

OPERATING AGREEMENT

OF

WATERMAN AFFORDABLE 3 LLC

June 1, 2019

OPERATING AGREEMENT

for

WATERMAN AFFORDABLE 3 LLC

This Operating Agreement (the "**Agreement**") is entered into as of June 1, 2019 (the "**Effective Date**"), by the Housing Authority of the County of San Bernardino, a public body, corporate and politic ("**HACSB**" or "**Managing Member**"), and Housing Partners I, Incorporated, a California nonprofit public benefit corporation ("**HPI**") (each referred to individually as a "**Member**" and collectively as the "**Members**"), with reference to the following facts:

A. HACSB and HPI desire to form a limited liability company known as Waterman Affordable 3 LLC, a California limited liability company (the "**Company**"), under the California Revised Uniform Limited Liability Company Act (the "**Act**") (California Corporations Code Sections 17701.01 *et seq.*).

B. The Members desire to execute this Agreement to form and provide for the governance of the Company and the conduct of its business.

NOW THEREFORE, the Members declare the following to be the Operating Agreement of the Company:

ARTICLE 1: DEFINITIONS

The following capitalized terms used in this Agreement have the meanings specified in this Article or elsewhere in this Agreement and when not so defined shall have the meanings set forth in California Corporations Code Section 17701.02.

1.1 "Act" means the California Revised Uniform Limited Liability Company Act (California Corporations Code Sections 17701.01-17713.13), including amendments from time to time.

1.2 "Affiliate" of a Member means any Person directly or indirectly controlling, controlled by, or under common control with the Member. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through membership, ownership, by contract or otherwise.

1.3 "Agreement" means this operating agreement, as originally executed and as amended from time to time.

1.4 "Articles of Organization" is defined in California Corporations Code Section 17701.02(b).

1.5 "Bona Fide Offer" is defined in Section 8.3.

1.6 "Capital Account" means, as to any Member, a separate account maintained and adjusted in accordance with Section 3.4.

1.7 "Capital Contribution" means, with respect to any Member, the amount of money, the value of services, and the Fair Market Value of any property (other than money) contributed to the Company (net of liabilities secured by such contributed property that the Company is considered to assume or take "subject to" under Internal Revenue Code section 752) in consideration of a Percentage Interest held by such Member. A Capital Contribution shall not be deemed a loan.

1.8 "Capital Event" means a sale or disposition of any of the Company's capital assets, the receipt of insurance and other proceeds derived from the involuntary conversion of Company property, the receipt of proceeds from a refinancing of Company property, or a similar event with respect to Company property or assets.

1.9 "Code" means the Internal Revenue Code of 1986, as amended, and any successor provision.

1.10 "Company" means Waterman Affordable 3 LLC, a California limited liability company.

1.11 "Dispute" is defined in Section 10.1

1.12 "Dissociation Event" is defined in Section 8.4.

1.13 "Effective Date" has the meaning as defined in the first paragraph of this Agreement.

1.14 "Encumber" means the act of creating or purporting to create an Encumbrance, whether or not perfected under applicable law.

1.15 "Encumbrance" means, with respect to any Membership Interest, or any element thereof, a mortgage, pledge, security interest, lien, proxy coupled with an interest (other than as contemplated in this Agreement), option, or preferential right to purchase.

1.16 "Fair Market Value" means, with respect to any property of the Company, the item's adjusted basis for federal income tax purposes, except as follows:

(a) The Gross Asset Value of any item of property contributed by a Member to the Company shall be the value of such property, as mutually agreed by the contributing Member and the Company; and

(b) The Gross Asset Value of any item of Company property distributed to any Member shall be the value of such item of property on the date of distribution, as mutually agreed by the distributee Member and the Company.

1.17 "Fair Option Price" is defined in Section 8.8.

1.18 "Initial Member" or "Initial Members" means those Persons whose names are set forth in the first sentence of this Agreement. A reference to an "Initial Member" means any of the Initial Members.

1.19 "Involuntary Transfer" means, with respect to any Membership Interest, or any element thereof, any Transfer or Encumbrance, effected by operation of law, under court order, by foreclosure of a security interest, by execution of a judgment or other legal process, or by any means other than at the will of the Members, including a purported transfer to or from a trustee in bankruptcy, receiver, or assignee for the benefit of creditors. Involuntary Transfer shall also include the death, incapacity, or dissolution of a Member.

1.20 "Limited Partnership" means Waterman Gardens Partners 2, L.P., a California limited partnership.

1.21 "Losses" see the definition of "Profits and Losses".

1.22 "Managing Member" means the Housing Authority of the County of San Bernardino, a public body, corporate and politic.

1.23 "Meeting" is defined in Section 5.4.

1.24 "Member" means a Person that has become a member of the Company under Section 17704.01 of the Act and has not dissociated under Section 17706.02 of the Act.

1.25 "Membership Interest" means a Member's rights in the Company, including the Member's Transferable Interest, any right to Vote or participate in management, and any right to information concerning the business and affairs of the Company provided by the Act.

1.26 "Notice" means a written notice required or permitted under this Agreement. A notice shall be deemed given or sent when sent by certified mail return receipt requested, or for overnight delivery, postage and fees prepaid, in the United States mail; when sent by Federal Express, United Parcel Service, or another reputable commercial delivery service with a delivery receipt, charges prepaid or charged to the sender's account; when personally delivered to the recipient with a delivery receipt; or when delivered to the home or office of a recipient with a delivery receipt in the care of a person whom the sender has reason to believe will promptly communicate the notice to the recipient. The delivery receipt shall be evidence of receipt of the notice, and notice shall be deemed to have been received on the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable.

1.27 "Option Date" is defined in Section 8.6.

1.28 "Percentage Interest" means a fraction, expressed as a percentage, the numerator of which is the total of a Member's Capital Account and the denominator of which is the total of all Capital Accounts of all Members. The Percentage Interests of the Members are set forth on Exhibit B.

1.29 "Person" means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

1.30 "Profits and Losses" means, for each fiscal year or other period specified in this Agreement, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code section 703(a).

1.31 "Project" means that certain affordable housing development located west of Crestview Avenue between Baseline Road and Olive Street in the City of San Bernardino, California.

1.32 "Regulations" means the income tax regulations promulgated by the United States Department of the Treasury and published in the Federal Register for the purpose of interpreting and applying the provisions of the Code, as such Regulations may be amended from time to time, including corresponding provisions of applicable successor regulations.

1.33 "Selling Member" is defined in Section 8.4.

1.34 "Substituted Member" is defined in Section 8.9.

1.35 "Transfer" means, with respect to a Membership Interest, or any element of a Membership Interest, any assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law, or other disposition of a Membership Interest or any element of such a Membership Interest, directly or indirectly, other than an Encumbrance that is expressly permitted under this Agreement.

1.36 "Transferable Interest" means the right, as originally associated with a Person's capacity as a Member, to receive distributions from the Company in accordance with this Agreement, whether or not the Person remains a Member or continues to own any part of the right.

1.37 "Transferee" means a Person to which all or part of a Transferable Interest has been transferred, whether or not the Transferor is a Member.

1.38 "Transferor" means a Person who by means of a Transfer has transferred a Transferable Interest in the Company to a Transferee.

1.39 "Vote" means a written consent or approval, a ballot cast at a Meeting, or consent given by electronic transmission.

ARTICLE 2: ARTICLES OF ORGANIZATION

2.1 The Members will form a limited liability company under the Act by properly executing and filing the Articles of Organization, and executing this Agreement. The rights, duties, and liabilities of the Members are determined pursuant to the Act, the Articles of Organization, and this Agreement. The Articles of Organization are attached as Exhibit A to this Agreement.

2.2 The name of the Company is Waterman Affordable 3 LLC.

2.3 The principal executive office of the Company is at 715 East Brier Drive, San Bernardino, California 92408, or such other place or places as may be determined by the Members from time to time.

2.4 The initial agent for service of process on the Company is as stated in the Articles of Organization. The Members may from time to time change the Company's agent for service of process.

2.5 The Company is formed for the specific charitable purpose of furthering the tax exempt charitable purposes of its Members and to serve as a limited partner in the Limited Partnership in its ownership and operation of the Project.

2.6 The term of existence of the Company commences on the effective date of filing of the Articles of Organization with the California Secretary of State and shall continue until terminated by the provisions of this Agreement or as provided by law.

2.7 The Company is member-managed, and is managed by all Members. HPI will act as the Managing Member of the Company.

ARTICLE 3: CAPITALIZATION

3.1 Each Member shall contribute to the capital of the Company as the Member's Capital Contribution the money, services, and/or property specified in Exhibit B to this Agreement and shall receive the Percentage Interests set forth in Exhibit B. Unless otherwise agreed by the Members under this Agreement, no Member shall be required to make additional Capital Contributions.

3.2 If at any time the Members jointly determine that additional Capital Contributions are necessary or appropriate for the conduct of the Company's business, each Member shall contribute its Percentage Interest of such additional required capital. Except as set forth in this Section, no Member shall be required to make additional Capital Contributions.

3.3 If a Member fails to make a required Capital Contribution within thirty (30) days after the Effective Date, that Member's entire Membership Interest shall terminate, that Member shall be dissociated from the Company, and that Member shall indemnify and hold the Company

and the other Members harmless from any loss, cost, or expense, including reasonable attorney's fees caused by the failure to make such Capital Contribution.

3.4 An individual Capital Account shall be maintained for each Member consisting of that Member's Capital Contribution, (1) increased by that Member's share of Profits, (2) decreased by that Member's share of Losses and Company expenses, and (3) adjusted as required in accordance with applicable provisions of the Code and Regulations.

3.5 A Member shall not be entitled to withdraw any part of the Member's Capital Contribution or to receive any distributions, whether of money or property from the Company except as provided in this Agreement or as the Members may determine.

3.6 No interest shall be paid on funds or property contributed to the capital of the Company or on the balance of a Member's Capital Account.

3.7 Services by any Member to the Company may not be considered to be contributions to the capital of the Company, and loans by any Member of the Company shall not be treated as capital contributions to the Company. Any compensation that the Company pays to a Member for services, and any payment made by the Company to a Member on that Member's loan to the Company, shall not be treated as payment made to that Member acting in his, her, or its capacity as a Member under Code Section 707.

3.8 A Member shall not be bound by, or be personally liable for, the expenses, liabilities, or obligations of the Company except as otherwise provided in the Act or in this Agreement.

3.9 No Member shall have priority over any other Member, with respect to the return of a Capital Contribution, or distributions or allocations of income, gain, losses, deductions, credits, or items thereof.

3.10 The Members may admit to the Company additional members to participate in the profits, losses, available cash flow, and ownership of the assets of the Company on such terms as are determined by all of the Members. Admission of any additional Member requires the written consent of all existing Members. Any additional Members are allocated gain, loss, income, or expense by the method provided in this Agreement.

3.11 In the event that a Member has incurred any indebtedness or obligation before the date of this Agreement that relates to or otherwise affects the Company, neither the Company nor any other Member has any liability or responsibility with respect to the indebtedness or obligation unless the indebtedness or obligation is assumed by the Company pursuant to a written instrument signed by all Members. Furthermore, neither the Company nor any Member is responsible or liable for any indebtedness or obligation that is subsequently incurred by any other Member. In the event that a Member (the "**Liable Member**"), whether before or after the date of this Agreement, incurs (or has incurred) any debt or obligation that neither the Company nor any of the other Members is to have any responsibility or liability for, the **Liable Member**

must indemnify and hold harmless the Company and the other Members from any liability or obligation they may incur in respect of the debt or obligation.

ARTICLE 4: ALLOCATIONS AND DISTRIBUTIONS

4.1 The Profits and Losses of the Company and all items of Company income, gain, loss, deduction, or credit shall be allocated, for Company book purposes and for tax purposes, to a Member in accordance with the Member's Percentage Interest, subject to the provisions of Code Section 704(c).

4.2 If any Member unexpectedly receives any adjustment, allocation, or distribution described in Regulations sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6), items of Company gross income and gain shall be specially allocated to that Member in an amount and manner sufficient to eliminate any deficit balance in the Member's Capital Account created by such adjustment, allocation, or distribution as quickly as possible. Any special allocation under this Section 4.2 shall be taken into account in computing subsequent allocations of Profits and Losses so that the net amount of allocations of income and loss and all other items shall, to the extent possible, be equal to the net amount that would have been allocated if the unexpected adjustment, allocation, or distribution had not occurred. The provisions of this Section 4.2 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations sections 1.704-1(b) and 1.704-2 and shall be interpreted and applied in a manner consistent with such Regulations.

4.3 Any unrealized appreciation or unrealized depreciation in the values of Company property distributed in kind to all the Members shall be deemed to be Profits or Losses realized by the Company immediately before the distribution of the property and such Profits or Losses shall be allocated to the Members' Capital Accounts in the same proportions as Profits are allocated under Section 4.1. Any property so distributed shall be treated as a distribution to the Members to the extent of the Fair Market Value of the property less the amount of any liability secured by and related to the property. Nothing contained in this Agreement is intended to treat or cause such distributions to be treated as sales for value. For the purposes of this Section 4.3, "unrealized appreciation" or "unrealized depreciation" shall mean the difference between the Fair Market Value of such property and the Company's basis for such property.

4.4 If any Membership Interest, or part thereof, is Transferred during any fiscal year in compliance with the provisions of Article 8, profits, losses, each item thereof, and all other items attributable to such Membership Interest for such fiscal year shall be divided and allocated between the Transferor and the Transferee by taking into account their varying Membership Interests during the period in accordance with Internal Revenue Code Section 706(d), using any convention permitted by law selected by the Members. All distributions on or before the date of such Transfer shall be made to the Transferor, and all distributions thereafter shall be made to the Transferee. Solely for purposes of making such allocations and distributions, the Company shall recognize such Transfer not later than the end of the calendar month during which the assignment occurs. Neither the Company nor the Members shall incur any liability for making allocations and distributions in accordance with the provisions of this Article 4.

4.5 All cash resulting from the normal business operations of the Company and from a Capital Event shall be distributed among the Members in proportion to their Percentage Interests at such times as the Members may agree.

4.6 If the proceeds from a sale or other disposition of a Company asset consist of property other than cash, the value of such property shall be as determined by the Members. Such noncash proceeds shall then be allocated among all the Members in proportion to their Percentage Interests. If such noncash proceeds are subsequently reduced to cash, such cash shall be distributed to each Member in accordance with Section 4.5.

4.7 Notwithstanding any other provisions of this Agreement to the contrary, when there is a distribution in liquidation of the Company, or when any Member's interest is liquidated, all items of income and loss first shall be allocated to the Members' Capital Accounts under this Article 4, and other credits and deductions to the Members' Capital Accounts shall be made before the final distribution is made. The final distribution to the Members shall be made to the Members to the extent of and in proportion to their positive Capital Account balances.

ARTICLE 5: MANAGEMENT

5.1 The Company shall be member-managed. HPI, or a successor selected pursuant to the provisions of this Article 5, shall act as the Managing Member and shall have primary responsibility for the activities specifically enumerated in this Agreement. Either HASBC or HPI shall have the authority to execute documents on behalf of the Company and as the limited partner of the Limited Partnership.

5.2 The appointment of a new managing member requires unanimous written approval of all of the Members.

5.3 Each Member shall designate in writing to the other Members not more than two (2) designated representatives each of whom shall be authorized to act under this Agreement for and on behalf of such Member and may be relied on by the other Members without further inquiry. Any such designated representative may be replaced by the Member by giving Notice to the other Members.

5.4 The Members are not required to hold any meetings, and decisions requiring the unanimous approval of the Members may be reached through one or more informal consultations followed by agreement among the Members, provided that all Members are consulted, or by a written consent signed by each of the Members. In the event that Members wish to hold a formal meeting (a "**Meeting**") for any reason, the following procedures shall apply:

(a) Any Member may call a Meeting of the Members by giving Notice of the time and place of the Meeting at least forty-eight (48) hours prior to the time of the holding of the Meeting. The Notice need not specify the purpose of the Meeting, or the location if the Meeting is to be held at the principal executive office of the Company.

(b) Attendance of all Members shall constitute a quorum for the transaction of business at any Meeting of the Members.

(c) The transactions of the Members at any Meeting, however called or noticed, or wherever held, shall be as valid as though transacted at a Meeting duly held after call and notice if a quorum is present and if, either before or after the Meeting, each Member not present signs a written waiver of Notice, a consent to the holding of the Meeting, or an approval of the minutes of the Meeting.

(d) Any action required or permitted to be taken by the Members under this Agreement may be taken without a Meeting if each of the Members consents in writing to such action.

(e) Members may participate in the Meeting through the use of a conference telephone or similar communications equipment, provided that all Members participating in the Meeting can hear one another.

(f) The Managing Member shall keep or cause to be kept with the books and records of the Company full and accurate minutes of all Meetings, Notices, and waivers of Notices of Meetings, and all written consents in lieu of Meetings.

5.5 The Members as such and as managers shall not be entitled to compensation for their services.

5.6 The Company may have a President as selected by the unanimous consent of the Members, who may, but need not be a Member. The Members by unanimous consent may provide for additional officers of the Company and for their election, and may alter the powers, duties, and compensation of the President and of all other officers.

5.7 All assets of the Company, whether real or personal, shall be held in the name of the Company.

5.8 All funds of the Company shall be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at such locations as shall be determined by the Members. Withdrawal from such accounts shall require the signature of such person or persons as all of the Members may designate.

5.9 The Housing Authority of the County of San Bernardino shall act as the Partnership Representative of the Company under Code section 6223(a).

(a) The Partnership Representative shall have the authority, and the Members shall have the obligations, described in the following subsections.

(1) The obligations of each Member or former Member under this Section 5.9 shall survive the transfer or redemption by a Member of its Membership Interest and the termination of this Agreement or the dissolution of the Company.

(2) The Partnership Representative, in its sole discretion, shall have the right to make on behalf of the Company any and all elections and take any and all actions that are available to be made or taken by the Partnership Representative or the Company (including, if applicable, any election under Code Section 6226(a)). The Members shall take any and all actions requested by the Partnership Representative consistent with any elections made and actions requested by the Partnership Representative, including, without limitation, filing amended tax returns and paying any tax or adjustment due.

(3) No later than 10 business days after the Partnership Representative has knowledge of any audit or proceeding concerning the Company, the Partnership Representative shall notify the Members of the existence of such audit or proceeding. Each Member shall have the right to have a tax advisor of its own choosing participate in, but not direct, the prosecution or defense of such audit or proceeding at such Member's sole expense. The Partnership Representative shall make commercially reasonable efforts to facilitate such tax advisor's participation.

ARTICLE 6: ACCOUNTS AND RECORDS

6.1 Complete books of account of the Company's business, in which each Company transaction shall be fully and accurately entered, shall be kept at the Company's principal executive office and shall be open to inspection by any Member or the Member's authorized representatives on reasonable Notice during normal business hours. The costs of such inspection and copying shall be borne by the Member.

6.2 Financial books and records of the Company shall be kept on the accrual method of accounting, which shall be the method of accounting followed by the Company for federal income tax purposes. A balance sheet and income statement of the Company shall be prepared promptly following the close of each fiscal year in a manner appropriate to and adequate for the Company's business and for carrying out the provisions of this Agreement. The fiscal year of the Company shall be January 1 through December 31.

6.3 At all times during the term of existence of the Company, and beyond that term if all of the Members deem it necessary, the Managing Member shall keep or cause to be kept the books of account referred to in Section 6.2, and the following:

(a) A current list of the full name and last known business or residence address of each Member, together with the Capital Contribution and the share in Profits and Losses of each Member;

(b) A copy of the Articles of Organization, and any amendments thereto;

(c) Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

(d) Executed counterparts of this Agreement, as amended;

(e) Any powers of attorney under which the Articles of Organization or any amendments thereto were executed;

(f) Financial statements and audits of the Company for the six (6) most recent fiscal years; and

(g) The books and records of the Company as they relate to the Company's internal affairs for the current and past six (6) fiscal years.

If the Managing Member deems that any of the foregoing items shall be kept beyond the term of existence of the Company, the repository of said items shall be as designated by the Managing Member.

6.4 Within ninety (90) days after the end of each taxable year of the Company the Company shall send to each of the Members all information necessary for the Members to complete their federal and state income tax or information returns, and a copy of the Company's federal, state, and local income tax or information returns for such year.

ARTICLE 7: MEMBERS AND VOTING

7.1 There shall be only one class of membership and no Member shall have any rights or preferences in addition to or different from those possessed by any other Member. Each Member shall Vote in proportion to the Member's Percentage Interest as of the governing record date, determined in accordance with Section 7.2. The following actions shall require the unanimous consent of the Members:

(a) the sale, lease, exchange, or other disposal of all, or substantially all, of the Company's property, with or without the goodwill, outside the ordinary course of the limited liability company's activities;

(b) the acquisition of any real or personal property;

(c) the approval of a merger or conversion under Article 10 of the Act (commencing with Section 17710.01);

(d) any act outside the ordinary course of the Company's activities;

(e) the Transfer of a Membership Interest and the admission of the Transferee as a Member of the Company;

(f) a decision to continue the business of the Company after an event described in Article 9;

(g) any amendment of the Articles of Organization or this Agreement;

- Contribution;
- (h) compromise of the obligation of a Member to make a Capital
 - (i) any act that would make it impossible to carry on the ordinary business of the Company;
 - (j) any confession of a judgment against the Company;
 - (k) the dissolution of the Company;
 - (l) the disposition of all or a substantial part of the Company's assets including the Company's interest in the Limited Partnership;
 - (m) the incurring of any debt not in the ordinary course of business;
 - (n) a change in the nature of the principal business of the Company;
 - (o) the incurring of any contracted obligation or the making of any capital expenditures with a total cost of more than Twenty Thousand Dollars (\$20,000); and
 - (p) the filing of a petition in bankruptcy or the entering into of an arrangement among creditors.

7.2 The record date for determining the Members entitled to Notice of any Meeting, to Vote, to receive any distribution, or to exercise any right in respect of any other lawful action, shall be the date set by the Managing Member, provided that such record date shall not be more than sixty (60), nor less than ten (10) days before the date of the Meeting, nor more than sixty (60) days before any other action.

In the absence of any action setting a record date, the record date shall be determined in accordance with California Corporations Code section 17704.07(p).

7.3 At all Meetings of the Members, a Member may Vote in person or by proxy. Such proxy shall be filed with any Member before or at the time of the Meeting, and may be filed by facsimile transmission to a Member at the principal executive office of the Company or such other address as may be given by the Managing Member to the Members for such purposes.

ARTICLE 8: TRANSFERS OF MEMBERSHIP INTERESTS

8.1 A Member may voluntarily dissociate from the Company at any time by giving Notice of Dissociation to all of the Members at least ninety (90) calendar days before the effective date of dissociation. Dissociation shall not release a Member from any obligations and liabilities under this Agreement accrued or incurred before the effective date of dissociation. A dissociated Member shall divest the Member's entire Membership Interest before the effective date of dissociation in accordance with and subject to the provisions of this Article 8.

8.2 Except as expressly provided in this Agreement, a Member shall not Transfer any part of the Member's Membership Interest in the Company, whether now owned or later acquired, unless (a) the other Members unanimously approve the Transferee's admission to the Company as a Member upon such Transfer and (b) the Membership Interest to be transferred, when added to the total of all other Membership Interests transferred in the preceding 12 months, will not cause the termination of the Company under the Code. No Member may Encumber or permit or suffer any Encumbrance of all or any part of the Member's Membership Interest in the Company unless such Encumbrance has been approved in writing by all Members. Such approval may be granted or withheld in the Members' sole discretion. Any Transfer or Encumbrance of a Membership Interest without such approval shall be void.

8.3 If a Member wishes to transfer any or all of the Member's Membership Interest in the Company pursuant to a Bona Fide Offer (as defined below), the Member shall give Notice to the other Member at least ninety (90) days in advance of the proposed sale or Transfer, indicating the terms of the Bona Fide Offer and the identity of the offeror. The Company and the other Members shall have the option to purchase the Membership Interest proposed to be transferred at the price and on the terms provided in this Agreement. If the price for the Membership Interest is other than cash, the fair value in dollars of the price shall be as established in good faith by the Company. For purposes of this Agreement, "**Bona Fide Offer**" means an offer in writing setting forth all relevant terms and conditions of purchase from an offeror who is ready, willing, and able to consummate the purchase and who is not an Affiliate of the selling Member. For thirty (30) days after the Notice is given, the Company shall have the right to purchase the Membership Interest offered, on the terms stated in the Notice, for the lesser of (a) the price stated in the Notice (or the price plus the dollar value of noncash consideration, as the case may be) and (b) the price determined under the appraisal procedures set forth in Section 8.8.

If the Company does not exercise the right to purchase all of the Membership Interest, then, with respect to the portion of the Membership Interest that the Company does not elect to purchase, that right shall be given to the other Members for an additional sixty (60)-day period, beginning on the day that the Company's right to purchase expires. Each of the other Members shall have the right to purchase, on the same terms, a part of the interest of the offering Member in the proportion that the Member's Percentage Interest bears to the total Percentage Interests of all of the Members who choose to participate in the purchase; provided, however, that the Company and the participating Members may not, in the aggregate, purchase less than the entire interest to be sold by the offering Member.

If the Company and the other Members do not exercise their rights to purchase all of the Membership Interest, the offering Member may, within ninety (90) days from the date the Notice is given and on the terms and conditions stated in the Notice, sell or exchange that Membership Interest to the offeror named in the Notice. Unless the requirements of Section 8.2 are met, the offeror under this Section shall become a Transferee, and shall be entitled to receive only the share of Profits or other compensation by way of income and the return of Capital Contribution to which the Transferor would have been entitled.

8.4 On the happening of any of the following events ("**Dissociation Events**") with respect to a Member, the Company and the other Members shall have the option to purchase the Membership Interest in the Company of such Member ("**Selling Member**") at the price and on the terms provided in Section 8.8 of this Agreement:

- (a) The winding up and dissolution of an entity Member.
- (b) The failure of a Member to make the Member's Capital Contribution pursuant to the provisions of Article 3 of this Agreement.
- (c) The occurrence of any other event that is, or that would cause, a Transfer in contravention of this Agreement.
- (d) The Company has Notice of the Member's express will to withdraw as a member.
- (e) The Member is expelled as a member pursuant to this Agreement.
- (f) The Member is expelled as a member by the unanimous consent of the other Members because any of the following applies:
 - (1) It is unlawful to carry on the Company's activities with the Member as a member.
 - (2) There has been a Transfer of all of the Member's Transferable Interest in the Company, other than either of the following: (1) a transfer for security purposes; or (2) a charging order in effect under Section 17705.03 that has not been foreclosed.
 - (3) The Member is a corporation and, within ninety (90) days after the Company notifies the Member that it will be expelled as a member because the Member has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation and the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated.
 - (4) The Member is a limited liability company or partnership that has been dissolved and whose business is being wound up.
- (g) On application by the Company, the Member is expelled as a member by judicial order because the Member has done any of the following:
 - (1) Engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the Company's activities.
 - (2) Willfully or persistently committed, or is willfully and persistently committing, a material breach of this Agreement or the Member's duties or obligations under Section 17704.09 of the Act.

(3) Engaged, or is engaging, in conduct relating to the Company's activities that makes it not reasonably practicable to carry on the activities with the Member as a member.

(h) The Member becomes a debtor in bankruptcy.

(i) The Company participates in a merger under Article 10 of the Act (commencing with Section 17710.01), and either of the following applies:

(1) The Company is not the surviving entity.

(2) Otherwise as a result of the merger, the Member ceases to be a member.

(j) The Company terminates.

Each Member agrees to promptly give Notice of a Dissociation Event to the other Members.

8.5 When a person is dissociated as a member of the Company all of the following apply:

(a) The Member's right to participate as a member in the management and conduct of the Company's activities terminates.

(b) The Member's fiduciary duties as a member end with regard to matters arising and events occurring after the Member's dissociation.

(c) Subject to Section 17705.04 and Article 10 of the Act (commencing with Section 17710.01), any Transferable Interest owned by the Member immediately before dissociation in the Member's capacity as a member is owned by the Member solely as a Transferee.

(d) A Member's dissociation as a member of the Company does not of itself discharge the Member from any debt, obligation, or other liability to the Company or the other Members that the Member incurred while a member.

8.6 On the receipt of Notice by a Member as contemplated by Sections 8.1, 8.3, and 8.4, and on receipt of Notice of any Dissociation Event as determined in good faith by the Member (the date of such receipt is hereinafter referred to as the "**Option Date**"), the Member shall promptly cause a Notice of the occurrence of such a Dissociation Event to be sent to all other Members, and the Company shall have the option, for a period ending ninety (90) calendar days following the determination of the purchase price as provided in Section 8.8, to purchase the Membership Interest in the Company to which the option relates, at the price and on the terms set forth in Section 8.8 of this Agreement, and the other Members, pro rata in accordance with their prior Membership Interests in the Company, shall then have the option, for a period of thirty (30) days thereafter, to purchase the Membership Interest in the Company not purchased

by the Company, on the same terms and conditions as apply to the Company. If all other Members do not elect to purchase the entire remaining Membership Interest in the Company, then the Members electing to purchase shall have the right, pro rata in accordance with their prior Membership Interest in the Company, to purchase the additional Membership Interest in the Company available for purchase. The Transferee of the Membership Interest in the Company that is not purchased shall hold such Membership Interest in the Company subject to all of the provisions of this Agreement.

8.7 Neither the Member whose interest is subject to purchase under this Article, nor such Member's Affiliate, shall participate in any Vote or discussion of any matter pertaining to the disposition of the Member's Membership Interest in the Company under this Agreement.

8.8 The purchase price of the Membership Interest that is the subject of an option under Section 8.6 shall be the "Fair Option Price" of the interest as determined under this Section 8.8. "Fair Option Price" means the cash price that a willing buyer would pay to a willing seller when neither is acting under compulsion and when both have reasonable knowledge of the relevant facts on the Option Date. Each of the selling and purchasing parties shall use his, her, or its best efforts to mutually agree upon the Fair Option Price. If the parties are unable to so agree within thirty (30) days of the Option Date, the selling party shall appoint, within sixty (60) days of the Option Date, one appraiser, and the purchasing party shall appoint within sixty (60) days of the Option Date, one appraiser. The two appraisers shall within a period of twenty (20) additional days, agree upon and appoint an additional appraiser. The three appraisers shall, within sixty (60) days after the appointment of the third appraiser, determine the Fair Option Price of the Membership Interest in writing and submit their report to all the parties.

The Fair Option Price shall be determined by disregarding the appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations, and the arithmetic mean of the remaining two appraisers' valuations shall be the Fair Option Price. Each purchasing party shall pay for the services of the appraiser selected by it, plus one half of the fee charged by the third appraiser, and one half of all other costs relating to the determination of Fair Option Price. The Fair Option Price as so determined shall be payable in cash.

8.9 Except as expressly permitted under Section 8.2, a prospective transferee (other than an existing Member) of a Membership Interest may be admitted as a Member with respect to such Membership Interest ("**Substituted Member**") only (a) on the unanimous written consent of the other Members in favor of the prospective transferee's admission as a Member, and (b) on such prospective transferee executing a counterpart of this Agreement as a party hereto. Any prospective transferee of a Membership Interest shall be deemed a Transferee, and, therefore, the owner of only a Transferable Interest until such prospective transferee has been admitted as a Substituted Member. Except as otherwise permitted in the Act, any such Transferee shall be entitled only to receive allocations and distributions under this Agreement with respect to such Membership Interest and shall have no right to Vote or exercise any rights of a Member until such Transferee has been admitted as a Substituted Member. Until the Transferee becomes a Substituted Member, the Transferor will continue to be a Member and to have the power to exercise any rights and powers of a Member under this Agreement, including

the right to Vote in proportion to the Percentage Interest that the Transferor would have had in the event that the Transfer had not been made.

8.10 Any person admitted to the Company as a Substituted Member shall be subject to all the provisions of this Agreement that apply to the Member from whom the Membership Interest was transferred, provided, however, that the transferring Member shall not be released from liabilities as a Member solely as a result of the Transfer, both with respect to obligations to the Company and to third parties, incurred prior to the assignment.

8.11 The initial sale of Membership Interests in the Company to the Initial Members has not been qualified or registered under the securities laws of any state, including California, or registered under the Securities Act of 1933, in reliance upon exemptions from the registration provisions of those laws. Notwithstanding any other provision of this Agreement, Membership Interests may not be Transferred unless registered or qualified under applicable state and federal securities law unless, in the opinion of legal counsel satisfactory to the Company, such qualification or registration is not required. The Member who desires to transfer a Membership Interest shall be responsible for all legal fees incurred in connection with said opinion.

ARTICLE 9: DISSOLUTION AND WINDING UP

9.1 The Company shall be dissolved on the first to occur of the following events:

- (a) The decision of all Members to dissolve the Company.
- (b) The death, incapacity, withdrawal, bankruptcy or corporate dissolution of a Member; provided, however, that the remaining Members may, by the Vote of all of the Members within ninety (90) days of the happening of that event, elect to continue the Company, in which case the Company shall not dissolve. If the remaining Members fail to so Vote, the remaining Members shall wind up the Company.
- (c) The passage of ninety (90) consecutive days during which the Company has no members.
- (d) The sale or other disposition of substantially all of the Company's assets.
- (e) Entry of a decree of judicial dissolution pursuant to California Corporations Code section 17707.03.

9.2 On the dissolution of the Company, the Company shall engage in no further business other than that necessary to wind up the business and affairs of the Company. The remaining Members shall wind up the affairs of the Company and shall give written notice of the commencement of winding up by mail to all known creditors and claimants against the Company whose addresses appear in the records of the Company. After paying or adequately providing for the payment of all known debts of the Company (except debts owing to the Members) the remaining assets of the Company shall be distributed or applied in the following order of priority:

(a) To pay the expenses of liquidation.

(b) To repay outstanding loans made to the Company from the Members. If there are insufficient funds to pay such loans in full, each member shall be repaid in the ratio that the member's respective loan, together with interest accrued and unpaid thereon, bears to the total of repayment, and shall first be credited to accrued and unpaid interest due and the remainder shall be credited to principal.

(c) To repay each Member's investment. Each Member shall look solely to the assets of the Company for the return of the Member's investment, and if the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the investment of any Member, such Member shall have no recourse against any other Members for indemnification, contribution, or reimbursement.

ARTICLE 10: DISPUTE RESOLUTION

10.1 In the event that the Members, in good faith, fail to agree with respect to any matter which requires the consent or approval of both Members under this Agreement or fail to agree on an interpretation of the terms of this Agreement (a "**Dispute**"), the matter shall be submitted to non-binding mediation. To initiate the mediation process, the Members shall prepare a list of mediators and attempt to agree on one of the mediators on the list. If the Members cannot reach agreement on one of the mediators on the list within ten (10) days, each shall nominate one mediator, and the two nominees shall jointly choose a mediator. The Members shall meet with the mediator on at least three occasions within a thirty (30)-day period in an attempt to resolve the Dispute. In the event the Members are unable to resolve the Dispute within thirty (30) days after the mediator is named, the process shall be deemed unsuccessful, subject to the ability of the Members to extend the mediation period by mutual agreement. If the mediation is unsuccessful, then the Members may pursue arbitration as set forth in Section 10.2 below.

10.2 If mediation is unsuccessful in resolving a Dispute any such Dispute shall be settled by arbitration in accordance with the rules of the American Arbitration Association. After unsuccessful mediation, arbitration shall be the exclusive dispute resolution process in the State of California, but arbitration shall be a nonexclusive process elsewhere. Any Member may commence arbitration by sending a written demand for arbitration to the other parties. Such demand shall set forth the nature of the Dispute to be resolved by arbitration. Arbitration shall be conducted in San Bernardino, California. The substantive law of the State of California shall be applied by the arbitrator to the resolution of the Dispute. The parties shall share equally all initial costs of arbitration. The prevailing party shall be entitled to reimbursement of attorney fees, costs, and expenses incurred in connection with the arbitration. All decisions of the arbitrator shall be final, binding, and conclusive on all parties. Judgment may be entered on any such decision in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 11: FIDUCIARY DUTIES

11.1 The fiduciary duties that the Members owe to the Company and the other Members of the Company are the duties of loyalty and care.

(a) The Members' duty of loyalty to the Company and the other Members is the following:

(1) To account to the Company and hold as trustee for it any property, profit, or benefit derived by the Members in the conduct and winding up of the activities of the Company or derived from a use by the Members of Company property, including the appropriation of a limited liability company opportunity.

(2) To refrain from dealing with the Company in the conduct or winding up of the activities of the Company as or on behalf of a party having an interest adverse to the Company.

(b) The Members' duty of care to the Company and the other Members in the conduct and winding up of the activities of the Company is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(c) The Members' do not violate a duty or obligation under this Agreement merely because a Member's conduct furthers its own interest.

11.2 All Members shall discharge the duties to the Company and the other Members under this Agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

ARTICLE 12: INDEMNIFICATION

12.1 The Company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a Member in the course of the Member's activities on behalf of the Company, if, in making the payment or incurring the debt, obligation, or other liability, the Member complied with the duties stated in Article 11.

ARTICLE 13: GENERAL PROVISIONS

13.1 This Agreement constitutes the whole and entire agreement with respect to the subject matter of this Agreement, and it shall not be modified or amended in any respect except by a written instrument executed by all the Members. This Agreement replaces and supersedes all prior written and oral agreements by and among the Members or any of them.

13.2 This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

13.3 This Agreement shall be construed and enforced in accordance with the internal laws of the State of California. If any provision of this Agreement is determined by any court of competent jurisdiction or arbitrator to be invalid, illegal, or unenforceable to any extent, that provision shall, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid such invalidity, illegality, or unenforceability or, if that is not possible, such provision shall, to the extent of such invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement shall remain in effect.

13.4 This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

13.5 Whenever used in this Agreement, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, company, or corporation, all as the context and meaning of this Agreement may require.

13.6 The parties to this Agreement shall promptly execute and deliver any and all additional documents, instruments, notices, and other assurances, and shall do any and all other acts and things, reasonably necessary in connection with the performance of their respective obligations under this Agreement and to carry out the intent of the parties.

13.7 Except as provided in this Agreement, no provision of this Agreement shall be construed to limit in any manner the Members in the carrying on of their own respective businesses or activities. The Members and their Affiliates may engage or invest in, independently or with others, any business activity of any type or description, including without limitation those that might be the same as or similar to the Company's and that might be in direct or indirect competition with the Company. Neither the Company nor any Member shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Members shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken by the Company. The Members shall have the right to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company. The Members acknowledge that the Members and their Affiliates own and/or manage other businesses, including businesses that may compete with the Company and for the Members' time. The Members hereby waive any and all rights and claims which they may otherwise have against the Members and their Affiliates as a result of any of such activities.

13.8 Except as provided in this Agreement, no provision of this Agreement shall be construed to constitute a Member, in the Member's capacity as such, the agent of any other Member.

13.9 Each Member represents and warrants to the other Members that the Member has the capacity and authority to enter into this Agreement.

13.10 The article, section, and paragraph titles and headings contained in this Agreement are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Agreement or any of its provisions.

13.11 This Agreement may be altered, amended, or repealed only by a writing signed by all of the Members.

13.12 Time is of the essence of every provision of this Agreement that specifies a time for performance.

13.13 This Agreement is made solely for the benefit of the Members and the Members' permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement.

13.14 The Members intend the Company to be a limited liability company under the Act. No Member shall take any action inconsistent with the express intent of the parties to this Agreement.

**SIGNATURE PAGE OF OPERATING AGREEMENT FOR
WATERMAN AFFORDABLE 3 LLC**

IN WITNESS WHEREOF, the Members has executed or caused to be executed this Agreement on the day and year first above written.

MEMBERS:

HOUSING AUTHORITY OF THE COUNTY OF SAN
BERNARDINO, a public body, corporate and politic,
its managing member

By: Maria Razo

Name: Maria Razo

Title: Executive Director

HOUSING PARTNERS I, INCORPORATED,
a California nonprofit public benefit corporation,
its member

By: Lee McDargan

Name: Lee McDargan

Title: President

EXHIBIT A

ARTICLES OF ORGANIZATION

201820710031

	Secretary of State Articles of Organization Limited Liability Company (LLC)	LLC-1
	IMPORTANT — Read instructions before completing this form. Filing Fee — \$70.00 Copy Fees — First page \$1.00; each attachment page \$0.50; Certification Fee — \$5.00 Note: LLCs may have to pay minimum \$800 tax to the California Franchise Tax Board each year. For more information, go to https://www.ftb.ca.gov .	
1. Limited Liability Company Name (See instructions — Must contain an LLC ending such as LLC or L.L.C. "LLC" will be added, if not included.) Waterman Affordable 3 LLC		

FILED
Secretary of State
State of California

JUL 25 2018

This Space For Office Use Only

2. Business Addresses

a. Initial Street Address of Designated Office in California - Do not enter a P.O. Box 715 East Brier Drive	City (no abbreviations) San Bernardino	State CA	Zip Code 92408
b. Initial Mailing Address of LLC, if different than item 2a	City (no abbreviations)	State	Zip Code

3. Service of Process (Must provide either Individual OR Corporation.)

INDIVIDUAL — Complete items 3a and 3b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation) Maria	Middle Name	Last Name Razo	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box 715 East Brier Drive	City (no abbreviations) San Bernardino	State CA	Zip Code 92408

CORPORATION — Complete item 3c. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete item 3a or 3b

4. Management (Select only one box)

The LLC will be managed by:
☐ One Manager ☐ More than One Manager ☒ All LLC Member(s)

5. Purpose Statement (Do not alter Purpose Statement)

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.
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6. The Information contained herein, including in any attachments, is true and correct.

Organizer sign here

LLC-1 (REV 04/2017)

Gustav Joslin

Print your name here

2017 California Secretary of State
www.sos.ca.gov/business/be



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

JUL 26 2016 65

Date:

Alex Padilla

ALEX PADILLA, Secretary of State

EXHIBIT B

INITIAL MEMBERS

<u>Name and Address</u>	<u>Initial Contribution</u>	<u>Percentage Interest</u>
HOUSING PARTNERS I, INCORPORATED 715 East Brier Drive San Bernardino, California 92408	\$1	1%
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO 715 East Brier Drive San Bernardino, California 92408	\$99	99%