



**ITEM #2**

**Articles of Incorporation**

ARTICLES OF INCORPORATION OF THE  
**EDINBURG AFFORDABLE HOUSING CORPORATION**  
A PUBLIC FACILITY CORPORATION AND INSTRUMENTALITY OF THE  
HOUSING AUTHORITY OF THE CITY OF EDINBURG

1. The name of the corporation is EDINBURG AFFORDABLE HOUSING CORPORATION.
2. The corporation is organized under the Texas Public Facility Corporation Act, Tex. Local Government Code, Chapter 303, as amended, and the Texas Nonprofit Corporation Act, Tex. Rev. Civ. Stat. Ann. art. 1396-1.01 et seq, as amended.
3. The corporation is a nonprofit public corporation.
4. The period of duration of the corporation is perpetual.
5. The name of the initial registered agent of the corporation is the Housing Authority of the City of Edinburg, and the street address of the registered office of the corporation is 910 Sugar Road, Edinburg, Texas 78539.
6. The corporation is organized and will be operated exclusively for the benefit of, to perform certain functions of, to carry out the purposes of, and to act as an instrumentality of the Housing Authority of the City of Edinburg ("EHA"). The corporation is sponsored and created by EHA, under the Public Facility Corporation Act with the broadest possible powers to assist it to acquire, construct, rehabilitate, renovate, repair, equip, furnish, finance, refinance, and place in service public facilities of EHA for public use in the public interest. EHA has specifically authorized the corporation to act on its behalf to further the public purpose described in these Articles of Incorporation.
7. The EHA has reviewed and approved this formation document as required by Texas Local Government Code §303.024 (a)(10).

The purposes for which the corporation are formed are exclusively public and charitable and consist, without limitation, of the following specific purposes:

- (1) to promote and provide advancement opportunities for low and moderate income residents, including families, and elderly, handicapped or disabled persons,
- (2) to promote and provide community economic development and educational activities and opportunities to benefit economically disadvantaged residents,

- (3) to promote the common good and general welfare of the City of Edinburg, Texas, and its residents and promoting other community improvements for low and moderate income residents in the communities and neighborhoods of Edinburg, Texas,
  - (4) Acquire improved and unimproved real property from governmental agencies, financial institutions, or other public or private entities that is economically and financially feasible for community use,
  - (5) Issue tax-exempt bonds or notes to finance public facilities on behalf of EHA, or to loan the proceeds of the tax-exempt obligations to other entities to accomplish the purposes of EHA,
  - (6) Support, develop, and provide opportunities for low and moderate income residents to undertake business enterprises and to become self-sufficient by participating in education, job training, and employment programs to reduce their dependency on public benefits and to lessen their burden on government; and to provide social services to support the business enterprises, self-sufficiency, and family and community improvement efforts of low and moderate income residents.
  - (7) Ameliorate sickness, poverty, crime and environmental degradation; and lessen the burden of government through public and private nonprofit initiatives for affordable housing opportunities, neighborhood improvement, and community development.
  - (8) Support by gifts, contributions or assistance other non-profit corporations, community funds and foundations organized and operated exclusively for charitable, educational or scientific purposes, no part of the earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.
8. In furtherance but not in limitation of the foregoing charitable, educational and scientific purposes, the corporation shall have the following powers:
- a. To acquire title to real property in order to lease, convey, or dispose of the property to the EHA, or, on direction of the sponsor and in furtherance of its purposes, to any other entity;
  - b. To furnish administrative, management, financial and other advice, support, training and technical assistance to other residents and non-profit organizations to enable them to develop necessary skills and resources to promote affordable housing opportunities and family self-sufficiency;

- c. To conduct research, studies, analyses and publish reports of the economic and social problems affecting the availability and accessibility of decent and affordable housing for lower income and minority residents, and of the markets, products, services, skills, financial resources and other matters that may further the purposes of the corporation;
  - d. To conduct educational and other efforts to eliminate prejudice and discrimination in the business, housing development, and financial communities and to establish constructive relationships between the private, for-profit business sector, the private, non-profit sector and the public sector for the promotion of affordable housing opportunities;
  - e. To support by gifts, contributions, loans, investments and other lawful forms of assistance other persons or organizations to accomplish the primary purposes of the corporation, under policies and terms resolved by the Board of Directors; and
  - f. To exercise all other rights and powers conferred upon corporations by the Texas Public Facility Corporation Act and the Texas Non-Profit Corporation Act.
9. The corporation is formed solely for public and charitable purposes. The corporation is not organized and will not operate for the primary purpose of generating pecuniary gain or profit. It will not disburse any gains, profits or dividends to the directors, officers or any individual. The corporation will be authorized and empowered to pay reasonable compensation for services rendered and to make payment and distribution to further its primary purposes. The property, assets, profits and net income of the corporation are dedicated irrevocably to public and charitable purposes. No part of the profit or net income of the corporation remaining after payment of its bonds and expenses in accomplishing its public purpose may benefit any person other than the sponsor of the corporation.
10. No substantial part of the activities of the corporation shall consist of carrying on of propaganda or otherwise attempting to influence legislation. The corporation shall not participate in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Articles, the corporation shall not carry on any other activities not permitted by a corporation exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or by a corporation that may receive contributions that are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended.
11. The number of directors constituting the initial board of directors is five, and the names and addresses of the persons who are to serve as the initial board of directors until the appointment of their successors are:

Jose Rodriguez, 910 Sugar Road, Edinburg, TX 78539

Armando Barrera, 910 Sugar Road, Edinburg, TX 78539

Sandra Garza, 910 Sugar Road, Edinburg, TX 78539

Adriana Rosas, 910 Sugar Road, Edinburg, TX 78539

Pablo Villarreal, 910 Sugar Road, Edinburg, TX 78539

12. The corporation will not have members and is a nonstock corporation. The sponsor of the corporation is EHA, and its street address is 910 Sugar Road, Edinburg, TX 78539.
13. The name and street address of the incorporator, who is of majority age, is Martin Castillo, 910 Sugar Road, Edinburg, TX 78539.
14. All real and personal property owned by the corporation shall be held for the use and benefit of EHA, shall be devoted for public use, and shall be used exclusively in performance of charitable functions to be exempt, at the option of the corporation, from all taxes, fees, and special assessments by the state of Texas, a municipality, or other political subdivision of the state under the Texas Public Facility Corporation Act, Tex. Local Government Code, Chapter 303, the Texas Housing Authorities Law, Tex. Local Government Code, Chapter 392, or other applicable laws.
15. Upon winding up and dissolution of the corporation, the title to all funds and other real property and personal property of the corporation when it dissolves automatically vests in the sponsor without further conveyance, transfer, or act, and all assets remaining after payment of, or provision for payment of, all debts and liabilities of the corporation will be distributed to or turned over to EHA; however, if EHA does not exist, then in the following order of priority:
  - a. first, to the City of Edinburg ("City");
  - b. second, to a local agency serving the City; and
  - c. third, to a state or local government or agency for a public purpose.
16. Any amendments to the Articles of Incorporation must be approved by the Board of Commissioners of EHA, as required by the Texas Public Facility Corporation Act, as amended.

IN WITNESS WHEREOF, I, the undersigned, the person named above as the incorporator, have executed these Articles of Incorporation as of April \_\_\_\_, 2024.

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Dr. Martin Castillo, Incorporator

**ITEM #5**

**Grant Consulting Agreement**

## GRANT CONSULTING AGREEMENT

This Grant Consulting Agreement ("Agreement") is entered into effective as of March \_\_\_\_, 2024 (the "Effective Date"), by and between Edinburg Housing Authority ("EHA") and World Development, LLC, a Texas limited liability company ("Consultant").

WHEREAS, EHA desires to apply for a grant in the amount of \$2,000,000.00 from the Federal Home Loan Bank (the "Grant") to provide capital for EHA's, or its affiliate's, participation in the acquisition of an interest in 3800 La Sienna Parkway LLC, a Texas limited liability company, an entity that will be formed to lease and operate the 288-unit apartment complex known as La Sienna Apartments located at 3800 La Sienna Parkway, Edinburg, Texas (the "Project");

WHEREAS, Consultant has experience and expertise in applying for grants similar to the Grant;

WHEREAS, EHA desires to engage Consultant to assist with the application for the Grant and all related matters on the terms set forth herein;

NOW, THEREFORE, the parties, in consideration of the premises and the mutual covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are acknowledged, agree as follows.

1. Consulting Services; Independent Contractor. EHA hereby retains Consultant as a consultant to EHA to assist EHA in the preparation of the application for the Grant, in presenting the Grant, in responding to any inquiries by the Federal Home Loan Bank relating to the Grant, and in all other matters reasonably necessary to properly apply for the Grant (the "Consulting Services"). Consultant is an independent contractor in the performance of the Consulting Services.

2. Term. The term ("Term") of this Agreement commences on the Effective Date and on December 31, 2024.

3. Consulting Fee and Reimbursement of Expenses. EHA shall pay Consultant a consulting fee in the amount of **Five Percent (5%)** (the "Fee") of any and all funds received by EHA or any affiliate of EHA as a result of the application for the Grant ("Grant Funds"). The Fee will be paid to Consultant within five (5) days of receipt by EHA of any Grant Funds. Additionally, EHA will reimburse Consultant for reasonable expenses incurred by Consultant in the performance of the Consulting Services within five (5) days of EHA's receipt of Consultant's invoices for reimbursement of expenses.

4. Governing Law; Section Headings. This Agreement shall be construed in accordance with, and governed by, the laws of the State of Texas as applied to contracts that are executed and performed entirely in Texas, and without regard to the conflicts of laws principles thereof. The section headings of this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof.

5. Notices. All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if: (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; (ii) by delivering same in person to the intended addressee; (iii) by delivery to a



reputable independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee; or (iv) by fax or email transmission to the intended addressee. Notice given by mail shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective only if and when received by the intended addressee. For purposes of notice, the addresses below of Consultant and EHA are set forth below; however, EHA and Consultant have the right to change their respective address for notice hereunder to any other location within the United States by the giving of thirty (30) calendar days prior notice to the other party in the manner set forth in this Agreement.

EHA: Edinburg Housing Authority  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONSULTANT: World Development, LLC  
Attn: David Salazar, President  
3618 Fossil Creek  
San Antonio, TX 78261  
Email: [dsalazarsatz@yahoo.com](mailto:dsalazarsatz@yahoo.com)

6. Benefit/Assignment. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, and assigns; provided, however, that neither Consultant, nor EHA, may assign their rights and obligations under this Agreement without the prior written consent of the other. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties any rights, remedies, obligations, or liabilities under or by reason of this Agreement.

7. Waiver of Default. No delay or omission on the part of any party in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or other provision of this Agreement.

8. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, arbitrator or court of competent jurisdiction, and if the rights or obligations of any party will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never been included in this Agreement, (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible upon which the parties agree based upon the underlying intent of the parties.

9. Entire Agreement/Amendment. This Agreement, together with the APA, supersede all previous contracts and agreements related to the subject matter of this Agreement, and

constitutes the entire agreement of whatsoever kind or nature existing between or among the parties respecting the subject matter of this Agreement, and no party to this Agreement shall be entitled to benefits other than those specified in this Agreement in regard to the subject matter of this Agreement. As between or among the parties, no oral statements or prior written materials not specifically referenced in this Agreement or the APA shall be of any force or effect.

10. Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument. The Agreement may be executed by delivery of a facsimile or email (pdf) copy of an executed signature page with the same force and effect as the delivery of an originally executed signature page.

[Signature Page Follows]

Executed by EHA and Consultant as of the Effective Date.

**EHA:**

EDINBURG HOUSING AUTHORITY

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

**CONSULTANT:**

WORLD DEVELOPMENT, LLC, a Texas limited liability company

By: \_\_\_\_\_  
DAVID SALAZAR, President

## **ITEM #6**

# **Company Agreement**

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3800 LA SIENNA PARKWAY LLC  
A TEXAS LIMITED LIABILITY COMPANY

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COMPANY AGREEMENT

DATED AS OF

April \_\_, 2024

**THE SECURITIES OFFERED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF CERTAIN STATES AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND SUCH LAWS. THE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THIS OFFERING OR THE ACCURACY OR ADEQUACY OF THIS AGREEMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.**

**THE MEMBERSHIP INTERESTS CANNOT BE RESOLD OR TRANSFERRED BY ANY PURCHASER THEREOF WITHOUT REGISTRATION OR IN A TRANSACTION WHICH IS EXEMPT FROM REGISTRATION UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS OR WHICH IS OTHERWISE IN COMPLIANCE THEREWITH. IN ADDITION, THE SALE OR TRANSFER OF MEMBERSHIP INTERESTS IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE RESTRICTIONS SET FORTH IN ARTICLE IX HEREOF.**

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**ADDENDUMS AND EXHIBITS**

<b>ADDENDUM 1</b>	<b>ADDENDUM TO AGREEMENT IN CONNECTION WITH SPECIAL MEMBERSHIP INTEREST</b>
<b>EXHIBIT A</b>	<b>DESCRIPTION OF PROPERTY</b>
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## COMPANY AGREEMENT

THIS COMPANY AGREEMENT OF 3800 LA SIENNA PARKWAY LLC, a Texas limited liability company (the “**Company**”), is dated as of April \_\_, 2024, and is among the (i) Company; (ii) (A) the COMMUNITY DEVELOPMENT TRUST (the “**CDT Member**”), (B) WORLD DEVELOPMENT, LLC, a Texas limited liability company (the “**World Development Member**”), and (iii) the EDINBURG HOUSING AUTHORITY PUBLIC FACILITIES CORPORATION (the “**EHA PFC Member**”) (collectively, the “**Members**”); and (iii) the World Development Member and [CDT APPOINTED MANAGER] as Manager of the Company (collectively, the “**Manager**”).

### RECITALS

WHEREAS, the Company was formed effective as of April \_\_, 2024 by the filing of the Certificate of Formation (the “**Certificate of Formation**”) of the Company with the Secretary of State of Texas;

WHEREAS, as of this date, the EHA PFC Member will acquire the real property described on Exhibit A, consisting of the 288 unit apartment complex known as La Sienna Apartments located at 3800 La Sienna Parkway, Edinburg, Texas (the “**Property**”) and enter into a Lease Agreement whereby the Company leases the Property from the EHA PFC Member for a period of \_\_\_\_\_ years (the “**PFC Lease**”);

WHEREAS, Exhibit B reflects the total Membership Interests owned by each of the Members.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.01 Definitions.** Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Section 1.01:

“**AAA**” has the meaning set forth in Section 12.13.

“**AAA Rules**” has the meaning set forth in Section 12.13.

“**Additional Capital Contributions**” has the meaning set forth in Section 3.02.

“**Additional Reserve**” means a reserve that is funded, maintained and used in accordance with Section 7.03(c).

**“Adjusted Capital Account Deficit”** means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) crediting to such Capital Account any amount that such Member is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i); and

(b) debiting to such Capital Account the items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

**“Affiliate”** means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, the term “control,” as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ability to exercise voting power, by contract or otherwise, including (a) any Person directly or indirectly owning, controlling or holding the power to vote more than 10% of the outstanding voting interests or shares of such other Person, (b) any Person more than 10% of whose outstanding voting interests or shares are directly or indirectly owned, controlled or held by such other Person, (c) any executive officer, director, manager or general partner of such other Person, (d) if such other Person is an executive officer, director, manager or general partner, any company for which he or she acts for in any such capacity, and (e) any other Person otherwise directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a Person if it owns, directly or indirectly, at least 25% of the ownership interest in or shares of such Person or otherwise has the power to direct the management, operations or business of such Person.

**“Agreement”** means this Amended and Restated Company Agreement of the Company, as executed and as it may be amended, modified, supplemented or restated from time to time, as provided herein.

**“Annual Budget”** means the Annual Capital Budget and Annual Operating Budget approved for such Fiscal Year, in accordance with Section 10.01(d), as the same may be amended by the Members from time to time.

**“Annual Capital Budget”** means the annual budget for capital improvements for the Company for each Fiscal Year submitted and approved in accordance with Section 10.01(d), as the same may be amended by the Members from time to time.

**“Annual Operating Budget”** means the annual operating budget for the Company for each Fiscal Year submitted and approved in accordance with Section 10.01(d), as the same may be amended by the Members from time to time.

**“Applicable Law”** means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority; (b) any consents or approvals of any

Governmental Authority; and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

“**Arbitration Notice**” has the meaning set forth in Section 12.13.

“**Arbitrators**” has the meaning set forth in Section 12.13.

“**Bankruptcy**” means, with respect to a Member, the occurrence of any of the following: (a) the filing of an application by such Member for, or a consent to, the appointment of a trustee of such Member’s assets; (b) the filing by such Member of a voluntary petition in bankruptcy or the filing of a pleading in any court of record admitting in writing such Member’s inability to pay its debts as they come due; (c) the making by such Member of a general assignment for the benefit of such Member’s creditors; (d) the filing by such Member of an answer admitting the material allegations of, or such Member’s consenting to, or defaulting in answering a bankruptcy petition filed against such Member in any bankruptcy proceeding; or (e) the expiration of 60 days following the entry of an order, judgment or decree by any court of competent jurisdiction adjudicating such Member a bankrupt or appointing a trustee of such Member’s assets.

“**Book Depreciation**” means, with respect to any Company asset for each Fiscal Year, the Company’s depreciation, amortization, or other cost recovery deductions determined for federal income tax purposes, except that if the Book Value of an asset differs from its adjusted tax basis at the beginning of such Fiscal Year, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; *provided*, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero and the Book Value of the asset is positive, Book Depreciation shall be determined with reference to such beginning Book Value using any permitted method selected by the Manager in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3).

“**Book Value**” means, with respect to any Company asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(a) the initial Book Value of any Company asset contributed by a Member to the Company shall be the gross Fair Market Value of such Company asset as of the date of such contribution;

(b) immediately prior to the distribution by the Company of any Company asset to a Member, the Book Value of such asset shall be adjusted to its gross Fair Market Value as of the date of such distribution;

(c) the Book Value of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as reasonably determined by the Manager in its reasonable discretion, as of the date of any event identified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5); provided, that adjustment pursuant to this paragraph (c) need not be made if Manager reasonably determines that such adjustment is not necessary or appropriate to reflect the relative economic interests of the Members and that the absence of such adjustment does not adversely and disproportionately affect any Member;

(d) the Book Value of each Company asset shall be increased or decreased, as the case may be, to reflect any adjustments to the adjusted tax basis of such Company asset pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Account balances pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m); *provided*, that Book Values shall not be adjusted pursuant to this paragraph (d) to the extent that an adjustment pursuant to paragraph (c) above is made in conjunction with a transaction that would otherwise result in an adjustment pursuant to this paragraph (d); and

(e) if the Book Value of a Company asset has been determined pursuant to paragraph (a) or adjusted pursuant to paragraphs (c) or (d) above, such Book Value shall thereafter be adjusted to reflect the Book Depreciation taken into account with respect to such Company asset for purposes of computing Net Income and Net Losses.

“**BSA**” has the meaning set forth in Section 4.08.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in Texas are authorized or required to close.

“**Capital Account**” has the meaning set forth in Section 3.03.

“**Capital Contribution**” means, for any Member, the total amount of cash and cash equivalents and the Book Value of any property contributed to the Company by such Member.

“**Capital Event**” means (1) the sale, exchange, ground lease, total or partial condemnation or taking, casualty loss or other disposition (whether voluntary or involuntary) of the Project, but specifically excluding dispositions of personal property and equipment in the ordinary course of business, (2) recovery of damage awards and insurance proceeds (other than business interruption or rental loss insurance proceeds), and/or (3) net proceeds (if any) from Indebtedness secured by the Project or any ownership interest therein, or any refinancing thereof, in each case as expressly permitted pursuant to the terms and provisions of this Agreement.

“**Cash Receipts**” means all cash received by the Company, excluding Capital Contributions, loan proceeds, prepayment of rent, security deposits, insurance proceeds (other than proceeds from business interruption insurance), condemnation awards, Net Cash from Capital Events, and any other funds not generated from current Project operations.

“**Certificate of Formation**” has the meaning set forth in the Recitals.

“**Code**” means the Internal Revenue Code of 1986.

“**Company**” means 3800 La Sienna Parkway LLC, a Texas limited liability company.

“**Company Interest Rate**” has the meaning set forth in Section 6.03(c).

“**Company Level Tax**” has the meaning set forth in Section 10.04(h).

“**Company Minimum Gain**” means “partnership minimum gain” as defined in Treasury Regulations Section 1.704-2(b)(2), substituting the term “Company” for the term “partnership” as the context requires.

“**Confidential Information**” has the meaning set forth in Section 12.03(a).

“**Contribution Agreement**” has the meaning set forth in the Recitals.

“**Covered Person**” has the meaning set forth in Section 8.01(a).

“**Deadlock**” has the meaning set forth in Section 7.02(c).

“**Deadlock Notice**” has the meaning set forth in Section 7.03(d).

“**Deadlock Resolution Meeting**” has the meaning set forth in Section 7.03(d).

“**Default**” has the meaning set forth in **Error! Reference source not found.**

“**Electronic Transmission**” means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process.

“**Emergency Situation**” means a situation (i) impairing or imminently likely to impair structural support of any portion of the Project, or (ii) causing or imminently likely to cause bodily injury to persons or physical damage to any part of the Project or any property in, on, under, within, upon, adjacent to the Property and which could affect the Project.

“**Environmental Law**” has the meaning set forth in Exhibit D.

“**Fair Market Value**” of any asset as of any date means the purchase price that a willing buyer having all relevant knowledge would pay a willing seller for such asset in an arm’s length transaction, as determined by the Manager in its reasonable discretion.

“**FATF**” has the meaning set forth in Section 4.08.

“**FHLB Grant**” means a grant in the amount of \$2,000,000.00 which the World Development Member and the EHA PFC Member will pursue on behalf of the Company and anticipate receiving.

“**Fiscal Year**” means the calendar year, unless the Company is required to have a taxable year other than the calendar year, in which case Fiscal Year shall be the period that conforms to its taxable year.

“**Force Majeure**” means the occurrence of a fire, flood, explosion, breakdown of machinery, governmental acts or regulations (including any governmental acts or regulations impacting the purchase and sale of materials and supplies or the transportation thereof), riot, war, labor difficulties, strikes, unavoidable shortage of materials, labor or energy, acts of terrorism,

unusual weather conditions or other Acts of God, delay by any Governmental Authority not within the affected party's control (unless such delay could have reasonably been anticipated by the affected party and the resulting cost or construction delay mitigated by commercially reasonable planning), or any other cause beyond the control of a party, which by the exercise of reasonable diligence, such party is not able to avoid or overcome, and which prevent the party from performing its obligations hereunder, in whole or in part, in each case, as mutually determined by all of the Members.

**"Force Majeure Extension"** means for any deadline, extension for any period of delay (which in the aggregate shall not exceed 90 days) which directly results from Force Majeure, provided that (i) the affected Member provides prompt written notice to the other Members of the occurrence, nature and predicted extent of any such event within five Business Days after the occurrence thereof, and (ii) the affected Member diligently endeavors to reduce or eliminate any delay resulting from such event.

**"GAAP"** means United States generally accepted accounting principles in effect from time to time.

**"Governmental Authority"** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of law), or any arbitrator, court or tribunal of competent jurisdiction.

**"Guarantor"** means, collectively, David Salazar of the World Development Member and \_\_\_\_\_.

**"Guaranty"** means collectively (i) any guaranty and/or indemnity approved by Guarantor and (ii) a guaranty of Non-Recourse Carve-Outs approved by Guarantor, as each of the same may be amended or modified; in each case given by Guarantor to Project Lender in connection with any Indebtedness.

**"Guaranty Payment"** has the meaning set forth in Section 3.11.

**"HUD"** has the meaning set forth in Section 3.11.

**"HUD Loan"** has the meaning set forth in Section 3.11.

**"HUD Loan Documents"** has the meaning set forth in Section 3.11.

**"Indebtedness"** means any indebtedness incurred by the Company or any Subsidiary, including the HUD Loan, any guaranties by the Company and any repurchase obligations of the Company.

**"Indemnifying Member"** has the meaning set forth in Section 10.04(h).

**“Internal Rate of Return”** means the discount rate that, when applied to the stream of cash flow of a Member’s Capital Contributions (determined as of the date received by the Company) and distributions from the Company to such Member (determined as of the date such distribution is made by the Company), would result in the net present value of that stream of Capital Contributions and distributions to be zero. For the avoidance of doubt, all calculations of Internal Rate of Return shall be calculated on a pre-tax basis without adjustment for any withholding or other federal, state or local income tax liabilities of the Member as a result of receiving such distributions or on the Member’s share of taxable income of the Company. For the purpose of illustration, an example showing the calculation of Internal Rate of Return is set out in Exhibit C hereto (and in the event of any discrepancy or disagreement between the foregoing definition and Internal Rate of Return as calculated in Exhibit C (which uses the Excel XIRR function), then the method of calculation provided in Exhibit C shall prevail).

**“La Sienna Apartments”** has the meaning set forth in the Recitals.

**“Liquidator”** has the meaning set forth in Section 11.03(a).

**“Losses”** has the meaning set forth in Section 8.03(a).

**“Major Action”** has the meaning set forth in Section 7.02(b).

**“Major Action Notice”** has the meaning set forth in Section 7.02(b).

**“Majority-in-Interest”** means Members whose aggregate Membership Interests exceed 50%.

**“Manager”** means, collectively, the World Development Member and [CDT MANAGER], or such other Person as may be designated or become the Manager pursuant to the terms of this Agreement. The Manager shall collectively have all the all of the powers, duties and obligations of a “manager” as provided in the TBOC, except as otherwise set forth in this Agreement. During any time that there are two (2) parties acting as Manager, all actions shall require the joint and mutual agreement of both such parties. For the avoidance of doubt, as long as the World Development Member is the Manager, all actions (i) that Manager is authorized on behalf of the Company to cause the Company and any Subsidiary take and (ii) requiring the approval of the Manager contained in this Agreement shall, in each case, require the approval of World Development Member.

**“Member”** shall constitute the “members” (as that term is defined in the TBOC) of the Company.

**“Member Nonrecourse Debt”** means “partner nonrecourse debt” as defined in Treasury Regulations Section 1.704-2(b)(4), substituting the term “Company” for the term “partnership” and the term “Member” for the term “partner” as the context requires.

**“Member Nonrecourse Debt Minimum Gain”** means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if the Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i)(3).



**“Member Nonrecourse Deduction”** means “partner nonrecourse deduction” as defined in Treasury Regulations Section 1.704-2(i), substituting the term “Member” for the term “partner” as the context requires.

**“Membership Interest”** means an interest in the Company owned by a Member, including such Member’s right (a) to its distributive share of Net Income, Net Losses and other items of income, gain, loss and deduction of the Company; (b) to its distributive share of the assets of the Company; (c) to vote on, consent to or otherwise participate in any decision of the Members as provided in this Agreement; and (d) to any and all other benefits to which such Member may be entitled as provided in this Agreement or the TBOC. The Membership Interest of each Member shall be expressed as a percentage and shall be the Percentage Interest of the Members as set forth on Exhibit B attached hereto, as such Exhibit is adjusted from time to time as provided in this Agreement.

**“Net Cash from Capital Events”** means, with respect to any period, an amount equal to the cash proceeds or distributions received by the Company from sales, refinancing or recapitalizations involving any Subsidiary or the Project for such period, reduced by the portion thereof used to, in the reasonable discretion of the Manager, (1) pay principal or interest on any Indebtedness of the Company (including, interest and principal on loans from Members), (2) establish Reserves, and (3) pay all expenses incurred by the Company in connection with the transaction giving rise to such proceeds or paid out of such proceeds. Net Cash from Capital Events shall not be reduced by depreciation, amortization, cost recovery deductions or other non-cash allowances and expenses.

**“Net Cash from Operations”** means, all Cash Receipts of the Company, plus any amounts received from Reserves, reduced by the portion thereof used to, in the reasonable discretion of the Manager, (1) pay principal or interest on any Indebtedness of the Company (including, interest and principal on loans from Members), (2) establish Reserves, and (3) pay all expenses of the Company. Net Cash from Operations shall not be reduced by depreciation, amortization, cost recovery deductions or other non-cash allowances and expenses.

**“Net Income”** and **“Net Loss”** mean, for each Fiscal Year or other period specified in this Agreement, an amount equal to the Company’s taxable income or taxable loss, or particular items thereof, determined in accordance with Code Section 703(a) (where, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or taxable loss), but with the following adjustments:

(a) any income realized by the Company that is exempt from federal income taxation, as described in Code Section 705(a)(1)(B), shall be added to such taxable income or taxable loss, notwithstanding that such income is not includable in gross income;

(b) any expenditures of the Company described in Code Section 705(a)(2)(B), including any items treated under Treasury Regulations Section 1.704-1(b)(2)(iv)(i) as items described in Code Section 705(a)(2)(B), shall be subtracted from such taxable income or taxable loss, notwithstanding that such expenditures are not deductible for federal income tax purposes;

(c) any gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property so disposed, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(d) any items of depreciation, amortization and other cost recovery deductions with respect to Company property having a Book Value that differs from its adjusted tax basis shall be computed by reference to the property's Book Value (as adjusted for Book Depreciation) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g);

(e) if the Book Value of any Company property is adjusted as provided in the definition of Book Value, then the amount of such adjustment shall be treated as an item of gain or loss and included in the computation of such taxable income or taxable loss;

(f) to the extent an adjustment to the adjusted tax basis of any Company property pursuant to Code Sections 732(d), 734(b) or 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis); and

(g) items allocated pursuant to Section 5.02 shall be excluded from the computation of Net Income and Net Loss.

**“Nondiscretionary Expenses”** means expenses for the Project for real estate taxes, utility costs, regular monthly principal and interest due under any HUD Loan as set forth in the Budget, Emergency Situations and insurance premiums.

**“Non-Recourse Carve-Outs”** means any obligations or liabilities under a non-recourse carve-out guaranty under the HUD Loan Documents or under the loan documents for any other loan in connection with the Project, for which Guarantor(s) have agreed in writing to be personally liable.

**“Nonrecourse Deductions”** has the meaning set forth in Treasury Regulations Section 1.704-2(b).

**“Nonrecourse Liability”** has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

**“Notice”** has the meaning set forth in Section 12.04.

**“OFAC”** has the meaning set forth in Section 4.08.

**“Officers”** has the meaning set forth in Section 7.05.

**“Partner Nonrecourse Debt”** has the meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

“**Partner Nonrecourse Deductions**” has the meaning set forth in Section 1.704-2(i)(2) of the Treasury Regulations.

“**Percentage Interest**” mean a Member’s percentage Membership Interest in the Company, as initially set forth on Exhibit B and as may be adjusted from time to time in accordance with this Agreement.

“**Permitted Transfer**” means a Transfer carried out pursuant to Section 9.02.

“**Permitted Transferee**” means a recipient of a Permitted Transfer.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“**Personal Property**” means (a) all tangible personal property owned by the Company that is located on the Property and used exclusively for the operation and maintenance of the Project, including computers located on site, but not the proprietary or licensed software loaded therein, and (b) all books, records and files relating solely to the Project.

“**Prime Rate**” means the interest rate published in the Wall Street Journal as the “prime rate.” The Prime Rate shall be a variable rate of interest and shall change from time to time as such published rate changes.

“**Project**” has the meaning set forth in the Recitals.

“**Property**” has the meaning set forth in the Recitals and is described further on Exhibit A.

“**Refute Notice**” has the meaning set forth in Section 7.10.

“**Refute Period**” has the meaning set forth in Section 7.10.

“**Regulatory Allocations**” has the meaning set forth in Section 5.02(i).

“**Replacement Reserve**” means a reserve that is funded, maintained and used in accordance with Section 7.03(b).

“**Representative**” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“**Reserves**” means amounts set aside in the Working Capital Reserve, the Replacement Reserve, as required by the HUD Loan Documents or the Additional Reserves, but shall not include liquidation reserves set aside by the Liquidator to be used to satisfy future obligations of the Company.

“**SDN List**” has the meaning set forth in Section 4.08.

“**Securities Act**” means the Securities Act of 1933.

“**Special Member**” means JJW GST IRREVOCABLE TRUST U/A/D August 29, 2018.

“**Special Membership Interest**” has the meaning set forth in Addendum I.

“**Subsidiary**” means any Person owned by the Company, directly or indirectly, in whole or in part, that has been formed for the purpose of acquiring an interest in the Project.

“**Syndication Expenses**” means any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b) (2)(iv)(i) of the Treasury Regulations.

“**Tax Representative**” has the meaning set forth in Section 10.04(a).

“**Taxing Authority**” has the meaning set forth in Section 6.03(b).

“**TBOC**” means the Texas Business Organizations Code.

“**Termination Event**” has the meaning set forth in Section 7.10.

“**Termination Notice**” has the meaning set forth in Section 7.10.

“**Transfer**” means to, directly or indirectly, sell, transfer, assign, hypothecate or similarly dispose of, either voluntarily or involuntarily, by operation of law or otherwise, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, hypothecation or similar disposition of, any Membership Interest owned by a Person or any interest (including a beneficial interest) in any Membership Interest owned by a Person. “**Transfer**” when used as a noun shall have a correlative meaning. “**Transferor**” and “**Transferee**” mean a Person who makes or receives a Transfer, respectively.

“**Transfer Affiliate**” means a Person that is controlled, directly or indirectly, by such Member or any of its Affiliates.

“**Treasury Regulations**” means the final or temporary regulations issued by the United States Department of Treasury pursuant to its authority under the Code, and any successor regulations.

“**Units**” means the Units of the Membership Interests of the Members as described in **Error! Reference source not found..**

“**Unreturned Capital Account**” means, for each Member, an internal book account maintained by the Company for such Member equal to (x) such Member’s Initial Capital Contribution, plus Additional Capital Contributions made to the Company by such Member, reduced by (y) any amount distributed in respect of such Member’s Units pursuant to Section 6.01(b)(i) and **Error! Reference source not found., Error! Reference source not found.d)** and **Error! Reference source not found.,** as applicable, until the balance in such account equals zero.

“**U.S. Sanctions Laws**” has the meaning set forth in Section 4.08.

“**Voluntary Loan**” has the meaning set forth in Section 3.09(a).

“**Withholding Advances**” has the meaning set forth in Section 6.03(b).

“**Working Capital Reserve**” means a reserve that is funded, maintained and used in accordance with Section 7.03(a).

“**World Development Member**” has the meaning set forth in the Preamble.

**Section 1.02 Interpretation.** For purposes of this Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits and Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

## **ARTICLE II ORGANIZATION**

### **Section 2.01 Formation.**

(a) The Company was formed on November 9, 2018, pursuant to the provisions of the TBOC, upon the filing of the Certificate of Formation with the Texas Secretary of State.

(b) This Agreement shall constitute the “company agreement” (as that term is used in the TBOC) of the Company. The rights, powers, duties, obligations and liabilities of the Members shall be determined pursuant to the TBOC and this Agreement. To the extent that the rights, powers, duties, obligations and liabilities of any Member are different by reason of any provision of this Agreement than they would be under the TBOC in the absence of such provision, this Agreement shall, to the extent permitted by the TBOC, control.

**Section 2.02 Name.** The name of the Company is “3800 **La Sienna Parkway LLC**” or such other name or names as may be designated by the Manager; *provided*, that the name shall always contain the words “Limited Liability Company” or “Limited Company” or an abbreviation of those phrases. The Manager shall give prompt notice to the Members of any change to the name of the Company.

**Section 2.03 Principal Office.** The principal office of the Company is located at 3618 Fossil Creek, San Antonio, Texas, or such other place as may from time to time be determined by the Manager. The Manager shall give prompt notice of any such change to each of the Members.

**Section 2.04 Registered Office; Registered Agent.**

(a) The registered office of the Company shall be the office of the initial registered agent named in the Certificate of Formation or such other office (which need not be a place of business of the Company) as the Manager may designate from time to time in the manner provided by the TBOC and Applicable Law.

(b) The registered agent for service of process on the Company in the State of Texas shall be the initial registered agent named in the Certificate of Formation or such other Person or Persons as the Manager may designate from time to time in the manner provided by the TBOC and Applicable Law.

**Section 2.05 Purpose; Powers.**

(a) The purposes of the Company are to lease and operate the Project for the purpose of maintaining, operating, leasing and selling or otherwise disposing of the Project, and to engage in any and all activities necessary or incidental thereto, and for no other purpose.

(b) The Company shall have all the powers necessary or convenient to carry out the purposes for which it is formed, including the powers granted by the TBOC.

**Section 2.06 Term.** The term of the Company commenced on the date the Certificate of Formation was filed with the Secretary of State of the State of Texas and shall continue in existence perpetually until the Company is dissolved in accordance with the provisions of this Agreement.

**Section 2.07 No State-Law Partnership.** The Members intend that the Company will be treated as a partnership for federal and, if applicable, state and local income tax purposes, and, to the extent permissible, the Company will elect to be treated as a partnership for such purposes. The Company and each Member will file all tax returns and will otherwise take all tax and financial reporting positions in a manner consistent with such treatment and no Member will take any action inconsistent with such treatment. The Members intend that the Company will not be a partnership (including a limited partnership) or joint venture, and that no Member, Officer, or manager of the Company will be a partner or joint venturer of any other Member, Officer, or other manager of the Company, for any purposes other than as set forth in the first sentence of this Section 2.07.

**Section 2.08 Qualification in Other Jurisdictions.** The Manager shall cause the Company and each Subsidiary to be qualified, formed, or registered under assumed or fictitious names or other limited liability company statutes or similar laws of any jurisdiction in which the Company or an applicable Subsidiary owns property or transacts business if and to the extent that such qualification, formation, or registration is necessary in order to protect the limited liability of the Members or to permit the Company or such Subsidiary lawfully to own property or to transact business. The Manager shall execute, file, and publish all such certificates, notices, statements, or other instruments necessary to permit the Company and each applicable Subsidiary to conduct business as a limited liability company in all jurisdictions in which the Company or such

Subsidiary owns property or elects to do business, or to maintain the limited liability of the Members.

### ARTICLE III CAPITAL CONTRIBUTIONS; CAPITAL ACCOUNTS

**Section 3.01 Capital Contributions.** Each Member has made the Capital Contribution to the Company set forth on Exhibit “A”. The Company shall issue the Special Membership Interests to the Special Member for its contribution of an irrevocable letter of credit that will satisfy the Working Capital Reserve and any other reserve requirements under the HUD Loan Documents. The Special Membership Interest provides the Special Member with certain rights and obligations under, and this Agreement shall be subject to, the terms and provisions of Addendum 1.

#### **Section 3.02 Additional Capital Contributions.**

(a) The World Development Member and the EHA PFC Member shall make all reasonable efforts to secure the FHLB Grant on behalf of the Company. The Members agree that in the event the FHLB Grant is received by the Company, that the \$2,000,000.00 received shall be allocated as follows:

(i) \$867,211 shall be treated as a Capital Contribution from the World Development Member;

(ii) \$397,211 shall be treated as a Capital Contribution from the EHA PFC Member;

(iii) \$735,578 shall be used by the Company to pay any outstanding fees owed to World Development Member and the EHA PFC Member and any remaining balance shall be held as working capital for the Company;

(iv) \$1,264,422 shall be paid to the CDT Member as a return of capital thereby reducing its Capital Account.

After the receipt by the Company of the FHLB Grant and the distribution of the proceeds as set forth above, the Percentage Interests of the Members shall be adjusted to the amounts set forth on Exhibit B-1. In the event the Company has not received the FHLB Grant by May 1, 2026, this agreements regarding allocation to Capital Accounts and adjustment of Percentage Interests set forth in this Section 3.02(a) shall expire. Any grant proceeds received beyond that date shall be allocated in the accordance with the agreement of all of the Members.

(b) The Company is not expected to require additional capital and no Member shall be obligated to pay any Capital Contributions in excess of those described in Section 3.01 and **Error! Reference source not found.** Notwithstanding the foregoing, the Company will have a right (but not an obligation) require each Member to make Capital Contributions (the “**Additional Capital Contributions**”) to the Company.

**Section 3.03 Maintenance of Capital Accounts.** The Company shall establish and maintain for each Member a separate capital account (a “**Capital Account**”) on its books and

records in accordance with this Section 3.03. Each Capital Account shall be established and maintained in accordance with the following provisions:

- (a) Each Member's Capital Account shall be increased by the amount of:
  - (i) such Member's Capital Contributions, including such Member's Initial Capital Contribution and any additional Capital Contributions (if any) agreed to be made by such Member;
  - (ii) the amount of any Net Income or other item of income or gain allocated to such Member pursuant to Article V; and
  - (iii) the amount of any liabilities of the Company that are assumed by such Member or secured by any property distributed to such Member.
- (b) Each Member's Capital Account shall be decreased by:
  - (i) the cash amount or Book Value of any property distributed to such Member pursuant to Article VI and Article XI;
  - (ii) the amount of any Net Loss or other item of loss or deduction allocated to such Member pursuant to Article V; and
  - (iii) the amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company.

**Section 3.04 Succession upon Transfer.** In the event that any Membership Interest is Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Membership Interest and, subject to Section 5.04, shall receive allocations and distributions pursuant to Article V, Article VI, and Article XI in respect of such Membership Interest.

**Section 3.05 Negative Capital Accounts.** If any Member shall have a deficit balance in its Capital Account, such Member shall have no obligation, during the term of the Company or upon dissolution or liquidation thereof, to restore such negative balance or make any Capital Contributions to the Company by reason thereof, except as may be required by Applicable Law or in respect of any negative balance resulting from a withdrawal of capital or dissolution in contravention of this Agreement.

**Section 3.06 Limited Liability of Members.** Except as otherwise expressly provided in the TBOC, the liability of each Member for the losses, debts, liabilities and obligations of the Company shall be limited to each Member's Initial Capital Contribution, plus Additional Capital Contributions made to the Company by such Member in accordance with **Error! Reference source not found.**, and its share of any assets and undistributed profits of the Company and no Member shall be obligated to restore any negative balance in its Capital Account. No Member shall be required to lend any funds to the Company or, after its required Initial Capital Contribution, as applicable, has been paid, subject to **Error! Reference source not found.**, to make any further contribution to the Company. It is the intent of the Members that no distribution



(or any part of any distribution) made to an Member pursuant to Article VI hereof shall be deemed a return or withdrawal of capital, even if such distribution represents, in full or in part, an allocation of depreciation or any other non-cash item accounted for as a loss or deduction from or offset to the Company's income, and that an Member shall not be obligated to pay any such amount to or for the account of the Company or any creditor of the Company. However, if any court of competent jurisdiction holds that, notwithstanding the provisions of this Agreement, an Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of the Manager.

**Section 3.07 No Withdrawals from Capital Accounts.** No Member shall be entitled to withdraw any part of its Capital Account or to receive any distribution from the Company, except as otherwise provided in this Agreement. No Member shall receive any interest, salary or drawing with respect to its Capital Contributions or its Capital Account, except as otherwise provided in this Agreement. The Capital Accounts are maintained for the sole purpose of allocating items of income, gain, loss and deduction among the Members and shall have no effect on the amount of any distributions to any Members, in liquidation or otherwise.

**Section 3.08 Non-Cash Capital Contributions.** No Member may make, and the Manager may not accept on behalf of the Company, a Capital Contribution other than in cash unless the Manager and a Majority-in-Interest of the Members (excluding any Members proposing the non-cash Capital Contribution) consents in writing thereto.

**Section 3.09 Optional Loans from Members to the Company.**

(a) If the Company's funds are insufficient to meet its costs, expenses, obligations, liabilities and charges, or to make any expenditure authorized by this Agreement, and additional funds are not available from third parties on terms acceptable to the Manager in its sole discretion, a Member may (but shall not be required to), subject to the HUD Loan Documents, advance such funds to the Company (a "Voluntary Loan"). Any advance by a Member to the Company pursuant to this Section 3.09, shall (i) be evidenced by a promissory note, (ii) be unsecured, (iii) bear interest, compounded daily, at two percentage points (i.e., two hundred basis points) above the Prime Rate, (iv) be without recourse to any Member, and (v) be repaid to the Member prior to any distribution to the Members pursuant to Article VI of this Agreement. Notwithstanding the foregoing, the proceeds of a Voluntary Loan may not be used to pay compensation to the Manager or its Affiliates if the Company does not have funds available to do so.

(b) Loans by any Member to the Company or any Subsidiary shall not be considered Capital Contributions and shall not affect the maintenance of such Member's Capital Account.

**Section 3.10 Modifications.** The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Treasury Regulations. If the Manager determines that it is prudent to modify the manner in which the Capital Accounts, or any increases or decreases to the Capital Accounts, are computed in order to comply with such Treasury Regulations, the Manager may authorize such modifications.

**Section 3.11 Financing.** The Property is subject to a mortgage loan (the “HUD Loan”) which is insured by United States Department of Housing and Urban Development (“HUD”) under Section 221(d)(4) of the National Housing Act, with a current balance of approximately \$33,389,633.00. EHA PFC is acquiring title to the Property and assuming the HUD Loan.

#### ARTICLE IV MEMBERS

##### **Section 4.01 Admission of New Members.**

(a) New Members may be admitted from time to time (1) in connection with the issuance of Membership Interests by the Company, subject to Section 7.02(a)(i), and (2) in connection with a Transfer of Membership Interests, subject to compliance with the provisions of Article IX, and in either case, following compliance with the provisions of Section 4.01(b).

(b) In order for any Person not already a Member of the Company to be admitted as a Member, whether pursuant to an issuance or Transfer of a Membership Interest, such Person (1) shall have executed and delivered to the Company a written joinder to this Agreement in a form reasonably acceptable to the Manager and (2) shall at the Company’s request pay all actual costs relating to such Member’s admission, including attorneys’ fees and disbursements. Upon the amendment of Exhibit B of this Agreement by the Manager and the satisfaction of any other applicable conditions, including the receipt by the Company of payment for the issuance of a Membership Interest, such Person shall be admitted as a Member and deemed listed as such on the books and records of the Company. The Manager shall also adjust the Capital Accounts of the Members as necessary in accordance with Section 3.03.

**Section 4.02 No Personal Liability.** Except as otherwise provided in the TBOC, by Applicable Law or expressly in this Agreement, no Member will be obligated personally for any debt, obligation or liability of the Company or the other Members, whether arising in contract, tort or otherwise, solely by reason of being a Member.

**Section 4.03 No Withdrawal.** So long as a Member continues to hold any Membership Interest, such Member shall not have the ability to withdraw or resign as a Member prior to the dissolution and winding up of the Company and any such withdrawal or resignation or attempted withdrawal or resignation by a Member prior to the dissolution or winding up of the Company shall be null and void. As soon as any Person who is a Member ceases to hold any Membership Interest, such Person shall no longer be a Member.

**Section 4.04 Death or Dissolution.** The death or dissolution of any Member will not cause the dissolution of the Company. In such event the Company and its business will be continued by the remaining Member or Members and the Membership Interest owned by the deceased or dissolved Member will automatically be Transferred to such Member’s heirs, successors, or assigns (as applicable); provided that, within a reasonable time after such Transfer of Membership Interest, the applicable heirs, successors, or assigns will sign a written undertaking agreeing to be bound by the provisions of this Agreement.

**Section 4.05 No Interest in Company Property.** No real or personal property of the Company shall be deemed to be owned by any Member individually, but shall be owned by, and

title shall be vested solely in, the Company. Without limiting the foregoing, each Member hereby irrevocably waives during the term of the Company any right that such Member may have to maintain any action for partition with respect to the property of the Company.

**Section 4.06 Record of Membership Interests.** Membership Interests shall be recorded in book-entry form and no Member shall have the right to demand that the Company produce or deliver certificates representing such Membership Interests.

**Section 4.07 Compliance with Securities Laws.** Each Member represents to the Company and each other that such Member (1) is an “accredited investor” within the meaning of Rule 501(a) of Regulation D promulgated under the Securities Act; (2) has knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of holding a Membership Interest in the Company and making an informed decision with respect thereto; (3) is able to bear the economic and financial risk of an investment in the Company for an indefinite period of time; (4) acknowledges that its Membership Interest Interest, as applicable, has not been registered under the securities laws of any jurisdiction; (5) acknowledges that its Membership Interest, as applicable, cannot be Transferred to a third party for investment unless it is subsequently registered or otherwise qualified under applicable securities laws (unless an exemption from such registration or other qualification is available) and the provisions of this Agreement governing Transfers have been complied with; and (6) is in compliance with all applicable federal and state securities laws relating to the purchase of its Membership Interest, as applicable, and syndication of any interest therein.

**Section 4.08 Compliance with Anti-Money Laundering Laws.** Each Member represents to the Company and each other that such Member is in compliance with all applicable provisions of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, the United States Bank Secrecy Act (the “BSA”) and all other anti-money laundering laws and applicable regulations adopted to implement the provisions of such laws, including policies and procedures that can be reasonably expected to detect and cause the reporting of transactions under Section 5318 of the BSA. Investor is not (i) identified on the U.S. Department of Treasury Office of Foreign Assets Control (“OFAC”) list of Specially Designated Nationals and Blocked Persons (the “SDN List”) codified at 31 CFR Ch. V Annex A, (ii) owned or controlled by or acting on behalf of any person or entity listed on the SDN List, (iii) the target of any sanction, regulation, or law promulgated by OFAC or any other U.S. governmental entity (such sanctions, regulations and laws, together with any supplement or amendment thereto, the “U.S. Sanctions Laws”) such that the entry into this Agreement or the performance of any of the transactions contemplated hereby would contravene such U.S. Sanctions Laws, (iv) owned or controlled by or acting on behalf of any person or entity that is the target of any U.S. Sanctions Laws such that the entry into this Agreement or the performance of any of the transactions contemplated hereby would contravene such U.S. Sanctions Laws, (v) residing in or having a place of business in a country or territory named on the SDN List, or which is designated as a Non-Cooperative Jurisdiction by the Financial Action Task Force on Money Laundering (“FATF”), or whose funds are from or through such a jurisdiction, (vi) a non-U.S. shell bank or a person or entity providing banking services indirectly to a non-U.S. shell bank, or (vii) otherwise prohibited from investing in the Company pursuant to applicable U.S. or other anti-money laundering, anti-terrorist and asset control laws, regulations, rules or orders.

**Section 4.09 Additional Representations and Warranties.** Each Member and Manager represents, warrants, covenants, acknowledges and agrees that:

(a) If it is an entity, it is a corporation, limited liability company or partnership, as applicable, duly organized or formed and validly existing and in good standing under the laws of the state of its organization or formation; it has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and, with respect to the Members, to acquire and hold its Membership Interest, as applicable; and the execution, delivery and performance of this Agreement has been duly authorized.

(b) This Agreement and all agreements, instruments and documents herein provided to be executed or caused to be executed by it are duly authorized, executed and delivered by and are and will be binding and enforceable against it.

(c) Its execution and delivery of this Agreement and the performance of its obligations hereunder will not conflict with, result in a breach of or constitute a default (or any event that, with notice or lapse of time, or both, would constitute a default) or result in the acceleration of any obligation under any of the terms, conditions or provisions of any other agreement or instrument to which it is a party or by which it is bound or to which any of its property or assets are subject, conflict with or violate any of the provisions of its organizational documents, or violate Applicable Law, that would materially and adversely affect the performance of its duties hereunder; such Person has obtained any consent, approval, authorization or order of any court, Governmental Authority, if any, required for the execution, delivery and performance by such Person of its obligations hereunder.

(d) There is no action, suit or proceeding pending or, to its knowledge, threatened against it in any court or by or before any other Governmental Authority that would prohibit its entry into or performance of this Agreement.

(e) It has been advised to engage, and has engaged, its own counsel (whether in-house or external) and any other advisors it deems necessary and appropriate. By reason of its business or financial experience, or by reason of the business or financial experience of its own attorneys, accountants and financial advisors (which advisors, attorneys and accountants are not Affiliates of the Company or any other Person), and with respect to the Members, it is capable of evaluating the risks and merits of an investment in the Company and purchase of its Membership Interest and of protecting its own interests in connection with this investment. Nothing in this Agreement should or may be construed to allow any Person to rely upon the advice of counsel acting for another Person or to create an attorney-client relationship between another Person and counsel for such other Person.

(f) It is not required to register as an “investment company” within the meaning ascribed to such term by the Investment Company Act of 1940, and, with respect to the Members, covenants that it shall at no time while it is a Member of the Company conduct its business in a manner that requires it to register as an “investment company”.

(g) It has not dealt with any broker or finder in connection with its entering into this Agreement with the other parties to this Agreement and shall indemnify the other parties hereto

for all costs, damages and expenses (including reasonable attorneys' fees) which may arise out of a breach of the aforesaid representation and warranty. Each Member and Manager agrees to pay any applicable fees and expenses due any broker or finder that such Member or Manager has engaged.

**Section 4.10 Survival.** All representations, warranties and agreements contained in this Agreement shall survive until the dissolution and final liquidation of the Company, except and to the extent that a particular representation, warranty or agreement expressly provides otherwise or is applicable to a specific time period that has passed.

## **ARTICLE V ALLOCATIONS**

### **Section 5.01 Allocation of Net Income and Net Loss.**

(a) Except as otherwise provided herein, the Net Income and Net Losses of the Company for a Fiscal Year shall be allocated among the Members in a manner that will, as nearly as possible, cause the Capital Account balance of each Member at the end of such Fiscal Year to equal the excess (which may be negative) of: (i) the hypothetical Distribution, if any, that such Member would receive if, on the last day of the Fiscal Year, (A) all Company assets were sold for cash equal to their Gross Asset Value, taking into account any adjustments thereto for such Fiscal Year, (B) all Company liabilities were satisfied in cash according to their terms (limited, with respect to each Non-recourse Liability, to the Gross Asset Value of the assets securing such liability), and (C) the net proceeds (after satisfaction of liabilities) and all other cash on hand were distributed in full pursuant to Section 6.01 and Section 6.02, as applicable; over (ii) the sum of (X) the amount, if any, which such Member is unconditionally obligated to contribute to the capital of the Company, (Y) such Member's share of Company Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(g), and (Z) such Member's share of Member Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5), all computed immediately prior to the hypothetical sale described above.

(b) Losses allocated pursuant to this Section 5.01 shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some, but not all, of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to this Section 5.01, the limitation set forth in this Section 5.01 shall be applied on a Member by Member basis so as to allocate the maximum possible Losses to each Member under Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

**Section 5.02 Regulatory and Special Allocations.** Notwithstanding the provisions of Section 5.01:

(a) Partnership Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain (determined according to Treasury Regulations Section 1.704-2(d)(1)) during any Fiscal Year, each Member shall be specially allocated Net Income for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations Section 1.704-

2(g). The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 5.02(a) is intended to comply with the “minimum gain chargeback” requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Partner Minimum Gain Chargeback. Member Nonrecourse Deductions shall be allocated in the manner required by Treasury Regulations Section 1.704-2(i). Except as otherwise provided in Treasury Regulations Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Fiscal Year, each Member that has a share of such Member Nonrecourse Debt Minimum Gain shall be specially allocated Net Income for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to that Member’s share of the net decrease in Member Nonrecourse Debt Minimum Gain. Items to be allocated pursuant to this paragraph shall be determined in accordance with Treasury Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 5.02(b) is intended to comply with the “minimum gain chargeback” requirements in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Nonrecourse Deductions. Nonrecourse Deductions shall be allocated to the Members pro rata in accordance with their respective Percentage Interests.

(d) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions shall be specially allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Section 1.704-2(i) of the Regulations.

(e) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), Net Income shall be specially allocated to such Member in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit created by such adjustments, allocations or distributions as quickly as possible. This Section 5.02(d) is intended to comply with the qualified income offset requirement in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(f) Gross Income Allocation. If any Member has a deficit balance in its Capital Account at the end of any fiscal year of the Company which exceeds the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and 1.704-2(i)(5) of the Regulations, then each such Member shall be specially allocated items of Company income or gain in the amount of such excess as quickly as possible. The special allocations required pursuant to this Section 5.02(f) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of the aforementioned sum after all of the allocations provided for in this Article V have been tentatively made as if Section 5.02(d) and this Section 5.02(f) were not in the Agreement.

(g) Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Company asset undertaken pursuant to Sections 734(b) or 743(b) of the Code is required to be taken into account in determining the Capital Accounts of the Members under Section 1.704-

1(b)(2)(iv)(m) of the Regulations, then the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted according to the aforementioned section of the Regulations.

(h) Syndication Expenses. Syndication Expenses shall be specially allocated to the Members in proportion to their respective number of Units, provided, however that if Members are admitted to the Company pursuant to **Error! Reference source not found.** on different dates, then all Syndication Expenses shall be divided among the Members who own Units from time to time so that, to the extent possible, the cumulative Syndication Expenses allocated with respect to each Unit at any time is the same amount. If the Manager determines that such result is not likely to be achieved through future allocations of Syndication Expenses, then the Managers may specially allocate a portion of Net Income or Net Losses so as to achieve the same effect on the Capital Accounts of the Members, notwithstanding any other provision of this Agreement.

(i) Curative Allocations. The allocations set forth in this Section 5.02 (the “**Regulatory Allocations**”) are intended to comply with certain requirements of the Treasury Regulations under Code Section 704. These Regulatory Allocations may lead to results that are inconsistent with the Members’ intentions concerning their sharing in Company distributions. Accordingly, the Manager is hereby authorized to specially allocate other items of Company income, gain, loss and deductions among the Members so as to prevent the special allocations required under Section 5.02(a) through Section 5.02(g) from distorting the manner in which Company distributions are intended to be made to the Members upon the dissolution and termination of the Company. In general, the Manager anticipates that the special allocations, if any, which will be made under this Section 5.02(f) will be made by specially allocating other items of Company income, gain, loss and deduction among the Members so that the sum of the special allocations made to each Member pursuant to Section 5.02(a) through Section 5.02(g) equals the sum of the special allocations made under this Section 5.02(f). The Manager shall have the discretion to accomplish the result contemplated by this Section 5.02(f) in any manner it reasonably deems appropriate, so long as the Manager’s actions do not render invalid for federal income tax purposes any of the allocations made pursuant to this Article V.

### **Section 5.03 Variation of Allocations to Preserve and Protect Members’ Intent.**

(a) It is the intent of the Members that liquidation proceeds distributed in accordance with Capital Accounts pursuant to Section 11.03 will be distributed among the Members in the same manner as such distributions would be distributed under Section 6.02. Accordingly, the Manager hereby is authorized and directed to allocate income, gain, loss, deduction, or credit (or item thereof) arising in any year differently than otherwise provided for in this Article V to the extent that allocating income, gain, loss, deduction or credit (or item thereof) in the manner provided for in this Article V is necessary, in the opinion of the Manager, to cause Capital Accounts at the time of liquidation to be in the same ratios that liquidation proceeds would be distributed pursuant to Section 6.02. Any allocation made pursuant to this Section 5.03 shall be

deemed to be a complete substitute for any allocation otherwise provided for in this Article V and no amendment of this Agreement or approval of any Member shall be required.

(b) In making any allocation (the “new allocation”) under Section 5.03(a), the Manager is authorized to act only after having been advised by the Company’s accountants that, under Section 704(b) of the Code and the Treasury Regulations promulgated thereunder, (i) the new allocation is necessary, and (ii) the new allocation is the minimum modification of the allocations otherwise provided for in this Article V necessary in order to assure that the intent of the Members is satisfied.

**Section 5.04 Timing of Allocations.** Except as otherwise expressly provided herein, all allocations of Net Income and Net Losses shall be made as of the last day of each fiscal year of the Company.

**Section 5.05 Other Allocation Rules.** The following rules shall apply for the purpose of interpreting and applying the provisions of this Article V relating to the allocation of Net Income, Net Losses and tax credits among the Members:

(a) Allocations Among Members. All Net Income, Net Losses and tax credits allocable to the Members in the aggregate shall be allocated among them in proportion to the Units held by each of them. In the event Members are admitted to the Company pursuant to **Error! Reference source not found.** of this Agreement on different dates, then Net Income, Net Losses and tax credits allocable to the Members for each such fiscal year during which the Investor Members are so admitted shall be allocated among the Members in proportion to the number of Units each holds during such fiscal year in accordance with Section 706 of the Code and the Regulations promulgated thereunder, using any convention permitted by law and selected by the Manager.

(b) Excess Nonrecourse Liabilities. Solely for purposes of determining a Member’s proportionate share of the “excess nonrecourse liabilities” of the Company within the meaning of Section 1.752-3(a)(3) of the Regulations, the Members’ respective share of Company profits shall be equal to their Percentage Interests.

(c) Effect of Cash Flow Distributions. To the extent permitted by Sections 1.704-2(h) and 1.704-2(i)(6) of the Treasury Regulations, the Manager shall endeavor to treat distributions of Net Cash from Operations and Net Cash from Capital Events as having been made from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

**Section 5.06 Tax Allocations.** All allocations required under this Section 5.06 are solely for purposes of federal, state and local income taxes and shall not affect or in any way be taken into account in computing any Member’s Capital Account or any Member’s share of Net Income, Net Losses, tax credits or other items or distributions or permitted to be made pursuant to any provision of this Agreement.

(a) In General. Except as otherwise required under Section 5.05(b), the allocation of Net Income and Net Losses and tax credits to any Member under this Article V shall be deemed an allocation to that Member of the same proportionate part of each separate item of Company taxable income, gain, loss, deduction or credit which comprise such Net Income, Net Losses and



tax credits, including, without limitation, any “unrealized receivable” or “substantially appreciated inventory item” under Section 751 of the Code. The Members are aware of the income tax consequences of the allocations made pursuant to this Article V and hereby agree to be bound by the provisions of this Article V in reporting their respective shares of Company income, gain, loss, deduction and credit for income tax purposes.

(b) Book – Tax Differences. Notwithstanding anything to the contrary contained in this Article V, income, gain, loss, deduction and credit with respect to any Company asset contributed to the capital of the Company by any Member shall, solely for tax purposes, be allocated among the Members so as to take into account any variation between the adjusted tax basis of such Company asset to the Company for federal income tax purposes and the value assigned to each Company asset for the purposes of the computation of the Members’ Capital Accounts. If any revaluation of any Company asset is made by the Manager pursuant to the authority granted to it in Article III, then any subsequent allocations of income, gain, loss, deduction and credit with respect to such Company asset shall take into account any variation between the adjusted tax basis of such Company asset for federal income tax purposes and the value assigned to such Company asset as a result of such revaluation.

## **ARTICLE VI DISTRIBUTIONS**

**Section 6.01 Distributions.** At the discretion of the Manager, but no less frequently than quarter-yearly, Net Cash from Operations shall be distributed in the following order of priority:

(a) First, to the payment of the outstanding balance, including accrued but unpaid interest, of all Voluntary Loans (ratably if the amount available for distribution is insufficient to pay all of such obligations);

(b) Thereafter, to the Members in accordance with each Member’s Percentage Interest.

**Section 6.02 Distributions of Net Cash from Capital Events.** Net Cash from Capital Events shall be distributed within thirty (30) days of the receipt by the Company of such Net Cash from Capital Events in the following order of priority:

(a) First, to the payment of the outstanding balance, including accrued but unpaid interest, of all Voluntary Loans (ratably if the amount available for distribution is insufficient to pay all of such obligations); and

(b) Thereafter, to the Members in accordance with each Member’s Percentage Interest.

Distributions made in connection with a liquidation of the Company will be made in accordance with Section 11.03 and not in accordance with this Section 6.02. Notwithstanding any provisions to the contrary contained in this Agreement, the Company shall not make any distribution to the Members if such distribution would violate Section 101.206 of the TBOC or other Applicable Law.

### **Section 6.03 Tax Withholding; Withholding Advances.**

(a) Tax Withholding. If requested by the Manager, each Member shall, if able to do so, deliver to the Manager:

(i) an affidavit in form reasonably satisfactory to the Manager that the applicable Member (or its members, as the case may be) is not subject to withholding under the provisions of any federal, state, local, foreign or other Applicable Law;

(ii) any certificate that the Manager may reasonably request with respect to any such laws; and/or

(iii) any other form or instrument reasonably requested by the Manager relating to any Member's status under such law.

If a Member fails or is unable to deliver to the Manager the affidavit described in Section 6.03(a)(i), the Manager may withhold amounts from such Member in accordance with Section 6.03(b).

(b) Withholding Advances. The Company is hereby authorized at all times to make payments (“**Withholding Advances**”) with respect to each Member in amounts required to discharge any obligation of the Company (as determined by the Tax Representative based on the advice of legal or tax counsel to the Company) to withhold or make payments to any federal, state, local or foreign taxing authority (a “**Taxing Authority**”) with respect to any distribution or allocation by the Company of income or gain to such Member and to withhold the same from distributions to such Member. Any funds withheld from a distribution by reason of this Section 6.03(b) shall nonetheless be deemed distributed to the Member in question for all purposes under this Agreement.

(c) Repayment of Withholding Advances. Any Withholding Advance made by the Company to a Taxing Authority on behalf of a Member and not simultaneously withheld from a distribution to that Member shall, with interest thereon accruing from the date of payment at a rate equal to the prime rate published in the *Wall Street Journal* on the date of payment plus 2% per annum (the “**Company Interest Rate**”):

(i) be promptly repaid to the Company by the Member on whose behalf the Withholding Advance was made (which repayment by the Member shall not constitute a Capital Contribution, but shall credit the Member's Capital Account if the Manager shall have initially charged the amount of the Withholding Advance to the Capital Account); or

(ii) with the consent of the Manager, be repaid by reducing the amount of the next succeeding distribution or distributions to be made to such Member (which reduction amount shall be deemed to have been distributed to the Member, but which shall not further reduce the Member's Capital Account if the Manager shall have initially charged the amount of the Withholding Advance to the Capital Account).

Interest shall cease to accrue from the time the Member on whose behalf the Withholding Advance was made repays such Withholding Advance (and all accrued interest) by either method of repayment described above.

(d) Indemnification. Each Member hereby agrees to indemnify and hold harmless the Company and the other Members from and against any liability with respect to taxes, interest or penalties that may be asserted by reason of the Company's failure to deduct and withhold tax on amounts distributable or allocable to such Member, as required by Applicable Law. The provisions of this Section 6.03(d) and the obligations of a Member pursuant to Section 6.03(c) shall survive the termination, dissolution, liquidation and winding up of the Company and the withdrawal or resignation of such Member from the Company or Transfer of its Membership Interest. The Company may pursue and enforce all rights and remedies it may have against each Member under Section 6.03, including bringing a lawsuit to collect repayment with interest of any Withholding Advances.

(e) Overwithholding. Neither the Company nor the Manager shall be liable for any excess taxes withheld in respect of any distribution or allocation of income or gain to a Member. In the event of an overwithholding, a Member's sole recourse shall be to apply for a refund from the appropriate Taxing Authority.

#### **Section 6.04 Distributions in Kind.**

(a) Except as set forth in Section 11.03(d), the Manager shall not make distributions to the Members in the form of securities or other property held by the Company without the prior written consent of all of the Members. In any non-cash distribution, the securities or property so distributed will be distributed among the Members in the same proportion and priority as cash equal to the Fair Market Value of such securities or property would be distributed among the Members pursuant to Section 6.01 or Section 6.02, as applicable.

(b) Any distribution of securities or other property shall be subject to such conditions and restrictions as the Members shall determine.

### **ARTICLE VII MANAGEMENT**

**Section 7.01 Management of the Company.** Subject to the provisions of Section 7.02, the Manager shall have full responsibility and exclusive and complete discretion in the management and control of the business and affairs of the Company (inclusive of the Subsidiaries) for the purposes stated in this Agreement, shall make all decisions affecting the Company's affairs and business, and shall have full, complete and exclusive discretion to take any and all action that the Company is authorized to take and to make all decisions with respect thereto. The actions of the Manager taken in accordance with the provisions of this Agreement shall bind the Company. No other Member of the Company shall have any authority or right to act on behalf of or bind the Company, unless otherwise provided herein or unless specifically authorized by the Manager pursuant to a resolution expressly authorizing such action which resolution is duly adopted by the Manager. Except as otherwise provided in Section 9.02, the Manager may not assign its obligations hereunder without the prior written consent of the Members. Without limiting the generality of the foregoing, the Manager is authorized on behalf of the Company to cause the Company and any Subsidiary to do the following:

- (a) acquire, hold, manage, finance, refinance, pledge, encumber, transfer, exchange and otherwise dispose of interests in any Subsidiary and the Project;
- (b) pay, in accordance with the provisions of this Agreement, all expenses, debts and obligations of the Company to the extent that funds of the Company are available therefor;
- (c) invest (including through an agent) cash reserves and other liquid assets of the Company prior to their use for Company purposes or distribution to the Members;
- (d) bring, compromise, settle and defend actions at law or in equity;
- (e) engage in any kind of activity and perform and carry out contracts of any kind necessary to, or in connection with, the accomplishment of the purposes of the Company;
- (f) enter into agreements and contracts with third parties in furtherance of the Company's business, including all documents and agreements as may be required in connection with the acquisition of interests in any Subsidiary and the Project;
- (g) maintain, at the expense of the Company, adequate records and accounts of all operations and expenditures;
- (h) purchase, at the expense of the Company, liability, casualty, fire and other insurance and bonds to protect the Company's assets, business, Members and employees;
- (i) purchase, at the expense of the Company, director and officer liability insurance to protect the Manager and its respective officers and employees;
- (j) open accounts and deposit, maintain and withdraw funds in the name of the Company in any bank, savings and loan association, brokerage firm or other financial institution;
- (k) establish Reserves for contingencies and for any other proper Company purpose as set forth in Section 7.03;
- (l) retain, and dismiss from retainer, any and all Persons providing property management, legal, accounting, engineering, brokerage, consulting, appraisal, investment advisory or management services to the Company, or such other Representatives as the Manager deems necessary or desirable (including Affiliates of the Manager) for the management and operation of the Company, any Subsidiary and the Project (or portions thereof);
- (m) incur and pay all expenses and obligations incident to the operation and management of the Company, including, taxes, interest, travel, rent, insurance, supplies, salaries and wages of the Company's Representatives;
- (n) distribute funds to the Members by way of cash or otherwise, all in accordance with the provisions of this Agreement;
- (o) prepare and cause to be prepared reports, statements and other relevant information for distribution to Members;

- (p) prepare and file all necessary returns, reports and statements and pay all taxes, assessments and other impositions relating to the assets or operations of the Company;
- (q) effect a dissolution of the Company as provided herein;
- (r) act for and on behalf of the Company in all matters incidental to the foregoing; and
- (s) authorize any member, partner, stockholder, Representative or Affiliate of the Manager to act for and on behalf of the Company in all matters incidental to the foregoing.

By executing this Agreement, each Member shall be deemed to have consented to any exercise by the Manager of any of the foregoing powers or other powers of the Manager contained in this Agreement, subject to the terms of Section 7.02 below.

**Section 7.02 Major Actions Requiring Consent of Members.**

(a) Subject to the terms of the HUD Loan Documents, without the prior written consent of a Majority-in-Interest and the Manager, the Company and the Manager, as manager of the Company, shall not perform or cause or enter into any commitment to perform or cause any of the following (each, a “**Major Action**”) on behalf of the Company:

- (i) Admit new Members to the Company, other than a Permitted Transferee;
- (ii) Dissolve or wind up the Company or initiate a Bankruptcy proceeding involving the Company;
- (iii) Consent to the Transfer of all or substantially all of the assets of the Company; or
- (iv) Take any other action that expressly requires the prior consent of all of the Members or the World Development Member, as the case may be, under this Agreement;
- (v) Subject to Section 12.10, amend the Certificate of Formation or this Agreement in any respect; *provided* that the Manager may, without the consent of the other Members, amend Exhibit B following any new issuance, redemption, repurchase or Transfer of Membership Interests in accordance with this Agreement;
- (vii) Cause the Company to incur debt for borrowed money, or incur any other indebtedness other than day-to-day accounts payable and trade payables;
- (viii) Take any action under a new Annual Budget; provided if any new Annual Budget is not approved or disapproved by the Members within 30 days of receipt then the prior Annual Budget (as adjusted for actual Nondiscretionary Expenses) shall continue to apply and the Company shall be operated in accordance with such prior year’s Annual Budget (as adjusted for actual Nondiscretionary Expenses);

- (ix) Amend or modify the Annual Budget causing the Company to expend any funds or incur any costs or expenses in excess of \$25,000 of such Annual Budget; provided, that Manager may (i) incur expenses that have increased above the amount budgeted for the following line items of costs: insurance costs, utility charges and property tax assessments and other Nondiscretionary Expenses and (ii) use contingency line items in such Budget;
- (x) Cause the Company to enter into any material contracts including, without limitation, any development agreement, property management agreement or any agreement with an Affiliate of the Manager except as otherwise approved in this Agreement or in accordance with Budget;
- (xi) Convert or merge the Company to or with another entity;
- (xii) Submit for payment any construction draw under the HUD Loan or any other loan to the Company;
- (xiii) Call for the contribution of any portion of the Initial Capital Contribution or request any other Capital Contributions;
- (xiv) Enter into leases or other arrangements for the occupancy of space in the Project or any part thereof; provided, however, that approval will not be required of an individual lease which satisfies the then applicable leasing guidelines for the Project (the "Leasing Guidelines"), with such non-material modifications as the Manager determines are reasonable in light of then prevailing market conditions;
- (xv) Create the Leasing Guidelines;
- (xvi) Adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment in which the amount in controversy exceeds Twenty-Five Thousand Dollars (\$25,000) (collectively "Claims") against the Company, or any group of Claims arising out of the same or related facts or circumstances;
- (xvii) Cause the Company to enter into a joint venture or other similar arrangement with a third party;
- (xviii) Create any Subsidiary;
- (xix) Amend or modify the terms and conditions of the HUD Loan or any other loan obtained by the Company;
- (xx) Cause the Company to become a plaintiff in any litigation, except for litigation commenced by any insurer of the Company, any subsidiary or any Member pursuant to the policy or policies of insurance issued by such

insurer; and except for tenant evictions and collection matters and other litigation in the ordinary course of business;

(xxi) Change the fiscal year of the Company; and

(xxii) Selection of the Company's accountant, tax accountant, attorney, architect and other professional service providers to the Company.

(b) Whenever the Manager desires to take any Major Action, the Manager shall give written notice (a "**Major Action Notice**") to each applicable Member describing such action in sufficient detail so as to enable the Member to exercise an informed judgment with respect thereto. As soon as practicable thereafter, each applicable Member shall give the Manager written notice that such Member either approves or disapproves of the proposed action (which shall set forth the Member's reasons thereof if the Member elects to so disapprove of such proposed transaction). If a Member fails to respond (as provided herein) on or before the 20th day following receipt of the Major Action Notice, then such Member shall be conclusively presumed to have approved such proposed action.

(c) If the requisite Members do not agree with respect to a Major Action or if the Manager (if there is more than one Manager) cannot agree on any action to be taken by the Manager (such failure to reach agreement with respect to the proposed Major Action as to the Members or any other action as to the Manager, a "**Deadlock**"), any Member or the Manager, as applicable, shall have the right to provide written notice of the Deadlock (a "**Deadlock Notice**") to the other Members and the Manager, as applicable. Thereafter, the Members and the Manager, as applicable, shall arrange a meeting to discuss the Deadlock (a "**Deadlock Resolution Meeting**") within ten days of receipt of the Deadlock Notice. At least one senior level executive of each of the Members and the Manager, as applicable, shall attend the Deadlock Resolution Meeting, and at the Deadlock Resolution Meeting the parties shall engage in good faith efforts to resolve the Deadlock. If the dispute cannot be resolved among the Members and the Manager, as applicable, at the Deadlock Resolution Meeting, the parties shall continue to engage in good faith efforts to resolve the Deadlock, which good faith efforts shall continue at least through the date that is 30 days after the date on which the Deadlock Notice was provided. If the dispute cannot be resolved among those senior level executives within the above described 30-day period after the Deadlock Resolution Meeting, then any Member or the Manager, as applicable, may elect to submit the issue to a non-binding mediation process by providing written notice thereof to the other Members and the Manager, as applicable, and the Members and the Manager, as applicable, shall cooperate with one another in good faith with respect to such non-binding mediation process. In the event of a Deadlock that cannot be resolved, then the "status quo" shall be maintained and the matter as to which consent or approval was sought shall not be implemented. The Manager and Members acknowledge and agree that the Members shall have the right to exercise their authority and discretion with respect to the matters set forth in this Section 7.02 in such Members' sole and absolute discretion and the Manager and each other Member waives any right to object to any such decision by any Member; provided, for the avoidance of doubt, the foregoing shall not authorize any Member to cause the Company to take any Major Action (or any other action set forth herein requiring the approval of the Manager) without the prior written consent of the Manager as set forth in Section 7.02(a) or as otherwise required under the terms and provisions contained in this Agreement.

### **Section 7.03 Reserves**

(a) Working Capital Reserves. The Manager may establish a Working Capital Reserve to fund anticipated future expenses and cash flow needs of the Company. Interest earned, if any, on investment of the amounts in the Working Capital Reserve shall be retained in that reserve.

(b) Replacement Reserves. The Manager may establish a Replacement Reserve which shall be funded in the amount of not less than \$250 per rental unit per year (or an additional amount to the extent required under the HUD Loan Documents) to fund anticipated future capital replacement and repair expenditures with respect to the Project. Amounts held in the Replacement Reserve shall be withdrawn and used in the discretion of the Manager. Interest earned, if any, on investment of the amounts in the Replacement Reserve shall be retained in that reserve.

(c) Additional Reserves. The Manager may establish additional reserves as required under the HUD Loan Documents and for anticipated cash needs of the Company for which the Working Capital Reserve and Replacement Reserve are inadequate. Except for additional reserves required under the HUD Loan Documents, the Manager must identify to the Members the specific purpose for such additional reserves, its estimate of the amount required, and the time frame for using such additional reserves. Interest earned, if any, on investment of the amounts in such additional reserves shall be retained in that reserve.

**Section 7.04 Emergency Authority.** Notwithstanding any other provision of this Agreement, the Manager shall have the right to incur expenditures, borrow money, or enter into contracts that constitute Major Actions without obtaining the requisite Member approval if the Manager determines that such action is necessary for the protection of life or health or the preservation of Company assets and, under the circumstances in the good faith judgment of the Manager, there exists an emergency or other situation requiring an immediate decision which should not reasonably be delayed until the approval of the Members is obtained. The Manager shall provide notice to the Members of any action taken pursuant to this Section 7.04 within a reasonable period of time after taking such action.

**Section 7.05 Officers.** The Manager may, from time to time, appoint individuals as officers of the Company (the “Officers”) as it deems necessary or desirable, in its sole and absolute discretion, to carry on the business of the Company and the Manager may delegate to such Officers such power and authority as the Manager deems advisable. No Officer need be a Member of the Company. Any individual may hold two or more offices of the Company. Each Officer shall hold office until his or her successor is designated by the Manager or until his or her earlier death, resignation or removal. Any Officer may resign at any time upon written notice to the Manager. Any Officer may be removed by the Manager with or without cause at any time. A vacancy in any office occurring because of death, resignation, removal or otherwise, may, but need not, be filled by the Manager.

### **Section 7.06 Meetings of and Voting by Members.**

(a) Although it is the express intent of the Members that there shall not be any required (or regularly scheduled) meetings of the Members, a meeting of the Members may be called at any time by any Member. Meetings of Members shall be held during normal business hours either



telephonically or in person at the Company's principal place of business (or such other location as is determined in the sole and absolute discretion of the Manager) on such day and at such time as are reasonably convenient for the Members. Not less than five nor more than 60 days before each meeting, the Member calling the meeting shall deliver or mail written notice of the meeting to the other Members, stating the time, place and purpose of the meeting and indicating that it is being issued by or at the direction of the Member calling the meeting. A Member may waive notice of any meeting, before or after the date of such meeting, by delivering a signed waiver to the Company for inclusion in the minutes of the Company or by its presence at the meeting in person or by proxy. Members may participate in any meeting by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting. At any meeting of Members, the presence in person or by proxy of all Members shall constitute a quorum. Except where expressly stated in this Agreement, all approvals, disapprovals and other actions taken by the Members at a meeting shall be authorized by a Majority-in-Interest.

(b) The record date for the purpose of determining the Members entitled to notice of a Member's meeting, for voting or the taking of any other action, shall be the tenth day prior to the date of the meeting or action.

(c) A Member may appoint a proxy to vote or otherwise act for the Member pursuant to a written appointment form executed by the Member or the Member's duly authorized attorney in fact.

(d) Any action required or permitted to be taken at a meeting of Members may be taken without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the Members that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. The Manager shall maintain a record of each such action taken by written consent of a Member or Members. The record date for determining Members entitled to take action without a meeting is the first date a Member signs a consent to such action.

**Section 7.07 Informational Rights.** In addition to the information required to be provided pursuant to Article X, the Manager shall keep the other Members reasonably informed on a timely basis of any material fact, information, litigation, employee relations or other matter that could reasonably be expected to have a material impact on the operations or financial position of the Company or any Subsidiary, including, but not limited to, any modification of the HUD Loan or other financing to the Company. The Manager shall provide all material information relating to the Company and its Subsidiaries or the management or operation of the Company, as any Member may reasonably request from time to time.

**Section 7.08 Other Activities; Business Opportunities.** Nothing contained in this Agreement shall prevent any Member, including the Manager, or any of its Affiliates from engaging in any other activities or businesses, regardless of whether those activities or businesses are similar to or competitive with the Company or the Project. None of the Members nor any of their Affiliates shall be obligated to account to the Company or to the other Members for any profits or income earned or derived from other such activities or businesses. None of the Members

nor any of their Affiliates shall be obligated to inform the Company or the other Members of any business opportunity of any type or description.

**Section 7.09 Compensation and Reimbursement of the Manager.** The Manager shall not be compensated for its services as the manager of the Company.

**Section 7.10 Removal of the Manager.** The CDT Member may, subject to the terms of this Section 7.10, remove a Manager (or its permitted assignee, as applicable) as a Manager of the Company if such Manager has (1) taken an action that requires any consent from the other Members pursuant to Section 7.02 without first obtaining such consent, if such breach remains uncured for 60 days after written notice of such breach is provided by the CDT Member to the Manager, (2) breached any other material covenant, duty or obligation under this Agreement if such breach remains uncured for 90 days after notice thereof by the CDT Member to the Manager, or (3) taken any action or omission that constitutes fraud, gross negligence or willful misconduct, causing damage to the Project or the Company (each, a **“Termination Event”**). If the CDT Member determines in good faith that a Termination Event has occurred, and desires to remove a Manager, such Member shall give the Manager written notice of such determination that a Termination Event has occurred, setting forth in reasonable detail the nature of such alleged Termination Event (such written notice **“Termination Notice”**). Such Manager shall have seven Business Days following the day it receives the Termination Notice (the **“Refute Period”**) to refute the alleged occurrence of the Termination Event as set forth in the Termination Notice by delivering a detailed written notice refuting the alleged occurrence of the Termination Event (the **“Refute Notice”**) to the CDT Member within the Refute Period. Thereafter, if the CDT Member has not provided a written revocation of removal of such Manager within one Business Day, such removal shall be deemed effective. Following such removal, the foregoing shall not modify the Manager’s right to submit the dispute as to whether a Termination Event has occurred to binding arbitration pursuant to Section 12.13, and if the arbitration results in a ruling that the Termination Event did not occur, then the Manager shall be reappointed as the Manager. Notwithstanding the foregoing, upon the bankruptcy of any Manager, such Manager shall automatically be removed as the Manager without any act on the part of the other Members. Upon removal of Manager, the Members shall use commercially reasonable efforts, at the sole cost and expense of the removed Manager, to cause the release of the Guarantor that is an Affiliate of Manager from its obligations under the Guaranty. If such release is not obtained, the Company, or upon approval of the removed Manager, the remaining Manager or a new Manager (or its Affiliate), shall indemnify such Guarantor for any recourse obligations or liabilities subsequently arising thereunder from and after the date of such removal, but excluding from such indemnity (i) any claims, losses, damages expenses (including attorney’s fees) and liabilities arising from or in connection with any acts of such Guarantor (or the Member which it controls) described in clause (3) of this Section 7.10 and (ii) any claims, losses, damages expenses (including attorney’s fees) and liabilities which accrued or arose prior to such removal.

**Section 7.11 Resignation of the Manager.** The Manager may not voluntarily resign as the Manager of the Company, unless otherwise consented to by the Members.

**Section 7.12 Expenses.** The Company, and not the Manager or any Member, shall bear all costs and expenses of the Company’s activities and operations, including all activities and operations prior to the date of this Agreement, and including: (1) all costs and expenses incurred

in organizing the Company and developing, negotiating, financing and structuring the investment in the Company, and the Project, including, any investment banking, engineering, appraisal, environmental, legal and accounting expenses, any commitment fees and other fees and out-of-pocket costs related thereto, and the costs of rendering financial assistance to or arranging for financing for the Project; (2) the Company's pro rata share of costs and expenses, if any, incurred in monitoring the Project, including, any engineering, environmental, third-party payment processing, legal and accounting expenses and other fees; (3) taxes of the Company; (4) costs related to litigation and threatened litigation involving the Company; (5) expenses associated with third-party accountants, attorneys and tax advisors with respect to the Company and its activities, including the preparation and auditing of financial reports and statements and other similar matters, and costs associated with the distribution of financial and other reports to the Members and costs associated with Company meetings; (6) fees incurred in connection with the maintenance of bank or custodian accounts; and (7) all expenses incurred in connection with the registration (or exemption from registration) of the Company's securities under applicable securities laws or regulations. To the extent that any expenses of the Company are paid by the Manager or any Member, such expenses shall be reimbursed by the Company.

## **ARTICLE VIII EXCULPATION AND INDEMNIFICATION**

### **Section 8.01 Exculpation of Covered Persons.**

(a) Covered Persons. As used herein, the term "**Covered Person**" shall mean (i) each Member, including the Manager; (ii) each officer, director, stockholder, partner, member, Affiliate, employee, agent or representative of each Member, and each of their Affiliates; and (iii) each Officer, employee, agent or other Representative of the Company.

(b) Standard of Care. No Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any action taken or omitted to be taken by such Covered Person in good faith reliance on the provisions of this Agreement, so long as such action or omission does not constitute fraud, gross negligence, or willful misconduct by such Covered Person or is not made in knowing violation of the provisions of this Agreement.

(c) Good Faith Reliance. A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements (including financial statements and information, opinions, reports or statements as to the value or amount of the assets, liabilities, Net Income or Net Losses of the Company or any facts pertinent to the existence and amount of assets from which distributions might properly be paid) of the following Persons or groups: (i) another Member; (ii) one or more Officers or employees of the Company; (iii) any attorney, independent accountant, appraiser or other expert or professional employed or engaged by or on behalf of the Company; or (iv) any other Person selected in good faith by or on behalf of the Company, in each case as to matters that such relying Person reasonably believes to be within such other Person's professional or expert competence.

## **Section 8.02 Liabilities and Duties of Covered Persons.**

(a) Limitation of Liability. This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Covered Person. Furthermore, each of the Members and the Company hereby waives any and all fiduciary duties that, absent such waiver, may be implied by Applicable Law, and in doing so, acknowledges and agrees that the duties and obligation of each Covered Person to each other and to the Company are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities of such Covered Person.

(b) Duties. Whenever in this Agreement a Covered Person is permitted or required to make a decision (including a decision that is in such Covered Person's "discretion" or under a grant of similar authority or latitude), the Covered Person shall be entitled to consider only such interests and factors as such Covered Person desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person; provided, however, that the Manager shall consider those additional duties to which it is subject as expressly set forth in this Agreement. Whenever in this Agreement a Covered Person is permitted or required to make a decision in such Covered Person's "good faith", the Covered Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or any other Applicable Law.

## **Section 8.03 Indemnification.**

(a) Indemnification. To the fullest extent permitted by the TBOC, as the same now exists or may hereafter be amended, substituted or replaced (but, in the case of any such amendment, substitution or replacement, only to the extent that such amendment, substitution or replacement permits the Company to provide broader indemnification rights than the TBOC permitted the Company to provide prior to such amendment, substitution or replacement), the Company shall indemnify, hold harmless, defend, pay and reimburse any Covered Person against any and all losses, claims, damages, judgments, fines or liabilities, including reasonable legal fees or other expenses incurred in investigating or defending against such losses, claims, damages, judgments, fines or liabilities, and any amounts expended in settlement of any claims (collectively, "**Losses**") to which such Covered Person may become subject by reason of:

(i) any act or omission or alleged act or omission performed or omitted to be performed on behalf of the Company, any Member or any direct or indirect Subsidiary of the foregoing in connection with the business of the Company provided such act or omission did not constitute fraud, gross negligence, or willful misconduct by such Covered Person or a knowing violation of the provisions of this Agreement, in either case as determined by a final, non-appealable order of a court of competent jurisdiction; or

(ii) such Covered Person being or acting in connection with the business of the Company as a member, partner, stockholder, Representative or Affiliate of the Company, any Member, or any of their respective Affiliates, or that such Covered Person is or was serving at the request of the Company as a Representative of any Person including the Company; *provided*, that (x) such Covered Person acted in good faith and in a manner believed by such Covered Person to

be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe his, her or its conduct was unlawful, and (y) such Covered Person's conduct did not constitute fraud, gross negligence, or willful misconduct by such Covered Person or a knowing violation of the provisions of this Agreement, in either case as determined by a final, non-appealable order of a court of competent jurisdiction. In connection with the foregoing, the termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the Covered Person did not act in good faith or, with respect to any criminal proceeding, had reasonable cause to believe that such Covered Person's conduct was unlawful, or that the Covered Person's conduct constituted fraud, gross negligence, willful misconduct or a knowing violation or material breach of this Agreement.

(b) Control of Defense. Upon a Covered Person's discovery of any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 8.03, the Covered Person shall give prompt written notice to the Company of such claim, lawsuit or proceeding, *provided*, that the failure of the Covered Person to provide such notice shall not relieve the Company of any indemnification obligation under this Section 8.03, unless the Company shall have been materially prejudiced thereby. Subject to the approval of the disinterested Members, the Company shall be entitled to participate in or assume the defense of any such claim, lawsuit or proceeding at its own expense. After notice from the Company to the Covered Person of its election to assume the defense of any such claim, lawsuit or proceeding, the Company shall not be liable to the Covered Person under this Agreement or otherwise for any legal or other expenses subsequently incurred by the Covered Person in connection with investigating, preparing to defend or defending any such claim, lawsuit or other proceeding. If the Company does not elect (or fails to elect) to assume the defense of any such claim, lawsuit or proceeding, the Covered Person shall have the right to assume the defense of such claim, lawsuit or proceeding as it deems appropriate, but it shall not settle any such claim, lawsuit or proceeding without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Reimbursement. The Company shall promptly reimburse (and/or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 8.03; *provided*, that if it is finally judicially determined that such Covered Person is not entitled to the indemnification provided by this Section 8.03, then such Covered Person shall promptly reimburse the Company for any reimbursed or advanced expenses.

(d) Entitlement to Indemnity. The indemnification provided by this Section 8.03 shall not be deemed exclusive of any other rights to indemnification to which those seeking indemnification may be entitled under any agreement or otherwise. The provisions of this Section 8.03 shall continue to afford protection to each Covered Person regardless of whether such Covered Person remains in the position or capacity pursuant to which such Covered Person became entitled to indemnification under this Section 8.03 and shall inure to the benefit of the executors, administrators, legatees and distributees of such Covered Person.

(e) Insurance. To the extent available on commercially reasonable terms, the Company may purchase, at its expense, insurance to cover Losses covered by the foregoing indemnification provisions and to otherwise cover Losses for any breach or alleged breach by any Covered Person of such Covered Person's duties in such amount and with such deductibles as the Manager may reasonably determine; *provided*, that the failure to obtain such insurance shall not affect the right to indemnification of any Covered Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Losses hereunder. If any Covered Person recovers any amounts in respect of any Losses from any insurance coverage, then such Covered Person shall, to the extent that such recovery is duplicative, reimburse the Company for any amounts previously paid to such Covered Person by the Company in respect of such Losses.

(f) Funding of Indemnification Obligation. Notwithstanding anything contained herein to the contrary, any indemnity by the Company relating to the matters covered in this Section 8.03 shall be provided out of and to the extent of Company assets only, and no Member (unless such Member otherwise agrees in writing) shall have personal liability on account thereof or shall be required to make additional Capital Contributions to help satisfy such indemnity by the Company.

(g) Savings Clause. If this Section 8.03 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person pursuant to this Section 8.03 to the fullest extent permitted by any applicable portion of this Section 8.03 that shall not have been invalidated and to the fullest extent permitted by Applicable Law.

(h) Amendment. The provisions of this Section 8.03 shall be a contract between the Company, on the one hand, and each Covered Person who served in such capacity at any time while this Section 8.03 is in effect, on the other hand, pursuant to which the Company and each such Covered Person intend to be legally bound. No amendment, modification or repeal of this Section 8.03 that adversely affects the rights of a Covered Person to indemnification for Losses incurred or relating to a state of facts existing prior to such amendment, modification or repeal shall apply in such a way as to eliminate or reduce such Covered Person's entitlement to indemnification for such Losses without the Covered Person's prior written consent.

**Section 8.04 Survival.** The provisions of this Article VIII shall survive the dissolution, liquidation, winding up and termination of the Company.

## ARTICLE IX TRANSFER

### **Section 9.01 Restrictions on Transfer.**

(a) Except as otherwise provided in this Article IX, no Member shall Transfer all or any portion of its Membership Interest in the Company without the written consent of the Manager (which consent may be granted or withheld in the sole discretion of the Manager). No Transfer of a Membership Interest to a Person not already a Member of the Company shall be deemed completed until the prospective Transferee is admitted as a Member of the Company in accordance with Section 4.01(b) hereof.

(b) Notwithstanding any other provision of this Agreement (including Section 9.02), each Member agrees that it will not Transfer all or any portion of its Membership Interest in the Company, and the Company agrees that it shall not issue any Membership Interests:

(i) except as permitted under the Securities Act and other applicable federal or state securities or blue sky laws, and then, with respect to a Transfer of Membership Interest, only upon delivery to the Company of an opinion of counsel in form and substance satisfactory to the Company to the effect that such Transfer may be effected without registration under the Securities Act;

(ii) if such Transfer or issuance would cause the Company to be considered a “publicly traded partnership” under Section 7704(b) of the Code within the meaning of Treasury Regulations Section 1.7704-1(h)(1)(ii), including the look-through rule in Treasury Regulations Section 1.7704-1(h)(3);

(iii) if such Transfer or issuance would affect the Company’s existence or qualification as a limited liability company under the TBOC;

(iv) if such Transfer or issuance would cause the Company to lose its status as a partnership for federal income tax purposes;

(v) if such Transfer or issuance would cause a termination of the Company for federal income tax purposes;

(vi) if such Transfer or issuance would cause the Company to be required to register as an investment company under the Investment Company Act of 1940; or

(vii) if such Transfer or issuance would cause the assets of the Company to be deemed “Plan Assets” as defined under the Employee Retirement Income Security Act of 1974 or its accompanying regulations or result in any “prohibited transaction” thereunder involving the Company.

(c) Any Transfer or attempted Transfer of any Membership Interest in violation of this Agreement shall be null and void, no such Transfer shall be recorded on the Company’s books and the purported Transferee in any such Transfer shall not be treated (and the purported Transferor shall continue be treated) as the owner of such Membership Interest for all purposes of this Agreement.

(d) For the avoidance of doubt, any Transfer of a Membership Interest permitted by this Agreement shall be deemed a sale, transfer, assignment or other disposal of such Membership Interest in its entirety as intended by the parties to such Transfer, and shall not be deemed a sale, transfer, assignment or other disposal of any less than all of the rights and benefits described in the definition of the term “Membership Interest,” unless otherwise explicitly agreed to by the parties to such Transfer.

(e) Any sale, assignment, issuance or other disposition (whether voluntarily or involuntarily) of direct or indirect ownership interests in a Member that causes such Member to

cease being a Transfer Affiliate shall constitute a Transfer of such Member's Membership Interest requiring the prior written consent of the other Members.

**Section 9.02 Permitted Transfers.** The provisions of Section 9.01 shall not apply to any Transfer by any Member of all or any portion of its Membership Interest to its Transfer Affiliate. Any Permitted Transferee shall be admitted to the Company as a substitute Member without need for any further approval or action and shall receive and hold such Membership Interest subject to the terms of this Agreement and to the obligations hereunder of the transferor. If there is a Permitted Transfer, the Permitted Transferee shall succeed to the Capital Account of the Transferring Member to the extent it relates to the Transferred Membership Interest, and, for purposes of applying the allocation and distribution provisions of this Agreement, the Permitted Transferee shall be deemed to have received allocations and distributions previously made to the Transferring Member with respect to the Transferred Membership Interest. A Permitted Transferee shall succeed to all of the economic, voting, and other rights and remedies of the Membership Interest that it acquired.

## **ARTICLE X ACCOUNTING; TAX MATTERS**

**Section 10.01 Financial Statements.** The Company shall furnish to each Member the following reports:

(a) Annual Financial Statements. As soon as available, and in any event within ninety (90) days after the end of each Fiscal Year, unaudited consolidated balance sheets of the Company and its Subsidiaries as at the end of each such Fiscal Year and unaudited consolidated statements of income, cash flows of the Company and its Subsidiaries, and Members' equity for the Company for such Fiscal Year, in each case setting forth in comparative form the figures for the previous Fiscal Year, all in reasonable detail and all prepared in accordance with GAAP, consistently applied (other than the absence of notes thereto).

(b) Quarter-Yearly Financial Statements. As soon as available, and in any event within forty-five (45) days after the end of each quarter-year accounting period in each Fiscal Year (other than the last fiscal quarter of the Fiscal Year), unaudited consolidated balance sheets of the Company and its Subsidiaries as at the end of each such quarter-year period and for the current Fiscal Year to date and unaudited consolidated statements of income, cash flows of the Company and its Subsidiaries and Members' equity for the Company, for such quarter-year period and for the current Fiscal Year to date, all in reasonable detail and all prepared in accordance with GAAP, consistently applied (subject to normal year-end adjustments and the absence of notes thereto).

(c) Audited Financial Statements. If the Company prepares audited financial statements (at the sole election of the Manager or as otherwise required by the Project Lender), then within fifteen (15) days after their preparation the Manager shall deliver copies thereof to the Members

(d) Annual Budget. At least 30 days in advance of the beginning of each Fiscal Year, the Manager shall prepare and submit to the Members a reasonably comprehensive Annual Budget for the Project for the upcoming Fiscal Year in such detail as the Members may reasonably require.



Such Annual Budgets shall include the Annual Capital Budget and the Annual Operating Budget for the Project for the upcoming Fiscal Year in amounts consistent with the Budget, all in such detail as Investors may reasonably require. The provisions of Section 7.02 shall apply if the Members are unable to agree on the Annual Budget for any Fiscal Year.

**Section 10.02 Inspection Rights.** Upon reasonable notice from a Member, the Company shall and shall cause each Subsidiary to, afford each Member and its Representatives access during normal business hours to (1) the Company's or such Subsidiary's, properties, offices, plants and other facilities; (2) the corporate, financial and similar records, reports and documents of the Company and any Subsidiary, including, all books and records, bank statements, minutes of proceedings, internal management documents, reports of operations, reports of adverse developments, and to permit each Member and its Representatives to examine such documents and make copies thereof; and (3) any officers, senior employees and public accountants of the Company and each Subsidiary, and to afford each Member and its Representatives the opportunity to discuss and advise on the affairs, finances and accounts of the Company and each Subsidiary with such officers, senior employees and public accountants (and the Company hereby authorizes (and shall cause each Subsidiary to do same) said accountants to discuss with such Member and its Representatives such affairs, finances and accounts).

**Section 10.03 Income Tax Status.** It is the intent of this Company and the Members that this Company shall be treated as a partnership for U.S., federal, state and local income tax purposes. Neither the Company nor any Member shall make an election for the Company to be classified as other than a partnership pursuant to Treasury Regulations Section 301.7701-3.

**Section 10.04 Tax Representative.**

(a) The Manager is hereby designated "partnership representative" of the Company within the meaning of Section 6223 of the Code (the "**Tax Representative**"). Each Member, by its execution of this Agreement, consents to such designation and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. To the extent that an individual Person must be named as the Tax Representative by the Code, the Manager shall appoint the Tax Representative.

(b) The Tax Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by Taxing Authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. The Tax Representative shall promptly notify the Members if any tax return of the Company is audited or if any adjustments are proposed by any Taxing Authority. Without the consent of the other Members, the Tax Representative shall not extend the statute of limitations, file a request for administrative adjustment, file suit relating to any Company tax refund or deficiency or enter into any settlement agreement relating to items of income, gain, loss or deduction of the Company with any Taxing Authority.

(c) The Tax Representative will make an election under Section 754 of the Code, if requested in writing by another Member. Except as otherwise provided herein, all determinations

as to tax elections and accounting principles shall be made solely by the Tax Representative; *provided*, that any determination that would benefit the Tax Representative to the detriment of another Member shall require the consent of the other Member.

(d) Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign or other income tax return with the treatment of the item on the Company's return.

(e) The Person serving as Tax Representative may resign at any time. In addition, the Person serving as the Tax Representative shall be automatically removed as Tax Representative upon the death, dissolution and/or winding up, legal incompetency or Bankruptcy of such Person, and the Person serving as the Tax Representative may be removed at any time by the Manager. Upon such resignation or removal of the Tax Representative, a successor to serve in such position shall be designated by the Manager, and the prior Tax Representative shall not take any action for or on behalf of the Company without the prior written consent of the Manager.

(f) Notwithstanding other provisions of this Agreement to the contrary, if any "partnership adjustment" (as defined in Section 6241(2) of the Code) is determined with respect to the Company, the Tax Representative, upon the determination of the Manager, will cause the Company to elect pursuant to Section 6226 of the Code to have any such adjustment passed through to the Members and former Members for the year to which the adjustment relates (i.e., the "reviewed year" within the meaning of Section 6225(d)(1) of the Code). In the event that the Tax Representative has not caused the Company to so elect pursuant to Section 6226 of the Code, then any "imputed underpayment" (as determined in accordance with Section 6225 of the Code) or "partnership adjustment" that does not give rise to an "imputed underpayment" shall be apportioned among the Members and former Members of the Company in such manner as may be necessary (as determined by the Manager) so that, to the maximum extent possible, the tax and economic consequences of the adjustment and any associated interest and penalties are borne by the Members and former Members based upon their interests in the Company for the reviewed year.

(g) Each Member agrees that, upon request of the Tax Representative, such Member shall (i) take such actions as may be necessary or desirable (as determined by the Manager) to allow the Company to comply with the provisions of Section 6226 of the Code so that any "partnership adjustments" are taken into account by the Members rather than the Company or (ii) file amended tax returns with respect to any "reviewed year" (within the meaning of Section 6225(d)(1) of the Code) to reduce the amount of any "partnership adjustment" otherwise required to be taken into account by the Company.

(h) If the Company is obligated to pay any amount of tax, penalty, interest, or other charges determined under the Code (a "**Company Level Tax**"), then, at the election of the Manager, each Member or former Member to which the assessment or payment relates (an "**Indemnifying Member**") shall indemnify the Company for, and pay to the Company, the Indemnifying Member's allocable share of the Company Level Tax. Each Indemnifying Member's allocable share of the Company Level Tax shall be determined by the Manager. Promptly upon notification by the Manager of the Indemnifying Member's obligation to indemnify the Company, an Indemnifying Member shall make a payment to the Company of immediately available funds,

at the time and in the amount and manner directed by the Manager. Amounts paid to the Company under this Section 10.04(h) by an Indemnifying Member who is not a Member of the Company at the time such payment is made shall not be treated as a Capital Contribution.

(i) Each Member agrees that such Member shall not treat any Company item inconsistently on such Member's federal, state, foreign, or other income tax return with the treatment of the item on the Company's return. Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes, and any taxes imposed pursuant to Section 6226 of the Code) shall be paid by such Member, and if paid by the Company will be recoverable from such Member.

(j) The obligations of each Member under this Section 10.04 shall survive the Transfer by such Member of its Membership Interest and the termination of this Agreement or the dissolution of the Company.

(k) The Manager shall cause all income tax and information returns for the Company to be prepared by the Company's accountants, and shall cause such tax returns to be timely filed with the appropriate authorities.

(l) The Company may make all elections for federal income tax purposes; provided, however, that the Company shall make no elections inconsistent with its being treated as a partnership for income tax purposes.

**Section 10.05 Tax Returns.** At the expense of the Company, the Manager (or any Officer that it may designate pursuant to Section 7.05) shall endeavor to cause the preparation and timely filing (including extensions) of all tax returns required to be filed by the Company pursuant to the Code as well as all other required tax returns in each jurisdiction in which the Company owns property or does business. The Manager shall provide the Members, for their review and comment, copies of all tax returns prior to the filing thereof. As soon as reasonably possible after the end of each Fiscal Year, the Manager or designated Officer will cause to be delivered to each Person who was a Member at any time during such Fiscal Year, IRS Schedule K-1 to Form 1065 and such other information with respect to the Company as may be necessary for the preparation of such Person's federal, state and local income tax returns for such Fiscal Year.

**Section 10.06 Company Funds.** All funds of the Company shall be deposited in its name, in such checking, savings or other accounts as shall be designated by the Manager, or held in its name in the form of such other investments as shall be approved by the Members. The funds of the Company shall not be commingled with the funds of any other Person. All withdrawals of such deposits or liquidations of such investments by the Company shall be made exclusively upon the signature or signatures of such Officer or Officers as the Manager may designate. The Manager shall deliver to the CDT Member a written disclosure of the names of all financial institutions or depositories at which the Company has any account, the account numbers of all accounts and the contact person and such person's contact information, together with each Manager, as an authorized agent and signatory under such account with electronic access to such accounts. The CDT Member is authorized to contact such financial institutions or depositories and contact persons and make inquiries and obtain statements and other records of any kind whatsoever from such entities or persons regarding the Company's accounts and financial transactions, including,

without limitation, having electronic access to such accounts, and the Manager shall timely and promptly cooperate with the CDT Member to accomplish any of the foregoing.

## ARTICLE XI DISSOLUTION AND LIQUIDATION

**Section 11.01 Events of Dissolution.** The Company shall be dissolved and its affairs wound up only upon the occurrence of any of the following events:

- (a) The unanimous determination of the Members to dissolve the Company;
- (b) The Bankruptcy of a Member, unless within ninety (90) days after the occurrence of such Bankruptcy, the other Members agree in writing to continue the business of the Company;
- (c) The decision of the Manager upon the Transfer of all or substantially all the assets of the Company or the Project;
- (d) The occurrence of a non-waivable event under the terms of the TBOC which requires the Company to be terminated; or
- (e) The entry of a decree of judicial dissolution under Section 11.314 of the TBOC.

**Section 11.02 Effectiveness of Dissolution.** Dissolution of the Company shall be effective on the day on which the event described in Section 11.01 occurs, but the Company shall not terminate until the winding up of the Company has been completed, the assets of the Company have been distributed as provided in Section 11.03 and the Certificate of Formation shall have been cancelled as provided in Section 11.04.

**Section 11.03 Liquidation.** If the Company is dissolved pursuant to Section 11.01, the Company shall be liquidated and its business and affairs wound up in accordance with the TBOC and the following provisions:

- (a) **Liquidator.** The Manager shall act as liquidator to wind up the Company (the “**Liquidator**”), unless the Company is being dissolved pursuant to Section 11.01(b) based on the Bankruptcy of the Manager, in which case the Liquidator shall be a Person appointed by the Manager. The Liquidator shall have full power and authority to sell, assign, and encumber any or all of the Company’s assets and to wind up and liquidate the affairs of the Company in an orderly and business-like manner. In connection with the liquidation of the Company, the Manager shall allocate any Net Income, Net Losses and tax credits in accordance with the provisions of Section 5.01, and shall apply and distribute the proceeds thereof as contemplated by this Section 11.03 and or as otherwise required pursuant to the Act and file Certificate of Cancellation or such other filings as are required pursuant to the Act.
- (b) **Accounting.** As promptly as possible after dissolution and again after final liquidation, the Liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company’s assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(c) Distribution of Proceeds. The Liquidator shall liquidate the assets of the Company and distribute the proceeds of such liquidation in the following order of priority, unless otherwise required by mandatory provisions of Applicable Law:

(i) *First*, to the payment of all of the Company's debts and liabilities to its creditors (including Members, if applicable) and the expenses of liquidation (including sales commissions incident to any sales of assets of the Company);

(ii) *Second*, to the establishment of and additions to reserves that are determined by the Manager to be reasonably necessary for any contingent unforeseen liabilities or obligations of the Company; and

(iii) *Third*, after paying such liabilities and providing for such liquidation reserves, the Liquidator shall cause the remaining net assets of the Company to be distributed to the Members in accordance with the provisions of Section 6.02 of this Agreement.

(d) Deficit Restoration Obligation. No Member shall have any obligation to restore any deficit balance in its Capital Account. The foregoing provisions of this Section 11.03(d) are intended to satisfy the requirements of Treasury Regulation §1.704-1(b)(3) and shall be interpreted consistently therewith.

(e) Discretion of Liquidator. Notwithstanding the provisions of Section 11.03(c) that require the liquidation of the assets of the Company, but subject to the order of priorities set forth in Section 11.03(c), if upon dissolution of the Company the Members determine that an immediate sale of part or all of the Company's assets would be impractical or could cause undue loss to the Members, the Liquidator shall defer the liquidation of any assets except those necessary to satisfy Company liabilities and Reserves, and shall, upon unanimous consent of the Members, distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 11.03(c), undivided interests in such Company assets as the Liquidator deems not suitable for liquidation. Any such distribution in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operating of such properties at such time. For purposes of any such distribution, any property to be distributed will be valued at its Fair Market Value.

**Section 11.04 Cancellation of Certificate.** Upon completion of the distribution of the assets of the Company as provided in Section 11.03(c) hereof, the Company shall be terminated and the Liquidator shall cause the cancellation of the Certificate of Formation in the State of Texas and of all qualifications and registrations of the Company as a foreign limited liability company in jurisdictions other than the State of Texas and shall take such other actions as may be necessary to terminate the Company.

**Section 11.05 Survival of Rights, Duties and Obligations.** Dissolution, liquidation, winding up or termination of the Company for any reason shall not release any party from any Loss that at the time of such dissolution, liquidation, winding up or termination already had accrued to any other party or thereafter may accrue in respect of any act or omission prior to such dissolution, liquidation, winding up or termination. For the avoidance of doubt, none of the

foregoing shall replace, diminish or otherwise adversely affect any Member's right to indemnification pursuant to Section 8.03.

**Section 11.06 Recourse for Claims.** Each Member shall look solely to the assets of the Company for all distributions with respect to the Company, such Member's Capital Account, and such Member's share of Net Income, Net Loss and other items of income, gain, loss and deduction, and shall have no recourse therefor (upon dissolution or otherwise) against the Liquidator or any other Member.

## **ARTICLE XII MISCELLANEOUS**

**Section 12.01 Expenses.** All costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with the preparation and execution of this Agreement, or any amendment or waiver hereof, the evaluation, acquisition and renovation of the Project and the transactions contemplated hereby (whether incurred prior to or after this Agreement), as approved by Manager, shall be capitalized into the Project and paid or reimbursed by the Company.

**Section 12.02 Further Assurances.** In connection with this Agreement and the transactions contemplated hereby, the Company and each Member hereby agrees, at the request of the Company or any other Member, to execute and deliver such additional documents, instruments, conveyances and assurances and to take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

### **Section 12.03 Confidentiality.**

(a) Each Member acknowledges that during the term of this Agreement, it will have access to and become acquainted with trade secrets, proprietary information and confidential information belonging to the Company and its Affiliates that are not generally known to the public, including, but not limited to, information concerning business plans, financial statements and other information provided pursuant to this Agreement, operating practices and methods, development plans, strategic plans, marketing plans, contracts, customer lists or other business documents that the Company treats as confidential, in any format whatsoever (including oral, written, electronic or any other form or medium) (collectively, "**Confidential Information**"). In addition, each Member acknowledges that: (i) the Company has invested, and continues to invest, substantial time, expense and specialized knowledge in developing its Confidential Information; (ii) the Confidential Information provides the Company with a competitive advantage over others in the marketplace; and (iii) the Company would be irreparably harmed if the Confidential Information were disclosed to competitors or made available to the public. Without limiting the applicability of any other agreement to which any Member is subject, no Member shall, directly or indirectly, disclose or use (other than solely for the purposes of such Member monitoring and analyzing its investment in the Company), including, use for personal, commercial or proprietary advantage or profit, any Confidential Information of which such Member is or becomes aware. Each Member in possession of Confidential Information shall take all appropriate steps to safeguard such information and to protect it against disclosure, misuse, espionage, loss and theft.

(b) Nothing contained in Section 12.03(a) shall prevent any Member from disclosing Confidential Information: (i) upon the order of any court or administrative agency; (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Member; (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests; (iv) to the extent necessary in connection with the exercise of any remedy hereunder; (v) to the other Members; (vi) to such Member's Representatives who, in the reasonable judgment of such Member, need to know such Confidential Information and agree to be bound by the provisions of this Section 12.03 as if a Member; or (vii) to any potential Permitted Transferee in connection with a proposed Transfer of Membership Interest from such Member, as long as such Transferee agrees to be bound by the provisions of this Section 12.03 as if a Member; *provided*, that in the case of clause (i), (ii) or (iii), such Member shall notify the Company and other Members of the proposed disclosure as far in advance of such disclosure as practicable (but in no event make any such disclosure before notifying the Company and other Members) and use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment satisfactory to the Company, when and if available.

(c) The restrictions of Section 12.03(a) shall not apply to Confidential Information that: (i) is or becomes generally available to the public other than as a result of a disclosure by a Member in violation of this Agreement; (ii) is or has been independently developed or conceived by such Member without use of Confidential Information; or (iii) becomes available to such Member or any of its Representatives on a non-confidential basis from a source other than the Company, the other Members or any of their respective Representatives, *provided*, that such source is not known by the receiving Member to be bound by a confidentiality agreement regarding the Company.

(d) The obligations of each Member under this Section 12.03 shall survive for so long as such Member remains a Member, and for five (5) years following the earlier of (i) termination, dissolution, liquidation and winding up of the Company, (ii) the withdrawal of such Member from the Company, and (iii) such Member's Transfer of its Membership Interest.

**Section 12.04 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder ("**Notice**") shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) when received or when delivery is refused if mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 12.04):

If to the World Development	3618 Fossil Creek
Member, World Development, or	San Antonio, TX 78261
David Salazar:	Attention: David Salazar, President
	Email: dsalazarsatx@yahoo.com

with a copy to (which shall not constitute notice) to:

Jones, Galligan, Key & Lozano  
2300 W Pike Blvd, Suite 300  
Weslaco, TX 78956  
Attention: Matthew L. Jones  
Email: mljones@jgkl.com

If to the CDT Member:

with a copy to (which shall not constitute notice) to:

If to the EHA PFC Member:

with a copy to (which shall not constitute notice) to:

If to the Special Member:

JJW GST IRREVOCABLE TRUST  
U/A/D August 29,2018  
14819 Ballantyne Village Way, Suite 1666  
Charlotte, NC 28277  
Attention: Juan Wu, Trustee  
Email: jane.wu@panorama-holdings.com

with a copy to (which shall not constitute notice) to:

Kirk Palmer & Thigpen, P.A.  
1300 Baxter Street, Suite 300  
Charlotte, NC 28204  
Attention: Bobby D. Hinson  
Email: bhinson@kptlaw.com

**Section 12.05 Headings.** The headings in this Agreement are inserted for convenience or reference only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision of this Agreement.

**Section 12.06 Severability.** If any term or provision of this Agreement is held to be invalid, illegal or unenforceable under Applicable Law in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in Section 8.03(g), upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable



manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 12.07 Entire Agreement.** This Agreement, together with the Certificate of Formation and all related Exhibits and Schedules, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, letters of intent, term sheets, memoranda, representations and warranties, both written and oral, with respect to such subject matter.

**Section 12.08 Successors and Assigns.** Subject to the restrictions on Transfers set forth herein, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**Section 12.09 No Third-party Beneficiaries.** Except as provided in Article VIII, which shall be for the benefit of and enforceable by Covered Persons as described therein, this Agreement is for the sole benefit of the parties hereto (and their respective heirs, executors, administrators, successors and permitted assigns) and nothing herein, express or implied, is intended to or shall confer upon any other Person, including any creditor of the Company, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 12.10 Amendment.** No provision of this Agreement may be amended or modified except by an instrument in writing executed by all of the Members. Any such written amendment or modification will be binding upon the Company and each Member. Notwithstanding the foregoing, the Manager may, without the consent of any other Member, , amend this Agreement (a) to satisfy any requirement, condition, guideline, directive, order, ruling or regulation of any Governmental Authority or as otherwise required by Applicable Law; (b) to reflect the admission of substitute, additional or successor Members, and the issuance and Transfer of Membership Interest in accordance with this Agreement; (c) to qualify or continue to qualify the Company as a limited liability company in all jurisdictions in which the Company conducts or plans to conduct business; (d) to cure any ambiguity or correct or supplement any provision herein contained which may be incomplete or inconsistent with any other provision herein contained; or (e) to correct any typographical error contained herein.

**Section 12.11 Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. For the avoidance of doubt, nothing contained in this Section 12.11 shall diminish any of the explicit and implicit waivers described in this Agreement, including in Section 12.14 hereof.

**Section 12.12 Governing Law.** All issues and questions concerning the application, construction, validity, interpretation and enforcement of this Agreement shall be governed by and

construed in accordance with the internal laws of the State of Texas, without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas.

**Section 12.13 Submission to Jurisdiction and Arbitration.** Any dispute arising under this Agreement shall be submitted to binding arbitration in Hidalgo County, Texas. If such dispute occurs, then either Member may deliver a notice to the other Member (an "**Arbitration Notice**") stating that it is initiating arbitration to resolve such dispute. Any arbitration initiated in connection with this Section 12.13 will be conducted by the San Antonio, Texas office of the American Arbitration Association ("AAA") in accordance with the AAA Commercial Rules ("**AAA Rules**"), except as the AAA Rules conflict with the provisions of this Section 12.13, in which event the provisions of this Section 12.13 will control. The arbitral panel will consist of one arbitrator if the Members agree on such arbitrator and otherwise will consist of three arbitrators who are independent of the Members and their Affiliates (in either case, the "**Arbitrators**") appointed as to two Arbitrators, by each of the Members respectively within ten days after the Arbitration Notice (and any failure to do so within such ten-day period will be deemed to constitute a waiver of such Member's right to so select an Arbitrator for such purpose), and as to the third Arbitrator in accordance with AAA's procedure for selecting arbitrators as described in the AAA Rules. Each of the Arbitrators will be a recognized independent expert in the real estate field and the matter in question with not less than ten years of relevant experience. Should any of the Arbitrators refuse or be unable to proceed with arbitration proceedings as called for by this paragraph, such Arbitrator(s) will be replaced by AAA with an arbitrator satisfying the qualifications provided for above. The arbitration initiated in connection with this Agreement will be conducted in Hidalgo County, Texas or in such other location as the Members may designate by unanimous written consent; provided, however, that the Arbitrator(s) may from time to time convene, carry on hearings, inspect property or documents, and take evidence at any location that the Arbitrator(s) deems appropriate. The Arbitrator(s) may in his, her or their discretion order a pre-hearing exchange of information including production of documents, exchange of summaries of testimony or exchange of statements of position, and will schedule promptly limited discovery (to the extent necessary and appropriate) and other procedural steps and otherwise assume case management initiative and control to effect an efficient and expeditious resolution of the dispute. At any hearing of evidence in connection with an arbitration pursuant to this paragraph, each party and its legal counsel will have the right to examine its witnesses and to cross-examine the witnesses of any other party. No testimony of any witness will be presented in written form unless the opposing party or parties will have the opportunity to cross-examine such witness, except as the parties otherwise agree in writing. The appointment of all Arbitrator(s) and the issuance of their final decision on the issue at hand will take place all within 60 days. At the closing of the arbitration hearing, the Arbitrator(s) will prepare and distribute to the parties a written determination which will include the reasons for such determination. Except as necessary in court proceedings to enforce this arbitration provision or an award rendered hereunder, or to obtain interim relief, or as otherwise required by law, no party hereto nor any Arbitrators may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all parties. The parties consent to the jurisdiction of any federal or state court in Hidalgo County, Texas with respect to such arbitration initiated in connection with this Agreement and further consent that any notice of arbitration in connection with this Agreement will be deemed sufficient if made in accordance with this Agreement, and that such notice will have the same effect as if personal service of notice had been made. The decision of the Arbitrators will be final and binding on the parties. Each of the

parties will pay the costs of any Arbitrator selected by it and the Arbitrator selected by AAA's procedure will be paid by the losing party in the arbitration. The provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1 through 14, except as modified hereby, will govern the interpretation and enforcement of this paragraph. The Arbitrators shall have the authority to grant equitable relief. The prevailing party in any arbitration shall be entitled to recover, in addition to any other relief awarded by the Arbitrators, its reasonable costs and expenses, including reasonable attorneys' fees, of preparing for and participating in the arbitration. If each party prevails on specific issues in the arbitration, the Arbitrators may allocate the costs incurred by all parties on a basis he or she deems appropriate.

**Section 12.14 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE.

**Section 12.15 Remedies.** If a Member breaches this Agreement, or if any of such Member's representations or warranties is inaccurate, the other Members may pursue available remedies under this Agreement or under applicable law without the necessity of dissolving and/or liquidating the Company. Remedies under this Agreement shall be cumulative. In addition, each party hereto acknowledges that a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the other parties, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

**Section 12.16 Attorneys' Fees.** In the event that any party hereto institutes any legal suit, action or proceeding, including arbitration, against another party in respect of a matter arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the reasonable out of pocket costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs.

**Section 12.17 Remedies Cumulative.** The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, except to the extent expressly provided in Section 8.02 to the contrary.

**Section 12.18 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of Electronic Transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signatures Follow]

IN WITNESS WHEREOF, the parties below have caused this Agreement to be executed as of the date first written above by their respective duly authorized officers.

**THE COMPANY:**

3800 LA SIENNA PARKWAY LLC

By: WORLD DEVELOPMENT, LLC,  
a Texas limited liability company

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

Name: David Salazar

Title: President

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

Name:

Title:

**MEMBERS:**

COMMUNITY DEVELOPMENT TRUST

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

Name:

Title:

WORLD DEVELOPMENT, LLC,  
a Texas limited liability company

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

Name: David Salazar

Title: President

EDINBURG HOUSING AUTHORITY  
PUBLIC FACILITIES CORPORATION

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

Name:

Title:

**SPECIAL MEMBER:**

JJW GST IRREVOCABLE TRUST  
U/A/D August 29,2018

By: \_\_\_\_\_  
Name: Jane Wu  
Title: Trustee

By: \_\_\_\_\_  
Name: Haojin Wu  
Title: Trustee\_\_\_\_\_

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

See attached.

**EXHIBIT B**

SCHEDULE OF MEMBERS

[•]

Member Name and Address	Equity Contribution (Unreturned Capital Account Balance)	Units	Percentage Interest
CDT Member Community Development Trust	\$12,012,005.00	95	95.0000%
World Development Member WORLD DEVELOPMENT, LLC 3618 Fossil Creek San Antonio, TX 78261 Attention: David Salazar, President Email: dsalazarsatx@yahoo.com	\$397,211.00	3.1414	3.1414%
EHA PFC Member Member	\$235,000.00	1.8586	1.8586%
<i>Total:</i>	\$12,644,216	100.000	100%



**EXHIBIT B-1**

**SCHEDULE OF MEMBERS UPON RECEIPT OF FHLB GRANT**

[•]

Member Name and Address	Equity Contribution (Unreturned Capital Account Balance)	Units	Percentage Interest
CDT Member Community Development Trust	\$10,747,583.00	85	85.0%
World Development Member WORLD DEVELOPMENT, LLC 3618 Fossil Creek San Antonio, TX 78261 Attention: David Salazar, President Email: dsalazarsatx@yahoo.com	\$1,264,422.00	10	10.0%
EHA PFC Member Member	\$632,211.00	5	5.0%
<b>Total:</b>	\$12,644,216	100.000	100%