

**NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY  
BOARD OF COMMISSIONERS REGULAR MEETING**

**April 18, 2023  
8:30 a.m.  
227 27<sup>th</sup> Street  
Newport News, VA 23607**

1. Pledge of Allegiance to the Flag of the United States of America
2. Roll Call
3. Consider approval of minutes of regular meeting, March 21, 2023
4. Communications
5. New Business
  - a. Report on Examination of Financial Statements for Year Ended June 30, 2022
6. Report to the Board
7. Closed session in accordance with the Virginia Freedom of Information Act, Code of Virginia, Section 2.2-3711
8. Consider adoption of resolution certifying a Closed Meeting in conformity with Virginia law.
9. Any other business to come before the Board.
  - Comments from the Public: (*Time Limit 5 Minutes*)
10. Adjournment

**Minutes of a Meeting of the  
Newport News Redevelopment and Housing Authority  
March 21, 2023**

Having duly given public notice, the Board of Commissioners of the Newport News Redevelopment and Housing Authority met at 227 27<sup>th</sup> Street, in the City of Newport News, Virginia, at 8:30 a.m. on Tuesday, March 21, 2023.

**Pledge of Allegiance**

Ray Suttle led the assembly in the Pledge of Allegiance to the Flag of the United States of America.

**Roll Call**

The meeting was called to order by the Chairman, and those present were as follows:

Commissioners present: -

Kenneth Penrose  
Lisa Wallace-Davis  
George Knight  
Barbara Holley  
Thaddeus Holloman – via Zoom

Mr. Black and Ms. Call's absences were excused.

Also present: Raymond H. Suttle, Jr. – from NNRHA Board Room  
Kaufman & Canoles, P.C.

Karen R. Wilds  
Executive Director

Lysandra Shaw  
Deputy Executive Director

Carl V. Williamson  
Director of Housing

Valarie Ellis, Director  
Administrative Services

Lisa Dessoffy, Director  
Finance

David Staley, Director  
Community Development

Teresa Bennett  
Executive Assistant

Torkeesha Brooks  
Executive Assistant

Justin Orié – from NNRHA Board Room  
NNRHA IT Department

Tricia Wilson – via Zoom  
City of Newport News, Department of Development

**Approval of Minutes, February 21, 2023**

Commissioner Davis moved that the minutes of the meeting of the Board of Commissioners held on February 21, 2023 be approved. The motion was seconded by Commissioner Knight and passed with a unanimous vote.

**Communications**

The following communications were provided to the Board and reviewed by the Executive Director. 1) A letter addressed to Ms. Wilds from the Department of Housing and Community Development informing that the Housing Authority will receive funding from the October 2022 Affordable and Special Needs Housing application cycle to support the Orcutt Townhomes I project totaling \$2,100,000. from the Virginia Housing Trust Fund, HOME Investment Partnerships and the National Housing Trust Fund for the Orcutt Townhomes RAD conversion.



**Minutes of a Meeting of the  
Newport News Redevelopment and Housing Authority  
March 21, 2023**

**New Business**

**Public Hearing**

Chairman Penrose announced that a Public Hearing was being held to receive comments on the proposed Public Housing Agency Five Year Plan for 2019-2023 and submission of HUD form 50075-ST.

A notice appeared in the Daily Press on Sunday, January 29, 2023 in the Tidewater Hispanic on February 9, 2023 stating the draft Five Year Plan was available for public review at the Authority's office at 227 27<sup>th</sup> Street, Newport News, Virginia during business hours. The Five-Year Agency Plan was also posted on the website.

No comments or emails were made or received.

Commissioner Knight made a motion to close the Public Hearing. Commissioner Davis seconded the motion which passed with a unanimous vote.

**The Board of Commissioners of the Newport News Redevelopment and Housing Authority Authorizing the submission of HUD form 50075-ST, PHA Plans (Five Year Plan and Annual Plan for FY 2019-2023 to HUD in Accordance with Statutory Regulations**

The Board had been provided copies of a resolution authorizing the proposed Five-Year Agency Plan which includes the Annual Plan for FY 2023 along with the required attachments. The public housing Agency Plan is a comprehensive guide to our policies, programs, services offered to clients, operations and plan to assist with local housing needs. There are two parts to the PHA Plan: the Five Year Plan and the Annual Plan. The Five-Year Plan describes the mission and goals of the Authority. The Annual Plan is a detailed review of all Authority operations along with the Capital Fund Program priorities. The Plan is required by the Department of Housing and Urban Development. The Agency Plan includes all updated requirements for participation in the Rental Assistance Demonstration program, Choice Neighborhoods program Housing Choice Voucher programs. After Board approval, any new elements will be referenced in our Agency Plan, Admission and Continued Occupancy Policy and the Housing Choice Voucher Administrative Plan. The Agency Plan is due to HUD no later than April 14, 2023, which is 75 days before the end of our new fiscal year which begins July 1.

Commissioner Davis made a motion to approve the resolution. Commissioner Knight seconded the motion which passed with a unanimous vote. The resolution is attached to and made a part of these minutes.

**Public Hearing**

Chairman Penrose announced that a Public Hearing was being held to receive comments on the proposed Capital Fund Program (CFP) FY 2023 - FY 2027 5-Year Plan.

A notice appeared in the Daily Press on Sunday, January 29, 2023 in the Daily Press on Sunday, January 29, 2023 and at the NNRHA Wilbern building, as well as all Public Housing rental offices and the occupancy office stating the draft Five Year Plan was available for public review at the Authority's office at 227 27<sup>th</sup> Street, Newport News, Virginia during business hours. NNRHA staff met with the Resident Advisory Board on January 30, 2023 to present the draft plan.

No comments or emails were made or received.

Commissioner Davis made a motion to close the Public Hearing. Commissioner Knight seconded the motion which passed with a unanimous vote.

Commissioner Davis made a motion to approve the resolution. Commissioner Knight seconded the motion which passed with a unanimous vote. The resolution is attached to and made a part of these minutes.

**The Board of Commissioners of the Newport News Redevelopment and Housing Authority Authorizing the submission of the Fiscal 2023 through 2027 Capital Fund Program Five Year Plan to the Department of Housing and Urban Development in Accordance with Statutory Regulations**

The Board had been provided copies of a resolution authorizing the proposed Capital Fund Program (CFP) FY 2023 - FY 2027 5-year Plan. The Capital Fund Program 5-year Plan is a detailed review of all planned PHA capital activities over a 5-year duration. The activities address all current public housing properties and outlines plans to perform interior and exterior improvements and upgrades, along with anticipated RAD conversions. Final approval is also required by HUD.

Commissioner Davis made a motion to approve the resolution. Commissioner Knight seconded the motion which passed with a unanimous vote. The resolution is attached to and made a part of these minutes.



**Minutes of a Meeting of the  
Newport News Redevelopment and Housing Authority  
March 21, 2023**

**The Board of Commissioners of the Newport News Redevelopment and Housing Authority Authorizing the Executive Director to submit an application to the U.S. Department of Housing and Urban Development for the Demolition of 88 units of the Marshall Courts Multi-Family Housing Community, 741 34<sup>th</sup> Street, Newport News, VA (Development #VA003-000302)**

The Board had been provided copies of a resolution authorizing the submission of a Section 18 Demolition application to the US Department of Housing and Urban Development (HUD) for the demolition of 88 dwelling units at 741 34<sup>th</sup> Street (the Marshall Courts Housing Community). This property is subject o HUD deed restrictions and the demolition is conditioned upon HUD's approval to release and remove any restrictions on the use of the property. The referenced property represents approximately 4.5 acres, located in the City's Southeast Community and within the footprint of the Choice Neighborhoods Initiative area. The property, Marshall Courts, is a multi-family development which was constructed in the 1940's. Demolition of the 88 dwelling units would commence later this year in accordance with HUD regulations. No structures will remain on the 4.5-acre portion of the site subject property. The demolition will result in a unit count of 259 at Marshall Courts. The demolition of the 88 dwelling units is included in the Board approved NNRHA Agency Plan and is consistent with NNRHA's Property Disposition Guidelines for the Disposition of Public Housing Properties. The approval of the request to the Special Applications Center (SAC) will result in the removal of the 88 units from our Annual Contributions Contract with HUD.

Commissioner Davis made a motion to approve the resolution. Commissioner Knight seconded the motion which passed with a unanimous vote. The resolution is attached to and made a part of these minutes.

**The Board of Commissioners of the Newport News Redevelopment and Housing Authority Authorizing the Executive Director to Execute a Funding Agreement for Implementation of the Marshall-Ridley Residential Façade Program**

The Board had been provided copies of a resolution approving the adoption of the Marshall-Ridley Residential Façade Program Funding Agreement to support the implementation of the Marshall-Ridley Residential Façade Program. The City of Newport News is providing funding to the Authority in the amount of \$2,100,000 for the implementation of the Marshall-Ridley Residential Façade Program. The Residential Façade Program provides up to \$20,000 to eligible residents residing in the Choice Neighborhood Initiative (CNI) area in order to make exterior improvements to their home. This program was identified as a Critical Community Improvement in the CNI plan. This action allows the Executive Director to execute the agreement with the City of Newport News and begin implementation of the Marshall-Ridley Residential Façade Program.

Commissioner Davis made a motion to approve the resolution. Commissioner Knight seconded the motion which passed with a unanimous vote. The resolution is attached to and made a part of these minutes.

**NNRHA Strategic Plan Overview**

The Board had been provided copies of the draft Strategic Plan Overview for review and comment. Ms. Wilds reminded the Board that consultant from SparkMill met with several bodies to develop the synthesis of goals: the steering committee, the staff, the Board, residents and community stakeholders. Ms. Wilds reviewed the overview with the Board and explained that our next step is to have the steering committee meet with the consultant and a larger staff representation to develop tactics to facilitate the implementation of the plan over the next 3 years.

Commissioner Knight made a motion to approve the draft. Commissioner Davis seconded the motion which passed with a unanimous vote. The draft Strategic Plan Overview is attached to and made a part of these minutes.

**Report to the Board**

A Report to the Board for March, 2023 had been provided to the Commissioners. A copy of the subject report is on file in the office of the Executive Director.

Mr. Williamson reported starting in February, Serve the City (STC) volunteers held monthly programs at Ashe Manor. STC served snack to residents and spent time getting to know them while playing Bingo. The Pincroft Resident Council sponsored several programs for the building such as game night on Fridays where residents plan Family Feud and board games. The Authority has begun accepting applications for NNRHA Scholarship program.

Ms. Dessoify provided the Board with a draft Financial Statement. She stated the Authority's funds are maintained in bank deposits or in investments in debt securities. The Authority is permitted to invest funds in deposit accounts at federally insured financial institutions; in obligations of the U.S. Treasury or U.S. Government agencies; Local or State Government Investment Pools; and Repurchase Agreements with financial institutions (as long as the entire balance is collateralized by specifically identified securities of the U.S. Government or its agencies). Investments in debt securities that have a remaining maturity at the time of purchase of more than on year



**Minutes of a Meeting of the  
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March 21, 2023**

and that have a determinable market value are valued at market value as of year-end. The market values are based on quoted market prices at year-end. Certificates of deposit are stated at cost as they are not traded in any market and are held for longer terms. Securities with a remaining maturity at the time of purchase of one year or less are reported at amortized cost.

Ms. Shaw reported construction of the Lift and Rise is nearing completion. The Property Manager is currently processing 39 applications, 27 of which are former Ridley residents. The Property Manager will continue to process applications and will begin coordinating move-ins. Housing Choice Voucher (HCV) staff are processing Project Based Voucher (PBV) applications and coordinating Section 8 inspections. The construction office has moved from the commercial space in the south building and is now ready to show potential commercial tenants. Further buildout will occur with the commercial space ready for lease in May. The square footage is 1,420 for the north building and 1,540 square feet for the south building. These spaces can be divided if needed. Site work has begun on the former Ridley site. Site demolition will be completed this month (March 2023) for CN III-R (16<sup>th</sup>-18<sup>th</sup> streets). Construction completion for Ridley North is planned for March 2024 for the area between 16<sup>th</sup> and 18<sup>th</sup> Streets and by November 2024 for the area between 12<sup>th</sup> and 16<sup>th</sup> Streets. The planning for the downtown housing is underway. NNRHA and the City have applied for \$3.5 million in HUD CNI supplemental development funding. Award notification is expected in May of this year. The team submitted the 9% Low-Income Housing Tax Credit (LIHTC) application for a 73-unit, four story building for a site at 28<sup>th</sup> and Washington Avenue on March 16<sup>th</sup>.

Ms. Ellis reported the Request for Proposals (RFP) for a study to evaluate NNRHA's existing salary and compensation schedule closed yesterday. The Request for Proposals seeks a highly qualified and experienced individual or firms to conduct a compensation study. The applications will be evaluated and we anticipate a contract award by April, 2023 with a completion date of three months after contract award.

Mr. Staley reported plans and specifications for the Orcutt Townhomes I project have been approved by the City. Approval of funding in the amount of \$2.1M from the Virginia Department of Housing and Community Development was announced March 10<sup>th</sup>. Solicitation of construction bids will occur in the next few weeks.

Ms. Wilds reported Traditions Brewing Company has filed a reorganizational bankruptcy. NNRHA is the only Class 1 Secured Creditor and the plans call for the outstanding balance to be paid as part of the equity surrender and then pursuant to the terms of the pre-petition loan documents until paid in full. The Authority has accepted their bankruptcy plan. Ms. Wilds also stated that the City Council has made Christmas Eve a full 8-hour day holiday for all City employees. The Authority is going to follow this same plan and make Christmas Eve a full 8-hour holiday for all employees.

**Closed Session**

Dr. Davis moved the Board enter into a Closed Session for the purpose of: Discussion of the Authority's Legal Services Contract which is consistent with Virginia Code 2.2-3711 (A) (29). Discussion of personnel matters related to the annual performance evaluation of the Executive Director consistent with Virginia Code 2.2-3711 (A) (1). The motion with seconded by Mr. Knight which passed with a unanimous vote.

Coming out of Closed Session Dr. Davis made a motion certifying only public business matters lawfully exempted from open meeting requirements by Virginia Law and only those matters as identified in the motion were discussed in the closed meeting, today. Dr. Davis requested approval of the resolution certifying adherence to the Virginia Freedom of Information Act. The motion was seconded by Mr. Knight which passed with a unanimous vote.

**Other Business**

**Adjournment**

There being no other business to come before the Board, the Chairman adjourned the meeting at 9:48 a.m.

**Minutes of a Meeting of the  
Newport News Redevelopment and Housing Authority  
March 21, 2023**

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Secretary-Treasurer



**ITEM NO. 4**  
**COMMUNICATIONS**



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-5000

ASSISTANT SECRETARY FOR  
PUBLIC AND INDIAN HOUSING

April 11, 2023

Ms. Karen R. Wilds  
Executive Director  
Newport News Redevelopment and Housing Authority  
227 27<sup>th</sup> Street  
P.O. Box 797  
Newport News, VA 23607

Cynthia D. Rohlf  
City Manager  
City of Newport News  
2400 Washington Avenue, 10<sup>th</sup> Floor  
Newport News, VA 23607

SUBJECT: Fiscal Year 2022 Choice Neighborhoods Supplemental Grant Submission

Dear Ms. Wilds and Ms. Rohlf:

Congratulations! We are pleased to inform you that the Newport News Redevelopment and Housing Authority and City of Newport News have been selected to receive a Fiscal Year (FY) 2022 Choice Neighborhoods Supplemental Grant in the amount of \$5,000,000 to further support the development of replacement housing in conjunction with the Transformation Plan for Ridley Place in the Marshall-Ridley neighborhood. The award amount has been adjusted based on the total number of remaining replacement units in accordance with the grant sizing methodology established in the NOFO. HUD received 17 applications for the FY 2022 Choice Neighborhoods Supplemental Grants competition and awarded 16 grants totaling \$98,216,956. The Department looks forward to continuing working with you to achieve the goals of this grant.

Again, please accept our sincere congratulations. We wish you every success.

Sincerely,

A handwritten signature in black ink, appearing to read "Dominique Blom", with a long horizontal flourish extending to the right.

Dominique Blom  
General Deputy Assistant Secretary  
for Public and Indian Housing





# Washington DC

More Regions and Sectors

Washington DC + DC Metro + Apartments | April 5, 2023



By: Paul Bubny

## BLVD Group Plans Overhaul for Newly Acquired Newport News Apartments

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The BLVD Group has acquired Aqua Vista Apartments, a 150-unit affordable housing community located on the waterfront in Newport News, VA. BLVD plans a \$13.5-million

redevelopment for the property, which was constructed in 1970 and has not been renovated since then.

Aqua Vista Apartment's buildings systems will be converted from gas to electric power in order to reduce the overall carbon footprint of the property, and the property will receive a broad range of new energy and water saving features. The property will receive the Enterprise Green Communities certification when complete.

The community will also undergo significant improvements to the building envelope including new roofs, insulation, energy efficient windows and entry doors.

BLVD's director of acquisitions, George Saad, states, "We are pleased to partner with Virginia Housing and Enterprise Community Investments to preserve and extend the affordability of Aqua Vista Apartments through a creative and collaborative 4% LIHTC acquisition."







# CPP Acquires Virginia Affordable Housing Property

By Gail Kalinoski

(<https://www.multihousingnews.com/author/gailkalinoski/>)

April 4, 2023



([https://www.facebook.com/sharer.php?](https://www.facebook.com/sharer.php?u=https%3A%2F%2Fwww.multihousingnews.com%2Fcpp-acquires-virginia-affordable-housing-property%2F)

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## Renovations at the Newport News community will ensure that it maintains affordable status.

**Community Preservation Partners** has acquired City Line Apartments, a 200-unit affordable housing property in Newport News, Va., from an unidentified seller for \$30.1 million, with plans to make nearly \$11 million in upgrades to the property.

Construction is expected to last for 12 months and be completed in December. CPP, a national investor in affordable housing and community renewal initiatives, said its total development investment is expected to be approximately \$57 million. Permanent financing will be provided by **Redstone**, with **PNC Bank** investing equity in the project.

**Argon Construction** is the general contractor, while **Ebersoldt + Associates** is the project's architect.



City Line Apartments in Newport News, Va. *Image courtesy of CPP.*

The project's Land Use Restrictive Agreement will be in place for 30 years. The Housing Assistance Payments contract associated with the property was set to expire in 2025, but the planned renovations will earn the community a new 20-year HAP contract, according to a statement from CPP. The project is part of the Low-Income Housing Tax Credit program.

Located at 155 A Mytilene Drive, the property was built in 1979. The last renovations occurred nearly 20 years ago. The improvements to the 200 apartments are estimated to cost \$55,000 per unit and will include new kitchen and bathroom appliances, new vinyl plank flooring and new HVAC units. Shared spaces will be upgraded, with a new computer room and community library. The roof will be replaced and a playground, outdoor fitness center, basketball court, barbeque area and community garden will be added. The project will meet a Home Energy Rating System of 80 after the renovations are completed.

Seth Gellis, senior vice president at CPP, noted that the apartments will continue to be rented to tenants who are at, or under, 50 percent of the Area Median Income. Anand Kannan, CPP president, further highlighted the necessity of affordable housing in Newport News, which has a lack of affordable options for working class and Section 8 housing residents.



**ITEM NUMBER 5**

**New Business**

- a. Report on Examination of Financial Statements for Year Ended June 30, 2022







## NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY

## MEMORANDUM

**DATE:** April 10, 2023

**TO:** All Members, Board of Commissioners

**FROM:** Karen R. Wilds, Executive Director 

**SUBJECT:** Report on Examination of Financial Statements for the Year Ended June 30, 2022

Attached is a copy of the Financial Statements and Report of Independent Auditor prepared by the accounting firm of Cherry Bekaert, LLP for the Authority's year ending June 30, 2022.

I am pleased to advise you that this is an unmodified opinion for both the financial statements and Federal awards, with no material weaknesses or significant deficiencies identified in the internal control over financial reporting.

There were two programmatic findings related to the Low-Rent Public Housing Program and the Section 8 Project-Based Programs. A nonmaterial noncompliance, significant deficiency was noted in both programs. Required documentation to support the eligibility determinations were not maintained in eleven of eighty tenant files reviewed.

Laura Harden, a Director in the firm, will attend our Board meeting to do a brief presentation and respond to any questions you may have about the audit.

In the meantime, if there are any questions, please contact me or Lisa Dessoify.



# REPORT TO THE BOARD

NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY

## MARCH 2023

The mission of the Newport News Redevelopment & Housing Authority (NNRHA) is to create affordable housing, viable neighborhoods, and opportunities for self-sufficiency that enhance the quality of life for all citizens of Newport News.



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## **BOARD OF COMMISSIONERS**

**Kenneth Penrose, Jr. - Chairperson**

**Lisa Wallace-Davis - Vice Chairperson**

**William Black**

**George Knight**

**Lou Call**

**Barbara Holley**

**Thaddeus Holloman**

**Raymond Suttle, Jr., Attorney**

## **STAFF**

**Karen R. Wilds, Executive Director**

**Secretary-Treasurer**

**Teresa Bennett, Assistant Secretary-Treasurer**

**Lysandra Shaw, Deputy Executive Director**

**Carl Williamson, Director of Housing Operations**

**Valarie Ellis, Director of Administrative Services**

**Lisa Dessoffy, Director of Finance**

**David Staley, Director of Community Development**



## COMMUNITY DEVELOPMENT

### COMMUNITY DEVELOPMENT

#### Community Development Block Grant (CDBG)

HUD has released allocations for the 2023-2024 Program Year. The City received \$1,278,265 in CDBG funding, a reduction of \$9,412 from the current program year. The CDBG application committee has devised a recommendation to City Council for action on May 23<sup>rd</sup>.

#### Total Housing Rehabilitation Activity for Fiscal Year July 1, 2022 – June 30, 2023

	Emergency Repair	Open House	HOMEcare	All Programs
Projects Completed	12	5	0	17
Projects in Underwriting	9	4	1	14
Projects Pending Approval	0	0	1	1
Projects Ongoing	1	2	0	3
<b>Total</b>	<b>22</b>	<b>11</b>	<b>2</b>	<b>35</b>

New Housing Rehabilitation Applications for March 1, 2023 – March 31, 2023	Total for July 1, 2022 – June 30, 2023
11	33

### REDEVELOPMENT

NNRHA administers the Citywide, down payment assistance program for first-time homebuyers through the HOME Investment Partnerships Program (HOME). This program assists eligible first-time homebuyers in purchasing homes.

Down Payment Assistance (DPA) Fiscal Year: July 1, 2022 – June 30-2023				
Program Year 22-23 (Completed)	Denied	Pending Additional Documentation	Current Month (Completed)	Underwriting in Process
4	8	5	0	0

New Housing Rehabilitation Applications for March, 2023	Total for July 1, 2022 – June 30, 2023
0	20



## CAPITAL ACTIVITY

### Marshall Courts Phase VII Demolition

Additional information was requested and submitted for the Historic Review Process. Both the Phase I Environmental Site Assessment (ESA) and Historic Review Process should be completed later this month. We anticipate the Section 18 Demolition Application will be submitted to HUD in late April or early May. Demolition drawings have been submitted to the City for review.

### Orcutt Townhomes I

Specifications and plans have been approved by the City. The Virginia Department of Housing and Community Development approved \$2.1M for the project in March. The Request for Proposals from the pre-qualified contractors went out on April 4, 2023. We anticipate Board action at the May meeting.

### Aqueduct Apartments

Stemmler Plumbing will begin the Aqueduct sewer renovation project later this month.

### **MARSHALL-RIDLEY RESIDENTIAL FACADE PROGRAM**

Acceptance of applications for the Marshall-Ridley Residential Façade Program began in mid-February and there has been an overwhelming positive response and interest in the program. The last day to submit an application for funding was Friday, March 31. A total of 112 applications were received. We anticipate beginning the first renovation project this month.

We look forward to working with residents to make beautification improvements to their homes and neighborhood.

## CHOICE NEIGHBORHOOD INITIATIVE (CNI)

There have been a series of delays on the Lift and Rise related to installation of fire dampers and balcony reinforcements. The Lift and Rise II will be completed first. Final inspection and Certificate of Occupancy (CO) is expected mid-April. The building will be ready for occupancy pending final CO. Completion of the north building and town homes is expected by the end of April.

The Pennrose property manager is processing 51 applications, 31 of which are former Ridley residents. The property manager will continue to process applications and will begin coordinating move-ins as the buildings are ready for occupancy. Housing Choice Voucher (HCV) staff are processing Project Based Voucher's (PBV) applications and will coordinate Section 8 inspections once final COs are issued.

Abbitt Realty is showing spaces to potential tenants. Further buildout will occur with the commercial space once residential uses are completed. The commercial space is anticipated to be ready for lease in July. The square footage is 1,420 for the north building & 1,540 square feet for the south building. Abbitt Realty continues to market the onsite retail space and reach out to potential tenants.

Site work has begun on the former Ridley site. Construction on the apartments with building pads and framing began in March. Construction completion for Ridley North is planned for March 2024 and for Ridley south by November 2024. The Ridley Site work will also include the construction of a Health and Wellness Trail. The Health and Wellness trail is one of the critical community improvements identified in the CNI plan. The trail will be constructed on the former Ridley site along with the new housing. The trail will provide a safe and attractive space to walk,



run, or bike. The trail will also incorporate a new park and water feature turning a stormwater management area into a tranquil park amenity for the benefit of the neighborhood.

The planning for the downtown housing continues. Multiple sessions of the development team, with community members, have established a conceptual framework for a 73-unit, four-story elevator building at 28<sup>th</sup> and Washington Avenue. NNRHA and the City applied for \$3.5 million in HUD CNI supplemental development funding and the award notification is expected soon. The team also submitted the project for competitive Low-Income Housing Tax Credits (LIHTC) on March 16<sup>th</sup>. LIHTC award notification will be in July of this year.

Urban Strategies, Inc. (USI) continues to conduct outreach to Ridley residents, as well as complete needs assessments for each household. Currently, 151 former Ridley families are enrolled in case management. USI held a residents meeting on March 16<sup>th</sup> at the Pearle Baily Library. A People Plan revision meeting was held on March 29<sup>th</sup> at the Downing-Gross Cultural Arts Center and a follow up meeting held virtually on April 3<sup>rd</sup>. USI has also hired new Senior project manager Tyishua McCoy who is leading the Newport News USI effort.

Newport News Public Schools has also hired Jessica Womack as the new CNI Education Resource Specialist to work with former Ridley Place students and families.

The City is preparing to bid the renovation/rebuild of a commercial building at 2510 Jefferson Avenue, to create new retail/commercial and office space, directly adjacent to Two-Five and J. The project is one of the Critical Community Improvements identified in the CNI neighborhood plan. Total project cost is estimated at \$2.5 million.

The City is evaluating firms that responded to a design services Request for Proposal (RFP) for the Seafood Market which is another identified critical community improvements and will issue an award in April for the design services.

The Citizen Advisory Committee (CAC) and City sponsored Housing Symposium was held March 11<sup>th</sup> - approximately 41 attendees and 16 partners were in attendance. NNRHA staff presented and attended the session providing information on residential rehabilitation program and Section 8 homeownership program.

## PUBLIC AND ASSISTED HOUSING OCCUPANCY REPORT

### *Total Waiting List Applications:*

Public Housing		355
Approved/Eligible	44	
Pending	311	
Section 8		373
Approved/Eligible	85	
Pending	288	

The pending numbers for the Public Housing Program (311) and the Housing Choice Voucher Program (288) represent the total number of applications being processed for eligibility for housing assistance. Some of these families will be determined to be ineligible based on income, landlord references or criminal activity. Therefore, these numbers may fluctuate each month.

### ***Applicants Housed in March***

Public Housing Program	14
Housing Choice Voucher	14
Mod-Rehab (SRO)	1
<b>Total</b>	<b>29</b>

### ***Occupancy Statistics:***

Public Housing Program (of 839 units)	95%
Section 8 Program (2,895)	94%
Warwick SRO (of 88 units)	96%

Avg. # of Leasing Days (Public Housing) 10



**Average Family Rent Contribution for Move-ins Last Month:**

- 1. Public Housing \$210.
- 2. Housing Choice Voucher \$313.
- 3. Warwick SRO \$270.

Cumulative Percentage of Section 8 Budget Authority Utilized Mar 2023 100.4%

**FAMILY INVESTMENT CENTER (FIC) ACTIVITIES**

EMPLOYED F.I.C. PARTICIPANTS March 2023 (since 1995)	
Aqueduct	123
Ashe Manor	0
Brighton	46
Cypress	24
Dickerson	185
Harbor Homes	126
Lassiter	95
Marshall	171
Orcutt	28
Orcutt TH	10
Oyster Point	23
Pincroft	7
Ridley	383
Section 8	72
Spratley	2
<b>Total</b>	<b>1,295</b>

**FAMILY SELF-SUFFICIENCY (FSS)**

192 Housing Choice Voucher and Public Housing clients have completed their goal of homeownership as follows:

Housing Choice Voucher Families/FSS	69
Public Housing Families/FSS:	56
HCV Homeownership:	<u>67</u>
Total	192

On Thursday, March 16, 2023, Mr. Thomas Sentz, Program Manager, from HRCAP, Housing and Financial Literacy Services offered a free Financial Literacy workshop to 10 NNRHA residents who reside in Marshall Courts. The residents were given information to obtain practical skills that encourage financial planning. The course helped participants to identify spending habits, the differences between needs vs wants and flexible vs. fixed expenses. Participants were given resources to help them prepare their own personal spending plan/budget, identify their spending comfort level and determine their debt to income ratio.

**COMMUNITY RESOURCES • Resident Relations • Senior Residents**

**Newport News Public Libraries Comes to NNRHA Communities**

**ProMedica Hospice Provides Blood Pressure Checks**

ProMedica Hospice is partnering with the NNRHA's Community Resources Department to provide periodic blood pressure checks and education to residents in our senior properties. Their first visit was to Pincroft Apartments, but they are also planning to visit Ashe Manor and Spratley House in coming months. Residents had their blood pressure checked by a registered nurse. They were provided helpful health information and a nutritious snack. Community Resources staff was able to link a resident with high blood pressure to much needed services.



## Serve the City (STC) and Summit Christian Academy Students Bring Smiles to Spratley

Approximately 25 students and adult chaperones visited with Spratley residents on March 16<sup>th</sup>. The goal was to reach out to people that have isolated through the pandemic and winter. Students assembled “goodie” bags filled with snacks and personal items for distribution. They used art supplies to decorate and individualize each bag. Students then knocked on doors and hand delivered them to surprised and grateful residents. STC also hosted their monthly programs at Ashe Manor and Spratley House. Bingo, prizes, snacks and smiles.



## Another Great Program With NN Public Libraries (NNPL)

St. Patrick's Day was this month's theme. NNPL staff has been doing a fantastic job of planning unique and enriching activities for senior residents at Ashe Manor, Spratley House and Pinecroft Apartments. This month they played NNPL's version of “Apples to Apples.” Their game involved making comparisons and matches with a St. Patrick's Day twist. After the game, residents enjoyed making shamrock suncatchers. They used different shades of

green to paint their shamrock and threaded beads on a string to hang it from.



## Chair Zumba at Pinecroft



Keia Dowling, with Inspired Home Health, held two chair zumba sessions at Pinecroft this month. Residents participated in this low-impact, fun exercise and left feeling good about themselves. Plans are for Keia to host a class at Ashe Manor next.

**Jencare** – Rita Council, Jencare rep., sponsored Bingo with prizes at Ashe Manor, Spratley House, and Pinecroft Apartments.

**Ken Hodge** – Provided information about Medicaid renewals beginning again and also sponsored Bingo with prizes at Ashe Manor, Spratley House, and Pinecroft Apartments.

**Ashe Manor Game Day** – Ashe Manor Resident Council sponsored a game day with a great turn out. Various games were brought by residents and they played for hours.



**Pineroft Game Nights** – Pineroft Resident Council has been sponsoring game night each Friday night. Residents report lively games of Family Feud.

## **ADMINISTRATIVE SERVICES**

Managed Benefits our insurance broker conducted Sexual Harassment Training for non-supervisory staff on March 30th and 31st. The training was conducted virtually and was well received. We will begin a series of training for supervisors in April and will focus on sexual harassment, employment law, managing conflict, performance management, difficult conversations and a review of our personnel handbook.

On March 30, our safety and security representative from the Housing Authority Insurance Group conducted training for our safety and security committee on the importance of safety committees, outlining the roles and responsibilities and provided tips for maintaining a successful committee.

**Other NNRHA Controlled Multi-Family Properties  
Waiting Lists as of March, 2023**

<b>Property</b>	<b>Occupancy Rate</b>	<b>Approved/Eligible</b>	<b>Pending</b>	<b>Total</b>
Orcutt Townhomes III	90%	2	4	6
Cypress Terrace	91%	18	22	40
Oyster Point/Brighton	97%	18	52	70
Great Oak	98%	112	205	317
Lofts on Jefferson	100%	3	4	7
Jefferson Brookville	80%	4	6	10
Lassiter Courts	93%	11	145	156

**Family Self Sufficiency (FSS)**

Following is a current breakdown of the status of FSS participants in the Public Housing and Housing Choice Voucher Programs for the month of March, 2023.

<b>Participants:</b>	<b>Public Housing</b>	<b>Housing Choice Voucher</b>	<b>Total</b>
<b>Total</b> number in FSS Program	18	86	<b>104</b>
Employed	8	61	<b>69</b>
Currently not working	7	23	<b>30</b>
Attending Thomas Nelson Comm. College	0	1	<b>1</b>
Enrolled in other Training Program	1	0	<b>1</b>
Employed and going to school	2	1	<b>3</b>
Participants with escrow accounts	9	47	<b>56</b>



**NEWPORT NEWS REDEVELOPMENT AND HOUSING AUTHORITY**  
**2023 Housing Choice and Mainstream Voucher Program Utilization Report - Actual**  
**For the Year Ending December 31, 2023**

CY Housing Choice 2023 Annual Budget Authority      \$ 26,799,573      Budget estimate,  
 Housing Choice Voucher Funding      \$ 26,799,573      100% proration

Mainstream Voucher Program Funding      \$ 1,007,939      Estimate- 100%  
 Emergency Housing Voucher Program Funding      \$            1      Final - 100%

HCV Units	2506
VASH units	54
CNI tenant protection	247
Warwick SRO - RAD2	88
Baseline HCV count	2895
Mainstream Vouchers	141
Emergency Housing Vouchers	32
<b>Total Vouchers</b>	<b>3068</b>

Month	# of Vouchers Utilized	Lease Rate	HAP Payments to Landlords	Avg HAP	Monthly +/- Dollar Utilization	Monthly Amount of Funding Utilized	Year to Date Amount of Funding Utilized	Funding			Other Sources Of Funds	NRRHA Held Reserve Balance	HUD Held Reserve Balance
								From HUD	Fraud Recovery				
January	HCV	2751	95.0%	\$ 2,051,002.00	\$ 745.55	\$ (41,685.00)	98.0%	\$ 2,092,687.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 202,264.00	1,691,973.47
	MS	113	80.1%	\$ 81,036.00	\$ 717.13	\$ 3,570.00	104.6%	\$ 77,466.00	-	-	-	\$ 35,304.00	184,971
	EHV	27	84.4%	\$ 26,175.00	\$ 969.44	\$ 7,740.00	142.0%	18,435.00	-	-	-	\$ (21,786.00)	195,006
February	HCV	2727	94.2%	\$ 2,069,096.00	\$ 758.74	\$ (23,591.00)	98.4%	\$ 2,092,687.00	\$ 140.00	\$ 140.00	\$ 140.00	\$ 225,995.00	1,800,787.22
	MS	115	81.6%	\$ 82,807.00	\$ 720.06	\$ 5,341.00	106.9%	\$ 77,466.00	-	-	-	\$ 29,963.00	191,576
	EHV	27	84.4%	\$ 26,175.00	\$ 969.44	\$ 7,740.00	142.0%	\$ 18,435.00	-	-	-	\$ (29,526.00)	176,571
March	HCV	2730	94.3%	\$ 2,095,363.00	\$ 767.53	\$ 8,417.00	100.4%	\$ 2,086,946.00	\$ 285.00	\$ 285.00	\$ 285.00	\$ 217,863.00	2,226,234.97
	MS	115	81.6%	\$ 86,256.00	\$ 750.05	\$ 7,533.00	109.6%	\$ 78,723.00	-	-	-	\$ 22,430.00	198,036
	EHV	27	84.4%	\$ 24,540.00	\$ 908.89	\$ (23,510.00)	51.1%	\$ 48,050.00	-	-	-	\$ (6,016.00)	128,521
											\$ 6,542,450.00	\$ 1,425.00	

**ITEM NO. 7**

**Closed Session**















**ITEM NO. 9**  
**Other Business**







**Choice Neighborhood V-Downtown  
Development Corporation**

**Board of Directors Meeting  
April 18, 2023**

227-27<sup>th</sup> Street  
Newport News, VA 23607

**Agenda**

1. Roll call
2. Election of Chairman and Vice Chairman
3. Appoint the Executive Director as President, Secretary and Treasurer
4. New Business
  - a. Consider a Resolution Authorizing the Adoption of the Bylaws for the Choice Neighborhood V-Downtown Development Corporation and Authorize the President to enter into an Operating Agreement of the Choice Neighborhood V-Downtown LLC
4. Any other business to come before the Board
5. Adjourn





4a

**CHOICE NEIGHBORHOOD V-DOWNTOWN  
DEVELOPMENT CORPORATION**

**MEMORANDUM**

**DATE:** April 11, 2023

**TO:** All Members, Board of Directors, Choice Neighborhood V-Downtown Development Corporation

**FROM:** Karen R. Wilds, President *KRW*

**SUBJECT:** Resolution Authorizing the Adoption of and Bylaws of the Choice Neighborhood V-Downtown Development Corporation and Authorize the President to enter into an Operating Agreement of the Choice Neighborhood V-Downtown LLC

The City, NNRHA and its development partner, Pennrose, LLC, are in the planning stage for the Phase 3 housing development which will be situated on Washington Avenue between 28<sup>th</sup> and 29<sup>th</sup> streets in the downtown area. This site will consist of 73 mixed-income housing units and commercial space (the "Project"). This Development Corporation and corresponding LLC were formed in order to develop this phase of CNI housing in the downtown.

In order to give clear structure and outline operating procedures for the entities, the attached resolution authorizes the adoption of bylaws and authorizes the Development Corporation President to enter into an operating agreement for the LLC

Approval is recommended.



**RESOLUTION OF THE CHOICE NEIGHBORHOOD V- DOWNTOWN  
DEVELOPMENT CORPORATION ADOPTION OF BYLAWS AND AUTHORIZATION  
OF THE PRESIDENT TO ENTER INTO AN OPERATING AGREEMENT**

**WHEREAS**, the Newport News Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia (the "Authority") was organized for the purpose, among others, of developing and operating low-income housing; and

**WHEREAS**, the Authority and the City of Newport News, Virginia were awarded a \$30 million Choice Neighborhoods Initiative (CNI) grant on May 13, 2019 to implement the Marshall-Ridley Choice Neighborhoods (MRCN) Transformation Plan; and

**WHEREAS**, the MRCN housing plan will be constructed in phases, consisting of replacement and mixed income housing units; and

**WHEREAS**, the Authority and its co-developer, Pennrose LLC, have agreed to facilitate the construction of the third phase of affordable and mixed income rental housing (the "Residential Housing") and commercial space (the "Commercial Unit") located in the downtown area of Newport News (the "Project"), and

**WHEREAS**, the Authority executed a Purchase Option Agreement and Partial Assignment of Agreement for Purchase and Sale of Real Property between the Newport News Redevelopment and Housing Authority and Choice Neighborhood V-Downtown LLC (the "Company") for the Authority owned and EDA optioned properties for this Project; and

**WHEREAS**, the Authority is to be the 51% stockholder in Choice Neighborhood V-Downtown Development Corporation, the Managing Member, with the Authority's Executive Director serving as President of the Managing Member; and

**WHEREAS**, it is necessary for the Managing Member to adopt bylaws to permit the orderly operation of the Managing Member; and

**NOW THEREFORE, BE IT RESOLVED** that the Choice Neighborhood V-Downtown Development Corporation by vote of its Board of Directors, approves the following resolutions:

1. That the President shall be the Executive Director of the Newport News Redevelopment and Housing Authority or her designee be and is hereby authorized to finalize negotiations and enter into and execute the following documents and transactions, all of which shall be subject to legal counsel review:
  - a. Bylaws of Managing Member and any modifications, amendments and restatements thereto, all subject to legal counsel review.
  - b. Operating Agreement for Choice Neighborhood V-Downtown LLC, and any modifications, amendments and restatements to said Operating Agreement, all subject to legal counsel review.



2. Any actions taken prior to the date hereof by the Choice Neighborhood V-Downtown Development Corporation on its behalf or as Managing Member of the Company in relation to the Project are hereby ratified and affirmed. The provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision of this Resolution shall be declared invalid, such invalidity shall not affect the validity of the remainder of the sections, phrases and provisions of this Resolution.
3. This Resolution shall take effect immediately upon its adoption.



**BYLAWS**  
**OF**  
**CHOICE NEIGHBORHOOD V-DOWNTOWN**  
**DEVELOPMENT CORPORATION**

**ARTICLE I**

**OFFICES**

**Section 1.** **Principal Office.** The principal office of Choice Neighborhood V-Downtown Development Corporation (the “**Corporation**”), in the Commonwealth of Virginia shall be located at such place as the board of directors of the Corporation (the “**Board of Directors**” and each director, individually, a “**Director**”) may designate.

**Section 2.** **Additional Offices.** The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II**

**DEVELOPMENT DECISIONS**

**Section 1.** **Development Decisions.** Pennrose Holdings, LLC, a Pennsylvania limited liability company, a stockholder, together with its affiliate Pennrose, LLC, a Pennsylvania limited liability company (collectively, “**Pennrose**”) in its role as the developer of that certain 72 unit residential project known as Choice Neighborhood Downtown V (the “**Project**”), shall cause the construction of the Project to be completed in a good and workmanlike manner, free and clear of all mechanics’, materialmen’s or similar liens, and shall equip the improvements or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, including refrigerators and ranges, all in accordance with the Project documents and the drawings and specifications of the Project and (ii) cause the Corporation to satisfy any other requirements necessary to achieve closing of the Project in accordance with the Project documents.

During the construction process and until the termination of all guaranty obligations of Pennrose and its affiliates with respect to the Project, Pennrose shall have the right to unilaterally make and implement all development and operations decisions with respect to the Project, which shall be made in a reasonable business prudent manner and which include but are not limited to the following (collectively, the “**Development Decisions**”):

- (a) Approval of all construction and architectural contracts and all architectural plans, specifications and drawings related to the Project prior to the construction and/or alteration of any Project improvements contemplated thereby;



- (b) Any proposed change in the work of the construction of the Project, or in the plans and specifications therefor, or in the cost thereof, or any other change which would affect the design, cost, value or quality of the Project;
- (c) Negotiation in the name and on behalf of the Corporation of all agreements for architectural, engineering, testing or consulting services for the Project, and any agreements for the construction of any improvements or tenant improvements to be constructed or installed at the Project or the furnishing of any supplies, materials, machinery or equipment therefor, or any amendments thereof;
- (d) Establishment and implementation of appropriate administrative and financial controls for the design and construction of the Project, including but not limited to the selection procedures for and selection of subcontractors and suppliers;
- (e) Approval or disapproval of requests for payment made by the Project architect and the general contractor, or by any other parties with respect to the design and construction of the Project, and in addition, verification that the same is being carried out substantially in accordance with the plans and specifications;
- (f) Establishment of operating budgets and ongoing management of the Project pursuant to a management agreement to be entered into with a management company selected by Pennrose; and
- (g) Overseeing and coordination of tenant leasing activities and ongoing compliance obligations in accordance with regulatory and financing documents applicable to the Project.

Furthermore, Pennrose shall have the right, power, authority and discretion acting alone to execute and deliver on behalf of the Corporation or any subsidiary, any and all agreements, instruments, certificates or other documents related to Development Decisions.

**Section 2.** **Advancement of Development Funds.** If the Corporation proceeds set aside to pay for development costs (“**Designated Proceeds**”) as available from time to time are insufficient to pay all development costs, then Pennrose shall advance or cause to be advanced to the Corporation from time to time as needed all such funds as are required to pay such deficiencies. Any such advances shall, to the extent permitted under the Project documents and any applicable regulations or requirements, be reimbursed only out of Designated Proceeds available from time to time after payment of all development costs.

### **ARTICLE III**

#### **MEETINGS OF STOCKHOLDERS**

**Section 1.** **Place.** All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set in accordance with these Bylaws (the “**Bylaws**”) and stated in the notice of the meeting.



**Section 2. Annual Meeting.** An annual meeting of stockholders for the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board of Directors. If no date for the annual meeting is established or said meeting is not held on the date established as provided above, a special meeting in lieu thereof may be held or there may be action by written consent of the stockholders on matters to be voted on at the annual meeting, and such special meeting or written consent shall have for the purposes of these Bylaws or otherwise all the force and effect of an annual meeting. Failure to hold an annual meeting does not invalidate the Corporation's existence or affect any otherwise valid acts of the Corporation.

**Section 3. Special Meetings.** Each of the chief executive officer, President (as such term is defined in Article V herein), Board of Directors and stockholders may call a special meeting of stockholders. A special meeting of stockholders shall be held on the date and at the time and place set by the chief executive officer, President or Board of Directors or stockholders, whoever has called the meeting. The call for the meeting shall state the place, date, hour and purposes of the meeting. Only the purposes specified in the notice of special meeting shall be considered or dealt with at such special meeting.

**Section 4. Notice.** Not less than ten (10) nor more than ninety (90) days before each meeting of stockholders, the Secretary (as such term is defined in Article V) herein shall give to each stockholder who is entitled to notice of the meeting, notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called. Such notice may be delivered by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business, by electronic transmission or by any other means permitted by Virginia law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. The Corporation may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless a stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II or the validity of any proceedings at any such meeting.

Any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice.

If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken, except that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed



for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 5. Organization And Conduct.** Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chairman of the meeting or, in the absence of such appointment or appointed individual, by the Chairman of the Board (as such term is defined in Article V herein) or, in the case of a vacancy in the office or absence of the Chairman of the Board, by one of the following officers present at the meeting in the following order: the Vice Chairman of the Board (as such term is defined in Article V herein), if there is one, the chief executive officer, the President, the vice presidents in their order of rank and seniority, the Secretary or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a two thirds (2/3) majority of the votes cast by stockholders present in person or by proxy. The Secretary, or, in the Secretary's absence, an assistant Secretary, or, in the absence of both the Secretary and assistant Secretaries, an individual appointed by the Board of Directors or, in the absence of such appointment, an individual appointed by the chairman of the meeting shall act as Secretary. In the event that the Secretary presides at a meeting of stockholders, an assistant Secretary, or, in the absence of all assistant secretaries, an individual appointed by the Board of Directors or the chairman of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (h) concluding a meeting or recessing or adjourning the meeting, whether or not a quorum is present, to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

**Section 6. Quorum; Adjournments.** At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a "**Supermajority**" of all the votes entitled to be cast at such meeting on any matter that is not a Development Decision or Major Decision (as defined in Article XIII herein), which shall mean at least 66-2/3% of the votes, shall constitute a quorum; provided that a Supermajority shall always require the affirmative vote of Pennrose or its agent, and this section shall not affect any requirement under any statute for the vote necessary for the approval of any matter. Each Major Decision shall require approval as specified therein.

If, however, such quorum is not established at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting *sine die* or from time to time to a date not more



than one hundred twenty (120) days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

**Section 7. Voting.** A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a Director. Each share may be voted for as many individuals as there are Directors to be elected and for whose election the share is entitled to be voted, without any right to cumulative voting. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Corporation's Articles of Incorporation, dated February 21, 2023, as such may be amended from time to time ("**Articles of Incorporation**"). Unless otherwise provided by statute or by the Articles of Incorporation, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders. Voting on any question or in any election may be *viva voce* unless the chairman of the meeting shall order that voting be by ballot or otherwise.

**Section 8. Proxies.** A holder of record of shares of stock of the Corporation may cast votes in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the Secretary before or at the meeting. No proxy shall be valid more than eleven (11) months after its date unless otherwise provided in the proxy. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting.

**Section 9. Voting Of Stock By Certain Holders.** Stock of the Corporation registered in the name of a corporation, partnership, trust, limited liability company or other entity, if entitled to be voted, may be voted by the President or a vice president, general partner, managing member or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any Director or fiduciary may vote stock registered in the name of such person in the capacity of such Director or fiduciary, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the



stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt by the Corporation of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

**Section 10. Inspectors.** The Board of Directors or the chairman of the meeting, in advance of or at any meeting, may, but need not, appoint one or more inspectors for the meeting and any successor to an inspector. Except as otherwise provided by the chairman of the meeting, the inspectors, if any, shall (a) determine the number of shares of stock represented at the meeting, in person or by proxy, and the validity and effect of proxies, (b) receive and tabulate all votes, ballots or consents, (c) report such tabulation to the chairman of the meeting, (d) hear and determine all challenges and questions arising in connection with the right to vote and (e) do such acts as are proper to fairly conduct the election or vote. Each such report shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

**Section 11. Action Without Meeting.** Any action to be taken by the stockholders may be taken without a meeting, if, prior to such action, all stockholders entitled to vote thereon shall consent in writing or by electronic transmission to such action being taken, and such consent shall be treated for all purposes as a vote at a meeting.

## ARTICLE IV

### DIRECTORS

**Section 1. General Powers.** Except as otherwise provided by these Bylaws, the property, affairs and business of the Corporation shall be managed under the direction of the Board of Directors, including the adoption of initial Bylaws, with decision making power granted to the stockholders, as specified in Article III herein, and, except as otherwise expressly provided by law, the Articles of Incorporation or these Bylaws, all of the powers of the Corporation shall be vested in the Board of Directors.

**Section 2. Emergency Powers.** If an emergency exists for purposes of this Article IV if a quorum of the corporation's Board of Directors cannot readily be assemble because of some catastrophic event, the Board of Directors may:

- (a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
- (b) Relocate the principal office, designate alternative principal officers or regional offices, or authorize the officers to do so.



**Section 3. Number and Qualifications.** The Board of Directors shall be comprised of members of the Commissioners of the Newport News Redevelopment and Housing Authority (“NNRHA”) as appointed by the City Council of the City of Newport News, Virginia. The Board of Directors shall serve without compensation. A director need not be a resident of the Commonwealth of Virginia or a shareholder of the corporation.

**Section 4. Annual Meeting.** The annual meeting of the Board of Directors shall be held at the registered office or principal office of the Corporation, or at such other place as the Board of Directors may designate from time to time, on the third Tuesday of January of each year or as determined by the Board of Directors. Notice of the annual meeting shall be given by mail to the Board of Directors not less than five (5) days prior to the date of the meeting.

**Section 5. Special Meetings.** The President, Chairman of the Board or Vice Chairman of the Board, as such terms are defined in Article V herein, of the Board of Directors may call special meetings of the Board of Directors at any time.

**Section 6. Notice.** Written notice of the date, time and place of special meetings shall be given to each Director by mail or e-mail, to the address of such Director as it appears in the records of the Corporation not less than three (3) days before the date of the meeting.

**Section 7. Action Without Meeting.** Any action required or permitted by law to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all of the members of the Board of Directors. The action shall be evidenced by one or more written consents stating the action taken, signed by each Director either before or after the action taken, and included in the minutes or filed with the corporate records reflecting the action taken.

**Section 8. Conduct of Meetings.** The President or Vice Chairman, in the absence of the Chairman, shall preside over meetings of the Board of Directors. The Secretary shall act as Secretary of all meetings of the Board of Directors. If no such officer is present, the Chairman or President shall appoint a Secretary of the meeting.

**Section 9. Procedure at Meetings.** Robert's Rules of Order Newly Revised shall be utilized for the conduct of meetings and actions voted upon by the Board of Directors, unless waived by a quorum (as defined herein) of Directors in attendance at a duly convened meeting of the Board of Directors.

**Section 10. Participation by Conference Telephone.** The Board of Directors may permit any or all Directors to participate in a meeting of the Directors by, or conduct the meeting through the use of, conference telephone or any other means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by such means shall be deemed to be present in person at the meeting. When a meeting is so conducted, a written record shall be made of the action taken at such meeting.

**Section 11. Quorum.** A quorum at any meeting of the Board of Directors shall be a majority of the number of Directors fixed or prescribed by these Bylaws or, if no number is



prescribed, the number of Directors in office immediately before the meeting begins. The affirmative vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 11. Committees.** The Board of Directors may create one or more committees as it may deem necessary and the Board of Directors may authorize the membership of such committees to be comprised of members of the Board of Directors.

**Section 12. Term of Office.** The term of each Director shall coincide with the term of appointment as a member of the Board of Commissioners of the NNRHA by the City Council of the City of Newport News, Virginia

**Section 13. Resignation.** A Director may resign at any time by delivering written notice to the Board of Directors, the President or the Secretary. A resignation shall be effective when delivered, unless the notice specifies a later effective date.

**Section 14. Conflicts of Interest.** No transaction with the Corporation in which a Director has a direct or indirect personal interest shall be void or voidable solely because the Director's interest in the transaction if: (i) the material facts of the transaction and the Director's interest are disclosed or known to the Board of Directors or a committee of the Board of Directors, and the transaction was authorized, approved or ratified by the affirmative vote of a majority of the Directors on the Board of Directors, or on the committee, who have no direct or indirect personal interest in the transaction; provided, however, that a transaction shall not be authorized, approved or ratified by a single Director.

## ARTICLE V

### OFFICERS

**Section 1. Officers.** The Chairman and Vice Chairman of the Board of Commissioners of the NNRHA and the Executive Director of the NNRHA shall serve as Chairman, Vice Chairman and President/Secretary - Treasurer respectively of the Corporation. The president of Pennrose Holdings, LLC shall serve as Development Manager of the Corporation.

**Section 2. Vacancies.** Vacancies among the officers occurring during the year shall be filled by appointment by the City Council of the City of Newport News, Virginia to the Board of Commissioners of the NNRHA who shall then become a member of the Board of Directors of the Corporation; provided, however, the Development Manager shall not be removed or replaced while Pennrose is entitled to make Development Decisions in accordance with Article II of these Bylaws.

**Section 3. Chairman of the Board.** The Chairman of the Board shall preside at all meetings of the Board of Directors, and perform such other duties as are incident to his or her office or are properly required by him or her by the Board of Directors.



**Section 4. Vice Chairman of the Board.** The Vice Chairman of the Board shall exercise the authority of Chairman of the Board in his or her absence and perform such other duties as may be assigned by the Chairman of the Board or by the Board of Directors.

**Section 5. President.** The President shall be the chief executive officer of the Corporation and subject to the direction of the Board of Directors. The President shall have general supervision and control of the business of the Corporation. Unless otherwise provided by the Board of Directors, the President shall: present at each annual meeting of the Board of Directors a report on the condition of the Corporation; sign and make all contracts and agreements in the name of the Corporation; see that the books, reports, statements, etc. required by statutes are properly kept, made and filed according to law; sign all notes, drafts or bills of exchange, warrants, etc. and shall direct orders for the payment of money duly drawn by the Treasurer; enforce these Bylaws and perform such other acts and duties as from time to time may be delegated by the Board of Directors; and be an ex-officio member of all committees,

**Section 6. Secretary.** The Secretary shall cause to be prepared for submission to the Board of Directors at the annual meeting, an annual status report of the operation of the Corporation; shall have the responsibility for preparing and maintaining custody of minutes of meetings of the Directors in a book or books kept for that purpose and the responsibility for authenticating records of the Corporation, and shall have such powers and perform such other duties as may be prescribed by the Board of Directors.

**Section 7. Treasurer.** The Treasurer shall be the chief financial officer of the Corporation. The Treasurer shall have the custody of all moneys and securities of the Corporation and shall deposit the same in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors and, unless otherwise prescribed by the Board of Directors, shall maintain the books of account and financial records, and shall render to the Board of Directors as requested, an account of all transactions of the Treasurer and the financial condition of the Corporation. The Treasurer shall cause to be prepared financial information suitable for inclusion in the annual report of the Corporation; and shall cause to be conducted an annual financial audit of the Corporation if directed to do so by the Board of Directors.

**Section 8. Development Manager.** The Development Manager shall exercise all duties and have all rights and responsibilities described in Article II of these Bylaws and shall have such powers and perform such other duties as may be prescribed by the Board of Directors.

**Section 9. Delegation of Power.** In the event of and during the absence, disqualification or inability to act of any officer, such other officers or employees as may be designated by the Board of Directors shall have the authority and perform the duties of such officer; provided, however, the powers of the Development Manager may only be designated by Pennrose.

**Section 10. Term of Office.** Each officer shall be appointed to hold office until the next annual meeting of the Board of Directors, or for such longer or shorter term as the Board of Directors may specify, and until his successor shall have been appointed or such earlier time as he shall resign, die or be removed. The Development Manager term shall continue while Pennrose's right to make all Development Decisions remains outstanding.



**Section 11. Resignation.** An officer may resign at any time by delivering written notice to the Board of Directors or the Secretary. A resignation shall be effective when delivered unless the notice specifies a later effective date.

**Section 12. Removal.** Any officer other than the Development Manager may be removed, with or without cause, at any time by the Board of Directors and such officer, if appointed by another officer, may likewise remove any officer or assistant officer.

**Section 13. Execution of Instruments.** Checks, drafts, notes and orders for the payment of money shall be signed by such officer or officers or such other individual or individuals as the Board of Directors may from time to time authorize, and any endorsement of such paper in the ordinary course of business shall be similarly made, except that any officer or assistant officer of the Corporation may endorse checks, drafts or notes for collection or deposit to the credits of the Corporation. The signature of any such officer or other individual may be a facsimile when authorized by the Board of Directors.

## ARTICLE VI

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**Section 1. Contracts.** The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board of Directors and executed by an authorized person.

**Section 2. Checks And Drafts.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation.

## ARTICLE VII

### **STOCK**

**Section 1. Certificates.** Except as may be otherwise provided by the Board of Directors, stockholders of the Corporation are not entitled to certificates representing the shares of stock held by them. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors or a duly authorized officer, shall contain the statements and information required by the Virginia Stock Corporation Act (“VSCA”) and shall be signed by the officers of the Corporation in the manner permitted by the VSCA. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the VSCA, the Corporation shall provide to the record holders of such shares a written statement of the information required by the VSCA to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.



**Section 2. Transfers.** All transfers of shares of stock shall be made on the books of the Corporation, by the holder of the shares, in person or by his or her attorney, in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors that such shares shall no longer be represented by certificates. Upon the transfer of any uncertificated shares, to the extent then required by the VSCA, the Corporation shall provide to the record holders of such shares a written statement of the information required by the VSCA to be included on stock certificates.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Virginia.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the Articles of Incorporation and all of the terms and conditions contained therein.

**Section 3. Replacement Certificate.** Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board of Directors has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct, and/or provide the Corporation with a written indemnity, as indemnity against any claim that may be made against the Corporation.

**Section 4. Fixing Of Record Date.** The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than ninety (90) days and, in the case of a meeting of stockholders, not less than ten (10) days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned or postponed to a date more than one hundred twenty (120) days after the record date originally fixed for the meeting, in which case a new record date for such meeting shall be determined as set forth herein.



**Section 5. Stock Ledger.** The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

**Section 6. Fractional Stock; Issuance Of Units.** The Board of Directors may authorize the Corporation to issue fractional shares of stock or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the Articles of Incorporation or these Bylaws, the Board of Directors may authorize the issuance of units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board of Directors may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

## ARTICLE VIII

### DISTRIBUTIONS

**Section 1. Authorization.** Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the Articles of Incorporation. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the Articles of Incorporation.

**Section 2. Contingencies.** Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends or other distributions, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

## ARTICLE IX

### INVESTMENT POLICY

Subject to the provisions of the Articles of Incorporation, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

## ARTICLE X

### INDEMNIFICATION PROVISIONS

To the maximum extent permitted by the laws of the Commonwealth of Virginia in effect from time to time, the Corporation shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable



expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Corporation and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner, member, manager, trustee, employee or agent of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity. The rights to indemnification and advance of expenses provided by the Articles of Incorporation or these Bylaws shall vest immediately upon election of a director or officer. The Corporation may, with the approval of its Board of Directors, provide such indemnification and advance for expenses to an individual who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, resolution, insurance, agreement or otherwise.

Neither the amendment nor repeal of this Article X, nor the adoption or amendment of any other provision of the Articles of Incorporation or these Bylaws inconsistent with this Article X, shall apply to or affect in any respect the applicability of the preceding paragraph of this Article X with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

## **ARTICLE XI**

### **WAIVER OF NOTICE**

Whenever any notice of a meeting is required to be given pursuant to the Articles of Incorporation or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

## **ARTICLE XII**

### **AMENDMENTS**

These Bylaws may be amended or repealed only by a unanimous vote of the stockholders present at a meeting in which a quorum is present if the substance of any proposed amendment to the Bylaws has been set forth in writing as a part of the written notice of the time and place of such a meeting.



## ARTICLE XIII

### MAJOR DECISIONS

Notwithstanding anything in these Bylaws to the contrary, during the construction process and until the termination of all Pennrose guaranty obligations with respect to the Project, no Director or Officer shall permit the Corporation to take any action, expend any sum, make any decision, or incur any obligation, in its own right or as the managing member of Choice Neighborhood V-Downtown LLC, a Virginia limited liability company (the “**Borrower**”) with respect to any matter listed below (each, a “**Major Decision**”) without the express written approval of Pennrose:

- (a) Any decision that would constitute a Development Decision;
- (b) Any decision, waiver or action permitted or required to be made or taken by the Corporation, any subsidiary or any of their affiliates with respect to the Project;
- (c) The sale, lease, license, transfer, exchange or other disposition of all or any portion of the Project (or any direct or indirect interest therein), or any material asset of the Corporation or any subsidiary or the granting of any options, or right of first offer or refusal in respect thereof, in each case other than (i) personal property in the ordinary course of business and (ii) leases in the ordinary course of business pursuant to leasing parameters and a standard form of lease approved by Pennrose from time to time;
- (d) The sale, transfer, exchange or other disposition of the ownership interests of NNRHA or Pennrose in the Corporation, in one or a series of related transactions;
- (e) The issuance of additional ownership interests in the Corporation, including any corporate action that effects any dilution of Pennrose’s interest in the Corporation;
- (f) The commencement of any process to subject all or any part of the Project to a condominium or cooperative form of ownership;
- (g) The approval of the terms or provisions of any restrictive covenants or easement agreements (excluding temporary access easements, utility easements for service to the Project and other similar agreements) affecting the Project or any portion thereof and/or any material amendments or modifications thereof;
- (h) The acquisition, by purchase, ground lease or otherwise, of any new or additional real property (other than the Project) or other material asset by the Borrower, Corporation, or any interest in any such real property or other material asset, either directly or indirectly;
- (i) (i) The incurrence by the Borrower, Corporation or any subsidiary of any indebtedness for borrowed money or any capitalized lease obligation, (ii) giving or granting, deeds of trust, mortgages, pledges, ground leases, security or other interests encumbering any property or asset of the Borrower, Corporation or any subsidiary (including, without limitation, the Project) or any portion thereof, or (iii) the entry into any agreement,



- commitment, assumption or guarantee or amendment thereof with respect to any of the foregoing;
- (j) The taking of any action or the failure to take any action that would reasonably be expected to result in a default (i) under any third party financing to which the Corporation or any subsidiary is a party or (ii) under Pennrose's or NNHRA's organizational documents or any regulatory agreement applicable to the Project;
  - (k) The modification in any material respect of the organizational documents of the Borrower or Corporation;
  - (l) Any merger, conversion, consolidation or similar action involving the Borrower, Corporation or any subsidiary;
  - (m)(i) Creating, forming or organizing any subsidiary, (ii) entering into any partnership or joint venture with any Person (as such term is defined in the Borrower's Operating Agreement dated \_\_\_\_\_, 2023 (the "**Operating Agreement**")) or (iii) purchasing or acquiring any stock, assets (including debt assets), obligations or securities of, or any other interest in, or making a capital contribution to, any other Person (other than purchases of inventory or equipment in the ordinary course of business);
  - (n) Seeking or consenting to any change in the zoning affecting the Project or any permits or approvals obtained with respect to the Project or seeking any variance under any existing zoning ordinance or using or permitting the use of any portion of the Project in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;
  - (o) Rebuilding or reconstructing the improvements on the Project if they are substantially damaged by a fire or other casualty;
  - (p) Using any insurance proceeds in excess of \$[50,000];
  - (q) Approval or modification of any tax abatements or tax abatement proposals, if applicable;
  - (r) (i) Entering into, renewing, modifying, waiving or terminating any development services, asset management, property management, construction management, design-build, sales and marketing, or leasing agreement (including the Ground Lease), or entering into such agreement in a form not approved by Pennrose, or (ii) making any material decision under such agreements or taking any action which, in each case, would result in a default under such agreements;
  - (s) All material insurance related matters, including the coverages, amounts, deductibles, carriers and reinsurers and the settling of any insurance claims;



- (t) Taking any action relating to material environmental matters other than obtaining environmental studies and reports, conducting or scheduling evaluations and analyses thereof and obtaining appropriate permits;
- (u) Making any change in any method of accounting or auditing practice, or changing, dismissing or engaging accountants or auditors for the Borrower, Corporation or any of its subsidiaries or the preparers of the Borrower's or Corporation's tax returns;
- (v) The termination, dissolution or liquidation of the Borrower, Corporation or any subsidiary;
- (w)(i) Confessing a judgment against the Borrower, Corporation or any subsidiary, or (ii) commencing litigation, settling any litigation or uninsured claims, submitting a Borrower, Corporation or any subsidiary claim to arbitration or engaging, terminating and/or replacing counsel to defend or prosecute on behalf of the Borrower, Corporation or any subsidiary with respect to any action or proceeding;
- (x) Filing or defending lawsuits or other proceedings except for the defense by insurers of insured claims;
- (y) Taking any other action not in the ordinary course of the Corporation's or Borrower's business;
- (z) Canceling or otherwise forgiving or releasing any claim or debt owed to the Corporation, Borrower or any of its subsidiaries;
- (aa) The establishment of any reserves;
- (bb) Constructing any material new discretionary or non-discretionary capital improvements on any property or replacing on a discretionary basis an existing material capital improvement following completion of construction thereof or the entering into of any material contract or agreement therefor;
- (cc) Approving the standard form of lease to be used with respect to the Project, as well as entering into, modifying or terminating any lease or license or sublease or sublicense of all, or any material portion of any Project;
- (dd) Taking any actions under any bonds, notes, loan documents or security documents to which the Corporation, Borrower, or any subsidiary is a party, or in respect of, or in connection with, any indebtedness in which the Corporation, Borrower, or any subsidiary has a direct or indirect interest; and
- (ee) The filing, commencement, or consent to the filing or commencement of any proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief from debts or creditors, dissolution, insolvency or similar law of any jurisdiction whether now or hereinafter in effect for the Corporation, Borrower, or the Project as



the debtor or the seeking or consenting to of the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation, Borrower, or any portion of the Project.

If the consent or approval of Pennrose is not obtained as to any matter set forth in this Article XIII or any other matter with respect to which Pennrose's consent or approval is required elsewhere in these Bylaws, then the "status quo" shall be maintained and the matter as to which consent or approval was sought shall not be implemented. NNHRA acknowledges and agrees that Pennrose shall have the right to exercise its authority and discretion with respect to approval or disapproval of the matters set forth in this Article XIII, or any other matter with respect to which Pennrose's consent or approval is required elsewhere in these Bylaws, in its sole and absolute discretion and waives any right to object to any such decision by Pennrose.



## **Choice Neighborhood V-Downtown LLC**

### **Board of Directors Meeting April 18, 2023**

227-27<sup>th</sup> Street  
Newport News, VA 23607

#### **Agenda**

1. Roll call
2. New Business
  - a. Consider a Resolution Authorizing the Adoption of the Operating Agreement of the Choice Neighborhood V-Downtown LLC
4. Any other business to come before the Board
5. Adjourn



**CHOICE NEIGHBORHOOD V-DOWNTOWN LLC****MEMORANDUM**

**DATE:** April 11, 2023

**TO:** All Members, Board of Directors – Choice Neighborhood V-Downtown LLC

**FROM:** Karen R. Wilds, President *KRW*

**SUBJECT:** Resolution Authorizing the Adoption of the Operating Agreement of the Choice Neighborhood V-Downtown LLC

The City, NNRHA and its development partner, Pennrose, LLC, are in the planning stage for the Phase 3 housing development which will be situated on Washington Avenue between 28<sup>th</sup> and 29<sup>th</sup> streets in the downtown area. This site will consist of 73 mixed-income housing units and ground floor commercial space (the "Project"). This LLC and its Managing Member, Choice Neighborhood V-Downtown Development Corporation were formed in order to support the development of CNI mixed income housing in the downtown phase.

The attached resolution approves the Operating Agreement for Choice Neighborhood V-Downtown LLC.

Approval is recommended.



## **RESOLUTION OF THE CHOICE NEIGHBORHOOD V-DOWNTOWN LLC ADOPTION OF THE OPERATING AGREEMENT**

**WHEREAS**, the Newport News Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia (the "Authority") was organized for the purpose, among others, of developing and operating low-income housing; and

**WHEREAS**, the Authority and the City of Newport News, Virginia were awarded a \$30 million Choice Neighborhoods Initiative (CNI) grant on May 13, 2019 to implement the Marshall-Ridley Choice Neighborhoods (MRCN) Transformation Plan; and

**WHEREAS**, the MRCN housing plan will be constructed in phases, consisting of replacement and mixed income housing units; and

**WHEREAS**, the Authority and its co-developer, Pennrose LLC, have agreed to facilitate the construction of the third phase of affordable and mixed income rental housing (the "Residential Housing") and commercial space (the "Commercial Unit") located in the downtown area of Newport News (the "Project"), and

**WHEREAS**, the Authority executed a Purchase Option Agreement and a Partial Assignment of Agreement for Purchase and sale of Real Property between the Newport News Redevelopment and Housing Authority and Choice Neighborhood V-Downtown Development Corporation LLC (the "Company") for the Authority owned and EDA optioned properties for this Project; and

**WHEREAS**, it is necessary for the LLC to adopt an Operating Agreement; and

**NOW THEREFORE, BE IT RESOLVED** Choice Neighborhood V-Downtown LLC, by vote of its Managing Member, Choice Neighborhood V-Downtown Development Corporation approves the following actions:

1. That the Executive Director of the Newport News Redevelopment and Housing Authority or her designee as President of the Managing Member be and is hereby authorized to finalize negotiations and enter into and execute the following documents and transactions, all of which shall be subject to legal counsel review:
  - a. Operating Agreement for Choice Neighborhood V-Downtown LLC, and any modifications, amendments and restatements to said Operating Agreement, all subject to legal counsel review.
  - b. Such documents as may be necessary to evidence the provision of funding for the Project, which final amount is subject to adjustment as may be negotiated by the President of the Managing Member.
2. Any actions taken prior to the date hereof by the Choice Neighborhood V-Downtown LLC in relation to the Project are hereby ratified and affirmed. The

provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision of this Resolution shall be declared invalid, such invalidity shall not affect the validity of the remainder of the sections, phrases and provisions of this Resolution.

3. This Resolution shall take effect immediately upon its adoption.



**OPERATING AGREEMENT  
OF  
CHOICE NEIGHBORHOOD V-DOWNTOWN LLC**

THIS OPERATING AGREEMENT, dated as of March \_\_, 2023, by the undersigned parties who, by their execution of this Operating Agreement, have become the members of Choice Neighborhood V-Downtown LLC, a Virginia limited liability company (the "Company"), provides as follows:

RECITALS:

The Company was organized as a limited liability company under the laws of the Commonwealth of Virginia effective February 21, 2023, and the undersigned parties enter into this Operating Agreement to set forth the terms and conditions on which the management, business and financial affairs of the Company shall be conducted.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties do hereby covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

1.01 The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "Act" shall mean the Virginia Limited Liability Company Act, Va. Code Ann. § 13.1-1000 et seq., as amended and in force from time to time.

(b) "Articles" shall mean the articles of organization of the Company, as amended and in force from time to time.

(c) "Capital Account" shall mean as of any given date the amount calculated and maintained by the Company for each Member as provided in Section 6.04 hereof.

(d) "Capital Contribution" shall mean any contribution to the capital of the Company by a Member in cash, property or services, or a binding obligation to contribute cash, property or services, whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company by a Member, as determined pursuant to Section 6.01 hereof.

(e) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) "Company" shall refer to Choice Neighborhood V-Downtown LLC.

(g) "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.

(h) "Manager" shall mean a manager of the Company, whose rights, powers and duties are specified in Article V hereof.

(i) "Member" shall mean each Person that is identified as an initial Member in Article III hereof or is admitted as a Member (either as a transferee of a Membership Interest or as an additional Member) as provided in Article VIII hereof. A Person shall cease to be a Member at such time as he no longer owns any Membership Interest.

(j) "Membership Interest" shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement.

(k) "Operating Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

(l) "Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so admits.

## ARTICLE II

### PURPOSES AND POWERS OF COMPANY

2.01 Purposes. The purposes of the Company shall be to:

(a) Acquire, develop, own, manage, operate, buy, sell, exchange, finance, refinance and otherwise deal with real estate and personal property incidental to real estate, as the Members may from time to time deem to be in the best interests of the Company, in particular, to acquire certain real estate in Newport News, rehabilitate the existing buildings thereon, operate thereon an affordable multifamily housing development using a combination of debt and equity derived from federal low income housing tax credits, to do all acts necessary or incidental to the accomplishment of that purpose and to engage such engineers, architects, contractors and other persons to accomplish such purpose. In particular, the Company is authorized to prepare and file an application for reservation of low incoming housing tax credits with the Virginia



Housing Development Authority and to enter into such other agreements as may be required for the purposes set forth above; and

(b) Engage in such other activities as are related or incidental to the foregoing purposes or otherwise reasonably necessary to accomplish the purposes of the Company and to do all such other acts or things except as may be specifically prohibited by this Operating Agreement of state or federal law.

2.02 Powers. The Company shall have all powers and rights of a limited liability company organized under the Act, to the extent such powers and rights are not proscribed by the Articles.

### ARTICLE III

#### **NAMES, ADDRESSES AND MEMBERSHIP INTERESTS OF INITIAL MEMBERS; PRINCIPAL OFFICE**

3.01 Names, Addresses and Membership Interests of Initial Members. The names, addresses and Membership Interests of the initial Members are as follows:

<u>Names and Addresses</u>	<u>Membership Interests</u>
Pennrose LP, LLC 230 Wyoming Avenue Kingston, Pennsylvania 18704	99.99%
Choice Neighborhood V-Downtown Development Corporation 227 27 <sup>th</sup> Street Newport News, Virginia 23607	00.01%

3.02 Principal Office. The principal office of the Company shall initially be at 227 27<sup>th</sup> Street, Newport News, Virginia 23607. The principal office may be changed from time to time by the Manager.

### ARTICLE IV

#### **VOTING POWERS, MEETINGS, ETC. OF MEMBERS**

4.01 In General. The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Members' right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles or this Operating Agreement vest in the Members the right to so vote or otherwise participate.

#### 4.02 Actions Requiring Approval of Members.

(a) Notwithstanding any other provisions of this Operating Agreement, the unanimous approval of the Members shall be required in order for any of the following actions to be taken on behalf of the Company:

(i) Amending the Articles or this Operating Agreement in any manner that materially alters the preferences, privileges or relative rights of the Members.

(ii) Electing the Managers as provided in Article V hereof.

(iii) Taking any action that would make it impossible to carry on the ordinary business of the Company.

(iv) Confessing a judgment against the Company in excess of \$5,000.

(v) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

(vi) Loaning Company funds in excess of \$25,000 or for a term in excess to one year to any Member.

(b) Unless the express terms of this Operating Agreement specifically provide otherwise, the affirmative vote of all the Members shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.02(a) above or any other matters that require the approval or consent of the Members.

4.03 Action by Members. In exercising their rights as provided above, the Members shall act collectively through meetings and/or written consents as provided in this Article.

4.04 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager, and shall be called by the Manager at the request of any two Members, or such lesser number of Members as are Members of the Company.

4.05 Place of Meeting. The place of any meeting of the Members shall be the principal office of the Company, unless another place, either within or outside the Commonwealth of Virginia, is designated by the Members.

4.06 Notice of Meetings. Written notice stating the place, day and hour of any meeting of the Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally, by mail, electronic mail or facsimile, by or at the direction of the Manager, to each Member, unless the Act or the Articles require different notice.



4.07 Conduct of Meetings. All meetings of the Members shall be presided over by a chairperson of the meeting, who shall be a Manager, or a Member designated by the Manager. The chairperson of any meeting of the 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, and shall appoint a secretary of such meeting to take minutes thereof.

4.08 Participation by Telephone or Similar Communications. Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

4.09 Waiver of Notice. When any notice of a meeting of the Members is required to be given, a waiver thereof in writing signed by a Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.

4.10 Action by Written Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if one or more written consents to such action are signed by the Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number or percentage of such Members necessary for adoption or approval of such matter on behalf of the Company. Such consent or consents shall be filed with the minutes of the meetings of the Members. Action taken under this Section shall be effective when the requisite Members have signed the consent or consents, unless the consent or consents specify a different effective date.

## **ARTICLE V**

### **MANAGERS**

5.01 Powers of Managers. Except as expressly provided otherwise in the Act, the Articles or this Operating Agreement, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, one or more Managers. The powers so exercised shall include but not be limited to the following:

(a) Entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company.

(b) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those

accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the Company.

(c) Collecting funds due to the Company.

(d) Acquiring, utilizing for the Company's purposes, maintaining and disposing of any assets of the Company.

(e) To the extent that funds of the Company are available therefor, paying debts and obligations of the Company.

(f) Borrowing money or otherwise committing the credit of the Company for Company activities, and voluntarily prepaying or extending any such borrowings.

(g) Employing from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys on such terms and for such compensation as the Managers shall determine, notwithstanding the fact that the Managers or any Member may have a financial interest in such firms or corporations.

(h) Making elections available to the Company under the Code.

(i) Registering the Company as a tax shelter with the Secretary of the Treasury and furnishing to such Secretary lists of investors in the Company, if required pursuant to applicable provisions of the Code.

(j) Obtaining general liability, property and other insurance for the Company, as the Managers deem proper.

(k) Taking such actions as may be directed by the Members in furtherance of their approval of any matter set forth in Section 4.02 hereof.

(l) Doing and performing all such things and executing, acknowledging and delivering any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

#### 5.02 Election, Etc. of Managers.

(a) The Members hereby unanimously elect Choice Neighborhood V-DOWNTOWN Development Corporation as the initial Manager of the Company, to serve until its successor(s) shall be duly elected and qualified.

(b) If any Person resigns or otherwise vacates the office of Manager, the Members shall elect a replacement Manager to serve the remaining term of such office unless one or more other Persons then serve as Managers and the Members determine not to fill such vacancy. A Person may be removed as a Manager by the Members with



or without cause at any time. A Manager may, but shall not be required to, be elected from among the Members. A Manager may be a natural person or an Entity.

5.03 Execution of Documents and Other Actions. If there is more than one Manager, the Managers may delegate to one or more of their number the authority to execute any documents or take any other actions deemed necessary or desirable in furtherance of any action that they have authorized on behalf of the Company as provided in this Operating Agreement.

5.04 Single Manager. When there is only one Person serving as Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Section, and all references in this Section and otherwise in this Operating Agreement to "Managers" shall be deemed to refer to such single Manager.

5.05 Reliance by Other Persons. Any Person dealing with the Company, other than a Member, may rely on the authority of the Manager in taking any action in the name of the Company, if the Manager provides to such Person a copy of the applicable provision of this Operating Agreement and/or the resolution or written consent of the Manager or Members granting such authority, certified in writing by the Manager to be genuine and correct and not to have been revoked, superseded or otherwise amended.

5.06 Manager's Expenses and Fees. The Company shall reimburse the Manager for reasonable out-of-pocket expenses that were or are incurred by the Manager on behalf of the Company with respect to the start-up or operation of the Company, the on-going conduct of the Company's business, or the dissolution and winding up of the Company and its business.

5.07 Competition. During the existence of the Company, the Manager shall devote such time to the business of the Company as may reasonably be required to conduct its business in an efficient and profitable manner. The Manager, for its own account and for the account of others, may engage in business ventures, including the acquisition of real estate properties or interests therein and the development, operation, management and/or syndication of real estate properties or interests therein, which may compete with the business of the Company. The Member hereby expressly consents to the continued operation by the Manager of such properties and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

5.08 Indemnification. The Company shall indemnify the Manager, whether serving the Company or, at its request, any other Entity, to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Manager may be entitled. The Manager may, upon the approval of the Member, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law.



5.10 Liability of Manager. So long as the Manager acts in good faith with respect to the conduct of the business and affairs of the Company, the Manager shall not be liable or accountable to the Company or to the Members, in damages or otherwise, for any error of judgment, for any mistake of fact or of law, or for any other act or thing that it may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct or gross negligence or breach of fiduciary duty, and further except for breaches of contractual obligations or agreements between the Manager and the Company.

## ARTICLE VI

### CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS

6.01 Initial Capital Contributions. Each Member, upon the execution of this Operating Agreement, shall make as an initial Capital Contribution the amount shown on Exhibit A, which is attached hereto. The initial Capital Contribution to be made by any Person who hereafter is admitted as a Member and acquires its Membership Interest from the Company shall be determined by the Members.

6.02 Additional Capital Contributions. No Member shall be required to make any Capital Contribution in addition to its Initial Capital Contribution. Otherwise, the Members may make additional Capital Contributions to the Company only if such additional Capital Contributions are made pro rata by all the Members or all the Members consent in writing to any non-pro rata contribution. The fair market value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be (a) agreed upon by the contributing Member and a majority in interest of the Members before contribution, or (b) determined by a disinterested appraiser selected by the Members.

6.03 Interests and Return of Capital Contribution. No Member shall receive any interest on its Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to withdraw or have refunded any Capital Contribution.

6.04 Capital Accounts. Separate Capital Accounts shall be maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited the fair market value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of profits, and the amount of any Company liabilities that are assumed by such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.



(c) In the event any membership interest in the Company is transferred in accordance with the terms of this Operating Agreement, the transferee shall succeed to the Capital Account of the transferor in proportion to the percentage of the transferor's membership interest transferred.

(d) The Capital Account shall also include a pro rata share of the fair market value of any property contributed by a person who is not a Member, such value to be the same value reported for federal gift tax purposes if a gift tax return is filed, and if not, the value in the case of real property shall be determined by an independent M.A.I. appraiser actively engaged in appraisal work in the area where such property is located and selected by the Members, and otherwise by the certified public accountant or accountants then serving the Company.

(e) If any Member makes a non-pro rata Capital Contribution to the Company or the Company makes a non-pro rata distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the then fair market value of the assets held by the Company immediately before the Capital Contribution or distribution.

6.05 Loans to the Company. If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members; provided that the terms of such borrowing shall be commercially reasonable and the Company shall not pledge its assets to secure such borrowing.

6.06 Effect of Sale or Exchange. In the event of a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee in proportion to the percentage of the transferor's membership interest transferred.

6.07 Distributions. All distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of the Act and Article IX hereof) shall be made to the Members in proportion to their respective Membership Interests. All distributions of cash or property shall be made at such time and in such amounts as determined by the Members. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.

6.08 Allocations. Except as otherwise provided in Section 6.09 hereof, all items of income, gain, loss, deduction and credit, whether resulting from the Company's operations or in connection with its dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.



6.09 Allocation with Respect to Property. If, at any time during the Company's existence, any Member contributes to the Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and such property is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

## ARTICLE VII

### RECORDS, REPORTS, ETC.; PARTNERSHIP REPRESENTATIVE

7.01 Records. The Company shall maintain and make available to the Member its records to the extent provided in the Act.

7.02 Financial and Operating Statements and Tax Returns. The Manager shall keep or cause to be kept complete and accurate books and records of the affairs of the Company at its principal office. The Members shall have the right to inspect such records at reasonable times. Within seventy-five (75) days from the close of each fiscal year of the Company, the Manager shall cause to be delivered to the Members a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable laws, rules and regulations. The Manager also shall cause to be prepared and filed all federal, state and local income tax returns required of the Company for each fiscal year.

7.03 Banking. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Manager. All withdrawals from any such bank accounts or investments established by the Manager under shall be made on such signature or signatures as may be authorized from time to time by the Manager. Any account opened for the Company shall not be commingled with other funds of the Manager or other interested persons.

7.04 Power of Attorney.

(a) The Members do hereby irrevocably constitute and appoint the Manager as the Members' true and lawful attorney, in their name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

(i) Any certificate or other instrument that may be required to be filed by the Company or the Members under the laws of the Commonwealth of Virginia or under the applicable laws of any other jurisdiction in order to conduct business in any



such jurisdiction, to the extent the Manager deems any such filing to be necessary or desirable.

(ii) Any amendment to the Articles adopted as provided in this Operating Agreement.

(iii) Any certificates or other instruments that may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Operating Agreement.

(b) It is expressly understood, intended and agreed by each Member for itself, its successors and assigns that the grant of the power of attorney to the Manager pursuant to subsection (a) is coupled with an interest, is irrevocable, and shall survive the termination, death or legal incompetency of the Member or such assignment of its Membership Interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the name of the Members and having the signature of the Manager, as attorney-in-fact, appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

7.04 Partnership Representative. The Members hereby appoint Karen R. Wilds as the partnership representative (the "Partnership Representative") in accordance with Section 6223(a) of the Code. The Partnership Representative may resign at any time. If Karen R. Wilds ceases to be the Partnership Representative for any reason, the Members, by majority vote, shall appoint a new Partnership Representative.

In the event of an income tax audit of any tax return, including administrative settlement and judicial review, the Partnership Representative shall be authorized to act for the Company subject, however, to the majority consent of the Members as to any extensions, filings, elections, agreements, settlements or any other material action as to any such matter.

Upon receipt of notice from the Internal Revenue Service (the "IRS") of the beginning of an administrative proceeding with respect to the Company, the Partnership Representative shall inform each Member. The Partnership Representative shall give the Members prompt notice of any inquiry or other communication received from the IRS or other applicable tax authority regarding the tax treatment of the Company or the Members (as such), and shall, to the extent possible, give the Members prior notice of and a reasonable opportunity to review and comment upon any written communication the Partnership Representative intends to make to any such taxing authority in connection with any examination, audit or other inquiry involving the Company.

Each Member shall provide to the Company and the Company shall provide to the Members (i) such assistance as may be reasonable requested by such Member or the Company in connection with the preparation of any tax return, any audit or any claim of refund or credit in respect of taxes and (ii) any records or other information relevant to



such tax returns, audits or claims, in each case relating to the business of the Company.

Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member as provided below.

To the extent that the Company is assessed amounts under Section 6221(a) of the Code, the current or former Member(s) to which this assessment relates shall pay to the Company such Member's share of the assessed amounts, including such Member's share of any additional accrued interest assessed against the Company relating to such Member's share of the assessment, upon thirty (30) days of written notice from the Partnership Representative requesting the payment. At the reasonable discretion of the Partnership Representative, with respect to current Members, the Company may alternatively allow some or all of a Member's obligation pursuant to the preceding sentence to be applied to and reduce the next distribution(s) otherwise payable to such Member under this Agreement.

The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by Taxing Authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees that any action taken by the Partnership Representative in connection with audits of the Company shall be binding upon such Member and that such Member shall not independently act with respect to tax audits or tax litigation affecting the Company.

The Company shall make any payments of assessed amounts under Section 6221 of the Code and shall allocate any such assessment among the current or former Members of the Company for the "reviewed year" to which the assessment relates in a manner that reflects the current or former Members' respective interests in the Company for that reviewed year based on such Member's share of such assessment as would have occurred if the Company had amended the tax returns for such reviewed year and such Member incurred the assessment directly (using the tax rates applicable to the Company under Section 6225(b) of the Code).

To each Member's Capital Account there will be debited any items in the nature of expenses or losses including such items that cannot be capitalized or deducted in computing taxable income, which for the avoidance of doubt, shall include any payment by the Company of an Imputed Underpayment or other nondeductible penalties and/or interest under the Code.

Within forty-five (45) days of any notice of final partnership adjustment, the Company will elect the alternative procedure under Section 6226 of the Code, as amended by Section 1101 of the Bipartisan Budget Act of 2015, and furnish to the IRS and each Member during the year or years to which the notice of final partnership adjustment relates a statement of the Member's share of any adjustment set forth in the



notice of final partnership adjustment.

The above Partnership Representative Sections shall survive the termination of this Operating Agreement.

## **ARTICLE VIII**

### **ASSIGNMENT; RESIGNATION**

8.01 Assignment Generally. Except as provided in Section 8.02 of this Operating Agreement, the Members hereby covenant and agree that they will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of their interest in the Company to any person, firm, corporation, trust or other entity without first offering in writing to sell such interest to the Company. The Company shall have the right to accept the offer at any time during the thirty (30) days following the date on which the written offer is delivered to the Company. The consent of the Manager shall be required to authorize the exercise of such option by the Company. If the Company shall fail to accept the offer within the thirty (30) day period, such interest may during the following sixty (60) days be disposed of free of the restrictions imposed by this Operating Agreement; provided, however, that the purchase price for such interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase that would have been applicable to the Company had the Company purchased the interest; provided further that the purchaser shall first become a Member pursuant to this Operating Agreement; and provided further that any interest not so disposed of within the sixty (60)-day period shall thereafter remain subject to the terms of this Operating Agreement. Notwithstanding the preceding sentence, no assignee of a Membership Interest shall become a Member of the Company except upon the consent of a majority of the non-assigning Members.

#### 8.02 Purchase of Certain Membership Interests.

(a) If an Option Event (as defined below) occurs with respect to any Member (an "Option Member"), the Company shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this Section 8.02. For purposes of the foregoing, an "Option Event" shall mean (i) the cancellation or termination of a member (ii) the inability of the Member to pay its debts generally as they become due, (ii) any assignment by the Member for the benefit of its creditors, (iii) the filing by the Member of a voluntary petition in bankruptcy or similar insolvency proceedings, or (iv) the filing against the Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter. The term "Option Member" shall include an Option Member's personal representative or trustee in bankruptcy, to the extent applicable.

(b) Upon any Option Event occurring to an Option Member, the Option Member shall deliver written notice of the occurrence of such Option Event to the Company. The Company shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the sixty (60) day period



immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the Company to purchase such Membership Interest for the book value of such Membership Interest. The book value is determined in accordance with normal accounting rules, except that book value of real estate owned by the Company shall be determined in accordance with the provisions of Section 8.02(d). The book value of the interest shall be the amount that the Option Member would receive in exchange for his entire interest in the Company if the Company sold all of its assets, subject to their liabilities, at their book value as of the date on which the Option Event occurred and distributed the net proceeds from such sale in complete liquidation of the Company. The consent of all the Members shall be required to authorize the exercise of such option by the Company. Such option must be exercised by delivery of a written notice from the Company to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the Company and the Option Member.

(c) If the foregoing option is not exercised, the business of the Company shall continue, and the Option Member shall retain its Membership Interest.

(d) As to real estate that is owned by the Company, book value shall mean the city or county assessment as determined by the locality where the property is situate and located.

(e) If at a time when the Company has an option to purchase an Option Member's Membership Interest, it is prohibited from purchasing all or any portion of such Membership Interest pursuant to the Act or any loan agreement or similar restrictive agreement, the Option Member and the remaining Members shall, to the extent permitted by law, take appropriate action to adjust the value of the Company's assets from book value to a fair valuation based on accounting practices and principles that are reasonable under the circumstances in order to permit the Company to purchase such Membership Interest. If the Company becomes obligated to purchase an Option Member's Membership Interest under this Section and the above action cannot be taken or does not create sufficient value to permit the Company to do so, the Company shall be obligated to purchase the portion of the Membership Interest it is permitted to purchase.

8.03 Absolute Prohibition. Notwithstanding any other provision in this Article VIII, the Membership Interest of the Members, in whole or in part, or any rights to distributions therefrom, shall not be sold, exchanged, conveyed, assigned, pledged, hypothecated, subjected to a security interest or otherwise transferred or encumbered, if, as a result thereof, the Company would be terminated for federal income tax purposes in the opinion of counsel for the Company or such action would result in a violation of federal or state securities laws in the opinion of counsel for the Company.

8.04 Members Acquiring Membership Interest from Company. No Person, other than the initial Members, who acquires a Membership Interest from the Company shall be admitted as a Member of the Company, except upon the consent of the Members.



8.05 Resignation. Except as provided herein, no Member shall have any right to voluntarily resign or otherwise withdraw from the Company without the written consent of all remaining Members of the Company.

8.06 Effect of Prohibited Action. Any transfer or other action in violation of this Article shall be void ab initio and of no force or effect whatsoever.

8.06 Rights of an Assignee. If an assignee of a Membership Interest is not admitted as a Member because of the failure to satisfy the requirements hereof, such assignee shall nevertheless be entitled to receive such distributions from the Company as the assigning Member would have been entitled to receive under Sections 6.07 and 9.04(c) of this Operating Agreement with respect to such Membership Interest had the assigning Member retained such Membership Interest.

## **ARTICLE IX**

### **DISSOLUTION AND TERMINATION**

9.01 Events of Dissolution. The Company shall be dissolved upon the first to occur of the following:

- (a) Any event that under the Act requires dissolution of the Company;
- (b) The unanimous vote of the Members' interest to the dissolution of the Company; and
- (c) The entry of a decree of judicial dissolution of the Company as provided in the Act.

9.02 Liquidation. Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Act by either or a combination of both of the following methods as the Members shall determine:

- (a) Selling the Company's assets and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership Interests and in satisfaction thereof; and/or
- (b) Distributing the Company's assets to the Members in kind with each Member accepting an undivided interest in the Company's assets, subject to its liabilities, in satisfaction of his Membership Interest. The interest conveyed to each Member in such assets shall constitute a percentage of the entire interests in such assets equal to such Member's Membership Interest.

9.03 Orderly Liquidation. A reasonable time not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

9.04 Distributions. Upon liquidation, the Company assets (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:

(a) First, to the payment of the debts and liabilities of the Company and the expenses of liquidation, including a sales commission to the selling agent, if any; then

(b) Second, to the setting up of any reserves that the Manager (or the person or persons carrying out the liquidation) deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the Manager (or the person or persons carrying out the liquidation) shall deem advisable, but in no event to exceed eighteen (18) months, the Company shall distribute the balance thereof in the manner provided in the following subsection; then

(c) Third, to the Members in proportion to their respective Membership Interests.

(d) In the event of a distribution in liquidation of the Company's property in kind, the fair market value of such property shall be determined by a qualified and disinterested M.A.I. appraiser, selected by the Members (or the person or persons carrying out the liquidation), and each Member shall receive an undivided interest in such property equal to the portion of the proceeds to which he would be entitled under the immediately preceding subsection if such property were sold at such fair market value.

9.05 Taxable Gain or Loss. Taxable income, gain and loss from the sale or distribution of Company property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in Section 6.08 above.

9.06 No Recourse Against Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member.

9.07 Non Profit Purchase Option and Right of First Refusal Agreement. The Company is expressly authorized to enter into an exclusive Nonprofit Purchase Option and Right of First Refusal with Newport News Redevelopment and Housing Authority, which is a qualified nonprofit organization under the provisions of Section 42 of the Code, which Purchase Option shall comply with the requirements of such Section 42.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

10.01 Arbitration. All disputes and controversies between the parties hereto arising out of or in connection with this Agreement shall be submitted to arbitration



pursuant to the following procedure. Either party may, by written notice to the other within thirty (30) days after the controversy has arisen hereunder, appoint an arbitrator who shall be either an attorney or accountant. The other party shall, by written notice, within fifteen (15) days after receipt of such notice by the first party, appoint a second arbitrator who shall also be an attorney or accountant, and in default of such second appointment the first party shall apply to the Clerk for the Circuit Court for the City of Newport News, to appoint the second arbitrator pursuant to the provisions of Section 8.01-581.03 of the Code of Virginia (1950). When two arbitrators have been appointed as hereinabove provided, they shall agree on a third arbitrator and shall appoint him by written notice signed by both of them and a copy mailed to each party hereto within fifteen (15) days after such appointment. On appointment of three arbitrators as hereinabove provided, such arbitrators shall hold an arbitration hearing within thirty (30) days after such appointment. At the hearing the three arbitrators shall allow each party to present his case, evidence, and witnesses, if any, in the presence of the other party, and shall render their award, including a provision for payment of costs and expenses of arbitration to be paid by one or both of the parties hereto, as the arbitrators deem just. The decision of the majority of the arbitrators shall be binding on the parties hereto (although each party shall retain his right to appeal any questions of law arising at the hearing), and judgment may be entered thereon in any court having jurisdiction.

10.02 Attorneys' Fees. In the event any Member brings an action to enforce any provisions of this Operating Agreement against the Company or any other Member, whether such action is at law, in equity or otherwise, the prevailing party shall be entitled, in addition to any other rights or remedies available to it, to collect from the non-prevailing party or parties the reasonable costs and expenses incurred in the investigation preceding such action and the prosecution of such action, including but not limited to reasonable attorney's fees and court costs.

10.03 Notices. Whenever, under the provisions of the Act or other law, the Articles or this Operating Agreement, notice is required to be given to any Person, it shall not be construed to mean exclusively personal notice unless otherwise specifically provided, but such notice may be given in writing, by mail, addressed to the Company at its principal office from time to time and to any other Person at its address as it appears on the records of the Company from time to time, with postage thereon prepaid. Any such notice shall be deemed to have been given at the time it is deposited in the United States mail. Notice to a Person may also be given personally, by telecopy or by electronic mail sent to its address as it appears on the records of the Company. The addresses of the initial Members as shown on the records of the Company shall originally be those set forth in Article III hereof. Any Person may change its address as shown on the records of the Company by delivering written notice to the Company in accordance with this Section.

10.04 Application of Virginia Law. This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the Commonwealth of Virginia, without reference to its choice of law provisions, and specifically the Act.



10.05 Amendments. No amendment or modification of this Operating Agreement shall be effective except upon the unanimous written consent of the Members.

10.06 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

10.07 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

10.08 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

10.09 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.10 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

10.11 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

10.12 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

10.13 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

10.14 Entire Agreement. This Operating Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and



entire Operating Agreement of the Company, adopted by the Members of the Company as of the date first written above. The Members further declare that the percentage Membership Interests specified below is their ownership interest in the Company.

**MEMBERS:**

Penrose LP, LLC – 99.99% Interest

By: \_\_\_\_\_  
Mark H. Dambly, President

Choice Neighborhood V-DOWNTOWN  
Development Corporation – 00.01% Interest

By: \_\_\_\_\_  
Karen R. Wilds, President

**EXHIBIT A**

Initial Capital Contribution:

Choice Neighborhood V-Downtown Development Corporation	\$ _____
Pennrose LP, LLC	\$ _____



**Choice Neighborhood Downtown Commercial Partners  
Development Corporation**

**Board of Directors Meeting  
April 18, 2023**

227-27<sup>th</sup> Street  
Newport News, VA 23607

**Agenda**

1. Roll call
2. Election of Chairman and Vice Chairman
3. Appoint the Executive Director as President, Secretary and Treasurer
4. New Business
  - a. Consider a Resolution Authorizing the Adoption of the Bylaws for the Choice Neighborhood Downtown Commercial Partners Development Corporation and Authorize the President to enter into an Operating Agreement of the Choice Neighborhood Downtown Commercial Partners LLC
4. Any other business to come before the Board
5. Adjourn







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**CHOICE NEIGHBORHOOD DOWNTOWN COMMERCIAL PARTNERS  
DEVELOPMENT CORPORATION**

**MEMORANDUM**

**DATE:** April 11, 2023

**TO:** All Members, Board of Directors – Choice Neighborhood Downtown Commercial Partners Development Corporation

**FROM:** Karen R. Wilds, President *KRW*

**SUBJECT:** Resolution Authorizing the Adoption of the Bylaws of the Choice Neighborhood Downtown Commercial Partners Development Corporation and Authorize the President to enter into an Operating Agreement of the Choice Neighborhood Downtown Commercial Partners LLC

The City, NNRHA and its development partner, Penrose, LLC, are in the planning stage for the Phase 3 housing development which will be situated on Washington Avenue between 28<sup>th</sup> and 29<sup>th</sup> streets in the downtown area. This site will consist of 73 mixed-income housing units and commercial space. The Choice Neighborhood Downtown Commercial Partner LLC and its Managing Member, Choice Neighborhood Downtown Commercial Partners Development Corporation were formed in order to support the creation of the retail space in the downtown phase.

In order to give clear structure and outline operating procedures for the entities, the attached resolution authorizes the adoption of bylaws and authorizes the Development Corporation President to enter into an operating agreement for the LLC.

Approval is recommended.

**RESOLUTION OF THE CHOICE NEIGHBORHOOD DOWNTOWN COMMERCIAL  
PARTNERS DEVELOPMENT CORPORATION ADOPTION OF BYLAWS AND  
AUTHORIZES THE PRESIDENT TO ENTER INTO AN OPERATING AGREEMENT**

**WHEREAS**, the Newport News Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia (the "Authority") was organized for the purpose, among others, of developing and operating low-income housing; and

**WHEREAS**, the Authority and the City of Newport News, Virginia were awarded a \$30 million Choice Neighborhoods Initiative (CNI) grant on May 13, 2019 to implement the Marshall-Ridley Choice Neighborhoods (MRCN) Transformation Plan; and

**WHEREAS**, the MRCN housing plan will be constructed in phases, consisting of replacement and mixed income housing units; and

**WHEREAS**, the Authority and its co-developer, Pennrose LLC, have agreed to facilitate the construction of the third phase of affordable and mixed income rental housing and commercial space (the "Commercial Unit") located in the downtown area of Newport News (the "Project"), and

**WHEREAS**, the Authority executed a Purchase Option Agreement and Partial Assignment of Agreement for Purchase and Sale of Real Property between the Newport News Redevelopment and Housing Authority and the Choice Neighborhood V-Downtown Development Corporation LLC (the "Company") for the Authority owned and EDA optioned properties for the Project; and

**WHEREAS**, the Authority is to be the 100% stockholder in the Managing Member, with the Authority's Executive Director serving as President of the Managing Member; and

**WHEREAS**, it is necessary for the Managing Member to adopt bylaws to permit the orderly operation of the Managing Member; and

**NOW THEREFORE, BE IT RESOLVED** Choice Neighborhood Downtown Commercial Partners Development Corporation, by vote of its Board of Directors, approves the following actions:

1. That the President shall be the Executive Director of the Newport News Redevelopment and Housing Authority and she or her designee be and is hereby authorized to finalize negotiations and enter into and execute the following documents and transactions, all of which shall be subject to legal counsel review:
  - a. Bylaws of Managing Member and any modifications, amendments and restatements thereto, all subject to legal counsel review.
  - b. Operating Agreement for Downtown Commercial Partner LLC, and any modifications, amendments and restatements to said Operating Agreement, all subject to legal counsel review.



- c. Any and all related and necessary documents needed to effectuate the transfer of Commercial Unit to Company.
2. Any actions taken prior to the date hereof by the Choice Neighborhood Downtown Commercial Partners Development Corporation on its behalf or as Managing Member of the Company in relation to the Project are hereby ratified and affirmed. The provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision of this Resolution shall be declared invalid, such invalidity shall not affect the validity of the remainder of the sections, phrases and provisions of this Resolution.
3. This Resolution shall take effect immediately upon its adoption.

**BYLAWS**  
**OF**  
**CHOICE NEIGHBORHOOD DOWNTOWN COMMERCIAL PARTNERS**  
**DEVELOPMENT CORPORATION**

**ARTICLE I**

**OFFICES**

**Section 1. Principal Office.** The principal office of Choice Neighborhood Downtown Commercial Partners Development Corporation (the “**Corporation**”), in the Commonwealth of Virginia shall be located at such place as the board of directors of the Corporation (the “**Board of Directors**” and each director, individually, a “**Director**”) may designate.

**Section 2. Additional Offices.** The Corporation may have additional offices, including a principal executive office, at such places as the Board of Directors may from time to time determine or the business of the Corporation may require.

**ARTICLE II**

**DEVELOPMENT DECISIONS**

**Section 1. Development Decisions.** Pennrose Holdings, LLC, a Pennsylvania limited liability company, together with its affiliate Pennrose, LLC, a Pennsylvania limited liability company (collectively, “**Pennrose**”) in its role as the developer of that certain 3,000 square foot unit commercial project known as Choice Neighborhood Downtown-V (the “**Project**”), shall cause the construction of the Project to be completed in a good and workmanlike manner, free and clear of all mechanics’, materialmen’s or similar liens, and shall equip the improvements or cause the same to be equipped with all necessary and appropriate fixtures, equipment and articles of personal property, including refrigerators and ranges, all in accordance with the Project documents and the drawings and specifications of the Project and (ii) cause the Corporation to satisfy any other requirements necessary to achieve closing of the Project in accordance with the Project documents.

During the construction process and until the termination of all guaranty obligations of Pennrose and its affiliates with respect to the Project, Pennrose shall have the right to unilaterally make and implement all development and operations decisions with respect to the Project, which shall be made in a reasonable business prudent manner and which include but are not limited to the following (collectively, the “**Development Decisions**”):

- (a) Approval of all construction and architectural contracts and all architectural plans, specifications and drawings related to the Project prior to the construction and/or alteration of any Project improvements contemplated thereby;



- (b) Any proposed change in the work of the construction of the Project, or in the plans and specifications therefor, or in the cost thereof, or any other change which would affect the design, cost, value or quality of the Project;
- (c) Negotiation in the name and on behalf of the Corporation of all agreements for architectural, engineering, testing or consulting services for the Project, and any agreements for the construction of any improvements or tenant improvements to be constructed or installed at the Project or the furnishing of any supplies, materials, machinery or equipment therefor, or any amendments thereof;
- (d) Establishment and implementation of appropriate administrative and financial controls for the design and construction of the Project, including but not limited to the selection procedures for and selection of subcontractors and suppliers;
- (e) Approval or disapproval of requests for payment made by the Project architect and the general contractor, or by any other parties with respect to the design and construction of the Project, and in addition, verification that the same is being carried out substantially in accordance with the plans and specifications;
- (f) Establishment of operating budgets and ongoing management of the Project pursuant to a management agreement to be entered into with a management company selected by Pennrose; and
- (g) Overseeing and coordination of tenant leasing activities and ongoing compliance obligations in accordance with regulatory and financing documents applicable to the Project.

Furthermore, Pennrose shall have the right, power, authority and discretion acting alone to execute and deliver on behalf of the Corporation or any subsidiary, any and all agreements, instruments, certificates or other documents related to Development Decisions.

**Section 2.** **Advancement of Development Funds.** If the Corporation proceeds set aside to pay for development costs (“**Designated Proceeds**”) as available from time to time are insufficient to pay all development costs, then Pennrose shall advance or cause to be advanced to the Corporation from time to time as needed all such funds as are required to pay such deficiencies. Any such advances shall, to the extent permitted under the Project documents and any applicable regulations or requirements, be reimbursed only out of Designated Proceeds available from time to time after payment of all development costs.

### ARTICLE III

#### **MEETINGS OF STOCKHOLDERS**

**Section 1.** **Place.** All meetings of stockholders shall be held at the principal executive office of the Corporation or at such other place as shall be set in accordance with these Bylaws (the “**Bylaws**”) and stated in the notice of the meeting.



**Section 2. Annual Meeting.** An annual meeting of stockholders for the transaction of any business within the powers of the Corporation shall be held on the date and at the time and place set by the Board of Directors. If no date for the annual meeting is established or said meeting is not held on the date established as provided above, a special meeting in lieu thereof may be held or there may be action by written consent of the stockholders on matters to be voted on at the annual meeting, and such special meeting or written consent shall have for the purposes of these Bylaws or otherwise all the force and effect of an annual meeting. Failure to hold an annual meeting does not invalidate the Corporation's existence or affect any otherwise valid acts of the Corporation.

**Section 3. Special Meetings.** Each of the chief executive officer, President (as such term is defined in Article V herein), Board of Directors and stockholders may call a special meeting of stockholders. A special meeting of stockholders shall be held on the date and at the time and place set by the chief executive officer, President or Board of Directors or stockholders, whoever has called the meeting. The call for the meeting shall state the place, date, hour and purposes of the meeting. Only the purposes specified in the notice of special meeting shall be considered or dealt with at such special meeting.

**Section 4. Notice.** Not less than ten (10) nor more than ninety (90) days before each meeting of stockholders, the Secretary (as such term is defined in Article V) herein shall give to each stockholder who is entitled to notice of the meeting, notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called. Such notice may be delivered by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business, by electronic transmission or by any other means permitted by Virginia law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. The Corporation may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless a stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II or the validity of any proceedings at any such meeting.

Any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice.

If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken, except that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed



for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 5. Organization And Conduct.** Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chairman of the meeting or, in the absence of such appointment or appointed individual, by the Chairman of the Board (as such term is defined in Article V herein) or, in the case of a vacancy in the office or absence of the Chairman of the Board, by one of the following officers present at the meeting in the following order: the Vice Chairman of the Board (as such term is defined in Article V herein), if there is one, the chief executive officer, the President, the vice presidents in their order of rank and seniority, the Secretary or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a two thirds (2/3) majority of the votes cast by stockholders present in person or by proxy. The Secretary, or, in the Secretary's absence, an assistant Secretary, or, in the absence of both the Secretary and assistant Secretaries, an individual appointed by the Board of Directors or, in the absence of such appointment, an individual appointed by the chairman of the meeting shall act as Secretary. In the event that the Secretary presides at a meeting of stockholders, an assistant Secretary, or, in the absence of all assistant secretaries, an individual appointed by the Board of Directors or the chairman of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies and such other individuals as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (h) concluding a meeting or recessing or adjourning the meeting, whether or not a quorum is present, to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

**Section 6. Quorum; Adjournments.** At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a "**Supermajority**" of all the votes entitled to be cast at such meeting on any matter that is not a Development Decision or Major Decision (as defined in Article XIII herein), which shall mean at least 66-2/3% of the votes, shall constitute a quorum; provided that a Supermajority shall always require the affirmative vote of Pennrose or its agent, and this section shall not affect any requirement under any statute for the vote necessary for the approval of any matter. Each Major Decision shall require approval as specified therein.

If, however, such quorum is not established at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting *sine die* or from time to time to a date not more



than one hundred twenty (120) days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

**Section 7. Voting.** A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a Director. Each share may be voted for as many individuals as there are Directors to be elected and for whose election the share is entitled to be voted, without any right to cumulative voting. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Corporation's Articles of Incorporation, dated February 21, 2023, as such may be amended from time to time ("**Articles of Incorporation**"). Unless otherwise provided by statute or by the Articles of Incorporation, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders. Voting on any question or in any election may be *viva voce* unless the chairman of the meeting shall order that voting be by ballot or otherwise.

**Section 8. Proxies.** A holder of record of shares of stock of the Corporation may cast votes in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the Secretary before or at the meeting. No proxy shall be valid more than eleven (11) months after its date unless otherwise provided in the proxy. Except as otherwise limited therein, proxies shall entitle the persons authorized thereby to vote at any adjournment of such meeting.

**Section 9. Voting Of Stock By Certain Holders.** Stock of the Corporation registered in the name of a corporation, partnership, trust, limited liability company or other entity, if entitled to be voted, may be voted by the President or a vice president, general partner, managing member or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any Director or fiduciary may vote stock registered in the name of such person in the capacity of such Director or fiduciary, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the



stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt by the Corporation of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

**Section 10. Inspectors.** The Board of Directors or the chairman of the meeting, in advance of or at any meeting, may, but need not, appoint one or more inspectors for the meeting and any successor to an inspector. Except as otherwise provided by the chairman of the meeting, the inspectors, if any, shall (a) determine the number of shares of stock represented at the meeting, in person or by proxy, and the validity and effect of proxies, (b) receive and tabulate all votes, ballots or consents, (c) report such tabulation to the chairman of the meeting, (d) hear and determine all challenges and questions arising in connection with the right to vote and (e) do such acts as are proper to fairly conduct the election or vote. Each such report shall be in writing and signed by the inspector or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

**Section 11. Action Without Meeting.** Subject to applicable law, any action to be taken by the stockholders may be taken without a meeting, if, prior to such action, all stockholders entitled to vote thereon shall consent in writing or by electronic transmission to such action being taken, and such consent shall be treated for all purposes as a vote at a meeting.

## ARTICLE IV

### DIRECTORS

**Section 1. General Powers.** Except as otherwise provided by these Bylaws, the property, affairs and business of the Corporation shall be managed under the direction of the Board of Directors, including the adoption of initial Bylaws, with decision making power granted to the stockholders, as specified in Article III herein, and, except as otherwise expressly provided by law, the Articles of Incorporation or these Bylaws, all of the powers of the Corporation shall be vested in the Board of Directors.

**Section 2. Emergency Powers.** If an emergency exists for purposes of this Article IV if a quorum of the corporation's Board of Directors cannot readily be assemble because of some catastrophic event, the Board of Directors may:

- (a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
- (b) Relocate the principal office, designate alternative principal officers or regional offices, or authorize the officers to do so.

**Section 3. Number and Qualifications.** The Board of Directors shall be comprised of members of the Commissioners of the Newport News Redevelopment and Housing Authority (“NRRHA”) as appointed by the City Council of the City of Newport News, Virginia. The Board of Directors shall serve without compensation. A director need not be a resident of the Commonwealth of Virginia or a shareholder of the corporation.

**Section 4. Annual Meeting.** The annual meeting of the Board of Directors shall be held at the registered office or principal office of the Corporation, or at such other place as the Board of Directors may designate from time to time, on the third Tuesday of January of each year or as determined by the Board of Directors. Notice of the annual meeting shall be given by mail to the Board of Directors not less than five (5) days prior to the date of the meeting.

**Section 5. Special Meetings.** The President, Chairman of the Board or Vice Chairman of the Board, as such terms are defined in Article V herein, of the Board of Directors may call special meetings of the Board of Directors at any time.

**Section 6. Notice.** Written notice of the date, time and place of special meetings shall be given to each Director by mail or e-mail, to the address of such Director as it appears in the records of the Corporation not less than three (3) days before the date of the meeting.

**Section 7. Action Without Meeting.** Any action required or permitted by law to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all of the members of the Board of Directors. The action shall be evidenced by one or more written consents stating the action taken, signed by each Director either before or after the action taken, and included in the minutes or filed with the corporate records reflecting the action taken.

**Section 8. Conduct of Meetings.** The President or Vice Chairman, in the absence of the Chairman, shall preside over meetings of the Board of Directors. The Secretary shall act as Secretary of all meetings of the Board of Directors. If no such officer is present, the Chairman or President shall appoint a Secretary of the meeting.

**Section 9. Procedure at Meetings.** Robert's Rules of Order Newly Revised shall be utilized for the conduct of meetings and actions voted upon by the Board of Directors, unless waived by a quorum (as defined herein) of Directors in attendance at a duly convened meeting of the Board of Directors.

**Section 10. Participation by Conference Telephone.** Subject to applicable law, the Board of Directors may permit any or all Directors to participate in a meeting of the Directors by, or conduct the meeting through the use of, conference telephone or any other means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by such means shall be deemed to be present in person at the meeting. When a meeting is so conducted, a written record shall be made of the action taken at such meeting.



**Section 11. Quorum.** A quorum at any meeting of the Board of Directors shall be a majority of the number of Directors fixed or prescribed by these Bylaws or, if no number is prescribed, the number of Directors in office immediately before the meeting begins. The affirmative vote of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

**Section 11. Committees.** The Board of Directors may create one or more committees as it may deem necessary and the Board of Directors may authorize the membership of such committees to be comprised of members of the Board of Directors.

**Section 12. Term of Office.** The term of each Director shall coincide with the term of appointment as a member of the Board of Commissioners of the NNRHA by the City Council of the City of Newport News, Virginia

**Section 13. Resignation.** A Director may resign at any time by delivering written notice to the Board of Directors, the President or the Secretary. A resignation shall be effective when delivered, unless the notice specifies a later effective date.

**Section 14. Conflicts of Interest.** No transaction with the Corporation in which a Director has a direct or indirect personal interest shall be void or voidable solely because the Director's interest in the transaction if: (i) the material facts of the transaction and the Director's interest are disclosed or known to the Board of Directors or a committee of the Board of Directors, and the transaction was authorized, approved or ratified by the affirmative vote of a majority of the Directors on the Board of Directors, or on the committee, who have no direct or indirect personal interest in the transaction; provided, however, that a transaction shall not be authorized, approved or ratified by a single Director.

## **ARTICLE V**

### **OFFICERS**

**Section 1. Officers.** The Chairman and Vice Chairman of the Board of Commissioners of the NNRHA and the Executive Director of the NNRHA shall serve as Chairman, Vice Chairman and President/Secretary - Treasurer respectively of the Corporation. The president of Pennrose Holdings, LLC shall serve as Development Manager of the Corporation.

**Section 2. Vacancies.** Vacancies among the officers occurring during the year shall be filled by appointment by the City Council of the City of Newport News, Virginia to the Board of Commissioners of the NNRHA who shall then become a member of the Board of Directors of the Corporation; provided, however, the Development Manager shall not be removed or replaced while Pennrose is entitled to make Development Decisions in accordance with Article II of these Bylaws.

**Section 3. Chairman of the Board.** The Chairman of the Board shall preside at all meetings of the Board of Directors, and perform such other duties as are incident to his or her office or are properly required by him or her by the Board of Directors.

**Section 4. Vice Chairman of the Board.** The Vice Chairman of the Board shall exercise the authority of Chairman of the Board in his or her absence and perform such other duties as may be assigned by the Chairman of the Board or by the Board of Directors.

**Section 5. President.** The President shall be the chief executive officer of the Corporation and subject to the direction of the Board of Directors. The President shall have general supervision and control of the business of the Corporation. Unless otherwise provided by the Board of Directors, the President shall: present at each annual meeting of the Board of Directors a report on the condition of the Corporation; sign and make all contracts and agreements in the name of the Corporation; see that the books, reports, statements, etc. required by statutes are properly kept, made and filed according to law; sign all notes, drafts or bills of exchange, warrants, etc. and shall direct orders for the payment of money duly drawn by the Treasurer; enforce these Bylaws and perform such other acts and duties as from time to time may be delegated by the Board of Directors; and be an ex-officio member of all committees,

**Section 6. Secretary.** The Secretary shall cause to be prepared for submission to the Board of Directors at the annual meeting, an annual status report of the operation of the Corporation; shall have the responsibility for preparing and maintaining custody of minutes of meetings of the Directors in a book or books kept for that purpose and the responsibility for authenticating records of the Corporation, and shall have such powers and perform such other duties as may be prescribed by the Board of Directors.

**Section 7. Treasurer.** The Treasurer shall be the chief financial officer of the Corporation. The Treasurer shall have the custody of all moneys and securities of the Corporation and shall deposit the same in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors and, unless otherwise prescribed by the Board of Directors, shall maintain the books of account and financial records, and shall render to the Board of Directors as requested, an account of all transactions of the Treasurer and the financial condition of the Corporation. The Treasurer shall cause to be prepared financial information suitable for inclusion in the annual report of the Corporation; and shall cause to be conducted an annual financial audit of the Corporation if directed to do so by the Board of Directors.

**Section 8. Development Manager.** The Development Manager shall exercise all duties and have all rights and responsibilities described in Article II of these Bylaws and shall have such powers and perform such other duties as may be prescribed by the Board of Directors.

**Section 9. Delegation of Power.** In the event of and during the absence, disqualification or inability to act of any officer, such other officers or employees as may be designated by the Board of Directors shall have the authority and perform the duties of such officer; provided, however, the powers of the Development Manager may only be designated by Pennrose.

**Section 10. Term of Office.** Each officer shall be appointed to hold office until the next annual meeting of the Board of Directors, or for such longer or shorter term as the Board of Directors may specify, and until his successor shall have been appointed or such earlier time as he shall resign, die or be removed. The Development Manager term shall continue while Pennrose's right to make all Development Decisions remains outstanding.



**Section 11. Resignation.** An officer may resign at any time by delivering written notice to the Board of Directors or the Secretary. A resignation shall be effective when delivered unless the notice specifies a later effective date.

**Section 12. Removal.** Any officer other than the Development Manager may be removed, with or without cause, at any time by the Board of Directors and such officer, if appointed by another officer, may likewise remove any officer or assistant officer.

**Section 13. Execution of Instruments.** Checks, drafts, notes and orders for the payment of money shall be signed by such officer or officers or such other individual or individuals as the Board of Directors may from time to time authorize, and any endorsement of such paper in the ordinary course of business shall be similarly made, except that any officer or assistant officer of the Corporation may endorse checks, drafts or notes for collection or deposit to the credits of the Corporation. The signature of any such officer or other individual may be a facsimile when authorized by the Board of Directors.

## ARTICLE VI

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

**Section 1. Contracts.** The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board of Directors and executed by an authorized person.

**Section 2. Checks And Drafts.** All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation.

## ARTICLE VII

### **STOCK**

**Section 1. Certificates.** Except as may be otherwise provided by the Board of Directors, stockholders of the Corporation are not entitled to certificates representing the shares of stock held by them. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors or a duly authorized officer, shall contain the statements and information required by the Virginia Stock Corporation Act (“VSCA”) and shall be signed by the officers of the Corporation in the manner permitted by the VSCA. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the VSCA, the Corporation shall provide to the record holders of such shares a written statement of the information required by the VSCA to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.

**Section 2. Transfers.** All transfers of shares of stock shall be made on the books of the Corporation, by the holder of the shares, in person or by his or her attorney, in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors that such shares shall no longer be represented by certificates. Upon the transfer of any uncertificated shares, to the extent then required by the VSCA, the Corporation shall provide to the record holders of such shares a written statement of the information required by the VSCA to be included on stock certificates.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided by the laws of the State of Virginia.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the Articles of Incorporation and all of the terms and conditions contained therein.

**Section 3. Replacement Certificate.** Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board of Directors has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct, and/or provide the Corporation with a written indemnity, as indemnity against any claim that may be made against the Corporation.

**Section 4. Fixing Of Record Date.** The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than ninety (90) days and, in the case of a meeting of stockholders, not less than ten (10) days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned or postponed to a date more than one hundred twenty (120) days after the record date originally fixed for the meeting, in which case a new record date for such meeting shall be determined as set forth herein.



**Section 5.** **Stock Ledger.** The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

**Section 6.** **Fractional Stock; Issuance Of Units.** The Board of Directors may authorize the Corporation to issue fractional shares of stock or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the Articles of Incorporation or these Bylaws, the Board of Directors may authorize the issuance of units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board of Directors may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

## ARTICLE VIII

### DISTRIBUTIONS

**Section 1.** **Authorization.** Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the Articles of Incorporation. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the Articles of Incorporation.

**Section 2.** **Contingencies.** Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends or other distributions, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

## ARTICLE IX

### INVESTMENT POLICY

Subject to the provisions of the Articles of Incorporation, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Corporation as it shall deem appropriate in its sole discretion.

## ARTICLE X

### INDEMNIFICATION PROVISIONS

To the maximum extent permitted by the laws of the Commonwealth of Virginia in effect from time to time, the Corporation shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable

expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Corporation and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner, member, manager, trustee, employee or agent of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to, or witness in, the proceeding by reason of his or her service in that capacity. The rights to indemnification and advance of expenses provided by the Articles of Incorporation or these Bylaws shall vest immediately upon election of a director or officer. The Corporation may, with the approval of its Board of Directors, provide such indemnification and advance for expenses to an individual who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, resolution, insurance, agreement or otherwise.

Neither the amendment nor repeal of this Article X, nor the adoption or amendment of any other provision of the Articles of Incorporation or these Bylaws inconsistent with this Article X, shall apply to or affect in any respect the applicability of the preceding paragraph of this Article X with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

## **ARTICLE XI**

### **WAIVER OF NOTICE**

Whenever any notice of a meeting is required to be given pursuant to the Articles of Incorporation or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission, given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

## **ARTICLE XII**

### **AMENDMENTS**

These Bylaws may be amended or repealed only by a unanimous vote of the stockholders present at a meeting in which a quorum is present if the substance of any proposed amendment to the Bylaws has been set forth in writing as a part of the written notice of the time and place of such a meeting.



## ARTICLE XIII

### MAJOR DECISIONS

Notwithstanding anything in these Bylaws to the contrary, during the construction process and until the termination of all Pennrose guaranty obligations with respect to the Project, no Director or Officer shall permit the Corporation to take any action, expend any sum, make any decision, or incur any obligation, in its own right or as the managing member of Choice Neighborhood Downtown Commercial Partners LLC, a Virginia limited liability company (the “**Borrower**”) with respect to any matter listed below (each, a “**Major Decision**”) without the express written approval of Pennrose:

- (a) Any decision that would constitute a Development Decision;
- (b) Any decision, waiver or action permitted or required to be made or taken by the Corporation, any subsidiary or any of their affiliates with respect to the Project;
- (c) The sale, lease, license, transfer, exchange or other disposition of all or any portion of the Project (or any direct or indirect interest therein), or any material asset of the Corporation or any subsidiary or the granting of any options, or right of first offer or refusal in respect thereof, in each case other than (i) personal property in the ordinary course of business and (ii) leases in the ordinary course of business pursuant to leasing parameters and a standard form of lease approved by Pennrose from time to time;
- (d) The sale, transfer, exchange or other disposition of the ownership interests of NNRHA in the Corporation, in one or a series of related transactions;
- (e) The issuance of additional ownership interests in the Corporation, including any corporate action that effects any dilution of Pennrose’s interest in the Corporation;
- (f) The commencement of any process to subject all or any part of the Project to a condominium or cooperative form of ownership;
- (g) The approval of the terms or provisions of any restrictive covenants or easement agreements (excluding temporary access easements, utility easements for service to the Project and other similar agreements) affecting the Project or any portion thereof and/or any material amendments or modifications thereof;
- (h) The acquisition, by purchase, ground lease or otherwise, of any new or additional real property (other than the Project) or other material asset by the Borrower, Corporation, or any interest in any such real property or other material asset, either directly or indirectly;
- (i) (i) The incurrence by the Borrower, Corporation or any subsidiary of any indebtedness for borrowed money or any capitalized lease obligation, (ii) giving or granting, deeds of trust, mortgages, pledges, ground leases, security or other interests encumbering any property or asset of the Borrower, Corporation or any subsidiary (including, without limitation, the Project) or any portion thereof, or (iii) the entry into any agreement,

commitment, assumption or guarantee or amendment thereof with respect to any of the foregoing;

- (j) The taking of any action or the failure to take any action that would reasonably be expected to result in a default (i) under any third party financing to which the Corporation or any subsidiary is a party or (ii) under Pennrose's or NNHRA's organizational documents or any regulatory agreement applicable to the Project;
- (k) The modification in any material respect of the organizational documents of the Borrower or Corporation;
- (l) Any merger, conversion, consolidation or similar action involving the Borrower, Corporation or any subsidiary;
- (m)(i) Creating, forming or organizing any subsidiary, (ii) entering into any partnership or joint venture with any Person (as such term is defined in the Borrower's Operating Agreement dated as of March 15, 2023 (the "**Operating Agreement**")) or (iii) purchasing or acquiring any stock, assets (including debt assets), obligations or securities of, or any other interest in, or making a capital contribution to, any other Person (other than purchases of inventory or equipment in the ordinary course of business);
- (n) Seeking or consenting to any change in the zoning affecting the Project or any permits or approvals obtained with respect to the Project or seeking any variance under any existing zoning ordinance or using or permitting the use of any portion of the Project in any manner that could result in such use becoming a non-conforming use under any zoning ordinance or any other applicable land use law, rule or regulation;
- (o) Rebuilding or reconstructing the improvements on the Project if they are substantially damaged by a fire or other casualty;
- (p) Using any insurance proceeds in excess of \$50,000;
- (q) Approval or modification of any tax abatements or tax abatement proposals, if applicable;
- (r) (i) Entering into, renewing, modifying, waiving or terminating any development services, asset management, property management, construction management, design-build, sales and marketing, or leasing agreement, or entering into such agreement in a form not approved by Pennrose, or (ii) making any material decision under such agreements or taking any action which, in each case, would result in a default under such agreements;
- (s) All material insurance related matters, including the coverages, amounts, deductibles, carriers and reinsurers and the settling of any insurance claims;



- (t) Taking any action relating to material environmental matters other than obtaining environmental studies and reports, conducting or scheduling evaluations and analyses thereof and obtaining appropriate permits;
- (u) Making any change in any method of accounting or auditing practice, or changing, dismissing or engaging accountants or auditors for the Borrower, Corporation or any of its subsidiaries or the preparers of the Borrower's or Corporation's tax returns;
- (v) The termination, dissolution or liquidation of the Borrower, Corporation or any subsidiary;
- (w)(i) Confessing a judgment against the Borrower, Corporation or any subsidiary, or (ii) commencing litigation, settling any litigation or uninsured claims, submitting a Borrower, Corporation or any subsidiary claim to arbitration or engaging, terminating and/or replacing counsel to defend or prosecute on behalf of the Borrower, Corporation or any subsidiary with respect to any action or proceeding;
- (x) Filing or defending lawsuits or other proceedings except for the defense by insurers of insured claims;
- (y) Taking any other action not in the ordinary course of the Corporation's or Borrower's business;
- (z) Canceling or otherwise forgiving or releasing any claim or debt owed to the Corporation, Borrower or any of its subsidiaries;
- (aa) The establishment of any reserves;
- (bb) Constructing any material new discretionary or non-discretionary capital improvements on any property or replacing on a discretionary basis an existing material capital improvement following completion of construction thereof or the entering into of any material contract or agreement therefor;
- (cc) Approving the standard form of lease to be used with respect to the Project, as well as entering into, modifying or terminating any lease or license or sublease or sublicense of all, or any material portion of any Project;
- (dd) Taking any actions under any bonds, notes, loan documents or security documents to which the Corporation, Borrower, or any subsidiary is a party, or in respect of, or in connection with, any indebtedness in which the Corporation, Borrower, or any subsidiary has a direct or indirect interest; and
- (ee) The filing, commencement, or consent to the filing or commencement of any proceeding under any bankruptcy, reorganization, arrangement, adjustment of debt, relief from debts or creditors, dissolution, insolvency or similar law of any jurisdiction whether now or hereinafter in effect for the Corporation, Borrower, or the Project as

the debtor or the seeking or consenting to of the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation, Borrower, or any portion of the Project.

If the consent or approval of Pennrose is not obtained as to any matter set forth in this Article XIII or any other matter with respect to which Pennrose's consent or approval is required elsewhere in these Bylaws, then the "status quo" shall be maintained and the matter as to which consent or approval was sought shall not be implemented. NNHRA acknowledges and agrees that Pennrose shall have the right to exercise its authority and discretion with respect to approval or disapproval of the matters set forth in this Article XIII, or any other matter with respect to which Pennrose's consent or approval is required elsewhere in these Bylaws, in its sole and absolute discretion and waives any right to object to any such decision by Pennrose.



**Choice Neighborhood Downtown Commercial Partners LLC**

**Board of Directors Meeting  
April 18, 2023**

227-27<sup>th</sup> Street  
Newport News, VA 23607

**Agenda**

1. Roll call
2. New Business
  - a. Consider a Resolution Authorizing the Adoption of the Operating Agreement for the Choice Neighborhood Downtown Commercial Partners LLC
4. Any other business to come before the Board
5. Adjourn







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**CHOICE NEIGHBORHOOD DOWNTOWN COMMERCIAL PARTNERS LLC**

**MEMORANDUM**

**DATE:** April 11, 2023

**TO:** All Members, Board of Directors – Choice Neighborhood Downtown Commercial Partners LLC

**FROM:** Karen R. Wilds, President *KRW*

**SUBJECT:** Resolution Authorizing the Adoption of the Operating Agreement of the Choice Neighborhood Downtown Commercial Partners LLC

The City, NNRHA and its development partner, Pennrose, LLC, are in the planning stage for the Phase 3 housing development which will be situated on Washington Avenue between 28<sup>th</sup> and 29<sup>th</sup> streets in the downtown area. This site will consist of 73 mixed-income housing units and ground floor commercial space. The Choice Neighborhood Downtown Commercial Partner LLC and its Managing Member, Choice Neighborhood Downtown Commercial Partners Development Corporation were formed in order to support the creation of the retail space in the downtown phase.

The attached resolution approves the Operating Agreement for Choice Neighborhood Downtown Commercial Partners LLC and authorizes the President to execute the agreement.

Approval is recommended.

## **RESOLUTION OF THE CHOICE NEIGHBORHOOD DOWNTOWN COMMERCIAL PARTNERS LLC ADOPTION OF THE OPERATING AGREEMENT**

**WHEREAS**, the Newport News Redevelopment and Housing Authority, a political subdivision of the Commonwealth of Virginia (the "Authority") was organized for the purpose, among others, of developing and operating low-income housing; and

**WHEREAS**, the Authority and the City of Newport News, Virginia were awarded a \$30 million Choice Neighborhoods Initiative (CNI) grant on May 13, 2019 to implement the Marshall-Ridley Choice Neighborhoods (MRCN) Transformation Plan; and

**WHEREAS**, the MRCN housing plan will be constructed in phases, consisting of replacement and mixed income housing units; and

**WHEREAS**, the Authority and its co-developer, Pennrose LLC, have agreed to facilitate the construction of the third phase of affordable and mixed income rental housing and commercial space (the "Commercial Unit") located in the downtown area of Newport News (the "Project"), and

**WHEREAS**, the Authority executed a Purchase Option Agreement and a Partial Assignment of Agreement for Purchase and sale of Real Property between the Newport News Redevelopment and Housing Authority and the Choice Neighborhood V-Downtown Development Corporation LLC (the "Company") for the Authority owned and EDA optioned properties for this project; and

**WHEREAS**, it is necessary for the LLC to adopt an Operating Agreement; and

**NOW THEREFORE, BE IT RESOLVED** Choice Neighborhood Downtown Commercial Partners LLC, by vote of its Board of Directors, approves the following actions:

1. That the Executive Director of the Newport News Redevelopment and Housing Authority or her designee as President of the Managing Member be and is hereby authorized to finalize negotiations and enter into and execute the following documents and transactions, all of which shall be subject to legal counsel review:
  - a. Operating Agreement for Downtown Commercial Partner LLC, and any modifications, amendments and restatements to said Operating Agreement, all subject to legal counsel review.
  - b. Such documents as may be necessary to evidence the provision for the funding of the Project, which final amount is subject to adjustment as may be negotiated by the President of the Managing Member.
  - c. Any and all related and necessary documents needed to effectuate the transfer of Commercial Unit to Company.



2. Any actions taken prior to the date hereof by the Choice Neighborhood Downtown Commercial Partners LLC in relation to the Project are hereby ratified and affirmed. The provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision of this Resolution shall be declared invalid, such invalidity shall not affect the validity of the remainder of the sections, phrases and provisions of this Resolution.
3. This Resolution shall take effect immediately upon its adoption.

**OPERATING AGREEMENT  
OF  
CHOICE NEIGHBORHOOD DOWNTOWN COMMERCIAL PARTNERS LLC**

THIS OPERATING AGREEMENT, dated as of March 15, 2023, by the undersigned parties who, by their execution of this Operating Agreement, have become the members of Choice Neighborhood Downtown Commercial Partners LLC, a Virginia limited liability company (the "Company"), provides as follows:

RECITALS:

The Company was organized as a limited liability company under the laws of the Commonwealth of Virginia effective February 21, 2023 , and the undersigned parties enter into this Operating Agreement to set forth the terms and conditions on which the management, business and financial affairs of the Company shall be conducted.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties do hereby covenant and agree as follows:

**ARTICLE I**

**DEFINITIONS**

1.01 The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "Act" shall mean the Virginia Limited Liability Company Act, Va. Code Ann. § 13.1-1000 et seq., as amended and in force from time to time.

(b) "Articles" shall mean the articles of organization of the Company, as amended and in force from time to time.

(c) "Capital Account" shall mean as of any given date the amount calculated and maintained by the Company for each Member as provided in Section 6.04 hereof.

(d) "Capital Contribution" shall mean any contribution to the capital of the Company by a Member in cash, property or services, or a binding obligation to contribute cash, property or services, whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company by a Member, as determined pursuant to Section 6.01 hereof.



(e) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) "Company" shall refer to Choice Neighborhood Downtown Commercial Partners LLC.

(g) "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.

(h) "Manager" shall mean a manager of the Company, whose rights, powers and duties are specified in Article V hereof.

(i) "Member" shall mean each Person that is identified as an initial Member in Article III hereof or is admitted as a Member (either as a transferee of a Membership Interest or as an additional Member) as provided in Article VIII hereof. A Person shall cease to be a Member at such time as he no longer owns any Membership Interest.

(j) "Membership Interest" shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement.

(k) "Operating Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

(l) "Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so admits.

## ARTICLE II

### PURPOSES AND POWERS OF COMPANY

2.01 Purposes. The purposes of the Company shall be to:

(a) Acquire, develop, own, manage, operate, buy, sell, exchange, finance, refinance and otherwise deal with real estate and personal property incidental to real estate, as the Members may from time to time deem to be in the best interests of the Company, in particular, to acquire certain real estate in Newport News, develop, own and operate the real estate as a commercial development and to enter into such other agreements as may be required for the purposes set forth above; and

(b) Engage in such other activities as are related or incidental to the foregoing purposes or otherwise reasonably necessary to accomplish the purposes of the

Company and to do all such other acts or things except as may be specifically prohibited by this Operating Agreement of state or federal law.

2.02 Powers. The Company shall have all powers and rights of a limited liability company organized under the Act, to the extent such powers and rights are not proscribed by the Articles.

### ARTICLE III

#### **NAMES, ADDRESSES AND MEMBERSHIP INTERESTS OF INITIAL MEMBERS; PRINCIPAL OFFICE**

3.01 Names, Addresses and Membership Interests of Initial Members. The names, addresses and Membership Interests of the initial Members are as follows:

<u>Names and Addresses</u>	<u>Membership Interests</u>
Choice Neighborhood Downtown Commercial Development Corporation 227 27 <sup>th</sup> Street Newport News, Virginia 23607	100%

3.02 Principal Office. The principal office of the Company shall initially be at 227 27<sup>th</sup> Street, Newport News, Virginia 23607. The principal office may be changed from time to time by the Manager.

### ARTICLE IV

#### **VOTING POWERS, MEETINGS, ETC. OF MEMBERS**

4.01 In General. The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Members' right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles or this Operating Agreement vest in the Members the right to so vote or otherwise participate.

4.02 Actions Requiring Approval of Members.

(a) Notwithstanding any other provisions of this Operating Agreement, the unanimous approval of the Members shall be required in order for any of the following actions to be taken on behalf of the Company:

(i) Amending the Articles or this Operating Agreement in any manner that materially alters the preferences, privileges or relative rights of the Members.

(ii) Electing the Managers as provided in Article V hereof.



(iii) Taking any action that would make it impossible to carry on the ordinary business of the Company.

(iv) Confessing a judgment against the Company in excess of \$5,000.

(v) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

(vi) Loaning Company funds in excess of \$25,000 or for a term in excess to one year to any Member.

(b) Unless the express terms of this Operating Agreement specifically provide otherwise, the affirmative vote of all the Members shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.02(a) above or any other matters that require the approval or consent of the Members.

4.03 Action by Members. In exercising their rights as provided above, the Members shall act collectively through meetings and/or written consents as provided in this Article.

4.04 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager, and shall be called by the Manager at the request of any two Members, or such lesser number of Members as are Members of the Company.

4.05 Place of Meeting. The place of any meeting of the Members shall be the principal office of the Company, unless another place, either within or outside the Commonwealth of Virginia, is designated by the Members.

4.06 Notice of Meetings. Written notice stating the place, day and hour of any meeting of the Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally, by mail, electronic mail or facsimile, by or at the direction of the Manager, to each Member, unless the Act or the Articles require different notice.

4.07 Conduct of Meetings. All meetings of the Members shall be presided over by a chairperson of the meeting, who shall be a Manager, or a Member designated by the Manager. The chairperson of any meeting of the 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, and shall appoint a secretary of such meeting to take minutes thereof.

4.08 Participation by Telephone or Similar Communications. Members may participate and hold a meeting by means of conference telephone or similar

communications equipment by means of which all Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

4.09 Waiver of Notice. When any notice of a meeting of the Members is required to be given, a waiver thereof in writing signed by a Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.

4.10 Action by Written Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if one or more written consents to such action are signed by the Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number or percentage of such Members necessary for adoption or approval of such matter on behalf of the Company. Such consent or consents shall be filed with the minutes of the meetings of the Members. Action taken under this Section shall be effective when the requisite Members have signed the consent or consents, unless the consent or consents specify a different effective date.

## **ARTICLE V**

### **MANAGERS**

5.01 Powers of Managers. Except as expressly provided otherwise in the Act, the Articles or this Operating Agreement, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, one or more Managers. The powers so exercised shall include but not be limited to the following:

(a) Entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company.

(b) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the Company.

(c) Collecting funds due to the Company.

(d) Acquiring, utilizing for the Company's purposes, maintaining and disposing of any assets of the Company.

(e) To the extent that funds of the Company are available therefor, paying debts and obligations of the Company.



(f) Borrowing money or otherwise committing the credit of the Company for Company activities, and voluntarily prepaying or extending any such borrowings.

(g) Employing from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys on such terms and for such compensation as the Managers shall determine, notwithstanding the fact that the Managers or any Member may have a financial interest in such firms or corporations.

(h) Making elections available to the Company under the Code.

(i) Registering the Company as a tax shelter with the Secretary of the Treasury and furnishing to such Secretary lists of investors in the Company, if required pursuant to applicable provisions of the Code.

(j) Obtaining general liability, property and other insurance for the Company, as the Managers deem proper.

(k) Taking such actions as may be directed by the Members in furtherance of their approval of any matter set forth in Section 4.02 hereof.

(l) Doing and performing all such things and executing, acknowledging and delivering any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

#### 5.02 Election, Etc. of Managers.

(a) The Members hereby unanimously elect Choice Neighborhood Downtown Commercial Partners Development Corporation as the initial Manager of the Company, to serve until its successor(s) shall be duly elected and qualified.

(b) If any Person resigns or otherwise vacates the office of Manager, the Members shall elect a replacement Manager to serve the remaining term of such office unless one or more other Persons then serve as Managers and the Members determine not to fill such vacancy. A Person may be removed as a Manager by the Members with or without cause at any time. A Manager may, but shall not be required to, be elected from among the Members. A Manager may be a natural person or an Entity.

5.03 Execution of Documents and Other Actions. If there is more than one Manager, the Managers may delegate to one or more of their number the authority to execute any documents or take any other actions deemed necessary or desirable in furtherance of any action that they have authorized on behalf of the Company as provided in this Operating Agreement.

5.04 Single Manager. When there is only one Person serving as Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Section,



and all references in this Section and otherwise in this Operating Agreement to "Managers" shall be deemed to refer to such single Manager.

5.05 Reliance by Other Persons. Any Person dealing with the Company, other than a Member, may rely on the authority of the Manager in taking any action in the name of the Company, if the Manager provides to such Person a copy of the applicable provision of this Operating Agreement and/or the resolution or written consent of the Manager or Members granting such authority, certified in writing by the Manager to be genuine and correct and not to have been revoked, superseded or otherwise amended.

5.06 Manager's Expenses and Fees. The Company shall reimburse the Manager for reasonable out-of-pocket expenses that were or are incurred by the Manager on behalf of the Company with respect to the start-up or operation of the Company, the on-going conduct of the Company's business, or the dissolution and winding up of the Company and its business.

5.07 Competition. During the existence of the Company, the Manager shall devote such time to the business of the Company as may reasonably be required to conduct its business in an efficient and profitable manner. The Manager, for its own account and for the account of others, may engage in business ventures, including the acquisition of real estate properties or interests therein and the development, operation, management and/or syndication of real estate properties or interests therein, which may compete with the business of the Company. The Member hereby expressly consents to the continued operation by the Manager of such properties and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

5.08 Indemnification. The Company shall indemnify the Manager, whether serving the Company or, at its request, any other Entity, to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Manager may be entitled. The Manager may, upon the approval of the Member, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law.

5.10 Liability of Manager. So long as the Manager acts in good faith with respect to the conduct of the business and affairs of the Company, the Manager shall not be liable or accountable to the Company or to the Members, in damages or otherwise, for any error of judgment, for any mistake of fact or of law, or for any other act or thing that it may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct or gross negligence or breach of fiduciary duty, and further except for breaches of contractual obligations or agreements between the Manager and the Company.

## ARTICLE VI



## **CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS**

6.01 Initial Capital Contributions. Each Member, upon the execution of this Operating Agreement, shall make as an initial Capital Contribution the amount shown on Exhibit A, which is attached hereto. The initial Capital Contribution to be made by any Person who hereafter is admitted as a Member and acquires its Membership Interest from the Company shall be determined by the Members.

6.02 Additional Capital Contributions. No Member shall be required to make any Capital Contribution in addition to its Initial Capital Contribution. Otherwise, the Members may make additional Capital Contributions to the Company only if such additional Capital Contributions are made pro rata by all the Members or all the Members consent in writing to any non-pro rata contribution. The fair market value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be (a) agreed upon by the contributing Member and a majority in interest of the Members before contribution, or (b) determined by a disinterested appraiser selected by the Members.

6.03 Interests and Return of Capital Contribution. No Member shall receive any interest on its Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to withdraw or have refunded any Capital Contribution.

6.04 Capital Accounts. Separate Capital Accounts shall be maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited the fair market value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of profits, and the amount of any Company liabilities that are assumed by such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) In the event any membership interest in the Company is transferred in accordance with the terms of this Operating Agreement, the transferee shall succeed to the Capital Account of the transferor in proportion to the percentage of the transferor's membership interest transferred.

(d) The Capital Account shall also include a pro rata share of the fair market value of any property contributed by a person who is not a Member, such value to be the same value reported for federal gift tax purposes if a gift tax return is filed, and if not, the value in the case of real property shall be determined by an independent M.A.I. appraiser actively engaged in appraisal work in the area where



such property is located and selected by the Members, and otherwise by the certified public accountant or accountants then serving the Company.

(e) If any Member makes a non-pro rata Capital Contribution to the Company or the Company makes a non-pro rata distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the then fair market value of the assets held by the Company immediately before the Capital Contribution or distribution.

6.05 Loans to the Company. If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members; provided that the terms of such borrowing shall be commercially reasonable and the Company shall not pledge its assets to secure such borrowing.

6.06 Effect of Sale or Exchange. In the event of a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee in proportion to the percentage of the transferor's membership interest transferred.

6.07 Distributions. All distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of the Act and Article IX hereof) shall be made to the Members in proportion to their respective Membership Interests. All distributions of cash or property shall be made at such time and in such amounts as determined by the Members. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.

6.08 Allocations. Except as otherwise provided in Section 6.09 hereof, all items of income, gain, loss, deduction and credit, whether resulting from the Company's operations or in connection with its dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.

6.09 Allocation with Respect to Property. If, at any time during the Company's existence, any Member contributes to the Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and such property is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

## ARTICLE VII



## **RECORDS, REPORTS, ETC.; PARTNERSHIP REPRESENTATIVE**

7.01 Records. The Company shall maintain and make available to the Member its records to the extent provided in the Act.

7.02 Financial and Operating Statements and Tax Returns. The Manager shall keep or cause to be kept complete and accurate books and records of the affairs of the Company at its principal office. The Members shall have the right to inspect such records at reasonable times. Within seventy-five (75) days from the close of each fiscal year of the Company, the Manager shall cause to be delivered to the Members a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable laws, rules and regulations. The Manager also shall cause to be prepared and filed all federal, state and local income tax returns required of the Company for each fiscal year.

7.03 Banking. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Manager. All withdrawals from any such bank accounts or investments established by the Manager under shall be made on such signature or signatures as may be authorized from time to time by the Manager. Any account opened for the Company shall not be commingled with other funds of the Manager or other interested persons.

### 7.04 Power of Attorney.

(a) The Members do hereby irrevocably constitute and appoint the Manager as the Members' true and lawful attorney, in their name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

(i) Any certificate or other instrument that may be required to be filed by the Company or the Members under the laws of the Commonwealth of Virginia or under the applicable laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Manager deems any such filing to be necessary or desirable.

(ii) Any amendment to the Articles adopted as provided in this Operating Agreement.

(iii) Any certificates or other instruments that may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Operating Agreement.

(b) It is expressly understood, intended and agreed by each Member for itself, its successors and assigns that the grant of the power of attorney to the Manager pursuant to subsection (a) is coupled with an interest, is irrevocable, and shall survive the termination, death or legal incompetency of the Member or such assignment of its Membership Interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the name of the Members and having the signature of the Manager, as attorney-in-fact, appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

7.04 Partnership Representative. The Members hereby appoint Karen R. Wilds as the partnership representative (the "Partnership Representative") in accordance with Section 6223(a) of the Code. The Partnership Representative may resign at any time. If Karen R. Wilds ceases to be the Partnership Representative for any reason, the Members, by majority vote, shall appoint a new Partnership Representative.

In the event of an income tax audit of any tax return, including administrative settlement and judicial review, the Partnership Representative shall be authorized to act for the Company subject, however, to the majority consent of the Members as to any extensions, filings, elections, agreements, settlements or any other material action as to any such matter.

Upon receipt of notice from the Internal Revenue Service (the "IRS") of the beginning of an administrative proceeding with respect to the Company, the Partnership Representative shall inform each Member. The Partnership Representative shall give the Members prompt notice of any inquiry or other communication received from the IRS or other applicable tax authority regarding the tax treatment of the Company or the Members (as such), and shall, to the extent possible, give the Members prior notice of and a reasonable opportunity to review and comment upon any written communication the Partnership Representative intends to make to any such taxing authority in connection with any examination, audit or other inquiry involving the Company.

Each Member shall provide to the Company and the Company shall provide to the Members (i) such assistance as may be reasonable requested by such Member or the Company in connection with the preparation of any tax return, any audit or any claim of refund or credit in respect of taxes and (ii) any records or other information relevant to such tax returns, audits or claims, in each case relating to the business of the Company.

Any deficiency for taxes imposed on any Member (including penalties, additions to tax or interest imposed with respect to such taxes) will be paid by such Member and if required to be paid (and actually paid) by the Company, will be recoverable from such Member as provided below.

To the extent that the Company is assessed amounts under Section 6221(a) of the Code, the current or former Member(s) to which this assessment relates shall pay to the



Company such Member's share of the assessed amounts, including such Member's share of any additional accrued interest assessed against the Company relating to such Member's share of the assessment, upon thirty (30) days of written notice from the Partnership Representative requesting the payment. At the reasonable discretion of the Partnership Representative, with respect to current Members, the Company may alternatively allow some or all of a Member's obligation pursuant to the preceding sentence to be applied to and reduce the next distribution(s) otherwise payable to such Member under this Agreement.

The Partnership Representative is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by Taxing Authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services and costs associated therewith. Each Member agrees that any action taken by the Partnership Representative in connection with audits of the Company shall be binding upon such Member and that such Member shall not independently act with respect to tax audits or tax litigation affecting the Company.

The Company shall make any payments of assessed amounts under Section 6221 of the Code and shall allocate any such assessment among the current or former Members of the Company for the "reviewed year" to which the assessment relates in a manner that reflects the current or former Members' respective interests in the Company for that reviewed year based on such Member's share of such assessment as would have occurred if the Company had amended the tax returns for such reviewed year and such Member incurred the assessment directly (using the tax rates applicable to the Company under Section 6225(b) of the Code).

To each Member's Capital Account there will be debited any items in the nature of expenses or losses including such items that cannot be capitalized or deducted in computing taxable income, which for the avoidance of doubt, shall include any payment by the Company of an Imputed Underpayment or other nondeductible penalties and/or interest under the Code.

Within forty-five (45) days of any notice of final partnership adjustment, the Company will elect the alternative procedure under Section 6226 of the Code, as amended by Section 1101 of the Bipartisan Budget Act of 2015, and furnish to the IRS and each Member during the year or years to which the notice of final partnership adjustment relates a statement of the Member's share of any adjustment set forth in the notice of final partnership adjustment.

The above Partnership Representative Sections shall survive the termination of this Operating Agreement.

## **ARTICLE VIII**

### **ASSIGNMENT; RESIGNATION**



8.01 Assignment Generally. Except as provided in Section 8.02 of this Operating Agreement, the Members hereby covenant and agree that they will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of their interest in the Company to any person, firm, corporation, trust or other entity without first offering in writing to sell such interest to the Company. The Company shall have the right to accept the offer at any time during the thirty (30) days following the date on which the written offer is delivered to the Company. The consent of the Manager shall be required to authorize the exercise of such option by the Company. If the Company shall fail to accept the offer within the thirty (30) day period, such interest may during the following sixty (60) days be disposed of free of the restrictions imposed by this Operating Agreement; provided, however, that the purchase price for such interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase that would have been applicable to the Company had the Company purchased the interest; provided further that the purchaser shall first become a Member pursuant to this Operating Agreement; and provided further that any interest not so disposed of within the sixty (60)-day period shall thereafter remain subject to the terms of this Operating Agreement. Notwithstanding the preceding sentence, no assignee of a Membership Interest shall become a Member of the Company except upon the consent of a majority of the non-assigning Members.

8.02 Purchase of Certain Membership Interests.

(a) If an Option Event (as defined below) occurs with respect to any Member (an "Option Member"), the Company shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this Section 8.02. For purposes of the foregoing, an "Option Event" shall mean (i) the cancellation or termination of a member (ii) the inability of the Member to pay its debts generally as they become due, (ii) any assignment by the Member for the benefit of its creditors, (iii) the filing by the Member of a voluntary petition in bankruptcy or similar insolvency proceedings, or (iv) the filing against the Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter. The term "Option Member" shall include an Option Member's personal representative or trustee in bankruptcy, to the extent applicable.

(b) Upon any Option Event occurring to an Option Member, the Option Member shall deliver written notice of the occurrence of such Option Event to the Company. The Company shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the sixty (60) day period immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the Company to purchase such Membership Interest for the book value of such Membership Interest. The book value is determined in accordance with normal accounting rules, except that book value of real estate owned by the Company shall be determined in accordance with the provisions of Section 8.02(d). The book value of the interest shall be the amount that the Option Member would receive in exchange for his entire interest in the Company if the Company sold all of its assets, subject to their liabilities, at their book value as of the date on which the Option Event occurred and distributed the net proceeds from such sale in complete liquidation of the



Company. The consent of all the Members shall be required to authorize the exercise of such option by the Company. Such option must be exercised by delivery of a written notice from the Company to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the Company and the Option Member.

(c) If the foregoing option is not exercised, the business of the Company shall continue, and the Option Member shall retain its Membership Interest.

(d) As to real estate that is owned by the Company, book value shall mean the city or county assessment as determined by the locality where the property is situate and located.

(e) If at a time when the Company has an option to purchase an Option Member's Membership Interest, it is prohibited from purchasing all or any portion of such Membership Interest pursuant to the Act or any loan agreement or similar restrictive agreement, the Option Member and the remaining Members shall, to the extent permitted by law, take appropriate action to adjust the value of the Company's assets from book value to a fair valuation based on accounting practices and principles that are reasonable under the circumstances in order to permit the Company to purchase such Membership Interest. If the Company becomes obligated to purchase an Option Member's Membership Interest under this Section and the above action cannot be taken or does not create sufficient value to permit the Company to do so, the Company shall be obligated to purchase the portion of the Membership Interest it is permitted to purchase.

8.03 Absolute Prohibition. Notwithstanding any other provision in this Article VIII, the Membership Interest of the Members, in whole or in part, or any rights to distributions therefrom, shall not be sold, exchanged, conveyed, assigned, pledged, hypothecated, subjected to a security interest or otherwise transferred or encumbered, if, as a result thereof, the Company would be terminated for federal income tax purposes in the opinion of counsel for the Company or such action would result in a violation of federal or state securities laws in the opinion of counsel for the Company.

8.04 Members Acquiring Membership Interest from Company. No Person, other than the initial Members, who acquires a Membership Interest from the Company shall be admitted as a Member of the Company, except upon the consent of the Members.

8.05 Resignation. Except as provided herein, no Member shall have any right to voluntarily resign or otherwise withdraw from the Company without the written consent of all remaining Members of the Company.

8.06 Effect of Prohibited Action. Any transfer or other action in violation of this Article shall be void ab initio and of no force or effect whatsoever.

8.06 Rights of an Assignee. If an assignee of a Membership Interest is not admitted as a Member because of the failure to satisfy the requirements hereof, such assignee shall nevertheless be entitled to receive such distributions from the Company

as the assigning Member would have been entitled to receive under Sections 6.07 and 9.04(c) of this Operating Agreement with respect to such Membership Interest had the assigning Member retained such Membership Interest.

## ARTICLE IX

### DISSOLUTION AND TERMINATION

9.01 Events of Dissolution. The Company shall be dissolved upon the first to occur of the following:

- (a) Any event that under the Act requires dissolution of the Company;
- (b) The unanimous vote of the Members' interest to the dissolution of the Company; and
- (c) The entry of a decree of judicial dissolution of the Company as provided in the Act.

9.02 Liquidation. Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Act by either or a combination of both of the following methods as the Members shall determine:

- (a) Selling the Company's assets and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership Interests and in satisfaction thereof; and/or
- (b) Distributing the Company's assets to the Members in kind with each Member accepting an undivided interest in the Company's assets, subject to its liabilities, in satisfaction of his Membership Interest. The interest conveyed to each Member in such assets shall constitute a percentage of the entire interests in such assets equal to such Member's Membership Interest.

9.03 Orderly Liquidation. A reasonable time not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

9.04 Distributions. Upon liquidation, the Company assets (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:

- (a) First, to the payment of the debts and liabilities of the Company and the expenses of liquidation, including a sales commission to the selling agent, if any; then
- (b) Second, to the setting up of any reserves that the Manager (or the person or persons carrying out the liquidation) deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of



such period as the Manager (or the person or persons carrying out the liquidation) shall deem advisable, but in no event to exceed eighteen (18) months, the Company shall distribute the balance thereof in the manner provided in the following subsection; then

(c) Third, to the Members in proportion to their respective Membership Interests.

(d) In the event of a distribution in liquidation of the Company's property in kind, the fair market value of such property shall be determined by a qualified and disinterested M.A.I. appraiser, selected by the Members (or the person or persons carrying out the liquidation), and each Member shall receive an undivided interest in such property equal to the portion of the proceeds to which he would be entitled under the immediately preceding subsection if such property were sold at such fair market value.

9.05 Taxable Gain or Loss. Taxable income, gain and loss from the sale or distribution of Company property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in Section 6.08 above.

9.06 No Recourse Against Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member.

9.07 Non Profit Purchase Option and Right of First Refusal Agreement. The Company is expressly authorized to enter into an exclusive Nonprofit Purchase Option and Right of First Refusal with Newport News Redevelopment and Housing Authority, which is a qualified nonprofit organization under the provisions of Section 42 of the Code, which Purchase Option shall comply with the requirements of such Section 42.

## **ARTICLE X**

### **MISCELLANEOUS PROVISIONS**

10.01 Arbitration. All disputes and controversies between the parties hereto arising out of or in connection with this Agreement shall be submitted to arbitration pursuant to the following procedure. Either party may, by written notice to the other within thirty (30) days after the controversy has arisen hereunder, appoint an arbitrator who shall be either an attorney or accountant. The other party shall, by written notice, within fifteen (15) days after receipt of such notice by the first party, appoint a second arbitrator who shall also be an attorney or accountant, and in default of such second appointment the first party shall apply to the Clerk for the Circuit Court for the City of Newport News, to appoint the second arbitrator pursuant to the provisions of Section 8.01-581.03 of the Code of Virginia (1950). When two arbitrators have been appointed as hereinabove provided, they shall agree on a third arbitrator and shall appoint him by written notice signed by both of them and a copy mailed to each party hereto within fifteen (15) days



after such appointment. On appointment of three arbitrators as hereinabove provided, such arbitrators shall hold an arbitration hearing within thirty (30) days after such appointment. At the hearing the three arbitrators shall allow each party to present his case, evidence, and witnesses, if any, in the presence of the other party, and shall render their award, including a provision for payment of costs and expenses of arbitration to be paid by one or both of the parties hereto, as the arbitrators deem just. The decision of the majority of the arbitrators shall be binding on the parties hereto (although each party shall retain his right to appeal any questions of law arising at the hearing), and judgment may be entered thereon in any court having jurisdiction.

10.02 Attorneys' Fees. In the event any Member brings an action to enforce any provisions of this Operating Agreement against the Company or any other Member, whether such action is at law, in equity or otherwise, the prevailing party shall be entitled, in addition to any other rights or remedies available to it, to collect from the non-prevailing party or parties the reasonable costs and expenses incurred in the investigation preceding such action and the prosecution of such action, including but not limited to reasonable attorney's fees and court costs.

10.03 Notices. Whenever, under the provisions of the Act or other law, the Articles or this Operating Agreement, notice is required to be given to any Person, it shall not be construed to mean exclusively personal notice unless otherwise specifically provided, but such notice may be given in writing, by mail, addressed to the Company at its principal office from time to time and to any other Person at its address as it appears on the records of the Company from time to time, with postage thereon prepaid. Any such notice shall be deemed to have been given at the time it is deposited in the United States mail. Notice to a Person may also be given personally, by telecopy or by electronic mail sent to its address as it appears on the records of the Company. The addresses of the initial Members as shown on the records of the Company shall originally be those set forth in Article III hereof. Any Person may change its address as shown on the records of the Company by delivering written notice to the Company in accordance with this Section.

10.04 Application of Virginia Law. This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the Commonwealth of Virginia, without reference to its choice of law provisions, and specifically the Act.

10.05 Amendments. No amendment or modification of this Operating Agreement shall be effective except upon the unanimous written consent of the Members.

10.06 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

10.07 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.



10.08 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

10.09 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.10 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

10.11 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

10.12 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

10.13 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

10.14 Entire Agreement. This Operating Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of the Company, adopted by the Members of the Company as of the date first written above. The Members further declare that the percentage Membership Interests specified below is their ownership interest in the Company.

Signatures appear on the following page.

**SIGNATURE PAGE TO THE OPERATING AGREEMENT OF  
CHOICE NEIGHBORHOOD DOWNTOWN COMMERCIAL PARTNERS LLC**

**MEMBER:**

Choice Neighborhood Downtown Development  
Corporation

By: \_\_\_\_\_  
Karen R. Wilds, President



**EXHIBIT A**

Initial Capital Contribution:

Choice Neighborhood Downtown Development Corporation      \$ \_\_\_\_\_