**OPERATING AGREEMENT**

SAMPLE JOINT VENTURE AGREEMENT

**OF**

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_],**

a [STATE] Limited Liability Company

THIS OPERATING VENTURE AGREEMENT OF [\_\_\_\_\_\_\_\_\_\_\_] (this “**Agreement**”) is made effective as of [\_\_\_\_\_], [YEAR] and executed on the [\_\_]day of [MONTH], [YEAR], by and between [DEVELOPER PARTNER, INC.], a [State] corporation (“**Developer**”) and [House of Worship], a [State] limited liability company (“**HOW**”), who are the initial and founding Members of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [State] limited liability company (hereinafter referred to as the “**LLC**”). Developer and HOW hereinafter collectively shall be referred to as the “**Members**” or “**parties**” and individually as a “**Member**” or a “**party**”. The terms “**Member**” and “**Members**” shall include in their meaning the definition of a “member” set forth in Section 4A-101(m) of the Act (as hereinafter defined).

**W I T N E S S E T H**

**WHEREAS**, the Members caused a limited liability company to be formed under and pursuant to the laws of the State of [State] for the purposes set forth below and for such other purposes and businesses as may be incident to the purposes set forth below or mutually agreed upon by the Members from time to time.

**NOW, THEREFORE**, the Members hereby agree and covenant as follows:

1. **Formation: Name**. The Members have consented to and have caused a limited liability company to be organized under the name of “[\_\_\_\_\_]” and under and pursuant to the laws of the State of [State] pursuant to the Articles of Organization filed with the Secretary of State for [State] on [\_\_\_\_\_\_\_\_\_] for the purposes set forth below.
2. **Purposes of the LLC**.
   1. The purposes for which the LLC was formed are: (a) to, directly or indirectly, acquire, own, develop, hold, lease, improve, operate, rent, manage, mortgage, pledge, transfer, sell and otherwise deal with certain parcels of real estate (including the ownership of interests in, and the administration and management of, entities and ventures that acquire, own, develop, hold, lease, improve, operate, rent, manage, mortgage, pledge, transfer, sell and otherwise deal with real estate) for the production of income and profit; (b) to have and exercise all powers now or hereafter conferred by the laws of the State of [State] on limited liability companies formed pursuant to the Act; and (c) to do any and all things necessary, convenient or incidental to the achievement of the foregoing. The LLC shall not engage in any other business unless expressly approved by Manager in writing.
   2. The LLC shall have all the powers of an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, those powers enumerated in the Act.
3. **LLC Requirements**.

Notwithstanding anything in this Operating Agreement or in the Articles to the contrary, during the term of this Operating Agreement:

* 1. (i) The LLC shall not engage in any business other than the LLC purpose.
  2. Except as expressly provided herein, the LLC shall not enter into any contract or agreement with any Affiliate of the LLC, any constituent party of the LLC, or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm’s length basis with third parties other than any such party.
  3. The LLC shall pay its debts and liabilities from its own assets as the same shall become due. No Member or Affiliate shall pay any debts or liabilities on behalf of the LLC, except as expressly provided in this Agreement.
  4. The LLC shall maintain in the principal business office of the LLC as described in Section 5(a), accurate books, financial records and bank accounts using the accrual method of accounting that are separate and distinct from the books, financial records and bank accounts of any other Person including any Affiliate.
  5. The LLC shall maintain separate annual financial statements prepared in accordance with generally accepted accounting principles, consistently applied, showing its assets and liabilities separate and distinct from those of any other entity.
  6. The LLC shall file its own tax returns and pay its own taxes required to be paid under applicable law, for which copies shall be provided without cost to the Members.
  7. The LLC shall (i) hold itself out as an entity separate and distinct from any other Person; (ii) not identify itself or any of its Affiliates as a division or part of the other; (iii) correct any known misunderstanding regarding its separate status; and (iv) use separate stationery, invoices, checks, and the like bearing its own name.
  8. The LLC shall conduct its business in its own name so as to avoid or correct any misunderstanding on the part of any creditor concerning the fact that any invoices and other statements of account from creditors of the LLC are to be addressed and mailed directly to the LLC, though this provision shall not prohibit such mail to be delivered to the LLC c/o any other entity.
  9. The LLC intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.
  10. The LLC shall not commingle any of its assets, funds or liabilities with the assets, funds or liabilities of any other Person.
  11. The LLC shall maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets, expenses and liabilities from those of any party.
  12. Other than in connection with the financing provided to the LLC, including loans anticipated to be provided by state, county, and/or local governments or by other funders (including any conventional loan lender), the LLC shall not, (i) assume or guaranty the debts of any other Person in a manner that includes a pledge, encumbrance, transfer or hypothecation (whether by operation of law or otherwise) of any assets or interests of the LLC or, (ii) hold itself out to be responsible for the debts of another Person in a manner that includes the pledge, encumbrance, transfer or hypothecation of any assets or interests of the LLC (whether by operation of law or otherwise), or (iii) otherwise pledge, encumber, transfer or hypothecate the assets of the LLC for the benefit of another Person or permit the same to occur, or (iv) hold the LLC’s credit as being available to satisfy the obligations of any other Person.
  13. All transactions carried out by the LLC will be, in all instances, made in good faith and without intent to hinder, delay or defraud creditors of the LLC.

1. **Definitions**.

**“Act”** means the Limited Liability Company Act of the State of [State] codified as Section 4A in the Annotated Code of the [State], as may be amended from time to time.

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

(i) the deficit shall be decreased by the amounts which the Member is obligated to restore, or is deemed obligated to restore, pursuant to Regulation Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) the deficit shall be increased by 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 Regulation Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

**“Affiliate”** of another Person means (i) any other Person that directly or indirectly controls or holds the power to vote 25% or more of the outstanding voting securities of the Person in question; (ii) any Person 25% or more of whose voting securities or other ownership interests are directly or indirectly owned, controlled or held with power to vote, by such other Person; (iii) any Person directly or indirectly controlling, controlled by, or under common control with such other Person; (iv) any officer, director, partner, member, shareholder or manager of such other Person; and (v) if such other Person is an officer, director, partner, member, shareholder or manager of any Person, any company for which such Person acts in any such capacity.

“**Appraisal**” shall have the meaning ascribed to it in Section 17(a) of this Agreement.

“**Appraised Value**” shall have the meaning ascribed to it in Section 17(a) of this Agreement.

“**Attorney-in-Fact**”shall have the meaning ascribed to it in Section 33 of this Agreement.

**“Bankrupt”** or **“Bankruptcy”** means, with respect to any Person, including, the LLC or any of the Members, that such Person has made an assignment for the benefit of creditors; filed a voluntary petition in bankruptcy; been adjudged a bankrupt or insolvent or had entered against such Person an order of relief in any bankruptcy or insolvency proceeding; filed a petition or an answer seeking for such Person any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; filed an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it or him in any proceeding of such nature; sought, consented to, or acquiesced in the appointment of a trustee, receiver, or liquidator of such Person or of all or any substantial part of its or his properties; one hundred twenty (120) days have elapsed after the commencement of any proceeding against such Person seeking reorganization, arrangement, or similar relief under any statute, law or regulation and such proceeding has not been dismissed; or ninety (90) days have elapsed since the appointment without its or his consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its or his properties and such appointment has not been vacated or stayed or the appointment is not vacated within ninety (90) days after the expiration of such stay.

“**Budget**” shall have the meaning ascribed to it in Section 22(c) of this Agreement.

“**Buy/Sell Closing**” shall have the meaning ascribed to it in Section 17(b) of this Agreement.

“**Buy/Sell Notice**” shall have the meaning ascribed to it in Section 17 of this Agreement.

“**Buy/Sell Offeree**” shall have the meaning ascribed to it in Section 17 of this Agreement.

“**Buying Member**” shall have the meaning ascribed to it in Section 17(b) of this Agreement.

**“Capital Account”** means the account maintained for each Member in accordance with the following provisions:

* + 1. Unless expressly provided otherwise herein, there shall be credited to each Member’s Capital Account all Capital Contributions made by such Member (at initial Value (as defined herein in the case of property other than cash), as such Value is determined as of the date the contribution is made to the LLC), such Member’s distributive share of Net Income, Net Gains from Capital Transactions, and any items in the nature of income or gain that are specially allocated to such Member pursuant to Section 12, and the amount of any LLC liabilities assumed by such Member or that are secured by any LLC property distributed to such Member.
    2. There shall be debited to each Member’s Capital Account the amount of cash and the Value of any LLC property distributed to such Member pursuant to any provision of this Agreement (as such Value is determined as of the date the distribution is made to the Member), such Member’s distributive share of Net Losses, Net Losses from Capital Transactions, the amount of any liabilities of such Member that are assumed by the LLC, and any items in the nature of losses or deductions that are specially allocated to such Member pursuant to Section 12.
    3. If any Membership Interest is transferred in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest.
    4. In determining the amount of any liability for purposes of this Agreement, there shall be taken into account Section 752 of the IRC and any other applicable provisions of the IRC and the Regulations.
    5. This subsection of this Agreement and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the requirements of Section 1.704(b) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. If Manager determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits to them (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the LLC or the Members), are computed to comply with such Regulations, Manager may make such modifications. Manager shall also make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations.

**“Capital Contributions”** means all cash and the Value of property contributed to the capital of the LLC by a Member or its or his predecessor in interest.

**“Capital Transaction”** means any sale, exchange, condemnation, loss or other disposition of any capital asset of the LLC (or of any capital asset held, directly or indirectly, by any entity in which the LLC holds an ownership interest) other all or any portion of the Property.

**“Cash from Capital Transactions”** means the amount or portion of the cash received by or remaining to the LLC from the proceeds of any Capital Transaction after the payment or provision for the payment of all costs and expenses incurred by the LLC in connection with such Capital Transaction, and after the payments made or required to be made on any indebtedness of the LLC (or of such other entity in which the LLC holds an ownership interest) or encumbrance against the assets of the LLC (or against the assets of such other entity in which the LLC holds an ownership interest) in connection with such Capital Transaction.

**“Cash from Financings”** means the amount or portion of the cash received by or remaining to the LLC from the proceeds of any loan made to or obtained by the LLC (or made to or obtained by, directly or indirectly, any entity in which the LLC holds an ownership interest) after the payment or provision for the payment of all costs and expenses incurred by the LLC (or by such other entity in which the LLC holds an ownership interest) in connection with such loan, and after the payments made or required to be made on any prior indebtedness of the LLC (or of such other entity in which the LLC holds an ownership interest) or encumbrance against the assets of the LLC (or against the assets of such other entity in which the LLC holds an ownership interest) in connection with such mortgaging or partial sale.

**“Consent”** means unanimous consent by and between the owner of any and all Membership Interest in the LLC.

“**Construction Financing**” shall have the meaning set forth in Section 16(d) of this Agreement.

**“Development Fee”** shall have the meaning set forth in Section 16(f) of this Agreement.

“**Designator**”shall have the meaning set forth in Section 17 of this Agreement.

“**Election Period**” shall have the meaning set for in Section 17(a) of this Agreement.

“**Guarantor**” shall have the meaning set forth in Section 16(g) of this Agreement.

**“Improvements”** means, collectively, those certain twenty-five (25) townhomes, which shall be constructed on the Property.

**“IRC”** means the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of succeeding law).

“**Manager**” means [Developer Partner, Inc.] a [State] corporation.

**“Majority in Interest”** means at any time the Members who hold more than fifty percent (50%) of the Members’ Percentages entitled to vote on the matter at issue.

**“Member Nonrecourse Debt”** means any LLC liability to the extent the liability is nonrecourse for purposes of Section 1.1001-2 of the Regulations, and a Member (or related Person (within the meaning of Regulations Section 1.752-4(b))) bears (or is deemed to bear) the economic risk of loss under Section 1.752-2 of the Regulations.

**“Members’ Percentages”** means the respective Membership Interests of the Members expressed in the form of a percentage interest as set forth in Exhibit A hereto.

**“Membership Interest”** means the ownership interestof a Member in the LLC.

“**Member Loan**” has the meaning ascribed to it in Section 11 of this Agreement.

**“Minimum Gain”** means the amount determined by computing with respect to each nonrecourse liability of the LLC, the amount of gain, if any, that would be realized by the LLC if it disposed of the asset securing such liability in full satisfaction thereof, and by then aggregating the amounts so computed. For purposes of determining the amount of such gain with respect to a liability, the adjusted basis for federal income tax purposes of the asset securing the liability shall be allocated among all the liabilities that the asset secures in the manner set forth in Section 1.704-2(d)(2) of the Regulations (or successor provisions).

**“Net Cash Flow”** means Net Income or Net Losses as shown on the books of the LLC, adjusted by the addition of all items set forth in (i) below and further adjusted by the deduction of all items set forth in (ii) below:

* + 1. Additions to Net Income or Net Losses:
       1. the amount of depreciation and/or amortization deductions taken in computing such Net Income or Net Losses;
       2. all other receipts of the LLC not included in Net Income or Net Losses, exclusive of Capital Contributions, the proceeds of loans, and similar capital receipts not provided for elsewhere; and
       3. any other funds deemed available for distribution, and designated as Net Cash Flow by Manager, including any amounts previously set aside as reserves by Manager which he no longer regards as necessary to maintain.
    2. Deductions from Net Income or Net Losses (except to the extent funded by Capital Contributions, the proceeds of loans, and similar capital receipts):
       1. all amortization payments for the current fiscal year on the obligations of the LLC to the extent not deducted in determining such Net Income or Net Losses;
       2. expenditures for the acquisition of the property of the LLC and similar capital outlay items not deducted in determining such Net Income or Net Losses; and
       3. amounts added to the LLC reserves determined by Manager to be necessary.

Net Cash Flow shall be determined separately for each fiscal year and shall not be cumulative.

**“Net Gains from Capital Transactions”** and **“Net Losses from Capital Transactions”** means the Net Income or Net Losses, as the case may be, consisting of gains (including, without limitation, any interest on principal in the event of an installment sale) or losses, as the case may be, realized by the LLC as a result of or upon any Capital Transaction or the damage or destruction of any capital asset of the LLC or of any entity in which the LLC, directly or indirectly, holds an ownership interest.

**“Net Income”** and **“Net Losses”** means, for each fiscal year or other period of the LLC, an amount equal to the LLC’s taxable income or loss for such year or period, determined in accordance with Section 703(a) of the IRC (for this purpose, all items of income, gain, loss or any deduction required to be stated separately pursuant to Section 703(a)(1) of the IRC shall be included in taxable income or loss), with the following adjustments:

* + 1. Any income of the LLC that is exempt from federal income tax and not otherwise taken into account in computing Net Income and Net Losses shall be added to such taxable income or loss;
    2. If the Value of any LLC asset is adjusted pursuant to this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Losses;
    3. Gain or loss resulting from any disposition of LLC assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Value of such LLC assets, notwithstanding that the adjusted tax basis of such property differs from its Value;
    4. In lieu of the depreciation, amortization, and other cost recovery deductions, if any, taken into account in computing such taxable income or loss, there shall be taken into account such deductions multiplied by the ratio of (A) the Value of each LLC asset at the beginning of the year or other period over (B) the adjusted tax basis of such asset at the beginning of the year or other period;
    5. Any expenditures of the LLC described in IRC Section 705(a)(2)(B) or treated as IRC Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(*i*) of the Regulations and not otherwise taken into account in computing Net Income or Net Losses pursuant to this paragraph shall be subtracted from such taxable income or loss; and
    6. Notwithstanding any other provision herein, any items that are specially allocated pursuant to Section 11(a)(3) hereof shall not be taken into account in computing Net Income or Net Losses.

“**New Market Tax Credits**” shall have the meaning ascribed under Section 45D of the IRC.

**“Nonrecourse Liability”** means any LLC liability to the extent that no Member or related Person (within the meaning of Regulations Section 1.752-4(b)) bears (or is deemed to bear) the economic risk of loss within the meaning of Regulations Section l.752-2.

**“Permitted Transferee”** shall have the meaning given such term in Section 13(h) of this Agreement.

**“Person”** means any individual, corporation, trust, partnership, joint venture, limited liability company, joint stock company or other entity.

“**Property**” means those certain properties owned or controlled by the LLC, as further described in **Exhibit B**.

“**Phased Development**” has the meaning set forth in Section 16(e) of this Agreement.

“**Purchase Price**” has the meaning set forth in Section 17(a) of this Agreement.

**“Regulations”** means such regulations as the Treasury Department validly promulgates under the IRC. **“Termination Event”** means any event or occurrence, including those set forth in Section 7(a) hereof, which causes the existence of the LLC to end.

“**Regulatory Allocations**” has the meaning set forth in Section 12(a)(iii)(F) of this Agreement.

“**Rule 506**” has the meaning set for in Section 18(a)(xiv) of this Agreement.

“**Securities Act**” has the meaning set forth in Section 14(a) of this Agreement.

“**Selling Member**” has the meaning set forth in Section 17(b) of this Agreement of this Agreement.

“**Tax Representative**” has the meaning set forth in Section 32 of this Agreement.

**“Townhouse Unit”** means each and every townhouse lot that has received any and all necessary entitlements in order to permit the commencement of construction of such Townhouse Units as a residential townhome or duplex unit.

**“Townhouse Units”** means, collectively, all the Townhouse Units located at the Property.

**“Transferred”** shall have the meaning given such term in Section 14.

**“Transferring Member”** shall have the meaning given such term in Section 14(h).

**“Value”** means, with respect to any asset, the asset’s adjusted tax basis for federal income tax purposes, except as otherwise provided below:

* + 1. The Value of any asset contributed by a Member to the LLC or distributed by the LLC to a Member shall be the asset’s gross fair market value on the date of the contribution or distribution, as the case may be, as agreed by the Members.
    2. The Value of all LLC assets shall be adjusted to equal their respective gross fair market values as of the following dates: (A) the acquisition of an additional interest in the LLC by any new or existing Member in exchange for more than a *de minimis* capital contribution to the LLC; (B) the distribution by the LLC to a Member of more than a *de minimis* amount of LLC assets as consideration for an interest in the LLC if Manager determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the LLC; and (C) the liquidation of the LLC within the meaning of Section 1.704-1(b)(2)(ii) of the Regulations;
    3. The Value of all LLC assets shall be increased or decreased to reflect any adjustments to the adjusted tax basis of such assets pursuant to Sections 734(b) or 743(b) of the IRC but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(*m*) of the Regulations and Section 12 hereof. However, Values shall not be adjusted pursuant to this Agreement to the extent Manager determines that an adjustment pursuant to this Agreement is not necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this Agreement;
    4. A Majority in Interest of the Members shall determine the gross fair market value of LLC assets when necessary under this Agreement (except as provided in Section 8(c) hereof), and the determination as provided herein of the value of the assets of the LLC shall be conclusive and binding on the LLC and all of the Members;and.
    5. If the Value of an asset has been determined or adjusted pursuant to this Agreement, such Value shall thereafter be adjusted by the depreciation, if any, taken into account with respect to such assets for purposes of computing Net Income and Net Losses.

1. **Offices of the LLC; Registered Agent**.
   1. The LLC shall maintain its principal offices at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], or at such other places as Manager may designate from time to time.
   2. The initial registered agent of the LLC shall be [\_\_\_\_\_\_\_\_] and the address of the initial registered agent is at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_].
2. **Members**. The Members of the LLC are Developer and HOW. Any additional Members shall include only those Persons who are subsequently admitted as additional or substitute Members pursuant to Section 7 of this Agreement.
3. **Admission of Additional Members**.
   1. The LLC may from time to time admit to the LLC an additional Member or Members. Such admission shall require the consent of Manager.
   2. An additional Member shall contribute cash or property to the LLC in such sums or amounts as Manager shall determine.
   3. Upon admission of an additional Member, this Agreement shall be amended to add the additional Member as a party. Upon execution of said amendment and receipt by the LLC of the capital contribution (if any) and if certificates have been issued to evidence the Membership Interests of the then current Members, the additional Member shall be issued a Certificate of Membership Interests, or, at the election of the then current Members, a certificate of another class of Membership Interests. The exact terms, conditions, rights, privileges, preferences and obligations of such Membership Interests shall be determined by a Majority in Interest of the then current Members.
4. **Term of LLC**.
   1. Subject to Section 8(c) below, the existence of the LLC shall terminate upon the occurrence of the earlier of:
      1. Unanimous written Consent of Manager;
      2. The Bankruptcy of any Member, unless the business of the LLC is continued by the unanimous consent of the remaining Members pursuant to the terms and conditions of this Agreement;
      3. The entry of a decree of judicial dissolution under Section 4A-903 of the Act; or
      4. As otherwise provided in this Agreement or the Act.
   2. Notwithstanding anything to the contrary in the Act, the LLC shall not terminate or be dissolved upon the occurrence of the death of any Member, the dissolution or termination of any Member, the adjudication of incompetency of any Member, in the case of an estate that is a Member, the distribution by the fiduciary of the estate’s Membership Interest, or, in the case of a Member that is acting as a Member by virtue of being a trustee of a trust, the termination of such trust (a “**Member Dissolution Event**”). Upon the occurrence of a Member Dissolution Event, such Member’s Membership Interest shall be assigned to his or its respective successors, assigns, administrators, executors, heirs, legatees, beneficiaries or guardians, as the case may be; provided, however, that in the case of a Member that is an entity, an assignment of the Membership Interest hereunder shall not be permitted to vest ownership of such Membership Interest in Persons that are not beneficial owners (or Affiliates thereof) of such an entity as of the date of this Agreement. Furthermore, notwithstanding anything to the contrary in the Act or this Agreement, no Member shall have the right or power to withdraw from the LLC.
   3. In the event that the LLC is dissolved and not continued as a result of a Termination Event, then those remaining Members who desire to continue the LLC or to continue operating its business in substantially the same manner as prior to such Termination Event shall have the right to form a new limited liability company under and pursuant to the laws of the State of [State] and pursuant to Articles of Organization and an Operating Agreement substantially in the form of this Agreement and the LLC’s Articles of Organization, and such newly formed limited liability company shall have the exclusive right to purchase all of the assets of the LLC at a price equal to ninety-five percent (95%) of the LLC assets’ then fair market value (such discount being granted in recognition of the fact that no broker would be involved in such transaction) and to assume all of the LLC’s liabilities and obligations. The net fair market value of such assets shall be determined by agreement among the remaining Members desiring to continue the business of the LLC and the former Members or their legal representatives. If these parties are unable to agree on the net fair market value, the Members desiring to continue the business of the LLC shall have the right to select one (1) appraiser, the former Members shall select a second (2nd) appraiser, and the two (2) appraisers so selected shall select a third appraiser. The three (3) appraisers shall appraise the LLC’s assets and the middle of the three (3) appraised values shall be the value utilized in the sale hereunder. The determination as provided herein of the value of the assets of the LLC shall be conclusive and binding on the LLC, all of the remaining Members, and the former Member(s). The remaining Members and the former Member(s) shall each pay the cost of their respective appraisal. The cost of obtaining the third (3rd) appraisal shall be paid one-half (1/2) by the former Member(s) and one-half (1/2) by the remaining Members, and the portion of the cost to be paid by the former Member(s) shall be deducted from the purchase price upon payment of the first installment(s) thereof. The purchase price for the LLC’s assets may be paid by the Members desiring to continue the LLC’s business in cash or in the form of an unsecured promissory note, which would bear interest on the unpaid balance at the applicable federal rate in effect under the IRC, and which note shall provide for level amortization of the balance of principal and interest over a period of ten (10) years based on monthly payments. Such note shall include a provision providing that it is subordinate to all debts owed to creditors other than members of the purchasing limited liability company.
   4. Redemption of Membership Interests of a Bankrupt Member’s Membership Interest.
      1. Notwithstanding anything to the contrary in the Act, if a Member shall become Bankrupt, the remaining Members shall have the right, by written notice to the legal representative of the Bankrupt Member within ninety (90) days after the Bankruptcy, to (A) elect unanimously to continue the business of the LLC and cause the LLC to purchase all of the Bankrupt Member’s Membership Interest as set forth below, or (B) terminate the LLC in accordance with the terms of this Agreement.
      2. If all of the remaining Members elect to cause the LLC to purchase the Bankrupt Member’s Membership Interest, the purchase price for the Bankrupt Member’s Membership Interest shall be an amount equal to the amount of cash that the Bankrupt Member would have received if the assets of the LLC were sold for an amount equal to ninety-five percent (95%) of their Value as determined hereunder, and the proceeds of such sale were distributed (following the allocation of Net Income, Net Losses, and Net Gains and Net Losses from Capital Transactions pursuant to Section 12) pursuant to Section 8(e) herein.
      3. If less than all of the remaining Members elect to purchase the Bankrupt Member’s Membership Interest, the LLC shall be terminated and, subject to Section 8(c), its assets shall be distributed in accordance with the provisions of Section 8(e) herein.
      4. The closing of the redemption of the Membership Interest of a Bankrupt Member shall take place at the principal office of the LLC at such time and on such date as Manager shall specify in a notice to the Bankrupt Member, but in no event more than sixty (60) days after the determination of the Value of the assets of the LLC.
      5. The purchase price of a Bankrupt Member’s Membership Interest shall be paid to such Member, at the closing specified above, entirely in cash or by bank officer’s check or, at the option of Manager, partly in cash (to the extent of ten percent (10%) of the aggregate redemption price), with the balance represented by an unsecured promissory note, bearing interest on the unpaid balance payable annually at the applicable federal rate in effect under the IRC, which note shall provide for level amortization of the balance of principal and interest over a period of ten (10) years based on annual payments (to be accelerated and paid in full on the sale, directly or indirectly, of the Property). Such note shall include a provision providing that such note is subordinate to all debts owed to creditors of the LLC.
      6. From and after the closing of the redemption of a Bankrupt Member’s Membership Interest:
         1. The former Member shall not have any interest.
         2. The former Member shall be indemnified and held harmless from and with respect to all debts and obligations of the LLC arising both before and on or after such date.
   5. Liquidation of the LLC.
      1. Upon the dissolution of the LLC, after adequate provisions have been made for the payment of debts and obligations of the LLC, the remaining assets of the LLC shall be distributed to the Members in the manner set forth in Section 13. If any assets of the LLC shall be distributed in kind, such assets shall be distributed on the basis of their current fair market value, and such assets shall be distributed to the Members entitled thereto as tenants-in-common in accordance with their respective interests therein; provided, that the Capital Account balances of the Members first shall be adjusted to reflect the manner in which the unrealized income, gain, loss and deduction inherent in such assets (that has not been reflected in such Capital Accounts previously) would be allocated among the Members if there were a taxable disposition of the assets for the fair market value of such assets. Such Capital Account adjustment shall be made in accordance with Regulations Section 1.704-1(b)(2)(iv)(*e*).
      2. A reasonable time shall be allowed for the orderly liquidation of the assets of the LLC and the discharge of liabilities.
      3. Not more than one hundred twenty (120) days after the termination of the LLC, each of the Members shall be furnished with statements similar, so far as may be practicable, to those set forth herein and prepared by the certified public accountants for the LLC for the period ending with the date of complete liquidation.
5. **Equity of LLC**.
   1. Unless otherwise agreed to by a Majority in Interest of the then current Members, the LLC’s Membership Interests shall consist of one (1) class.
   2. The Members’ Membership Interests may be evidenced by Certificates of Membership Interests.
   3. The Membership Interests shall have the following rights, privileges, powers and preferences:
      1. Membership Interests shall be entitled to vote on all matters presented by Manager or as required by the terms of this Agreement for the consideration and approval of the Members;
      2. Each Member shall enjoy one (1) vote (or any fraction thereof, if applicable) for each one (1) Membership Percentage (or any fraction thereof, if applicable) held by such Member on all matters presented for the consideration and approval of the Members; and
      3. Such other powers, privileges, preferences and rights set forth herein.
6. **Capital Contributions**.
   1. Each Member has, as of the date hereof, contributed to the capital of the LLC the amount of cash or property as set forth opposite its or his name under the heading “Capital Contribution” on Exhibit A hereto in consideration of and as payment for its or his Membership Interest. No interest shall be paid on any contribution to the capital of the LLC.
   2. If, at any time or from time to time, additional capital is necessary to carry out the development of the Townhouse Units, the pre-development of the project, pay the debts and obligations (including without limitation so-called “carrying costs” which shall include real estate taxes, insurance, and any other costs necessary for the LLC’s ownership of the Property) or maintain the financial integrity of the LLC, Manager shall, in the following order and in the name and on behalf of the LLC, endeavor to borrow the necessary funds from commercial banks, lending institutions and/or other Persons: (i) first, on an unsecured basis; or (ii) second, on a secured basis with the borrowings secured by the assets of the LLC or any real property (including the Property) and the improvements (including the Improvements) located thereon.
   3. If, and to the extent that, Manager is (i) not able to obtain financing on reasonably acceptable terms and conditions or (ii) determines that the LLC requires additional capital to complete pre-development activities with respect to the property, which such determination shall be made in Managers discretion, the Members will be obligated to make additional capital contributions in amounts proportionate to their respective Members’ Percentages fifteen (15) days after the date of written notice from Manager requesting such additional contributions (“**Additional Capital Contributions**”).
   4. If a Member fails to make any Additional Capital Contribution in the manner and time required herein (the “**Non-Contributing Member**”), and the LLC is unable to raise the requisite funds through other means, then the Members hereby agree that any funds transferred by a Member (or its Affiliate) other than the Non-Contributing Member to the LLC in response to Manager’s request for Additional Capital Contributions shall be treated as loans to the LLC and not as Additional Capital Contributions.
7. **Loans**. Any loan made by a Member (or an Affiliate of a Member) to the LLC (“**Member Loan**”) shall bear interest at a rate of eight percent (8%) and be a priority payment obligation out of the distributions of the LLC (as described in Section 12 below). Notwithstanding the foregoing, the loan in the amount of One Hundred Twenty-Five Thousand Dollars ($125,000) paid to HOW by the LLC upon execution of this Agreement shall bear no interest. Any Member Loan shall be evidenced by a promissory note and shall be approved by Manager prior to disbursement thereof.
8. **Allocations**.
   1. **Allocations of Profits and Losses**
      1. **Maintenance of Capital Accounts**. A separate Capital Account shall be maintained for each Member. Such Capital Accounts shall be maintained and adjusted as Manager determines in accordance with Regulations Section 1.704-1(b).
      2. **Net Income and Net Losses.**
         1. Except as otherwise provided in this Section 12 and after giving effect to the special allocations set forth in Section 12(a)(iii) below, the Net Income and Net Losses of the LLC, as the case may be, for any taxable year shall be allocated between the Members in the same proportion as their respective Members’ Percentages as set forth on Exhibit A hereto; provided, however, that no Member shall be allocated Net Losses that would create or increase an Adjusted Capital Account Deficit of such Member.
         2. Notwithstanding Section 12(a)(ii)(A), the Net Gains from Capital Transactions shall be allocated among the Members as follows in the following order of priority:
            1. First to the Members, if any, having negative balances in their Capital Accounts, in the proportion that the negative balance in each such Capital Account bears to the aggregate negative balances in the Capital Accounts of all such Members, until the balances in their Capital Accounts equal zero;
            2. Second, to the Members in the amounts necessary, and in the ratio of such amounts, to cause their Capital Account balances to be in the ratio of their respective Members’ Percentages; and
            3. Thereafter, to all Members in proportion to their respective Members’ Percentages.
         3. Notwithstanding Section 12(a)(ii)(A), the Net Losses from Capital Transactions shall be allocated among the Members as follows in the following order of priority:
            1. First to the Members, if any, having positive balances in their Capital Accounts, in the proportion that the positive balance in each such Capital Account bears to the aggregate positive balances in the Capital Accounts of all such Members, until the balances in their Capital Accounts equal zero; and
            2. Thereafter, to all Members in proportion to their respective Members’ Percentages.
         4. For purposes of Section 12(a)(ii)(B) and Section 12(a)(ii)(C), a Member’s Capital Account balance shall be determined immediately prior to the event giving rise to the gain and loss as if, at such time, the books of the LLC had been closed as though at the end of the taxable year.
      3. **Special Allocations and Limitations**. The following provisions shall apply notwithstanding the provisions of Section 12(a)(ii). In the event that there is a conflict between any of the following provisions, the earlier listed provision shall govern.
         1. If there is a net decrease in Minimum Gain attributable to a Nonrecourse Liability during any taxable year, each Member who has a share of the Minimum Gain attributable to such Nonrecourse Liability shall be specially allocated a pro rata portion of each of the LLC’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 year as determined pursuant to Regulations Section 1.704-2(g)(2). In the event that such net decrease in the LLC’s Minimum Gain occurs in connection with the disposition of all or any portion of the assets of the LLC securing a Nonrecourse Liability, then any items of LLC income or gain allocated in accordance with the previous sentence shall first consist of gain recognized by the LLC as a result of such disposition. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with and only to the extent required by Regulations Sections 1.704-2(f) and (j)(2)(i), and this Section 12(a)(iii)(A) shall be interpreted consistently therewith.
         2. If there is a net decrease in Minimum Gain attributable to Member Nonrecourse Debt during any fiscal year, each Member who has a share of the Minimum Gain attributable to such Member Nonrecourse Debt shall be specially allocated a pro rata portion of each of the LLC’s items of income and gain for such year (and, if necessary, for subsequent years) to the extent of an amount equal to such Member’s share of the net decrease in such Minimum Gain during such year as determined pursuant to Regulations Section 1.704-2(i)(4). In the event that such net decrease in the LLC’s Minimum Gain occurs in connection with the disposition of all or any portion of the LLC’s assets securing a Member Nonrecourse Debt, then any items of LLC income or gain allocated in accordance with the previous sentence shall first consist of gain recognized by the LLC as a result of such disposition. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with and only to the extent required by Regulations Sections 1.704-2(i) and (j)(2)(ii), and this Section 12(a)(iii)(B) shall be interpreted consistently therewith.
         3. In the event a Member unexpectedly receives in any taxable year any adjustments, allocations or distributions described in Regulations Section 1.704-1(b)(2)(ii)(*d*)(*4*), (*5*) or (*6*) that cause or increase a Capital Account deficit of such Member, items of LLC income and gain shall be specially allocated to such Member in such taxable year (and, if necessary, in subsequent taxable years) in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Capital Account deficit of such Member as quickly as possible. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the qualified income offset provision of Regulations Section 1.704-1(b)(2)(ii)(*d*), and this Section 12(a)(iii)(C) shall be interpreted consistently therewith.
         4. No Net Losses or deductions for any taxable year shall be allocated to any Member to the extent such allocation would cause or increase a Capital Account deficit with respect to such Member, and such Net Losses or deductions shall instead be allocated to those Members that have positive Capital Account balances.
         5. If in any taxable year there is a net increase during such year in the amount of Minimum Gain attributable to a Member Nonrecourse Debt, any Member bearing the economic risk of loss with respect to such debt (within the meaning of Regulations Section 1.752-2) shall be specially allocated items of LLC loss or deduction in an amount equal to the excess of (i) such Member’s share of the amount of such net increase, over (ii) the aggregate amount of any distributions during such year to such Member of the proceeds of such debt that are allocable to such increase in Minimum Gain. It is the intent that items to be so allocated shall be determined and the allocations made in accordance with the required allocation of “partner nonrecourse deductions” pursuant to Regulations Section 1.704-2(i), and this Section 12(a)(iii)(E) shall be interpreted consistently therewith.
         6. The special allocations set forth in Section 12(a)(iii)(A), (B), (C) and (E) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2. The Regulatory Allocations shall be taken into account in allocating other profits, losses and other items of income, gain, loss and deduction to the Members so that, to the extent possible, the net amount of such allocations of profits and losses and other items shall be equal to the amount that would have been allocated to each Member had the Regulatory Allocation not occurred. In the event that in any year the Regulatory Allocations alter the allocations of tax items to the Members, to the extent possible, depreciation deductions shall nevertheless be allocated to the Members in accordance with their Members’ Percentages as set forth in Exhibit A hereto.
         7. The respective interest of the Members in the Net Income and Net Losses or items thereof shall remain as set forth above unless changed by amendment to this Agreement or by an assignment of a Membership Interest authorized by the terms of this Agreement. Except as otherwise provided herein, for tax purposes, all items of income, gain, loss, deduction or credit shall be allocated to the Members in the same manner as Net Income from operations; provided, however, that with respect to property contributed to the LLC by a Member, such items shall be shared among the Members so as to take into account the variation between the basis of such property and its fair market value at the time of contribution in accordance with Section 704(c) of the IRC.
         8. Solely for purposes of determining a Member’s proportionate share of the “excess nonrecourse liabilities” of the LLC within the meaning of Regulations Section 1.752-3(a)(3), a Member’s interest in LLC profits shall equal its respective Members’ Percentage as set forth in Exhibit A hereto.
9. **Distributions**.
   1. **Net Cash Flow Distributions**. Within a reasonable time following the sale of any Townhouse Unit constituting a portion of the Improvements on the Property, Manager shall be required to distribute the Net Cash Flow, to the extent available, following such sale in the following manner:
      1. First, to the payment of any debts and liabilities of the LLC, other than (A) Member Loans advanced pursuant to the terms hereof, (B) advances, (C) or other payments, if any, that have been made by any of the Members to or on behalf of the LLC;
      2. Second, to satisfy any Member Loans from any of the Members advanced to the LLC pursuant to the terms hereof;
      3. Third, [$X] to a certain reserve account held at a banking institution mutually acceptable to the Members in the name of the LLC, which such reserve account shall be held for the purpose of holding such capital necessary to satisfy any and all obligations of the LLC accruing after the sale of any Townhouse Unit.[[1]](#footnote-1)
      4. Fourth, Fifteen Thousand and No/Dollars ($15,000.00) in the event any Townhouse Unit sells to a bona fide third-party purchaser for a purchase price that permits such distribution to HOW; or in any other lesser amount as determined by Manager.
      5. Thereafter, to each of the Members in proportion to their respective Members’ Percentages, as such percentages are further described in **Exhibit A** attached hereto.
   2. **Distributions of Cash from Financings and Cash from Capital Transactions**. To the extent not used in the business operations of the LLC or set aside as reserves, each as determined in the Manager’s sole, absolute and non-reviewable discretion, the decision of whether, when and in what amount to make any distributions of any Cash from Capital Transactions, including net proceeds upon liquidation of the LLC resulting from the sale of all or substantially all of the assets of the LLC (after taking into account the provisions of Section 8(e) of this Agreement), and any Cash from Financings shall be determined in the sole, absolute and non-reviewable discretion of the Manager, provided that, in the event that any such distributions are made, such distributions shall be distributed as follows:
      1. First, to the payment of any debts and liabilities of the LLC, other than (A) Member Loans advanced pursuant to Section 11, (B) advances, (C) or other payments, if any, that may have been made by any of the Members to or on behalf of the LLC and the expenses of liquidation;
      2. Second, to satisfy any Member Loans from any of the Members advanced pursuant to Section 11 above, including any accrued but unpaid interest on each such loan for the then-current and all prior fiscal periods; and
      3. Third, [$X] to a certain reserve account held at a banking institution mutually acceptable to the Members in the name of the LLC, which such reserve account shall be held for the purpose of holding such capital necessary to satisfy any and all obligations of the LLC accruing after the sale of any Townhouse Unit.[[2]](#footnote-2)
      4. Fourth, to repay any and all Capital Contributions (and/or Additional Capital Contributions, as the case may be) provided to the LLC by the Members; and
      5. Thereafter, to each of the Members in proportion to their respective Members’ Percentages.

Notwithstanding the forgoing, in the event (i) the LLC utilizes New Market Tax Credits, as all or a part of the LLC’s construction or permanent financing with respect to the Property, (ii) such New Market Tax Credits require all Townhouse Units to be constructed simultaneously and (iii) there is a downturn in the market, the distributions provided in Section 13(a) and 13(b) above will be adjusted in manner mutually acceptable to the Members.  However, in the event of a dispute with respect thereto, the final decision shall be deemed to be at the determination of Manager, in Manager’s sole, absolute and non-reviewable discretion.

1. **Restrictions on Transfer of Membership Interests**.

No Membership Interest, now owned or hereafter acquired, may be assigned, hypothecated, pledged or otherwise transferred (“**Transferred**”), in whole or in part, without the prior written Consent of Manager and only in accordance with other specific provisions of this Agreement or the following provisions of this Section 14, provided that no Membership Interest shall be Transferred if such transfer would result in a breach of or default under any loan agreement, instrument or other document to which the LLC is a party.

* 1. Unless waived by Manager, a Membership Interest shall not be Transferred in the absence of an opinion of counsel, satisfactory to Manager, that the registration of the Membership Interest is not required under the Securities Act of 1933 (the “**Securities Act**”) or any applicable state securities laws.
  2. Any transfer of a Membership Interest shall be effective only to give the transferee the right to receive the share of tax allocations and distributions to which the transferor would otherwise be entitled. No transferee of a Membership Interest shall have the right to become a substitute Member unless Manager, in the exercise of its sole and absolute discretion, expressly consents thereto in writing and the transferee agrees to be bound by all the terms and conditions of this Agreement as then in effect. Unless and until a transferee is admitted as a substitute Member, the transferee shall have no right to exercise any of the powers, rights, and privileges of a Member hereunder. A Member who has assigned its or his Membership Interest shall cease to be a Member upon assignment of the Member’s entire Membership Interest and thereafter shall have no further powers, rights or privileges as a Member hereunder, but shall, unless otherwise relieved of such obligations by agreement of all of the other Members or by operation of law, remain liable for all obligations and duties as a Member.
  3. Manager may, in its reasonable discretion, charge a reasonable fee to cover the additional administrative expenses incurred in connection with or as a consequence of the transfer of all or part of a Membership Interest.
  4. The LLC, each Member, and any other Person or Persons having business with the LLC need deal only with Members who are admitted as Members or as substitute Members of the LLC, and they shall not be required to deal with any other Person by reason of assignment by a Member, except as otherwise provided in this Agreement. In the absence of the substitution (as provided herein) of a Member for an assigning Member, any payment to a Member shall acquit the LLC and Manager of all liability to any other Persons who may be interested in such payment by reason of an assignment by such Member.
  5. No Person shall have a perfected lien or security interest in a Membership Interest unless the creation of such interest is in accord with the provisions of this Agreement and the LLC is notified of such interest and provided a copy of all documentation with respect thereto, including financing statements, prior to execution and filing.
  6. Any transfer not in accord with this Agreement shall be void ab initio.
  7. Each Member agrees not to transfer all or any part of its Membership Interest (or take or omit any action, filing election, or take any other action which could result in a deemed transfer) if such transfer (either considered alone or in the aggregate with prior transfers by other Members) would result in the termination of the LLC for federal income tax purposes, or cause a breach of or default under any loan agreement, instrument or other document to which the LLC is a party. Such a transfer shall be void ab initio.

(h) Notwithstanding anything in this Section 14 to the contrary (except for Section 14(g) above), any Member or beneficial owner of such Member (the “**Transferring Member**”) may cause its Membership Interest, or any portion thereof, to be Transferred to any Permitted Transferee who agrees in writing to be bound by the terms of this Agreement and to assume the obligations of such Transferring Member hereunder with respect to the Transferred Membership Interest. For purposes of this Agreement, “**Permitted Transferee**” means (i) with respect to a Transferring Member who is a natural person or a beneficial owner of any such Member: the spouse or lineal descendants (but not minors) of such Transferring Member; any trust created solely for the benefit of such Transferring Member, the spouse or lineal descendants of such Transferring Member or such Transferring Member’s estate; any individual retirement account or other tax-deferred account the sole beneficiary(ies) of which shall be such Transferring Member, the spouse or lineal descendants of such Transferring Member and/or such Transferring Member’s estate; any corporation, limited liability company or partnership in which such Transferring Member, the spouse or lineal descendants of such Transferring Member are the direct or indirect beneficial owners of all of the equity interests (provided such Transferring Member, spouse and lineal descendants agree in writing to remain the direct or indirect beneficial owners of all such equity interests); or the personal representatives of such Transferring Member on such Transferring Member’s death for the purposes of administration of such Transferring Member’s estate or on such Transferring Member’s adjudicated incapacity for purposes of the protection and management of the assets of such Transferring Member; (ii) with respect to a Transferring Member who is not a natural person (other than a trust): its Affiliates; and (iii) with respect to a Transferring Member that is a trust: the beneficiaries thereof.

* + 1. **Transfers of Ownership Interests in Members**. Except with respect to any Permitted Transferee set forth in Section 14(h) above, for purposes of this Section 14(i), any transfer or assignment of any direct or indirect ownership or other interest in a Member that results in such Member being controlled by a Person or Persons other than the Person or Persons that control such Member as of the date hereof shall be deemed an assignment of the Membership Interest of such Member and therefore subject to all of the restrictions and provisions of this Section 14. In addition, any encumbrance, pledge or other collateral assignment of a direct or indirect ownership or other interest in a Member that, if the pledgee or other assignee were to exercise its right to acquire such interest, would (taking into account any prior transfers or assignments described above and any such prior pledges, encumbrances or collateral assignments) result in such Member being controlled by a Person or Persons other than the Person or Persons that control such Member on the date hereof shall be deemed an assignment of the Member’s Membership Interest and therefore subject to the restrictions and provisions of this Section 14. For purposes of this Section 14(i), “control” shall mean, directly or indirectly, owning or having the power to vote 25% or more of the interests of such Member.

1. **Management of LLC**.
   1. Manager, with the authority granted under the terms of this Agreement and subject to the authority and approval of the Members as reserved herein, shall have the complete power and authority to manage and operate the LLC in accordance with the Budget and make all decisions affecting its business and affairs, including, without limitation, (I) the decision about when and whether to establish reserves needed for the obligations of the LLC, (II) the decision about when and whether to make distributions to the Members, (III) any proposed sale of the LLC’s membership interest in the Property, (IV) any proposed sale or strategy to sell the Property or any part thereof, including without limitation the Townhouse Units, (V) the selection and management of a service provider and (VI) the decisions regarding budget, design and construction management. Notwithstanding the itemized list in this Section 15(a), Manager has the authority to make, do and execute, or cause to be made, done and executed, all such further acts as may reasonably be required in Managers sole and absolute discretion. Without limiting the foregoing, and except as limited, restricted or prohibited by the express provisions of this Agreement, Manager shall have and may exercise on behalf of the LLC all powers and rights necessary, proper, convenient or advisable to effect and carry out the purposes, business and objectives of the LLC including, without limitation, (i) the execution of documents on behalf of the LLC; (ii) the powers, rights, authority and duties set forth in the Act, as amended, and as amended and restated in the future, and which the Members may delegate from time to time, by the affirmative vote of a simple majority of the Members, to Manager; and (iii) the powers, rights, authority and duties described in this Agreement to be carried out by Manager.
   2. The Members shall have the right to designate a Member (or a beneficial owner of a Member that is an entity) to be Manager from time to time. The initial Manager of the LLC shall be, Developer . In the event of Developer ’s inability to serve as Manager due to Bankruptcy, incapacity, resignation or similar circumstance, a Majority in Interest of the Members shall be required to elect a substitute manager, who shall serve in such capacity until dissolution, incapacity, Bankruptcy, resignation or removal by a Majority in Interest of the Members.
   3. Except as otherwise provided in this Agreement, all decisions and documents relating to the management and operation of the LLC shall be made and executed, as the case might be, by Manager. Further and for the avoidance of doubt, in no event shall any Member, solely in their capacity as a member of the LLC, have the ability to bind the LLC unless otherwise expressly permitted under the terms hereof.
   4. Non-Manager Responsibilities. HOW shall have the responsibility to use commercially reasonable efforts in (i) leading community outreach efforts and (ii) creating and managing all marketing efforts in connection with the development of the Townhouse Units, but any and all such responsibilities shall be subject to any and all approvals of Manager as further described in Section 16.
2. **Unanimous Consent of Members**.
   1. In addition to other acts prohibited or restricted by this Agreement or by law, Manager, unilaterally, is prohibited from undertaking the following without unanimous consent of the Members:
      1. Incur, refinance or restructure any mortgage or deed of trust indebtedness of the LLC (or of any other entity for which the LLC acts as manager or other similar governing authority), or incur any obligation or enter into any contract on behalf of the LLC that involves any such financing;
      2. Making any amendments, modifications or changes to the Budget that exceed ten percent (10%) or $10,000 for any specific line item in the Budget for each applicable calendar year;
      3. Sell, transfer, assign or otherwise convey all or substantially all of the assets of the LLC or of any other entity for which the LLC acts as manager or other similar governing authority (other than in the ordinary course of business);
      4. Enter into any arrangement calling for the Members to guarantee or otherwise be personally liable for any obligation of the LLC; provided, however, that no Member shall be required to guarantee or otherwise be personally liable for any obligation of the LLC without such Member's prior written consent;
      5. Doing any act that would make it impossible to carry on the ordinary business of the LLC;
      6. Confessing a judgment against the LLC;
      7. Possessing or in any manner dealing with the assets of the LLC or assigning the rights of the LLC in the assets of the LLC for other than LLC purposes;
      8. Assigning the property of the LLC in trust for creditors or on the assignee’s promise to pay the debts of the LLC;
      9. Disposing of the goodwill of the LLC; or
      10. Commingling the funds of the LLC with the funds of any other Person.
      11. The merger or consolidation of the LLC into or with any other entity.
      12. Enter into, directly or indirectly, sell or otherwise transfer any portion of the LLC, or otherwise acquire any property or assets, or otherwise engage in any transactions with an Affiliate.
   2. Notwithstanding anything in this Section 16 to the contrary, if there is a conflict or deadlock and no consensus can be achieved concerning any matter described in this Section 16, then the decision of Manager shall control any such decision.
   3. Reserved.
   4. Manager Responsibilities. Notwithstanding anything to the contrary provided herein, Manager shall use commercially reasonable efforts to (i) reduce any and all need for capital contributions in accordance with Section 10(b) and (ii) ask any and all vendors, to the extent possible, to defer payments to such vendors until the closing date of the required construction financing for the Property (the “**Construction Financing**”).
   5. Phased Development. Manager may determine to build the Townhouse Units in phases (the “**Phased Development**”). The Phased Development may, in Manager’s discretion, consist of five (5) different phases, where the first four (4) phases consist of developing five (5) Townhouse Units each and the fifth (5th) phase will consist of developing the last three (3) Townhouse Units. If Phased Development is not the development method chosen by Manager, in its sole discretion, then all twenty-three (23) of the Townhouse Units will be developed at one time.
   6. Members’ Development Fee. The Members, in accordance with their respective Membership Percentages, shall be entitled to their proportionate share of a development fee equal to five percent (5%) of the total hard costs budgeted to be spent on the construction of the Townhouse Units (the “**Development Fee**”). The Development Fee shall be paid by the LLC to the Members, in the proportion of each Member’s Membership Percentage, on a monthly basis commencing on the closing date of the Construction Financing and terminating on the date in which the construction of the Townhouse Units is scheduled to be substantially completed in accordance with the Budget.
   7. Guaranty. In connection with the Construction Financing and any and all further financings that may be necessary in connection with the development, construction or management of the Property, Manager and/or one or more of Manager’s affiliates (each a “**Guarantor**”) shall provide guarantees as are reasonably required in connection with any acquisition, Construction Financing and/or tax credit financing, if applicable, for the development of the Property, which such guarantees may include a guaranty of completion of construction, a cost overrun guaranty and any additional guarantees necessary in connection with any equity investment and/or financing necessary for the development of the Townhouse Units, which such financing shall be approved by Manager as further provided herein. [DEVELOPER TO CONFIRM THAT DEVELOPER WILL PROVIDE NECESSARY GUARANTIES AND IF SO, IS HOW TO PROVIDE PROPORTIONATE INDEMNITY WITH RESPECT TO GUARANTY OBLIGATIONS].
3. **Buyout**. In the event Member wishes to buy or sell their Membership Interest to a Member of the LLC, such Member must provide a written notice indicating (the **“Buy/Sell Notice**”) that such Member (being hereinafter called the “**Designator**” and the party receiving the Buy/Sell Notice being hereinafter called the “**Buy/Sell Offeree**”) desires to invoke the Buy/Sell provisions of this Section 17.
   1. If a Designator has invoked the Buy/Sell provisions, then the Designator shall designate a purchase price determined at the time of delivery of the certain appraisal conducted to designate the Appraised Value (as such term is defined herein). The purchase price for the Designator’s Membership Interests shall be no less an amount equal to (i) eighty percent (80%) of the then current Appraised Value (as such term is defined herein) of the Property, minus (ii) any and all costs incurred by the LLC in connection with any pre-development expenses necessary to have been spent as of the date of the Buy/Sell Notice (the “**Purchase Price**”).  Within thirty (30) calendar days after delivery of the Appraisal (such thirty (30) day period being referred to herein as the “**Election Period**”), the Buy/Sell Offeree shall elect, by written notice to the Designator, either to sell all its Membership Interest to the Designator or to buy all the Membership Interest of the Designator for the Purchase Price.  Failure by the Buy/Sell Offeree to make an election within such thirty (30) day period shall be deemed an election by the Buy/Sell Offeree to sell all its Membership Interest to the Designator.  The term “**Appraised Value**” shall be the value of the LLC and shall include any real property, personal property or any other assets of the LLC, whether owned directly or indirectly, and shall be determined by an appraiser and shall be selected by the Buy/Sell Offeree within fifteen (15) days after Buy/Sell Offeree’s receipt of the Buy/Sell Notice and such appraiser shall determine the value of any LLC real property, personal property or other assets owned by the LLC. Such appraiser selected shall be experienced in the performance of the valuation of real estate and be recognized as ethical and reputable within the field. The determination of such appraiser as to the Appraised Value of the LLC (the “**Appraisal**”) shall be set forth in a written appraisal furnished to the parties within forty-five (45) days after the date in which the Buy/Sell Offeree engages such appraiser. The determination by the appraiser of the Appraised Value shall be conclusive and binding on the Members. The costs of the appraisal(s) shall be borne proportionately by the Member in accordance with their proportionate share of the Membership Interests.
   2. The time and date of the buyout closing (“**Buy/Sell Closing**”) shall be specified by the buying Member (“**Buying Member**”) at least ten (10) calendar days prior written notice to the selling Member (“**Selling Member**”), but no later than the date which is ninety (90) days after the expiration of the Election Period.  At the Buy/Sell Closing, the Selling Member shall execute such assignments of its Membership Interest and other documents and assurances as the Buying Member may reasonably require to consummate the sale and vest in the Buying Member or its nominee the entire right, title and Membership Interest of the Selling Member; provided, however, that all instruments executed in connection with such Buy/Sell Closing shall be without recourse, representation or warranty whatsoever except that each Selling Member shall (as to its own Membership Interest only) represent that (i) the Membership Interest being sold by it is free and clear of all liens, encumbrances and rights of others, (ii) it has full right and authority to sell such Membership Interest and the sale has been duly authorized, (iii) the notices given by such party under this Section 17 were true and correct and that since the date of such notice the Selling Member has not taken any action in violation of this Agreement.  All expenses of the transactions contemplated hereby relating to the transfer of a Membership Interest shall be paid by the Buying Member, other than the attorneys’ fees and professional services fees of theSelling Member.
   3. The Purchase Price for the Membership Interest being sold and all other amounts payable in connection with the transactions contemplated hereby shall be payable at the Buy/Sell Closing by federal wire of immediately available funds.  On the sixtieth (60th) calendar day after the completion date of the Appraisal (or if such day is a Saturday, Sunday or legal holiday, on the first Business Day thereafter) the Buying Member shall deposit in escrow with a bank or trust company designated by the Selling Member an amount equal to five percent (5%) of the Purchase Price (only to the extent the Buying Member has agreed to purchase the other Member’s Membership Interests in accordance with this Section 17), such amount to be credited to the Purchase Price payable to the Selling Member at the Buy/Sell Closing.  In the event of default (after the expiration of the applicable cure, grace and/or notice periods (if any)) by the Buying Member, the Selling Member may, as its sole remedy for such default terminate the sale and retain the deposit as liquidated damages.
   4. If any Member which is the Selling Member fails to perform its obligations contained in Section 17 after the expiration of the applicable cure, grace and/or notice periods (if any), the Buying Member may, in addition to its other remedies set forth in this Agreement, enforce its rights under Section 17 by an action for specific performance.
   5. If any Member fails to perform its obligations contained in Section 17 (after written notice and the expiration of a five (5) day cure period or such longer period to the extent expressly provided herein), the defaulting Member shall be deemed to have withdrawn as a Member for purposes of the right to vote or to make decisions with respect to LLC matters (including the right to vote on major decisions), but rather shall be limited to the rights to receive allocations and distributions with respect to its Membership Interest only.
   6. Because the Buying Member is purchasing the Membership Interest of the other Member in the LLC, then, in lieu of purchasing such Member Interest, the Buying Member may elect to cause the LLC to convey and transfer the assets of the LLC to theBuying Member or its designee provided that the Buying Member (i) pays all transfer taxes, recording fees and other costs in connection with such conveyance and transfer, and (ii) such conveyances and transfers shall not cause adverse tax or other material adverse financial consequences to the Selling Member and shall indemnify and hold harmless the Selling Member for all such liabilities, costs, taxes, fees and expenses caused by Buying Member’s election under this Section 17(f).  Buying Member will pay, to the extent applicable, any prepayment penalty or assumption charges on any loan, mortgage or deed of trust upon the Property.
   7. In the event that the Selling Member has failed or refused to execute, acknowledge and deliver such documents as are reasonably required to effectuate the provisions of this Section 17, then the Buying Member shall have the right to execute, acknowledge and deliver such documents for, on behalf of and in the stead of the Selling Member, and such execution, acknowledgment and delivery by the Buying Member shall be for all purposes effective against and binding upon the Selling Member as though such execution, acknowledgment and delivery had been by the Selling Member.  Subject to the foregoing and in order to effectuate the provisions of this Section 17, each Member does hereby irrevocably constitute and appoint the other Member as the true and lawful attorney-in-fact of such Member and the successors and assigns thereof, in the name, place and stead of such Member or the successors or assigns thereof, as the case may be, to execute, acknowledge and deliver such documents in the event such Member shall be a Selling Member under the circumstances contemplated by this Section 17.  The parties agree that the grant of the power of attorney to the other Member pursuant to this Section 17 is coupled with an interest, is irrevocable and shall survive the death, dissolution, termination or legal incompetency, as applicable, of such granting Member, or the assignment of the Membership Interest of such granting Member.
4. **Representations, Warranties and Covenants.**

* + - 1. Representations, Warranties and Covenants of Manager.

1. Manager is a corporation;
2. Manager is duly organized and validly existing under the Act and is in good standing under the laws of the state of [State];
3. Manager is duly authorized to enter into the transactions contemplated by this Agreement and any other documents required to be executed on or about the date hereof; and
4. Manager has not and shall not enter into any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto with respect to its Membership Interest in the LLC.
5. Manager hereby agrees and acknowledges that real estate development is a speculative endeavor which is subject to multiple variables and factors outside the control of the Members. Nothing in this Agreement shall be deemed a representation or warranty by any Member to the other Member that the project shall ultimately be able to obtain debt and/or equity financing for the project. Without limiting the foregoing, Manager hereby agrees and acknowledges that neither Member has made any representation or warranty about the ability to obtain debt and/or equity financing for the project nor has either Party made any representation or warranty regarding any specific economic return or benefit relating to the transactions contemplated herein. Any and all financial projections or pro-formas produced by the Members shall not be deemed to be a representation or warranty regarding any aspect of the project and each of the Members agrees and acknowledges that all such projections and pro-formas are subject to change and modification.
6. Manager has acquired the Membership Interest for investment purposes for its own account only and not with a view to or for sale in connection with any distribution of all or any part of such Membership Interest.
7. Manager acknowledges that the Membership Interests have not been registered under the Securities Act, or under any applicable blue sky laws in reliance, in part, upon its representations, warranties, and agreements herein.
8. Manager understands that the Membership Interests are “restricted securities” under the Securities Act in that such Membership Interests will be acquired from the LLC in a transaction not involving a public offering, and that the Membership Interests may be resold without a registration under the Securities Act only in certain limited circumstances and that otherwise the Membership Interests must be held indefinitely.
9. Manager represents, warrants and agrees that the LLC and Manager are under no obligation to register or qualify the Membership Interests under the Securities Act of 1993 or under any state securities law, or to assist it in complying with any exemption from registration and qualification.
10. Without limiting the representations set forth above, and without limiting anything contained elsewhere in this Agreement (including Section 14 concerning transfers of Membership Interests), it will not make any disposition of all or any part of its Membership Interest which will result in violation by it or by the LLC of the Securities Act or any other applicable securities laws.  Without limiting the foregoing, Manager agrees not to make any disposition of all or any part of its Membership Interest unless and until it has notified the LLC of the proposed and that such disposition will not require registration of any securities under the Securities Act or the consent of, or a permit from, appropriate authorities under any applicable state securities laws.
11. Manager acknowledges that there are substantial restrictions on the transferability of the Membership Interests pursuant to this Agreement, that there is no public market for such Membership Interests and that none is expected to develop, and that, accordingly, it may not be possible for it to liquidate its investment in the LLC.
12. Manager has received and reviewed this Agreement and the other information provided by the LLC it considers necessary or appropriate for deciding whether to invest in the LLC.
13. Manager has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, article or any other form of advertising or general solicitation with respect to the sale of Membership Interests.
14. Manager represents and warrants that it is not a “covered person” under the Rule 506 of Regulation D under the Securities Act of 1933, as amended (“**Rule 506**”) that has a criminal conviction, regulatory or court order or other disqualifying event constituting a disqualifying event under Rule 506.
    * + 1. Representations, Warranties and Covenants of HOW.
15. HOW is a limited liability company;
16. HOW is duly organized and validly existing under the Act and is in good standing under the laws of the state of [State];
17. HOW is duly authorized to enter into the transactions contemplated by this Agreement and any other documents required to be executed on or about the date hereof; and
18. HOW has not and shall not enter into any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto with respect to its Membership Interest in the LLC.
19. HOW hereby agrees and acknowledges that real estate development is a speculative endeavor which is subject to multiple variables and factors outside the control of the Members. Nothing in this Agreement shall be deemed a representation or warranty by any Member to the other Member that the project shall ultimately be able to obtain debt and/or equity financing for the project. Without limiting the foregoing, HOW hereby agrees and acknowledges that neither Member has made any representation or warranty about the ability to obtain debt and/or equity financing for the project nor has either Party made any representation or warranty regarding any specific economic return or benefit relating to the transactions contemplated herein. Any and all financial projections or pro-formas produced by the Members shall not be deemed to be a representation or warranty regarding any aspect of the project and each of the Members agrees and acknowledges that all such projections and pro-formas are subject to change and modification.
20. HOW has acquired the Membership Interest for investment purposes for its own account only and not with a view to or for sale in connection with any distribution of all or any part of such Membership Interest.
21. HOW acknowledges that the Membership Interests have not been registered under the Securities Act, or under any applicable blue sky laws in reliance, in part, upon its representations, warranties, and agreements herein.
22. HOW understands that the Membership Interests are “restricted securities” under the Securities Act in that such Membership Interests will be acquired from the LLC in a transaction not involving a public offering, and that the Membership Interests may be resold without a registration under the Securities Act only in certain limited circumstances and that otherwise the Membership Interests must be held indefinitely.
23. HOW represents, warrants and agrees that the LLC and Manager are under no obligation to register or qualify the Membership Interests under the Securities Act or under any state securities law, or to assist it in complying with any exemption from registration and qualification.
24. Without limiting the representations set forth above, and without limiting anything contained elsewhere in this Agreement (including Section 14 concerning transfers of Membership Interests), it will not make any disposition of all or any part of its Membership Interest which will result in violation by it or by the LLC of the Securities Act or any other applicable securities laws.  Without limiting the foregoing, HOW agrees not to make any disposition of all or any part of its Membership Interest unless and until it has notified the LLC of the proposed disposition and, if requested by Manager, a written opinion of counsel in form and substance reasonably satisfactory to the LLC that such disposition will not require registration of any securities under the Securities Act or the consent of, or a permit from, appropriate authorities under any applicable state securities laws.
25. HOW acknowledges that there are substantial restrictions on the transferability of the Membership Interests pursuant to this Agreement, that there is no public market for such Membership Interests and that none is expected to develop, and that, accordingly, it may not be possible for it to liquidate its investment in the LLC.
26. HOW has received and reviewed this Agreement and the other information provided by the LLC it considers necessary or appropriate for deciding whether to invest in the LLC.
27. HOW has not seen, received, been presented with, or been solicited by any leaflet, public promotional meeting, article or any other form of advertising or general solicitation with respect to the sale of Membership Interests.
28. HOW represents and warrants that it is not a “covered person” Rule 506 that has a criminal conviction, regulatory or court order or other disqualifying event constituting a disqualifying event under Rule 506.
29. **Reserves**. Manager may cause the LLC to create reserves in such amounts and for such purposes as it determines to be in the best interests of the LLC, including without limitation, reserves contemplated in Section 13(a)(iii) and Section 13(b)(iii).
30. **Compensation**. Except as provided herein, no Member or Manager shall receive any salary or draw for services rendered to the LLC and no firm, corporation or association of which any Member is a member, employee, director, officer or stockholder or an individual to whom a Member is related by blood or marriage shall receive compensation in connection with any work performed on behalf of the LLC.
31. **Indemnification**.
    1. Manager shall be indemnified by the LLC from any liability, loss, cost, expense (including reasonable investigative expenses and reasonable attorney’s fees), judgment, award, amount paid in settlement, fine or penalty resulting from any act performed by Manager within the scope of the authority conferred by this Agreement, except for acts of gross negligence, fraud or willful misconduct; provided, however, that any indemnity under this Section shall be provided out of and be limited to the extent of the LLC’s assets only and shall not include any liabilities arising under any state or federal securities laws.
    2. Manager shall not be liable to the LLC or to any Member or any other Manager for or as a result of any act, omission or error in judgment which was taken, omitted or made by Manager in the exercise of his reasonable judgment in good faith under this Agreement and which does not constitute willful misconduct, fraud or gross negligence.
32. **Books, Records and Reports**.
    1. At all times during the term of the LLC, Manager shall keep, or cause to be kept, full and faithful books of account, records and supporting documents, which shall reflect, completely, accurately and in reasonable detail, each transaction of the LLC (including, without limitation, transactions with Manager or its Affiliates). The books of account shall be maintained and tax returns prepared and filed using the cash method of accounting. The books of account, records and all documents and other writings of the LLC shall be kept and maintained at the principal office of the LLC. Each Member and/or its or his designated representative shall, upon reasonable notice to Manager, have access to such financial books, records and documents during reasonable business hours and may inspect and make copies of any of them at its or his own expense. Manager shall cause the LLC to keep at its principal office the following:
       1. a current list of the full name and last known business address of each Member, in alphabetical order;
       2. a copy of the Articles of Organization and a copy of amendments thereto;
       3. copies of the LLC’s federal, state and local income tax returns and reports, if any, for the three (3) most recent years; and
       4. copies of this Agreement, as amended, and of any financial statements of the LLC for the three (3) most recent years.
    2. Within one hundred twenty (120) days after the end of each year of the LLC, Manager shall send to each Person who was a Member at any time during such year such tax information, including, without limitation, a federal tax information report (including the LLC’s tax returns and K-1’s), as shall be reasonably necessary for the preparation by such Person of its or his federal or state income tax return.
    3. Manager shall prepare and submit to the Members for approval an annual budget for all construction, development and phasing with respect to Property (the “**Budget**”). The LLC’s fiscal year will be January 1 to December 31 and by executing this Agreement, Manager hereby approve the Budget attached hereto as **Exhibit C**. Commencing with calendar year 2022, on or before April 30th of each calendar year, Manager shall prepare and submit to the Members for approval an update to the Budget then in effect. If an updated Budget for any calendar year has not been approved by June 30th, then last approved budget shall continue to apply. Manager hereby agree to the budget attached hereto as **Exhibit C** shall be the budget for the initial calendar year of the LLC.
    4. Within one hundred twenty (120) days after the end of each year of the LLC, Manager shall send to each Person who was a Member at any time during such year (i) a balance sheet as of the end of the year, (ii) a cash flow statement (based on accrued operating results) for such year, (iii) a statement of profit and loss for such year, and (iv) a statement of the Members’ Capital Accounts, all compiled by a certified public accountant selected by Manager.
33. **Notices**. All notices under this Agreement shall be in writing and shall be deemed to have been received when delivered personally or by overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested. Notices to the LLC shall be mailed or delivered to the LLC’s principal office. Notices to a Member shall be mailed or delivered to its or his address set forth on Exhibit A hereof. Members shall give notice to Manager of any change of address.
34. **Amendment**.
    1. This Agreement is subject to amendment only following the unanimous consent of the Members.
    2. Notwithstanding the provisions of this Section, no amendment to this Agreement shall:
       1. Add to, detract from or otherwise modify the purposes of the LLC or amend the provisions concerning the management of the LLC, without the consent of all the Members;
       2. Enlarge the obligations, or reduce the rights, of any Member under this Agreement, without the consent of such Member;
       3. Amend the provisions herein with respect to allocations and distributions to the Members without the approval of each Member affected thereby, or amend this Section without the consent of all Members; or
       4. Enlarge the obligations, or reduce the rights, of any Manager under this Agreement, without the consent of such Manager.
35. **Additional Documents**. Each party hereto agrees to execute and acknowledge all documents and writings which may be necessary or expedient in the creation of this LLC and the achievement of its purposes.
36. **Survival of Rights**. Except as herein otherwise provided to the contrary, this Agreement shall be binding on and inure to the benefit of the parties hereto, their executors, administrators, heirs, guardians, beneficiaries, successors and assigns.
37. **Governing Law**. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed and construed in accordance with the laws of the State of [State], without regard to such jurisdiction’s rules concerning conflicts of laws that require the application of the laws of any other jurisdiction.
38. **Severability**. If any provision, sentence, phrase or word of this Agreement or the application thereof to any Person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase or word to Persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.
39. **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.
40. **Benefits**. The agreements, covenants and representations contained herein are for the benefit of the parties hereto and are not for the benefit of any third parties including, without limitation, any creditors of the LLC.
41. **Integration**. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on any party except to the extent incorporated in this Agreement.
42. **Tax Representative**.
    1. Developer shall be the “partnership representative” of the LLC pursuant to Section 6223 of the IRC (the “**Tax Representative**”). The Tax Representative may make or revoke any election or other determination that is made or may be made by the LLC for federal, state, local and foreign tax purposes, including any election under Sections 703(b), 709(b), 6221(b) and 6226 of the IRC. The Tax Representative shall inform each Member of all significant tax matters that may come to its attention in its capacity as Tax Representative by giving prompt notice thereof.
    2. Unless the Members elect otherwise, the LLC shall timely elect to use the alternative procedure described in Section 6226 of the IRC, if available, to have the affected Members or former Members of the LLC for any year that is under examination pay their applicable tax liability, and the Tax Representative shall provide the Internal Revenue Service and each affected Member with such information as is required by Section 6226 of the IRC and any Treasury Regulations promulgated thereunder. Each Member agrees to cooperate with the LLC and the Tax Representative in using the alternative procedures of Section 6226 of the IRC, whether or not such person is a Member at the time of a final LLC adjustment.
    3. If any “partnership adjustment” (as defined in Section 6241(2) of the IRC) is finally determined with respect to the LLC, and if the Tax Representative has not caused the LLC to make the election under Section 6226 of the IRC, then: (i) the Members shall take such actions requested by the Tax Representative, including filing amended tax returns and paying any tax due in accordance with Section 6225(c)(2) of the IRC; (ii) the Tax Representative shall use commercially reasonable efforts to make any modifications available under Section 6225(c)(3), (4) and (5) of the IRC; and (iii) any “imputed underpayment” (as determined in accordance with Section 6225 of the IRC) or partnership adjustment that does not give rise to an imputed underpayment shall be apportioned among the Members of the LLC for the taxable year in which the adjustment is finalized in such manner as may be necessary (as determined by the Tax Representative in good faith) so that, to the maximum extent possible, the tax and economic consequences of the partnership adjustment and any associated interest and penalties are borne by the Members based upon their interests in the LLC for the reviewed year.
    4. Expenses of administrative proceedings relating to the determination of the LLC tax items or taxes at the LLC level undertaken by the Tax Representative will be LLC expenses.
43. **Power of Attorney**.

(a) **Grant of Power**. The Members constitute and appoint Manager as the Members’ true and lawful attorney-in-fact (“**Attorney-in-Fact**”), and in the Members’ name, place and stead, to make, execute, sign, acknowledge and file:

(i) any and all certificates or other instruments required to be filed by the LLC under the laws of the State of [State] or of any other state or jurisdiction, including, without limitation, any certificate or other instrument necessary in order for the LLC to continue to qualify as a limited liability company under the laws of the State of [State];

(ii) all documents required to consummate the dissolution and termination of the LLC, if elected, and to cancel its Articles of Organization;

(iii) all documents required to effect acquisition and financing of the Property; and

(iv) all documents required to effect a transfer of a Member’s Membership Interest as may be expressly authorized by this Agreement.

(b) **Irrevocability**. The foregoing power of attorney is irrevocable and is coupled with an interest, and, to the extent permitted by applicable law, shall survive the dissolution, liquidation, termination, death or disability, as applicable, of a Member. It also shall survive the transfer of a Member’s Membership Interest, except that if the transferee is approved for admission as a Member, this power of attorney shall survive the delivery of the assignment for the sole purpose of enabling the Attorney-in-Fact to execute, acknowledge and file any documents needed to effect the substitution. Each Member shall be bound by any representations made by the Attorney-in-Fact acting in good faith pursuant to this power of attorney, and each Member hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the Attorney-in-Fact taken in good faith under this power of attorney.

1. **Interpretation**. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and the masculine gender shall include the neuter or female gender as the context may require. The section headings or titles shall not define, limit, extend or interpret the scope of this Agreement or any particular section.
2. **Dispute Resolution**. Any controversy, claim or deadlock between the Members hereof or Manager arising out of this Agreement or any actions relating to the terms and conditions hereof, or the breach of this Agreement by any Member, shall be settled by arbitration administered by the American Arbitration Association (“**AAA**”) in accordance with the rules stipulated by AAA in connection with a claim under an operating agreement substantially similar to the Agreement, and judgment on the award rendered by the arbitrator(s) may be entered into the courts of the State of [State] with sufficient jurisdiction over such a matter.

[Remainder of page intentionally left blank; signatures appear on the following pages]

**IN WITNESS WHEREOF,** the parties have executed this Agreement effective the day and year first above written.

**MEMBERS:**

**DEVELOPER PARTNER, INC.**,

a [State] corporation

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

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE OF Worship**

a [State] limited liability company

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

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

LIST OF MEMBERS

|  |  |  |
| --- | --- | --- |
|  | **Membership** | **Capital** |
| **Members** | **Percentage** | **Contributions** |
| Developer | 50% | $50.00 |
| HOW | 50% | $50.00 |
| **TOTAL** | **100%** | **$100.00** |

**EXHIBIT B**

PROPERTY

1. Please clarify an amount for the reserve fund. [↑](#footnote-ref-1)
2. Please clarify an amount for the reserve fund. [↑](#footnote-ref-2)