



STATE OF SOUTH CAROLINA  
DEPARTMENT OF REVENUE  
**POWER OF ATTORNEY AND  
DECLARATION OF REPRESENTATIVE**

**Part I: Power of Attorney**

\* indicates a required field. If all required fields are not completed, the power of attorney will be considered invalid.

**1 Taxpayer information - Taxpayer must sign and date this form on page 2, line 7.**

* Taxpayer name and address SC Preserve at Port Royal, LLC 1240 East 2100 South Suite 300 Salt Lake City, Utah 84108	* SSN	* FEIN
	Spouse's SSN (if filing jointly)	Plan number (if applicable)
	Daytime phone number	Email address

hereby appoints the following representatives as attorneys-in-fact:

**2 Representative information - Representatives must sign and date this form on page 2, Part II.**

*Name and address Emily Zackon Parker Poe Adams & Bernstein LLP 1221 Main Street, Suite 1100, Columbia, SC 29201	*Phone (803) 253-6867 Fax _____ Email emilyzackon@parkerpoe.com Check if new: <input type="checkbox"/> Address <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Email
Name and address	Phone _____ Fax _____ Email _____ Check if new: <input type="checkbox"/> Address <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Email
Name and address	Phone _____ Fax _____ Email _____ Check if new: <input type="checkbox"/> Address <input type="checkbox"/> Phone <input type="checkbox"/> Fax <input type="checkbox"/> Email

to represent the taxpayer before the SCDOR for the following tax matters:

**3 Tax matters (See instructions. Include specific types, forms, and years or periods. General references are not acceptable.)**

* Type of tax or license (Individual, Corporate, Withholding, Sales, ABL, etc.)	* Tax form number (SC1040, WH1605, ST-3, etc.)	* Years or Periods
Property	PT401-O	2025

**4 Acts authorized:** A representative is an individual authorized to receive and inspect confidential tax information and to perform any and all acts on behalf of the taxpayer with respect to the tax matters described on line 3. This includes the authority to sign any agreements, consents, or other documents. You may not use this Power of Attorney form to authorize a representative to endorse or cash refund checks. You may authorize a representative to sign a return only as set forth in SC Code Section 12-2-75.

List any specific additions to or deletions from the acts otherwise authorized in this power of attorney: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



5 **Receipt of refund checks:** If you want to authorize a representative named on line 2 to receive refund checks, but not to endorse or cash them, initial here \_\_\_\_\_ and list the name of that representative below.

Name of representative to receive refund checks \_\_\_\_\_

6 **Retention/revocation of prior powers of attorney:** Filing this power of attorney automatically revokes all earlier powers of attorney on file with the SCDOR for the same tax matters for years or periods covered by this document.

Check this box if you do not want to revoke a prior power of attorney .....

**YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

7 **Taxpayer signature:** If the tax matter concerns a joint return and you are requesting joint representation, both taxpayers must sign. If signed by a corporate officer, partner, guardian, tax matters partner, LLC member, executor, receiver, personal representative, or trustee on behalf of the taxpayer, I certify that I have the legal authority to execute this form on behalf of the taxpayer.

**The SCDOR will not accept an unsigned power of attorney.**

\*  (Mar 19, 2025 13:29 PDT) \* 3/19/2025 Chief Executive Officer  
 \_\_\_\_\_  
 Signature Date Title (if applicable)

\* Jaymie Beckett  
 \_\_\_\_\_  
 Print name

\_\_\_\_\_  
 Signature Date Title (if applicable)

\_\_\_\_\_  
 Print name

All notices and communications will be sent to the taxpayer, not your representative. You can also review notices and communications on MyDORWAY. Contact our office for assistance if you are unable to forward a copy of any notices to your representative.

**Part II: Declaration of Representative**


\* indicates a required field. If all required fields are not completed, the declaration of representative will be considered invalid.

I declare that:

- I am authorized to represent the taxpayers identified in Part I for the tax matters specified; and
- I am one of the following:
  - a. Attorney: a member in good standing of the bar of the highest court of the jurisdiction shown below
  - b. Certified Public Accountant: duly qualified to practice as a certified public accountant in the jurisdiction shown below
  - c. Enrolled Agent: enrolled as an agent under the requirements of the US Treasury Department Circular 230
  - d. Officer: a bona fide officer of the taxpayer organization
  - e. Full-Time Employee: a full-time employee of the taxpayer
  - f. Family Member: a member of the taxpayer's immediate family (spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister)
  - g. Return Preparer
  - h. Other (provide explanation): \_\_\_\_\_

**The SCDOR will not accept an unsigned declaration of representative.**

I declare that this return and all attachments are true, correct, and complete to the best of my knowledge and belief.

* Designation (enter letter a-h from above)	* Jurisdiction (state)	* Signature	*Date
a	SC		March 20, 2025

# Preserve at Port Royal\_2848

Final Audit Report

2025-03-19

Created:	2025-03-19
By:	Miguel Garcia (mgarcia@housingonmerit.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAARNLd8n1jRAOrLKLqJxkcPEvcJm66v4fH

## "Preserve at Port Royal\_2848" History

-  Document created by Miguel Garcia (mgarcia@housingonmerit.org)  
2025-03-19 - 8:26:58 PM GMT
-  Document emailed to Jaymie Beckett (jbeckett@housingonmerit.org) for signature  
2025-03-19 - 8:27:02 PM GMT
-  Email viewed by Jaymie Beckett (jbeckett@housingonmerit.org)  
2025-03-19 - 8:29:04 PM GMT
-  Document e-signed by Jaymie Beckett (jbeckett@housingonmerit.org)  
Signature Date: 2025-03-19 - 8:29:16 PM GMT - Time Source: server
-  Agreement completed.  
2025-03-19 - 8:29:16 PM GMT





**MEMORANDUM**

**TO:** Exempt Property Section  
**FROM:** Parker Poe Adams & Bernstein LLP  
**DATE:** March 20, 2025  
**RE:** Preserve at Port Royal - SC Preserve at Port Royal, LLC

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**I. Exemption Requirements**

South Carolina Code Annotated section 12-37-220(B)(11)(e) grants an exemption from property taxes for certain property owned by a nonprofit housing corporation or an instrumentality of a nonprofit housing corporation. To be eligible for the property tax exemption provided by section 12-37-220(B)(11)(e), three criteria must be satisfied:

- The nonprofit housing corporation, or a solely-owned instrumentality of the nonprofit housing corporation, must own the property;
- The devoted use of the property is the provision of housing for very low or low income residents; and
- The nonprofit housing corporation must satisfy the safe-harbor provisions of Revenue Procedure 96-32.

**II. Purpose of Request**

The sole member of SC Preserve at Port Royal, LLC, a Delaware limited liability company (“Taxpayer”) is Solano Vista JV LLC, a Utah limited liability company (“JV Entity”). The managing member of JV Entity is HOM Preserve at Port Royal LLC, a Delaware limited liability company (“Managing Member”) (*see Schedule I: Organizational Chart*). The Managing Member is a wholly-owned instrumentality of Housing on Merit (“HOM”), a California nonprofit public benefit corporation and organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“Code”). The Taxpayer acquired a 400-unit, multifamily housing development in Beaufort County, South Carolina known as Preserve at Port Royal (“Development”) on December 6, 2021. The Taxpayer will operate the Development as an affordable housing development which will provide safe and decent housing for individuals and families that qualify as low and very low income residents.

The Taxpayer is submitting a request for a property tax exemption pursuant to section 12-37-220(B)(11)(e) for all of the property comprising the Development (as more particularly identified in the applications and on **Exhibit A**).

**III. Facts and Supporting Analysis**

The facts and analysis presented below show that the Taxpayer and the Development meet the criteria set forth in section 12-37-220(B)(11)(e).

*A. A nonprofit housing corporation, or an instrumentality of the nonprofit housing corporation, owns the property comprising the Development.*

The Managing Member is an instrumentality of a nonprofit corporation.

HOM is an organization recognized as exempt from taxation under Section 501(c)(3) of the Code. HOM is organized and operated for charitable purposes, which charitable purposes include the promotion of affordable housing for families and individuals (*see Exhibit B: HOM Determination Letter, Articles of Incorporation and Bylaws*).

The Managing Member is a wholly-owned instrumentality of HOM (*see Exhibit C: Managing Member Operating Agreement*). The Managing Member has been appointed as the Managing Member of the JV Entity (*see Exhibit D: JV Entity Omnibus Amendment to the Operating Agreement and Amended and Restated Operating Agreement*). JV Entity is the sole member of Taxpayer (*see Exhibit E: Taxpayer Amended Operating Agreement and Operating Agreement*). The charitable purposes of the Managing Member include the provision of decent, safe, sanitary and affordable housing for low-income families and individuals in a manner consistent with Section 501(c)(3) of the Code. Additionally, because the Managing Member is a wholly owned instrumentality of HOM, the Managing Member must act in furtherance of HOM's exempt purpose. The Managing Member, through the JV Entity, will manage the Taxpayer in accordance with this exempt purpose.

The Taxpayer acquired the property comprising the Development on December 6, 2021 (*see Exhibit F: Deed to Real Estate*).

*B. The devoted use of the property is the provision of housing for very low- or low-income residents.*

The devoted use of the property comprising the Development will be the provision of housing for very low and low income residents. HOM is specifically organized to carry on the exempt purpose of promoting affordable housing through, among other things, development and owning affordable housing nationwide (*see Exhibit B*) and the JV Entity must act in accordance with this exempt purpose (*see Exhibit D*). Accordingly, the JV Entity must operate the Taxpayer in accordance with this exempt purpose. Therefore, because of HOM's participation in the JV Entity (through the Managing Member), the Taxpayer cannot acquire and arrange for the operation of the Development in a manner that does not further HOM's exempt purpose (i.e. that is not for the provision of housing for very low and low income residents) without jeopardizing its tax-exempt status. Additionally, the Managing Member is solely authorized to operate the Taxpayer in a manner that furthers HOM's exempt purpose

*C. The safe-harbor provisions of Revenue Procedure 96-32 as they relate to the Development are satisfied.*

- Revenue Procedure 96-32 establishes four “safe-harbor” criteria that an organization must meet to qualify as a nonprofit housing corporation under section 501(c)(3) of the Internal Revenue Code. These criteria are:
- the project of the corporation must have residents that meet the following income levels
  - 75 percent of the units are occupied by residents that qualify as low-income; AND, EITHER
  - 20 percent of the units are occupied by residents that also qualify as very low-income for the area; OR
  - 40 percent of the units are occupied by residents that also do not exceed 120 percent of the area's very low-income limit;

- the project must actually be occupied by poor and distressed residents. Any construction or rehabilitation may not disrupt residency at the project for more than a reasonable time;
- the project offers affordable housing to low and very low-income residents;
- each component building of a project must either share the same grounds or separately satisfy the requirements above.

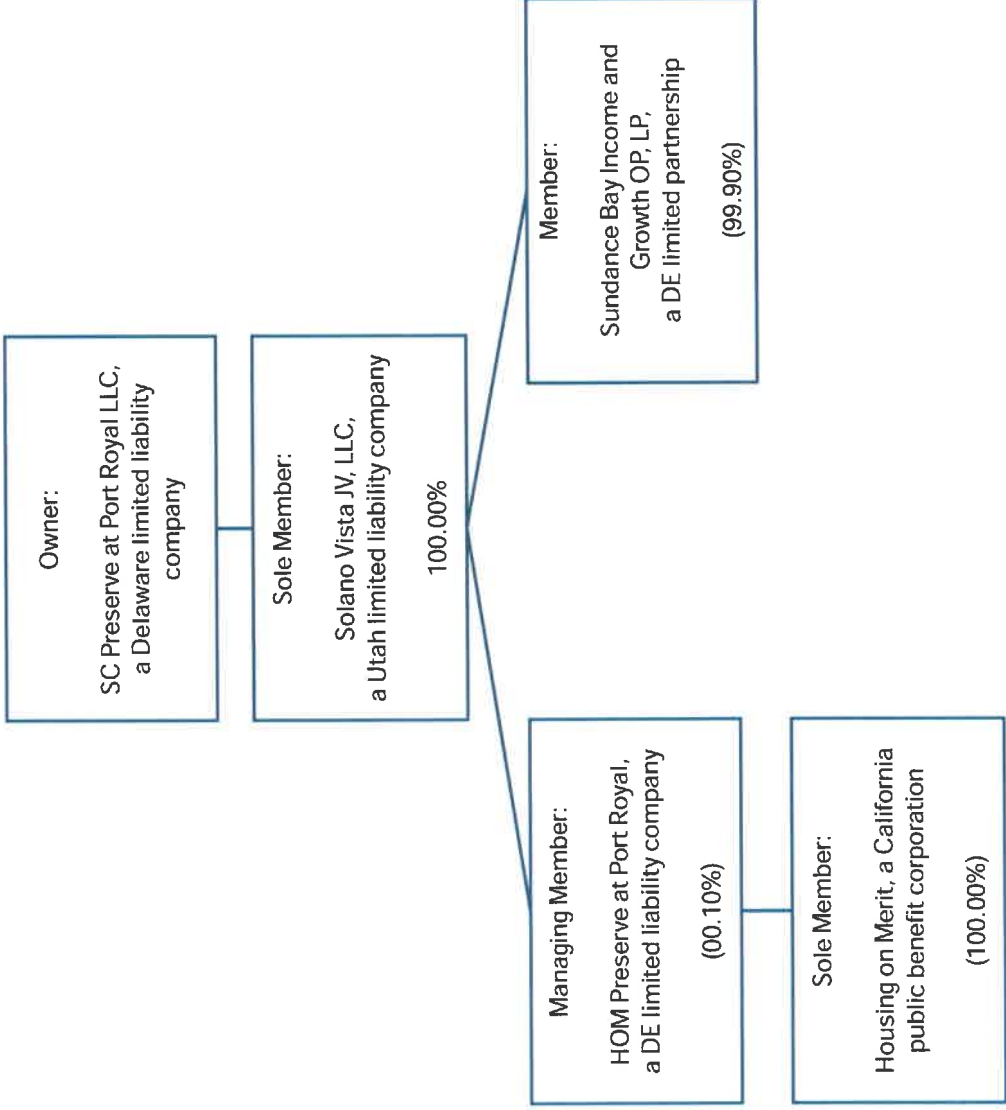
The requirements above with respect to the Development are satisfied.

- As shown in the enclosed rent roll (*see Exhibit F: Rent Roll*), not less than 75% of the units are reserved for residents that 80% or less of the area median income and additionally, not less than 20% of the units are reserved for residents that earn 50% or less of the area median income. Additionally, the rent charged to residents in such reserved units is affordable.
- To the extent the Taxpayer does not comply with the terms of the Revenue Procedure 96-32 and actually provide housing for very low and low income residents, the Taxpayer jeopardizes its own tax-exempt status which could lead to penalties imposed by the Internal Revenue Service.
- The component parts of the Development are located on the same grounds.

#### **IV. Conclusion**

Based on the facts and supporting analysis provided above, the Taxpayer is eligible for the exemption from property taxes provided under section 12-37-220(B)(11)(e) for the property comprising the Development and kindly requests DOR approve the application submitted for the Development.

**SCHEDULE I**  
**Organizational Chart**



**EXHIBIT A**

**Tax Map Numbers and Address for Development**

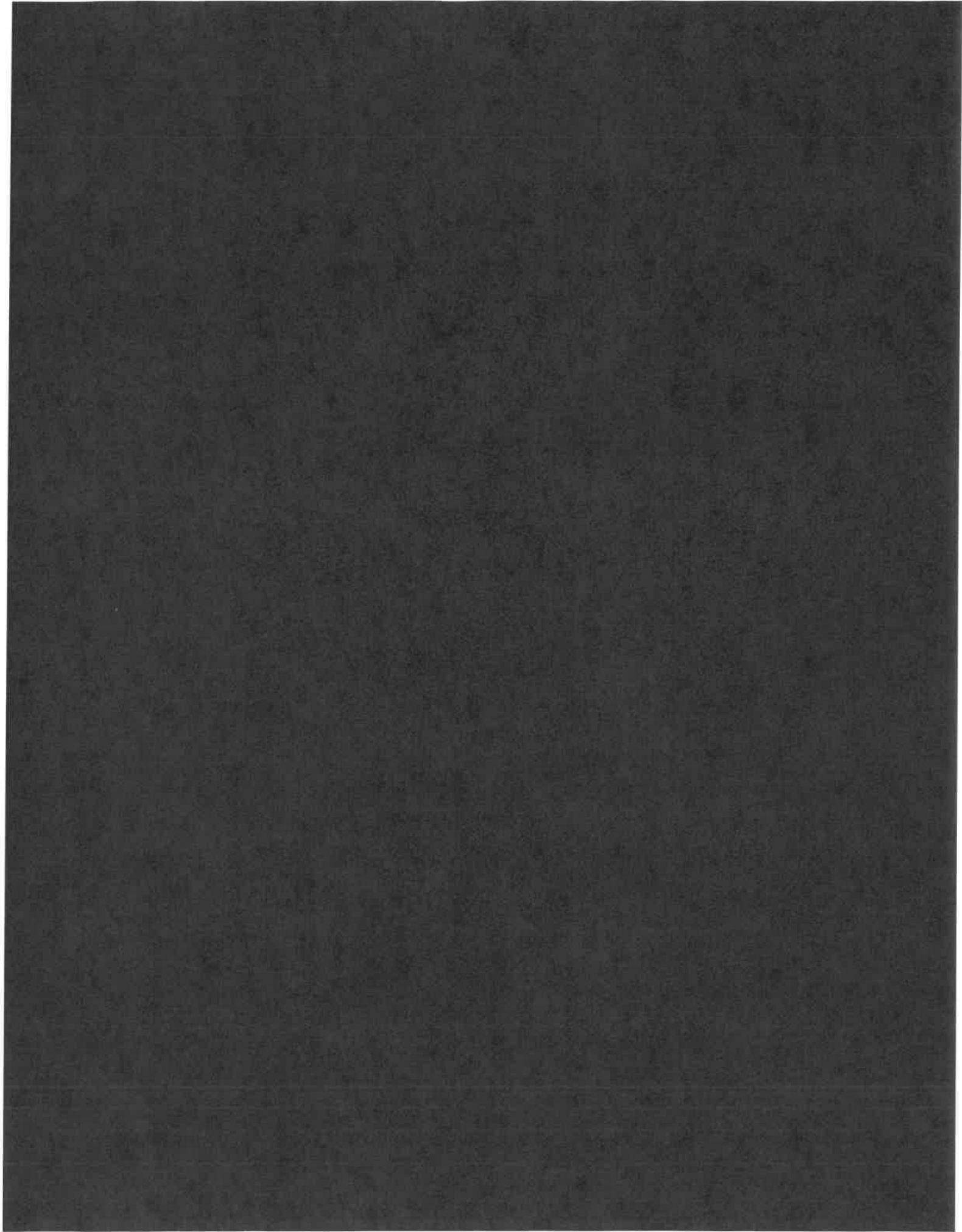
**TMS No.:** R110-008-000-033A-0000

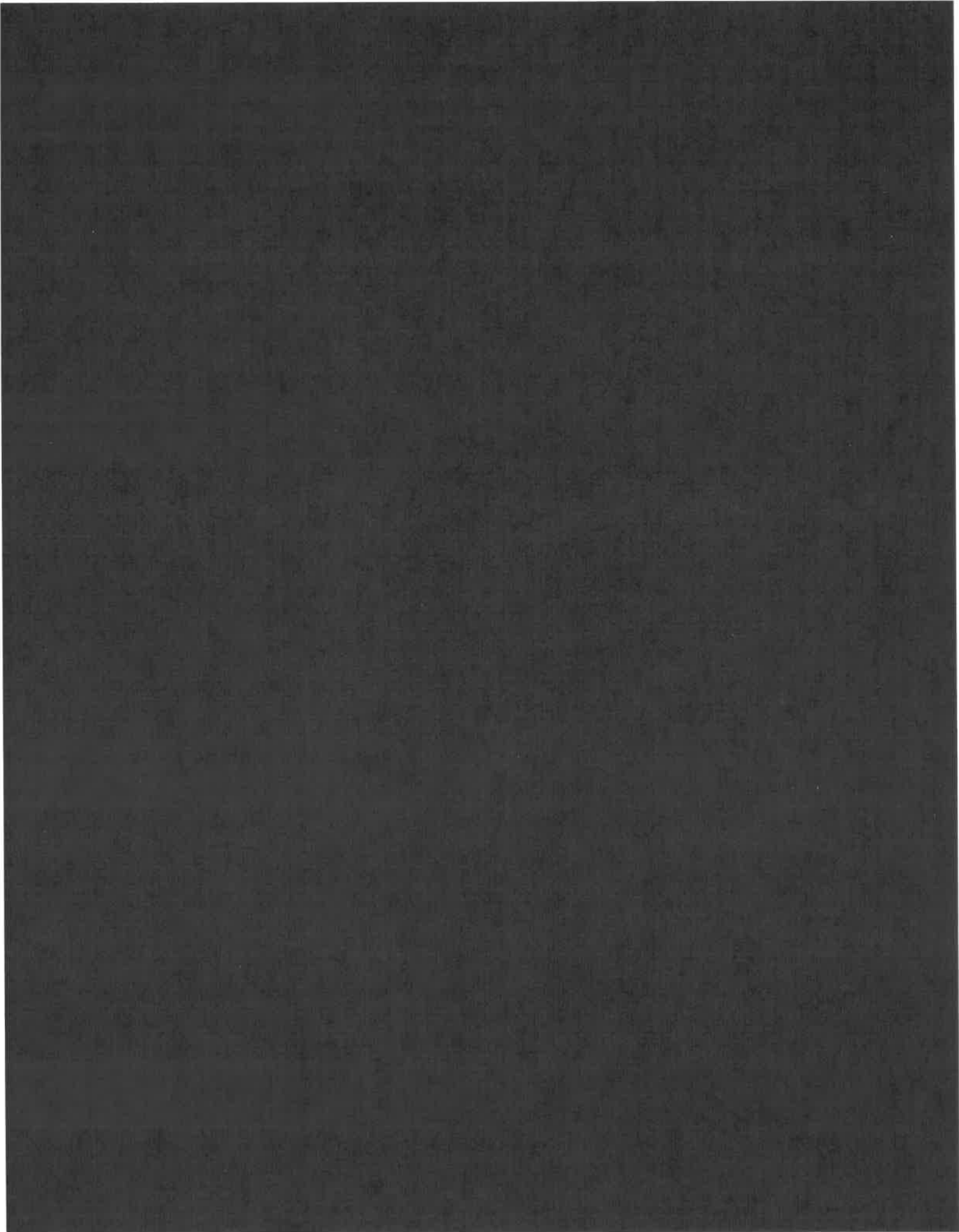
**Address:** 1 Preserve Avenue West, Port Royal, SC 29935

**EXHIBIT B**

**HOM Determination Letter, Articles of Incorporation and Bylaws**

**[See Attached]**





A0747275

3371314  
CERTIFICATE OF AMENDMENT

FILED  
Secretary of State  
State of California

*BJP*  
*CWK*

OF

OCT 24 2013

ARTICLES OF INCORPORATION *1cc*

The undersigned hereby certify that:

1. They are the President and Secretary, respectively, of HOUSING ON MERIT.
2. Article V of the Articles of Incorporation is amended to read as follows:

"V.

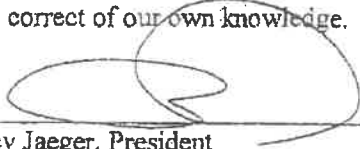
The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under section 501 (c)(3) of the Internal Revenue Code."

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the board of directors.

4. This corporation has no members.

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this Certificate are true and correct of our own knowledge.

Dated: October 24, 2013

  
\_\_\_\_\_  
Jeffrey Jaeger, President

  
\_\_\_\_\_  
Sydne Garchik, Secretary



3371314

ARTICLES OF INCORPORATION  
OF  
HOUSING ON MERIT

**ENDORSED - FILED**  
In the Office of the Secretary of State  
of the State of California

APR 04 2011

I.

The name of this corporation is HOUSING ON MERIT.

II.

A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for charitable purposes.

B. This corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provisions of any future United States Internal Revenue law. The specific and primary purposes of this corporation are promote affordable housing alternatives for families and individuals by (i) acquiring and managing transitional housing facilities throughout the Los Angeles area, (ii) providing families with ancillary services such as counseling, housing assistance, job placement, educational services and (ii) developing and owning affordable housing nationwide.

III.

The name and address in the State of California of this corporation's initial agent for service of process is:

Jeffrey Jaeger  
139 South Beverly Drive Suite 222  
Beverly Hills, CA 90212

IV.

A. Notwithstanding any provision contained in these Articles or in any other governing instrument of this corporation, this corporation shall not carry on any activities not permitted to be carried

on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or the corresponding provision of any future United States internal revenue law, or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code or the corresponding provision of any future United States internal revenue law.

B. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

C. Notwithstanding any provision contained in these Articles or in any other governing instrument of this corporation, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

## V.

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member hereof or to the benefit of any private person. Upon the dissolution or winding up of this corporation, its assets remaining after payment (or provision for payment) of all of its debts and liabilities shall be distributed to a nonprofit fund, foundation or corporation designated by the Board of Directors of this corporation which is organized and operated exclusively for charitable, educational or scientific purposes and which has established its tax exempt status under Section 501(c)(3) of the Code or the corresponding provision of any future United States internal revenue law.

## VI.

Notwithstanding any provision contained in these Articles or in any other governing instrument of this corporation, this corporation is required to distribute its income for each taxable year at such times and in such manner as not to subject this corporation to tax under Section 4942 of the Code or the

corresponding provision of any future United States internal revenue law. In addition, this corporation shall not, during any period and to the extent that it is a private foundation described in Section 509 of the Code or the corresponding provision of any future United States internal revenue law, (a) engage in any act of self-dealing as defined in Section 4941(d) of the Code; (b) retain any excess business holdings as defined in Section 4943(c) of the Code; (c) make any taxable expenditures as defined in Section 4945(d) of the Code; or (d) make any investments in such manner as to subject the corporation to tax under Section 4944 of the Code or the corresponding provision of any future United States internal revenue law.

Dated: March 31, 2011



Laurie Biegel, Incorporator

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Dated: March 31, 2011



Laurie Biegel



I hereby certify that the foregoing transcript of 3 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

APR 21 2011

Date: \_\_\_\_\_

*Debra Bowen*  
DEBRA BOWEN, Secretary of State

**AMENDED AND RESTATED BYLAWS**  
**OF**  
**HOUSING ON MERIT**  
a California Nonprofit Public Benefit Corporation

**ARTICLE I**  
**NAME**

The name of this corporation shall be HOUSING ON MERIT.

**ARTICLE II**  
**OFFICES**

Section 1. Principal Office. The principal office for the transaction of the business of the corporation ("Principal Executive Office") is located at 1901 Avenue of the Stars, Suite 395, Los Angeles, CA 90067.

Section 2. Other Offices. The Board of Directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.

**ARTICLE III**  
**PURPOSES AND OBJECTIVES**

Section 1. Specific Purpose. This corporation is organized and shall be operated exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The specific purpose of this corporation is to provide housing and related services to the homeless and underprivileged.

Section 2. General Purposes. The general purposes and powers of this corporation are the following:

- (a) to receive, hold, and disburse gifts, bequests, devises, and other funds to advance the purpose and objectives of this corporation;
- (b) to own and maintain or to lease suitable personal property which is deemed necessary for the purpose and objectives of this corporation; and
- (c) to enter into, make, and perform, and carry out contracts of every kind for any lawful purpose, without limit as to amount.

ARTICLE IV  
NONPARTISAN ACTIVITIES

This corporation has been formed under the California Nonprofit Public Benefit Corporation Law for the purpose described above, and it shall be nonprofit and nonpartisan. No substantial part of the activities of this corporation shall consist of the publication or dissemination of materials with the purpose of attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign on behalf of any candidate for public office or for or against any cause or measure being submitted to the people for a vote.

This corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of its purpose described above.

ARTICLE V  
DEDICATION OF ASSETS

The property of this corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer, or member thereof or to the benefit of any private person. Upon the dissolution or winding up of this corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation, which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Code.

ARTICLE VI  
MEMBERS

Section 1. Directors as Members. This corporation shall have no members. Any action that would otherwise require approval by a majority of all members or approval by the members shall require only approval of the Board of Directors, as authorized by Section 5310 of the California Nonprofit Public Benefit Corporation Law.

Section 2. Meetings. There shall be no meetings of members as such. The persons constituting the Board of Directors may, at any given time and from time to time, act in their capacity as members pursuant to Section 1 of this Article VI, at meetings of the Board of Directors held as provided in Section 5 of Article VII of these Bylaws.

ARTICLE VII  
DIRECTORS

Section 1. Powers.

(a) General Corporate Powers. Subject to the provisions of the California Nonprofit Public Benefit Corporation Law and any limitations in the Articles of

Incorporation and these Bylaws, the business and affairs of this corporation shall be managed, and all corporate powers shall be exercised, by or under the direction of the Board of Directors; provided, however, that in order to preserve the nonprofit, exempt-from-income-tax status of this corporation, neither the Board nor any member thereof shall do any act, or authorize or suffer the doing of any act by an officer or employee of this corporation, on behalf of the corporation, which is inconsistent with the Articles or these Bylaws or the nonprofit purpose of this corporation. Any such act or acts shall be null and void.

(b) Specific Powers. Without prejudice to these general powers, and subject to the same limitations, the Directors shall have the power to:

(1) Select and remove all officers, agents, and employees of this corporation; prescribe any powers and duties for them that are consistent with law, with the Articles of Incorporation, and with these Bylaws; and fix their compensation.

(2) Change the principal office in Los Angeles, California, from one location to another; and designate any place within Southern California, for the holding of any meeting or meetings.

(3) Adopt, make, and use a corporate seal; and alter the form of the seal.

(4) Borrow money and incur indebtedness on behalf of this corporation and cause to be executed and delivered for this corporation's purposes and objectives, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, and other evidences of debt and securities.

Section 2. Authorized Number and Qualifications of Directors. The exact number of Directors shall be up to thirteen (13), until changed in accordance with the provisions of these Bylaws. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

(a) Restriction on Interested Persons as Directors. Not more than forty-nine percent (49%) of the persons serving on the Board of Directors at any time may be interested persons. An interested person is (i) any person being compensated by this corporation for services rendered to it within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise; and (ii) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person. However, any violation of the provisions of this paragraph shall not affect the validity or enforceability of any transaction entered into by this corporation.

Section 3. Election and Term of Office.

(a) Election of Directors. All Directors shall be elected at the annual meeting of the Board of Directors; provided, however, that if any such annual meeting is not held or the Directors are not elected at such annual meeting, they may be elected at any special meeting of the Board of Directors held for that purpose or by written ballot. Each Director, including a Director elected to fill a vacancy or elected at a special meeting of the Board of Directors, shall hold office until expiration of the term for which elected and until a successor has been elected and qualified.

(b) Term of Office. Each such Director shall hold office for two (2) years until a successor has been elected and qualified.

Section 4. Vacancies on Board.

(a) Events Causing Vacancy. A vacancy or vacancies in the Board of Directors shall be deemed to exist on the occurrence of the following: (i) the death, resignation, or removal of any Director, (ii) the declaration by resolution of the Board of Directors of a vacancy of the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony or has been found by final order or judgment of any court to have breached any duty under Article 3 of Chapter 2 of the California Nonprofit Public Benefit Corporation Law, (iii) the vote of a majority of all the Directors of the corporation to remove a Director; (iv) the increase of the authorized number of Directors, or (v) the failure of the Directors, at any meeting of Directors at which any Director or Directors are to be elected, to elect the number of Directors to be elected at such meeting.

(b) Resignations. Except as provided in this paragraph, any Director may resign by giving written notice to the chairman of the Board, if any, or to the president or the secretary of the Board. The resignation shall be effective when notice is given unless the notice specifies a later time for the resignation to become effective. If the resignation of a Director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective. Except upon notice to the Attorney General, no Director may resign when this corporation would then be left without a duly elected Director in charge of its affairs.

(c) Vacancies Filled by Board. Vacancies in the Board of Directors may be filled by a majority of the remaining Directors, though less than a quorum, or by a sole remaining Director, except that a vacancy created by the removal of a Director by the vote or written consent of the Directors of the corporation or by court order may be filled only by the vote of a majority of the Directors entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of a majority of the required quorum of Directors. Each Director so elected shall hold office until the next annual meeting of the Directors and until a successor has been elected and qualified.

(d) No Vacancy on Reduction of Number of Directors. No reduction of the authorized number of Directors shall have the effect of removing any Director before that Director's term of office expires.

Section 5. Directors' Meetings.

(a) Place of Meetings. Meetings of the Board of Directors may be held at any place within or outside the State of California that has been designated from time to time by resolution of the Board or in the notice of the meeting. In the absence of such designation, meetings shall be held at the Principal Executive Office of this corporation. Notwithstanding the above provisions of this Section 5, a regular or special meeting of the Board of Directors may be held at any place consented to in writing by all the Board members, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting.

(b) Participation in Meeting. Members of the Board may participate in a meeting through use of conference telephone, electronic video screen communication or electronic transmission by and to the corporation. Participation in a meeting through use of conference telephone or electronic video screen communication constitutes presence in person at that meeting as long as all Directors participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, constitutes presence in person at that meeting if both of the following apply:

(1) Each Director participating in the meeting can communicate with all of the other Directors concurrently.

(2) Each Director is provided the means of participating in all matters before the Board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

"Electronic transmission" by the corporation means a communication delivered (i) by (A) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that Director on record with the corporation, (B) posting on an electronic message Board or network which the corporation has designated for those communications, together with a separate notice to the Director of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (C) other means of electronic communication; (ii) to a Director who has provided an unrevoked consent to the use of those means of transmission for communications; and that (iii) creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. "Electronic transmission to the corporation" means a communication (i) delivered by (A) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the corporation has provided from time to time to Directors for sending communications to

the corporation, (B) posting on an electronic message Board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (C) other means of electronic communication; (ii) as to which the corporation has placed in effect reasonable measures to verify that the sender is the Director purporting to send the transmission; and (iii) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(c) Annual Meeting. The annual meeting of the Board of Directors shall be held each year on a date and at a time designated by the Board of Directors. The date so designated shall be within fifteen (15) months after the last annual meeting. At each annual meeting Directors shall be elected, officers shall be elected and any other proper business may be transacted.

(d) Other Regular Meetings. Other regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be fixed by the Board of Directors.

(e) Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the chairman of the Board, if any, the president, any vice president, the secretary, or any two (2) Directors.

(f) Time, Manner of Giving, and Contents of Notice. Notice of special meetings of the Board of Directors shall be given to each Director by one of the following methods: (i) by personal delivery of written notice; (ii) by first-class mail, postage prepaid; (iii) by telephone, including a voice messaging system; or (iv) by electronic transmission. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of this corporation. In case the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. In case the notice is delivered personally, by telephone, or by electronic transmission, it shall be delivered at least forty-eight (48) hours before the time of the holding of the meeting. The notice shall state the time of the meeting, and the place of the meeting if other than the Principal Executive Office of this corporation. It need not specify the purpose of the meeting. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation after either of the following:

(i) The corporation is unable to deliver two consecutive notices to the Director by that means.

(ii) The inability to so deliver the notices to the Director becomes known to the secretary, any assistant secretary, or other person responsible for the giving of the notice.

(g) Quorum. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn. Every act or

decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, subject to the more stringent provisions of the California Nonprofit Public Benefit Corporation Law, including, without limitation, those provisions relating to (i) approval of contracts or transactions in which a Director has a direct or indirect material financial interest, (ii) appointment of committees, and (iii) indemnification of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(h) Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if a quorum is present, and either before or after the meeting, each of the Directors not present or who though present has prior to the meeting or at its commencement protested the lack of proper notice to him, signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(i) Adjournment. A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

(j) Notice of Adjournment. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case notice of the time and place shall be given before the time of the adjourned meeting in the manner specified in paragraph f of this Section 5 to the Directors who were not present at the time of the adjournment.

Section 6. Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. For purposes of this action only, "all members of the Board" shall not include any "interested Director" as defined in Section 5233 of the California Nonprofit Public Benefit Corporation Law.

Section 7. Compensation. Unless otherwise approved by the Board, Directors and members of committees shall receive no compensation for their services.

## ARTICLE VIII COMMITTEES

Section 1. Standing Committees. This corporation may, by resolution adopted by a majority of the Directors then in office, establish the following standing committees:

(a) Executive Committee. The Executive Committee of the Board shall consist of the officers of this corporation. The president of this corporation shall serve as the chair of the Executive Committee. Except as provided in Section 3 below, the Executive Committee may act for the Board in conducting the business and affairs of this corporation.

(b) Nominating Committee. The Nominating Committee shall consist of at least two (2) Directors appointed by the Board, none of whom may be the president of this corporation. The Nominating Committee shall have the responsibility of nominating persons for offices in this corporation as well as nominating persons for election to the Board. Such nominations shall be made at least ten (10) days prior to the annual meeting of the Board of Directors, and from time to time as vacancies shall arise. Members of the Nominating Committee shall not serve on this committee for more than two (2) consecutive one (1) year terms.

(c) Finance Committee. The Finance Committee shall consist of the chief financial officer together with Directors and, if so desired, persons who are not Directors, appointed by the Board. The Finance Committee shall be responsible for interim financial information, and corporation's annual operating budget. The Finance Committee shall also have such further duties and responsibilities as may from time to time be assigned to it by the Board.

(d) Audit Committee. The Audit Committee shall consist of Directors and, if so desired, persons who are not Directors, appointed by the Board and shall be separate from the Finance Committee. The Chair of the Audit Committee shall not be a member of the Finance Committee and one-half or more of the members of the Audit Committee must be persons who are not members of the Finance Committee. The Audit Committee shall be reasonable for selecting the corporation's independent auditors and reviewing the results of the independent audit (including the independent auditors' report on internal control).

(e) Investment Committee. The Investment Committee shall consist of Directors and, if so desired, persons who are not Directors, appointed by the Board. The Investment Committee shall oversee the financial and investment policies and the investments of this corporation. This includes development of investment policies, review of asset allocation, review of outside investment managers, and the hiring and firing of managers.

(f) Advisory Council. The Advisory Council shall be a committee consisting of persons, appointed by the Board. The Advisory Council will consist of innovative business enterprises, industry stakeholders and community leaders who wish to lend their names as supporters and offer their expertise in support of this corporation's mission. The Advisory Council does not share any of the authority or responsibilities assigned to the Board of Directors. The Advisory Council will be invited to meet annually with the Board of Directors.

Section 2. Other Committees. The Board of Directors may, by resolution adopted by a majority of the Directors then in office, establish one or more other committees, each consisting of two (2) or more Directors as well as persons who are not Directors, to serve at the pleasure of the Board. The Board may designate two (2) or more Directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

Section 3. Restrictions on Committees. Any committee, to the extent provided in the resolution of the Board, shall have all the authority of the Board, except where noted. No committee, regardless of Board resolution, may do any of the following:

- (a) take any final action on matters which, under the Nonprofit Corporation Law of California, also requires approval of the Directors or approval of a majority of all Directors;
- (b) fill vacancies on the Board of Directors or in any committee;
- (c) fix compensation of the Directors for serving on the Board or on any committee;
- (d) amend or repeal Bylaws or adopt new Bylaws;
- (e) amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (f) appoint any other committees of the Board of Directors or the members thereof;
- (g) expend corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected; or
- (h) approve any transaction which is defined as a self-dealing transaction in Section 5233 of the California corporations Code, except as such approval may be allowed by said section.

Section 4. Meetings and Action of Committees. Meetings and action of committees shall be governed by, and held and taken in accordance with, the provisions of Article VII of these Bylaws concerning meetings of Directors, with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees may also be called by resolution of the Board of Directors, and notice of special meetings of committees shall also be given to any and all alternate members, who shall have the right to attend all meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

ARTICLE IX  
OFFICERS

Section 1. Officers. The officers of this corporation shall be a president, a secretary, and a chief financial officer. This corporation may also have, at the discretion of the Board of Directors, a chairman of the Board, one or more vice presidents, a treasurer, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article IX. If there is a treasurer, he shall be the chief financial officer unless some other person is so appointed by the Board of Directors. Any number of offices may be held by the same person, except that neither the secretary nor the chief financial officer may serve concurrently as the chairman of the Board.

Section 2. Election of Officers. The officers of the corporation, except those appointed in accordance with the provisions of Section 3 of this Article IX, shall be elected by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Subordinate Officers. The Board of Directors may appoint, and may authorize the president or another officer to appoint, any other officers that the business of the corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the Bylaws or determined from time to time by the Board of Directors.

Section 4. Removal of Officers. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors, at any regular or special meeting of the Board, or, except in case of an officer elected by the Board of Directors, by an officer on whom such power of removal may be conferred by the Board of Directors.

Section 5. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board of Directors. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 6. Vacancies in Office. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these Bylaws for regular election to that office.

Section 7. Chairman of the Board. If such an officer be elected, the chairman of the Board shall preside at meetings of the Board of Directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by the Bylaws. If there is no president, the chairman of the Board shall, in addition, be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 8 of this Article.

Section 8. President. Subject to such supervisory powers, if any, as may be given by the Board of Directors to the chairman of the Board, the president shall, subject to the control of the Board of Directors, generally supervise, direct, and control the business and the officers of the corporation. In the absence of the chairman of the Board, or if there be none, the president shall preside at all meetings of the Board of Directors. The president shall have such other powers and duties as may be prescribed by the Board of Directors or the Bylaws. The president shall be the chief executive officer of the corporation unless the chairman of the Board, if any, is so designated.

Section 9. Vice President. In the absence or disability of the president, the vice presidents, if any, in order of their rank as fixed by the Board of Directors or, if not ranked, a vice president designated by the Board of Directors, shall perform all the duties of the president, and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board of Directors or Bylaws and the chairman of the Board.

Section 10. Secretary. The secretary shall attend to the following:

(a) Book of Minutes. The secretary shall keep or cause to be kept, at the principal office or such other place as the Board of Directors may direct, a book of minutes of all meetings and actions of Directors, committees of Directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings, the number of Directors present or represented a Directors' meetings, and the proceedings of such meetings.

(b) Notices, Seal and Other Duties. The secretary shall give, or cause to be given, notice of all meetings of the Board of Directors required by the Bylaws or by law to be given. The secretary shall keep the seal of the corporation in safe custody. The secretary shall have other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

Section 11. Chief Financial Officer.

(a) Books of Account. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of this corporation. The chief financial officer shall send or cause to be given to the Directors such financial statements and reports as are required to be given by law, by these Bylaws, or by the Board. The books of account shall be open to inspection by any Director at all reasonable times.

(b) Deposit and Disbursement of Money and Valuables. The chief financial officer shall deposit all money and other valuables in the name and to the credit of this corporation with such depositories as may be designated by the Board of Directors and the chief financial officer shall disburse the funds of this corporation as may be ordered by the Board of Directors. The chief financial officer shall render to the president and

Directors, whenever they request it, an account of all transactions effected by the chief financial officer and of the financial condition of this corporation. The chief financial officer shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or the Bylaws.

(c) Bond. If required by the Board of Directors, the chief financial officer shall give this corporation a bond in the amount and with the surety or sureties specified by the Board of Directors for faithful performance of the duties of such office and for restoration to this corporation of all its books, papers, vouchers, money, and other property of every kind in the possession or under control of the chief financial officer on such officer's death, resignation, retirement, or removal from office.

## ARTICLE X

### INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS

Section 1. Right of Indemnity. To the fullest extent permitted by law, this corporation shall indemnify any present or former Director, officer, employee or other "agent" of the corporation, as that term is defined in Section 5238 of the California Nonprofit Public Benefit Corporation Law, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that Section, and including an action by or in the right of the corporation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in this Bylaw, shall have the same meaning as in Section 5238(a) of such Law.

Section 2. Approval of Indemnity. On written request to the Board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Nonprofit Public Benefit Corporation Law, the Board shall promptly determine under Section 5238(e) of such Law whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to that proceeding, application shall be made by this corporation or the agent or the attorney or other person rendering a defense to the agent to the court in which the proceeding is or was pending for a determination, whether or not the application by the agent, attorney, or other person is opposed by this corporation.

Section 3. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under Sections 1 and 2 above in defending any proceeding covered by those Sections shall be advanced by the corporation before final disposition of the proceeding, on receipt by the corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by the corporation for those expenses.

Section 4. Insurance. The corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees, and

other agents, against any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising out of the officer's, Director's, employee's, or agent's status as such.

## ARTICLE XI RECORDS AND REPORTS

Section 1. Maintenance of Corporate Records. The corporation shall keep:

- (a) Adequate and correct books and records of account; and
- (b) Written minutes of the proceedings of its Board and committees of the Board.

Section 2. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect the corporation's books, records, documents of every kind, physical properties, and the records of each of its subsidiaries. The inspection may be made in person or by the Director's agent or attorney. The right of inspection includes the right to copy and make extracts of documents.

Section 3. Annual Report. The corporation shall provide to the Directors no later than 120 days after the close of its fiscal year, a report containing in appropriate detail the information described in Section 6321(a)(1)-(5) of the California Nonprofit Public Benefit Corporation Law. The report shall be accompanied by any report thereon by independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation.

## ARTICLE XII MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of this corporation shall be the calendar year.

Section 2. Checks, Drafts, Evidence of Indebtedness. All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to this corporation, shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the Board of Directors.

Section 3. Corporate Contracts and Instruments; How Executed. The Board of Directors, except as otherwise provided in these Bylaws, may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of this corporation, and this authority may be general or confined to specific instances; and, unless so authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind this corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 4. Construction and Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a legal entity and a natural person.

ARTICLE XIII  
AMENDMENTS

New Bylaws may be adopted or these Bylaws may be amended or repealed by a vote of 65% of the Directors of the corporation entitled to vote represented at a duly held meeting at which a quorum is present, or by the written consent of a majority of the required quorum of Directors.

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of HOUSING ON MERIT, a California nonprofit public benefit corporation, and that the above and forgoing Bylaws were Amended and Restated as the Bylaws of this corporation at a meeting of the Board of Directors of said corporation held on April 23, 2020 and that they have not been amended or modified since that date.

Executed on June 2, 2020, in Costa Mesa, California.

  
\_\_\_\_\_  
Andrew Lamming, Secretary

**EXHIBIT C**  
**Managing Member Operating Agreement**  
**[See Attached]**

## LIMITED LIABILITY COMPANY AGREEMENT

of

### HOM PRESERVE AT PORT ROYAL LLC, a Delaware limited liability company

This Limited Liability Company Agreement (this “Agreement”) of HOM PRESERVE AT PORT ROYAL LLC, a Delaware limited liability company (the “Company”), is entered into as of October 10, 2024, by the undersigned sole Member and Manager, who desires to form and operate a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act, as amended from time to time (the “Act”), under the following terms and conditions:

1. **Name.** The name of the limited liability company is HOM Preserve at Port Royal LLC (the “Company”). The business of the Company may be conducted under that name, or such other name or names as the Member deems appropriate. The Manager is authorized to make all appropriate filings on behalf of the Company to enable the Company to conduct business under an assumed or different name, and to secure the Company’s proprietary rights to such a name.

2. **Formation and Term.** The Company was formed upon the filing of the Company’s Certificate of Formation with the Secretary of State of the State of Delaware. The Company’s term shall expire or terminate as provided in this Agreement or as the Company may be earlier dissolved in accordance with the provisions of this Agreement or the Act.

3. **Principal Place of Business.** The principal office of the Company is 1901 Avenue of the Stars, Suite 395, Los Angeles, CA 90067. The Company may locate its place of business at any other place or places as the Member may from time to time deem advisable; provided, however, that the Company shall at all times maintain within the State of Delaware a registered agent. The initial registered agent for service of process in Delaware is stated in the Certificate of Formation, as it may be amended from time to time (the “Certificate”).

4. **Appointment of Manager; Authority and Duties.** In accordance with the Act, the operations of the Company shall be conducted by a manager or managers (“Manager”) who shall be appointed by the Member and may be removed at any time for any reason by the Member. The Manager shall have the responsibility and authority to manage the business, property and affairs of the Company in all respects, and each Manager, acting alone, shall have the authority to execute and deliver on behalf of the Company such documents and instruments as it shall deem reasonably required in connection therewith and to enter into such contracts and to take such actions as it deems from time to time to be in the best interests of the Company. The initial Manager shall be the Member.

5. **Qualifying Organization.** Each Member of the Company shall be a qualifying organization (referred to herein as a “Qualifying Organization”), which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code (“IRC”).

6. **Purpose.** The business of the Company is to engage in the following activities and exercise the following powers:

- (a) The Company has been organized exclusively for the following purposes:
  - (i) directly or indirectly holding title to property, specifically including the real property and improvements and all related personal property, fixtures and interests located at 1 Preserve Ave W Port Royal, SC 29935 (the “Property”);
  - (ii) collecting the income from the Property; and
  - (iii) remitting the net income of the Company to another organization that itself is exempt from tax under Section 501(a) of the IRC, as amended.

(b) The Company is organized and operated exclusively for charitable purposes. The Company is operated exclusively to further the charitable purposes of its Member by providing low-income housing to poor and distressed persons by, directly or indirectly, acquiring, developing, financing, constructing, rehabilitating, owning, maintaining, operating and selling or otherwise disposing of the Property, including the following powers:

- (i) To engage in all other activities necessary, customary, convenient or incidental to any of the foregoing;
- (ii) To exercise all other powers necessary to or reasonably connected with the Company’s business which may be legally exercised by limited liability companies under the Act and which at any time appear conducive to or expedient for the protection or benefit of the Company and its assets;
- (iii) The property of the Company is and shall be irrevocably dedicated to charitable purposes; and
- (iv) The Company shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of the Company.

7. **Ownership of Company Property.** All assets owned by the Company shall be owned by the Company as an entity, and held in the name of the Company. Neither the Member nor the Manager shall have any ownership interest in any Company property in the Member’s own name or right, and the Member’s interest in the Company is personal property for all purposes.

8. **Limited Liability.** Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the Company, and neither the Member nor the Manager is personally obligated for any such debt, obligation or liability of the Company solely by reason of being a manager or member of the Company.

9. **Capital Contributions.** The Member will contribute to the Company, as its initial capital contribution, the amount set forth on Exhibit "A" attached to this Agreement. The Member is not required to make any additional capital contributions to the Company.

10. **Allocation of Profits and Losses.** The Company's profits and losses shall be allocated solely to the Member.

11. **Distributions.**

(a) All cash resulting from the normal business operations of the Company and from a capital event shall be distributed to the Member at such times and as the Member deems appropriate.

(b) Notwithstanding any provision to the contrary in this Agreement, the Company shall not make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other similar applicable law.

(c) Notwithstanding the foregoing, the Company shall not distribute any of its assets to any member of the Company who ceases to be a Qualifying Organization.

12. **Officers.** The Manager may, from time to time as the Manager deems advisable, appoint officers of the Company (the "Officers") and assign in writing titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such person. Unless the Manager decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title constitutes the delegation to such person of the authorities and duties that are normally associated with that office, including, without limitation, the execution of documents, instruments and agreements in the name of and on behalf of the Company. Any delegation pursuant to this Section may be revoked at any time by the Manager in writing. As of the date of this Agreement, the Manager hereby appoints Jaymie Beckett as an authorized representative of the Company with full and complete authority to execute documents on behalf of the Company in furtherance of the Company's business.

13. **Other Business.** The Manager or the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company has no rights in or to such independent ventures or the income or profits therefrom.

14. **Exculpation and Indemnification.**

(a) No Member, Manager, officer, director, shareholder or other holder of an equity interest in the Company, shall be personally liable for the performance of the obligations of the Company, but the foregoing shall not relieve any such Member, Manager, officer, director or employee of the Company, of its obligations to the Company, the Manager or the Member.

(b) To the fullest extent permitted by applicable law, a Member, Manager, Officer or employee of the Company, and the officers, directors and employees of the Manager and Member (each of the foregoing a "Person" and collectively the "Persons")

shall be indemnified, defended and held harmless by the Company from and against any and all claims, demands, liabilities, costs, damages, expenses and causes of action of any nature whatsoever arising out of or incidental to any act performed or omitted to be performed by any one or more of such indemnified Persons in connection with the business of the Company; provided, however, the indemnity under this Section shall be paid solely out of and to the extent of the assets owned by the Company and shall not be a personal obligation of any Member. All judgments against the Company, the Manager, the Member, such other Persons or any one or more thereof, wherein such Manager or Member is entitled to indemnification, must be satisfied from the assets owned by of the Company.

15. **Assignments.** A Member may assign in whole or in part its limited liability company interest. If a Member transfers its interest in the Company, the transferee shall be admitted to the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement; and if a Member transfers its entire membership interest in the Company and there are no other Members of the Company, the admission of the transferee as a Member of the Company shall be deemed effective concurrent with the termination of the transferor as a Member of the Company. The Manager may not transfer its rights or obligations under this Agreement in whole or in part. Notwithstanding the foregoing, no Member of the Company shall transfer any direct or indirect membership interest in the Company to any person or entity which is not a Qualifying Organization.

16. **Withdrawal.** A Member may withdraw from the Company. If a Member withdraws from the Company and there are no other Members of the Company at the time, a new Member shall be admitted to the Company, subject to Section 17 below, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement. The admission of the new Member shall be deemed effective concurrent with the termination of the withdrawing Member.

17. **Admission of Additional Members.**

(a) No member shall transfer any direct or indirect Membership Interest in the Company to any person or entity that is not a Qualifying Organization.

(b) The Company shall not merge with or convert into any entity which is not tax-exempt under IRC Section 501(c)(3).

(c) Subject to the foregoing Sections 17(a) and (b), one (1) or more additional members of the Company may be admitted to the Company with the written consent of the Member. If the Company subsequently has more than one Member, than all references in this Agreement to the singular "Member" will refer to all of the Members of the Company, and any matter requiring the consent of the "Member" under this Agreement will require the consent of a majority in interest of the Members

18. **Dissolution.**

(a) The Company shall dissolve, and its affairs shall be wound up upon the first to occur of the following: (i) the expiration of the term, (ii) the occurrence of any dissolution event set forth in the Certificate, as the same may be amended from time to

time, (iii) the written consent of the Member, (iv) the withdrawal or dissolution of the Member or the occurrence of any other event which terminates the continued membership of the Member in the Company unless the business of the Company is continued in a manner permitted by the Act, or (v) the entry of a decree of judicial dissolution under the Act.

(b) The bankruptcy of the Member will not cause the Member to cease to be a member of the Company, and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(c) In the event of dissolution, the Manager shall conduct only such activities as are necessary to wind up the affairs of the Company (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Act.

(d) Upon the dissolution of the Company, all assets of the Company shall be distributed to a corporation organized and operated pursuant to IRC Section 501(a).

19. **Separability of Provisions.** Each provision of this Agreement is separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality does not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

20. **Entire Agreement.** This Agreement and the schedules and exhibits to this Agreement constitute the entire agreement of the Member with respect to the subject matter hereof. The exhibits and schedules to this Agreement are incorporated into and made a part of this Agreement by reference. This Agreement is intended to be a legally binding document.

21. **Governing Law.** This Agreement shall be governed by, and construed under, the internal laws of the State of Delaware, all rights and remedies being governed by Delaware law.

22. **Amendments.** This Agreement may not be modified, altered, supplemented or amended except pursuant to a writing executed and delivered by the Member.

23. **Non-Tax-Exempt Mergers.** The Company shall not merge with, or convert into, any entity which is not tax-exempt under Section 501(c)(3) of the Code.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Agreement effective as of the date first above written.

**MEMBER AND MANAGER:**

HOUSING ON MERIT,  
a California nonprofit public benefit corporation

By:   
Jaymie Beckett (Oct 11, 2024 12:33 PDT)  
Jaymie Beckett, Chief Executive Officer

**EXHIBIT "A"**

**INITIAL CAPITAL CONTRIBUTIONS, UNITS AND PERCENTAGE INTERESTS**

<b>Name and Address of Member/Manager</b>	<b>Initial Capital Account and Capital Contribution Balance</b>	<b>Number of Units</b>	<b>Member's Percentage Interest</b>
Housing on Merit 1901 Avenue of the Stars, Suite 395 Los Angeles, CA 90067	As set forth in the books and records of the Company.	100	100%






# HOM Preserve at Port Royal LLC - Limited Liability Company Agreement(21309203.2)

Final Audit Report

2024-10-11

Created:	2024-10-11
By:	Sydney Gomez (sgomez@housingonmerit.org)
Status:	Signed
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## "HOM Preserve at Port Royal LLC - Limited Liability Company Agreement(21309203.2)" History

-  Document created by Sydney Gomez (sgomez@housingonmerit.org)  
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-  Document e-signed by Jaymie Beckett (jbeckett@housingonmerit.org)  
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-  Agreement completed.  
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**EXHIBIT D**

**JV Entity Omnibus Amendment to the Operating Agreement and Amended and Restated  
Operating Agreement**

**[See Attached]**

**OMNIBUS AMENDMENT TO THE  
OPERATING AGREEMENT  
OF  
SOLANO VISTA V, LLC**

This Omnibus Amendment to the Amended and Restated Operating Agreement (“*Amendment*”) of Solano Vista JV, LLC, a Utah limited liability company (“*Company*”), is made and entered into as of December \_\_\_\_, 2024 (“*Effective Date*”), by and between HOM Preserve at Port Royal LLC, a Delaware limited liability company (“*Nonprofit Member*”), and Sundance Bay Income and Growth OP, LP, a Delaware limited partnership (“*Sponsor*” and together with the Nonprofit Member, the “*Members*”), and amends the Amended and Restated Operating Agreement of the Company entered into by the Sponsor on December 31, 2023 (“*Agreement*”). All capitalized terms used but not defined in this Amendment shall have the meaning given to such term in the Agreement.

**RECITALS**

A. The Company was formed as a manager-managed Utah limited liability company for the purpose of the development, ownership, management, and operation of an apartment property known as “Preserve at Port Royal” and located at 1 Preserve Ave W, Port Royal, South Carolina 29935 (the “*Property*”). To carry out this purpose, the Company is the sole owner of SC Preserve At Port Royal, LLC, a Delaware limited liability company (“*Owner*” and, together with the Company, the “*Owner Parties*”), the owner of the Property. The Company has been operated in accordance with such purposes and conducted such activities since its date of formation.

B. Prior to the Effective Date, Sponsor has served as the Manager of the Company.

C. Sponsor desires for the Property to be operated as an affordable housing residential rental project which is devoted to providing housing to low or very low-income residents.

D. The Nonprofit Member is the wholly-owned subsidiary of Housing on Merit (“*Nonprofit*”), a California nonprofit public benefit corporation organized under the California Nonprofit Corporation Law and exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (“*Code*”). The charitable purposes of Nonprofit include the provision of decent, safe, sanitary and affordable housing for low-income persons and families (“*Exempt Purpose*”) in accordance with Internal Revenue Service Revenue Procedure 96-32 (“*Rev. Proc. 96-32*”), and the Nonprofit Member’s admission as a Member to the Company and its service as Manager of the Company furthers the Exempt Purpose.

E. Sponsor desires to amend the Agreement to (i) resign as the Manager of the Company and admit the Nonprofit Member as a Member of the Company, and (ii) appoint the Nonprofit Member as the sole manager of the Company with the sole authority and power over the business and affairs of the Company so that the Property is at all times operated as a decent, safe, and sanitary affordable housing for low-income or very-low-income families and individuals.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the Agreement shall be, and hereby is, amended as of the Effective Date as follows:

**ARTICLE I  
AMENDMENTS TO AGREEMENT**

Notwithstanding any contrary provisions therein, the Agreement shall be amended in all respects

as may be necessary to incorporate the following provisions. The provisions of the Agreement shall be interpreted liberally to give effect to the amendments provided below and to evidence (i) the admission of the Nonprofit Member as an additional Member of the Company, (ii) the resignation of Sponsor as the Manager, and (iii) the appointment of the Nonprofit Member as the Manager. To the extent there are any conflicts between the Agreement or any document to which the Company is a party (collectively, "**Owner Documents**") and the provisions set forth in this Amendment, the terms of this Amendment will control and supersede the Agreement.

**Section** . The Nonprofit Member shall be admitted as a Member of the Company and shall hold a 00.10% percent interest in the Company ("**Nonprofit Member's Interest**"). The names and membership interests of the Members shall be as reflected on the attached Exhibit A. Sponsor hereby acknowledges that Nonprofit is an organization described in Section 501(c)(3) of the Internal Revenue Code, and is the sole member of the Nonprofit Member.

**Section** . The purpose of the Company shall be as permitted in the Agreement but shall at all times be subject to the operation of the Company in accordance with the Exempt Purpose, and the Owner Parties will operate the Property in accordance with the Exempt Purpose at all times Nonprofit has an interest (directly or indirectly) in the Owner. Owner Parties intend to operate the Property in a manner that qualifies for a property tax abatement/reduction under South Carolina Code Annotated section 12-37-220(B)(11)(e) that grants an exemption from property taxes for certain property owned by a nonprofit housing corporation or an instrumentality of a nonprofit housing corporation ("**Exemption**").

**Section** . Sponsor hereby withdraws as the Manager of the Company, and Nonprofit Member is hereby appointed as the sole Manager of the Company. The Manager may appoint such individuals, entities or other persons, with such titles as it may select, as officers, employees or agents of the Company to act on behalf of the Company, with such power and authority as the Manager may determine from time to time. The Manager shall at all times oversee the activities of any individual, entity or other person so appointed. Any appointment pursuant to this Section 3 may be revoked at any time by the Manager. Notwithstanding anything to the contrary in this Amendment, Major Actions (as defined below) must be approved by the Sponsor.

**Section** . For so long as the Nonprofit Member is the Manager of the Company, the other member(s) of the Company acknowledge and agree that the Nonprofit Member will be paid the following fees and reimbursements by the Company for services rendered to the Owner Parties, all of which are payable prior to any other fees owed by the Company and prior to any distributions of cash or other property to the members, but shall at all times be subordinate to any obligation secured by a first lien mortgage on the Project, and if any invoice for fees and/or reimbursements are not paid within sixty (60) days following the issuance of such invoice, interest will accrue on such delinquent amounts at the rate of 4% per month:

4.1. A one-time start of fee of 80,000 payable by the Company on the Effective Date.

4.2. An annual service fee of 40,000 per year ("**Service Fee**"), payable by the Company as an operating expense commencing on the Effective Date each January 1 of each year thereafter. The Service Fee will increase by 3.0% each year and will be paid on each January 1 of each year. Should units be added at the Property, then the Service Fee will be increased by a percentage equal to the percentage increase in the unit count of the Property at such time as the units are placed in service.

4.3. A fee equal to 1% of any grant awarded to the Owner Parties ("**Administrative Fee**"). The Administrative Fee is payable on the first funding of any grant so received.

4.4. All duties and services performed by Nonprofit employees or agents on behalf of

the Nonprofit Member or Owner Parties that are in addition to Nonprofit's duties as sole member of the Nonprofit Member, will be billed to the Company at a rate of 175/hour.

4.5 The fees set forth in this Section 4 shall be the sole compensation of Nonprofit Member in its capacity as Manager of the Company, and Nonprofit Member shall not be entitled to any distributions from the Company.

**Section .** The Nonprofit Member and Nonprofit will be reimbursed for the following costs and expenses, all of which are payable prior to any other fees owed by the Company and prior to any distributions of cash or other property to the members, and if any invoice for fees and/or reimbursements are not paid within sixty (60) days following the issuance of such invoice, interest will accrue on such delinquent amounts at the rate of 4% per month:

5.1. Any direct out-of-pocket expenses incurred in connection with the performance of its duties under the Agreement, including this Amendment, and reimbursement of costs of the Owner Parties or Property paid or advanced by the Nonprofit Member. To the extent that any cost paid or advanced exceeds the annual budget for such item by more than 500, reimbursement of the cost paid or advanced will be approved by the Sponsor. Reimbursement of expenses and costs are payable on receipt of an invoice from the Nonprofit Member to the Owner Parties.

5.2. All legal and other professional fees and expenses incurred in connection with the Property, including, without limitation, consummating this Amendment.

**Section .** The Nonprofit Member may be removed as Manager by the Sponsor with or without cause on fifteen (15) days prior written notice to the Nonprofit Member. On such removal, the Nonprofit Member will automatically be deemed to withdraw as a member of Company and a successor Manager will be appointed in accordance with the Agreement. If the Nonprofit Member is removed without cause then the Company will pay the Nonprofit Member a fee of 25,000 ("*Exit Fee*"), which Exit Fee is in addition to any other fees payable under the Agreement, including this Amendment. For purposes of this Section 6, "cause" means any of the following that result directly from the actions taken by the Nonprofit on behalf of the Nonprofit Member that causes material harm to the Company or the Property ("*Bad Acts*"): (i) the Nonprofit Member breaches any material provision of the Agreement, including this Amendment, that are within its control and the breach continues for more than thirty (30) days after the Nonprofit Member has received written notice from the Sponsor of the breach, or, in the case of a breach that cannot be cured within thirty (30) days, the Nonprofit Member fails to begin curing the breach within thirty (30) days or the breach remains uncured for ninety (90) days; (ii) the Nonprofit Member engages in fraud, gross negligence, willful misconduct or acts with reckless disregard for its obligations, and/or (iii) engages in bad faith in activities that are beneficial to itself and that cause material harm to the Company or the Property.

**Section .** So long as HOM Preserve at Port Royal LLC is the Nonprofit Member, the Nonprofit Member will have to option to require the Sponsor or its designee to purchase its interest in the Company (i) on or after the fifteenth (15th) anniversary of the date of this Agreement and following 180 days' prior written notice to the Sponsor; (ii) upon the withdrawal of the Sponsor from the Owner or the transfer of any controlling interest in the Sponsor, which transfer will be subject to the reasonable prior written consent of the HOM SPE; (iii) the Property will not qualify/obtain the Exemption 240 days of the date of this Amendment; and (iv) at any time it determines that its participation in the Owner (directly or indirectly) no longer furthers the Exempt Purpose. The Nonprofit Member's Interest will be purchased for such interest's fair market value on the date of such transfer, and thereafter the Nonprofit Member will immediately and automatically be relieved of and released from all rights, duties and obligations, and will no longer be a partner/member of the Company. Notwithstanding anything to the contrary contained herein, provided that the Owner Parties are in compliance with and are satisfying all of their obligations under the

that certain Letter Agreement dated as of even date herewith, the Nonprofit Member agrees to remain in place as a Member and the Manager of the Company notwithstanding any foreclosure or transfer of the ownership interests in Owner or Company (a "**Foreclosure**") to MF1 2022-FL8 LTD., an exempted company incorporated with limited liability under the laws of the Cayman Islands, or any of its nominees ("**Lender**"), provided however that in the event of a Foreclosure the Nonprofit Member reserves the right to exercise its option under this Section 7 on thirty (30) days notice ("**Notice Period**") to Lender, with Lender or Lender's designee taking the place of the Sponsor or Sponsor's designee as purchaser of the Nonprofit Member's Interest. In the event that the Nonprofit Member provides such notice, the Nonprofit Member agrees to use commercially reasonable efforts to work cooperatively with Lender or Lender's designee during the Notice Period to arrange for the management and operation of the Property and to transfer Nonprofit Member's Interest to and admit as substitute member and manager a replacement nonprofit entity. At the expiration of such Notice Period, the Nonprofit Member's Interest will be purchased by Lender or Lender's designee for such interest's fair market value on the date of such transfer, and thereafter the Nonprofit Member will immediately and automatically be relieved of and released from all rights, duties and obligations, and will no longer be a partner/member of the Company.

**Section** The Nonprofit Member will review and approve any announcements, press releases, or other types of publications made by the Owner Parties (or any affiliate thereof) regarding the Property prior to circulation or publication, and may cause the Owner Parties to place signage on the Property.

**Section** Notwithstanding anything to the contrary set forth herein, the Owner Parties will have the perpetual right to market the Property for sale. In the event that the Owner Parties receive a bona fide third party offer to purchase the entire Property, including, without limitation, pursuant to a letter of intent or term sheet (the "**Bona Fide Offer**"), and such offer is acceptable to the Nonprofit Member and the Sponsor, the Property may be sold to such purchaser; provided, however, that the Nonprofit Member will be granted a right of first refusal ("**ROFR**") to purchase the entire Property if the Nonprofit Member is the current Manager of the Company and has (i) not been provided notice of removal pursuant to Article I, Section 7 above or has otherwise been removed pursuant to the terms of the Agreement, including this Amendment, and (ii) is not itself in breach of any provisions of the Agreement, including this Amendment or itself (or its member) has not otherwise engaged in Bad Acts. The ROFR will only be exercisable under terms, conditions, and a purchase price matching the terms, conditions, and purchase price of the Bona Fide Offer. The ROFR must be exercised by written notice ("**Acceptance Notice**") to the Owner Parties within three (3) days of the Nonprofit Member's receipt of written notice of the Bona Fide Offer from the Owner Parties, a contract for the purchase and sale of the Property must be executed within three (3) days of the sending of the Acceptance Notice, and the Nonprofit Member must close on such purchase of the Property within sixty (60) days of its exercise of the ROFR. If, following receipt of notice of a Bona Fide Offer, the Nonprofit Member fails to timely (i) deliver the Acceptance Notice, (ii) enter into such contract for the purchase and sale of the Property, or (iii) close on such purchase of the Property, as applicable, the Nonprofit Member shall be deemed to have waived its ROFR with respect to such Bona Fide Offer, and thereafter the Owner Parties, without further consent from the Nonprofit Member, shall be authorized take all actions on behalf of the Company to cause the Company to pursue and consummate the sale of the Property pursuant to the terms set forth in the Bona Fide Offer. The Nonprofit Member shall, at the request of the Owner Parties, provide an acknowledgment in favor of the applicable buyer parties confirming the waiver of the ROFR and any other certificates or documentation reasonably requested by the Owner Parties in connection therewith. For the avoidance of doubt, in the event of a purchase of the Property by the Nonprofit Member pursuant to this Section, an Exit Fee will not be due to the Nonprofit Member. Should the Nonprofit Member issue an Acceptance Notice and later fail to contract for or close on the purchase of the Property, the Nonprofit Member's right of first refusal will be extinguished absent any right of reinstatement. Notwithstanding anything to the contrary contained herein, Nonprofit Member's purchase option and ROFR as contained in this Amendment are subject and subordinate to the mortgage executed

by Owner on behalf of Lender and shall not be applicable to any foreclosure sale, transfer by deed-in-lieu of foreclosure or similar transfer of the Property or to any subsequent transfer or sale of the Property by Lender or its nominee, in each case, whether such transfer or sale affects the Property or the ownership interests in Company or Owner.

**Section** The Nonprofit Member will not be required to (i) make any capital contributions in excess of its initial capital contribution to the Company in the amount of \_\_\_\_\_, (ii) incur any financial obligations to, or on behalf of, Owner Parties, including, without limitation, providing any guaranties in connection with Property financing or otherwise on behalf of the Owner Parties, or (iii) advance or otherwise provide any funds to the Owner Parties (e.g., member loans).

**Section** In addition to all other indemnification protections provided in the Agreement, Sponsor and the Company each hereby agree to, to the fullest extent permitted by law, indemnify, defend and hold the Nonprofit Member and any of its members, and their respective managers, officers, directors employees and agents (collectively, the “*Indemnified Parties*”), harmless from any and all fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, fees and expenses of attorneys, accountants, consultants and other professionals, experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under any statutory law or regulation (including, without limitation, federal or state securities laws and regulations and federal tax laws or regulations) or at common law or otherwise (collectively, “*Liabilities*”), arising out of or based upon or in any way relating to the Property or the Agreement, except such Liabilities as may be occasioned by the fraud, gross negligence or willful misconduct of the Nonprofit Member.

**Section** The Nonprofit Member will not be obligated to present any particular business opportunity to the Owner Parties, even if such opportunity is of a character that, if presented to the Owner Parties, could be taken by the Owner Parties. The Nonprofit Member will have the right to take for their own account (individually or as a member/partner or fiduciary) or to recommend to others any such particular business opportunity

**Section** . Notwithstanding anything to the contrary, no decision shall be made, no action shall be taken, no sum shall be expended and no obligation (monetary or otherwise) shall be incurred by the Nonprofit Member with respect to a matter affecting the Company or any Subsidiary which is within the scope of any of the Major Actions, unless such Major Action shall have been approved in writing in advance by Sponsor, which approval may be withheld, denied or conditioned in the sole and absolute discretion of Sponsor. Each of the following shall constitute a Major Action (collectively, the “*Major Actions*”):

13.1 The acquiring of any real property by any means (whether directly or indirectly);

13.2 The acquiring of any assets unrelated to the ownership, leasing and operation of the Property and/or the engaging in any business or enterprise unrelated to the ownership, leasing and operation of the Property;

13.3 The selling, transferring, assigning, conveying, exchanging or otherwise disposing of the Property or any part thereof or interest therein, or any other assets of the Company or any part thereof or any interest therein except for a transfer of Nonprofit Member’s Interests pursuant to Section 7 of this Amendment, other than (i) personal property at the Property or the assets of the Company, which may be disposed of or replaced due to wear and tear or obsolescence, or (ii) de minimis portions of the Property or the assets of the Company or interests therein in the ordinary course of business provided

that such transaction shall not have a material adverse impact upon the value, use, development or financeability of the Property or such assets of the Company;

13.4 The changing of the purpose or nature of the business of the Company or the Owner or entering into, causing or permitting any other amendment to the limited liability company agreement, certificate of formation or any other organizational documents with respect to the Owner;

13.5 The merger or consolidation of the Company or the Owner with any other entity, partnership or joint venture, or the liquidation or dissolution of the Company or the Owner;

13.6 The taking of any Bankruptcy Action or permitting or causing Owner to take any Bankruptcy Action;

13.7 The making of any election to change the status of the Company or the Owner for federal income tax purposes or the revoking of any election of the Company or the Owner for federal income tax purposes;

13.8 The making of any decision, election or other determination not to have the Company or the Owner make (or to delay the making of) any distribution required to be made by the Company to the Sponsor or by the Owner to the Company;

13.9 The making of any decision to effect or undertake a material development, redevelopment or renovation of the Property;

13.10 Modifying (other than non-substantive modifications), terminating or entering into any material contract;

13.11 The issuance, transfer, conveyance, pledge, encumbrance or sale of any membership interests in the Owner or the admission of any new or additional members in the Owner;

13.12 The termination, modification, amendment or waiver of any rights under the limited liability company agreement, certificate of formation or other organizational documents of the Owner;

13.13 The acquisition or ownership by the Company or the Owner of any equity interest or other ownership interest in any entity other than the ownership interest of the Company in the Owner;

13.14 The dissolution, liquidation and/or other termination of existence of the Company or the Owner.

For the purposes of this Section 13, "**Bankruptcy Action**" shall mean (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors' Rights Laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors.

For the purposes of this Section 13, "**Creditors' Rights Laws**" shall mean, with respect to any Person, any existing or future law of any jurisdiction, domestic or foreign, applicable to such Person and relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors.

## ARTICLE II

### Section Interests in the Company.

Each limited liability company interest in the Company shall constitute a “security” within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8102(a)(15) thereof) as in effect from time to time in the State of Utah and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the Uniform Commercial Code as in effect in the State of Utah (Utah Code 70A-1a-101, et seq.) (the “UCC”), such provision of Article 8 of the UCC shall be controlling. The Member hereby agrees that its interest in the Company shall for all purposes be personal property. The Member has no interest in specific Company property.

### Section Share Certificates.

(a) Upon the issuance of limited liability company interests in the Company to any Person in accordance with the provisions of this Agreement (or, in the case of the Member, effective upon its execution of this Agreement), the Company shall issue one or more non-negotiable certificates in the name of such Person substantially in the form of Exhibit A attached hereto (a “Share Certificate”), which evidences the ownership of the limited liability company interests in the Company of such Person. Each such Share Certificate shall be denominated in terms of the percentage of the limited liability company interests in the Company evidenced by such Share Certificate and shall be signed by the Member, any officer of the Company or such other duly authorized party on behalf of the Company. The Share Certificates shall be consecutively numbered (on a class by class or series by series basis) and shall be entered in the books of the Company as they are issued and shall exhibit the holder’s name and number of shares.

(b) The Company shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the limited liability company interests in the Company represented by such Share Certificate, as reflected on the books and records of the Company: (i) makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Share Certificate has been lost, stolen or destroyed; (ii) requests the issuance of a new Share Certificate before the Company has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim; (iii) if requested by the Company, delivers to the Company a bond, in form and substance satisfactory to the Company, with such surety or sureties as the Company may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; (iv) satisfies any other reasonable requirements imposed by the Company; and (v) obtains the prior written consent of, for so long as the Loan is outstanding, Lender.

(c) Upon a Member’s transfer in accordance with the provisions of this Agreement of any or all limited liability company interests in the Company represented by a Share Certificate, the transferee of such limited liability company interests in the Company shall deliver such Share Certificate to the Company for cancellation (executed by such transferee on the reverse side thereof), and the

Company shall thereupon issue a new Share Certificate to such transferee for the percentage of limited liability company interests in the Company being transferred and, if applicable, cause to be issued to such Member a new Share Certificate for that percentage of limited liability company interests in the Company that were represented by the canceled Share Certificate and that are not being transferred.

(d) Notwithstanding any other provision hereof, for so long as the Loan is outstanding, (i) no new Share Certificates shall be issued after the date of this Agreement without the prior consent of Lender, and the Member to whom any new Share Certificate is issued must agree to comply with all reasonable requests of Lender and (ii) this Section 36 shall not be amended, modified or replaced in any way without the prior written consent of Lender.

### **ARTICLE III REPRESENTATIONS**

**Section** Sponsor hereby represent and warrant that all the Owner Documents (including all Property finance documents) (i) do not conflict with the Agreement, including this Amendment, (i) do not conflict with any of the other documents entered into by the Nonprofit Member and/or Nonprofit in connection with the Property ("*Nonprofit Documents*"), (iii) do not impair any of the Nonprofit Member's and/or Nonprofit's rights under this Amendment and/or Nonprofit Documents, nor does the Nonprofit Member's and/or Nonprofit's exercise of any of their respective rights thereunder require the prior consent of any party.

**Section** No further consent or approval, including consent from any holder of any indebtedness of the Company, or any guarantor of indebtedness of or other provider of credit or liquidity to the Company, is necessary in connection with the execution and delivery of this Amendment.

**Section** Sponsor represents that the Required Interest necessary to approve the execution and delivery of this Amendment has so approved the execution and delivery of this Amendment and it has been duly authorized to execute and deliver this Amendment.

### **ARTICLE IV MISCELLANEOUS**

**Section** This Amendment may be executed in counterparts, all of which taken together shall be deemed one original. Signature pages may be transmitted via facsimile or other electronic means, and any such signature pages shall be deemed to be originals.

**Section** . The Amendment is effective as of the Effective Date. No further changes or delivery of any document other than this Amendment shall be necessary to effectuate the provisions hereof; provided, however, the Manager and the Members are authorized to take such further actions as may be necessary to evidence or execute the provisions hereof.

**Section** Except as expressly modified herein, the terms and conditions of the Agreement will remain in full force and effect.

SIGNATURE PAGES FOLLOW.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Omnibus Amendment to the Amended and Restated Operating Agreement of Solano Vista JV, LLC effective as of the Effective Date.

**NONPROFIT MEMBER:**

HOM Preserve at Port Royal LLC  
a Delaware limited liability company

By: Housing on Merit  
A California nonprofit public benefit corporation  
Its: Sole Member


By:   
Name: Jaymie Beckett  
Title: CEO

IN WITNESS WHEREOF, the undersigned has hereunto executed this Omnibus Amendment to the Operating Agreement of Solano Vista JV, LLC effective as of the Effective Date.

**SPONSOR:**

Sundance Bay Income and Growth OP, LP  
a Delaware limited partnership

By: Sundance Bay Income and Growth Fund GP, LLC  
Its: General Partner

  
\_\_\_\_\_  
By: Ryan Baughman  
Its: Manager

**EXHIBIT A**

**Membership Interests**

<b>Member Name</b>	<b>Address</b>	<b>Ownership Percentage</b>
HOM Preserve at Port Royal LLC	1901 Avenue of the Stars, Suite 395 Los Angeles, CA 90067	████████
Sundance Bay Income and Growth OP, LP	1240 E 2100 S Ste. 300 Salt Lake City, UT 84106	████████
<b>Total</b>		<b>100.00%</b>

AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
SOLANO VISTA JV, LLC

THE LIMITED LIABILITY COMPANY 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 ANY SIMILAR STATE STATUTE IN RELIANCE UPON EXEMPTIONS FROM REGISTRATION AS PROVIDED IN THOSE STATUTES.

THE SALE OR OTHER DISPOSITION OF THE LIMITED LIABILITY COMPANY INTERESTS IS RESTRICTED, AS SET FORTH IN THIS AMENDED AND RESTATED OPERATING AGREEMENT, AND THE EFFECTIVENESS OF ANY SUCH SALE OR OTHER DISPOSITION MAY BE CONDITIONED UPON THE RECEIPT BY THE LIMITED LIABILITY COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE MEMBERS AND ITS COUNSEL THAT SUCH SALE OR OTHER DISPOSITION CAN BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE STATUTES.

BY ACQUIRING LIMITED LIABILITY COMPANY INTERESTS REPRESENTED BY THIS AMENDED AND RESTATED OPERATING AGREEMENT, A MEMBER REPRESENTS THAT IT WILL NOT SELL OR OTHERWISE DISPOSE OF THE LIMITED LIABILITY COMPANY INTERESTS WITHOUT REGISTRATION OR OTHER COMPLIANCE WITH THE AFORESAID STATUTES AND THE RULES AND REGULATIONS THEREUNDER.

THIS AMENDED AND RESTATED OPERATING AGREEMENT (the “*Agreement*”) is made effective as of the 31st day of December, 2023 (the “*Effective Date*”), by and among the undersigned members of the Company (each a “*Member*” or “*Class A Member*” and, collectively, the “*Members*” or “*Class A Members*”), which shall supersede and replace all prior operating agreements of the Company.

RECITALS

WHEREAS, the Company was previously formed by the filing of its certificate of organization with the Utah Division of Corporations and Commercial Code (the “*Division*”) pursuant to the Utah Revised Uniform Limited Liability Company Act, (as may be amended from time to time, hereinafter the “*Act*”); and

WHEREAS, the Members intend to enter into this Agreement in order to define and express all of their respective rights and obligations with respect to (i) their Interests in the Company, and (ii) the operation of the Company as a limited liability company under the Act for the purposes set forth herein.

NOW, THEREFORE, the Members, by their execution of this Agreement, hereby ratify the prior formation of the Company as a limited liability company pursuant to and in accordance with the Act, and in consideration of the foregoing premises and the mutual promises, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company and its Members and Manager hereby agree as follows:

ARTICLE I  
DEFINITIONS

1.1 Definitions. Capitalized terms used in this Agreement and not defined elsewhere herein have the following meanings:

**“Additional Capital Contribution”** means, with respect to each Member, any Capital Contribution made by such Member to the Company under Section 4.3 of this Agreement.

**“Adjusted Capital Account”** means, with respect to a Member, such Member’s Capital Account as of the end of each taxable year, as the same is specially computed to reflect the adjustments required or permitted to be taken into account in applying Regulations Section 1.704-1(b)(2)(ii)(d) (including adjustments for Company Minimum Gain and Member Nonrecourse Debt Minimum Gain) and taking into account any amounts such Member is obligated or deemed obligated to restore pursuant to any provision of this Agreement and the Regulations.

**“Affiliate”** means any person or entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person or entity. For purposes hereof, the terms “control”, “controlled”, or “controlling” with respect to a specified person or entity will include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the managing member(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

**“Agreement”** means this Amended and Restated Operating Agreement made effective as of the Effective Date by and among the Members and the Company and its Manager, as the same may be amended from time to time.

**“Capital Account”** means, with respect to any Member, such Member’s Capital Account determined in accordance with Section 4.5 of this Agreement.

**“Capital Contribution”** means, with respect to each Member, the aggregate amount of money and the initial Gross Asset Value of any property (other than money) contributed by such Member to the Company pursuant to Section 4.2 or 4.3 of this Agreement.

**“Capital Proceeds”** means funds of the Company arising from a Capital Transaction and releases from reserves previously reducing Capital Proceeds for a prior period, less any cash which is applied to (a) the payment of transaction costs and expenses relating to such Capital Transaction, (b) the repayment of debt of the Company, (c) the repair, restoration or other improvement of assets of the Company which is required under any contractual obligation of the Company, and (d) the establishment of reasonable reserves as determined by the Manager. For clarification, any and all distributions to Members that are not determined to be Net Cash Flow shall be deemed to be Capital Proceeds.

**“Capital Transaction”** means the sale, financing, refinancing or similar transaction of or

involving real property other than in the ordinary course of business, and any condemnation awards, payment of title insurance proceeds or payment of casualty loss insurance proceeds (other than business interruption or rental loss insurance proceeds) received by the Company to the extent not used for reconstruction or restoration of all or any portion of real property.

“**Certificate of Organization**” means the Certificate of Organization of the Company filed with the Division on Corporations and Commercial Code, as amended or amended and restated from time to time.

“**Class A Units**” means the Units designated hereunder as “Class A Units” and having the rights, preferences, and privileges specifically attributed to Class A Units hereunder, as well as the rights, preferences, and privileges of Interests in general as set forth in this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Company**” means Solano Vista JV, LLC, a Utah limited liability company.

“**Company Minimum Gain**” has the meaning set forth in Section 5.2(a) below.

“**Fiscal Year**” has the meaning set forth in Section 10.3 of this Agreement.

“**Gross Asset Value**” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of any asset contributed by a Member to the Company will be the fair market value of such asset as determined by the Manager;

(ii) the Gross Asset Value of each Company asset will be adjusted to equal its respective gross fair market value as of the following times: (1) the acquisition of an additional Interest in the Company by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (2) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for an Interest in the Company; or (3) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (1) and (2) above will be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) the Gross Asset Value of any Company asset distributed to any Member will be the fair market value of such asset on the date of distribution as determined by the Manager; and

(iv) the Gross Asset Values of Company assets will be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values will not be adjusted pursuant to this clause (iv) to the extent the Manager determines that an adjustment pursuant to clause (ii) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to clauses (i), (ii), or (iv) above, such Gross Asset Value will thereafter be adjusted by the depreciation or amortization

deductions taken into account with respect to such asset for purposes of computing the Company's taxable income.

**"Incompetency"** of an individual Person means a determination of such individual's incompetency, whether for insanity, age, disability or other reason. For this purpose, such determination shall be made by a duly licensed physician chosen by the Managers. If the competency of an individual Manager is questioned, the Members (not including said Manager if he/she is also a Member) may select the determining physician. If such individual disputes such declaration, he may choose a second physician, and said two physicians shall choose a third physician, and the decision of the majority of said physicians as to the competency of such individual shall be binding on all parties. Each party shall bear the cost of the physician chosen by it and the parties shall split the cost of the third physician.

**"Interest"** means a Member's economic rights and other interest in the Company as a Member as provided in this Agreement. The Interests of the Company shall consist of Class A Units. The allocation of the Units as of the date hereof is set forth on Exhibit A attached hereto.

**"IRS"** means the Internal Revenue Service.

**"Manager"** means each Person designated as a manager of the Company by the Members. As of the Effective Date, the Manager will be Sundance Bay Income and Growth OP, LP, a Delaware limited partnership (also referred to herein as "**SB Income and Growth**").

**"Member Nonrecourse Debt"** has the meaning set forth in Section 5.2(e) below.

**"Member Nonrecourse Debt Minimum Gain"** has the meaning set forth in Section 5.2(b) below.

**"Members"** means the Members holding Units and their permitted assignees and such other Persons admitted as Members after the Effective Date by the Manager.

**"Net Cash Flow"** means, for any period and without duplication, Net Operating Income, less debt service on any loans incurred by the Company or other subsidiaries of the Company, as applicable, and the reasonable holdback of capital reserves and expenditures, as outlined in a budget prepared by the Manager and disclosed to the Members.

**"Net Operating Income"** means, for any period, the amount by which Operating Revenues exceed Operating Expenses for such period.

**"Operating Expenses"** means, for any period and without duplication, the current obligations of the Company for such period, determined in accordance with sound accounting principles and applicable to commercial real estate, consistently applied, for operating expenses of the property of the Company, for capital expenditures not paid from the Members' Capital Contributions or loans incurred directly by the Company, and for reasonable working capital and reserves actually funded that are not funded from Capital Event Proceeds. Operating Expenses shall not include debt service on loans incurred directly by the Company or any non-cash expenses such as Depreciation or amortization but shall include any expenses incurred under an agreement with an Affiliate of any Member entered into in accordance with this Agreement.

**"Operating Revenues"** means, for any period and without duplication, all gross revenue

received by the Company, and all other gross revenues of the Company arising from the ownership of the property owned by the Company during such period, including proceeds of any business interruption or rental loss insurance maintained by the Company, from time to time and amounts released from reserves, but specifically excluding, without duplication, Capital Contributions and proceeds of loans incurred by the Company.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, trust, non-incorporated organization or government or any agency or political subdivision thereof.

**“Profits”** and **“Losses”** means for each Fiscal Year, an amount equal to the Company’s taxable income, gain or loss for such year or other period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) will be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax or otherwise described in Code Section 705(a)(1)(B) and not otherwise taken into account shall be added to such taxable income or loss;

(ii) Any expenditure of the Company described in Code Section 705(a)(2)(B) and non-deductible syndication costs described in Code Section 709 and not otherwise taken into account shall be subtracted from such taxable income or loss;

(iii) If the Gross Asset Value of any asset differs from its adjusted basis for federal income tax purposes at the beginning of such year, in lieu of depreciation, amortization and other cost recovery deductions, there shall be taken into account depreciation for such Fiscal Year or other period equal to the amount that bears the same ratio to the Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction bears to the beginning adjusted tax basis, and in lieu of a gain or loss resulting from disposition of Company property and taken into account in computing taxable income or loss, there shall be taken into account gain or loss computed by reference to the Gross Asset Value of such Company property rather than its adjusted basis for federal income tax purposes;

(iv) Items of income, gain, loss or deduction that are specifically allocated pursuant to Section 5.2 shall not be taken into account in calculating Profits and Losses; and

(v) In the event the Gross Asset Value of any Company asset is adjusted in a manner described in the definition thereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses to the extent and in the manner required by Treasury Regulations.

**“Right of Asset Contribution”** has the meaning set forth in Section 6.2.

**“Substitute Member”** means any Person who (i) holds Units, and (ii) has been admitted as a Member pursuant to Section 8.2 of this Agreement.

**“Target Final Balance”** has the meaning set forth in Section 5.1(d).

“*Tax Matters Member*” has the meaning set forth in Section 10.5 of this Agreement.

“*Total Capital Contributions*” means the sum of the Capital Contributions made by a Class A Member and any Additional Contributions made by such Class A Member.

“*Transfer*” means any transfer, assignment, sale, conveyance, lease, partition, pledge or grant of a security interest in a Member’s Interest in the Company, and includes any “involuntary transfer” such as a sale of any part of an Interest therein in connection with any bankruptcy or similar insolvency proceedings or any other disposition or encumbrance of a Member’s Interest. For purposes of this Agreement, any transfer, exchange or series of transfers (or exchanges) of the stock, partnership, membership or other ownership interests of any Member that is a business organization or an entity (or any combination of such transfers or exchanges, whether direct or in connection with a merger, acquisition, sale, or similar reorganization or transaction, including issues of new stock or other ownership interests, or the exercise of options, warrants, debentures or other convertible instruments, or a redemption of other interests in the Member, and any similar transactions involving the stock or other ownership interests of such Member), the effect of which is that the Persons who owned more than fifty percent (50%) of the outstanding stock or other ownership interests in such Member as of the date of this Agreement no longer own more than fifty percent (50%) of such stock or other ownership interests, then a Transfer will also be deemed to have occurred with regard to the Interest owned by such Member. Capitalized terms containing such word as a root, such as “Transferee” or “Transferring,” will have corresponding meanings in this Agreement.

“*Treasury Regulations*” means the federal income tax regulations promulgated by the U.S. Department of Treasury, or any amendment or successor provision to such regulations, pursuant to or in interpretation of the Code.

“*Units*” means Units of Interest, which entitle the holder thereof to receive distributions of cash, allocations of Profits and Losses and other rights as set forth in this Agreement. Exhibit A attached hereto describes the Units owned by each Member. Units may be issued and held in fractional amounts. The Units shall consist of Class A Units.

## 1.2 Other Definitions.

1.2(a) As used in this Agreement, accounting terms to the extent they are not defined in this Agreement, have the respective meanings given to them under generally accepted accounting principles.

1.2(b) The words “below” and “above” and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless otherwise specified.

## ARTICLE II ORGANIZATION; PURPOSES

2.1 Formation. The Company has been formed under the provisions of the Act.

2.2 Name. The name of the Company is Solano Vista JV, LLC. All Company business must be conducted in that name or such other name as the Manager shall approve. The Company’s name may

be changed at any time by the Manager, and notice of any such change will be given to each Member within a reasonable time thereafter.

2.3 Registered Office; Registered Agent; Principal Office; Place of Business. The registered office and the registered agent of the Company in the State of Utah shall be as specified in the Certificate of Organization or as designated by the Manager.

2.4 Purpose. The Company is organized for any and all lawful purposes for which companies may be organized pursuant to the Act, including but not limited to the acquisition, ownership, holding for investment, development, construction, management, sale, lease, rent, exchange and all other modes of dealing with all forms of real and personal property, tangible and intangible, wherever located. The Company shall have and may exercise all powers necessary to the accomplishment of its purposes without the necessity of their specific enumeration herein.

### ARTICLE III TERM

The term of the Company commenced on the date when the Certificate of Organization was filed with the Division. The existence of the Company as a separate legal entity will continue perpetually, unless sooner dissolved as herein provided.

### ARTICLE IV CONTRIBUTIONS TO CAPITAL

4.1 [reserved]

4.2 Capital Account Balances. The capital account balances of the Members are as set forth on the books and records of the Company.

4.3 Additional Capital Contributions or Loans.

4.3(a) Subject to the provisions of Section 2.4 of this Agreement for so long as the Indebtedness remains outstanding, if the Company requires additional funds, the Manager will have the right to (i) seek additional financing from banking institutions or other third-party lenders (and grant security interests in the Company's assets as the Manager deems necessary and appropriate in its sole and absolute discretion), and (ii) attempt to obtain Additional Capital Contributions from the existing Members, or raise additional capital by admitting additional Persons as new Members pursuant to Section 8.5 below. If the Manager is unable to obtain financing and/or additional equity funds, the Manager will have the right to ask any Member to make advances or loans from time to time to the Company in such amounts as the Manager reasonably determines necessary to fund the Company's obligations; provided, however, that no Member shall be obligated to make any Additional Capital Contributions to the Company. Any such advance or loan will accrue interest at a rate comparable to prevailing interest rates charged by commercial lenders at the time such advance or loan is made and will be represented either by a promissory note or appropriate entries in the financial statements or other books and records of the Company. The foregoing provision is not intended to create any obligation of a Member to any creditor of, or other claimant against, the Company or to any other third party, and no creditor, claimant, or other third party will be deemed a third-party beneficiary or have any other right or claim against a Member by virtue of this provision or any other provision of this Agreement.

4.3(b) With respect to any guaranty that a Member or any of its Affiliates may provide to a third party with respect to any Company indebtedness in accordance with this Agreement, the Company, its receiver or its trustee will indemnify, hold harmless and pay all judgments and claims against any guarantor, or its successors and assigns, for any liability, loss or damage incurred by them in making payments with respect to such indebtedness or obligation, including reasonable costs and attorneys' fees (which attorneys' fees may be paid as incurred) and any amounts expended in the settlement of any claims of liability, loss or damage, provided that any such indemnification will be recoverable only from assets of the Company and not from the assets of any Member, and such indemnity shall be subordinate to the Loan. The indemnification provided herein will survive the termination of this Agreement and the dissolution of the Company.

4.4 Withdrawal of Capital Contributions. No Member will have the right to withdraw or reduce such Member's Capital Contribution, or to receive any distributions from the Company, except as otherwise provided herein. No Member has the right to demand or receive any Company property. No Member shall have priority over any other Member with respect to the return of Capital Contributions, allocations of Profits or Losses or any other distributions, except as expressly provided in this Agreement; provided that this sentence shall not apply to loans (as distinguished from capital contributions) which a Member has made to the Company.

4.5 Capital Accounts.

4.5(a) A separate Capital Account will be maintained for each Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv).

4.5(b) In connection with a Capital Contribution of money or other property (other than a *de minimis* amount) by a new or existing Member as consideration for an Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a *de minimis* amount) by the Company to a withdrawing Member, the Capital Accounts of the Members will be adjusted to reflect a revaluation of Company property (including tangible assets) in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(f). If, under Treasury Regulations Section 1.704-1(b)(2)(iv)(f), Company property that has been revalued is properly reflected in the Capital Accounts and on the books of the Company at a book value that differs from the adjusted tax basis of such property, then depreciation, amortization and gain or loss with respect to such property will be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of such property and the book value, in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' shares of tax items under Code Section 704(c).

4.5(c) In the event of a sale or exchange of any Interest, the Capital Account of the transferor will become the Capital Account of the transferee to the extent it relates to the transferred Interest in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

4.5(d) The manner in which Capital Accounts are to be maintained pursuant to this Section is intended to comply with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder, and this Agreement will be interpreted in a manner consistent therewith.

4.6 Units.

4.6(a) The Manager will have the right to cause the Company to issue additional Units (including fractional Units) to the existing Members or to new Members. The Units may be (but will not be required to be) represented by a certificate in such form as the Manager may determine. The Manager will from time to time attach to this Agreement an Exhibit A (and provide copies thereof to all Members) setting forth the names and addresses of the Members, the number and class of Units held by each of them, and the consideration paid for their Units.

4.6(b) For all matters of the Company that require the vote or approval of the Members under this Agreement or the Act, the Members will be entitled to one (1) vote per Unit.

## ARTICLE V ALLOCATION OF PROFITS AND LOSSES; DISTRIBUTIONS

### 5.1 General Allocation of Profits and Losses.

5.1(a) Subject to the special allocations set forth in Section 5.2, Profits and Losses (and, to the extent necessary, individual items of income, gain, loss, deduction or credit) of the Company will be allocated among the Members in a manner such that the Capital Account balance of each Member, immediately after making such allocation, is, as nearly as possible equal (proportionately) to the distributions that would be made to such Member if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Values, all Company liabilities were satisfied and the net assets of the Company were distributed to the Members in accordance with Section 5.4.

5.1(b) If the Profits and Losses allocable to the Members pursuant to Section 5.1(a) are insufficient to allow the Capital Account balance of each Member to equal such Member's share of the Company's assets as set forth in this Agreement, such Profits or Losses will be allocated among the Members in such a manner as to decrease the differences between the Members' respective Capital Account balances and their respective shares of the Company's assets in proportion to such differences.

5.1(c) Notwithstanding the foregoing, the Manager may, in its sole discretion, make any modifications and adjustments to the allocations that it believes are necessary to comply with applicable law and to ensure that the allocations achieve the results intended by the Members hereunder.

5.1(d) For the avoidance of doubt, the allocation provisions of this Agreement are intended to produce final Capital Account balances that are at levels ("**Target Final Balance**") in the year of liquidation of the Company that are equal in amount to the distributions that would occur if all such liquidating distributions were made to the Members in accordance with Section 5.4. To the extent that the allocation provisions of this Agreement would not produce the Target Final Balance, the Members agree to take such actions as are necessary to amend such tax allocation provisions in the year of liquidation of the Company to produce such Target Final Balance. In furtherance of the foregoing, the Manager is expressly authorized and directed to make such allocations of income, gain, loss and deduction (including items of gross income, gain, loss and deduction) in such year so as to cause the Capital Accounts of the Members to be equal to the Target Final Balance.

5.2 Special Allocations. The Company will make the following special allocations in the

following order:

5.2(a) Company Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain (as defined below) during a Fiscal Year so that an allocation is required by Treasury Regulations Section 1.704-2(f), then each Member will be specially allocated items of income and gain for such year (and, if necessary, subsequent Fiscal Years) equal to such Member's share of the net decrease in Company Minimum Gain as determined by Treasury Regulations Section 1.704-2(g). Such allocations will be made in a manner and at a time that will satisfy the minimum gain chargeback requirements of Treasury Regulations Section 1.704-2(f) and this Section will be interpreted consistently therewith. The term "***Company Minimum Gain***" has the meaning set forth in Treasury Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

5.2(b) Member Nonrecourse Minimum Gain Chargeback. If there is a net decrease in the Member Nonrecourse Debt Minimum Gain (as defined below) during any Fiscal Year, any Member who has a share of such Member Nonrecourse Debt Minimum Gain (as determined in the same manner as partner nonrecourse debt minimum gain under Treasury Regulations Section 1.7042(i)(5)) will be specially allocated items of income or gain for such year (and, if necessary, subsequent Fiscal Years) equal to such Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain in the manner and to the extent required by Treasury Regulations Section 1.704-2(0)(4). This Section will be interpreted in a manner consistent with such Treasury Regulations. The term "***Member Nonrecourse Debt Minimum Gain***" has the meaning set forth in Treasury Regulations Section 1.704-2(i)(3).

5.2(c) Qualified Income Offset. If a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), any of which causes or increases an "Adjusted Capital Account Deficit" in such Member's Capital Account, then such Member will be specially allocated items of income and gain in an amount and manner sufficient to eliminate such deficit balance created or increased by such adjustment, allocation, or distribution as quickly as possible; provided, however, an allocation pursuant to this Paragraph will be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article V have been tentatively made as if this Paragraph were not in the Agreement. The term "***Adjusted Capital Account Deficit***" means the Member has a deficit balance in its "***Capital Account***" after giving effect to any amounts the Member is obligated to contribute or restore to the Company pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(0)(1) and 1.704-2(i)(5).

5.2(d) Allocation of Nonrecourse Liability Deductions. Deductions attributable to any Company Nonrecourse Liability will be allocated among the Members in proportion to their respective number of Units. The term "***Company Nonrecourse Liability***" has the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

5.2(e) Member Nonrecourse Debt Deductions. Deductions attributable to any Member Nonrecourse Debt will be allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1). The term "***Member Nonrecourse Debt***" has the meaning set forth in Treasury Regulations Section 1.704-1(b)(4).

5.2(f) Section 754 Election. To the extent an adjustment to the adjusted tax basis of any

Company asset pursuant to Code Section 734(b) or Code Section 743(h) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts will be treated as an item of gain (if such gain or loss increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss will be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such Section of the Treasury Regulations.

5.2(g) Imputed Interest. If any Member makes a loan to the Company, or the Company makes a loan to any Member, and interest in excess of the amount actually payable is imputed under Code Sections 7872, 483, or 1271 through 1288 or corresponding provisions of subsequent federal income tax law, then any item of income or expense attributable to any such imputed interest will be allocated solely to the Member who made or received the loan and will be credited or charged to its Capital Account, as appropriate.

5.2(h) Contributed Property. Income, gain, loss or deduction with respect to any property contributed by a Member will, solely for tax purposes, be allocated among the Members, to the extent required by Code Section 704(c) and the related Treasury Regulations under Code Sections 704(b) and 704(c), to take account of the variation between the adjusted tax basis of such property and its Gross Asset Value (as defined in the Code) at the time of its contribution to the Company. If the Gross Asset Value of any Company property is adjusted as provided in Treasury Regulations Section 1.704-1(b)(2)(iv), then subsequent allocations of income, gain, loss and deduction and the gain asset value of such property will be adjusted as provided in Code Section 704(c) and the related Treasury Regulations. If Code Section 704(c) and the Treasury Regulations thereunder allow alternative methods of making such acquired allocations, the Company will use the “traditional method with curative allocations” as defined in Treasury Regulations Section 1.704-3(c). Allocations under this Paragraph are solely for purposes of federal, state and local taxes and will not affect, or in any way be taken into account in computing, any Member’s Capital Account or share of Profits, Losses, or other items or distributions under any provision of this Agreement.

5.2(i) Share of Excess Nonrecourse Liabilities. For purposes of calculating a Member’s share of “excess nonrecourse liabilities” of the Company (within the meaning of Treasury Regulations Section 1.752-3(a)(3)), the Members intend that they be considered as sharing profits of the Company in proportion to their respective number of Units.

### 5.3 Allocation Rules.

5.3(a) If Members are admitted to the Company pursuant to this Agreement on different dates, the Profits (or Losses) allocated to the Members for each Fiscal Year during which Members are so admitted will be allocated among the Members in proportion to their number of Units during such Fiscal Year in accordance with Code Section 706, using any convention permitted by law and selected by the Manager.

5.3(b) For purposes of determining the Profits and Losses and any other items allocable to any period, Profits and Losses and any such other items will be determined on a daily, monthly or other basis, as determined by the Manager using any method that is permissible under Code Section 706 and the Treasury Regulations thereunder.

5.3(c) Except as otherwise provided in this Agreement, all items of Company income, gain, loss, deduction and any other allocations not otherwise provided for will be divided among the Members in the same proportions as they share Profits and Losses for the Fiscal Year in question.

5.3(d) The Members are aware of the income tax consequences of the allocations made by this Article V and hereby agree to be bound by the provisions of this Article V in reporting their Company income and loss for income tax purposes.

5.4 Distribution of Net Cash Flow and Capital Proceeds. The Manager shall determine in its sole discretion the timing and the amount of all distributions of Net Cash Flow to be made by the Company, provided that Net Cash Flow shall be distributed on at least a quarterly basis unless otherwise agreed by the Members. Distributions of Net Cash Flow and Capital Proceeds shall be made on a pro-rata basis, and to the Members as follows, and in the following order of priority:

5.4(a) First, One hundred percent (100%) of the Net Cash Flow and Capital Proceeds shall be distributed to the Class A Members, in proportion to their relative ownership of Class A Units.

5.5 Limitation on Distributions. Notwithstanding any provision to the contrary contained in this Agreement, no distribution may be made to the Members if prohibited by the Act.

## ARTICLE VI THE MANAGER

6.1 Manager. The management of the Company shall be vested in those Persons designated by the Members as the Manager. As of the Effective Date, the Manager will be SB Income and Growth. The Manager shall direct, manage and control the business of the Company and shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Manager shall deem to be reasonably required in light of the Company's business and objectives, without the necessity of their specific enumeration herein. Whenever there is more than one person serving as Manager, except as otherwise provided herein, a simple majority of such persons must agree on any action to be taken by the Managers. The remaining Members of the Company shall have no right or authority to act for or on behalf of the Company and shall not interfere or participate in the management of the Company except as expressly provided herein. SB Income and Growth shall serve as the Manager of the Company until its resignation, removal or financial insolvency, in which event Members holding a majority of the Units will have the right to elect a successor Manager. The Manager elected, designated or appointed by the Members will hold office until a successor is elected and qualified or until such Manager's earlier death, resignation, expulsion or removal. The Manager need not be a Member.

6.2 Powers. The Manager shall have all powers necessary to conduct the business of the Company without the need for specifically setting them forth herein. Unless authorized to do so by this Agreement or by the Manager, no Member, agent or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

6.3 Manager as Agent. To the extent of his powers set forth in this Agreement, the Manager is an agent of the Company for the purpose of the Company's business, and the actions of the Manager taken in accordance with such powers set forth in this Agreement will bind the Company.

6.4 [Reserved].

6.5 Devotion of Time; Reimbursement. The Manager will devote whatever time and effort may be necessary or appropriate to the business and affairs of the Company. The Company will promptly reimburse the Manager for any and all costs and expenses reasonably incurred by the Manager in connection with the business of the Company, provided that such costs and expenses are (i) permitted under a budget approved by the Manager, or (ii) otherwise approved by the Manager.

6.6 Standards of Conduct; Fiduciary Duties.

6.6(a) Good Faith and Fair Dealing. As provided in Section 48-3a-409(4) of the Act, the Manager shall perform its duties in a manner consistent with the contractual obligation of good faith and fair dealing, which obligation shall be satisfied if the action taken or failure to act on behalf of the Company did not constitute bad faith, willful misconduct or recklessness.

6.6(b) Duty of Care. As provided in Section 48-3a-409(3) of the Act, the Manager shall refrain from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.6(c) Duty of Loyalty. The Manager shall be subject to the duty of loyalty as provided in Section 48-3a-409(2) and (9) of the Act. Notwithstanding the preceding sentence, the following categories of activities do not violate the duty of loyalty:

(i) The Manager is not obligated to devote all of its time or business efforts to the affairs of the Company. Such person shall devote whatever time, effort and skill he, she or it deems to be reasonably appropriate for the management of the Company

(ii) The Manager may enter into a business transaction with the Company if the terms of the transaction are no less favorable to the Company than those of a similar transaction with the independent third party. Approval or ratification by Members having no interest in the transaction constitutes conclusive evidence that the terms satisfy the foregoing condition.

6.6(d) Liability for Certain Acts. Notwithstanding anything to the contrary in this Agreement, the Manager shall not be liable or accountable in damages or otherwise to the Company of its Members for any action taken or failure to act on behalf of the Company, unless a judgment or other final adjudication adverse to the Manager establishes a violation of the duties set forth above.

6.7 Resignation. A Person serving as a Manager 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 and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.8 Dealings With Affiliates. The Company may enter into business and contractual relationships of any kind with entities affiliated with the Manager or Members, provided that the terms of such relationships are commercially reasonable and satisfy arm's length standards.

6.9 Removal. A Manager may be removed for cause by the affirmative vote of a the Class A

Members holding sixty seven percent (67%) of the Class A Units by reason of the Manager's Incompetency, willful misconduct, gross negligence, or conviction of the Manager or its principals of a felony; provided, however, that (i) prior to removal of the Manager for cause, the Class A Members desiring such removal shall provide Manager at least thirty (30) days prior written notice and an opportunity to cure the cause of such removal event, which cure shall include, without limitation, removal from management of Manager any principal convicted of a felony; and (ii) at all times while the Loan remains outstanding, SB Income and Growth shall not be removed without also obtaining the prior written consent of Lender.

## ARTICLE VII RIGHTS AND OBLIGATIONS OF MEMBERS

7.1 Limitation of Liability. No Member shall be personally liable for any debts, obligations, liabilities or losses of the Company, regardless of the particular nature or source thereof, beyond such Member's capital interest in the Company. Notwithstanding the foregoing, a Member receiving a distribution in violation of Section 48-3a-405 of the Act shall be personally liable to the Company as provided in Section 48-3a-406 of the Act, and then only to the extent that the distribution received by such Member exceeds the amount that could have been properly paid to such Member under Section 48-3a-405 of the Act.

7.2 Dissociation by a Member. No Member shall have the right under this Operating Agreement to unilaterally dissociate from the Company or to require that his or her interest in the Company be redeemed, in whole or in part.

7.3 Intentionally Omitted.

## ARTICLE VIII TRANSFER

8.1 General. No Member will Transfer any Units now or hereafter owned (of record or beneficially) by such Member except in accordance with the terms and conditions of this Agreement. A Member may Transfer its Units only to any Person that is approved in advance in writing by the Manager, provided that any Transfer pursuant to this Section will be subject to the provisions of Section 8.2 of this Agreement, and the Transferee in all cases will be subject to Section 8.3 of this Agreement until such time, if any, as the Transferee becomes a Substitute Member in accordance with Section 8.2 of this Agreement. Notwithstanding any other provision herein, the Transfer by a Member of any Units to another Member or the Affiliate of a Member (including an Affiliate of the Transferor Member) will not require the consent of the Manager, but such Transfer will be subject to Sections 8.2 and 8.3 of this Agreement.

8.2 Substitute Members. Notwithstanding anything contained herein to the contrary, no Transferee or assignee of any Units will become a Substitute Member, respectively, in place of the Transferor of such Units unless and until: (a) the Transferor has stated such intention in a written instrument of assignment; (b) the Transferee has executed an instrument agreeing to be bound by the terms and conditions of this Agreement; and (c) the Transferor or Transferee has paid all reasonable expenses of the Company in connection with the admission of the Transferee as a Substitute

Member. Upon satisfaction of all of the foregoing conditions with respect to a particular Transferee, this Agreement (including Exhibit A) will be duly amended to reflect the admission of the transferee as a Substitute Member.

8.3 Effect of Admission as a Substitute Member. Unless and until admitted as a Substitute Member pursuant to Section 8.2 of this Agreement, a Transferee of a Member's Units will not be entitled to exercise any rights of a Member of the Company or to receive distributions hereunder. A Transferee who has become a Substitute Member will have, to the extent of the Interest Transferred to it, all the rights and powers of the Transferring Member, as applicable, for which it is substituted and will be subject to the restrictions and liabilities of the Transferring Member, as applicable, under this Agreement and the Act.

8.4 Improper Transfer. If a Member or any other Person Transfers an Interest and such Transfer is not permitted under Section 8.1 of this Agreement, then, subject to the consent of the non-Transferring Member (which may be withheld for any reason), such Interest will (i) be forfeited to the Company as of the Transfer date, and (ii) the Company will pay the Transferor of such Interest an amount equal to the outstanding Capital Account for such Interest as of the Transfer date; provided, however, the Company will have the right, as determined in its sole discretion, to pay this amount to the Transferor with a promissory note payable not later than twelve (12) months after the Transfer date, together with interest on the unpaid balance at a rate equal to the prime rate of interest as quoted in the Wall Street Journal on the Transfer date.

8.5 Creating New or Additional Interests. Additional Persons may be admitted to the Company as Members and Units may be created and issued to those Persons and to existing Members upon the approval of the Manager on such terms and conditions as the Manager and the recipients of such Units may determine at the time of admission, provided that the Manager has determined in good faith that the consideration to be received by the Company for such additional Units is not less than the fair market value of such additional Units. The terms of admission or issuance must specify the interests in Company capital applicable to the new Units. The provisions of this Article shall not apply to Transfers of Units.

8.6 Intentionally Omitted.

## ARTICLE IX DISSOLUTION AND WINDING UP OF THE COMPANY

9.1 Dissolution of the Company. The Company will be dissolved upon the first to occur of any of the following events: (a) the Manager determines that the Company be dissolved; (b) an order by a court of competent jurisdiction decrees that the Company be dissolved; (c) the cessation of business by the Company, or (d) the consent, in writing, of Members holding an aggregate of not less than 85% of the Class A Units.

9.2 Winding Up of the Company. The Members will continue to share distributions and allocations of Profits and Losses during the period of liquidation in accordance with Article V of this Agreement. Any gain or loss realized by the Company upon the sale of property will be deemed recognized and allocated to the Members in the manner set forth in Article V of this Agreement.

Upon a dissolution of the Company, the Manager will take full account of the Company's assets and liabilities and the assets will be, as determined in the Manager's sole discretion, distributed in kind and/or liquidated as promptly as is consistent with obtaining the fair market value thereof and as may be necessary to timely make the distributions below described, and the proceeds therefrom, to the extent sufficient therefor, will be applied and distributed in the following order: (a) to the payment and discharge of the Company's debts and liabilities, including establishment of any necessary contingency reserves; and (b) to the Members, in accordance with and in the same order as described in Article V of this Agreement.

9.3 Required Filings. If the Company is liquidated and the winding up of the Company has been completed, the Manager (or a liquidating trustee) will promptly file with the Division such statements, certificates, and other instruments, and take such other actions, as are reasonably necessary or appropriate to effectuate and confirm the cessation of the Company's existence.

ARTICLE X  
BOOKS OF ACCOUNTS, ACCOUNTING, REPORTS,  
FISCAL YEAR, BANKING AND TAX MATTERS MEMBER

10.1 Accounting, Books and Records. The Company will maintain at its principal place of business or such other places as the Manager determines books of account for the Company which will show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of the Company and the operation of its business in accordance with generally accepted accounting principles consistently applied and, to the extent inconsistent therewith, in accordance with this Agreement. The Company will use either the cash method or the accrual method of accounting in preparation of its annual reports and for tax purposes and will keep its books and records accordingly.

10.2 Reports and Statements; Annual Operating Budget.

10.2(a) For each Fiscal Year, the Manager shall send to each Person who was a Member at any time during such Fiscal Year, within one hundred twenty (120) days of the end of each Fiscal Year, (A) a completed IRS Schedule K-1 in respect of its Interest and (B) an annual report of the Company including a balance sheet as of the end of such Fiscal Year and statements of profit and loss, changes in financial position, and distributions to the Members for that Fiscal Year, all as prepared in accordance with generally accepted accounting principles consistently applied, and a statement showing allocations to the Members of taxable income, gains, losses, deductions and credits. If requested by the Class A Members, the annual report of the Company shall be audited by an independent accounting firm selected by Manager, at the expense of the Company.

10.2(b) For each quarter, the Manager shall send to each Person who was a Member at any time during such quarter, within thirty (30) days after the end of such quarter, quarterly financial statements of the Company, including a balance sheet as of the end of the quarter, and detailed statements of profit and loss, changes in financial position, and distributions to the Members for that quarter, all prepared in accordance with generally accepted accounting principles consistently applied.

10.2(c) Not later than November 1 of the prior Fiscal Year with respect to each subsequent Fiscal Year, the Manager shall prepare and approve for the Company for the Fiscal Year in question

a proposed Annual Operating Budget and shall submit the same to the Members.

10.2(d) All out of pocket expenses payable to persons who are not affiliates of SB Income and Growth in connection with the keeping of the books and records of the Company and the preparation of audited or unaudited financial statements and federal and local tax and information returns required to implement the provisions of this Agreement or required by any governmental authority with jurisdiction over the Company shall be borne by the Company as an ordinary expense of its business.

10.3 Fiscal Year. The Fiscal Year of the Company will be the calendar year or such fiscal year as selected by the Manager.

10.4 Company Funds. All funds of the Company will be deposited in its name in a separate bank account or accounts at a commercial bank as determined by the Manager.

10.5 Tax Matters Member. SB Income and Growth will serve as the Company's "Tax Matters Member," which term will have the meaning ascribed to the term "tax matters partner" in the Code. In such capacity, the Tax Matters Member is hereby authorized and empowered to act for and represent the Company and each of the Members before (i) the IRS in any audit or examination of any Company tax return, and (ii) any court selected by the Manager for judicial review of any adjustment assessed by the IRS. The Members specifically acknowledge, without limiting the general applicability of this Section, that the Tax Matters Member will not be liable, responsible or accountable in damages or otherwise to the Company or any Member with respect to any action taken by it in its capacity as the Tax Matters Member, provided it used reasonable business judgment with respect to the action taken. All out-of-pocket expenses incurred by the Tax Matters Member in its capacity as the Tax Matters Member will be considered expenses of the Company for which the Tax Matters Member will be entitled to full reimbursement.

## ARTICLE XI INVESTMENT REPRESENTATIONS

11.1 Representations. Each Member represents to the Company, the Manager and the other Members that:

11.1(a) The Member has received and read or reviewed and is familiar with and understands this Agreement and the other information delivered to the Member, and the Member confirms that all documents, records and books pertaining to the investment and participation in the Company and requested by such Member have been made available or delivered to such Member. The Member is experienced in development and contracting activities in real estate and is sophisticated in analyzing such endeavors or has obtained the assistance of an advisor or advisors who possess such expertise.

11.1(b) The Member had an opportunity to ask questions of and receive answers from the Company, or a person or persons acting on the Company's behalf, concerning the terms and conditions of such Member's participation and investment in the Company, and to obtain any additional information necessary to verify the accuracy of the information delivered to the Member. The Company has responded to all questions and inquiries that the Member has made.

11.1(c) The Member understands that the Units of the Company have not been and will not be registered under the Securities Act or any state securities laws, but, if deemed to be securities, are

being sold and acquired in reliance on exemptions for private offerings under the Securities Act and such state laws and the Member further understands that the Member is acquiring its interests in the Company without being furnished any offering literature or prospectus other than the information delivered by the Company.

11.1(d) The Member's interest in the Company is being acquired solely for the Member's own account; for investment and is not being acquired with a view to or for the resale or distribution of such interests within the meaning of the Securities Act, or subdivision or fractionalization thereof; and the Member has not entered into and has no present plans to enter into any contract, undertaking, agreement or arrangement for the sale or further distribution of the interests. The Member did not receive an offer to acquire its interest by any form of general solicitation or advertising. The Member agrees that the Company will have no obligation to recognize the ownership, beneficial or otherwise, of such interests by anyone other than the Member.

11.2 Risks. The Members acknowledge and understand the following with respect to their interest in the Company.

11.2(a) The Company is a newly organized entity and faces all of the risks of a start-up business. The Company has no history of operations or earnings. There is no assurance that the operations of the Company will be profitable or that any investment in the Company will be recouped. The Member understands that there are substantial risks associated with acquisition of a Units in the Company, including, without limitation, the risk of loss of its investment and/or return thereon, adverse effects on its investment resulting from cost overruns, market changes, natural disasters, shortages of materials or contractors, failures of subcontractors, adverse weather conditions, changes in market demand, fluctuations in interest rates, increased competition, inability to obtain desired governmental approvals, and other matters. The Member has evaluated and accepted such risks.

11.2(b) The multifamily real estate market is very competitive. There are numerous other developers of residential real estate who have greater financial resources than the Company. There can be no guarantee that the Company will be successful or that other developers will not build other residential developments near the properties owned directly or indirectly by the Company which could adversely affect the Company.

11.2(c) Any budgets and projections that have been provided to the Member are provided are for illustrative purposes only, are forward looking, and while the Company believes that projections and the assumptions underlying the projections are made in good faith, there is no assurance that the projections will reflect the actual operations of the Company.

11.2(d) Neither the Manager nor the Company has made any representations regarding the tax treatment of the Company or the tax consequences of an investment to any Member. Each Member should consult such Member's own tax advisor.

## ARTICLE XII MISCELLANEOUS

12.1 Amendment: Action By Members. This Agreement embodies the entire understanding among the Members concerning the Company and their relationship as Members and supersedes all prior negotiations, understandings or agreements. Except as provided in this Section 12.1 below, this

Agreement and the Certificate of Organization may be amended or modified from time to time only by a written instrument adopted, executed, and agreed to by Members holding not less than 85% of the Class A Units; provided, however, that (A) an amendment or modification reducing disproportionately a Members Interest or other interest in Profits or Losses or in distributions or increasing a members' obligation to contribute to the capital of the Company shall be effective only with that Member's consent, and (b) an amendment or modification reducing the required threshold for any consent or vote in this Agreement shall be effective only with the consent or vote of Members having the Interest theretofore required. Notwithstanding the foregoing, the Members and Manager will execute and file any amendment to the Certificate of Organization required by the Act. If any such amendment results in inconsistencies between the Certificate of Organization and this Agreement, this Agreement will be considered to have been amended in the manner necessary to eliminate the inconsistencies.

12.2 Notices. Any notice to be given under this Agreement will be made in writing and sent by fax, Federal Express or another commercial delivery service, addressed as set forth below:

12.2(a) If to the Company at 1240 East 2100 South, Suite 300, Salt Lake City, UT 84106, or such other address as the Company may provide to the Members from time to time.

12.2(b) If to any Member, such notice will be mailed to the address of the Member as set forth on Exhibit A attached hereto.

12.2(c) Any such notice will be deemed to be delivered, given and received for all purposes as of the date delivered if delivered by a commercial delivery service or by confirmed facsimile.

12.3 Disclosure and Waiver of Conflicts. In connection with the preparation of this Agreement, the Members acknowledge and agree that: (a) the attorney that prepared this Agreement ("Attorney") acted as legal counsel to the Company; (b) the Members have been advised by the Attorney that the interests of the Members are opposed to each other and are opposed to the interests of the Company and, accordingly, the Attorney's representation of the Company may not be in the best interests of the Members; and (c) each of the Members has been advised by the Attorney to retain separate legal counsel. Notwithstanding the foregoing, the Members (a) desire the Attorney to represent the Company; (b) acknowledge that they have been advised to retain separate counsel and have waived their right to do so; and (c) jointly and severally forever waive any claim that the Attorney's representation of the Company constitutes a conflict of interest. Furthermore, the Members acknowledge that the Attorney may represent SB Income and Growth and its Affiliates in connection with this and other matters, and each Member jointly and severally forever waives any claim that the Attorney's representation of the Company, SB Income and Growth and its Affiliates constitutes a conflict of interest.

12.4 Governing Law; Venue; Attorneys' Fees. The internal laws of the State of Utah will govern all questions concerning the relative rights of the parties hereto and all other questions concerning the construction, validity and interpretation of this Agreement and the exhibits hereto, without giving effect to the application of the principles pertaining to conflicts of laws. Any action arising from or relating to this Agreement will be brought exclusively in the courts located in Salt Lake City, Utah, and the parties hereby irrevocably consent and submit to personal jurisdiction exclusively in said courts. Should it become necessary for any party to institute legal action to enforce the terms and conditions of this Agreement, and such legal action results in a final judgment in favor of one party,

the prevailing party will be entitled to payment from the other party of all of the prevailing party's reasonable attorneys' fees and related costs at all trial and appellate levels.

12.5 Entire Agreement. This Agreement constitutes the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written. Furthermore, the parties hereto acknowledge and agree that the recitals to this Agreement are true and correct and constitute an integral portion of and are hereby incorporated into, this Agreement for all purposes.

12.6 Counterparts. This Agreement may be executed in any number of counterparts, including, without limitation, counterparts received via facsimile, each of which will be deemed to be an original as against any party whose signature appears thereon, and all of which will together constitute one and the same instrument.

### ARTICLE XIII EXCULPATION AND INDEMNIFICATION

13.1 Covered Persons. Neither the Members, nor any Manager, employee or agent of the Company nor any employee, representative, agent or Affiliate of the Member (collectively, the "***Covered Persons***") will, to the fullest extent permitted by law, be liable to the Company or any other Person that is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person will be liable for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

13.2 Indemnification. To the fullest extent permitted by applicable law, a Covered Person will be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person will be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person's gross negligence or willful misconduct with respect to such acts or omissions; *provided, however*, that any indemnity under this Article by the Company will be provided out of and to the extent of Company assets only, and the Members will not have personal liability on account thereof.

13.3 Expenses. To the fullest extent permitted by applicable law, expenses (including legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding will, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it is determined that the Covered Person is not entitled to be indemnified as authorized in this Article.

13.4 Good Faith Reliance. A Covered Person will be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to

the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid. To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement will not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement or any approval or authorization granted by the Company or any other Covered Person. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Member to replace such other duties and liabilities of such Covered Person.

13.6 Survival. The foregoing provisions of this Article will survive any termination of this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the undersigned have each executed this Operating Agreement effective as of the Effective Date.

**CLASS A MEMBERS:** SUNDANCE BAY INCOME AND GROWTH OP, LP


By: Sundance Bay Income and Growth Fund GP, LLC  
Its: General Partner

  
\_\_\_\_\_  
By: Ryan Baughman  
Its: Manager

**CONSENTED TO BY THE MANAGER:**

SUNDANCE BAY INCOME AND GROWTH OP, LP

By: Sundance Bay Income and Growth Fund GP, LLC  
Its: General Partner

  
\_\_\_\_\_  
By: Ryan Baughman  
Its: Manager

1572202

EXHIBIT A

MEMBERS, ADDRESSES, NUMBER OF UNITS  
FOR  
SOLANO VISTA JV, LLC

<b>Name</b>	<b>Address</b>	<b>Capital Account Balance</b>	<b>Number of Class A Units</b>	<b>Ownership Percentage</b>
Sundance Bay Income and Growth OP, LP	1240 E 2100 S Ste. 300 Salt Lake City, UT 84106	28,568,322.30	28,568,322.30	100.00%
<b>Total</b>		28,568,322.30	28,568,322.30	100.00%

**EXHIBIT E**

**Taxpayer Amended Operating Agreement and Operating Agreement**

**[See Attached]**

**FIRST AMENDMENT TO THE  
LIMITED LIABILITY COMPANY OPERATING AGREEMENT  
OF  
SC PRESERVE AT PORT ROYAL, LLC**

THIS FIRST AMENDMENT TO THE LIMITED LIABILITY COMPANY OPERATING AGREEMENT (the “*Amendment*”) OF SC PRESERVE AT PORT ROYAL, LLC, a Delaware limited liability company (the “*Company*”), is made and entered into effective as of December 30, 2024 (the “*Effective Date*”), by Solano Vista JV LLC, a Utah limited liability company (the “*Member*”), as the sole Member of the Company.

**RECITALS**

A. The Company is governed by that certain Limited Liability Company Operating Agreement dated November 18, 2021 (the “*Operating Agreement*”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Operating Agreement. References to “Sections” in this Amendment shall be references to Sections in the Operating Agreement.

B. The Member, pursuant to the authority granted to the Member by Section 31 of the Operating Agreement, desires now to amend the Operating Agreement to (i) clarify that the management of the Company is under the direction of the Member, and (ii) correct internal section headers and cross references in the Operating Agreement related thereto.

**AMENDMENT**

NOW THEREFORE, the Member hereby amends the Operating Agreement as follows:

1. **Management.** Section 9 of the Operating Agreement is hereby deleted in its entirety and shall be replaced by the following in lieu thereof:

“Section 9. **Management.**

(a) **Powers.** Subject to Section 9(c), the Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Sections 7 and 9, the Member has the authority to bind the Company.

(b) **Member as Agent.** To the extent of its powers set forth in this Agreement and subject to Section 9(c), the Member is an agent of the Company for the purpose of the Company’s business, and the actions of the Member, as authorized person on behalf of the Member, taken in accordance with such powers set forth in this Agreement shall bind the Company.

(c) **Limitations on the Company’s Activities.**

- i. This Section 9(c) is being adopted in order to comply with certain provisions required in order to qualify the Company as a “special purpose” entity. All capitalized terms used in this Section 9(c) and not otherwise defined shall have the meaning given to such term in the Loan Agreement.
- ii. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, and any provision of law that empowers the Company, the Member, or any other Person, for so long as any Obligation is outstanding, neither the Member nor the Company shall amend, alter, change or repeal the definitions of “Special Member” or “Independent Director”, or Sections 1, 5(b), 5(c), 7, 8, 9, 10, 14, 16, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30 or 31 or Schedule C of this Agreement (collectively, the “Special Purpose Provisions”), or any other provision of this or any other document governing the formation, management or operation of the Company in a

manner that is inconsistent with any of the Special Purpose Provisions, unless the Lender consents in writing. Subject to this Section 9(c), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 31. In the event of any conflict between any of the Special Purpose Provisions and any other provision of this Agreement or any other document governing the formation, management or operation of the Company, the Special Purpose Provisions shall control.

- iii. Notwithstanding any other provision of this Agreement or any other document governing the formation, management or operation of the Company, and notwithstanding any provision of law that otherwise so empowers the Company, the Member or any other Person, so long as any Obligation is outstanding, neither the Member nor any other Person shall be authorized or empowered, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of the Member and the Independent Director, take any Material Action, provided, however, that so long as any Obligation is outstanding, the Member may not authorize the taking of any Material Action, unless there is at least one Independent Director then serving in such capacity.
- iv. The Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises.
- v. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the Member has caused the Company to, since the date of its formation, and, for so long as any Obligation is outstanding, shall continue to cause the Company to, and the Company represents, warrants and covenants to comply with the covenants set forth on Schedule C attached hereto.
- vi. Failure of the Company, or the Member on behalf of the Company, to comply with any of the covenants set forth on Schedule C or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member.”

2. **Amendments.** The first sentence of Section 31 of the Operating Agreement is hereby deleted in its entirety and is replaced by the following sentence in lieu thereof:

“Subject to Section 9(c), this Agreement may be modified altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member.”

3. **Article** . The following provisions are hereby inserted to the Operating Agreement as a new Sections 35 and 36:

Section 35. **Interests in the Company.**

Each limited liability company interest in the Company shall constitute a “security” within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8102(a)(15) thereof) as in effect from time to time in the State of Delaware and (ii) the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the Uniform Commercial Code as in effect in the State of Delaware (6 Del. C. 8 101, et seq.) (the “UCC”), such provision of Article 8 of the UCC shall be controlling. The Member hereby agrees that its interest in the Company shall for all purposes be personal property. The Member has no interest in specific Company property.

Section 36. Share Certificates.

(a) Upon the issuance of limited liability company interests in the Company to any Person in accordance with the provisions of this Agreement (or, in the case of the Member, effective upon its execution of this Agreement), the Company shall issue one or more non-negotiable certificates in the name of such Person substantially in the form of Exhibit A attached hereto (a "Share Certificate"), which evidences the ownership of the limited liability company interests in the Company of such Person. Each such Share Certificate shall be denominated in terms of the percentage of the limited liability company interests in the Company evidenced by such Share Certificate and shall be signed by the Member, any officer of the Company or such other duly authorized party on behalf of the Company. The Share Certificates shall be consecutively numbered (on a class by class or series by series basis) and shall be entered in the books of the Company as they are issued and shall exhibit the holder's name and number of shares.

(b) The Company shall issue a new Share Certificate in place of any Share Certificate previously issued if the holder of the limited liability company interests in the Company represented by such Share Certificate, as reflected on the books and records of the Company: (i) makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Share Certificate has been lost, stolen or destroyed; (ii) requests the issuance of a new Share Certificate before the Company has notice that such previously issued Share Certificate has been acquired by a purchaser for value in good faith and without notice of an adverse claim; (iii) if requested by the Company, delivers to the Company a bond, in form and substance satisfactory to the Company, with such surety or sureties as the Company may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Share Certificate; (iv) satisfies any other reasonable requirements imposed by the Company; and (v) obtains the prior written consent of, for so long as the Loan is outstanding, Lender.

(c) Upon a Member's transfer in accordance with the provisions of this Agreement of any or all limited liability company interests in the Company represented by a Share Certificate, the transferee of such limited liability company interests in the Company shall deliver such Share Certificate to the Company for cancellation (executed by such transferee on the reverse side thereof), and the Company shall thereupon issue a new Share Certificate to such transferee for the percentage of limited liability company interests in the Company being transferred and, if applicable, cause to be issued to such Member a new Share Certificate for that percentage of limited liability company interests in the Company that were represented by the canceled Share Certificate and that are not being transferred.

(d) Notwithstanding any other provision hereof, for so long as the Loan is outstanding, (i) no new Share Certificates shall be issued after the date of this Agreement without the prior consent of Lender, and the Member to whom any new Share Certificate is issued must agree to comply with all reasonable requests of Lender and (ii) this Section 36 shall not be amended, modified or replaced in any way without the prior written consent of Lender.

4. **No Further Amendment.** Except as expressly modified herein, all provisions of the Operating Agreement shall remain in full force and effect.

5. **Electronic Signature.** Any electronic signature on any counterpart of this Amendment shall be deemed to be an original signature for all purposes and shall fully bind the party whose facsimile signature appears on the counterpart.

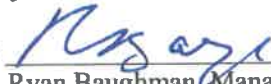
**IN WITNESS WHEREOF**, the Manager has executed this Amendment effective as of the Effective Date.

**MEMBER:**

**SOLANO VISTA JV LLC,**  
a Utah limited liability company

By: Sundance Bay Income and Growth OP, LP, a  
Delaware limited partnership, its Manager

By: Sundance Bay Income and Growth Fund  
GP, LLC, a Delaware limited liability  
company, its General Partner

By:   
Ryan Baughman, Manager

**EXHIBIT A**

**FORM OF SHARE CERTIFICATE**

*d*

CERTIFICATE FOR LIMITED LIABILITY COMPANY INTERESTS IN SC  
PRESERVE AT PORT ROYAL, LLC

THIS CERTIFICATE HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER THE SECURITIES OR BLUE S Y LAWS OF ANY STATE. THE HOLDER OF THIS CERTIFICATE, BY ITS ACCEPTANCE HEREOF, REPRESENTS THAT IT IS ACQUIRING THIS SECURITY FOR INVESTMENT AND NOT WITH A VIEW TO ANY SALE OR DISTRIBUTION HEREOF. ANY TRANSFER OF THIS CERTIFICATE OR ANY LIMITED LIABILITY COMPANY INTEREST REPRESENTED HEREBY IS SUBJECT TO THE TERMS, CONDITIONS AND RESTRICTIONS OF THE LIMITED LIABILITY COMPANY AGREEMENT (AS DEFINED BELOW).

Certificate Number 001

100.0% Percentage Interest

SC PRESERVE AT PORT ROYAL, LLC, Delaware limited liability company (the "Company"), hereby certifies that SOLANO VISTA JV, LLC, a Utah limited liability company (together with any assignee of this Certificate, the "Holder") is the registered owner of 100.0% of the limited liability company interests in the Company. The rights, powers, preferences, restrictions and limitations of the limited liability company interests in the Company are set forth in, and this Certificate and the limited liability company interests in the Company represented hereby are issued and shall in all respects be subject to the terms and provisions of the Limited Liability Company Operating Agreement dated as of November 18, 2021, as the same may be further amended or restated from time to time (the "Limited Liability Company Agreement"). By acceptance of this Certificate, and as a condition to being entitled to any rights and/or benefits with respect to the limited liability company interests evidenced hereby, the Holder is deemed to have agreed to comply with and be bound by all the terms and conditions of the Limited Liability Company Agreement. The Company will furnish a copy of the Limited Liability Company Agreement to the Holder without charge upon written request to the Company at its principal place of business. The Company shall maintain books for the purpose of registering the transfer of interests. Transfer of any or all of the limited liability company interests in the Company evidenced by this Certificate is subject to certain restrictions in the Limited Liability Company Agreement and can be effected only after compliance with all of those restrictions and the presentation to the Company of the Certificate, accompanied by an assignment in the form appearing on the reverse side of this Certificate, duly completed and executed by and on behalf of the transferor in such Transfer, and an application for transfer in the form appearing on the reverse side of this Certificate, duly completed and executed by and on behalf of the transferee in such Transfer.

Each limited liability company interest in the Company shall constitute and shall remain a "security" within the meaning of and be governed by (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the States of Delaware and New York and (ii) the corresponding provisions of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and each limited liability company interest in the Company shall be treated as such a "security" for all purposes, including, without limitation perfection of the security interest therein under Article 8 of each applicable Uniform Commercial Code).

This Certificate and the limited liability company interests evidenced hereby shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed as of the date set forth below.

SC PRESERVE AT PORT ROYAL, LLC,  
a Delaware limited liability company

By: Sundance Bay Income and Growth OP, LP,  
a Delaware limited partnership, its Manager

By: Sundance Bay Income and Growth Fund  
GP, LLC, a Delaware limited liability  
company, its General Partner

By: \_\_\_\_\_  
Ryan Baughman, Manager

Dated: \_\_\_\_\_, 2024

**REVERSE SIDE OF CERTIFICATE  
ASSIGNMENT OF INTEREST**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (print or typewrite name of transferee), \_\_\_\_\_ (insert

Social Security or other taxpayer identification number of transferee), the following specified percentage of limited liability company interests in the Company: 100.0% (identify the percentage interest being transferred) effective as of the date specified in the Application for Transfer of Interests below, and irrevocably constitutes and appoints

\_\_\_\_\_ and its authorized officers, as attorney-in-fact, to transfer the same on the books and records of the Company, with full power of substitution in the premises.

SOLANO VISTA JV, LLC, a Delaware limited liability company

By: Sundance Bay Income and Growth OP, LP,  
a Delaware limited partnership, its Manager

By: Sundance Bay Income and Growth Fund GP, LLC,  
a Delaware limited liability company, its General Partner

By: \_\_\_\_\_  
Ryan Baughman, Manager  
(Transferor)

Dated: \_\_\_\_\_

**APPLICATION FOR TRANSFER OF INTERESTS**

The undersigned applicant (the "Applicant") hereby (a) applies for a transfer of the percentage of limited liability company interests in the Company described above (the "Transfer") and applies to be admitted to the Company as a substitute member of the Company, (b) agrees to comply with and be bound by all of the terms and provisions of the Limited Liability Company Agreement, (c) represents that the Transfer complies with the terms and conditions of the Limited Liability Company Agreement, (d) represents that the Transfer does not violate any applicable laws and regulations, and (e) agrees to execute and acknowledge such instruments (including, without limitation, a counterpart of the Limited Liability Company Agreement), in form and substance satisfactory to the Company, as the Company reasonably deems necessary or desirable to effect the Applicant's admission to the Company as a substitute member of the Company and to confirm the agreement of the Applicant to be bound by all the terms and provisions of the Limited Liability Company Agreement with respect to the limited liability company interests in the Company described above. Initially capitalized terms used herein and not otherwise defined herein are used as defined in the Limited Liability Company Agreement.

The Applicant directs that the foregoing Transfer and the Applicant's admission to the Company as a substitute Member shall be effective as of \_\_\_\_\_.

Name of Transferee (Print): \_\_\_\_\_

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

(Transferee)

Address: \_\_\_\_\_

The Company (a) has determined that the Transfer described above is permitted by the Limited Liability Company Agreement,

(b) hereby agrees to effect such Transfer and the admission of the Applicant as a substitute member of the Company effective as of the date and time directed above, and (c) agrees to record, as promptly as possible, in the books and records of the Company the admission of the Applicant as a substitute member.

By: \_\_\_\_\_  
Name:  
Title:

## LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

### SC PRESERVE AT PORT ROYAL, LLC

This Limited Liability Company Operating Agreement (together with the schedules attached hereto, this "Agreement") of SC PRESERVE AT PORT ROYAL, LLC, a Delaware limited liability company (the "Company"), is dated and effective as of November 18, 2021 (the "Effective Date"), by Solano Vista JV, LLC, a Utah limited liability company, having an address at 1240 East 2100 South, Suite 300, Salt Lake City, UT 84106, as the sole equity member (the "Member") and David Cynamon, an individual, having an address at 1700 Reisterstown Road Unit 217, Pikesville, MD 21208, the Independent Director (as defined on Schedule A hereto) and as the Special Member (as defined on Schedule A hereto). Capitalized terms used and not otherwise defined herein have the meanings set forth on Schedule A hereto.

The Member, by execution of this Agreement, hereby forms the Company as a limited liability company pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18 101 et seq.), as amended from time to time (the "Act"), and this Agreement, and the Member and the Special Member hereby agree as follows:

Section 1. Name.

The name of the limited liability company is SC Preserve at Port Royal, LLC.

Section 2. Principal Business Office.

The principal business office of the Company shall be located at 1240 East 2100 South, Suite 300, Salt Lake City, UT 84106, or such other location as may hereafter be determined by the Member.

Section 3. Registered Office.

The address of the registered office of the Company in the State of Delaware is the address stated in the Certificate of Formation of the Company (the "**Certificate of Formation**"), which is dated October 26, 2021, and which was filed with State of Delaware, Secretary of State, Division of Corporations, on October 26, 2021, a copy of which is attached hereto as Schedule D.

Section 4. Registered Agent.

The name and address of the registered agent of the Company for service of process on the Company in the State of Delaware is the registered agent identified in the Certificate of Formation.

Section 5. Members.

(a) The mailing address of the Member is set forth on Schedule B attached hereto. The Member was admitted as a member of the Company as of the date hereof upon its execution of a counterpart signature page to this Agreement.

(b) Subject to Section 9(c), the Member may act by written consent.

(c) The Member shall at all times cause there to be at least one Person bound by this Agreement as Special Member. Upon the occurrence of any event (a "Springing Event") that causes the Member to cease to be a member of the Company (other than (i) upon an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23 or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), the Person acting as the Independent Director pursuant to Section 10 shall, without any action of any Person and simultaneously with the Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Director pursuant to Section 10; provided, however, the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member. The Special Member shall be a member of the Company that has no interest, in his or her capacity as Special Member, in the profits, losses and capital of the Company and has no right, in his capacity as Special Member, to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member, in his or her capacity as Special Member, shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in his or her capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, the Special Member, in his or her capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of the Special Member, the Person acting as the Independent Director pursuant to Section 10 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member upon the occurrence of a Springing Event, the Person acting as the Independent Director pursuant to Section 10 shall not be a member of the Company.

Section 6. Certificates.

Ryan Baughman, as an "authorized person" for the Company within the meaning of the Act, executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation, the Member became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act, and the Member shall execute, deliver and

file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in the State of South Carolina and in any other jurisdiction in which the Company may wish to conduct business.

The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Act.

Section 7. Purposes.

(a) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management, or operation of the Company, the sole purpose to be conducted or promoted by the Company has been since its formation and shall continue to be to engage in the following activities:

(i) acquiring, refinancing, developing, owning, holding, selling, leasing, transferring, exchanging, managing, financing, refinancing, disposing of and operating the real estate project currently known as “Preserve at Port Royal” and located at 1 Preserve Ave W, Port Royal, SC 29935 (the “Property”); and

(ii) any lawful act or activity and exercising any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above-mentioned purposes.

(b) The Company is hereby authorized to execute, deliver and perform, and the Member, as authorized person on behalf of the Company, is hereby authorized to execute and deliver, the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement. The foregoing authorization shall not be deemed a restriction on the powers of the Member to enter into other agreements on behalf of the Company.

Section 8. Powers: Division.

(a) Subject to Section 9(c), the Company (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 7 and (ii) shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act.

(b) The Company shall have no right, power or authority, express or implied, to divide into multiple entities pursuant to any applicable law allowing an entity to divide or conduct a divisive merger. This provision shall not be amended, modified or otherwise changed to grant such right, power or authority, and any attempt to divide or conduct a divisive merger or to amend this absolute prohibition of division shall, to the fullest extent permitted by law, be void ab initio and of no force or effect whatsoever.

Section 9. Management.

(c) Powers. Subject to Section 9(c), the Manager shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Sections 7 and 9, the Manager has the authority to bind the Company.

(d) Member as Agent. To the extent of its powers set forth in this Agreement and subject to Section 9(c), the Member is an agent of the Company for the purpose of the Company's business, and the actions of the Member, as authorized person on behalf of the Member, taken in accordance with such powers set forth in this Agreement shall bind the Company.

(e) Limitations on the Company's Activities.

(i) This Section 9(c) is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity. All capitalized terms used in this Section 9(c) and not otherwise defined shall have the meaning given to such term in the Loan Agreement.

(ii) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, and any provision of law that empowers the Company, the Member, or any other Person, for so long as any Obligation is outstanding, neither the Member nor the Company shall amend, alter, change or repeal the definitions of "Special Member" or "Independent Director", or Sections 1, 5(b), 5(c), 7, 8, 9, 10, 14, 16, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30 or 31 or Schedule C of this Agreement (collectively, the "Special Purpose Provisions"), or any other provision of this or any other document governing the formation, management or operation of the Company in a manner that is inconsistent with any of the Special Purpose Provisions, unless the Lender consents in writing. Subject to this Section 9(c), the Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 31. In the event of any conflict between any of the Special Purpose Provisions and any other provision of this Agreement or any other document governing the formation, management or operation of the Company, the Special Purpose Provisions shall control.

(iii) Notwithstanding any other provision of this Agreement or any other document governing the formation, management or operation of the Company, and notwithstanding any provision of law that otherwise so empowers the Company, the Member or any other Person, so long as any Obligation is outstanding, neither the Member nor any other Person shall be authorized or empowered, nor shall they permit the Company to, and the Company shall not, without the prior unanimous written consent of the Manager and the Independent Director, take any Material Action, provided, however, that so long as any Obligation is outstanding, the Manager may not authorize

the taking of any Material Action, unless there is at least one Independent Director then serving in such capacity.

(iv) The Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises.

(v) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the Member has caused the Company to, since the date of its formation, and, for so long as any Obligation is outstanding, shall continue to cause the Company to, and the Company represents, warrants and covenants to comply with the covenants set forth on Schedule C attached hereto.

(vi) Failure of the Company, or the Member on behalf of the Company, to comply with any of the covenants set forth on Schedule C or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member.

#### Section 10. Independent Director.

(a) Duties. Notwithstanding any provision in this Agreement to the contrary, so long as any Obligation is outstanding, the Member shall cause the Company at all times to have at least one (1) Independent Director who will be appointed by the Member. No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Director by a written instrument, and (ii) shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Section 9(c)(iii). Except for duties to the Company as set forth in the immediately preceding sentence (including duties to the Member and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), to the fullest extent permitted by law, the Independent Director shall not have any fiduciary duties to the Member, or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, the Independent Director shall not be liable to the Company, the Member or any other Person bound by this Agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct. An Independent Director is hereby designated as a

“manager” within the meaning of Section 18-101(12) of the Act; provided, however, that all right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement and the Independent Director shall otherwise have no authority to bind the Company. Notwithstanding any other provision of this Agreement to the contrary, the Independent Director, in its capacity as an Independent Director, may only act, vote or otherwise participate in those matters referred to in Section 9(c)(iii) or as otherwise specifically required by this Agreement or applicable law. No Independent Director shall at any time serve as a trustee in bankruptcy for any Affiliate of the Company.

(b) Removal. Subject to the other provisions of this Section 10(b), so long as any Obligation is outstanding, no Independent Director may be removed or replaced without cause. No resignation or removal of the Independent Director permitted by the preceding sentence shall be effective until (1) the Company has provided the Lender with at least three (3) business days’ prior written notice of (a) any proposed removal of an Independent Director, together with a statement as to the reasons for such removal, and (b) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements for an Independent Director set forth in this Agreement and (2) a successor Independent Director is appointed and such successor (i) shall have accepted his or her appointment as an Independent Director by a written instrument, and (ii) shall have executed a counterpart to this Agreement as required by Section 5(c). In the event of a vacancy in the position of an Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director.

Section 11. Intentionally Omitted.

Section 12. Limited Liability.

Except as otherwise expressly provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Member nor the Special Member nor the Independent Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member, Special Member or Independent Director of the Company.

Section 13. Capital Contributions.

The Member has contributed to the Company property of an agreed value as listed in the books and records of the Company. In accordance with Section 5(c), the Special Member shall not be required to make any capital contributions to the Company.

Section 14. Additional Contributions.

The Member is not required to make any additional capital contribution to the Company. However, the Member may make additional capital contributions to the Company at any time

upon the written consent of such Member. To the extent that the Member makes an additional capital contribution to the Company, the Member shall revise the books and records of the Company. The provisions of this Section 14 are intended to benefit the Member and the Special Member and, subject to Section 26, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (other than a Covered Person) and the Member and the Special Member shall not have any duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 15. Allocation of Profits and Losses.

The Company's profits and losses shall be allocated to the Member.

Section 16. Distributions.

Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law or any Basic Document.

Section 17. Books and Records.

The Member shall keep or cause to be kept complete and accurate books of account and records with respect to the Company's business. The Member and its duly authorized representatives shall have the right to examine the Company books, records and documents during normal business hours. The Company's books of account shall be kept using the method of accounting determined by the Member. The Company's independent auditor, if any, shall be an independent public accounting firm selected by the Member.

Section 18. Reports.

The Company shall prepare and distribute such financial statements and reports so as to enable the company to satisfy its obligations under the Loan Documents.

Section 19. Other Business.

Notwithstanding any duty otherwise existing at law or in equity, the Member, the Special Member, the Independent Director, and any employee or agent of the Company and any Affiliate of the Member or the Special Member or the Independent Director may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

Section 20. Exculpation and Indemnification.

(a) To the fullest extent permitted by applicable law, neither the Member nor the Special Member, the Independent Director nor any officer, director, member, partner, shareholder, employee, agent or Affiliate of the foregoing (collectively, the “Covered Persons”) shall be liable to the Company or any other Person who is a party to or is otherwise bound by this Agreement for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person’s gross negligence or willful misconduct.

(b) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of such Covered Person’s gross negligence or willful misconduct with respect to such acts or omissions; provided, however, that any indemnity under this Section 20 by the Company shall be provided out of and to the extent of Company assets only, and the Member and the Special Members shall not have personal liability on account thereof; and provided further, that so long as any Obligation is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Section 20 shall be payable from amounts allocable to any other Person pursuant to the Basic Documents.

(c) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees) incurred by a Covered Person defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in this Section 20.

(d) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person’s professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, or any other facts pertinent to the existence and amount of assets from which distributions to the Member might properly be paid.

(e) The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities of a Covered Person to the Company or its members otherwise existing at

law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(f) Notwithstanding the foregoing provisions, any indemnification set forth herein shall be fully subordinate to the Debt and the terms and conditions set forth in the Basic Documents, and, to the fullest extent permitted by law, shall not constitute a claim against the Company in the event that the Company's cash flow in excess of the amount required to pay the Debt is insufficient to pay such indemnity obligations.

(g) The foregoing provisions of this Section 20 shall survive any termination of this Agreement.

Section 21. Assignments.

Subject to Section 23 and any limitations in the Loan Agreement, the Member may assign in whole or in part its limited liability company interest in the Company. Subject to Section 23, the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. If the Member transfers all of its limited liability company interest in the Company pursuant to this Section 21, such admission shall be deemed effective immediately prior to the transfer and, immediately following such admission, the transferor Member shall cease to be a member of the Company. Notwithstanding anything in this Agreement to the contrary, any successor to the Member by merger or consolidation in compliance with the Basic Documents shall, without further act, be the Member hereunder, and such merger or consolidation shall not constitute an assignment for purposes of this Agreement and the Company shall continue without dissolution. Any assignment provided hereunder must comply with any limitations or restrictions on any such assignment set forth in the Loan Agreement.

Section 22. Resignation.

So long as any Obligation is outstanding, the Member may not resign, except as permitted under the Basic Documents and if the Rating Agency Condition is satisfied. If the Member is permitted to resign pursuant to this Section 22, an additional member of the Company shall be admitted to the Company, subject to Section 23, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

Section 23. Admission of Additional Members.

(a) One or more additional Members of the Company may be admitted to the Company with the written consent of the Member; provided, however, that, notwithstanding the foregoing, so long as any Obligation remains outstanding, no additional Member may be

admitted to the Company unless the Rating Agency Condition is satisfied, except as permitted under the Basic Documents.

Section 24. Dissolution.

(a) Subject to Schedule C and to the applicable provisions of the Loan Agreement, the Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under Section 18-802 of the Act. Upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes the Member to cease to be a member of the Company (other than upon continuation of the Company without dissolution upon (i) an assignment by the Member of all of its limited liability company interest in the Company and the admission of the transferee pursuant to Sections 21 and 23, or (ii) the resignation of the Member and the admission of an additional member of the Company pursuant to Sections 22 and 23), to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of the Member or a Special Member shall not cause the Member or Special Member, respectively, to cease to be a member of the Company and upon the occurrence of such an event, the Company shall continue without dissolution. Except as otherwise required by law, notwithstanding any other provision of this Agreement, the dissolution or death of a Member or Special Member shall not, by itself, cause the Company to be dissolved or its affairs to be wound up, and upon the occurrence of such event the Company shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Member, the Special Member and any additional member waive any right it might have to agree in writing to dissolve the Company upon the Bankruptcy of the Member or a Special Member or additional member, or the occurrence of an event that causes the Member, Special Member or additional member to cease to be a member of the Company.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act.

(e) Subject to Sections 5(c) and 9(c), and the terms and conditions of the Basic Documents, the Company shall terminate when (i) all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company shall have been distributed to the Member in the manner provided for in this Agreement and (ii) the Certificate of Formation shall have been canceled in the manner required by the Act.

Section 25. Waiver of Partition; Nature of Interest.

Except as otherwise expressly provided in this Agreement, to the fullest extent permitted by law, each of the Member, Special Member and the Independent Director hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to Section 16 hereof. The interest of the Member in the Company is personal property.

Section 26. Benefits of Agreement; No Third-Party Rights.

Except for Lender as holder of the Loan, (a) none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of the Member or a Special Member, and (b) nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third Person (other than Covered Persons). The Lender, its successors and assigns, are intended third-party beneficiaries of this Agreement and may enforce the Special Purpose Provisions.

Section 27. Severability of Provisions.

Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 28. Entire Agreement.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.

Section 29. Binding Agreement.

Notwithstanding any other provision of this Agreement, the Member agrees that this Agreement, including, without limitation, the Special Purpose Provisions, constitutes a legal,

valid and binding agreement of the Member, and is enforceable against the Member in accordance with its terms.

Section 30. Governing Law.

This Agreement shall be governed by and construed under the laws of the State of Delaware (without regard to conflict of laws principles), all rights and remedies being governed by said laws.

Section 31. Amendments.

Subject to Section 9(c), this Agreement may be modified, altered, supplemented or amended pursuant to a written agreement executed and delivered by the Member or the Manager. Notwithstanding anything to the contrary in this Agreement, so long as any Obligation is outstanding, this Agreement may not be modified, altered, supplemented or amended unless permitted under the Basic Documents except: (i) to cure any ambiguity or (ii) to convert or supplement any provision in a manner consistent with the intent of this Agreement and the other Basic Documents.

Section 32. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

Section 33. Notices.

Any notices required to be delivered hereunder shall be in writing and personally delivered, mailed or sent by telecopy, electronic mail or other similar form of rapid transmission, and shall be deemed to have been duly given upon receipt (a) in the case of the Company, to the Company at its address in Section 2, (b) in the case of the Member, to the Member at its address as listed on Schedule B attached hereto and (c) in the case of either of the foregoing, at such other address as may be designated by written notice to the other party.

Section 34. Effectiveness.

This Agreement shall be effective as of the Effective Date.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the Effective Date.

MEMBER:

Solano Vista JV LLC,  
a Utah limited liability company

By: Sundance Bay Income and Growth OP, LP, a  
Delaware limited partnership  
limited liability company, its Manager

By: Sundance Bay Income and Growth Fund  
GP, LLC, a Delaware limited liability  
company, its General Partner

By:   
Ryan Baughman, Manager

INDEPENDENT DIRECTOR AND SPECIAL  
MEMBER:

Print Name: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the Effective Date.

MEMBER:

Solano Vista JV LLC,  
a Utah limited liability company

By: Sundance Bay Income and Growth OP, LP, a  
Delaware limited partnership  
limited liability company, its Manager

By: Sundance Bay Income and Growth Fund  
GP, LLC, a Delaware limited liability  
company, its General Partner

By: \_\_\_\_\_  
Ryan Baughman, Manager

INDEPENDENT DIRECTOR AND SPECIAL  
MEMBER:



Print Name: David Cynamon

## SCHEDULE A

### Definitions

#### A. Definitions

When used in this Agreement, the following terms not otherwise defined herein have the meanings set forth below. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Loan Agreement:

“Acceptable ID Provider” shall mean (i) any of the following unless any of the same are ever disapproved by the Rating Agencies: CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company and Lord Securities Corporation and (ii) any other national provider of Independent Directors that is approved in writing by Lender and the Rating Agencies.

“Act” has the meaning set forth in the preamble to this Agreement.

“Affiliate” means, as to any Person, any other Person that (i) owns directly or indirectly twenty percent (20%) or more of all equity interests in such Person, (ii) is in Control of, is Controlled by or is under common ownership or Control with such Person, (iii) is a director or executive officer of such Person or of an Affiliate of such Person, and/or (iv) is the spouse, issue or parent of such Person.

“Agreement” means this Limited Liability Company Agreement of the Company, together with the schedules attached hereto, as amended, restated or supplemented or otherwise modified from time to time.

“Bankruptcy” means, with respect to any Person, (A) if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, or (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (B) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person’s consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of “Bankruptcy” is intended to replace and shall supersede and replace the definition of “Bankruptcy” set forth in Sections 18-101(1) and 18-304 of the Act.

“Basic Documents” means the Loan Agreement and the other Loan Documents and all documents and certificates contemplated thereby or delivered in connection therewith.

“Certificate of Formation” means the Certificate of Formation of the Company, which is dated October 26, 2021, and which was filed with State of Delaware, Secretary of State, Division of Corporations, on October 26, 2021, as amended or amended and restated from time to time.

“Company” means SC Preserve at Port Royal, LLC, a Delaware limited liability company.

“Control” as to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of such Person, whether through ownership of voting securities or other beneficial interests, by contract or otherwise, and the terms “controlled” or “controlling” shall have a correlative meaning.

“Covered Persons” has the meaning set forth in Section 20(a).

“Debt” has the meaning set forth in the Loan Agreement.

“Independent Director” shall mean a natural person selected by the Company who shall (A) not have been at the time of each such individual’s initial appointment, and shall not have been at any time during the preceding five years, and shall not be at any time while serving as Independent Director, either (i) a shareholder (or other equity owner – except for being a Special Member with no economic interest) of, or an officer, director (other than in its capacity as Independent Director), partner, member (except for being a Special Member with no economic interest) or employee of, the Company, any Guarantor (as defined in the Loan Agreement) or any of their respective shareholders, partners, members, subsidiaries or Affiliates, (ii) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, the Company, any Guarantor or any of their respective shareholders, partners, members, subsidiaries or Affiliates, (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee supplier, customer or other Person, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, (B) shall have, at the time of their appointment, had at least three (3) years’ experience in serving as an independent director and (C) be employed by, in good standing with and engaged by the Company in connection with, in each case, an Acceptable ID Provider.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the Independent Director of a “special purpose entity” affiliated with the Company shall be qualified to serve as an Independent Director of the Company, provided that the fees that such individual earns from serving as Independent Director of affiliates of the Company in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

A natural person who satisfies the foregoing definition other than clause (ii) shall not be disqualified from serving as an Independent Director of the Company if such individual is an

independent director, independent manager or special manager provided by an Acceptable ID Provider that provides professional independent directors, independent managers and special managers and also provides other corporate services in the ordinary course of its business.

“Lender” means MF1 CAPITAL LLC, a Delaware limited liability company, together with its affiliates and their successors and/or assigns.

“Loan” means that loan by the Lender to the Company.

“Loan Agreement” means that certain loan agreement with Lender with respect to the Loan.

“Loan Documents” has the meaning set forth in the Loan Agreement.

“Material Action” means to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a voluntary bankruptcy petition or any other petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company’s inability to pay its debts generally as they become due (unless required by law), or to declare or effectuate a moratorium on the payment of any obligation, or take action in furtherance of any such action.

“Member” means Solano Vista JV, LLC, a Utah limited liability company, as the initial member of the Company, and includes any Person admitted as an additional member of the Company or a substitute member of the Company pursuant to the provisions of this Agreement, each in its capacity as a member of the Company; provided, however, the term “Member” shall not include the Special Members.

“Membership Interest” means the limited liability company interest of a Member in the Company, including the right of such Member in the capital, profits and losses of, and distributions from, the Company, and the right of such Member to any and all benefits to which such Member may be entitled under this Agreement, including voting and consent rights hereunder.

“Obligation” shall mean the indebtedness, liabilities and obligations of the Company under or in connection with the Basic Documents or any related document in effect as of any date of determination.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Rating Agency” has the meaning assigned to that term in the Basic Documents.

“Rating Agency Condition” means (i) with respect to any action taken at any time before the Loan has been sold or assigned to a securitization trust, that the Lender has consented in writing to such action, and (ii) with respect to any action taken at any time after such Loan has been sold or assigned to a securitization trust, that each Rating Agency shall have been given ten days prior notice thereof and that each of the Rating Agencies shall have notified the Company in writing that such action will not result in a reduction, withdrawal, downgrade or qualification of the then current rating by such Rating Agency of the Loan or any pool of loans of which the Loan forms a part or any of securities issued by such securitization trust.

“Special Member” means, upon such person’s admission to the Company as a member of the Company pursuant to Section 5(c), each such person acting as a Special Member in such person’s capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.




“Springing Event” has the meaning set forth in Section 5(c).

B. Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words “include” and “including” shall be deemed to be followed by the phrase “without limitation.” The terms “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

SCHEDULE B

Member

<u>Name</u>	<u>Mailing Address</u>	<u>Limited Liability Company Interest</u>
Solano Vista JV, LLC	1240 East 2100 South, Suite 300, Salt Lake City, UT 84106	
David Cynamon, as Special Member Only		

SCHEDULE C

SPE Covenants

**Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Loan Agreement.**

The Member shall cause the Company (in this Schedule C, Company is sometimes referred to as "Borrower"), and the Company represents, warrants and covenants to the following:

Borrower covenants and agrees that:

- (a) Borrower has not and will not:
  - (i) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto;
  - (ii) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the ownership, leasing, maintenance and operation of the Property;
  - (iii) incur any Indebtedness, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt and/or (B) unsecured trade payables and operational debt not evidenced by a note and incurred in the ordinary course of business with trade creditors, provided any indebtedness incurred pursuant to subclause (B) shall be not more than sixty (60) days past due.; provided, however, the aggregate amount of the indebtedness described in (B) shall not exceed at any time (in the aggregate among all Borrowers, if more than one exist) two percent (2%) of the outstanding principal amount of the Debt. No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property;
  - (iv) commingle its funds or assets with the funds or assets of any other Person, or maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
  - (v) use the stationery, invoices or checks of any other Person as its own or fail to allocate shared expenses (including, without limitation, shared office space);
  - (vi) fail to maintain a sufficient number of employees in light of its contemplated business operations, fail to remain solvent, or fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds (in each case to the extent there exists sufficient cash flow from the

Property to do so, and provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower);

(vii) fail to (A) hold itself out to the public and identify itself, in each case, as a legal entity separate and distinct from any other Person and not as a division or part of any other Person, (B) correct any known misunderstanding regarding its separate identity or (C) hold its assets and conduct its business solely in its own name;

(viii) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents (provided, that, such organizational documents may be amended or modified to the extent that, in addition to the satisfaction of the requirements related thereto set forth therein, Lender's prior written consent and, if required by Lender, a Rating Agency Confirmation are first obtained);

(ix) merge into or consolidate with any Person, or divide, dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure (including through division of the Borrower into multiple entities or series, whether pursuant to Section 18-217 of the Delaware Limited Liability Company Act, 6 Del. C. §18-101, et seq. or otherwise);

(x) have any obligation to indemnify any of its officers, directors, managers, members, shareholders or partners, as the case may be, unless such obligation is fully subordinated to the Debt and will not constitute a claim against Borrower if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(xi) own any subsidiary, or make any investment in, any Person;

(xii) fail to file its own tax returns (to the extent Borrower is required to file any such tax returns pursuant to applicable Legal Requirements) or file a consolidated federal income tax return with any other Person;

(xiii) fail to maintain all of its books, records, financial statements and bank accounts separate from those of any other Person (including, without limitation, any Affiliates). Borrower's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its Affiliates provided that (i) appropriate notation shall be made on such

consolidated financial statements to indicate the separateness of Borrower and such Affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has maintained and will maintain its books, records, resolutions and agreements as official records;

(xiv) enter into any contract or agreement with any partner, member, shareholder, principal or Affiliate, except, in each case, upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(xv) assume or guaranty or otherwise become obligated for the debts of any other Person, hold itself out to be responsible for, or have its credit available to satisfy the debts or obligations of, any other Person, or otherwise pledge its assets for the benefit of any other Person;

(xvi) except as provided in the Loan Documents, have any of its obligations guaranteed by any Affiliate;

(xvii) make any loans or advances to any Person;

(xviii) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (to the extent there exists sufficient cash flow from the Property to do so, and provided that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower);

(xix) fail to consider the interests of Borrower's creditors in connection with all company actions;

(xx) without the prior unanimous written consent of all of its partners, shareholders or members, as applicable, and the prior unanimous written consent of its board of directors or managers, as applicable, and the prior written consent of each Independent Director (as defined below), regardless of whether such Independent Director is engaged at the Borrower or SPE Component Entity level, (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (B) seek or consent to the appointment of a receiver, liquidator or any similar official, (C) take any action that might cause such entity to become insolvent, (D) make an assignment for the benefit of creditors or (E) take any Material Action with respect to Borrower or any SPE Component Entity (provided, that, none of any member, shareholder or partner (as applicable) of Borrower or any SPE Component Entity or any board of directors or managers (as applicable) of Borrower or any SPE Component Entity

may vote on or otherwise authorize the taking of any of the foregoing actions unless, in each case, at least one (1) Independent Director is then serving in such capacity in accordance with the terms of the applicable organizational documents and such Independent Director has consented to such foregoing action);

(xxi) acquire obligations or securities of its partners, members, shareholders or other Affiliates, as applicable;

(xxii) permit any Affiliate or constituent party independent access to its bank accounts;

(xxiii) identify its partners, members, shareholders or other Affiliates, as applicable, as a division or part of it; or

(xxiv) conduct its business and activities in such a way as to cause any of the assumptions made with respect to Borrower and its principals in any Non-Consolidation Opinion or in any New Non-Consolidation Opinion to be violated.

(b) If Borrower is a partnership or limited liability company (other than a Springing Member LLC), each general partner (in the case of a partnership) and managing member (in the case of a limited liability company) of Borrower, as applicable, shall be a corporation or a Springing Member LLC (each an “**SPE Component Entity**”) whose sole asset is its interest in Borrower. Each SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in clauses (a)(iv) - (xxiv) of this Exhibit C and, if such SPE Component Entity is a Springing Member LLC, clauses (c) and (d) of this Exhibit C, as if such representation, warranty or covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in Borrower; (iii) will not acquire or own any assets other than its partnership, membership, or other equity interest in Borrower; (iv) will at all times continue to own no less than a 0.5% direct equity ownership interest in Borrower; (v) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation); and (vi) will cause Borrower to comply with the provisions of this Exhibit C.

(c) In the event Borrower or the SPE Component Entity is a Springing Member LLC, the limited liability company agreement of Borrower or the SPE Component Entity (as applicable) (the “**LLC Agreement**”) shall provide that (i) upon the occurrence of any event that causes the last remaining member of Borrower or the SPE Component Entity (as applicable) (“**Member**”) to cease to be the member of Borrower or the SPE Component Entity (as applicable) (other than (A) upon an assignment by Member of all of its limited liability company interest in Borrower or the SPE Component Entity (as applicable) and the admission of the transferee in accordance with the Loan Documents and the LLC Agreement, or (B) the resignation of Member and the admission of an additional member of Borrower or the SPE Component Entity (as applicable) in accordance with the terms of the Loan Documents and the LLC

Agreement), any person acting as Independent Director of Borrower or the SPE Component Entity (as applicable) shall, without any action of any other Person and simultaneously with the Member ceasing to be the member of Borrower or the SPE Component Entity (as applicable) automatically be admitted to Borrower or the SPE Component Entity (as applicable) as a member with a 0% economic interest (“**Special Member**”) and shall continue Borrower or the SPE Component Entity (as applicable) without dissolution and (ii) Special Member may not resign from Borrower or the SPE Component Entity (as applicable) or transfer its rights as Special Member unless (A) a successor Special Member has been admitted to Borrower or the SPE Component Entity (as applicable) as a Special Member in accordance with requirements of Delaware law and (B) after giving effect to such resignation or transfer, there remains at least one (1) Independent Director of the SPE Component Entity or Borrower (as applicable) in accordance with clauses (e) and (f) below. The LLC Agreement shall further provide that (i) Special Member shall automatically cease to be a member of Borrower or the SPE Component Entity (as applicable) upon the admission to Borrower or the SPE Component Entity (as applicable) of the first substitute member, (ii) Special Member shall be a member of Borrower or the SPE Component Entity (as applicable) that has no interest in the profits, losses and capital of Borrower or the SPE Component Entity (as applicable) and has no right to receive any distributions of the assets of Borrower or the SPE Component Entity (as applicable), (iii) pursuant to the applicable provisions of the limited liability company act of the State of Delaware (the “Act”), Special Member shall not be required to make any capital contributions to Borrower or the SPE Component Entity (as applicable) and shall not receive a limited liability company interest in Borrower or the SPE Component Entity (as applicable), (iv) Special Member, in its capacity as Special Member, may not bind Borrower or the SPE Component Entity (as applicable) and (v) except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, Borrower or the SPE Component Entity (as applicable) including, without limitation, the merger, division, consolidation or conversion of Borrower or the SPE Component Entity (as applicable); provided, however, such prohibition shall not limit the obligations of Special Member, in its capacity as Independent Director, to vote on such matters required by the Loan Documents or the LLC Agreement. In order to implement the admission to Borrower or the SPE Component Entity (as applicable) of Special Member, Special Member shall execute a counterpart to the LLC Agreement. Prior to its admission to Borrower or the SPE Component Entity (as applicable) as Special Member, Special Member shall not be a member of Borrower or the SPE Component Entity (as applicable), but Special Member may serve as an Independent Director of Borrower or the SPE Component Entity (as applicable).

(d) The LLC Agreement shall further provide that (i) upon the occurrence of any event that causes the Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) to the fullest extent permitted by law, the personal representative of Member shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE

Component Entity (as applicable) agree in writing (A) to continue Borrower or the SPE Component Entity (as applicable) and (B) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of Borrower or the SPE Component Entity (as applicable) effective as of the occurrence of the event that terminated the continued membership of Member in Borrower or the SPE Component Entity (as applicable), (ii) any action initiated by or brought against Member or Special Member under any Creditors Rights Laws shall not cause Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable) and upon the occurrence of such an event, the business of Borrower or the SPE Component Entity (as applicable) shall continue without dissolution and (iii) each of Member and Special Member waives any right it might have to agree in writing to dissolve Borrower or the SPE Component Entity (as applicable) upon the occurrence of any action initiated by or brought against Member or Special Member under any Creditors Rights Laws, or the occurrence of an event that causes Member or Special Member to cease to be a member of Borrower or the SPE Component Entity (as applicable).

(e) The organizational documents of Borrower (to the extent Borrower is a corporation or a Springing Member LLC) or the SPE Component Entity, as applicable, shall provide that at all times there shall be at least one duly appointed independent director or manager of such entity (each, an “**Independent Director**”) who shall (I) not have been at the time of each such individual’s initial appointment, and shall not have been at any time during the preceding five years, and shall not be at any time while serving as Independent Director, either (i) a shareholder (or other equity owner) of, or an officer, director (other than in its capacity as Independent Director), partner, member or employee of, Borrower or any of its respective shareholders, partners, members, subsidiaries or Affiliates, (ii) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, Borrower or any of its respective shareholders, partners, members, subsidiaries or Affiliates, (iii) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee supplier, customer or other Person, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, (II) shall have, at the time of their appointment, had at least three (3) years’ experience in serving as an independent director and (III) be employed by, in good standing with and engaged by Borrower in connection with, in each case, an Acceptable ID Provider (defined below).

(f) The organizational documents of each Borrower and the SPE Component Entity shall further provide that (I) the board of directors or managers of Borrower and the SPE Component Entity and the constituent equity owners of such entities (constituent equity owners, the “**Constituent Members**”) shall not take any action set forth in clause (a)(xx) of this Exhibit C or any other action which, under the terms of any organizational documents of Borrower or the SPE Component Entity, requires the vote of the Independent Director unless, in each case, at the time of such action there shall be at least one Independent Director engaged as provided by the terms hereof and such Independent Director votes in favor of or otherwise consent to such action; (II) any

resignation, removal or replacement of any Independent Director shall not be effective without (1) prior written notice to Lender and the Rating Agencies (which such prior written notice must be given on the earlier of five (5) days or three (3) Business Days prior to the applicable resignation, removal or replacement) and (2) evidence that the replacement Independent Director satisfies the applicable terms and conditions hereof and of the applicable organizational documents (which such evidence must accompany the aforementioned notice); (III) to the fullest extent permitted by applicable law, including Section 18-1101(c) of the Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Constituent Members and Borrower and any SPE Component Entity (including Borrower's and any SPE Component Entity's respective creditors) in acting or otherwise voting on the matters provided for herein and in Borrower's and SPE Component Entity's organizational documents (which such fiduciary duties to the Constituent Members and Borrower and any SPE Component Entity (including Borrower's and any SPE Component Entity's respective creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in Borrower or SPE Component Entity (as applicable) exclusive of (x) all other interests (including, without limitation, all other interests of the Constituent Members), (y) the interests of other Affiliates of the Constituent Members, Borrower and SPE Component Entity and (z) the interests of any group of Affiliates of which the Constituent Members, Borrower or SPE Component Entity is a part)); (IV) other than as provided in subsection (III) above, the Independent Director shall not have any fiduciary duties to any Constituent Members, any directors of Borrower or SPE Component Entity or any other Person; (V) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (VI) to the fullest extent permitted by applicable law, including Section 18 1101(e) of the Act, an Independent Director shall not be liable to Borrower, SPE Component Entity, any Constituent Member or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.

SCHEDULE D

CERTIFICATE OF FORMATION OF THE COMPANY

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "SC PRESERVE AT PORT ROYAL, LLC", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF OCTOBER, A.D. 2021, AT 7:22 O`CLOCK P.M.



  
Jeffrey W. Bullock, Secretary of State

6338618 8100  
SR# 20213621583

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 204522775  
Date: 10-27-21

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 07:22 PM 10/26/2021  
FILED 07:22 PM 10/26/2021  
SR 20213621583 - File Number 6338618


**STATE of DELAWARE**  
**LIMITED LIABILITY COMPANY**  
**CERTIFICATE of FORMATION**

This Certificate of Formation of SC Preserve at Port Royal, LLC is being duly executed and filed by the undersigned for the purpose of forming a limited liability company pursuant to the provisions of Section 18-201 of the Delaware Limited Liability Company Act.

**FIRST:** The name of the limited liability company is SC Preserve at Port Royal, LLC.

**SECOND:** The address of its registered office in the State of Delaware is: Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation this 26<sup>th</sup> day of October, 2021.

By:   
Ryan Baughman, Authorized Person

**EXHIBIT F**

**Deed to Real Estate**

**[See Attached]**

  
BEAUFORT COUNTY AUDITOR

Deed prepared by:

Schulten Ward Turner & Weiss, LLP  
260 Peachtree Street, NW  
Suite 2700  
Atlanta, GA 30303

STATE OF SOUTH CAROLINA

Property Tax ID # R110 008 000 033A 0000

COUNTY OF BEAUFORT

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## SPECIAL WARRANTY DEED

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**THIS SPECIAL WARRANTY DEED** is delivered on the 6th day of December, 2021, by and between **PORT ROYAL OWNER, LLC**, a South Carolina limited liability company, **AS TO A 98.82% UNDIVIDED INTEREST**, **SCHORR ROLL 10 LLC**, a New Jersey limited liability company, **AS TO A 0.84% UNDIVIDED INTEREST**, and **W. COLIN CAVILL**, a resident of the State of Georgia, **AS TO A 0.34% UNDIVIDED INTEREST**, hereinafter collectively called **GRANTOR**, which expression shall include his, her or their heirs and assigns, and/or its successors and assigns, wherever the context so requires, or admits, of the one part, and **SC PRESERVE AT PORT ROYAL, LLC**, a Delaware limited liability company, c/o Sundance Bay, LLC, Attn: Ryan Baughman, 1240 E 2100 S Ste 300, Salt Lake City, UT 84106, hereinafter called **GRANTEE**, which expression shall include his, her or their heirs and assigns, and/or its successors and assigns, forever, wherever the context so requires or admits, of the other part; and in this agreement, the singular shall include the plural, and the plural shall include the singular, and one gender shall include all genders.

**KNOW ALL MEN BY THESE PRESENTS**, that **GRANTOR**, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) Dollars, paid to **GRANTOR**, by **GRANTEE**, in the State aforesaid, the receipt whereof is hereby acknowledged, subject to any matters and reservations set forth herein or on any exhibits attached hereto, has bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said **GRANTEE**, the following described property, located in Beaufort County, South Carolina, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO

**TOGETHER** with all and singular the rights, members, hereditaments and appurtenances to said premises belonging, or in anywise incident or appertaining.

**TO HAVE AND TO HOLD** all and singular the said premises before mentioned unto said **GRANTEE**.

**AND** the said **GRANTOR** does hereby bind itself, its heirs, successors and assigns, to warrant and forever defend all and singular the said premises unto the said **GRANTEE**, as hereinabove provided, against itself and its heirs, successors and assigns, and no others.

**IN WITNESS WHEREOF**, the **GRANTOR** has caused these presents to be signed and sealed this 6th day of December, 2021 and delivered as of the date indicated on the first page of this Deed.

(SIGNATURES ON FOLLOWING PAGE)



**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

**GRANTOR**

**SCHORR ROLL 10 LLC, a**  
New Jersey limited liability company

By: \_\_\_\_\_  
Name: SHERAGIA SCHORR  
Its: Manager

[Signature]  
\_\_\_\_\_  
(#1 witness sign here)

[Signature]  
\_\_\_\_\_  
(Notary sign as #2 witness)

JOSEPH OPPENHEIM  
NOTARY PUBLIC OF NEW JERSEY  
Comm. # 50089408  
My Commission Expires 8/31/2023

New Jersey  
STATE OF ~~SOUTH CAROLINA~~ )  
Ocean )  
COUNTY OF ~~BEAUFORT~~ )  
Joseph Oppenheim

**ACKNOWLEDGMENT**

I, Joseph Oppenheim, a Notary Public, do hereby certify that the within named Grantor, personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and seal this 2 day of December, 2021.

[Signature]  
\_\_\_\_\_  
Notary Public Signature

Joseph Oppenheim  
\_\_\_\_\_  
Notary Public Printed Name

Notary Public for [Signature]  
My Commission Expires: ~~8/31/2023~~ 8/31/2023

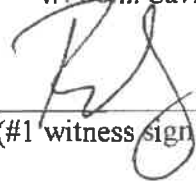
[SEAL]

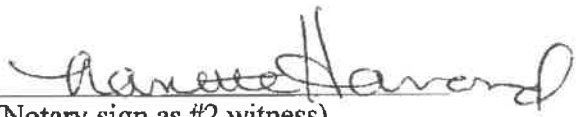
JOSEPH OPPENHEIM  
NOTARY PUBLIC OF NEW JERSEY  
Comm. # 50089408  
My Commission Expires 8/31/2023  
OPP,  
COPA  
50089408  
Expires 8/31/2023

**SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:**

**GRANTOR**

By:   
W. Colin Cavill

  
(#1 witness sign here)

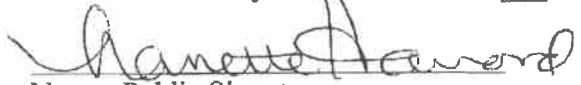
  
(Notary sign as #2 witness)

STATE OF GEORGIA            )  
  )  
COUNTY OF FULTON         )

**ACKNOWLEDGMENT**

I, Nanette Hammond Notary Public, do hereby certify that the within named Grantor, personally appeared before me this day and acknowledge the due execution of the foregoing instrument.

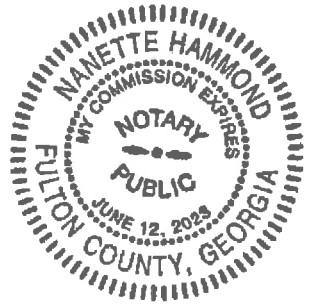
Witness my hand and seal this 6th day of December, 2021.

  
Notary Public Signature

Nanette Hammond  
Notary Public Printed Name

Notary Public for Fulton Co, Ga.  
My Commission Expires: 6/12/2023

[SEAL]



**EXHIBIT "A"**  
**(legal description)**

All that certain piece, parcel or lot of land, lying and being in Beaufort County, State of South Carolina, being located North of Ribaut Road (SC Hwy 281) and East of Block 'D' Waddell Gardens Subdivision in the Town of Port Royal and being more fully shown and designated on (i) an ALTA/ACSM Survey prepared for The Preserve of Port Royal Phase II, LLC by David S. Youmans, RLS No. 9765 for Beaufort Surveying, Inc. dated January 12, 2006, recorded in Register of Deeds Office for Beaufort County in plat book 111 at page 112, and (ii) an ALTA/ACSM Survey prepared for The Preserve of Port Royal Phase I, LLC, by David S. Youmans, RLS No. 9765 for Beaufort Surveying, Inc. dated June 18, 2004 and recorded in the Register of Deeds Office for Beaufort County in plat book 100 at page 110 and an ALTA/ACSM Survey prepared for The Preserve of Port Royal Phase I, LLC, by David S. Youmans, RLS No. 9765 for Beaufort Surveying, Inc. dated October 8, 2003 and recorded in the Register of Deeds Office for Beaufort County in plat book 109 at page 16, and having the following metes and bounds to wit:

Beginning at a found concrete monument (AOC), said monument being the Southwest corner of Land Lot 39, Section 19, Township One South of the Beaufort Baseline and Range One West of the Saint Helena Meridian and noted as POB on aforementioned plat recorded in Register of Deeds Office for Beaufort County in plat book 111 at page 112, then running along the property of Now or Formerly (N/F) Paris N00°21'11"W for a distance of 50.00' to a found ½" rebar, thence running along the property of N/F Adjei N00°21'11"W for a distance of 100.32' to a found ¾" pipe, thence running along the property of N/F Bekemeyer N00°10'36"W for a distance of 102.96' to a found angle iron, thence running along the property of N/F Martin N00°16'36"W for a distance of 160.79' to a found angle iron, thence running along the property of N/F Andrews N00°27'40"W for a distance of 146.19' to a found 1" pipe, thence running along the property of N/F Connelly N00°34'02"E for a distance of 68.67' to a found ½" rebar, thence turning and running along the property of Town of Port Royal N89°53'56"E for a distance of 299.94' to a found ½" rebar, thence continuing along the property of Town of Port Royal N89°41'11"E for a distance of 359.23' to a found ½" rebar, thence turning and running along the property of N/F Alston S00°03'26"E for a distance of 49.51' to a set ½" rebar, thence continuing along the property of N/F Alston S00°53'07"E for a distance of 7.48' to a set ½" rebar, thence turning and continuing along the property of N/F Alston N89°28'39"E for a distance of 249.94' to a set ½" rebar, thence turning and continuing along the property of N/F Alston N00°13'16"W for a distance of 87.02' to a found concrete monument 4x4 (NN). thence turning and running along the property of N/F Abner N89°32'17"E for a distance of 100.03' to a found ½" rebar, thence running along the property of Fyall-Dawson N89°24'09"E for a distance of 49.99' to a found ½" rebar, thence continuing along the property of Fyall-Dawson N89°33'31"E for a distance of 49.98' to a found ½" rebar, thence running along the property of N/F Jones S89°03'34"E for a distance of 217.04' to a found ½" rebar, thence running along the property of N/F Vernon Lights Trust and the property of Old Fort Cemetery N89°37'22"E for a distance of 331.05' to a found concrete monument 4x4, thence turning and running along the property of Beaufort Housing Authority S00°36'16"E for a distance of 562.62' to a found concrete monument 3x3, thence turning and running along the property of Yogi and Yagna of Port Royal, LLC N89°59'11"W for a distance of 331.67' to a found ½" rebar, thence turning and continuing along the property of Yogi and Yagna of Port Royal, LLC, S00°36'57"E for a distance of 141.73' to a found ½" rebar, said rebar being the Point of Beginning of Access Easement 'A' and noted as POB 'A', on an ALTA/ACSM Land Title Survey dated May 15, 2015 prepared by David S. Youmans, RLS No. 9765 for Beaufort Surveying, Inc., for Walker & Dunlop, The

Preserve At Port Royal, LLC, Prima Title, LLC, Fidelity National Title Insurance Co. and Federal Home Loan Mortgage Corp., their successors and/or assigns. (Survey), thence turning and running along the property of The Preserve of Port Royal Associates, Ltd. (Preserve) S89°24'58"W for a distance of 50.10' to a set 'X' in concrete, said set 'X' in concrete being the end of Access Easement 'A', thence turning and continuing along the property of Preserve S00°37'34"E for a distance of 84.37' to a mag nail, thence turning and running along the property of Preserve S84°44'06"W for a distance of 62.25' to a found ½" rebar, thence turning and continuing along the property of Preserve N00°35'24"W for a distance of 89.41' to a found ½" rebar, thence turning and continuing along the property of Preserve S89°25'08"W for a distance of 255.64' to a ½" set rebar, said rebar being the Point of Beginning of Access Easement 'B' and noted as POB 'B' on the Survey, thence continuing along the property of Preserve S89°25'08"W for a distance of 80.03' to set 'x' in concrete, said rebar being the end of Access Easement 'B', thence continuing along the property of Preserve S89°25'08"W for a distance of 440.22' to a found ½" rebar, thence turning and running along the property of Town of Port Royal Cemetery N00°05'08"W for a distance of 49.20' to a found ½" rebar, thence turning and continuing along the property of Town of Port Royal Cemetery N89°58'30"W for a distance of 295.09' to a found concrete monument (AOC) (Disturbed), thence running along the property of Royal Pines Extension Subdivision and Royal Palms Road S89°57'59"W for a distance of 50.00' to a found ½" rebar, thence running along the property of Royal Palms Road and N/F Ashmore S89°57'59"W for a distance of 97.15' to the Point of Beginning and containing 24.529 acres.

Save and Except:

That area between Phase I and Phase II being designated as Property Identification Number (PIN) R110-008-000-0672-0000, owned by to Town of Port Royal, containing 2.603 acres, and as shown on the ALTA/ACSM Land Title Survey dated March 1, 2012 prepared by David S. Youmans RLS No. 9765 on behalf of Beaufort Surveying, Inc. for Preserve At Port Royal LLC, as described in the deed from Millennium Investment Group, LLC and The Town of Port Royal in Book 2801 at Page 362 in the Beaufort County Records.

Save and Except:

That 40'x40' parcel northwest of the Club House, designated as PIN R110-009-000-0323-000 owned by Beaufort Jasper Water Sewer Authority, containing 0.037 acres, and as shown on the ALTA/ACSM land Title Survey dated May 15, 2015 prepared by David S. Youmans RLS No. 9765 on behalf of Beaufort Surveying, Inc. for Preserve At Port Royal LLC, as described and shown in the deed from The Preserve of Port Royal Phase I, LLC and Beaufort Jasper Water and Sewer Authority in Book 2224 at Page 958 in the Beaufort County Records.

These two parcels reduce the acreage of Phase I and Phase II to 21.89 acres.

Access Easement 'A'

All that certain piece, parcel or lot of land, lying and being in the Town of Port Royal, Beaufort County, State of South Carolina, beginning at a set ½" rebar where the Northeast corner of Access Easement 'A' adjoins the Southeastern most corner of the property of The Preserve of Port Royal Phase I, L.L.C., and noted as POB 'A' on an ALTA/ACSM Land Title Survey dated May 15, 2015 prepared by David S. Youmans, RLS No. 9765 for Beaufort Surveying, Inc., for Walker & Dunlop, Preserve At Port Royal LLC, Prims Title, LLC, Fidelity National Title Insurance, Co., and Federal Home Loan Mortgage Corp., their successors and/or

assigns, then running along the property of Yogi and Yagna of Port Royal, LLC S00°36'57"E for a distance of 330.98' to a Found ½" rebar, thence turning and continuing along the property of Yogi and Yagna of Port Royal, LLC S45°58'29"E for a distance of 14.22' to a Found ½" rebar at the Northeast terminus of North Richmond Avenue, thence turning and running along the Right of Way (R/W) of North Richmond Avenue S33°24'02"W for a distance of 52.48' to a Found ½" rebar, thence turning, leaving the R/W of North Richmond Avenue and running along the property of The Preserve of Port Royal Associates, Ltd. (Preserve) in a Northeasterly direction around a curve with an arc distance 112.03', having a radius of 126.50', a tangent of 59.99' and a chord of N20°36'16"W for a distance of 108.40' to a point, thence continuing along the property of Preserve N04°45'57"E for a distance of 67.07' to a point, thence continuing along the property of Preserve N00°39'00"W for a distance of 131.49' to a Found mag nail, thence running along the property of The Preserve of Port Royal Phase I, L. L.C. N00°37'34"W for a distance of 84.37' to a set 'X' in concrete, thence turning and continuing along the property of The Preserve of Port Royal Phase I, L.L.C. N89°24'58"E for a distance of 50.10' to the Point of Beginning and containing 0.435 acres.

#### Access Easement 'B'

All that certain piece, parcel or lot of land, lying and being in the Town of Port Royal, Beaufort County, State of South Carolina, beginning at a set ½" rebar where the Northeast corner of Access Easement 'B' adjoins the South side of the property of The Preserve of Port Royal Phase I, L. L.C. and noted as POB 'B', on an ALTA/ACSM Land Title Survey dated May 15, 2015 prepared by David S. Youmans, RLS No. 9765 for Beaufort Surveying, Inc., for Walker & Dunlop, The Preserve At Port Royal, LLC, Prima Title, LLC, Fidelity National Title Insurance, Co., and Federal Home Loan Mortgage Corp., their successors and/or assigns, said rebar being 367.73' on a bearing of S89°25'08"W from the Southeastern most corner of the property of The Preserve of Port Royal Phase I, L.L.C. which is also the Point of Beginning of Access Easement 'A', then running along the property of Preserve of Port Royal Associates, Ltd. (Preserve) S02°03'09"E for a distance of 401.99' to a point, thence continuing along the property of Preserve in a Southerly direction around a curve with an arc of 20.00', having a radius of 437.71', a tangent of 10.00' and a chord of S00°44'38"E for a distance of 19.99' to a point, thence continuing along the property of Preserve S00°33'54"W for a distance of 140.91' to a found ½" rebar, thence continuing along the property of Beaufort County Memorial Hospital S00°33'54"W for a distance of 56.71' to a found ½" rebar at the Northeastern terminus of North Paris Avenue, thence turning and running along the Northern Right of Way (R/W) of North Paris Avenue N89°59'21"W for a distance of 80.00' to a found ½" rebar, thence turning, leaving the (R/W) of North Paris Avenue and running along the property of Preserve N00°33'54"E for a distance of 198.44' to a point, thence continuing along the property of Preserve in a Northerly direction around a curve with an arc distance of 16.34' having a radius of 357.71', a tangent of 8.17' and a chord of N00°44'38"W for a distance of 16.34' to a point, thence continuing along the property of Preserve N02°03'09"W for a distance of 404.05' to a set 'x' in concrete, said 'x' being on the Southern property line of the property of The Preserve of Port Royal Phase I, L.L.C., thence turning and running along the property of The Preserve of Port Royal Phase I, LLC N89°25'08"E for a distance of 80.03' to the Point of Beginning and containing 1.137 acres.

#### Derivation:

This being the same property conveyed to the Grantor by Limited Warranty Deed to Port Royal Owner, LLC, a South Carolina limited liability company, from The Preserve at Port Royal, LLC, a Delaware limited liability company, dated August 7, 2020, and recorded in the Office of the Beaufort County Register of Deeds in Book 3894, Page 913 on August 7, 2020, by that Quit Claim Deed to Port Royal Owner, LLC, a South Carolina limited liability company, from The Preserve at Port Royal, LLC, a Delaware limited

liability company, dated August 7, 2020, and recorded in the Office of the Beaufort County Register of Deeds in Book 3894, Page 921 on August 7, 2020, by that Special Warranty Deed to W. Colin Cavill, a resident of the State of Georgia, from Port Royal Owner, LLC, a South Carolina limited liability company, dated December 6, 2021, and recorded in the Office of the Beaufort County Register of Deeds in Book 4091, Page 2657 on December 7, 2021, and that Special Warranty Deed to Schorr Roll 10, LLC, a New Jersey limited liability company, from Port Royal Owner, LLC, a South Carolina limited liability company, dated December 6, 2021, and recorded in the Office of the Beaufort County Register of Deeds in Book 4091, Page 2667 on December 7, 2021.

TMS: R110 008 000 033A 0000

State of South Carolina )  
County of Beaufort )  
 )

AFFIDAVIT

1. I have read the information on this affidavit, and I understand such information.
2. The property being transferred bearing Beaufort County Property Tax ID # R110 008 000 033A 0000 was transferred on August 7, 2020 by The Preserve At Port Royal, LLC, to Port Royal Owner, LLC.
3. Check one of the following: The deed is
  - a.  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - b.  subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - c.  exempt from the deed recording fee because (See Information section of affidavit);

\_\_\_\_\_  
(If exempt, please skip items 4 – 7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check Yes  or No

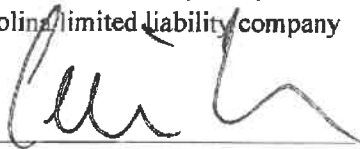
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
  - a.  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$91,250,000.00
  - b.  The fee is computed on the fair market value of the realty which is \_\_\_\_\_.
  - c.  The fee is computed on the fair market value of the realty as established for property tax purposes which is \_\_\_\_\_.
5. Check Yes  or No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may be subsequently waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ \_\_\_\_\_.
6. The deed recording fee is computed as follows:
  - a. Place the amount listed in item 4 above here: \$91,250,000.00 \_\_\_\_\_
  - b. Place the amount listed in item 5 above here: \$ \_\_\_\_\_

c. Subtract line 6(b) from Line 6(a) and place result here: \$91,250,000.00


7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 337,625.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor/Seller.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

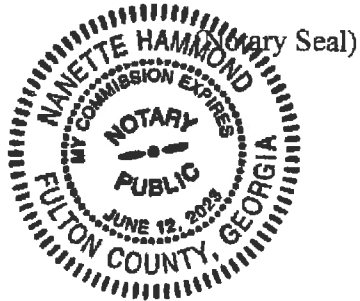
(SIGNATURES ON FOLLOWING PAGE)

**PORT ROYAL OWNER, LLC, a**  
South Carolina limited liability company

By:   
Name: W. Colin Cavill  
Its: Authorized Signatory

SWORN TO AND SUBSCRIBED BEFORE ME  
this 6th day of December, 2021

  
Notary Public for Fulton Co., Ga.  
My Commission Expires: 6/12/2023



(Signatures Continue on Following Page)

SCHORR ROLL 10 LLC, a  
New Jersey limited liability company

By:

Name: SARAH SCHORR

Its: [Signature]

SWORN TO AND SUBSCRIBED BEFORE ME  
this 6th day of December, 2021

[Signature]  
Notary Public for Queen County  
My Commission Expires: 8/31/2023

(Notary Seal)

JOSEPH OPPENHEIM  
NOTARY PUBLIC OF NEW JERSEY  
Comm. # 50089408  
My Commission Expires 8/31/2023

(Signatures Continue on Following Page)

By: W. Colin Cavitt

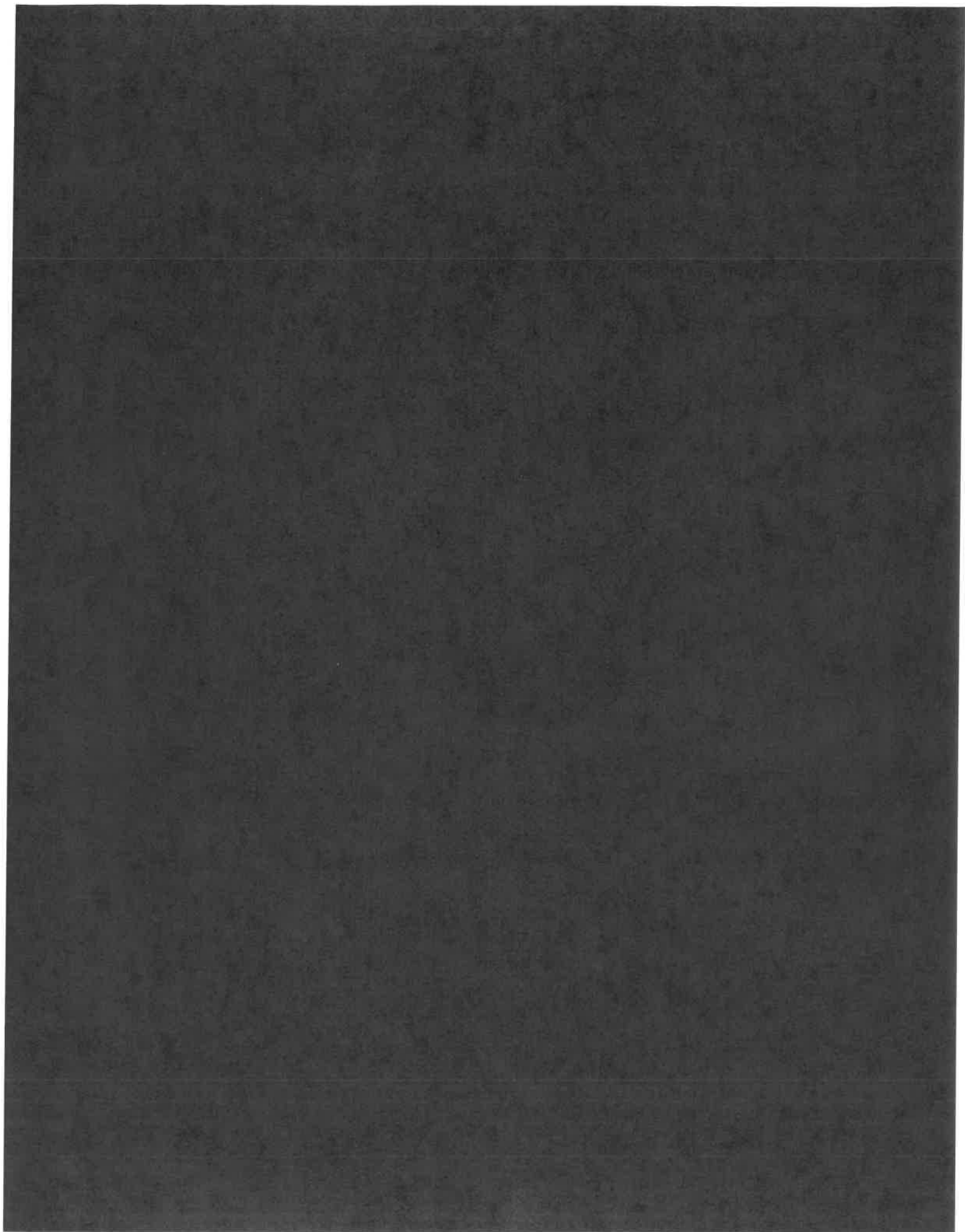
SWORN TO AND SUBSCRIBED BEFORE ME  
this 6th day of December, 2021

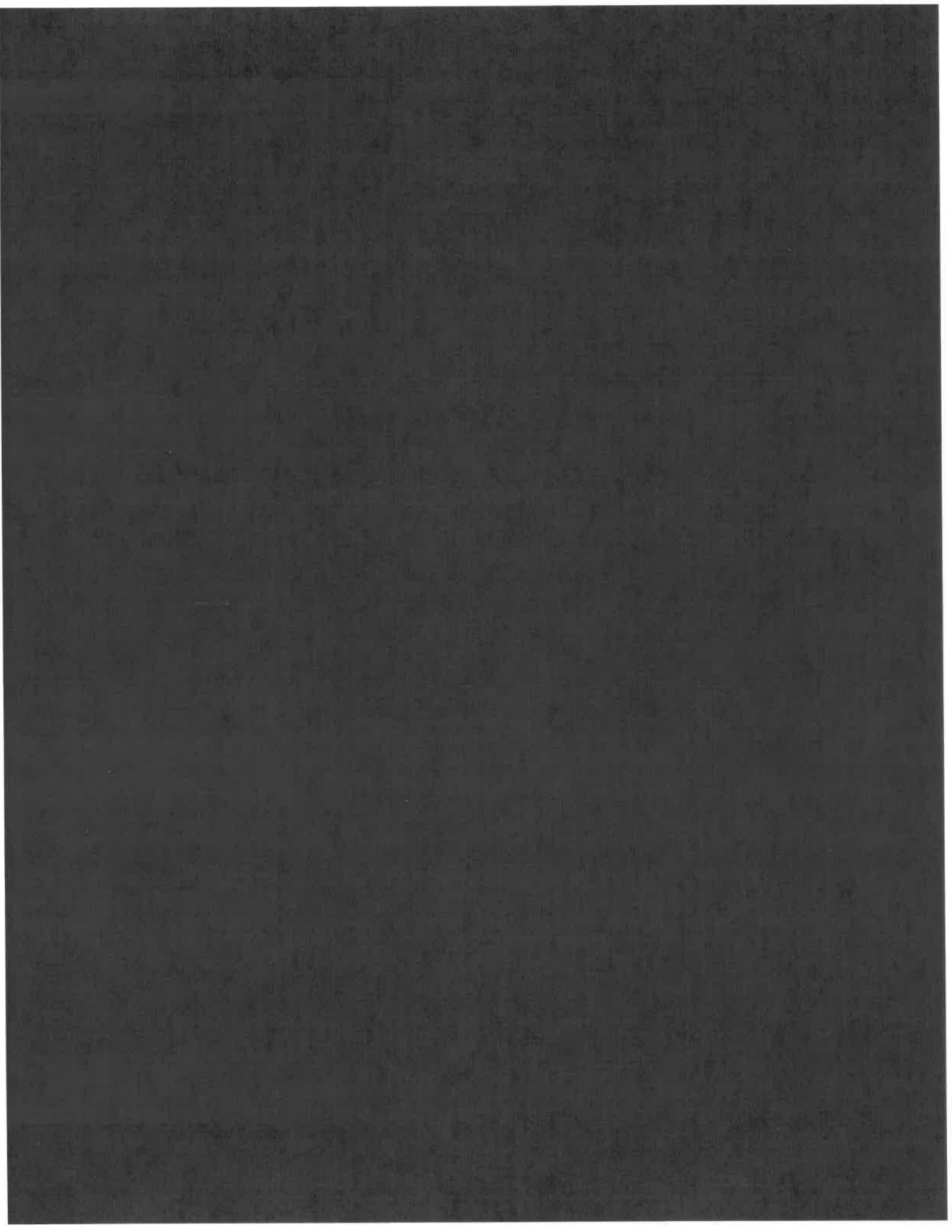
Nanette Hammond  
Notary Public for Fulton Co. Ga.  
My Commission Expires: 6/12/2023

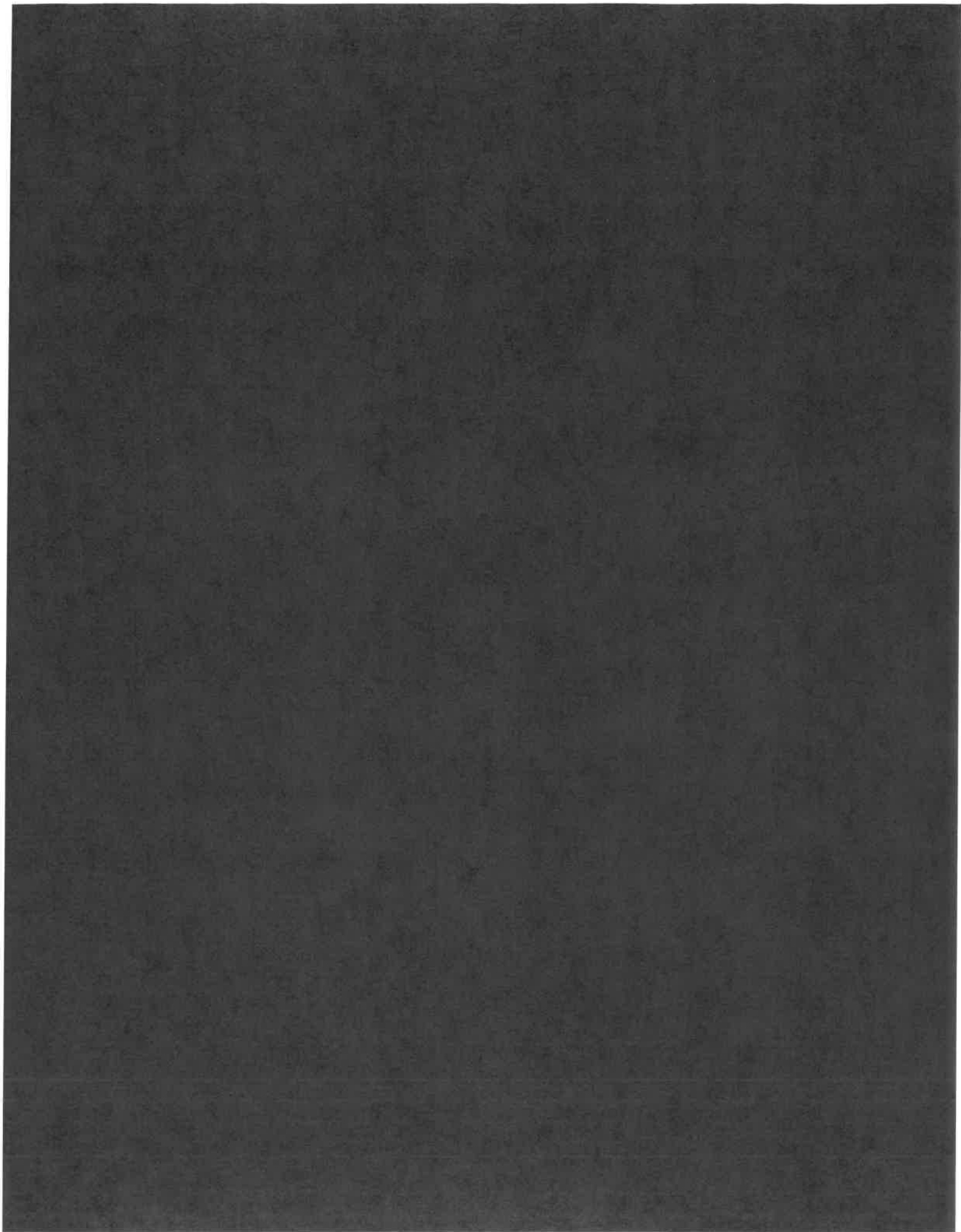
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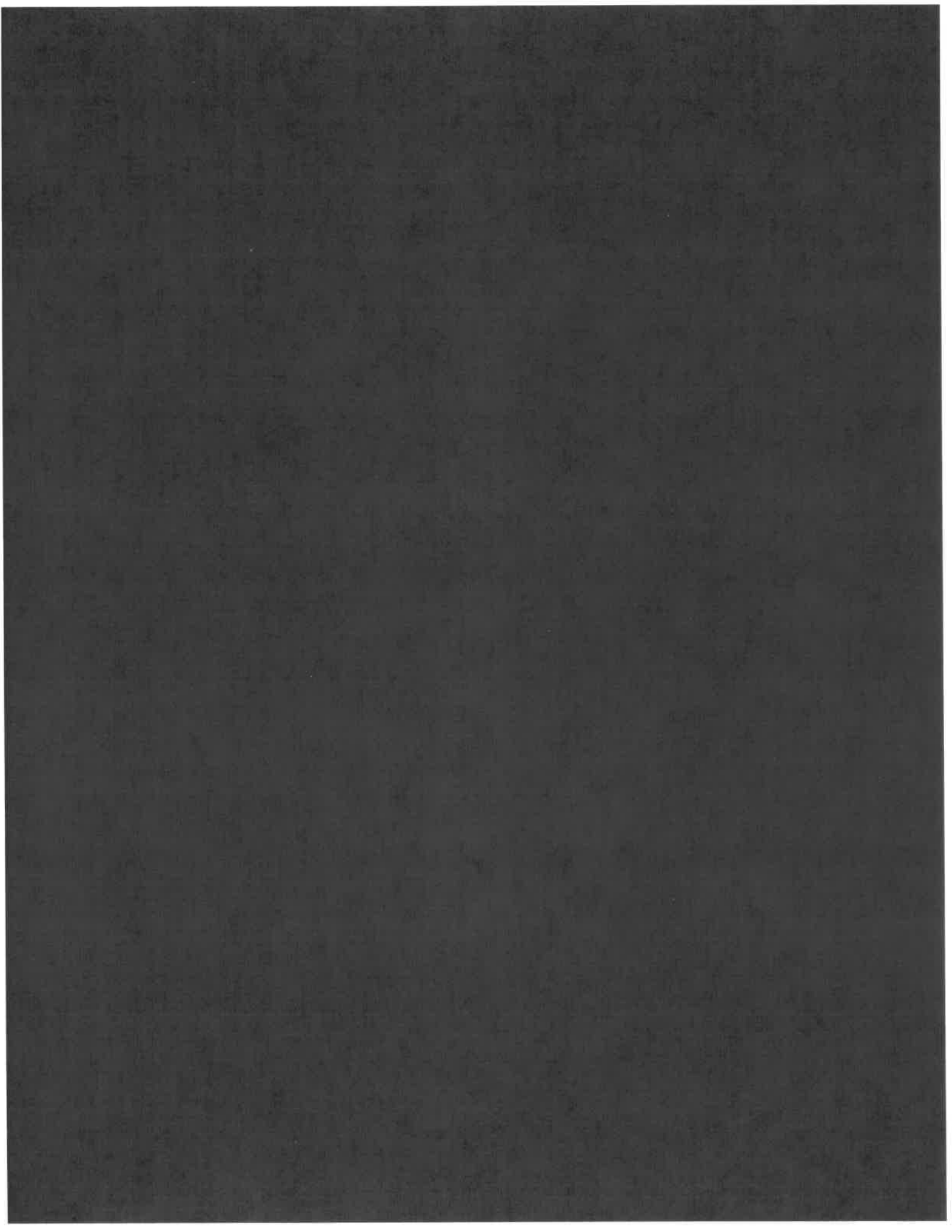


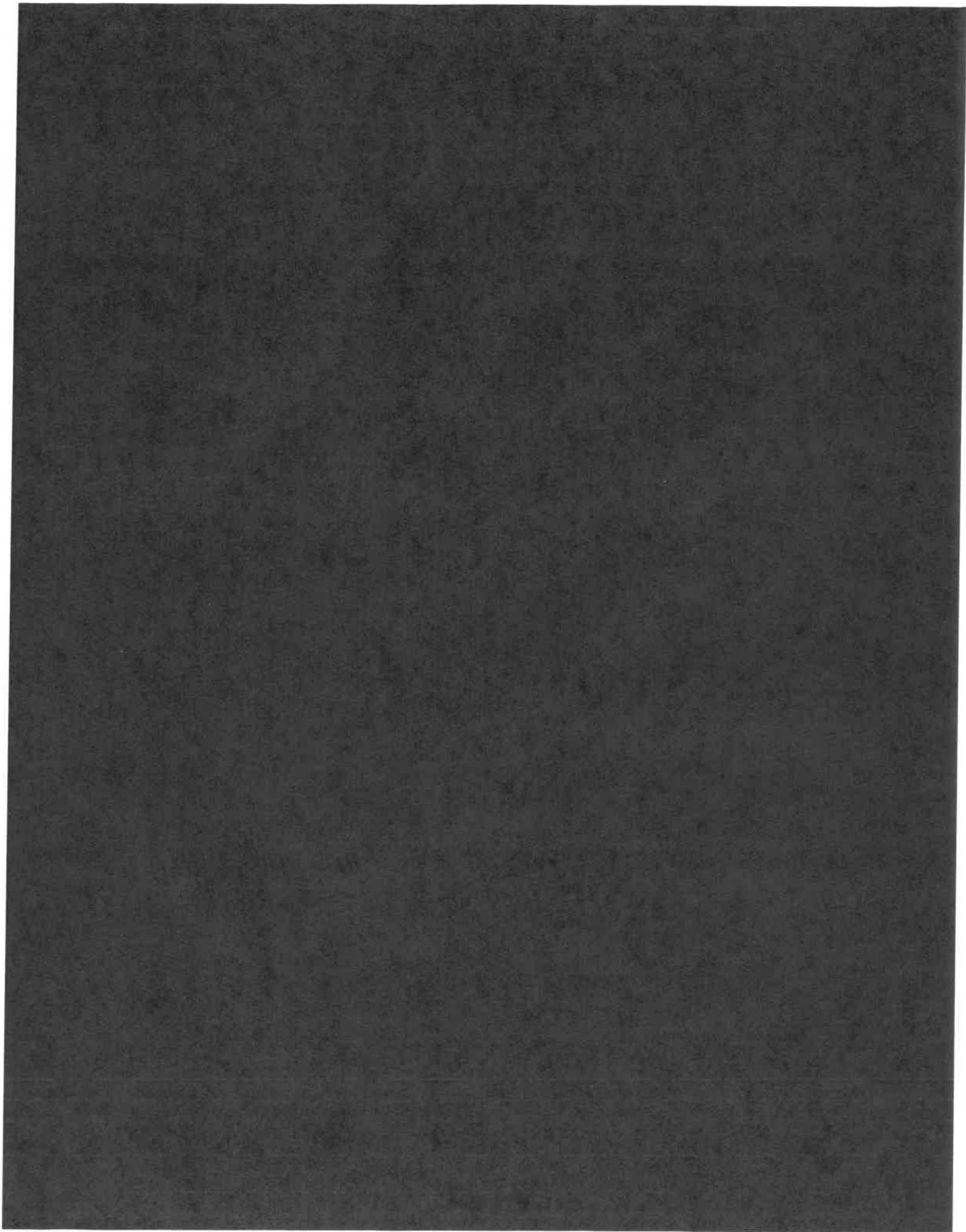


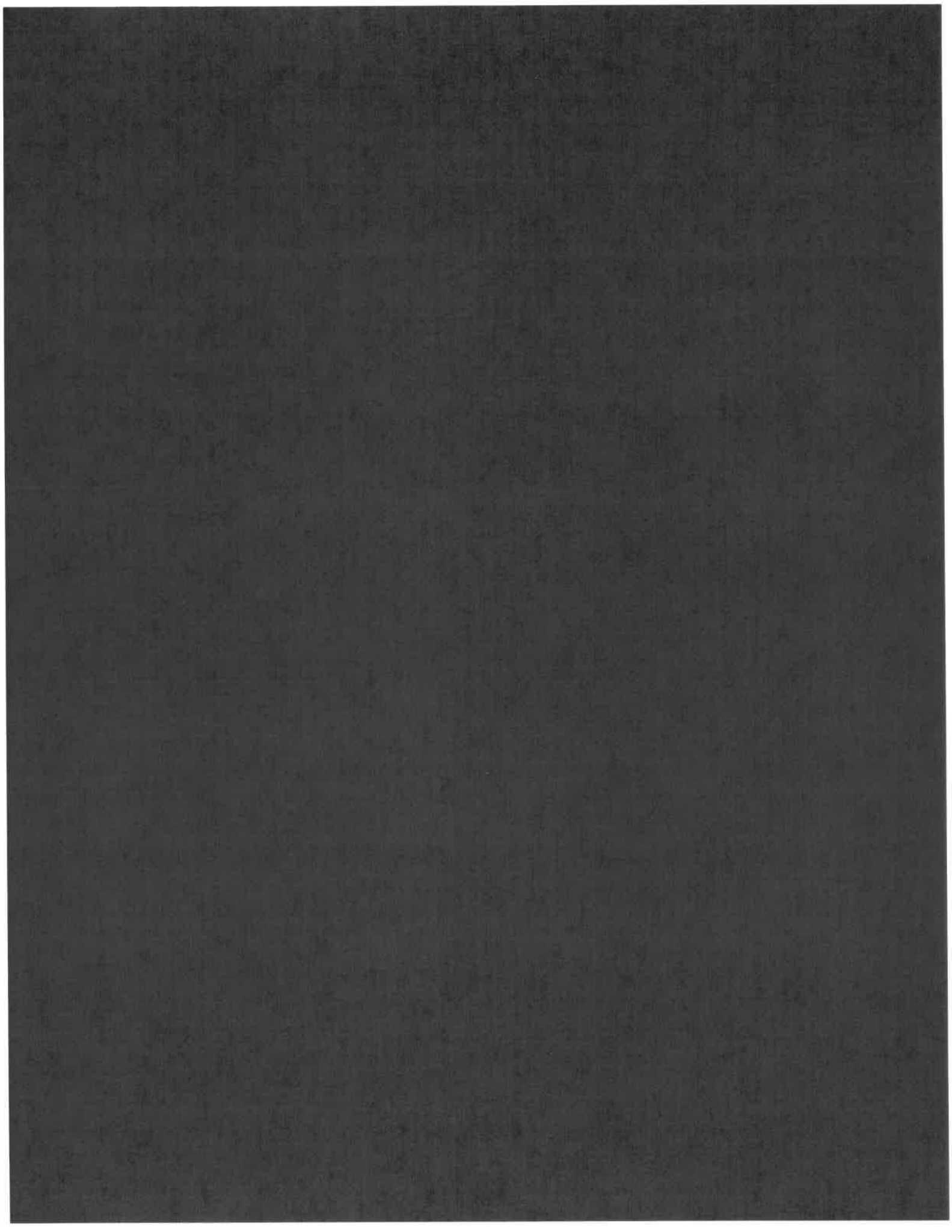


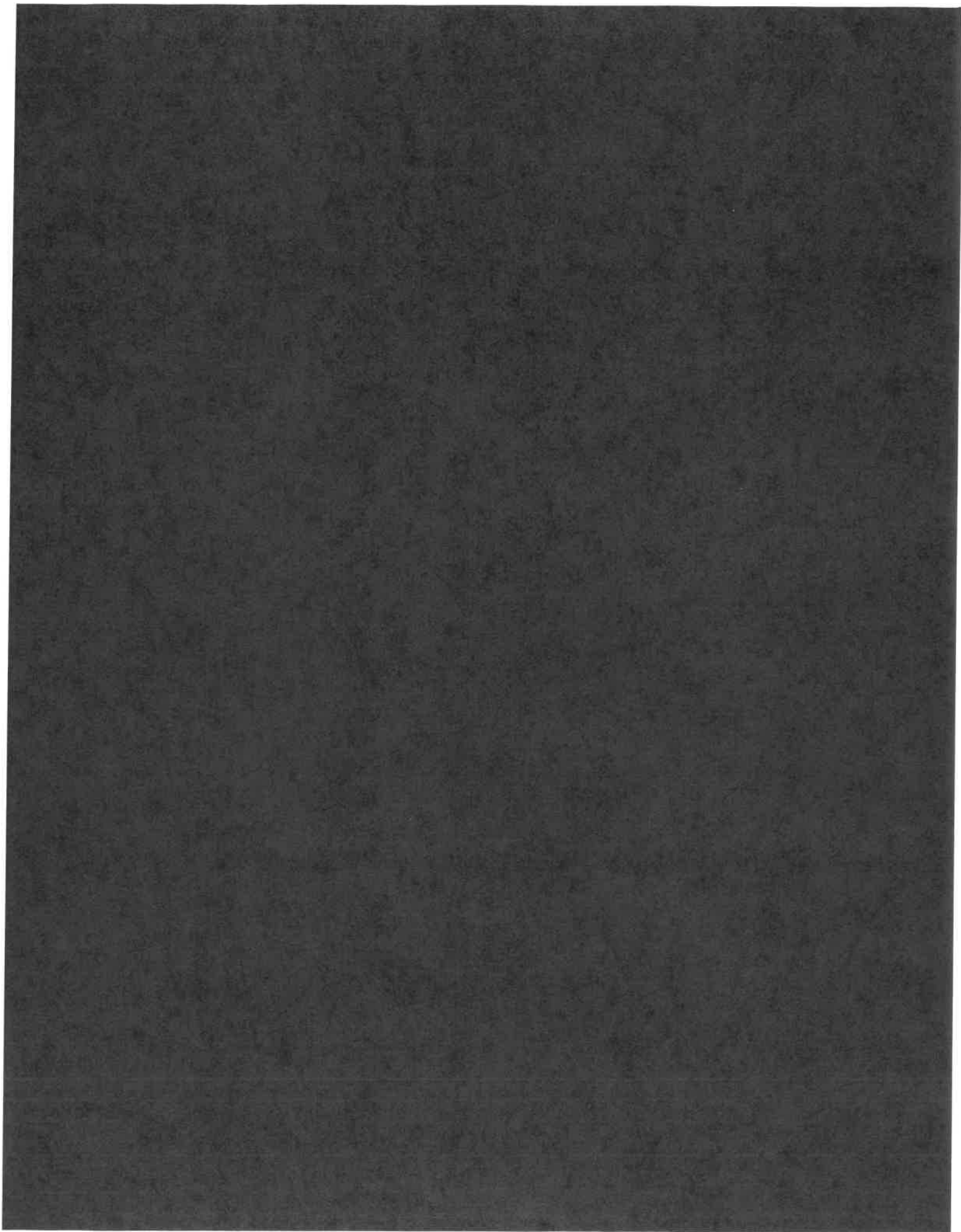


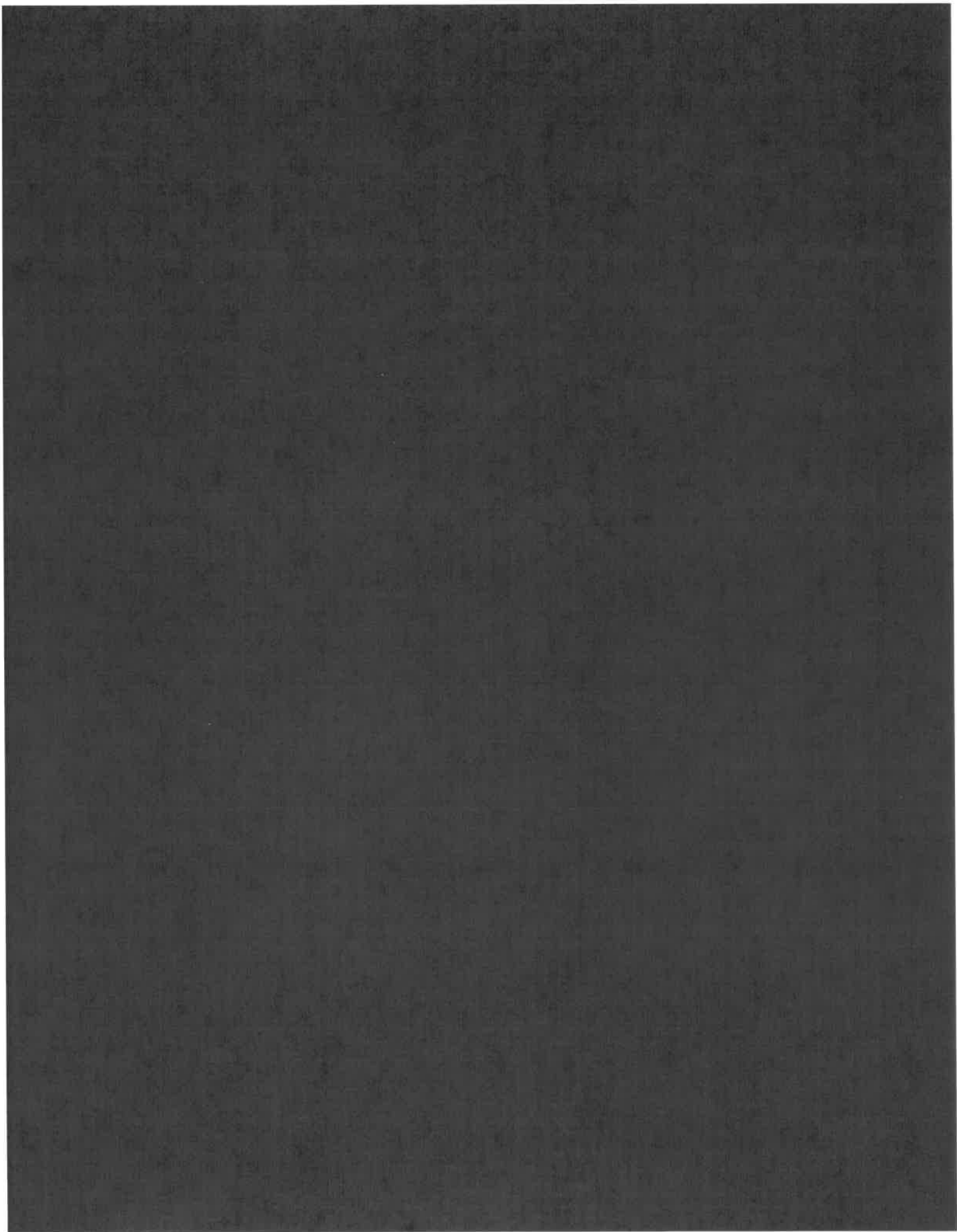


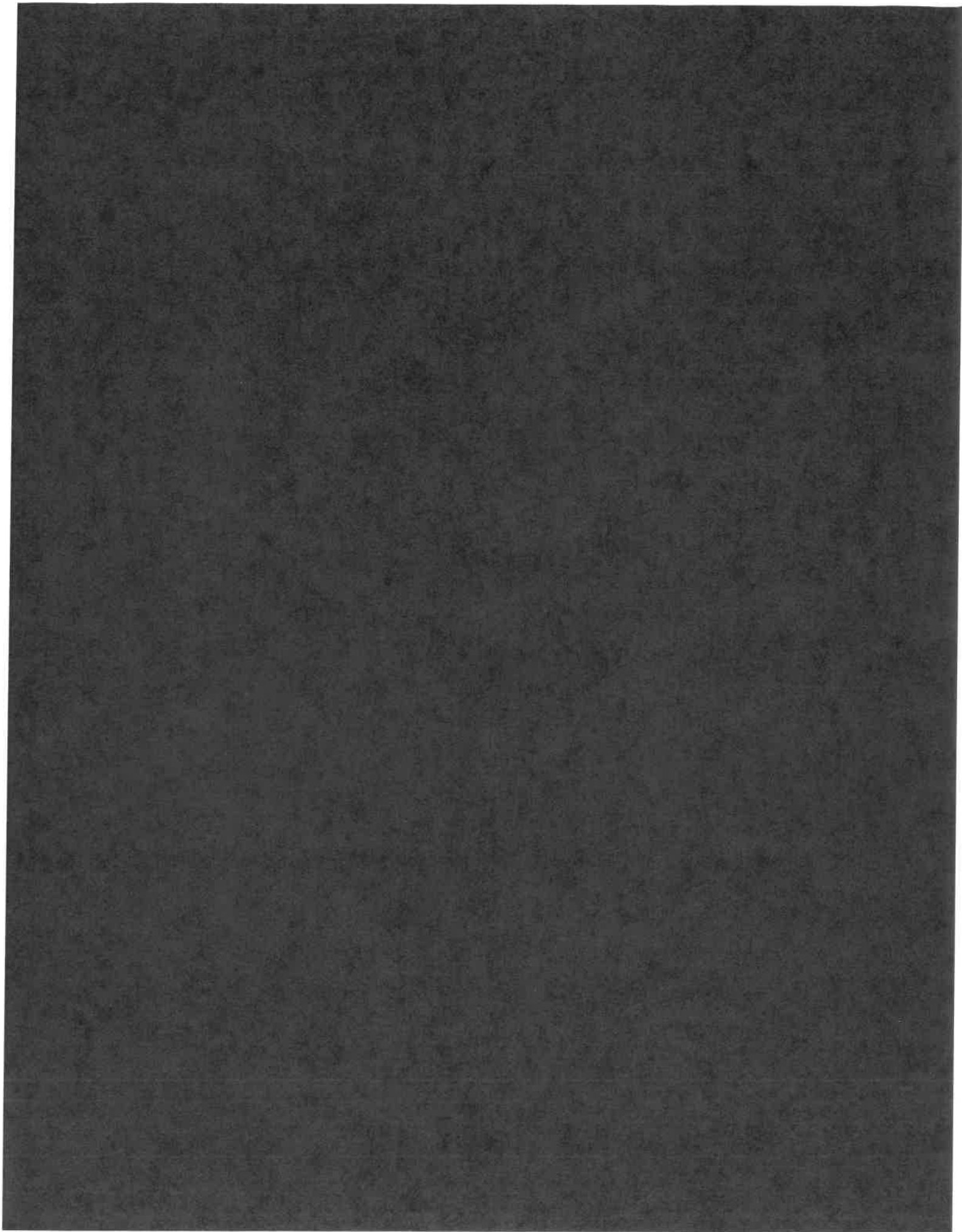












# Redaction Log

Total Number of Redactions in Document: 18

## Redaction Reasons by Page

Page	Reason	Description	Occurrences
1			1
11			1
12			1
54			2
104			3
130			1
131			1
132			1
133			1
134			1
135			1
136			1
137			1
138			1
139			1

# Redaction Log

## Redaction Reasons by Exemption

Reason	Description	Pages (Count)
		1(1) 11(1) 12(1) 54(2) 104(3) 130(1) 131(1) 132(1) 133(1) 134(1) 135(1) 136(1) 137(1) 138(1) 139(1)

