

**ORGANIZATION REVIEW – LIMITED LIABILITY COMPANIES  
COMPLIANCE WITH MHDC REQUIREMENTS**  
(Add to all Operating Agreements)

**Section [assign section number]. MHDC REQUIREMENTS.**

Notwithstanding anything to the contrary in this document:

- (1) The duration of the Limited Liability Company is at least ten (10) years longer than the term of the MHDC Deed of Trust Note.
- (2) The Limited Liability Company is authorized to execute an MHDC Deed of Trust Note and MHDC Deed of Trust and Security Agreement in order to secure a loan to be made by the Missouri Housing Development Commission ("MHDC") and to execute an MHDC Regulatory Agreement ("Regulatory Agreement"), and all other documents which may be required by MHDC, or any other lender, in connection with the MHDC loan (collectively the "MHDC Loan Documents").
- (3) The Limited Liability Company is further authorized to execute a Declaration of Land Use Restriction Covenants for Low-Income Housing Tax Credits ("LIHTC LURA") as a condition of receiving low-income housing tax credits allocated and administered by MHDC and to execute said LIHTC LURA, and such other documents as may be required by MHDC, in accordance with Section 42 of the Internal Revenue Code of 1986 (the "Code").
- (4) Upon execution, each of the LIHTC LURA and Regulatory Agreement shall be binding upon the Limited Liability Company and all of its members/managers, whether they become members/managers before or after the execution of such LIHTC LURA and/or Regulatory Agreement. The LIHTC LURA shall remain binding upon the Limited Liability Company and the members/managers until earlier of the date the Extended Use Period (as such term is defined under the Code) expires, or the date the provisions of the LIHTC LURA are otherwise terminated pursuant to its own terms or the terms of the Code. Furthermore, the Regulatory Agreement shall remain binding upon the Limited Liability Company and the members/managers for so long as the MHDC Deed of Trust Note and MHDC Deed of Trust and Security Agreement on the Limited Liability Company property remain outstanding or until the Affordability Period (as such term is defined in the Regulatory Agreement) expires, whichever occurs later.
- (5) Any incoming member/manager must, as a condition of receiving an interest in the Limited Liability Company, agree to be bound by the MHDC Deed of Trust Note, the MHDC Deed of Trust and Security Agreement, the LIHTC LURA, the Regulatory Agreement, and all other documents required by MHDC, or any lender, in connection with the MHDC loan to the same extent and upon the same terms as the other members/managers.
- (6) Upon dissolution of the Limited Liability Company, no title or right to possession and control of the Limited Liability Company property, and no right to collect the rents therefrom, shall pass to any individual or entity that is not bound by the LIHTC LURA and the MHDC Regulatory Agreement in a manner satisfactory to MHDC.
- (7) So long as the Limited Liability Company property is encumbered by the MHDC Deed of Trust and Security Agreement held by MHDC or its successors or assigns, no payments out of Available Distributions (as such term is defined in the Regulatory Agreement) or payments to any member/manager shall be made except as permitted by the terms of the Regulatory Agreement.

(8) The following provisions shall apply during such time as the Limited Liability Company property is encumbered by any or all of the MHDC Deed of Trust and Security Agreement or Loan Regulatory Agreement and/or the LIHTC LURA; provided, however, provisions below referring specifically to the MHDC Loan Documents shall no longer apply if the MHDC Loan has been paid in full and the MHDC Deed of Trust has been released.

(i) **Amendments.** The Operating Agreement may be amended without the consent of MHDC; provided, however, that notwithstanding anything herein to the contrary, MHDC's consent will be required for the following amendments to the Operating Agreement, which consent shall not be unreasonably withheld, conditioned or delayed:

(a) an amendment conflicting with MHDC's requirements pursuant to this Section *[insert section number containing this language]* or adversely affecting MHDC's rights or collateral pursuant to the MHDC Loan Documents or the LIHTC LURA;

(b) If the MHDC Loan has not been fully paid and the MHDC Deed of Trust still encumbers the Project, an amendment modifying the timing of any one or more of the *[insert defined term for equity installments]* reflected in *[insert section/exhibit containing the breakdown and timing of equity installments]*;

(c) an amendment decreasing the amount of the *[insert defined term for equity installments]* as set forth in *[insert section/exhibit containing the breakdown and timing of equity installments]*, other than adjustments to *[insert defined term for equity installments]* contemplated in Section *[insert section dealing with equity adjustors]* of this Agreement;

(d) an amendment memorializing a transfer of a member or manager interest for which MHDC's consent is expressly required pursuant to Section *[insert section number containing this language]*(8)(ii) and (iii) below; and

(e) an amendment to voluntarily dissolve the Limited Liability Company or convert the Limited Liability Company to another form of entity.

(ii) **Investor Member Transfers.** Notwithstanding anything in the MHDC Loan Documents, the LIHTC LURA or herein to the contrary:

(a) A transfer of investor members' interests to any entity that is (i) an Affiliate of *[insert legal name of investor member]*, (ii) managed by *[insert legal name of investor member]* or an Affiliate thereof or (iii) that is the *[Manager/Managing Member]* or an Affiliate of the *[Manager/Managing Member]*, in each case, shall not require MHDC consent, but will require prior notice to MHDC and a copy of

documentation relating to such transfer as reasonably requested by MHDC (each such entity, referred to herein as a “Permitted Transferee”); provided, however, that in the event any capital contributions remain unfunded or are not yet due and payable at the time of a transfer to a Permitted Transferee, the transferring investor member shall remain liable for all such capital contributions to the extent the Permitted Transferee fails to make such contributions when they become due and payable to the Limited Liability Company.

(b) Except as otherwise expressly provided herein, a transfer of investor members’ interests pursuant to Sections *[insert section numbers dealing with the sale of the project at the end compliance period, the sale of the investor members’ interests and the investor members’ put to the manager/managing member]* of the Agreement shall not require MHDC consent, but will require 90 days prior notice to MHDC and a copy of documentation relating to such transfer as reasonably requested by MHDC. Notwithstanding the foregoing, if the proposed transferee is not a Permitted Transferee, the investor member(s) shall obtain MHDC’s Consent to such replacement entity. “MHDC Consent” for purposes of this subsection means, and will be deemed to have been obtained if, MHDC shall have been notified in writing by the investor member(s) of the identity of the proposed replacement entity, and on the expiration of 30 days from the receipt by MHDC of such notice, no objections shall have been received from MHDC or MHDC shall have expressly consented in writing to such replacement. In the alternative, MHDC may reject the proposed replacement entity within such 30 day timeframe for Cause. “Cause” shall mean that the proposed replacement entity is currently suspended or disbarred by, or is in bad standing with, MHDC, HUD or any other state credit allocating agency.

(c) Any other transfer of investor members’ interests other than described in (a) and (b) of this subsection (ii) shall require MHDC’s consent, which consent will not be unreasonably withheld, delayed or conditioned.

(iii) ***[Manager/Managing Member] Transfers.*** Notwithstanding anything in the MHDC Loan Documents, the LIHTC LURA or herein to the contrary:

(a) the investor members may remove the *[Manager/Managing Member]* pursuant to the terms of this Agreement; and

(b) MHDC’s prior consent must be obtained prior to the admission of a successor *[Manager/Managing Member]*, unless (i) such entity is a Permitted Transferee or (ii) the investor member determines, in its sole reasonable discretion, that any delay in admitting the successor *[Manager/Managing Member]* could have an adverse impact on the Limited Liability Company or any of its members/managers.

(c) In the case of a delay referenced in (b)(ii) above, the investor member(s) shall notify MHDC of the material facts pertaining to the removal and reasons why a delay would materially and adversely impact the project and, if time permits, an opportunity to comment on the successor [Manager/Managing Member], and following any such admission to the Limited Liability Company, the Limited Liability Company shall thereafter obtain the approval of MHDC to the successor [Manager/Managing Member]. A removal and replacement of the [Manager/Managing Member] pursuant to the terms of this Section [insert section number containing this language](8)(iii)(c) shall not be deemed a violation of the MHDC Loan Documents or the LIHTC LURA provided that the investor member(s) seeks MHDC's consent following the admission of the successor [Manager/Managing Member]. In the event that the successor [Manager/Managing Member] is not approved by MHDC in its reasonable discretion, then the investor member(s) shall remove the successor [Manager/Managing Member] and admit a [Manager/Managing Member] acceptable to MHDC. Failure to admit a [Manager/Managing Member] acceptable to MHDC solely pursuant to the terms of this [insert section number containing this language](8)(iii)(c) shall constitute a default under the MHDC Loan Documents and the LIHTC LURA.

- (9) If this project utilizes HOME Community Housing Development Organization Set Aside funds the Non-Profit manager/member must have "effective project control" as required by 24 CFR 92.300(a)(1).
- (10) If anything in this Agreement conflicts with the LIHTC LURA and/or Regulatory Agreement, the LIHTC LURA and/or Regulatory Agreement (as the case may be) shall prevail.
- (11) The Limited Liability Company is a single asset, single purpose entity.

Furthermore, the Members' Information Schedule needs to be attached and incorporated into the Operating Agreement in the format below:

**INFORMATION SCHEDULE TO THE  
AMENDED AND RESTATED OPERATING AGREEMENT OF  
\_, LLC**

<u>Name and Address</u>	<u>Projected Tax Credit Amounts</u>	<u>Capital Contribution</u>	<u>Ownership Percentage</u>	<u>Taxpayer ID No.</u>
<u>Manager/Managing Member:</u>				
Name	Federal Housing Tax	\$0.00	0.00%	xx-xxxxxxx
Address	Credit: \$0.00			
City, State, Zip				
<u>Administrative Manager /Managing Member:</u>				
Name	Federal Housing Tax	\$0.00	0.00%	xx-xxxxxxx
Address	Credit: \$0.00			
City, State, Zip				
<u>Federal Investor Member:</u>				
Name	Federal Housing Tax	\$0.00	0.00%	xx-xxxxxxx
Address	Credit: \$0.00			
City, State, Zip				
<u>State Investor Member:</u>				
Name	Federal Housing Tax	\$0.00 for Federal Housing Tax Credits*	0.00%	xx-xxxxxxx
Address	Credit: \$0.00			
City, State, Zip		\$0.00 for State Housing Tax Credits		
	State Housing Tax			
	Credit: \$0.00			

\* Indicate an amount for the federal credit.

Include information in the same format if there are historic credits.