

OPERATING AGREEMENT

OF

A Pennsylvania Limited Liability Company

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OF

A PENNSYLVANIA LIMITED LIABILITY COMPANY

THIS OPERATING AGREEMENT OF _____ (the "**Company**"), is made and entered into this _____ day of October 2008, and effective as of _____, 2008 (the "**Effective Date**"), by and between, CENTRAL NORTHSIDE NEIGHBORHOOD COUNCIL, a Pennsylvania non-profit corporation (hereinafter "**CNNC**") and NORTHSIDE LEADERSHIP CONFERENCE, a Pennsylvania non-profit corporation (hereinafter "**NSLC**").

ARTICLE I **DEFINITIONS**

Section 1.01 Definitions. Terms in this Agreement are defined either as provided in the text hereof or as follows:

"Bankrupt" means a Person (1) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (1); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Person's or of all or any substantial part of the Person's properties; or (2) against which a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and 120 days have expired without dismissal thereof or with respect to which, without the Person's consent or acquiescence, a trustee, receiver, or liquidator of the Person or of all or any substantial part of the Person's properties has been appointed and ninety (90) days have expired without the appointment having been vacated or stayed, or ninety (90) days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

"Business Day" means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in Pennsylvania are closed.

"Code" means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

"Capital Contribution" means, subject in each case to adjustments on account of Dispositions of Membership Interests permitted by this Agreement, in which case all Capital Contributions previously made with respect to Membership Interests subject to a Disposition shall be deemed to have been made by the transferee thereof, in the case of a Member executing this Agreement as of the date hereof or a Person acquiring that Membership Interest, the amount specified for that Member as its initial Capital Contribution on Exhibit A.

"Distributable Cash" means for the period in question the excess, if any, of (i) the sum of all net revenues or proceeds received by the Company from whatever source derived, including rent, sales proceeds, financings or refinancings, distributions from any partnership, joint venture, corporation, trust or other entity in which the Company has an interest, any decrease in the Company's reserve accounts and a Sale or Disposition, other than capital contributions, less (ii) the sum of cash disbursements of the Company, including disbursements for third party debt service, disbursements for capital additions and improvements (without deduction for depreciation and amortization of intangibles), disbursements to reimburse Members for expenditures made on behalf of the Company, the amount of any reasonable deposits or additions made by the Members to the Company's reserve accounts, disbursements for operating expenses and disbursements other than capital distributions.

"Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

"Fiscal Year" shall mean the Company's fiscal year, which shall be the calendar year, unless otherwise required by law.

"Fair Market Value" means the Fair Market Value determined by an independent appraiser. An appraiser shall be selected jointly by the Member seeking a determination as well as the Members not seeking a determination; provided, however, that if the Members cannot agree on the selection of a single appraiser, the Member seeking a determination of Fair Market Value shall select an appraiser, the Member not seeking a determination shall select an appraiser and the appraisers so selected shall select a third appraiser who shall conduct the appraisal. The determination of the independent appraiser designated shall be final and binding on all parties.

"Manager" means any Person serving at the time as a manager of the Company as provided in this Agreement. The Managers collectively constitute the "Board of Managers."

"Member" means any Person executing this Agreement as of the date of this Agreement as a Member or hereafter admitted as a Member as provided in this Agreement.

"Membership Interest" means the interest of a Member in the Company, including, without limitation, rights to distributions, allocations, information, and to consent or approve.

"PaBCL" means the Pennsylvania Business Corporate law of 1988, 15 Pa. C.S. Section 1101 *et. seq.*, and any successor statute, as amended from time to time.

"Person" shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such "Person" where the context so permits.

"Profits and Losses" mean for each fiscal year or other period, an amount equal to the Company's net income or loss on the accrual basis in accordance with Generally Accepted Accounting Principles consistently applied.

"Required Interest" means one or more Members having among them sixty percent (60%) or more of the Sharing Ratios of all Members.

"Sale or Disposition" means any transaction (other than the receipt of capital contributions) not in the ordinary course of operating a Company Asset or any partnership, joint venture, corporation, trust or other entity in which the Company has an interest, including any sale, exchange or other disposition of any Company Asset or interest therein, condemnation, recovery of damage award or insurance proceeds (other than business or rental interruption insurance proceeds), any financing or refinancing or any decrease in the Company's reserve accounts to the extent such reserve accounts were funded with revenues from a Sale or Disposition or from Capital Contributions.

"Sharing Ratio" shall have the meaning ascribed thereto in Exhibit A.

Section 1.02 Construction. Whenever the context requires, the use of the singular in this Agreement shall include the plural, the plural shall include the singular and the use of any gender shall include all genders. All references to Articles and Sections refer to articles and sections of this Agreement, and all references to Exhibits are to Exhibits attached hereto, each of which is made a part hereof for all purposes.

ARTICLE II **ORGANIZATION**

Section 2.01 Formation. The Company has been organized as a Pennsylvania limited liability company by the filing of a Certificate of Organization (the "**Certificate**") with the Pennsylvania Department of State under and pursuant to the PaBCL.

Section 2.02 Name. The name of the Company is _____, **LLC**, and all Company business must be conducted in that name or such other names that comply with applicable law as the Board of Managers may select from time to time. Title to all property, real, personal, or mixed, owned by or leased to the Company shall be held in such name (collectively the "**Company Assets**").

Section 2.03 Registered Office; Principal Office. The principal office of the Company required by the PaBCL to be maintained in Pennsylvania shall be _____, Pittsburgh, PA 15212, or such other office as the Board of Managers may designate from time to time in the manner provided by law.

Section 2.04 Purposes. The purpose of the Company is to engage in any business in which limited liability companies are legally authorized to engage, as same shall be determined by the Board of Managers and carried out in accordance with the terms and conditions set forth in this Agreement, including the development of a commercial real estate project in the Central Northside neighborhood of the City of Pittsburgh, Pennsylvania (the "**Project**"), as described on Exhibit "B".

Section 2.05 Foreign Qualification. Prior to the Company's conducting business in any jurisdiction other than Pennsylvania, the Board of Managers shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Board of Managers, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. At the request of the Board of Managers, each Member shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

Section 2.06 Term. The Company commenced its existence on the date the Certificate was filed with the Pennsylvania Department of State, and shall continue for twenty-five (25) years from that date, unless sooner terminated pursuant to the provisions of this Agreement.

Section 2.07 No State Law Partnership. The Members intend that the Company not be a partnership or joint venture, and that no Member or Manager be deemed a partner or joint venturer of any other Member or Manager, for any purposes other than Federal tax purposes and, to the extent permitted, state tax purposes, and this Agreement shall not be construed to produce a contrary result.

Section 2.08 Responsibilities of Members. In connection with the Project, each of the Members agrees to further provide sufficient personnel and services to the

Company as determined, from time to time, by the Board of Managers and agreed to by the Members.

ARTICLE III

MEMBERSHIP, DISPOSITIONS OF INTERESTS

Section 3.01 Members; No Transfer. The Members of the Company are the Persons executing this Agreement as of the date hereof as Members and as appear on Exhibit A. No Member may sell, assign, give, hypothecate, pledge, encumber or otherwise transfer (any such sale, assignment, gift, hypothecation, pledge, encumbrance or other transfer being hereinafter referred to as a "**Transfer**") any Membership Interest in the Company, whether directly or indirectly, except as provided in Sections 3.02 and 3.03. Any Transfer of any Membership Interest in the Company in contravention of this Article III shall be null and void. No Member, except as provided in Sections 3.02 and 3.03 shall retire or withdraw from the Company except as a result of such Member's involuntary dissolution or final adjudication as a bankrupt. Notwithstanding the foregoing, the Members may Transfer all or any portion of their Membership Interest with the express written consent of all of the Members.

Section 3.02 Succession by Operation of Law/Permitted Transfers. Notwithstanding the provisions of Section 3.01 or 3.03, in the event of the merger, consolidation, dissolution, or liquidation of any Member, such Member's Membership Interest in the Company shall pass to such Member's legal successor, subject to the provisions of Section 3.04 hereof.

Section 3.03 Pledge, Encumbrance or Hypothecation. Notwithstanding the foregoing provisions of Section 3.01, any Member may assign, pledge, encumber or hypothecate its Membership Interest with the written consent of all Members, which consent shall not be unreasonably withheld, for the limited purpose of securing financing or refinancing for the Company's Project.

Section 3.04 Transferees. Notwithstanding anything to the contrary, any transferee of a Membership Interest in the Company shall not become a Member of the Company unless and until such transferee shall expressly assume and agree to be bound by all of the terms and conditions of this Agreement. At the request of the Board of Managers, each such transferee shall also cause to be delivered to the Company, at his or its sole cost and expense, a favorable opinion of legal counsel reasonably acceptable to the Board of Managers, to the effect that (i) such transferee has the legal right, power and capacity to own the Membership Interest proposed to be Transferred, (ii) if applicable, that such Transfer does not violate any provision of any mortgage or deed of trust encumbering all or any portion of the Company Property, (iii) if applicable, such Transfer will not cause the termination of the Company for purposes of Section 708 of the Code or that such termination will not materially adversely affect the Company or any Member. All reasonable costs and expenses incurred by the Company in connection with any Transfer of a Membership Interest and, if applicable,

the admission of a transferee as a Member hereunder, shall be paid by the transferee or the Transferor Member.

Section 3.05 Certification. The Membership Interests issued hereunder shall be certificated and shall include a legend on the face thereof referencing the restrictions created by the within Operating Agreement.

Section 3.06 Interests in a Member. A Member that is not a natural Person (the "**Breaching Member**") may not cause or permit an interest, direct or indirect, in itself to be Disposed of such that, after the Disposition, (a) the Member would be considered to have terminated within the meaning of Section 708 of the Code or (b) without the consent of the Board of Managers, that Member shall cease to be controlled by substantially the same Persons who control it as of the date of its admission to the Company, it being agreed that a sale by a Member of a controlling interest, direct or indirect, in itself to the public shall not cause that Member to become a Breaching Member. On any breach of the provisions of clause (b) of the immediately preceding sentence, the Company shall have the option to buy, and on exercise of that option the Breaching Member shall sell, the Breaching Member's Membership Interest, all in accordance with Section 11.01 as if the Breaching Member were a Bankrupt Member.

Section 3.07 Representations and Warranties. Each Member hereby represents and warrants to the Company and each other Member that (a) if that Member is a limited liability company or corporation, it is duly organized, validly existing and in good standing as a foreign corporation in the jurisdiction of its principal place of business (if not incorporated or organized therein); (b) if that Member is a partnership, trust or other entity, it is duly formed, validly existing, and in good standing under the law of the state of its formation, and if required by law is duly qualified to do business and (if applicable) in good standing in the jurisdiction of its principal place of business (if not formed therein), and the representations and warranties in clause (a), (b) or (c), as applicable, are true and correct with respect to each partner (other than limited partners), trustee or other member thereof; (c) the Member has full power and authority to execute and agree to this Agreement and to perform its obligations hereunder and all action by Persons necessary for the due authorization, execution, delivery and performance of this Agreement by that Member has been duly taken; (d) the Member has duly executed and delivered this Agreement; and (e) the Member's authorization, execution, delivery and performance of this Agreement do not conflict with any other agreement or arrangement to which that Member is a party or by which it is bound.

Section 3.08 Confidential Information. The Members acknowledge that they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member shall hold in strict confidence any information it receives regarding the Company that such Person should reasonably know to be confidential and may not disclose it to any Person, other than another Member or a Manager, except for disclosures (i) compelled by law (but the Member must notify the Company promptly of any request for that information, before disclosing

it if practicable), (ii) to advisers or representatives of the Member or Persons to which that Member's Membership Interest may be Disposed as permitted by this Agreement, but only if the recipients have agreed to be bound by the provisions of this Section, or (iii) of information that Member also has received from a source independent of the Company that the Member reasonably believes obtained that information without breach of any obligation of confidentiality to the Company. The Members acknowledge that breach of the provisions of this Section may cause irreparable injury to the Company for which monetary damages are inadequate, difficult to compute, or both. Accordingly, the Members agree that the provisions of this Section may be enforced by specific performance.

Section 3.09 Liability to Third Parties. No Member or Manager shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of court.

Section 3.10 Lack of Authority. Except as expressly set forth in this Agreement, no Member has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company, or to incur any expenditures on behalf of the Company.

Section 3.11 Withdrawal. A Member does not have the right to withdraw from the Company as a Member.

ARTICLE IV CAPITAL CONTRIBUTIONS

Section 4.01 Initial Contributions; No Further Capital Contributions. As of the date hereof, each Member has made the initial Capital Contribution described for that Member in Exhibit A. Except as expressly provided in this Agreement or with the prior written consent of the Members, no Member shall be required or entitled to contribute any other or further capital to the Company, nor shall any Member be required or entitled to loan any funds to the Company. No Member, in its capacity as such, shall be liable for the debts, liabilities, contracts or any other obligation of the Company except as otherwise specifically provided herein.

Section 4.02 Return of Contributions. A Member is not entitled to the return of any part of its Capital Contributions or to be paid interest in respect of either its Capital Account (as defined below) or its Capital Contributions. An unrepaid Capital Contribution is not a liability of the Company or of any Member. Except as otherwise provided in this Agreement, a Member is not required to contribute or to lend any cash or property to the Company to enable the Company to return any Member's Capital Contributions. No Member shall be entitled to withdraw any part of its Capital Contributions or Capital Account, or to receive any distributions from the Company, except as expressly provided for in this Agreement or under the PaBCL as then in effect.

Section 4.03 Capital Account. A "**Capital Account**" shall be established and maintained for each Member. Each Member's Capital Account (a) shall be increased by (i) the Capital Contributions made by that Member to the Company, (ii) the Fair Market Value of property contributed by that Member to the Company (net of liabilities secured by the contributed property that the Company is considered to assume or take subject to under Section 752 of the Code and net of liabilities assumed by the Company) and (iii) allocations to that Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treasury Regulation Section 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treasury Regulation Section 1.704-1(b)(4)(i) and (b) shall be decreased by (i) the amount of money distributed to that Member by the Company, (ii) the Fair Market Value of property distributed to that Member by the Company (net of liabilities secured by the distributed property that the Member is considered to assume or take subject to under Section 752 of the Code), (iii) allocations to that Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code, and (iv) allocations of Company loss and deduction (or items thereof), including loss and deduction described in Treasury Regulation Section 1.704-1(b)(2)(iv)(g), but excluding loss or deduction described in Treasury Regulation Section 1.704-1(b)(4)(i). The Members' Capital Accounts also shall be maintained and adjusted as permitted by the provisions of Treasury Regulation Section 1.704(1)(b)(2)(iv)(f) and as required by the other provisions of Treasury Regulation Section 1.704-1(b)(2)(iv) and 1.704-1(b)(4), including adjustments to reflect the allocations to the Members of depreciation, depletion, amortization and gain or loss as computed for book purposes rather than the allocation of the corresponding items as computed for tax purposes, as required by Treasury Regulation Section 1.704-1(b)(2)(iv)(g). After the transfer of all or part of a Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest thereof shall carry over to the transferee Member in accordance with the provisions of Treasury Regulation Section 1.704-1(b)(2)(iv)(1).

ARTICLE V

ALLOCATIONS AND DISTRIBUTIONS

Section 5.01 Allocations. Profits and Losses of the Company shall be determined and allocated with respect to each Fiscal Year of the Company as of the end of such year. Subject to the provisions of Article V, an allocation to a Member of a share of Profits and Losses shall be treated as an allocation of the same share of each item of income, gain, loss and deduction taken into account in computing Profits and Losses.

(a) **Allocation of Profits.** After giving effect to any Special Allocations required by Section 5.02, the Company's Profits for a Fiscal Year, including the Fiscal Year in which the Company is dissolved, will be allocated among the Members as follows:

- (i) First, to the Members pro rata in accordance with each Member's respective Sharing Ratio until (a) the cumulative Profits allocated pursuant to this Section for the current and all prior Fiscal Years, equals (b) the cumulative Losses allocated to the Members pursuant to Section 5.01(b) for all prior Fiscal Years;
- (ii) Thereafter, pro rata in accordance with each Member's respective Sharing Ratio.

(b) **Allocation of Losses.** After giving effect to the Special Allocations set forth in Section 5.02, Losses for a Fiscal Year, including the Fiscal Year in which the Company is dissolved, will be allocated among the Members as follows:

- (i) First, to the Members pro rata in accordance with each Member's respective Sharing Ratio until the cumulative Losses allocated pursuant to this Section 5.01.(b)(i) for the current and all prior Fiscal Years are equal to the cumulative Profits allocated to the Members pursuant to Section 5.01(a) for all prior Fiscal Years;
- (ii) Thereafter, pro rata in accordance with each Member's respective Sharing Ratio.

Section 5.02 Special Allocations. Notwithstanding any other provision in Section 5.01 to the contrary, in order to comply with the rules set forth in the regulations under Section 704(b) of the Code for (1) allocations of income, gain, loss and deductions attributable to nonrecourse liabilities, and (2) allocations where Members are not liable to restore deficit Capital Accounts, the following rules shall apply:

(a) "Member nonrecourse deductions" as described and defined in Treasury Regulation Section 1.704-2(i)(1) and (2) (and referred to therein as "**Partner Nonrecourse Deductions**") attributable to a particular "member nonrecourse liability" (as defined in Treasury Regulation Section 1.704-2(b)(4) as "partner nonrecourse liability", e.g., a loan to the Company by a Member) shall be allocated among the Members in the ratio in which the Members bear the economic risk of loss with respect to such liability;

(b) Items of Company gross income and gain shall be allocated among the Members to the extent necessary to comply with the minimum gain chargeback rules for nonrecourse liabilities set forth in Treasury Regulation Sections 1.704-2(f) and 1.704-2(1)(4); and

(c) Items of Company gross income and gain shall be allocated among the Members to the extent necessary to comply with the qualified income offset provisions set forth in Treasury Regulation Section 1.704-1(b)(2)(ii)(d), relating to unexpected deficit Capital Account balances (after taking into account all Capital Account adjustments prescribed in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)).

Since the allocations set forth in this Section 5.02 (the "**Regulatory Allocations**") may effect results not consistent with the manner in which the Members intend to divide Company distributions, the Members hereby agree to divide other allocations of income, gain, loss and deductions among the Members so as to prevent the Regulatory Allocations from distorting the manner in which distributions would be divided among the Members under Section 5.01, but for application of the Regulatory Allocations.

(d) In accordance with Section 704(c) of the Code and the regulations thereunder, items of income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for Federal income tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of such property for Federal income tax purposes and its fair market value, as recorded on the books of the Company using the remedial method set forth in Treasury Regulation Section 1.704-3(d). As provided in Treasury Regulation Section 1.704-1(b)(2)(iv)(f), in the event that the Capital Accounts of the Members are adjusted to reflect the revaluation of the Company property on the Company's books, then subsequent allocations of items of income, gain, loss and deduction with respect to such property shall take into account any variation between the adjusted basis of such property for Federal income tax purposes and its adjusted fair market value, as recorded on the Company's books using the remedial method set forth in Treasury Regulation Section 1.704-3(d). Allocations under this paragraph shall be made in accordance with Treasury Regulation Section 1.704-1(b)(4)(i) and, consequently, shall not be reflected in the Members' Capital Accounts and shall not affect distributions of the Company.

Section 5.03 Sharing Ratios. The Members will each have the initial Sharing Ratios in the Company as set forth in Exhibit A hereto.

Section 5.04 Distributions. Distributable Cash shall be distributed by the Board of Managers in the following order and priority:

(a) First, Project development fees, as permitted by parties financing the Project ("**Developers' Fees**"), shall be distributed to the Members, immediately after the sale of any portion of the Project by the Company, according to their Sharing Ratios to the extent funds are available.

(b) Second, Distributable Cash, if any, shall be distributed annually by the Company to the Members in an amount equal to the highest combined marginal federal, state and local tax rate of any Members multiplied by, for each Member, the Company's taxable income allocable to such Member (the "**Member Tax Distribution**").

(c) Third, pro rata in accordance with each Member's respective Sharing Ratio within three months of the conclusion of the Fiscal Year in which the Project by the

Company in the Central Northside neighborhood of the City of Pittsburgh has been completed and annually thereafter.

Section 5.05 Limitations on Distributions.

(a) The Company may be restricted from making distributions under the terms of notes, mortgages or other agreements or instruments to which it may be a party or which it may issue or assume in conjunction with the business of the Company as herein contemplated, and distributions may also be restricted or suspended in circumstances when the Board of Managers determine that such action is in the best interests of the Company.

(b) All distributions are subject to payment of Company expenses and to the maintenance of such reserves ("**Working Capital Reserves**") as the Board of Managers deems necessary, desirable or appropriate for operating expenses, repairs, maintenance, replacements, debt service, taxes, utilities, contingencies and capital additions and improvements of or relating to any Company Assets or the business of the Company as well as completion of construction projects contemplated by the Company.

**ARTICLE VI
MANAGEMENT**

Section 6.01 Management by Managers.

(a) **Exclusive Responsibility.** The business and affairs of the Company shall be managed by or under the direction of the Managers. A Member, as such, shall not take part in, or interfere in any manner with, the management, conduct, or control of the business and affairs of the Company, and shall not have any right or authority to act for or bind the Company. The Company may act only by actions taken by or under the direction of the Board of Managers in accordance with this Agreement.

(b) **Authority and Duty of Managers.** Except as otherwise provided by resolution adopted by the Board of Managers, the Managers may act only collectively as a board and by resolution duly adopted. Individual Managers shall have only such authority and perform such duties as the Board of Managers may, from time to time, delegate to them.

(c) **Limitation on Authority.** The Managers have no authority to engage in any of the following acts unless the act was approved in advance by action of the Members:

- (i) To sell, lease, exchange, mortgage, pledge, or otherwise transfer or dispose of all or substantially all of the property or assets of the Company;

- (ii) To merge the Company with any other Entity;
- (iii) To amend the Certificate of the Company;
- (iv) To incur indebtedness by the Company other than in the ordinary course of business;
- (v) To authorize a transaction involving an actual or potential conflict of interest between a Member or a Manager and the Company;
- (vi) To change the nature of the business of the Company;
- (vii) Following completion of construction of Project, to construct any new capital improvements, or to replace any existing capital improvements if construction or replacement would substantially alter the use of the Project;
- (viii) To acquire any real property;
- (ix) To cause the Company to make any loan or advance to any Person in an amount in excess of \$5,000.00;
- (x) To sell, lease, or otherwise convey the Project or any portion thereof, except for (A) sales of housing units to third parties for prices within ranges previously approved by all of the Members and (B) grants of easements and similar rights to obtain utility services for the Project or for other purposes necessary or convenient for the construction or operation of the Project, or
- (xi) To commence a voluntary bankruptcy case for the Company.

The Managers may, but are not required to, refer any other matter to a vote of the Members.

(d) **Non-exclusive Service.** The Managers need not devote services to the Company on a substantially full-time basis and need only devote so much time to the Company's activities as the Board of Managers determines to be necessary for the efficient conduct thereof, except to the extent otherwise required by a separate employment or other agreement the execution of which by the Company was authorized by vote of the Members, excluding the affected Manager if a Member, or by vote of disinterested Managers.

Section 6.02 Number and Term of Office of Managers; Qualifications.

(a) **Election of Managers.** The Managers shall be designated by the Members.

(b) **Number of Managers.** Subject to Section 6.03, the number of Managers of the Company shall be at least five (5), but no more than seven (7).

(c) **Term of Office.** Each Manager shall hold office for a term of three (3) years and until his or her successor shall have been designated and qualified, or until his or her earlier death, resignation, or removal.

6.03 Voting Agreement as to Election of Managers. For so long at Company is in existence, each Member shall vote its Membership Interest, and will take all other necessary or desirable actions within its control, in order to cause the following:

(a) The number of Managers constituting the Board of Managers to be set at five (5). The Board of Managers may expand the number of Managers to seven (7) if, at its sole discretion, the Board of Managers determines that such expansion is needed or desirable for the sound operation of the Company;

(b) The designation to the Board of Managers of:

(i) Three (3) Managers designated by CNNC.

(ii) Two (2) Managers designated by NSLC.

(iii) In the event the Board of Managers exercises its right to expand the number of Managers pursuant to subsection 6.03(a) above, then four (4) Managers shall be designated by CNNC and three (3) designated by NSLC.

(c) Each of CNNC and NSLC, respectively, shall have the right (i) to remove, with cause and by a 2/3 vote of its board of directors, any Manager designated by such Member in accordance with this Section 6.03, and (ii) to designate any replacement for a Manager nominated by such Member in accordance with this Section 6.03 upon the death, resignation, retirement, disqualification or removal from office of such Manager.

(d) The provisions of this Section 6.03 shall terminate automatically and be of no further force and effect at such time as CNNC no longer holds at least 51% of the Sharing Ratios.

Section 6.04 Officers; Delegation and Duties. The Company shall have such officers, other employees and agents as shall be necessary or desirable to conduct its business. All officers of the Company must be members of the Board of Managers. The Board of Managers may assign titles to the officers they elect. Unless the Board of Managers decides otherwise, if the title is one commonly used for officers of a business corporation, the assignment of that title shall constitute the delegation of the authority and duties that are normally associated with that office, subject to any specific delegation of authority and duties made by the Board of Managers. Any number of

offices may be held by the same Manager. The Managers serving as officers shall serve without compensation for their services as officers, but they may be reimbursed for all expenses reasonably incurred on behalf of the Corporation.

Section 6.05 Vacancies; Removal; Resignation.

(a) **Vacancies.** Any vacancy occurring in the Board of Managers may be filled by designation by the Member whose ratio is negatively affected by such vacancy. Any vacancy occurring in the Board of Managers may also be filled by action of the Managers at any regular or special meeting of the Board of Managers. A Manager elected to fill a vacancy shall be designated for the unexpired term of his or her predecessor in office.

(b) **Resignation of Managers.** Any Manager may resign at any time. A resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the remaining Managers or, in the case of the resignation of the last Manager, by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 6.06 Meetings of Board of Managers.

(a) **Quorum; Manner of Acting.** Unless otherwise provided in the Certificate or this Agreement, a majority of the Managers in office shall constitute a quorum for the transaction of business by the Board of Managers, and the act of a majority of the Managers present at a meeting at which a quorum is present shall be the act of the Board of Managers. A Manager who is present at a meeting of the Board of Managers at which action on any matter is taken shall be presumed to have assented to the action unless his or her dissent is entered in the minutes of the meeting or unless he or she files written dissent to the action with the secretary of the meeting before the adjournment thereof or delivers the dissent to the Company immediately after the adjournment of the meeting. The right to dissent shall not apply to a Manager who voted in favor of the action.

(b) **Location.** Meetings of the Board of Managers may be held at such place or places within the City of Pittsburgh as shall be determined from time to time by the Board of Managers.

(c) **Waiver of Notice.** A waiver of notice of a meeting signed by the Manager entitled to the notice, whether before or after the meeting, shall be deemed equivalent to the giving of the notice. Attendance of a Manager at a meeting constitutes a waiver of notice of the meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(d) **Annual Meeting.** In connection with any annual meeting of Members for the election of Managers, the Board of Managers may, if a quorum is present, hold a meeting for the transaction of business immediately after and at the same place as the annual meeting of the Members. Notice of the meeting at that time and place shall not be required.

(e) **Regular Meetings.** Regular meetings of the Board of Managers shall be held at such times and places within the City of Pittsburgh as shall be designated from time to time by the Board of Managers. Notice of regular meetings shall not be required.

(f) **Special Meetings.** Special meetings of the Board of Managers may be called at a reasonable time and place within the City of Pittsburgh by any two (2) Managers with at least three (3) days written notice to each other Manager. The notice must state the purpose of the meeting and limit the business conducted at said meeting to the purpose stated within the notice.

Section 6.07 Action by Consent or Remote Conference.

(a) **Action by Consent.** Any action required or permitted to be taken at a meeting of the Board of Managers may be taken without a meeting if, prior or subsequent to the action, a consent or consents thereto by all of the Managers in office is filed with the records of the Company. The consents shall be in writing or in electronic form.

(b) **Remote Participation.** One or more Managers may participate in a meeting of the Board of Managers or a committee of the Board of Managers by means of conference telephone or other electronic technology by means of which all Persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting.

Section 6.08 Compensation of Managers. The members of the Board of Managers shall serve without compensation for their services as Managers, but they may be reimbursed for all expenses reasonably incurred on behalf of the Corporation..

Section 6.09 Conflicts of Interest.

(a) **Other Business Opportunities.** Subject to the other express provisions of this Agreement, each Manager of the Company at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, independently or with others, except ones in competition with the Company, with no obligation to offer to the Company or any Member or Manager the right to participate therein.

(b) **Interested Transactions.** A contract or transaction between the Company and one or more of its Managers or officers or between the Company and

another domestic or foreign association in which one or more of its Managers or officers have a management role or a financial or other interest, shall not be void or voidable solely for that reason, or solely because the Manager or officer is present at or participates in the meeting of the Board of Managers that authorizes the contract or transaction, or solely because the vote of the Manager or officer is counted for that purpose, if:

- (i) the material facts as to the relationship or interest and as to the transaction are disclosed or known to the Board of Managers and the Board of Managers authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Managers even though the disinterested Managers are less than a quorum;
- (ii) the material facts as to the relationship or interest and as to the transaction are disclosed or known to the Members entitled to vote thereon and the contract or transaction is specifically approved in good faith by vote of those Members; or
- (iii) the contract or transaction is fair to the Company as of the time it is authorized, approved, or ratified by the Board of Managers or the Members.

Section 6.10 Committees.

(a) **Establishment.** The Board of Managers may designate one or more committees, each committee to consist of one or more Managers. The provisions of this Agreement relating to meetings of the Board of Managers and the procedures for taking action by the Board of Managers shall also apply to committees of the Board of Managers.

(b) **Alternate Committee Members.** The Board of Managers may designate one or more Managers as alternate members of any committee of the Board of Managers, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another Manager to act at the meeting in the place of the absent or disqualified member.

(c) **Authority.** A committee, to the extent provided by the Board of Managers, shall have and may exercise all the powers and authority of the Board of Managers in the management of the business and affairs of the Company, except that a committee shall not have any power or authority as to the following:

- (i) the submission to the Members of any action requiring approval by the Members under the Act or this Agreement,

- (ii) the creation or filling of vacancies in the Board of Managers,
- (iii) the amendment of the Certificate or this Agreement,
- (iv) the amendment or repeal of any resolution of the Board of Managers that by its terms is amendable or repealable only by action of all of the Managers then in office, or
- (v) action on any matter committed exclusively to another committee of the Board of Managers.

Section 6.11 Limitation of Liability. A Manager shall not be personally liable, as such, for monetary damages (other than under criminal statutes and under federal, state, and local laws imposing liability on managers for the payment of taxes) for any action taken, or any failure to take any action, unless the person's conduct constitutes self-dealing, willful misconduct, or recklessness. No amendment or repeal of this section shall apply to or have any effect on the liability or alleged liability of any person who is or was a Manager of the Company for or with respect to any acts or omissions of the Manager occurring prior to the effective date of such amendment or repeal. If the Act is amended to permit a Pennsylvania limited liability company to provide greater protection from personal liability for its managers than the express terms of this section, this section shall be construed to provide for such greater protection.

Section 6.12 Advisory Board.

(a) Designation. Each Member may, at its sole discretion, appoint an advisory board to consult with and advise the Managers designated by said respective Member on all issues, decisions and and/or actions of Company.

(b) Requirement to Consult. The Board of Managers shall, upon request from any Advisory Board, meet with that Advisory Board within 30 days of a request made in writing to the Board of Managers. Each Advisory Board may not make more than 2 such requests per year. Similarly, an Advisory Board shall, upon request from the Board of Managers, meet with said Board of Managers within 30 days of a request made in writing to said Advisory Board. Any and all requests for meeting made pursuant to this subsection shall set forth the time and place, which shall not be outside the City of Pittsburgh, for said meeting.

**ARTICLE VII
MEETINGS OF MEMBERS**

Section 7.01 Meetings.

(a) A quorum shall be present at a meeting of Members if the holders of a Required Interest are represented at the meeting in person or by proxy. Except as

otherwise provided in this Agreement, the affirmative vote of a Required Interest at a meeting of Members at which a quorum is present shall be the act of the Members.

(b) All meetings of the Members shall be held at the principal place of business of the Company or at such other place within the City of Pittsburgh as shall be specified or fixed in the notices or waivers of notice thereof; provided that any or all Members may participate in any such meetings by means of conference telephone or similar communications equipment pursuant to Section 7.04.

(c) The chairman of the meeting or the holders of a Required Interest shall have the power to adjourn such meeting from time to time, without any notice other than announcement at the meeting of the time and place of the holding of the adjourned meeting. If such meeting is adjourned by the Members, such time and place shall be determined by a vote of the holders of a Required Interest or, if not so deferred, shall be the fifth (5th) business day following such adjournment at the Company's principal offices. Upon the resumption of such adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called.

(d) An annual meeting of the Members for the transaction of such business as may properly come before the meeting, shall be held at such place, within the City of Pittsburgh, on such date and at such time as the Board of Managers shall fix and set forth in the notice of the meeting which date shall be within (13) months subsequent to the date of organization of the Company or the last annual meeting of Members, whichever most recently occurred.

(e) Special meetings of the Members for any proper purposes may be called within the City of Pittsburgh at any time by the Board of Managers or the holders of at least twenty percent of the Sharing Ratios of all Members. If not otherwise stated in or fixed in accordance with the remaining provisions hereof, the record date for determining Members entitled to call a special meeting is the date any Member first signs the notice of such meeting. Only business within the purposes described in the notice (or waiver thereof) required by this Agreement may be conducted at a special meeting of the Members.

(f) Written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than three (3) nor more than sixty (60) days before the date of the meeting, either personally, by telecopy or by mail, by or at the direction of the Board of Managers or Members calling the meeting pursuant to Section 7.01(e), to each Member entitled to vote at such meeting. If delivered personally or by telecopy such notice shall be deemed to be delivered on the day delivered or telecopied. If mailed, any such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Member at such Member's address provided for in Section 14.02, with postage thereon prepaid.

(g) The date on which notice of a meeting of Members is delivered or the date on which the resolution of the Board of Managers declaring a distribution is adopted, as the case may be, shall be the record date for the determination of the Members entitled to notice of or vote at such meeting, including any adjournment thereof, or the Members entitled to receive such distribution.

Section 7.02 Proxies. A Member may vote either in person or by proxy executed in writing by the Member. A telegram, telex, cablegram or similar transmission by the Member or a photographic, photostatic, facsimile or similar reproduction of a writing executed by the Member shall be treated as an execution in writing for purposes of this Section. A proxy shall be revocable unless the proxy form conspicuously states that the proxy is irrevocable.

Section 7.03. Conduct of Meetings. All meetings of the Members shall be presided over by the chairman of the meeting. If such Person is not present, the Members shall select an alternative chairman of the meeting. The chairman of any meeting of Members shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion as seem to him in order.

Section 7.04 Action by Written Consent or Telephone Conference.

(a) Any action required or permitted to be taken at any annual or special meeting of Members may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of a Required Interest.

(b) The record date for determining Members entitled to consent to action in writing without a meeting shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Company by delivery to its registered office, its principal place of business. Delivery shall be by hand or by certified or registered mail, return receipt requested or by telegraph or telecopy. Delivery to the Company's principal place of business shall be addressed to the Board of Managers.

(c) If any action by Members is taken by written consent, any articles or documents filed with the Pennsylvania Department of State as a result of the taking of the action shall state, in lieu of any statement required by the PaBCL concerning any vote of Members, that written consent has been given in accordance with the provisions of the PaBCL and that any written notice required by the PaBCL has been given.

(d) Members may participate in and hold a meeting by means of conference telephone or similar communications equipment by means of which all Persons participating in the meeting can hear each other, and participation in such meeting shall constitute attendance and presence in person at such meeting, except where a Person

participates in the meeting for the express purpose of objection to the transaction of any business on the ground that the meeting is not lawfully called or convened.

ARTICLE VIII INDEMNIFICATION

Section 8.01 Right to Indemnification. Subject to the limitations and conditions as provided in this Article, each Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "**Proceeding**"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or a Person of whom he is the legal representative, is or was a Manager of the Company or while a Manager of the Company is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Company to the fullest extent permitted by the PaBCL, as the same exist or may hereafter be amended, against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees and related defense costs) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article shall be deemed contract rights and no amendment, modification or repeal of this Article shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article could involve indemnification for negligence or under theories of strict liability but may not extend to any matter for which indemnification is precluded by Section 8945(b) of the PaBCL.

Section 8.02 Advance Payment. The right to indemnification conferred in this Article shall include the right to be paid or reimbursed by the Company for the reasonable expenses incurred by a Person of the type entitled to be indemnified under Section 8.01 who was, is or is threatened to be made named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the Persons' ultimate entitlement to indemnification; provided, however, that the payment of such expense incurred by any such Person in advance of final disposition of a Proceeding, shall be made only upon delivery to the Company of a written affirmation by such Person of his good faith belief that he has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such Person is not entitled to be indemnified under this Article or otherwise.

Section 8.03 Indemnification of Employees and Agents. The Company, by adoption of a resolution of the Board of Managers, may indemnify and advance expenses to an employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Managers under this Article; and, the Company may indemnify and advance expenses to Persons who are not or were not Managers, employees or agents of the Company but who are or were serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a Person to the same extent that it may indemnify and advance expenses to Managers under this Article.

Section 8.04 Appearance as a Witness. Notwithstanding any other provision of this Article, the Company shall pay or reimburse expenses incurred by a Manager in connection with his appearance as a witness or other participation in a Proceeding involving the Company at a time when he is not a named defendant or respondent.

Section 8.05 Nonexclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article shall not be exclusive of any other right which a Manager or other Person indemnified pursuant to Section 8.03 may have or hereafter acquire under any law, provision of the Certificate or this Agreement, other agreements, vote of Members or disinterested Managers or otherwise.

Section 8.06 Insurance. The Company may purchase and maintain insurance, at its expense, to protect itself and any Person who is or was serving as a Manager, employee or agent of the Company or is or was serving at the request of the Company as a Manager, director, officer, partner, venturer, proprietor, trustee employee, agent, or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article.

Section 8.07 Member Notification. To the extent required by law, any indemnification of or advance of expenses to a Manager in accordance with this Article shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the twelve (12) month period immediately following the date of the indemnification or advance.

Section 8.08 Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, the Company shall

nevertheless indemnify and hold harmless each Manager or any other Person indemnified pursuant to this Article as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 8.09 Limitation on Liability. No Manager shall be personally liable for any action taken unless: (i) such Manager breached or failed to perform the duties of his office; and (ii) the breach or failure to perform constituted self-dealing, gross negligence, willful misconduct, or recklessness. The foregoing shall not apply to any responsibility or liability under a criminal statute or liability for the payment of taxes under Federal, state or local law.

Section 8.10 Notice and Control of Litigation. If any claim is asserted in writing against a party entitled to indemnification under this Article (the "**Indemnified Party**") which would give rise to a claim under this Article, the Indemnified Party shall notify the Person providing the indemnity ("**Indemnifying Party**") in writing of the same within fifteen (15) days of receipt of such written assertion of a claim. The Indemnifying Party shall have the right to defend a claim and control the defense, settlement and prosecution of any litigation. If the Indemnifying Party, within ten (10) days after notice of such claim, fails to defend such claim, the Indemnified Party will (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such claim at any time prior to settlement, compromise or final determination thereof. Anything in this Section notwithstanding, (i) if there is a reasonable probability that a claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right, at its own cost and expense, to defend, compromise and settle such claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party settle or compromise any claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant to the Indemnified Party a release from all liability in respect to such claim. All parties agree to cooperate fully as necessary in the defense of such matters. Should the Indemnified Party fail to notify the Indemnifying Party in the time required above, this indemnity shall terminate and be of no further force and effect with respect to the subject matter of the required notice but only to the extent that the Indemnified Party's failure to notify in the time required above materially adversely affects the Indemnifying Party's ability to defend such matter.

ARTICLE IX TAXES

Section 9.01 Tax Returns. The Tax Matters Partner, with the cooperation of the Board of Managers, shall cause to be prepared and filed all necessary federal and state income tax returns for the Company, including making the elections described in Section 9.02. Each Member shall furnish to the Tax Matters partner all pertinent information in its possession relating to Company operations that is necessary to enable the Company's income tax returns to be prepared and filed. A copy of each such return shall be furnished to each of the Members.

Section 9.02 Tax Elections. To the extent permitted by applicable tax law, the Company shall make the following elections on the appropriate tax returns:

(a) To elect to be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of a U.S. Partnership Return of Income shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Members;

(b) To adopt the accrual method of accounting;

(c) If a transfer of a Membership Interest as described in Section 743 of the Code occurs, on written request of any transferee Member, or if a distribution of Company property is made on which gain described in Section 734(b)(1)(A) of the Code is recognized or there is an excess of adjusted basis as described in Section 734(b)(1)(B) of the Code, to elect, pursuant to Section 754 of the Code;

(d) Any other election CNNC and/or NSLC, with the consent of the Board of Managers may deem appropriate and in the best interests of the Members.

Neither the Company nor any Manager or Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law, and no provision of this Agreement (including, without limitation, Section 2.07) shall be construed to sanction or approve such an election.

Section 9.03 Tax Matters Partner. NSLC shall be the "Tax Matters Partner," within the meaning of Section 6231(a)(7) of the Code and shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code. Any Member who is designated Tax Matters Partner shall inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Partner by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity. Any Member who is designated Tax Matters Partner may not take any action contemplated by Sections 6222 through 6232 of the Code without consent of a Required Interest, and this sentence does not authorize such Tax Matters Partner to take any action left to the determination of an individual Member under Sections 6222 through 6232 of the Code.

ARTICLE X
BOOKS, RECORDS, REPORTS AND BANK ACCOUNTS

Section 10.01 Maintenance of Books. The Company shall keep or, cause to be kept in reasonable detail books and records of account of the Company's business. Such books and records of account shall be maintained at the principal place of business of the Company or such other place or places as may be determined by the Board of Managers from time to time. Each Member or its duly authorized representative shall have the right to inspect, examine and copy such books and records of account at the Company's office during reasonable business hours. A reasonable charge for copying books and records may be charged by the Company.

Section 10.02 Accounting and Fiscal Year. Books of account for the Company shall be maintained on an accrual basis. The Fiscal Year of the Company shall end on December 31 of each year, unless otherwise required by law.

Section 10.03 Reports.

(a) The Board of Managers shall prepare for each Fiscal Year, and shall cause to be delivered to the Members within the time provided for filing of tax returns in Section 10.03(c) after the end of the Company Fiscal Year, at the Company's expense, an annual report which shall include: (i) an unaudited balance sheet and statements of income or loss, Members' equity and a cash flow statement prepared in accordance with generally accepted accounting principles, (ii) Company information necessary in the preparation of the Members' federal and state income tax returns, including a reconciliation of the differences between income determined in accordance with generally accepted accounting principles and income for federal income tax purposes, and (iii) an unaudited statement of cash distributions and the sources thereof for such Fiscal Year.

(b) The Board of Managers shall prepare, at the Company's expense, quarterly reports for the first three quarters of each fiscal year, which shall include unaudited financial statements (including a balance sheet, statement of income or loss and a cash flow statement for the relevant period). Copies of such report shall be distributed to each Member within 45 calendar days after the end of each of the first three fiscal quarters of each fiscal year.

(c) The Board of Managers, at the Company's expense, shall cause income tax returns for the Company to be prepared and timely filed, including any allowed extensions, with the appropriate authorities. A copy of such returns shall be furnished to each Member promptly following the filing thereof.

Section 10.04 Bank Accounts. The Board of Managers shall, on behalf of the Company, open and maintain such bank accounts for the Company as shall be deemed

necessary and all funds of the Company shall be kept in such accounts. All withdrawals from, or transactions relating to, such accounts shall be made by the Board of Managers subject to the terms hereof, and all funds shall be disbursed from such accounts in accordance with this Agreement.

ARTICLE XI BANKRUPTCY OF A MEMBER; DISPUTE RESOLUTION

Section 11.01 Bankrupt Members. If any Member becomes a Bankrupt Member, the Company shall have the option, exercisable by notice from the Board of Managers to the Bankrupt Member (or its representative) at any time prior to the 180th day after receipt of notice of the occurrence of the event causing it to become a Bankrupt Member, to buy, and the Bankrupt Member or its representative shall sell, its Membership Interest. The purchase price shall be an amount equal to the Fair Market Value thereof. The Bankrupt Member and the Company each shall pay one-half of the costs of the appraisal. The Company shall pay the Fair Market Value as so determined in four equal cash installments, the first due on closing and the remainder (together with accumulated interest on the amount unpaid at the General Interest Rate) due on each of the first three anniversaries thereof. The payment to be made to the Bankrupt Member or its representative pursuant to this Section is in complete liquidation and satisfaction of all of the rights and interest under the Bankrupt Member and its representative) in and in respect to the Company, including without limitation, any Membership Interest, any rights in specific Company property, and any rights against the Company and (insofar as the affairs of the Company are concerned) against the Members.

Section 11.02 Dispute Resolution.

(a) This Section concerns the resolution of any controversies or claims among the Managers, and between Members, whether arising in contract, tort or by statute, including but not limited to controversies or claims that arise out of or relate to: (i) this Agreement (including any modifications); or (ii) any document related to this Agreement; (collectively a "**Claim**"); or (iii) the management and operation of the Company.

(b) At the request of any party identified in subsection (a) above, any claim shall be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U. S. Code) (the "**Arbitration Act**"). The act will apply even though this agreement provides that it is governed by the law of a specified state.

(c) Arbitration proceedings will be determined in accordance with the Arbitration Act, the streamlined arbitration rules and procedures for commercial disputes of Judicial Arbitration and Mediation Services, Inc. or any successor thereof ("**J.A.M.S**"), and the terms of this Section. In the event of any inconsistency, the terms of this Section shall control.

(d) The arbitration shall be administered by J.A.M.S and conducted in Pittsburgh, Pennsylvania. All claims shall be determined by one arbitrator; however, if claims exceed \$5,000,000, upon the request of any party, the claims shall be decided by three arbitrators. All arbitration hearings shall commence within 60 days of the demand for arbitration and close within 30 days of commencement and the award of the arbitrator(s) shall be issued within 30 days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional 60 days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and enforced.

(e) The arbitrator(s) will have the authority to decide whether any claim is barred by the statute of limitations and, if so, to dismiss the arbitration on that basis. For purposes of the application of the statute of limitations, the service on J.A.M.S. Under applicable J.A.M.S Rules of a notice of claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a claim is arbitrable shall be determined by the arbitrator(s). The arbitrator(s) shall have the power to award legal fees and expenses pursuant to the terms of this agreement.

(f) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any claim. Furthermore, without intending in any way to limit this agreement to arbitrate, to the extent any claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such claim. This provision is a material inducement for the parties entering into this agreement.

ARTICLE XII DISSOLUTION, LIQUIDATION AND TERMINATION

Section 12.01 Dissolution. The Company shall be dissolved and its business wound up upon the happening of any of the following events, whichever shall first occur:

- (a) the sale, condemnation or other disposition of all or substantially all of the Company Assets and the receipt of all consideration therefor;
- (b) the expiration of the period set forth in Section 2.06;
- (c) the entry of a decree of judicial dissolution of the Company under Section 8972 of the PaBCL; or
- (d) the election by a Manager, with the required consents, to terminate the Company.

None of the events listed in Section 8971(a)(4) of the PaBCL shall cause the dissolution of the Company.

Section 12.02 Termination. In all cases of dissolution of the Company the business of the Company shall be wound up and the Company terminated as promptly as practicable thereafter, and each of the following shall be accomplished:

(a) The Liquidating Member (as defined in Section 12.03) shall cause to be prepared a statement setting forth the assets and liabilities of the Company as of the date of dissolution, a copy of which statement shall be furnished to all of the Members.

(b) The Property and assets of the Company shall be liquidated by the Liquidating Member as promptly as possible, but in an orderly and businesslike and commercially reasonable manner. The Liquidating Member may distribute Property and assets of the Company in kind only with the unanimous consent of the Members.

(c) Any gain or loss realized by the Company upon the sale of its property and assets shall be allocated to the Members in the manner set forth in Article V hereof.

(d) The proceeds of sale and all other assets of the Company shall be applied and distributed upon liquidation as follows and in the following order of priority:

- (i) To the payment of (x) the debts and liabilities of the Company (including Default Loans and any outstanding amounts due on any indebtedness encumbering the assets or properties of the Company, or any part thereof as well as the recoverable portion of grants) and (y) the expenses of liquidation.
- (ii) To the setting up of any reserves which the Liquidating Member shall determine to be reasonably necessary for contingent, unliquidated or unforeseen liabilities or obligations of the Company or any Member arising out of or in connection with the Company. Such reserves may, in the discretion of the Liquidating Member, be paid over to a national bank or national title company selected by it and authorized to conduct business as an escrowee to be held by such bank or title company as escrowee for the purposes of disbursing such reserves to satisfy the liabilities and obligations described above, and at the expiration of such period as the Liquidating Member may reasonably deem advisable, distributing any remaining balance as provided in clause (iii) below; provided, however, that, to the extent that it shall have been necessary, by reason of applicable law or regulation, to create any reserves prior to any and all distributions which would otherwise have been made under this subsection (d) and, by reason thereof, a distribution under clause (i) hereof has not been made, then any balance remaining shall first be distributed pursuant to clause (i) hereof.
- (iii) To the Members in the amount of their respective Capital Accounts.

- (iv) The balance, if any, to the Members, in accordance with and pursuant to the distribution provisions set forth in Article V.

Section 12.03 Liquidating Member.

(a) The term "**Liquidating Member**" shall mean CNNC or such other Member that may be appointed by the Board of Managers.

(b) The Liquidating Member is hereby irrevocably appointed as the true and lawful attorney in the name, place and stead of each of the Members, 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 XII. Notwithstanding the foregoing, each Member, upon the request of the Liquidating Member, shall promptly execute, acknowledge and deliver all such documents, certificates and other instruments as the Liquidating Member shall reasonably request to effectuate the proper dissolution and termination of the Partnership, including the winding up of the business of the Partnership. If the Liquidating Partner consists of more than one Person, then any act by the Liquidating Partner shall require the consent of all such Persons. It is understood that any liquidation of the Company will be undertaken with consideration of the purpose of the formation of the Company, specifically to develop and improve the Central Northside neighborhood of the City of Pittsburgh, Pennsylvania, and that the Liquidating Member shall continue that purpose in the manner of liquidation.

Section 12.04 Certificate of Dissolution. On completion of the distribution of Company assets as provided herein, the Company is terminated, and the Board of Managers (or such other Person or Persons as the PaBCL may require or permit) shall file a Certificate of Dissolution with the Pennsylvania Department of State, cancel any other filings made pursuant to Section 2.05, and take such other actions as may be necessary to terminate the Company.

**ARTICLE XIII
GENERAL PROVISIONS**

Section 13.01 Offset. Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

Section 13.02 Notice. Except as expressly set forth to the contrary in this Agreement, all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be given either by depositing that writing in the United States mail, addressed to the recipient, postage paid and registered or certified with return receipt requested or by delivering that writing to the recipient in person, by courier or by facsimile transmission; and a notice, request or consent given

under this Agreement is effective upon the receipt by the Person to receive it. All notices, requests and consent to be sent to a Member must be sent to or made at the addresses given for that Member on Exhibit A, or such other address as that Member may specify by notice to the other Members. Any notice, request or consent to the Company or the Board of Managers must be given to the Managers at the principal office of the Company.

Whenever any notice is required to be given by law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 13.03 Entire Agreement; Successors and Assigns. This Agreement constitutes the entire agreement of the Members relating to the Company. This Agreement shall be binding upon the parties hereto and their respective executors, administrators, legal representatives, heirs, permitted successors and assigns, and shall inure to the benefit of the parties hereto and, except as otherwise provided herein, their respective executors, administrators, legal representatives, heirs, successors and assigns.

Section 13.04 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach of default in the performance by that Person of the same or any other obligations of that Person with respect to the Company.

Section 13.05 Amendment or Modifications. This Agreement may be amended or modified from time to time only by a writing adopted by a Required Interest; provided, however that (a) an amendment or modification regarding a Member's Sharing Ratio or increasing its Capital Contribution (other than to reflect changes otherwise provided by this Agreement) is effective only with that Member's consent, (b) an amendment or modification reducing the required Sharing Ratio, Required Interest or other measure for any consent or vote in this Agreement is effective only with the consent or vote of Members having the Sharing Ratio, Required Interest or other measure required.

Section 13.06 Binding Act. Subject to the restrictions on Dispositions set forth in this Agreement, this Agreement is binding on and inures to the benefit of the Members and their respective heirs, legal representatives, successors and assigns.

Section 13.07 Governing Law; Severability. This Agreement is governed by and shall be construed in accordance with the Laws of Pennsylvania, excluding any conflict-of-laws rule. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other Persons or circumstances

is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Section 13.08 Further Assistance. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

Section 13.09 No Third Party Benefit. The provisions hereof are solely for the benefit of the Company and its Members and Managers and are not intended to, and shall not be construed to, confer a right or benefit on any creditor of the Company or any other Person.

Section 13.10 Waiver of Certain Rights. Each Member irrevocably waives any right it may have to maintain any action for dissolution of the Company or for partition of the property of the Company.

Section 13.11 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

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SIGNATURE PAGE(S) FOLLOW

IN WITNESS WHEREOF, the Members of the Company have executed this Agreement as of the date first set forth above.

MEMBERS:

WITNESS:

Central Northside Neighborhood Council

By

WITNESS:

Northside Leadership Conference

By

Exhibit A

<u>Member</u>	<u>Sharing Ratio</u>	<u>Capital Contribution</u>
NSLC	49%	\$100,000.00
CNNC	<u>51%</u>	<u>\$ 10,000.00</u>
Total	100%	\$110,000.00

Exhibit B

The Project