

AMENDED AND RESTATED OPERATING AGREEMENT
OF
SOUTH CREEK DEVELOPMENT, LLC

DATED AS OF

January 1, 2020

THE LLC MEMBERSHIP INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE NORTH CAROLINA SECURITIES ACT, OR SIMILAR LAWS OR ACTS OF OTHER STATES IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE MEMBERSHIP INTERESTS HAVE BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD OR TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS AMENDED AND RESTATED OPERATING AGREEMENT AND IN A TRANSACTION WHICH IS EITHER EXEMPT FROM REGISTRATION UNDER SUCH ACTS OR PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER SUCH ACTS.

SOUTH CREEK DEVELOPMENT, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this “Agreement”) of South Creek Development, LLC (the “Company”) is made and entered into as of January 1, 2020 by and among Hill Tide Development, LLC, a Georgia limited liability company (“Hill Tide”), South Creek Ventures, LLC, a North Carolina limited liability company (“South Creek Ventures”) and South Creek SC, LLC, a South Carolina limited liability company (“South Creek SC”), each a “Member” and collectively, the “Members”.

RECITALS

A. The Company was formed on May 31, 2017 as a limited liability company pursuant to the North Carolina Limited Liability Company Act by filing the Articles of Organization with the Secretary of State of the State of North Carolina.

B. The original members of the Company were Hill Tide Partners, LLC and CS Heritage, LLC, and the original Operating Agreement of the Company was dated June 1, 2017.

C. CS Heritage, LLC subsequently changed its name to South Creek Ventures, LLC, and Hill Tide Partners, LLC transferred its interest to Hill Tide Development, LLC.

D. South Creek SC is now being admitted to the Company as a Member, and the Members desire to amend and restate the Operating Agreement of the Company (as amended by that Amendment dated as of December 1, 2018) to reflect such admittance of South Creek SC as a Member and to set forth the current agreement among the Members of the Company.

E. The parties hereto desire to enter into this Agreement to provide for, among other things, (i) the admission of the Members into the Company, (ii) the payment of capital contributions by the Members to the Company, (iii) the allocation of profits and losses and distribution of cash flow and other proceeds of the Company among the Members, (iv) the respective rights, obligations and interests of the parties hereto to each other and to the Company, and (v) certain other matters, all as more particularly described herein.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.1 The following terms have the meanings hereinafter indicated whenever used in this Agreement with initial capital letters:

“Act” shall mean the North Carolina Limited Liability Company Act, as the same may be amended from time to time.

“Additional Capital Contribution” shall mean a Capital Contribution made pursuant to Section 3.3 hereof.

“Adjusted Capital Account Deficit” shall mean, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentences of Sections 1.704-2(g)(1) and (i)(5) of the Regulations; and

(b) debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Regulations.

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

“Affiliate” shall mean, with respect to any Person, (a) a spouse, descendant or ancestor of such Person; (b) any partnership of which such Person is a general partner; (c) any trust or estate in which such Person has a substantial beneficial interest, or of which such Person serves as trustee or in some other fiduciary capacity, or of which such Person is the grantor; (d) any corporation or organization (i) in which such Person is, directly or indirectly, the beneficial owner of 50% or more of any class of equity interest therein, or (ii) which is, directly or indirectly, the beneficial owner of 50% or more of any class of equity interest in such Person; (e) any officer or director of such Person, or any Person who is, directly or indirectly, the beneficial owner of 50% or more of any class of equity interest in such Person; and (f) any entity which controls, is controlled by, or is under common control with, the Person. For purposes of this definition, “control” when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting interests, by contract or otherwise, and the terms “controlling” and “controlled” will have meanings correlative to the foregoing.

“Agreement” has the meaning set forth in the preamble hereto.

“Budget” shall mean, collectively, any Development & Construction Budget, Project Budget, and Company Budget.

“Capital Account” of a Member shall consist of the cash and the Capital Account Asset Value of property contributed by the Member to the Company (net of any liability secured by contributed property that the Company is considered to assume or take subject to under Code Section 752) plus the Member’s share of Net Profits, less (a) all distributions to and withdrawals by the Member (not including the repayment of Member loans and any interest thereon) and (b) the Member’s share of Net Losses. In the event of a distribution of property other than cash, the

Capital Account of the distributee Member shall be charged with the Capital Account Asset Value of the distributed property (net of any liability secured by the distributed property that the Member is considered to assume or take subject to under Code Section 752). Upon the transfer of all or part of an interest hereunder, the Capital Account of the transferor Member that is attributable to the transferred interest shall carry over to the transferee Member. The foregoing provisions hereof and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. In the event that all the Members shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including without limitation, debits or credits relating to liabilities which are secured by contributed or distributed property or which are assumed by the Company or any Member), are computed to comply with such regulations, the Manager may make such modification, provided that the modification is not likely to have a material effect on the amounts distributable to any Member pursuant to Articles V and XI hereof upon the dissolution of the Company. The Manager also shall make (i) any adjustments necessary to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes in accordance with Regulations Section 1.704-1(b)(2)(iv)(q), and (ii) any appropriate modifications in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b).

"Capital Account Asset Value" with respect to any Company asset shall mean the value placed on such asset in connection with the maintenance of Capital Accounts and shall be that asset's adjusted basis for federal income tax purposes except as follows:

(a) The Capital Account Asset Value of assets contributed to the capital of the Company by a Member shall be the fair market value of the contributed assets on the date of contribution, as determined by Hill Tide;

(b) The Capital Account Asset Value of Company assets shall be increased or decreased to reflect any adjustments to the adjusted basis of the assets pursuant to Code Section 734(b) or 743(b), but only to the extent that the adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Capital Account Asset Values of Company assets shall not be adjusted pursuant to this clause (b) to the extent that the Members makes an adjustment pursuant to clause (c) hereof in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (b);

(c) The Capital Account Asset Value of all Company assets shall be adjusted to equal their respective fair market values as determined by the Members upon the occurrence of any of the following events: (i) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company assets as consideration for all or a portion of a Member's Membership Interest; (iii) the acquisition of an additional Membership Interest by any new or existing Member as consideration for the provision of services to or for the benefit of the Company as contemplated in Regulations Section 1.704-1(b)(2)(iv)(f)(5)(iii); and (iv) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(d) The Capital Account Asset Value of any Company asset shall be adjusted by any Depreciation taken into account with respect to such Company asset for purposes of computing Net Profits and Net Losses; and

(e) The Capital Account Asset Value of any Company asset distributed to any Member shall be adjusted to the fair market value of the asset on the date of distribution as determined by all the Members.

“Capital Call” has the meaning set forth in Section 3.3(b) hereof.

“Capital Call Notice” has the meaning set forth in Section 3.3(b) hereof.

“Capital Contribution” shall mean the amount of cash and the Capital Account Asset Value of any property (net of any liability secured by such property that the Company is considered to assume or take subject to under Code Section 752) contributed by a Member to the Company pursuant to Article III of this Agreement.

“Cash Flow” shall mean, with respect to any period, all cash (other than Capital Contributions) (a) derived by the Company from all sources, or (b) withdrawn from Reserves during such period, *minus* (i) all expenses incurred during such period (other than depreciation and other similar noncash expenses), (ii) all capital expenditures made during such period, (iii) all payments of principal and interest made during such period with respect to Company loans, excluding loans from Members, and (iv) any increase in the amount of Reserves.

“Cause” shall mean, with respect to the Manager or its owners, manager or officers, fraud, gross negligence, willful misconduct, material breach of fiduciary duty, material breach of this Agreement, violation of applicable law, commission of a felony or a crime involving moral turpitude, as evidenced by conviction or by admission, nonperformance of its duties and obligations herein or failure to contribute any Additional Capital Contributions to the Company.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Company” shall mean South Creek Development, LLC, a North Carolina limited liability company.

“Company Budget” has the meaning set forth in Section 8.5 hereof. The Company Budget for Fiscal Year 2017 is attached hereto as Exhibit E.

“Depreciation” shall mean for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for the Fiscal Year or other period; provided, however, that if the Capital Account Asset Value of an asset differs from that asset’s adjusted basis for federal income tax purposes at the beginning of a Fiscal Year or other period, Depreciation shall be an amount that bears the same ratio to the beginning Capital Account Asset Value of such asset as the federal income tax depreciation, amortization or other cost recovery deduction for such Fiscal Year bears to the beginning adjusted tax basis of such year except as otherwise required by Regulations Section 1.704-3(d)(2); provided, further, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with

reference to such beginning Capital Account Asset Value using a reasonable method under Code Section 704(c) selected by the Manager in its reasonable discretion.

“Designated Prime Rate” shall mean 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.

“Development & Construction Budget” is attached hereto as Exhibit B.

“Fair Market Value” shall mean the Company’s methodology for determining fair market value of the Company’s assets and liabilities within Section 11.1. The Company shall use the following method to determine Fair Market Value:

(a) Hill Tide selects and obtains an appraisal from a qualified appraiser with at least five years’ experience appraising low-income housing assets; and

(b) South Creek Ventures selects and obtains an appraisal from a qualified appraiser with a least five years’ experience; and

(c) If the appraised values are less than or equal to twenty percent (20%) of one another, the Fair Market Value shall be the average of the two appraisals determined by adding the values together then dividing by two (2); or

(d) If the appraised values are greater than 20% of one another, a third qualified appraiser shall be mutually selected by the Members. The Fair Market Value shall be the average of the three appraisals determined by adding the values together then dividing by three (3).

“Fiscal Year” of the Company shall be the calendar year.

“Hill Tide” means Hill Tide Development, LLC, a Georgia limited liability company.

“Hill Tide Commitment” has the meaning set forth in Section 3.2 hereof.

“Hill Tide Consent” shall mean the prior written consent or approval of Hill Tide.

“Initial Capital Contribution” shall mean a Capital Contribution made pursuant to Section 3.2 hereof.

“Intermediate Entity” has the meaning set forth in Section 2.5(a) hereof.

“Liquidating Trustee” shall mean the Manager or such other Person appointed by Hill Tide to act in the capacity as provided in Article XI hereof.

“Manager” shall mean the Person(s) designated as such pursuant to Section 6.2 hereof to manage the day-to-day operations of the Company.

“Member Loan” has the meaning set forth in Section 3.6 hereof.

“Members” shall mean, collectively, those Persons set forth on Exhibit A attached to this Agreement, as amended from time to time, together with all Persons to whom the Membership Interest of a Member is transferred and who is admitted to the Company pursuant to the terms of this Agreement; and reference to a “Member” shall mean any one of the Members.

“Membership Interest” shall mean a Member’s entire interest in the Company, including any and all benefits to which such Member is entitled pursuant to this Agreement, together with all obligations of such Member to comply with the terms and conditions of this Agreement.

“Minimum Gain” shall mean the sum of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain. A Member’s share of Minimum Gain shall be the sum of its share of Partnership Minimum Gain and Partner Nonrecourse Debt Minimum Gain.

“Net Profits” or “Net Losses” shall mean the Company’s taxable income or loss determined in accordance with Code Section 703(a) for each of its Fiscal Years or other periods, with the following adjustments:

(a) Such Net Profits or Net Losses shall be computed as if items of tax-exempt income and nondeductible, noncapital expenditures under Code Sections 705(a)(1)(B) and 705(a)(2)(B) were included in the computation of taxable income or loss. For purposes of calculating Net Profits or Net Losses, the following items shall be treated as Code Section 705(a)(2)(B) expenditures: (i) amounts paid or incurred to organize the Company, except for amounts with respect to which an election is properly made under Code Section 709(b); and (ii) any deduction for a loss on a sale or exchange of Company property that is disallowed to the Company under Code Sections 267(a)(1) or 707(b).

(b) In the event that the Capital Account Asset Value of any Company asset is adjusted pursuant to this Agreement, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses.

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

(d) 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 Fiscal Year.

(e) Notwithstanding any other provision of this Agreement, any items that are specially allocated pursuant to Article IV shall not be taken into account in computing Net Profits or Net Losses.

“Non-Participating Contribution” has the meaning set forth in Section 3.4 hereof.

“Non-Participating Member” has the meaning set forth in Section 3.4 hereof.

“Non-Participating Member Loan” has the meaning set forth in Section 3.4 hereof.

“Nonrecourse Deductions” has the meaning specified in Regulations Section 1.704-2(b)(1).

“Partnership Minimum Gain” has the meaning specified in, and shall be determined in accordance with, Regulations Section 1.704-2(d).

“Partner Nonrecourse Debt” has the meaning specified in Regulations Section 1.704-2(b)(4).

“Partner Nonrecourse Debt Minimum Gain” has the meaning specified in Regulations Section 1.704-2(i)(3).

“Partner Nonrecourse Deductions” has the meaning specified in Regulations Section 1.704-2(i)(2).

“Person” shall mean an individual, partnership, joint venture, association, corporation, limited liability company, trust or any other legal entity.

“Percentage Interest” shall mean, with respect to each Member, its Percentage Interest in an applicable Project, which shall be set forth on Exhibit D.

“Priority Loan” has the meaning set forth in Section 3.6(b) hereof.

“Project” is described on Exhibit D.

“Project Budget” has the meaning set forth in Section 8.5 hereof. Each Project’s initial Project Budget is attached hereto as Exhibit C.

“Project Partnership” has the meaning set forth in Section 2.5(a) hereof.

“Regulations” shall mean the Federal Income Tax Regulations promulgated under the Code as amended from time to time.

“Regulatory Allocations” has the meaning set forth in Section 4.2(f) hereof.

“Reserves” shall mean all amounts held by the Company in reserve for the purpose of satisfying obligations of the Company and any other purpose as approved by Hill Tide.

“Revenue” shall mean all cash received from operation of 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 Revenue shall exclude the aggregate of the paid-in portion of each Member’s Capital Contribution, the proceeds of any other loans to the Company, and interest earned on Reserves (unless withdrawn as aforesaid).

“Subsidiary” shall mean any partnership, association, trust, corporation, limited liability company, limited partnership or other entity in which the Company holds an ownership interest,

directly or indirectly through one or more intermediate entities, including the Intermediate Entities and the Project Partnerships.

“Total Equity Value” shall mean, with respect to any Member or the Membership Interests held by such Member, the aggregate proceeds which would be received by such Member if (a) the assets of the Company (and the assets of all Subsidiaries) as a going concern were sold at their Fair Market Value, (b) the Company satisfied and paid in full all of its obligations and liabilities (including all taxes, costs and expenses incurred in connection with such transaction, as well as any indebtedness of the Company and any reserves established by the Manager for contingent liabilities), and (c) such net sale proceeds were then distributed in accordance with Section 5.1, all as determined in good faith by Hill Tide.

“Transfer” shall mean a sale, exchange, transfer, assignment, pledge, encumbrance, conveyance or other disposition of a Membership Interest, or a right to share in the Net Profits or Net Losses of the Company or to receive distributions from the Company.

1.2 Generic Terms. Unless the context clearly indicates otherwise, where appropriate, the singular shall include the plural and the masculine shall include the feminine or neuter, and vice versa, to the extent necessary to give the terms defined in this Article I and the terms otherwise used in this Agreement their proper meanings.

ARTICLE II

FORMATION AND PURPOSE

2.1 Name. The name of the Company shall be, and the business of the Company shall be conducted under the name, South Creek Development, LLC.

2.2 Registered Office and Agent. The registered office and registered agent shall be determined by Hill Tide from time to time in accordance with the Act.

2.3 Principal Place of Business. The principal office of the Company, and the office at which the records of the Company are maintained, is located at 3414 Peachtree Road, Suite 825, Atlanta, GA 30326. Hill Tide may designate a different principal office for the Company by giving written notice to the Members. The Company may have such additional offices at such other places as Hill Tide shall deem advisable.

2.4 Term. The Company was formed on the date the Articles of Organization were filed with the Secretary State of North Carolina and shall continue until dissolved in accordance with the provisions of this Agreement.

2.5 Purposes of Company.

(a) The purposes of the Company shall be to acquire, own, hold, manage, sell or otherwise dispose of ownership interests, directly or indirectly through one or more intermediate entities (each, an “Intermediate Entity”), in one or more limited liability companies or limited partnerships that invests in low-income housing properties (each, a “Project Partnership”), and to earn development fees with respect to such Projects.

(b) The Company may engage in other activities and businesses incidental to the purposes of the Company as may be necessary or desirable, as determined by Hill Tide, to promote and carry out the principal purposes of the Company, as set forth above; provided, however, that, without Hill Tide Consent: (i) the purposes of the Company shall not be changed, and (ii) the Company shall not engage in any substantial business endeavor other than those consistent with the purposes of the Company, or incidental thereto.

2.6 Tax Status. The Members intend that the Company shall be treated as a partnership for federal and state tax purposes, rather than an association taxable as a corporation.

ARTICLE III

MEMBERSHIP AND CAPITALIZATION

3.1 Members. The Members shall be listed on Exhibit A attached hereto, as maintained by the Manager and from time to time amended and supplemented in accordance with this Agreement. As of the date of this Agreement, the Percentage Interest of each Member is set forth on Exhibit D, which shall be amended by the Manager as provided in this Agreement so that it sets forth the then current list of Members and their Percentage Interest. The initial amount or value of Capital Contributions to the Company by the Members is set forth on Exhibit A attached hereto, which exhibit shall be amended by the Manager so that it sets forth the then current list of Members and their aggregate Capital Contributions. The Percentage Interest of each Member for the first nine (9) acquired Projects shall be as follows:

- (a) with respect to the first and second acquired Projects, 85% to Hill Tide and 15% to South Creek Ventures;
- (b) with respect to the third acquired Project, 80% to Hill Tide and 20% to South Creek Ventures;
- (c) with respect to the fourth acquired Project, 75% to Hill Tide, 20% to South Creek Ventures and 5% to South Creek SC;
- (d) with respect to the fifth acquired Project, 75% to Hill Tide, 19% to South Creek Ventures and 6% to South Creek SC;
- (e) with respect to the sixth acquired Project, 75% to Hill Tide, 18% to South Creek Ventures and 7% to South Creek SC;
- (f) with respect to the seventh acquired Project, 75% to Hill Tide, 17% to South Creek Ventures and 8% to South Creek SC;
- (g) with respect to the eighth acquired Project, 75% to Hill Tide, 16% to South Creek Ventures and 9% to South Creek SC; and
- (h) with respect to the ninth acquired Project, and to those Projects acquired thereafter, 75% to Hill Tide, 15% to South Creek Ventures and 10% to South Creek SC.

3.2 Initial Capital Contributions.

(a) Hill Tide's aggregate maximum commitment to make Initial Capital Contributions under this Section 3.2 shall be \$855,000 (the "Hill Tide Commitment"). South Creek Ventures' and South Creek SC's aggregate maximum commitment to make Initial Capital Contributions under this Section 3.2 shall be \$0, all in accordance with the Budgets.

(b) From time to time and as determined by Hill Tide in its reasonable discretion, but no more frequently than monthly, no less frequently than quarterly and no later than the end of the Initial Period, as the Company requires funds pursuant to the Budgets, Hill Tide will make Initial Capital Contributions to the Company in an aggregate amount not to exceed the Hill Tide Commitment.

3.3 Additional Capital Contributions.

(a) Except as expressly provided in this Section 3.3, no Member shall be required to contribute any additional capital to the Company.

(b) In the event that the Members determine, unanimously, (each in its sole discretion) that the Company requires Additional Capital Contributions pursuant to any Budget for a specific Project, then the Manager shall deliver written notices (each, a "Capital Call Notice") to the Members, each of which shall call for a Capital Contribution from each Member (a "Capital Call") equal to such Member's pro rata share (based on the Members' respective Percentage Interest as it relates to such Project) of the aggregate amount set forth in the Capital Call Notice and determined by Hill Tide to be appropriate and consistent with the Company's purpose. Each Capital Call Notice shall provide a brief description of the Company's proposed use of the funds requested in such notice and shall include a schedule setting forth, for each Member, and the aggregate amount of capital payable by such Member pursuant to such Capital Call Notice. Each Member shall be required to make such Member's Capital Contributions in the amount stated in a Capital Call Notice on the date specified in the Capital Call Notice, which date shall not be earlier than 30 days after the date such Capital Call Notice was delivered to the Members.

(c) In the event that a Member contributes additional capital, acquires additional Membership Interests or additional Members are admitted to the Company, the Members shall amend Exhibit A accordingly.

3.4 Failure to Make Additional Capital Contributions.

(a) If any Member fails to timely contribute its share (or any portion thereof) of any Additional Capital Contribution required pursuant to Section 3.3 hereof after the Initial Period or at any time due to cost overruns in any Budget (any such Member, a "Non-Participating Member", and any such amount that a Non-Participating Member fails to contribute, the "Non-Participating Contribution"), then any other Member who has made all of its Capital Contributions required hereunder (each, a "Participating Member") may otherwise elect to contribute such amounts to the Company on behalf of the Non-Participating Member, with such amounts so contributed being treated as a loan from the Participating Member to the Non-Participating

Member (a “Non-Participating Member Loan”), which shall bear interest at the annual compound interest rate of eighteen percent (18%) or the highest rate allowed by applicable law, whichever is less; in turn, an amount equal to the Non-Participating Member Loan shall be treated as having been contributed to the Company as an Additional Capital Contribution by the Non-Participating Member.

(b) A Participating Member shall make such an election by giving notice thereof in writing to the Company and the Non-Participating Member at the time the Participating Member contributes such amounts to the Company on behalf of the Non-Participating Member pursuant to this Section 3.4.

(c) At any time during which a Non-Participating Member has a Non-Participating Member Loan outstanding, the Company shall not distribute any Cash Flow or Capital Proceeds or repay any loans to such Non-Participating Member. Instead, until all of such Non-Participating Member’s outstanding Non-Participating Member Loans (and interest thereon) have been repaid in full, any Cash Flow or Capital Proceeds otherwise distributable to such Non-Participating Member shall be paid, on behalf of such Non-Participating Member, to the Participating Members to which such Non-Participating Member Loans are owed pro rata in proportion to the amounts loaned by such Participating Members to such Non-Participating Member. Any amounts paid to a Participating Member on behalf of the Non-Participating Member pursuant to the preceding sentence shall be treated as a distribution to the Non-Participating Member and a payment of such amount by the Non-Participating Member to the Participating Member(s) who made the Non-Participating Member Loan(s) to the Non-Participating Member for all purposes of this Agreement.

(d) In the event that the outstanding principal and accrued interest of the Non-Participating Member Loan is not repaid within 6 months, the Participating Member may elect to have the provisions of Section 3.5 apply. In such event, the Non-Participating Contribution of the Non-Participating Member will equal the amount of the outstanding principal and accrued interest of the Non-Participating Member Loan.

3.5 Percentage Interest Dilution Option.

(a) If a Participating Member elects as allowed by Section 3.4(d), a Participating Member’s and the Non-Participating Member’s Percentage Interests shall be correspondingly adjusted in respect of any Non-Participating Contribution made by the Participating Member pursuant to Section 3.4 by increasing the Participating Member’s Percentage Interest in the Company (but not above 100%) and correspondingly decreasing the Non-Participating Member’s Percentage Interest in the Company (but not below zero) by the following amount:

$$\begin{array}{l} \text{Increase/Decrease} \\ \text{in Percentage} \\ \text{Interest} \end{array} = \text{PI} \times \frac{\text{DC} \times 1.3}{\text{CC} + \text{DC}}$$

Where: PI = the Percentage Interest of the Non-Participating Member immediately preceding any Non-Participating Contribution by a Participating Member.

DC = the Non-Participating Contribution of the Participating Member.

CC = the aggregate amount of Capital Contributions made by the Non-Participating Member throughout the term of the Company determined as of the date the Non-Participating Contribution is made.

(b) If one or more Additional Capital Contributions are required in which a Member is a Non-Participating Member, the forgoing formula shall be applied as if all such Additional Capital Contributions were made at the same time and result in one aggregate adjustment (even if an adjustment had been previously made to a prior failure by the Non-Participating Member).

3.6 Member Loans.

(a) In the event Hill Tide determines that the Company requires funds to implement any Budget, Hill Tide may (in addition to, or in lieu of, Capital Calls pursuant to Section 3.3) request that each Member make a loan (a “Member Loan”) in an amount equal to the aggregate amount required by the Company multiplied by such Member’s Percentage Interest. The Manager shall give the Members notice of the amount of the Member Loans required from each Member and the due date thereof at least 30 days prior to the due date. The outstanding principal amount of the Member Loans shall bear interest, until paid, at a rate equal to 10% per annum, compounded annually. Payment of interest and principal on each Member Loan shall be governed by Article V hereof.

(b) In the event any Member, shall fail to make its share of any Member Loan within 15 days after the due date thereof, then the other Members who have made their Member Loan shall be entitled to make the Member Loan of any non-paying Member, and all paying Members who so elect shall make their respective shares of the unpaid Member Loans of the non-paying Members (a “Priority Loan”) within 10 days from the date the written notice is given. Any Priority Loan provided pursuant to this Section 3.4(b) shall bear interest, until paid, at a rate equal to 18% per annum, compounded annually. Payment of interest and principal on each Priority Loan shall be governed by Article V hereof.

(c) Notwithstanding the foregoing, in the event that any Project requires pre-development funds pursuant to any Budget, Hill Tide shall make a loan (a “Pre-Development Loan”) to the Company in the amount set forth in such Budget, but not to exceed \$250,000 for each Project. The Manager shall give Hill Tide notice of the amount of any Pre-Development Loan required, which shall include the applicable invoices, and the due date thereof at least 30 days prior to the due date. Any unbudgeted or unanticipated pre-development costs shall not be incurred without Hill Tide Consent. The outstanding principal amount of the Pre-Development Loans shall bear interest, until paid, at a rate equal to the Designated Prime Rate plus 5% per

annum, compounded annually. Payment of interest and principal on each Pre-Development Loan shall be governed by Article V hereof.

3.7 Capital Accounts. A Capital Account shall be maintained for each Member in accordance with Regulations Section 1.704-1(b)(2)(iv).

3.8 Revaluations of Assets and Capital Account Adjustments. Unless otherwise agreed to by Hill Tide, the Manager, immediately preceding the issuance of additional Membership Interests in exchange for cash, property or services to a new or existing Member, upon the redemption of the Membership Interest of a Member and at such other times as determined by Hill Tide in accordance with Regulations Section 1.704-1(b)(2)(iv)(f), the then prevailing Capital Account Asset Values of the Company shall be adjusted to equal their respective fair market values and the Members' Capital Accounts shall be adjusted to reflect any change in the net equity value of the Company.

3.9 No Right to Interest or Return of Capital. Except as set forth herein, no Member shall be entitled to any return of or interest on Capital Contributions to the Company. No Member shall have any liability for the repayment of the Capital Contribution of any other Member and each Member shall look only to the assets of the Company for return of its Capital Contribution.

3.10 No Third Party Rights. The obligations or rights of the Company or the Members to make or require any Capital Contribution under this Article III shall not grant any rights to or confer any benefits upon any Person who is not a Member.

ARTICLE IV

PROFITS AND LOSSES

4.1 Net Profits and Net Losses. Except as otherwise provided in Section 4.2, Net Profits and Net Losses for any Fiscal Year shall be allocated among the Members in such a manner that, as of the end of such Fiscal Year, the sum of (a) the Capital Account of each Member, (b) such Member's share of Minimum Gain (as determined according to Regulations Section 1.704-2(g)) and (c) such Member's Partner Nonrecourse Debt Minimum Gain shall be equal to the respective net amounts, positive or negative, which would be distributed to them or for which they would be liable to the Company under the Act or otherwise, determined as if the Company were to (i) liquidate the assets of the Company for an amount equal to their Capital Account Asset Value and (ii) distribute the proceeds of liquidation pursuant to Section 5.1 hereof.

4.2 Special Allocations. Notwithstanding Section 4.1 above, the following special allocations shall be made for each Fiscal Year in the following order of descending priority:

(a) Partnership Minimum Gain. Except as otherwise provided in Regulations Section 1.704-2(f), if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to and to the extent of, an amount equal to the portion of such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Regulations Section 1.704-2(g). This Section is intended to comply

with the chargeback of items of income and gain requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Minimum Gain Attributable to Partner Nonrecourse Debt. Except as otherwise provided in Regulations Section 1.704-2(i), if there is a net decrease in Minimum Gain attributable to Partner Nonrecourse Debt during any Fiscal Year, each Member with a share of Minimum Gain attributable to Partner Nonrecourse Debt shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in proportion to, and to the extent of, an amount equal to the portion of such Member's share of the net decrease in the Minimum Gain attributable to Partner Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). This Section is intended to comply with the chargeback of items of income and gain requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4),(5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 4.2(c) shall be made only after all other allocations provided for in this Section 4.2 have been tentatively made as if this Section 4.2(c) were not in this Agreement. This Section 4.2(c) is intended to constitute a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d)(3), and is to be interpreted, to the extent possible, to comply with the requirements of such Regulation as it may be amended or supplemented from time to time.

(d) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated among the Members in proportion to their respective Percentage Interests in accordance with Regulations Section 1.704-2(b)(1).

(e) Partner Nonrecourse Deductions. Partner Nonrecourse Deductions for any Fiscal Year shall be allocated 100% to the Member that bears the economic risk of loss (as defined in Regulations Section 1.704-2(b)) with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i). If more than one Member bears the economic risk of loss with respect to a Partner Nonrecourse Debt, the Partner Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such economic risk of loss.

(f) Curative Allocations. The allocations set forth in Sections 4.2(a) through 4.2(e) (the "Regulatory Allocations") are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2(b). Notwithstanding any other provisions of this Section 4.2 (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss, and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to such Member if the Regulatory Allocations had not occurred.

4.3 Nonrecourse Liabilities. Excess nonrecourse liabilities (as defined in Regulations Section 1.752-3(a)(3)) shall be allocated among the Members in proportion to their respective Percentage Interests.

4.4 Code Section 704(c). In accordance with Code Section 704(c) and the Regulations thereunder and Regulations Section 1.704-1(b)(4)(i), income, gain, loss and deduction (as computed for federal income tax purposes) with respect to any property contributed to the capital of the Company or otherwise revalued on the books of the Company shall, solely for federal income tax purposes, be allocated among the Members to take into account any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Capital Account Asset Value as determined at the time of the contribution or revaluation.

4.5 Allocations with Respect to Transferred Interests. In the event of a transfer of a Membership Interest, all items of income, gain, loss, deduction and credit for the taxable year in which the transfer occurs shall be allocated for federal income tax purposes between the transferor and the transferee on the basis of the interim closing of the books method, unless otherwise agreed by the transferor and transferee. Distributions made on or after the effective date of transfer shall be made to the transferee, regardless of when such distributions accrued on the books of the Company. The effective date of the transfer shall be (a) in the case of a voluntary transfer, the actual date the transfer is recorded on the books of the Company, or (b) in the case of an involuntary transfer, the date of the operative event.

4.6 Code Section 754 Election. Upon a transfer of a Membership Interest, the Manager may, if requested by a Member, make an election on behalf of the Company pursuant to Section 754 of the Code and pursuant to corresponding provisions of applicable state and local tax laws, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code (but only if such adjustment would be a positive amount).

4.7 Tax Items. Except as otherwise provided herein, any allocation to a Member of a portion of the Net Profits or Net Losses for a Fiscal Year shall be deemed to be an allocation to that Member of the same proportionate part of each item of income, gain, loss, deduction or credit that is earned, realized or available by or to the Company for federal income tax purposes.

ARTICLE V

DISTRIBUTIONS

5.1 Distributions of Cash Flow. Cash Flow, if any, shall be distributed from time to time, as determined by Hill Tide but in no event less than semi-annually, in the following order of priority:

(a) First, to pay in full all accrued interest and unpaid principal of any outstanding Priority Loans, which amounts shall be paid pro rata in accordance with the principal amounts then outstanding;

(b) Second, to pay in full all accrued interest and unpaid principal of any defaulted Pre-Development Loans, which amounts shall be paid pro rata in accordance with the principal amounts then outstanding;

(c) Third, to pay in full all accrued interest and unpaid principal of any outstanding Member Loans, which amounts shall be paid pro rata in accordance with the principal amounts then outstanding; and

(d) The balance, if any, to the Members pro rata in accordance with their respective Percentage Interests (as such are determined from Project to Project as set forth herein).

5.2 Tax Distributions. The Company shall, at least annually unless restricted or prohibited by the Act, make distributions of Cash Flow to the Members in an amount that is deemed by Hill Tide sufficient to pay the combined estimated federal and state income tax liability of the Members resulting solely from the allocation of Net Profits and Net Losses to the Members (after taking into account distributions already made to the Members during the applicable Fiscal Year pursuant to Section 5.1(d)). Hill Tide shall not be required to consider the personal circumstances of the Members in making a determination of the estimated combined federal and state income tax liability of the Members. For the avoidance of doubt, distributions made pursuant to this Section 5.2 shall be treated as advances of distributions to be made pursuant to Section 5.1(d).

5.3 Distribution upon Dissolution. Notwithstanding anything to the contrary contained above, in the event of dissolution of the Company, all distributions shall be made pursuant to Article XI hereof.

5.4 Withholding from Distributions. All amounts withheld pursuant to the Code or any provision of any state or local tax law with respect to any payment, distribution or allocation to the Company or to the Members shall be treated as amounts distributed to the Members pursuant to this Article V or Article XI, as the case may be, for all purposes of this Agreement. The Company is authorized to withhold from distributions, or with respect to allocations, to the Members and to pay over to any federal, state or local government any amount required to be withheld pursuant to the Code or any provisions of any other federal, state, or local law and may allocate any such amounts among the Members in any manner that is in accordance with applicable law.

ARTICLE VI

MANAGEMENT

6.1 Management of Company. The responsibility for the day-to-day operations of the Company shall be vested in the Manager. Subject to Section 6.3 and except for situations in which the consent of the Members is otherwise expressly required by this Agreement or by nonwaivable provisions of applicable law, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, including acquiring and disposing of the ownership interests in the Intermediate Entities, so long as such actions are in accordance with an approved Budget.

6.2 Number, Tenure and Qualifications. The Company shall have one initial Manager, which shall be South Creek Ventures, LLC, and, in the event of any vacancy in the office of

Manager, then such other Person as may be appointed by Hill Tide. The Manager shall hold office until its resignation or removal pursuant to the terms hereof.

6.3 Limitations of Power and Authority of Manager. Notwithstanding anything to the contrary contained in this Article VI or any other term or provision of this Agreement, the Manager shall not undertake any of the following actions without Hill Tide Consent (unless approved in a Project Budget pursuant to Section 8.5 or the Company Budget):

(a) Pledging or granting any security interest in, or other encumbrance of, all or any part of the Company's property;

(b) Entering into an agreement to purchase, lease, option or otherwise acquire any interest, directly or indirectly, in real property;

(c) Borrowing money or incurring other obligations, in each case, in excess of \$50,000 in any one or a series of related transactions;

(d) Making decisions relating to the employment or compensation of employees or independent contractors;

(e) Entering into agreements with any Affiliate of the Manager or the payment of any compensation, fees or commissions to the Manager or any Affiliate of the Manager;

(f) Modifying accounting methods or tax elections or decisions that materially affect the tax liability of the Members;

(g) Amending the Articles of Organization (except to the extent otherwise provided in this Agreement);

(h) Entering into a business different from the activities described in Section 2.5 hereof;

(i) Filing or defending a legal proceeding, or settling any such proceeding, where the amount involved is reasonably expected to exceed \$50,000;

(j) Acquiring, selling, exchanging or disposing of any Company property or interests in a Subsidiary not in the ordinary course of business;

(k) Filing of bankruptcy by the Company;

(l) Merging the Company with another entity;

(m) Approving any Development & Construction Budget, Company Budget or Project Budget;

(n) Taking any action not in accordance with a Development & Construction Budget, Company Budget or Project Budget;

(o) Dissolving the Company

(p) Selecting a site for any Project;

(q) Acquiring any Project, directly or indirectly; or

(r) Taking any action with respect to a Subsidiary that the Manager would otherwise be prohibited to take with respect to the Company, including causing, authorizing or otherwise permitting a Subsidiary to take any of the actions set forth in this Section 6.3.

6.4 Officers. The Manager may, but shall not be required to, create such officers as it deems appropriate, including, but not limited to, Managing Director, Director, Chief Executive Officer, President, Executive Vice President, Senior Vice President(s), Vice President(s), Executive Director, Secretary and Treasurer. The officers shall have such duties as are assigned to them by the Manager from time to time and shall be authorized and directed to take such action as specifically authorized and delegated to such officers by the Manager including, without limitation, the authority to open bank accounts as such officers shall deem appropriate from time to time and to execute and deliver certificates, agreements or other documents as requested by such banks; provided, however, no officer may take any action that the Manager would be prohibited from taking under this Agreement. All officers shall serve at the pleasure of the Manager, the Manager may remove any officer from office without cause and any officer may resign at any time. Officer compensation shall be determined by the Manager. The initial Executive Directors shall be Robin E. Delmer, George L. Strobel, II, Robert W. Long, Daniel L. Winters, Jr., and Charles Heritage who shall each have the authority to bind the Company under written agreements to the extent authorized by an approved Budget.

6.5 Third Parties. Any contract, agreement, deed, lease, note, or other document or instrument executed on behalf of the Company by the Manager (acting within the scope of its authority under this Agreement) will be deemed to have been duly executed by the Company, and third parties will be entitled to rely on such signature in binding the Company (provided the Manager is acting within the scope of its authority under this Agreement).

6.6 Limitation of Liability. The Manager and each officer shall act in a manner it believes in good faith to be in the best interest of the Company and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. The Manager and each officer shall be entitled to rely upon the information, opinions, reports, or statements contemplated by the Act to the full extent permitted by the Act. The Manager and each officer shall have no liability to the Company or any Member for any loss suffered by the Company or any Member which arises out of any act or omission by the Manager or any such officer if it performs the duty of its office in compliance with the standard set forth in the immediately preceding sentences, except loss or damage resulting from intentional misconduct, fraud, willful misrepresentation, gross negligence, knowing violation of law, or a transaction for which the Manager or any such officer received a personal benefit in violation or breach of the provisions of this Agreement. To the fullest extent permitted under the Act, the Company shall and does hereby agree to indemnify, defend and hold the Manager and each officer harmless from, against and in respect of any liabilities, damages, losses, costs or expenses whatsoever arising in connection with the Company, provided this indemnity shall not apply to the Manager's or any such officer's intentional misconduct, fraud, willful misrepresentation, gross negligence, or knowing violation of law or to a transaction for which such Person received a personal benefit in violation or breach

of the provisions of this Agreement. The Company shall pay or reimburse any Manager or officer for expenses incurred by such Manager or officer (a) in advance of the final disposition of any proceeding involving the Company to which such Manager or officer was, is or is threatened to be made a party, provided such Manager or officer meets the conditions for indemnification set forth above, and (b) in connection with such Manager's or officer's appearance as a witness or other participation in any proceeding involving the Company, provided that the Company has received from such Manager or officer an undertaking satisfactory to the Manager (or if the undertaking involves the Manager, satisfactory to the Members, other than the Manager, by Hill Tide Consent) by, or on behalf of, such Manager or officer to repay such amount in the event of a final determination that such Manager or officer is not entitled to be indemnified by the Company. The Company may, if agreed to by the Members, purchase and maintain insurance to protect itself and any Manager or officer of the Company, whether or not the Company would have the power to indemnify such Person under this provision. This indemnification obligation shall be limited to the assets of the Company, and no Member shall be required to make a Capital Contribution in respect thereof. This Section shall be equally applicable to any Person who is no longer a Manager of the Company.

6.7 No Exclusive Duty to Company. No Manager shall be required to manage the Company as its sole and exclusive function, and a Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of a Manager or to the income or proceeds derived therefrom. No Manager shall incur any liability to the Company or to any of the Members as a result of engaging in any other business or venture. This paragraph does not constitute a waiver of any fiduciary duties a Manager may have to the Company and its Members.

6.8 Resignation. A Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of a Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice. The resignation of a Manager shall not affect the Manager's rights as a Member and shall not constitute a withdrawal of a Member.

6.9 Removal and Replacement of Manager.

(a) Hill Tide shall have the right to remove the Manager for Cause upon 30 days' notice, and to appoint another Person as Manager in accordance with this Section 6.9.

(b) Upon the removal of the Manager pursuant to this Section 6.9:

(i) The Manager shall no longer have any authority as Manager of the Company and, until such time as a new Manager is appointed by Hill Tide, the Company shall immediately become "member-managed" whereby all decisions herein would require Hill Tide Consent;

(ii) Notwithstanding the removal, the removed Manager shall continue to own its Membership Interest, if any, including all the rights and obligations related thereto, provided that the removed Manager shall not have the right to participate, as a Member or

otherwise, with respect to any decision involving the appointment, removal or compensation of any Person as Manager of the Company;

(iii) The removed Manager shall remain liable for only those Manager obligations that arose on or prior to the date of removal; and

(iv) The removed Manager shall immediately return to the Company all books, records, documents, data and other information relating to the business activities of the Company or any Subsidiary and generated or received by the Manager in connection with the performance by the Manager of its responsibilities under this Agreement.

6.10 Compensation. The Company shall make a monthly payment to the Manager for serving as Manager in an amount equal to \$11,666.66 or as otherwise set forth in the Budgets. The Manager shall have the right to reimbursement from the Company for any direct out-of-pocket expenses reasonably incurred or payments made on behalf of the Company, provided that such expenses or payments are commercially reasonable and appropriate for the conduct of Company business.

6.11 Project Approval Process. The Manager shall present potential Projects for acquisition by the Company, directly or indirectly, to Hill Tide for its prior approval, which shall include a description of the proposed site of the Project, terms and conditions of the purchase contract, the proposed application submission date, a proforma, and a pre-development budget. The Manager and the Company shall not move forward with the application process for any Project without Hill Tide Consent.

6.12 Third Party Approval Process. With Hill Tide Consent, the Manager shall select the general contractor and management company for each Project. In the event that the selected general contract or management company is terminated for nonperformance, Hill Tide shall have the right to select the replacement.

6.13 Financing Parties Approval Process. The Manager and Hill Tide must mutually agree on the debt and equity providers for each Project. In the event that the Manager and Hill Tide cannot agree on such providers, Hill Tide shall have the right to select the debt and equity providers for such Project.

ARTICLE VII

POWERS, RIGHTS AND OBLIGATIONS OF THE MEMBERS

7.1 Powers and Rights. Other than a Member or Members serving as Manager, no Member shall take part in, or interfere in any manner with, the conduct or control of the Company business, and shall not have any right or authority to act or sign for or to obligate the Company. No Member shall at any time be entitled to withdraw all of any part of its contribution to the capital of the Company except to the extent such Member is entitled to distributions pursuant to the provisions of Articles V and XI hereof.

7.2 Limitation on Liability of the Members. Notwithstanding any other provision of this Agreement, the liability of each Member shall be limited to its Capital Contributions at any given time as and when payable under the provisions of this Agreement.

7.3 Indemnification of the Members. The Company shall indemnify and hold each Member harmless from any claims, demands, losses, damages, liabilities, lawsuits and other proceedings, judgment, awards, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by such Member as a result of actions against such Member in its capacity as a member of the Company, except to the extent a court of competent jurisdiction determines the same were incurred by the Member while not acting in accordance with the terms of this Agreement.

7.4 Other Activities of Members. The Members acknowledge that the Members, and their respective Affiliates, are presently, or may become in the future, members of other companies, general partners of partnerships, or associated in some other manner with other businesses. Except as otherwise provided herein, the Members and their respective Affiliates may engage in all such other business ventures, and any other business of any nature or description, independently or with others. Neither the Company nor any of the Members shall have any rights by virtue of this Agreement of the Company in or to such independent ventures or to the income or profits derived therefrom. Notwithstanding the foregoing, neither South Creek Ventures, South Creek SC or any Affiliate of either shall not own, directly or indirectly, develop, or earn fees from any Projects rejected by Hill Tide pursuant to Section 6.11.

7.5 Defaults. Upon any default by any Member with respect to its obligation to make Capital Contributions as set forth in this Agreement and for so long as such default remains uncured, such Member shall not be entitled to vote on any matter on which such Member would otherwise be entitled to vote. For purposes of determining the requisite number of Members required for quorums, majorities and other determinations under this Agreement (except for calculations of distributions), such defaulting Member's Membership Interests shall be disregarded.

7.6 Guaranty. To the extent the Members are required to provide a guaranty to a federal or state tax credit investor with respect to a Project, the Members shall share the guarantee obligation pro rata according to their Percentage Interests.

7.7 Meetings. The Members and the Manager shall meet in person no less frequently than quarterly and have conferences calls every other week.

7.8 Hill Tide Services. Hill Tide shall support the Company with respect to the following services: accounting, banking, construction draws, IT support, website design, human resources, payroll, and benefits.

ARTICLE VIII

ACCOUNTING, BOOKS AND RECORDS

8.1 Accounting Method. The Company shall use such method of accounting for financial and tax reporting purposes as determined by Hill Tide (unless otherwise required by the

Code or Regulations). Hill Tide shall be empowered to make any changes of accounting method that the Manager shall deem advisable.

8.2 Books and Records. The Manager shall keep or cause to be kept, at Company expense, full, complete and accurate books of account and other records showing the assets, liabilities, costs, expenditures, receipts, Net Profits, Net Losses and cash flow, of each Intermediate Entity, the respective Capital Accounts of the Members and such other matters as the Manager shall deem appropriate. Such books of account shall be the property of the Company and shall be open to the reasonable inspection and examination of the Members or their duly authorized representatives. The books of account shall be maintained at the principal office of the Company.

8.3 Financial Reports and Tax Returns. The Manager shall cause to be prepared and distributed to the Members, on an annual basis, reports regarding the revenue received and costs and expenses incurred by the Company during the preceding Fiscal Year and such other matters as are appropriate or desirable for the Manager to report to the Members. As soon as practicable after the end of each Fiscal Year, the Manager shall cause to be prepared a full, detailed and complete set of financial statements of the Company for such Fiscal Year regarding the revenue received and costs and expenses incurred by the Company during the preceding Fiscal Year, including a cash receipts and disbursements statement, a profit and loss statement and a statement showing all cash distributions to each Member, and allocations to each Member of Net Profits, Net Losses and other items specifically allocated herein. The Manager shall cause to be prepared and distributed to the Members, by March 15th of each Fiscal Year, Schedule K-1's and reports regarding the revenue received and costs and expenses incurred by the Company during the preceding Fiscal Year, and such other matters as are appropriate or desirable for the Manager to report to the Members. The Manager shall also cause the preparation and timely filing of all tax returns required to be filed by the Company pursuant to the Code and all other tax returns deemed necessary and required in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's Fiscal Year.

8.4 Tax Matters Partner.

(a) Hill Tide Development, LLC is hereby designated as the initial "tax matters partner," as that term is defined in Section 6231(a)(7) of the Code (the "Tax Matters Partner"), of the Company, with all of the rights, duties and powers provided for in Sections 6221 through 6234 of the Code, inclusive. The Tax Matters Partner shall take such action as may be necessary to cause to the extent possible each other Member to become a notice partner within the meaning of Code Section 6231(a)(8). The Tax Matters Partner shall inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Partner by giving notice thereof on or before the 20th day after (or if applicable, such shorter period as may be required by the appropriate statutory or regulation provisions) becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. The Tax Matters Partner shall remain as the Tax

Matters Partner so long as it retains any ownership interests in the Company unless the Tax Matters Partner requests that it not serve as Tax Matters Partner.

(b) The Tax Matters Partner shall take no action without the authorization of the other Members, other than such action as may be required by law. Any reasonable, documented cost or expense incurred by the Tax Matters Partner in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

(c) No Member shall file a request pursuant to Code Section 6227 for an administrative adjustment of Company items for any taxable year without first notifying the other Members. If the other Members consent to the requested adjustment, the Tax Matters Partner shall file the request for the administrative adjustment on behalf of the Members. If such consent is not obtained within 30 days from such notice, or within the period required to timely file the request for administrative adjustment, if shorter, any Member, including the Tax Matters Partner, may file a request for administrative adjustment on its own behalf. Any Member intending to file a petition under Code Sections 6226 or 6228 or any other Code section with respect to any item involving the Company shall notify the other Members of such intention and the nature of the contemplated proceeding. In the case where the Tax Matters Partner is the Member intending to file such petition on behalf of the Company, such notice shall be given within a reasonable period of time to allow the other Members to participate in the choosing of the forum in which such petition will be filed.

(d) If any Member intends to file a notice of inconsistent treatment under Code Section 6222(b), such Member shall give reasonable notice under the circumstances to the other Members of such intent and the manner in which the Member's intended treatment of an item is (or may be) inconsistent with the treatment of that item by the other Members.

(e) Pursuant to the Bipartisan Budget Act of 2015, P.L. 114-74 (the "Budget Act"), the Tax Matters Partner shall have the sole discretion to cause the Company to elect out of the application of Code Section 6225 at such time and in such manner as required by the Code and the Regulations. The Tax Matters Partner is hereby designated as the "partnership representative" as such term is used in Code Section 6223 (as amended by the Budget Act).

8.5 Development & Construction Budget. South Creek Ventures shall cause to be prepared and distributed to all of the Members projected budgets for pre-development, development and construction of each Project (the "Development & Construction Budget") that will be attached as Exhibit B upon approval. Each Member shall either approve or disapprove each Development & Construction Budget as submitted within 15 days after receipt thereof, and if a Member fails to respond in writing with approval or disapproval within 15 days after receipt of any Development & Construction Budget, such Member shall be deemed to have approved the Development & Construction Budget. If a Member disapproves any Development & Construction Budget, such Member must specify in writing the specific items in the Development & Construction Budget of which it disapproves. Unless a proposed Development & Construction Budget is ratified by Hill Tide, the Manager shall promptly submit a revised Development & Construction Budget to all of the Members pursuant to the approval procedures set forth in this Section 8.5. Upon approval of a proposed Development & Construction Budget by Hill Tide, such Development & Construction Budget shall be deemed approved for purposes hereof and the

Manager shall be authorized to take all action necessary to implement such Development & Construction Budget and expend the funds of the Company pursuant thereto.

8.6 Project Budget and Company Budget. South Creek Ventures shall cause to be prepared and distributed to all of the Members by December 1st of each calendar year, commencing in 2017, an annual business plan for each Project, which shall contain a projected budget for such Project for the upcoming calendar year and such other items as are reasonably necessary or desirable for the operation of such Project during the upcoming calendar year (the “Project Budget”) and an annual business plan for the Company, which shall contain a projected budget for the Company for the upcoming calendar year and such other items as are reasonably necessary or desirable for the operation of the Company during the upcoming calendar year (the “Company Budget”). Each Member shall either approve or disapprove each Project Budget and Company Budget as submitted within 15 days after receipt thereof, and if a Member fails to respond in writing with approval or disapproval within 15 days after receipt of any Project Budget or Company Budget, such Member shall be deemed to have approved the Project Budget or Company Budget, as applicable. If a Member disapproves any Project Budget or Company Budget, such Member must specify in writing the specific items in the Project Budget or Company Budget, as applicable, of which it disapproves. Unless a proposed Project Budget or Company Budget, as applicable, is ratified by Hill Tide, the Manager shall promptly submit a revised Project Budget or Company Budget, as applicable, to all of the Members pursuant to the approval procedures set forth in this Section 8.6. Upon approval of a proposed Project Budget or Company Budget, as applicable, by Hill Tide, such Project Budget or Company Budget shall be deemed approved for purposes hereof and the Manager shall be authorized to take all action necessary to implement such Project Budget or Company Budget and expend the funds of the Company pursuant thereto.

ARTICLE IX

TRANSFER, ASSIGNMENT AND REDEMPTION OF MEMBERSHIP INTEREST

9.1 Restrictions on Transfer by Members. Except for Transfers to Affiliates and Transfers pursuant to Section 9.2, which shall not require any prior consent, the Members shall not have the right to Transfer (directly or indirectly) all or any portion of their Membership Interests without Hill Tide Consent. For purposes of clarification, where a Membership Interest is held by a legal entity, a Transfer of 50% or more of the ownership interests in, or voting control over, such entity shall be deemed to be a Transfer of the Membership Interest prohibited by this Section 9.1. Any attempt to Transfer an interest in the Company in violation of this Section 9.1 shall be null and void. Notwithstanding anything to the contrary herein, this Section 9.1 does not prohibit Monarch Private Capital, LLC, a Georgia limited liability company, from (a) entering into any reorganization, recapitalization or change in its capital structure, (b) merging or consolidating with any Person, or permitting another Person to merge into it, (c) selling, transferring or otherwise disposing of all or any division of its assets, or (d) selling, transferring or otherwise disposing of all or any portion of its equity interests.

9.2 Requirements Upon Transfer. A transferee of a Membership Interest in the Company has no right to participate in the management of the business and affairs of the Company

or to become a Member. A transferee shall be admitted as a substitute Member entitled to all the rights of a Member if and only if:

(a) Hill Tide consents to such substitution in writing, which consent may not be unreasonably withheld;

(b) the permitted transferee shall have executed a written agreement, in form and substance reasonably satisfactory to Hill Tide, to assume all of the duties and obligations of the transferor Member under this Agreement and to be bound by and subject to all of the terms and conditions of this Agreement;

(c) the transferor shall furnish to the Company the instruments and assurances Hill Tide may reasonably request, including without limitation, if requested, an opinion of counsel satisfactory to Hill Tide, that the interest in the Company being Transferred has been registered or is exempt from registration under all applicable federal and state securities laws; and

(d) the transferee shall have paid the reasonable expenses incurred by the Company in connection with the admission of the transferee to the Company.

9.3 Unadmitted Transferee. Upon a Transfer of a Membership Interest permitted by this Agreement, if the transferee does not become a substituted Member, (a) the transferor, to the extent of the Transferred Membership Interest, shall cease to be a Member for all purposes of this Agreement, and (b) the transferee shall be entitled to receive only that portion of distributions or allocations to which the transferor of the Membership Interest would be entitled, but such transferee shall not have any other rights of a Member pursuant to this Agreement or otherwise.

9.4 Withdrawals. Except for withdrawals in connection with a Transfer of a Membership Interest permitted by this Agreement, no Member may withdraw from the Company without Hill Tide Consent.

9.5 Buy/Sell.

(a) At any time after the Initial Period, any Member (the “Offeror”) may make an offer (the “Offer”) to any other Member (the “Offeree”) by sending written notice to such Offeree and the Company (the “Offer Notice”) to either buy such Offeree’s entire Membership Interest or to sell such Offeror’s entire Membership Interest to the Offeree (the Offer shall constitute both an offer to buy and an offer to sell). Such Offer Notice shall set forth the Offeror’s terms of purchase, including the purchase price for the Offeror’s Membership Interest and the Offeree’s Membership Interest (the “Purchase Price”) and the Fair Market Value of the assets of the Company utilized by the Offeror to determine the Purchase Price. All terms of purchase with respect to the Offer to buy or sell shall be the same; provided that the Purchase Price for each Membership Interest shall be the Total Equity Value of such Membership Interest.

(b) Within 90 days after receipt of the Offer Notice, the Offeree shall give notice to the Offeror stating whether the Offeree elects (i) to purchase the Offeror’s entire Membership Interest at the Purchase Price and upon the terms stated in the Offer or (ii) to sell to the Offeror the Offeree’s entire Membership Interest at the Purchase Price and upon the terms stated in the Offer. If the Offeree fails to make an election to purchase or to sell under this Section

9.5, such failure shall be deemed to be an election by the Offeree to sell the Offeree's entire Membership Interest to the Offeror at the Purchase Price and upon the terms stated in the Offer.

(c) The closing of the purchase and sale contemplated by this Section 9.5 shall occur at the offices of the Company no later than 10:00 a.m. on the 15th day immediately following the earlier of (i) the date the notice under paragraph (b) is delivered to the Offeror or (ii) the date the election is deemed to have been made by the Offeree under paragraph (b).

ARTICLE X

DISSOLUTION OF COMPANY

10.1 Events of Dissolution. The Company shall be dissolved upon the happening of any of the following events:

(a) the sale or other disposition of all or substantially all of the Company's assets; or

(b) the election to dissolve the Company by Hill Tide Consent.

10.2 Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Act. Upon dissolution, the Manager shall file a statement of commencement of winding up pursuant to the Act and publish all notices required by the Act.

ARTICLE XI

DISTRIBUTIONS UPON DISSOLUTION

11.1 Liquidation.

(a) Upon the dissolution of the Company, the Company immediately shall commence to wind-up its affairs unless the Members elect to continue the Company as provided in this Agreement. The winding up of the Company shall be under the direction of the Liquidating Trustee. A reasonable period of time shall be allowed for the orderly termination of the Company's business, the discharge of its liabilities and the distribution or liquidation of its remaining assets so as to enable the Company to minimize the normal losses attendant to the liquidation process. A full accounting of the assets and liabilities of the Company shall be taken and a written statement thereof shall be furnished to each Member within a reasonable period after dissolution.

(b) Upon dissolution of the Company, the Liquidating Trustee shall either sell the assets of the Company at the best price available, or the Liquidating Trustee may distribute to the Members all or any portion of the Company's assets in kind. If any assets are to be distributed in kind, the Liquidating Trustee shall ascertain the Fair Market Value of such assets, and each Member's Capital Account shall be charged or credited, as the case may be, as if such asset had been sold for cash at such fair market value and the net gain or net loss recognized thereby had been allocated to and among the Members in accordance with Article V above.

(c) In the event of a dissolution on account of a sale or other disposition of all or substantially all of the Company's assets and payment of a portion of the proceeds from the sale or disposition is deferred, through the Company receiving a purchase money note or otherwise, the Company shall not be finally liquidated until the deferred portion of the purchase price is collected in full (or deemed worthless by the Liquidating Trustee) and the Company shall not be required to distribute the indebtedness representing the deferred portion of the purchase price to the Members.

(d) The Company's assets and the proceeds from the liquidation thereof shall be applied in the following order of priority:

(i) Payment of the debts and liabilities of the Company incurred in accordance with the terms of this Agreement (but excluding any loans by the Members to the Company or any debts from the Company to the Members), and payment of the expenses of liquidation;

(ii) Setting up of reserves as the Liquidating Trustee may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company or any obligation or liability not then due and payable; provided, any unspent balance of the reserves shall be distributed in the manner hereinafter provided when deemed reasonably prudent by the Liquidating Trustee;

(iii) Payment of loans by the Members to the Company and any debts from the Company to the Members; and

(iv) The balance, in accordance with Section 5.1; subject, however, to the following:

it is intended that the distributions set forth in this Section 11.1(d) comply with the requirement of Regulations Section 1.704-1(b)(2)(ii)(b)(2) that liquidating distributions be made in accordance with positive Capital Accounts. However, if the balances in the Capital Accounts do not result in such requirement being satisfied, items of income, gain, loss, deduction and credit will be reallocated among the Members so as to cause the balances in the Capital Accounts to be in the amounts necessary so that, to the extent possible, such result is achieved.

11.2 No Action for Dissolution or Partition. The Members acknowledge that irreparable damage will be done to the Company (on account of a premature liquidation of the Company's assets, loss of goodwill and reputation, and other factors) if any Member seeks to dissolve, terminate or liquidate the Company, or seek partition of Company assets by litigation or otherwise. The Members further acknowledge that this Agreement has been drawn carefully to provide fair treatment of all parties and equitable payments in liquidation of the Membership Interests of all Members, and that the Members entered into this Agreement with the intention that the Company continue until dissolved and liquidated in accordance with the terms of this Agreement. Accordingly, each Member hereby waives and renounces any right to dissolve, terminate or liquidate the Company, or to obtain the appointment of a receiver or trustee to liquidate the Company, or to obtain partition of Company assets, except as specifically set forth in this Agreement.

11.3 No Further Claim. Each Member shall look solely to the assets of the Company for the return of its investment in the Company (including Capital Contributions and loans from a Member to the Company), and no Member shall have any liability or obligation to the Company or to any other Member to repay any unreturned Capital Contributions or loans made by any Member to the Company.

11.4 Negative Capital Account. Notwithstanding anything in this Agreement to the contrary, no Member shall have any obligation to restore any negative or deficit balance in its Capital Account upon dissolution or liquidation of the Company, or otherwise.

ARTICLE XII

MISCELLANEOUS

12.1 Arbitration. Any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in Atlanta, Georgia, pursuant to the commercial arbitration rules then in effect of the American Arbitration Association (or at any time or at any other place or under any other form of arbitration mutually acceptable to the parties so involved). Any award rendered shall be final and conclusive upon the parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel's fees, except that in the discretion of the arbitrator, any award may include the cost of a party's counsel if the arbitrator expressly determines that the party against whom such award is entered has caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic.

12.2 Additional Documents. At any time and from time to time after the date of this Agreement, upon the request of the Manager, the Members shall do and perform, or cause to be done and performed, all such additional acts and deeds, and shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such additional instruments and documents, as may be required to best effectuate the purposes and intent of this Agreement.

12.3 Applicable Law. This Agreement shall be governed by, construed under, and enforced and interpreted in accordance with, the laws of the State of North Carolina, excluding the conflicts of law provisions thereof.

12.4 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given upon personal delivery (which may be evidenced by a return receipt if sent by registered mail or by signature if delivered by courier or delivery service) or sent by facsimile (and electronic receipt was received) or sent by electronic mail, addressed (a) if to any Member, at the address of such Member set forth in the Company register or at such other address as such Member shall have furnished to the Company in writing as the address to which notices are to be sent hereunder and (b) if to the Company, at the address of the Company's principal place of business.

12.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or agreement among them respecting the subject matter hereof. There are no representations, arrangements, understandings or agreements, oral or written, among the parties hereto relating to the subject matter of this Agreement, except those fully expressed herein.

12.6 Amendments.

(a) Subject to Section 12.6(b), no change or modification of this Agreement or waiver of any provision hereof shall be valid or binding on the parties hereto, unless such change, modification or waiver shall be in writing and approved by the Members.

(b) Notwithstanding any other provision herein, the Manager may, without the consent or approval of any Member, make such amendments to this Agreement which are necessary to: (i) update or revise Exhibit A in accordance with this Agreement, (ii) correct a typographical error, correct any manifest error, correct, clarify or supplement any provision which may be inconsistent with any other provisions, or (iii) update or revise Exhibits B-E upon the acquisition of an Intermediate Entity or update to a budget.

12.7 Determination of Matters Not Provided For in This Agreement. Hill Tide shall decide any and all questions arising with respect to the Company and this Agreement which are not specifically or expressly provided for in this Agreement.

12.8 Further Assurances. The Members each agree to cooperate, and to execute and deliver in a timely fashion any and all additional documents necessary to effectuate the purposes of the Company and this Agreement.

12.9 Severability. If any portion of this Agreement is held illegal or unenforceable, the Members hereby covenant and agree that such portion or portions are absolutely and completely severable from all other provisions of this Agreement and such other provisions shall constitute the agreement of the Members with respect to the subject matter hereof.

12.10 Successors. Subject to the provisions hereof imposing limitations and conditions upon the transfer, sale or other disposition of the Membership Interests in the Company, all the provisions hereof shall inure to the benefit of and be binding upon the heirs, successors, legal representatives and assigns of the parties hereto.

12.11 Counterparts; Facsimile. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts. This Agreement and any document executed and delivered in connection with this Agreement, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or as an attachment to an electronic mail message in “pdf” or similar format, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

12.12 Section Headings. Section and other headings contained in this Agreement are for reference purposes only and are in no way intended to define, interpret, describe or limit the scope, extent or intent of this Agreement or any provision hereof.

12.13 Time. Time is of the essence of this Agreement.

12.14 Pronouns. All pronouns used in this Agreement in reference to any Member shall include the neuter, masculine and feminine genders and the singular and the plural, as the context requires.

12.15 Acceptance of Prior Acts by New Members. Each person becoming a Member, by becoming a Member, ratifies, affirms and confirms, and agrees to be bound by, all actions duly taken by the Company, pursuant to the terms of this Agreement, prior to the date such person becomes a Member.

12.16 Company Property. The legal title to the real or personal property or interest therein now or hereafter required by the Company shall be owned, held and operated in the name of the Company, and no Member, individually, shall have any ownership of such property.

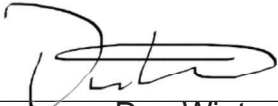
12.17 No Strict Construction. The parties to this Agreement have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[Signatures on the following page]

IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Operating Agreement in their respective capacities set forth below as of the date first set forth above.

MEMBERS:

HILL TIDE DEVELOPMENT, LLC

By: 
Name: Dan Winters
Title: Manager

SOUTH CREEK VENTURES, LLC

By: 
Name: Charles Heritage
Title: Manager

SOUTH CREEK SC, LLC

By: 
Name: Andrew Schryver
Title: Manager

MANAGER:

SOUTH CREEK VENTURES, LLC

By: 
Name: Charles Heritage
Title: Manager

EXHIBIT A

MEMBERSHIP AND CAPITALIZATION

NAME	CAPITAL CONTRIBUTION
Hill Tide Development, LLC 3414 Peachtree Road, Suite 825 Atlanta, Georgia 30326	As recorded in the books and records of the Company
South Creek Ventures, LLC 7204 West Friendly Ave, Suite C Greensboro NC 27410	As recorded in the books and records of the Company
South Creek SC, LLC 11 Shrewsbury Road Charleston SC 29407	As recorded in the books and records of the Company
TOTAL	As recorded in the books and records of the Company