VALDEZ SENIOR HOUSING ASSOCIATES, LLC,

AN ALASKA LIMITED LIABILITY COMPANY

AMENDED AND RESTATED OPERATING AGREEMENT

Dated as of [April __, 2023]

MANAGING MEMBER:	**CM Valdez Sr Housing, LLC** **22701 E. Briarwood Place** **Aurora, Colorado 80016**
CLASS B MEMBER:	**City of Valdez** **Box 307** **Valdez, Alaska 99686**
INVESTOR MEMBER:	**CREA Valdez Senior, LLC** **30 South Meridian Street, Suite 400** **Indianapolis, Indiana 46204**
SPECIAL MEMBER:	**CREA SLP, LLC** **30 South Meridian Street, Suite 400** **Indianapolis, Indiana 46204**

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THIS AMENDED AND RESTATED OPERATING AGREEMENT is made and entered into as of April [__], 2023, by and among CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company (the "Managing Member"), the CITY OF VALDEZ, a home rule municipality organized under the laws of the State of Alaska (the "Class B Member"), CREA VALDEZ SENIOR, LLC, a Delaware limited liability company (the "Investor Member"), CREA SLP, LLC, an Indiana limited liability company (the "Special Member"), and SHAWNE MASTRONARDI, an individual resident of Colorado (the "Withdrawing Member").

RECITALS

WHEREAS, the Managing Member, as managing member, executed Articles of Organization (the "Certificate") for the formation of Valdez Senior Housing Associates, LLC (the "Company") pursuant to the terms of the Alaska Revised Uniform Limited Liability Company Act (the "Act"), which Certificate was subsequently filed with the Secretary of State of the State of Alaska (the "State of Formation") on December 16, 2021 (the "Date of Formation");

WHEREAS, the Managing Member, the Class B Member and the Withdrawing Member have previously executed an Operating Agreement of the Company dated as of August 5, 2022 (as amended, "Original Agreement"), and the Managing Member, Class B Member, Investor Member, and Special Member desire to amend and restate the terms governing the Company in accordance with the terms hereof;

WHEREAS, the Managing Member, the Class B Member, the Special Member and the Investor Member wish to continue the Company pursuant to the Act;

WHEREAS, the Company has been formed to develop, construct, own, maintain and operate a 29-unit multifamily Project (including one (1) manager's unit) for rental to seniors, to be known as Valdez Senior Living Apartments to be located in Valdez, Alaska;

WHEREAS, the parties hereto now desire to enter into this Amended and Restated Operating Agreement to (i) continue the Company under the Act; (ii) withdraw the Withdrawing Member from the Company; (iii) admit the Investor Member and the Special Member to the Company as Members; and (iv) set forth all of the provisions governing the Company;

NOW, THEREFORE, in consideration of the foregoing, of mutual promises of the parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree to continue the Company pursuant to the Act, as set forth in this Amended and Restated Operating Agreement, which reads in its entirety as follows:

ARTICLE 1
ORGANIZATION

Section 1.1 Character and Purpose of Business. The general character and purpose of the business of the Company shall be: (a) to acquire, construct, own, finance, lease and operate the Project as a qualified low income housing project within the meaning of the Code; (b) to eventually sell or otherwise dispose of the Project in a manner consistent with the provisions of this Operating Agreement; and (c) to engage in all other activities incidental or related thereto.

Section 1.2 Name of Company. The name of the Company is "Valdez Senior Housing Associates, LLC."

Section 1.3 Principal Place of Business. The address of the principal place of business of the Company shall be CM Valdez Sr. Housing, LLC, 22701 E. Briarwood Place, Aurora, Colorado 80016 or such other address as may from time to time be selected by the Members.

Section 1.4 Principal Office. The address of the principal office of the Company in Alaska shall be at such address as may from time to time be selected by the Members.

Section 1.5 Agent for Service of Process. Faith Cozadd shall be the Company's agent for service of process. The agent's address for such purpose shall be 4047 Main Street, Unit 105, Homer, Alaska 99603 or such other address as the Members may select from time to time.

Section 1.6 Name and Address of Managing Member and Class B Member. The name and address of the Managing Member is as follows:

CM Valdez Sr Housing, LLC
22701 E. Briarwood Place
Aurora, CO 80016

The name and address of the Class B Member is as follows:

City of Valdez
P.O. Box 307
Valdez, Alaska 99686

Section 1.7 Name and Address of Investor Member and Special Member. The name and address of the Investor Member is as follows:

CREA Valdez Senior, LLC
30 South Meridian Street, Suite 400
Indianapolis, Indiana 46204

The name and address of the Special Member is as follows:

CREA SLP, LLC
30 South Meridian Street, Suite 400
Indianapolis, Indiana 46204

Section 1.8 Governmental Filings. The Managing Member shall make all governmental filings as are necessary or appropriate to qualify the Company to do or continue to do business in the State and any other jurisdiction or to otherwise carry out the purposes and intent of this Operating Agreement. In addition, the Managing Member shall timely and properly file of record the Restrictive Covenant.

Section 1.9 Term of Company. The term of the Company began on December 16, 2021 (the date on which the Company's Articles of Organization were first filed with the Alaska Division of Corporations, Business and Professional Licensing), and the Company shall continue in existence until December 31, 2099 or such later date as the Members agree, unless it is earlier dissolved and terminated pursuant to the provisions of this Operating Agreement.

Section 1.10 Definitions. All capitalized words and phrases used in this Operating Agreement (other than the full names and addresses of the Members and governmental subdivisions and agencies) have the meanings set forth in Appendix I.

ARTICLE 2
CAPITAL CONTRIBUTIONS

Section 2.1 Managing Member's and Class B Member's Capital Contributions.

(a) The Managing Member has made a cash Capital Contribution to the Company in the amount of $[100] and, upon the execution of this Operating Agreement, shall provide documentation that the Capital Contribution has been made. The Class B Member has made an aggregate Capital Contribution to the Company in the amount of $[2,557,500] comprised of the Land valued at $[226,000] and cash, and upon the execution of this Operating Agreement, shall provide documentation that the Capital Contribution has been made. In no event shall the aggregate Capital Contributions of the Managing Member and the Class B Member exceed $[2,557,600] without the Consent of the Investor Member.

(b) Each of the Managing Member and Class B Member has assigned and hereby assigns and has caused and shall cause its respective Affiliates to assign to the Company all of its respective rights, title and interest in, to, and under all agreements, licenses, approvals, permits, Tax Credit allocations and any other tangible or intangible personal property which is related to the Project or which is required to permit the Company to pursue its business and carry out its purposes as contemplated in this Operating Agreement. The Managing Member's and Class B Member's Capital Account will not be credited with any amount as a result of its assignment to the Company of the various items referred to in the immediately preceding sentence.

(c) If any Developer Fee including any accrued but unpaid interest thereon (if any) remains (or is expected to remain) at the expiration of the Compliance Period, the Managing

Member shall make an additional Capital Contribution to the Company in the aggregate amount of the unpaid Developer Fee no later than six (6) months prior to the expiration of the Compliance Period, and the Managing Member shall cause the Company to immediately pay the entire unpaid amount of Developer Fee. If the Managing Member does not make such additional Capital Contribution as required in the preceding sentence, such Capital Contribution will be deemed to have been paid by the Managing Member and unpaid Developer Fee will be deemed to have been paid by the Company, and the Developer's sole recourse for nonpayment shall be against the Managing Member.

(d) Notwithstanding anything contained herein to the contrary, in the event that the Developer is an Affiliate of any Managing Member, at the election of the Special Member in its sole and absolute discretion, upon the removal of such Managing Member in accordance with the terms hereof, to the extent all or any portion of the Developer Fee remains unpaid as of the effective date of such removal of such Managing Member, such Managing Member shall immediately prior to such removal make a Capital Contribution to the Company in an amount sufficient to pay any unpaid balance of the Developer Fee, and the Company shall thereafter promptly pay to the Developer such remaining balance of the Developer Fee.

Section 2.2 Special Member and Investor Member's Capital Contributions.

(a) The Special Member shall pay its entire Capital Contribution of $100 to the Company in cash as of the date of admission.

(b) The Investor Member shall contribute as its Capital Contribution the sum of [$7,696,838] payable in accordance with the schedule of payments set forth on Appendix VII. The obligation of the Investor Member to make the Capital Contributions is subject to satisfaction of the conditions precedent to each installment of its Capital Contribution as set forth in *Section 2.2(c)*, *Section 5.4(a)* and Appendix VII. The determination of whether or not a condition precedent to a Capital Contribution has been satisfied shall be made in the reasonable discretion of the Investor Member within seven (7) Business Days of receipt of any single item. Upon disapproval of an item, the Managing Member shall take all steps necessary to correct any deficiencies and resubmit the same as soon as practical thereafter. Each such installment of Capital Contribution shall be made within ten (10) Business Days of the satisfaction of the last condition precedent thereto.

(c) All installments of Capital Contributions by the Investor Member made through Construction Completion shall be funded on a monthly draw basis. The obligation of the Investor Member to make any Capital Contribution pursuant to this *Section 2.2* shall be expressly conditioned upon each of the following requirements being satisfied at all times prior to and including the due dates of the aforesaid payments:

(1) the Managing Member shall have properly completed, executed and delivered to the Investor Member a certificate relating to the appropriate installments in the forms attached in Appendix VII;

(2) the Managing Member shall have fully complied with all of its covenants and obligations set forth in this Operating Agreement (including without

limitation, those covenants and obligations set forth in *Section 5.3* which shall be true and correct in all material respects);

(3) no event shall have occurred which would permit the Investor Member to give an Election Notice under *Section 5.10(d)*;

(4) the Project must be In Balance; and

(5) there has been no change in any law or regulation, which would adversely affect the ability of the Company to generate Tax Credits.

Section 2.3 Interest on Capital Contributions. The Company shall not pay any interest on Capital Contributions.

Section 2.4 Withdrawal and Return of Capital Contributions. No Member has the right to: (a) withdraw any part of its Capital Contribution from the Company; (b) demand a return of its Capital Contribution; or (c) receive property other than cash in return for its Capital Contribution.

Section 2.5 Capital Accounts.

(a) The Company shall maintain for each Member a separate capital account in accordance with Section 1.704-1(b) of the Regulations. The Capital Account of each Member consists of the amount of its Capital Contribution, and will be (1) increased by (i) the fair market value of any property contributed by it to the Company, (ii) the amount of any Company liability assumed by such Member or which is secured by any Company Property distributed to such Member, and (iii) such Member's allocable share of Profits, and (2) decreased by (i) the amount of any cash distributed to it, (ii) the fair market value of any Company Property distributed to it, (iii) the amount of any liability of such Member assumed by the Company or which is secured by any property contributed by such Member to the Company, and (iv) its allocable share of Losses. The Capital Account of each Member will also be adjusted to the extent required by Section 1.704-1(b)(2)(iv)(j) of the Regulations.

(b) If any Company Interests are transferred in accordance with the terms of this Operating Agreement, then the transferee will succeed to the Capital Account of the transferor to the extent it relates to the transferred Company Interests. Upon the occurrence of any of the following events, and if required to cause the provisions herein regarding the maintenance of Capital Accounts to comply with Section 1.704-1(b) of the Regulations, the Company Property shall be revalued and the Members' Capital Accounts adjusted to reflect the gain (or loss) that would have been allocated to each Member if all the Company Property had been sold at its fair market value immediately prior to the occurrence of such event:

(1) The acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution;

(2) The Company distributing to a Member more than a de minimis amount of property or money in consideration for an interest in the Company; or

(3) The "liquidation" of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations.

The revaluation of the Company Property referred to in the immediately preceding sentence shall be made in accordance with Section 1.704-1(b)(2)(iv)(f) of the Regulations.

The foregoing provisions and all other provisions of this Operating Agreement relating to the maintenance of Capital Accounts are intended to comply with Section 1.704-1(b) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations.

Section 2.6 Company Loans. Subject to the limitations set forth in *Sections 5.2(f), 5.4(h)* and *5.4(j)*, if from time to time funds are needed by the Company in excess of those provided by the Project Loans, Capital Contributions of the Members, and funds required to be provided by the Managing Member or any Affiliate of the Managing Member pursuant to any obligation hereunder or any other agreement (such as pursuant to *Sections 5.4(j)* and *5.4(m)*), any Member or other Person may loan such additional funds to the Company at an interest cost to the Company and upon such other terms, as agreed upon by the Managing Member and the Special Member in their reasonable discretion, subject to compliance with the terms of existing loan agreements and this Operating Agreement. Any loans made by a Managing Member or an Affiliate of a Managing Member will not bear interest in excess of one percent per annum over the Prime Rate. Any Member making any loan to the Company will be considered, with respect to the monies advanced, a general creditor of the Company and not a Member. Any loan made hereunder by a Member will be paid as provided in *Sections 4.1* and *4.2*.

Section 2.7 Additional Capital Contributions. Except as expressly provided in this Operating Agreement, no Member is obligated to make contributions to the capital of the Company.

ARTICLE 3
ALLOCATION OF PROFITS, LOSSES AND TAX CREDITS

Section 3.1 Profit and Loss Allocations. All Profits and Losses for any Fiscal Year of the Company, except those items in *Section 3.2* below, shall be allocated to the Members in accordance with the following percentages. Every item of income, gain, loss, deduction, or tax preference entering into the computation of such Profits and Losses, or applicable to the period during which such Profits and Losses were realized, shall be considered allocated to each Member in the same proportion as Profits and Losses are allocated to such Member.

Managing Member	0.005%
Class B Member	0.005%
Special Member	0.01%
Investor Member	99.989%
Total	100.000%

Allocations to the Investor Member and the Special Member herein shall be made in accordance with the percentages set forth in this *Section 3.1* unless specifically stated otherwise.[1]

Section 3.2 **Special Allocations.** Notwithstanding anything to the contrary contained in *Section 3.1*, the following special allocations shall in all events apply in determining the allocation of Profits and Losses among the Members and shall be made prior to the allocations required under *Section 3.1*.

(a) **Depreciation and Tax Credits**.

(1) Depreciation (cost recovery) deductions and Tax Credits shall be allocated among the Members in accordance with the following percentages:

Managing Member	0.005%
Class B Member	0.005%
Special Member	0.01%
Investor Member	99.989%
Total	100.000%

(2) Any recapture of Tax Credits shall be allocated to the Members who were allocated (or whose predecessors-in-interest were allocated) the depreciation/cost recovery deduction and Tax Credits associated therewith.

(3) Energy Credits shall be allocated among the Members in the same manner as profits are allocated among the Members pursuant to *Section 3.1*.

(b) **Limitation on Allocations of Losses**.

(1) To the extent the allocation of any Losses to a Member would cause that Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year of the Company, then those Losses will not be allocated to that Member, but rather will be specially allocated to the remaining Members in proportion with their relative interests in the Company.

(2) In the event some but not all of the Members would have Adjusted Capital Account Deficits due to an allocation of Losses, the limitation set forth in this *Section 3.2(b)* shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member who is not a Managing Member under Regulation Section 1.704-1(b)(2)(ii)(d). All Losses in excess of the limitation set forth in this *Section 3.2(b)* shall be allocated to the Managing Member.

(c) **Profit Chargeback.** To the extent any Losses are specially allocated to a Member in accordance with *Section 3.2(b)*, then Profits will thereafter first be specially allocated to such Member in proportion to and in an amount (1) up to but not exceeding the amount of any such

[1] Add language from the Master Appendix as the last sentence if the Managing Member is a nonprofit and using qualified allocations.

special allocation of Losses away from such Member under such subparagraph (b) but (2) not to the extent that Losses or depreciation deductions would be allocated to the remaining Members in excess of the amount permitted by *Section 3.2(b)*.

(d) **Partnership Minimum Gain Chargeback.** Notwithstanding any other provision of this Operating Agreement, if there is a net decrease in the Partnership's Minimum Gain attributable to Nonrecourse Liabilities during any taxable year, each Member shall be specially allocated a pro rata portion of each of the Company's items of income and gain for such year (and, if necessary for subsequent years) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in such Minimum Gain during such taxable year as determined in accordance with the provisions of Regulation Section 1.704-2(g)(2). In the event that such net decrease in the Partnership's Minimum Gain occurs in connection with the disposition of all or any portion of the Project, then any items of Company income or gain allocated in accordance with the previous sentence shall first consist of gain recognized by the Company as a result of such disposition. It is the intent that the allocations provided in this *Section 3.2(d)* shall be determined in accordance with and only to the extent required by Regulation Section 1.704-2(f) and (j)(2)(i).

(e) **Partner Minimum Gain Chargeback.** Notwithstanding any other provision of this Operating Agreement, if there is a net decrease in the amount of the Partner's Minimum Gain during any taxable year with respect to a Partner Nonrecourse Debt, the Member bearing the Economic Risk of Loss with respect to such Partner Nonrecourse Debt shall be specially allocated a pro rata portion of each of the Company's items of income and gain for such taxable year (and, if necessary, for subsequent years) in proportion to, and to the extent of the amount of such Member's share of the net decrease in such Minimum Gain during such taxable year as determined in accordance with the provisions of Regulation Section 1.704-2(i)(4). In the event that such net decrease in the Partner's Minimum Gain occurs in connection with the disposition of all or any portion of Project, then any items of Company income or gain allocated in accordance with the previous sentence shall first consist of gain recognized by the Company as a result of such disposition. It is the intent that the allocations provided in this *Section 3.2(e)* shall be determined in accordance with and only to the extent required by the provisions of Regulation Section 1.704-2(i) and (j)(2)(ii).

(f) **Qualified Income Offset.** If a Member unexpectedly receives any adjustments, allocations, or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) of the Regulations, then items of Company income or gain will be specially allocated to that Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of that Member as quickly as possible. The special allocations required pursuant to this *subparagraph (f)* are made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this *Article 3* have been tentatively made as if this *subparagraph (f)* were not in this Operating Agreement. This *subparagraph (f)* is intended to comply with the qualified income offset requirements of Section 1.704-1(b)(2)(ii)(d) of the Regulations and will be interpreted consistently therewith.

(g) **Gross Income Allocation.** In the event any Member has a deficit Capital Account at the end of any Fiscal Year in excess of the sum of (i) the amount that such Member must restore pursuant to any provision of this Operating Agreement, if any, and (ii) the amount such Member

is deemed obligated to restore pursuant to the penultimate sentence of Regulation Section 1.704-2(g) and Section 1.704-2(i)(5), such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this *Section 3.2(g)* shall be made if and only to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this *Article 3* have been tentatively made as if *Sections 3.2(f)* and *3.2(g)* were not in this Operating Agreement.

(h) **Nonrecourse Deductions.** Nonrecourse Deductions shall be specially allocated among the Members in accordance with the same percentages set forth in *Section 3.1* with respect to Profits and Losses.

(i) **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.

(j) **Section 754 Adjustment.** To the extent an adjustment to the adjusted tax basis of any Company Property undertaken pursuant to Section 734(b) or 743(b) of the Code is required to be taken into account in determining the Capital Accounts of the Members under Regulation Section 1.704-1(b)(2)(iv)(m), then the amount of such adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to the aforementioned section of the regulations.

(k) **Imputed Interest.** To the extent the Company has taxable interest income with respect to any Capital Contribution pursuant to Section 483 or Sections 1271 through 1288 of the Code, then (i) such interest income shall be specially allocated to the Member to whom such Capital Contribution relates, and (ii) the amount of such interest income shall be excluded from the Capital Contributions credited to such Member's Capital Account in connection with the payments of principal with respect to such Capital Contribution.

(l) **Curative Allocations**. In the event that income, loss or items thereof are allocated to one or more Members pursuant to *Sections 3.2(f)* and *(g)*, subsequent income, loss or items thereof shall be allocated (subject to the provisions of *Sections 3.2(f)* and *(g)*) to the Members so that, to the extent possible in the judgment of the Managing Member, the net amount of allocations shall be equal to the amount that would have been allocated had *Section 3.2* not been applied. Notwithstanding the foregoing, the allocation of depreciation deductions will be governed by *Section 3.2(a)* and this *Section 3.2(l)* shall not apply to allocations of depreciation deductions.

(m) **Allocation of Income or Gain from Sales.** All items of Company income or gain arising from events resulting in Net Cash from Sales or Refinancings shall be allocated:

First, as specified in *Sections 3.2(c)* through *(g)*, *(j)* and *(l)* and *Section 3.4(c)*;

Second, if after the allocation of Profits and Losses for the Fiscal Year in which the gain arose, the Investor Member has a negative Capital Account balance, 100% to the Investor Member until the Investor Member's negative Capital Account is reduced to zero;

Third, if after the allocation of Profits and Losses for the Fiscal Year in which the gain arose the Managing Member has a negative Capital Account balance, 100% to the Managing Member until such negative Capital Account balance is reduced to zero;

Fourth, if after the allocation of Profits and Losses for the Fiscal Year in which the gain arose the Class B Member has a negative Capital Account balance, 100% to the Class B Member until such negative Capital Account balance is reduced to zero;

Fifth, to each Member until such Member's positive Capital Account balances equal any amount to be distributed to such Member pursuant to *Section 4.2(a)*;

Fifth, to the Members in accordance with the percentages specified in *Section 4.2(b)*.

(n) **Special Adjustment.** Notwithstanding any provision of this Operating Agreement to the contrary and prior to making, with respect to a Fiscal Year, any special allocations set forth in this *Section 3.2*, (1) items of expenses and other deductions (other than depreciation, amortization, cost recovery deductions, and Nonrecourse Deductions) incurred in such Fiscal Year for any Fiscal Year, equal to the amount of any loan advances to the Company made or required to be made in such Fiscal Year by a Managing Member or any of its Affiliates pursuant to this Operating Agreement shall be specially allocated to the Managing Member making the loan; and (2) any "cancellation of debt income" (defined in Section 1.61-12 of the Regulations) shall be specially allocated to the Managing Member.

Section 3.3 Timing of Allocations. Except as otherwise expressly provided herein, all allocations of Profits, Losses and Tax Credits shall be made as of the last day of each Fiscal Year of the Company.

Section 3.4 Other Allocation Rules. The following rules shall apply for the purpose of interpreting and applying the provisions of this *Article 3* relating to the allocation of Profits, Losses and Tax Credits among the Members:

(a) **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 interests in Company Profits shall be those percentage interests set forth in *Section 3.1* (determined without regard to *Section 3.2*).

(b) **Effect of Cash Distributions.** To the extent permitted by Section 1.704-2(h) and Section 1.704-2(i)(6) of the Regulations, the Managing Member shall endeavor to treat

distributions of Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for the Investor Member.

(c) **Recharacterization of Fee as Distribution.** If any fee or portion thereof which would be considered an ordinary and necessary expense of the Company payable to any Member or any Affiliate thereof is determined to be a nondeductible distribution from the Company to a Member for federal income tax purposes, there shall be allocated to such Member an amount of gross income equal to such distribution.

(d) **Deductions Attributable to Operating Deficit Loans**. In the event that the Managing Member makes any Operating Deficit Loans pursuant to *Section 5.4(j)*, any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to the Managing Member.

(e) **Income Attributable to Managing Member Capital Contributions**. Any income attributable to the Capital Contribution of the Managing Member shall be allocated to the Managing Member.

Section 3.5 Tax Effect of Allocations. Except as otherwise required under the second paragraph of this *Section 3.5*, the allocation of Profits, Losses and Tax Credits to any Member under this *Article 3* 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 Profits, 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 3* and hereby agree to be bound by the provisions of this *Article 3* in reporting their respective shares of Company income, gain, loss, deduction and credit for income tax purposes.

Notwithstanding anything to the contrary contained in this *Article 3*, income, gain, loss, deduction and credit with respect to any Company Property 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 Property to the Company for federal income tax purposes and the value assigned to such Company Property for the purposes of the computation of the Members' Capital Accounts. If any revaluation of the Company Property is made by the Managing Member (which revaluation may only be made with the Consent of the Special Member), then any subsequent allocations of income, gain, loss, deduction and credit with respect to such Company Property shall take into account any variation between the adjusted tax basis of such Company Property for federal income tax purposes and the value assigned to such Company Property as a result of such revaluation. All allocations required under this paragraph of *Section 3.5* 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 Profits, Losses, Tax Credits or other items or distributions required or permitted to be made pursuant to any provision of this Operating Agreement.

ARTICLE 4
DISTRIBUTIONS

Section 4.1 Distribution of Cash Flow.

Subject to any Requisite Approvals, after payment of the Asset Management Fee and the Incentive Leasing Fee, up to 50% of Cash Flow prior to the achievement of Stabilized Operations shall be available to the Developer and the Managing Member to pay Development Costs; thereafter shall be distributed in the following order and priority:

First, to pay the Asset Manager any accrued but unpaid Asset Management Fee;

Second, to repay any unpaid loans made by a Investor Member or the Special Member pursuant to *Section 2.6*;

Third, to the Investor Member of the full amount (including interest) of any amounts owed to the Investor Member pursuant to *Section 5.10* or any other amounts owed to the Investor Member or Special Member pursuant this Agreement or the Guaranty Agreement;

Fourth, to payment of any unpaid Developer Fee and any accrued interest thereon;

Fifth, to the Operating Reserve Account until such time as such account is equal to the Operating Reserve Amount, and then to the Replacement Reserve Account to fund amounts from prior years that were not made as required herein;

Sixth, to repay any unpaid loans made by the Managing Member pursuant to *Section 2.6*;

Seventh, to the payment of any Deferred Management Fee (if applicable) and then to any Company Management Fee (if available);

Ninth, to the Managing Member to repay any amounts treated as loans to the Company by the Managing Member pursuant to *Sections 5.4(h), 5.4(j),* or *5.4(m)* and not yet repaid; and

Tenth, (a) for Fiscal Years ending prior to the Energy Property Recapture Period, to the Members in accordance with the interests set forth in *Section 3.1*, and (b) for Fiscal Years beginning on or after the Energy Property Recapture Period, 10% to the Investor Member and the balance to the Managing Member, first, as an Incentive Management Fee (but not in excess of 12% of the gross revenues of the Partnership, less any fees payable to the Managing Member, Class B Member or their respective Affiliates) and, thereafter, as a distribution.

Section 4.2 **Net Cash from Sales and Refinancings.** Except as otherwise provided in *Article 10* (pertaining to the liquidation and dissolution of the Company), Net Cash from Sales and Refinancings shall be paid or distributed to the Members as provided in this *Section 4.2*.

(a) Prior to winding up and dissolution, Net Cash from Sales and Refinancings shall, prior to making any distributions pursuant to *Section 4.2(b)*, be paid out in the following order and priority:

First, to repay any unpaid loans made by the Investor Member or the Special Member pursuant to *Section 2.6*;

Second, to the Investor Member of the full amount (including interest) of any amounts owed to the Investor Member pursuant to *Section 5.10* or any other amounts owed to the Investor Member or Special Member pursuant this Agreement or the Guaranty Agreement*;*

Third, to the Investor Member in the amount of the Exit Taxes;

Fourth, to the payment of any accrued but unpaid Asset Management Fee;

Fifth, to payment of any unpaid Developer Fee and any accrued interest thereon;

Sixth, to fund reserves for contingent liabilities to the extent deemed reasonable by the Investor Member (other than items listed below in this *Section 4.2(a)*); and

Seventh, to the payment of any Deferred Management Fee (if applicable); and

Eighth, to the payment of any debts and liabilities (including any unpaid fees) owed to the Members or Affiliates by the Company for Company obligations; provided, however, that the foregoing debts and liabilities owed to the Members and their Affiliates shall be paid or repaid, as applicable, in the following order of priority, if and to the extent applicable; (i) unpaid loans (on a pro rata basis) by the Managing Member pursuant to *Section 2.6*; and (ii) amounts treated as loans pursuant to *Sections 5.4(h), 5.4 (j), or 5.4(m)* and not yet repaid.

(b) After making the payments specified in *Section 4.2(a)*, the balance of Net Cash from Sales and Refinancings, if any, shall be distributed among the Members as follows:

(i) for Fiscal Years ending prior to the Energy Property Recapture Period, the balance of Net Cash from Sales and Refinancings, if any, shall be distributed to the Members in accordance with the interests set forth in *Section 3.1*, and

(ii) for Fiscal Years beginning on or after the Energy Property Recapture Period, the balance of Net Cash from Sales and Refinancings, if any, shall

be distributed among the Members in accordance with the following percentages: 10% to the Investor Member and 90% to the Managing Member.

Section 4.3 **Timing of Distributions.** Distributions of Cash Flow shall be made annually within 90 days after the end of each Fiscal Year of the Company, but in no event prior to the Special Member's receipt and approval of the calculation of Cash Flow and draft annual Company financial statements. The determination of the amount of Cash Flow distributable annually to the Members under this *Article 4* shall be made based upon the state of facts existing on the last day of each Fiscal Year of the Company.

ARTICLE 5
POWERS, RIGHTS AND DUTIES OF MANAGING MEMBER

Section 5.1 **Management of Company**. The Company shall be managed by the Managing Member, who shall exercise full and exclusive control over the affairs of the Company, subject, however, to the limitations on its authority set forth in this Operating Agreement (including, without limitation, *Sections 5.2* and *5.3*). The Managing Member shall conduct and manage the affairs of the Company in a prudent, businesslike, and lawful manner and shall devote such part of its time to the affairs of the Company as shall be deemed necessary and appropriate to pursue the business and carry out the purposes of the Company as contemplated in this Operating Agreement. The Managing Member shall use its best efforts and exercise good faith in all activities related to the business of the Company.

Section 5.2 **Restrictions on Managing Member's Authority.** Notwithstanding anything to the contrary contained in this Operating Agreement, the Managing Member does not have the authority to take any of those actions specifically set forth below, unless the Consent of the Special Member and Class B Member is obtained:

(a) Do any act that is in contravention of or inconsistent with this Operating Agreement or any other agreement to which the Company is a party (including, without limitation, those relating to any Construction Loan or Permanent Loan);

(b) Do any act which would make it impossible to carry on the ordinary business of the Company;

(c) Confess a judgment against the Company;

(d) Possess Company Property or assign rights in specific Company Property for other than a Company purpose;

(e) Sell or otherwise transfer any interest in the Project (other than leases of residential units in the ordinary course of the Company's business);

(f) Incur any liability on behalf of the Company in the ordinary course of the Company's business in excess of $25,000 in the aggregate (or enter into any agreement resulting in any such liability being incurred), other than the Project Loans or loans required or permitted

under *Sections 5.4(j)* and *5.4(m)* hereof, and those liabilities (or agreements relating thereto) which have theretofore been disclosed to and approved in writing by the Special Member;

(g) Except as disclosed in the Financial Forecasts, to cause the Company to acquire any interest in real property or acquire any item of personal property having a purchase price of more than $25,000 in the aggregate;

(h) File a lawsuit on behalf of the Company (other than lease enforcement, collection or other routine legal actions in the ordinary course of business of the Company);

(i) Refinance, prepay or modify any mortgage or long-term liability of the Company, including, without limitation any Permanent Loan;

(j) Compromise any claim or liability in excess of $10,000 owed by or to the Company;

(k) Make, amend or revoke any tax election, reservation, allocation or certification required of or permitted to be made by the Company under the Code or the Regulations, or the State Housing Finance Agency, including, without limitation, any election under Section 42 or Section 754 of the Code. In this regard, the Managing Member shall make (and the Special Member Consents thereto) any elections required or any reasonable elections permitted under Section 42 of the Code requested in writing by the Special Member;

(l) Change any accounting method or practice of the Company;

(m) Take any action which would cause the termination of the Company for federal income tax purposes, the treatment of the Company as other than a partnership for federal income tax purposes, or the dissolution of the Company for state law purposes except as permitted in *Section 10.1*;

(n) Construct any improvements on the Project other than those contemplated in the Plans and Specifications (or any modification thereof if such modification is expressly approved in writing by the Special Member);

(o) Use or cause the Project to be used for any purpose inconsistent with its use as a low income housing development eligible for Tax Credits as contemplated under Section 42 of the Code;

(p) Except for the Project Loans, mortgage, pledge or encumber any interest in any Company Property, including, without limitation, the Project;

(q) Loan any money on behalf of the Company or guarantee on behalf of the Company the indebtedness of any other Person;

(r) Change the nature of the business or purpose of the Company;

(s) Except for the Management Agent, hire or retain any Person to manage the Project or the Company's business;

(t) Admit any other Person as a Member of the Company;

(u) Perform any act subjecting the Investor Member, the Special Member or Class B Member to liability as a Managing Member in any jurisdiction;

(v) Deposit any Company funds in any bank, savings and loan or other financial institution whose accounts are not insured by the Federal Deposit Insurance Corporation;

(w) Commingle any Company funds with the funds of (i) any other partnership, limited liability company, or other entity in which the Managing Member or its Affiliates is a partner or member, or (ii) the Managing Member;

(x) Hire any employees for any purposes;

(y) Cause the Company to execute or deliver any assignment for the benefit of creditors; or

(z) Cause the Company to modify or amend any material term of the Management Agreement, Development Agreement, Construction Contract, Project Document or any agreement between the Company and an Affiliate of the Managing Member or waive any rights of the Company thereunder.

Section 5.3 **Representations, Warranties and Covenants of the Managing Member.** As an inducement to the Investor Member and Special Member to enter into this Operating Agreement and in addition to the representations, warranties and covenants set forth elsewhere in this Operating Agreement, the Managing Member and Class B Member (to the extent the Class B Member is expressly referenced in connection with a representation herein), hereby make the following representations, warranties and covenants to and with the Investor Member and the Special Member. All of the representations, warranties, and covenants set forth herein shall be deemed given as of the date hereof and as of every date thereafter throughout the term of the Company's existence and may be relied upon by counsel to the Special Member in connection with its issuance of a taxation opinion relating to the Investor Member's investment in the Company. The Managing Member shall fully comply with and abide by all of the covenants set forth herein at all times throughout the term of the Company's existence.

(a) **Current Operating Agreement**. The Managing Member has previously provided a true, complete and current copy of the Company's original Operating Agreement, together with all amendments thereto to the Special Member or its designees, which original Operating Agreement and amendments reflect all agreements among the Members of the Company prior to its amendment hereby.

(b) **Due Authorizations, Execution and Delivery; Binding Effect**. The execution and delivery of this Operating Agreement by each of the Managing Member and Class B Member and the performance by the Managing Member and Class B Member of the transactions contemplated hereby have been duly authorized by all requisite corporate, company or trust actions or proceedings and the consummation of any such transactions with or on behalf of the Company will not constitute a breach or violation of, or a default under, the charter or by-laws of the Managing Member and Class B Member or any agreement by which the Managing Member and

Class B Member or any of their respective properties are bound, nor constitutes a violation of any law, administrative regulation or court decree. The Managing Member is duly organized, validly existing and in good standing under the laws of the state of its formation with power to enter into this Operating Agreement and to consummate the transactions contemplated hereby. The Class B Member is validly existing and in good standing under the laws of the State with power to enter into this Operating Agreement and to consummate the transactions contemplated hereby. This Operating Agreement is binding upon and enforceable against the Managing Member and Class B Member in accordance with its terms.

(c) **Valid Company; Power of Authority**. The Company is and will continue to be a valid limited liability company, duly organized under the laws of the State of Formation, and shall have and shall continue to have full power and authority to own the Land and to develop, construct, operate and maintain the Project in accordance with the terms of this Operating Agreement, and shall have taken and shall continue to take all action under the laws of the State of Formation and any other applicable jurisdiction that is necessary to protect the limited liability of the Investor Member and Special Member and to enable the Company to engage in its business.

(d) **Required Consents**. The Company has obtained all consents required for the admission of the Investor Member and Special Member to the Company, including but not limited to, all Requisite Approvals. No consent is required for the transfer of the Investor Member's Interest to a Fund.

(e) **Ownership of Managing Member**. Dr. David Cordes and Shawne Mastronardi own and shall continue to own at all times during the term of the Company 100% of all classes of interests of the Managing Member. Shawne Mastronardi owns and shall continue to own at all times during the term of the Company 100% of the ownership interests in the Developer during the term of the Company.

(f) **No Violation**. The execution and delivery of the Project Documents, the incurrence of the obligations set forth in any of the Project Documents, and the consummation of the transactions contemplated by any of the Project Documents do not violate any provision of law, any order, judgment or decree of any court binding on the Company, the Managing Member, the Class B Member or any Affiliate(s) thereof, any provision of any indenture, agreement, or other instrument to which the Company, the Managing Member or the Class B Member is a party or by which the Company, Managing Member, Class B Member or the Project is affected, and are not in conflict with, and will not result in a breach of or constitute a default under any such indenture, agreement, or other instrument or result in creating or imposing any lien, charge, or encumbrance of any nature whatsoever upon the Project.

(g) **Compliance with Agreements**. At the time of the execution of this Operating Agreement, the Managing Member and Class B Member, either individually or on behalf of the Company, has fully complied with all applicable provisions and requirements of any and all contracts, options and other agreements with respect to the contribution of the Land to the Company and the development, financing and operation of the Project; and the Managing Member and Class B Member shall take, and/or cause the Company to take, all actions as shall be necessary to achieve and maintain continued compliance with the provisions, and fulfill all applicable requirements, of such agreements.

(h) **No Defaults; No Litigation**. Neither the Managing Member nor Class B Member is aware of (i) any default by the Managing Member, Class B Member, Developer, Guarantor or the Company or any circumstances which, with the giving of notice or the passage of time, would constitute a default, under any agreement, contract, lease, Project Loan, or other commitment, or (ii) any claim, demand, litigation, proceedings or governmental investigation pending or threatened against the Managing Member, Class B Member, Developer, Guarantor, Project or the Company, or related to the business or assets of the Managing Member, Class B Member, Developer, Guarantor, Project or the Company, which claim, demand, litigation, proceeding or governmental investigation could result in any judgment, order, decree, or settlement which would adversely affect the business or assets of the Managing Member, Class B Member, Developer, Guarantor, Project or the Company.

(i) **Taxation and Limited Liability**. No event has occurred that has caused and the Managing Member will not act in any manner that will cause (i) the Company to be treated for federal income tax purposes as an "association" taxable as a corporation, rather than as a company, or (ii) the Investor Member to be liable for Company obligations in excess of its respective Capital Contributions, plus the limited dollar amount of any deficit restoration obligation agreed to by the Investor Member pursuant to *Section 10.4*, plus any amount required to be repaid by the Investor Member to the Company pursuant to *Section 6.1*.

(j) **No Undisclosed Financial Responsibilities**. None of the Company, the Managing Member or the Class B Member, either individually or on behalf of the Company, has incurred any financial responsibility with respect to the Project prior to the date of execution of this Operating Agreement, other than (i) that disclosed to the Special Member in writing prior to the date of this Operating Agreement, or (ii) obligations which will be fully satisfied at or prior to the closing. As of the date hereof and hereafter continuously, unless the Special Member otherwise Consents or unless otherwise specifically provided for herein, the only indebtedness of the Company with respect to the Project is the Project Loans. Without limiting the generality of the foregoing, neither the Managing Member, the Class B Member, any of their Affiliates, nor the Company, has entered, or shall enter, into any agreement or contract for any loans (other than the Project Loans) or for the payment of any Project Loan discounts, additional interest, yield maintenance or other interest charges or financing fees, or any agreement providing for the guarantee of payment of any such interest charges or financing fees relating to any Project Loan. The financial statements and other financial data delivered to the Investor Member in connection with the Project and the Managing Member, Class B Member, Developer and Guarantors are true, complete and accurate in all material respects. No adverse change has occurred in any such entity's financial position since the date of the financial statements and financial data last delivered to the Investor Member.

(k) **Nonrecourse; No Personal Liabilities for Loans**. Neither the Company nor any Member, or any Affiliate thereof, has or will have direct or indirect personal liability as maker, guarantor, Member or otherwise with respect to the payment of principal or interest or any other sum due under the Project Loans, except that the Construction Loan and the Deferred Developer Fee Note are recourse as to the Company and the Managing Member, and are guaranteed by the Managing Member and its principals and/or Affiliates.

(l) **Member or Affiliate Loans**. Neither the Members nor any Affiliate of a Member will be a lender to the Company unless, based upon the advice of tax counsel or adviser satisfactory to the Special Member, such loan will not likely adversely affect or cause a material re-allocation among the Members of Tax Credits or Profits and Losses. If the Investor Member shall give notice to the Managing Member that in the reasonable judgment of the Investor Member depreciation deductions will no longer be allocated to the Investor Member as a result of the treatment of any Project Loan or any deferral of the Developer Fee or any other Company indebtedness as recourse or Member Nonrecourse Debt ("Related Party Financing"), then the Managing Member shall take all such action as may be necessary to assure that any outstanding balance of such Related Party Financing shall constitute a Partnership Nonrecourse Liability and the Investor Member shall give its Consent to allow the Managing Members to take all necessary action, provided such action does not have any negative tax consequences for the Company or the Investor Member.

(m) **Aggregate Net Worth of Guarantors**. The Guarantors have and will at all times during the Compliance Period maintain an aggregate net worth (exclusive of their investment in the Company), computed on a market value basis, equal to not less than $2,500,000 (of which $500,000 is held in liquid accounts); provided, however, that from and after the Company's receipt of Form(s) 8609 for the Project, the aggregate net worth of the Guarantors (exclusive of their investment in the Company), computed on a market value basis, shall equal not less than $1,000,000 (of which $250,000 is held in liquid accounts).

(n) **Construction Contract**. The Construction Contract has been entered into between the Company and the General Contractor; no other consideration or fee shall be paid to the General Contractor in its capacity as the General Contractor for the Project other than the amounts set forth in the Construction Contract or as evidenced by change orders disclosed in writing to and Consented (unless Consent is not required pursuant to (o) below) to by the Special Member (and approved by the Project Lenders as necessary); and all change orders to date have been paid in full. In addition, no consideration or fee shall be paid to the Developer, Managing Member or Class B Member by the General Contractor.

(o) **Construction Plans and Specifications**. The Managing Member has sent to the Special Member or its designees the Plans and Specifications, if any, and all construction schedules, approved construction draws, certifications concerning occupancy, lien notices, project inspection reports, proposed changes and modifications to the Plans and Specifications, all documents pertaining to the Project Loans, and any other information which is relevant to the construction and development of the Project. No material change will be made in the Plans and Specifications for the Project without the Consent of the Special Member; provided, that changes in the Plans and Specifications, the Construction Contract (including change orders thereunder), or any other material contract relating to the development or financing of the Project which (i) do not affect the value or the use of the Project, or (ii) do not result in an increase or decrease of more than 10% of the contingency in any one instance and 50% of the contingency in the aggregate between budget line items over the entire construction period, may be made without the Consent of the Special Member, but the Managing Member shall provide the Special Member with notice thereof prior to making such change. Thereafter, any use of the hard cost contingency (either within the Construction Contract or held as an owner's contingency) requires the Consent of the Special Member.

(p) **Construction of Project**. The construction and development of the Project shall be undertaken and shall be completed in a timely and workmanlike manner, free from liens (not otherwise bonded over in a cumulative amount not to exceed $200,000) and defects, in accordance with (i) all applicable requirements of the Project Loans and the Project Documents, (ii) all applicable requirements of all appropriate Agencies and Authorities, and (iii) the Plans and Specifications of the Project that have been or shall be hereafter approved by the Special Member and, if required, the Project Lenders and any applicable governmental entities, as such Plans and Specifications may be changed from time to time with the Consent of the Special Member as required pursuant to this Operating Agreement and the Project Lenders, if required, and any applicable Authorities, if such approval shall be required. The Managing Member shall promptly provide or cause to be provided copies of all change orders to the Special Member.

(q) **No Defective Soils Conditions**. To the best of the Managing Member's knowledge, (i) there are no defects or conditions of the soil that would have an adverse effect upon the use, occupancy and operation of the Project; (ii) the soil condition of the Land is such that it will support all of the improvements to be located thereon for its foreseeable life, without the need for unusual or new subsurface excavations, fill, footings, caissons or other installations; and, (iii) the improvements on the Land, as built, will be or are constructed in a manner compatible with the soil condition at the time of construction and all necessary excavations, fills, footings, caissons and other installations were then, have since been and will be provided.

(r) **Public Utilities**. All appropriate roadway and public utilities, including, without limitation, sanitary and storm sewers, water, telephone and electricity, are available to the Project, and all easements required in connection therewith have been obtained and filed of public record and the Managing Member will use commercially reasonable efforts to keep all such utilities operating in a manner sufficient to service the Project and the residential units contained therein.

(s) **No Defects, Compliance**. Upon completion of the Project, there will be no physical or mechanical defects or deficiencies in the condition of the Project, including, but not limited to, the roofs, exterior walls or structural components of the Project and the heating, air conditioning, plumbing, ventilating, elevator, utility, sprinkler and other mechanical and electrical systems, apparatuses and appliances located in, or about, the Land which would materially and adversely affect the Project or any portion thereof. The Project is free from infestation by termites or other pests, insects, animals or other vermin and the Managing Member will keep and maintain the Project in such condition. The Project conforms (or will timely conform) to all governmental regulations, including, without limitation, all zoning, building, health, fire and environmental rules, regulations ordinances or requirements or environmental laws, regulations or procedures applicable to the Project where the failure to conform would result in a material adverse effect. The Managing Member shall not cause or permit to occur any circumstances that would (i) give rise to a "flag" affecting the Investor Member or its Affiliates under HUD's previous participation certification system, the effect of which would be to adversely impact the ability of the Investor Member or its Affiliates from participation in HUD loan or subsidy programs, if applicable; (ii) result in a determination by HUD that the Project has failed to comply with HUD's minimum standards for physical condition (which under current practice, and HUD Notice H-2011-24 dated September 13, 2011, would mean a HUD REAC score of below 31), if applicable; or (iii) cause the owner or operator of the Project to lose the benefit of an innocent landowner defense pursuant to Section 101(35) of CERCLA**.**

(t) **As-Built Survey**. The Managing Member shall deliver to the Investor Member a final ALTA compliant "as built" survey covering the completed Project and satisfactory to the Special Member within 90 days of Construction Completion.

(u) **Title, Liens and Encumbrances**. The Company owns the Project and all personal property used in connection therewith, in fee simple, free and clear of all liens and encumbrances other than mortgages and other security instruments securing any of the Project Loans, and those liens and encumbrances expressly agreed to in writing by the Special Member, including pursuant to *Section 5.3(p)*, if any. An owner's title insurance policy issued by the Title Company or a financially responsible institution acceptable to the Special Member, in favor of the Company, will be issued at or prior to the closing subject only to such easements, covenants, restrictions and such other standard exceptions as are normally included in owner's title insurance policies and which are Consented to in writing by the Special Member. Neither the Managing Member nor Class B Member has made any misrepresentation or failed to make any disclosure that will or could result in the Company lacking title insurance coverage based on imputation of knowledge of the Managing Member and Class B Member to the Company. The Managing Member will deliver the owner's title insurance policy to the Investor Member within 30 days of the closing.

(v) **Zoning and Related Matters**. The Project conforms (or will timely conform) in all material respects to all applicable laws, including, without limitation, all zoning, building, health, fire and environmental rules and regulations and there are no laws, planning rules, regulations, ordinances, requirements or environmental laws, regulations or procedures applicable to the Project that would inhibit or adversely affect the operation of the Project as a low income housing development.

(w) **Moratoria; Assessments; Dedications**. There is no reassessment (except for real estate property taxes), reclassification, rezoning, proceeding, ordinance or regulation (including amendments and modifications to any of the foregoing) pending or proposed to be imposed, by any Authority or any public or private utility having jurisdiction over the Land which would have an adverse effect upon the use or occupancy of the Project. No special assessments have been levied against the Project or by an Authority upon the commencement or completion of any construction, alteration or rehabilitation on or of the Project or any portion thereof. The Managing Member will promptly notify the Special Member of any such actions, if and as they arise. Except as previously disclosed in writing to and approved by the Special Member, the completion of the improvements, construction, alteration or rehabilitation on or to the Project or any portion thereof will not require the dedication of any portion of the Project by any Authority.

(x) **Governmental Actions**. There is no official action of any Authority, pending or, to the best of the Managing Member's knowledge, threatened, which in any way would (i) have an adverse effect on the Company, the Project, the Investor Member, or the Tax Credits; (ii) involve any intended public improvements which improvements may result in any charge in excess of $10,000 being levied against the Land; or (iii) result in any special assessment, being levied against or assessed upon the Land or the Project. There is no existing or proposed plan, or, to the best of the Managing Member's knowledge, plan contemplated, plan to widen, modify or realign any street or highway contiguous to the Land. The Managing Member will promptly notify the Investor Member of any such official actions or plans, if and as they arise.

(y) **Environmental Conditions**. The Project is not in violation of any federal, state or local law, ordinance or regulation relating to any environmental conditions on, under or about the Project, including, but not limited to, soil and groundwater conditions or the presence of mold. To the best of the Managing Member's knowledge after due inquiry, no Hazardous Substance has been used, generated, manufactured, stored or disposed of on, under or about the Project, or transported to or from the Project.

(z) **Environmental Site Assessment**. In connection with the acquisition and development of the Project, the Managing Member obtained a Phase I Environmental Site Assessment for the Project completed by GIBCO Environmental, LLC dated April 25, 2022, [as updated on _____, 2023], as prudent and appropriate inquiry into the previous ownership and uses of the Project consistent with good commercial practice, and to the best of the Managing Member's knowledge and consistent with good commercial practice, such inquiries are sufficient for the Company to successfully establish an innocent landowner defense pursuant to Section 101(35) of CERCLA.

(aa) **CERCLA waivers, releases**. None of the Company, the Managing Member, nor to the best of the Managing Member's knowledge, any predecessor in title of the Company, has given any indemnification for or waiver or release of liability pursuant to ASTM, CERCLA or any other Environmental Law or any similar applicable state or local law to any person or entity in the chain of title of the Project.

(bb) **Management of Project**. The Managing Member will not, and will cause the Management Agent not to, (i) cause or permit any waste or damage to the Project, or (ii) allow any tenant to use a residential unit within the Project or any of the common areas in any manner which is unlawful, hazardous, unsanitary, noxious or offensive or which unreasonably interferes with the use of the Project by the other tenants.

(cc) **Full Disclosure Concerning the Project**. All material information concerning the Project known to the Managing Member or any of its Affiliates, or which should have been known to any of them in the exercise of reasonable care, has been disclosed by the Managing Member to the Special Member and there are no facts or information known to the Managing Member or any of its Affiliates, or which should have been known to any of them in the exercise of reasonable care, which would make any of the facts or information submitted by the Managing Member to the Special Member with respect to the Project inaccurate, incomplete or misleading in any material respect.

(dd) **Insurance**. The Managing Member has caused and will cause the Company, the General Contractor, the Architect and the Management Agent to maintain the insurance set forth in Appendix VI.

(ee) **Allocation or Reservation of Tax Credits; Applicable Percentage**. On [December 21, 2022], the Company received a valid State Designation with respect to the Project. The Applicable Percentage for the Project is 9%.

(ff) **Qualification for LIHTC Units**. At all times following the completion of the contemplated improvements to the Project, the Managing Member shall use commercially

reasonable efforts to operate the Project in order to qualify 100% of the LIHTC Units in the Project for the Tax Credit with 100% of the tenants of such LIHTC Units qualifying under the appropriate income and rent restrictions of Section 42 of the Code as the same may be modified pursuant to the Restrictive Covenant.

(gg) **Applicable Income and Rent Restrictions**. The Project is being developed in a manner which satisfies, and shall continue to satisfy, all restrictions, including, without limitation, the tenant income and rent restrictions, applicable to projects generating Tax Credits under Section 42 of the Code. The Company will comply with the so-called "40-60 Set-Aside Test" of Code Section 42(g)(1)(B).

(hh) **Projected Tax Credits; Financial Forecasts**. The Projected Tax Credits that the Managing Member has projected will be available to the Investor Member are accurately set forth in Appendix II. The Financial Forecasts attached hereto as Appendix II are true, complete and accurate in all material respects. There shall be no material changes to the operating or construction budget of the Project which would impact the Financial Forecasts without the Consent of the Special Member. Without limiting the foregoing, (i) the Financial Forecasts accurately allocate the Development Costs between non-depreciable and depreciable costs, and (b) no portion of the Incentive Management Fee or Developer Fee is allocable to the organization of the Company, to the sale of any interests in the Company, or to any permanent financing arrangements.

(ii) **No Tax-Exempt Use Property**. No portion of the Project in excess of 0.005% is or will be treated as "tax-exempt use property" as defined in Section 168(h) of the Code.

(jj) **No Abusive Tax Shelter**. The Managing Member has not received notice from the IRS that it has considered the Managing Member to be involved in any abusive tax shelter and is not aware of any facts, which if known to the IRS, would cause such notice to be issued.

(kk) **Bankruptcy**. No Bankruptcy, including, without limitation, attachments, execution proceedings, assignments for the benefit of creditors, insolvency, reorganization or other proceedings is pending or threatened against the Company, the Managing Member or the Guarantor. The Managing Member will not permit a bankruptcy to occur.

(ll) **Commitments to Third Parties**. The Managing Member is not presently under any commitment to any real estate broker, rental agent, finder, syndicator or other intermediary with respect to the Project or any portion thereof, except for arrangements disclosed in writing to the Special Member prior to the date hereof.

(mm) **Federal Subsidies**. No portion of the Project is federally subsidized as defined in Section 42(i)(2) of the Code.

(nn) **Fair Market Value**. The Project's fair market value, including the value of the tax benefits and favorable financing described in the Financial Forecasts, is reasonably expected to exceed all indebtedness secured by the Project at all times after the Project is Placed in Service.

(oo) **Restrictive Covenant**. The term of the Restrictive Covenant will not exceed 30 years. The Company has waived its rights to cause the Restrictive Covenant to be terminated prior to the conclusion of its term in the event that the State Housing Finance Agency does not present

a "qualified contract", as defined in Section 42(h)(6)(F) of the Code, pursuant to the procedures set forth in Section 42(h)(6) of the Code. The Project shall be operated in accordance with, and residential units within the Project leased in compliance with, the Restrictive Covenant and Section 42 of the Code.

(pp) **Restrictions on Sale or Refinancing**. No restrictions on the sale or refinancing of the Project, other than restrictions that may be set forth in the Project Documents, exist as of the date hereof, and no such restrictions shall, at any time while the Investor Member is the Investor Member, be placed upon the sale or refinancing of the Project.

(qq) **Compliance with Federal Fair Housing Act**. At all times during the term of this Operating Agreement, the Company shall comply with the provisions of the Federal Fair Housing Act, as amended, including, but not limited to, complying with all provisions thereof relating to housing for the elderly.

(rr) **Current Lease Terms**. All current leases (if any) for residential units in the Project are, and all future leases will be, for an initial term of at least six months, or such longer period as may be required by the Code or other governing authority.

(ss) **Taxpayer Certifications**. On behalf of the Company, the Managing Member will cause to be filed any and all certifications and other documents on a timely basis with the IRS, the State Housing Finance Agency and all other Authorities, as have been and may be required to support the full amount of Projected Tax Credits.

(tt) **Grants.** The Company shall not accept any grants without the Consent of the Special Member.

(uu) **Depreciation**. Except to the extent otherwise required by Section 168(g)(1)(B) of the Code, the Company shall depreciate substantially all of its residential rental property, site improvements and personal property costs, respectively, over thirty (30) years, fifteen (15) years and five (5) years for federal income tax purposes. All other elections required or permitted to be made by the Company under the Code shall be made by the Managing Member with the Consent of the Special Member. The Managing Member shall cooperate with the Special Member to provide documentation necessary to complete the Cost Segregation Study and deliver the Cost Segregation Study by January 31st in the year following when the Project is Placed in Service.

(vv) **Survival of Representations and Warranties.** Each of the Managing Member and Class B Member (to the extent the Class B Member is expressly referenced in connection with a representation herein) shall indemnify, defend and hold harmless the Investor Member and Special Member against a breach by it of any of the foregoing representations, warranties and covenants and any damage, loss or claim caused thereby, including reasonable attorneys' fees and costs and expenses of litigation and collection. In addition to the foregoing indemnification, the Investor Member or Special Member may pursue any other available legal or equitable remedy against the Managing Member and Class B Member with respect to the Managing Member's and Class B Member's respective breach of any of the representations, warranties or covenants contained herein, including, without limitation, the Investor Member's deferral of the payments of its Capital Contributions pursuant to *Section 2.2*.

(ww) **Designated Nationals**. The Managing Member, Class B Member, Developer, Guarantors and any of their respective Affiliates that are under contract with respect to the Project (the "Sponsor Entities"): (i) are in compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), including, without limitation, Executive Order 13224, (ii) are not, nor is any Affiliate of the Sponsor Entities, on the Specially Designated Nationals and Blocked Persons List maintained by OFAC, and (iii) are not otherwise identified by a government entity or legal authority as a person with whom a U.S. Person (as defined below) is prohibited from transacting business. As used herein, "U.S. Person" shall mean any United States citizen, any permanent resident alien, any entity organized under the laws of the United States (including foreign branches), or any person in the United States.

(xx) **Real Property Trade or Business**. The Managing Member agrees that unless directed otherwise in writing by the Special Member, the Company shall make the election under Code Section 163(j)(7)(B) as provided in the Act to be an "Electing Real Property Trade or Business" (as such term is defined in the Code). In addition, unless directed otherwise in writing by the Special Member, the Company will not make an election under Section 168(k) of the Code to opt-out of any bonus depreciation otherwise allowable with respect to its site work and personal property improvements.

(yy) **Energy Property**. The Managing Member agrees as follows:

(1) The Managing Member shall cause the Company to acquire, construct, install, operate, maintain and finance the Energy Property.

(2) The Company shall own the Energy Property.

(3) The Managing Member shall cause the Company to install the Energy Property in compliance with all laws and regulations, and cause the Energy Property to be interconnected with the main power grid in a manner satisfactory to [_____].

(4) The Company, except to the extent it is protected by insurance, bears the sole risk of loss if the Energy Property is destroyed or condemned or there is a diminution in the value of the Energy Property.

(5) The Energy Property shall be maintained in accordance with generally accepted standards and the maintenance costs of the Energy Property are included in the annual operating budget.

(6) The Energy Property is not in violation of any state or local building code or regulation.

(7) The Energy Property uses solar energy to generate electricity.

(8) The electricity generated by the Energy Property will not be used to heat a swimming pool.

(9) Substantially all of the expenditures included in the calculation of Energy Property Basis of the Energy Property shown in the Financial Forecasts are properly chargeable to a capital account and may be depreciated under Section 168 of the Code.

(10) No portion of the Energy Property is, or will be, tax-exempt use property (within the meaning of Section 168(h) of the Code) or financed with the proceeds of tax-exempt debt.

(11) The Company will not dispose of the Energy Property during the Energy Property Recapture Period.

(12) The fees paid by the Company in connection with the development of the Energy Property, if any, are reasonable in amount for services performed or materials actually provided.

(13) The Managing Member shall cause the Company to depreciate the Energy Property utilizing a double-declining balance method over a sixty (60)-month period.

(14) The Financial Forecasts are accurate and complete in all material respects with respect to the Energy Property and depreciation of the Energy Property and are reasonable in light of all of the facts and circumstances.

Section 5.4 **Specific Obligations of Managing Member**. The Managing Member, on behalf of and in the name of the Company and in addition to any obligations placed upon it elsewhere in this Operating Agreement, has the following specific obligations.

(a) **Draws During Construction**. Concurrently with a construction draw request to a lender, the Managing Member shall furnish to the Special Member a copy of any documents submitted to the lender as part of the construction draw. When a Capital Contribution installment is requested during the construction period, the Managing Member shall furnish to the Special Member copies of the following documents:

(1) a completed hard cost requisition form in the form of standard industry AIA documents G702 and G703, or other pre-approved forms, executed by the Managing Member and containing a separate breakdown of soft costs and invoices attached to such form;

(2) sworn statements of the General Contractor, and unconditional waivers of any lien (subject only to payment for the work set forth therein) covering all work in excess of $50,000, together with such invoices, contracts or other supporting data as the Special Member may require to evidence that all costs for which disbursement is sought have been incurred;

(3) any change orders, whether proposed or executed, which have not been previously furnished to the Special Member;

(4) a title certificate date down endorsement or updated title search dated within 15 days of the draw request, showing no new liens or exceptions (other than those approved by the Special Member or bonded pursuant to Section 5.3(p) herein), dated as of the date of the construction draw;

(5) an updated detail of the sources and uses, using an AIA form document (or other form reasonably acceptable to the Special Member) and containing information on both the total project and the actual draw request; and,

(6) receipt of all open items identified on Appendix IX, if any, on or before such times as described in Appendix IX.

(b) **Inspecting SLP Representative**. The Special Member will select an inspecting representative for the Project to perform inspections for the sole benefit of the Investor Member during the construction or rehabilitation of the Project (the "Inspecting SLP Representative"). The Inspecting SLP Representative shall perform a site inspection for the funding of the Second, Third and Fourth Installments and no less than twice during the initial six-month period of construction. Furthermore, the Special Member shall be invited by the Managing Member to all monthly construction progress meetings with the Construction Lender and the Special Member may reasonably require the Inspecting SLP Representative to attend such meetings. The Investor Member does not warrant or otherwise endorse the findings of the Inspecting SLP Representative.

(c) **Removal of Management Agent**. The Management Agent may not be removed or replaced without the Consent of the Special Member, and none of the services to be performed by the Management Agent under the Management Agreement may be assigned or subcontracted to third parties without the Consent of the Special Member. The Managing Member shall, upon the written request of the Special Member, promptly remove the Management Agent**.** In addition, the Managing Member shall cause every management agreement to contain a provision that either the Company or the Management Agent may terminate the management agreement with or without cause upon 30 days' written notice.

(d) **Limited Liability Company Status.** The Managing Member shall (i) file such certificates and do such other acts as may be required to qualify and maintain the Company as a limited liability company under the Act and to qualify the Company to transact business in all such jurisdictions as may be required under applicable provisions of law and (ii) take or cause the Company to take all reasonable steps deemed necessary by counsel to the Company to assure that the Company is at all times classified as a Company for federal income tax purposes.

(e) **Partnership Audit Provisions.** The Managing Member shall constitute the "partnership representative" (the "Partnership Representative") for each taxable year of the Company under the Revised Partnership Audit Procedures. The Members shall timely designate an individual to serve as the sole individual through whom the Partnership Representative will act for each taxable year of the Company as required by Treas. Reg. §301.6223-1 (the "Designated Individual"). The Designated Individual, pursuant to the acknowledgement attached hereto as Appendix XI, hereby agrees to be bound by this *Section 5.4(e)*. If the Designated Individual resigns or is otherwise unsuitable (in the sole and absolute judgement of the Special Member) to act as the

Designated Individual for a taxable year or years (including, without limitation, by reason of death, incapacity, or change of employment), then, to the extent permitted by law, (a) on behalf of the Company, the Partnership Representative, in consultation with and with the Consent of the Special Member, shall nominate an eligible individual to serve as the Designated Individual for such taxable year or years, and (b) the Company will take all necessary and appropriate steps to replace such Designated Individual for such taxable year with the Designated Individual nominated under the preceding clause (a). Notwithstanding the foregoing, the Designated Individual shall resign upon the request of the Partnership Representative or if the Designated Individual (i) leaves the employment of the Managing Member or Managing Member's Affiliate (ii) becomes employed by the IRS or (iii) is imprisoned. Any individual designated as the Designated Individual shall act diligently, promptly, and in good faith to perform its duties hereunder, including such actions as may be necessary to collect any data that it needs to minimize the Company and any Members' tax liability in accordance with the Revised Partnership Audit Procedures, which may include the filing of amended returns, where appropriate. In addition, in the event of any final partnership adjustment occurring under the procedures of the Revised Partnership Audit Procedures, unless the Consent of the Special Member is obtained for doing otherwise, the Company shall timely elect to utilize the alternative procedure described in Section 6226 of the Code (as modified by the 2015 Act), and the Partnership Representative shall provide the IRS and each affected Member with such information as required by such Section 6226 and any Treasury Regulations promulgated thereunder. Each Member agrees to cooperate with the Company in utilizing the procedures under Section 6226 of the Code whether or not such person is a Member at the time of a final partnership adjustment. The Managing Member's designation as the Partnership Representative shall include the Managing Member serving in such capacity after the termination of the Company with respect to IRS audits and proceedings. The Partnership Representative and Designated Individual shall comply with any written direction given by the Special Member at any time with regard to making an Opt-Out Election, Push-Out Election, Administrative Adjustment Request or any other tax decisions and elections on behalf of the Company, or the Investor Member for any taxable year and shall not make an Opt-Out Election, Push-Out Election, Administrative Adjustment Request or any other tax decisions or elections on behalf of the Company, or the Investor Member for any taxable year without obtaining the Special Member's prior written Consent. Notwithstanding anything to the contrary contained herein, neither the Managing Member, in its capacity as the Partnership Representative, nor the Designated Individual shall take any of the following actions, without first obtaining the Consent of the Special Member:

(1) Extend the statute of limitations for assessing or computing any tax liability against the Company (or the amount or character of any Company tax item);

(2) Settle any audit with the IRS concerning the adjustment or readjustment of any Company tax item;

(3) File a request for an administrative adjustment with the IRS at any time or file a petition for judicial review with respect to any IRS adjustment;

(4) Initiate or settle any judicial review or action concerning the amount or character of any Company tax item;

(5) Intervene in any action brought by any other Member for judicial review of a final adjustment of any Company tax item;

(6) Elect any depreciation schedule other than 30 years for the buildings comprising the Project; or

(7) Take any other action that would have the effect of finally resolving a tax matter affecting the rights of the Company and its Members.

The Managing Member and Designated Individual shall keep the Special Member advised of any dispute the Company may have with any federal, state or local taxing authority and shall afford the Special Member the right to participate directly in negotiations with any such taxing authority in an effort to resolve any such dispute.

The Partnership Representative and Designated Individual shall obtain the Consent of the Special Member before taking any of the actions specified in this *Section 5.4(e)*, regardless of whether the Company has been dissolved or any Investor Member has withdrawn from the Company, voluntarily or involuntarily, if the result of such actions would adversely affect the Investor Member.

Notwithstanding anything to the contrary herein: (i) at any time and from time to time, the Investor Member may replace the PartershipRepresentative or Designated Individual, (ii) the Partnership Representative and Designated Individual shall have a fiduciary responsibility to protect the interests of the Investor Member, (iii) prior to appointing any individual to serve in the capacity of Partnership Representative or Designated Individual, that individual shall acknowledge and consent in writing to comply with the provisions of this *Section 5.4(e)*, and (iv) the Managing Member shall indemnify, defend and hold the Investor Member harmless from any loss, cost or expense incurred by the Investor Member as a result of the failure of the Partnership Representative or Designated Individual to comply with the terms of this *Section 5.4(e)*.

(f) **Governmental Filings.** The Managing Member shall prepare, sign and submit to any Agency or Authority, on a timely basis, any and all annual reports, returns, certifications, documents or other information required by any such Agency and shall provide the Special Member with a copy of any such submission at the time of submission. The Managing Member shall comply with all other applicable requirements of any Agency, including, without limitation, any requirements of any such Agency with respect to the funding and maintenance of any operating or capital improvement reserves for the Project. The Managing Member shall cause the Company to apply for all Forms 8609 for the Project from the State Housing Finance Agency in a timely manner, shall timely file any other tax returns, information, or statements required by the Code, and shall provide the Special Member with a copy of such application for all IRS Forms 8609 at the time of submission.

(g) **Bank Accounts.** The Managing Member shall establish in the name and on behalf of the Company such bank accounts as shall be required to facilitate the operation of the Company's business. The Company's funds shall not be commingled with any other funds of the Managing Member or any of its Affiliates, including without limitation, any other company or business venture in which the Managing Member or any Affiliates thereof is a managing member,

owner, partner, or member. Funds of the Company held in bank accounts shall be deposited in one or more accounts maintained in FDIC insured banking institutions approved by the Special Member. Promptly upon the request of the Special Member, the Managing Member shall obtain and deliver to the Special Member full, complete and accurate statements of the amount and status of all Company bank accounts and all withdrawals therefrom and deposits thereto.

(h) **Completion Guaranty**.

(1) The Managing Member and Guarantors (pursuant to the Guaranty Agreement), jointly and severally, absolutely and unconditionally guarantee (A) Construction Completion on or before the completion date designated in the Construction Contract; and (B) the payment of all development costs and fees, Operating Deficits attributable to owning and operating the Company and the Project through the Stabilized Operations Date, and the initial funding of any other reserves required herein or in the Financial Forecasts (collectively referred to herein as "Development Costs") which may be paid through the additional deferral of the Developer Fee, provided the Special Member reasonably determines that the Financial Forecasts demonstrate such deferral of Developer Fee can be paid in full from Cash Flow prior to maturity of the Deferred Developer Fee Note. The obligations of the Managing Member under the foregoing sentence include, without limitation, providing all funds required for the Company to achieve Construction Completion of the Project (to the extent not then available under *Section 4.1* hereof or from the Project Loans or Capital Contributions), including, without limitation, cash equity, and to pay any unanticipated or additional development, construction costs, on and off-site escrows, taxes (including any transfer taxes in connection with the admission of the Investor Member and the Special Member to the Company), insurance premiums, and interest. Such costs may also include a ratable portion of the annual amount of seasonal and/or periodic expenses, including but not limited to utilities, maintenance expenses and real estate taxes, which might reasonably be expected to be incurred on an unequal basis during a full annual period of operation and any other costs of the Company to develop the Project. The repayment of any borrowings arranged by the Managing Member to fund its obligations under this *Section 5.4(h)* shall be the sole obligation of the Managing Member. Any payments made by the Managing Member under this *Section 5.4(h)* shall be treated as a non-interest bearing loan repayable in accordance with *Section 4.1* and *Section 4.2* herein or a capital contribution from the Managing Member, as determined in the reasonable discretion of the Special Member. Notwithstanding the foregoing, loans funded by the Managing Member hereunder to fund a temporary shortfall in anticipated proceeds of Project Loans, Capital Contributions and Cash Flow required to pay Development Costs (i.e., in an aggregate amount not to exceed $[_____] for a period of no longer than [__] days) may be repaid from the proceeds of such Project Loans, Capital Contributions and Cash Flow upon the receipt thereof.

(2) In the event that the Managing Member or Guarantors (pursuant to the Guaranty Agreement) fails to pay Development Costs as required under this *Section 5.4(h)*, an amount not in excess of the total of any remaining unpaid Investor Member Capital Contribution installments may, in the discretion of the Special Member, be applied by the Company to meet such obligations of the Managing Member. Any such direction and application of funds otherwise payable pursuant to *Section 2.2* shall constitute reductions in amounts owed pursuant to *Section 2.2*, and the Investor Member's obligation to make such installment payments pursuant to *Section 2.2*.

(i) **Operating and Replacement Reserves**.

(1) Operating Reserve. The Operating Reserve shall be used to fund Operating Deficits and withdrawals shall require the signature of the Managing Member and the Consent of the Special Member (which shall not to be unreasonably withheld and shall be deemed given if the Special Member has not responded within ten (10) Business Days). Upon exhaustion of the Operating Reserve Account, continuing shortfalls shall be funded from the Operating Deficit Guaranty described below in *Section 5.4(j)*.

(2) Replacement Reserve. The Replacement Reserve shall be utilized to pay capital expenditures and repairs and replacements required from time to time, provided, however, that the Consent of the Special Member shall be required for any expenditures from the Replacement Reserve that have not otherwise been included in an approved capital improvement budget required per Appendix VIII (which shall not be unreasonably withheld and shall be deemed given if the Special Member has not responded within ten (10) Business Days of its receipt of a request to withdraw funds from the Replacement Reserve).

(j) **Operating Deficit Guaranty**.

The Managing Member and the Guarantor, pursuant to the Guaranty Agreement, jointly and severally, are obligated, promptly upon the reduction of the Operating Reserve Account to zero, to provide funds to the Company for Operating Deficits occurring during the Operating Deficit Guaranty Period; provided, however, that the Guarantor shall not be obligated to make Operating Deficit Loans under this *Section 5.4(j)* to the extent that the outstanding aggregate principal amount of such Operating Deficit Loans would exceed the Operating Guaranty Amount.. Notwithstanding anything contained herein to the contrary, there shall be no limitation on the Managing Member's liability under this *Section 5.4(j)*. Repayment of any letters of credit or other borrowings arranged by the Managing Member and/or Guarantor in furtherance of its obligations under this *Section 5.4(j)* shall be the sole obligation of the Managing Member and/or Guarantor. Funds made available to the Company by the Managing Member and/or Guarantor pursuant to this *Section 5.4(j)* and/or the Guaranty Agreement shall be treated as non-interest bearing loans to the Company repayable as provided in *Section 4.1* and *Section 4.2*.

(k) **Qualified Occupancy.** The Project shall achieve Qualified Occupancy within three (3) months of the Qualified Occupancy Date.

(l) **Cooperation with Asset Manager.** The Managing Member shall cooperate and shall cause the Management Agent to cooperate fully with the Asset Manager so that the Asset Manager may carry out its duties and obligations.

(m) **Permanent Loan Shortfall Guaranty.** The Managing Member has or will obtain on behalf of the Company the Permanent Loan, as more particularly described in Appendix IV. The Managing Member shall be obligated to provide funds to the Company in the event that the actual proceeds of the Permanent Loan or any other loan source are less than the anticipated amount of the Permanent Loan or any other such loan or loan proceeds as set forth in the Financial Forecast (a "Permanent Loan Shortfall"). The Investor Member shall permit the deferral of additional Developer Fee (provided the Financial Forecasts demonstrate such deferred fee can be paid in full from Cash Flow prior to the expiration of the Compliance Period) to initially fund the Permanent Loan Shortfall. Funds made available pursuant to this *Section 5.4(m)* shall be evidenced by a note (the "Permanent Loan Shortfall Note") with terms no less favorable than the terms of the Permanent Loan or such other loan (as determined by the Special Member) and shall be repaid as provided in *Section 4.1* and *Section 4.2*. The Permanent Loan Shortfall Note shall be unsecured.

(n) **Syndication and Permanent Financing**. The Managing Member shall be and has been responsible for procuring acceptable permanent financing for the Project and for all duties relating to the admission of the Special Member and Investor Member to the Company.

(o) **Signage.** The Managing Member shall cause the name of the Investor Member and Special Member and the logo of each Investor Member and the Special Member (the forms of which shall be provided to the Managing Member) to be prominently displayed on all construction site signage for the Project. The Special Member, in its discretion and subject to reasonable local regulations and proper safety and construction concerns and needs, may install a construction sign on the Project at its own cost and expense.

Section 5.5 Fees for Services Rendered. The Company shall pay the following described fees to the Persons that are Affiliates of one or more Members indicated below:

(a) **Developer Fee.** As provided in the Development Agreement, the Company shall pay the Developer Fee to the Developer for the services and obligations described in the Development Agreement.

(b) **Incentive Management Fee**. The Company shall pay to the Managing Member an Incentive Management Fee in the amount and priority specified in *Section 4.1* and as further provided in the Incentive Management Agreement.

(c) **Incentive Leasing Fee**. The Company shall pay the Managing Member an Incentive Leasing Fee in the amount and priority specified in *Section 4.1* until the Project has achieved Stabilized Operations, as further provided in the Incentive Leasing Agreement.

(d) **Asset Management Fee.** The Asset Management Fee shall be paid annually by the Company to the Asset Manager in the amount and priority specified in *Section 4.1* and *4.2* and

as further provided in the Asset Management Services Agreement. The Asset Manager shall not incur any liability to the Managing Member or the Company as a result of the Asset Manager's performance of or failure to perform its asset management services. The Asset Manager owes no duty to the Managing Member or the Company and may be terminated only by the Investor Member.

(e) **Company Management Fee**. The Company shall pay to the Managing Member a Company Management Fee in the amount and priority specified in *Section 4.1* and *4.2* and as further provided in the Company Management Agreement.

(f) **Termination of Fee Agreements**. The Development Agreement and any other fee agreement entered into by the Company and the Managing Member or any Affiliate thereof shall specifically provide that such agreement shall be terminable at the election of the Special Member if the Managing Member is removed pursuant to *Section 9.6*.

(g) **Distribution.** None of the payments or reimbursements to any of the Persons indicated above shall be considered a distribution of Cash Flow to any Member and, except as otherwise specifically provided herein, the Managing Member may make any such reimbursement or payment prior to any distribution of any Cash Flow to the Members.

Section 5.6 Reimbursement of Expenses. The Company shall reimburse each Member for all reasonable out-of-pocket costs and expenses incurred by it or its Affiliates in connection with the formation and organization of the Company as and to the extent provided in the Financial Forecasts. In addition, except as otherwise provided herein, the Company shall reimburse each Member for all reasonable out-of-pocket costs and expenses incurred by it or its Affiliates in connection with the operation of the Company's business, including, but not limited to, reasonable costs and expenses incurred by any such Member in connection with the exercise of any consent hereunder.

Section 5.7 Outside Ventures of Members. Any Member may engage in or possess an interest in any other business venture of any type or description, independently or with others (including, without limitation, any venture which may be competitive with the business being conducted by the Company) and neither the Company, nor any Member will, by virtue of this Operating Agreement, have any right, title or interest in or to such outside ventures or the income or other benefits derived therefrom.

Section 5.8 Dealing With Affiliates. The Managing Member may employ or retain in any capacity any Member or Affiliate of any Member so long as the terms upon which such Member or such Affiliate is employed or retained are commercially reasonable under the circumstances and comparable to those terms which could be obtained from an independent person for comparable services in the area where the Project is located or the Company has its principal office.

Section 5.9 Indemnification of Company and Investor Member.

(a) The Managing Member hereby agrees to defend, indemnify and hold harmless the Company, the Investor Member, the Special Member, the Class B Member and their Affiliates and successors, from and against any loss, claims, demands, liabilities, lawsuits and other proceedings, judgments, awards, costs and expenses including, without limitation, attorneys' fees or damage

(including foreseen and unforeseen damage and consequential damages) arising directly or indirectly out of the presence on, under or about the Project of any Hazardous Substance, or the use, generation, manufacture, storage or disposal of any Hazardous Substance on, under or about the Project.

(b) The Managing Member shall indemnify, defend and hold harmless the Investor Member, the Special Member, the Class B Member and their Affiliates and successors, from and against any loss, claims, demands, liabilities, lawsuits and other proceedings, judgments, awards, costs and expenses including, without limitation, attorneys' fees or damage (including foreseen and unforeseen damage and consequential damages) arising directly or indirectly, in whole or in part, out of a breach of any or all of the representations, warranties and covenants contained in this Operating Agreement, including, without limitation, those contained in *Section 5.3*.

(c) The Managing Member's obligations described in this *Section 5.9* will survive the termination or liquidation of the Company.

(d) The Company shall indemnify, defend and hold harmless the Investor Member, Special Member and Class B Member against any third-party claims or costs sustained or incurred by it arising out of its investment in the Company, provided that the same were not the result of any improper action or omission on the part of such Investor Member, Special Member, Class B Member or any Affiliate thereof; and provided, further, that the Managing Member shall be primarily and concurrently liable for any claims or costs sustained within the scope of either *Section 5.9(a)* or *Section 5.9(b)*.

Section 5.10 Credit Adjusters.

(a) **Basis Adjuster.**

(1) If, as of the end of the first year of the Credit Period and based upon the Cost Certification by the Accountants, it is determined that the amount of Actual Tax Credits over the Credit Period for the Project will be less than Projected Tax Credits (hereinafter referred to as a "Permanent Credit Shortfall," then each Investor Member shall be entitled to a return of its Capital Contributions or, if not fully paid, a reduction of same commencing with the installment coming next due and so on until fully offset but only if the Special Member determines that such reduction could not result in a reallocation of Tax Credits (the **"**Permanent Credit Shortfall Adjustment**"**), in an amount equal to the product of (i) the Permanent Credit Shortfall and (ii) $0.85. The Permanent Credit Shortfall shall mean the amount by which the Actual Tax Credits are or will be less than the Projected Tax Credits over the Credit Period due to (i) the actual Applicable Percentage being less than projected; (ii) the actual Eligible Basis being less than projected; (iii) the actual Qualified Basis as of the end of the first year of the Credit Period being less than projected Qualified Basis; (iv) the actual final allocation of Tax Credits as indicated on IRS Form 8609 being less than the Projected Tax Credits; or (v) any combination of the above. If any Permanent Credit Shortfall Adjustment required hereunder is not offset as set forth above,

then the Managing Member shall immediately make a Capital Contribution to the Company in the amount necessary for the Company to pay the Permanent Credit Shortfall Adjustment, followed by an immediate distribution of such amount by the Company to the Investor Member; provided, however, that if the Special Member reasonably determines that such Managing Member Capital Contribution could result in a reallocation of Tax Credits, then the Permanent Credit Shortfall Adjustment shall be paid by the Managing Member directly to the Investor Member as a guaranty payment and calculated on an After-Tax Basis, and the Managing Member shall not receive any Capital Account credit for such payment.

(2) In the event that any Capital Contribution installments are repaid or reduced or Managing Member payments are required to be made under *Section 5.10(a)(1)*, the pro forma Financial Forecasts attached hereto as Appendix II shall be correspondingly revised and shall be considered amendments and determinative of the "Projected Tax Credits" and other amounts set forth herein if there is a conflict between any amounts set forth therein and in this Operating Agreement.

(b) **Timing Difference in Tax Credit.**

(1) If, prior to the end of 2025, 100% of the Projected Tax Credits cannot be claimed (as determined by the Accountants or by a Final Determination) by the Investor Member in the anticipated Fiscal Year but must be delayed and taken in a later year or years, then the Investor Member shall be entitled to a return of its Capital Contribution or, if not fully paid, a reduction of same commencing with the installment coming next due and so on until fully offset but only if the Special Member determines that such reduction could not result in a reallocation of Tax Credits (the "Timing Reduction"), in an amount equal to $0.58 for each $1.00 that the Actual Tax Credits for such years are less than the Projected Tax Credits for such years. This Timing Reduction is designed to compensate the Investor Member for the reduced present value of such delayed Tax Credits. In order not to adjust under this *Section 5.10(b)* for any shortfall in Tax Credits for which an adjustment shall have been made pursuant to *Section 5.10(a)*, the term "Projected Tax Credit" shall be revised, as provided for in the last paragraph of *Section 5.10(a)*, to reflect the actual Applicable Percentage for the Project and the actual Eligible Basis for the Project, but not taking into account any delays in placing the Project, or any portion thereof, in service. If any Timing Reduction required hereunder is not offset as set forth above, then the Managing Member shall immediately make a Capital Contribution to the Company in the amount necessary for the Company to pay the Timing Reduction, followed by an immediate distribution of such amount by the Company to the Investor Member; provided, however, that if the Special Member reasonably determines that such Managing Member Capital Contribution could result in a reallocation of Tax Credits, then the Timing Reduction shall be calculated on an After-Tax Basis and paid by the

Managing Member directly to the Investor Member as a guaranty payment, and the Managing Member shall not receive any Capital Account credit for such payment. Notwithstanding the foregoing, any Timing Reduction described herein may be offset through the additional deferral of the Developer Fee, provided the Special Member reasonably determines that the Financial Forecasts demonstrate such deferral of Developer Fee can be paid in full from Cash Flow prior to maturity.

(2) If, prior to the end of 2025, more than 100% of the Projected Tax Credits can be claimed (as determined by the Accountants or by a Final Determination) by the Investor Member in the anticipated Fiscal Year, then the Investor Member shall make a Capital Contribution (the "Timing Increase") in an amount equal to $0.58 for each $1.00 that the Actual Tax Credits for such years are more than the Projected Tax Credits for such years. The Investor Member shall pay the amount of such Timing Increase at the time of the final Capital Contribution. Notwithstanding the foregoing and unless otherwise agreed to by the Investor Member, (i) the additional Capital Contribution paid pursuant to this *Section 5.10(b)(2)* shall not exceed the Upward Timing Adjuster Cap; and (ii) the additional Capital Contributions payable pursuant to this *Section 5.10(b)(2)* and *Sections 5.10(e)(2) and 5.10(e)(4)* in the aggregate exceed the Upward Adjuster Cap.

(c) **Tax Credit Shortfall**. If, for any Fiscal Year, for any reason whatsoever, but only if such Credit Shortfall has not previously been addressed pursuant to *Sections 5.10(a)* and *(b)*, (1) the Actual Tax Credits are less than the Projected Tax Credits (as adjusted in any revised Financial Forecast prepared pursuant to *Sections 5.10(a)* or *(b)*) for such Fiscal Year or (2) an Investor Member is required to recapture (resulting from other than a transfer of part or all of the Investor Member's Company Interest) all or any part of the Tax Credits claimed by it in any prior Fiscal Year of the Company ("Credit Shortfall"), then the Managing Member and Guarantors (pursuant to the Guaranty Agreement) shall be obligated, subject to the limitations expressed herein, to pay to the Investor Member the amount ("Credit Reduction Payment") equal to the sum of: (I) $1.00 multiplied by the Credit Shortfall; (II) the amount of any interest and/or penalties paid or payable by the Investor Member as a result of any Recapture Event affecting the foregoing calculation of the Tax Credits recaptured in such Fiscal Year; and (III) 10% of the amounts in *clauses (I)* and *(II)* per annum commencing on the date the Credit Shortfall occurs and continuing until the payment of the amount of such Credit Reduction Payment in full. The Managing Member shall immediately make a Capital Contribution to the Company in the amount necessary for the Company to pay the Credit Reduction Payment, followed by an immediate distribution of such amount by the Company to the Investor Member; provided, however, that if the Special Member reasonably determines that such Managing Member Capital Contribution could result in a reallocation of Tax Credits, then the Credit Reduction Payment will be calculated on an After-Tax Basis and paid by the Managing Member directly to the Investor Member as a guaranty payment , and the Managing Member shall not receive any Capital Account credit for such repayment. If a Credit Shortfall arises solely due to a Change in Tax Law that the Company, despite its best efforts to comply, is unable to comply with, then any such Credit Reduction Payment shall be paid solely as provided in *Section 4.1* and *Section 4.2*. Notwithstanding the foregoing or any other provision of this Operating Agreement to the contrary, if the Project is destroyed by fire or other casualty, the Project shall be promptly

restored and rebuilt within the time period permitted under Section 42 of the Code provided that, the Project need not be rebuilt if the Investor Member is repaid its total Capital Contribution together with a return, on an After-Tax Basis, of 9% per annum on such sum commencing on the date(s) the Investor Member paid its Capital Contribution installments and ending on the date of final repayment.

(d) **Repurchase.** Notwithstanding anything contained herein to the contrary, in the event that (1) Construction Completion and placement in service of all buildings is not achieved on or before the date required by or under the Code, Agency or Authority, (2) the Company does not achieve Qualified Occupancy within six (6) months of the Qualified Occupancy Date, (3) any acceleration of a Project Loan or the commencement of any action to foreclose any mortgage covering the Project or the exercise by any lender to the Project of any power of sale or similar remedy affecting the Project prior to the end of the Operating Deficit Guaranty Period, (4) the Company's basis in the Project for federal income tax purposes, as finally determined by the Accountants or pursuant to an audit by the IRS, as of 12 months from the date of the State Designation (or such earlier date as required by the State Housing Finance Agency) was not 10% of the Company's reasonably expected basis in the Project, as required pursuant to Section 42(h)(1)(E) of the Code, (5) the failure to achieve conversion of the Construction Loan to the Permanent Loan and closing of the Permanent Loan by the time required by the Permanent Lender's commitment, or the termination of the commitment for the Permanent Loan prior to closing and full funding of the Permanent Loan unless a reasonable substitute Permanent Loan commitment is obtained 30 days after such termination, (6) the Project is not eligible for at least 70% of the Projected Tax Credits, or (7) the Company does not receive the fully executed IRS Form(s) 8609 by the end of the first full tax year in compliance with the requirements of the Code and the State Housing Finance Agency, then, in any such event, upon the written request of the Investor Member (an "Election Notice"), the Managing Member shall purchase the Investor Member's and Special Member's interests in the Company for an amount equal to the sum of all Capital Contributions actually made to the Company by the Investor Member and Special Member with interest at the rate of 12% per annum calculated from the date of such Capital Contributions, plus all fees and expenses incurred by the Investor Member and Special Member in connection with such repurchase, less the amount of any tax benefit (net of any tax costs, including but not limited to Tax Credit recapture and any Tax Credits claimed by the Investor Member that may remain subject to potential recapture) or distribution (net of any tax costs) previously received or incurred by the Investor Member. The Managing Member shall pay such amount within 30 days after such written request. Upon receipt of this amount, the Investor Member's and Special Member's interest as a Member in the Company shall terminate, the Investor Member and Special Member shall transfer their interests in the Company to the Managing Member or its designee, and the Managing Member shall indemnify and hold harmless the Investor Member and Special Member from and against any losses, damages and liabilities to which the Members (as a result of its participation hereunder) may be subject.

(e) **Energy Tax Credits**

(1) If, for the year 2024 (or for the year 2025 if the Energy Property is placed in service in 2025), for any reason whatsoever, the amount of the Energy Credits (as determined by the Accountants or by a Final Determination and properly allocable to the Investor Member) (the "Actual Energy Credit Amount") is less than

the Projected Energy Credit Amount (a "Energy Credit Shortfall"), then the Capital Contribution of the Investor Member shall be reduced in the following manner: (i) to the extent the Energy Credit Shortfall is not attributable to the recapture of Energy Credits previously reported on a Company tax return, the reduction shall equal the product of (1) $0.85 and (2) the Energy Credit Shortfall (not attributed to recapture), *plus* interest on the amount derived from the calculation described in the preceding clause at a rate of Prime Rate plus 2% per annum commencing on the date hereof and continuing until the payment of the amount of such reduction in full (provided, however, that interest shall only be applied if there is no remaining Capital Contribution payable by the Investor Member in an amount to cover such shortfall); and (ii) to the extent the Energy Credit Shortfall is attributable to the recapture of Energy Credits previously reported on a Company tax return, the reduction shall equal the product of (1) $1.00 and (2) the Energy Credit Shortfall (attributable to recapture), *plus* any interest and penalties paid or payable under the Code by direct or indirect participants of the Investor Member as a result of such recapture.

(2) If, for the year 2024 (or for the year 2025 if the Energy Property is placed in service in 2025), for any reason whatsoever, the cumulative Actual Energy Credit Amount is more than the Projected Energy Credit Amount (an "Energy Credit Surplus"), then the Investor Member shall increase its Capital Contribution in an aggregate amount equal to the product of (1) $0.85 and (2) the Energy Credit Surplus. The Investor Member shall increase its Capital Contribution under this *Section 5.10(e)(2)* at the time of the final Installment. Notwithstanding the foregoing, the additional Capital Contribution paid pursuant to this *Section 5.10(e)(2)* shall not exceed the Energy Credit Upward Basis Adjuster Cap.

(3) If the Actual Energy Credit Amount claimed by the Investor Member is less than the Projected Energy Credit Amount (as adjusted pursuant to this *Section 5.10(e)*) in the [___ calendar quarter of 2024] (the "Energy Credit Target Quarter"), and such unavailable Energy Credits must be delayed and taken in a [later quarter] (the "Deferred Energy Credit Amount"), then the Investor Member shall be entitled to a return of its Capital Contribution or, if not fully paid, a reduction of same commencing with the installment coming next due and so on until fully offset but only if the Special Member determines that such reduction could not result in a reallocation of Tax Credits in an amount, equal to the product of (i) $[0.02] and (2) the Deferred Energy Credit Amount.

(4) If, prior to the end of 2024, the Projected Energy Credit Amount for such year can be claimed (as determined by the Accountants or by a Final Determination) by the Investor Member earlier than the Energy Credit Target Quarter (the "Accelerated Energy Credit Amount"), then the Investor Member shall increase its Capital Contributions in an amount equal to the product of (i) $[0.02] and (2) the Accelerated Energy Credit Amount. The Investor Member shall increase its Capital Contribution under this *Section 5.10(e)(4)* at the time of the final Installment. Notwithstanding the foregoing, the additional Capital Contribution paid pursuant

to this *Section 5.10(e)(4)* shall not exceed the Energy Credit Upward Timing Adjuster Cap.

(f) **Failure to Pay; Remedies.**

(1) Any amount payable from Managing Member and Guarantors pursuant to this *Section 5.10* which is not made when due shall bear interest at an annual rate equal to the Prime Rate plus 2.00% from the date due until the date payment is made.

(2) If the Managing Member fails to pay any amount due to the Investor Member pursuant to this *Section 5.10* within 30 days after written demand of the Investor Member or Special Member, then, in addition to any other rights such Investor Member may have, any amounts due and owing to such Investor Member shall be paid as follows: (1) *First*, any sums payable to the Managing Member (or any Affiliate thereof) pursuant to the terms of this Operating Agreement (including, without limitation, Cash Flow and any fees payable by the Company to the Managing Member or its Affiliates) shall instead be paid to such Investor Member until such time as all amounts owing to such Investor Member pursuant to this *Section 5.10* are fully repaid (for purposes of this Operating Agreement, any sums paid to the Investor Member pursuant to the immediately preceding sentence shall be deemed to have been paid to the Managing Member (or its Affiliates) and subsequently paid by such Managing Member (or its Affiliates) to such Investor Member in satisfaction of its obligations hereunder; (2) *Second*, the remaining amounts shall be paid to such Investor Member out of Cash Flow or Net Cash from Sales and Refinancings in accordance with *Section 4.1* and *Section 4.2*; and (3) *Third*, the remaining amounts may be paid (in the Investor Member's discretion) to such Investor Member out of the Operating Reserve, the Replacement Reserve, or any other reserve of the Company. The interest accrual under *Section 5.10(f)(1)* and the payments to the Investor Member under this *Section 5.10(f)(2)* shall be deemed to have arisen as a consequence of a transaction between the Managing Member and the Investor Member other than in their capacities as Members and the Capital Accounts or loans of the Members shall not be affected in any way as a result of the making of any credits or payments hereunder.

(3) The rights and remedies granted to the Investor Member by this *Section 5.10* shall not be exclusive of, but shall be in addition to, any other rights and remedies granted to the Investor Member under this Operating Agreement or by applicable law.

(g) **Survival.** The obligations of the Managing Member and its Affiliates prescribed or described in this *Section 5.10* shall survive the termination and liquidation of the Company.

ARTICLE 6
POWERS, RIGHTS AND DUTIES OF INVESTOR MEMBER AND CLASS B MEMBER

Section 6.1 Limitation of Liability. Except as otherwise required under the Act (relating to a member's liability under certain circumstances to refund to the Company distributions of cash previously made to it as a return of capital), the Investor Member, Special Member and Class B Member are not personally liable for any loss or liability of the Company beyond the amount of their applicable agreed-upon Capital Contributions.

Section 6.2 No Participation in Management. Except as otherwise expressly provided in this Operating Agreement, the Investor Member, the Special Member and Class B Member do not participate in the operation, management, or control of the Company's business, transact any business in the Company's name, or have any power to sign documents for or otherwise bind the Company.

ARTICLE 7
ACCOUNTING AND FISCAL AFFAIRS

Section 7.1 Books of Account.

(a) The Managing Member shall keep proper books of account for the Company and shall elect the accrual method of accounting for federal tax purposes. The Managing Member shall keep these books of account at the principal office of the Company and make them available at all times for examination and copying by the Special Member, the Class B Member or their authorized representatives. The Managing Member shall retain such books of account for six years after the termination of the Company. All decisions as to the Fiscal Year and accounting methods to be used by the Company may be made only with the Consent of the Special Member.

(b) All documents referenced in *Article 7*, or in Appendix VIII, are to be submitted to the Special Member and Integratec Services, LLC, the host and service provider of the tax credit asset management software. Documents should be electronically submitted to crea@integratec.biz as they become due.

(c) The Managing Member shall retain all documentation with respect to initial qualification of the Project as a qualified Tax Credit project until the later of six years after completion of the Project's Compliance Period or as long as is required under applicable law. The Managing Member shall retain such other documentation relating to the continuing Tax Credit qualification of the Project for at least six years, unless requested by the Special Member or required by applicable law to retain such documentation for a longer period. The Managing Member shall retain copies of tax returns and reports for the Company for as long as is required by applicable law.

(d) After initial lease-up of the Project, the Investor Member or Class B Member may, at such Investor Member's or Class B Member's own expense, conduct or cause to be conducted an audit or review of the Company's compliance with all regulations and procedures relating to the operation of the Project as a qualified Tax Credit project within the meaning of Section 42(h) of the Code. In addition, the Investor Member or Class B Member may, at such Investor Member's or Class B Member's own expense, conduct or cause to be conducted a site visit of the Project.

The Managing Member shall cooperate with any such audit by making appropriate personnel of the Managing Member and Management Agent and all books and records of the Project and Company available to the Investor Member, Class B Member or their representatives at the offices of the Company during regular business hours. The Managing Member shall cooperate with any site visit by making appropriate personnel of the Managing Member and Management Agent available to the Investor Member, Class B Member or their representatives at the Project site during regular business hours.

(e) The Managing Member acknowledges and agrees that it shall cooperate fully and in good faith, and shall instruct and cause the Management Agent to cooperate fully and in good faith, with the Special Member and Class B Member with respect to its monitoring of the Company's operation of the Project, including the review of and compliance with Tax Credit related laws and regulations.

Section 7.2 Reports. The Managing Member shall prepare and deliver to or shall cause to be prepared and delivered to the Special Member and Class B Member the reports set forth on Appendix VIII attached hereto and incorporated herein, and any other reports as may be reasonably requested by the Special Member.

Section 7.3 Budgets and General Disclosure. The Managing Member shall keep the Special Member and Class B Member informed concerning the general state of the business and financial condition of the Company and shall, upon the reasonable request of the Special Member or Class B Member, furnish to the Special Member and Class B Member full information, accounts, and documentation concerning the state of the business and financial condition of the Company.

(a) The Managing Member shall deliver to the Special Member and Class B Member a detailed report of any of the following events within 10 days after the occurrence of such event:

(1) there is a material default by the Company under any loan, grant, subsidy, construction or property management documents or in payment of any mortgage, taxes, interest or other obligation on secured or unsecured debt; and

(2) receipt of any notice (i) from the IRS, State Housing Finance Agency, HUD or (ii) from other federal, state or local entity having jurisdiction over the Project involving the Company which would cause a material adverse effect on the Project, Company, Investor Member or Class B Member.

(b) The Managing Member shall deliver to the Special Member and Class B Member a detailed report of any of the following events within 10 days after the end of any calendar quarter during which such event occurred:

(1) any reserve has been reduced or terminated by application of funds therein for purposes materially different from those for which such reserves was established and not contemplated in the approved budget;

(2) the Managing Member has received any notice of a material fact which may substantially affect further distributions; and

(3) any Member has pledged or collateralized its interest in the Company.

Section 7.4 Failure to Provide Information.

(a) Failure to provide reports within the time requirements set forth under this *Article 7* or as set forth in Appendix VIII will result in a penalty to the Investor Member of $50 per report per day. The foregoing penalty shall begin accruing on the 10th day after the Special Member has delivered notice to the Managing Member of the reporting delinquency. Any resulting penalty shall be due and payable to the Special Member immediately upon demand. The Special Member may deliver notices electronically to the last known email address of a principal of the Managing Member.

(b) If the Managing Member fails to provide any information, reports or data required to be provided by the Managing Member pursuant to *Article 7* or Appendix VIII, or otherwise fails to perform its obligations under this *Article 7* or Appendix VIII, then, in addition to any remedies the Investor Member may have under this Operating Agreement or applicable law, the Company shall not make any distributions or payments to the Managing Member pursuant to *Sections 4.1* and *4.2* until such time as such information, reports or data have been provided or such other obligations have been fulfilled.

(c) The Special Member has the right to require the Managing Member to remove the Accountant and the right to approve a replacement accountant if the obligations and / or reporting requirements under *Article 7* or Appendix VIII are not being met.

ARTICLE 8
TRANSFER OF INVESTOR MEMBER'S COMPANY INTERESTS

Section 8.1 Voluntary Transfers.

(a) The Investor Member may at any time make a Voluntary Transfer of all or any part of its Company Interests, so long as such Voluntary Transfer complies with the following conditions: (i) the Managing Member has received a written instrument of transfer of all such Company Interests, which instrument shall be signed by the transferor Investor Member and the transferee and shall contain the name and address of the transferee and the transferee's express acceptance of an agreement to be bound by all of the terms and conditions of this Operating Agreement; (ii) all requirements of applicable state and federal securities laws have been complied with; and, (iii) the Investor Member reimburses the Company for any reasonable third-party costs and expenses incurred by the Company in connection with such Voluntary Transfer. Upon compliance with all of the conditions of this *Section 8.1*, such Voluntary Transfer of the Investor Member's Company Interests shall bind the Company and the Managing Member and the transferee shall automatically be deemed to be an Assignee with respect to such Company Interests. Notwithstanding the foregoing, the Managing Member acknowledges that the Investor Member may borrow funds to make its Capital Contribution payments and that the lender of such funds may require a security interest in such Investor Member's interest. The Managing Member's consent to such a security interest shall not be required.

(b) Notwithstanding the foregoing, or any other provision of this Agreement, until 100% of the member interest in the Investor Member has been transferred to a fund where the

Managing Member or managing member of the fund is an Affiliate of the Investor Member or Special Member: (1) the Investor Member may pledge, without the consent of the Managing Members or any other Person, its Company Interest to Fifth Third Bank as agent (together with its successors and/or assigns in such capacity, "FTB") to secure a loan to an affiliate of the Investor Member, the proceeds of which have been used by the Investor Member to make its Capital Contribution to the Company (the "FTB Pledge"); (2) FTB shall have the rights of a secured party to retain, sell or transfer the Company Interest so pledged in accordance with the FTB Pledge; (3) FTB shall have the right to transfer or assign its rights hereunder and under the FTB Pledge without the consent of the Managing Members or any other Person; (4) in the event of any enforcement of the FTB Pledge and the foreclosure upon or other disposition of the Company Interest, FTB (or its nominee, successor, transferee or assignee) shall be immediately, automatically and unconditionally admitted as a Substituted Investor Member, subject only to its execution of an agreement to be bound by this Agreement; and, (5) so long as the FTB Pledge shall not have been released in accordance with its terms, (a) the Company Interests will not be, and will not become "investment property" or held in a "securities account" (within the meaning of the Uniform Commercial Code of the State of Formation (the "UCC")) and will be, and will remain, "general intangibles" within the meaning of Article 9 of the UCC and (b) any action by any Member to cause any of the Company Interests to be deemed to be or to be treated as a "security" or as "investment property" or to be held in a "securities account" within the meaning of Articles 8 and 9 of the UCC, shall be void and of no effect. Further, the Managing Member shall provide FTB with reasonable notice of and the right to cure, within a reasonable cure period, any default by the Investor Member to make its Capital Contribution as described in *Section 2.2(b)*, and upon such cure, release any lien by the Company on the Investor Member interest (if any) and consent to the transfer of any such Investor Member interest to FTB or such other entity as FTB may reasonably determine. FTB, as agent, is an intended third party beneficiary of this section.

Section 8.2 Managing Member's Consent to Substitution as an Investor Member.

(a) In addition to the requirements set forth in *Section 8.1*, an Assignee of the Investor Member's Company Interests shall not become a Substituted Investor Member, unless and until the Managing Member consents to such substitution, which consent may not be unreasonably withheld, delayed or conditioned and shall be deemed given if the Managing Member fails to provide a written response within 10 days after receipt of the written notice from the Investor Member objecting to the transfer; provided, however, that no such consent shall be required for the substitution of an Assignee that is (i) an Affiliate of such Investor Member or who is controlled by any such Affiliate, or (ii) a Person, provided that either CREA SLP, LLC remains the Special Member hereunder or that the Investor Member has made all of its required Capital Contributions. Any amendment of this Operating Agreement with respect to the admission of a Substituted Investor Member that does not require the consent of the Managing Member shall not require the signature of the Managing Member, provided, however, the Managing Member shall duly file for record any required amended Certificate reflecting such substitution in such public offices as shall be required under the Act. The effective date of the substitution of the Assignee as a Substituted Investor Member shall be the date on which the Managing Member provides its consent if required or the date of the assignment to such Assignee, as the case may be.

(b) If the Managing Member's consent is required but the Managing Member does not consent to the substitution of an Assignee of the Investor Member's Company Interests, then the

transferor Investor Member retains all the rights of a transferor of a company interest under the Act and, except as otherwise provided in *Section 8.4*, the Assignee shall not be treated as owning any interest in the Company. In particular, an Assignee of the Investor Member's Company Interests who is not admitted as a Substituted Investor Member under this *Section 8.2* shall not be entitled to: (1) require any accounting of the Company's transactions; (2) inspect the Company's books and records; (3) require any information from the Company; or (4) exercise any privilege or right of such Investor Member that is not specifically granted to a nonsubstituted transfer of a company interest under the Act.

(c) The Members hereby agree that upon the substitution of an Assignee of the Investor Member's Company Interests, the transferor Investor Member shall be released from any and all obligations and liabilities under this Operating Agreement arising on or after the date of said substitution, provided that all Capital Contributions, whether or not due as of the date of such substitution, have been made by such Investor Member.

Section 8.3 Involuntary Transfers. The Involuntary Transfer of all or any part of the Investor Member's Company Interests shall not cause the dissolution and termination of the Company, but rather the business of the Company shall be continued without interruption in accordance with the provisions of this *Section 8.3*. Upon an Involuntary Transfer of all or any part of the Investor Member's Company Interests, such Investor Member's successor or legal representative shall automatically be deemed to be a Substituted Investor Member.

Section 8.4 Distributions and Allocations with Respect to Transferred Company Interests. If any transfer (whether a Voluntary Transfer or Involuntary Transfer) of the Investor Member's Company Interests is recognized by the Company under this *Article 8*, then all allocations of Profits and Losses attributable to the transferred Company Interests shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during such fiscal period, using any convention or method of allocation selected by the Managing Member which is then permitted under Section 706 of the Code and the Regulations promulgated thereunder. All distributions of Cash Flow made prior to the effective date of any such transfer shall be made to the transferor and any such distributions made after the effective date of such transfer shall be made to the transferee.

Section 8.5 Disposition of Project.

(a) The Managing Member shall not transfer, sell or otherwise dispose of the Project to any Person except in accordance with this *Section 8.5*. During the Compliance Period, the Managing Member shall obtain the Consent of the Special Member and Class B Member and any Requisite Approvals prior to the transfer or sale of the Project. At the conclusion of the Compliance Period, the Managing Member or its designated Affiliate shall have the right to purchase the Project exercisable by written notice to the Special Member within two (2) years after the conclusion of the Compliance Period, for a purchase price (the "Purchase Price") equal to the greater of:

(1) the Fair Market Value of the Project, and

(2) the sum of (A) the total outstanding indebtedness of the Company secured by liens on the Project, (B) the Credit Deficiency amount, (C) any amounts owed to the Investor Member to repay any loans made by the Investor Member to the Company and (D) Exit Taxes.

Section 8.6 Option to Acquire Investor Member's Company Interests.

(a) Each Investor Member and the Special Member hereby grant to the Managing Member or its designated Affiliate the option, commencing on the day following the close of the Compliance Period and ending two (2) years thereafter (the "Option Period"), to purchase their respective interest in the Company (each, a "Company Interest") for a purchase price (the "Purchase Price") equal to the greater of:

(1) The Fair Market Value of the Company Interest, and

(2) the sum of (a) any amounts owed to the applicable Investor Member to repay any loan made by the Investor Member to the Company, (b) the Credit Deficiency amount and (c) Exit Taxes.

In addition, each of the Investor Member and Special Member hereby grants to the Managing Member or its designated Affiliate the option (the "Early Option"), commencing on the day following the close of the Credit Period and ending two (2) years after the end of the Credit Period (the "Early Option Period"), to purchase their respective Company Interests for the Purchase Price subject to the Consent of the Investor Member (not to be unreasonably withheld, delayed, or conditioned). In determining whether or not to give its Consent to the exercise of the Early Option, the Investor Member will consider: (w) whether the Managing Member and Guarantors can demonstrate that they possess sufficient Tax Credit experience and financial wherewithal to indemnify the Special Member and Investor Member for any amounts related to the recapture of any Tax Credits; (x) whether the Managing Member and Guarantors are expected to take any action prior to the end of the Compliance Period, which may increase the risk that the Partnership could suffer a recapture of Tax Credits; (y) whether there will be a material reduction in the projected tax benefits to the Investor Member set forth in the Financial Forecasts, which are not entirely offset by the proceeds to the Investor Member from the exercise of the Early Option; and (z) whether any event of default exists under any of the Project Documents has occurred or is anticipated. In the event the Managing Member exercises the Early Option, it will provide until the end of the Compliance Period (A) annual certificates and such other documentation as the Special Member deems necessary or appropriate to ensure the Project is compliance with the Project Documents and (B) pay an annual monitoring fee to the Special Member in the amount that is equal to the Asset Management Fee that would have been payable throughout the Compliance Period.

(b) The foregoing option to acquire any additional Company Interest shall lapse if notice of exercise is not given during the Option Period or closing does not occur within 90 days following the close of the Option Period. Notwithstanding anything in this *Section 8.6* to the contrary, the Managing Member must concurrently acquire the Company Interests of the Investor Member and the Special Member.

Section 8.7 **Put Option**. The Managing Member hereby grants to the Investor Member and the Special Member the individually exercisable right and option, but not the obligation, to require the Managing Member to purchase its Company Interest (the "Put") in any calendar year which is 180 days after the end of the Compliance Period at a price equal to $100. The Investor Member and Special Member shall exercise the Put by delivering notice to the Managing Member in the manner set forth herein at any time after the expiration of the Credit Period. Within 10 days of such notice, the Managing Member shall purchase, and the Investor Member (and Special Member, as the case may be) shall sell without recourse, representation or warranty (other than that Investor Member and the Special Member is the sole owner of the Interest, that the Interest is not subject to any charge, lien, pledge or encumbrance of any kind, and that the Investor Member and the Special Member has not made, caused or entered into any prior assignment or transfer of the Interest or any portion thereof) its Company Interest by entering into an assignment, assumption and indemnification agreement acceptable to the Investor Member and Special Member, which agreement shall require, at a minimum, that the Managing Member and Guarantor(s) (a) reaffirm the indemnification and guarantee provisions set forth within the Operating Agreement and the Guaranty and (b) agree to continue provide reports and information as set forth in *Article 7*. Notwithstanding anything in this *Section 8.7* to the contrary, the Managing Member must concurrently acquire the Company Interests of the Investor Member and the Special Member.

ARTICLE 9
TRANSFER OF MANAGING MEMBER'S COMPANY INTERESTS

Section 9.1 **Voluntary Transfers.** The Company will not recognize any Voluntary Transfer of a Managing Member's Company Interests and any such attempted Voluntary Transfer shall be invalid and ineffective as to the Company and the Investor Member, unless and until: (a) the proposed transfer is of all the Company Interests owned by the Managing Member; (b) the Special Member has received a written instrument of transfer of all such Company Interests, which instrument shall be signed by the Managing Member and the transferee and shall contain the name and address of the transferee and the transferee's express acceptance of an agreement to be bound by all of the terms and conditions of this Operating Agreement; (c) the Managing Member has paid or caused to be paid all costs related to such Voluntary Transfer, including, without limitation, the reimbursement of all legal fees and expenses incurred by the Company in connection with such transfer; (d) such Voluntary Transfer will not result in the termination of the Company for Federal income tax purposes; (e) such Voluntary Transfer will not result in the Company being classified as an "association" which is taxable as a corporation for Federal income tax purposes and the Company receives an opinion of legal counsel to such effect; (f) will not result in a loss of Tax Credits to the Investor Member; and (g) the Special Member and Class B Member have Consented in writing to such Voluntary Transfer, with the understanding that the Investor Member has entered into this Operating Agreement with the Managing Member in reliance upon the unique knowledge, experience and expertise of the Managing Member, its principals, officers, members, and affiliates in the planning and implementation of the Project and in the area of affordable housing and development in general. The foregoing restriction on transfer is based in part on the above factors.

Upon compliance with this *Section 9.1*, such transfer of a Managing Member's Company Interests shall bind the Company and the Investor Member and no such Voluntary Transfer shall cause the termination of the Company. In addition, effective as of the date of full compliance with

the requirements of this *Section 9.1*, the transferee of a Managing Member's Company Interests shall be admitted as a new Managing Member of the Company and shall be vested with all the powers and obligations with respect to the management of the Company as are granted to and placed upon the transferor Managing Member under this Operating Agreement.

Section 9.2 Involuntary Transfers. An Involuntary Transfer of a Managing Member's Company Interests at such time as there is more than one Managing Member shall not dissolve the Company, but rather the business of the Company shall be continued without interruption and all of the management powers and authority granted herein to the Managing Member making such Involuntary Transfer shall automatically be placed upon the remaining Managing Member(s), unless the Investor Member otherwise elects within 30 days after the occurrence of such Involuntary Transfer to dissolve the Company and have the Company's affairs and business wound up and terminated pursuant to *Article 10*. Subject to *Section 9.6* with respect to the removal of a Managing Member, an Involuntary Transfer of a Managing Member's Company Interests when there is no other Managing Member in existence will dissolve the Company and the Company's affairs and business shall be wound up and terminated under *Article 10*, unless the Investor Member agrees in writing to the continuation of the business of the Company and the appointment of a new Managing Member pursuant to the provisions of *Section 9.3*.

Section 9.3 Continuation of Company After Involuntary Transfer of Managing Member's Company Interests. Upon an Involuntary Transfer of the last remaining Managing Member's Company Interests, the Investor Member shall have the right to appoint a new Managing Member and continue the business of the Company or alternatively, within 90 days after the occurrence of such Involuntary Transfer, the Investor Member may cause a dissolution and termination of the Company under *Article 10*. If the Investor Member elects to continue the Company, (a) the Company shall continue until the end of the term of the Company's existence set forth in this Operating Agreement; and (b) immediately upon its receipt of cash in an amount equal to the then positive balance in its Capital Account (but not less than $100), the former Managing Member shall automatically (and without the need for the execution of any further documentation) be deemed to have relinquished its entire Company Interest, with such relinquished Company Interest being automatically allocated to the new Managing Member.

Section 9.4 Distributions and Allocations with Respect to Transferred Company Interests. If any transfer (whether a Voluntary Transfer or Involuntary Transfer) of a Managing Member's Company Interests is recognized by the Company under this *Article 9*, then all allocations of Profits and Losses attributable to the transferred Company Interests shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during such fiscal period, using any convention or method of allocation selected by the Special Member which is then permitted under Section 706 of the Code and the Regulations promulgated thereunder. Any distributions of Cash Flow made prior to the effective date of any such transfer shall be made to the transferor and any such distributions made after the effective date of such transfer shall be made to the transferee. Neither the Company, the Investor Member nor the Special Member shall incur any liability for making allocations and distributions in accordance with the provisions of this *Section 9.4*.

Section 9.5 Voluntary Withdrawal. A Managing Member shall not be permitted to withdraw from the Company without the Consent of the Investor Member and Class B Member.

Section 9.6 Removal of Managing Member.

(a) The Special Member shall have the right to remove the Managing Member for any of the following reasons:

(1) any fraud, gross negligence or intentional misconduct of the Managing Member; or

(2) any act by the Managing Member outside the scope of its duties or obligations under this Operating Agreement or any breach by the Managing Member of any fiduciary duty to the Company, the Special Member or the Investor Member, that the Special Member reasonably determines has, or with the passage of time could have, a material adverse effect on the Company, the Project, the Special Member, or the Investor Member; or

(3) the inaccuracy of any representation or warranty of the Managing Member contained in this Operating Agreement, including without limitation those contained in *Section 5.3*, that the Special Member reasonably determines has, or with the passage of time could have, a material adverse effect on the Company, the Project, the Special Member or the Investor Member; or

(4) the breach by the Managing Member of any covenant or obligation of the Managing Member contained in this Operating Agreement, including without limitation those contained in *Sections 5.3* and *5.4*, that the Special Member reasonably determines has, or with the passage of time could have, a material adverse effect on the Company, the Project, the Special Member or the Investor Member; or

(5) any action or inaction by the Managing Member or any Affiliate of the Managing Member that the Special Member reasonably determines has, or with the passage of time could, (i) cause the termination of the Company for federal income tax purposes (except to the extent such action is expressly authorized herein), (ii) cause the Company to be treated for federal tax purposes as an association taxable as a corporation, (iii) violate any federal or state securities laws, (iv) cause the Company to fail to qualify as a limited liability company under the Act, (v) cause the Investor Member or the Special Member to be liable for Company obligations in excess of its Capital Contribution, (vi) qualify as an event of removal or withdrawal with respect to the Managing Member under the Act, or (vii) substantially reduce tax benefits or substantially increase tax liabilities of the Investor Member; or

(6) any construction cost overruns or Operating Deficits are incurred by the Company and not funded as required or permitted under this Operating Agreement or the Guaranty Agreement; or

(7) a default occurs under a Project Loan and such default is not cured or waived by the lender within any applicable cure period; or

(8) any lender to the Company or other creditor of the Company files a foreclosure or other creditor's action for exercise of control over the Project or the rents therefrom, or the filing of a bankruptcy petition or similar creditor's action by or against the Company or the Managing Member, which petition or similar action is not withdrawn, vacated or dismissed within 60 days after filing; or

(9) the Company suffers a recapture of 20% or more of the Tax Credits; or

(10) the Managing Member fails to timely and promptly discharge the Management Agent pursuant to *Section 5.4(c)* or the Accountant pursuant to *Section 7.4(c)*; or

(11) any payment is required to be made to the Investor Member or the Company by the Managing Member, the Guarantor or Developer under this Agreement, the Guaranty Agreement or the Development Agreement but is not timely made; or

(12) the occurrence of an "Event of Default" under the Guaranty Agreement, taking into account any applicable cure periods; or

(13) the Company fails to allocate to the Investor Member at least 70% of the Projected Tax Credits with respect to any calendar year after 2025; or

(14) the failure of the Managing Member to obtain, within 60 days of service of summons upon the Managing Member, the dismissal of any case commenced against the Managing Member (i) for the appointment of a trustee for the Managing Member, or any of its property or (ii) in bankruptcy or insolvency or for compromise adjustment or other relief under the laws of the United States or any state relating to the relief of debtors; or

(15) the failure by the Managing Member to prepare or cause to be prepared properly and to deliver or cause to be delivered in its entirety any reporting required under this Agreement after the expiration of any applicable cure period provided under *Section 7.4* and such failure occurs more than two (2) times during any two (2) year period;; or

(16) failure to operate the Project in accordance with the requirements of Section 42 of the Code, the Construction Loan and the Permanent Loan, or Project Documents; or

(17) Construction Completion and Placement in Service of all buildings is not achieved on or before the earlier of the date (i) which is six months from the completion date designated in the Construction Contract, and (ii) required under the Code or other governing authority.

(b) The removal of the Managing Member shall be effective immediately upon the receipt of written notice from the Special Member specifying the reason for such removal (a

"Removal Notice") if the reason for such removal is under *Sections 9.6(a)(1), (7), (8), (9), (10),* or *(13)* or if the Company files a bankruptcy or similar relief from creditors' action. The removal of the Managing Member shall be effective 30 days after the Managing Member's receipt of the Removal Notice from the Special Member specifying the reason for such removal if the reason for such removal is a default under *Sections 9.6(a)(2), (3), (4), (5), (6), (11), (12), (14), (15), or (16), or (17)* and the Managing Member does not cure the default specified in such notice within such 30-day period. In the event that the Special Member sends a Removal Notice, the Special Member may, as of such date, elect to become, or to designate another Person, including, without limitation, an Affiliate of the Special Member or the Investor Member, to become, an additional Managing Member with all the rights and privileges of a Managing Member, subject to receipt of all Requisite Approvals. Upon such election by the Special Member, (1) the Special Member or such other Person shall automatically become and shall be deemed to be a Managing Member, (2) the Company shall acquire the interest of the removed Managing Member for an amount equal to the greater of (i) $100 or (ii) the Capital Account balance of the removed Managing Member on the date of removal, less any amounts owed by the Managing Member pursuant to this Agreement which have not been paid and (3) each Member hereby irrevocably appoints the Special Member (with full power of substitution) as the attorney-in-fact of such Member for the purpose of executing, acknowledging, swearing to, recording and/or filing any amendment to this Agreement and the Certificate necessary or appropriate to confirm the foregoing. Any amounts owed to the removed Managing Member pursuant to the preceding sentence shall be payable by the Company, without interest, upon the earlier of fifteen years from the date of removal or the sale of all or substantially all of the Company's assets. If the Special Member or such other Person shall become an additional Managing Member as herein stated, its interest in the Company shall not be increased as a result thereof. If after the admission of the Special Member or such Person as a Managing Member pursuant to this *Section 9.6*, and if there are then any other Managing Members, the Special Member or such other Person shall have managerial rights, authority and voting rights of 51% on any matters to be decided or voted upon by the Managing Members and the rights and authority of the remaining Managing Members shall be deemed equally divided among them. Notwithstanding the removal of a Managing Member pursuant to this *Section 9.6*, such removed Managing Member shall remain liable to the Company and the Investor Member for (i) all obligations and liabilities (including, without limitation, its obligations to make any payments pursuant to *Sections 5.4(h), 5.4(j), 5.4(m), 5.9* and *5.10* and liabilities resulting from any breach of any of the representations and warranties herein, including those set forth in *Section 5.3*) incurred by it as a Managing Member before the effective date of such removal but shall be free of any obligations and liabilities incurred on account of Company activities from and after the time of such removal and (ii) all damages and other amounts recoverable or payable hereunder or under applicable law by or to the Company or the Investor Member as a result of the occurrence of the event giving rise to such removal.

(c) The Managing Member hereby irrevocably appoints the Special Member and the Asset Manager as its attorney-in-fact to take all actions to effectuate the removal of the Managing Member if the reason for such removal is a default under *Sections 9.6(a)(5), (7), (8), (9), (13), (14), (15)* or *(16)* and the designation of a replacement Managing Member, which appointment is coupled with an interest and is irrevocable.

(d) If the Managing Member is removed as a Member of the Company pursuant to this *Section 9.6*, the Managing Member shall not be entitled to payment of any further installments of

the Incentive Management Fee or Company Management Fee. Nothing in this *Section 9.6(d)* shall limit or reduce the rights of the removed Managing Member or any Affiliate thereof to receive any other fees for services previously performed or repayment of Operating Deficit Loans, if any, in accordance with the terms thereof; provided, however, the parties hereto agree that any cash distributions, fees, loans or other payments otherwise distributable or owed to the removed Managing Member or its Affiliates (including, without limitation, the amount of any unpaid Developer Fee or Operating Deficit Loan) shall, in the sole and absolute discretion of the substitute Managing Member, be satisfied by applying all or any of such amounts to any unpaid obligation of the removed Managing Member pursuant to this Agreement (including, without limitation, any obligations of the removed Managing Member pursuant to *Sections 5.4(h), 5.4(j), 5.4(m)* and *5.10*).

Section 9.7 Security Interest. In order to secure each and every obligation of the Managing Member to the Company and the Investor Member under this Operating Agreement, the Managing Member shall enter into a Security Agreement with the Company and the Investor Member pursuant to which the Managing Member shall pledge all of its right, title and interest in and to its interest in the Company to the Company and the Investor Member.

ARTICLE 10
DISSOLUTION, WINDING UP AND TERMINATION

Section 10.1 Dissolution. The Company shall dissolve upon the occurrence of any of the following events:

(a) The expiration of the term of the Company's existence;

(b) The sale or other disposition of all or substantially all of the Company Property and the Company's receipt of all or substantially all of the proceeds therefrom;

(c) The Members' mutual election to dissolve the Company;

(d) After the end of those periods described in *Sections 8.5* and *8.6*, the Investor Member's election to dissolve the Company;

(e) The election of the Investor Member in the manner provided in *Section 9.3* not to continue the business of the Company and appoint a new Managing Member upon the occurrence of an Involuntary Transfer of the last remaining Managing Member's Company Interests or the removal of the Managing Member; or

(f) The Investor Member's election pursuant to *Section 9.2* to dissolve the Company upon the occurrence of an Involuntary Transfer of a Managing Member's Company Interests, notwithstanding the fact that one or more other Managing Members are in existence at such time.

Section 10.2 Winding Up and Termination. Upon the dissolution of the Company, the affairs and business of the Company will be wound up and terminated, the Company's liabilities shall be discharged and the Company Property shall be liquidated and distributed in the manner hereinafter described. A reasonable time shall be allowed for the orderly winding up of the affairs and business of the Company so as to enable the Company to minimize the normal losses attendant to the

winding up and termination period. The winding up and termination of the affairs and business of the Company shall be supervised and conducted by the Liquidation Manager. The Liquidation Manager shall have the exclusive power and authority to act on behalf of the Company to wind up and terminate the affairs and business of the Company, to sell and convey the Company Property to such Persons (including, without limitation, any Member or any Affiliate thereof) for such consideration and upon such terms and conditions as it deems necessary or appropriate, to discharge the Company's liabilities, to establish any reserves that it deems necessary or appropriate for any contingent or unforeseen liabilities or obligations of the Company, and to distribute the liquidation proceeds in the manner hereinafter described.

Upon completion of the winding up of the affairs and business of the Company, the liquidation proceeds shall be distributed by the Liquidation Manager in the following manner and order of priority:

(a) First, such liquidation proceeds shall be applied to the payment of debts and liabilities of the Company (excluding any loans made by a Member or an Affiliate of a Member and any unpaid Developer Fee) and the payment of expenses of the winding up of the affairs and business of the Company;

(b) Second, such liquidation proceeds shall be applied to the setting up of any reserves (to be held by the Liquidation Manager in an interest-bearing account) which the Liquidation Manager may deem necessary or appropriate for any contingent or unforeseen liabilities or obligations of the Company; provided, however, that at the expiration of such time as the Liquidation Manager deems necessary or appropriate, the balance of such reserves remaining after payment of such liabilities or obligations shall be distributed by the Liquidation Manager in the manner hereinafter set forth in this *Section 10.2*;

(c) Third, such liquidation proceeds shall be paid to satisfy debts and liabilities owed to Members and their Affiliates described in *Section 4.2(a)* and in accordance with the priority set forth therein; and

(d) Fourth, such liquidation proceeds shall be distributed in compliance with Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations to the Members in accordance with their positive Capital Accounts, after giving effect to all contributions, distributions and allocations for all periods, including, without limitation, the allocations to be made under *Section 3.2(m)*.

Section 10.3 Compliance with Liquidation Requirements of Regulations. If the Company is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, then:

(a) Distributions shall be made pursuant to *Section 10.2* (if such "liquidation" constitutes a dissolution and termination of the Company) to the Members who have positive balances in their Capital Accounts in compliance with Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations;

(b) If the Managing Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including, without limitation, the taxable year in which such liquidation occurs), then the Managing Member shall

contribute to the capital of the Company the amount necessary to restore the balance in its Capital Account to zero;

(c) If the Investor Member has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including, without limitation, the taxable year in which such liquidation occurs), then such Investor Member may contribute to the capital of the Company the lesser of (i) such deficit balance in its Capital Account or (ii) the limited dollar amount, if any, of its Capital Account deficit which the Investor Member has expressly agreed in writing to restore to the capital of the Company pursuant to *Section 10.4*; and

(d) Any such contribution by a Member shall be made on or before the later of (1) the end of the taxable year of the "liquidation" or (2) 90 days after the date of the "liquidation".

Notwithstanding anything to the contrary contained in this *Section 10.3*, in the event the Company is "liquidated" within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, but such "liquidation" does not constitute a dissolution and termination of the Company pursuant to this Operating Agreement, then no distributions shall be made pursuant to *Section 10.2*. Instead, the Company shall be deemed to have contributed the Company Property to a new "Company" (which shall be deemed to be the "Company" governed by this Operating Agreement) in exchange for an interest in the new "Company" and, immediately thereafter, the Company liquidates by distributing interests in the new "Company" to the then Members in proportion to their respective interests in the Company, followed by the continuation of the business by the new "Company." The Capital Accounts of the then Members of the Company shall be their Capital Accounts of the new "Company."

Section 10.4 Rights and Obligations of Investor Member Upon Dissolution. Except as otherwise expressly provided in *Section 10.3(b)*, the Investor Member shall look solely to the assets of the Company for the return of its Capital Contribution. Except as otherwise elected by a Investor Member pursuant to this *Section 10.4*, such Investor Member shall not have any obligation to restore any deficit in its Capital Account upon the liquidation of the Company. Notwithstanding anything to the contrary contained in this Operating Agreement, the Investor Member may from time to time elect to be obligated to restore a deficit in its Capital Account up to a limited dollar amount. Such election shall be made by the Investor Member's delivery of a written notice of election to the Managing Member no later than December 31 of the taxable year for which such election is to be effective and shall specify the dollar amount of the deficit in its Capital Account that the Investor Member agrees to restore. Such election shall be irrevocable and shall be binding on subsequent transferees of the applicable Investor Member's Company Interests.

Section 10.5 Waiver of Partition. Each Member hereby waives any right to partition or cause a partition of the Company Property.

Section 10.6 Final Accounting. The Liquidation Manager shall furnish each of the Members with a final accounting and a statement setting forth the assets and liabilities of the Company as of the date of the completion of the winding up and termination of the affairs and business of the Company. Upon completion of the distribution plan set forth in this *Article 10*, the Liquidation Manager shall cause to be executed by the appropriate parties and filed in such public offices as

shall be required under the Act a cancellation of the articles of organization of the Company and any and all other documents which the Liquidation Manager deems necessary or appropriate to effect the dissolution and termination of the Company.

ARTICLE 11
MISCELLANEOUS

Section 11.1 Notices and Addresses. All notices, consents, demands, requests, or other communications which may or are required to be given hereunder shall be in writing and shall be sent by email, telefax, overnight courier or United States mail, registered or certified, return receipt requested, postage prepaid to the Company at the address of the Company's principal office and to the Members at the addresses set forth after their respective names in *Article 1*, with a copy to the Managing Member's counsel at: J William Callison, Holland & Hart LLP, 555 17th Street, Suite 3200, Denver, Colorado 80202. The Company and any Member may change its or his address for the giving of notices, consents, demands, requests, or other communications by delivering written notice to the Company and to all the Members of its or his new address for such purpose. Notices, consents, demands, requests, or other communications shall be deemed given or served on the day when sent by telefax, one Business Day after deposit with an overnight courier or three Business Days after deposit in the United States mail.

Section 11.2 Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

Section 11.3 Counterparts; Electronic or Facsimile Transmission of Signature. This Operating Agreement may be executed in several counterparts all of which shall constitute one agreement, binding on all parties hereto, notwithstanding that all the parties are not signatories to the same counterpart. The manual signature of any party hereto that is transmitted to any other party or its counsel by facsimile or electronic transmission (e.g., "pdf" or "tif") shall be deemed for all purposes to be an original signature.

Section 11.4 Applicable Law. This Operating Agreement and the rights of the Members hereunder shall be interpreted in accordance with the laws of the State of Formation.

Section 11.5 Successors. This Operating Agreement shall inure to the benefit of, be binding upon, and be enforceable by and against the parties hereto, their heirs, executors, administrators, successors, and assigns.

Section 11.6 Severability. The invalidity or unenforceability of any provision of this Operating Agreement in a particular respect shall not affect the validity and enforceability of any other provisions of this Operating Agreement or of the same provision in any other respect.

Section 11.7 Exhibits. All exhibits or appendices attached hereto or referred to herein are incorporated herein by this reference.

Section 11.8 Limitation of Benefits. It is the explicit intention of the Members that no person or entity other than the Members and the Company is or shall be entitled to bring any action or enforce any provision of this Operating Agreement against any Member or the Company, and that

the covenant, undertakings and agreements set forth in this Operating Agreement shall be solely for the benefit of and shall be enforceable only by the Members and the Company (and theirs or its respective successors and assigns as permitted hereunder).

Section 11.9 Entire Agreement. This Operating Agreement contains the entire agreement among the Members with respect to the transactions contemplated herein and supersedes all prior or written agreements, commitments, or understandings with respect to the matters provided for herein and therein.

Section 11.10 Broker's Commission and Indemnity. Each of the parties to this Operating Agreement warrants and represents to the others that it has not been introduced to the other party by any broker, nor has it been in contact with any real estate or business broker or consultant otherwise than as specified in this Operating Agreement regarding the Project; and each party to this Operating Agreement agrees to indemnify and hold the other party harmless from all suits, claims, actions, loss or expenses (including reasonable attorney's fees) arising from the claim of any person to a brokerage or other commission in connection with this transaction and resulting from contact with or other action, alleged or actual, of the indemnifying party.

Section 11.11 Amendment of Operating Agreement. Except as otherwise provided for herein, this Operating Agreement may not be amended in whole or in part except by a written instrument signed by the Managing Member and the Investor Member.

Section 11.12 No Third Party Beneficiary. No creditor or other third party having dealings with the Company shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans or to pursue any other right or remedy hereunder or at law or in equity, it being understood and agreed that the provisions of this Agreement shall be solely for the benefit of, and may be enforced solely by, the parties hereto and their respective successors and assigns. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party until such Capital Contribution is made or loan is advanced nor may such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or of any of the Members. Without limiting the generality of the foregoing, a deficit Capital Account of a Member shall not be deemed to be a liability of such Member nor an asset or property of the Company.

Section 11.13 Waivers. Any forbearance by the Investor Member in exercising any right or remedy under this Operating Agreement, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy, or the subsequent exercise of any right or remedy. The enforcement by the Investor Member of any right herein shall not constitute an election by the Investor Member of remedies so as to preclude the exercise of any other right available to the Investor Member.

[*Remainder of this page intentionally left blank]*

The Members have executed this Operating Agreement as of the date first set forth at the beginning hereof.

MANAGING MEMBER:

CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company

By: _____
Name: [_____]
Title: [_____]

CLASS B MEMBER:

CITY OF VALDEZ

By: _____
Name: [_____]
Title: [_____]

The Withdrawing Member hereby withdraws from the Company:

WITHDRAWING MEMBER:

_____
SHAWNE MASTRONARDI, an individual resident of the State of Colorado

INVESTOR MEMBER:

CREA VALDEZ SENIOR, LLC, a Delaware limited liability company

By: _____
Alison J. Anderson
Authorized Representative

SPECIAL MEMBER:

CREA SLP, LLC, an Indiana limited liability company

By: _____
Alison J. Anderson
Authorized Representative

APPENDIX I

DEFINITIONS

The capitalized words and phrases used in the Operating Agreement shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of such words and phrases):

"25% Construction Completion" means when twenty-five percent (25%) of the construction of the Project is completed in accordance with the Plans and Specifications as evidenced by the Application and Certification for Payment on AIA Documents G702 and G703 which are approved by the Special Member.

"75% Construction Completion" means when seventy-five percent (75%) of the construction of the Project is completed in accordance with the Plans and Specifications as evidenced by the Application and Certification for Payment on AIA Documents G702 and G703 which are approved by the Special Member.

"Accelerated Energy Credit Amount" has the meaning given to it in *Section 5.10(e).*

"Accountants" means initially Leavitt, Christensen & Co., PLLC or such certified public accountant as is selected by the Managing Member with the Consent of the Special Member; provided, however, that the Managing Member shall not need to obtain the Special Member's Consent if the Managing Member selects a "Big 4" accounting firm as the Accountants.

"Act" means the Alaska Revised Limited Liability Company Act, as may be amended from time to time during the term of the Company.

"Actual Energy Credit Amount" has the meaning attributed thereto in *Section 5.10.*

"Actual Tax Credits" means the total amount of Tax Credits properly allocable by the Company to the Investor Member pursuant to the Code, as such amount may be increased or decreased as a result of a subsequent determination by the Accountants, a Final Determination or a Recapture Event. The Actual Tax Credits shall be retroactively revised if the amount of the Actual Tax Credits properly allocable to the Investor Member is revised as the result of an audit or is otherwise recaptured.

"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) the credit to such Capital Account of any amounts which such Member is obligated to restore under this Operating Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulation Section 1.704-2(g)(1) and Regulation Section 1.704-2(i)(5) and (b) debit to such Capital Account the items described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6). The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Administrative Adjustment Request" means an administrative adjustment request under Section 6227 of the Code.

"After-Tax Basis" means, with respect to any payment to be received by the Investor Member, the amount of such initial payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all income taxes imposed on the members of the Investor Member by any governmental authority with respect to such payments, the remaining balance of such payments shall be equal to the amount of the initial payment. For purposes of the calculation under this definition, it will be assumed that the federal and state taxes are payable at the actual marginal federal and state income tax rates.

"Affiliate" means, with respect to any Person: (a) any Person directly or indirectly controlling, controlled by or under common control with such Person; (b) any Person owning or controlling 10% or more of the outstanding voting securities of such Person; (c) any officer, director or managing member of such Person; or (d) any Person who is an officer, director, managing member, trustee or holder of 10% or more of the voting securities of any Person described in clauses (a) through (c) of this subparagraph.

"Agency" or "Agencies" means the State Housing Finance Agency or any other governmental authority having jurisdiction over the Project, the business and operations of the Company or the particular matter to which reference is being made.

"Applicable Percentage" means nine percent (9%).

"Architect" means BDS Architects, Inc.

"Asset Management Fee" means a fee equal to $5,000 per year, earned on an annual basis, beginning on the date hereof, beginning the year following the first full calendar year of the Company (with a pro-rata share of such fee earned for any partial calendar year). The first year's Asset Management Fee will be paid at closing and the amount payable for the second year's Asset Management Fee will be adjusted pro-rata.

"Asset Manager" means CREA, LLC or its designee.

"Assignee" means a Person to whom all or any part of the Investor Member's Company Interest has been transferred in a manner permitted under this Operating Agreement, but who has not been admitted to the Company as a Substituted Investor Member with respect to the transferred Company Interest.

"Authority" or "Authorities" means any nation or government, any state or other political subdivision thereof, and any entity exercising its executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including but not limited to, any federal, state or municipal department, commission, board, bureau, agency, court, tribunal or instrumentality.

"Bankruptcy" or "Bankrupt" as to any Person means the filing of a petition for relief as to any such Person as debtor or bankrupt under the Bankruptcy Act of 1898 or the Bankruptcy Code of 1978 or like provision of law (except if such petition is contested by such Person and has been

dismissed within 60 days); insolvency of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of his assets; commencement of any proceedings relating to such Person under any other reorganization, arrangement, insolvency, adjustment of debt or liquidation law of any jurisdiction, whether now in existence or hereinafter in effect, either by such Person or by another, provided that if such proceeding is commenced by another, such Person indicates his approval of such proceeding, consents thereto or acquiesces therein, or such proceeding is contested by such Person and has not been finally dismissed within 60 days.

"Business Day" means a day during which commercial banks in Indianapolis, Indiana are open for business of the nature required for the implementation or administration of this Agreement.

"Capital Account" means, with respect to any Member, the capital account maintained for such Member pursuant to *Section 2.5*.

"Capital Contribution" means, with respect to any Member, the amount of money and the fair market value of property contributed to the Company by such Member.

"Capital Transaction" means any transaction the proceeds of which are not includable in determining Cash Flow, including without limitation, the sale, refinancing or other disposition of all or substantially all of the assets of the Company, but excluding loans to the Company (other than a refinancing of any mortgage loan) and contributions of capital to the Company by the Members.

"Cash Flow" means the excess of Cash Receipts over Operating Expenses. Cash Flow shall be determined separately for each Fiscal Year or portion thereof.

"Cash Receipts" means with respect to a Fiscal Year or other applicable period, all actual cash receipts of the Company from whatever source derived from normal operations, including, without limitation, rental revenues (except pre-paid rent, which shall be added only on an accrual basis during such period), government subsidy payments on a cash basis from normal operations, proceeds from business or rental interruption insurance, laundry income, parking revenue, and other incidental revenues, but specifically excluding interest on Company reserves, proceeds from insurance (other than business or rental interruption insurance), loans, proceeds of a Capital Transaction or Capital Contributions. In addition, any amount released without restriction from any escrow or reserve account in a Fiscal Year (including, without limitation, the Operating Reserve and the Replacement Reserve) shall be considered a Cash Receipt of the Company for such Fiscal Year, but shall not be included for the purposes of calculating the applicable Debt Coverage Ratio. Notwithstanding the foregoing, at the election of the Managing Member, Cash Receipts received near the end of a Fiscal Year and intended for use in meeting the Company's obligations (including the cost of acquiring assets or paying debts or expenses) in the subsequent Fiscal Year shall not be deemed to be received until such following Fiscal Year.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601 et seq.

"Certificate" has the meaning set forth in the Recitals.

"Change in Tax Law" means amendments to the Code or amendments to, or the promulgation of, new Regulations after the date of this Agreement, but shall not include the promulgation of final or temporary regulations to the extent such Regulations are consistent with final, temporary or proposed Regulations that were promulgated on or prior to the date of this Agreement.

"Class B Member" means The City of Valdez, a home rule municipality organized under the laws of the State of Alaska, or any other Person who becomes a successor Class B Member pursuant to *Section 9.1* or *Section 9.3*

"Code" means the Internal Revenue Code of 1986, as the same may be amended from time to time (or any corresponding provisions of any successor law).

"Company" has the meaning set forth in the *Recitals*.

"Company Interest" means the entire ownership interest of a Member, including, without limitation, the rights and obligations of such Member under this Operating Agreement and the Act.

"Company Management Fee" means an annual fee equal to $10,000 per year, earned on an annual basis, beginning with the payment of the Asset Management Fee (with a pro-rata share of such fee earned for any partial calendar year) and increasing annually at a rate of 2%.

"Company Management Agreement" means the Company Management Agreement of even date herewith between the Company and the Managing Member pursuant to which the Managing Member is to provide certain services with respect to the Project.

"Company Property" means all real and personal property acquired by the Company and any improvements thereto, and shall include both tangible and intangible property.

"Compliance Period" means, with respect to the Project, the entire period during which the "compliance period" in Section 42(i)(1) of the Code shall be applicable to any building.

"Consent" means the prior written consent or approval of the party for which consent is sought, which consent, unless otherwise specifically provided herein, may be given or withheld in such party's sole discretion.

"Construction Completion" means completion of the Project in accordance with the Plans and Specifications, free and clear of all mechanics' and similar liens, and in accordance with the terms, conditions and provisions of the Project Loans, and this Operating Agreement, and equipping the Project with all necessary and appropriate fixtures, equipment and personal property together with receipt of all requisite [temporary or] permanent certificates of occupancy for all Project buildings permitting immediate occupancy of all units. Construction Completion shall not have occurred until the Special Member has received (i) copies of all requisite certificates or permits permitting occupancy of 100% of the apartment units in the Project as issued by each Agency having jurisdiction; (ii) certification from the Architect that the work to be performed by the General Contractor under the Construction Contract is substantially complete in accordance

with the Plans and Specifications; (iii) satisfactory evidence that all environmental remediation of the Project has been completed in accordance with all Environmental Laws; and (iv) satisfactory resolution of each action item referenced in the Environmental Review Letter.

"Construction Contract" means the construction contract in the guaranteed maximum amount of [$_____] (including all exhibits and attachments thereto) to be entered into between the Company and the General Contractor, pursuant to which the Project is to be constructed. Such Construction Contract, and any amendments thereto, shall be subject to the Consent of the Special Member.

"Construction Lender" means the lender of the Construction Loan as set forth in Appendix IV.

"Construction Loan" means the loan described as such in Appendix IV, based on loan documents acceptable to the Special Member.

"Conversion" means the satisfaction of all conditions precedent for the conversion of a loan, the proceeds of which were used to finance acquisition or construction of the Project, to a fixed-rate, amortizing, non-recourse loan.

"Cost Certification" means the certified audit prepared by the Accountants, approved by the Special Member and submitted to the State Housing Finance Agency, itemizing the Company's development and related costs for purposes of establishing the amount of Tax Credits available to the Project.

"Cost Savings" means (i) a permanent reduction in Development Costs from that set forth in the Financial Forecasts without an offsetting reduction in Capital Contributions or proceeds of Project Loans or (ii) a permanent increase in development sources from those set forth in the Financial Forecasts without an offsetting increase in Development Costs. The determination of Cost Savings is subject to the Consent of the Special Member and shall be released no earlier than the Stabilized Operations Date. If any Cost Savings are realized they shall be applied in the following order: (i) a reduction in the deferred Developer Fee, (ii) a reduction in the Permanent Loan amount, (iii) to capital improvements reasonably acceptable to the Special Member, and (iv) the balance, if any, shall be distributed in accordance with *Section 4.1*.

"Cost Segregation Study" means the cost segregation study for the 5- and 15- year property associated with the new construction of the Project, which has been approved by the Accountants and the Investor Member.

"Credit Deficiency" means the Projected Tax Credits (reduced by any reduction in Capital Contributions and any amounts paid to the Investor Member pursuant to *Section 5.10*) less the aggregate amount of Actual Tax Credits received by the Investor Member which shall be computed no sooner than at the end of the Compliance Period. For purposes hereof, the Investor Member shall be considered to have received Tax Credits in the amount allocated to such Investor Member on the Company's federal income tax returns reduced by (a) any adjustment of the Company's tax return that is made or claimed by the IRS, except to the extent that such adjustment or claimed adjustment is rejected or overturned by the IRS or a court and the order of such court is beyond

the time for appeal; and (b) the amount of any recapture or claimed recapture of such Credits (other than recapture caused by the action of the Investor Member and not including recapture which is rejected by the IRS or a court). The Credit Deficiency shall be calculated on an After-Tax Basis.

"Credit Period" means, with respect to any building the period described in Code Section 42(f)(1) and (2), which generally is the period of 10 taxable years beginning with (a) the taxable year in which the building is Placed in Service or (b) at the election of the taxpayer, the succeeding taxable year, but only if the building is a qualified low-income building (as defined in the Code) as of the close of the first year of such period. Special rules apply to the determination of the Credit Period for multiple building Projects and the Credit Period may include the 11th year of such period as provided in Code Section 42(f)(2).

"Credit Reduction Payment" has the meaning attributed thereto in *Section 5.10(c).*

"Credit Shortfall" has the meaning attributed thereto in Section *5.10(c)*.

"Debt Coverage Ratio" means the ratio of (i) Cash Receipts less Operating Expenses (excluding any payment of principal and interest on any Company indebtedness) to (ii) principal and interest payments due and payable with respect to the must-pay Permanent Loan, but excluding loans to the Company from the Managing Member or the Developer.

"Debt Coverage Ratio Requirement" means a Debt Coverage Ratio of at least 1.15:1.00 at Stabilized Operations and 1.10:1.00 throughout the Compliance Period.

"Deferred Developer Fee Note" means the promissory note from the Company to the Developer attached as Exhibit A to the Development Agreement.

"Deferred Energy Credit Amount" has the meaning attributed thereto in *Section 5.10*.

"Deferred Management Fee" has the meaning set forth in the definition of Management Fee.

"Developer" means Cordes Development 3, LLC, a Colorado limited liability company.

"Development Agreement" means the Development Agreement entered into or to be entered into by the Company and the Developer pursuant to which the Developer shall assume primary responsibility for overseeing the development of the Project and bearing certain cost overruns.

"Developer Fee" means the amount set forth in Section 5 of the Development Agreement but not to exceed the maximum amount allowed by the State Housing Finance Agency payable at the times and upon the conditions set forth in the Development Agreement.

"Development Costs" has the meaning set forth in *Section 5.4(h)*.

"Economic Risk of Loss" has the meaning specified in Regulation Section 1.752-2.

"Election Notice" has meaning set forth in *Section 5.10(d).*

"Eligible Basis" means, generally, the adjusted basis of a building for depreciation purposes determined as of the close of the first taxable year of the Credit Period, subject to certain exclusions as set forth in the Code.

"Energy Credit(s)" means the credits provided pursuant to Section 48 of the Code for which the Company is eligible.

"Energy Credit Upward Basis Adjuster Cap" means $[_____].

"Energy Credit Upward Timing Adjuster Cap" means $[566].

"Energy Property" has the meaning set forth in Section 48(a)(3) of the Code.

"Energy Property Basis" means the tax basis of the Energy Property at the Project as calculated pursuant to Section 48 of the Code for purposes of determining the amount of the Energy Credits.

"Energy Property Cost Certification" means the submission to, and acceptance by the Investor Member of, a certified audit by the Accountants of the Energy Property Development Costs for purposes of establishing the Energy Property Basis, the Energy Property depreciation schedule and the Energy Credits.

"Energy Property Development Costs" means all costs incurred to (i) acquire and construct the Energy Property, (ii) complete the installation of the Energy Property or cause the same to be completed in a good and workmanlike manner, free and clear of all mechanics', materialmen's or similar liens, (iii) pay or provide for all other payments, expenses, escrows or reserves required by this Agreement or by any Lender, Governmental Agency or Company creditor to be made, incurred or funded in connection with the Energy Property through the Energy Property PIS Date.

"Energy Property PIS Date" means the date in which the Energy Property is placed-in-service as determined by the Accountant in accordance with Section 48 of the Code.

"Energy Property Recapture Event" means an event, as evidenced by a determination thereof by the Accountants or as a result of a Final Determination that results in a recapture with respect to all or any portion of the Company's Energy Credits.

"Energy Property Recapture Period" means the 60-month period following the Energy Property PIS Date.

"Environmental Laws" means all federal, state and local environmental, land use, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environmental or human health and safety, or governing the use storage, treatment, generation, transportation, processing, handling, production, remediation, abatement, purchase, sale or disposal of Hazardous Substance and the written rules, regulations, policies, guidelines, interpretations, decisions, orders and directive of federal, state and local government agencies and authorities relating to the environment or worker safety, which include, but are not limited to, CERCLA, the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et. seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et. seq.), the

Hazardous Materials Transportation Act, as amended, (39 U.S.C. Section 1801 et. seq.), the Occupational Health and Safety Act (29 U.S.C. Section 651 et. seq.), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et. seq.) or any other applicable laws and regulations adopted and promulgated thereunder that protect the environment or human health and safety.

"Environmental Review Letter" means the letter issued by Nova Group on September 1, 2022 with respect to the Project, attached hereto as Appendix X.

"Exit Taxes" means an amount equal to the amount of any federal, state or local income tax liability which would be imposed upon the Investor Member as a result of the deficit balance in the Investor Member's Capital Account, assuming that the Investor Member is subject to the highest marginal federal, state and local income tax rates.

"Fair Market Value" means the fair market value as determined by a M.A.I. appraiser mutually acceptable to the Managing Member and the Investor Member or, if there is no such agreement, (i) the Investor Member shall select a M.A.I. appraiser and the Managing Member shall select a second M.A.I. appraiser; (ii) the two M.A.I. appraisers shall select a third M.A.I. appraiser; (iii) the third M.A.I. appraiser shall determine the fair market value, which appraisal may take into consideration any continued restrictive use agreement affecting the Project required by the State Housing Finance Agency and other encumbrances affecting the use of the Project. The costs of determining the Fair Market Value shall be paid for by the Company.

"Final Determination" means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), (ii) the date on which the IRS has entered into a binding agreement with the Company with respect to such issue or on which the IRS has reached a final administrative determination with respect to such issue which, whether by law or agreement, is not subject to appeal, (iii) the date on which the time for instituting a claim for refund has expired, or if a claim was filed the time for instituting suit with respect thereto has expired, or (iv) the date on which the applicable statute of limitations for raising an issue regarding a federal income tax matter with respect to the Company has expired.

"Final Partnership Adjustment" means a notice from the IRS of a final partnership adjustment under Section 6231 of the Code.

"Financial Forecasts" means the financial forecasts attached hereto as Appendix II.

"First Installment" has the meaning set forth in Appendix VII.

"Fiscal Year" means the 12-month period which begins on the first day of January and ends on the 31st day of December of each calendar year (or ends on the date of final dissolution for the year in which the Company is wound up or dissolved).

"'Fourth Installment" has the meaning set forth in Appendix VII.

"Fund" means an assignee of the Investor Member's Company Interest where the Managing Member or managing member of the assignee is an Affiliate of the Investor Member or Special Member.

"General Contractor" shall mean Orion Construction Inc., an [Alaska] corporation, or such other general contractor as Consented to by the Special Member.

"Geotechnical Report" means that report entitled [_____] prepared by [_____] dated [_____].

"Guarantor(s)" means jointly and severally, CM Valdez Sr Housing, LLC, Cordes Development 3, LLC, Dr. David Cordes and Shawne Mastronardi, collectively or individually as the context requires; provided, however, that Dr. David Cordes shall be released as a Guarantor from and after the Operating Deficit Guaranty Period as and to the extent set forth in the Guaranty Agreement.

"Guaranty Agreement" means the Guaranty Agreement between the Company and the Guarantor dated as of the date hereof.

"Hazardous Substance" means, without limitation, any combustible substances, ignitable substances, flammable substances, corrosive substances, reactive substances, explosives, radon, radioactive materials, asbestos, lead-based paint, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum-based products, methane, and hazardous materials, hazardous chemicals, hazardous wastes, hazardous or toxic substances or related materials, including those as so defined in or regulated by Environmental Laws.

"HUD" means the Department of Housing and Urban Development of the United States of America and its successors.

"Imputed Underpayment" shall have the meaning assigned to such term in Section 6225 of the Code.

"In Balance" means, during the construction period, and in the Special Member's reasonable discretion, the then undisbursed portion of the Capital Contributions to be disbursed in accordance with this Agreement during the construction period plus the undisbursed proceeds of the Construction Loan or other construction period financing and Cash Flow, equals or exceeds the amount necessary to pay for all work completed and not theretofore paid for or to be completed for Project to achieve Construction Completion in accordance with the Plans and Specifications or otherwise to be incurred in connection with completion of the Project. After Construction Completion, "In Balance" means, in the Special Member's reasonable discretion, the then undisbursed portion of the permanent sources contained in the Financial Forecasts equals or exceeds the remaining costs of the Project, including repayment of any construction loans.

"Incentive Leasing Fee" means the non-cumulative fee payable by the Company to the Managing Member in accordance with the terms and conditions set forth in *Section 5.5(c)*.

"Incentive Leasing Agreement" means the Incentive Leasing Agreement of even date herewith between the Company and the Managing Member pursuant to which the Managing Member is to provide certain supplemental services with respect to the Project.

"Incentive Management Agreement" means the Incentive Management Agreement of even date herewith between the Company and the Managing Member pursuant to which the Managing Member is to provide certain supplemental management services with respect to the Project.

"Incentive Management Fee" means the non-cumulative fee payable by the Company to the Managing Member in accordance with the terms and conditions set forth in *Section 5.5(b)*.

"Involuntary Event" means, with respect to any Member any one of the following events: (a) the making of an assignment for the benefit of creditors by the Member; (b) the filing of a voluntary petition in bankruptcy by the Member; (c) the adjudication of the Member as a bankrupt or insolvent; (d) the filing of a petition or answer by the Member seeking for himself a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or rule; (e) the seeking, consenting to or acquiescence of the Member in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties; (f) the death of any Member who is a natural person; or (g) the termination of the legal existence of any Member who is other than a natural person.

"Involuntary Transfer" means any transfer of any Member's Company Interest effected by operation of law as a result of the occurrence of an Involuntary Event.

"IRS" means the Internal Revenue Service.

"Land" means the tract of land currently owned by the Company upon which the Project will be located, as more particularly described on Appendix V.

"LIHTC Units" means the 28 dwelling units located in the Project which qualify as low-income housing units pursuant to Section 42(i)(3) of the Code.

"Investor Member" means, singly or collectively as the case may be, CREA Valdez Senior, LLC, a Delaware limited liability company, or any other Person who becomes a Substituted Investor Member for any such Person pursuant to *Section 8.1* or *Section 8.2*. The term Investor Member shall not refer to the Special Member.

"Liquidation Manager" means any Person selected by the Investor Member.

"Management Agent" means North Star Management, LLC or such other management agent that is selected by the Managing Member with the Consent of the Special Member. The Management Agent shall act as property manager for the Project pursuant to a management agreement approved in writing by the Asset Manager.

"Management Fee" means the fee payable to the Management Agent, which fee shall not exceed $[49.15] per unit per year (inclusive of any fees for leasing, accounting and/or other services) and no other fees for leasing, accounting or other services shall be paid to the Management Agent without the Consent of the Special Member. The Managing Member shall

cause any management agreement between the Company and a Management Agent that is Affiliated with the Managing Member, Developer, or Guarantor to contain a provision that allows for the deferral of the Management Fee to the payment of any Operating Deficits (the "Deferred Management Fee"). Any portion of the Deferred Management Fee shall accrue without interest and shall be repaid in accordance with *Section 4.1* and *4.2* herein.

"Managing Member" means CM Valdez Sr Housing, LLC, a Colorado limited liability company, or any other Person who becomes a successor Managing Member pursuant to *Section 9.1* or *Section 9.3*

"Member" or "Members" means, individually or collectively as the context requires, the Managing Member, the Investor Member and/or the Special Member.

"Net Cash from Sales and Refinancings" means, with respect to any Fiscal Year of the Company, the cash proceeds from Company sales or refinancings reduced by (a) all reasonable costs and expenses incurred by the Company in connection with such sale or refinancing, and (b) all principal and interest payments and other sums paid on or with respect to any indebtedness of the Company other than the Deferred Developer Fee Note and amounts treated as loans pursuant to this Operating Agreement from the Managing Member, Developer or Guarantor or any of their respective Affiliates or the Investor Member. Net Cash from Sales and Refinancing shall include all principal and interest payments with respect to any note or other obligation received by the Company in connection with the sale or other disposition of Project.

"Nonrecourse Deduction" has the meaning set forth in Section 1.704-2(b)(1) of the Regulations. The amount of Nonrecourse Deductions for any Fiscal Year of the Company equals the excess, if any, of the net increase, if any, in the amount of Company Minimum Gain during that Fiscal Year reduced (but not below zero) by the aggregate amount of any distributions during that Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined in accordance with Section 1.704-2(c) of the Regulations.

"Nonrecourse Liability" has the meaning set forth in Section 1.704-2(b)(3) of the Regulations.

"Operating Agreement" means the Company's Amended and Restated Operating Agreement, as the same may be amended from time to time. Words such as "herein," "hereinafter," "hereof," "hereto" and "hereunder" refer to this Operating Agreement as a whole, unless the context otherwise requires.

"Operating Deficit" means the amount by which Cash Receipts (other than proceeds of any loans to the Company and investment earnings on funds on deposit in the reserve fund for replacements and other such reserve or escrow funds or accounts) for a particular period of time (which shall be measured on a monthly basis and funded as necessary during the Operating Deficit Guaranty Period) is exceeded by the sum of all Operating Expenses, including required deposits into the Replacement Reserve Account, any fees to lenders and/or any applicable mortgage insurance premium payments and all other Company obligations or expenditures, excluding payments for construction of the Project, all fees payable out of Cash Flow, and fees and other

expenses and obligations of the Company to be paid from the Capital Contributions of a Member pursuant to this Operating Agreement, during the same period of time.

"Operating Deficit Guaranty Period" means the period beginning with Stabilized Operations and continuing for 60 months thereafter; provided, however, that the Operating Deficit Guaranty Period shall not expire at the end of such period unless all of the following conditions are satisfied: (i) the Project has operated at or above an average Debt Coverage Ratio of at least 1.10:1.00 for the preceding twelve-month period based upon financial information certified by the Managing Member and reasonably acceptable to the Special Member, and (ii) the Operating Reserve has been restored to its original Operating Reserve Amount.

"Operating Deficit Loan" means a loan made pursuant to *Section 5.4(j)*.

"Operating Expenses" means all recurring costs and expenses of any type, seasonally adjusted, annualized and properly accruable during a specified Fiscal Year which may be properly charged as operating expenses incidental to the ownership and operations of the Project under standard accounting procedures, including, without limitation, payment of principal and interest on any Company indebtedness (other than payments of principal and interest on any loan made pursuant to *Sections 2.6, 5.4(j),5.4(m), 5.10* or any Project Loans made to the Company the debt service on which is payable solely from Cash Flow or any unpaid Developer Fee), including Replacement Reserves, the cost of non-capital repairs to the Project, amounts allocated to reserves by the Managing Member and the payment of any fees other than those fees payable out of Cash Flow and the Developer Fee. The term Operating Expenses shall not include Development Costs. Operating Expenses payable to Members or Affiliates of Members shall be paid after Operating Expenses payable to third parties. For purposes of real estate taxes, the amount shall be based on the full assessment of the Project following the Construction Completion, less any applicable tax abatement.

"Operating Guaranty Amount" means $[_____].

"Operating Reserve" means, initially, the reserve equal to the Operating Reserve Amount, to be funded in accordance with the Financial Forecasts, and thereafter out of Cash Flow pursuant to *Section 4.1*, plus interest earned thereon, which reserve shall be used to fund Operating Deficits. The Operating Reserve shall be held throughout the Compliance Period and any amounts remaining in the Operating Reserve at the end of the Compliance Period shall be released in accordance with *Section 4.1*.

"Operating Reserve Account" means a segregated Company bank account established at a financial institution selected by the Special Member.

"Operating Reserve Amount" means $[_____].

"Opt-Out Election" means action by the PartnershipRepresentative that causes the Company to elect out of the Revised Company Audit Rules, if such election is available to the Company under Section 6221(b) of the Code and Regulations or other guidance issued by the IRS.

"Partner Minimum Gain" means an amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt

were treated as a Nonrecourse Liability, determined in accordance with Section 1.704-2(i) of the Regulations.

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

"Partner Nonrecourse Deductions" has the meaning set forth in Section 1.704-2(i)(2) of the Regulations. The amount of Partner Nonrecourse Deductions with respect to a Partner Nonrecourse Debt for a Company Fiscal Year equals the net increase during that Fiscal Year in Partner Nonrecourse Debt reduced (but not below zero) by the proceeds of the Partner Nonrecourse Debt distributed during that Fiscal Year to the Member bearing the Economic Risk of Loss for the Partner Nonrecourse Debt that are both attributable to the Partner Nonrecourse Debt and allocable to an increase in Partner Minimum Gain, as determined in accordance with Section 1.704-2(i)(2) of the Regulations.

"Partnership Minimum Gain" has the meaning set forth in Section 1.704-2(d) of the Regulations.

"Partnership Representative" has the meaning ascribed in *Section 5.4(e)*.

"Payment Certificate" means a payment certificate set forth in Appendix VII and executed by the Managing Member pursuant to which the Capital Contributions will be disbursed.

"Permanent Credit Shortfall" has the meaning set forth in *Section 5.10(a)*.

"Permanent Credit Shortfall Adjustment" has the meaning set forth in *Section 5.10(a)*.

"Permanent Lender" means the lender of the Permanent Loan.

"Permanent Loan" means the loan described as such in Appendix IV, with terms no less favorable than those set forth in Appendix IV and loan documents acceptable to the Special Member. Unless otherwise agreed to by the Special Member, at the time of conversion, the Project shall satisfy the Debt Coverage Ratio Requirement over a consecutive 90-day period using: (i) the annualized aggregate substantiated Cash Receipts of the Project at the time (excluding tenant based rental subsidies in excess of current asking rents and adjusted for the vacancy rate assumed in the Financial Forecasts if such rate is greater than the actual vacancy rate) and (ii) annualized aggregate Operating Expenses (excluding any payment of principal and interest on any Company indebtedness) which shall reflect the Specified Expense Line Items and, for all other Operating Expenses, the greater of the Special Member's projected expenses included in the Financial Forecasts and the actual substantiated expenses of the Project at the time. Further, if, at the time of the calculation of the Debt Coverage Ratio in the immediately preceding sentence, the Debt Coverage Ratio is less than the Debt Coverage Ratio Requirement, the Managing Member shall be permitted to reduce the Permanent Loan to a sufficient amount to account for the decrease in the Debt Coverage Ratio. Pursuant to the Financial Forecasts attached hereto, the maximum principal amount of the amortizing Permanent Loan is [$1,300,000].

"Permanent Loan Shortfall" and "Permanent Loan Shortfall Note" have the meanings set forth in *Section 5.4(m)*.

"Person" means any individual, company, corporation, trust or other entity.

"Placed in Service" means when the Project is first placed in a condition or state of readiness and is available for occupancy as evidenced by a certificate of occupancy for at least one unit in each building in the Project; provided, however, that if such certificate or permit is of a temporary nature, the "Placed in Service" shall not be deemed to have occurred unless the work remaining to be done is of a nature which would not impair the permanent occupancy of such unit. Notwithstanding the foregoing, a building shall not be deemed to have been Placed in Service if the Project is not placed in service as provided by the Code and IRS guidance.

"Plans and Specifications" mean the plans and specifications for the Project approved by the Special Member.

"Prime Rate" means the annual rate of interest which is at all times equal to the lesser of (i) the highest prime rate as published in the *Wall Street Journal* (or any comparable publication selected by the Special Member in its reasonable discretion if the *Wall Street Journal* ceases to publish such index) with calculations of interest to be made on a daily basis and on the basis of a three hundred sixty (360)-day year, and (ii) the maximum rate permitted by law in the applicable context.

"Profits" and "Losses" mean, for each Fiscal Year of the Company, an amount equal to the Company's taxable income or loss for such period from all sources, determined in accordance with Section 703(a) of the Code, adjusted in the following manner: (a) the income of the Company that is exempt from federal income tax shall be added to such taxable income or loss; (b) any expenditures of the Company which are not deductible in computing its taxable income and not properly chargeable to capital account under either Section 705(a)(2)(B) of the Code or the Regulations promulgated under Section 704(b) of the Code shall be subtracted from such taxable income or loss; (c) in the event any Project is revalued in accordance with Section 1.704-1(b)(2)(iv)(f) of the Regulations, then the amount of any adjustment to the value of such Property shall be taken into account as gain or loss from the disposition of such Project for purposes of computing Profits or Losses; (d) gain or loss resulting from any disposition of Project which has been revalued pursuant to Section 1.704-1(b)(2)(iv)(f) of the Regulations and with respect to which gain or loss is recognized for Federal income tax purposes shall be computed by reference to the adjusted value of such Project, notwithstanding that the adjusted tax basis of such Project differs from the adjusted value; and (e) any depreciation, amortization or other cost recovery deductions taken into account in computing such taxable income or loss shall be recomputed based upon the adjusted value of any Project which has been revalued in accordance with Section 1.704-1(b)(2)(iv)(f) of the Regulations.

"Project" means the Land currently owned by the Company in Valdez, Alaska, and the 29-unit multifamily rental housing development and other improvements to be constructed, owned and operated thereon by the Company, and to be known as Valdez Senior Living Apartments.

"Project Documents" means and includes this Operating Agreement (and all exhibits hereto), the Construction Contract, the Plans and Specifications, the Restrictive Covenant, Management Agreement, and all instruments and agreements delivered to (or required by) the

Investor Member, Project Lenders or the State Housing Finance Agency to the extent not otherwise listed in this definition.

"Project Lender" means the lenders of the Project Loans as set forth in Appendix IV.

"Project Loans" means those loans set forth and described in Appendix IV, the terms of which shall not be modified or amended without the Consent of the Special Member.

"Projected Energy Credits" means $[28,305] (the foregoing amount represents 99.989% of the total Energy Credits projected for the Company).

"Projected Tax Credits" means year 2022 70% present value tax credits from the State Housing Finance Agency in an amount equal to $[611,759] for year 2024, [which shall not be delivered prior to [_____], or such later date as directed by the Special Member], $[905,510] for years 2025 through 2033, and $[293,752] for the year 2034 (the foregoing amounts represent 99.99% of the total Tax Credits projected for the Company). The Projected Tax Credits shall be deemed amended and revised to reflect the Projected Tax Credits calculated in any revised Financial Forecast prepared pursuant to *Section 5.10(a)* and *Section 5.10(b)*.

"Purchase Price" has the meaning set forth in *Section 8.5(a)* or *Section 8.6(a)*, as applicable.

"Purchaser" has the meaning set forth in Appendix III.

"Push-Out Election" means an election by the Partnership Representative under Section 6226 of the Code with respect to any Imputed Underpayment(s) identified in a Final Partnership Adjustment for the Company.

"Qualified Basis" has the meaning set forth in Section 42(c) of the Code.

"Qualified Occupancy" means initial occupancy of 100% of the LIHTC Units by qualified tenants whose occupancy and leases (including specified rents) qualify such residential units for the Tax Credit. The achievement of Qualified Occupancy shall be confirmed by the Management Agent and certified by the Managing Member.

"Qualified Occupancy Date" means [October 1, 2024].

"REAC" shall refer to the Real Estate Assessment Center of the United States Department of Housing and Urban Development ("HUD").

"Recapture Event" means an event, as evidenced by a determination thereof by the Accountants or as a result of a Final Determination, which results in a recapture with respect to all or any portion of the Company's Tax Credits and/or which results in a disallowance of any Tax Credits previously claimed by the Company.

"Regulations" means the regulations promulgated under the Code (including without limitation, temporary regulations), as the same may be amended from time to time (including corresponding provisions of successor regulations).

"Removal Notice" has the meaning set forth in *Section 9.6.*

"Replacement Reserve" means the greater of (i) the amount required by the Project Lenders to be reserved by the Company, and (ii) $300 per unit per year per year, plus all interest earned on any such amount, funded ratably on a monthly basis, with credit given for any amount funded into any lender controlled replacement reserve, commencing upon the funding of the Permanent Loan. The Replacement Reserve shall be replenished as provided in *Section 4.1*. On the sixth and eleventh anniversary of the completion of construction of the Project, the Special Member shall have the right to require a physical assessment of the Project pursuant to which the amount reserved on a monthly basis may be increased.

"Replacement Reserve Account" means a segregated Company bank account established at a bank selected by the Special Member to hold the Replacement Reserve, unless required to be held by any Permanent Lender.

"Requisite Approvals" means any required approvals of each Project Lender and Agency to an action proposed to be taken by the Company.

"Restrictive Covenant" means the extended low-income housing commitment entered into between the Company and the State Housing Finance Agency pursuant to Section 42(h)(6) of the Code.

"Revised Partnership Audit Procedures" means the revised partnership audit rules contained in Subchapter 63C of the Code, as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 and the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, and the Regulations promulgated thereunder.

"Second Installment" has the meaning set forth in Appendix VII.

"Security Agreement" means that certain Security Agreement by and among the Managing Member, the Company and the Investor Member dated of even date herewith.

"Special Member" means CREA SLP, LLC, an Indiana limited liability company.

"Specified Expense Line Items" means the actual and substantiated expenses of the Project for property taxes, insurance and utilities. For purposes of real estate taxes, the amount shall be based on the full assessment of the Project following Construction Completion, less any applicable tax abatement.

"Stabilized Operations" means the date following Construction Completion upon which: (i) the Project has achieved Qualified Occupancy, (ii) the Project has maintained physical occupancy of 90% for a minimum of 90 consecutive days, and (iii) all conditions in the Permanent Loan definition have been satisfied.

"Stabilized Operations Date" shall mean the date upon which Stabilized Operations has been achieved as determined by the Special Member. The Stabilized Operations Date shall be evidenced in the applicable Installment Payment Certificate.

"State Designation" means, with respect to the Project, the allocation by the State Housing Finance Agency of Tax Credits, as evidenced by the receipt by the Company of a carryover allocation of Tax Credits in the annual amount of $905,601 meeting the requirements of Section 42(h)(1)(E) of the Code and Treasury Regulations executed by the State Housing Finance Agency as to all buildings in the Project for which such form is required.

"State Housing Finance Agency" means the agency controlling the designation of Tax Credits and administering the Tax Credits, acting through any authorized representative.

"State of Formation" has the meaning set forth in the *Recitals*.

"Substituted Investor Member" means a Person who is admitted as Investor Member to the Company pursuant to *Section 8.1* or *Section 8.2* in place of and with all the rights of an investor member under the Operating Agreement and the Act.

"Tax Credit" or "Credit" means the low income housing tax credit under Section 42 of the Code allocated pursuant to the State Designation and Energy Credits.

"Ten Percent Test Qualification" means receipt by the Special Member of evidence satisfactory to the Special Member demonstrating that the Company has met the "ten percent test" set forth in Section 42(h)(1)(E)(ii) of the Code with respect to the Project.

"Third Installment" has the meaning set forth in Appendix VII.

"Timing Reduction" means the return of Capital Contributions of the Investor Member designed to compensate the Investor Member for the reduced present value of delayed Tax Credits.

"Timing Shortfall" means, for any Fiscal Year, the difference between the Actual Tax Credits and the Projected Tax Credits for any year in the Project's Credit Period, which is attributable to a delayed receipt of Tax Credits.

"Title Company" means Stewart Title Guaranty Company.

"UCC" has the meaning set forth in *Section 8.1(b).*

"Upward Timing Adjuster Cap" means $[131,299], unless otherwise agreed to by the Special Member.

"Voluntary Transfer" means any sale, assignment, transfer, pledge, or hypothecation of any Company Interests by a Member, except for an Involuntary Transfer.

"Withdrawing Investor Member" has the meaning set forth in the preamble.

APPENDIX II

Financial Forecasts

APPENDIX III

The following provisions shall be applicable to a purchase of the Project by the Managing Member ("Purchaser") or its designee pursuant to *Section 8.5*:

Section 1. Purchase Price. The Purchase Price shall be payable in full at the closing by wire transfer or certified or cashier's check or, with any required consents of mortgage holders, by the Purchaser assuming the liabilities secured by mortgages and other liens on the Project and paying the balance of the Purchase Price, if any, in cash, wire transfer or by certified or cashier's check at the closing.

Section 2. Property Purchased. The property ("Premises") to be transferred to Purchaser shall include the following:

(a) The land upon which the Project is situated and all buildings, structures, improvements, fixtures and appurtenances located on or related to the land and buildings (collectively, "Real Property").

(b) All tangible and intangible (other than cash balances and receivables) personal property ("Personal Property") affixed to or used in connection with the Project and which are owned by the Company and used in connection with the operation and maintenance of the Project.

(c) All tenant leases, along with all tenant security deposits then held by or for the Company (and Purchaser shall accept the assignment of the tenant leases and tenant security deposits and shall assume the leases and landlord's obligations thereunder). No adjustment on the Purchase Price shall be made in the event of any shortage in the tenant security deposit amounts.

(d) All Company reserves.

Section 3. Survey. Purchaser shall be responsible for obtaining and paying for any evidence of title (title search, title commitment, etc.) and survey desired by Purchaser.

Section 4. Taxes and Assessments; Prorations; Adjustments.

(a) Company shall also credit on the Purchase Price all unpaid real estate taxes and special assessments not yet due for the years prior to the closing and a portion of such taxes and special assessments for the year of closing prorated through the date of closing. The proration of the special assessments and undetermined real estate taxes shall be based upon a 365-day year and on the most recently available assessment information and tax rate and valuation.

(b) Company shall pay for or arrange with Purchaser for billing and service cut-offs (or credit against the Purchase Price) of water, sewer, street cleaning and any other charges accrued through the day of closing and utilities which are not payable by tenants of the Project.

(c) All rents payable by the tenants of the Project shall be prorated through the date of closing and the Purchase Price shall be adjusted accordingly. All advance rents and security deposits paid by such tenants shall be credited against the Purchase Price.

(d) Purchaser agrees to use its best efforts to collect on behalf of Company any tenant rents that were due prior to the month of closing and, if Purchaser receives any such rents, deliver the same to Company.

(e) The following adjustments shall also be made on the basis of a 365 day year or 30 day calendar month as appropriate and as of the day of closing: (i) amounts paid or due or owing under any contracts or agreements relating to the operation or maintenance of the Project. All amounts that are owed by Company for the period prior to the month of closing under any item set forth in this paragraph shall be paid by Company.

(f) Company shall be obligated to and shall deliver only those tenant security deposits and other tenant funds held by or for Company at closing that were received by Company.

(g) Replacement reserves and other reserves or cash accounts maintained by the Company shall be transferred to the Purchaser, if required by a lender or other third party controlling the account and the Purchase Price payable by Purchaser shall be correspondingly increased.

(h) The adjustments and prorations described in this *Section 4* shall increase or decrease the amount due (but not below the liabilities secured by liens on the Project) from the Purchaser at closing. The provisions of this *Section 4* shall survive the closing.

Section 5. Transfer of Real Property. Company shall convey and transfer merchantable title to the Real Property by a recordable Special Warranty Deed. Purchaser shall cause, at Company's cost, the Special Warranty Deed to contain all necessary state, county and city approvals. Purchaser shall pay transfer fees and taxes associated with the conveyance of the Real Property to Purchaser.

Section 6. Personal Property. The Personal Property shall be conveyed by a special warranty bill of sale to Purchaser at closing.

Section 7. As Is Condition. The Premises shall be conveyed at closing in an "as is" condition. No express or implied warranties are given or made with respect to the condition of the same and Purchaser shall acknowledge that it is its obligation to inspect the Premises and accept the same in its "as is" condition at closing. No express or implied warranties are or will be given or made by Company.

Section 8. Condemnation, Casualty.

(a) Condemnation. Purchaser shall not be obligated to perform under *Section 8.5* of the Operating Agreement if on the closing date any portion of the Real Property has been condemned or sold under threat of condemnation, or is the subject of a condemnation proceeding, in which event this Operating Agreement shall terminate unless Purchaser elects to close. If Purchaser so elects to close, it shall be entitled to receive any condemnation proceeds payable with respect to the Real Property or Personal Property to Company.

(b) Casualty.

(i) Purchaser shall not be obligated to perform under its purchase obligation if on or before the closing date any portion of the Real Property has been damaged by fire, storm, flood or other casualty, the damage of which is in excess of $1,000,000. In the case of such damage in an amount less than $1,000,000, or if Purchaser elects not to terminate its purchase obligation in the event of such damage in an amount in excess of $1,000,000, Purchaser shall be entitled to the proceeds of the insurance policy payable as a result of such damage and Purchaser's purchase obligation shall remain in full force and effect without any Purchase Price adjustment.

(ii) If the amount of such damage is in excess of $1,000,000, Purchaser may elect by written notice to the Investor Member, given no later than 30 days after receipt of Purchaser's notice of the casualty, not to terminate its purchase obligation.

Section 9. Closing; Possession.

(a) As used in this Appendix, references to "a closing," the "closing" or "day of closing" shall mean a closing of the purchase and sale contemplated by *Section 8.5* , as the case may be, of the Operating Agreement and this Appendix III. Purchaser shall be entitled to possession of the Premises on the day of closing, subject to rights of tenants.

(b) Unless the Purchaser's election to purchase is terminated pursuant to the provisions hereof, the closing shall occur within 30 Business Days after the determination of the Purchase Price, with all prorations and adjustments made as of the date of closing. The closing shall be at a place and time in the county and state where the Real Property is located as designated by the Managing Member.

Section 10. Company to Retain Receivables. Purchaser shall agree that Company shall retain all of the rights to any and all receivables and claims for recovery related to any transaction or matter prior to the date of closing. Purchaser shall cooperate, at no cost to Purchaser, in the collection of any such receivable or the prosecution of any such claim and, if collection thereof is received by Purchaser, the proceeds thereof will be promptly remitted to Company.

APPENDIX IV

Loan Terms Summary

A. $[_____] Loan from _____ (the "Construction Loan").

1.	Type of Loan:	Construction
2.	Amount:	$[_____]
3.	Lender:	
4.	Interest Rate:	
5.	Payments:	
6.	Minimum Amortization Period:	
7.	Maturity Date:	
8.	Priority Position:	First during construction phase
9.	Nonrecourse/Recourse:	
10.	When Funded?:	

B. $[1,300,000] Loan from Northrim Bank (the "Permanent Loan").

1.	Type of Loan:	Permanent
2.	Amount:	$[1,300,000]
3.	Lender:	Northrim Bank
4.	Interest Rate:	
5.	Payments:	
6.	Minimum Amortization Period:	
7.	Maturity Date:	
8.	Priority Position:	First during permanent phase
9.	Nonrecourse/Recourse:	Nonrecourse

10. When Funded?:

APPENDIX V

Legal Description of Project

[To be finalized]

APPENDIX VI

Insurance Requirements

The following are construction and permanent insurance requirements. This outline describes the minimum types and amounts of insurance that are satisfactory to CREA, LLC, its affiliates and/or assigns (collectively, "CREA"). ***CREA reserves the right to modify the insurance requirements as conditions warrant.***

Carrier Requirement

- All carriers must be A- or better rated according to A.M. Best Company, with a Financial Size Category rating by A.M. Best of VIII or higher.

Policy Requirements

- Reference the name of the insured property ("Property"), including address, in the "description section" of the insurance certificate.
- Policies shall provide CREA a 30-day prior written notice of cancellation, termination, or reduction of coverage except for non-payment of premium where ten (10) days notice shall be given.
- Insurance binders, certificates, and policies must name the identified CREA entity shown below as an additional insured.
- Copies of policies, binders and certificates shall be provided to CREA and Integratec Services, LLC (to crea@integratec.biz) no later than the effective date of the policy.

Field Code Changed

Additional Insured / Loss Payee or Certificate Holder, as applicable:

- For all policies, the following entities should be named:
  - Investor Member – its successors and/or assigns
  - Special Member – its successors and/or assigns

Construction Period Coverage

Prior to the commencement of any construction activities, the Managing Member shall obtain (or cause to be obtained by the general contractor or the architect, as applicable) the following coverages, which shall remain in force until receipt of the certificates of occupancy for all buildings:

Company

Builder's All Risk (Property)- if rehab, insurance must be in place to cover both construction phase and existing structures.	
Named Insured:	Company
Loss Payee:	See Page 1
Form:	Completed Value (Non-Reporting Form)
Perils:	Special form "All Risk" policy, including wind/hail, subject to the policy terms, conditions and exclusions

Builder's All Risk (Property)- if rehab, insurance must be in place to cover both construction phase and existing structures.	
	Flood and Earthquake exclusion acceptable (unless specifically required by the Special Member. Wind coverage must be provided.
Valuation:	Replacement Cost including the existing structure(s), if applicable
Deductible:	Not to exceed $25,000 per occurrence
	If located in Tier One Wind County, wind/hail deductible not to exceed 5%. All other locations, wind/hail deductible not to exceed $25,000
Endorsements/Extensions:	Permission to Occupy Endorsement Renovations Coverage Endorsement Loss of Rents (12 Months)/Delay in Start Up Soft Costs Ordinance and Law Coverage Waiver of Co-insurance or Agreed Value Endorsement Transit Must Obtain Property Insurance on a Building by Building Basis once the Certificate of Occupancy is received for that building • NOTE: Investor Member and Special Member to be associated in the adjustment of any claim

Commercial General Liability		
Named Insured:	Company	
Additional Insured:	See Page 1	
Form:	ISO, Occurrence Form (please supply Certificate of Insurance on an ACORD form 25)	
Minimum Limits:	Aggregate Limit	$2,000,000
	Products / completed operations aggregate	$1,000,000
	Personal & Advertising Injury	$1,000,000
	Each Occurrence	$1,000,000
	Fire Damage	$50,000
	Medical Expense	$5,000
	Note: aggregate limits must be written on a "per location" basis	
Deductible	No greater than $10,000	
	Primary and Non Contributory	

Umbrella Liability		
Named Insured:	Company	
Additional Insured:	See Page 1	
Minimum Limits:	1-3 stories	$3,000,000
	4-10 stories	$5,000,000
	11-20 stories	$10,000,000
	21 or more	$25,000,000
Deductible/SIR:	$10,000	

Boiler and Machinery (if property has centralized equipment, boilers or elevators)	
Named Insured:	Company
Loss Payee/Additional Interest:	See Page 1
Form:	Comprehensive Form

Limit:	Total Building Value
Valuation:	Replacement Cost
Extensions:	Loss of Rents with Mechanical Breakdown Endorsement

Additional Coverages, if applicable	
Flood:	• Required if buildings are located within a 100-year flood plain (FEMA Flood Zone "A" or "V" – or any sub-designation of Zone "A" or "V"). • Policies must be obtained through the National Flood Insurance Plan (NFIP) in the amount equal to the lesser of the full insurable value or $250,000 ($500,000 if 5 or more units) per building with a deductible not to exceed $5,000 per building. • An excess Flood or Difference in Conditions (DIC) policy should provide for the difference, if any, between the maximum limit provided by NFIP policies and the full insurable value. • Flood policies must be in full effect for both the construction and permanent phases.
Earthquake:	• If located in Seismic Zones 3 or 4, a Seismic Report must be completed to determine Scenario Expected Loss (SEL) • If the SEL is shown to have an expected seismic damage ratio of less than 20%, earthquake coverage may be waived. • If earthquake coverage is required, it must be in full effect for both construction and permanent phases in the amount not less than full insurance value, with deductible less than 10% Total Insurable Value, and Business Income/Rent Loss at minimum, of 12 month rents.
Wind:	• Must be included peril. If excluded, a separate wind/hail policy must be provided at the same limits as the property or builders risk with 12 month's rents.
Ordinance and Law:	• Must be obtained when the Property represents a non-conforming use under current building, zoning or land use laws or ordinances. The amount is to cover any losses to the undamaged portion of the building at replacement cost, the demolition cost and the increased cost of construction.
Terrorism:	• Terrorism coverage is not required unless deemed by the special member to be in a high risk area.

Worker's Compensation and Employer's Liability*		
If the Company has employee(s), provide evidence of Workers Compensation as applicable by law.		
Certificate Holder:	See Page 1	
Worker's Compensation:	Per accident	$1,000,000
Employer's Liability:	Disease - policy limit	$1,000,000
	Disease - each employee	$1,000,000

Automobile		
If Company owns vehicles:		
Liability:	Per accident Combined Single Limit (CSL)	$1,000,000

General Contractor

Commercial General Liability	
Additional Insured:	See Page 1
Form:	ISO, Occurrence Form (please supply Certificate of Insurance on an ACORD form 25)

Minimum Limits:	Aggregate Limit	$2,000,000
	Products / completed operations aggregate	$1,000,000
	Personal & Advertising Injury	$1,000,000
	Each Occurrence	$1,000,000
	Fire Damage	$50,000
	Medical Expense	$5,000
	Note: aggregate limits must be written on a "per project" basis	
Deductible	No greater than $10,000	

Umbrella Liability		
Additional Insured:	See Page 1	
Minimum Limits:	1-3 stories	$3,000,000
	4-10 stories	$5,000,000
	11-20 stories	$10,000,000
	21 or more	$25,000,000
	Note: umbrella to be written on a following form	

Worker's Compensation, Employer's Liability, and Automobile Liability		
Certificate Holder:	See Page 1	
Worker's Compensation:	Per accident	$1,000,000
Employer's Liability:	Disease - policy limit	$1,000,000
	Disease - each employee	$1,000,000
Automobile Liability:	Per accident Combined Single Limit (CSL)	$1,000,000

Architect

Professional (Errors & Omissions) Liability – including contractual liability coverage	
Certificate Holder:	See Page 1
Minimum Limit:	$1,000,000 (please supply Certificate of Insurance on an ACORD Form 25)

Property Management Company
Note: Coverage required for both construction and permanent phases

Commercial General Liability		
Named Insured:	Property Management Company	
Additional Insured:	See Page 1	
Form:	ISO, Occurrence Form (please supply Certificate of Insurance on an ACORD form 25)	
Minimum Limits:	Aggregate Limit	$2,000,000
	Products / completed operations aggregate	$1,000,000
	Personal & Advertising Injury	$1,000,000
	Each Occurrence	$1,000,000
	Fire Damage	$50,000
	Medical Expense	$5,000
	Note: aggregate limits must be written on a "per location" basis	
Deductible:	No greater than $10,000	

Umbrella Liability		
Named Insured:	Property Management Company	
Additional Insured:	See Page 1	
Minimum Limits:	1-3 stories	$3,000,000
	4-10 stories	$5,000,000
	11-20 stories	$10,000,000
	21 or more	$25,000,000

Worker's Compensation, Employer's Liability, Automobile Liability, and Fidelity Bond		
Certificate Holder:	See Page 1	
Worker's Compensation:	Per accident	$1,000,000
Employer's Liability:	Disease - policy limit	$1,000,000
	Disease - each employee	$1,000,000
Fidelity Bond/Crime	(6) months of projects gross rental receipts. Coverage must be in full effect at time of occupancy. Coverage to be held by the Managing Member or the Property Management Company	
Automobile Liability:	Per accident Combined Single Limit (CSL)	$1,000,000

Permanent Phase Coverage

Company

Property Insurance	
Named Insured:	Company
Loss Payee:	See Page 1
Form:	ISO Special Form (please supply Evidence of Property Insurance, ACORD form 27, 28 or other "Special" or "All Risk" form); Copies of Policies to follow within 90 day of

	acceptance	
Limits:	Building (Real Property:	100% of Insurable Value (Replacement Cost)
	Contents (Personal Property):	Replacement Cost Coverage
	Business Interruption:	12 months of gross rental income with extra expense. This is to include tenant's gross rents as well as any subsidies
Valuation:	Replacement Cost	
Deductible:	$25,000 per occurrence If located in Tier 1 Wind County - wind deductible not to exceed 5%. All other locations, wind/hail deductible not to exceed $25,000	
Extensions:	Vacancy/Un-occupancy up to 60 days Ordinance and Law Waiver of Coinsurance/Agreed Amount Endorsement	

Commercial General Liability		
Named Insured:	Company	
Additional Insured:	See Page 1	
Form:	ISO, Occurrence Form (please supply Certificate of Insurance on an ACORD form 25)	
Minimum Limits:	Aggregate Limit	$2,000,000
	Products / completed operations aggregate	$1,000,000
	Personal & Advertising Injury	$1,000,000
	Each Occurrence	$1,000,000
	Fire Damage	$50,000
	Medical Expense	$5,000
	Note: aggregate limits must be written on a "per location" basis	
Deductible:	No greater than $10,000	

Umbrella Liability		
Named Insured:	Company	
Additional Insured:	See Page1	
Minimum Limits:	1-3 stories	$3,000,000
	4-10 stories	$5,000,000
	11-20 stories	$10,000,000
	21 or more	$25,000,000

Boiler and Machinery (if property has centralized equipment, boilers or elevators)	
Named Insured:	Company
Loss Payee/Additional Interest:	See Page 1
Form:	Comprehensive Form
Limit:	Total Building Value

Valuation:	Repair and/or Replacement
Extensions:	Loss of Rents with Mechanical Breakdown Endorsement

Additional Coverages, if applicable	
Flood:	• Required if buildings are located within a 100-year flood plain (FEMA Flood Zone "A" or "V" – or any sub-designation of Zone "A" or "V"). • Policies must be obtained through the National Flood Insurance Plan (NFIP) in the amount equal to the lesser of the full insurable value or $250,000 ($500,000 if 5 or more units) per building with a deductible not to exceed $5,000 per building. • An excess Flood or Difference in Conditions (DIC) policy should provide for the difference, if any, between the maximum limit provided by NFIP policies and the full insurable value. • Flood policies must be in full effect for both the construction and permanent phases.
Earthquake:	• If located in Seismic Zones 3 or 4, a Seismic Report must be completed to determine Scenario Expected Loss (SEL) • If the SEL is shown to have an expected seismic damage ratio of less than 20%, earthquake coverage may be waived. • If earthquake coverage is required, it must be in full effect for both construction and permanent phases in the amount not less than full insurance value, with deductible less than 10% Total Insurable Value, and Business Income/Rent Loss at minimum, of 12 month rents.
Wind:	• Must be included peril.
Ordinance and Law:	• Must be obtained when the Property represents a non-conforming use under current building, zoning or land use laws or ordinances. The amount is to cover any losses to the undamaged portion of the building at replacement cost, the demolition cost and the increased cost of construction.
Terrorism:	• Terrorism coverage is not required unless deemed by the special member to be in a high risk area.
Automobile:	• Only required if an automobile is used as part of the property's operations (i.e. transportation van) and titled in the name of the Company/Borrower. Liability in the amount of $1,000,000 is required (per accident combined single limit).

APPENDIX VII

CAPITAL CONTRIBUTIONS

I. First Installment

$[193,022] ("First Installment") shall be paid on a draw basis, beginning on the later of the execution of this Agreement and the satisfaction of the following conditions precedent, as determined by the Investor Member.

Required Delivery/Event	Notes
1. Admission of the Investor Member and Special Member to the Company.	
2. Closing of the Construction Loan and the other loans set forth in Appendix IV and initial funding of the Construction Loan and such other loans, as applicable, to the extent such initial funding is reflected in the Financial Forecasts.	
3. Receipt of a commitment for the Permanent Loan.	
4. Receipt of building permits or will issue letter acceptable to the Special Member.	
5. Receipt by Investor Member of such other documentation as it may reasonably request to satisfy its due diligence requirements including, without limitation, those documents listed on the Investor Member's closing checklist, a copy of which has been previously delivered to the Managing Member.	

The Managing Member shall cause the Company to reimburse the Special Member for due diligence, legal work and issuance of the tax opinion in the amount of $40,000 from the proceeds of the First Installment.

II. Second Installment

$[965,112] ("Second Installment") shall be paid on a draw basis beginning on the later of [October 1, 2023] and/or 10 Business Days after the occurrence and satisfaction of the Second Installment Payment Certificate conditions precedent, as determined by the Investor Member.

The proceeds of the Second Installment shall be used for Development Costs and to pay a portion of the Developer Fee in accordance with the Development Agreement.

VALDEZ SENIOR HOUSING ASSOCIATES, LLC

SECOND INSTALLMENT PAYMENT CERTIFICATE

The Managing Member of Valdez Senior Housing Associates, LLC, an Alaska limited liability company (the "Company") hereby requests that the Investor Member fund the Second Installment in the amount of $_____, there being no reduction in the amount initially contemplated pursuant to *Section 5.10* of the Operating Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Operating Agreement.

In connection with the foregoing request to fund the Second Installment, the Managing Member hereby certifies to the Investor Member, the Special Member, and their successors and assigns, that the following conditions have been satisfied:

Required Delivery/Event		Notes
1.	All terms and conditions contained in *Section 2.2(c)* have been satisfied.	
2.	Receipt of a date down endorsement or an updated title search, evidencing the accuracy of the representation contained in *Section 5.3(u)* of the Operating Agreement.	
3.	25% Construction Completion (except for those bonds or liens permitted pursuant to *Section 5.3(p)*).	
4.	Receipt of a lien waiver from the General Contractor with respect to the work performed and/or materials supplied through the date of Construction Completion for which it has been paid to date.	
5.	Certification from the Architect that the Project has been 25% completed according to the Plans and Specifications.	
6.	Satisfaction of the conditions to the payment of the First Installment.	

Upon the Investor Member's receipt and approval of the conditions immediately above, the Investor Member shall make a Capital Contribution within ten (10) Business Days.

IN WITNESS WHEREOF, the undersigned has executed this certificate this ___ day of _____, 20__.

MANAGING MEMBER:

CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company

By: _____
Name:
Title:

III. Third Installment

$[1,544,180] ("Third Installment") shall be paid on a draw basis beginning on the later of [January 1, 2024] and/or 10 Business Days after the occurrence and satisfaction of the Third Installment Payment Certificate conditions precedent, as determined by the Investor Member.

The proceeds of the Third Installment shall be used for Development Costs.

VALDEZ SENIOR HOUSING ASSOCIATES, LLC

THIRD INSTALLMENT PAYMENT CERTIFICATE

The Managing Member of Valdez Senior Housing Associates, LLC, an Alaska limited liability company (the "Company") hereby requests that the Investor Member fund the Third Installment in the amount of $_____, there being no reduction in the amount initially contemplated pursuant to *Section 5.10* of the Operating Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Operating Agreement.

In connection with the foregoing request to fund the Third Installment, the Managing Member hereby certifies to the Investor Member, the Special Member, and their successors and assigns, that the following conditions have been satisfied:

Required Delivery/Event		Notes
1.	All terms and conditions contained in *Section 2.2(c)* have been satisfied.	
2.	Receipt of a date down endorsement or an updated title search, evidencing the accuracy of the representation contained in *Section 5.3(u)* of the Operating Agreement.	
3.	75% Construction Completion (except for those bonds or liens permitted pursuant to *Section 5.3(p)*).	
4.	Receipt of a lien waiver from the General Contractor with respect to the work performed and/or materials supplied through the date of Construction Completion for which it has been paid to date.	
5.	Certification from the Architect that the Project has been 75% completed according to the Plans and Specifications.	
6.	Satisfaction of the conditions to the payment of the Second Installment.	

Upon the Investor Member's receipt and approval of the conditions immediately above, the Investor Member shall make a Capital Contribution within ten (10) Business Days.

IN WITNESS WHEREOF, the undersigned has executed this certificate this ___ day of _____, 20__.

MANAGING MEMBER:

CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company

By: _____
Name:
Title:

IV. Fourth Installment

$[579,067] ("Fourth Installment") shall be paid on the later [April 1, 2024] and or 10 Business Days after the occurrence and satisfaction of the Fourth Installment Payment Certificate conditions precedent, as determined by the Investor Member.

The proceeds of the Fourth Installment shall be used to pay Development Costs and to pay a portion of the Developer Fee in accordance with the Development Agreement.

VALDEZ SENIOR HOUSING ASSOCIATES, LLC

FOURTH INSTALLMENT PAYMENT CERTIFICATE

The Managing Member of Valdez Senior Housing Associates, LLC, an Alaska limited liability company (the "Company") hereby requests that the Investor Member fund the Fourth Installment in the amount of $_____, there being no reduction in the amount initially contemplated pursuant to *Section 5.10* of the Operating Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Operating Agreement.

In connection with the foregoing request to fund the Fourth Installment, the Managing Member hereby certifies to the Investor Member, the Special Member, and their successors and assigns, that the following conditions have been satisfied:

#	Required Delivery/Event	Notes
1.	All terms and conditions contained in *Section 2.2(c)* have been satisfied.	
2.	Receipt of a date down endorsement or updated title search, evidencing the accuracy of the representation contained in *Section 5.3(u)* of the Operating Agreement.	
3.	Construction Completion (except for those bonds or liens permitted pursuant to *Section 5.3(p)*).	
4.	Receipt of a lien waiver from the General Contractor with respect to the work performed and/or materials supplied through the date of Construction Completion for which it has been paid to date.	
5.	Certification from the Architect that the Project is completed according to the Plans and Specifications.	
6.	Receipt of a copy of the permanent certificates of occupancy for the Project.	
7.	Site visit by the Inspecting SLP Representative and receipt and approval of all documents listed in *Section 5.4(a)*.	
8.	Radon Zone "3": No action required unless required by an involved agency (such as HUD) or due to a very small number of indoor radon samples in the area of the Project.	All required actions (if any) with respect to radon will be performed by a

		licensed third party consultant.
9.	Receipt by the Special Member of satisfactory evidence of achievement by the Company of Ten Percent Test Qualification, including the supporting documentation and accountant's report/certificate. If available prior to this installment, it shall be submitted per Appendix VIII Reporting Requirements.	
10.	Receipt by the Special Member of the Accountant's draft Cost Certification.	
11.	Receipt by the Special Member of evidence that the provider of the Cost Segregation Study has been engaged, work thereon has commenced and the final Cost Segregation Study will be delivered by January 31st in the year following when the Project is Placed in Service.	
12.	Satisfaction of the conditions to the payment of the First Installment.	

Upon the Investor Member's receipt and approval of the conditions immediately above, the Investor Member shall make a Capital Contribution within ten (10) Business Days.

IN WITNESS WHEREOF, the undersigned has executed this certificate this ___ day of _____, 20__.

MANAGING MEMBER:

CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company

By: _____
Name:
Title:

V. Fifth Installment

$[4,131,187] ("Fifth Installment") shall be paid on a draw basis beginning on the later of [October 1, 2024]] and/or 10 Business Days after the occurrence and satisfaction of the Fifth Installment Payment Certificate conditions precedent, as determined by the Investor Member.

The proceeds of the Fifth Installment shall be used for Development Costs.

VALDEZ SENIOR HOUSING ASSOCIATES, LLC

FIFTH INSTALLMENT PAYMENT CERTIFICATE

The Managing Member of Valdez Senior Housing Associates, LLC, an Alaska limited liability company (the "Company") hereby requests that the Investor Member fund the Fifth Installment in the amount of $_____, there being no reduction in the amount initially contemplated pursuant to *Section 5.10* of the Operating Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Operating Agreement.

In connection with the foregoing request to fund the Fifth Installment, the Managing Member hereby certifies to the Investor Member, the Special Member, and their successors and assigns, that the following conditions have been satisfied:

Required Delivery/Event		Notes
1.	All terms and conditions contained in *Section 2.2(c)* have been satisfied.	
2.	Receipt of a date down endorsement or an updated title search, evidencing the accuracy of the representation contained in *Section 5.3(u)* of the Operating Agreement.	
3.	Achievement of Qualified Occupancy.	
4.	Satisfaction of the conditions to the payment of the Fourth Installment.	

Upon the Investor Member's receipt and approval of the conditions immediately above, the Investor Member shall make a Capital Contribution within ten (10) Business Days.

IN WITNESS WHEREOF, the undersigned has executed this certificate this ___ day of _____, 20__.

MANAGING MEMBER:

CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company

By: _____
Name:
Title:

VI. Sixth Installment

$[84,965] ("Sixth Installment") shall be paid on the later [October 1, 2024]] and/or 10 Business Days after the occurrence and satisfaction of the Sixth Installment Payment Certificate conditions precedent, as determined by the Investor Member.

In accordance with the terms contained herein, Cost Savings shall be distributed concurrently with the funding of the Sixth Installment. The proceeds of the Sixth Installment shall be used to repay the balance of the Construction Loan and then, to pay a portion of Developer Fee in accordance with the Development Agreement.

VALDEZ SENIOR HOUSING ASSOCIATES, LLC

SIXTH INSTALLMENT PAYMENT CERTIFICATE

The Managing Member of Valdez Senior Housing Associates, LLC, an Alaska limited liability company (the "Company") hereby requests that the Investor Member fund the Sixth Installment in the amount of $_____, there being no reduction in the amount initially contemplated pursuant to *Section 5.10* of the Operating Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Operating Agreement.

In connection with the foregoing request to fund the Sixth Installment, the Managing Member hereby certifies to the Investor Member, the Special Member, and their successors and assigns, that the following conditions have been satisfied:

#	Required Delivery/Event	Notes
1.	All terms and conditions contained in *Section 2.2(c)* have been satisfied.	
2.	Receipt of final title policy with a current date down endorsement, evidencing the accuracy of the representation contained in *Section 5.3(u)* of the Operating Agreement.	
3.	Repayment in full of the Construction Loan and closing and funding of the Permanent Loan occurred, or shall occur, on _____.	
4.	Achievement of Stabilized Operations.	
5.	Special Member's receipt and approval of a third party review of all the first year's tenant files for compliance with the Code and State Housing Finance Agency requirements.	
6.	Receipt of an ALTA compliant as-built survey of the Project.	
7.	Receipt by the Special Member of the Accountants' final Cost Certification.	
8.	Satisfaction of the conditions to the payment of the Fifth Installment.	

Upon the Investor Member's receipt and approval of the conditions immediately above, the Investor Member shall make a Capital Contribution within ten (10) Business Days.

IN WITNESS WHEREOF, the undersigned has executed this certificate this ___ day of _____, 20__.

MANAGING MEMBER:

CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company

By: _____
Name:
Title:

VI. Seventh Installment

$[223,365] ("Seventh Installment") shall be paid on the later of [January 1, 2025] and or 10 Business Days after the occurrence and satisfaction of the Seventh Installment Payment Certificate conditions precedent, as determined by the Investor Member.

The proceeds of the Seventh Installment shall be used to fund the Operating Reserve and then, to pay the Developer Fee in accordance with the Development Agreement.

VALDEZ SENIOR HOUSING ASSOCIATES, LLC

SEVENTH INSTALLMENT PAYMENT CERTIFICATE

The Managing Member of Valdez Senior Housing Associates, LLC, an Alaska limited liability company (the "Company") hereby requests that the Investor Member fund the Seventh Installment in the amount of $_____, there being no reduction in the amount initially contemplated pursuant to *Section 5.10* of the Operating Agreement. Capitalized terms not defined herein shall have the meanings set forth in the Operating Agreement.

In connection with the foregoing request to fund the Seventh Installment, the Managing Member hereby certifies to the Investor Member, the Special Member, and their successors and assigns, that the following conditions have been satisfied:

#	Required Delivery/Event	Notes
1.	All terms and conditions contained in *Section 2.2(c)* have been satisfied.	
2.	Receipt of a date down endorsement or updated title search, evidencing the accuracy of the representation contained in *Section 5.3(u)* of the Operating Agreement.	
3.	Receipt of IRS Forms 8609 in form reasonably satisfactory to the Special Member (which shall include the fully executed Part I & Part II) for all buildings in the Project.	
4.	Receipt by the Special Member of a properly recorded Restrictive Covenant.	
5.	Receipt by the Special Member of the executed Deferred Developer Fee Note if any Development Amount will be deferred pursuant to the Development Agreement.	
6.	Satisfaction of the conditions to the payment of the Seventh Installment.	

Upon the Investor Member's receipt and approval of the conditions immediately above, the Investor Member shall make a Capital Contribution within ten (10) Business Days.

IN WITNESS WHEREOF, the undersigned has executed this certificate this ___ day of _____, 20__.

MANAGING MEMBER:

CM VALDEZ SR HOUSING, LLC, a Colorado limited liability company

By: _____
Name:
Title:

APPENDIX VIII

REPORTING REQUIREMENTS

Report Name	Description	Deadline
Draw Request	Until the Project has attained Construction Completion, a construction draw request report including: (i) percentage of construction complete; and (ii) cumulative and proposed change orders.	Due monthly
Monthly Leasing Reports	a. Until the date the Project has attained Qualified Occupancy, on a a lease-up status report on a building by building basis, including: (i) a certified rent roll showing current occupancy and the date that each unit was qualified, in the form specified or approved by the Special Member; and (ii) the number of applications under review and/or approved but not moved in. b. If the Average Income Test election is made, the Monthly Leasing Reports shall also include (i) a listing that includes each specific unit's set-aside designation whether occupied or vacant and (ii) a monthly test demonstrating the Average Income Test is met which would consider (a) first year credit delivery for each building and (b) whether the project will elect to be part of a multi-building project on line 8b of the IRS Form(s) 8609. c. If, after achieving Qualified Occupancy, a Project fails to maintain occupancy levels above 90% for the previous quarter, the Managing Member must provide a monthly occupancy report, including: (i) a certified rent roll showing current occupancy and the date that each unit was qualified, in the form specified or approved by the Special Member; and (ii) the number of applications under review and/or approved but not moved in. d. In addition to the qualified occupancy report, upon request of the Special Member the Managing Member shall provide a statement of income and expenses, an operating statement, an accounts receivable and accounts payable aging report, and a check register or a detailed general ledger.	Due by the 10th of each calendar month
First Year Tenant Files	Upon initial lease-up of the Project, each unit's first year tenant file shall be provided electronically to the Special	-The greater of the first **10%** or **5 files**

	Member showing compliance with all regulations and procedures relating to the operation of the Project as a qualified Tax Credit Project, per the state allocation agency and within the meaning of §42(h) of the Code. Files will be sent by the Special Member to a third-party reviewer, unless the Special Member has approved file review by a third-party hired by the Company. The Company shall budget and pay no more than $30 per unit in order to hire an inspector.	are due as they become qualified -At **50%** qualified occupancy all available files are due -At Qualified Occupancy, the balance of the files are due within 30 days of the date of Qualified Occupancy
Quarterly Status Report and Financials	Commencing with the start of lease-up, a report showing financial and operational performance, and including: 1. Signed quarterly status report – all questions answered 2. Copies of Real Estate Tax Bill and evidence of payment 3. A Rent Roll for each month in the quarter 4. If the Average Income Test election is made, a listing of all unit set-aside designations and evidence that the Average Income Test is currently met 5. Income Statement (Excel format is preferred) 6. Balance Sheet (Excel format is preferred) 7. Operating and Replacement Reserve Bank Statements for all 3 months of the quarter 8. Detailed explanation of any variances from the budget submitted to CREA 9. Any other pertinent information regarding the Company and its activities as may be requested by the Special Member, including any correspondence between the Company and the IRS or State Agency, such as the Stat Designation and IRS Form(s) 8609.	Due within 30 days of the end of quarter Quarter 1: April 30 Quarter 2: July 31 Quarter 3: October 31 Quarter 4: January 31
Monthly Financial Statements *	A copy of the prior month's financial operations of the property, including DSCR calculation before reserves. ***Required only if Project did not maintain above 1.0 DSCR with replacement reserves for the previous quarter***	Due by the 15th of each month
Audited Financials and Tax Returns	At the Company's expense: 1. Copies of tax returns and reports 2. Financial statements on a year over year comparable basis for the Company (consisting of a balance sheet as	Financial

(with K-1's) of Company	of the end of such calendar year, statements of income, and each Member's equity and changes in financial position) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion of the Accountant 3. Cash flow statement 4. Statement and reconciliation of each Member's Capital Account 5. Statement of the tax basis for the computation of the Tax Credits and depreciation deductions 6. Depreciation schedules for current and all future years, and a depreciation worksheet, which shall serve to establish material allocations of assets for cost recovery purposes. Financial statements shall identify: (i) computation of Cash Flow verified by the Accountant; (ii) distributions from Cash Flow from operations during the calendar year; (iii) distributions from Cash Flow generated during a prior period which had been held as reserves; (iv) Net Cash from Sales and Refinancings; (v) costs reimbursed to the Managing Member or affiliates; (vi) reserves; (vii) borrowed monies, loans and additional Capital Contributions; (viii) Affiliate transactions; (ix) transactions outside of the ordinary course of business with a description thereof; (x) a copy of the HUD REAC Score, if applicable, (xi) acceptable annual Tax Credit training compliance certifications regarding the Management Agent; and (xii) any other information reasonably requested by the Special Member.	Statements and Tax Returns: Drafts – within 30 days after year end Final versions– within 75 days after year end Engagement Letter with CPA at least 60 days prior to year end
Audited or Certified Financials and Tax Returns of Managing Member and Guarantor(s)	Current audited financial statements of the Managing Member and each Guarantor entity, or certitifed personal financial statements if the Guarantor is an individual, and, upon written request of the Special Member, updates to the same on a quarterly basis.	Within 120 days after year end
Operating Budget	Projected annual operating and capital improvements budget (in excel format), including: a. Account numbers for the following year; b. Separate breakout of projected rents used for rental income in the budget; c. Proposed repairs and capital improvements for the upcoming year; d. Proposed use of Replacement Reserves; and	Due at least 30 days prior to year end

	e. Any other information reasonably requested by the Special Member.	
Annual Owner Certification, and Periodic Reports required by Project Lenders or Governmental Agencies	a. Certification by the Managing Member to the Investor Member, in the same scope and manner that it is required to certify to the applicable State Housing Finance Agency, that the Company is in compliance with all regulations and procedures relating to the operation of the Project as a qualified Tax Credit project within the meaning of Section 42(h) of the Code. b. A copy of any periodic financial or performance report (and supporting documents) provided by the Company to any federal, state, or local governmental agency or to any Company lender, or any compliance monitoring report provided to the State Housing Finance Agency, such as the State Designation and IRS Form(s) 8609.	At the same time such certification or report is filed with the Governmental Agency or delivered to the Project Lender
Permanent Insurance Policies	See Appendix VI Insurance Requirements	

APPENDIX IX

POST-CLOSING ITEMS

Description of Item	Required Date of Delivery

APPENDIX X

ENVIRONMENTAL REVIEW LETTER
(attached behind)

APPENDIX XI

DESIGNATED INDIVIDUAL ACKNOWLEDGEMENT

The undersigned Designated Individual for the Project acknowledges and agrees to be bound by the terms of *Section 5.4(e)* of the Amended and Restated Operating Agreement of _____, dated as of _____ (the "Operating Agreement").

Capitalized terms used but not defined shall have the meanings set forth in the Operating Agreement.

"DESIGNATED INDIVIDUAL"

_____
[Name]

Effective as of:_____