

**Subject:** Adoption of Operating Agreement.

**Background Information:**

DCDC Sierra Vista II, LLC ("DCDC SV II") organized for a charitable purpose as specified in Section 214 of the California Revenue and Taxation Code. DCDC SV II will (1) provide housing for low-income persons; and (2) serve as a general partner in a limited partnership to develop, own and operate housing for the benefit of low-income persons in need of affordable, decent, safe and sanitary housing and related services. Specifically, DCDC SV II will be a limited partner in limited liability partnership created for the development of Phase II of the rehabilitation of Sierra Vista.

October 2018 DCDC SV II filed the Articles of Organization (LLC-1) with the Secretary of the State of California. An Operating Agreement for DCDC Housing is now necessary for the administration of said entity and attached for the Board's consideration and approval. Authority also seeks by this action and resolution authorization to prepare and execute all additional documents to submit to local, county and federal agencies including, but not limited to, Housing and Urban Development, State of California (BOE, FTB, LIHTC, etc.), County of San Joaquin and City of Stockton.

**Recommendation:** Staff recommends the approval and adoption of DCDC SV II's Operating Agreement and to authorize and direct Authority staff to execute and file all documents necessary and in furtherance of Phase II of the Sierra Vista development including, but not limited to, limited partnership, development and financing of Phase II of the Sierra Vista project.

**Alternate Option:** Do not approve and adopt DCDC SV II's Housing's Operating Agreement and authorization to execute necessary documents in furtherance of Sierra Vista Phase II development.

**Fiscal Impact:** None.

**Attachments:** DCDC SV II's Housing's Operating Agreement

**Prepared by:** Alan R. Coon, General Counsel

**Approval:**

  
\_\_\_\_\_  
Peter W. Ragsdale, Executive Director

## OPERATING AGREEMENT OF DCDC SIERRA VISTA II, LLC

THIS OPERATING AGREEMENT (this "**Agreement**") of DCDC Sierra Vista II, LLC, a California limited liability company (the "**Company**"), is made and entered into effective as of December \_\_\_\_, 2018, by Delta Community Developers Corp., a California nonprofit public benefit corporation ("**DCDC**"), as managing member of the Company (the "**Managing Member**" or "**Sole Member**").

### RECITALS

A. Sole Member has formed a Company under the California Revised Uniform Limited Liability Company Act ("RULLCA" or "the Act").

B. Sole Member desires to adopt and approve this Agreement in order to provide for the governance of the Company and to further the charitable purpose to provide housing for low-income persons,

Now, therefore, Sole Member declares the following to be the Operating Agreement of the Company:

### **ARTICLE I: ARTICLES OF ORGANIZATION**

1.1. Formation. The Sole Member filed Articles of Organization ("Articles") for the Company with the California Secretary of State on October 9, 2018. Sole Member, by filing the Articles, has formed a limited liability company pursuant to and in accordance with Corporations Code Section 17000, et seq., as amended from time to time (herein also known as the "Act").

1.2. Name. The name of the Company is DCDC Sierra Vista II, LLC.

1.3. Principle Place of Business. The principal executive office of the Company will be at 448 S. Center Street, Stockton, California 95203, or any other place or places determined by the Sole Member from time to time.

1.4. Registered Agent For Service of Process. The initial agent for service of process on the Company will be Peter W. Ragsdale. The Sole Member may from time to time change the Company's agent for service of process.

1.5. Purpose. The Company will be formed for the purpose of operating exclusively for one or more exempt purposes as specified in Section 214 of the California Revenue and Taxation Code pursuant to the provisions of the Act upon the terms and conditions contained in this Agreement including, but not limited to, acquisition, rehabilitation, development and management of low income housing opportunities in Stockton, California. Company is expected and therefore reserves its

intent to locate additional property locations and/or partner with persons and entities to further Company's purposes.

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

1.7. Management and Attorney-In-Fact. The Sole Member is hereby irrevocably appointed as the Managing Member and shall also act as the true and lawful attorney in the name, place and stead of the Company, such appointment being coupled with an interest, to make, execute, sign, acknowledge and file with respect to the Company all papers which shall be necessary or desirable to effect the dissolution and termination of the Company in accordance with the provisions of this Article, including settling and compromising third party claims and selling any assets of the Company, including without limitation, any ancillary assets of the Company following a sale of the Project.

1.8. Definitions. The following terms used in this Agreement shall have the meanings ascribed to them herein:

"Act" means the California Revised Limited Liability Company Act, Corporations Code 17701.01 – 17713.13, as the same may be amended from time to time.

"Affiliate" of a specified Person is (a) any Person who, directly or indirectly, Controls, is Controlled by, is an instrumentality or is otherwise under common Control with, the specified Person, or (b) any Affiliate of any Person described in clause (a) above.

"Agreement" means this Operating Agreement, as amended from time to time.

"Bankruptcy" means, with respect to a specified Person, (a) the voluntary filing of an application by such Person for relief of such Person under any federal or state bankruptcy or insolvency law; (b) such Person's consent to the appointment of a trustee, receiver, or custodian of its assets; (c) the entry of an order for relief with respect to such Person in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (d) the making by such Person of a general assignment for the benefit of creditors; (e) the involuntary filing of an application for relief against such Person under any federal or state bankruptcy law, or the entry (if opposed by the Person) of an order, judgment, or decree by any court of competent jurisdiction appointing a trustee, receiver, or custodian of the assets of such Person, unless the application or proceedings, as the case may be, are dismissed within 90 days; or (f) the failure by such Person generally to pay its debts as they become due within the meaning of Section 303(h)(1) of the United States Bankruptcy Code, as determined by the United States Bankruptcy Court, or the Person's admission in writing of its inability to pay its debts as they become due.

"Code" means the Internal Revenue Code of 1986, as further amended from time to time.

“Company” means DCDC Sierra Vista II, LLC.

“Company Record Book” means a book to be maintained by the Sole Member which shall contain the Company’s certificate of formation, all amendments thereto, all certificates of authority to do business held by the Company, and similar corporate housekeeping matters.

“Emergency” means an event which reasonably requires immediate action involving the expenditure of funds or other action in order to avert or mitigate personal injury to Persons or significant physical damage to property in connection with the Company or any of its assets if it is not possible (after a reasonable effort) for a Member to reach or obtain the Approval of any other Member whose Approval to take such action otherwise would be required.

“Force Majeure Event” means any strike, lockout or other labor trouble; inability to obtain labor, materials, coal, oil, or other suitable fuel or reasonable substitutes therefor or the failure of the supply of any thereof; acts of God, fire or other casualty; governmental preemption of priorities or other controls in connection with a public emergency; governmental restrictions or requirements of Laws; enemy or hostile governmental action; civil commotion; or any other event or circumstance outside of the reasonable control of a Member.

“Laws” means all federal, state and local laws, moratoria, initiatives, referenda, ordinances, rules, regulations, standards and orders.

“Managing Manager” means Delta Community Developers Corp.

“Person” means an individual, general or limited partnership, limited liability partnership or company, corporation, trust, estate, real estate investment trust, association or any other entity.

“Qualified Organization” means either (i) an organization that is exempt under Section 501(c)(3) of the Code or under Section 23701(d) of the California Revenue and Taxation Code and that qualifies for exemption under Section 214 of the California Revenue and Taxation Code, or (ii) a government entity that is exempt from property taxation under Section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities under subdivision (d). Organizations qualifying pursuant to (i) above shall have a valid, unrevoked letter from the Internal Revenue Service or the Franchise Tax Board, stating that it qualifies as an exempt organization under Section 501(3) of the Code or under Section 23701(d) of the California Revenue and Taxation Code.

“Tax Regulations” means the regulations issued from time to time by the U.S. Internal Revenue Service and California Franchise Tax Board.

## **ARTICLE II: CAPITALIZATION**

2.1. Capital Contribution. The Sole Member will contribute to the capital of the Company the money and property specified in Exhibit B to this Agreement. The Sole Member may from time to time and at any time contribute further cash or property to the Company, but shall not be required to contribute, as the Sole Member may determine in its sole and absolute discretion.

2.2. Limited Liability. The debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Sole Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member of the Company.

### **ARTICLE III: ALLOCATIONS AND DISTRIBUTIONS**

3.1. Profits and Losses. If any membership interest, or part of an interest, is assigned during any fiscal year in compliance with the provisions of this Article III, profits, losses, each item thereof, and all other items attributable to the membership interest for that fiscal year will be divided and allocated between the transferor and the transferee by taking into account their varying membership interests during the period in accordance with IRC §706(d), using any convention permitted by law selected by the Sole Member. All distributions due on or before the date of the assignment will be made to the transferor, and all distributions thereafter will be made to the transferee. Solely for purposes of making the allocations and distributions, the Company will recognize the assignment not later than the end of the calendar month during which the assignment occurs. Neither the Company nor the Sole Member will incur any liability for making allocations and distributions in accordance with the provisions of this Section 3.1.

3.2. Tax Matters. For so long as, and during such time as the Company shall have only one Member, for federal and relevant state income and/or franchise tax purposes (but for no other purpose whatsoever), the Company shall be disregarded as an entity separate from the Sole Member, as provided in Section 301.7701-3(a) of the Federal Income Tax Regulations and any comparable provision of relevant state income or franchise tax law, regulation or administrative pronouncement. The Sole Member and the Company shall take any and all actions necessary or appropriate to accomplish the foregoing, and neither the Sole Member nor the Company shall at any time take any action that is or might be inconsistent with the foregoing. Consistent with such treatment for federal and relevant state income or franchise tax purposes, each of the assets and each of the liabilities of the Company shall be treated as an asset or a liability (as appropriate) of the Sole Member (and not of the Company) for federal and relevant state income and/or franchise tax purposes (but for no other purpose whatsoever), and each item of income, gain, loss, deduction and credit recognized by the Company shall be treated as having been recognized by the Sole Member (and not by the Company) for federal and relevant state income and/or franchise tax purposes (but for no other purpose whatsoever).

3.3. Cash from Operations. All cash resulting from the operations of the Company will be distributed to the Sole Member at such times as the Sole Member deems appropriate.

#### **ARTICLE IV: MANAGEMENT**

4.1. Manager. The business of the Company will be managed by the Sole Member or designee. The Sole Member may appoint one or more nonmembers as co-managers or may reassign as manager at any time and appoint a nonmember as the manager of the Company on such terms and conditions as elected by the Sole Member.

4.2. Officers. The Company may have a President who may, but need not, be the Sole Member or a designee of Sole Member. The Sole Member may provide for additional officers of the Company and may alter the powers, duties, and compensation of the President and of any other officer.

4.3. Title. All Company assets, whether real or personal, will be held in the name of the Company.

4.4. Financial Institutions. All Company funds will be deposited in one or more accounts with one or more recognized financial institutions in the name of the Company, at locations determined by the Sole Member. Withdrawal from those accounts will require the signature of the person or persons designated by the Sole Member.

#### **ARTICLE V: ACCOUNTS AND RECORDS**

5.1. Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed for federal income tax purposes, or such other commonly accepted accounting methods as may be selected by the Sole Member from time to time. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its principal office in California all of the following:

a. a current list of the full name and last known business or residence address of the Sole Member, together with the capital account and capital contributions of the Sole Member;

b. copy of the Articles and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

c. copies of the Company's federal, state, and local income tax or information returns and reports, if any;

d. a copy of this Agreement and any and all amendments thereto together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

e. copies of the financial statements of the Company, if any, for the six (6) most recent fiscal years; and

f. Company's books and records as they relate to the internal affairs of the Company for at least the current and past four (4) fiscal years.

5.2. Accounting Method. Financial books and records of the Company will be kept on the cash method of accounting. A balance sheet and income statement of the Company will 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 will be January 1 through December 31.

5.3. Tax Returns. The Sole Member shall cause to be prepared at least annually, at its expense, information necessary for the preparation of the Sole Member's federal and state income tax returns in accordance with Tax Regulations. The Company shall send or cause to be sent to the Sole Member within ninety (90) days after the end of each taxable year such information as is necessary to complete 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 that year which shall be timely filed by, and at the sole expense, of the Sole Member.

5.4. Reports. The Sole Member, at its expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of the Articles and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules, and regulations.

## **ARTICLE VI: RESTRICTIONS ON TRANSFER OF MEMBERSHIP INTEREST**

6.1. Membership Interest. The Sole Member will not transfer any part of the Sole Member's membership interest in the Company. Notwithstanding any other provision of this Agreement to the contrary, the Sole Member may transfer all or any portion of its membership interest to any subsidiary entity created for the benefit of the Sole Member, or any combination between or among the Sole Member and said subsidiary entity.

## **ARTICLE VII: DISSOLUTION AND WINDING UP**

7.1. Dissolution. The Company will be dissolved on the first to occur of the following events:

(a) The decision of the Sole Member to dissolve the Company.

(b) The sale or other disposition of substantially all of the Company's assets.

(c) Entry of a decree of judicial dissolution under California Corporations Code §17351 or an order of distribution as provided in Bankruptcy.

7.2. Winding Up. On the dissolution of the Company, it will engage in no further business other than that necessary to wind up its business and affairs. The Sole Member will wind up the affairs of the Company and 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 Sole Member), the remaining assets of the Company will be distributed or applied in the following order of priority:

- (a) To pay the expenses of liquidation.
- (b) To repay outstanding loans to the Sole Member.
- (c) To the Sole Member.

## **ARTICLE VIII: GENERAL PROVISIONS**

8.1. Entire Agreement. This Agreement constitutes the whole and entire agreement with respect to the subject matter of this Agreement.

8.2. Governing Law. This Agreement will be construed and enforced in accordance with the 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 will, if possible, be construed as though more narrowly drawn, if a narrower construction would avoid that invalidity, illegality, or unenforceability or, if that is not possible, that provision will, to the extent of that invalidity, illegality, or unenforceability, be severed, and the remaining provisions of this Agreement will remain in effect.

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

8.4. Amendments. This Agreement may be altered, amended, supplemented or repealed except pursuant to a written agreement executed and delivered by the Sole Member.

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

8.6. Benefits; Binding Effect. The covenants and agreements contained herein shall inure to the benefit of and be binding upon the Sole Member and its respective permitted successors and permitted assigns. Any permitted person or entity succeeding to the interest of a Member hereunder shall succeed to all of such Member's rights, interests and obligations under this Agreement and be subject to all of the terms and conditions of this Agreement.



8.7. No Third Party Beneficiary. Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person, firm, corporation, partnership, association or other entity, other than the parties hereto and their respective legal representatives and permitted successors and assigns, any rights or remedies under or by reason of this Agreement.

8.8. Indemnification. To the fullest extent permitted by law, the Company shall defend, indemnify and save harmless any officer, the Sole Member, and its respective direct or indirect agents, employees, representatives, officers, directors, shareholders or partners from and against all claims, losses, damages, cost, expense, demands, liabilities, obligations, liens, encumbrances, rights of action or attorneys' fees sustained by reason of any act performed, or omitted to be performed, in good faith and without gross negligence or willful misconduct, within the scope of their respective authority expressly conferred by this Agreement, to the fullest extent permitted by applicable law in effect on the date hereof and to such greater extent as applicable law may hereafter from time to time permit. Such indemnity shall not be construed to limit or diminish the coverage of any Member under any insurance obtained by the Company. Payment shall not be a condition precedent to any indemnification provided in this Agreement.

8.9. Survival. The indemnification provided herein and any other provisions hereof which state that they expressly survive the termination of the Company shall survive the termination or expiration of this Agreement or the Company.

8.10. Time is of the Essence. All dates and times in this Agreement are of the essence.

8.11. Governing Law/Jurisdiction. Except as provided otherwise in this Agreement, the laws of the State of California shall govern the interpretation and effect of this Agreement without regard to conflicts of law. In any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement, each Member hereby consents (except with respect to issues to be resolved by arbitration as specified in this Agreement) to the exclusive jurisdiction of the state and federal courts sitting in the State of California.

8.12. Severability. If any provision of this Agreement or the application of such provision to any person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

[Signature Page to Follow]

**IN WITNESS WHEREOF**, the undersigned has executed this Operating Agreement as of the date first above written.

**SOLE MEMBER/ MANAGING MEMBER:**

DELTA COMMUNITY DEVELOPERS CORP.

By: \_\_\_\_\_

Name: Peter W. Ragsdale

Title: Executive Director and Secretary

**Exhibit A**  
Member Information

<u>Member Name</u>	<u>Initial Required Capital</u>	<u>Maximum Required Capital</u>	<u>Total Additional Capital To Date</u>	<u>Percentage Interest (Pro Rata Share)</u>
<i>DCDC</i>	Not to Exceed \$100	Not to Exceed \$100	\$ 0.00	100%

Exhibit "A"

**RESOLUTION APPROVING AND ADOPTING  
DCDC SIERRA VISTA II, LLC  
OPERATING AGREEMENT**

**WHEREAS**, DCDC Sierra Vista II, LLC (DCDC SVII) is being organized and operating exclusively for charitable purposes as specified in Section 214 of the California Revenue and Taxation Code; and

**WHEREAS**, DCDC SV II is being organized to further the following charitable purposes of its members: (1) to provide housing for low income persons; and (2) to serve as a general partner in a limited partnership which owns and operates housing for the benefit of low income persons who are in need of affordable, decent, safe and sanitary housing and related service; and

**WHEREAS**, Articles of Organization Limited Liability Company for DCDC Sierra Vista II, LLC will be filed by the Secretary of the State of California; and

**WHEREAS**, the Operating Agreement for DCDC SV II has been prepared for approval and adoption by the Board;

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED** by the Board of Directors of DCDC Sierra Vista II, LLC in a Special Meeting this 4<sup>th</sup> day of December, 2018, as follows:

1) That the Operating Agreement, dated December 4, 2018, be, and the same hereby is, approved and adopted; and

2) That staff hereby is, authorized and directed to prepare, execute and file all documents with appropriate entities which is necessary for and in furtherance of Phase II of the Sierra Vista development including, but not limited to, limited partnership, development and financing of Phase II of the Sierra Vista project.