

DUNCAN VILLAGE 2023 L.L.C. OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") of Duncan Village 2023 L.L.C. (the "Company") is made and entered into as of January 31, 2023, by and among MCFAH South Carolina, L.L.C., a Delaware limited liability company ("Managing Member"), and ACD Partners XLIV L.L.C., a Michigan limited liability company as a member.

BACKGROUND STATEMENT

On January 24, 2023, a limited liability company known as Duncan Village 2023 L.L.C. (the "Company") was formed pursuant to the Michigan Limited Liability Company Act (the "Act").

The Members desire to enter into this Agreement and agree to be bound by the terms and conditions set forth herein.

AGREEMENT

1. Formation; Name.

In accordance with the terms and conditions hereof, the parties agree that the Company shall continue its existence without interruption or dissolution as a Limited Liability Company under the provisions of the Act, and pursuant to the provisions of the Agreement. The name of the Company shall be Duncan Village 2023 L.L.C., and its office shall be located at 20250 Harper Avenue, Detroit, Michigan 48225, or may be relocated to such other place as the Manager may determine from time to time.

2. Definitions.

As used in this Agreement, the following terms shall have the following meanings:

"Act" means the Michigan Limited Liability Company Act, being Act No. 23 of the Public Acts of 1993, as amended.

"Affiliate" means any person which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a Member, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a person whether through the ownership of voting securities, by contract or otherwise.

"Agreement" means this Operating Agreement of the Company.

"Articles" means the Articles of Organization, including all restatements and amendments, which are filed with the appropriate authorities under the law pursuant to the Act.

"Borrower" has the meaning set forth in Section 13.

"Cash Flow" of the Company has the meaning set forth in Subsection 7.5.

"Code" means the Internal Revenue Code of 1986, as amended.

"Company" means Duncan Village 2023 L.L.C.

"Company Percentage" means, with respect to each Member, the percentage set forth opposite such Member's name under the heading "Company Percentage" on Exhibit A.

"Excess Capital Account Deficit" has the meaning set forth in Subsection 7.3(b).

"Exhibit A" means Exhibit A attached hereto and hereby made a part hereof.

"Fiscal Year" shall be determined by the Manager, and may be changed from time to time, subject to applicable Code provisions. Initially, the Fiscal Year shall be the calendar year.

"Good Cause" has the meaning set forth in Subsection 5.5.

"HUD" means the United States Department of Housing and Urban Development or successor agency.

"HUD-insured loan" has the meaning set forth in Section 13.

"HUD Loan Documents" has the meaning set forth in Subsection 13(a).

"Interest" means the interest of a Member in the capital and property of the Company and the right to share in distributions and allocations in accordance with the terms of this Agreement.

"Majority in Interest of the Members" means those Members holding more than fifty (50%) percent of the Company Percentages held by the Members.

"Manager" has the meaning set forth in Subsection 5.2.

"Members" means MCFAH South Carolina L.L.C., and ACD Partners XLIV L.L.C. and shall include, unless the context clearly requires otherwise, a predecessor and successor (other than a mere unadmitted assignee) in interest. The Members are listed on Exhibit A.

"Organizational Documents" means the Articles and the Agreement.

"person" or "persons" means an individual, a partnership (general and limited), corporation, joint stock company, limited liability company, joint venture, business trust, cooperative association, or other form of business organization, whether or not regarded as a legal entity under applicable law, trust (inter vivos or testamentary) or governmental authority.

"Project" means Duncan Village Apartments, a 50 unit apartment complex located in Duncan, Spartanburg County, South Carolina.

"Regulations" means Treasury Regulations issued under the Code.

"Residual Proceeds" has the meaning set forth in Subsection 7.6(a).

"Secretary" means the Secretary of HUD.

"Tax Matters Member" means (i) the "tax matters partner" of the Company within the meaning of Code Section 6231(a) (7) as in effect prior to the Bipartisan Budget Act of 2015, and (ii) the "partnership representative" of the Company within the meaning of Section 6223 of the Code as amended by the Bipartisan Budget Act of 2015. Subject to the Code and applicable Regulations, the Manager may designate the Tax Matters Member from time to time. Initially, the Manager shall be the Tax Matters Member.

"Taxable Year" means the Fiscal Year.

"Trustee" has the meaning set forth in Section 9.

All references to statutory provisions shall be deemed to include reference to corresponding provisions of subsequent law.

3. Purpose and Scope of Activities.

3.1 Purposes. The Company has been organized for the purpose of any activity for which limited liability companies may be formed under Act, including acquiring real and personal property, constructing, rehabilitating, owning, holding, selling, assigning, transferring, leasing, managing, mortgaging and otherwise dealing with the Project.

3.2 Limitations on Activities. Notwithstanding anything to the contrary in the Articles, the Company's business will be limited to the purposes set forth in Section 3.1, and the Company will not engage in any other business activity. No Member or Manager need afford the Company or any Member the opportunity of acquiring or investing in any other business or enterprise, regardless of whether such business or enterprise would, but for this sentence, be deemed an opportunity for the Company. Moreover, nothing in this Agreement shall restrict a Member or Manager from engaging in any other business activity without any obligation to account to the Company or an Member, whether or not such activity is similar to, within the scope of or competitive with the activities of the Company.

4. Capital Contributions; Borrowing.

4.1 Contributions of Members.

(a) Each Member has contributed to the capital of the Company the amount set forth opposite his name in Exhibit A.

(b) In addition, if the Manager determines at any time or from time to time that the Company requires additional funds in order to provide for the needs of the Project or for any other Company purpose, it may call for the additional capital by written notice to all other Members; in which event the Members shall contribute the required capital in proportion to their respective Company Percentages. Such contributions shall be due when so called for. In the event that a Member fails to contribute his share of the additional capital within thirty (30) days after the call therefor, the Member shall be in default of its obligations under this Subsection 4.1. In such event, in addition to any other remedies available to the Manager and the Company at law or in equity, and at any time before payment or collection of the defaulted contribution and the interest thereon:

(1) The Manager may lend an amount equal to the defaulted contribution to the Company, or obtain such a loan to the Company from one or more Members or third parties selected by the Manager, in which event the loan shall bear interest at the rate of twelve per cent (12%) per annum and the interest and principal thereof shall be repaid from the first funds that would otherwise be available to the Members; in that event, any distributions that would otherwise be paid to the defaulting Member shall be withheld from the defaulting Member and shall be retained by the Company to reimburse it for all principal and interest paid by the Company in respect of the loan, and the amount retained shall then be distributed to the other Members (but not the defaulting Member) in the proportions and amounts that distributions to such Members were reduced on account of the amounts paid by the Company in respect of the loan.

(2) Regardless of whether the Manager has made or obtained a loan pursuant to Section (1) above, the Manager may obtain a capital contribution from one or more of the other Members selected by it in an amount equal to the defaulted contribution, and in such event (i) the contributing Member or Members shall pay to the Company the amount of the defaulted contribution and the unpaid interest accrued on any loan made to cover such defaulted contribution under the preceding Section (1), (ii) the defaulted capital contribution payment from each contributing Member shall be credited such Member's capital account as a capital contribution, (iii) the Company Percentages of the Members shall be adjusted so that such Company Percentages are proportionate to the relative capital contributions made by them, and (iv) if a loan was made or obtained to cover the defaulted contribution pursuant to the Section (1) above, the Company shall apply the amounts received from the contributing Member or Members to the repayment of such loan and the interest thereon.

4.2 Reserved.

4.3 Use of Members' Contributions. The capital contributions of the Members and the proceeds of any borrowings by the Company shall be applied to such Company purposes, or retained by the Company or distributed to the Members, as the Manager may determine.

4.4 Withdrawals. No Member shall be entitled to withdraw any portion of its capital account until termination of the Company.

4.5 Borrowing. The Company may borrow money for Company purposes from any source, including a Member, provided that such borrowing is not prohibited by any applicable law, regulation or agreement and, in the case of a borrowing from the Manager, a Member or an Affiliate of any of them, that the interest rate on such borrowing does not exceed 100 basis points (one percentage point) over the prime rate of Comerica Bank as in effect from time to time, unless either the Majority in Interest of the Members have consented to a greater rate of interest or such loan is made in accordance with Subsection 4.1.

5. Rights and Obligations of Members.

5.1 Members. Except as provided in this Agreement, the Members shall not be bound by the obligations of the Company, and shall not be obligated to make contributions to the Company in excess of the amounts provided for in Subsection 4.1. Except as provided in this Agreement, no Member shall be entitled to participate in the management or control of the Company and no Member shall have authority to act for or bind the Company. The Manager may act for the Company without the consent or approval of the Members, so long as the Members' interest are not negatively impacted by the Manager's decisions, except in cases where all Member's interest are impacted ratably (all as the Manager may determine in the Manager's reasonable judgment). In any case where, in the Manager's reasonable judgment, the Members' interests are negatively impacted, but not ratably, by the Manager's decision, the decision will be subject to the approval of a Majority in Interest of the Members. The respective interests of the Members may, under certain circumstances, be reduced as provided in this Agreement.

5.2 Manager. The Company shall be managed by a manager within the meaning of the Act (the "Manager"). The initial Manager shall be MCFAH South Carolina L.L.C. Nothing in this Agreement shall prohibit the Manager from engaging in any other business activity, whether or not similar to, within the scope of, or competitive with the activities conducted by or on behalf of the Company.

5.3 Additional Members. The names and addresses of all the Members are set forth in Exhibit A. Additional Members may be admitted to the Company subject to the following conditions: (1) the admission of an additional Member (and the terms of the admission) shall be approved in writing by the Manager (which approval shall be given or withheld in its sole and absolute discretion); and (2) the additional Member shall execute a counterpart of, and agree to be bound by, this Agreement. Assignees of Company interests may be admitted to the Company as Member(s) pursuant to Section 10 of this Agreement. Exhibit A shall be amended and replaced by the Manager to reflect the names and addresses of all of the Members at any time

without any other amendment to this Agreement, without any signature, and without any other document.

5.4 Meetings of the Company. Meetings of the Members may be called by any Manager or by those Members who collectively own ten (10%) percent or more of the Company Percentage for informational purposes and for any matters upon which the Members may vote. The Manager shall give all Members not less than fifteen (15) nor more than sixty (60) days written notice of any such meeting, specifying the time, place and purpose of the meeting, which shall be held at a time and place convenient to the Members. Such notice is not necessary if all Members consent in writing to the meeting.

5.5 Termination of Manager. The Manager may be removed by the Majority in Interest of the Members for good cause. "**Good Cause**" is defined for the purposes of this Agreement as the following:

- (a) Bankruptcy or dissolution of the Manager; or
- (b) The Manager commits an act of fraud that has a material adverse effect on the Company.

In the event of such a removal, or in the event that the Manager resigns, the Majority in Interest of the Members shall appoint a successor to act as Manager. Neither the removal nor resignation of the Manager shall affect such Manager's Interest in the Company or other rights as a Member.

6. Administrative Powers, Obligations, Compensation, Etc., of Manager.

6.1 Powers.

(a) The Manager shall manage, and shall have complete control over the conduct of Company affairs. Subject to the other provisions of this Section 6, the Manager shall have the authority, on behalf of the Company, to do all things appropriate to the accomplishment of the purposes of the Company, including (but not limited to) (1) purchasing the Project, (2) developing the Project, (3) managing and leasing the Project, (4) obtaining financing and refinancing for, pledging, and mortgaging all or part of a project or any other Company property, incurring indebtedness on behalf of the Company, and paying and prepaying part or all of any indebtedness of the Company or any indebtedness upon a project or any other Company property, (5) employing architects, contractors, subcontractors, attorneys, accountants, managing or other agents, including Affiliates, (6) investing and reinvesting Company funds (except for Residual Proceeds as provided in Subsection 7.6), (7) executing contracts, notes, mortgages and other writings, (8) transacting the Company's business under an assumed name or name other than its name as set forth in the Articles and filing a Certificate of Assumed Name with the Michigan Department of Licensing and Regulatory Affairs, (9) appointing another Manager or other person as agent for service of process on the Company as required by law of any state in which the Company transacts business, (10) forming one or more subsidiaries of the Company or becoming a member of or investor in affiliated entities for the purposes of carrying out any or all

of the purposes of the Company, and (11) doing such other acts as may facilitate the Manager's exercise of its powers.

- (b) In furtherance and not in limitation of the foregoing, the Manager is authorized to:
 - (1) Negotiate the terms of the purchase of land and execute all documents the Manager deems necessary in order to acquire the Project;
 - (2) Negotiate the terms of any mortgage loan and any related transaction and execute all documents the Manager deems necessary in order to obtain financing;
 - (3) Negotiate and enter into a construction contract and development services agreement relating to the development of the Project;
 - (4) Enter into a management agreement with the management agent for the Project, if any; and
 - (5) Enter into an operating agreement with affiliated entities for the purposes of having ownership interests in various projects.
 - (6) The Manager shall not, without the unanimous consent in writing of the Members change the Company Percentage of any Member except as provided in this Agreement.

6.2 Management of Company. The Manager shall have full power to act for and to bind the Company to the extent provided by Michigan law, except as may be expressly provided to the contrary in this Agreement.

6.3 Self-Dealing. The Manager, any Member and any Affiliate of the Manager or a Member may deal with the Company, directly or indirectly, as vendor, purchaser, employee, and agent or otherwise. No contract or other act of the Company shall be voidable or affected in any manner by the fact that the Manager, a Member or his Affiliate is directly or indirectly interested in such contract or other act apart from his interest as Member. Neither the Manager, a Member nor any Affiliate shall be accountable to the Company or the other Members in respect of any profits directly or indirectly realized by it by reason of a contract or other act. The interested Member shall be eligible to vote or take any other action as a Member in respect of a contract or other act as it would be entitled were it not an interested Member. The Company may use St. Clair Construction Company (including any of its subsidiaries and/or affiliates) for construction services, Independent Management Services for management services at such rates as the Manager and the Majority in Interest of the Members mutually deem appropriate.

7. Capital Account's Profits and Losses; Cash Flow; Distributions.

7.1 Capital Accounts.

(a) Establishment and Maintenance of Account. An individual capital account shall be established and maintained for each Member. Each Member's capital account (a) shall be increased by (i) the amount of money and fair market value of property contributed by the Member to the Company, (ii) the Member's allocable share of Company profits and any item of income or gain specially allocated to the Member pursuant to this Agreement, and (iii) the amount of any liabilities of the Company assumed by the Member (or which are secured by property distributed by the Company to the Member), and (b) shall be decreased by (i) the amount of money and fair market value of property distributed to that Member, (ii) that Member's allocable share of any Company loss and any item of deduction or loss specially allocated to the Member pursuant to this Agreement and (iii) the amount of any liabilities of the Member assumed by the Company (or which are secured by the property contributed to the Company by the Member),. This Section is intended to comply with Treasury Regulations Section 1.704-1(b)(2)(iv) and shall be interpreted and applied consistent therewith. The Members further agree to make any adjustments to their capital accounts that may be necessary or appropriate to comply with such regulations. No Member is entitled to receive any interest or return on any contributions to the Company or on the Member's capital account, nor does any Member have any interest, right or claim in or to any of the Company's assets unless expressly provided in this Agreement or under the Act.

(b) Transferees. If all or a portion of a membership interest is transferred, the transferee shall succeed to the capital account of the transferring Member, to the extent of the interest transferred.

(c) Optional Revaluation of Assets. The Company may revalue its assets and increase or decrease the Members' capital accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(f) in connection with any of the following:

- (1) The contribution of money or other property to the Company by a new or existing Member as consideration for an interest in the Company;
- (2) The distribution of money or other property to a terminating or continuing Member as consideration for an interest in the Company;
- (3) The liquidation of the Company, or
- (4) The happening of any other event specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f).

Without limiting the foregoing, if the Company distributes property other than cash to the Members, then the Members' capital accounts shall be adjusted as provided in Treasury Regulations Section 1.704-1(b)(2)(iv)(e) for unrealized income, gain, loss and deduction inherent in such property and not already been reflected in the Members' capital accounts, as if there were

a taxable disposition of the property for its fair market value on the date of distribution. In connection with any revaluation under this Section 7.1(c), the fair market value of the Company's assets shall be reasonably determined by the Manager.

7.2 Allocation of Profits and Losses. The profits and losses of the Company shall be determined in accordance with the accounting methods followed by the Company for federal income tax purposes, as determined by the Manager, but shall (i) be increased by tax-exempt income described in Section 705(a)(1)(B) of the Code, (ii) be decreased by non-deductible, non-capitalizable expenditures described in Section 705(a)(2)(B) of the Code, (iii) exclude those items of income or loss specially allocated pursuant to Section 7.3 or allocated for tax purposes under Sections 7.4 and 7.7 below and (iv) if any non-cash property has been contributed to the Company or, pursuant to Section 7.1(c), revalued, then take into account depreciation or amortization, and gain or loss on sale or other disposition, of such property determined by reference to the fair market value of the property on the date of contribution or revaluation (in lieu of depreciation or amortization, and gain or loss on sale or other disposition, of such property as determined for income tax purposes) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g). The profits and losses of the Company shall be determined as of the end of each Fiscal Year of the Company and, except as otherwise required under the Code or Regulations, shall be allocated among the Members so as to make their capital accounts, increased by their respective shares of “partnership minimum gain” and “partner nonrecourse debt minimum gain” of the Company (determined in accordance with Treasury Regulations Section 1.704-2), to be in proportion to their Company Percentages; provided, however, that no loss or item of loss or deduction shall be allocated to any Member to the extent such allocation would create or increase an Excess Capital Account Deficit (as defined in Section 7.3(b) below).

7.3 Special Allocations. The following special allocation rules are intended to comply with the requirements of the regulations issued under Code Section 704, and should be construed in a manner consistent with those regulations.

(a) **Qualified Income Offset.** If a Member unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to the Member as necessary to eliminate any “Excess Capital Account Deficit” (as defined below) as soon as possible, to the extent required by the Regulations.

An “Excess Capital Account Deficit” means the amount of a Member's negative capital account balance in excess of the following, determined as of the end of the Company's fiscal year after making all other allocations under this Section 7.3 ignoring this Subsection 7.3(a):

- (1) The Member's “share of partnership minimum gain” of the Company (within the meaning of Regulations Sections 1.704-2(g)(2)), if any;
- (2) The Member's “share of partner nonrecourse debt minimum gain” of the Company (within the meaning of Regulations Section 1.704-2(i)(5)), if any;

- (3) The amount of the adjustments, allocations and distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6); and
- (4) Any amount the Member is required to restore or is deemed to be required to restore to the Company upon liquidation under Treasury Regulations Section 1.704-1(b)(2)(ii)(c).

This Subsection is intended to comply with the qualified income offset requirements of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted accordingly.

(b) Minimum Gain Chargeback. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), and despite any other provision of this Agreement, if there is a net decrease in “partnership minimum gain” of the Company for a taxable year, each Member shall be allocated items of income and gain (for that year and if necessary for subsequent years) in proportion to and to the extent of the Member's share of the net decrease in partnership minimum gain. The income and gain items shall be allocated according to the provisions of Treasury Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Subsection is intended to comply with the minimum gain chargeback requirements of Treasury Regulations Section 1.704-2(f).

(c) Member Minimum Gain Chargeback. To the extent and in the manner required by Treasury Regulations Section 1.704-2(i) (4), if there is a net decrease in “partner nonrecourse debt minimum gain” of the Company, each Member with a share of such “partner nonrecourse minimum gain” shall be allocated items of income and gain for such fiscal year (and, if necessary, succeeding fiscal years) in an amount equal to the Member's share of the net decrease in partner nonrecourse debt minimum gain. The items to be allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(f)(6). This Section 7.3(c) shall be interpreted and applied in a manner consistent with the minimum-gain chargeback requirement of Treasury Regulations Section 1.704-2(i)(4).

(d) Nonrecourse Deductions. Any “nonrecourse deductions” of the Company shall be allocated among the Members in accordance with their Company Percentages. Any “partner nonrecourse deductions” of the Company shall be allocated to the Members bearing the “economic risk of loss” for the “partner nonrecourse debt” to which such “partner nonrecourse deductions” are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

(e) Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset is required to be taken into account in determining capital accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company pursuant to Section 734(b) or Section 743(b) of the Code or Treasury Regulations Sections 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), the amount of such adjustment to capital accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be allocated to the Members in accordance with their interests in the Company in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(f) Varying Interests. If there is an addition, withdrawal or substitution of, or any other change in the Interest of, any Member during the period covered by an allocation, then the profits and losses for the period shall be allocated among the varying interests in one of the following alternative manners, which must be consistent with applicable provisions of the Code and valid regulations promulgated under the Code:

- (1) In the manner described in any written agreement between the persons affected which is presented to the Company; or
- (2) In the event the persons affected present no written agreement to the Company, the Company's books may be closed at the time of the change in interest, and the profits and losses for the segment of the period prior to the change and the segment after the change shall be separately allocated among the Interests as they stood during each segment.

7.4 Allocations Solely for Tax Purposes The following allocations shall be made solely for tax purposes (and shall not affect the Members' capital accounts):

(a) Section 704(c) Allocations. Any item of income, gain, loss or deduction with respect to property other than cash that has been contributed by a Member to the capital of the Company or that has been revalued in accordance with Section 7.1(c) and which is required or permitted to be allocated to the Members for income tax purposes under Code Section 704(c) so as to account for the variation between its tax basis and fair market value at the time of its contribution or revaluation shall be allocated to the Members solely for income tax purposes in any manner chosen by the Manager and permitted by the Regulations.

(b) Depreciation Recapture. For purposes of determining the character of taxable income of the Company allocated to the Members, any amount treated as ordinary income attributable to depreciation recapture shall, to the extent possible, be allocated among the Members in proportion to the amount of depreciation previously allocated to the Members with respect to the property. This Subsection shall not alter the amount of allocations among the Members but merely the character of the income allocated.

7.5 Cash Flow

(a) The Cash Flow of the Company for a Fiscal Year shall be determined as of the end of the Fiscal Year, and shall consist of:

- (1) The Company's profits for the Fiscal Year (for this purpose treating a loss as a negative profit amount) determined in accordance with Subsection 7.2;
- (2) Increased by the following:

- (i) Any receipts during the Fiscal Year which were not included in profits (such as capital contributions, loan proceeds and withdrawals from reserves); and
 - (ii) Any deductions for the Fiscal Year not involving cash expenditures (such as depreciation, amortization and costs for which payment is deferred).
- (3) Decreased by the following:
 - (i) All expenditures during the Fiscal Year which were not deducted in determining profits (such as expenditures for asset acquisition, improvements and replacements, and loan repayments); and
 - (ii) Contributions during the Fiscal Year to any reserve account required by the Manager or any lender.

Notwithstanding the foregoing, however, Residual Proceeds and expenditures from Residual Proceeds and items deductible in determining profits that are paid from Residual Proceeds, shall not be taken into account in determining the Cash Flow of the Company.

(b) The Cash Flow of the Company for the most recent Fiscal Year and the Cash Flow of the Company which has not been distributed in prior years shall within ninety (90) days after the end of each Fiscal Year be used as follows:

- (1) To repay any loans made by a Member or any other lender to the Company in amounts and at times determined by the Manager;
- (2) To the payment of, or to a reserve for the payment of, Company liabilities (including liabilities to Members) and including such provision for contingent liabilities as the Majority in Interest of the Members approves; and
- (3) The balance, if any, shall be distributed to the Members in proportion to their Company Percentages.

(c) The Manager may in its sole discretion distribute Cash Flow more frequently than as required in subparagraph (b) above.

7.6 Residual Proceeds.

(a) The net cash proceeds resulting from (i) the refinancing of any loan or (ii) the sale, exchange, condemnation, destruction (whether insured or uninsured) or other event resulting in the disposition of all or any part of a project (all of which shall constitute "**Residual Proceeds**") shall be applied in the following order of priority:

- (1) Such proceeds shall first be applied to the payment of, or to a reserve for the payment of, Company liabilities (including liabilities to Members such as the fee due to the Manager under Section 6.4 above) and including such provision for contingent liabilities as the Majority in Interest of the Members approves; and
- (2) The balance, if any, shall be distributed among the Members proportionately to their Company Percentages.

(b) Notwithstanding the provisions of Subsection 7.6(a), in the event of the compulsory or involuntary conversion of all or any part of the project within the meaning of Section 1033(a) of the Code, then if and to the extent determined by the Manager and the Majority in Interest of the Members, the Company shall not apply the net proceeds in accordance with Subsection 7.6(a), but instead shall reinvest the net proceeds in such a manner as to avoid recognition (for federal income tax purposes) of part or all of the gain on such conversion.

7.7 Other Allocations.

(a) Any provision of this Agreement to the contrary notwithstanding, to the extent that any fee or other compensation to a Member is disallowed as a deduction for federal income tax purposes (whether by way of expense, depreciation, amortization, reduction in gain, or otherwise), there shall be allocated to such Member any amount equal to the Company's gross income which would have been reduced by the deduction, in recognition of the fact that the payment was, in fact made to the Member.

(b) Any credit allowable to the Company for federal income tax purposes shall be allocated among the Members in proportion to their Company Percentages. Any increase or decrease in the basis of property owned by the Company due to the allowance or recapture of investment tax credit with respect to the property for federal income tax purposes shall be charged against or credited to the capital accounts of the Members in the proportions that such credit was allocated so as to decrease or increase their capital accounts in an amount equal to the basis adjustment. Upon the sale or other disposition of any property, the gains realized shall, to the extent of any net basis reduction, be allocated to the Member in the proportions that the investment tax credit was allocated, which allocation shall increase their capital accounts.

8. Term of Company.

8.1 Commencement. The term of the Company commenced upon the filing of the initial Articles.

8.2 Termination. The term of the Company is perpetual, except as limited herein. The term of the Company shall be terminated, solely on the first to occur of the following:

(a) The decision of the Manager agreed to by the Majority in Interest of the Members;

(b) One hundred twenty (120) days after the sale or other disposition of the Company's entire interest in the Project and the distribution of net proceeds thereof (unless such sale or other disposition results in the Company's acquisition of a receivable, in which case the term of the Company shall not end until such receivable has been collected, unless the Manager determines otherwise); or

(c) Any other event causing a dissolution under the Act or this Agreement.

Neither the dissolution, death, insolvency nor substitution of the Manager or a Member nor the admission of a new Manager or Member shall cause a termination of the Company. In the event of the death of a Member neither his estate nor the Company shall have any option to have his interest sold or purchased, by the Company.

9. Application of Assets.

Upon termination of the Company, the Manager shall conclude the affairs of the Company. If there is no Manager, the Company affairs shall be concluded by a trustee (the "Trustee") selected in writing by the Majority in Interest of the Members. The remaining assets of the Company shall be applied or distributed in the following order:

(a) To creditors, including Members who are creditors, to the extent permitted by law, in satisfaction of Company debts, liabilities and obligations; and

(b) Any remaining balance shall be distributed to the Members in proportion to their Company Percentages.

Company assets may be liquidated or distributed in kind, as determined by the Manager or the Trustee. In the event Company assets are distributed in kind, the assets so distributed shall be valued at their current fair market values and the unrealized appreciation or depreciation in value of the assets shall be allocated to the Member's capital accounts in the manner described in Subsections 7.2 and 7.3 as if such assets had been sold, and such assets shall then be distributed to the Members as provided in Subsection 7.6. To the extent that the Company assets cannot either be sold without undue loss or readily divided for distribution in kind to the Members, then the Company may, as determined by the Manager or Trustee, convey those assets to a trust or other suitable holding entity established for the benefit of the Members in order to permit the assets to be sold without undue loss. The sale proceeds shall be distributed to the Members at a future date. The legal form of the holding entity, the identity of the trustee or other fiduciary, and the terms of its governing instrument shall be determined by the Members or the Trustee.

10. Assignability of Interests.

10.1 In General. Interests in the Company are not assignable except in compliance with this Agreement. Any purported assignment of an Interest which does not comply with this Agreement shall be void *ab initio*, and the Company shall not be bound to recognize such purported assignment.

10.2 Members. Subject to Subsection 10.4, a Member may assign its interest in Company capital, profits and losses, but the assignment shall not of itself substitute the assignee as a Member, and the assignor shall remain a Member.

10.3 Rights of Assignees. An assignee of an interest shall not be admitted as a Member unless the Manager consents in writing. An assignee admitted as a Member shall execute a special power of attorney. An assignee who does not become a substitute Member shall be entitled to receive any allocations and distributions which (but for the assignment) would have been made to the assignor, but shall have no other rights and the assignor shall remain a Member. No assignment of a Company interest shall be effective with respect to the Company until written notice to the Company.

10.4 Restrictions on Transfers. Notwithstanding the other provisions of Section 10, no Member shall assign its interest in Company capital, profits or losses (1) without the prior written consent of the Manager, which consent shall not be unreasonably withheld, (2) if the effect of the assignment would be to terminate the Company within the meaning of Section 708(b), of the Code, (3) if such assignment would violate any applicable state or federal securities law, without first offering the Company or the Manager in writing the opportunity to purchase the interest in the Company being assigned on the same terms and conditions as the proposed assignee offered to purchase the interest or (4) unless waived in writing by the Manager, without an opinion of counsel in form and substance satisfactory to counsel for the Company that registration is not required under the Securities Act of 1933. THE MEMBERS ACKNOWLEDGE THAT THEIR INTERESTS IN THE COMPANY HAVE NOT BEEN REGISTERED UNDER ANY STATE OR FEDERAL SECURITIES LAWS OR REGULATIONS AND AGREE THAT SUCH INTERESTS WILL NOT BE TRANSFERRED WITHOUT REGISTRATION UNDER SUCH LAWS OR REGULATIONS OR EXEMPTION THEREFROM AS REQUIRED.

11. Investment Representation. The Members represent to each other and to the Company that they are acquiring their respective interests in the Company for their own personal accounts, and without a view to transferring or distributing their interests.

12. Amendments. This Agreement may be amended by written agreement of the Manager and the Majority in Interest of the Members except that (1) no amendment shall reduce a Member's interest in distributions of the Company or increase a Member's monetary obligations to the Company unless he consents in writing, (2) no amendment shall effect any change in Sections 6.3 (Self Dealing) if the change would result in payments of fees to the Manager or its Affiliates that would be treated for income tax purposes as distributions subject to Section 7.7(a), and (3) Exhibit A shall be amended and replaced by the Manager to reflect the names and addresses of all of the Members at any time without any other amendment to this Agreement, without any signature, and without any other document.

13. HUD Required Provisions.

Notwithstanding any clause of provision in the Operating Agreement or Articles of Organization (collectively, the "Organizational Documents") of Duncan Village 2023 L.L.C. (the

“Borrower”) to the contrary and so long as the United States Department of Housing and Urban Development (“HUD”) or a successor or assign of HUD is the insurer or holder of a loan to Borrower (“the HUD-insured Loan”) secured by the mortgage on the Project in Duncan, Spartanburg County, South Carolina the following provisions shall apply:

(a) If any of the provisions of the organizational documents conflict with the terms of the HUD-insured Note, Security Instrument, or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.

(b) No provision required by HUD to be inserted into the organizational documents may be amended without HUD’s prior written approval. Additionally, if there is a conflict between any HUD-required provisions inserted into this Agreement and any other provision of this Agreement, the terms of the HUD-required provisions will govern; and if there is a conflict between any of the provisions in the Organizational Documents and any HUD-required provisions of this Agreement, the HUD-required provisions will govern.

(c) Unless otherwise approved in writing by HUD, the Borrower entity’s business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the Project and activities incidental thereto. Borrower shall not engage in any other business or activity. The Project shall be the sole asset of the Borrower entity, which shall not own any other real estate other than the aforesaid Project.

(d) None of the following will have any force or effect without the prior written consent of HUD:

- (1) Any amendment that modifies the term of Borrower’s existence;
- (2) Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD 2530, Previous Participation Certification, or 24 CFR § 200.210, et seq.);
- (3) Any amendment that in any way affects the HUD Loan Documents;
- (4) Any amendment that would authorize any member, partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Borrower entity for all matters concerning the Project which require HUD's consent or approval;
- (5) A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1; or
- (6) Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the Regulatory Agreement).

(e) The Borrower entity is authorized to execute a Note and Security Instrument in order to secure a loan to be insured by HUD and to execute the Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.

(f) Any incoming member of Borrower must as a condition of receiving an interest in the Borrower entity agree to be bound by the HUD Loan Documents and all other documents required in connection with the HUD-insured loan to the same extent and on the same terms as the other members.

(g) Upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the Regulatory Agreement in a manner satisfactory to HUD.

(h) The key principals of the Borrower identified in the Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the Regulatory Agreement.

(i) The approved Borrower entity shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.

(j) The Borrower entity has designated Gerald A. Krueger as its official representative for all matters concerning the Project that require HUD consent or approval. The signature of this representative will bind the Borrower entity in all such matters. The Borrower entity may from time to time appoint a new representative to perform this function, but within three business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority with respect to management of the Project, the Borrower entity will promptly provide HUD with the name of that person and the nature of that person's management authority

(k) Notwithstanding any provision in the Organizational Documents to the contrary, any obligation of the Company to provide indemnification under the Organizational Documents shall be limited to (i) amounts mandated by state law, if any, (ii) coverage afforded under any liability insurance carried by the Company and (iii) available "surplus cash" of the Borrower as defined in the Regulatory Agreement. Until funds from a permitted source for payment of indemnification costs are available for payment, the Company shall not (a) pay funds to any members, partners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.

14. Miscellaneous Provisions.

14.1 Books of Account; Reports.

(a) The Manager shall keep true and complete books of account and records of all Company transactions. The books of account and records shall be kept at the office of the Company designated in Section 1 of this Agreement. The Company shall maintain at the office (i) a list of names and addresses of all Members; (ii) a copy of the Articles together with

executed copies of all powers of attorney pursuant to which the has Articles have been executed; (iii) copies of the Company's federal, state and local income tax returns and reports for the three (3) most recent years; (iv) copies of the Company's effective Operating Agreement including all Amendments; and (v) copies of financial statements of the Company for the seven (7) most recent years. The Company records shall be available to any Member or any assignee or his designated representative during ordinary business hours at the reasonable request of the Member.

(b) The Manager will use its best efforts to furnish, or cause to be furnished, to Members the following items on the dates indicated:

- (1) Upon the admission of the Members to the Company, each Member shall receive a copy of this Agreement.
- (2) Any annual financial statements provided to HUD or any other mortgage lender to the Company within twenty (20) days after they are provided to HUD or such other mortgage lender. Such statements are not required to be audited or prepared by an independent party unless required by HUD or such other mortgage lender.
- (3) Schedules K-1 by no later than April 1 of each year or as soon thereafter as reasonably practicable.
- (4) Updates on any development as they occur which materially adversely affect the interests of the Members.

14.2 Bank Accounts and Investment Funds. Subject to Subsection 4.1(a), all funds of the Company shall be deposited in its name in such checking accounts, savings accounts, money market accounts, time deposits, or certificates of deposit or shall be invested in another manner, as shall be designated by the Manager. Withdrawals shall be made upon signature or signatures as the Manager may designate.

14.3 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary in this Agreement, shall be made by the Manager in accordance with generally accepted accounting principles or (if permitted by HUD) an other comprehensive basis of accounting consistently applied. Such decisions shall be acceptable to the accountants retained by the Company, and the Manager may rely upon the advice of the accountants as to whether such decisions are in accordance with generally accepted accounting principles or (if applicable) another comprehensive method of accounting. In its sole discretion, the Manager may adopt another comprehensive basis of accounting upon the recommendation of the company's accountants.

14.4 Federal Income Tax Elections. The Company shall, to the extent permitted by applicable law and regulations and upon obtaining any necessary approval of the Commissioner of Internal Revenue, elect to use such methods of depreciation as, and make all other federal income tax elections in the manner that, the Manager determines to be appropriate.

14.5 Entire Agreement. This Agreement constitutes the entire Agreement between the parties and may be modified only as provided in this Agreement. No representations or oral or implied agreements have been made by any party or its agent, and no party relies upon any representation or agreement not set forth in this Agreement.

14.6 Notices, Etc. Any notice, writing, or other matter, and any distributions, to be delivered shall be deemed delivered when deposited in the United States mail via Certified Mail with postage prepaid and addressed to the Company at the Company's principal offices, to a Member at its address as set forth in Exhibit A and to an assignee of a Member at their address as set forth in the notice of assignment and receipt is acknowledged by a Member via a written form of receipt. A Member or other person may change its address by written notice to the Company.

14.7 Consent of Members. Various provisions of this Agreement require or permit the consent, agreement, approval or disapproval, written or otherwise, of all or some of the Members. In any such case, the Manager may give all the Members written notice of the action, event or agreement and state in the notice that any Member which does not indicate its disapproval by written notice to the Company within a specified period of time (not less than thirty (30) days after mailing of the notice) shall be deemed to have given its consent or approval to the action or event or to have made the agreement referred to in the notice. In such event, any Member who does not indicate its disapproval by written notice to the Company within the time specified shall be deemed to have given its written consent, approval or agreement.

14.8 Further Execution. Upon request of the Manager, the Members shall execute and swear to or acknowledge any other writing which may be required by any rule or law or which may be appropriate to the effecting of any action by or on behalf of the Company or the Members which has been taken in accordance with the provisions of this Agreement.

14.9 Benefits. This Agreement shall inure to the benefit of and shall bind the parties, their successors and permitted assigns. None of the provisions of this Agreement shall be construed as for the benefit of or as enforceable by any creditor of the Company or the Members or any other person not a party to this Agreement.

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

14.11 Captions. All captions are for convenience only, do not form a substantive part of this Agreement and shall not restrict or enlarge any substantive provisions of this Agreement.

14.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall constitute one (1) instrument. The Manager shall have custody of counterparts executed in the aggregate by all Members.

14.13 Michigan Law to Control. The validity and interpretation of, and the sufficiency of performance under, this Agreement shall be governed by Michigan law.

15. Indemnification.

15.1 Subject to Subsections 15.2 and 15.3, the Company, its receiver or its trustee, shall indemnify, save harmless and pay all judgments and claims against the Manager and Members from any liability or damage incurred by reason of any act performed or omitted to be performed by it in connection with the business of the Company, including attorneys' fees incurred by it in connection with the defense of any action based on any such act or omission, which attorneys' fees may be paid as incurred, including all such liabilities under Federal and State Securities Acts (including the Securities Act of 1933) as permitted by law.

15.2 In the event of any action by a Member or assignee of a Member against the Manager including a Company derivative suit, the Company will indemnify, save harmless and pay all expenses of the Manager including attorneys' fees incurred in the defense of said action, if the Manager is successful in the action.

15.3 Notwithstanding the provisions of Subsection 15.1 and 15.2, the Manager shall not be relieved from any liability imposed by law for the receipt of a financial benefit to which it is not entitled, a knowing violation of law or making a distribution which renders the Company insolvent,. All judgments against the Company and the Manager, wherein the Manager is entitled to indemnification, must first be satisfied from Company assets before the Manager is responsible for these obligations.

15.4 The Manager shall have the right and authority to require in all Company contracts that it will not be personally liable and that the person contracting with the Company is to look solely to the Company and its assets for satisfaction.

MANAGER and MEMBER:

MCFAH SOUTH CAROLINA L.L.C., a Delaware limited liability company

By: Multifamily Coalition for Affordable Housing, a Michigan non-profit corporation, its Manager

By: John K. Zollinger, Jr. JCK
John K. Zollinger Jr., President

MEMBER:

ACD PARTNERS XLIV L.L.C., a Michigan limited liability company

By: American Community Developers, Inc., a Michigan corporation, its Manager

By: Gerald A. Krueger JCK
Gerald A. Krueger, President

EXHIBIT A

		Capital Contribution	Company Percentage
Managing Member	MCFAH South Carolina L.L.C. 201 West Big Beaver Road, Suite 600 Troy, MI 48084-4161	\$1	0.1%
Member	ACD Partners XLIV L.L.C. 20250 Harper Avenue Detroit, MI 48225	999	99.9%
	Total	\$1000	100%