable reserves. Reserves are amounts needed for working capital, debt service, deferred maintenance, and for anticipated capital improvements.

Cash-Flow Earnings take into account the obligation of the Company to the payment obligations of interest to Members who have advanced funds to the Company as loans and the payment of any guaranteed payment obligations of the Company. The distribution of earnings may be deferred for a reasonable time to the extent that the Company does not have available cash to satisfy the distribution amount. The term available cash indicates the actual cash of the Company in checking accounts, money market funds, and 90-day Treasury Bills.

**(m) Company**

Company means College Town Partners, LLC, an Illinois Limited Liability Company.

**(n) Delivery means:**

personal delivery to a party;

mailing by certified United States mail to the last known address of the party to whom delivery is made, with return receipt requested to the party making delivery;

facsimile transmission to a party when receipt is confirmed in writing or by electronic transmission back to the sending party; or

electronic mail transmission to a party when receipt is confirmed in writing or by electronic mail transmission back to the sending party.

The effective date of delivery is the date of personal delivery or the date of the return receipt, if received by the sending party. If no return receipt is provided, then the effective date will be the date the transmission would have normally been received by certified mail if there is evidence of mailing.

**(o) Disability**

Disability of a Member means that any one of the following has occurred:

the Member has been declared incompetent, incapacitated, or otherwise legally unable to effectively manage his or her property or financial affairs by a court of competent jurisdiction;

the Member's incapacity has been certified in writing by two licensed physicians, one of whom is the Member's personal physician, after examining the Member;

the Member has disappeared or is absent for unexplained reasons, causing the Member to be unable to manage his or her property or financial affairs effectively; or

the Member is being detained under duress or under law, causing the Member to be unable to manage his or her property or financial affairs effectively.

A Member's disappearance, absence, or detention under duress may be established by an affidavit of any Manager; or, if the individual in question is the only Manager, by the affidavit of any other Member. The affidavit must describe the circumstances of the individual's disappearance, absence, or detention. Any third party dealing in good faith with the Company may rely upon the affidavit.

Upon regaining capacity, a formerly incapacitated Member will have all the rights, power, and authority originally granted to the Member by this Agreement.

**(p) Founding Member**

Founding Member means the five (5) Members of the Company as of the date the Company was formed under the laws of the State of Illinois.

**(q) Immediate Family**

Immediate Family means any Member's spouse (but not a spouse who is legally separated from the person under a decree of divorce or separate maintenance), descendants (including descendants by adoption), and siblings.

**(r) Including and Includes**

In this Agreement, the words include, includes, and including mean include without limitation, includes without limitation, and including without limitation, respectively. Include, includes, and including are words of illustration and enlargement, not words of limitation or exclusivity.

**(s) Initial Capital Contribution**

See Capital Contribution.

**(t) Internal Revenue Code**

References to the Internal Revenue Code or to its provisions are to the Internal Revenue Code of 1986, as amended from time to time, and any corresponding Treasury Regulations. References to the Treasury Regulations are to the Treasury Regulations under the Internal Revenue Code in effect. If a particular provision of the Internal Revenue Code is renumbered or a subsequent federal tax law supersedes the Internal Revenue Code, any reference is to the renumbered provision or to the corresponding provision of the subsequent law, unless the result would be clearly contrary to the Members' intent as expressed in this Agreement. The same rule applies to Treasury Regulations references.

**(u) Legal Representative or Personal Representative**

The terms Legal Representative and Personal Representative mean a person's guardian, conservator, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

**(v) Majority; Majority in Interest; 75% in Interest of the Members**

Majority means greater than fifty percent (50%).

Majority in Interest means that 51 or more votes out of 100 votes that may be cast will determine the matter subject to the vote.

Seventy-Five Percent (75%) in interest of the Members means that at least 75 votes out of the total 100 votes that may be cast will determine the matter subject to the vote.

**(w) Manager**

Manager means any individual or legal entity designated in this Agreement as a Manager. A Manager conducts the business of the Company and is authorized to exercise the powers and duties of Manager detailed in this Agreement.

**(x) Market Rate of Interest or Market Rate**

The terms market rate of interest and market rate mean the rate of interest identified as the prime rate by the Wall Street Journal in its "Money Rates" column; or, if two or more rates are reported as the prime rate, the average of the two or more. If Internal Revenue Code Sections 483 and 1274A apply to this transaction, the minimum rate of interest of the purchase money obligation will be fixed at the rate of interest then required by those Sections.

**(y) Member**

Member means any person or legal entity designated in this Agreement as a Member or any person or legal entity who becomes a Member under this Agreement.

**(z) Members**

The term Members means all of the Members of the Company.

**(aa) Membership Interest**

Membership Interest means the percentage ownership interest and rights of a Member in the Company, including the Member's right to a distributive share of the profits and losses, the distributions, and the property of the Company and the right to consent or approve Company actions. All Membership Interests are subject to the restrictions on transfer imposed by this Agreement. Each Member's Interest is personal property and no Member will acquire any interest in any of the assets of the Company.

Each holder of a Membership Interest will have the right to vote the holder's proportionate interest in the Company regarding all matters that Members have a right to vote on under this Agreement or by law.

Example: A Member with a Membership Interest of 35.5% will have a 35.5% ownership interest in the Company, and will have 35.5 votes out of 100 votes that may be cast on matters that require the consent or affirmative action of the Members.

Membership Interests may be adjusted from time to time under Article Three.

**(bb) Person**

Person has the same broad meaning as defined in Internal Revenue Code Section 7701(a)(1). The term specifically includes the Company; its successors and assigns; each Member or Assignee, and their successors, assigns, heirs, and personal representatives. The phrase each other person identifies any individual, corporation, partnership, limited liability company, trust, or other party whose interest may be affected, adversely or otherwise, by the resolution of any dispute, contest, or claim.

**(cc) Property**

Property means all Company property and rights as described in Exhibit A and any property—real or personal, tangible or intangible—otherwise acquired by the Company.

**(dd) Securities Act**

Securities Act refers to the Securities Act of 1933, as amended. (kk) Substitute Member

**(ee) Substitute Member**

Substitute Member means any person not previously a Member who acquires a Membership Interest and is admitted as a Substitute Member according to the terms of Section 12.05 of this Agreement.

**(ff) Taxable Year**

Taxable Year means the calendar year or any other accounting period selected by the Board of Managers. Taxable Year is synonymous with fiscal year for all purposes of this Agreement.

**Section 15.05 Changing the Company's Situs**

The Company's situs may be changed only by the unanimous written consent of all of the Members and the Board of Managers.

**Section 15.06 No Duty to Mail Articles of Organization**

The Board of Managers does not have an obligation to deliver or mail copies of the Articles of Organization or any amendments to the Members unless required to do so by the Act.

**Section 15.07 Intellectual Property**

Intellectual property created, acquired or licensed by the Company will be held for the use of the Company or any subsidiary entity established to accomplish the purpose for which the intellectual property was acquired.

**Section 15.08 Insurance**

The Company will obtain suitable insurance covering its operations and properties.

**Section 15.09 General Matters**

The following general provisions and rules of construction apply to this Agreement:

**(a) Multiple Originals; Validity of Copies**

This Agreement may be signed in any number of counterparts, each of which will be deemed an original.

Any person may rely on a copy of this Agreement that the Board of Managers certifies to be a true copy to the same effect as if it were an original.

**(b) Singular and Plural; Gender**

Unless the context requires otherwise, words denoting the singular may be construed as plural and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within the context. The word or, when used in a list of more than two items, may function as both a conjunction and a disjunction as the context requires or permits.

**(c) Headings of Articles, Sections, and Subsections**

The headings of Articles, Sections, and Subsections used within this Agreement are included solely for the reader's convenience and reference. They have no significance in the interpretation or construction of this Agreement.

**(d) Governing Law**

This Agreement shall be governed, construed, and administered according to the laws of Illinois, as from time to time amended, without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Illinois, except as to trust property required by law to be governed by the laws of another jurisdiction, and unless the situs of administration is changed under Section 15.05.

**(e) Notices**

Unless otherwise stated, whenever this Agreement calls for notice, the notice must be in writing and must be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. Notice is effective on the date personally delivered or on the date of the return receipt. If a party giving notice does not receive the return receipt but has proof that he or she mailed the notice, notice will be effective on the date it would normally have been received by certified mail. If notice is required to be given to a minor or incapacitated individual, notice must be given to the minor or incapacitated individual's parent or Legal Representative.

**(f) Severability**

The invalidity or unenforceability of any provision of this Agreement does not affect the validity or enforceability of any other provision of this Agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this Agreement are to be construed as if the invalid provision had never been included in this Agreement.

**(g) Acceptance**

Each Manager and Member has reviewed this Agreement, accepts all its provisions, and agrees to be bound by all the terms, conditions, and restrictions contained in this Agreement.

*(Signature page to follow.)*



## Exhibit A

### The Initial Members and Contributions to the Company as of April \_\_, 2014

Member	Contribution	Value	Membership Interest
Stephen P. Irving [Address]	Cash	\$100,000.00	7.41%
First National Nebraska Community Development Corporation [Address]	Cash	\$500,000.00	37.03%
First State Bank [Address]	Cash	\$250,000.00	18.52%
Northern Illinois University [Address]	Cash	\$250,000.00	18.52%
City of DeKalb	Cash	\$250,000	18.52%
<b>TOTAL:</b>		<b>\$1,350,000.00</b>	<b>100%</b>

*To keep Membership Interests up to date for voting and distribution purposes, this Exhibit or a copy of it must be prepared and signed by the Board of Managers each time an additional contribution is made to the LLC, and each time a transfer of a Membership Interest is made between Members. Each revised Exhibit must be attached to this Agreement and available for inspection by each Member.*

IN WITNESS WHEREOF, the undersigned have executed this Agreement effective as of the date first hereinabove set forth.

**MEMBERS:**

\_\_\_\_\_  
Stephen P. Irving, in his individual capacity

FIRST STATE BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

FIRST NATIONAL NEBRASKA  
COMMUNITY DEVELOPMENT CORP.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

NORTHERN ILLINOIS UNIVERSITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF DEKALB

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**COMPANY:**

COLLEGE TOWN PARTNERS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Authorized Manager