

**AMENDED AND RESTATED OPERATING AGREEMENT**

**OF**

**ROOF DECK CLUB, LLC**



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Exhibit A “Phases of Roof Top Deck”

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COUNTY OF CHATHAM }  
STATE OF GEORGIA }

**AMENDED AND RESTATED OPERATING AGREEMENT OF  
ROOF DECK CLUB, LLC**

**WITNESSETH**

WHEREAS, on or about the 29<sup>th</sup> day of November, 2021, the Members held an organizational meeting and adopted the Operating Agreement of Roof Deck CLUB, LLC;

WHEREAS, the parties to the Operating Agreement desire to amend the Operating Agreement in its entirety and substitute the following in its place; and,

WHEREAS, the Members have voted to amend the Operating Agreement pursuant to Section 9.9, by a two-thirds majority vote of the Members, and adopt this Amended and Restated Operating Agreement in its place, as evidenced by that certain Certification of Vote attached hereto.

NOW THEREFORE, in consideration of the mutual promises of the parties and of good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the Operating Agreement is deleted in its entirety, and the following is adopted in its place:

**THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (“FEDERAL ACT”) THE GEORGIA UNIFORM SECURITIES ACT OF 2008, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE, AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE FEDERAL ACT AND VARIOUS APPLICABLE STATE LAWS. IN ADDITION, THE TRANSFER OF THE SECURITIES IS SUBJECT TO THE RESTRICTIONS ON TRANSFER AND OTHER TERMS AND CONDITIONS SET FORTH IN THE OPERATING AGREEMENT. THESE SECURITIES MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED, OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THE OPERATING AGREEMENT. FURTHER, THESE SECURITIES MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED, OR TRANSFERRED UNLESS SUCH TRANSFER IS UNDER CIRCUMSTANCES WHICH ARE, IN THE OPINION OF LEGAL COUNSEL, ACCEPTABLE TO THE COMPANY, DO NOT REQUIRE THAT THE SECURITIES BE REGISTERED UNDER**

THE FEDERAL ACT OR ANY APPLICABLE STATE SECURITIES LAWS, OR SUCH TRANSFER IS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE FEDERAL ACT OR ANY APPLICABLE STATE SECURITIES LAWS.

## ARTICLE I

### GENERAL INFORMATION

1.1 Formation and Name. The parties to this Agreement agree to and do hereby form a limited liability company under the name Roof Deck CLUB, LLC (the “Company”), pursuant to the provisions of the Act and this Agreement.

1.2 Registered Office and Agent. The initial registered office of the Company in Georgia shall be located at 319 Tattnall Street, Savannah, Georgia. The name of the current registered agent of the Company at such address shall be Colby E. Longley.

1.3 Principal Place of Business. The principal office and place of business of the Company, shall be located at 321 Abercorn Street, Unit 100, Savannah, Georgia, or at such other place as the Managing Members (as hereinafter defined) may from time to time determine and specify by written notice to the Members. The records of the Company required to be maintained under the Act shall be maintained at the principal office, the Company’s attorney’s office, or at such location as the Managing Member may from time to time determine. The Company may have such additional offices at such other places as the Managing Member shall deem advisable.

1.4 Purposes.

(a) The Company shall be engaged in the business of leasing, managing, and maintaining the rooftop deck located above the common areas of the Lafayette Condominium building, as shown on the plans attached hereto as Exhibit “A,” (the “Property”), and any other legal activities, and the Company may exercise all other powers necessary or reasonably connected with the Company’s business which may be legally exercised under the Georgia Limited Liability Company Act.

(b) The Company shall not materially amend or otherwise materially change the plans attached hereto as Exhibit “A,” without the consent of at least two-thirds (2/3rds) of the entire Membership interests in the Company. Following completion of Phase I, the company may not



undertake subsequent phases or a major capital call without approval of 2/3 of the Members. The matter to be voted on shall include detailed plans and cost estimates and be subject to commonly accepted competitive bidding practices.

(c) The Company may engage in other activities and business incidental to the purpose of the Company as may be necessary or desirable, in the opinion of the Managing Members, to promote and carry out the principal purposes of the Company, as set forth in subsection 1.4(a) above.

1.5 Term. The Company shall have a term beginning on the date the Articles of Organization are filed and received for recording by the Secretary of State, and shall continue in full force and effect in perpetuity, unless sooner dissolved pursuant to the terms of this Agreement.

1.6 Operating Agreement. The Members intend that this Agreement constitute the operating agreement of the Company pursuant to Section 14-11-101(18) of the Act.

## ARTICLE II

### MEETINGS OF MEMBERS

2.1 Special Meetings. Meetings of the Members, for any purpose or purposes, unless prescribed by statute or by the Articles of Organization of the Company, shall be held when called for by at least twenty-five percent (25%) of the Members of the Company.

2.2 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business or such other location selected by the Managing Member(s).

2.3 Notice of Meetings. Whenever Members are required or authorized to take any action at a meeting, a written notice of such meeting, stating the place, date, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered no fewer than three (3) nor more than sixty (60) days prior to the date set for such meeting, either by hand delivery or by first class mail, to each Member entitled to vote at such meetings. If mailed, such notice shall be deemed delivered seven (7) days after deposit in the United States mail addressed to the Member at his address as it appears on the books of the Company, with first class postage prepaid thereon. A written waiver by a Member of notice of a Members meeting, signed by him, whether before or after the time stated thereon, shall be equivalent to the giving of such notice. A Member may authorize the Company to notify him or her of meetings by email so long as the Member gives

written notice to the Company that he or she waives notice by the delivery methods stated hereinabove, and provides their email address to the Company.

2.4 Consent by Members. Personal presence of a Member shall not be required, provided a written consent to or rejection of any proposed action is submitted to the Member or Manager presiding over the meeting. Attendance by a Member and voting in person at any meeting shall revoke any written consents or rejections of such Member submitted with respect to action proposed to be taken at such meeting. The submission of a later dated written consent or rejection with respect to any action shall revoke an earlier one as to such action, so long as the subsequent consent or rejection is received prior to the beginning of the meeting in question. Every consent or rejection must be signed by the Member or his attorney-in-fact. All questions regarding the validity of consents or rejections shall be determined by the Member or Manager presiding over the meeting.

2.5 Action of Company by Written Consent. Any matter on which the Members are authorized to take action under law, the Articles or Organization, or this Agreement may be taken by the Members without a meeting assembled if unanimous written consent to such action by the Members are signed by the Members entitled to vote upon such action at a meeting.

2.6 Voting. The majority vote of all Members of the Company entitled to vote on the subject matter shall be the act of the Members unless otherwise provided by law, this Agreement, which includes the election of Managing Member(s), or the Articles of Organization of the Company. All questions regarding the qualification of votes and the acceptance or rejection of votes shall be decided by the Member or Manager presiding over the meeting.

2.7 Qualifications of Members. Members must be owners of Units within the Lafayette Condominium Building, and thus, a Member, in good standing, with the Lafayette Condominium Association, Inc. If a Member falls out of good standing with the Lafayette Condominium Association, Inc., then their membership status may be suspended or revoked pursuant to Article 3.8 herein. If a Member falls out of good standing with the Company, then their membership status may also be suspended or revoked pursuant to Article 3.8 herein.

2.8 Membership Appurtenant to Unit. Membership in the Company shall pass with the title to a Unit within the Lafayette Condominium. Upon becoming a Member of the Roof Deck

CLUB, LLC, said membership shall attach and become appurtenant to the Member's Unit within the Lafayette Condominium and shall pass to all successors in title to the Unit. Notwithstanding anything contained herein to the contrary, if a Member owns multiple Units within the Lafayette Condominium and conveys one or more, but fewer than all, Unit(s), to a successor in interest, the selling Member may elect to keep his Membership Interest in the Company appurtenant to a retained Unit by executing a signed writing, in a form provided by or approved by the Company, amending Exhibit "B" attached hereto to reflect the change in appurtenant Unit, which then shall be executed by the Company without the need for Membership approval.

### **ARTICLE III**

#### **INITIAL CAPITAL CONTRIBUTIONS, ASSESSMENTS, AND MEMBERSHIP INTEREST**

3.1 Amount of Contribution and Interest. Concurrently with the execution of this Agreement, each Initial Member (a/k/a "Founding Member") shall contribute to the capital of the Company cash, in the amounts described in Exhibit "B" ("Membership Contribution and Interest") attached hereto and shall receive a percentage interest ("Interest" or "Percentage Interest") in the Company as set forth opposite his or her name. The obligation of each Member hereunder is expressly acknowledged and not subject to any rights of setoff or accounting, other than specifically stated herein. Members who are invited to join the Company after its inception, will be categorized as "Non-Founding Members," and Exhibit "B," shall be amended as necessary to reflect their admission as a Member and their accompanying capital contribution.

3.2 Additional Capital Contribution. In the event the assets and projected assessments of the Company are insufficient to satisfy the obligations of the Company, the Company may require Members to contribute more capital in the form of Special Assessments, as more fully provided for in Section 3.4 below.

3.3 Annual Assessments. The Company shall have the power to levy assessments to pay the costs of administering the Company and maintaining the assets of the Company (ie: the rooftop deck) and to pay those sums due and owing to the Lafayette Condominium Association, Inc., pursuant to the terms and conditions of that certain Air Rights Lease entered into between the Company and the Lafayette Condominium Association, Inc. The assessments contemplated herein

shall not be treated as capital contributions. The Managers shall set the annual budget of the Company and distribute the budget to the Members at least thirty (30) days in advance of said budget going into effect. The budget shall become effective unless during the thirty (30) day period after it is distributed to the Members, the Members call a special meeting for the purpose of disapproving the budget, and at said meeting at least 51% of the total voting power of the Company vote to disapprove it. If the budget is disapproved, or for any reason a new budget is not established and distributed to the Members, the budget for the prior fiscal year shall remain in effect. The Managers may, in their sole discretion, collect the annual assessment on a monthly, quarterly, or bi-annual basis. Any assessment not paid within ten (10) days of the date due shall bear interest at the rate of 18% per annum and incur a late fee of 10% of the amount due or \$10.00, whichever is greater. The Managers may revise or amend the budget during the year, subject to the notice requirements and rights of the Members to disapprove the revised budget as set forth herein.

3.4 Special Assessments for Capital Improvements. In addition to the assessments and capital contributions authorized herein, the Managers may levy special assessments to cover unbudgeted expenses or to fund capital improvements. To the extent the special assessment is greater than 1/6<sup>th</sup> of the annual assessment liability of each Member, the special assessment must be approved by a majority of the total voting power of the Membership.

3.5 Specific Assessments. Any costs or expenses incurred by the Company which is due to the conduct of fewer than all Members shall be specifically assessed to those Members responsible for the cost or expense.

3.6 Interest on and Return of Capital. No Member shall be entitled to interest on his capital account or on his contributions to the capital of the Company, and, except as otherwise provided in this Agreement, no Member shall have the right to demand or to receive the return of all or any part of his capital of the Company unless and until the Company is dissolved pursuant to Section 7.3 of this Agreement.

3.7 Waiver of Right of Partition. Each of the Members hereby waives any right he might have to cause any property of the Company to be partitioned, or to file a complaint or to institute any proceeding at law or in equity to cause any property of the Company to be partitioned.

3.8 Failure to Make Capital Contributions or Pay Assessments. Should any Member be unable or unwilling to make any contribution to the capital of the Company or pay assessments required of him pursuant to Section 3.2 hereof, and in the event such Member (“Delinquent Member”) has not made such contribution within fifteen (15) days after written demand therefor, (such fifteen (15) day period being called hereinafter “Grace Period”), the Company shall suspend the Member for use of the rooftop deck until such time as all assessments, including late fees and interest, are paid by Member. If a Member is more than four (4) months in arrears, or fails to pay an annual assessment within four (4) months of it coming due, then the Company may terminate the Member’s membership interest, and upon termination, the Member’s rights pursuant to this Agreement will expire. The defaulting Member will not be entitled to any reimbursement, disbursement, or compensation for his or her membership interest. Once a defaulting Member is more than four (4) months in arrears, the Company may send notice of termination of membership interest to the defaulting Member. If the defaulting Member does not pay the balance owed, including any costs of collection and attorney’s fees, within ten (10) days, then the defaulting Member’s membership interest may be terminated

3.9 Return of Initial Capital Contribution of Founding Members. From June 1, 2021, through June 30, 2031, the Founding Members, as defined in Exhibit “B,” shall be entitled to partial reimbursements of their initial capital contributions. Founding Members shall be reimbursed \$500 each upon the submission of every two (2) new Members who are admitted between June 1, 2021, and June 30, 2031, with a cap on reimbursement being equal to the initial amount invested by the Founding Member. To the extent a Founding Member conveys his or her interest in the Unit to which their Membership in the Company is appurtenant, and do not own another Unit within the Lafayette Condominium to which the Membership interest could be transferred pursuant to Section 2.8, their Founding Membership interest shall cease to exist and from the date of the conveyance shall not be entitled to any additional return on their initial investment pursuant to this Section.

## ARTICLE IV

### ACCOUNTING AND FISCAL MATTERS

4.1 Fiscal Matters. The determination of the fiscal year, the method of accounting, and the production of financial or operating statements shall be decisions made by the Managing Members. In addition, the retention and access to books of accounts, records, and other information shall be decisions made solely by the Managing Members.

## ARTICLE V

### ASSIGNMENT OF INTERESTS; PURCHASE OF INTERESTS; ADMISSION OF MEMBERS

5.1 Generally. No Member shall have the right to assign, transfer, give, sell or pledge as security for borrowed funds such Member's Membership Interest in the Company, or make any other disposition of all or any portion of such Membership Interest (any of the foregoing may be referred to herein as a 'transfer') without the consent of 2/3rds of the Members. Additionally, all transfers must be on strict compliance with this Article V. Any transfer not in accordance with this Article VI shall be void *ad initio*. Notwithstanding anything contained herein to the contrary, a Member's Membership Interest in the Company shall automatically transfer upon the sale of his or her Unit within the Lafayette Condominium to his or her successor in title, and no membership vote shall be required.

5.2 Transfer Requirements. To be effective any transfer of a Membership Interest must meet all of the following requirements (in addition to all other terms of this Article V):

- (a) the transfer will not require registration of Membership Interests under any federal or state securities laws;
- (b) the transferee delivers to the Company a written agreement to be bound by all the terms of this Agreement;
- (c) the transfer will not result in the termination of the Company pursuant to Section 708 of the Act;
- (d) the transferee provides proof of ownership of a Unit within the Lafayette Condominium, or provides a valid and binding contract for the purchase of a Unit within the Lafayette Condominium, and said contract results in the conveyance of the Unit to the transferee;

and

(e) to the extent required herein, the transfer is approved by a 2/3rds vote of the Membership. A Member selling a Unit with an appurtenant interest in the Company to a transferee does not require a 2/3<sup>rd</sup> approval of the Membership, so long as the transferee satisfies the other requirements of this Section 5.2.

5.3 Admission as Substitute Member. Upon a transfer of a Membership Interest, if all the provisions of this Article V are satisfied, then the transferee, if not already a Member, shall be admitted as a Member and shall be entitled to exercise the rights of a Member, and Exhibit “B” shall be appropriately amended by the Managing Members, without the need for 2/3rds approval by the Membership, except as otherwise required hereinabove.

5.4 Admission of New Members. New Members who qualify for membership may be admitted upon the affirmative majority vote of the Managing Members, and upon the payment of the required Initial Capital Contribution. New Members shall not be considered Founding Members, and are not entitled to a return of their Initial Capital Contribution under any circumstances. The Initial Capital Contribution of new, non-Founding, Members to the Company shall be disbursed to Founding Members as contemplated in Article 3.9, with any additional funds being deposited into the account(s) of the Company and used to offset common expenses or to fund reserves used for the purpose of maintaining, repairing, replacing, or constructing the capital improvements of the Company. The Capital Contribution of new, non-Founding, Members to the Company shall be established by the majority vote of the Managing Members at the beginning of each fiscal year.

5.5 Tenants. Tenants shall not be Members of the Company. However, Tenants occupying a Unit with an appurtenant membership interest in the Company, pursuant to a written lease agreement which satisfies all obligations, conditions, and restrictions contained within the Declaration of Condominium for the Lafayette Condominium shall have the right to use the amenities located within the Property. The tenant(s) must be parties to a valid lease agreement, must abide by the terms and conditions contained herein, and the rules and regulations which may be promulgated by the Managing Members. Failure to do so may result in revocation or suspension

of the privileges to use the Property. To the extent a tenant(s) is authorized to use the Property, the Member and Owner of said Unit shall not be entitled to use the Property. This restriction shall not apply to an Owner's ability to inspect the rooftop deck. The Unit Owner shall be jointly and severally liable for any damages caused by Tenants to the rooftop deck.

## ARTICLE VI

### DISSOCIATION AND DISSOLUTION

6.1 Dissociation. Notwithstanding the provisions of §14-11-601.1 of the Act, the sole events of dissociation and/or withdrawal of a Member shall be:

(a) the transfer by such Member of such Member's entire Membership Interest in accordance with Article V of this Agreement;

(b) the entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage his or her person or his or her property;

(c) the occurrence of a "Bankruptcy Event" with respect to a Member. The term "Bankruptcy Event" means the occurrence of an event described in O.C.G.A. §14-11-601.1(b)(4) or (6), as amended from time to time, with respect to a Member;

(d) the Member ceases to be a Member of the Company in accordance with the terms and conditions contained herein;

(e) the Member conveys or otherwise is no longer the fee simple owner of the Unit within the Lafayette Condominium to which membership in the Company was appurtenant and membership wasn't transferred as set forth in Section 2.8, or the Member is deceased and the Unit passes to someone other than the Member's surviving spouse; or

(f) such Member defaults under this Agreement and the Managing Members terminate said Member's membership interest in accordance with the terms and conditions contained herein.

6.2 Dissociation does not terminate Company. Any act of dissociation described above shall not constitute the termination or dissolution of the Company. The Membership Interest shall be amended to reflect the new interests after removing the withdrawn Member's interest.

6.3 Dissolution. The Company shall be dissolved upon the first to occur of: (a) the unanimous vote of the Members to dissolve the Company evidenced in writing; or (b) a decree of



judicial dissolution. Notwithstanding the provisions of §14-11-405 of the Act, a Member may only be paid the value of his Membership Interest by the Company upon dissolution of the Company as provided in Section 6.4 hereof, or upon such other terms as the Members by unanimous consent agree to in writing.

6.4 Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution, an accounting shall be made of the accounts of the Company and of the Company's assets, liabilities, and operations, from the date of the last previous accounting until the date of dissolution. The Members shall then immediately begin to wind up the affairs of the Company.

(b) If the Company is dissolved and its affairs are to be wound up, the Members shall:

(i) Sell or otherwise liquidate all of the Company's assets consistent with realization of full value of such assets and collection of any assets outstanding (except to the extent the Members may determine to distribute any assets to Members in kind);

(ii) Allocate any profit or loss resulting from such sales to Members in accordance with their pro rata membership interests;

(iii) Discharge all liabilities of the Company, including liabilities to Members who are creditors, to the extent otherwise permitted by law, other than liabilities to Members for distributions;

(iv) Distribute the remaining assets to the Members, either in cash or in kind, as determined by the Members, with any assets distributed in kind being valued for this purpose at their fair market value as provided below, in accordance with the positive balance (if any) in each Member's capital account (as determined after taking into account all capital account adjustments for the Company's taxable year during which the liquidation occurs). Any such distributions to Members in respect of their capital accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations; and

(v) If any assets of the Company are to be distributed in kind, the net fair market value of such assets as of the date of dissolution shall be determined. Such assets shall be deemed to have been sold as of the date of dissolution for their fair market value, and the capital accounts

of Members shall be adjusted pursuant to the provisions of this Agreement to reflect such deemed sale.

(c) Upon completion of the winding up, liquidation, and distribution of the assets, the Company shall be deemed terminated.

(d) The Members shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

6.5 Certificate of Termination. When all debts, liabilities, and obligations have been paid and discharged or adequate provisions have been made therefore and all of the remaining property and assets have been distributed to Members, a certificate evidencing such termination may be executed and filed with the Secretary of State of Georgia in accordance with the Act.

6.6 Return of Contribution Nonrecourse to Other Member. Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of such Member's capital account. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the capital account of one or more Member, including, without limitation, all or any part of that capital account attributable to capital contributions, then such Member shall have no recourse against the Company or the other Member, and whatever property or assets of the Company are left shall be distributed amongst the remaining Members on a pro rata basis.

## ARTICLE VII

### MANAGEMENT OF THE COMPANY

7.1 Powers and Duties of Managing Members. Responsibility for the day-to-day operations of the Company's business and affairs shall be vested in one or more Manager(s), who shall be Members, and no other Member shall have the right to direct or control the affairs of the Company in any manner, except as expressly set forth herein. The Managing Members shall be responsible for the day-to-day management of the Company business and affairs, and shall devote the time and effort that he shall deem necessary for the welfare and success of the Company. The Managing Members shall be the sole agent(s) of the Company and shall have full and complete power, authority, and discretion to take such action for, on behalf of, and in the name of the Company as

each shall deem necessary or appropriate to carry out the purposes for which the Company was organized as set forth in Section 1.4 hereof. Every contract entered into by the Company shall be in writing, shall be duly authorized and executed by a Managing Member, and shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that, at the time of delivery thereof, this Agreement was in full force and effect and that the execution and delivery of such instrument was duly authorized by the Company. The other Members shall not have any right or authority to act or sign for, or to obligate the Company, but the Members shall have all other rights of a Member expressly required under the Act.

Without limiting the generality of the foregoing, the Managing Members, by majority vote, shall have full and complete power, authority, and discretion:

(a) to purchase, sell, convey, or lease personal property and to execute any documents or instruments in connection therewith;

(b) to borrow money for and on behalf of the Company and to convey, mortgage, pledge, hypothecate, or otherwise transfer for and on behalf of the Company any part of the Company's assets to secure any loan or loans to the Company;

(c) to make application for all governmental licenses and permits required in connection with the business and operations of the Company;

(d) to grant easements for, or otherwise enter into agreements with The Lafayette Condominium Association, Inc. for the purpose of maintaining utilities or other services to the Condominium.

(e) to execute and to deliver for and on behalf of the Company any contract, agreement, note, deed, lease, security agreement, affidavit, or other instrument or document required in connection with, or which in the opinion of counsel to the Company is necessary to facilitate the purposes of the Company;

(f) to perform all ministerial acts and duties relating to the payment of all indebtedness, taxes and assessments due or to become due with regard to the assets of the Company and to give and receive notices, reports, and other communications arising out of or in connection with the ownership, indebtedness, or maintenance of the assets of the Company;

(g) to manage the Rooftop Deck and collect all monies due to the Company and to

disburse Company funds for Company purposes to those persons entitled to receive them;

(h) to employ accountants to prepare required tax returns in accordance with the terms of this Agreement;

(i) to provide protection to the Company and the Members by purchasing such insurance as is deemed reasonably necessary to provide protection with respect to the claims of third parties;

(j) to employ attorneys for the Company purposes;

(k) to promulgate and enforce reasonable rules and restrictions governing the use of the Rooftop Deck, said enforcement to include the imposition of reasonable monetary fines or suspension of use;

(l) to prosecute, defend, and appeal such actions at law or in equity as may be necessary to enforce or protect the interests of the Company and to cause the Company to respond to any final decree, judgment, or decision of any court, board, or authority having jurisdiction over the property.

(m) to establish the Initial Capital Contribution for new, non-Founding, Members as discussed in Section 5.4, and to establish a budget upon which assessments are based in accordance with Section 3.3.

7.2 Consent of the Members. Notwithstanding any provision of Section 7.1 herein to the contrary, the Managing Members shall not cause the Company to:

(a) take any action outside or not incident to the scope of the purposes of the Company;  
or,

(b) take any action which requires the consent or approval of the Members.

7.3 Current Managing Members. The current Managing Member(s) of the Company shall be William Garrison, Russell Kinsey, Joann Sitra, and Beth Saxon, who shall serve in such capacity until resigned or removed as set forth hereinbelow. To the extent there is a tie in voting, so long as there are four (4) Managing Members, a majority vote of the Membership present at a meeting of the Company, in person or by written consent, shall break the tie. At any time when there is more than one Managing Member, any one of the Managing Member(s) may take any

action permitted to be taken by the Managing Member(s). Managing Members terms shall run from October 1 through September 30 of each year, so long as a successor is duly elected and qualified.

7.4 Number and Election of Managing Members. There shall be at least three (3) and no more than five (5) Managing Members. Managing Members shall serve one (1) year terms. Managing Members must be Members of the Company. Every year the Company shall hold a meeting for the purpose of electing the Managing Members. To achieve a quorum at this meeting, there must be at least a majority (51%) of the total membership interest present in person or by proxy. Managing Members will be elected by a plurality vote and cumulative voting is not permitted.

Wherever possible, there should be no overlap between LCA board of directors and Managing Members. The members agree that the number of Managing Members may be reduced, to not less than three (3), to minimize the occasions of board overlap. If three (3) or more non-LCA board members are placed into nomination for a Managing Member position, no overlap occurs. Following the election, the non-LCA board members receiving the most votes will be seated providing the minimum of three (3) seats is reached up to the maximum of five (5). If a total of three (3) Managing Members is not reached then, to reach the minimum number of Managing Members, members sharing a household with an LCA Board Member may be nominated and elected to fill the remaining seats. If a total of three (3) Managing Members is still not reached then, to reach the minimum number of Managing Members, LCA Board Member may be nominated and elected to fill the remaining Managing Member positions. The Company's Managing Members may develop nomination and election procedures to ensure the target Managing Member composition is equitably reached.

7.5 Removal of Managing Members. The Managing Member(s) may be removed and a new Managing Member substituted upon the affirmative majority vote of all Members. Notwithstanding the foregoing, upon the death or resignation of a Managing Member, a new Managing Member may be immediately substituted upon the affirmative majority vote of the remaining Managing Members to serve until such time as a successor is elected by the

Membership.

7.6 Compensation of Managing Members. The Managing Members shall be entitled to reimbursement for all reasonable out-of-pocket costs and expenses paid or incurred by the Managing Member for and on behalf of the Company. The Managing Members may receive such other fees and compensation as may be agreed upon by unanimous consent of the Members.

7.7 Managing Member's Liability. The Managing Member(s) shall not be liable to any Member because of any act or failure to act if the act or omission is within the scope of the authority conferred on the Managing Member(s) by this Agreement or by law and does not constitute intentional misconduct or neglect of duty. To the fullest extent permitted under Section 14-11-306 of the Act, the Company shall indemnify, defend and hold the Managing Member(s) harmless from, against and in respect of any liabilities, damages, losses, costs or expenses incurred by the Managing Member(s) as a result of any act or omission believed by it in good faith to be within the scope of authority conferred upon them by this Agreement, provided such act or omission was not the result of intentional misconduct, knowing violation of law, gross negligence or a transaction for which the Managing Member(s) received a personal benefit in violation or breach of the provisions of this Agreement.

7.8 Tax Matters Member. Russell Kinsey shall be Tax Matters Member, as that term is defined in Section 6231 of the Code. The Tax Matters Member may resign from his or her duties and obligations or may be relieved of his or her duties and obligations as such and a new Tax Matter Member shall be designated, upon the majority vote of the Managing Members.

7.9 Banking. The funds of the Company shall be kept in a separate account or accounts in the name of the Company in such bank, banks, or other federally insured depositories as may be designated by the Managing Members. All withdrawals therefrom shall be made on such signature or signatures as may be designated by the Managing Members.

7.10 Majority in Interest. As to any matter requiring the consent or approval of the Members, unless otherwise specified, the decision of Members holding a simple majority in interest shall be binding on the Company.

7.11 Limitation on the Authority of Members. No Member, other than the Managing

Members, shall have the authority to bind the Company, to enter into contracts on behalf of the Company, to convey any interest in the Company assets, or to incur debts or obligations on behalf of the Company.

7.12 Managing Member Deadlock. If the Managing Members disagree upon a course of action and such disagreement continues for a period of ten (10) days, then the Managing Members shall submit such decision to the Members for resolution by a vote of the Members. The Managing Members hereby agree to abide by and be bound by any resolution which shall have been approved by the Members holding a majority of the Membership Interest voting in person or by proxy.

## **ARTICLE VIII**

### **BUSINESS OPERATIONS AND RELATED MATTERS**

8.1 Best Efforts. The parties hereto agree to use their best efforts in connection with the purposes of the Company as set forth in Section 1.4 hereof, in an effective and efficient manner, and the parties hereto agree to cooperate in good faith with each other and with the Company to that end.

## **ARTICLE IX**

### **GENERAL PROVISIONS**

9.1 Books and Records. The Company shall keep, or cause to be kept, at Company expense, complete and accurate books of account and other records as the Managing Members, accountants, and attorneys for the Company shall deem necessary or advisable. The books and records of the Company required to be maintained under the Act shall be the property of the Company, shall at all times be maintained at the principal office, the Company's attorney's office, or at such location as the Managing Members may from time to time determine, and shall be open to reasonable inspection and examination of the Members or their duly authorized representatives.

9.2 Notices. All notices, elections, or other communications provided or required by this Agreement or relating hereto shall be effective when delivered by hand or when deposited with the U.S. Postal Service as certified or registered mail, return receipt requested and postage prepaid, addressed to the Member to whom such notice is intended to be given at the address of such Member as shown on the records of the Company, unless otherwise indicated in this Agreement.

9.3 Complete Agreement. This Agreement, together with the documents mentioned herein, contains the entire agreement of the parties, and except as specifically referred to herein, all prior negotiations, proposals, and agreements relating to the subject matter hereof have been merged herein. No change or modification of this Agreement or waiver of any term or condition shall be valid or binding upon the Members, unless such change, modification, or waiver shall be set forth in a written instrument signed by all Members.

9.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Members and their heirs, devisees, legal representatives, transferees, successors, and assignees.

9.5 Counterparts. For the convenience of the Members, any number of counterparts hereof may be executed, and each such counterpart shall be deemed to be an original instrument.

9.6 Applicable Law and Forum Selection. This Agreement shall be governed by, construed under, enforced, and interpreted in accordance with, the laws of the State of Georgia, without regard to its conflict of laws principles.

9.7 Headings. The titles of the section and subsections herein have been inserted as a matter of convenience of reference only and shall not control or affect the meaning or construction of any of the terms or provisions herein.

9.8 Gender and Number. All pronouns used in this Agreement in reference to any Member, Affiliate, or Person shall include neuter, masculine, and feminine genders, and the singular and the plural, as context requires.

9.9 Amendment of Agreement. This Agreement may be altered, amended, repealed or added to only by the consent of two-thirds (2/3rds) the entire Membership.

9.10 Partial Invalidity. If any provision of this Agreement is held by a Court of competent jurisdiction, in this or any other State, to be invalid, void or unenforceable, then the remaining provisions shall continue in full force and effect, without being impaired or invalidated in any way.

9.11 Investment Intent. Each Member hereby represents, warrants, and acknowledges that:

- (a) the Member is acquiring an interest in the Company solely for the Members's use and benefit to use the Rooftop Deck, and not with a view or interest of participating, directly, or indirectly, in the resale or distribution of all or any part thereof;



(b) the Member's interest in the Company is to be issued and sold to the Member without registration and in reliance upon certain exemptions under state and federal securities laws;

(c) the Member has received copies of this Agreement and has had an opportunity to review it or have it reviewed by the Member's representative;

[Signature page follows]

IN WITNESS WHEREOF, the foregoing constitutes the Operating Agreement of the Company, as amended herein, the same being approved by the Members of the Company constituting at least a two-thirds (2/3rds) majority vote, and as attested to and evidenced by the signatures of the Managing Members below, with the effective date of this Amended and Restated Operating Agreement being \_\_\_\_\_, 2023.

**MANAGING MEMBERS:**

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# Exhibit A

## Phase I

The entrance to the deck is through the 4th floor Drayton penthouse stairs and AlphaTouch electronic door lock. The penthouse door opens to a 2400 SF paver on pedestal deck. Two sets of furniture, umbrellas, and 4 donated beehive chairs, garden, watering system, grills. The deck plan is about double the original 1,675 SF to about 3100 SF and include much more. The view is spectacular (and the raised deck even better), and is similar to the Perry Lane view (except for Drayton Towers).

## Phase II

### roof, bathroom, and kitchen

As part of Phase II, is in the planning phase, and includes a retractable roof or permanent roof of approximately 475 SF, kitchen, bathroom, plumbing and electricity. The retractable roof solves problems of high winds, and was highly recommended by our architect. The kitchen (or bar) needs to be planned. The roof deck will use the condo electricity, garbage, water and sewer.

## Phase III

### Observation Deck

The observation deck will be about 5' above the roof on top of the columns, steps, and cable railing system, built on top of the AT&T building designed to be able to add 2 additional floors to the building. We will buy additional furniture and umbrellas, This will expand the deck area for approximate 625 more SF.

# Architectural Drawings of the retractable roof



Exhibit "A"

**EXHIBIT "B"**

**INITIAL MEMBERSHIP CONTRIBUTION AND INTEREST**

Exhibit B

<b><u>Founding Members</u></b> <b><u>Unit #s</u></b>	<b><u>Founding Member</u></b> <b><u>Representative</u></b>	Membership Contribution (as of 10/01/2021)	Percentage Interest (based on 17 members as of 10/1/2021)	
102	Hulse	\$10,000	5.9%	
103	Lee Wiedl	\$10,000	5.9%	
104	Betty Furlong	\$10,000	5.9%	
112	Russell Kinsey	\$10,000	5.9%	
203	Patricia Brennan	\$10,000	5.9%	
207	Meredith Devendorf Belford	\$10,000	5.9%	
208	Beth Saxon	\$10,000	5.9%	
210	Christine Tambakis McDonnell	\$10,000	5.9%	
301	Jammie Coleman	\$10,000	5.9%	
302	William Garrison	\$10,000	5.9%	
303	Joe Sitra	\$10,000	5.9%	
307	Geert Smit	\$10,000	5.9%	
401	Greg Rush	\$10,000	5.9%	
402	Yoryos Yeracris	\$10,000	5.9%	
403	William Highsmith	\$10,000	5.9%	
404	Reba Bergeron	\$10,000	5.9%	
408	Dennis Bruno	\$10,000	5.9%	

**CERTIFICATION OF VOTE**

I, \_\_\_\_\_, the undersigned duly authorized Managing Member of the Roof Deck CLUB, LLC, a Georgia limited liability company (the “Club”), do hereby certify that this Amended and Restated Operating Agreement was duly approved on \_\_\_\_\_, 2023, by members of the Club holding at least two-thirds (2/3) of the total eligible Club vote.

This \_\_\_\_ day of \_\_\_\_\_, 2023.

Signed, sealed and delivered  
this \_\_\_\_ day of \_\_\_\_\_,  
2023, in the presence of:

\_\_\_\_\_  
Unofficial Witness

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

\_\_\_\_\_  
Notary Public  
My Commission Expires: