



TACOMA HOUSING AUTHORITY

RESOLUTION 2013-5-22(3)

Date: May 22, 2013
To: THA Board of Commissioners
From: Michael Mirra
Executive Director
Re: New Look Purchase and Sale Agreement

Background

This resolution would authorize the executive director to negotiate and sign an agreement to purchase the Martin Luther King Housing Development Authority's (MLKHDA) 1% managing member interest in the New Look Apartments. We would do this only if we could at the same time negotiate (i) the terms to later purchase the 99% interest of the tax credit investors, the National Equity Fund (NEF) and (ii) the terms of a renegotiated loan on the building from WCRA, the permanent lender. With this purchase THA would become the managing member. The board has discussed this possibility intermittently for over a year.

The New Look Apartments is at the corner of MLK and 11th Street on the Hilltop. It is a 49-unit mixed-use senior housing tax credit project. MLKHDA is interested in selling its 1% ownership to THA. THA has already conducted much of the due diligence needed. The main remaining due diligence item we need to do is deconstructive testing to determine the extent of water damage to the envelope of the building. THA had contracted with Tatley Grund to do this work last summer. However, MLKHDA declined to give access to THA to do this work preferring instead to wait for a signed purchase and sale agreement. Attached you will find a draft purchase and sale agreement that staff has been working on with its attorney as well as with MLKHDA's representative. Staff believes this is close to final form.

Once a PSA is negotiated between THA and MLKHDA, THA will finish its due diligence work and begin to negotiate with NEF and WCRA. There are several items THA would like to change in the Operating Agreement with NEF. During early discussions, NEF seemed interested and willing to negotiate changes to the Operating Agreement. THA has also been communicating with WCRA who holds the mortgage on the property. In order to make the property more financially sustainable, THA would like to renegotiate the interest rate on the loan.

Prior to closing on this transaction, staff will bring the form of final documents to the Board for its approval.

Recommendation

Approve Resolution 2013-5-22(3) authorizing the Executive Director to (i) negotiate, and if those negotiations are successful, to execute the Purchase and Sale Agreement with the Martin Luther King Housing Development Authority to purchase the managing member interest of the New Look; (ii) negotiate a revised Operating Agreement with the National Equity Fund; and (iii) negotiate the terms of the permanent loan with the WCRA or other lender if WCRA cannot provide the terms needed to enhance the financial viability of the project.



TACOMA HOUSING AUTHORITY

RESOLUTION 2013-5-22(3) New Look Purchase and Sale Agreement

A RESOLUTION of the Board of Commissioners of the Housing Authority of the City of Tacoma

Whereas, the Housing Authority of the City of Tacoma (the "Authority") seeks to encourage the provision of long-term housing for low-income persons residing within the City of Tacoma, Washington (the "City").

Whereas, the Authority is authorized by the Housing Authorities Law (chapter 35.82 RCW) to, among other things: (i) "prepare, carry out, acquire, lease and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof" (RCW 35.82.070(2)); (ii) "lease or rent any dwellings . . . buildings, structures or facilities embraced in any housing project" (RCW 35.82.070(5)); (iii) "make and execute contracts and other instruments, including but not limited to partnership agreements" (RCW 35.82.070(1)); (iv) "delegate to one or more of its agents or employees such powers or duties as [the Authority] may deem proper" (RCW 35.82.040); and (v) "make . . . loans for the . . . acquisition, construction, reconstruction, rehabilitation, improvement, leasing, or refinancing of land, buildings, or developments for housing persons of low income."

Whereas, the phrase "housing project" is defined by RCW 35.82.020 to include, among other things, "any work or undertaking . . . to provide decent, safe and sanitary urban or rural dwellings, apartments, mobile home parks or other living accommodations for persons of low income."

Whereas, THA legal counsel has drafted a Purchase and Sale Agreement, which has been reviewed by THA staff;

Whereas, The Executive Director and the Board of Commissioners find the terms of the Purchase and Sale Agreement acceptable to THA;

Resolved by the Board of Commissioners of the Housing Authority of the City of Tacoma, Washington as follows:

1. The Executive Director has the authority to negotiate, and if those negotiations are successful, to execute a Purchase and Sale Agreement with the Martin Luther King Housing Development Authority (MLKHDA), in substantially the same form as attached.
2. The Executive Director has the authority to negotiate a revised Operating Agreement with the National Equity Fund;
3. The Executive Director has the authority to negotiate the terms of the permanent

loan with the WCRA or other lender if WCRA cannot provide the terms needed to enhance the financial viability of the project.

5. **Acting Officers Authorized.** The proper officers of the Authority are and are hereby authorized, empowered, and directed to take such further action on behalf of the Authority as they deem necessary to effectuate the foregoing sections of this resolution. Any action required by this resolution to be taken by the Executive Director of the Authority may in his absence be taken by the duly authorized acting Executive Director of the Authority.

Approved: May 22, 2013


Janis Flauning, Chair

MANAGING MEMBER INTEREST PURCHASE AND SALE AGREEMENT
(MLK New Look, LLC)

This Managing Member Interest Purchase and Sale Agreement (this "**Agreement**"), dated as of May __, 2013, (the "**Effective Date**") is made by and among Martin Luther King Housing Development Association, a Washington nonprofit corporation ("**Seller**"), Housing Authority of the City of Tacoma, a public body corporate and politic of the State of Washington, and/or its Permitted Assigns (defined below) (collectively, "**Buyer**").

In consideration of the payment of the Purchase Price (defined below) and the performance of the covenants in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Defined Terms.

The defined terms used in this Agreement shall have the meanings specified below.

"*Amendments to Operating Agreement*" means the amendments to the Operating Agreement to be negotiated by the parties prior to Close of Escrow.

"*Affiliate*" means, when used with reference to a specified Person, any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person.

"*Assignment*" means any assignment, transfer or sale, and the words "*assign*," "*assignee*" and "*assignor*" shall have correlative meanings, except in each case where the sense of this Agreement requires a different construction.

"*Assignment and Assumption of Managing Member Interests*" means the Assignment by Seller of all right, title and interests in and to the Interests, in the form attached as *Exhibit A* hereto.

"*Business Day*" means any day of the week other than a Saturday, Sunday or a legal holiday in the State.

"*Buyer's Closing Conditions*" means, collectively, the conditions set forth in Section 8(B) below.

"*Buyer's Deliverables*" means, collectively, the documents and items set forth in Section 10(D) below, and the Seller's Proceeds.

"*Capital Contribution*" means the total amount of cash contributed by each Member in the Company as shown in the Operating Agreement, including a Capital Contribution previously made by any preceding Member in respect to the Company interest of each such Member.

"Certificate" means the certificate of formation of the Company, which certificate shall be amended at Close of Escrow to reflect the admission of Buyer as the new Managing Member of the Company and the withdrawal from the Company of the applicable Managing Member.

"Close of Escrow" means the delivery by the Escrow Agent of the Seller's Deliverables to the Buyer, and the Buyer's Deliverables to the Seller, and the payment of the Seller's Proceeds to Seller, as set forth in Section 10(B) below.

"Closing Conditions" means, collectively, the Buyer's Closing Conditions and the Seller's Closing Conditions.

"Closing Date" means a date, determined by Buyer and agreed to by Seller, which is within 30 days of receipt of the Transaction Consents.

"Closing Statement" means the closing statement referenced in Section 10(A) below, consistent with the terms of this Agreement and in a form mutually agreeable to Buyer and Seller, with a schedule thereto itemizing, as the case may be, any income and expenses for the Company allocated to or paid by Seller between the Effective Date and the Closing Date.

"Company" means MLK New Look, LLC, a Washington limited liability company.

"Credit Agency" means the Washington State Housing Finance Commission.

"Developer Services Agreement" means that certain Developer Services Agreement dated as of June 20, 2000, among the Company and the Seller, as amended to date.

"Deferred Developer Fee" means the fee and reimbursement amount described in, and subject to, the Developer Services Agreement.

"Deposit" means the amount set forth in Section 4 below, and accrued interest thereon.

"Effective Date" means the date of this Agreement.

"Escrow Agent" means [Chicago Title Insurance Company], whose address is [4717 South 19th Street, Tacoma, Washington 98405].

"Extended Use Agreement" means the agreement entered into between the Credit Agency and the Company respecting long-term use restrictions and satisfying all of the requirements of Section 42(h)(6) of the Internal Revenue Code.

"Feasibility Period" means the period commencing on the date that Buyer receives (i) a fully executed copy of this Agreement, (ii) Seller's Due Diligence Materials, and (iii) the Transaction Consents, and terminating at 5:00 p.m. Pacific Time on the 90th day thereafter.

"Fiscal Year" means, with respect to the Company or other entity described herein, the yearly accounting period for such entity.

"Governmental Agency" means, as applicable, the Credit Agency and any other governmental agencies, instrumentalities, bodies, boards, departments and officers and individuals acting in any official capacity on behalf thereof having jurisdiction over the Company or the Project.

"Interests" means, collectively, 100% of the interests of the Managing Member and any Affiliates thereof in and to all distributions, capital, profits and losses, tax credits, Company funds and accounts, and otherwise in and to the Company, including but not limited to all allocations and distributions, all management, voting and other rights under the organizational and operational agreements, and all rights to any receivables and accrued fees which are not paid at closing or pursuant to prorations under Section 11(B) hereof, including but not limited to receivables and accrued fees payable to the Managing Member and its Affiliates pursuant to the Developer Services Agreement (*i.e.* the Deferred Developer Fee), real property service agreements, company service agreements, property or asset management service agreements, real estate brokerage agreements, member loans, credit adjustment notes, and any other such receivables. Such interest shall include any rights of the Managing Member or any Affiliate in any successor entity formed pursuant to the Operating Agreement.

"Laws" means all codes, statutes, case law, rules, regulations, pronouncements, requirements, orders, directives, decisions, decrees, judgments and formal or informal guidance or interpretations of any court or Governmental Agency.

"Lender" means the lender for any Mortgage Loan encumbering the Project.

"Investor Member" means any or all of those Persons designated as a Investor Member in the Operating Agreement, in each such Person's capacity as a Investor Member of the Company.

"Investor Member Estoppels" means the estoppels to be negotiated by the parties to this Agreement that shall be executed by each Investor Member of the Company in favor of the Buyer.

"Management Agent" means the Housing Authority of the City of Tacoma, the property management company to be engaged by the Company for the Project as the management agent at Close of Escrow.

"Management Agreement" means, with respect to the Project, the management contract by and between the Company and the Management Agent executed as of the Closing Date.

"Managing Member" means Martin Luther King Housing Development Association, a Washington nonprofit corporation.

"Material Adverse Change" means a change directly or indirectly caused by an act or omission of Seller following the Effective Date which has materially diminished the economic value of the Interests.

"Mortgage Loan" means any permanent loan or any construction loan encumbering the Project.

"Mortgage Loan Documents" means, with respect to the Project, the promissory note from the Company to a Lender and related documents, as the same may have been amended, evidencing a Mortgage Loan, which Mortgage Loan Documents are listed in **Exhibit B** attached hereto.

"Net Cash Flow" has the meaning ascribed to such phrase in the existing Operating Agreement.

"Operating Expenses" means all the costs and expenses of any type incurred incidental to the ownership and operation of the Project, including, without limitation, taxes, capital improvements reasonably deemed necessary by the Managing Member and not funded out of any reserves for such, and the cost of operations, debt service, maintenance and repairs, and the funding of any reserves required to be maintained by any Lender or Governmental Agency or pursuant to the Operating Agreement, but shall not include, to the extent applicable, distributions to Members pursuant to the Operating Agreement.

"Owner's Title Policy" means the existing owner's title insurance policy issued by _____ (Policy No. _____) in favor of the Company for the Project.

"Member" means any Managing Member or any Investor Member.

"Member Consents" means the advance written consent of all Members (including, without implied limitation, all Investor Members) who have the right to approve or disapprove the Transaction, or any aspect thereof.

"Operating Agreement" means, that certain "First Amended and Restated Operating Agreement of MLK New Look Limited Liability Company," as amended to date. A list of the documents comprising the Operating Agreement and the Certificate are set forth in **Exhibit C** attached hereto.

"Permitted Assign(s)" means any general partnership, limited partnership, limited liability company, corporation, joint venture, and the successors and assigns of such Person, as may be applicable, to which Buyer assigns its interest in this Agreement on or before Closing pursuant to the provisions of Section 15(I) below.

"Person(s)" means any individual or any general partnership, limited partnership, limited liability company or partnership, corporation, joint venture, trust, business trust, cooperative or association, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person as may be applicable.

"Pro Forma Statements" means the *pro forma* financial statements for the Company, which Pro Forma Statements show all of the Company's assets and liabilities, income and expenses (or projections thereof) for the past twelve months and which Pro Forma Statements are updated and delivered to Buyer pursuant to Section 6 hereof.

"Project" means the 49-unit multi-family apartment complex located at 1102 South 11th Street in Tacoma, Washington, and the associated commercial parking lot, at 1109 South 11th Street in Tacoma, Washington (parcel # 2010230050), variously known as MLK New Look

Senior Housing, the Alberta Canada Building, and New Look Apartments, which has been developed, owned and operated as a project intended to generate low-income housing tax credits under Section 42 of the Internal Revenue Code, as amended. The legal description of the land upon which the Project is located shall be as set forth in the Owner's Title Policy.

"Project Documents" means, collectively, the Operating Agreement, the Mortgage Loan Documents, the Extended Use Agreement, any Regulatory Agreement, the Management Agreement and all other documents relating to the Company or the Project which are required by, or have been executed in connection with, any of the foregoing documents

"Purchase Price" means the price set forth in Section 3 below.

"Regulatory Agreement" means any regulatory agreements, affordability restrictions, restrictive covenants or other similar documents entered into between or by the Company and/or for the benefit of any Lender or Governmental Agency with respect to the Project, as amended from time to time.

"Seller's Closing Conditions" means the conditions set forth in Section 8(A) below.

"Seller's Deliverables" means, collectively, the documents and items referenced in Section 10(E) below.

"Seller's Due Diligence Materials" means, collectively, all material delivered to Buyer under Section 6(A) below.

"Seller's Proceeds" means the amount of cash equal to the Purchase Price minus the (i) Deposit and (ii) Additional Deposit, subject to applicable prorations, credits and other adjustments in escrow in accordance with this Agreement.

"State" means the State of Washington.

"Transaction" means the transfer of the Interests contemplated by this Agreement.

"Transaction Consents" means the advance written consent of all Persons (including, without implied limitation, all Investor Members, all Lenders, Governmental Agencies and the Credit Agency) who have the right to approve or disapprove the Transaction, or any aspect thereof.

2. Agreement to Sell and Purchase the Interests.

Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Interests, subject to the terms and conditions in this Agreement.

3. Purchase Price.

The purchase price to be paid by Buyer for the Interests is _____ Hundred Thousand and No/100 Dollars (\$_____).

4. Deposit.

(A) Delivery. No later than the third business day following Buyer's receipt of a fully executed copy of this Agreement, Buyer shall deliver to Escrow Agent the sum of Five Thousand and No/100 Dollars (\$5,000) which Deposit shall be security for the performance of Buyer's obligations under this Agreement. Upon expiration of the Feasibility Period, Buyer shall deposit an additional sum of Five Thousand and No/100 Dollars (\$5,000) with Escrow Agent ("**Additional Deposit**"). The Deposit and the Additional Deposit and all other money to be delivered by Buyer under this Agreement shall be delivered by wire transfer. At Closing, the Deposit and Additional Deposit shall be applied to the Purchase Price.

(B) Interest. The Deposit and Additional Deposit and all other funds received from or for the account of Buyer under this Agreement shall be deposited by the Escrow Agent in an interest-bearing account with a federally insured state or national bank. All interest accrued on the Deposit and the Additional Deposit shall become part of same, and shall be reported to the Internal Revenue Service and to any state taxing authority (if applicable), as income of the party ultimately entitled to the Deposit and/or Additional Deposit. Seller and Buyer, as appropriate, shall promptly execute all forms reasonably required by the other party to effectuate the intent of this Section 4(B), including Form W-9 published by the Internal Revenue Service.

(C) Refundability. Upon the expiration of the Feasibility Period, the Deposit and the Additional Deposit shall be non-refundable to Buyer, except in the event this Agreement terminates as a result of a failure of any of Buyer's conditions to the Close of Escrow as set forth in Section 8(B), in which case the Deposit and Additional Deposit shall be refunded to Buyer in full.

5. Representations and Warranties.

(A) Seller's Representations and Warranties. Seller represents and warrants to Buyer that, as of the Effective Date and as of the Closing Date:

(1) The Company is a limited liability company duly formed and validly existing under the laws of the State, is qualified to do business in the State, and is fully authorized to own and operate the Project in the manner in which the Project is currently operated. The Managing Member is a nonprofit corporation duly organized and validly existing under the laws of the State, and is qualified to do business in the State.

(2) Seller has (a) the power to enter into this Agreement, to perform its obligations under this Agreement and to complete the Transaction as contemplated by this Agreement, (b) exclusive, good and marketable title to the Interests, and (c) taken all action necessary (including obtaining any requisite consents of its investors) to authorize the execution and delivery of this Agreement, and, subject to the terms and conditions of this Agreement, the performance by each of its obligations under this Agreement and the completion of the Transaction as contemplated by this Agreement.

(3) The Company has exclusive, good and marketable title to the Project, subject only to the exceptions and encumbrances described in the Owner's Title Policy.

(4) To Seller's knowledge, there are no conditions related to the Project (including without limitation any physical condition), the Company, or the Interests that have not already been disclosed to Buyer that could materially and adversely affect Buyer's rights and obligations under the Project Documents or the Company's use of the Project as a multifamily, residential low-income housing tax credit community under Section 42 of the Internal Revenue Code.

(5) Other than as provided for in the Operating Agreement, there are no liens, charges, security interests or encumbrances of any nature whatsoever affecting any portion of the Interests.

(6) The execution and delivery of this Agreement by Seller and the performance by Seller of its obligations under this Agreement and (provided that the Transaction Consents contemplated by this Agreement are obtained) the completion of the Transaction as contemplated by this Agreement will not result in: (a) a breach of, or a default under, any contract or instrument to which Seller is party or by which Seller or the Interests is bound, or (b) a violation of any Law of any Governmental Agency applicable to Seller or any judgment, order or decree of any court or Governmental Agency that is binding on Seller.

(7) Other than as outlined in *Exhibit D*, there is no action, suit, proceeding, inquiry or investigation pending or, to the best of Seller's knowledge, threatened by or before any court or Governmental Agency (a) against the Interests, Company, any Member, or the Project, or (b) that would prevent the performance by Seller of its obligations under this Agreement or the completion of the Transaction as contemplated by this Agreement. Seller shall provide a written indemnification for the benefit of Buyer for all matters listed in *Exhibit D* in a form acceptable to the parties hereto.

(8) To Seller's knowledge, there is no existing violation of federal state or local law related to the Project, including but not limited to zoning laws, health and safety codes and violations of the Americans with Disabilities Act (ADA) or other accessibility requirements.

(9) To Seller's knowledge, the Project does not contain Hazardous Materials. The Company has not used the Project (or allowed the Project to be used) in any manner for the storage, discharge, deposit or dumping of, Hazardous Materials, whether in the soil, ground water or otherwise (and no Hazardous Materials from any such activities have migrated from the Project to other properties), except for *de minimis* amounts of what otherwise could constitute Hazardous Materials to the extent that the same are or have been used in the ordinary course of business and in compliance with applicable laws. "**Hazardous Materials**" is defined as (a) oil, flammable substances, explosives, radioactive

materials, radon, hazardous wastes or substances, toxic wastes or substances or any other materials or pollutants that pose a hazard to the Project or to persons on or about the Project or cause the Project to be in violation of any local, state or federal law or regulation, or are defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including, but not limited to, (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*; (2) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1801, *et seq.*; (3) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*; and in the regulations adopted and publications promulgated pursuant to said laws; (b) asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls; (c) mold, or excessive moisture; (d) radon; and (e) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or that may or could pose a hazard to the health and safety of the occupants of the Project or the owners and/or occupants of properties adjacent to or surrounding the Project." To Seller's knowledge, the Project does not presently contain underground tanks of any kind and there are no surface or subsurface conditions on the properties or underlying the Project that constitute, or with the passage of time may constitute, a public or private nuisance.

(10) In connection with the sale of the Interests, Seller has not retained, dealt with or incurred any obligation to any broker other than to Johnson Commercial Real Estate.

(11) The Project is in compliance under Section 42 of the Internal Revenue Code, the Regulatory Agreements and the Extended Use Agreement, and there are no material compliance issues outstanding and no event has occurred or condition exists that with the giving of notice or passage of time would constitute a default under same. The Company has timely filed with Governmental Agencies (including the Credit Agency) all compliance reports and certifications and there are no unresolved compliance audit matters for the Project.

(12) As of Closing, there will be no members of the Company other than the Investor Member and Buyer, as Managing Member. No Member (nor any other Person) has any rights of first offer or rights of first refusal to acquire or finance the Project, Interests, or Company. In addition, there are no loans from the Company to any Member and no loans from a Member to the Company, except as otherwise specifically disclosed to Buyer in writing. All Capital Contributions have been made by the Members in the Company, there are no outstanding deferred development costs (other than the unpaid Deferred Developer Fee specified in Section 5(A)(21)), and no tax credit adjustment amounts are due to any Person under the Project Documents. There are no claims

by Members against the Company for any amounts due including any outstanding or accrued asset or company management fees (or similar fees) to any Member.

(13) **Exhibit B** is a true, complete and correct list of all loan documents (including the Mortgage Loan Documents and all amendments thereto) entered into by the Company and true, complete and correct copies of such loan documents have previously been delivered to Buyer. There has been no alleged default by the Company under any such loan documents. All operating reserve and replacement reserve accounts for the Project are fully funded in accordance with all applicable loan documents and all tenant security deposit liability is fully funded for the Project.

(14) A true, complete and correct list of all insurance policies under which the Project is insured has been delivered to Buyer. All such insurance policies are in full force and effect, and the Seller has received no notice that such insurance will be cancelled, will not be renewed, or coverages limited. The said insurance is in full compliance with the insurance requirements of the existing loans.

(15) All federal, state and local tax returns required to be filed by or with respect to the Company have been filed on a timely basis with the appropriate Governmental Agencies; all due and payable federal, state and local taxes of all kinds, including without limitation property, excise, withholding and other taxes and any interest or penalties thereon have been paid; and there are no levies, liens or other encumbrances (nor any planned public improvements that would result in the imposition of same) listed, or to the Seller's best knowledge, threatened, with respect to any asset of the Company relating to any taxes described herein above.

(16) The Company has no material assets other than the Project and cash in the Company accounts. True, correct, and complete financial information for the Company, subject to any qualifications set forth in such information, including a list of all Company bank accounts, has been delivered to Buyer. The Company has engaged in no business other than the operation of the Project. Except for the payables of the Company and Project indicated on **Exhibit E** hereto, all payables of the Company and Project are not more than 30 days old. At Closing, the Seller shall cause the Company to bring substantially all payables within thirty (30) days, but in any event, the dollar amount of any and all payables more than thirty (30) days old shall not exceed Five Thousand and No/100 Dollars (\$5,000) at Closing. Any and all prorations of Net Cash Flow between the Buyer and the Seller shall be calculated pursuant to Section 11(B) hereof.

(17) The Company does not have, and has never had, any employees.

(18) Neither the Company nor the Managing Member has (a) made a general assignment for the benefit of creditors, (b) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by creditors, (c)

suffered the appointment of a receiver to take possession of all, or substantially all, of its assets, (d) suffered the attachment or other judicial seizure of all, or substantially all, of its assets, (e) admitted in writing an inability to pay debts as they come due or (f) made an offer of settlement, extension or composition to creditors generally under applicable loan documents.

(19) True, complete and correct copies of the Operating Agreement and all amendments thereto governing the Company and true, complete and correct copies of the Certificate have previously been delivered to Buyer and each of such documents is described in *Exhibit C* hereto. There are no defaults or alleged defaults by the Company or any of the Members under any such documents.

(20) A true, complete and correct copy of the Developer Services Agreement, and all amendments thereto have been provided to Buyer and there are no defaults or alleged defaults by any of the parties (or their assigns) to such Developer Services Agreement. As of the Effective Date, the outstanding Deferred Developer Fee is \$ _____. Seller shall assign all of its rights to receive the Deferred Developer Fee to the Buyer (or its designee) on the Closing Date (and before Buyer is admitted as a Member). From and after Closing, no party other than the Buyer shall have any right in or claim to amounts due, if any, under the Developer Services Agreement.

(21) Neither the Company, the Managing Member nor, to Seller's knowledge, the Investor Member, has provided any Person with an option or a right of first refusal to purchase the Project or such Member's interests in the Company.

(B) Buyer's Representations and Warranties. Buyer represents and warrants to Seller that, as of the Effective Date and as of the Closing Date:

(1) Buyer is a duly organized and validly existing a public body corporate and politic of the State; provided, if Buyer assigns this Agreement to Tacoma Housing Development Group ("**THDG**") pursuant to Section 15(I), then Buyer will be a duly incorporated and validly existing Washington nonprofit corporation as of Closing.

(2) Buyer has the corporate power to enter into this Agreement, to perform the obligations under this Agreement and to complete the Transaction as contemplated by this Agreement. Buyer has taken all corporate action necessary to authorize the execution and delivery of this Agreement, and, subject to the terms and conditions of this Agreement, the performance by Buyer of its obligations under this Agreement and the completion of the Transaction as contemplated by this Agreement.

(3) The execution and delivery of this Agreement by Buyer and the performance by Buyer of its obligations under this Agreement and the completion of the Transaction as contemplated by this Agreement will not result in (a) a

breach of, or a default under, any contract, agreement, commitment or other document or instrument to which Buyer is party or by which Buyer is bound, or (b) a violation of any Law of any Governmental Agency applicable to Buyer or any judgment, order or decree of any court or Governmental Agency that is binding on Buyer.

(4) There is no action, suit, proceeding, inquiry or investigation (including any bankruptcy or other debtor relief proceeding), pending or threatened against Buyer by or before any court or Governmental Agency that would prevent or hinder the performance by Buyer of its obligations under this Agreement or the completion of the Transaction as contemplated by this Agreement.

(5) In connection with the sale of the Interests, Buyer has not retained or incurred any obligation to any broker, and has not dealt with any broker.

(6) Buyer shall from and after the Closing Date, cause the Company to maintain the Project as affordable and keep the Project in compliance under the Regulatory Agreements and the Extended Use Agreement so as not to cause any tax penalties and costs of a tax credit recapture.

(C) Disclaimer of Warranties. Except for the representations and warranties in this Agreement and any other documents and instruments entered into pursuant to this Agreement, Seller disclaims all warranties or representations of any kind or character, express, implied, statutory or otherwise (including warranties or merchantability and warranties of fitness for use or acceptability for the purpose intended by Buyer) with respect to the Interests. Buyer acknowledges that, except for the representations and warranties made by Seller in this Agreement and any other documents and instruments entered into pursuant to this Agreement, Buyer has not relied upon and will not rely upon, either directly or indirectly, any statement of Seller or any of its Affiliates or any officer, director, trustee, agent, employee or other person acting or purporting to act on behalf of Seller or any of its Affiliates. Buyer acknowledges that it has conducted or will conduct such investigations as to the Interests and all matters bearing upon the Interests as it deems necessary to protect such person's interests. Except for the representations and warranties in this Agreement and any other documents and instruments entered into pursuant to this Agreement, Buyer is acquiring the Interests "as is" and "where is" and with all faults, defects or other adverse matters. Buyer acknowledges and agrees that the disclaimers and waivers set forth in this Section 5(C) are an integral part of this Agreement and that Seller would not have agreed to complete the transaction on the terms provided in this Agreement without the disclaimers and waivers set forth in this Section 5(C).

(D) Seller's Limited Indemnity for Tax Credit Compliance Prior to Closing. Seller hereby agrees to indemnify, defend and hold Buyer, and Buyer's owners, members and constituent entities harmless from and against all claims, losses, damages, liabilities, or expenses, including attorneys' fees and costs ("Liabilities") arising from conditions existing at the Project or with respect to the Company prior to the Closing Date including but not limited to: (i) the failure of the Managing Member or the Company to comply with the tax credit compliance requirements pursuant to Section 42 of the Internal Revenue Code applicable to the

Project; and/or (ii) a claim of or action by any prior Managing Member of the Company, against the Company and/or Buyer; and/or (iii) the failure of the Managing Member or the Company to comply with the Project Documents. Liabilities shall include, without limitation, the loss of any tax credits or the recapture thereof, interest, penalties and income tax payable as a result thereof (and all other amounts due tax credit investor under the Operating Agreement), and reasonable accountant and legal fees and other reasonable costs actually incurred contesting or challenging the tax credits or enforcing in good faith the provisions of this Section 5(D) and any claims in connection with the Buyer becoming the replacement Managing Member. The indemnification by Seller set forth in this Section 5(D) shall not be subject to the twenty-four (24) month survival period set forth in Section 5(E) below, but shall instead continue for so long as Buyer holds an interest in the Company. No contest of any claims shall be made or costs incurred prior to notice being given to Seller and Seller having been given a reasonable opportunity to resolve or cure any alleged claims. The provisions of this Section 5(D) shall survive the Close of Escrow. Seller agrees to provide the financial statements of Seller to Buyer.

(E) Survival of Seller's Representations and Warranties and Indemnities. Subject to the limitations set forth in this Section 5(E) and in Section 5(D), Seller hereby agrees to defend, protect, indemnify, and hold Buyer harmless from any and all Liabilities Buyer may suffer as a result of any breach of or any inaccuracy of the representations and warranties set forth in Section 5(A), beyond any applicable notice and cure period in Section 12(A). Notwithstanding the foregoing, Seller's representations and warranties set forth in Section 5(A) shall expire twenty-four (24) months from the Closing Date.

(F) Buyer's Indemnity for Tax Credit Compliance After Closing. Buyer hereby agrees to indemnify, defend and hold Seller and Seller's owners, members and constituent entities harmless from and against all Liabilities first arising, and conditions first existing, at the Project after the Closing Date, including but not limited to: (i) the failure of the Company to comply with the tax credit compliance requirements pursuant to Section 42 of the Internal Revenue Code applicable to the Project; and/or (ii) the failure of the Buyer or the Company to comply with the Regulatory Agreements and the Extended Use Agreement, from and after the Closing Date (but only to the extent such noncompliance did not commence prior to the Closing Date). Liabilities shall include, without limitation, the loss of any tax credits or the recapture thereof, interest, penalties and income tax payable as a result thereof (and all other amounts due the Investor Member under the Operating Agreement), and reasonable accountant and legal fees and other reasonable costs actually incurred contesting or challenging the tax credits or enforcing in good faith the provisions of this Section 5(F). The provisions of this Section 5(F) shall survive the Close of Escrow. Buyer agrees to provide its financial statements to Seller within three (3) days of the Effective Date.

(G) Limitation on Buyer and Seller Indemnities. Notwithstanding anything to the contrary set forth herein, no party shall be required to indemnify for any Liabilities to the extent caused by the negligence, intentional misconduct, or breach by the party seeking indemnification.

6. Feasibility.

(A) Due Diligence Materials. Seller shall deliver to Buyer (or shall make available to Buyer at the Project site where indicated below) within five (5) days of execution of this Agreement true and complete copies of the following due diligence materials:

- (1) the Project Documents;
- (2) the Developer Services Agreement;
- (3) any applicable option and/or right of first refusal agreements;
- (4) the latest rent roll for the Project (which rent roll shall be updated monthly by the twentieth (20th) day of each month throughout the term of this Agreement;
- (5) the audited financial statements (past three years) and Pro Forma Statements for the Project (which Pro Forma Statements shall be updated monthly and delivered by the twentieth (20th) day of each month throughout the term of this Agreement;
- (6) the current tax returns of the Company (past three years);
- (7) the Owner's Title Policy for the Project and copies of all exception documents referenced therein and a copy of the existing survey for the Project;
- (8) the tenant files, tenant leases and commercial leases (make available to Buyer at the Project site), including all of the tenant files from the initial lease-up of the Project's units;
- (9) the most recent capital expenditure reports for the Project;
- (10) the existing service contracts, equipment leases and unexpired warranties for the Project;
- (11) all annual program reports and audits from for the Credit Agency (including the annual certifications required by Section 6.6 of the Extended Use Agreement), together with follow-up correspondence and close-out letters, as well as all IRS 8823 forms issued to the Company and corresponding follow-up letters;
- (12) tax credit applications and reservations documents (including carryover allocation documentation, where applicable);
- (13) all IRS Forms 8609 (and any amendments thereto) for the Project, together with evidence of the amount of "Actual Credits" (as defined in the existing Operating Agreement);

(14) certificates of occupancy, business licenses and permits, O&M plans and building plans and specifications (make available to Buyer at the Project site);

(15) copies of existing property and liability insurance policies and three (3) year loss runs;

(16) environmental, asbestos, soil, physical and engineering reports and appraisals; and

(17) utility bills (gas, electric, water and sewer) and tax bills and assessment notices (including evidence of any tax abatement/exemptions) for the past year, as well as current year-to-date.

To the extent there are any material changes to the information contained in due diligence materials previously delivered to Buyer or to the extent that, during the ninety (90) day Feasibility Period, Buyer determines that the due diligence materials received from Seller are incomplete, Seller shall within three (3) days deliver any such new, updated or supplementary due diligence materials to Buyer and the Feasibility Period shall be extended by fifteen (15) calendar days, but in no event beyond the one hundred-fifth (105th) day following the commencement of the Feasibility Period. At any time prior to the Close of Escrow, Seller shall promptly deliver to Buyer, any additional due diligence materials related to the Interests which are obtained or received by Seller.

(B) Feasibility Period Investigations/Approvals

(1) Seller shall have thirty (30) days from the Effective Date to obtain the approval of all Investor Members ("**Investor Approval Period**") of the Company to: (i) this Agreement and the transactions contemplated hereby, (ii) the Amendments to the Operating Agreement, (iii) the Investor Member Estoppels, and (iv) the release of Seller and Seller Affiliates from all liabilities associated with the Company and the Project from the Closing Date forward. Seller shall use commercially reasonable efforts to obtain the approval of the Investor Member within the Investor Approval Period. In the event Seller fails to obtain the approval of same within the Investor Approval Period, either party may terminate this Agreement and the full amount of the Deposit (and the Additional Deposit if applicable) shall be refunded to Buyer in full. Seller and Buyer hereby agree that the Investor Approval Period may be extended by Seller and Buyer agreeing on a number of days for extension thereof. The parties hereby agree that the consent of the Investor Member shall be obtained prior to the application to any Lenders of the Project for their consent to the Transaction.

(2) Buyer shall have until the expiration of the Feasibility Period to investigate the Interests and review any third party reports or deliverables in connection therewith and determine if it wishes to proceed with the Transaction.

(3) Buyer and its representatives and consultants may visit the Project upon reasonable advance notice to Seller (which shall be no less than 48 hours) to

make such inspections, and conduct such testing, regarding the Project as Buyer reasonably deems necessary or desirable. Seller may be present at such inspections if Seller so desires, but Seller's availability shall not delay Buyer's scheduling of such inspections. All Buyer inspections shall be done in a manner to avoid interference with the tenants of the Project as much as possible. Buyer shall indemnify, defend and hold harmless Seller against any claim arising out of activities conducted at the Project by Buyer and its representatives, consultants and contractors and related damage, liability, obligation, claim, suit, cause of action, judgment, settlement, penalty, fine or cost or expense (including reasonable fees and disbursements of attorneys and other professionals and court costs); provided, however, that Buyer shall not be liable for the mere discovery of pre-existing conditions at the Project. If the results of any of Buyer's investigations trigger a reporting requirement to a Governmental Agency pursuant to applicable law, then prior to any such reporting, Buyer shall give advance notice to Seller and Seller shall determine, in its sole discretion, whether to send any information to the Credit Agency. Buyer shall not send any information regarding the Project to the Credit Agency. The provisions of this Section 6(B)(3) shall survive the termination of this Agreement, or the Close of Escrow, as applicable. This provision shall not affect the obligation of Seller to provide written permission to the Credit Agency permitting the Credit Agency to disclose to Buyer any and all matters related to compliance under Section 42 on the Project and Buyer's correspondence with the Credit Agency regarding same.

(4) Buyer may terminate its obligation to complete the Transaction at any time during the Feasibility Period if Buyer, in its sole discretion, is not satisfied with the Interests, the Company or the Project or any matter relating to the Interests, the Company or the Project. Buyer may exercise its right under this Section 6(B)(4) to terminate the Transaction at any time during the Feasibility Period by delivering written notice to Seller and Escrow Agent, in which event the Deposit and the Additional Deposit shall be refunded in full to Buyer (provided that Buyer has delivered the Deposit and Additional Deposit to Escrow Agent). If Buyer elects to complete the Transaction, Buyer shall deliver notice to Seller on or before the expiration date of the Feasibility Period making such election, and the Deposit and Additional Deposit shall thereupon become nonrefundable as provided in Section 4 above, subject only to the terms and conditions set forth in Section 4(C) above. If Buyer does not deliver notice to Seller on or before the expiration date of the Feasibility Period electing to complete the Transaction, Buyer shall be deemed to have elected to terminate the Transaction, in which event the Deposit and the Additional Deposit shall be refunded in full to Buyer (provided that Buyer has delivered the Deposit and Additional Deposit to Escrow Agent).

(5) Buyer agrees to provide all information reasonably requested by Lenders, the Investor Member and the Credit Agency in order for such entities to analyze and review the proposed transfer of Interests, to the extent such information is within Buyer's possession.

7. Transaction Consents.

Seller shall be responsible for obtaining the Transaction Consents. Each party shall timely copy the other party on all written communiqués and correspondence to or from that party related to the Transaction Consents (other than communiqués and correspondence solely between a party and that party's attorneys and consultants), keeping the other party apprised of the status of the Transaction Consents, including any issues as they arise and shall provide a copy of the final Transaction Consents to the other party upon request for same. Buyer agrees to cooperate with Lenders' requests to provide certain non-recourse carve-outs and indemnifications to Lenders that are presently being provided by Seller, so long as such carve-outs and indemnities are reasonable and are limited to events occurring and conditions arising from and after Closing. If applicable, upon obtaining the last Transaction Consent, Seller shall promptly notify Buyer in writing of Seller's receipt of all of the Transaction Consents, time being of the essence. It is the parties' intent that all Transaction Consents shall be obtained within thirty (30) days after the Effective Date.

8. Conditions to Close of Escrow.

(A) Seller's Conditions to Close of Escrow. Seller's obligation to close the Transaction shall be contingent upon the satisfaction of all of the following conditions for its benefit on or before the Closing Date:

(1) There having been no Material Adverse Change with respect to the Buyer between the Effective Date and the Closing Date; and,

(2) Buyer is not in material default hereunder beyond any applicable notice and cure period pursuant to Section 12(A) below and has performed all of its covenants in this Agreement required to be performed by Buyer on or before the Closing Date; and,

(3) Seller and each of its Affiliates shall have been released by all Lenders and Investor Member from all liability arising from and after the Closing under any guaranties, indemnities or similar agreements relating to the Project.

(B) Buyer's Conditions to Close of Escrow. The Buyer's obligation to close the Transaction shall be contingent upon the satisfaction of all of the following conditions for its benefit on or before the Closing Date:

(1) Buyer shall be satisfied, in its sole and absolute discretion, with the results of its inspections during the Feasibility Period and shall have elected to complete the Transaction pursuant to Section 6(B)(4) above;

(2) There having been no Material Adverse Change with respect to the Project, the Company, the Interests or the Seller between the Effective Date and the Closing Date, including, without limitation, any material change to the finances of the Company from such finances as set forth under the Pro Forma Statements or Seller's financial statements provided to Buyer;

(3) Seller is not in material default hereunder beyond any applicable notice and cure period pursuant to Section 12(A) below and has performed all of its covenants in this Agreement required to be performed by Seller on or before the Closing Date;

(4) The Seller shall have obtained final and fully executed Transaction Consents, subject to the provisions of Section 7 above;

(5) There is no Material Adverse Change to the condition of title of the Project from that which is shown in the Owner's Title Policy and the Title Endorsements (defined below); and

(6) The representations and warranties provided by Seller in Section 5 hereof are true and correct in all material respects.

(C) Waiver of Non-Satisfaction of Condition. Either Buyer or Seller may waive in writing the non-satisfaction of a condition which benefits it, or may terminate this Agreement on account thereof.

9. Title.

(A) Title Endorsements. Buyer shall request within five (5) business days of execution of this Agreement, proforma (1) title update (*i.e.*, "date down"), (2) non-imputation, and (3) "fairways" title endorsements to the Owner's Title Policy for the Project and underlying exception documentation therefor (collectively, the "Title Endorsements"), to be delivered as soon as reasonably possible following Buyer's request. Seller agrees to execute such affidavits as are required by the title company which issued the Owner's Title Policy in the standard form given to title companies to issue the Title Endorsements (or shall execute such affidavits for the benefit of Buyer in lieu thereof, if such title endorsement is unavailable in the State).

(B) Title Review Period. Within fifteen (15) business days after receipt of the Owner's Title Policy and proforma Title Endorsements for the Project, Buyer shall deliver a Notice to Seller ("Buyer's Title Notice") of those title exceptions which are not approved by Buyer ("Unpermitted Exceptions").

(C) Title Remedy Period. Seller shall have fifteen (15) business days after receipt of Buyer's Title Notice to either (i) have the Unpermitted Exceptions removed from the Title Endorsements or (ii) obtain a commitment from the title insurer to "insure over" the Unpermitted Exceptions or (iii) commit to "bond over" the Unpermitted Exceptions. If Seller is unable or unwilling to remove the Unpermitted Exceptions, then Seller shall so notify Buyer ("Seller's Title Notice").

(D) Buyer's Right to Terminate. Upon receipt of a Seller's Title Notice, Buyer can either waive the Unpermitted Exceptions, and all such approved and/or waived exceptions shall become "Permitted Exceptions" and proceed to Closing or, upon written notice to Seller within fifteen (15) business days after receipt of Seller's Title Notice, terminate this Agreement. In the event that Buyer terminates this Agreement, the Deposit (and Additional

Deposit if applicable) plus all interest accrued thereon shall be returned to the Buyer and except as specifically provided for elsewhere in this Agreement, neither party shall have any further obligation or liability hereunder.

(E) Cost of Endorsements. On the Closing Date, the Title Endorsements shall be issued to Buyer, the cost of which shall be paid by Buyer.

10. Close of Escrow.

(A) Closing Date. Subject to the notice and cure provisions in Section 12(A) below and the extension provisions in Section 7 and Section 8(B) above, the Close of Escrow will take place by five o'clock (5 p.m.) Pacific Time on the Closing Date at a place designated in writing by Buyer and Seller, or in lieu of an in-person meeting, pursuant to written escrow closing instructions consistent with this Agreement, customarily used in similar transactions, and mutually agreeable to Seller, Buyer and the Escrow Agent and signed by them or their respective counsel in advance of the Closing Date.

(B) Close of Escrow. Subject to the provisions of Section 7 and Section 8(B) above, Escrow Agent will close the escrow on the Closing Date if all of the Closing Conditions have been satisfied (or any unsatisfied Closing Condition has been waived in writing by the party who is the direct beneficiary of the waived condition pursuant to the terms and conditions of Section 8(C) above), including, without implied limitation, the delivery to the Escrow Agent of, respectively, the Buyer's Deliverables and the Seller's Deliverables, by (a) delivering to the State of Washington Secretary of State for filing the Certificate (or to a company located in the State charged with the responsibility to file immediately upon notice that Close of Escrow has occurred); (b) delivering, as applicable, two (2) counterparts of the Seller's Deliverables to Buyer and of the Buyer's Deliverables to Seller; (c) delivering the Deposit and Additional Deposit held by Escrow Agent and the Seller's Proceeds to Seller; and (d) taking such further actions pursuant to this Agreement as may be required by the written escrow closing instructions.

(C) Delivery of Balance of Purchase Price. Prior to the Closing Date, Buyer shall deposit the Seller's Proceeds into escrow, and notify Seller of such deposit. At the Close of Escrow, Escrow Agent shall deliver Seller's Proceeds, the Deposit and the Additional Deposit to Seller.

(D) Delivery of Buyer's Deliverables. Prior to Close of Escrow, Buyer shall deposit with the Escrow Agent the following items, duly executed and acknowledged in five (5) counterparts, as applicable:

(1) such documents as Escrow Agent may reasonably require to establish the authority of Buyer to complete the Transaction;

(2) the Assignment and Assumption of Managing Member Interests in the Company in the form attached hereto as *Exhibit A*;

(3) an amendment to the Certificate in a form agreeable to both parties;

(4) a certificate reaffirming the representations and warranties set forth in Section 5(B) and the indemnification set forth in Section 5(F) above without material change; and

(5) the Closing Statement.

(E) Delivery of Seller's Deliverables. Prior to Close of Escrow, Seller shall deposit with Escrow Agent the following items, duly executed and acknowledged, in five (5) counterparts, as applicable:

(1) such documents as Escrow Agent may reasonably require to establish the authority of Seller to complete the Transaction;

(2) the Assignment and Assumption of Managing Member Interests for the Company in the form attached hereto as *Exhibit A*;

(3) an amendment to the Certificate in a form agreeable to both parties;

(4) a certificate as to the accuracy and completeness of the current rent roll and Pro Forma Statements for the Project as of the Closing Date;

(5) a certificate reaffirming the representations and warranties set forth in Section 5(A) and the indemnification set forth in Sections 5(D) and 5(E) above without material change;

(6) written approval by all Investor Members to the Transaction and executed Investor Member Estoppels and Amendments to Operating Agreement;

(7) assignments to Buyer of rights to receive the Deferred Developer Fee from all Persons owed any portion of the Deferred Developer Fee;

(8) written evidence that the Company Administration Agreement between the Company and the Managing Member has been terminated and, as of the Closing Date, the Company has no obligation to pay any amounts thereunder;

(9) a right of first refusal executed by the Company and the Investor Member in substantially the form attached hereto as *Exhibit F*;

(10) the Closing Statement; and

(11) such owner's affidavits, indemnities and other documents as the Escrow Agent may require in order for the Escrow Agent to be irrevocably committed to issue the Title Endorsements at Closing with respect to the Owner's Title Policy for the Project and to affirmatively insure over or unconditionally remove all exceptions to title, except for the Permitted Exceptions.

11. Closing Costs, Prorations.

(A) Closing Costs. Seller shall pay one-half of any escrow fee or recording fees charged by the Escrow Agent, any fees and costs of Johnson Commercial Real Estate, any fees and costs to obtain the Transaction Consents, and all transfer or excise taxes associated with the transaction. Buyer shall pay one-half of any escrow fee or recording fees charged by the Escrow Agent, the costs of its due diligence, and the costs for Title Endorsements (or any reinsurance). Buyer and Seller shall each pay its own attorneys' fees, including but not limited to their respective legal fees in connection with obtaining the Transaction Consents.

(B) Prorations. Seller shall be entitled to Net Cash Flow payable to the Managing Member under the Operating Agreement, to the extent available, up to the Closing Date and Buyer shall be entitled to Net Cash Flow payable to the Managing Member on and after such Closing Date, with calculations of Net Cash Flow based on all operating expenses and liabilities of the Company that are outstanding as of such Closing Date being paid current as of the Closing Date (regardless of the aging status or actual payment by Company of such expenses or liabilities). To the extent reasonably requested by Buyer or Seller on or before the Close of Escrow, certain prorations may be completed at the end of the month in which the Closing Date occurs and allocated between Buyer and Seller based upon the number of days in such month so as to facilitate the accurate and timely accounting for such amounts and to eliminate timing differences in recognition of income and expenses. Within 30 days after the Close of Escrow, Seller and Buyer shall determine Net Cash Flow payable to the Managing Member and the Investor Member, to the extent available, in accordance with this provision. To the extent there is any casualty to the Project or condemnation of all or any portion of the Project during the period from the Effective Date to the Closing Date, any insurance or condemnation proceeds shall be handled in the manner set forth in the Mortgage Loan Documents and the Operating Agreement. The parties hereto agree that cash distributions to any Member in connection with this Section 11(B) are subject to and may be made by the Company only at such time as is permitted under the applicable Operating Agreement provision for cash distributions. Buyer agrees to cause the Company to request permission from the Investor Member to allow cash distributions within three (3) business days after the determination of Net Cash Flow is made.

12. Remedies.

(A) Notice and Cure Period. Neither party shall be in material default hereunder unless such party (i) has first received a notice from the party claiming the material default specifying it in reasonable detail and (ii) if such material default exists, has not cured the material default within ten (10) business days from its receipt of the said notice. Either party shall have the right to satisfy its or the other party's respective Closing Conditions within the foregoing cure periods. The parties hereby acknowledge that neither the Seller nor the Buyer shall be deemed in default under this Agreement due to the failure of any necessary Member Consent or Transaction Consent to be obtained.

(B) Seller's Remedies. If Buyer is in material default beyond any applicable notice and cure period and Buyer's Closing Conditions in Section 8(B) have been satisfied, then Seller (provided that Seller is not then in default under this Agreement) shall be entitled, as its

sole and exclusive remedy, to terminate this Agreement by written notice thereof given to Escrow Agent and Buyer and recover the Deposit and Additional Deposit as liquidated damages and not as penalty, in full satisfaction of claims against Buyer hereunder. Seller and Buyer agree that Seller's damages resulting from Buyer's material default are difficult, if not impossible, to determine and that the Deposit (and the Additional Deposit, if applicable) is a fair estimate of those damages which has been hereby expressly agreed to in an effort to cause the amount of such damages to be certain.

(C) **Buyer's Remedies.** If Seller is in material default beyond any applicable notice and cure period and Seller's Closing Conditions in Section 8(A) have been satisfied, then Buyer (provided that Buyer is not then in default under this Agreement), may (a) terminate its obligation to complete the Transaction, in which case Buyer shall recover the Deposit and the Additional Deposit, or (b) enforce specific performance of Seller's obligation to sell the Interests pursuant to this Agreement, or (c) seek damages in a judicial proceeding.

(D) **Cumulative Remedies.** Except as otherwise specifically provided in this Agreement, all remedies provided for in this Agreement or available as a matter of Law (whether at Law, in equity, by statute or otherwise) are cumulative and may be exercised concurrently or consecutively, in such order as a party may elect. Limitations on remedies apply only to the obligations specifically referenced to be limited. Limitations on remedies set forth in this Section 12 shall apply only with respect to obligations arising or required to be performed prior to or on the Close of Escrow, and Buyer and Seller reserve all available remedies at law or in equity with respect to obligations and liabilities which survive the Close of Escrow.

13. Destruction/Condemnation of the Project

In the event that all or any material portion (as defined below) of the Project is damaged or destroyed by any casualty or is the subject of a taking or condemnation under the provisions of eminent domain prior to the date of Closing, Buyer may terminate this Agreement. If the damage or taking is not material, then the following shall apply at the Closing: (a) in the event of a casualty, Buyer shall receive an assignment of the Managing Member's rights to any proceeds of any casualty insurance otherwise payable to a Company along with payment by Seller of any applicable deductible under Seller's insurance by Seller to Buyer, provided that Seller's payment to Buyer hereunder shall not exceed the actual value of the damages as agreed to between Buyer and Seller; and (b) in the event of a taking, the Buyer shall receive an assignment of the Managing Member's rights to any condemnation proceeds resulting from such taking and shall not make any settlements without Buyer's prior written approval. For purposes hereof, damage and/or condemnation for the Project shall be deemed material, if (i) the reasonable estimated cost of repair exceeds ten (10%) percent of the value of the Project, (ii) the expected costs of repair is more than the sum of the insurance proceeds available plus any applicable deductible amount to be paid by Seller, (iii) the Lender (and/or any Person entitled to control the use or disposition of such proceeds) does not consent to make the proceeds available for restoration, or (iv) a taking or casualty results in a material reduction in the low income tax credits thereafter available with respect to the Project. The "**value of the Project**" for this purpose shall be defined as the sum of the mortgages and other notes payable and Members' equity, as reflected on the audited financial statements for the Company as of December 31, 2012.

14. Termination.

If Buyer or Seller terminates its obligation to complete the Transaction under circumstances permitted by this Agreement, neither Buyer nor Seller will have any further obligation under this Agreement, except those which by their express terms survive termination. Nothing in this Section 14 is intended to limit the obligations of the Escrow Agent or the provisions of this Agreement dealing with the disposition of funds or documents held in escrow following termination of the obligations of Buyer or Seller.

15. Miscellaneous.

(A) Interpretation. When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the words "include" and "including" are intended as an introduction to illustrative matters and not as a limitation. References in this Agreement to "Sections" are to the numbered subdivisions of this Agreement, unless another document is specifically referenced. The word "party" when used in this Agreement means either Buyer or Seller unless another meaning is required by the context.

(B) Professionals' Fees. If litigation is commenced by Buyer or Seller against the other party in connection with this Agreement or the Transaction, the party prevailing in the litigation will be entitled to collect from the other party the expense (including reasonable fees and disbursements of attorneys, consultants and other professionals and court costs) incurred in connection with the litigation.

(C) Notice. Any notice or other communication to any party given under this Agreement will be effective only if in writing delivered to whichever of the following addresses is applicable:

If to Seller:

Martin Luther King Housing Development
Association
Attn. Linda Fotiou, Executive Director
1147 Tacoma Avenue South
Tacoma, WA 98402
Telephone: (253) 682-1300
Email: linda@mlkhda.org

If to Buyer:

Housing Authority of the City of Tacoma
Attn. Tina Hansen
Interim Director, Real Estate Development
902 S. L Street
Tacoma, WA 98405
Telephone: (253) 207-4434
Email: thansen@tacomahousing.org

If to Escrow Agent:

[Chicago Title Insurance Company]
[4717 South 19th Street]
[Tacoma, Washington 98405]

Telephone:

Email:

Any notice or other communication will be deemed received only upon delivery to the address provided for in this Section 15(C) or rejection of delivery at such address. Notice may be given by facsimile or electronic mail transmission, and confirmation of transmission generated by the sender's equipment will be prima facie evidence of receipt. The addresses and addressees to which notice is to be given may be changed by written notice given in the manner specified in this Section 15(C) and actually received by the addressee.

(D) Successors and Permitted Assigns. This Agreement will be binding upon and will inure to the benefit of Buyer and Seller and their respective successors and permitted assigns. Any indemnity in favor of a party also will benefit each person who holds a direct or indirect ownership interest in such party and the respective officers, directors, trustees, agents, employees and Affiliates of such party and such owners, and all such persons are third-party beneficiaries of this Agreement to the extent of their rights to indemnity under the related provision and may enforce that provision against Buyer or Seller, as applicable. Escrow Agent is not a third-party beneficiary of this Agreement, and Escrow Agent may not enforce this Agreement or any obligation under this Agreement.

(E) Headings. The Section headings contained in this Agreement are for convenience of reference only and are not intended to delineate or limit the meaning of any provision of this Agreement or be considered in construing or interpreting the provisions of this Agreement.

(F) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which, taken together, will constitute one instrument.

(G) Entire Agreement. This Agreement embodies the entire agreement and understanding between Buyer and Seller with respect to its subject matter and supersedes all prior agreements and understandings, written and oral, between Buyer and Seller related to that subject matter. This Agreement and the obligations of the parties under this Agreement may be amended, waived and discharged only by an instrument in writing executed by the party against which enforcement of the amendment, waiver or discharge is sought. Joinder of the Escrow Agent will not be necessary to make any amendment, waiver or discharge effective between Buyer and Seller.

(H) Severability. The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(I) Assignment. Neither Buyer nor Seller may Assign this Agreement or its rights under this Agreement without disclosing all of the terms and conditions of the proposed Assignment to the other party and without the advance written approval of the other party, which approval may be withheld in such other party's sole and absolute discretion; provided,

however, that (i) an Assignment by Buyer to THDG prior to or at Close of Escrow shall be permitted under this Agreement without Seller's advance written approval, and (ii) an Assignment by Buyer to any other Affiliate of Buyer prior to or at Close of Escrow shall be permitted under this Agreement with Seller's advance written approval, not to be unreasonably withheld.

(J) Governing Law. This Agreement will be governed by the laws of the State without giving effect to principles of conflicts of law.

[SIGNATURES ON FOLLOWING PAGE]

DRAFT

SELLER:

MARTIN LUTHER KING HOUSING
DEVELOPMENT ASSOCIATION, a
Washington nonprofit corporation

By: _____

Name:

Its:

BUYER:

HOUSING AUTHORITY OF THE CITY OF
TACOMA, a public body corporate and politic
of the State of Washington

By: _____

Name: Michael Mirra

Its: Executive Director

Joinder by Escrow Agent (only as to its obligations hereunder):

ESCROW AGENT:

[CHICAGO TITLE INSURANCE
COMPANY]

By: _____

Name:

Its duly authorized _____

DRAFT

Exhibit A
Form of Assignment and Assumption of Managing Member Interests

ASSIGNMENT AND ASSUMPTION OF MANAGING MEMBER INTERESTS

THIS ASSIGNMENT AND ASSUMPTION OF MANAGING MEMBER INTERESTS (“Assignment”) is entered into as of _____, 2013 by and among MARTIN LUTHER KING HOUSING DEVELOPMENT ASSOCIATION, a Washington nonprofit corporation (the “Withdrawing Managing Member”), the undersigned Investor Member (the “Investor Member”), and HOUSING AUTHORITY OF THE CITY OF TACOMA, a public body corporate and politic of the State of Washington (the “Successor Managing Member”).

Reference is hereby made to the following:

The parties desire to effect the assignment by the Withdrawing Managing Member to the Successor Managing Member of the Withdrawing Managing Member’s Interests in MLK New Look, LLC, a Washington limited liability company (the “Company”), and the assumption of such Interests by the Successor Managing Member, as more specifically set forth herein and as also provided for in the Managing Member Interest Purchase and Sale Agreement dated as of March __, 2013 (the “Agreement”). Capitalized terms used but not specifically defined herein shall have the meanings set forth in the Agreement.

Accordingly, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The Withdrawing Managing Member hereby assigns, bargains, sells, conveys, transfers and sets over to the Successor Managing Member all of the Withdrawing Managing Member’s Interests in the Company and the Successor Managing Member hereby assumes all of the Withdrawing Managing Member’s Interests in the Company.
2. The Withdrawing Managing Member hereby assigns, bargains, sells, conveys, transfers and sets over to the Successor Managing Member all of (a) the Withdrawing Managing Member’s rights to receive the Deferred Developer Fee, (b) the Withdrawing Managing Member’s rights to receive payment of loans and contributions made by the Withdrawing Managing Member to the Company, and (c) the Withdrawing Managing Member’s rights in any option and/or right of first refusal to purchase the Project and/or the Investor Members interests in the Company.
3. This Assignment may be executed in several counterparts, each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

[Signature Pages Follow]

Witness the execution under seal of this Assignment as of _____, 2013.

WITHDRAWING MANAGING MEMBER:

MARTIN LUTHER KING HOUSING DEVELOPMENT ASSOCIATION, a Washington nonprofit corporation

By: _____

Name:

Its:

SUCCESSOR MANAGING MEMBER:

HOUSING AUTHORITY OF THE CITY OF TACOMA, a public body corporate and politic of the State of Washington

By: _____

Name: Michael Mirra

Its: Executive Director

INVESTOR MEMBER:

OREGON EQUITY FUND IV LIMITED PARTNERSHIP

By:

By: _____

Name:

Its:

Exhibit C
Operating Agreement, Certificate of Limited Company, and Amendments

Exhibit D
Pending Litigation

NONE.

Exhibit E
Payables More Than 30 Days Old

NOTE: The attached schedule represents payables as of _____, 2013, and indicates those payables which are more than 30 days old.

Exhibit F
Form of Right of First Refusal