FORMER FEDERAL BUILDING LANDLORD, LLC,
A MONTANA LIMITED LIABILITY COMPANY

OPERATING AGREEMENT

Dated as of [_______], 2024

THE MEMBERSHIP INTERESTS EVIDENCED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR FOREIGN JURISDICTION AND HAVE NOT BEEN REGISTERED OR QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY SECURITIES REGULATORY AUTHORITY OF ANY STATE OR ANY OTHER JURISDICTION. THE MEMBERSHIP INTERESTS ARE BEING SOLD IN RELIANCE UPON EXEMPTION FROM SUCH REGISTRATION OR QUALIFICATION REQUIREMENTS. THE MEMBERSHIP INTERESTS EVIDENCED BY THIS AGREEMENT MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE SOLD, PLEDGED, ASSIGNED OR TRANSFERRED WITHOUT COMPLIANCE WITH APPLICABLE FEDERAL, STATE OR FOREIGN SECURITIES LAWS AND THE TRANSFER OR OTHER DISPOSITION RESTRICTIONS AS PROVIDED IN THIS AGREEMENT.

TABLE OF CONTENTS

Page

Recitals 1

ARTICLE I. GENERAL 3
- 1.01 Articles of Organization and Limited Liability Company Agreement 3
- 1.02 Name 3
- 1.03 Principal Executive Offices; Agent for Service of Process 3
- 1.04 Term 4
- 1.05 Recording of Articles 4

ARTICLE II. DEFINED TERMS 4
- 2.01 Certain Definitions 4
- 2.02 Construction 20
- 2.03 References 20

ARTICLE III. PURPOSE AND BUSINESS OF THE COMPANY 21
- 3.01 Purpose of the Company 21
- 3.02 Authority of the Company 21

ARTICLE IV. REPRESENTATIONS, WARRANTIES AND COVENANTS; DUTIES AND OBLIGATIONS 22
- 4.01 Representations, Warranties and Covenants Relating to the Property and the Company 22
- 4.02 Managing Member Duties and Obligations Relating to the Property and the Company 26
- 4.03 Investor Member Duties and Obligations Relating to the Property and the Company 29

ARTICLE V. MEMBERS, Company INTERESTS AND OBLIGATIONS OF THE COMPANY 30
- 5.01 Members, Managing Member, Capital Contributions and Company Interests 30
- 5.02 Return of Capital Contribution 34
- 5.03 Withholding of Capital Contribution Upon Default 34
- 5.04 Legal Opinions 35
- 5.05 Repurchase Obligation 35
- 5.06 Subordinated Loans 35

ARTICLE VI. CHANGES IN MANAGING MEMBER 36
- 6.01 Resignation of a Managing Member 36
- 6.02 Admission of a Successor or Additional Managing Member 36
- 6.03 Effect of Bankruptcy, Withdrawal, or Dissolution of a Managing Member 37

ARTICLE VII. ASSIGNMENT TO THE COMPANY 38

ARTICLE VIII. RIGHTS, OBLIGATIONS AND POWERS OF THE MANAGING MEMBER 39
8.01 Management of the Company 39
8.02 Limitations Upon the Authority of the Managing Member 39
8.03 Management Purposes 41
8.04 Delegation of Authority 41
8.05 Developer Entity Dealings with the Company 41
8.06 Reserved 42
8.07 Liability of Managing Member 42
8.08 Company Taxable as Partnership 43
8.09 Excess Development Costs, Operating Deficits 44
8.10 Net Interim Cash Flow 45
8.11 Withholding of Fee Payments 45
8.12 Conversion to Economic Interest; Appointment of a Non-Member Manager 45
8.13 Reserved 48
8.14 Reserved 48
8.15 Reserved 48
8.16 Operating Budget and Capital Budget 48
8.17 Operating Reserve 48

ARTICLE IX. TRANSFERS OF, AND RESTRICTIONS ON TRANSFERS OF INTERESTS OF INVESTOR MEMBER 48
9.01 Purchase for Investment 48
9.02 Restrictions on Transfer of Investor Member's Interest 49
9.03 Admission of Substitute Investor Member 49
9.04 Rights of Assignee of Company Interest 50
9.05 Investor Member Put Option 50

ARTICLE X. RIGHTS AND OBLIGATIONS OF INVESTOR MEMBER 52
10.01 Management of the Company 52
10.02 Limitation on Liability of Investor Member 52
10.03 Other Activities 52

ARTICLE XI. PROFITS, LOSSES, CREDITS, AND DISTRIBUTIONS 53
11.01 Allocation of Profits, Losses, Credits and Cash Distributions 53
11.02 Determination of Profits or Losses 54
11.03 Allocation of Profits or Losses from a Capital Transaction 54
11.04 Distribution of Proceeds from a Capital Transaction 55
11.05 Capital Accounts 56
11.06 Authority of Managing Member to Vary Allocations to Preserve and Protect Members' Intent 57
11.07 Designation of Partnership Representative 57
11.08 Authority of Partnership Representative 59
11.09 Expenses of Partnership Representative 62

11.10 Special Allocations ... 62

ARTICLE XII. SALE, DISSOLUTION AND LIQUIDATION ... 64
12.01 Dissolution of the Company ... 64
12.02 Winding Up and Distribution ... 65

ARTICLE XIII. BOOKS AND RECORDS, ACCOUNTING TAX ELECTIONS, ETC ... 66
13.01 Books and Records; Accounting Method ... 66
13.02 Bank Accounts ... 66
13.03 Accountants ... 66
13.04 Reports to Members ... 67
13.05 Tax Elections ... 69
13.06 Company Fiscal Year ... 70
13.07 Investor Member Inspection ... 70

ARTICLE XIV. AMENDMENTS ... 70
14.01 Proposal and Adoption of Amendments ... 70

ARTICLE XV. CONSENTS, VOTING AND MEETINGS ... 71
15.01 Method of Giving Consent ... 71
15.02 Submissions to Investor Member ... 71

ARTICLE XVI. GENERAL PROVISIONS ... 71
16.01 Burden and Benefit ... 71
16.02 Applicable Law ... 71
16.03 Safe Harbor ... 71
16.04 Counterparts ... 71
16.05 Separability of Provisions ... 72
16.06 Entire Agreement ... 72
16.07 Liability of the Investor Member ... 72
16.08 Notices ... 72
16.09 Legal Fees ... 73
16.10 Rights and Remedies ... 73
16.11 Survival of Obligations ... 74
16.12 Creditors Not Benefited ... 74

Schedule A - Members, Capital Contributions, and Percentage Interests
Exhibit A - Insurance Provisions
Exhibit B-1 - Form of Installment Payment Notice
Exhibit B-2 - Form of Managing Member’s Certificate
Exhibit C - Architect’s Certificate
Exhibit D - Projections

OPERATING AGREEMENT
OF
FORMER FEDERAL BUILDING LANDLORD, LLC

This OPERATING AGREEMENT (this "Agreement") is made and entered into as of the Admission Date, by and between the undersigned parties.

RECITALS

WHEREAS, Former Federal Building Landlord, LLC (the "Company") was formed upon the filing of the Articles of Organization of the Company ("Articles") in the office of the Secretary of State of the State of Montana (the "State") on [___________], 2024 pursuant to the Montana Limited Liability Company Act (as amended from time to time, the "Act"); and

WHEREAS, the City of Billings, Montana (the "City") is the owner of a fee interest in the building located at 316 North 26th Street, in Billings, Montana and commonly known as the James F. Battin Federal Building (the "Building"), as well as certain other improvements, and the tract of land upon which the Building is located (collectively, the "Land" and, together with the Building, the "Property"); and

WHEREAS, pursuant to the Lease Purchase Finance Documents (as hereafter defined): (i) the City granted a leasehold interest in the Property to First Interstate Bank, a national banking corporation ("FIB"), and (ii) FIB subleased the Property back to the City; and

WHEREAS, the Company acquired a sub-leasehold interest in the Property pursuant to the Ground Lease (as hereafter defined); and

WHEREAS, the rehabilitation of the Building will help ensure the preservation and protection of a historic building through the restoration of the historic interior and exterior of the Building, and the development of the Building into office space and other related amenities that will qualify for Federal Historic Tax Credits (as hereinafter defined) and State Historic Tax Credits (collectively, the "Project"); and

WHEREAS, FIB Battin, LLC, a Delaware limited liability company (together with any successors thereto, the "Investor Member"), has acquired an interest in the Company; and

WHEREAS, the Investor Member intends to make a capital contribution in one or more installments in the aggregate amount of $[________] (as may be adjusted pursuant to the terms hereof) to the Company; and

WHEREAS, Former Federal Building Manager, LLC, a Montana limited liability company (the "Managing Member"), is the managing member of the Company; and

WHEREAS, the Company intends to use a portion of the proceeds of (i) that certain loan made by the City, in the aggregate amount of $[________] (the "Loan"), which Loan is evidenced and repaid by the Ground Lease (as hereafter defined); (ii) the capital contribution by the

Managing Member in the aggregate amount of $[________]; and (iii) the capital contribution by the Investor Member, among other sources, to acquire and rehabilitate the Property; and

WHEREAS, the parties hereto now desire to enter into this Agreement to (i) admit the Investor Member to the Company as the Investor Member; (ii) admit and appoint the Managing Member as the Managing Member of the Company; (iii) assign Interests in the Company; and (iv) set forth all of the provisions governing the Company.

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

ARTICLE I.
GENERAL

1.01 Articles of Organization and Limited Liability Company Agreement.

The Members ratify the execution and filing of the Articles in the office of the Secretary of State of the State on [______], 2024, by Andy Zoeller as the "person" forming the Company as contemplated by Section 35-8-201(1) of the Act. The Company shall be a "manager-managed company" as that term is defined in Section 35-8-102(20) of the Act, and the Managing Member is hereby appointed as the initial manager of the Company in accordance with the terms and conditions hereof.

This Agreement constitutes the "operating agreement" of the Company within the meaning of Section 35-8-109 of the Act and this Agreement governs the affairs of the Company and the conduct of its business, except as otherwise required by the Act.

1.02 Name.

The name of the Company is Former Federal Building Landlord, LLC.

1.03 Principal Executive Offices; Agent for Service of Process.

The principal executive office of the Company shall be 210 North 27th Street, Billings, Montana 59101. The Company may change the location of its principal executive office to such other place or places as may hereafter be determined by the Managing Member. The Managing Member shall promptly notify all other Members of any change in the principal executive office. The Company may maintain such other offices at such other place or places as the Managing Member may from time to time deem advisable.

The name and address of the Agent for service of process is Gina Dahl with an address of 210 North 27th Street, Billings, Montana 59101.

1.04 Term.

The term of the Company commenced as of [_________], 2024, and shall continue until the Company is dissolved by law or in accordance with the provisions of this Agreement.

1.05 Recording of Articles.

Upon the execution of this Agreement by the parties hereto, the Managing Member shall take all actions necessary to assure the prompt recording of an amendment to the Articles of the Company, if required by the Act, including filing with the Office of the Secretary of State of the State. All fees for filing shall be paid out of the Company's assets. The Managing Member shall take all other necessary action required by law to perfect and maintain the Company as a limited liability company under the laws of the State and shall register the Company under any assumed or fictitious name statute or similar law in force and effect in the State or the State, as required.

ARTICLE II.
DEFINED TERMS

1.01 Certain Definitions.

In addition to the defined terms set forth in the Recitals to this Agreement, the following defined terms used in this Agreement shall have the meanings specified below:

"2024 Delay Amount" has the meaning set forth in Section 5.01(f)(v)(A).

"2025 Delay Amount" has the meaning set forth in Section 5.01(f)(v)(B).

"Accountants" means, with respect to any Cost Certifications and the Projections, BakerTilly US LLP, or such other firm of independent certified public accountants as may be engaged by the Managing Member with the Consent of the Investor Member.

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

"Actual Federal Historic Tax Credits" means, for a particular year or in the aggregate, as the context may require, the total amount of Federal Historic Tax Credits properly claimed by the Company and properly allocable to the Investor Member under the terms of this Agreement, as subsequently adjusted, if applicable, as provided for herein.

"Actual State Historic Tax Credits" means, for a particular year or in the aggregate, as the context may require, the total amount of State Historic Tax Credits properly claimed by the Company and properly allocable to the Investor Member under the terms of this Agreement, as subsequently adjusted, if applicable, as provided for herein.

"Adjuster Differential Amount" has the meaning set forth in Section 5.01(f)(iii) herein.

"Adjustment Date" means the first day following the latest to occur, to the satisfaction of the Investor Member in its sole and reasonable discretion, of (i) receipt by the Investor Member of evidence of no continuing Event of Default (as defined in any Operating Document) then exists

(including any default by the Managing Member of its obligation pursuant to Section 9.05(c)); (ii) receipt by the Investor Member of evidence of satisfaction of any accrued and unpaid charges owed to Investor Member, including any accrued and unpaid Priority Return and Special Tax Distribution; (iii) the first day of the first month following the last day of the Compliance Period; and (iv) the end of the last taxable year in which any Historic Tax Credits are allocated to the Investor Member (without taking into account the "at-risk" rules under Section 49 of the Code).

"Adjustment Year" shall have the meaning set forth in Section 6225(d) of the Code.

"Admission Date" means the date upon which this Agreement is executed and delivered by the Investor Member.

"Affiliate" means, with respect to a specified Person, (i) any Person directly or indirectly controlling, controlled by or under common control with the Person specified, (ii) any Person owning or controlling 10% or more of the outstanding voting securities or beneficial interests of the Person specified, (iii) any officer, director, partner, trustee or member of the immediate family of the Person specified, (iv) if the Person specified is an officer, director, general partner, manager, managing member or trustee, any corporation, partnership or trust for which that Person acts in that capacity or (v) any Person who is an officer, director, general partner, manager, managing member, trustee or holder of 10% or more of outstanding voting securities or beneficial interests of any Person described in clauses (i) through (iv). The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"After-Tax Basis" means, with respect to any payment to be received by the Investor Member, the amount of such payment supplemented by a further payment or payments so that, after deducting from such payments the amount of all taxes (net of any current credits, deductions or other tax benefits arising and realized from the payment by the Investor Member of any amount, including taxes, for which the payment to be received is made) imposed on the Investor Member by any governmental authority or other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment to be received; provided, however, for the purposes of this definition, and for purposes of any payment to be made to the Investor Member on an After-Tax Basis, it shall be assumed that taxes are payable by the Investor Member at the Applicable Tax Rate, which rate shall be certified in writing by the Investor Member to the Managing Member upon request.

"Agreement" means this Operating Agreement, as amended from time to time in accordance with its terms.

"Applicable Laws" means any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, requirements, or any order, judgment, decree, determination, or award of any court binding on any Developer Entity, or their assets including the Property.

"Applicable Securities Laws" means, collectively, the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or the securities laws or regulations of any state or other jurisdiction.

"Applicable Tax Rate" means the combined effective federal, state, and local income tax rate of a taxpayer applicable in any given Company Fiscal Year assuming in each case the maximum tax rate applicable to the taxpayer without regard to actual taxable income.

"Architect" means JLG Architects or such other firm as may be engaged by the Company with the Consent of the Investor Member to provide architectural services in connection with the Rehabilitation.

"Architect's Certificate" means the certificate executed by the Architect in the form attached hereto as Exhibit C.

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

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

"Bankruptcy Code" has the meaning set forth in Section 6.03(f).

"Budget" has the meaning set forth in Section 8.16.

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

"Business Day" means any day other than (i) a Saturday or Sunday or (ii) a day on which commercial banks in Billings, Montana are authorized or required to be closed.

"Capital Account" means the capital account of a Member as described in Section 11.05.

"Capital Contribution" means with respect to any Member the total amount of money or the Fair Market Value of other property (net of liabilities thereon) contributed or agreed to be contributed, as the context requires, to the Company by such Member or the amount of any obligation of the Company assumed by any Member pursuant to the terms of this Agreement. Any reference to the Capital Contribution of a Member shall include the Capital Contribution made by a predecessor holder of the Interest of such Member.

"Capital Contribution Adjustments" means any negative Credit Adjustment, Recapture Differential Amount, or Delay Differential Amount as the same may be reduced by any payments made pursuant to Article XI hereof.

"Capital Index" means, with respect to Federal Historic Tax Credits, 89%, and with respect to State Historic Tax Credits, 92%, in the case of any Credit Adjustment.

"Capital Transaction" means (i) a sale, assignment, or other disposition of all or substantially all of the assets; (ii) a mortgage, financing or refinancing; (iii) a casualty (excluding proceeds from loss of income and business interruption insurance), condemnation or similar event of any part with respect to the Property, where the gross proceeds from such event are not used to rebuild or repair the Property (but only to the extent such rebuild or repair is feasible, as determined by FIB in its discretion); (iv) a title defect giving rise to payments to the Company under the Title Policy to the extent such proceeds are not required to cure such title defect; or (v) any other transaction generating cash proceeds to the Company that are not includable in determining Net Cash Flow.

"Certification Application" means for the Property, the Historic Preservation Certification Application provided for in Title 36 of the Code of Federal Regulations, Part 67.

"Change of Law" means any of the following occurring after the date of this Agreement: (i) amendments to the Code; (ii) any amendment to the Treasury Regulations promulgated under the Code; or (iii) the promulgation of any new Treasury Regulations after the date of this Agreement, in each case that material and adversely affect the Tax Credits or the Investor Member's ability to claim the Tax Credits; provided, however, that a "Change of Law" shall not include the promulgation of new or amended Treasury Regulations or other administrative authority to the extent that the same do not alter in any material respect the Treasury Regulations or administrative authority that were promulgated or issued on or prior to the date of this Agreement with respect to the Tax Credits.

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

"Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law.

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

"Company Adjustment" means any adjustment to any item of income, gain, loss, deduction, or credit of the Company, or any Member's distributive share thereof, in either case as described in any applicable Treasury Regulations or other guidance prescribed by the IRS.

"Company Fiscal Year" means the fiscal and tax year of the Investor Member as provided in Section 13.06.

"Compliance Period" means the time period ending upon the fifth full year after the last date upon which QREs taken account of for purposes of calculating the Actual Federal Historic Tax Credits and/or Actual State Historic Tax Credits for any year were placed in service, or any longer time period during which Federal Historic Tax Credits and/or State Historic Tax Credits attributable to the Property are subject to recapture pursuant to the Code or pursuant to the State HTC Statute.

"Consent" means the prior written consent or approval of the Investor Member, or any other Member, as the context may require, to do the act or thing for which the consent is solicited.

"Construction Contract" means the guaranteed maximum price construction contract (including all exhibits, attachments thereto and change orders approved by the Developer, the Managing Member, and, if required, the National Park Service) for on-site and off-site work and pre-construction services entered into between the Developer and the Contractor pursuant to which the Property is being rehabilitated.

"Contractor" means Dick Anderson Construction, which is the general construction contractor for the Project, or such other firm as may be engaged by Company with the Consent of the Investor Member (in its reasonable discretion) to provide general contractor services in connection with the Project.

"Contribution Agreement" means the Contribution and Reimbursement Agreement dated the date hereof among the Developer, the Managing Member, and the Company.

"Controlling Interest" means the power to direct the management of any Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

"Cost Certification" means a written certification of the Accountants as to the itemized amounts of the QREs incurred in connection with the Rehabilitation and the Actual Federal Historic Tax Credits and Actual State Historic Tax Credits, which certification shall constitute no less than an "examination report."

"Counsel" or "Counsel for the Company" means such attorneys or law firm or firms upon which the Investor Member and the Managing Member shall agree; provided, however, that if any section of this Agreement either (i) designates particular counsel for the purpose described therein, or (ii) provides that counsel for the purpose described therein shall be chosen by another method or by another Person, then such designation or provision shall prevail over this general definition.

"Credit Adjustment" has the meaning set forth in Section 5.01(f)(ii).

"Credit Determination" has the meaning set forth in Section 5.01(f)(i).

"Debt Service" means all payments of principal, interest, or other charges, or any combination thereof, due on the Loan pursuant to the Ground Lease. For the avoidance of doubt, Debt Service shall be deemed to include all amounts payable under the Ground Lease, whether denominated as principal, interest, rent or other charges due and payable by the Company under the Ground Lease.

"Delay Differential Amount" has the meaning set forth in Section 5.01(f)(v).

"Depreciation" means, for each Company Fiscal Year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Company Fiscal Year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Company Fiscal Year or other period, Depreciation shall be an amount which bears the same ratio to such

beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Company Fiscal Year or other period bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Company Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

"Designated Individual" means the person appointed by the Partnership Representative to be the "designated individual" with the sole authority to bind the Partnership Representative pursuant to the Revised Partnership Audit Rules.

"Developer" means the City.

"Developer Entity" means each of the Developer, the Managing Member, the Company, and each Affiliate of any of them that has any obligations to or rights or benefits with respect to the Property or the Company; provided, however, that the Investor Member shall not be deemed a Developer Entity.

"Development Agreement" means that certain Development Agreement of even date herewith by and between the Company and the Developer for services rendered by the Developer in connection with the Rehabilitation of the Building.

"Development Costs" means all expenditures of the Company that are required to (i) complete the Rehabilitation, (ii) achieve Substantial Completion, (iii) achieve the Final Closing, (iv) pay any applicable loan assessment fees, discounts or other expenses incurred by the Company as a result of the occurrence of Final Closing, and (v) fund any Operating Reserves required to be funded from Development Sources. Without limiting the generality of the foregoing, the term "Development Costs" shall include (1) any loan assessment fees, discounts or other expenses incurred by the Company, including those that result from the occurrence of Final Closing, (2) any interest, taxes, and property insurance premiums that are the responsibility of the Company incurred prior to the Final Closing, (3) any construction cost overruns and the cost of any change orders, (4) sums necessary to remedy any defects, including latent defects, in connection with the rehabilitation or construction, if such defects are not cured by the Contractor within a reasonable period of time, (5) any escrow deposit requirements which are conditions to the Final Closing, including without limitation, any amounts necessary for local taxes, utilities, earthquake and other insurance premiums and other purposes, which might be required (provided, however, that if any such deposits are made by the Managing Member and the funds, or any portion thereof, subsequently are released from such deposit, the funds so released shall be paid to the Managing Member), and (6) any Operating Deficits arising during the Property Development Period.

"Development Fee" means, in the aggregate, the fees payable to the Developer pursuant to the provisions of the Development Agreement.

"Development Sources" means the aggregate amount of (i) the paid-in portion of the capital contributions to the Company, (ii) the net, funded proceeds of the Loan, and (iii) the Company's share of any casualty insurance or condemnation award proceeds to the extent received during the Property Development Period, necessary for rebuilding of the Property, and available therefor.

“Disqualified Person” means (a) any federal, state, or local government (or any political subdivision, agency, or instrumentality thereof); (b) any organization described in Section 501(c) of the Code and exempt from tax under Section 501(a) of the Code; (c) any Person who is not a “United States person” as defined in Section 7701(a)(3) of the Code (other than a foreign partnership or foreign pass-through entity), unless such Person is a foreign person or entity that is subject to United States federal income tax on more than 50% of the gross income for the taxable year derived by such Person from the Project; (d) any entity described in Treasury Regulation Section 1.48-4(a)(1)(v) (e.g., a real estate investment trust, regulated investment company, certain domestic building and loan associations, a mutual savings or cooperative bank or a cooperative described in Section 1381(a) of the Code); and (e) any partnership or other pass-through entity (including a single-member disregarded entity) that has a partner (or other holder of an equity or profits interest) which is a Disqualified Person.

“Economic Interest” means the elements of an Interest that (i) are limited to the right to receive allocations of Operating Profits and Operating Losses and distributions of Net Cash Flow and proceeds from a Capital Transaction pursuant to Sections 11.01, 11.03 and 11.04 and Capital Account balance; and (ii) do not include any rights to vote, grant any consent or participate in any way in the management of the Company.

“Environmental Laws” means the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 9601 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., and the Occupational Safety and Health Act, each as amended from time to time and any other federal, state, or local statute, code, ordinance, rule, regulation, permit, consent, approval, license, judgment, order, writ, judicial decision, common law rule, decree, agency interpretation, injunction or other authorization or requirement whenever promulgated, issued, or modified, including the requirement to register underground storage tanks, relating to (i) emissions, discharges, spills, releases, or threatened release of pollutants, contaminants, Hazardous Substances (as hereinafter defined), materials containing Hazardous Substances, or hazardous or toxic materials or wastes into ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, wetlands, septic systems or onto land; or (ii) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment of Hazardous Substances, materials containing Hazardous Substances or hazardous or toxic wastes, material, products, or by-products (or of equipment or apparatus containing Hazardous Substances).

“Environmental Reports” means the Phase I Environmental Site Assessment for the Property prepared by Green Environmental Management, and dated August 14, 2024.

“Excess Development Costs” means all Development Costs in excess of Development Sources.

“Excluded Event” means (i) any sale or disposition of a direct or indirect Interest in the Company by the Investor Member; (ii) any change in the Investor Member’s tax status to a Disqualified Person; (iii) any other act or omission by the Investor Member that was the cause of a Recapture Event or negative Credit Adjustment; and (iv) any loss or disallowance of Federal

Historic Tax Credits due to the structure of the transaction, including the failure of (a) the Company to be treated as a partnership for federal income tax purposes; (b) the Investor Member and Managing Member to be treated as the sole partners in the Company for federal income tax purposes; (c) the allocations of tax items (i.e., income, gain, loss, deduction and credit) to the Members of the Company; or (d) an IRS challenge of all or any portion of the transaction structure of the Company not already described in (iv) any of which items (i) through (iii) was not caused directly or indirectly by Managing Member Acts or Omissions.

"Fair Market Value" means the amount for which the real estate or other property will sell in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably in an arm's-length transaction. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under circumstances in which: (i) the buyer and the seller are motivated by customary commercial considerations; (ii) each party is well-informed or well-advised and each is acting in what it considers its own best interest; (iii) a reasonable time is allowed for soliciting offers in the open market; (iv) payment is made in cash or its equivalent; (v) financing, if any, is on terms generally available in the community on the closing date that are typical for similar types of property in the same geographic area; and (vi) the price represents a normal consideration for the property sold unaffected by special financing amounts, terms, services, fees, costs or credits incurred in connection with the transaction.

"Federal Historic Tax Credits" means the tax credit allowable pursuant to Section 47 of the Code for QREs incurred in connection with the "certified rehabilitation" of a "certified historic structure."

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

"Final Closing" means the date upon which the Investor Member has received from the Company evidence of each of the following: (i) Substantial Completion; (ii) final lien-free completion of the Rehabilitation including all outstanding punchlist items and receipt of certificate of final completion covering 100% of the Rehabilitation from the Architect and receipt of any required prior approvals from FIB pursuant to the Lease Purchase Finance Documents; and (iii) receipt of any required final prior approvals from FIB as prerequisites to the disbursement of any remaining proceeds under the Lease Purchase Finance Documents, all as evidenced by such supporting documentation as shall be acceptable to the Investor Member.

"Final Determination" means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted), (ii) the date on which the IRS (or, if applicable, any state or local taxing authority) has entered into a binding agreement with the Company with respect to such issue or on which the IRS (or such state or local taxing authority) has reached a final administrative or judicial determination with respect to such issue which, whether by law or agreement, is not subject to appeal, (iii) the date on which the time for instituting a claim for refund has expired, or if a claim was filed the time for instituting suit with respect thereto has expired with no such suit having been filed, or (iv) the date on which the applicable statute of limitations for

raising an issue regarding a federal (or, if applicable, a state or local) income tax matter with respect to the Company has expired with such issue not having been raised.

"First Installment" has the meaning set forth in Section 5.01(c)(i).

"Forbearance Agreement" means that certain Forbearance Agreement among FIB, the City, the Company, and the Investor Member, dated as of the date hereof.

"Former Member" means any Person who was a Reviewed Year Member but does not hold an interest in the Company at any time during the Adjustment Year.

"GAAP" has the meaning set forth in Section 13.01.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset, as determined by the contributing Member and the Company;

(ii) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross Fair Market Values, as determined by the Managing Member, as of the following times: (a) the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member of more than a de minimis amount of Company property as consideration for an interest in the Company; and (c) the liquidation of the Company within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Treasury Regulations; provided, however, that the adjustments pursuant to clauses (a) and (b) above shall be made only if the Managing Member reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) The Gross Asset Value of any Company asset distributed to any Member shall be the gross Fair Market Value of such asset on the date of distribution as determined by the Managing Member; and

(iv) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code, 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 Treasury Regulations and Section 11.05 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this clause (iv) to the extent the Managing Member determines that an adjustment pursuant to clause (ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to Section (i), (ii) or (iv) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

"Ground Lease" means that certain Ground Sublease Lease dated as of the date hereof by and between the City, as ground lessor, and the Company, as ground lessee, pursuant to which the Company acquired a sub-leasehold interest in the Property.

"Hazardous Substance" means (i) hazardous materials, hazardous wastes, and hazardous substances as those terms are defined under any applicable Environmental Laws, (ii) petroleum and petroleum products including crude oil and any fractions thereof, (iii) natural gas, synthetic gas, and any mixtures thereof, (iv) asbestos and any material which contains any hydrated mineral silicate, including but not limited to chrysolite, amosite, crocidolite, tremolite, anthophylite, and actinolite, whether friable or non-friable, (v) PCBs, or PCB-containing materials or fluids, (vi) radon, (vii) any other hazardous, radioactive, toxic, or noxious substance, materials, pollutant, or solid, liquid or gaseous waste, and (viii) any substance with respect to which a federal, state or local agency requires environmental investigation, monitoring, or remediation.

"Imputed Underpayment" shall have the meaning set forth in Section 6225 of the Code.

"Initial Operating Period" means the period commencing on the Admission Date and running through the first day of the first month following the end of the expiration of the Put Option Period.

"Installment" means, as the context requires, one or more of the installments of the Investor Member's Capital Contribution paid or payable to the Company pursuant to Section 5.01, or as otherwise provided herein.

"Interest" or "Company Interest" means the ownership interest of a Member of the Company at any particular time, including the right of such Member to any and all benefits to which such Member may be entitled as provided in this Agreement and in the Act, together with the obligations of such Member to comply with all the terms and provisions of this Agreement and of said Act. Such Interest of each Member shall, except as otherwise specifically provided herein, be that percentage of the aggregate of such benefit or obligation set forth in Schedule A as such Member's Percentage Interest.

"Investor Member" means FIB Battin, LLC, a Delaware limited liability company, and its successors and assigns, and in the event of more than one Investor Member, Investor Member means, collectively, all such Investor Members.

"IRS" means the Internal Revenue Service.

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

"Lease Purchase Finance Documents" means, collectively: (i) that certain Ground Lease Agreement dated as of the date hereof, by and between the City, as lessor, and FIB, as lessee, (ii) that certain Lease-Purchase Agreement by and between FIB, as lessor, and the City, as lessee, and (iii) that certain Lender Letter dated as of the date hereof from FIB to the City.

"Liquidator" means the Managing Member or, if there is none at the time in question, such other Person who may be appointed in accordance with applicable law and who shall be

responsible for taking all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Company upon its dissolution.

"Managing Member" means Former Federal Building Manager, LLC, a Montana limited liability company, and its successors pursuant to this Agreement.

"Managing Member Acts or Omissions" means the direct or indirect acts or omissions of the Managing Member or any Affiliate of the Managing Member with respect to the Company or the Project which directly or indirectly causes a Recapture Event.

"Master Lease" means that certain Lease Agreement of even date herewith by and between the Company, as landlord, and the City, as tenant, with respect to the lease of the Property.

"Member" means any or each Person who is a member of the Company as the context shall require.

"Net Cash Flow" means for each Company Fiscal Year the sum of (i) Operating Income and (ii) any other funds deemed available for distribution by the Managing Member, less the sum of all Operating Expenses (including Debt Service), and all other cash expenditures (whether or not such expenditure are deducted, amortized, or capitalized for tax purposes). Net Cash Flow shall be determined separately for each Company Fiscal Year, commencing on the day after Final Closing and shall not be cumulative.

"Net Interim Cash Flow" means the amount by which the sum of (i) Operating Income attributable to the Property Development Period and (ii) Development Sources (including interest income, rental income, other income from the Project, and any reserves, escrows or insurance proceeds), even if actually received after such period, exceeds the sum of (iii) any Operating Expense attributable to the Property Development Period and (iv) all other Development Costs, regardless of when expended.

"Non-Member Manager" has the meaning set forth in Section 8.12(b).

"Notice" means a writing containing the information required by this Agreement to be communicated and either given by U.S. mail return receipt requested, by a nationally recognized next-business-day courier service, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), or sent by electronic mail (provided such electronic mail is received by the recipient no later than 5:00 p.m. Mountain Time on the date of such notice), or sent by personal delivery by a nationally recognized courier service for next day delivery; provided, however, that any written communication containing such information actually received shall constitute Notice for all purposes of this Agreement.

"Operating Deficit" means for any period, the amount by which Operating Income for such period of time is exceeded by Operating Expenses and Debt Service due from the Company with respect to the Loan. For purposes of this definition, all expenses shall be deemed payable on a 60-day current basis.

"Operating Deficit Loans" has the meaning set forth in Section 8.09(b).

"Operating Documents" means and includes (i) this Agreement; (ii) the Development Agreement; (iii) the Construction Contract; (iv) the Master Lease; (v) the Ground Lease, and any other documents evidencing, guarantying, and securing the Loan; and (vi) the Forbearance Agreement.

"Operating Expenses" mean all expenses of operation of the Property and the Company, as incurred by the Company in the reasonable discretion of the Managing Member, and determined to be fixed expenses in the reasonable discretion of the Managing Member, including Debt Service, costs of utilities, maintenance, repairs professional and management fees, miscellaneous expenses, and any deposit to cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be reasonably determined from time to time by the Managing Member with the approval of the Investor Member, which approval shall not be unreasonably withheld, to be advisable for the operation of the Company, but excluding Development Costs and any other expenses of the Company to be paid from Development Sources pursuant to this Agreement; any payments or distributions of Net Cash Flow; and depreciation, amortization deductions and other non-cash items. For purposes of this definition, all expenses shall be deemed paid on the earlier of the stated due date or on a 60-day current basis.

"Operating Income" means all cash received from operation of the Property and the Company in the ordinary course of business and recognizable by the Company for income tax reporting purposes, including rents, sublease payments, and all other sources; provided, however, that Operating Income shall exclude Development Sources and the proceeds of any other loans to the Company, proceeds from Capital Transactions, tenant security and other deposits (except to the extent applied in payment of delinquent rent, property damage or other tenant obligations) and interest earned on the Operating Reserve (unless withdrawn as aforesaid).

"Operating Profits" or "Operating Losses" means, for any Company Fiscal Year, the Profits or Losses, as the case may be, of the Company for that year as determined for federal income tax purposes by the Accountants with the adjustments described in the definition of "Profits or Losses," excluding Profits or Losses from a Capital Transaction and determined without regard to any adjustments to basis pursuant to Sections 734 or 743 of the Code.

"Operating Reserve" has the meaning set forth in Section 8.17.

"Operating Reserve Amount" has the meaning set forth in Section 8.17.

"Ordinary Income Amount" has the meaning set forth in Section 11.03(c).

"Part 1 Approval" means (i) the individual listing on the National Register of Historic Places of the Building; or (ii) the determination by the National Park Service pursuant to Part 1 of the Certification Application that the Building is a "certified historic structure" as provided for in Section 47(c)(3)(A)(ii) of the Code.

"Part 2 Approval" means the conditional determination by the National Park Service, pursuant to Part 2 of the Certification Application, that the Rehabilitation of the Building described in the Plans and Specifications is consistent with the historic character of the Building, or the historic district in which the Building is located, and meets the Secretary's Standards, as such Part 2 Approval may be amended with the Consent of Investor Member.

"Part 3 Approval" means the determination by the National Park Service, pursuant to Part 3 of the Certification Application, that the completed Rehabilitation of the Building is a "certified rehabilitation" of a "certified historic structure" under Section 47 of the Code.

"Partnership Representative" means the Member designated in Section 11.07 to be the Partnership Representative as provided for in the Revised Partnership Audit Rules.

"Percentage Interest" means the percentage Interest of each Member as set forth in Schedule A.

"Person" means any individual, partnership, joint venture, limited liability company, corporation, trust or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

"Placement in Service" or "Placed in Service" means with respect to the Rehabilitation or any phase thereof the occurrence of the events necessary to establish placement in service thereof for purposes of Section 1.48-12(f)(2) of the Treasury Regulations, including, if applicable, the issuance of all necessary temporary or permanent certificates of occupancy from the applicable governmental jurisdictions or authorities with respect to such portion.

"Plans and Specifications" means the Plans and Specifications for the Rehabilitation of the Building approved by the Developer and Investor Member, including specifications for materials, and all amendments and modifications thereof.

"Preservation Consultant" means Gilmore Franzen Consulting LLC or such other firm as may be engaged by the Company with the Consent of the Investor Member to provide preservation consulting services in connection with the Rehabilitation.

"Priority Return" means a cumulative, annual distribution to the Investor Member (prorated for periods of less than a full year) of an amount equal to 2% of its paid-in Capital Contribution made in connection with the Federal Historic Tax Credits as determined by the Capital Index associated therewith and as adjusted hereby beginning on the first January 1st after the Admission Date, payable from Net Cash Flow or the proceeds of a Capital Transaction in the manner set forth in Article XI. Beginning on the Substantial Completion Date, any Priority Return not paid currently shall bear interest from the date due until the date paid at the lesser of 8% and the maximum interest rate permitted under Montana law, compounding annually.

"Profits" or "Losses" means, for each Company Fiscal Year or other period, an amount equal to the Company's taxable income or loss, as the case may be, for such Company Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) Any items described in Sections 705(a)(1)(B) and 705(a)(1)(C) of the Code which are not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss.

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Section 1.704-1(b)(2)(iv)(i) of the Treasury Regulations, and not otherwise taken into account in computing Profits or Losses, shall be subtracted from such taxable income or loss.

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

(iv) In the event of a distribution of Company assets to a Member (whether in connection with a liquidation or otherwise), or in the event the Gross Asset Value of any Company asset is adjusted upon the acquisition of an additional interest in the Company, unrealized income, gain, loss and deduction inherent in such distributed or adjusted assets (not previously reflected in Capital Accounts) shall be allocated pursuant to Section 11.03 hereof as if there had been a taxable disposition of such distributed or adjusted assets at Fair Market Value.

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Company Fiscal Year or other period, computed in accordance with the definition of "Depreciation" set forth herein.

(vi) Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Section 11.10 hereof shall be taken into account in computing Profits or Losses only if required under the applicable provisions of the Code and Treasury Regulations.

"Profits or Losses from a Capital Transaction" means the Profits or Losses, if any, recognized by the Company as a result of a Capital Transaction, as determined for federal income tax purposes by the Accountants with the adjustments described in the definition of "Profits or Losses," but without regard to any adjustments to basis pursuant to Section 734 and 743 of the Code.

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

"Projected Federal Historic Tax Credits" means Federal Historic Tax Credits in the amount of $[________] with respect to the Building, of which $[________] the Investor Member has projected (and which have been reviewed and accepted by the Managing Member) to be the total amount of Federal Historic Tax Credits to be allocated to the Investor Member in connection with the Rehabilitation.

"Projected State Historic Tax Credits" means State Historic Tax Credits in the amount of $[________], 100% of which shall be allocated to the Investor Member (and which have been reviewed and accepted by the Managing Member) to be the total amount of State Historic Tax Credits to be allocated to the Investor Member in connection with the Rehabilitation.

"Projections" means the financial projections attached hereto as Exhibit D.

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

"Property Development Period" means the period commencing upon formation of the Company and terminating upon Final Closing.

"Push-Out Election" has the meaning set forth in Section 11.08(f).

"Put Option" has the meaning set forth in the Section 9.05(a).

"Put Option Election Notice" has the meaning set forth in the Section 9.05(b).

"Put Option Period" has the meaning set forth in the Section 9.05(a).

"Put Price" has the meaning set forth in the Section 9.05(a).

"QREs" means "qualified rehabilitation expenditures" as such term is defined in Section 47(c)(2) of the Code, as determined by the Accountants.

"Recapture Adjustment Amount" means an amount equal to any increase in taxes payable by the Investor Member as a result of any Recapture Event due to Managing Member Acts or Omissions plus any interest and penalties due to the IRS or the State in connection therewith.

"Recapture Differential Amount" has the meaning set forth in Section 5.01(f)(iv).

"Recapture Event" means any event that results in the recapture or disallowance of Federal Historic Tax Credits and/or State Historic Tax Credits under the Code and/or State HTC Statute, as applicable (other than a recapture arising as a result of a sale or disposition of the Company Interest of the Investor Member).

"Rehabilitation" means the development, construction, renovation, and rehabilitation work on the Building described in the Part 2 Approval, together with any other work on the Property contemplated in the Construction Contract or the Projections.

"Repurchase Event" means any of the following events: (i) the Property has not achieved Substantial Completion by December 31, 2025; (ii) the Company has not received Part 3 Approval within 9 months of Substantial Completion, or such later date as may be Consented to by the Investor Member; (iii) Final Closing has not occurred within 12 months of Substantial Completion of the Rehabilitation or such other later date as may be agreed to by the Investor Member; (iv) an event of default described in clauses (a), (b), (c) or (f) of Section 5.03 occurs prior to Final Closing, and any such event of default is (x) not cured within 60 days of the Managing Member's receipt of Notice of such default and (y) has a material adverse effect on the Tax Credits or the Investor Member; (v) the Property will qualify for less than 80% of the Projected Federal Historic Tax Credits and/or Projected State Historic Tax Credits; or (vi) an event of Bankruptcy has occurred with respect to any Developer Entity prior to the Final Closing and not dismissed within 60 days.

"Reviewed Year" shall have the meaning set forth in Section 6225(d) of the Code.

"Reviewed Year Member" means any Person who held an interest in the Company at any time during the Reviewed Year.

"Revised Partnership Audit Rules" means the partnership audit rules contained in Subchapter 63C of the Code, as amended by the Bipartisan Budget Act of 2015, Pub L. No. 114-74 (the "2015 Budget Act") and the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, the Treasury Regulations promulgated thereunder, and any applicable forms, instructions and other guidance prescribed by the IRS related thereto.

"Second Installment" has the meaning set forth in Section 5.01(c)(ii).

"Secretary" means the Secretary of the U.S. Department of the Interior or any authorized representative thereof, including the National Park Service.

"Secretary's Standards" means the standards for rehabilitation set forth in Title 36 of the Code of Federal Regulations, Part 67.7, or any successor provisions, as amended from time to time.

"Special Tax Distribution" means in any Company Fiscal Year in which taxable income or taxable gain is allocated to an Investor Member by the Company, pursuant to this Agreement, whether on the Company's tax return or after audit by the IRS beginning in the taxable year that includes the Admission Date, Net Cash Flow in a cumulative amount equal to the product of (i) the amount of such net taxable income and taxable gain allocated to such Investor Member for such year, and (ii) the Applicable Tax Rate, payable annually.

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

"State Historic Tax Credits" means the tax credit allowable pursuant to the State HTC Statute for projects that qualify for State Historic Tax Credits.

"State HTC Statute" means Section 15-31-151 of the Montana Code Annotated, and any successor provisions of Montana law governing the State Historic Tax Credits.

"Subordinated Loan" has the meaning set forth in Section 5.06(a); provided, however, that the Loan shall not be deemed to be a Subordinated Loan for this purpose.

"Substantial Completion" means with respect to the Rehabilitation or any phase thereof, the date upon which the Investor Member has received from the Company each of the following: (i) a certificate of substantial completion as certified by the Architect; (ii) all necessary certificates of occupancy (whether temporary or permanent) from the applicable governmental jurisdictions or authorities for 100% of the improvements therein; and (iii) any other documentation necessary to establish placement in service for purposes of Section 47(b) of the Code.

"Substitute Investor Member" means any Person admitted to the Company as an Investor Member pursuant to Section 9.03.

"Survey" means the ALTA (or an equivalent) survey prepared, certified, and submitted to the Investor Member.

"Tax Credits" means the Federal Historic Tax Credits and State Historic Tax Credits.

"Tax Dispute" has the meaning set forth in Section 11.08(d).

"Tax Reform Act" means the Act to Provide for Reconciliation Pursuant to Title II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (originally known as the Tax Cuts and Jobs Act), Pub. L. No. 115-97.

"Third Installment" has the meaning set forth in Section 5.01(c)(iii).

"Title Policy" means the ALTA extended coverage owner's leasehold policy of title insurance issued to the Company in an amount equal to the 115% of the Investor Member's expected Capital Contributions plus the Development Fee, in the form approved by the Investor Member.

"Treasury Regulations" or "Treasury Reg." means the final and temporary regulations promulgated from time to time under the Code.

"Withdrawal Event" means the occurrence of any of the following events: (a) the withdrawal of any Managing Member or, unless otherwise approved herein or by Investor Member, the sale, assignment, transfer or encumbrance by a Managing Member of any portion of such Managing Member's Interest; (b) the death or adjudication of incompetency of any individual Managing Member; (c) the voluntary or involuntary dissolution of a Managing Member which is not a natural person; (d) unless otherwise approved herein or by Investor Member, the sale, assignment, transfer or encumbrance of a Controlling Interest in a corporate Managing Member, of a partner interest in a Managing Member which is a partnership or of a member interest in a Managing Member which is a limited liability company; (e) a Bankruptcy with respect to any Managing Member or with respect to the holder of any Controlling Interest in any Managing Member; or (f) without limitation of the foregoing, any event occurring as to a partner of a Managing Member which is a partnership or as to a member of a Managing Member which is a limited liability company which would constitute a Withdrawal Event as provided above, if such Person were a Managing Member.

1.02 Construction.

As used herein, singular shall include the plural, the masculine gender shall include the feminine and neuter, feminine gender shall include the masculine and neuter and the neuter gender shall include the masculine and feminine unless the context otherwise indicates.

1.03 References.

Unless otherwise expressly specified, references to Articles and Sections are intended to refer to Articles and Sections of this Agreement, and all references to Exhibits and Schedules are intended to refer to Exhibits and Schedules attached to this Agreement, each of which is made a part of this Agreement for all purposes. Information contained in any Schedule shall be deemed contained in each and every other Schedule without requiring repetition thereof. The term "including" means "including, without limitation." Any date specified for action that is not a Business Day shall mean the first Business Day after such date. Any reference to a Person shall

be deemed to include such Person's permitted successors and assigns. Any reference to any document or documents shall be deemed to refer to such document or documents as amended, modified, supplemented, or replaced from time to time.

ARTICLE II.
PURPOSE AND BUSINESS OF THE COMPANY

. The Company has been organized exclusively for the purpose of owning, constructing, developing, leasing, improving, and disposing of the Project in accordance with Section 47 of the Code and the State HTC Statute and engaging in any other activity necessary, appropriate, desirable, or incidental thereto, all in order to generate profits in the form of cash income and long-term appreciation in value as well as return of capital. Notwithstanding anything contained herein to the contrary, the Company shall not engage in any business, and it shall have no purpose, unrelated to the Property and shall not acquire any real property or own assets other than those related to the Property or otherwise in furtherance of the purposes of the Company.

. In order to carry out its purpose, the Company is empowered and authorized to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of its purpose, and for the protection and benefit of the Company, including but not limited to the following:

(a) acquire and maintain the Property;

(b) rehabilitate, develop, operate, maintain, improve, buy, own, sell, convey, assign, mortgage, rent or lease any real estate and any personal property necessary to the operation of the Property;

(c) operate the Property consistent with the requirements of the Operating Documents;

(d) enter into any kind of activity, and perform and carry out contracts of any kind necessary to, or in connection with, or incidental to, the accomplishment of the purposes of the Company;

(e) borrow money and issue evidences of indebtedness in furtherance of the Company's business and secure any such indebtedness by mortgage, pledge, or other lien;

(f) maintain and operate the Property;

(g) subject to the approval of FIB, if required, and to other limitations expressly set forth elsewhere in this Agreement, negotiate for and conclude agreements for the sale, exchange, assignment, or other disposition of all or substantially all of the property of the Company, or for the refinancing of any loan secured by a mortgage;

(h) enter into the Operating Documents to which it is a party; and

(i) do any and all other acts and things necessary or proper in furtherance of the Company's business.

ARTICLE III.
REPRESENTATIONS, WARRANTIES AND COVENANTS; DUTIES AND OBLIGATIONS

. The Managing Member hereby represents, warrants, and covenants to the Company and to the Members as follows:

(a) at the time of commencement of Rehabilitation of the Building and as of the date hereof, the Land was and is properly zoned for the uses contemplated herein, by the date of Substantial Completion it has or will have all permits, consents, permissions and licenses required by all applicable governmental entities for the operation of the Property, and the Property conforms and will continue to conform in all material respects to all applicable federal, state and local land use, zoning, building, environmental and other governmental laws and regulations;

(b) all appropriate public utilities, including sanitary and storm sewers, water, gas, and electricity, are currently or will be available to the Property and will be operating properly for the Property at the time of first occupancy of the Property. The Property has direct access to a public street or highway and will have adequate parking to comply with Applicable Laws and make it viable;

(c) good and marketable leasehold title to the Property is held solely by the Company, free and clear of any liens, charges or encumbrances other than the matters set forth in the Title Policy, the Operating Documents, the Lease Purchase Finance Documents, and mechanics' or other liens which have been bonded or insured against in such manner to preclude the holder of such lien or such surety or insurer from having any recourse to the Property or the Company for payment of any debt secured thereby. None of the liens, charges, encumbrances, or exceptions set forth in the Title Policy has or will have a material adverse effect upon the Rehabilitation or operation of the Property;

(d) to the Managing Member's actual knowledge after due inquiry, no default by any Developer Entity has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under any of the Operating Documents, and the Operating Documents are in full force and effect (except to the extent fully performed in accordance with their respective terms);

(e) to the Managing Member's actual knowledge after due inquiry, the execution and delivery of this Agreement, the incurrence of the obligations set forth in this Agreement, and the consummation of the transactions contemplated by this Agreement do not violate or conflict with any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, requirements, or any order, judgment, decree, determination, or award of any court binding on any Developer Entity, or its assets (including the Property), nor do they conflict with, result in a conflict under, result in a material breach of, constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice (which notice has not been furnished) under any agreement, contract, lease, license, instrument, or other arrangement to which the Company or any Developer Entity is a party, or by which it is bound or to which any of its assets is subject;

(f) neither the Company nor any Developer Entity has incurred any financial responsibility with respect to the Property prior to the date of execution of this Agreement, other than as set forth in the Operating Documents or the Lease Purchase Finance Documents, as reflected in the Contribution Agreement, or that has been otherwise disclosed to the Investor Member;

(g) the Company is and will continue to be a limited liability company, duly organized and validly existing under the laws of the State and had, has and shall continue to have full power and authority to acquire, develop, construct, hold, operate and maintain its leasehold interest in the Property in accordance with the terms of this Agreement;

(h) [reserved];

(i) no restrictions on the sale or refinancing of the Property, other than the restrictions set forth in the Operating Documents or the Lease Purchase Finance Documents, exist as of the date hereof, and no such restrictions shall (except as may be set forth in the Operating Documents or the Lease Purchase Finance Documents), at any time while the Investor Member is a Member, be placed upon the sale or refinancing of the Property;

(j) if required by any Operating Document, all payments for real estate taxes as determined by the Managing Member and included in the approved Budget shall be deposited monthly in a segregated escrow account in an amount equal to one-twelfth the yearly aggregate of such payments;

(k) neither the Managing Member nor any of its direct or indirect members is a "tax-exempt entity" or "tax-exempt controlled entity" as those terms are used in Section 168(h) of the Code that has not made the election to be taxed pursuant to Section 168(h)(6)(F) of the Code;

(l) the Managing Member is duly and validly organized and is validly existing in good standing as a limited liability company under the laws of the State of Montana, with full power and authority to enter into and perform its obligations hereunder;

(m) the Property shall be operated in a manner that satisfies and shall continue to satisfy, all restrictions applicable to the Property and projects generating Tax Credits and which shall be in conformity with the description of the Property set forth in Part 2 of the Certification Application;

(n) the Property shall be operated in a manner that complies with the Applicable Laws;

(o) subject to Section 13.06, the Company's fiscal year is and shall be the calendar year;

(p) no Developer Entity is Bankrupt or contemplating a Bankruptcy;

(q) except as described in the Environmental Reports, to the Managing Member's actual knowledge after due inquiry, no Developer Entity has ever received notification from any federal, state or other governmental authority of (i) any potential, known, or threat of

release of any Hazardous Substance from the Property or (ii) the incurrence of any expense or loss by any such governmental authority or by any other Person in connection with the assessment, containment or removal of any release or threat of release of any Hazardous Substances from the Property, and no Hazardous Substance was, to the Managing Member's actual knowledge upon due inquiry, prior to the Company's ownership of the Property ever stored on, transported, or disposed of on the Property except to the extent any such storage, transport or disposition was at all times in compliance with all laws, ordinances, and regulations pertaining thereto; and subsequent to the Company's ownership of the Property, and no Hazardous Substance was ever or is now stored on, transported, or disposed of on the Property except to the extent any such storage, transport or disposition was at all times in compliance with all laws, ordinances, and regulations pertaining thereto;

(r) no portion of the Property constituting QREs was placed in service by the Company prior to the Admission Date and the QREs incurred in connection with the Rehabilitation of the Building would under the Code constitute "new section 38 property" to the Company if the Company had actually incurred such QREs;

(s) each Developer Entity has complied with all Applicable Laws with respect to the Project, and no action, suit, proceeding, hearing, government investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any Developer Entity alleging any failure to so comply;

(t) the computations included in the Projections are correct in all material respects and are based on assumptions believed by the Managing Member to be reasonable as to all legal and factual matters material to such Projections, are consistent with the provisions of the Operating Documents, take into consideration the relevant provisions, as currently in effect, of federal income tax law and regulations material to the Projections and represent the Managing Member's best, good-faith estimates of the matters reflected therein;

(u) to the Managing Member's best knowledge, the Managing Member has disclosed to the Investor Member all material actions with respect to the Company taken by the Managing Member prior to the date hereof;

(v) to the Managing Member's best knowledge, a copy of all material documents relating to the Company and the Property have been delivered to the Investor Member;

(w) as of the date hereof, no certificates of occupancy or temporary certificate of occupancy relating to the Rehabilitation have been issued with respect to the portion of the Building comprising QREs;

(x) to the Managing Member's best knowledge, the Architect has demonstrated expertise in the area of historic preservation and compliance with the Secretary's Standards;

(y) the Construction Contract has been entered into between the Developer and the Contractor; no other consideration or fee shall be paid to the Contractor in its capacity as the Contractor other than the amounts set forth in the Construction Contract or as evidenced by change orders approved by the Developer (and the National Park Service to the extent the proposed changes would be deemed to constitute an amendment to the Certification Application) and as

otherwise disclosed in writing to the Investor Member; and all change orders to date have been paid in full or adequate provision has been made for payment;

(z) if the Developer defers recognizing the Development Fee as income, such deferral will be in the Developer's regular course of business in accordance with the applicable requirements of the Code, and not from a manipulation of the cash method of accounting with respect to Developer, the Company, or any members or Affiliates thereof;

(aa) there is, or there will be, sufficient reasonable and adequate documentation that provides objective evidence that details the time and effort spent by Developer on any of the services described in the Development Agreement (e.g., time records or memoranda recounting meetings or other efforts as to such services);

(bb) none of the Developer's obligations provided, or to be provided, for the Development Fee are duplicative (including, but not limited to, the services performed, or to be performed, by Developer under such Development Agreement or by Contractor or any other contractor, subcontractor, or material supplier). No portion of the Development Fee is for, or incident to: (i) syndication expenses; (ii) organization costs; (iii) acquisition costs; (iv) rent/lease-up costs; (v) rental management; or (vi) any similar type costs;

(cc) the Development Fee is, and will be, capitalized as part of the Property's depreciable basis. No portion of the Development Fee is required to be, or will be treated as an expense and deducted in the year incurred. The Company is legally bound to pay the Development Fee;

(dd) the fair market value of the Property attributable to QREs as of the date the Rehabilitation is Placed in Service will exceed the adjusted basis of the Company therein as of such date;

(ee) upon Placement in Service, the Building will be eligible for depreciation (or amortization in lieu of depreciation). The QREs that form the basis for Tax Credits generated by the Rehabilitation will not include (i) any expenditure with respect to which a method other than the straight-line method for depreciation over a recovery period determined under Section 168(c) or (g) of the Code for nonresidential real property or an addition or improvement thereto will be used, (ii) the cost of acquiring the Building or any interest therein, or (iii) the cost of enlargement of the Building, excluding any increase in floor space resulting solely from interior remodeling; and

(ff) for federal income tax purposes, the Company (acting by and through Investor Member) and the Managing Member each reports its income on the accrual method of accounting.

The Managing Member shall be solely responsible for the representations, warranties, and covenants hereunder, and shall not assert as a defense in any action by the Company or the Investor Member the fact that the Managing Member may have relied on other parties in connection with matters addressed therein.

. The Managing Member shall have the following duties and obligations with respect to the Property and the Company:

(a) it shall cause to be met all requirements applicable to the Company, if any, which are necessary to obtain, achieve and maintain (i) issuance of all necessary certificates of occupancy, including all governmental approvals required to permit occupancy of the Property, (ii) Final Closing, and (iii) compliance with all provisions of the Operating Documents;

(b) while conducting the business of the Company, it shall not act in any manner which it knows or should have known after due inquiry will (i) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; or (ii) cause any Investor Member to lose its limited liability protection;

(c) it shall prepare and submit to the Secretary, the Secretary of the Treasury or the IRS (or any other governmental authority designated for such purpose), on a timely basis, any and all annual reports, information returns and other certifications and information required (i) to ensure that the Company will qualify for Federal Historic Tax Credits and State Historic Tax Credits and (ii) to avoid any Recapture Event or the imposition of penalties or interest on the Company or the Investor Member for failure to comply with the requirements of the Code, State HTC Statute or any other applicable laws relating to the Federal Historic Tax Credits and/or State Historic Tax Credits;

(d) it shall exercise good faith in all activities relating to the conduct of the business of the Company, including the development, operation, and maintenance of the Property, and it shall take no action with respect to the business and property of the Company which is not reasonably related to the achievement of the purpose of the Company;

(e) all of (i) the fixtures, maintenance supplies, tools, equipment and the like now and to be owned by the Company or to be appurtenant to, or to be used in the operation of the Property, as well as (ii) the rents, revenues and profits earned by the Company from the operation of the Project, will be free and clear of all security interests and encumbrances except as provided in the Operating Documents or Lease Purchase Finance Documents;

(f) it will execute on behalf of the Company all documents necessary to elect, pursuant to Sections 732, 734, 743 and 754 of the Code, to adjust the basis of the Company's property upon the request of the Investor Member, if, in the sole opinion of the Investor Member, such election would be advantageous to the Investor Member or any of its members;

(g) it shall, during and after the period in which it is a Managing Member, provide the Company with such information and sign such documents as are necessary for the Company and the Investor Member to make timely, accurate and complete submissions of (i) federal and state income tax returns, (ii) reports to governmental agencies, and (iii) any other reports required to be delivered to the members of the Investor Member or their members;

(h) it shall comply and cause the Company to comply in all material respects with the provisions of all state and local zoning laws, building codes, health and safety codes and all other applicable governmental and contractual obligations;

(i) it shall use commercially reasonable efforts consistent with sound management practice and with the terms of the Operating Documents to maximize Net Cash Flow available for distribution to the Members;

(j) [reserved];

(k) it shall provide the Investor Member with Notice of any written notice of any (i) default or failure of compliance with respect to any financial, contractual or governmental obligation of the Company or the Managing Member; (ii) IRS proceeding regarding the Property or the Company or any intention on the part of the Secretary to revoke, cancel or amend Part 1 Approval, Part 2 Approval or Part 3 Approval; (iii) litigation, criminal action or administrative proceeding against the Managing Member or the Company; or (iv) communication from the Secretary or any other Person or governmental authority which is not in the ordinary course of business;

(l) in operating the Property, it shall use commercially reasonable efforts to obtain all contracts, materials, supplies, utilities, and services required by the project on the most advantageous terms available. Except as otherwise approved by the Consent of the Investor Member, the Managing Member shall secure and credit to the Company, and not receive or retain for itself, its agents, employees or Affiliates, any discounts, compensation, rebates, or commissions obtainable with respect to any and all purchases, service contracts, and all other transactions affecting the project, including any compensation received from the assignment or transfer of any contracts affecting the Property;

(m) Reserved;

(n) it shall operate the Property in a manner that (i) satisfies, and shall continue to satisfy in all material respects, all restrictions applicable to the Property for projects generating Tax Credits and (ii) shall be in conformity with the description of the Property set forth in Part 2 of the Company's Certification Application;

(o) it shall not enter into any sublease with any "tax-exempt entity" as that term is defined in Section 168(h) of the Code, including the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing; any organization exempt from federal income tax; or any foreign person or entity, if such sublease results in any portion of the Property being treated as "tax-exempt use property" as that term is defined in Section 168(h) of the Code (as modified by Section 47(c)(2)(B)(v) of the Code); the parties recognize that the Master Lease (and the County Lease referenced therein) does not violate this provision;

(p) it shall cause the Company to conduct its own business through the Managing Member, as applicable, and that business has been and will be conducted solely in the name of the Company and in such a way as to not mislead others as to the identity of the entity with which they are dealing. In that regard, all written communications by the Company or the Managing Member, including letters, invoices, purchase order and contracts, have been and will be made solely in the name of the Company or the Managing Member, as appropriate. The Company has described and will always describe itself as a separate legal entity and not as a division or department of any Developer Entity. The Company has and will have its own invoices,

checks and other business forms, separate from those of any Developer Entity. Each of the Company and any Developer Entity will pay its own expenses and liabilities from its own funds. Invoices and other statements of account from creditors of the Company will be addressed and mailed directly to the Company. The Company and the Managing Member allocate and will allocate all other overhead expenses for items shared with any Developer Entity (if any) on the basis of actual use to the extent practicable and, to the extent such allocation is not practicable, on an equitable basis reasonably related to the actual use;

(q) it shall keep the Managing Member and the Company in good standing in accordance with the requirements of the State;

(r) it shall furnish to the Investor Member such other approvals, opinions, certificates, documents, or agreements as Investor Member may reasonably request, in form and substance reasonably acceptable to Investor Member;

(s) it agrees to provide notice to the Investor Member of any change in the financial condition of the Managing Member that could have a material adverse effect on the ability of the Managing Member to satisfy their respective obligations under the Operating Documents or this Agreement;

(t) except as disclosed in the Environmental Reports, the Managing Member represents and warrants that, to the best of its knowledge, (i) it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of any Hazardous Substances at, upon, under or within the Land or any contiguous real estate, and (ii) it has not caused nor permitted to occur, and it shall use commercially reasonable efforts to not permit to exist, any condition which may cause a discharge of any Hazardous Substances at, upon, under or within the Land or on any contiguous real estate in violation of applicable Environmental Laws;

(u) the Managing Member further represents and warrants that (i) it has not been, nor will it be involved in operations at or, pursuant to its commercially reasonable efforts, near the Land, which operations could lead to (A) the imposition of liability under applicable Environmental Laws on the Company or (B) the creation of a lien on the Property under applicable Environmental Laws or under any similar laws or regulations; and (ii) the Managing Member has not permitted, and will use commercially reasonable efforts to not permit, any tenant or occupant of the Property to engage in any activity that could impose liability under applicable Environmental Laws on such tenant or occupant, on the Land or on the Company;

(v) the Managing Member shall comply in all respects with the requirements of applicable Environmental Laws and related regulations and with all similar laws and regulations. In addition, the Managing Member shall provide the Investor Member with prompt written notice (i) upon any Managing Member or Affiliate thereof obtaining knowledge of any potential or known release, or threat of release, of any hazardous material in violation of applicable law at or from the Property may result in a lien on the Property, (ii) upon any Managing Member or Affiliate thereof receiving any notice to such effect from any federal, state, or other governmental authority, or (iii) upon any Managing Member or Affiliate thereof obtaining knowledge of any incurrence of any expense or loss by any such governmental authority in connection with the assessment,

containment, or removal of any hazardous material for which expense or loss a lien may be imposed on the Property;

(w) to the extent permitted by law, the Managing Member shall at all times indemnify, defend and hold harmless the Investor Member and its members against and from any and all claims, suits, actions, debts, damages, costs, charges, losses, obligations, judgments, and expenses, of any nature whatsoever, suffered or incurred by the Investor Member or its members, under or on account of the Environmental Laws or any similar laws or regulations, including the assertion of any lien thereunder, on or under the Project. The foregoing indemnification shall be a recourse obligation of the Managing Member and shall survive the dissolution of the Company and the death, retirement, incompetency, insolvency, Bankruptcy, or withdrawal of the Managing Member;

(x) it shall maintain insurance in form and amounts satisfactory to the Investor Member, as specified in Exhibit A to this Agreement; provided that the Managing Member may comply with its obligations to maintain such insurance if such insurance is maintained by the City as the owner of a fee interest in the Property or as the tenant under the Master Lease or is maintained by one or more contractors;

(y) it shall not enter into any lease, other than the Master Lease, with any tenant unless (i) the terms thereunder (including rental rates) are reasonable, (ii) a copy of such lease is provided to the Investor Member at least 10 days prior to execution, and (iii) the Consent of the Investor Member is obtained prior to entering into any lease which is for more than 30% of the rentable space of the Property; and

(z) the Rehabilitation shall be completed in a timely manner in accordance with (i) all applicable requirements of the Operating Documents, (ii) all applicable requirements of all appropriate governmental entities, and (iii) the Plans and Specifications of the Property that have been or shall be hereafter approved by FIB and any applicable governmental entities, as the Plans and Specifications may be changed from time to time with the approval of FIB, if any approval shall be required, and any applicable governmental entities, if any approval shall be required.

. The Investor Member shall have the following duties and obligations with respect to the Property and the Company:

(a) The Investor Member (i) intends for the Company to be treated as a partnership for federal income tax purposes and for the Investor Member to be treated as a member of the Company for federal income tax purposes, (ii) will report its distributive share of all items of income, gain, loss, deductions and credits with respect to its Interest in the Company for federal income tax purposes in a consistent manner as reasonably determined by the Investor Member's accountants;

(b) as of the date hereof, and for so long as it is a member of the Company, the Investor Member will keep books and records that are separate from the books and records of the Company and the Managing Member;

(c) the Investor Member has not received any loans (or guarantees or other insurance of any indebtedness) from the Managing Member, the Company, or any person related

to such entities within the meaning of Section 267(b) or Section 707(b)(1) of the Code, to acquire its Interest in the Company;

(d) the Investor Member did not acquire its Interest in the Company with the intent of abandoning it and has no prior agreement, plan, or intention to abandon its Interest in the Company; and

(e) the Investor Member has no prior agreement, plan, or intention to exercise the Put Option.

ARTICLE IV.
MEMBERS, COMPANY INTERESTS AND OBLIGATIONS OF THE COMPANY

4.01 Members, Managing Member, Capital Contributions and Company Interests.

(a) The Managing Member, its principal address or place of business, its Capital Contribution and its Percentage Interest are set forth in Schedule A attached hereto. Prior to the Admission Date, the Managing Member made a combination of in-kind contributions of property, work-in-process, development entitlements and cash contributions to the Company in the aggregate amount of $[________], and as reflected in the Projections.

(b) The Investor Member, its principal office or place of business, its Capital Contribution and its Percentage Interest are set forth in Schedule A attached hereto.

(c) Subject to the provisions of this Agreement, including the provisions of Sections 5.01(f) and 5.03, the Investor Member shall be obligated to make a Capital Contribution to the Company in the aggregate amount of $[________] in 3 Installments, which Installments shall be due and payable in cash by the Investor Member, solely from the capital contributions received by the Investor Member for such purposes, as follows:

(i) $[________] (the "First Installment") upon the latest to occur of (A) the Admission Date; (B) receipt of evidence of Part 1 Approval and Part 2 Approval; (C) receipt of Title Policy and Survey; (D) receipt by the Investor Member of the Architect's Certificate that the Plans and Specifications are consistent with the Part 2 Approval; (E) receipt by the Investor Member of the Preservation Consultant's certificate that the Plans and Specifications are consistent with the Part 2 Approval as amended; (F) closing of the Loan; (G) evidence of receipt of all capital contributions of the Managing Member as provided in the Projections; (H) execution and delivery of the Ground Lease by the Developer and the Company; (I) receipt of a reasonableness opinion with respect to any fees paid to any Developer Entity, including but not limited to the Development Fee, in each case satisfactory to the Investor Member; and (J) the satisfaction of any requirements set forth in this Agreement as prerequisites to the payment of the First Installment, including but not limited to the opinions described in Section 5.04 hereof.

(ii) $[________] (the "Second Installment") shall be paid within 15 days after the end of the month in which the Investor Member receives all of the following: (A) receipt of evidence of Placement in Service of the Building; (B) receipt of a draft Cost Certification prepared by the Accountants evidencing Actual Federal Historic Tax Credits in an amount no less than 75% of the Projected Federal Historic Tax Credits and otherwise in form and substance

acceptable to the Investor Member; (C) delivery to the Investor Member of the Managing Member's Certificate, updated to reflect the status of events described therein and signed by the Managing Member; (D) receipt by the Investor Member of the Architect's Certificate that the Project has been built and construction change orders, if any, in a manner consistent with the Secretary's Standards, the Plans and Specifications, and the Part 2 Approval (as amended); (E) receipt by the Investor Member of the Preservation Consultant's certificate that the Project has been built and construction change orders, if any, in a manner consistent with the Secretary's Standards, the Plans and Specifications, and the Part 2 Approval (as amended); (F) receipt of evidence of Part 3 Approval; (G) receipt of evidence satisfactory to the Investor Member that no uncured defaults exist under the Operating Documents; (H) receipt of evidence satisfactory to the Investor Member that all required insurance is in full force and effect; (I) no adverse Change of Law has occurred; (J) receipt of a date-down endorsement to the Title Policy acceptable to Investor Member; (K) receipt of prior year's tax return and K-1, if applicable; and (L) satisfaction of the requirements for the payment by the Investor Member of the First Installment.

(iii) $[________] (the "Third Installment") shall be paid within 15 days after the end of the month in which the Investor Member receives of all of the following: (A) achievement of Final Closing; (B) receipt of a final Cost Certification prepared by the Accountants evidencing Actual Federal Historic Tax Credits in an amount no less than 75% of the Projected Federal Historic Tax Credits and otherwise in form and substance acceptable to the Investor Member; (C) delivery to the Investor Member of the Managing Member's Certificate, updated to reflect the status of events described therein and signed by the Managing Member; (D) receipt of a date-down endorsement to the Title Policy acceptable to Investor Member; (E) receipt of final audit and tax return for the year in which the Building achieved Placement in Service; (F) receipt of a K-1 (or Montana equivalent) evidencing allocation of 100% of the Actual State Historic Tax Credits to Investor Member; (G) receipt of evidence satisfactory to the Investor Member that no uncured defaults exist under the Operating Documents; (H) receipt of evidence satisfactory to the Investor Member that all required insurance is in full force and effect; (I) no adverse Change of Law has occurred; and (J) satisfaction of the requirements for the payment by the Investor Member of the Second Installment.

No Installment shall be due or payable prior to receipt by the Investor Member of the Installment Payment Notice in the form set forth in Exhibit B1 from the Managing Member at least 10 Business Days and not more than 30 calendar days prior to the due date of the Installment specifying the amount of such Installment and the Managing Member's Certificate from the Managing Member in the form set forth in Exhibit B2.

The Investor Member shall have the right to pay itself, at any time and from any Installment, on behalf of the Company, any Special Tax Distribution. Any third party reasonable legal, accounting, or other related costs incurred by the Investor Member with respect to any other post-closing documents, may be deducted from any Installment.

(d) Reserved.

(e) The Investor Member, in its sole and absolute discretion, may waive, in whole or in part, any one or more conditions to the payment of any Installment and may pay all or a portion of the amount of such Installment that would have been due had all of the conditions been

satisfied. The waiver of any condition, in whole or in part, shall not prevent the Investor Member from asserting the failure of such condition as a defense against the requirement of paying any portion of such Installment that the Investor Member determines not to fund or paying any other Installment at any subsequent time so long as such condition remains unsatisfied. Upon request from the Investor Member, the Managing Member, with the assistance of the Accountants, shall provide the information necessary for the Investor Member to determine the timing and amount of any accelerated Installment. By executing this Agreement, the Managing Member agrees to the operation of this provision.

(f) Credit Adjustments to Capital Contributions.

(i) If, as a result of a reduction or increase in QREs, a reallocation of Profits or Losses, or for any other reason other than (A) a Recapture Event; (B) an event which would be a Recapture Event but for the fact it resulted from a sale or disposition of the Company Interest of the Investor Member; or (C) an Excluded Event, either the Accountants shall determine in preparing the Company's tax returns (or an amended return), or there shall be a Final Determination, that the Actual Federal Historic Tax Credits and/or Actual State Historic Tax Credits are more or less than the Projected Federal Historic Tax Credits and/or Projected State Historic Tax Credits (such determination being referred to herein as the "Credit Determination"), the provisions of Sections 5.01(f)(ii) and 5.01(f)(iii) shall apply.

(ii) After the Credit Determination is made, the Accountants shall calculate the difference between: (i) the Actual Federal Historic Tax Credits and the Projected Federal Historic Tax Credits, and (ii) the Actual State Historic Tax Credits and the Projected State Historic Tax Credits. Such difference shall be multiplied by the Capital Index and the product shall be referred to herein as the "Credit Adjustment." If the amount of the Credit Adjustment is positive, the Third Installment shall be increased by the amount of such positive Credit Adjustment. If there are no remaining unpaid Installments, the Investor Member shall contribute the amount of such positive Credit Adjustment to the capital of the Company within 30 days following the receipt of notice of the positive Credit Adjustment. Prior to any such increase in the amount of a remaining Installment or obligation to contribute additional capital, the Investor Member shall be provided with evidence reasonably sufficient to enable it to verify the calculation of such positive Credit Adjustment. Notwithstanding the foregoing, positive Credit Adjustments shall not in the aggregate exceed 15% of the Investor Member's Capital Contribution (as set forth on Schedule A and prior to any adjustment provided for in this Section 5.01(f)(ii)).

(iii) In the case of a negative Credit Adjustment, the amount of the next succeeding Installment (and any Installments thereafter if necessary) to be paid by the Investor Member after the Credit Determination has been made shall be reduced by the amount of the negative Credit Adjustment. If the negative Credit Adjustment exceeds the amount of all remaining Installments, the Managing Member shall pay the amount necessary to achieve the total Credit Adjustment by contributing to the Company the difference between the Credit Adjustment and the amount by which such Installments were reduced (the "Adjuster Differential Amount"), which amount shall then be immediately distributed to the Investor Member as a return of capital. Notwithstanding the foregoing, if the effect of such a contribution of capital would be to prevent the Investor Member from being allocated 99% of Profits, Federal Historic Tax Credits, and/or State Historic Tax Credits, then the Adjuster Differential Amount that was to be contributed to the

Company as aforesaid (recalculated on an After-Tax Basis) shall be paid directly by the Managing Member to the Investor Member as compensation for a breach of warranty. Any amounts not paid within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full.

(iv) If a Recapture Event due to Managing Members Acts or Omissions occurs prior to the time the Investor Member has paid in its Capital Contribution in full, the amount of the next succeeding Installment (and any Installments thereafter if necessary) of the Investor Member shall be reduced by the Recapture Adjustment Amount. If no further Installment remains, or if the Recapture Adjustment Amount is greater than the aggregate amount of the remaining Installments, then the Managing Member shall pay the difference between the Recapture Adjustment Amount and the amount by which such Installments were reduced (the "Recapture Differential Amount"), by contributing to the Company the Recapture Differential Amount, which amount shall then be immediately distributed to the Investor Member as a return of capital. Any amounts not paid within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full.

(v) In addition to any adjustment described in Section 5.01(f)(i) through (iv):

(A) to the extent at least 80% of the Projected Federal Historic Tax Credits has not achieved Placement in Service by December 31, 2024, then the amount of the next succeeding Installment (and any Installment thereafter if necessary) to be paid by the Investor Member shall be calculated by reducing the Capital Index by 3%, which Capital Index shall be further reduced by 1% for each full or partial calendar quarter that Placement in Service delay occurs beyond March 31, 2025 (the "2024 Delay Amount"); or

(B) to the extent at least 80% of the Projected Federal Historic Tax Credits has achieved Placement in Service by December 31, 2024 but any further portion of the Rehabilitation of the Building has not achieved Placement in Service by March 31, 2025, then the amount of the next succeeding Installment (and any Installment thereafter if necessary) to be paid by the Investor Member with respect to such portion of the Rehabilitation of the Building shall be calculated by reducing the Capital Index by 3%, which Capital Index shall be further reduced by 1% for each full or partial calendar quarter that such Placement in Service delay with respect to such portion of the Rehabilitation of the Building occurs beyond June 30, 2025 (the "2025 Delay Amount").

If the 2024 Delay Amount or the 2025 Delay Amount exceeds the amount of all remaining Installments, the difference between the 2024 Delay Amount or the 2025 Delay Amount, as the case may be, and the amount by which such Installments were reduced pursuant to clause (A) or (B) above (the "Delay Differential Amount") shall be paid by the Managing Member by contributing to the Company the Delay Differential Amount, which amount shall then be immediately distributed to the Investor Member as a return of capital. Any amounts not paid within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full. Notwithstanding the foregoing, if the effect of such a contribution of capital would be to cause Company Profits or Losses or credits arising during the Compliance Period to be allocated among the Members other than in accordance with their Percentage Interests as set forth in Schedule A, then the Delay

Differential Amount (recalculated on an After-Tax Basis) that was to be contributed to the Company as aforesaid shall be paid directly by the Managing Member to the Investor Member promptly after demand is made therefor.

(vi) Notwithstanding anything to the contrary in this Agreement, the aggregate amount of the reductions to the Installments pursuant to Sections 5.01(f)(iii) and 5.01(f)(v) and payments by the Managing Member pursuant to Section 5.01(f)(iii) and 5.01(f)(v) shall be limited to 25% of the Investor Member's Capital Contribution (as set forth on Schedule A and prior to any adjustment provided for in Section 5.01(f)). To the extent the aggregate amount of the negative Credit Adjustments pursuant to Section 5.01(f)(iii), and the 2024 Delay Amount or the 2025 Delay Amount, as the case may be, pursuant to Section 5.01(f)(v), exceed 25% of the Investor Member's Capital Contribution (as set forth on Schedule A and prior to any adjustment provided for in Section 5.01(f)), such excess amount shall be treated as a Capital Contribution Adjustment payable pursuant to Section 11.01(b).

4.02 Return of Capital Contribution.

Except as provided in this Agreement, no Member shall be entitled to demand or receive the return of any portion of its Capital Contribution. Except as provided in Section 9.02 hereof, without the Consent of all of the Members, no additional Person may be admitted as an additional Member and a Capital Contribution may be accepted only as and to the extent expressly provided for in this Article V.

4.03 Withholding of Capital Contribution Upon Default.

In the event that: (a) the Managing Member has not substantially complied with any material provisions of this Agreement, beyond any cure period, and remains in non-compliance (b) any agreement entered into by the Company for financing related to the Property is in default, or a default under the Ground Lease or the Lease Purchase Finance Documents has occurred and is continuing in default beyond any applicable cure period, (c) any events described in Section 8.12 herein has occurred, and are continuing in default beyond any cure period, (d) foreclosure proceedings have been commenced against the Property or any portion thereof, (e) the Managing Member has not made its capital contribution to the Company as required by this Agreement and pursuant to the Projections and such failure shall be continuing beyond any cure period or (f) any default exists under any material provisions of the Operating Documents and such failure shall be continuing beyond any cure period (provided that if the counterparty under such Operating Document shall waive such default then such default shall be deemed cured for purposes of this Agreement), then the Company and the Managing Member shall be in default of this Agreement, and the Investor Member, at its sole election, may withhold payment of any Installment otherwise payable to the Company; provided, however, that if a payment of all or any portion of the then due Installment will cure the event justifying the withholding, then the Investor Member shall pay such Installment otherwise payable if it is applied to cure such event.

Unless applied as set forth above, all amounts so withheld by the Investor Member under this Section 5.03 shall be promptly released to the Company only after the Managing Member or the Company has cured the default justifying the withholding, as demonstrated by evidence reasonably acceptable to the Investor Member.

4.04 Legal Opinions.

As a condition precedent to payment of the First Installment, the Investor Member shall have received such legal opinions as it may require, in its reasonable discretion. Any opinion shall explicitly state that Kutak Rock LLP, of Kansas City, Missouri, counsel to the Investor Member, may rely upon it.

4.05 Repurchase Obligation.

If a Repurchase Event occurs and such Repurchase Event results from either (i) the direct or indirect actions or inactions of any Developer Entity in violation of this Agreement or (ii) a Change of Law, then the Managing Member shall, within 30 days of the occurrence or notification thereof, as applicable, send to the Investor Member Notice of such event and of its obligation to purchase the Interest of the Investor Member hereunder and shall return to the Investor Member in payment therefor an amount equal to 100% of the Investor Member's paid-in Capital Contribution (which amount shall be reduced by any amount paid to the Investor Member pursuant to the downward adjustment described in Section 5.01(f)(iii), 5.01(f)(iv), or 5.01(f)(v), in the event the Investor Member in its sole discretion requires such purchase of its Interest), plus interest during the time such amount was outstanding at a rate equal to the lesser of 8% per annum or the maximum rate of interest chargeable under Montana law. The Managing Member, within 30 days of the mailing date of Notice by the Investor Member of such election, shall acquire the entire Interest of the Investor Member in the Company by making payment to the Investor Member of the amount described above, in cash. Any amounts not paid under this Section 5.05 within 60 days of written demand shall bear interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law, until paid in full. Upon the purchase of the Interest of the Investor Member, the Interest of the Investor Member in the Company shall terminate, and the Managing Member shall indemnify and hold harmless, to the extent permitted by law, the Investor Member from any losses, damages, and liabilities to which the Investor Member (as a result of its participation hereunder) may be subject arising from membership in the Company and subject to the provisions of this Agreement as a result of the Acts or Omissions of the Managing Member (except any loss, damage or liability attributable solely to the Investor Member's gross negligence, recklessness or willful misconduct). For the avoidance of doubt, the Managing Member shall not be obligated to purchase the Investor Member's interest or indemnify the Investment Member pursuant to this Section 5.05 if the Repurchase Event results from an Excluded Event.

4.06 Subordinated Loans.

(a) The Managing Member shall have the right, but not the obligation, after funding all other obligations under this Agreement, including its obligation to fund Operating Deficits pursuant to Section 8.09 hereof, to make "Subordinated Loans" pursuant to this Section 5.06(a) to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company. The Investor Member shall also have the right, in its sole and absolute discretion to make Subordinated Loans to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company.

(b) At the request of a Member, which request may be made quarterly, any Subordinated Loan shall be evidenced by a non-negotiable promissory note or notes reflecting any

such Subordinated Loans made during the preceding calendar quarter. Subordinated Loans shall be on the following terms: (i) interest shall accrue on Subordinated Loans at an annual interest rate of 8%; and (ii) Subordinated Loans shall be repayable solely as set forth in Sections 11.01 and 11.04 of this Agreement. Subordinated Loans shall be unsecured loans. Subordinated Loans shall not be considered a part of a Member's Capital Contribution and shall not increase such Member's Capital Account.

ARTICLE V. CHANGES IN MANAGING MEMBER

5.01 Resignation of a Managing Member.

(a) A Managing Member may resign from the Company or sell, transfer, or assign its Interest as Managing Member (or a Controlling Interest in the Managing Member) only (i) with the Consent of the Investor Member and (ii) only after the requirements of Section 6.02 have been met.

(b) In the event that a Managing Member resigns from the Company or sells, transfers or assigns its entire Interest in compliance with Section 6.01(a), it shall be and shall remain liable for all obligations and liabilities incurred by it as Managing Member before such resignation, sale, transfer or assignment shall have become effective, but shall be free of any obligation or liability incurred on account of the activities of the Company from and after the time such resignation, sale, transfer or assignment shall have become effective. Notwithstanding the foregoing, such Managing Member shall continue to be liable with respect to its acts or omission taken as "partnership representative" (as defined by the Revised Partnership Audit Rules) of the Company after such resignation, sale, transfer, or assignment is effective, other than notification of the IRS of its resignation as partnership representative.

. A Person shall be appointed as a Managing Member of the Company only if the following terms and conditions are satisfied:

(a) the appointment of such Person shall have been Consented to by the Managing Member or its successors and the Investor Member;

(b) the successor or additional Person shall have accepted and agreed to be bound by (i) all the terms and provisions of this Agreement, by executing a counterpart thereof, and (ii) all the terms and provisions of the Operating Documents, to the extent applicable, by executing a counterpart thereof, and (iii) all the terms and provisions of such other documents or instruments as may be required or appropriate in order to effect the appointment of such Person as a Managing Member, and an appropriate document evidencing the appointment of such Person as a Managing Member shall have been filed, if required, and all other actions required by Section 1.05 in connection with such appointment shall have been performed;

(c) if the successor or additional Person is a limited liability company or corporation, it shall have provided the Company with evidence satisfactory to Counsel for the Company of its authority to become a Managing Member, to do business in the State and to be bound by the terms and provisions of this Agreement; and

(d) Counsel shall have rendered an opinion that the appointment of the successor or additional Person is in conformity with the Act and that none of the actions taken in connection with the appointment of such Person will cause the termination or dissolution of the Company or will cause it to be treated for federal income tax purposes as an association taxable as a corporation.

5.03 Effect of Bankruptcy, Withdrawal, or Dissolution of a Managing Member.

(a) In the event of the Bankruptcy of the Managing Member, the termination, resignation, or dissolution of the Managing Member, the business of the Company shall be continued by the other Members unless the Company is terminated as otherwise provided for herein.

(b) Upon the Bankruptcy or dissolution of a Managing Member, such Person shall immediately cease to be a Managing Member. Promptly thereafter, the Investor Member may appoint a Non-Member Manager in the same manner as provided for in Section 8.12(b). The Non-Member Manager shall have all rights and responsibilities of a Non-Member Manager under Section 8.12(b) which arise following the date of appointment of such Non-Member Manager. Until the Investor Member has appointed a Non-Member Manager, the Investor Member shall have all rights and responsibilities as a Non-Member Manager as if it were appointed pursuant to Section 8.12(b).

(c) A Managing Member that ceases to be a Managing Member in accordance with the provisions of this Section 6.03 shall cease to have any further rights under this Agreement, except as expressly set forth in this Section 6.03. A Managing Member that ceases to be a Managing Member in accordance with the provisions of this Section 6.03 shall (i) be entitled to reimbursement of expenses or any fees or compensation provided for in this Agreement arising or earned before ceasing to be a Managing Member, and (ii) shall remain liable for all of its obligations and liabilities as Managing Member that accrued before the date which the Managing Member ceased to be a Managing Member and for any acts or omissions taken by the Managing Member as "partnership representative" (as defined by the Revised Partnership Audit Rules) of the Company after such date, other than notification of the IRS of its resignation as partnership representative.

(d) If, at the time of termination, resignation, Bankruptcy, or dissolution of the Managing Member, the Managing Member was not the sole Managing Member, then the remaining Managing Members shall immediately (i) give Notice to the Investor Member of such termination, resignation, Bankruptcy, or dissolution and (ii) make such amendments to this Agreement and execute and file for recordation such amendments or documents or other instruments necessary to reflect that such Managing Member is no longer a Managing Member.

(e) All parties hereto hereby agree to take all actions and to execute all documents as shall be necessary or appropriate to effect the foregoing provisions of this Section 6.03.

(f) The Managing Member, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees that in the event the Managing Member

should make application for or seek protection or relief under any of the Sections or Chapters of the United States Bankruptcy Code (the "Bankruptcy Code"), or in the event that any involuntary petition is filed against the Managing Member, which is not dismissed within 60 days, then, in such event, any other Member shall thereupon be entitled to immediate relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies available to such Member pursuant to this Agreement, or otherwise. The foregoing shall in no way preclude, restrict, or prevent the Managing Member from filing for protection under the Bankruptcy Code.

(g) The Members acknowledge and agree that this Agreement is a contract under which the Investor Member is excused from accepting performance from the Managing Member, its assignee or trustee, in the event that the Managing Member makes application for or seeks protection under any of the Sections or Chapters of the Bankruptcy Code, or in the event that an involuntary petition is filed against such Managing Member which is not dismissed within 60 days. The effect of this Paragraph shall be that this Agreement is hereby deemed to be subject to the exceptions to assumption and assignment of contracts set forth in Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code and that the Investor Member, by its refusal to consent to an assumption or assignment of this Agreement by the Managing Member after the filing of a petition in bankruptcy by or against such Managing Member, shall be able to prevent such assumption or assignment.

(h) In the event that the Managing Member makes application for or seeks relief or protection under any of the Sections or Chapters of the Bankruptcy Code, or in the event that any involuntary petition is filed against said Managing Member, then, in such event, any Member may apply or move to the bankruptcy court in which such petition is filed for a change of venue to the bankruptcy court where the Company has its principal place of business, and the Managing Member hereby agrees not to oppose or object to such application or motion in any way.

ARTICLE VI.
ASSIGNMENT TO THE COMPANY

The Managing Member acknowledges, it has transferred and assigned to the Company all of its rights, title, and interest in and to the Property, including the following:

(a) all contracts with architects, engineers, surveyors, contractors, and supervising architects with respect to the Company's development of the Property;

(b) all plans, specifications, and working drawings, prepared, or obtained in connection with the Property and all governmental approvals obtained, including planning, zoning, environmental, and building permits to the extent assignable;

(c) all commitments with respect to the Tax Credits, the Ground Lease, and the Operating Documents; and

(d) all contracts with respect to the Company's operation of the Property;

(e) all governmental approvals obtained in connection with the Company's operation of the Property; and

(f) any Operating Documents and other work product related to the Property.

The foregoing rights, title and interest are deemed to have no value for purposes hereof.

ARTICLE VII.
RIGHTS, OBLIGATIONS AND POWERS OF THE MANAGING MEMBER

7.01 Management of the Company.

(a) Except as otherwise set forth in this Agreement, the Managing Member, within the authority granted to it under this Agreement, shall have full, complete and exclusive discretion to manage and control the business of the Company for the purposes stated in Article III, shall make all decisions affecting the business of the Company and shall manage and control the affairs of the Company to the best of its ability and use its best efforts to carry out the purpose of the Company. In so doing, the Managing Member shall take all actions necessary or appropriate to protect the interests of the Investor Member and of the Company. The Managing Member shall devote such of its time as is necessary to the affairs of the Company. The Managing Member shall not be paid any compensation for serving as managing member.

(b) Except as otherwise set forth in this Agreement and subject to the provisions of the Operating Documents, the Managing Member (acting for and on behalf of the Company), in extension and not in limitation of the rights and powers given by law or by the other provisions of this Agreement, shall, in its sole discretion, have the full and entire right, power and authority in the management of the Company business to do any and all acts and things necessary, proper, convenient or advisable to effectuate the purpose of the Company. In furtherance and not in limitation of the foregoing provisions, the Managing Member is specifically authorized and empowered to execute and deliver, on behalf of the Company, the Operating Documents and any bank resolution and signature card, release, discharge, or any other document or instrument in any way related thereto or necessary or appropriate in connection therewith. All decisions made for and on behalf of the Company by the Managing Member shall be binding upon the Company. No person dealing with the Managing Member shall be required to determine its authority to make any undertaking on behalf of the Company, nor to determine any facts or circumstances bearing upon the existence of such authority. The Managing Member shall take all actions on behalf of the Company which pertain to the acquisition of the Property and the admission of the Investor Member to the Company.

7.02 Limitations Upon the Authority of the Managing Member.

(a) The Managing Member shall not have any authority to:

(i) perform any act in violation of any Applicable Law or regulations thereunder;

(ii) perform any act in violation of the provisions of any of the Operating Documents;

(iii) do any act required to be approved or ratified in writing by the Investor Member under the Act unless the right to do so is expressly given in this Agreement; or

(iv) borrow from the Company or commingle Company funds with funds of any other Person.

(b) The Managing Member shall not, without the Consent of the Investor Member, have any authority to:

(i) sell, refinance, or otherwise dispose of all or substantially all of the assets of the Company, including the Property; grant or refinance any mortgage or other indebtedness of the Company; permit a disposition of the Property, or the Company's sub-leasehold interest therein, within the meaning of Section 50 of the Code, or take any action that would cause a Recapture Event;

(ii) supplement, replace, renew, cancel, or materially amend any of the Operating Documents (including any increase in the Debt Service);

(iii) incur debt in excess of $25,000 in the aggregate at any one time outstanding on the general credit of the Company, except borrowings constituting Subordinated Loans or Operating Deficit Loans, or which are provided for in an approved Budget, if any;

(iv) undertake any rehabilitation, repairs or other work on the Building inconsistent with the Secretary's Standards; or construct any new or replacement capital improvements on the Property which substantially alter the Property or its use, except (A) replacements and remodeling in the ordinary course of business or under emergency conditions, (B) reconstruction paid for from insurance proceeds, or (C) as and to the extent provided for in an approved Budget, if any;

(v) acquire any real property in addition to the Property (other than easements or servitudes or other rights benefiting and necessary or convenient for the operation and maintenance of the Property);

(vi) make any filing to begin Bankruptcy proceedings on behalf of the Company;

(vii) make application for or accept any grant funds on behalf of the Company regardless of the source of the grant;

(viii) except as provided for in the Operating Documents or the Lease Purchase Finance Documents, pledge or assign any of the assets of the Company, including the right to receive the Investor Member's Capital Contribution or the proceeds thereof;

(ix) cause the Company to settle, compromise, mediate or otherwise relinquish any claim (actual or prospective), or to release, waive or diminish any material Company rights in any litigation or arbitration matter involving a claim in excess of $25,000;

(x) change the nature of the Company's business;

(xi) dissolve and wind up the Company;

(xii) permit the merger or termination of the Company;

(xiii) enter into any sublease with any "tax-exempt entity" as that term is defined in Section 168(h) of the Code, including the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing; any organization exempt from federal income tax; or any foreign person or entity, if such sublease results in any portion of the Property being treated as "tax-exempt use property" as that term is defined in Section 168(h) of the Code (as modified by Section 47(c)(2)(B)(v) of the Code); the parties recognize that the Master Lease (and the County Lease referenced therein) does not violate this provision;

(xiv) take any action that causes or is likely to cause the Building to be delisted from the National Register of Historic Places or to be certified as noncontributing to the historic district in which it is located, as applicable;

(xv) guarantee or cause the Company to guarantee the indebtedness of any Person;

(xvi) grant or request on behalf of the Company any approval, removal or consent provided for in the Operating Documents;

(xvii) take any action or fail to take any action that would prevent the Company from being eligible to claim Tax Credits with respect to the Property; or

(xviii) make any payment for or enter into any contract or other agreement for the management or operation of the Property or any other contract or other agreement with an Affiliate that is not on arms' length terms.

7.03 Management Purposes.

In conducting the business of the Company, the Managing Member shall be bound by the Company's purposes set forth in Article III.

7.04 Delegation of Authority.

The Managing Member may delegate all or any of its powers, rights, and obligations hereunder, and may appoint, employ, contract, or otherwise deal with any Person for the transaction of the business of the Company, which Person may, under supervision of the Managing Member, perform any acts or services for the Company as the Managing Member may approve. Any such delegation of authority shall not limit or decrease the Managing Member's obligations and responsibilities under this Agreement.

7.05 Developer Entity Dealings with the Company.

(a) Reserved.

(b) Neither the Company nor the Managing Member shall enter into any agreement with any Developer Entity for the sale of goods or services to the Company not specifically provided for in this Agreement unless (i) the compensation paid for such goods or

services is reasonable (i.e., at Fair Market Value) and is paid only for goods or services actually furnished to the Company, (ii) the goods or services to be furnished are reasonable for and necessary to the Company, (iii) the fees, terms and conditions of such transaction are at least as favorable to the Company as would be obtainable in an arm's-length transaction, and (iv) no agent, attorney, accountant or other independent consultant or contractor who also is employed on a full-time basis by any Developer Entity shall be compensated by the Company for his or her services without the Consent of the Investor Member.

Any contract covering such transactions shall be in writing and shall be terminable without penalty on 60 days' Notice. Any payment made to a Developer Entity for such goods or services shall be fully disclosed to the Investor Member in the reports required under Section 13.04. The Company shall not, by the making of lump-sum payments to any Person for disbursement by such Person, circumvent the provisions of this Section 8.05(b).

Notwithstanding the foregoing provisions of this Section 8.05 or Section 8.02(b)(xviii), the Investor Member hereby consents to the Construction Contract, the Development Agreement, the Master Lease, and the Forbearance Agreement.

7.06 Reserved.

7.07 Liability of Managing Member.

No Managing Member shall be liable, responsible or accountable in damages or otherwise to any of the Members for any act or omission performed or omitted by it in good faith on behalf of the Company and in a manner reasonably believed by it to be within the scope of the authority granted to it by this Agreement and in the best interest of the Company, except for gross negligence, willful misconduct, or fraud as Managing Member with respect to such acts or omissions as determined by a nonappealable judgment of court of competent jurisdiction. Any loss or damage incurred by the Managing Member by reason of any act or omission performed or omitted by it in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority granted to it by this Agreement and in the best interests of the Company (but not, in any event, any loss or damage incurred by any Managing Member by reason of gross negligence, willful misconduct, or fraud as Managing Member with respect to such acts or omissions as determined by a nonappealable judgment of court of competent jurisdiction) shall be paid from Company assets to the extent available (but the Investor Member shall not have any personal liability to the Managing Member under any circumstances on account of any such loss or damage incurred by the Managing Member or on account of the payment thereof).

The personal liability of the Managing Member to the Company or the Members for monetary damages for breach of fiduciary duty as the Managing Member is eliminated to the fullest extent permitted by law. No amendment of this Agreement or the Articles will adversely affect the elimination of the personal liability of the Managing Member with respect to any act or omission that occurred before such amendment.

To the extent permitted by law, the Managing Member shall indemnify, defend, and hold harmless the Investor Member from any Transfer Taxes (as hereinafter defined) incurred by the Investor Member as a result of the Investor Member's admission to, or becoming a Member of, the

Company. For the avoidance of doubt, the Managing Member shall not be obligated to indemnify, defend and hold harmless the Investment Member pursuant to this paragraph if the Transfer Taxes are as a result of an Excluded Event. As used herein, "Transfer Taxes" means any real property transfer taxes assessed by or within the State or the city or county in which the Property is located, including any taxes imposed on the transfer of an interest in an entity that owns real property.

The indemnification rights contained in this Section 8.07 shall (i) be joint and several recourse obligations of the Managing Members (if more than one); (ii) survive dissolution of the Company, the withdrawal, bankruptcy, or insolvency of the Managing Member and the withdrawal, insolvency, dissolution or bankruptcy of the Investor Member; and (iii) be cumulative of and in addition to any and all rights, remedies and recourses to which the Investor Member shall be entitled, whether pursuant to the provisions of this Agreement, at law or in equity.

Notwithstanding anything in this Agreement to the contrary, no Developer Entity shall have any liability under this Agreement or any other Operating Document for special, incidental, consequential, or indirect damages or lost profits.

The Investor Member and its Affiliates and members acknowledge and agree that the obligations of the Managing Member hereunder are solely the obligations of the Managing Member. The City, as the sole member of the Managing Member, has no obligation to make capital contributions or loan money to the Company or the Managing Member. Any such capital contributions by the City, directly or indirectly, to the Company or the Managing Member would be payable only upon appropriation by the City from current funds which are budgeted and appropriated for such purpose during the fiscal year of the City for which such funds were budgeted and appropriated. The City has not pledged the full faith and credit or taxing power of the City to payment of any amounts to the Company or the Managing Member under this Agreement or pursuant to the Lease Purchase Finance Documents or the other Operating Documents.

No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against the City or any officer, member of the governing body or employee of the City, past, present, or future, as an individual. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of the City or any such officer, member of the governing body or employee of the City is hereby expressly waived and released by the Members and their respective Affiliates and members.

7.08 Company Taxable as Partnership.

(a) The Managing Member shall take such steps and comply with such other requirements as may from time to time be necessary to assure that all provisions of the Code (as now or hereafter interpreted by the IRS or the courts) are met that are necessary to assure that the Company is classified as a partnership for federal income tax purposes (including, but not limited to, not making an election under Treasury Regulation Section 301.7701-3 to be classified as anything other than a partnership).

(b) Upon request, the Managing Member shall deliver to the Investor Member financial statements or other evidence reasonably satisfactory to the Investor Member of compliance with the requirements of Section 8.08(a). If the Managing Member is unable to

comply with the requirements of Section 8.08(a) then, at the request of the Investor Member, and subject to Section 6.01, an additional or substitute Managing Member shall be admitted who shall cause the Managing Member to be in compliance with Section 8.08(a).

7.09 Excess Development Costs, Operating Deficits.

(a) The Managing Member shall be responsible for: (i) meeting all requirements for obtaining all necessary temporary and permanent certificates of occupancy for all the rental units in the Property; (ii) fulfilling all actions required of the Company to assure that the Property receives Part 3 Approval; and (iii) achieving Final Closing. The Managing Member hereby is obligated to fund all Excess Development Costs by making a Capital Contribution to the Company. In the event that the Managing Member shall fail to pay any such Excess Development Costs as required in this Section 8.09(a), the Investor Member may, in its sole discretion, cause the Company to pay such Excess Development Costs using the Investor Member's Capital Contribution.

(b) Any Operating Deficits occurring prior to the achievement of Final Closing shall be considered a Development Costs and shall be governed by Section 8.09(a). Thereafter, in the event that an Operating Deficit exists at any time during the Initial Operating Period, the Managing Member shall provide such funds to the Company as shall be necessary to pay such Operating Deficit in the form of a loan to the Company (the "Operating Deficit Loan"). The Managing Member shall make Operating Deficit Loans in such amounts and at such intervals so as to allow the Company to cover accrued accounts payable on a 90-day current basis. An Operating Deficit Loan shall be treated as if it were a Subordinated Loan in accordance with the provisions of Section 5.06(b); provided, however, that an Operating Deficit Loan shall bear no interest, and shall be repaid only if no event described in Section 8.12 has occurred and shall then be continuing. Notwithstanding anything herein to the contrary, any Operating Deficits occurring after the establishment of the Operating Reserve shall first be satisfied with proceeds maintained in the Operating Reserve.

(c) Notwithstanding anything in this Agreement to the contrary, the Managing Member shall not be required to fund (including by way of making a Subordinated Loan or Operating Deficit Loan to the Company) any Excess Development Costs or Operating Deficit to the extent attributable to deficiencies in the Operating Reserve.

(d) Development Fee.

(i) The Company has entered into the Development Agreement with the Developer for its services in connection with the development and Rehabilitation of the Property (which services do not include, and the Developer shall take no actions which pertain to, the admission of the Investor Member). In consideration for these services, a Development Fee in the total amount of $[________] shall be payable by the Company to the Developer in installments, which installments shall be due and payable in cash by the Company as follows: (1) $[________] upon the Company's receipt of the First Installment pursuant to Section 5.01(c)(i); (2) $[________] upon the Company's receipt of the Second Installment pursuant to Section 5.01(c)(ii); and (3) $[________] upon the Company's receipt of the Third Installment pursuant to Section 5.01(c)(iii).

(ii) Any amount of the Development Fee that is not paid pursuant to Section 8.09(c)(i) shall be earned upon Placement in Service, subject to interest at the applicable federal rate, and payable from Net Cash Flow pursuant to Section 11.01 or proceeds from a Capital Transaction pursuant to Section 11.04. If any portion of the Development Fee is not paid prior to the expiration of the fifth anniversary of Substantial Completion, the Managing Member shall make a Capital Contribution in the amount of any unpaid Development Fee in order that the Development Fee may be paid in full prior to such anniversary.

7. Net Interim Cash Flow.

Subject to the Consent of the Investor Member, which shall not be unreasonably conditioned, delayed, or withheld, Net Interim Cash Flow with shall be added to Net Cash Flow for the first Company Fiscal Year in which Net Cash Flow is to be determined.

7. Withholding of Fee Payments.

Without limitation on any other provision in this Agreement, upon the occurrence of any of the events described in Section 5.03, the Managing Member shall be in default of this Agreement, and the Company shall withhold payment of any amounts otherwise payable to it hereunder until such time as such default shall have been cured; provided, however, if a payment of all or any portion of such amounts then otherwise due would cure the event justifying the withholding, then the Company shall pay such amounts otherwise payable if it is applied to cure such event.

7. Conversion to Economic Interest; Appointment of a Non-Member Manager.

(a) The Investor Member shall have the right to convert the Interest of a Managing Member to an Economic Interest and appoint a Non-Member Manager in accordance with the procedures set forth in Section 8.12(b) in the event the Investor Member shall reasonably determine that one or more of the following conditions shall exist:

(i) for any gross negligence, malfeasance, or fraud, in the discharge of its duties and obligations as Managing Member (provided the same has, or reasonably may have, a material adverse effect on the Tax Credits or the Investor Member's ability to claim the Tax Credits); or

(ii) upon the occurrence of any of the following:

(1) the Company or the Managing Member shall have violated any provisions of any of the Operating Documents or any Applicable Laws, any of which has a material adverse effect on the Tax Credits or the Investor Member's ability to claim the Tax Credits, or the Managing Member fails to pay the Put Price as required by Section 9.05;

(2) a default shall have occurred under the Lease Purchase Finance Documents and shall not have been cured within any applicable notice and cure period under the Lease Purchase Finance Documents, provided

that if FIB shall waive such default, then such default shall be deemed cured for purposes of this Agreement;

(3) the Managing Member shall have conducted its own affairs or the affairs of the Company in such manner as would:

(A) cause the Company to fail to qualify as a limited liability company under the Act;

(B) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; or

(C) cause a Recapture Event; or

(4) an event of Bankruptcy shall have occurred with respect to the Company or the Managing Member.

(b) The Investor Member shall give Notice to all Members of its determination that the Managing Member's Interest shall be converted to an Economic Interest and a Non-Member Manager shall be appointed to succeed to the rights, duties, and obligations of the Managing Member hereunder. The Managing Member shall have the lesser of (x) 60 days after receipt of such Notice or (y) the cure period applicable to the event of default as determined by the operative document, to cure any default or other reason for such removal (if susceptible to cure); provided, however, that if upon the expiration of said 60-day period, the Managing Member shall not have cured such default and, if in the reasonable judgment of the Investor Member, (A) the Managing Member has made reasonable progress towards cure, and (B) the default was not capable of being cured within said 60-day period, then unless and to the extent the nature of the default is such that there is a likelihood of material loss, liability or prejudice to the Investor Member from any such delay in removal, the Managing Member shall have 60 additional days in which to cure any such default, in which event it shall remain as Managing Member for such period. If the default or other cause for removal shall not be susceptible to cure or shall not have been cured within any applicable cure period, then (i) the rights, duties, and obligations conferred on the Managing Member as Managing Member under this Agreement shall cease, and the Interest of such Managing Member shall without further action (but with Notice to the Managing Member of the same) be converted to an Economic Interest; (ii) the Managing Member shall continue to provide to the Investor Member any such reports, contracts, and other relevant information as the Investor Member may reasonably require with respect to the Project and the Company solely with respect to periods prior to such date; (iii) the Investor Member will have the right to appoint a Person as a non-member manager of the Company (the "Non-Member Manager"); and (iv) the Non-Member Manager shall be paid a fee for its services in an amount not exceeding a reasonable and customary fee for a non-member manager performing like services, which shall first be paid from any other amount otherwise payable to the Managing Member. Upon its appointment as Non-Member Manager to the Company, such Non-Member Manager shall have all the rights, duties, and obligations of the Managing Member hereunder; provided that the Managing Member shall retain its all rights with respect to its Economic Interest as provided in Section 8.12(a).

(c) (i) In the event that the Managing Member's Interest is converted to an Economic Interest prior to Final Closing, it shall be and shall remain liable for all obligations and

liabilities incurred by it as Managing Member of the Company before such conversion became effective, including but not limited to the obligations and liabilities of the Managing Member with respect to its obligations set forth in Section 8.09 of this Agreement with regard to Excess Development Costs; provided, however, that if amounts otherwise payable to the Managing Member as fees are applied to meet the Managing Member's obligations stated in Article VIII of this Agreement, such application shall serve to reduce any such liabilities of the Managing Member or any successor, except for any liability incurred as the result of its gross negligence, misconduct, fraud or breach of fiduciary duty as Managing Member of the Company. The Managing Member shall have no liability for obligations arising after such conversion unless related to any period prior to such conversion.

If the Managing Member's Interest is converted to an Economic Interest prior to Final Closing, it shall not be entitled to payment of any further installments of any fees which otherwise would have been due and payable under various Sections of this Article VIII.

(ii) In the event that the Managing Member's Interest is converted to an Economic Interest after Final Closing, it shall be and shall remain liable for all obligations and liabilities incurred by it as Managing Member of the Company before such conversion became effective, including but not limited to the Managing Member's obligations and liabilities under Section 8.09(b) of this Agreement; provided, however, that if amounts otherwise payable to the Managing Member as fees are applied by the Company at the request of the Investor Member to pay Operating Deficits, such application shall serve to reduce any such liabilities after Final Closing, except for any liability incurred as the result of its gross negligence, misconduct, fraud or breach of fiduciary duty as Managing Member of the Company. The Managing Member shall have no liability for obligations arising after such conversion unless related to any period prior to such conversion.

(iii) In the event that the Managing Member's Interest is converted to an Economic Interest, it shall be and shall remain liable for all its acts or omissions taken by the Managing Member as "partnership representative" (as defined by the Revised Partnership Audit Rules) of the Company after such conversion became effective, other than notification of the IRS of its resignation as partnership representative.

(d) The election by the Investor Member to convert the Managing Member's Interest to an Economic Interest under this Section 8.12 shall not limit or restrict the availability and use of any other remedy which the Investor Member or any other Member might have with respect to the Managing Member in connection with their undertakings and responsibilities under this Agreement. Nothing in this Section 8.12 shall reduce or otherwise limit the rights, remedies, or other actions available to the Investor Member against the Managing Member.

8. Reserved.

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The annual operating budget and the capital budget for the Property (the "Budget") shall be prepared by the Managing Member and submitted to the Investor Member for its review at least 60 days prior to the proposed effective date of such Budget; any such proposed Budget shall be subject to the Consent of the Investor Member before it becomes effective, which Consent shall not be unreasonably withheld. Such Budget shall specifically provide for all budget expenses in all major categories, including, but not limited to, administration, operation, repairs and maintenance, utilities, capital improvements, taxes, insurance, interest, and all budgeted expenses which are to be paid to any Developer Entity. The review and approval of the Budget by the Investor Member, or its objections to the Budget, shall be made and delivered to the Managing Member within 30 days of the Investor Member's receipt of the proposed Budget. After commencement of the Company Fiscal Year covered by such Budget, the Managing Member shall notify the Investor Member in writing of any proposed modification in the allocation of funds among the specific categories in the Budget approved by the Investor Member by more than (i) the greater of 10% or $2,500 in any category; or (ii) more than 5% of the overall Budget. In the event Investor Member fails to approve the Budget for any given Company Fiscal Year, the prior Fiscal Year's Budget shall govern until such time as Investor Member approves the Budget.

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The Managing Member shall cause a reserve to fund Operating Deficits and Debt Service (the "Operating Reserve") shall be maintained by the Company and may be utilized for other purposes solely with the Consent of the Investor Member. The Operating Reserve shall be initially funded from proceeds of the Third Installment in the amount equal to $[________] (the "Operating Reserve Amount"). To the extent the balance of the Operating Reserve is less than the Operating Reserve Amount, the Operating Reserve shall be replenished solely from Net Cash Flow in accordance with Section 11.01. The funds in the Operating Reserve shall be held in a segregated account with FIB. All earnings on the Operating Reserve shall accrue to the benefit of the Operating Reserve. The Consent of the Investor Member shall be required for any withdrawals from the Operating Reserve other than in accordance with Section 8.09(b). At no time shall the aggregate amount of the Operating Reserve exceed the Company's reasonably projected Operating Expenses (including the Operating Reserve) for a 6-month period.

ARTICLE IX.
TRANSFERS OF, AND RESTRICTIONS ON TRANSFERS OF INTERESTS OF INVESTOR MEMBER

9. Purchase for Investment.

(c) Investor Member hereby represents and warrants to the Managing Member, to the Company and to any other Member that the acquisition of its Interest is made as principal for its account for investment purposes only and not with a view to the resale or distribution of such Interest, except insofar as Applicable Securities Laws permit such acquisitions to be made for the account of others or with a view to the resale or distribution of such Interest without requiring that such Interest, or the acquisition, resale or distribution thereof, be registered under Applicable Securities Laws.

(d) Investor Member agrees that it will not sell, assign, or otherwise transfer its Interest or any fraction thereof to any Person who does not similarly represent and warrant and similarly agree not to sell, assign, or transfer such Interest or fraction thereof to any Person who does not similarly represent and warrant and agree.

9. Restrictions on Transfer of Investor Member's Interest.

(c) The offer, sale, transfer, assignment, hypothecation, or pledge of any Interest of the Investor Member to any Affiliate of the Investor Member shall be permitted without the Managing Member's Consent provided that the Investor Member is not in default under Section 5.01 with respect to its Capital Contributions to the Company. Any other offer, sale, transfer, assignment, by hypothecation or pledge of any Interest of the Investor Member, or any offer, sale, transfer, assignment, hypothecation, or pledge of any Interest by any other Investor Member shall be subject to the Consent of the Managing Member in its reasonable discretion.

(d) The Investor Member whose Interest is being transferred shall pay such reasonable expenses as may be incurred by the Company in connection with such transfer (including, notwithstanding Section 8.07, with respect to any Transfer Taxes).

(e) Nothing in this Section 9.02 shall limit the authority of any member of the Investor Member to offer, sell, transfer, or assign its interest in the Investor Member in such member's sole discretion.

9. Admission of Substitute Investor Member.

(c) Subject to the other provisions of this Article IX, an assignee of all or a portion of the Interest of an Investor Member (which shall be understood to include any purchaser, transferee, donee, or other recipient of any disposition of such Interest) shall be deemed admitted as a Substitute Investor Member of the Company only upon the satisfactory completion of the following:

(ii) each assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement by executing a counterpart thereof or an appropriate amendment hereto, and such other documents or instruments as the Managing Member may require in order to effect the admission of each such Person as an Investor Member;

(iii) an amended Agreement and Articles evidencing the admission, if necessary, of each such Person as an Investor Member shall have been filed for recording, if necessary, pursuant to the requirements to the Act;

(iv) each assignee shall have represented and agreed in writing as required by Section 9.01;

(v) if any assignee is an entity, the assignee shall have provided the Managing Member with evidence satisfactory to Counsel of its authority to become an Investor Member under the terms and provisions of this Agreement; and

(vi) each assignee or the assignor shall have reimbursed the Company for all reasonable expenses, including all reasonable legal fees and recording charges, incurred by the Company in connection with such assignment (including, notwithstanding Section 8.07, with respect to any Transfer Taxes).

(d) For the purpose of allocation of Profits or Losses and credits, and for the purpose of distributing Net Cash Flow of the Company, a Substitute Investor Member shall be treated as having become, and as appearing in, the records of the Company as a Member upon its signing of an amendment to this Agreement, agreeing to be bound hereby.

(e) The Managing Member shall cooperate with each Person seeking to become a Substitute Investor Member by preparing the documentation required by this Section 9.03 and making any official filings and publications. The Company shall take all such action, including the filing of any amended Agreement and Articles evidencing the admission of any Person as an Investor Member, if required, and the making of any other official filings and publications, if required, as promptly as practicable after the satisfaction by the assignee of the Interest of an Investor Member of the conditions contained in this Article IX to the admission of each such Person as an Investor Member of the Company. Any cost or expense incurred in connection with such admission shall be borne by each Substitute Investor Member.

9. Rights of Assignee of Company Interest.

(c) Except as provided in this Article and as required by operation of law, the Company shall not be obligated for any purpose whatsoever to recognize the assignment by any Investor Member of its Interest until the Company has received actual Notice thereof.

(d) Any Person who is the assignee of all or any portion of an Investor Member's Interest, but does not become a Substitute Investor Member and desires to make a further assignment of such Interest, shall be subject to all the provisions of this Article IX to the same extent and in the same manner as any Investor Member desiring to make an assignment of its Interest.

9. Investor Member Put Option.

(c) The Managing Member hereby grants to the Investor Member an option, at any time during the 6-month period commencing upon the later of (i) the 61st-month anniversary of Placement in Service of the Project, (ii) the last day of the Compliance Period, and (iii) 60 days after receiving written notice from Managing Member of confirmation of the Put Option start date, but in no event during the Compliance Period (the "Put Option Period"), to sell the Interest of the Investor Member (the "Put Option") to the Managing Member for an amount (the "Put Price") equal to the lesser of (i) 5% of the Investor Member's paid-in Capital Contribution plus any unpaid amounts and charges owed to or on behalf of the Investor Member by the Company pursuant to the Operating Documents through the date of payment of the Put Price (including any accrued and unpaid Special Tax Distribution or Priority Return owed to or on behalf of the Investor Member through the date of payment of the Put Price); or (ii) the fair market value of the Investor Member's Interest, as determined by an independent appraiser (taking into account any accrued and unpaid Special Tax Distribution or Priority Return owed to or on behalf of the Investor Member through

the date of payment of the Put Price); provided, however, that if there shall be any uncured default existing under the Operating Agreement, the Put Option Period shall not terminate until such default shall have been cured.

(d) If, at any time during the Put Option Period, the Investor Member elects to sell its Interest pursuant to the provisions of this Section 9.05, it shall give the Managing Member written notice of such election (an "Put Option Election Notice").

(e) Within (i) 120 days after the delivery to the Managing Member of a Put Option Election Notice from the Investor Member; or (ii) 60 days after the date on which the parties receive the appraisal described below, whichever occurs later, the Managing Member shall pay the Put Price to the Investor Member in immediately available funds. Any amount of the Put Price not paid within such period shall accrue interest at the rate of the lesser of 18% annually and the maximum interest permitted under Montana law until paid.

(f) As soon as practicable and in any event within 30 days following the delivery by the Investor Member of the Put Option Election Notice to the Managing Member, the Managing Member and the Investor Member shall select an independent appraiser. In the event the parties are unable to agree upon an independent appraiser within such 30-day period, the Managing Member and the Investor Member each shall select an independent appraiser. If the difference between the two appraisals is within 10% of the lower of the two appraisals, the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than 10% of the lower of the two appraisals, then the two appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed to be binding on all parties. If the two appraisers are unable jointly to select a third appraiser, either the Purchaser or the Investor Member may, upon written notice to the other, apply to the presiding judge of a court of competent jurisdiction in Billings, Montana for the selection of the third appraiser who shall then participate in such appraisal proceeding, and who shall be selected from a list of names of independent appraisers submitted by the Managing Member and by the Investor Member. Each list of names of independent appraisers shall be submitted within 10 days after the date on which the appraisal proceeding is invoked, and the appraiser shall be selected from the lists provided. The Managing Member shall pay the cost of any appraisers selected by the Managing Member pursuant to this Section 9.05(d), as well as any Transfer Taxes or other closing costs attributable to the exercise of the Put Option.

(g) Notwithstanding anything to the contrary in this Agreement, in the event the Investor Member has exercised its Put Option hereunder but the Managing Member has failed to pay the Put Price to the Investor Member, then the Put Option shall be of no force and effect.

(h) Upon receipt of the Put Price, the Investor Member shall execute and deliver such documents, assignments, instruments, and other items, and shall take such other action, as shall be necessary to transfer and assign its Interest to the Managing Member. The Managing Member shall have the right to cause another party to effect payment provided that any such assignment shall not relieve the Managing Member of its obligation to honor the Put Option Election Notice in accordance with the terms hereof in the event that such acts are not otherwise performed by the Managing Member's assignee.

(i) Upon the delivery of a Put Option Election Notice to the Managing Member, the Investor Member shall have no further obligations under this Agreement. The Managing Member shall take all action and shall pay all costs necessary to enable the Investor Member to receive and retain the Put Price, as against any creditor of the Managing Member or of the Company. Notwithstanding the purchase by the Managing Member of the Interest of the Investor Member pursuant to this Section 9.05, to the extent permitted under the applicable provisions of the Code, the Investor Member shall be allocated any Profits or Losses or Tax Credits in respect of such Interest for the period prior to the date of the receipt by the Investor Member of the Put Price. Anything herein to the contrary notwithstanding, title to the Interest of the Investor Member shall not vest in the Managing Member until payment in full of the Put Price therefor. Upon such payment, the Managing Member shall forthwith cause an amendment to the Articles, if required, and any other necessary papers to be filed, recorded, and published wherever required showing such substitution.

ARTICLE X.
RIGHTS AND OBLIGATIONS OF INVESTOR MEMBER

10. Management of the Company.

The Investor Member shall not take part in the management or control of the business of the Company nor transact any business in the name of the Company. Except as otherwise expressly provided in this Agreement, the Investor Member shall not have the power or authority to bind the Company or to sign any agreement or document in the name of the Company. The Investor Member shall not have any power or authority with respect to the Company except insofar as the Consent of the Investor Member shall be expressly required and except as otherwise expressly provided in this Agreement.

10. Limitation on Liability of Investor Member.

The liability of the Investor Member shall be limited to its Capital Contribution as and when payable under the provisions of this Agreement. The Investor Member shall not have any other liability to contribute money to, or in respect of the liabilities or obligations of, the Company, nor shall the Investor Member be personally liable for any obligations of the Company. The Investor Member shall not be obligated to make loans to the Company.

10. Other Activities.

The Investor Member may engage in or possess interests in other business ventures of every kind and description for its own account, including serving as a member of other limited liability companies which own, either directly or through interests in other limited liability companies, projects similar to the Property. Neither the Company nor any of the Members shall have any right by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom.

ARTICLE XI.
PROFITS, LOSSES, CREDITS, AND DISTRIBUTIONS

11. Allocation of Profits, Losses, Credits and Cash Distributions.

(c) After application of Section 11.10, all Operating Profits and Operating Losses, except those gains and losses referred to in Section 11.03, and all credits (except State Historic Tax Credits) shall be allocated among the Members in accordance with their Percentage Interests as set forth in Schedule A.

(d) All Net Cash Flow available for distribution shall be paid on a quarterly basis as follows:

(ii) to the Investor Member to pay any outstanding Capital Contribution Adjustments;

(iii) to the Investor Member to pay any outstanding Special Tax Distribution;

(iv) to the Investor Member to pay any outstanding Priority Return;

(v) to the Operating Reserve, to the extent the balance of the Operating Reserve is less than the Operating Reserve Amount;

(vi) 95% to the payment of any accrued and unpaid Development Fee;

(vii) to the repayment, on a pari passu basis, of any Subordinated Loans (and accrued interest thereon) made by the Investor Member;

(viii) to the repayment, on a pari passu basis, of any Subordinated Loans (and accrued interest thereon) made by the Managing Member;

(ix) to the repayment, on a pari passu basis, of any Operating Deficit Loans;

(x) 95% to the Managing Member, as a return of capital; and

(xi) the balance shall be distributed to the Members in accordance with their respective Percentage Interests.

(e) In any year in which a Member sells, assigns or transfers all or any portion of an Interest to any Person who during such year is admitted as a substitute Member, the share of all Profits or Losses allocated to, and of all Net Cash Flow and of all cash proceeds distributable under Section 11.04 distributed to, all Members which is attributable to the Interest sold, assigned or transferred shall be allocated and distributed to the assignee from and after the first day of the calendar month following the month in which the assignee executes this Agreement; provided, however, that the assignor and the assignee may, by agreement, make special provisions for the allocation of items of Profits or Losses, deduction or credit as may from time to time be permitted

under the Code, and for the distributions of Net Cash Flow and the proceeds of Capital Transactions, but such allocation shall be binding as to the Company only after it shall have received Notice thereof from the assignor and assignee.

(f) Reserved.

(g) In the event that there is a determination that there is any original issue discount, imputed interest or stated interest attributable to the Capital Contribution of any Member, or any loan between a Member and the Company, any income or deduction of the Company attributable to such imputed interest, stated interest or original issue discount on such Capital Contribution or loan (whether stated or unstated) shall be allocated solely to such Member.

(h) If any Member's Interest in the Company is reduced but not eliminated because of the admission of new Members or otherwise, or if any Member is treated as receiving any items of property described in Section 751(a) of the Code, the Member's Interest in such items of Section 751(a) property that was property of the Company while such Person was a Member shall not be reduced, but shall be retained by the Member so long as the Member has an Interest in the Company and so long as the Company has an Interest in such property.

(i) In accordance with Section 704(c) of the Code (relating to allocations with respect to appreciated contributed property) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall be allocated, solely for tax purposes, among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Fair Market Value. Any elections or other decisions relating to such allocations shall be made by the Managing Member in any manner that reasonably reflects the purpose and intention of this Agreement.

(j) In the event that the Managing Member makes any loan to the Company, any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to the Managing Member.

(k) No distributions or return of Capital Contributions shall be made and paid from Company assets if, after the distribution or return of contribution is made, either: (i) the Company would be insolvent, or (ii) the net assets of the Company would be less than zero.

11. Determination of Profits or Losses.

Profits or Losses for all purposes of this Agreement shall be determined in accordance with the accrual method of accounting for federal income tax purposes.

11. Allocation of Profits or Losses from a Capital Transaction.

After application of Section 11.10, Profits or Losses from a Capital Transaction recognized by the Company shall be allocated in the following manner:

(c) All Profits shall be allocated (i) first, to the Members with negative Capital Account balances, in proportion to such balances, that portion of gains (including any Profits

treated as ordinary income for federal income tax purposes) which is equal in amount to such Members' negative Capital Accounts in the Company; (ii) second, Profits in excess of the amount allocated under clause (i) shall be allocated to the Members in the amount, and to the extent necessary, to increase the Members' respective Capital Accounts so that the proceeds distributed in accordance with the Members' respective Capital Account balances would equal the amounts distributable under Section 11.04.

(d) Losses shall be allocated (i) first, to the extent of and pro rata in proportion to the positive Capital Accounts of the Members with positive Capital Accounts; and (ii) second, the amount of any Losses that remain after the allocations in subparagraph (b)(i) to the Members in accordance with the manner in which they bear the economic risk of loss associated with such Losses. In the event that no Member bears an economic risk of loss, then all Members shall be allocated Losses in excess of the amounts allocated under (b)(i) in accordance with their Percentage Interests.

(e) Any portion of the gains treated as ordinary income for federal income tax purposes under Sections 1245 and 1250 of the Code ("Ordinary Income Amount") shall be allocated on a dollar-for-dollar basis to those Members to whom the items of Company deduction or loss giving rise to the Ordinary Income Amount had been previously allocated.

11. Distribution of Proceeds from a Capital Transaction.

Except as may be required under Section 12.02(b), the proceeds resulting from any Capital Transaction, as the case may be, shall be distributed and applied in the following order of priority:

(c) to the payment of all matured debts and liabilities of the Company, and all expenses of the Company incident to any Capital Transaction, excluding (i) debts and liabilities of the Company to the Members or their Affiliates, and (ii) all unpaid fees owing to any Developer Entity under this Agreement;

(d) to the setting up of any reserves which the Liquidator (or the Managing Member if the distribution is not pursuant to the liquidation of the Company with the Consent of the Investor Member) deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Company;

(e) to the Investor Member to pay any outstanding Capital Contribution Adjustments;

(f) to the Investor Member to pay any outstanding Special Tax Distribution;

(g) to the Investor Member to pay any outstanding Priority Return;

(h) to the Investor Member in an amount equal to any projected federal income tax incurred as a result of the transaction giving rise to such proceeds; plus an amount equal, on an After-Tax Basis, to the local, state and federal taxes projected (at the Applicable Tax Rate) to be imposed on the members of the Investor Member from the allocation by the Company to the Investor Member of the Profits (if any) from the Capital Transaction to which the net proceeds relate pursuant to Section 11.03 above, but only to the extent that such allocation of Profits (if any)

from a Capital Transaction exceed all Losses from such Capital Transaction allocated to the Investor Member by the Company;

(i) to the payment of any accrued and unpaid Development Fee;

(j) to the repayment of any unrepaid debts and liabilities (including unpaid fees) owed to the Investor Member or its Affiliates by the Company for Company obligations, including any loans made pursuant to Section 5.06;

(k) to the Investor Member in an amount equal to any excess or additional Capital Contributions made by the Investor Member;

(l) to the repayment of any unrepaid debts and liabilities (including unpaid fees) owed to the other Members or their Affiliates by the Company for Company obligations, including any loans made pursuant to Section 5.06, and any Operating Deficit Loans; and

(m) to the Members in accordance with their respective Percentage Interests.

Notwithstanding the foregoing, no proceeds resulting from a Capital Transaction shall be distributed if, after the distribution is made, either: (i) the Company would be insolvent, or (ii) the net assets of the Company would be less than zero.

If there is more than one Managing Member, any distribution to the Managing Member shall be made pro rata in accordance with their Interests.

11. Capital Accounts.

A separate Capital Account shall be maintained and adjusted for each Member. There shall be credited to each Member's Capital Account the amount of its Capital Contribution, the Fair Market Value of any property contributed to the Company (net of any liabilities secured by such property) and such Member's distributive share of the Profits for tax purposes of the Company; and there shall be charged against each Member's Capital Account the amount of all Net Cash Flow distributed to such Member, the Fair Market Value of any property distributed to such Member (net of any liabilities secured by such property), the net proceeds resulting from the liquidation of the Company's assets or from any Capital Transaction distributed to such Member, and such Member's distributive share of the Losses for tax purposes of the Company. Each Member's Capital Account shall be maintained and adjusted in accordance with the Code and the Treasury Regulations thereunder. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Reg. §1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulations. It is the intention of the Members that the Capital Accounts maintained under this Agreement be determined and maintained throughout the full term of this Agreement in accordance with the accounting rules of Treasury Reg. §1.704-1(b)(2)(iv). In the event that the Company is liquidated within the meaning of Treasury Reg. § 1.704-1(b)(2)(ii)(g), if the Investor Member's Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations), the Investor Member shall increase its Capital Contribution in compliance with Treasury Reg. § 1.704-1(b)(2)(ii)(b)(3), provided, however, that the Investor Member's deficit restoration obligation shall not exceed the difference between: (i) the amount of

Capital Contributions the Investor Member is required to make pursuant to Section 5.01 hereof (as adjusted), less (ii) the Investor Member's actual paid-in Capital Contributions. Additionally, the Investor Member shall have the right (exercisable in its sole discretion) at any time, upon giving written notice to the Managing Member, to increase and/or extend the years in which it may be obligated to restore any deficit balance in its Capital Account, and any deficit restoration obligation undertaken by the Investor Member shall be automatically decreased to the extent the deficit balance in such Investor Member's Capital Account is moved closer to zero when compared to the deficit balance in such Investor Member's Capital Account, if any, at the close of the previous taxable year.

11. Authority of Managing Member to Vary Allocations to Preserve and Protect Members' Intent.

It is the intent of the Members that each Member's distributive share of income, gain, loss, deduction, or credit (or item thereof) shall be determined and allocated in accordance with this Article XI to the fullest extent permitted by Section 704(b) of the Code. Subject to the Consent of the Investor Member, the Managing Member hereby is authorized and directed to allocate income, gain, loss, deduction, or credit (or item thereof) arising in any year differently than otherwise provided for in this Article XI to the extent that allocating income, gain, loss, deduction or credit (or item thereof) in the manner provided for in Article XI would, in the opinion of the tax advisor to the Company (tax counsel or the Accountants) cause the determinations and allocations of each Member's distributive share of income, gain, loss, deduction, or credit (or item thereof) not to be permitted by Section 704(b) of the Code and Treasury Regulations promulgated thereunder. Any allocation made pursuant to this Section 11.06 shall be deemed to be a complete substitute for any allocation otherwise provided for in this Article XI and no amendment of this Agreement or approval of any Member shall be required.

11. Designation of Partnership Representative.

(c) The Managing Member hereby is designated as the Partnership Representative of the Company for each taxable year, and shall engage in such undertakings as are required of the Partnership Representative of the Company, as provided in Treasury Regulations pursuant to Sections 6233 and 6241, respectively, of the Code. Each Member, by the execution of this Agreement, Consents to such designation of the Partnership Representative and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such Consent.

(d) For each taxable year, the Partnership Representative shall appoint as Designated Individual an individual who meets the requirements of the Revised Partnership Audit Rules for a "designated individual," has sufficient experience and authority to represent the Partnership in all dealings with the IRS, and for taxable years beginning prior to the Adjustment Date, is consented to by the Investor Member. No later than the effective date of the designation of the Designated Individual, such Designated Individual must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this **Article XI** prior to and as condition of such designation. If a Designated Individual for any taxable year becomes unable to perform the tasks required of a Designated Individual, no longer has the "capacity to act" within the meaning of the Revised Partnership Audit Rules, or the Managing

Member otherwise determines that such person should be removed as the Designated Individual, the Managing Member shall promptly notify the Members of such determination and take all necessary actions to effectuate the resignation (or revocation) of such person as Designated Individual for all taxable years such designation was in effect (including obtaining any required IRS notification of such resignation from such person to be held in trust and delivered to the IRS at the time specified in the Revised Partnership Audit Rules). The designation of the Designated Individual shall also automatically terminate on the effective date of the resignation or revocation of the applicable entity as Partnership Representative.

(e) In the event of a withdrawal of the Managing Member pursuant to Article VI or conversion of the Managing Member's Interest to an Economic Interest pursuant to Section 8.12 hereof, the Company shall revoke the designation of the Managing Member as the Partnership Representative for all taxable years such designation was in effect and the Managing Member shall take all necessary actions to effectuate its resignation as Partnership Representative in accordance with the Revised Partnership Audit Rules, including updating the Partnership Representative contact information for the IRS as the Investor Member may specify or providing any required IRS notification to the Investor Member to be delivered to the IRS at the time specified in the Revised Partnership Audit Rules. Notice of such revocation or resignation shall be given to the IRS in the time and manner prescribed by the IRS and shall include the designation of another person selected by the Investor Member as the successor Partnership Representative for the applicable taxable years and the designation of another individual as Designated Individual in accordance with Section 11.07(b). The resigning or removed Partnership Representative and Designated Individual shall remain obligated hereunder in such capacity until the replacement is accepted by the IRS. In furtherance hereof, the Investor Member hereby is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the Managing Member as shall be legally necessary and sufficient to affect all of the foregoing provisions of this Section 11.07(c).

(f) Notwithstanding any other provision of this Agreement, the Investor Member hereby is granted authority at any time to designate itself or its manager as the Partnership Representative for any taxable year it is a Member of the Company. The Investor Member may exercise its right to designate the Partnership Representative for specified taxable years, as provided herewith, upon 10 days' Notice to the then-existing Partnership Representative and Managing Member. In the event that the Investor Member exercises its right to designate the Partnership Representative, the pre-existing Partnership Representative will resign as the Partnership Representative for the specified taxable years and shall take all necessary actions to effectuate its resignation as Partnership Representative in accordance with the Revised Partnership Audit Rules, including updating the Partnership Representative contact information for the IRS as the Investor Member may specify or providing any required IRS notification to the Investor Member (or its designee) to be delivered to the IRS at the time specified in the Revised Partnership Audit Rules. Notice of such resignation shall be given to the IRS in the time and manner prescribed by the IRS and shall include the designation of the Investor Member (or its designee) as the successor Partnership Representative for the specified taxable years and the designation of another individual as Designated Individual in accordance with Section 11.07(b). No later than the effective date of such designation, the Investor Member (or its designee) must agree in writing to be bound by the same obligations and restrictions imposed on the Partnership Representative under this Article XI prior to and as condition of such designation. The Investor Member (or its

designee), upon such redesignation as the Partnership Representative, shall have thereafter all the authority and powers given to the Partnership Representative of the Company under the Revised Partnership Audit Rules and under this Agreement. Each Member, by its execution of this Agreement, consents to such admission and designation, as the case may be, and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such consent. Upon any exit of the Investor Member from the Partnership, if it or its designee is has been designated as the Partnership Representative for any taxable year, it shall either (i) affirm that it remains obligated as Partnership Representative with respect to any Tax Disputes arising with respect to such taxable year or (ii) resign simultaneous with any such exit and the Managing Member shall designate a replacement Partnership Representative as provided for herein.

11. Authority of Partnership Representative.

(c) The Partnership Representative shall have and perform all of the duties required under the Code, including the following duties:

(ii) within 15 calendar days after the receipt of any correspondence or communication relating to the Company or a Member from the IRS, shall forward to each Member a photocopy of all such correspondence or communications and shall within 15 calendar days thereafter, advise each Member in writing of the substance and form of any conversation or communication held with any representative of the IRS;

(iii) inform the Members of any matter which requires their consent pursuant to this Article XI, along with any applicable deadlines imposed pursuant to the Revised Partnership Audit Rules or the IRS in its conduct of any particular Tax Dispute;

(iv) provide the Investor Member with a draft copy of any correspondence, filing or other materials to be submitted by the Company or the Partnership Representative in connection with any administrative or judicial proceedings relating to the determination of Company items level reasonably in advance of such submission, incorporate all reasonable changes or comments to such correspondence or filing requested by the Investor Member to the extent such review and comments are provided in a timely manner such that it would allow the Company to comply with any deadline imposed under applicable law, and provide the Investor Member with a final copy of such correspondence, filing or other materials; and

(v) represent the Company in all dealings with the IRS and state and local taxing authorities in accordance with the obligations and restrictions imposed by this Agreement.

(d) The Partnership Representative shall, upon request by a Member, permit a Member to include its attorney in the power of attorney (Form 2848) for the Company for any taxable years under a tax audit or in a tax administrative appeals process, provided the inclusion is permitted by the Revised Partnership Audit Rules.

(e) The Partnership Representative shall not without the Consent of the Members:

(ii) extend the statute of limitations for assessing or computing any tax liability against the Company (or the amount of character of any Company tax items);

(iii) settle any audit with the IRS concerning the adjustment or readjustment of any partnership items or remit any imputed underpayment amounts (within the meaning of Revised Partnership Audit Rules);

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

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

(vi) intervene in any action brought by any other Member for judicial review of a final adjustment;

(vii) engage an accounting firm or counsel to represent the Company before the IRS; or

(viii) take any other action not expressly permitted by this Article XI on behalf of the Company or any Member in connection with any adjustment, election, or administrative or judicial tax proceeding.

(f) The Partnership Representative shall keep the other Members advised of any dispute the Company may have with any federal, state or local taxing authority (a "Tax Dispute"), shall consult with the Members regarding the nature and content of all actions to be taken and defenses to be raised and elections to be made by the Company in response to such Tax Dispute, shall not act without the Consent of the Members, and shall afford the other Members the opportunity to participate directly in the negotiation of the Tax Dispute, to the extent permitted by law. The Partnership Representative also shall consult with Members regarding the nature and content of any Tax Dispute instituted by or on behalf of the Company (including the decision to institute proceedings, whether administrative or judicial, and whether in response to a previous Tax Dispute against the Company, or otherwise), and shall not act without the Consent of the Members. Reasonable legal fees incurred in connection with any Tax Dispute (including any Tax Dispute arising at the Investor Member level, to the extent that such Tax Dispute is the result of a Tax Dispute of the Company) shall be paid solely from the assets of the Company, except that if the Company lacks sufficient funds to undertake or prosecute any litigation relating to such Tax Dispute (including, without limitation, any appeal) and either the Managing Member or Investor Member in good faith does not reasonably consent to a settlement or resolution of such tax dispute, then the legal fees and other costs and expenses associated with such litigation shall be funded by the Member(s) refusing to consent to such settlement or resolution, through one or more Subordinated Loans to the Company. The Partnership Representative shall take such actions as may be reasonably necessary in order for the Members and the Company to achieve the desired intent of this Section 11.08(d).

(g) If the Company or the Partnership Representative receives notice of a proposed Company Adjustment from the IRS, the Partnership Representative shall so notify the Members in accordance with the provisions of Section 11.08(a)(i) and, if requested to do so by a

Member, shall request modification of the Imputed Underpayment proposed in such notice in accordance with the Revised Partnership Audit Rules. Any such request by a Member shall describe the modifications or adjustment factors that the Member believes affect the calculation of the Imputed Underpayment in sufficient detail to substantiate the request for modification. All information required to support a requested modification shall be submitted by the Members to the Partnership Representative prior to the applicable deadline, subject to any extension granted by the IRS.

(h) If the Company receives notice of a final Company Adjustment from the IRS, the Partnership Representative shall so notify the Members in accordance with the provisions of Section 11.08(a)(i) and, if requested to do so by Investor Member, shall make an election (a "Push-Out Election") under Section 6226 of the Code with respect to one or more Imputed Underpayments set forth in the final partnership adjustment notice. If a Push-Out Election is made, each Reviewed Year Member shall take into account its allocable share of the Company Adjustments that relate to the specified Imputed Underpayment (as determined with the Consent of the Investor Member for such Reviewed Year) and shall be liable for any taxes as described in Section 6226 of the Code and any applicable Treasury Regulations or other guidance prescribed by the IRS. Notwithstanding the foregoing, to the extent permitted by law, any Reviewed Year Member that is a partnership or S corporation may, at its option and in accordance with any applicable Treasury Regulations or other guidance prescribed by the IRS, elect (in lieu of paying its allocable share of such Company Adjustments) to push out the liability for taxes attributable to such Company Adjustments to its partners (including indirect partners). Any Push-Out Election shall be filed prior to the applicable deadline, shall be in such form, and shall contain such information, as required by the Revised Partnership Audit Rules. If a Push-Out Election is made, the Partnership Representative shall furnish to each Reviewed Year Member and the IRS, for each Reviewed Year prior to the applicable deadline, a statement that includes all items and information required under the Revised Partnership Audit Rules.

(i) If the Company becomes obligated to make an Imputed Underpayment, within 30 days after written notice from the Partnership Representative:

(ii) To the extent such Imputed Underpayment relates to an Excluded Event, each of the Members (including any Former Member) to whom such liability relates shall be obligated to pay an amount that is equal to its allocable share (determined in accordance with its Percentage Interest prior to the Adjustment Date) of such Imputed Underpayment to the Company;

(iii) To the extent such Imputed Underpayment is caused by Managing Member Acts or Omissions, the Managing Member shall be obligated to pay an amount that is equal to such Imputed Underpayment to the Company; and

(iv) Otherwise, each of the Members (including any Former Member) to whom such liability relates shall be obligated to make a Subordinated Loan to the Company in an amount that is equal to its allocable share of such Imputed Underpayment to the Company.

Any amount not paid by a Member (or Former Member) within such 30-day period shall accrue interest at the rate of the lesser of 18% annually and the maximum interest permitted

under Montana law until paid. Any such payment made by any Member pursuant to Section 11.08(g)(i) or 11.08(g)(ii) shall be treated as a Capital Contribution and, if and to the extent permitted by the Code and Regulations, any Capital Account reduction attributable to the Imputed Underpayment shall be allocated to the Members in proportion to such Capital Contributions. Any such payment made by any Former Partner pursuant to Section 11.08(g)(i) or 11.08(g)(ii) shall be treated as an indemnity payment and not as a Capital Contribution or loan to the Company, but any payment made pursuant to Section 11.08(g)(iii) shall be treated as a loan to the Company and subject to repayment pursuant to Sections 11.01 or 11.04 as if it were still a Member.

(h) The obligations of each Member or Former Member under Sections 11.07 and 11.08 shall survive the transfer, redemption or liquidation by such Member of its Company Interest and the termination of this Agreement or the dissolution of the Company. For the avoidance of doubt, to the extent a Former Member has potential liability for amounts pursuant to Sections 11.08(f) or 11.08(g) with respect to a Tax Dispute, such Former Member shall retain its rights pursuant Sections 11.07 and 11.08 to with respect to such Tax Dispute.

11. Expenses of Partnership Representative.

The Company shall indemnify and reimburse the Partnership Representative and the Investor Member for all expenses, including legal and accounting fees, claims, liabilities, losses, and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liabilities of the Members or Company. The payment of all such expenses shall be made before any distributions are made from Net Cash Flow or net proceeds from a Capital Transaction or any discretionary reserves are set aside by the Managing Member. The taking of any action and the incurring of any expense by the Partnership Representative in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Partnership Representative and the provisions on limitations of liability of the Members and indemnification set forth in Sections 8.07 or 10.02 of this Agreement shall be fully applicable to the Partnership Representative in its capacity as such.

11. Special Allocations.

(c) Notwithstanding any other provision of this Agreement, if there is a net decrease in the Company's minimum gain attributable to nonrecourse liabilities during any taxable year, each Member shall be specifically allocated a pro rata portion of each of the Company's items of income and gain for such year (and, if necessary for subsequent years) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in such minimum gain during such taxable year as determined in accordance with the provisions of Treasury Reg. §§ 1.704-2(f), 1.704-2(g)(2).

(d) Notwithstanding any other provision of this Agreement, if there is a net decrease in the amount of the Company's minimum gain during any taxable year with respect to a Member nonrecourse debt, the Member bearing the economic risk of loss with respect to such Member nonrecourse debt shall be specially allocated a pro rata portion of each of the Company's items of income and gain for such taxable year (and, if necessary, for subsequent years) in proportion to, and to the extent of the amount of such Member's share of the net decrease in such

minimum gain during such taxable year as determined in accordance with the provisions of Treasury Reg. §§1.704-2(i)(4), 1.704-2(j)(2)(ii).

(e) If in any taxable year there is a net increase in the amount of Company minimum gain attributable to a Member nonrecourse debt, the Member bearing the economic risk of loss attributable to such Member nonrecourse debt shall be specially allocated items of Company deduction and loss in proportion to and to the extent of the excess of:

(ii) the amount of such net increase, over

(iii) the aggregate amount of any distributions during such taxable year to such Member of the proceeds of such Member nonrecourse debt that are allocable to such increase in Company minimum gain. Items to be so allocated shall be determined in accordance with Treasury Reg. §1.704-2(j)(l).

The allocations provided for in this Section 11.10(c) are intended to comply with the allocations required by Treasury Reg. §1.704-2(i) and shall be applied consistently therewith. The Company's minimum gain shall be determined in accordance with Treasury Reg. § 1.704-2(d).

(f) In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Reg. §§1.704-1(b)(2)(ii)(d)(4), (5) or (6) which cause or increase an Adjusted Capital Account Deficit (as defined below) of such Member, items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate (to the extent required by the Treasury Regulations under Code Section 704(b)) such Member's Adjusted Capital Account Deficit as quickly as possible.

(g) For purposes of this Section 11.10, the term "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Company Fiscal Year, after giving effect to the following adjustments:

(ii) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is otherwise treated as being obligated to restore under Treasury Reg. §1.704-1(b)(2)(ii)(c) or is deemed to be obligated to restore pursuant to the penultimate sentence of Treasury Reg. §§1.704-2(g)(1) and 1.704-2(i)(5); and

(iii) Debit to such Capital Account the items described in Treasury Reg. §1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Reg. §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(h) Notwithstanding any other provision of this Section 11.10, in no event shall Losses of the Company be allocated to any Member if such allocation would result in such Member having an Adjusted Capital Account Deficit at the end of any taxable year. All Losses in excess

of the limitation set forth in this Section 11.10(f) shall be allocated to each other Member that does not have an Adjusted Capital Account Deficit.

(i) Notwithstanding any other provision of this Article XI, in no event shall the Investor Member be allocated more than 99% or less than 5% of each material item of Company income, gain, loss, deduction, and credit (including Profits and Losses from a Capital Transaction, Operating Profits and Operating Losses, and Profits and Losses allocated pursuant to this Section 11.10).

(j) Any (i) downward adjustment to the Capital Accounts from the downward adjustment to the basis of the Project required under Treasury Reg. §1.704-1(b)(2)(iv)(j), and (ii) any upward adjustment to the Capital Accounts from the upward adjustment to the basis of the Project upon recapture of Federal Historic Tax Credits (which shall be made in the manner described in Treasury Reg. §1.704-1(b)(2)(iv)(j)), shall be allocated to the Members in accordance with their Percentage Interests as set forth in Schedule A.

(k) State Historic Tax Credits shall be specially allocated 100% to the Investor Member. Any taxable income, profit or gain of the Company resulting from the allocation, distribution, sale or deemed sale of State Historic Tax Credits shall be specifically allocated one hundred percent (100%) to the Managing Member as a nonrecurring item not affecting the allocation of general profits. Notwithstanding anything else to the contrary in this Agreement, in no event shall any profit, income or gain of the Company resulting directly or indirectly from the receipt, allocation, sale, deemed sale or transfer of the State Historic Tax Credits be allocated to the Investor Member. The Managing Member agrees, to the extent permitted by law, to protect, indemnify, defend, and hold harmless the Company and the Investor Member from and against any and all liabilities, costs and expenses actually incurred, including, but not limited to, any tax liability owed by the Investor Member, reasonable costs and expenses of litigation and appeal, reasonable attorneys' and accountants' fees, penalties, fines, loss or damage of any kind or nature, in connection with or resulting from, the allocation of income or gain to the Investor Member attributable to a sale, or deemed sale, of the State Historic Tax Credits (such calculation to be made assuming the Investor Member is subject to the highest federal and state rates imposed on corporate taxpayers under the Code and state tax law at that time for the taxable year of the Investor Member in which such payment is taken into income by the Investor Member). For the avoidance of doubt, nothing in this Section 11.10(i) shall be construed to obligate the Managing Member to incur any liability whatsoever in connection with any income recognized by the Investor Member as a result of the Investor Member or any of its members subsequently claiming the State Historic Tax Credits.

(l) Any taxable income of the Company resulting from its receipt of donations, contributions, grants, subsidies, or capital contributions of the Members shall be specifically allocated one hundred percent (100%) to the Managing Member as a nonrecurring item not affecting the allocation of general profits.

ARTICLE XII.
SALE, DISSOLUTION AND LIQUIDATION

. The Company shall be dissolved upon:

(c) the sale or other disposition of all or substantially all of the assets of the Company;

(d) any other event causing the dissolution of the Company under the laws of the State; or

(e) the agreement of the Investor Member and the Managing Member.

12. Winding Up and Distribution.

(c) Upon the dissolution of the Company pursuant to Section 12.01, (i) Articles of Termination shall be filed in such offices within the State as may be required or appropriate, and (ii) the Company business shall be wound up and its assets liquidated as provided in this Section 12.02 and the net proceeds of such liquidation shall be distributed in accordance with Section 12.02(b).

(d) It is the intent of the Members, that upon liquidation of the Company, any liquidation proceeds available for distribution to the Members be distributed to the Members with positive Capital Accounts, pro rata in proportion to the balances in their respective positive Capital Accounts. The Members believe that distributions under Section 11.04 will effectuate such intent. In the event that, upon liquidation, there would otherwise be any conflict between a distribution pursuant to the Members' respective positive Capital Account balances and the intent of the Members with respect to distribution proceeds as provided in Section 11.04, the Liquidator shall, notwithstanding the provisions of Sections 11.01, 11.02 and 11.03 (but after all of the allocations provided for in Section 11.10 shall have been made) allocate the Company's items of income, gain, loss and deduction in a manner that will, as nearly as possible, cause the distribution of liquidation proceeds to the Members to be in accordance both with the Members' economic expectations as set forth in Section 11.04 and their respective Capital Account balances. If the Company's items of income, gain, loss and deduction are insufficient to cause the Members' Capital Accounts to be in such amounts as will permit liquidation proceeds to be distributed both in accordance with the Members' respective positive Capital Account balances and Section 11.04, then liquidation proceeds shall be distributed in accordance with the Members' respective positive Capital Account balances after the allocations described herein have been made.

(e) The Liquidator shall file all certificates and notices of the dissolution of the Company required by law. The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Company's property and assets; provided, however, that if the Liquidator shall determine that an immediate sale of part or all of the Company property would cause undue loss to the Members, then in order to avoid such loss, the Liquidator may, except to the extent provided by the Act, defer the liquidation as may be necessary to satisfy the debts and liabilities of the Company to Persons other than the Members. Upon the complete liquidation and distribution of the Company assets, the Investor Member shall cease to be the Investor Member of the Company and the Managing Member shall cease to be Managing Member, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Company.

(f) Upon the dissolution of the Company pursuant to Section 12.01, the Accountants shall promptly prepare, and the Liquidator shall furnish to each Member, a statement setting forth the assets and liabilities of the Company upon its dissolution. Promptly following the complete liquidation and distribution of the Company property and assets, the Accountants shall prepare, and the Liquidator shall furnish to each Member, a statement showing the manner in which the Company assets were liquidated and distributed.

ARTICLE XIII.
BOOKS AND RECORDS, ACCOUNTING TAX ELECTIONS, ETC.

13. Books and Records; Accounting Method.

The books and records of the Company shall be maintained on an accrual basis in accordance with generally accepted accounting principles ("GAAP") or federal income tax basis of accounting, consistently applied, and retained for such period required by law or if longer, such period recommended by the Accountants. These and all other records and financial statements of the Company, including information relating to the status of the Property and information with respect to the sale by any Developer Entity of goods or services to the Company, shall be kept at the principal office of the Company and shall be available for examination there by any Member or by any member of the Investor Member, or its duly authorized representative, at any and all reasonable times and upon reasonable advance notice. Any Member, or its duly authorized representative, upon paying the costs of collection, duplication, and mailing, shall be entitled to a copy of the list of names and addresses of Investor Member. The Managing Member agrees to cooperate with the Investor Member to provide information in a timely manner to facilitate audits conducted by independent auditors selected by the Investor Member in its sole discretion and expense.

13. Bank Accounts.

All funds of the Company not otherwise invested shall be deposited in one or more federally insured accounts maintained with FIB, and withdrawals shall be made only in the regular course of Company business on such signature or signatures as the Managing Member may, from time to time, determine. No funds of the Company shall be deposited in any financial institution in which any Developer Entity is an officer, director, or holder of a propriety interest.

13. Accountants.

(c) With the Consent of the Investor Member, the Managing Member, at the Company's expense, shall hire the Accountants and provide them with such information in its possession and sign such documents as are necessary for the Company to make timely, accurate and complete submissions of federal and state income tax returns (and in all events such returns shall be filed with respect to the year of the Investor Member's admission to the Company and each year thereafter). The Accountants shall be the accountants for the Company for the purposes of preparing income tax returns, the audit of the Company and the other relevant matters set forth in this Article XIII. The Managing Member and the Company hereby agree, authorize, and direct the Accountants to provide contemporaneous copies to the Investor Member of all tax returns,

audits, and any other information that the Accountants deliver to the Managing Member or to the Company.

(d) The Accountants shall annually prepare for execution by the Managing Member any tax returns of the Company, and shall certify, in accordance with GAAP, a balance sheet, a profits and losses statement, and a cash flow statement. The Accountants shall annually audit the books of the Company. With respect to each Company Fiscal Year during the Company's operations, at such time as the Accountants shall have prepared the proposed tax return for such year, the Accountants shall provide copies of such proposed tax return to the Investor Member's accountants for their review and comment. Any changes in such proposed tax return recommended by the Investor Member's accountants and consistent with this Agreement shall be made by the Accountants prior to the completion of such tax return for execution by the Managing Member. A full detailed statement shall be furnished to all Members, showing such assets, properties, and net worth and the profits and losses of the Company for the preceding Company Fiscal Year. All Members shall have the right and power to examine and copy, at any and all reasonable times upon reasonable advance notice, the books, records, and accounts of the Company.

13. Reports to Members.

The Managing Member shall, at Company expense, cause to be prepared and delivered to the Investor Member all such reports requested by the Investor Member as shall be necessary for the Investor Member to comply with its Tax Credit requirements in connection with the Company and:

(c) Within 45 days after the end of each calendar quarter thereafter:

(ii) unaudited financial statements for the Company, including a balance sheet, statement of income or loss and statement of cash sources and applications;

(iii) reports of Company operations;

(iv) a report of any construction activity;

(v) a reconciliation of the differences between the tax basis and GAAP basis statements;

(vi) a report of any Excess Development Costs or Operating Deficits or anticipated Excess Development Costs or Operating Deficits of the Company and the manner in which such Excess Development Costs or Operating Deficits will be funded;

(vii) a report of any material default by the Company under any Operating Documents or in payment of any mortgage, taxes, interest, or other obligation on secured or unsecured debt;

(viii) a report of any reduction or termination of any reserve by application of funds therein for purposes materially different from those for which such reserve was established;

(ix) a report of any notice of a material fact which may substantially affect distributions pursuant to this Agreement;

(x) a report of any pledge or collateralization of any asset of the Company;

(xi) a report of fees, commissions, compensation, and other remuneration and reimbursed expenses paid by the Company to any Developer Entity and the services and goods provided to the Company; and

(xii) a report of the activities and investments of the Company during the quarter including a description of all transactions between the Company and any Developer Entity.

(d) Within 120 days after the expiration of each Company Fiscal Year:

(ii) all necessary tax reporting information regarding the Company required by the Investor Member for preparation of its respective federal, state, and local income or franchise tax or information returns, for the preceding Company Fiscal Year; provided, however, that if applicable extensions are filed with respect to any such reporting, such tax reporting information shall be provided no later than June 30 of the applicable Company Fiscal Year;

(iii) a copy of the Company's (if applicable), and Managing Member's federal, state, and local tax or information returns for the prior Company Fiscal Year, and proof of payment of property taxes and insurance premiums for the preceding Company Fiscal Year; provided, however, that if applicable extensions are filed with respect to any such returns, such returns shall be provided no later than June 30 of the applicable Company Fiscal Year;

(iv) with the first tax return prepared following Substantial Completion, a table comparing the actual total depreciable basis with the depreciable basis indicated in the Projections;

(v) a statement summarizing the distributions, fees, commissions, compensation and other remuneration and reimbursed expenses paid for such year to any Member or Developer Entity and the services performed or goods provided therefor;

(vi) a report on the balance of the Operating Reserve as of the end of the Company Fiscal Year;

(vii) a report on any Operating Deficit Loans and Subordinated Loans made during such year and repayments thereof; and

(viii) unaudited financial statements for the Company, including a balance sheet, statement of income or loss and statement of cash sources and applications.

(e) Within 30 days:

(ii) upon the occurrence of any natural disaster, incident, or widespread property damage having a material adverse impact on the Property, a report of the extent of the damage to the Property, any expected delay in the Rehabilitation, and the effect such damage might have on the operations or marketing and lease-up activity of the Property;

(iii) upon the occurrence of a Withdrawal Event;

(iv) from time to time, as may be reasonably requested by the Investor Member, information on the state of the business, financial condition, and affairs of the Company or the Property or any other information required to be delivered to the Investor Member;

(v) upon learning of a condition or circumstance which is expected to reduce below the projected levels the amount of Tax Credits available to the Company, a detailed statement describing such matters; or

(vi) upon learning of any violation of any health, safety, building code, or other statute or regulation by the Company that would have a material adverse effect on the Company or the Property, a detailed statement describing such matters along with any written notices thereof received by the Company from any federal, state, or local governmental entity.

(f) Within 10 Business Days after receipt by the Company:

(ii) copies of all reports, notices, filings or correspondence sent or received regarding the occurrence of any event which has or may have a material adverse effect on the Company or the Property (including any reports, notices, filings or correspondence with any governmental agency regarding the Tax Credits; default notices, notices of reductions or elimination of benefits under any federal, state, or local program previously enjoyed by the Company; any default or failure of compliance with respect to the Loan or any other financial, contractual or governmental obligation of the Company or the Managing Member; notice of any IRS or Secretary proceeding involving the Company; notice of any demand for payment or draw under any construction completion guarantee, performance bond, or letter of credit regarding the Company; and notices regarding the Property's compliance with any regulatory restrictions imposed thereon); and

(iii) copies of all lawsuits or legal proceedings or alleged violations of law, and notices of all actions taken, or proposed to be taken, affecting the Company or the Managing Member.

(g) It shall also furnish to the Investor Member within 10 Business Days of execution a copy of all amendments or changes to the articles, bylaws, certificate, partnership agreement, operating agreement or other organizational documents of the Managing Member and the Company. In addition, it shall promptly respond to any reasonable requests or inquiries made in writing by the Investor Member regarding matters affecting the Property or the Company;

(h) Prior to November 1 of each year, an estimate of the Investor Member's share of Tax Credits, Net Cash Flow, distributions and Profits or Losses of the Company for federal income tax purposes for the current Company Fiscal Year. Such estimate shall be prepared by the Managing Member or the Accountants.

(i) The Investor Member agrees that any of the reports required to be delivered in Sections 13.04(a) or 13.04(b) shall be deemed to be delivered to the Investor Member to extent such information is contained in public filings published by the Company, the Managing Member, or the City.

13. Tax Elections.

(c) In the event of a transfer of all or any part of the Interest of a Member (or a member or partner thereof), the Company shall elect, pursuant to Sections 743 and 754 of the Code (or any corresponding provision of succeeding law), to adjust the basis of the Company property if, in the opinion of the Investor Member, based upon the advice of the Accountants, such election would be most advantageous to the Investor Member, to the extent that it is not at the detriment of the Managing Member. Each Member agrees to furnish the Company with all information necessary to give effect to such election. The Managing Member shall not make other elections permitted under the Code unless it has received the direction or prior Consent of the Investor Member.

(d) The Company shall make an election to be treated as an "electing real property trade or business" under Section 163(j)(7)(B) of the Code and provide evidence of making such election effective no later than the end of the taxable year ending December 31, 2024. Except as expressly provided in this Agreement, the Company has not made and will not make any elections under the Code, including pursuant to the Tax Reform Act or the Treasury Regulations thereunder, without the Consent of the Investor Member. The Company will file an election to opt-out of bonus depreciation that is otherwise available with respect to property owned by the Company pursuant to Section 168(k) of the Code.

13. Company Fiscal Year.

Except as the Code may otherwise require, the Company Fiscal Year shall be the fiscal year of the Investor Member. The fiscal year of the Investor Member is currently the calendar year. The Investor Member will inform the Managing Member of any change in its fiscal year.

13. Investor Member Inspection.

The Investor Member shall have the right to physically inspect the interior and exterior of the Property and the Company's books, records, and sublease documents during normal business hours. The Investor Member shall provide written notice to the Managing Member of any such inspection not less than two weeks prior to the inspection. The Managing Member shall correct any inaccuracies or deficiencies in the Company's books and records as agreed by the Managing Member and the Investor Member.

ARTICLE XIV.
AMENDMENTS

14. Proposal and Adoption of Amendments.

(c) This Agreement may be amended by the Managing Member with the Consent of the Investor Member or by the Investor Member with the Consent of the Managing Member.

(d) The Company shall bear the expense, including attorneys' fees and filing expenses, of amendments to this Agreement; provided, however, that if the Company does not have sufficient Operating Income to bear such expenses the party proposing an amendment to this Agreement shall bear the expenses thereof.

ARTICLE XV.
CONSENTS, VOTING AND MEETINGS

15. Method of Giving Consent.

Any Consent required by this Agreement may be given by a written Consent of the consenting Member and received by the Managing Member at or prior to the doing of the act or thing for which the Consent is solicited.

15. Submissions to Investor Member.

The Managing Member shall give the Investor Member Notice of any proposal or other matter required by any provision of this Agreement or by law to be submitted for consideration and approval of such Investor Member. Such Notice shall include any information required by the relevant provision or by law.

ARTICLE XVI.
GENERAL PROVISIONS

16. Burden and Benefit.

The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

16. Applicable Law.

This Agreement shall be construed and enforced in accordance with the laws of the State.

16. Safe Harbor.

The Members acknowledge that IRS Revenue Procedure 2014-12 establishes a safe harbor (the "Safe Harbor") under which the IRS will not challenge a partnership's allocations of validly claimed Federal Historic Tax Credits provided the partnership and its partners satisfy all the

requirements of the Safe Harbor. The Members agree that each intends to satisfy each of the requirements of the Safe Harbor and that in that regard, Investor Member is intended to constitute an "Investor" and the Company is intended to constitute a Partnership, and more specifically a "Developer Partnership," as those terms are defined in the Revenue Procedure. The Members also agree that this Agreement shall be interpreted in a manner that would tend to cause the Company and its Members to comply with the requirements of the Safe Harbor.

16. Counterparts.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

16. Separability of Provisions.

Each provision of this Agreement shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement which are valid.

16. Entire Agreement.

This Agreement and the documents referred to herein set forth all (and is intended by all parties to be an integration of all) of the representations, promises, agreements and understandings among the parties hereto with respect to the Company, the Company business and the property of the Company, and there are no representations, promises, agreements or understandings, oral or written, express or implied, among them other than as set forth or incorporated herein or therein.

16. Liability of the Investor Member.

Notwithstanding anything to the contrary contained herein, neither the Investor Member nor any of its partners, general or limited, or members shall have any personal liability to any of the parties to this Agreement with regard to the representations and covenants extended, or the obligations undertaken, by the Investor Member under this Agreement. Except as otherwise expressly stated herein, in the event that the Investor Member shall be in default under any of the terms of this Agreement, the sole recourse of any party hereto for any indebtedness due hereunder, or for any damages resulting from any such default by the Investor Member, shall be against the unpaid Capital Contribution of the Investor Member.

16. Notices.

(c) Any and all notices, consents, approvals and other communications required or permitted under this Agreement shall be deemed adequately given only if in writing delivered either in hand, by mail or by expedited commercial carrier which provides evidence of delivery or refusal, addressed to the recipient, postage prepaid and certified or registered with return receipt requested, if by mail, or with all freight charges prepaid, if by commercial carrier or by electronic transmission provided that such electronic transmission is received prior to 5:00 p.m. Mountain Time on a Business Day. All notices and other communications shall be deemed to have been

given for all purposes of this Agreement upon the date of receipt or refusal. All such notices and other communications shall be addressed to the Members at their respective addresses set forth below or at such other addresses as any of them may designate by notice to the other Members.

(d) Any Notice required by the provisions of this Agreement to be given to the Investor Member shall be addressed as follows:

FIB Battin, LLC
c/o First Interstate Bank
401 N. 31st Street
P.O. Box 30918
Billings, MT 59116
Attention: [_______________]
Email: [_________________]

With a copy to:

Kutak Rock LLP
2405 Grand Boulevard, Suite 600
Kansas City, MO 64108
Attention: Nicholas Irmen
Email: Nicholas.Irmen@kutakrock.com

(e) Any Notice required by the provisions of this Agreement to be given to the Company or the Managing Member shall be addressed as follows:

Former Federal Building Landlord, LLC
c/o City of Billings
PO Box 1178
Billings, MT 59103
Attention: Andy Zoeller
Email: zoellera@billingsmt.gov

With a copy to:

Dorsey & Whitney LLP
Millennium Building
125 Bank Street, Suite 600
Missoula, MT 59802-4407
Attention: Erin McCrady
Email: mccrady.erin@dorsey.com

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(c) In the event an action, suit or proceeding is commenced by one Member against the other in connection with this Agreement or the transaction contemplated hereby, the non-prevailing Member shall be required to reimburse the prevailing Member for all reasonable legal fees, costs and expenses incurred by the prevailing Member in connection therewith.

(d) Except as provided in Section 16.09(a), the Managing Member shall pay for any and all reasonable legal fees or costs incurred by the Investor Member in connection with any waiver or amendment request made by the Managing Member or in connection with any default by the Managing Member hereunder.

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(c) Unless otherwise specifically provided herein, the rights and remedies of any of the parties hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. Each of the parties confirms that damages at law may be an inadequate remedy for breach or threat of breach of any provisions hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other parties for a breach or threat of breach of any provision hereof, it being the intention by this paragraph to make clear that under this Agreement the respective rights and obligations of the Members shall be enforceable in equity as well as at law or otherwise.

(d) To the extent permitted by law, each Member hereby irrevocably:

(ii) consents to any suit, action, or proceeding with respect to this Agreement being, if brought by the Investor Member, brought in any State court of competent jurisdiction located in Billings, Montana, as the Investor Member may elect and, if brought by the Managing Member, brought in any State court of competent jurisdiction located in Billings, Montana as the Managing Member may elect;

(iii) waives any objection that it may have now or hereafter to the venue of any such suit, action or proceeding in any such court and any claim that any of the foregoing have been brought in any inconvenient forum;

(iv) (A) acknowledges the competence of any such court, (B) submits to the exclusive jurisdiction of any such court in any such suit, action or proceeding, and (C) agrees that the final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon it and may be enforced in any court to the jurisdiction of which it is or may be subject by a suit upon such judgment, a certified copy of which shall be conclusive evidence of its liability;

(v) agrees that service of process in any suit, action or proceeding brought in any such court may be made at its address set forth in Section 16.08, or such other address designated by it pursuant to the terms of Section 16.08;

(vi) waives all claims of error by reason of any service effected in accordance with the provisions of subparagraph (iv) above and agrees that such service shall in every respect effect service upon it in any suit, action or proceeding and shall be taken and held to be valid personal service upon or personal delivery to it, to the fullest extent permitted by law; and

(vii) waives trial by jury in any action related to this Agreement.

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All monetary obligations of the Company or the Managing Member to the Investor Member hereunder shall survive the sale by the Investor Member of its Interest or the termination of the Company until satisfied by the Company or the Managing Member, as the case may be.

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Nothing contained in this Agreement is intended or shall be deemed to benefit any creditor of the Company or any creditor of any Member, and no creditor of the Company shall be entitled to require the Company or the Members to solicit or accept any Capital Contribution for the Company or to enforce any right which the Company or any Member may have against any Member under this Agreement or otherwise or under any guaranty.

Signature page follows

IN WITNESS WHEREOF, the parties have set their signatures to this Operating Agreement as of the date first written above.

MANAGING MEMBER:

FORMER FEDERAL BUILDING MANAGER, LLC, a Montana limited liability company

By: ______________________________
Andy Zoeller, Manager

<u>INVESTOR MEMBER</u>:

FIB BATTIN, LLC,
a Delaware limited liability company

By: __________________________________
Name: __________________________________
Title: __________________________________

SCHEDULE A

MEMBERS, CAPITAL CONTRIBUTIONS, AND PERCENTAGE INTERESTS

	Capital Contribution	Percentage Interest
Investor Member FIB Battin, LLC c/o First Interstate Bank 401 N. 31st St. P.O. Box 30918 Billings, MT 59116 Attention: [____________________]	$[________]*	99% Admission Date 5% Adjustment Date
Managing Member Former Federal Building Manager, LLC 210 North 27th Street Billings, Montana 59101 Attention: Andy Zoeller	$[________]	1% Admission Date 95% Adjustment Date

*Payable as and when provided in the Agreement. Subject to adjustment as provided for in the Agreement.

EXHIBIT A

INSURANCE PROVISIONS

SUMMARY OF REQUIREMENTS

Hazard insurance certificates and policy confirmations meeting the Investor Member's requirements should be obtained in favor of the Company and listing "*FIB Battin, LLC, and each of its members, successors and assigns, as their interests may appear*" as additional insureds, with respect to the following items: (i) Builder's Risk coverage in an amount at least equal to the amount of the hard cost construction contract (i.e., the Insurable Value); (ii) Workmen's Compensation insurance; (iii) fire and extended coverage insurance in an amount equal to at least the full replacement cost of the Project, or if under construction, to replace work completed to date; (iv) single limit comprehensive general liability insurance on an "occurrence basis" against claims for personal injury in an amount of at least $1,000,000 for any single occurrence and $5,000,000 in aggregate coverage for any single year.

All Asset Management and Insurance Notifications and Certificates should be identified and sent to:

FIB Battin, LLC
c/o First Interstate Bank
401 N. 31st Street
P.O. Box 30918
Billings, MT 59116
Attention: [____________________]
Email: [______________________]

INSURANCE FORMAT

Unless self-insurance is provided by the City, all insurance policies (or riders) required by this Exhibit A are to be taken out and maintained (i) with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State or (ii) with Montana Municipal Interlocal Authority.

THESE REQUIREMENTS MAY BE FORWARDED TO YOUR INSURANCE AGENT OR BROKER AS WELL AS THE GENERAL CONTRACTOR.

<u>PROPERTY INSURANCE REQUIREMENT</u>

Evidence of Property Insurance **ACORD 27**, **ACORD 28** or equivalent which conveys to the Company all the rights and privileges afforded under the policy in a manner acceptable to the Investor Member. An endorsement naming FIB Battin, LLC as an additional insured is required in addition to acceptable evidence. The policy must contain provisions acceptable to the Investor Member.

Note: **ACORD 25** is **<u>not</u>** acceptable as evidence of property coverage. ACORD forms or other forms with disclaimers similar to ACORD 25 are not acceptable. Therefore, ACORD 27 & ACORD 28 forms (**version 07/2006**) are not acceptable.

Evidence of Property Insurance must indicate all of the following coverage:

- Include a <u>description</u> of the property insured in addition to the property address.
- *Former Federal Building Landlord, LLC and its successors and assigns, as its interests may appear* must be listed as Named Insured.
- The policy limit for Hard Costs must be sufficient to cover the full cost to rebuild the building(s).
- Deductible of $50,000 maximum.
- A certified copy of the insurance policy will be required prior to investment and loan closing. If this is a new insurance policy, a certified copy will be required within 90 days from the effective date.
- The insurance policy form must be Builders Risk.
- The policy must be written on Special Form (also known as All Risk).
- Acts of Terrorism—the insurance policy must not contain an exclusion for acts of terrorism. The evidence of insurance must include the following: *Acts of Terrorism are not specifically excluded.*
- Completed Value form is required. Reporting Form is not acceptable.
- Builders Risk policies void coverage when the building in the course of construction is partially occupied prior to being 100% complete. This clause is commonly known as the Occupancy Clause. We require this clause to be deleted by endorsement.
- 30-day cancellation clause, with 10 days for non-payment of premium.
- FIB Battin, LLC must be named as an additional insured.
- Vandalism and Malicious Mischief (V&MM) and Theft on construction materials on site prior to installation must be included.
- The Builders Risk policy must include coverage for Soft Costs including construction loan interest payments and other expenses that could be incurred again during the reconstruction period after a loss.

PARTNERSHIP'S LIABILITY INSURANCE REQUIREMENTS
(Use ACORD 25 form)

Primary liability insurance and excess liability insurance limits are acceptable to comply with the per occurrence policy limit requirement.

- The Company must be a Named Insured.
- *FIB Battin, LLC and its successors and assigns, as its interests may appear* must be listed as an additional insured.
- Commercial General Liability insurance policy must be on Occurrence Form. Claims Made Form is not acceptable. The policy limit must be $1,000,000 per occurrence and $5,000,000 in the aggregate, and include the following coverage:
    - Products/Completed Operations coverage.
    - Protective Liability (a.k.a. Owners and Contractors Protective liability) covering borrower for liability claims stemming from the general contractor's actions.
- 30-day cancellation clause, with 10 days for non-payment of premium.

BUILDER'S INSURANCE REQUIREMENTS
(Use ACORD 25 form)

If a general contractor is hired to do the construction work, insurance from the contractor is required as follows:

- The certificate of insurance must include a description of the property insured and the property address.
- Commercial General Liability insurance policy must be on Occurrence Form. Claims Made form is not acceptable. The policy limit must be **$10,000,000** per occurrence and must include the following coverage:
- Products/Completed Operations coverage must be included.
- Protective Liability (a.k.a. Independent Contractors Protective liability) covering all subcontractors.
- *FIB Battin, LLC and its successors and assigns, as its interests may appear* must be listed as an additional insured.
- An additional insured endorsement naming the Company as an additional insured.
- 30-day cancellation clause, with 10 days for non-payment of premium.
- Statutory Workers' Compensation insurance.
- Employers' Liability coverage **($1,000,000** Minimum)
- FIB Battin, LLC must be the certificate holder.

All of the conditions listed above are requirements of the Investor Member and must be indicated on the Proof of Insurance. The insurance requirements listed above do not modify any provisions of the loan or equity documents regarding insurance. They represent the minimum requirements of the Investor Member and should not be accepted as advice of counsel concerning an adequate property and casualty insurance program to meet your personal needs. We urge you to seek advice from your insurance adviser in this regard.

EXHIBIT B-1

FORM OF INSTALLMENT PAYMENT NOTICE

[**Date of Notice**]

FIB Battin, LLC
c/o First Interstate Bank
401 N. 31st Street
P.O. Box 30918
Billings, MT 59116

Re: Capital Contribution as per the Operating Agreement of Former Federal Building Landlord, LLC (the "Agreement") dated [__________] by and between the undersigned and the addressee hereof ("Investor Member")

To whom it may concern:

The undersigned on behalf of Former Federal Building Landlord, LLC confirms that all of the requirements for the payment of the [**First/Second/Third**] Installment have been satisfied and requests, subject to the terms and conditions of the Agreement, that the Investor Member contribute $[**Installment Amount**] constituting the [**First/Second/Third**] Installment and in accordance with the Agreement, on [**Installment Payment Date**].

Terms not otherwise defined herein shall have the meanings given them in the Agreement.

FORMER FEDERAL BUILDING MANAGER, LLC, a Montana limited liability company

By: ___________________________________

EXHIBIT B-2

FORM OF MANAGING MEMBER'S CERTIFICATE

[**Note: This certificate must be revised when reissued in connection with a request for the Second or Third Installments to reflect the passage of time, closing on the permanent financing, receipt of updated title insurance documentation, and similar events**]

All capitalized terms used herein and not otherwise defined, shall have the meanings attributed to them in the Operating Agreement of Former Federal Building Landlord, LLC (the "Company"), dated as of [__________] (the "Operating Agreement").

The undersigned, Former Federal Building Manager, LLC, a Montana limited liability company (the "Managing Member"), as of [**Date of Certificate**] being the sole Managing Member of the Company, hereby represents, warrants, and covenants to the Company and to the Members that with respect to the Company:

All representations and warranties of the Managing Member contained in Section 4.01 of the Operating Agreement are true and correct in all material respects as of the date hereof. All covenants of the Managing Member as set forth in Section 4.02 of the Operating Agreement are true and correct in all material respects as of the date hereof.

No event shall have occurred entitling the Investor Member to convert the Managing Member's Interest to an Economic Interest pursuant to Section 8.12 of the Operating Agreement nor has any event occurred which, with the passage of time, would entitle the Investor Member to convert the Managing Member's Interest to an Economic Interest.

The Managing Member and the Company are in good standing and authorized to engage in the activities as set forth in the Operating Agreement. In addition, there have been no changes or amendments to the articles, by-laws, certificates, or other organizational documents, as appropriate, of the Managing Member and the Company, except as provided to the Investor Member.

All obligations of the Managing Member set forth in the Operating Agreement (including the delivery of all financial and other reports required to be delivered as of the date hereof pursuant to Article XIII of the Operating Agreement) have been satisfied.

MANAGING MEMBER:

FORMER FEDERAL BUILDING MANAGER, LLC,
a Montana limited liability company

By: ______________________________
Name: ______________________________
Title:

EXHIBIT C

ARCHITECT'S CERTIFICATE

(See attached)

<u>EXHIBIT D</u>

PROJECTIONS

(See attached)