ART'S CAFÉ SPRINGVILLE LLC
A NEW YORK LIMITED LIABILITY COMPANY

AMENDED AND RESTATED OPERATING AGREEMENT

Dated as of _____, 2018

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ART'S CAFÉ SPRINGVILLE LLC

AMENDED AND RESTATED OPERATING AGREEMENT

This Amended and Restated Operating Agreement (the "Agreement") is made and entered into as of _____, 2018 by and between SCA X, Inc., a New York corporation ("SCA X" or the "Managing Member"), Robert Sorensen. (the Withdrawing Member") and Art's Café Community Owners, LLC, a New York limited liability company, ("ACCO or the "Investor Member"),

RECITALS

WHEREAS, on July 27, 2012, Seth Wochensky, as organizer, executed Articles of Organization pursuant to the Limited Liability Company Act of the State of New York (the "Formation State") for the formation of Art's Café Springville LLC (the "Company"), which Articles of Organization were subsequently filed in the Office of the Secretary of State of the Formation State on July 27, 2012, pursuant to said Act and the Company is currently governed by that certain Operating Agreement dated as of September 10, 2012 (the "Original Agreement") by the Springville Center for the Arts, Inc. ; and

WHEREAS, the Company is the owner of a building located at 5 East Main Street, Springville, New York (the "Building") as well as certain other improvements, and the tracts(s) of land upon which the Building is located (collectively, the "Land" and, together with the Building, the "Property"); and

WHEREAS, the Company is rehabilitating the Building into 2 residential rental units and roughly 2,100 square feet of commercial space, the rehabilitation of which will qualify for Historic Tax Credits (as hereinafter defined) and State Historic Tax Credits (as hereinafter defined) (the "Project"); and

WHEREAS, the Company has received a permanent loan for the Project from Springville Center for the Arts, Inc. (in such capacity the "Lender") in the principal amount of up to $600,000, (the "Mortgage Loan"): and

WHEREAS, the Company has been formed to rehabilitate the Building and hold, maintain, operate, and sell or otherwise dispose of the Property; and

WHEREAS, Robert Sorensen wishes to withdraw from the Company; and

WHEREAS, Springville Center for the Arts, Inc. assigned the entirety of its membership interest in the Company to its affiliate, SCA X; and

WHEREAS, the parties hereto now desire to enter into this Agreement to (i) continue the Company; (ii) to admit ACCO to the Company as an Investor Member; (iii) to restate that SCA X, Inc. is the Managing Member, (iv) reassign Interests in the Company; and (v) amend and restate the Original Agreement and 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 amends and restates the Original Agreement which reads in its entirety as follows:

ARTICLE I.
CONTINUATION OF THE COMPANY

1.01. Continuation.

The undersigned hereby continue the Company as a limited liability company under the Act.

1.02. Name.

The name of the Company is Art's Café Springville LLC.

1.03. Principal Executive Offices; Agent for Service of Process.

The principal executive office of the Company shall be 5 East Main Street, Springville, New York 14141. 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 that Person reflected in the Articles of Organization as filed in the office of the Department of State in New York.

1.04. Term.

The term of the Company shall be perpetual, unless the Company is sooner dissolved by law or in accordance with the provisions of this Agreement.

ARTICLE II.
DEFINED TERMS

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:

"Accountants" means any such firm of independent certified public accountants as may be engaged by Managing Member with the Consent of Investor Member.

"Act" means the New York Limited Liability Company Act, as the same may be amended from time to time during the term of the Company.

"Actual Historic Tax Credits" means, for a particular year or in the aggregate, as the context may require, the total amount of Historic Tax Credits properly allocable to the Investor Member under the terms of this Agreement and reflected in the Company's federal income tax returns, as subsequently adjusted, if applicable, as otherwise provided for herein.

"Actual State Credit" means, for a particular year or in the aggregate, as the context may require, the total amount of State Historic Tax properly allocable to the Investor Member under the terms of this Agreement and reflected in the Company's state income tax returns, as subsequently adjusted, if applicable, as otherwise provided for herein.

"Adjusted Capital Account Deficit" has the meaning set forth in Section 11.10(d).

"Adjusted Capital Contribution" means an amount, not less than zero, equal to the paid in portion of the Capital Contribution made by a Member less any distributions made by the Company to such Member.

"Adjusted Prime Rate" shall mean the lesser of (i) the annual rate of 3% over the Designated Prime Rate, compounded monthly, or (ii) the maximum allowable annual rate then in effect.

"Admission Date" means the date of this Agreement which is the date upon which the Investor Member was admitted to the Company.

"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, 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, 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 Investor Member (that is taxable to 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 imposed on 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 Investor Member on an After-Tax Basis, it shall be assumed that taxes are payable by Investor Member at the Applicable Tax Rate, which rate shall be certified in writing by Investor Member to Managing Member upon request.

"Agreement" means this Amended and Restated Operating Agreement, as amended from time to time.

"Applicable Laws" means any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, requirements, including without limitation Environmental Laws, or any order, judgment, decree, determination, or award of any court binding on any Developer Entity, or their assets including the Property. For avoidance of doubt, any provision in this Agreement requiring compliance with "Applicable Laws" shall not be deemed to have been violated by an IRS challenge to the income tax treatment and tax structure of Investor Member's membership interest in the Company.

"Applicable Securities Laws" has the meaning set forth in Section 4.01(i).

"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 any such firm as may be engaged by the Managing Member with the Consent of Investor Member to provide architectural services in connection with the Rehabilitation.

"Articles" means the Articles of Organization of the Company, or any articles of organization or any other instrument or document which is required under the laws of the Formation State to perfect or maintain the Company as a limited liability company under the laws of the Formation State, to effect the admission, withdrawal or substitution of any Member of the Company, or to protect the limited liability of Investor Member under the laws of the Formation State.

"Bad Acts" means gross negligence, willful misconduct, fraud or any breach of fiduciary duty by Managing Member or any other Developer Entity.

"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 of 1978 or like provision of law (except if such petition is contested by such Person and has been dismissed within 60 days); insolvency of such Person as finally determined by a court proceeding; filing by such Person of a petition or application to accomplish the same or for the appointment of a receiver or a trustee for such Person or a substantial part of 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.

"Budget" has the meaning set forth in Section 8.18.

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

"Capital Account" means the capital account of a Member as described in Section 11.

"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 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 Transaction" means (i) a sale, assignment, or other disposition of Company assets other than in the ordinary course of its business; (ii) a contribution, borrowing or refinancing; (iii) a casualty (where the proceeds are not to be used for reconstruction), condemnation or similar event of any part of the Property, where the gross proceeds from such event exceed $50,000; (iv) a title defect giving rise to payments to the Company under the Title Policy; 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.

"Check the Box Regulations" means regulations (in temporary or in final form) or other equivalent authority issued by the Internal Revenue Service and all state and local jurisdictions in which the income, assets or operations of the Company are, or may be, subject to income or similar tax, permitting the Company to make an election to be treated as a partnership for U.S. federal, state and, if applicable, local, income tax purposes.

"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.

"Commercial Lease" means any lease or sublease or other agreement for the use or occupancy of any portion of the Property other than as a "dwelling unit," as that term is defined in Section 168(e)(2) of the Code.

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

"Company Fiscal Year" has the meaning set forth in Section 13.

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

"Contractor" means SCA X which is the construction manager for the Property.

"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 the date on which the Investor Member has received a copy of the written certification of the Accountants as to the itemized amounts of the Rehabilitation, the Development Costs of the Building, the QREs incurred in connection with the Rehabilitation and the Actual Credits allocable to the Building.

"Counsel" or "Counsel for the Company" means such attorneys or law firm or firms upon which Investor Member and 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.

"Credit Determination" has the meaning set forth in Section 5.

"Credit Recovery Loan" means a constructive interest-bearing advance by Investor Member, as more fully described in Section 5.01(e). Credit Recovery Loans and interest thereon shall not be treated as loans or interest, respectively, for accounting, tax or liability purposes but rather as a method of calculating required distributions. For the purposes of Article XI, the term "Credit Recovery Loan" shall not include any portion of such an advance which shall have theretofore been repaid to Investor Member. So long as a Credit Recovery Loan is not the result of a Managing Member Breach, neither the Managing Member nor any Guarantor shall be responsible for any distribution owing on account of a Credit Recovery Loan.

"Debt Service" means all payments of principal, interest, or other charges or any combination thereof, due on the Mortgage Loan.

"Debt Service Coverage Ratio" means for any period of time, the ratio of monthly Net Operating Income measured at the Property divided by all Debt Service for such period, as determined by the Accountants and as reviewed and approved by the Investor Member. When calculating Net Operating Income of the Property for purposes of calculating the Debt Service Coverage Ratio, Operating Expenses shall be deemed not to include the Debt Service.

"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 Managing Member.

"Designated Prime Rate" means the prime commercial rate of interest as published from time to time in The Wall Street Journal, or such other source as the parties may agree, adjusted as such rate adjusts.

"Developer" or "Developer Entity" means, if applicable, the Managing Member or their assigns, if they are retained to render development services to the project.

"Development Agreement" means, if applicable, any Development Services Agreement of even date herewith between the Company and an outside 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 Initial Closing and 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 Reserves required to be funded from Development Sources. Without limiting the generality of the foregoing, the term "Development Costs" shall include (1) the cash equity required to be provided to the Senior Lender by or on behalf of the Company at Initial Closing and/or the Final Closing, (2) any loan assessment fees, discounts or other expenses incurred by the Company, including those that result from the occurrence of Final Closing, (3) any Mortgage Loan fees, (4) any interest, taxes, and property insurance premiums that are the responsibility of the Company, (5) any construction cost overruns and the cost of any change orders, (6) sums necessary to remedy any defects, including latent defects that manifest within one year of completion, in connection with the rehabilitation or construction, if such defects are not cured by the Contractor within a reasonable

period of time, (7) 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 Managing Member and the funds, or any portion thereof, subsequently are released from such deposit, the funds so released shall be paid to Managing Member), and (8) any Operating Deficits arising during the Property Development Period.

"Development Sources" means the Capital Contributions to the Company; the net, funded proceeds of the Mortgage Loans; 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; and any other funds anticipated to be available to the Company during the Property Development Period as described in the Projections.

"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., and/or the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq., and/or 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 and/or toxic wastes, material, products, or by-products (or of equipment or apparatus containing Hazardous Substances).

"Excess Development Costs" means all Development Costs in excess of Development Sources.

"Excluded Event" means (a) any direct or indirect sale, transfer, conversion or other disposition or deemed disposition of the Interests of Investor Member in the Company, or any direct or indirect interest therein, or redemption or repurchase of any such direct or indirect interest, (b) any challenge by the Internal Revenue Service of all or a portion of the transactional structure of the Company, including without limitation a Final Determination that any of the transactions or the Interests contemplated by this Agreement lack economic substance or a valid business purpose or are properly recharacterized for federal income tax purposes, and, as a result of any of the foregoing, all or any portion of such transactions or the Interests are disregarded or recharacterized for federal income tax purposes, unless such Final Determination is the result of a Managing Member Breach, or (c) any change in the Code or any U.S. Department of the Treasury regulations, or any issuance of binding guidance by the U.S. Department of Treasury or the IRS after the Admission Date. For the avoidance of doubt loss of Historic Tax Credits due to any circumstance that would constitute an Excluded Event hereunder but for the existence of a Managing Member Breach shall nonetheless be deemed an Excluded Event unless there is a Final Determination that such Managing Member Breach was a failure to observe the transactional structure and that no loss of Historic Tax Credits would have resulted (and any IRS challenge would not have succeeded) in the absence of such Managing Member Breach.

"Final Closing" means the date upon which Investor Member has received from the Company evidence of each of the following: (i) Substantial Completion; (ii) conversion of the Loan from its construction term to its permanent term, all as evidenced by such supporting documentation as shall be acceptable to the Investor Member; and (iii) receipt of any Capital Contributions required to be made by Managing Member to the Company.

"Final Determination" means the earliest to occur of (i) the date on which a decision, judgment, decree or other order has been issued by any court of competent jurisdiction, which decision, judgment, decree or other order has become final (i.e., all allowable appeals requested by the parties to the action have been exhausted or the

deadline for filing any appeal has passed), (ii) the date on which the Internal Revenue Service (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 Internal Revenue Service (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.

"Flip Date" means January 1 of the year following the later of (i) the five (5)-year anniversary of Placement In Service of the last QRE to be Placed in Service; provided, however, that the Flip Date shall not occur at any time during which the Managing Member is in material default of its obligations hereunder, which default has or is reasonably expected to have a material adverse effect on Investor Member or the Company, and that the occurrence of the Flip Date shall be suspended until such time as the subject material default has been cured.

"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 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 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; 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 Code Section 734(b) or Code Section 743(b), 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 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.

"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/or any material which contains any hydrated mineral silicate, including but not limited to chrysolite, amosite, crocidolite, tremolite, anthophylite, and/or 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.

"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."

"Initial Closing" means the date of the admission of the Investor Member and the signing of the mortgage. The mortgage was signed in 2017.

"Initial Operating Period" means the period commencing on the Admission Date and ending six months following the end of the Recapture Period.

"Installment(s)" 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 a Member of the Company 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 specified by Section 5.01 as such Member's Percentage Interest. In the case of a non-member manager of the Company, the term "Interest" means all rights and obligations of such Person with respect to the Company in such Person's capacity as a manager of the Company.

"Investor Member" means Art's Café Community Owners LLC, a New York 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.

"Liquidator" means the Managing Member or, if there is none, 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.

"Management Agreement" means the agreement between the Company and the Management Agent providing for the management of the Property.

"Managing Member Breach" means gross negligence, willful misconduct, fraud, breach of this Agreement or any other Operating Document or Property Document or any breach of fiduciary duty by the Managing Member or any other Developer Entity.

"Managing Member" means SCA X, Inc., a New York corporation, and its successor(s) pursuant to this Agreement, including particularly the provisions of Sections 6, and 8.

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

"Mortgage" means any mortgage given by the Company to a lender, including without limitation the Managing Member, in its capacity as a lender, to secure the Mortgage Loan.

"Mortgage Loan" means any loan secured by a Mortgage, including the Sponsor Loan.

"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 Managing Member, less the sum of all Operating Expenses and mandatory 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 Income" means the amount by which the sum of (i) Net Operating Income attributable to the Property Development Period and (ii) Development Sources (including interest income, rental income, other income, and any reserves, escrows or insurance proceeds released by the Lender), even if actually received after such period, exceeds the sum of (iii) any Debt Service attributable to the Property Development Period and (iv) all other Development Costs, regardless of when expended.

"Net Operating Income" means for a particular period of time, as reviewed by the Accountants, Operating Income less the sum of (i) Operating Expenses, and (ii) all cash expenditures which have been incurred in the operation of the Company's business and which are properly capitalizable (including any leasing costs, leasing commissions, subtenant improvement costs, moving allowances and related fees) but which expenditures are paid or to be paid from Operating Income. For purposes of determining Net Operating Income, Operating Expenses shall include a ratable portion of the annual amount (as reasonably estimated by the Managing Member) of those seasonal and/or periodic expenses (such as utilities, maintenance expenses and real estate taxes or service charges in lieu of real estate taxes to the extent not counted above) which might reasonably be expected to be incurred on an unequal basis during a full annual period of operation, for such period of time on an annualized basis (based on the Projections). Notwithstanding the foregoing, if at any time the actual amount of real estate taxes to be due from the Company is not known, the computation of the amount of real estate taxes included in item (i) above, shall be based on the greater of the amount of real estate taxes assumed in the Projections or the projected assessed real estate taxes on the value of the Property at the time of Substantial Completion. Net Operating Income shall be evidenced by a certification of the Managing Member with an accompanying unaudited balance sheet and income statement of the Company indicating that all trade payables have been satisfied (or with respect to trade payables within sixty (60) days of the date the services were performed or goods were delivered, the trade payables shall not be past due and the Company shall have an adequate cash reserve for the payment of such trade payables), all as shall be subject to the approval of the Investor Member.

"Nonrecourse Deductions" shall have the meaning given it in Treasury Regulations Section 1.704-2(b)(1).

"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. For purposes of this definition, all expenses shall be deemed payable on a sixty (60) day current basis.

"Operating Deficit Loans" means the loans made by Managing Member to the Company pursuant to Section 8.09(b) of this Agreement.

"Operating Expenses" mean all expenses of operation of the Property and the Company, as incurred by the Company in the reasonable discretion of Managing Member, including, without limitation, costs of utilities, maintenance, repairs and necessary replacements, real estate taxes, insurance premiums, professional and management fees, miscellaneous expenses, and any deposit to cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures (including any Reserve funding required pursuant to Section 8.19 hereof), in such amounts as may be required by the Lender or may be determined from time to time by Managing Member with the approval of Investor Member 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; Debt Service; 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 sixty (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, withdrawals from reserves to the extent otherwise permitted hereunder, 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 Reserves (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.

"Option Agreement" means that certain Option Agreement between Investor Member and Managing Member of even date herewith and respecting the Interest of Investor Member.

"Ordinary Income Amount" has the meaning set forth in Section 11.

"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 or unconditional 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.

"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.

"Payment Certificate" has the meaning set forth in Section 5.

"Percentage Interest" means the percentage Interest of each Member as set forth in Section 5.01.

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

"Placement in Service" means 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 jurisdiction(s) or authority(ies) with respect to such portion.

"Plans and Specifications" means the plans and specifications for the Rehabilitation of the Building approved by the Lender, including, without limitation, specifications for materials, and all amendments and modifications thereof.

"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 11.01 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.

"Project Documents" means and includes this Agreement; the Construction Contract; the Lease or Management Agreement (as applicable); documents evidencing, guarantying and securing any Mortgage Loan; the Option Agreement; all instruments delivered to (or required by) the Lender or the Secretary including the Certification Application and all other documents relating to the Property by which the Company is bound, as any of the foregoing may be amended or supplemented from time to time.

"Projected Credits" means Historic Tax Credits in the amount of $181,476 in 2018 with respect to the Building, which the Investor Member has projected (and which have been reviewed and accepted by the Managing Member) to be the total amount of Historic Tax Credits available to the Investor Member.

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

"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.

"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" has the meaning set forth in Section 5

"Recapture Event" means any event that results in the recapture of Historic Tax Credits under the Code or any applicable state law or any event that results in the recapture of State Historic Tax Credits under New York state law. A "Recapture Event" shall not include any Excluded Event.

"Recapture Notice" has the meaning set forth in Section 5

"Recapture Period" means the time period ending upon the fifth (5^{th}) full year after the last date upon which QREs taken into account for purposes of calculating the Actual Credits for any year were placed in service, or any

longer time period during which Historic Tax Credits and State Historic Tax Credits attributable to the Property are each subject to recapture pursuant to the Code.

"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.

"Reserves" means any and all reserves and escrow accounts maintained or required to be maintained by or for the benefit of the Company, including any escrows for real estate taxes and hazard liability or mortgage insurance premiums.

"Safe Harbor" has the meaning set forth in Section 16.10 hereof.

"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 and/or taxable gain, calculated on a cumulative basis, is allocable to the Members on account of its interest in the Project, whether on the Company's tax return or after audit by the IRS, Net Cash Flow in an amount equal to the product of (i) the amount of such taxable income and/or taxable gain allocated to such Member for such year, and (ii) the Applicable Tax Rate, payable in all years.

"Sponsor Loan" means that certain loan made by Springville Center for the Arts, Inc. to the Company in the initial principal amount of $599,000.

"Sponsor Loan Mortgage" means that certain mortgage securing the Sponsor Loan.

"Stabilized Operations" means the date upon which the Company, for ninety (90) consecutive days after Substantial Completion, has maintained Operating Income for such period equal to or exceeding Operating Expenses plus Debt Service.

"State" means the State of New York.

"State Credit Adjustment" has the meaning set forth in Section 5.

"State Credit Determination" has the meaning set forth in Section 5.

"State Historic Tax Credits" means the New York State Historic Tax Credits pursuant to Sections 210 and 1511 of the New York State Tax Law.

"State Projected Credits" means State Historic Tax Credits in the amount of $181,476 in 2018 with respect to the Building, which the Investor Member has projected (and which have been reviewed and accepted by the Managing Member) to be the total amount of State Historic Tax Credits available to the Investor Member.

"Subordinated Loan" means any loan made by a Member to the Company pursuant to Section 5.

"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 in accordance with the Plans and Specifications as certified by the Architect on AIA Form G704 or a similar document; (ii) all necessary certificates of occupancy, or temporary certificates of occupancy, provided, however, that if such certificates are of a temporary nature, Substantial Completion shall not have occurred unless the work remaining to be done to receive a permanent certificate is of a nature which would not impair the

permanent occupancy of the Building or any portion thereof or negatively affect the availability of the Historic Tax Credits, from the applicable governmental jurisdiction(s) or authority(ies) for one hundred per cent (100%) of the improvements therein; and (iii) certification by the Lender's inspector that the Rehabilitation is complete, subject only to punch list items as approved by the Investor Member and any commercial tenant improvements required upon lease thereof.

"Substitute Investor Member" means any Person admitted to the Company as an Investor Member pursuant to Section 9.

"Survey" means the boundary survey obtained by the Company.

"Target Amount" has the meaning set forth in Section 8.

"Tax Certificate" means the certificate in the form attached hereto as Exhibit A, updated to reflect the status of events described therein and signed by Managing Member, as Managing Member of the Company.

"Tax Credits" mean the State Historic Tax Credits and the Historic Tax Credits.

"Tax Matters Member" shall mean the Member designated in Section 11.07 to be the Tax Matters Partner as provided for in the Code

"Title Policy" means the ALTA standard form owner's policy of title insurance issued to the Company.

"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 or removal of any Managing Member or the sale, assignment, transfer or encumbrance by a Managing Member of any portion of such Managing Member's rights hereunder; (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) 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 the Guarantor, or 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.

ARTICLE III.
PURPOSE AND BUSINESS OF THE COMPANY

3.01. Purpose of the Company.

The Company has been organized exclusively to own and the rehabilitate the Property, to maintain, operate, lease and sell, exchange or otherwise dispose of the Property, and to qualify for Historic Tax Credits in accordance with Section 47 and Section 50 of the Code and State Historic Tax Credits in accordance with Sections 210 and 1511 of the New York State Tax Law. 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 and/or otherwise in furtherance of the purposes of the Company.

3.02. Authority 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) 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;

(b) rehabilitate and operate the property consistent with the requirements of the Project Documents;

(c) 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;

(d) 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;

(e) maintain and operate the Property, notwithstanding the foregoing, the Company may delegate such authority to a tenant through a lease agreement or to a Management Agent (which Management Agent may be any of the Members or an Affiliate thereof) through a management agreement;

(f) subject to the approval of the lender, 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;

(g) enter into and perform the Project Documents to which it is a party; and;

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

3.03 Withdrawal and Admission of Members.

(a) The Withdrawing Member hereby withdraws from the Company as a Member.

(b) SCA X is hereby appointed as the Managing Member of the Company.

(c) The Investor Member is hereby admitted to the Company as a Member. The Managing Member shall have no authority to admit additional Members without the Consent of the Investor Member.

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

4.01. Representations, Warranties and Covenants Relating to the Property and the Company.

As of the date hereof, the Managing Member hereby represents, warrants and covenants to the Company and to the other Members as follows:

(a) the Company has good and marketable fee simple title to the Property, free and clear of any liens, charges or encumbrances other than the matters set forth in the Title Policy, 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 construction or operation of the Property;

(b) the Managing Member is duly and validly organized and is validly existing in good standing as a corporation under the laws of the State, with full power and authority to enter into and perform its obligations hereunder; 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 in any material respect 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 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 any Developer Entity is a party, or by which it is bound or to which any of its assets is subject;

(c) 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 limited liability company power and authority to hold, operate and maintain the Property in accordance with the terms of this Agreement, and has taken and shall continue to take all action under the laws of the State and any other applicable jurisdiction that is necessary to protect the limited liability of the Investor Member(s) and to enable the Company to engage in its business;

(d) the Historic Tax Credits available to the Company with respect to the Building expected to be available to the Investor Member in 2018 are the Projected Credits;

(e) the State Historic Tax Credits available to the Company with respect to the Building expected to be available to the Investor Member in 2018 are the State Projected Credits;

4.02. Duties and Obligations Relating to the Property and the Company.

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 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 all of the commercial units in the Property, and (ii) compliance with all provisions of the Project Documents;

(b) while conducting the business of the Company, if any, it shall not act in any manner which it knows or should have known after due inquiry will (i) cause the termination of the Company for federal income tax purposes without the Consent of the Investor Member; (ii) cause the Company to be treated for federal income tax purposes as an association taxable as a corporation; or (iii) 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 Internal Revenue Service (or any other governmental authority designated for such purpose), on a timely basis, the Election (to the extent required to be signed by the Company) and any and all annual reports, information returns and other certifications and information required (i) to ensure that the Company (and its Members) qualify for Tax Credits and (ii) to avoid any Recapture Event or the imposition of penalties or interest on the Company or any of its Members for failure to comply with the requirements of the Code or any other applicable state laws relating to the Tax Credits;

(d) it shall exercise good faith in all activities relating to the conduct of the business of the Company, including without limitation, the 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) except for property and equipment leased in the ordinary course of business, 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 from the operation of the Property, will be free and clear of all security interests and encumbrances;

(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 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 with the provisions of all Applicable Laws, including, without limitation, all state and local zoning laws, building codes, health and safety codes, and all other applicable governmental and contractual obligations;

(i) it shall be personally responsible for the payment of any fines or penalties imposed by the Secretary or the Lender pursuant to the Project Documents and any documents executed in connection with obtaining Tax Credits attributable to any negligent action or inaction of it or its Affiliates;

(j) it shall operate the Property 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;

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

(l) the Managing Member represents and warrants that (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 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;

(m) the Managing Member shall at all times indemnify 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. The foregoing indemnification shall be a recourse obligation of the Managing Member and shall survive the dissolution of the Company and/or the death, retirement, incompetency, insolvency, Bankruptcy or withdrawal of the Managing Member provided that such obligation shall not include liabilities arising from events subsequent to the withdrawal of the Managing Member which were not caused by the acts or omissions of the Managing Member;

(n) with the Consent of the Investor Member, it 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 Members' admission to the Company and each year thereafter). 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 described in this Article IV or Section 13.03 that the Accountants deliver to the Managing Member or to the Company; and

(o) insurance shall be maintained in form and amounts satisfactory to the Investor Member, as specified in Exhibit A to this Agreement.

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

5.01. Members, 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.

(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. The Investor Member is hereby admitted to the Company as of the Admission Date.

(c) Subject to the provisions of this Agreement, including, without limitation, the provisions of Sections 5.01(d), 5.01(e) and 5.03, the Investor Member shall be obligated to make a Capital Contribution to the Company in the aggregate amount of $300,000 in one (1) Installment, which Installments shall be due and payable in cash by the Investor Member upon the satisfaction of the following conditions: (A) admission of the Investor Member to the Company; and (B) Initial Closing. No Installment shall be due prior to satisfaction of all conditions for all prior Installments

(d) At least ten (10) days before the Managing Member intends to call for a payment under this Section 5.01, the Managing Member shall provide a written statement. (e) If a Recapture Event occurs prior to the time the Investor Member has paid in its Capital Contribution, the amount of the next succeeding Installment (and any Installment(s) thereafter if necessary) of the Investor Member shall be reduced by an amount (a "Recapture Adjustment Amount") that, on an After-Tax Basis, is equal to any increase in taxes, interest and/or penalties payable and any costs and expenses incurred by the Investor Member or any of its members as a result, directly or indirectly, of such Recapture Event. If the Recapture Adjustment Amount exceeds the amount of the remaining Installments or if the determination that a Recapture Event has occurred is made after the Second Installment has been contributed, within twenty (20) days following the date of the delivery by the Investor Member to the Managing Member of a notice indicating the amount of such Recapture Adjustment Amount (a "Recapture Notice"), the Managing Member shall forthwith make a tax indemnity payment to the Investor Member in an amount equal to the Recapture Adjustment Amount (to the extent not taken into account by a reduction in Capital Contribution). Any amounts not paid within ten (10) days from the Recapture Notice shall bear interest at the Adjusted Prime Rate in effect at the end of the preceding calendar month, until paid in full. Any tax indemnity payments made by the Managing Member pursuant to this Section 5.01(e)(vi) shall be construed as being Capital Contributions by the Managing Member to the Company. (f) The Parties acknowledge and agree that the Investor Member's capital contribution shall be fixed at the amounts set forth in this section 5.01 and that the amount shall not be adjusted on account of the amount of Tax Credits actually earned being less or more than anticipated in the projections approved by the Accountant.

5.02. 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. Any other provision of this Agreement to the contrary notwithstanding the net paid-in Capital Contribution of Investor Member must equal no less than 20% of the total expected Capital Contributions as of the date the Building is Placed In Service throughout the duration of its ownership of its Interest in the Company.

5.03. Withholding of Capital Contribution Upon Default.

In the event that: (i) the Managing Member has not substantially complied with any material provisions of this Agreement, or (ii) any financing commitment of the Lender or any other lender, or any agreement entered into by the Company for financing related to the Property, has terminated, or (iii) foreclosure proceedings have been commenced against the Property, then the Company and the Managing Member shall be in default under 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. At the sole election of the Investor Member, it may directly apply all or any part of any unpaid Installment to cure the event justifying the withholding, including, but not limited to, the failure of the Managing Member to make payments required under Sections 5.01(c), 5.04, 8.09 and/or 11.01(a).

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.

5.04. Return of Capital Obligation.

(a) If (i) foreclosure proceedings have been commenced against the Property; or (ii) an event of Bankruptcy has occurred with respect to any Developer Entity prior to the Final Closing; then the Managing Member shall, within fifteen (15) days of the occurrence or notification thereof (unless extended by the Investor Member in its reasonable discretion, but in no event longer than sixty (60) days, as applicable, deliver to the Investor Member notice of such event and of its obligation to purchase the Interest of the Investor Member hereunder and return to the Investor Member its Adjusted Capital Contribution and any actual costs that the Investor Member has incurred with respect to the transaction, in the event the Investor Member, in its sole discretion requires such return. Upon written election by the Investor Member Managing Member shall forthwith pay to the Investor Member an amount equal to its Adjusted Capital Contribution and any actual costs that the Investor Member has incurred with respect to the transaction, in cash (with interest thereon at the Adjusted Prime Rate commencing on the fifteenth (15th) day following the date of such delivery of notification from the Investor Member).

(b) Upon return to the Investor Member an amount equal to its Adjusted Capital Contribution and any costs that the Investor Member has incurred with respect to the transaction, the Interest of the Investor Member in the Company shall terminate, and the Managing Member shall on demand indemnify and hold harmless the Investor Member from any losses, damages, and liabilities (including attorneys' fees) to which the Investor Member (as a result of its participation hereunder) may be subject. Notwithstanding the foregoing, upon redemption of the Investor Member interest, the Managing Member shall have no further obligations under Section 5.01(e) hereof.

5.05. Subordinated Loans.

(a) Each of the Parties shall have the right, but not the obligation, after funding all other obligations under this Agreement, including, without limitation, its obligation to fund Excess Development Costs or Operating Deficits pursuant to Section 8.09 hereof, to make "Subordinated Loans" pursuant to this Section 5.05(a) to fund Operating Deficits of the Company or to fund other reasonable and necessary obligations of the Company.

(b) 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 equal to 4.25% per annum in effect on the date such loans are made; 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 VI.
CHANGES IN MEMBERS

6.01. Withdrawal of a Managing Member.

(a) A Managing Member may withdraw from the Company or sell, transfer or assign its Interest as Managing Member (or a controlling interest in the Managing Member) only with the Consent of the Investor Member, and of the Lender, if required, and only after being given written approval by the necessary parties as provided in Section 6.02 of the Managing Member(s) to be substituted for it or to receive all or part of its Interest as Managing Member.

(b) In the event that a Managing Member withdraws 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 withdrawal, 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 withdrawal, sale, transfer or assignment shall have become effective.

6.02. Admission of a Successor or Additional Managing Member.

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

(a) the admission 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 Project 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 admission of such Person as a Managing Member, and an appropriate document evidencing the admission 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 admission 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 admission of the successor or additional Person is in conformity with the Act and that none of the actions taken in connection with the admission 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.

6.03. Effect of Bankruptcy, Death, Withdrawal, Dissolution or Incompetence of a Managing Member.

(a) In the event of the Bankruptcy of the Managing Member, the termination, resignation or dissolution of the Managing Member, or with respect to any Managing Member that is a natural person, the death of such Managing Member or the adjudication that a Managing Member is incompetent (which term shall include, but not be limited to, insanity), 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, death, dissolution or adjudication of incompetence of a Managing Member, such Managing Member shall immediately cease to be a Managing Member. Promptly thereafter, a majority in Percentage Interest of the Investor Members may appoint a successor Managing Member in the same manner as provided for in the event of the removal of a Managing Member under Section 8.13(b). The successor Managing Member shall have all rights and responsibilities of the Managing Member under this Agreement which

arise following the date of appointment of such successor Managing Member. Until the Investor Member has appointed a successor Managing Member, the Investor Member holding the greatest Percentage Interest of the Investor Members shall have all rights and responsibilities of the Managing Member under this Agreement.

(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. 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. Any amounts payable by the Company to a Managing Member that ceases to be a Managing Member in accordance with the provisions of this Section 6.03, whether as reimbursements, payments on Subordinated Loans or Operating Deficit Loans, or otherwise, may be applied by the Company to meet the Managing Member's obligations and liabilities (including any liability under any indemnification, but only obligations and liabilities incurred in its capacity as Managing Member) to the Company or the other Members, shall be deemed paid to the Managing Member upon any such application, and such application shall serve to reduce any such obligations or liabilities of the Managing Member.

(d) If, at the time of termination, resignation, Bankruptcy, death, adjudication that a Managing Member is incompetent or dissolution of the Managing Member, the Managing Member was not the sole Managing Member, then the remaining Managing Member(s) 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 are 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 sixty (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 an 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 sixty (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 an 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 VII.
ASSIGNMENT TO THE COMPANY

The Managing Member acknowledges that it and its Affiliates have transferred and assigned to the Company all of their right, title and interest in and to the Project and in and to all of the Project Documents, including, but not limited to, the following: (i) all contracts with architects, supervising architects, engineers and contractors with respect to the development of the Project; (ii) all plans, specifications and working drawings heretofore prepared or obtained in connection with the Project; (iii) all governmental commitments and approvals obtained, and applications therefor, including, but not limited to, those relating to planning, zoning, building permits and Tax Credits; (iv) any and all contracts or rights with respect to any agreements with the Lender(s) and any Agency; and (v) any other work product related to the Project and/or the Company.

Prior to the date hereof, SCA was the owner of the Property. SCA is the sole member of the Managing Member and has incurred certain costs of improvement and other costs relating to the Building and the Property and the Managing Member agrees that it shall not be deemed to have contributed the Building, Property improvements and any other property related thereto to the Company, but rather shall have transferred the Property to the Company, with the express understanding of the Parties that the Company shall repay SCA in accordance with the terms of the Note and Mortgage.

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

8.01. 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 Project 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 Project 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. In consideration of its obtaining an Interest in the Company, 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.

8.02. 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 regulation thereunder;

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

(iii) do any act required to be approved or ratified in writing by an Investor Member under the Act prior to obtaining such approval or ratification; 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 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 Project Documents;

(iii) incur debt in excess of $50,000 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 or which are at a cost in excess of $10,000 in a single Company Fiscal Year, 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;

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

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

(viii) pledge or assign any of the assets of the Company, other than to the Lender in connection with the existing Mortgage Loan;

(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 $10,000;

(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 Commercial Lease 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 Commercial Lease results in any portion of the Property being treated as "tax-exempt use property" as that term is used in Section 168(h) of the Code;

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

(xv) [intentionally omitted]

(xvi) [intentionally omitted]

(xvii) admit an additional Investor Member;

(xviii) guarantee the indebtedness of any Person; or

(xix) except with respect to the Mortgage Loans, incur any additional permanent debt on behalf of the Company.

8.03. Management Purposes.

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

8.04. 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.

8.05. Other Activities.

The Managing Member, its members and Affiliates may engage in or possess interests in other business ventures of every kind and description for their own account, including, without limitation, 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 other Member shall have any rights by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom.

8.06. Liability for Acts and Omissions.

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, provided, however, that the Managing Member shall be liable for the Company's violation of laws and violations of law by the Managing Member acting on behalf of the Company, for negligence, misconduct, fraud, breach of this Agreement or any breach of fiduciary duty as Managing Member with respect to such acts or omissions. 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 negligence, misconduct, fraud, breach of this Agreement or any breach of its fiduciary duty as Managing Member with respect to such acts or omissions) 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 Managing Member shall indemnify, defend and hold harmless the Investor Member and the Company (and the Company shall indemnify, defend and hold harmless the Investor Member) from and against any actual loss, liability, damage, cost or expense (including reasonable attorneys' fees) to the extent that (i) the Managing

Member's acts and/or omissions constituted a violation of law, fraud, misconduct or gross negligence, (ii) the Managing Member breached its fiduciary duty or any provision of this Agreement, including, without limitation, its representations and warranties herein contained, and such breach had a material adverse effect on the Company or the Investor Member.

The Managing Member shall indemnify, defend and hold harmless the Investor Member from and against any loss, liability, damage, cost or expense (including reasonable attorneys' fees) for 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. 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, without limitation, 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, removal, incompetence, 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.

8.07. 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 the Company is at all times treated as a partnership for federal, state and, if applicable, local income tax purposes including, without limitation, making all elections necessary for such purpose under any applicable Check the Box Regulations. While conducting the business of the Company, the Managing Member shall not act in any manner which it knows or should have known after due inquiry will cause the Company to be treated for federal income tax purposes as an association taxable as a corporation.

8.08. Excess Development Costs, Operating Deficits.

(a) (i) The Managing Member hereby is obligated to fund all Excess Development Costs. Any amounts paid by the Managing Member pursuant to this clause (i) shall be added to the Capital Contribution of the Managing Member.

(ii) 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 or through a Subordinate Loan.

(b) Any Operating Deficits occurring prior to the achievement of Final Closing shall be considered 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(s) in the form of a loan to the Company (the "Operating Deficit Loan(s)"). 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 sixty (60) day current basis. An Operating Deficit Loan shall be treated as if it were a Subordinated Loan in accordance with the provisions of Section 5.05(b); provided, however, that an Operating Deficit Loan shall bear no interest, and shall be repaid only if the Managing Member is not in default with respect to its obligations under this Agreement.

8.09. Net Interim Income.

With the Consent of the Investor Member any Net Interim Income shall be added to Net Cash Flow for the first Company Fiscal Year in which Net Cash Flow is to be determined.

8.10. [Reserved].

8.11. Withholding of Fee Payments.

Without limitation on any other provision in this Agreement, in the event that (i) the Managing Member has not substantially complied with any material provisions of this Agreement, or (ii) foreclosure proceedings have been commenced against the Property, or (iii) any of the events specified in subparagraphs (i), or (ii) immediately above have occurred with respect to any Affiliate of the Managing Member in which the Investor Member is an investor, then the Managing Member shall be in default of this Agreement.

The Managing Member shall have thirty (30) days after the occurrence of any of the conditions set forth in Section 8.12(i) through (iii) above to cure any such default.

8.12. Removal of the Managing Member.

(a) The Investor Member shall have the right to remove the Managing Member:

(i) for any intentional misconduct, gross negligence, malfeasance, fraud, act outside the scope of its authority, breach of its fiduciary duty, or any failure to exercise reasonable care with respect to any matter in the discharge of its duties and obligations as Managing Member (provided the same has, or reasonably may have, a material, adverse impact on the Company, the Investor Member its members or Affiliates or the Property); or

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

(A) Any Developer Affiliate shall be in continuing default under any of the Project Documents, or any provisions of any Applicable Laws, beyond any applicable cure periods, any of which has a material, adverse impact on the Company, the Investor Member, its members or Affiliates, or the Property;

(B) the Managing Member shall have violated this Agreement; or violated the Option Agreement or any provision of Applicable Law, beyond any applicable cure periods, provided the same has a material, adverse impact on the Company, the Investor Member, its members or Affiliates, or the Property (including the failure to pay the Put Price thereunder when and as due);

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

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

(2) cause the termination of the Company for federal income tax purposes;

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

(4) cause a Recapture Event.

(D) an event of Bankruptcy shall have occurred with respect to the Company or any Developer Entity; or there shall have occurred the liquidation or dissolution of any corporate Guarantor, or the death of any individual Guarantor, but then only if the personal representative of such Guarantor shall have failed to timely reach a binding agreement with the Company as provided for in the Guaranty; or

(E) any of the events specified in subparagraphs (A)-(E) immediately above have occurred with respect to any Developer Entity in which any Affiliate of the Investor Member is an investor.

(b) The Investor Member shall give written notice to all Members of its determination that the Managing Member shall be removed. The Managing Member shall have thirty (30) days after receipt of such notice to cure any default or other reason for such removal (if susceptible to cure); provided, however, that if upon the expiration of said thirty (30)-day period, the Managing Member shall not have cured such default and, if in the reasonable judgment of the Investor Member, (x) the Managing Member has made reasonable progress towards cure, and (y) the default was not capable of being cured within said thirty (30)-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 its members or Affiliates from any such delay in removal, the Managing Members shall have thirty (30) additional days in which to cure any such default, in which event it shall remain as Managing Member. 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, the Investor Member may, in its sole discretion the direct that the Managing Member shall cease to be a Managing Member and the powers and authorities conferred on it as Managing Member under this Agreement shall cease and the Interest of such Managing Member shall be transferred to a Person designated by the Investor Member. Upon its admission to the Company, such Person shall become a Managing Member.

(c) (i) In the event that the Managing Member is removed as aforesaid 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 removal 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;

(ii) In the event that the Managing Member is removed as aforesaid 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 removal became effective, including, but not limited to, the Managing Member's obligations and liabilities under Section 8.09(b) of this Agreement;

(iii) In the event that the Managing Member is removed as aforesaid after Final Closing, without any further action by any Member, a designee of the Investor shall automatically become a Managing Member and the removed Managing Member shall become a non-managing Member. At any time thereafter, the Investor Member may elect by written notice to the removed Managing Member to purchase the interest of the removed Managing Member for the lesser of (a) the then positive balance in its an amount in its Capital Account or (b) the fair market value of such the interest of the removed Managing Member as determined by an independent appraiser chosen by the Investor Member (provided however, the fair market value determination shall assume a sale of the Project and a liquidation of the Company).

(d) Upon the expiration of the cure period in Section 8.15 hereunder, 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 Members and the Company as shall be legally necessary and sufficient to effect all of the foregoing provisions of this Section 8.13. The election by the Investor Member to remove the Managing Member under this Section 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 8.13 shall reduce or otherwise limit the rights, remedies or other actions available to the Investor Member against the removed Managing Member.

8.13. Loans to the Company.

The Company is authorized to receive Operating Deficit Loans and Subordinated Loans on the terms set forth in this Agreement. In addition, if (i) additional funds are required by the Company for any purpose relating to the business of the Company or for any of its obligations, expenses, costs or expenditures, and (ii) the Company has not received an Operating Deficit Loan, or Subordinated Loan to pay such amounts, then the Company may borrow such funds as are needed from a Person or organization, other than a Developer Entity, in accordance with the terms of this Section 8.13, for such period of time and on such terms as the Managing Member and the Investor Member

may agree; provided, however, that no such additional loans shall be secured by any mortgage or other encumbrance on the property of the Company without the Consent of the Investor Member, except that such Consent shall not be required in the case of the hypothecation of personal property purchased by the Company and not included in the security agreements executed by the Company in connection with the closing of the Permanent Loan. Nothing in this Section 8.17 shall modify or affect the obligation of the Managing Member to make Operating Deficit Loans and to perform its obligations when and as required by this Agreement.

[Reserved].

8.14. Reserves.

The Managing Member may cause the Company to establish and maintain all Reserves required to be maintained hereunder or pursuant to the Project Documents, including the following:

(a) the Managing Member may establish a reserve fund for Operating Deficits (the "Operating Reserve"). The funds in the Operating Reserve shall be held in a segregated, interest bearing account with a federally insured financial institution. All earnings on Operating Reserve balances shall accrue to the benefit of the Operating Reserve.

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

9.01. Purchase for Investment.

(a) The Investor Member hereby represents and warrants to the Managing Member, to the Company and to any other Investor 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 the Applicable Securities Laws.

(b) Each 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.

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

(a) 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. 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.

(b) 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.

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

9.03. Admission of Substitute Investor Member.

(a) Subject to the other provisions of this Article IX, an assignee 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:

(i) the assignee shall have accepted and agreed to be bound by the terms and provisions of this Agreement, including the obligation to fund any unpaid Capital Contributions due and payable by the Investor Member subject to the terms and conditions 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 such Person as an Investor Member;

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

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

(iv) if the 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

(v) the 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.

(b) 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.

(c) The Managing Member shall take all actions reasonably necessary, including any actions requested by the Investor Member, to facilitate the disposition of the Investor Member's Interest. The Managing Member shall cooperate with the Person seeking to become a Substitute Investor Member by preparing the documentation required by this Section and making any official filings and publications. The Company shall take all such action, including the filing of any amended Agreement and/or 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 such Person as an Investor Member of the Company. Any cost or expense incurred in connection with such admission shall be borne by the Substitute Investor Member.

9.04. Rights of Assignee of Company Interest.

(a) 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.

(b) 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.

ARTICLE X.
RIGHTS AND OBLIGATIONS OF INVESTOR MEMBER

10.01. Management of the Company.

An 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, no Investor Member shall have the power or authority to bind the Company or to sign any agreement or document in the name of the Company. No Investor Member shall have any power or authority with respect to the Company except insofar as the Consent of any Investor Member shall be expressly required and except as otherwise expressly provided in this Agreement.

10.02. Limitation on Liability of Investor Member.

The liability of each Investor Member shall be limited to its Capital Contribution as and when payable under the provisions of this Agreement. No Investor Member shall have any other liability to contribute money to, or in respect of the liabilities or obligations of, the Company, nor shall any Investor Member be personally liable for any obligations of the Company. No Investor Member shall be obligated to make loans to the Company.

10.03. Other Activities.

Each Investor Member may engage in or possess interests in other business ventures of every kind and description for its own account, including, without limitation, 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 AND DISTRIBUTIONS

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

(a) 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 Tax Credits shall be allocated among the Members in accordance with their Percentage Interests as set forth in Section 5.01. Such allocation shall be made annually within sixty (60) days following the end of the Company Fiscal Year. All Net Cash Flow available for distribution shall be paid as follows:

(i) distribution to the Members of the Special Tax Distribution, if any;

(ii) Payment of principal and interest due on the Mortgage Loan as set forth in the Projections;

(iii) to the repayment pari passu of any Subordinated Loans (and accrued interest thereon) and any Operating Deficit Loans (and accrued interest thereon);

(iv) Prior to the Flip Date, the balance shall be allocated and distributed 1% to the Managing Member, and 99% to the Investor Member, after the Flip Date, the balance shall be allocated and distributed 5% to the Managing Member, and 95% to the Investor Member.

(b) 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.

(c) [reserved]

(d) 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.

(e) [Intentionally omitted.]

(f) 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.

(g) 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.

(h) In the event that the Managing Member makes any Operating Deficit Loans pursuant to Section 8.09(b), any deductions or losses of the Company attributable to the use of those funds shall be specially allocated to the Managing Member.

11.02. 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.

11.03. 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:

(a) 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 (i) shall be allocated to the Members in the amount and to the extent necessary to increase their Capital Accounts so that the proceeds if then distributed under Section 11.04 would be distributed in accordance with the Members' respective Capital Accounts.

(b) Losses shall be allocated (i) first, to the extent of and in such proportions to the Members' 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 (i) and (ii) in accordance with their respective Percentage Interests.

(c) 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.

11.04. Distribution of Proceeds from a Capital Transaction.

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

(a) to the payment of all matured debts and liabilities of the Company (including amounts due pursuant to the Mortgage Loans and all expenses of the Company incident to any sale or refinancing), excluding (i) debts and liabilities of the Company to Members or any Affiliates, and (ii) all unpaid fees owing to any Developer Entity under this Agreement;

(b) 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) deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Company;

(c) any unpaid Special Tax Distribution 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 as a result of the Capital Transaction;

(d) to the repayment of any unrepaid debts and liabilities (including unpaid fees) owed to the Members or any Affiliates by the Company for Company obligations, including any Subordinated Loans (and accrued interest thereon), and any Operating Deficit Loans (and accrued interest thereon);

(e) prior to the Flip Date, any balance 1% to the Managing Member and 99% to the Investor Member, after the Flip Date any balance 95% to the Managing Member and 5% to the Investor Member.

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

11.05. Capital Accounts.

A separate capital account shall be maintained and adjusted for each Member (each, a "Capital Account"). 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 Managing Member's Capital Account has a deficit balance (after giving effect to all contributions, distributions and allocations, the Managing Member shall increase its Capital Contribution by the amount of such deficit in compliance with Treasury Reg. § 1.704-1(b)(2)(ii)(b)(3).

11.06. 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.

11.07. Designation of Tax Matters Partner.

The Managing Member hereby is designated as Tax Matters Partner of the Company, and shall engage in such undertakings as are required of the Tax Matters Partner of the Company, as provided in Treasury Regulations pursuant to Section 6231 of the Code. Each Member, by the execution of this Agreement, Consents to such designation of the Tax Matters Partner 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. In the event of a withdrawal or removal of the Managing Member pursuant to Article VI or Section 8.13 hereof, the Company shall designate a successor Tax Matters Partner and file a timely notice of such designation with the Internal Revenue Service.

Notwithstanding any other provision of this Agreement, the Investor Member hereby is granted authority, to the extent permitted by the Code and Treasury Regulations, at any time to act as the Tax Matters Partner with all the authority and powers given to the Managing Member as Tax Matters Partner of the Company under the Code and under this Agreement. Unless otherwise specifically provided or agreed, the new Tax Matters Partner in these circumstances will not be responsible for or have the right to conduct any operational or managerial functions of the Company not otherwise delegated to it besides those required to discharge its responsibilities as Tax Matters Partner. The Investor Member may exercise its right to assume the Tax Matters Partner responsibilities for the Company, as provided herewith, upon ten (10) calendar days' notice to the then existing Tax Matters Partner and may continue as Tax Matters Partner indefinitely. In the event that the Investor Member exercises its right to assume duties of the Tax Matters Partner, the pre-existing Tax Matters Partner will resign in accordance with Treas. Reg. Section 301.6231(a)(7)-1(i) and will redesignate the Investor Member as Tax Matters Partner in accordance with Treas. Reg. Section 301.6231(a)(7)-1(e). Each Member, by its execution of this Agreement, Consents to such admission and designation and agrees to execute, certify, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to evidence such Consent. The Investor Member shall, upon such admission, replace the Managing Member as Tax Matters Partner and shall have thereafter all the authority and powers given to the Managing Member as Tax Matters Partner of the Company under the Code and under this Agreement.

11.08. Authority of Tax Matters Partner.

(a) The Tax Matters Partner shall have and perform all of the duties required under the Code, including the following:

(i) furnish the name, address, Profits interest, and taxpayer identification number of each Member to the IRS; and

(ii) within five (5) calendar days after the receipt of any correspondence or communication relating to the Company or a Member from the IRS, the Tax Matters Partner shall forward to each Member a photocopy of all such correspondence or communication(s). The Tax Matters Partner shall, within five (5) 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.

(b) The Tax Matters Partner shall, upon request by the Investor Member, permit the Investor 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.

(c) The Tax Matters Partner shall not without the Consent of the Investor Member:

(i) 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);

(ii) settle any audit with the IRS concerning the adjustment or readjustment of any limited liability company items) (within the meaning of Section 6231(a)(3) of the Code);

(iii) 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;

(iv) initiate or settle any judicial review or action concerning the amount or character of any limited liability company tax item(s) (within the meaning of Section 6231(a)(3) of the Code);

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

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

(d) In the event of any Company-level proceeding instituted by the IRS pursuant to Sections 6221 through 6233 of the Code, the Tax Matters Partner shall consult with the Investor Member regarding the nature and content of all actions to be taken and defenses to be raised by the Company in response to such proceeding. The Tax Matters Partner also shall consult with the Investor Member regarding the nature and content of any proceeding pursuant to Sections 6221 through 6233 of the Code 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 IRS proceeding against the Company or otherwise).

11.09. Expenses of Tax Matters Partner.

The Company shall indemnify and reimburse the Tax Matters Partner 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. The payment of all such expenses shall be made before any distributions are made from Net Cash Flow or any discretionary reserves are set aside by the Managing Member. The taking of any action and the incurring of any expense by the Tax Matters Partner in connection with any such proceeding, except to the extent required by law, is a matter in the sole discretion of the Tax Matters Partner and the provisions on limitations of liability of the Managing Member and indemnification set forth in Section 8.07 of this Agreement shall be fully applicable to the Tax Matters Partner in its capacity as such.

11.10. Special Allocations.

(a) 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).

(b) 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).

(c) 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:

(i) the amount of such net increase, over

(ii) 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).

(d) 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.

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:

(i) 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

(ii) 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.

(e) The Investor Member may agree to a Capital Account deficit restoration obligation in such amount and at such time in the future as it may deem necessary in its sole and absolute discretion upon giving Managing Member notice of such obligation and may terminate such deficit restoration obligation when the Investor Member has a positive capital account and upon notice to the Managing Member.

(f) In the event that income, loss or items thereof are allocated to one or more Members pursuant to Sections 11.10(a), (b), (c), (d) or (e), subsequent income, loss or items thereof shall be allocated (subject to the provisions of Section 11.10(a), (b), (c), (d) or (e)) to the Members so that, to the extent possible in the judgment of the Managing Member and permitted by Treasury Regulations, the net amount of allocations shall be equal to the amount that would have been allocated had Section 11.10 not been applied.

(g) Nonrecourse Deductions for any Company Fiscal Year shall be allocated to the Members in accordance with their Percentage Interests. Any Member Nonrecourse Deductions for any Company Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

(h) Any depreciation recapture recognized pursuant to Sections 1245 and 1250 of the Code shall be allocated to the Members in the same proportions that the depreciation or cost recovery deductions giving rise to such recapture were allocated among such Members or their predecessors-in-interest. Except as otherwise specifically requested under the Code or the Regulations, any recapture of the Tax Credits shall be allocated to the Members in the same manner as the Tax Credits were allocated. Any taxable income of the Company resulting from its receipt of debt forgiveness, donations, contributions, grants or subsidies shall be allocated entirely to the Managing Member.

ARTICLE XII.
SALE, DISSOLUTION AND LIQUIDATION

12.01. Dissolution of the Company.

The Company shall be dissolved upon the earlier of the expiration of the term of the Company, or upon:

(a) the withdrawal, Bankruptcy, death, dissolution or adjudication of incompetency of a Managing Member who is at that time the sole Managing Member, unless a majority in Interest of the other Members within ninety (90) days after receiving notice of such withdrawal, Bankruptcy, death, dissolution or adjudication of incompetence elects to designate a successor Managing Member(s) and continue the Company upon the admission of such successor Managing Member(s) to the Company;

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

(c) any other event causing the dissolution of the Company under the laws of the State.

12.02. Winding Up and Distribution.

(a) Upon the dissolution of the Company pursuant to Section 12.01, (i) a Certificate of Cancellation 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).

(b) It is the intent of the Members that, upon liquidation of the Company, any liquidation proceeds available for distribution to the Members shall be distributed in accordance with the Members' respective Capital Account balances and the Members believe that distributions under Section 11.04 will effectuate such intent. In the event that, upon liquidation, there is any conflict between a distribution pursuant to the Members' respective Capital Account balances and the intent of the Members with respect to distribution of proceeds as provided in Section 11.04, the Liquidator shall, notwithstanding the provisions of Sections 11.01, 11.02 and 11.03, allocate the Company's Profits or Losses in a manner that will cause the distribution of liquidation proceeds to the Members to be in accordance with the Members' respective Capital Account balances.

(c) 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 Members shall cease to be Members of the Company, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Company.

(d) Upon the dissolution of the Company pursuant to Section 12.01, the Accountants for the Company 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 Company 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.

13.01. 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 during normal business hours and upon reasonable 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 each 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.

13.02. Bank Accounts.

All idle funds of the Company shall be deposited in one or more accounts maintained in such federally insured financial institutions as the Managing Member shall determine, 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, directly or indirectly, of an ownership or other proprietary interest.

13.03. Accountants; Financial Statements.

The Accountants shall annually prepare for execution by the Managing Member all tax returns of the Company, and shall certify, in accordance with GAAP or federal income tax basis of accounting, consistently applied, 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, 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. In addition, upon request of the Investor Member, the Company shall cause the Accountants to furnish the Investor Member with copies of all workpapers and other support for tax returns, cost certifications and financial statements prepared by it. Any changes in such proposed tax return recommended by the Investor Member's accountants shall be made by the Accountants prior to the completion of such tax return for execution by the Managing Member. The Company shall furnish to Investor Member annually, within the time period set forth in Section 13.04, a complete copy of the Company's annual financial statements reviewed and certified by the Accountants (accompanied by an unqualified opinion from such accounting firm), each in accordance with GAAP or federal income tax basis of accounting, consistently applied,

and containing balance sheets and statements of profit and loss for the Company and the Property in such detail as Investor Member may request.

13.04. Reports to Members.

All information provided to Investor Member pursuant to this Section shall be signed by the Managing Member as presenting fairly the information concerning and the financial condition of the Property and the Company at the date of such information and certificate. The Managing Member shall, at Company expense, cause to be prepared and delivered to the Investor Member the following upon request of the Investor Member:

(a) Within fifteen (15) days of the end of each calendar month until Stabilized Operations (or, at the request of the Investor Member, if thereafter the Company fails to maintain ninety percent (90%) occupancy and within forty-five (45) days after the end of each calendar quarter thereafter:

(i) unaudited financial statements for the Company, which may be prepared and certified by the Managing Member, including a balance sheet statement of income or loss and statement of cash sources and applications; together with notes identifying the basis of preparation, "off balance sheet" commitments, an analysis of the Reserves and other material matters (all such statements shall be prepared in accordance with the practices used in the preparation of the Company's other financial statements, consistently applied);

(ii) 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 and when;

(iii) 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;

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

(v) a listing of insurance policies providing coverage for the Company and the Property, detailing the type, level of coverage, deductibles, insurance carrier, term and broker;

(vi) a report of any other information regarding the Company, its operations or the Property during the prior fiscal period reasonably deemed by the Company to be material to the Members.

(b) Within fifty (50) days after the expiration of each Company Fiscal Year:

(i) 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, or those of its members, for the preceding Company Fiscal Year, including form K-1 and a copy of the Company's federal annual tax return and any state or local tax return required to be filed by the Company and the Managing Member's federal, state and local tax or information returns for the prior Company Fiscal Year. If, for any reason, the Company has not provided such information by six (6) months after the Company's fiscal year end, the Investor Member may, at any time thereafter, by written notice to the Company, require the Company to replace the Accountants with accountants designated by the Investor Member (or otherwise acceptable to the Investor Member, at its option), and to the extent that such late receipt of information results in the Tax Credits for such fiscal year not being used by the Investor Member or its members because it elects not to amend its tax returns for such year, then such unused Tax Credits shall be deemed recaptured for purposes of this Agreement and the Project Documents. In addition, the Company shall provide the Investor Member with such information and sign such documents as are necessary for the Investor Member or its members to make timely, accurate and complete submissions of federal and state income tax returns. The tax returns shall be prepared and signed by the Accountant and

certified by the Accountant as the return filed (such certification shall be acceptable to the Investor Member).

(c) Within seventy-five (75) days after the expiration of each Company Fiscal Year:

(i) proof of payment of property taxes and insurance premiums for the preceding Company Fiscal Year;

(ii) 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;

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

(iv) a report on the balances of all Reserve accounts of the Company as of the end of the Company Fiscal Year and the changes thereto during such year;

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

(vi) a certificate from the then current chief executive officer (or similar party) of the Managing Member to the effect that, as of the end of the preceding Company Fiscal Year, (i) all required payments of Company indebtedness, real estate taxes and insurance have been made (together with copies of receipts for such taxes and insurance verifying such payments) and (ii) if applicable, to the knowledge of such officer (after due inquiry), no material default has occurred and is continuing with respect to any mortgage financing relating to the Property or, to the extent that such officer is unable to certify to any of the foregoing, stating the reason for such inability and the action, if any, taken or proposed to be taken by the Company relating thereto;

(d) Promptly:

(i) upon the occurrence of any natural disaster and/or incident and/or widespread property, damage and/or any other incident which has or potentially could have a material adverse impact on the Property and/or the Company, 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, the expected time to repair the Property, the funding for such repairs, and any adverse position of any insurer of the Property or Company;

(ii) upon the death, incompetency, dissolution or Bankruptcy of the Guarantor, notice thereof;

(iii) upon learning of any violation of any health, safety, building code, or other statute or regulation, order, or decree of any governmental authority having jurisdiction, which violation would have a material adverse effect on the Company, the Property (including its Rehabilitation, use, occupancy, or operation thereof), the Tax Credits, the Managing Member, the Company or the Guarantor, a detailed statement describing such matters along with any written notices thereof received by the Company from any such governmental authority;

(iv) after terminating a relationship with the current Accountants, notice of such change, including material details of the termination;

(v) upon receipt of notice of, or discovery of circumstances which could reasonably result in a Recapture Event, a copy or explanation thereof, as applicable, providing a detailed description of the circumstances, any plans to remedy the circumstances and the amount and year or years and estimated amounts of Tax Credits that could be or have been recaptured;

(vi) upon receipt of written allegation or notice of, or discovery of, circumstances which could reasonably result in, any audit, claim, litigation, action, investigation, event, third party complaints, hearing or proceeding involving the Company, the Property, the Tax Credits, the Managing Member, and any Developer Entity, which, if adversely resolved, would (a) have a material adverse effect on the Company, the Property, the Tax Credits, or the Managing Member; (b) have a material adverse effect on the ability of the Managing Member to perform its respective obligations under this Agreement or the Project Documents; or (e) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in the this Agreement, the Project Documents, Loan or other material financial obligation of the Company or Property (including taxes and insurance), a copy or explanation thereof, as applicable;

(vii) a copy of any report of any pledge or collateralization by any Member of any of its Interest in the Company; and

(viii) upon (a) the discovery of, or receipt of notice of, any material adverse event or circumstance affecting the Property, the Company, the Tax Credits or Investor Member, or (b) any emergency or other material change in the normal course of the business of the Company, the Property, the Managing Member, any Developer Entity or any Affiliate of a Developer Entity (collectively the "Affected Persons") if such emergency or change would be material, individually or in the aggregate, to the business, assets, properties, operations, condition (financial or otherwise), results of operations or business prospects of the Affected Persons or to any Affected Person's ability to consummate any of the transactions contemplated by this Agreement or the Project Documents, a report specifying the nature and period of the existence of any of the circumstances and what actions have been taken by whom and what actions are proposed to take by whom with respect thereto;

(e) Within two (2) business days after receipt by the Company:

(i) 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; and

(ii) 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 Investor Member, the Company, the Managing Member or the Guarantor.

(f) It shall also furnish to the Investor Member within five (5) 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, or the Company (without implying the consent of the Investor Member to any such amendment or change to any such organizational document). 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;

13.05. Section 754 Elections.

In the event of a transfer of all or any part of the Interest of a Managing Member or of an Investor 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. 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 required or permitted under the Code unless it has received the direction or prior Consent of the Investor Member.

13.06. Company Fiscal Year.

The Company's fiscal year (the "Company Fiscal Year") shall be the calendar year unless the Code requires another tax year, in which case the Company Fiscal Year shall be the same as the tax year required by the Code. The Investor Member will inform the Managing Member of any change in its fiscal year.

13.07. 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 lease documents during normal business hours upon twenty-four (24) hours written notice to the Managing Member. The Managing Member shall correct any deficiencies of which it received written notice from the Investor Member to the Investor Member's reasonable satisfaction within thirty (30) days from receipt of written notice or such additional time which may be reasonably required provided that the Managing Member is diligently pursuing such cure, but in no event longer than sixty (60) days.

13.08. Communications.

The Managing Member agrees to cooperate with the Investor Member by providing such other incidental information as may be reasonably requested by the Investor Member for purposes of its communications and publicity regarding the Property, provided that the failure to provide information under this Section shall not result in the imposition of any penalties on the Managing Member (or give rise to any right to remove the Managing Member).

ARTICLE XIV.
AMENDMENTS

14.01. Proposal and Adoption of Amendments.

(a) 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.

(b) The party proposing an amendment shall bear the expense, including reasonable attorneys' fees and filing expenses, of amendments to this Agreement and shall reimburse the other party for reasonable legal or accounting costs incurred by it in connection with such proposed amendment.

ARTICLE XV.
CONSENTS, VOTING AND MEETINGS

15.01. 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 Member requesting Consent at or prior to the doing of the act or thing for which the Consent is solicited. The Member requesting Consent shall reimburse the Consenting Member for reasonable legal or accounting costs incurred by it in connection with the matter requiring Consent.

ARTICLE XVI.
GENERAL PROVISIONS

16.01. Burden and Benefit.

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

16.02. Applicable Law.

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

16.03. 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.

16.04. 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.

16.05. 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.

16.06. 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. 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 capital contributions of the Investor Member allocated to, and remaining for investment in, the Company; provided however, that under no circumstances shall the liability of the Investor Member for any such default be in excess of the amount of the Investor Member's Capital Contribution that is unpaid at the time of such default.

16.07. Notices.

(a) 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. 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.

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

Art's Café Community Owners, LLC
5 East Main Street
Springville, New York 14141
Attention: Seth Wochensky, Manager
Phone: (716) 592-9038

and

Kelly O'Neal Adams
118 West Main Street
Springville, New York 14141
Phone: (716) 592-0263

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

Art's Café Springville, LLC and
SCA X, Inc.
5 East Main Street
Springville, New York 14141
Attention: Seth Wochensky
Phone: (716) 592-9038

With a copy to:

Borrelli & Yots PLLC
c/o Richard T. Rogers, Esq.
170 Florida Street
Buffalo, New York 14208
Attn: Jason A. Yots, Esq.
Telephone: (716) 440-0521

16.08. Legal Fees.

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

16.09. Rights and Remedies.

(a) 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.

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

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

(ii) 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;

(iii) (a) acknowledges the competence of any such court, (b) submits to the nonexclusive 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;

(iv) 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 16.07, or such other address designated by it pursuant to the terms of Section 16.07;

(v) 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

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

16.10. Compliance with Safe Harbor.

The members acknowledge that IRS Revenue Procedure 2014-12 establishes a so called safe harbor (the "Safe Harbor") under which the IRS will not challenge a partnership's allocations of validly claimed Tax Credits provided the partnership and its partners satisfy all the requirements of the Safe Harbor. The Members agree and acknowledge that each intends to satisfy and fully comply with 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" as those terms are defined in the Revenue Procedure. The Members also affirm and direct that any ambiguity in the meaning of any provision of this Agreement shall be resolved in favor of an interpretation that would tend to cause the Company or its members to comply with the requirements of the Safe Harbor. If the IRS should determine that the existence and/or lack of any provision(s) in this Agreement would cause the Company not to comply with the Safe Harbor, it is the parties' intent and desire that such provision(s) shall be modified, reformed, deemed struck and/or added, as the case may be, to the extent necessary to permit the Company to fall within the Safe Harbor requirements and for the allocation of the Historic Tax Credits to the Investor Member and the Managing Member, as contemplated in this Agreement, to be respected.

16.11. Survival of Obligations.

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.

IN WITNESS WHEREOF, the parties have set their signatures and seals to this Amended and Restated Operating Agreement of Art's Café Springville LLC as of the date first written above.

MANAGING MEMBER

SCA X, Inc.
a New York Corporation

By: _____
Name: E. Seth Wochensky
Title: President

INVESTOR MEMBER:

ART'S CAFÉ COMMUNITY OWNER LLC
a New York limited liability company

By: _____
Name: E. Seth Wochensky
Title: Manager

WITHDRAWING MEMBER:

_____
ROBERT SORENSON

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SCHEDULE A

Members, Capital Contributions and Company Interests

Name And Address	Capital Contribution	Company Interest**
SCA X, Inc. 5 East Main Street Springville, New York 14141	$250	1%
Art's Café Community Owners LLC 5 East Main Street Springville, New York 14141	$300,000	99%

* Payment of the Investor Member's Capital Contribution shall be subject to the conditions and adjustments described herein.

**As of the date hereof. After the Flip Date, the Company Interest of the Managing Member shall increase to 95% and the Company Interest of the Investor Member shall decrease to 5%.

EXHIBIT A -- INSURANCE REQUIREMENTS

A. INSURANCE COMPANIES:

All insurance policies must be issued by an insurance carrier which has a policyholder's rating of not less than A-.

B. PROPERTY INSURANCE COVERAGE:

Builder's Risk Insurance. Builder's risk insurance is required during the initial period of Rehabilitation and during the period of reconstruction after a casualty.

Property Insurance. The Project must be covered by a "causes of loss-special form" policy (formerly known as an "all risk policy"). The policy may be Actual Cash Value. The policy must include a deductible of not more than $10,000 per occurrence.

C. COMMERCIAL GENERAL LIABILITY INSURANCE COVERAGE:

Commercial general liability insurance is required. The minimum limit of liability with respect to bodily injury or death or property damage is $1 million per occurrence with a $2 million minimum general aggregate limit. The Investor Member may require additional amounts of coverage if it is determined that special risks exist. Liability coverage must provide for claims to be made on an occurrence basis.

D. WORKER'S COMPENSATION INSURANCE COVERAGE:

Evidence of Worker's Compensation (Statutory Limits) and Employer's Liability Insurance (limit $500,000/$500,000/$500,000) or a policy written by New York State Insurance Fund with their limits is required if any employee at the Project is required to be covered by worker's compensation laws of the applicable state.

E. CANCELLATION NOTICES:

All policies must provide for (i) at least thirty (30) days' written cancellation notice to the names insurance and mortgagee. The investor member will be notified of any cancellation by the Managing Member within ten days of receipt of notice.

F. ADDITIONAL INSUREDS; LOSS PAYABLE PROVISIONS:

All policies must name the Company as the Insured and the Investor Member and its successors and assigns as Additional Insureds.

G. POLICY TERM:

Each policy must be for a term of not less than one year. An existing policy with fewer than twelve (12) months

remaining on its term on the Admission Date may be acceptable to the Investor Member on a case by case basis. The Company must provide evidence that each policy has been paid in full prior to the Admission Date.

H. **BLANKET POLICIES:**

The Company may comply with and satisfy the requirements of this insurance section through the use of a blanket or package policy (or policies) of insurance covering the Property and other properties and liabilities of affiliates of the borrower, provided that the Property is listed and identifiable in the policy.

I. **EVIDENCE OF INSURANCE:**

1. The Admission will accept Accord Certificates as evidence of insurance.

2. Certificates must name the parties' interests.

3. Certificates must require notice to the certificate holder of cancellation.

4. Certificates must be issued to the Investor Member and its successors and assigns.

J. OTHER MATTERS: Upon reasonable request, the Company shall provide the Investor Member with true, accurate and complete copies of any policies of insurance maintained by or on behalf of the Company. As soon as available, Company shall provide acceptable evidence of all updates and renewals of insurance policies, including confirmation of the Investor Member and the Investor Member continuing to be a named insured.

EXHIBIT B
PROJECTIONS