



WEST VALLEY CITY HOUSING AUTHORITY
3600 CONSTITUTION BOULEVARD
WEST VALLEY CITY, UTAH 84119

LARS NORDFELT, CHAIR
STEVE VINCENT, VICE CHAIR

A Special Electronic Meeting of the West Valley City Housing Authority will be held on Tuesday, December 6, 2016, at 6:30 PM, or as soon thereafter as the Redevelopment Agency Meeting is completed, in the City Council Chambers , West Valley City Hall, 3600 Constitution Boulevard, West Valley City, Utah. Members of the press and public are invited to attend.

Posted December 1, 2016, 12:00 PM

A G E N D A

1. Call to Order- Chair Lars Nordfelt
2. Opening Ceremony
3. Roll Call
4. Resolutions:
 - A. 16-11: Approve the Execution of an Assignment and Assumption Agreement and an Amendment to the Operating Agreement of West Valley Permanent Housing, LLC
 - B. 16-12: Authorize the Execution of a Real Estate Purchase Agreement with Aklesh Kumar for Property Located at 3015 West Lehman Avenue
5. Adjourn

- West Valley City does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in employment or the provision of services.
- If you are planning to attend this public meeting and, due to a disability, need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting and we will try to provide whatever assistance may be required. The person to contact for assistance is Nichole Camac.
- Electronic connection may be made by telephonic or other means. In the event of an electronic meeting, the anchor location is designated as City Council Chambers, West Valley City Hall, 3600 Constitution Boulevard, West Valley City, Utah.

Item #:	_____
Fiscal Impact:	<u>\$0.00</u>
Funding Source:	_____
Account #:	_____
Budget Opening Required:	<u>No</u>

ISSUE:

A resolution approving the Assignment and Assumption Agreement and Second Amendment to Operating Agreement of West Valley Permanent Housing LLC.

SYNOPSIS:

This will remove Wells Fargo Bank as the non-managing member and transfer this designation to the West Valley Housing Authority.

BACKGROUND:

Wells Fargo Bank as the successor in interest to First Security Bank, has utilized all of the tax credits originally invested in the Jared Alan Campbell Apartments located in West Valley City.

RECOMMENDATION:

City staff recommends approval of the Assignment and Assumption Agreement and Second Amendment to Operating Agreement.

SUBMITTED BY:

Layne R. Morris, Director

HOUSING AUTHORITY OF WEST VALLEY CITY, UTAH

RESOLUTION NO. _____

A RESOLUTION APPROVING THE EXECUTION OF AN ASSIGNMENT AND ASSUMPTION AGREEMENT AND AN AMENDMENT TO THE OPERATING AGREEMENT OF WEST VALLEY PERMANENT HOUSING, LLC.

WHEREAS, the Housing Authority of West Valley City, Utah (the “Authority”) is a member of West Valley Permanent Housing, LLC, a limited liability company providing and managing the Jared Alan Campbell Apartments within the City; and

WHEREAS, Wells Fargo Bank, N.A. (“Wells Fargo”) and Utah Non-Profit Housing Corporation (“UNHC”) (collectively, with the Authority, the “Parties”) are also members of said limited liability company; and

WHEREAS, Wells Fargo desires to assign its membership and interest in said limited liability company to the Authority; and

WHEREAS, an amendment to the Operating Agreement of said limited liability company is required to permit and facilitate said assignment by Wells Fargo; and

WHEREAS, documents entitled “Second Amendment to Operating Agreement” (the “Amendment”) and “Assignment and Assumption Agreement” (the “Assignment”) have been prepared for execution by and between the Parties; and

WHEREAS, the Board of Commissioners of the Housing Authority of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to approve the execution of the Amendment and the Assumption;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Housing Authority of West Valley City, Utah, that the Amendment and the Assumption are hereby approved, and that the Chairman and Executive Director are hereby authorized to execute said Amendment and Assumption on and behalf of the Authority, subject to the final approval of the form of the Amendment and Assumption by the City Attorney’s Office.

PASSED, APPROVED and MADE EFFECTIVE this _____ day of _____, 2016.

HOUSING AUTHORITY OF WEST VALLEY
CITY

CHAIRMAN

ATTEST:

SECRETARY

**WEST VALLEY PERMANENT HOUSING, LLC,
A UTAH LIMITED LIABILITY COMPANY**

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “*Assignment*”), dated and effective as of _____, 2016 (the “*Effective Date*”), is made and entered into by and between the following parties:

Wells Fargo Bank, National Association,
a national banking association,
successor in interest to First Security Bank, N.A.,
as “Assignor”;

and

West Valley City Housing Authority,
a body corporate and politic organized and existing under the laws of the State of Utah,
as “Assignee”.

Recitals:

West Valley Permanent Housing, LLC, a Utah limited liability company (the “*Company*”), is governed by that certain Operating Agreement of the Company dated as of December 21, 2000, as amended by that certain First Amendment to the Operating Agreement dated as of April 21, 2004 (as so amended, the “*Operating Agreement*”). Utah Non Profit Housing Corporation, a Utah non-profit corporation, is the Managing Member of the Company and Assignee and Assignor are Members of the Company.

The Company owns and operates the multifamily affordable housing project known as Jared Alan Campbell Apartments located in West Valley City, Utah.

Assignor desires to sell and assign all of its right, title and interest in and to the Company (the “*Interest*”) to Assignee, and Assignee desires to consummate the transfer and assignment thereof on the terms herein provided.

Accordingly, in consideration of the foregoing, of the sum stated below, and of the mutual covenants and conditions hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

Agreement:

1. ***Capitalized Terms.*** Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Operating Agreement.

2. ***Sale; Purchase Price.*** As of the Effective Date, Assignor hereby sells, assigns and transfers to Assignee, without recourse, all of Assignor’s Interest for the sum of \$1.00, as full consideration and full value for such assignment and transfer.

3. **Assignment.** Assignor hereby assigns and transfers its Interest to Assignee.
4. **No Prior Assignment.** Assignor represents that it has not heretofore assigned any of its Interest prior to the assignment herein and that the Interest is free and clear of all liens, claims, pledges, rights of first refusal and other encumbrances of any nature whatsoever.
5. **Assumption.** Assignee accepts the foregoing assignment and transfer of Assignor's Interest and assumes all of Assignor's commitments, agreements, duties and obligations under the Operating Agreement arising from and after the Effective Date, and agrees to be bound by the terms of the Operating Agreement.
6. **Indemnification.** Assignee hereby agrees to indemnify and hold Assignor and its predecessors in interest harmless from and against any and all claims made by the Company or the Members that Assignor or its predecessors in interest have failed to comply fully with and/or perform all obligations under the Operating Agreement arising from and after the Effective Date.
7. **No Recourse.** Assignee acknowledges that the transfer of the Interest is being made without warranty or representation as to title and is an "AS-IS" and "WHERE-IS" transaction, except as specifically set forth in this Assignment. This Assignment is given and received on the express understanding that Assignee shall have no recourse to Assignor, its predecessors in interest, successors or assigns under any circumstances whatsoever for any obligations or duties under the Operating Agreement or this Assignment, except for the breach of Assignor's representations, warranties or covenants described herein.
8. **Representations, Warranties and Covenants.**
 - (a) Assignor represents, warrants and covenants as follows:
 - (i) Assignor is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America with full power and authority to execute and deliver this Assignment and the First Amendment to Operating Agreement of the Company (collectively, the "**Transfer Documents**"), to perform its obligations hereunder and to consummate the transaction contemplated hereby.
 - (ii) Assignor is free to transfer the Interest as provided herein and such transfer does not violate any law or regulation or constitute a default under any agreement to which it is a party or by which it is bound.
 - (iii) The Transfer Documents have been duly executed and delivered by Assignor and are the valid and binding obligation of Assignor and enforceable against Assignor in accordance with the terms therein, except to the extent that enforceability may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(iv) Assignor is not subject to any law or regulation, and is not a party to any agreement or instrument, that would prohibit Assignor's transfer or sale of the Interest in accordance of the terms of the Transfer Documents.

(b) Assignee represents, warrants and covenants as follows:

(i) Assignee is a body corporate and politic duly organized, validly existing and in good standing under the laws of the State of Utah with full power and authority to execute and deliver the Transfer Documents, to perform its obligations hereunder, and to consummate the transaction contemplated hereby.

(ii) Assignee is free to acquire the Interest as provided herein and such acquisition does not violate any law or regulation or constitute a default under any agreement to which it is a party or by which it is bound.

(iii) The Transfer Documents have been duly executed and delivered by Assignee and are valid and binding obligations of Assignee and enforceable against Assignee in accordance with the terms therein, except to the extent that enforceability may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(iv) Assignee is not subject to any law or regulation, and is not a party to any agreement or instrument, that would prohibit Assignee's acquisition of the Interest in accordance of the terms of the Transfer Documents.

9. **Transfer.** This Assignment is given and received on the express understanding that:

(a) The Operating Agreement is being amended simultaneously herewith to reflect that Assignee has acquired the Interest, effective as of the Effective Date.

(b) Only the Company and Assignee shall be responsible for filing and payment of any real property transfer taxes, recordation taxes or any similar taxes or fees (if any) imposed by any state or local governmental authority upon the transfer of the Interest (collectively, the "**Transfer Taxes**"). The Company and Assignee agree to hold Assignor harmless against future claims regarding payment of any Transfer Taxes and will at all times indemnify, and keep indemnified, Assignor, and hold and save it harmless from and against any and all damages, losses, costs, charges and expenses of whatsoever kind or nature, including reasonable attorneys' fees, which Assignor shall or may, at any time, sustain or incur by reason of or in connection with Transfer Taxes (including, without limitation, any inquiry into the sufficiency of a Transfer Tax payment, and any asserted or assessed deficiency or shortfall in the payment of Transfer Taxes).

(c) Notwithstanding any provision in the Operating Agreement to the contrary, each of Assignor and Assignee agrees to pay one-half of all costs and legal expenses, including fees and expenses of legal counsel and accountants (but excluding

Transfer Taxes), incurred by Assignor, Assignee and the Company in connection with the transfer of the Interest and the Transfer Documents.

(d) Assignee hereby agrees to be bound by all documents contemplated by the Operating Agreement to the same extent and on the same terms as required by the terms of the Operating Agreement.

10. **Counterparts.** This Assignment may be executed in several counterparts, each of which shall be deemed an original copy and all of which together shall constitute one agreement binding on all parties, notwithstanding that all parties hereto shall not have signed the same counterpart. This Assignment may be delivered by facsimile machine copy of an original signature, or by scanned copy of an original signature in pdf format, and such copy shall constitute an original for all purposes.

11. **Governing Law and Venue.** This Assignment shall be governed by and construed in accordance with the laws of the State of Utah, without regard to principles of conflicts of laws and shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns. The parties agree and consent that venue for purposes of resolving any dispute or controversy relating to this Assignment shall be Salt Lake City, Utah.

12. **Further Action.** Each party, upon the request of any other party hereto, agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Assignment.

13. **Notices.** All notices, waivers, demands, requests and other communications required or permitted by this Assignment (collectively, "**Notice**") shall be in writing and given as follows by (i) personal delivery, (ii) United States Postal Service Express Mail or other established overnight commercial courier with delivery charges prepaid or duly charged, or (iii) registered or certified mail, return receipt requested, first class postage prepaid. Any Notice shall be addressed to a party at its respective address set forth below (or at such other address as shall be specified by the party by like notice given to the other party):

If to Assignor: Wells Fargo Bank, National Association
c/o Wells Fargo Affordable Housing Community Development Corporation
301 South College Street, 17th floor
Charlotte, NC 28288
Attention: Michael Loose, Director of Asset Management
Tel: 704-715-7631
E-mail: michael.loose@wellsfargo.com

with a copy to: Wells Fargo Law Department – Consumer of Real Estate Division
MAC X2401-06T
1 Home Campus
Des Moines, IA 50328-0001
Attention: Joel Hjelmaas, Esq.
Tel: 515-313-7141

E-mail: joel.s.hjelmaas@wellsfargo.com

and: Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attention: Mercedes A. Dahlquist, Esq.
Tel: 402-231-8981
E-mail: mercedes.dahlquist@kutakrock.com

If to Assignee: West Valley City Housing Authority
3600 Constitutional Boulevard
West Valley City, UT 84119
Attention: _____
Tel: _____
E-mail: _____

with a copy to: Utah Non Profit Housing Corporation
223 West 700 South
Salt Lake City, UT 84101
Attention: Marion A. Willey
Tel: 801-364-6117
E-mail: mawilley@unphc.org

Notice given by personal delivery shall be presumed to have been received upon tender to the applicable natural person designated below to receive notice or, in the absence of such a designation, upon tender to the person signing this Assignment on behalf of the applicable party. Notice given by overnight courier shall be presumed to have been received the next business day after delivery to such overnight commercial courier. Notice given by mail shall be presumed to have been received on the third (3rd) business day after deposit into the United States Postal System. Notice given by e-mail shall be presumed to have been received on the date e-mailed. All copies to the applicable persons or entities designated below to receive copies shall be given in the same manner as the original Notice, and such giving shall be a prerequisite to the effectiveness of any Notice. A notice shall be considered timely sent if such party sends the Notice prior to the expiration of the date for providing such notice set forth in this Assignment.

14. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER OPPORTUNITY FOR CONSULTATION WITH INDEPENDENT COUNSEL, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR OBLIGATIONS (A) UNDER THIS ASSIGNMENT, (B) ARISING FROM THE FINANCIAL RELATIONSHIP BETWEEN THE PARTIES EXISTING IN CONNECTION WITH THIS ASSIGNMENT OR ANY OTHER DOCUMENT OR (C) ARISING FROM ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENT (VERBAL OR WRITTEN) OR ACTION OF THE PARTIES IN CONNECTION WITH SUCH FINANCIAL RELATIONSHIP. NO PARTY HERETO WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED. THE PROVISIONS OF THIS

PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HERETO HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. THIS PARAGRAPH IS A MATERIAL INDUCEMENT FOR ASSIGNOR TO ENTER INTO THIS ASSIGNMENT.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, this Assignment has been executed to be effective as of the Effective Date.

ASSIGNOR:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By: _____

Name: _____

Its: _____

ASSIGNEE:

WEST VALLEY CITY HOUSING AUTHORITY, a body corporate and politic organized and existing under the laws of the State of Utah

By: _____

Name: _____

Its: _____

[Signature page 1 of 1 of Assignment and Assumption Agreement]

**WEST VALLEY PERMANENT HOUSING, LLC,
A UTAH LIMITED LIABILITY COMPANY**

SECOND AMENDMENT TO OPERATING AGREEMENT

This Second Amendment to Operating Agreement of West Valley Permanent Housing, LLC (this “*Amendment*”), dated and effective as of _____ __, 2016 (the “*Effective Date*”), is made and entered by and among the following parties:

Utah Non Profit Housing Corporation,
a Utah non-profit corporation,
as the “Managing Member”;

Wells Fargo Bank, National Association,
a national banking association,
successor in interest to First Security Bank, N.A.,
as the “Withdrawing Member”;

and

West Valley City Housing Authority,
a body corporate and politic organized and existing under the laws of the State of Utah,
as the “Non-Managing Member”.

Recitals:

West Valley Permanent Housing, LLC, a Utah limited liability company (the “*Company*”), is governed by that certain Operating Agreement of the Company dated as of December 21, 2000, as amended by that certain First Amendment to the Operating Agreement dated as of April 21, 2004 (as so amended, the “*Operating Agreement*”). The Managing Member is the Managing Member of the Company and the Non-Managing Member and the Withdrawing Member are Members of the Company.

The Company owns and operates the multifamily affordable housing project known as Jared Alan Campbell Apartments located in West Valley City, Utah (the “*Apartment Complex*”).

The Withdrawing Member desires to transfer all of its right, title and interest in and to the Company (the “*Interest*”) to the Non-Managing Member, pursuant to that certain Assignment and Assumption Agreement between the Withdrawing Member and the Non-Managing Member dated as of the Effective Date (the “*Assignment*”).

The purpose of this Amendment is to (i) effectuate the withdrawal of the Withdrawing Member as a Member of the Company; (ii) reflect the assumption of the Interest by the Non-Managing Member and (iii) continue the Company as currently existing without any other changes in the Operating Agreement, except to the extent provided herein.

Accordingly, in consideration of the foregoing, of the mutual covenants of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto, intending legally to be bound, hereby agree as follows:

Agreement:

1. ***Defined Terms.*** Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the Operating Agreement.

2. ***Managing Member Consent.*** The Managing Member hereby confirms and acknowledges that:

(a) the requirements of the Operating Agreement for the assumption of the Interest by the Non-Managing Member have been met or are otherwise waived;

(b) the transactions giving rise to this Amendment are not in violation of, or contravention with, any of the provisions of the Operating Agreement; and

(c) the Withdrawing Member has fully and completely satisfied all of its obligations (financial or otherwise) under the Operating Agreement as a Member, including, without limitation, the payment of capital contributions pursuant to Section 5.1 of the Operating Agreement or any other sections of the Operating Agreement.

By execution of this Amendment, the Managing Member evidences its consent to the transfer by the Withdrawing Member of all of its Interest in the Company to the Non-Managing Member, the assumption of the Interest by the Non-Managing Member, and the withdrawal of the Withdrawing Member from the Company.

3. ***Assignment, Assumption, and Allocations.*** The parties hereby agree that, as of the Effective Date, (i) the Withdrawing Member shall withdraw and cease to be a Member of the Company or to hold any interest in the Company; (ii) the Non-Managing Member shall succeed to the entire Interest of the Withdrawing Member; and (iii) the Non-Managing Member agrees to assume and discharge all of the Withdrawing Member's obligations arising under the Operating Agreement on or after the Effective Date, and agrees to be bound by the provisions of the Operating Agreement, as modified by this Amendment; provided, however, that (a) solely for purposes of allocating the profits, losses and tax credits (collectively, the "***Tax Benefits***") between the Withdrawing Member and the Non-Managing Member under Article VIII of the Operating Agreement, the Withdrawing Member shall receive 10% of all Tax Benefits attributable to any day before the Effective Date, and the Non-Managing Member shall receive 55% of all Tax Benefits attributable to the Effective Date and any day thereafter; (b) the Withdrawing Member shall receive its share of Cash Flow attributable to any day before the Effective Date, even if such Cash Flow is distributable on or after the Effective Date, and Capital Transaction Proceeds if such Capital Transaction occurred before the Effective Date, even if such proceeds are distributable on or after the Effective Date; and (c) the Non-Managing Member shall receive its share of Cash Flow attributable to any day on or after the Effective Date and Capital Transaction Proceeds if such Capital Transaction occurs on or after the Effective Date.

4. **References to Investor Member.** As of the Effective Date, all references to “FSB” in the Operating Agreement shall be deleted and replaced with “WVCHA” and deemed to refer to the Non-Managing Member in the place and stead of the Withdrawing Member.

5. **Amendments.**

(a) The name and address of the Withdrawing Member in Section 1.2(c) of the Operating Agreement is hereby deleted in its entirety.

(b) The definition of the term “FSB” in Article II of the Operating Agreement is hereby deleted in its entirety.

(c) The following new definition of the term “WVCHA” is hereby added to Article II of the Operating Agreement:

“WVCHA” means West Valley City Housing Authority, a body corporate and politic organized and existing under the laws of the State of Utah, its successors and assigns.

(d) The name and address of the Withdrawing Member in Section 13.7 of the Operating Agreement is hereby deleted in its entirety.

6. **Requisite Consents.** The Managing Member and the Non-Managing Member represent and warrant that the Managing Member, the Company, and the Non-Managing Member have obtained all necessary consents and approvals from lenders, governmental entities, and all other interested parties for the assumption of the Interest by the Non-Managing Member and for the withdrawal of the Withdrawing Member from the Company.

7. **Filings.** The Managing Member shall make all filings and take all actions required under the laws of Utah to effectuate the withdrawal of the Withdrawing Member from the Company, and the assumption of the Interest by the Non-Managing Member, as set forth in this Amendment.

8. **Company Not Terminated.** The parties hereto acknowledge that the parties do not intend to terminate the Company hereby; the Managing Member and the Non-Managing Member intend to continue the Company under applicable law.

9. **Release.** The Managing Member, on behalf of the Company, itself and all of its principals and affiliates, by execution of this Amendment, hereby remises, releases and forever discharges the Withdrawing Member and its shareholders, members, partners, managers, general partners, directors, officers, employees, agents and any of their successors or assigns (collectively, the “**Withdrawing Parties**”), from any and all losses, liabilities, damages, interest, penalties, costs or expenses including reasonable attorney’s and accountant’s fees, claims, actions, or causes of action, known or unknown, asserted or unasserted (collectively, “**Loss**”), which they or the Company may have relating to or growing out of any action or inaction taken or not taken by the Withdrawing Member prior to the Effective Date under the terms of the Operating Agreement or with respect to the Interest, the Apartment Complex or the Company.

10. **Indemnification.** The Managing Member (on behalf of the Company and itself) hereby agrees to indemnify and hold the Withdrawing Parties harmless from and against any Loss incurred by reason of (a) any and all claims made by the Company or any of its Members that the Withdrawing Member has failed to comply fully with and/or perform all obligations (financial or otherwise) under the Operating Agreement or (b) the Managing Member's breach of any representation, warranty, covenant, indemnification obligation, or agreement in this Amendment or the Operating Agreement. The Withdrawing Member's rights against the Managing Member in accordance with the terms and conditions of the Operating Agreement shall survive the assignment of the Interest or the dissolution of the Company, and shall continue to remain in effect for the benefit of the Withdrawing Member. In addition, the Non-Managing Member agrees to indemnify and hold the Withdrawing Parties harmless from and against any Loss incurred by reason of the Non-Managing Member's breach of any representation, warranty, covenant, or agreement in this Amendment or the Assignment. The parties hereto agree that neither the Company nor any of its Members shall have any recourse to the Withdrawing Parties under any circumstances whatsoever for any obligations or duties under the Operating Agreement.

11. **Transfer Tax.**

(a) The Company and the Managing Member, as a material inducement for the Withdrawing Member to enter into the Assignment and this Amendment, hereby agree that they will at all times indemnify, and keep indemnified, the Withdrawing Member, and hold and save it harmless from and against any and all liability for "Transfer Taxes" (as defined in Section 9(b) of the Assignment) and all other amounts described in Section 9(b) of the Assignment (in the aggregate, "**Transfer Tax Amounts**"). The Company's and the Managing Member's obligation to indemnify for the Transfer Tax Amounts shall remain in place until the expiration of the statute of limitations period for assessment of Transfer Taxes relating to the Assignment and this Amendment.

(b) The Withdrawing Member shall give notice to the Company and the Managing Member of any claim for Transfer Tax Amounts (the "**Transfer Tax Notice**"). The Transfer Tax Notice shall be deemed received by the Company and the Managing Member on the earlier of the date e-mailed to the Company and the Managing Member or the business day following the day sent by overnight mail or FedEx to the Company and the Managing Member at the address set forth in Section 13.7 of the Operating Agreement.

(c) The Company and the Managing Member agree to pay the Withdrawing Member the Transfer Tax Amounts on an After-Tax Basis (as defined below) within thirty (30) days of the earlier of its receipt of the Transfer Tax Notice or its knowledge of an event giving rise to an obligation under this Section 11 (the "**Transfer Tax Obligation Date**"), including interest thereon at 10% per annum, from the Transfer Tax Obligation Date until the date that such amount is paid and received by the Withdrawing Member, provided that, if on the Transfer Tax Obligation Date, the available information is insufficient to calculate a precise dollar amount, the Company and the Managing Member shall pay an amount based on the Withdrawing Member's estimate, subject to adjustment when the Withdrawing Member has determined the final amount. "After-Tax Basis"

means with respect to any payment or distribution to be received by a Person (or, in the case of a pass-through entity, the partners or members of such Person), the amount of such payment or distribution supplemented by a further payment or payments so that, after deducting from such total payments or distributions the amount of all Taxes (“Taxes” for this purpose is defined as all liabilities, losses, expenses and costs that are, or are in the nature of, taxes, fees or other governmental charges, including interest, penalties, fines and additions to tax imposed by the Internal Revenue Service or any other taxing authority) (net of any current credits, deductions or other tax benefits arising from the payment by such Person (or its partners or members) of any amount, including Taxes, for which the payment to be received is made) imposed currently on such Person by the Internal Revenue Service or any other taxing authority with respect to such payments, the balance of such payments shall be equal to the original payment received. For the purposes of this definition, and for purposes of any payment to be made to a Person (or its partners or members) on an After-Tax Basis, it shall be assumed that federal, state and local taxes are payable at the highest combined marginal federal and state statutory income tax rate (taking into account the deductibility of state income taxes for federal income tax purposes) applicable to corporations in the year that such payment is made.

12. ***[Intentionally Omitted.]***

13. ***Tax Returns and Financial Statements.*** The Managing Member agrees, at its expense, to deliver to the Withdrawing Member a complete and final 2016 short year tax return for the Company with Schedule K-1 (showing the partial year ownership of the Withdrawing Member’s Interest) for the period from January 1, 2016 until and including the Effective Date and the 2016 audited financial statements for the Company on such date(s) and at such time as required by the Operating Agreement for delivery of the 2016 tax return and the 2016 audited financial statements.

14. ***Waiver of Opinion Requirement.*** The parties hereto agree that notwithstanding anything to the contrary in the Operating Agreement, no opinion of counsel shall be required in connection with this Amendment.

15. ***Transaction Costs.*** Each of the Managing Member and the Withdrawing Member agrees to pay one-half of all costs and expenses, including fees and expenses of legal counsel and accountants (but excluding Transfer Taxes), incurred by the parties hereto in connection to this Amendment, the Assignment, and any other agreements and documents to be delivered in connection herewith.

16. ***Counterparts.*** This Amendment may be executed in several counterparts, each of which shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart. This Amendment may be delivered by facsimile machine copy of an original signature, or by scanned copy of an original signature in pdf format, and such copy shall constitute an original for all purposes.

17. **Entire Agreement.** This Amendment contains the entire understanding between and among the parties and supersedes any prior understandings and agreements between and among them respecting the subject matter of this Amendment.

18. **Future Cooperation.** Each of the parties hereto agrees to cooperate at all times from and after the Effective Date with respect to all of the matters described herein, and to provide any tax return for the Company or execute further assignments, releases, assumptions, notifications and other documents as may be reasonably requested for the purpose of giving effect to, or evidencing or giving notice of, the transactions contemplated by this Amendment.

19. **Governing Law and Venue.** It is the intention of the parties hereto that all questions with respect to the construction, enforcement, and interpretation of this Amendment and the rights and liabilities of the parties hereto shall be determined in accordance with the laws of the State of Utah without regard to principles of conflicts of laws. The parties agree and consent that venue for purposes of resolving any dispute or controversy relating to this Amendment shall be Salt Lake City, Utah.

20. **Ratification.** Except as otherwise specifically provided herein, all other terms and conditions of the Operating Agreement shall remain in full force and effect and are hereby ratified and confirmed in all respects by the parties hereto.

21. **Separability.** This Amendment is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any provision of this Amendment or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Amendment and the applications of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law. In the event that any provision of this Amendment or the application thereof shall be held invalid or unenforceable by a final judgment of a court of competent jurisdiction, the parties agree to negotiate (on a reasonable basis) a substitute valid or enforceable provision providing for substantially the same effect as the invalid or unenforceable provision.

22. **Successors and Assigns.** Once executed by all parties hereto, this Amendment shall be binding upon, and inure to the benefit of, the parties hereto and their respective spouses, heirs, executors and administrators, personal and legal representatives, successors and assigns.

23. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY, AFTER OPPORTUNITY FOR CONSULTATION WITH INDEPENDENT COUNSEL, WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS OR OBLIGATIONS (A) UNDER THIS AMENDMENT, (B) ARISING FROM THE FINANCIAL RELATIONSHIP BETWEEN THE PARTIES EXISTING IN CONNECTION WITH THIS AMENDMENT OR ANY OTHER DOCUMENT OR (C) ARISING FROM ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENT (VERBAL OR WRITTEN) OR ACTION OF THE PARTIES IN CONNECTION WITH SUCH FINANCIAL RELATIONSHIP. NO PARTY HERETO WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY

TRIAL HAS NOT BEEN OR CANNOT BE WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NO PARTY HERETO HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES. THIS PARAGRAPH IS A MATERIAL INDUCEMENT FOR THE WITHDRAWING MEMBER TO ENTER INTO THIS AMENDMENT.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, this Amendment has been executed to be effective as of the Effective Date.

MANAGING MEMBER:

UTAH NON PROFIT HOUSING CORPORATION, a Utah non-profit corporation

By: _____

Name: _____

Its: _____

WITHDRAWING MEMBER:

WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association

By: _____

Name: _____

Its: _____

NON-MANAGING MEMBER:

WEST VALLEY CITY HOUSING AUTHORITY, a body corporate and politic organized and existing under the laws of the State of Utah

By: _____

Name: _____

Its: _____

[Signature page 1 of 1 of Second Amendment to Operating Agreement]

HOUSING AUTHORITY OF WEST VALLEY CITY

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE EXECUTION OF A REAL ESTATE PURCHASE AGREEMENT WITH AKLESH KUMAR FOR PROPERTY LOCATED AT 3015 W. LEHMAN AVENUE.

WHEREAS, the Housing Authority of West Valley City (hereinafter the “Authority”) exists to promote the availability of affordable housing within the City; and

WHEREAS, the Authority desires to promote the redevelopment of aging housing stock and to assist in the development of high quality affordable housing in and around the City’s downtown area; and

WHEREAS, the Authority desires to acquire the property located at 3015 W. Lehman Avenue to assist in those development and redevelopment efforts; and

WHEREAS, the owner, Aklesh Kumar (hereinafter the “Seller”), is willing to sell said property to the Authority; and

WHEREAS, an agreement has been prepared for execution by and between the Seller and the Authority, a copy of which is attached hereto and entitled “Real Estate Purchase Agreement” (hereinafter the “Agreement”), which sets forth the rights, duties, and obligations of each of the parties with respect thereto; and

WHEREAS, the Board of Commissioners of the Housing Authority of West Valley City, Utah, does hereby determine that it is in the best interests of the health, safety, and welfare of the citizens of West Valley City to execute the Agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Housing Authority of West Valley City, Utah, that the Agreement for the purchase of property located at 3015 W. Lehman Avenue is hereby approved in substantially the form attached, and that the Chief Executive Officer is hereby authorized to execute said Agreement for and in behalf of the Authority, along with any additional documents necessary to complete the authorized purchase, subject to approval of the final form of the documents by the Chief Executive Officer and City Attorney’s Office.

PASSED, APPROVED, and MADE EFFECTIVE this _____ day of _____, 2016.

HOUSING AUTHORITY OF WEST VALLEY CITY

CHAIR

ATTEST:

SECRETARY

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT, herein the "Agreement," is made and entered into as of the 07 day of November, 2016, by and between Aklesh Kumar, herein the "Seller," and West Valley City Housing Authority, a municipal corporation of the State of Utah, herein the "Buyer."

RECITALS:

- A. The Seller owns a parcel of property located at 3015 West Lehman Avenue, in West Valley City, Salt Lake County, State of Utah, herein the "Property." The Property is more particularly described and depicted on the attached Exhibit "A," which is incorporated herein. For purposes of this Agreement, the term "Property" shall include the Property purchased pursuant to the terms of this Agreement and all of the Seller's right, title, and interest in and to all leases, privileges, rights-of-way, easements, and appurtenances, and all other rights appurtenant to or connected with the beneficial use or enjoyment of the Property, including, without limitation, any of the Seller's right, title, and interest in and to immediately adjacent public streets, roads, alleys, or rights-of-way; all mineral rights; all surveys in the Seller's possession or control relating to the Property; and all soils and other geological or environmental studies, investigations, and reports, engineering studies and reports, wetlands information and reports, and landscaping plans and specifications in the Seller's possession or control relating to the Property.
- B. The Seller desires to sell the Property to the Buyer, and the Buyer desires to purchase the Property from the Seller, upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and promises contained in this Agreement, the Buyer and the Seller agree as follows:

AGREEMENT:

1. **Purchase of Property.** Subject to the terms and conditions of this Agreement, the Seller agrees to sell the Property to the Buyer, and the Buyer agrees to purchase the Property from the Seller. The Seller hereby agrees to effect this purchase and sale transaction through the use of a Warranty Deed, subject only to those title matters which are acceptable to the Buyer.
2. **Purchase Price.**
 - a. Purchase Price. The Purchase Price shall be \$238,500 payable in United States dollars.
 - b. Earnest Money. Within 10 days of the execution of this Agreement by all parties, the Buyer shall pay \$7,500 earnest money into an escrow account with the title

company to be paid to the Seller at Closing. If the Buyer terminates this Agreement for any reason during the period provided for Property Inspection under paragraph 3.b of this Agreement, the Earnest Money shall be returned to the Buyer.

- c. Balance of Purchase Price. The Buyer shall pay the entire Purchase Price, less the Earnest Money, in cash at the Closing.
3. **Conditions to Closing.** The Closing shall not occur until each one of the following conditions precedent has been satisfied, in the Buyer's sole discretion, prior to the Closing; provided, however, that the Buyer is entitled to waive any of the conditions in writing.
- a. Approval of Title. At the Closing, the title to the Property shall be in a condition that is acceptable to the Buyer in its sole discretion. At the Buyer's written request, the Seller shall provide such documentation, releases, or reconveyances as may be necessary to provide a title acceptable to the Buyer.
 - b. Property Inspections. The Property shall be in a physical condition acceptable to the Buyer, in its sole discretion. The Buyer shall have thirty (30) days from the date of the execution of this Agreement to perform physical inspections of the Property, including, but not limited to: any surveys, soils tests, groundwater tests, environmental tests, and any other tests Buyer determines, at the Buyer's discretion. If the Buyer fails to terminate this Agreement within the 30-day period, the Buyer will be deemed to have accepted the physical condition of the Property.
 - c. Water Rights. The parties agree that all water rights, water shares, or stock owned by the Seller and associated with the property, if any, shall be conveyed to the Buyer.
 - d. Mineral Rights. The sale includes all mineral rights to the Property.
4. **Closing.** The term "Closing" is used in this Agreement to mean the time at which the title company records the Deed in the office of the Salt Lake County Recorder. The Closing shall occur on or before November 30, 2016, unless the Buyer and the Seller mutually agree in writing to close the transaction on an alternate date.
- a. Buyer Deliveries. On or before the Closing Date, the Buyer shall deliver payment of the balance of the cash Purchase Price.
 - b. Seller Deliveries. On or before the Closing Date, the Seller shall deliver the following to the Buyer:
 - (i) The duly executed and acknowledged Warranty Deed in favor of the Buyer, conveying fee title to the Property, free and clear of all liens and encumbrances which are unacceptable to the Buyer.
 - (ii) Original copies, as available, of all leases, subleases and contracts relating to the Property. If applicable, all such leases, subleases and contracts shall

be assigned to the Buyer at Closing.

- (iii) All security deposits of current tenants, if any.
- (iv) The Seller shall not pay closing costs, including title insurance, escrow or recording costs.

c. Buyer's Costs. The Buyer shall pay the following items at or before the Closing:

- (i) The Purchase Price.
- (ii) Closing, escrow and recording costs.
- (iii) The cost of title insurance.

d. Failure to Deliver.

- (i) If the Buyer fails or refuses to deliver the required funds at the Closing, the Seller may, at the Seller's option, extend the time for the Closing, or may commence an action for damages, or bring an action to compel specific performance by the Buyer. All costs shall be borne by the party incurring the cost. The Seller expressly agrees that the action for damages, or action for specific performance pursuant to this section shall be the Seller's sole remedies for the Buyer's failure to perform or deliver at the Closing.
- (ii) If the Seller fails or refuses to deliver a valid and acceptable Deed, or such other documents as may be necessary for the Seller to perform at the Closing, the Buyer may, at the Buyer's option, extend the time for the Closing, or may take any legal action necessary to enforce the Buyer's rights, to be made whole for damages caused by the Seller's default, and/or to compel specific performance by the Seller.

e. Prorations.

- (i) All water, sewer, and utility charges for the Property.
- (ii) Seller is paying the prorated 2016 General Property Taxes through the date of Closing, however, if for any reason the Salt Lake County Treasurer determines there are still taxes due on the property, including rollback taxes, it is the responsibility of the Seller to pay said taxes since the Buyer is tax exempt.
- (iii) All levied or pending assessments affecting the Property.
- (iv) Current rents received from the Property, if any.

The Seller shall furnish to the Buyer sufficient information to enable the Buyer and the Seller to make the prorations required under this Agreement.

5. Seller's Representations, Warranties and Covenants.

- a. The parties expressly understand that each of the following representations, warranties, and covenants made herein is material, and that the Buyer is relying upon each of such representations, warranties, and covenants as true and correct as of the date on which the parties executed this Agreement and as of the Closing Date, as though such representations, warranties and covenants had been made on each of such dates. As a condition to the Closing, the Seller hereby makes the following representations and warranties, in addition to any others made in this Agreement:
- (i) At the Closing, the Seller will be the sole owner of the Property and will hold title to the Property in fee simple, free and clear of all encumbrances, except for those found acceptable by the Buyer.
 - (ii) The Seller warrants that there is no pending claim, suit, or litigation that involves the Property.
 - (iii) At the Closing, there will be no unpaid bills or claims in connection with the Property.
 - (iv) Between the date of this Agreement and the Closing date, the Seller, without the Buyer's prior written consent, shall not subject any new lease agreements, right, title, or interest in the Property to any mortgage, pledge, lien, or other encumbrance.
 - (v) This Agreement and the consummation of this transaction do not and will not contravene any provision of any judgment, order, decree, writ, or injunction, and will not result in a breach of, constitute a default under, or require consent pursuant to any credit agreement, lease, indenture, mortgage, deed of trust, purchase agreement, guaranty, or other instrument to which any of the persons or entities comprising the Seller are presently a party or by which any of the same or their respective assets are presently bound or affected.
 - (vi) All documents delivered to the Buyer by the Seller pursuant to this Agreement are true, correct, and complete originals or accurate copies of originals.

To the actual knowledge of the Seller no hazardous waste or toxic substances have been stored on, released into, generated on, or deposited upon the Property or into any water systems on or below the surface of the Property, and the Property complies with all local, state, and federal hazardous waste laws, rules, and regulations.

The Seller hereby agrees and covenants that the Purchase Price being paid by the Buyer constitutes full and adequate consideration for the Property and rights being acquired by the Buyer. The Seller also agrees and covenants that the sale of the Property is a transaction with the Buyer at arm's length in accordance with the terms and conditions set forth herein this Agreement and that the Seller was not induced, threatened, or otherwise compelled by Buyer to consummate the transaction.

These representations, warranties, and covenants of the Seller shall survive the Closing on the Property.

6. **Brokerage Commissions.** The Buyer is represented by Broker Dee Hansen of the DRH Realty, LLC. The Seller is not represented by a broker or real estate agent in this transaction. The Buyer shall be solely responsible for the payment of the commission to Dee Hansen in this transaction. Further, the Seller hereby indemnifies the Buyer from and against all claims, actions, damages, or costs, including reasonable attorney's fees and court costs, in connection with any claimed brokerage or real estate commissions with respect to the transaction contemplated by this Agreement that arise from or through any agent or broker consulted or used by the Seller. The Buyer hereby indemnifies the Seller from and against all claims, actions, damages, or costs, including reasonable attorney's fees and court costs, in connection with any claimed brokerage or real estate commissions with respect to the transaction contemplated by this Agreement that arise from or through any agent or broker consulted or used by the Buyer.
7. **Additional Acts and Consideration.** Both the Buyer and the Seller agree to execute all other documents and to do such other acts as may be reasonably necessary or proper in order to consummate the transaction contemplated by this Agreement.
8. **Notices.** All notices, requests, demands, and other communications required under this Agreement shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by telecopy (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the Seller:

Aklesh Kumar

If to the Buyer:

Layne Morris
Director of Community Preservation
4522 West 3500 South
West Valley City, UT 84120
Telephone: 801-963-3329
Facsimile: 801-963-3518

And: Mark Nord
RDA Director
3600 Constitution Boulevard
West Valley City, Utah 84119
Telephone: 801-963-3473
Facsimile: 801-963-8434

With a copy to: Freyja Johnson
RDA Attorney
West Valley City
3600 Constitution Boulevard
West Valley City, Utah 84119
Telephone: 801-955-3605
Facsimile: 801-963-3559

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

9. **Attorney's Fees.** Should it become necessary for either party to enforce its rights under this Agreement, whether in suit or otherwise, the substantially prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs, in addition to any other relief to which the party attempting to enforce its rights hereunder may be entitled.
10. **Modification.** Neither party to this Agreement may amend or modify this Agreement, except in a writing executed by the parties hereto.
11. **Risk of Loss.** If, prior to the Closing Date, the Property or any portion thereof is damaged by fire, acts of God, or other casualty or cause, the Buyer shall have the right to terminate this Agreement and the Earnest Money shall be refunded to Buyer.
12. **Entire Agreement.** The parties expressly agree that this Agreement and the exhibits attached hereto constitute the full and complete understanding and agreement of the parties, and that this Agreement supersedes all prior understandings, agreements, and conversations between the parties, whether oral or written.
13. **Severability.** If any term or provision of this Agreement is invalid or unenforceable for any reason whatever, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
14. **Captions and Headings.** The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original for all purposes, but all of which shall constitute but one and the same instrument.
16. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Utah.
17. **Assignability.** This Agreement shall bind and inure to the benefit of the assignees, heirs, and successors-in-interest of the Buyer and the Seller. Neither the Buyer nor the Seller shall assign its rights or delegate its obligations hereunder without the prior written consent of the other.
18. **No Third-Party Beneficiaries.** The execution, performance, and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any entity or party other than Buyer and Seller.
19. **Time of the Essence.** Time is of the essence with respect to the performance of the parties under this Agreement.
20. **Waiver.** Failure on the part of a party to complain of any action or non-action on the part of the other parties, no matter how long the same may continue, shall not be deemed to be a waiver by such party of any of its rights hereunder. The consent or approval by a party to or of any action of the other party requiring such consent or approval shall not be deemed to waive or render unnecessary such consent or approval to or of any subsequent similar act.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the day and year first above written.


BUYER:

West Valley City Housing Authority

Chief Executive Officer

ATTEST:

Secretary

APPROVED AS TO FORM
West Valley City Attorney's Office
By: 
Date: 11/16/16

SELLER:

Aklesh Kumar

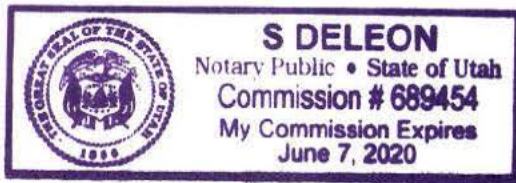
Aklesh Kumar

STATE OF UTAH

COUNTY OF Salt Lake

)
: ss.
) November 5th

On this 7th day of 2016 October, 2016, personally appeared before me Kumar Aklesh [name of person(s)], whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the seller [title], of Estate, by authority of its members or its articles of organization, and he/she acknowledged to me that said limited liability company executed the same.



[Signature]

Notary Public

EXHIBIT A

Parcel No.: 15-33-105-012

Lot 33, LEHMAN SUBDIVISION, according to the official plat thereof on file and of record in the Office of the Salt Lake County Recorder.