AMENDED AND RESTATED OPERATING AGREEMENT
OF
WICHITA RAD AMP 1 LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT (the "Amended and
Restated Agreement"), is entered into as of this ______ day of ______, 2021, with
persons identified as Members on Schedule A and whose signatures appear on the
signature page attached, and encompassed by all the Members of Wichita RAD AMP
1 LLC (the “Company”).

WITNESSETH

WHEREAS, the Company was originally formed on April 23, 2018, pursuant to the
terms of that certain Operating Agreement (the “Original Agreement”) with Keith B.
Key Enterprises, LLC as the sole Member; and

WHEREAS, the Members desire to continue the Company as a limited liability
company under and pursuant to K.S.A 17-7662, et seq. (the “Act”) and to admit the
City of Wichita, Kansas as a Member of the Company; and

WHEREAS, the Members agree that their respective rights, powers, duties and
obligations as Members of the Company, and the management, operations and
activities of the Company, shall be controlled by this Amended and Restated
Agreement;

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions
contained herein, the Members hereby agree as follows:

ARTICLE I
General

1.01 Name of the Limited Liability Company. The name of the limited liability
company formed hereby continues to be Wichita RAD AMP 1 LLC.

1.02 Purpose. The sole purposes of the Company is to be admitted as a partner to
and to serve as the general partner of Wichita RAD Senior, LP, a Kansas limited
partnership (the "Owner"), and in connection therewith, to own, hold, sell, dispose
of or otherwise deal with its partnership interest in the Owner. The Company may
engage in any lawful act or activity and exercise any power permitted to a limited
liability company organized under the laws of the State of Kansas that is related or
incidental to and necessary, convenient or advisable for the accomplishment of the
foregoing purposes.

1.03 Office of the Limited Liability Company; Agent for Service of Process. The
address of the registered office of the Company for purposes of the Act is 112 SW 7th

4815-4212-9631.8
Street, Suite 3C, Topeka, Kansas 66603. The name and address of the resident agent for service of process for the Company is The Corporation Company, Inc.

1.04 Principal Place of Business; Offices. The principal place of business for the Company shall be 112 Jefferson St, Columbus, Ohio 43215.

1.05 Organization. A Manager shall cause to be filed such Certificates and documents as may be necessary or appropriate to comply with the Act and any other applicable requirements for the operation of a limited liability company in accordance with the laws of the State of Kansas and any other jurisdictions in which the Company shall conduct its business and operations and shall continue to do so for so long as the Company conducts business therein.

ARTICLE II
Members

2.01 Members. The Members of the Company are identified on Schedule A.

2.02 Voting Rights. Except as may otherwise be provided by this Amended and Restated Agreement or the Act, the Members shall not participate in the control or management of the business of the Company (except for any Member who is also a Manager).

2.03 Members as Non-Agents. The Members are not agents of the Company and do not have authority to act for, or bind, the Company in any matter.

2.04 Acknowledgment of Other Obligations. The Members acknowledge that they may each be obligated under other similar agreements to provide services to other entities and/or projects and may continue to contract with other entities and projects in the future.

2.05 Confidentiality. No Member shall use or disclose the confidential or proprietary information of the Company or its trade secrets for any purpose but the business of the Company.

2.06 Liability of Members. The liability of Members for the losses, debts and obligations of the Company shall be limited to their Capital Contributions, provided however, that under applicable law, the Members may under certain circumstances be liable to the Company to the extent of previous distributions made to them in the event the Company does not have sufficient assets to discharge its liabilities.

ARTICLE III
Managers
3.01 **Managers.** Managers are hereby designated by Members of the Company in accordance with this Agreement. Any Manager may withdraw or be removed as a Manager of the Company, and other persons may be added or substituted as Managers as specified in Sections 3.08 of the Agreement.

3.02 **Management Generally.** In accordance with this Agreement and the Act, the business and affairs of the Company shall be conducted, and all its powers shall be exercised, by or under the direction of the Managers. The Members hereby appoint Keith B. Key as the initial and sole Manager.

3.03 **Managers as Members.** Any Manager may hold an interest in the Company as a Member, and such person’s rights and interest as a Manager shall be distinct and separate from such person’s rights and interests as a Member.

3.04 **Authority of Managers.** Except as otherwise provided in this Agreement or the Act, the Managers shall have exclusive control of the business of the Company. If at any time the number of Managers is two (2), then any action to be taken by the Managers may be taken only by their unanimous approval. If the number of Managers is three (3) or greater, any action to be taken by the Managers may be taken only upon the vote of a majority in number of Managers.

Except as limited by Section 3.05, Keith B. Key as the initial and sole Manager of Company shall have the sole authority to execute and deliver all agreements, documents and writings as shall be necessary for helpful in order for the Company to participate in a Development, as such term is defined in that certain Development Agreement between The City of Wichita Housing Authority and Keith B. Key Enterprises, LLC, dated as of March 20, 2018, as the same may be amended from time to time (the “Development Agreement”), as well as execute and deliver all agreements and documents required of the Company under the Amended and Restated Agreement of Limited Partnership, by and between the Company, AHP Housing Fund 249, LLC, a Delaware limited liability company and Keith B. Key Enterprises, LLC (the "Partnership Agreement").

3.05 **Limitations on Authority.** The Managers shall not have the authority to take any of the following actions on behalf of the Company without the consent of a Majority in Interest of the Members:

(a) sell, lease, exchange or otherwise dispose of all or substantially all of the Company’s assets;
(b) merge, consolidate or otherwise provide for any business combination of the Company;
(c) enter into any transaction that would result in a change in control of more than 50% of the Members’ Interests in the Company;
(d) issue any additional Interests or admit new Members to the Company
(e) reorganize or convert to a form of entity other than a limited liability company
(f) make any election to be taxed as a corporation
(g) make any filing against the Company under any Bankruptcy or insolvency law, or make a general assignment for the benefit of creditors.
(h) take any action not permitted under Section 4.5 of the Development Agreement.

3.06 Compensation of Managers. The Managers of the Company who are involved in the daily operations of the Company shall be entitled to a reasonable compensation, if any, for services rendered to the Company as determined by the unanimous consent of the Members.

3.07 Reliance by Third Parties. Persons dealing with the Company are entitled to rely conclusively upon the affirmation of the Managers that they are acting upon the power and authority of the Managers as herein set forth.

3.08 Removal, Resignation and Appointment of Successor Managers. The Members agree as follows:

(a) Each Manager shall hold office until death, Bankruptcy, Disability, resignation, or removal as provided in this paragraph.
(b) Subject to the consent of AHP Housing Fund 249, LLC, as required by the terms of the Owner’s Partnership Agreement, Majority in Interest of Members may remove a Manager upon giving thirty (30) days written notice, subject to normal cure periods provided by Kansas state law.
(c) Any Manager may resign effective upon giving thirty (30) days written notice to the other Managers, if any, and the Members of the Company, unless the notice specifies a later time for the effectiveness of such resignation. Upon receipt of notice of resignation from the resigning Manager, the remaining Managers or, if none, a Majority in Interest of the Members, may notify the Manager of an earlier effective date for the resignation.
(d) If any Manager is unable or unwilling to continue to serve as Manager, and one or more Managers remains, then the remaining Managers shall continue to serve as Managers. If at any time no Manager remains, then a Majority in Interest of the Members shall appoint one or more successor Managers. If at any time the Company has no Managers, then the Members shall act on behalf of the Company by a Majority in Interest.

3.09 Officers and Delegation of Authority. The Managers may delegate their power and authority to one or more officers, employees or agents of the Company. The Managers may set compensation of their delegates and prescribe duties as
appropriate. The Managers may remove and replace delegates at any time for any reason or for no reason.

The Managers hereby appoint Keith B. Key to serve as President and CEO of the Company and authorize him to exercise, on behalf of the Managers, all of the authority granted to the Managers under this Amended and Restated Agreement.

3.10 Conflict of Interest and Confidentiality. The Managers accept the same or substantially the same obligations and duties as Members as to Conflict of Interest and Confidentiality as set forth in Sections 2.04 and 2.05 of Article II.

ARTICLE IV
Capital Contributions

4.01 Initial Capital Contribution. The initial Capital Contribution of the Members as of the date of this Agreement are set forth on Schedule A hereto.

4.02 Additional Capital Contributions. The Members shall have the right, but shall not be obligated, to contribute any additional funds essential to conducting Company operations in such amounts and proportions as the Members determine.

4.03 Capital Accounts. For each Member, the Company shall establish and administer a separate Capital Account.

ARTICLE V
Allocations and Distributions

5.01 Profits and Losses. Members shall be entitled to all allocations and distributions of Company capital, profits and losses as follows: 50% to the City of Wichita, Kansas and 50% to Keith B. Key Enterprises, LLC.

5.02 Limitations on Withdrawal of Capital. No Member shall have the right to withdraw from the Company all or any part of the Member’s Capital Contribution. No Member shall have the right to demand any distribution other than upon the dissolution and liquidation of the Company.

5.03 Sources of Distributions. Each Member shall look solely to the assets of the Company for all distributions with respect to the Company. Members shall have no recourse (upon dissolution or otherwise) against the Managers or the other Members.

5.04 Allocations. Notwithstanding anything to the contrary contained in this Agreement relating to allocations required by Section 704(c) of the Internal Revenue Code of 1986, as the same may be amended from time to time (the “Code”), allocations required by the Regulations resulting from basis
adjustments pursuant to Sections 734(b) and 743(b) of the Code, allocations relating to minimum gain, qualified income offset and other regulatory allocations, as well as provisions prohibiting allocations which would increase an adjusted Capital Account deficit), the City of Wichita shall be allocated no more and no less than 50% of income, gain, loss, deduction or tax preference items at all times during the existence of the Company. The Members acknowledge that this provision cannot be amended without the written consent of AHP Housing Fund 249, LLC (the investor limited partner in the Owner).

ARTICLE VI
Tax Status and Reports

6.01 Tax Return. The Managers shall prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of the Company with any taxing authority and shall make timely filing thereof. Keith B. Key Enterprises, LLC is also hereby appointed as the “partnership representative” in accordance with the applicable provisions of the Internal Revenue Code. The partnership representative shall have exclusive authority to negotiate a settlement or agreement with the Internal Revenue Service with respect to any item relating to the taxes of the Company; provided that, the partnership representative shall not finalize any such settlement or agreement without first informing each Member in writing of the issues in question and his or her proposed recommendations as to each issue, and obtaining written consent to his or her recommended action from a Majority in Interest.

6.02 Tax Report. A Managers shall prepare or cause to be prepared and delivered to each Member a report setting forth in reasonable detail the information with respect to the Company to enable each Member to prepare his tax returns in accordance with applicable law.

6.03 Accounting Matters. The Managers shall cause to be maintained complete books and records accurately reflecting the accounts, business and transactions of the Company.

ARTICLE VII
Assignment of Interests

7.01 Restrictions on Assignment of Interests. No member shall make or effect an Assignment or Transfer of all, or any part of, such Member’s Interest, except with the consent of the majority of Members. The Members acknowledge that at no time during the existence of the Company can the City of Wichita own more than 50% of all of the economic interests in the Company.
7.02 **Right of First Refusal.** A Member who desires to make an Assignment of such Member’s Interest to any Person, may make such Assignment only after complying with the following provisions:

(a) Any such Member shall promptly send a notice (Offer Notice) to the Company and each other Member and be deemed to have offered to sell his Interest at the price and on the terms determined in accordance with Section 7.03. 

(b) Upon notice of a proposed Assignment, the Company shall have the first right and the other Members shall have the second right to purchase, but not less than all, of the proposed Interest to be transferred. The Company shall exercise its right to purchase, if at all, by irrevocable notice to the Company and the selling Member within thirty (30) days of the Offer Notice, and the remaining Members shall exercise their right to purchase, if at all, by irrevocable notice to the Company and the selling Member within sixty (60) days of the Offer Notice. Notwithstanding the above, in no event prior to the expiration of the Compliance Period shall the City of Wichita take title to additional Member’s Interest that will result in the City of Wichita owning more than 50% of the economic interests in the Company in accordance with the “related party rules” under Section 42 of the Code.

7.03 **Determination of Purchase Price**

(a) The price for the Interest of a selling Member shall be set forth in the Offer Notice.

(b) If the proposed assignment is a pledge or gift or otherwise does not include a good faith arm’s length purchase price, then the price shall be the fair market value as determined by an independent certified public accountant.

7.04 **Admission of New Members.** No Person, including any recipient of an Economic Interest in a Permitted Transfer, shall be admitted as a Member without the consent of a Majority in Interest of the Members. The Members acknowledge that no Member may transfer its interest in the Company without the written consent of AHP Housing Fund 249, LLC.

7.05 **Members’ Representative and Successors,** If a Member who is a natural person dies or a court of competent jurisdiction adjudges the Member to be incompetent to manage his affairs, the Member’s executor, administrator, guardian, conservator or other legal representative may exercise all the Member’s rights for the purpose of settling the Member’s estate or administering the Member’s property.

7.06 **Withdrawal of Members.** No Member shall have the right to withdraw from the Company without the consent of a Majority in Interest of the other Members (excluding the withdrawing Member).
ARTICLE VIII
Dissolution

8.01 Dissolution. The Company shall be dissolved and its affairs wound up upon the first to occur of the following conditions:

   (a) The vote of a Majority in Interest of the Members;
   (b) The sale of all or substantially all of the assets of the Company and cessation of its business in the ordinary course; or
   (c) Entry of a decree of judicial dissolution under the Act.

8.02 Liquidation. Upon occurrence of an event of dissolution as defined in the Act or Section 8.01 of the Agreement, the Company shall cease to engage in any further business operations, except to the extent necessary to perform existing obligations, and shall wind up its affairs and, if necessary to pay or establish reserves for all debts and contingent or unforeseen liabilities of the Company, liquidate its assets.

8.03 Liabilities. Any liquidation shall continue until the Company's affairs are in such condition that there can be a final accounting showing that all fixed or liquidated obligations and liabilities of the Company are satisfied or can be adequately provided for under this Agreement.

8.04 Settling of Accounts. Subject to any applicable provisions of the Act, upon the dissolution and any liquidation of the Company, the cash of the Company and any proceeds of liquidation shall be applied as follows:

   (i) first, to pay all expenses of liquidation and winding up;
   (ii) second, to pay all debts, obligations and liabilities of the Company in order of priority as provided by law, other than on account of Members’ contributions; and
   (iii) third, to establish reasonable reserves for any remaining contingent or unforeseen liabilities of the Company not otherwise provided for, which reserves shall be maintained by the Managers on behalf of the Company in a regular interest-bearing trust account for a reasonable period of time as determined by the Managers. If any excess funds remain in such reserve at the end of such reasonable time, then such remaining funds shall be distributed by the Company to the Members pursuant to Section 8.05 hereof.

8.05 Distribution of Assets of the Company. Subject to any restrictions contained in the Act, upon dissolutions of the Company but not later than the Distributions Date (the date established by the Managers when a final accounting may be determined and the distribution of assets including any proceeds of liquidation occurs), the assets of the Company, including any net proceeds of liquidation, shall be distributed to Members in proportion to the positive balances of their Capital Accounts.
8.06 Filing. Upon dissolution of the Company, the Managers shall cause to be executed and filed with the Secretary of the State articles of dissolution in accordance with the Act.

ARTICLE IX
Certificates Evidencing Interests

9.01 Issuance. The Company may, but shall not be required to, issue to Members of the Company a certificate signed by the Managers specifying the Interest of such Member.

9.02 Lost or Worn Certificates. If a certificate for registered Interests is worn out or lost it may be renewed on production of the worn out certificate or on satisfactory proof of its loss together with such indemnity as may be required by the Managers.

9.03 Not Freely Assigned. Certificates evidencing an Interest are not freely transferable and are only transferable to the extent a permitted Assignment is made in compliance with Article VII.

ARTICLE X
Indemnification

10.01 Exculpation. Neither the Managers nor any Member shall be liable to the Company or any Member for any loss in connection with the affairs of the Company so long as such person is not guilty of fraud, willful misconduct, or gross negligence.

10.02 Indemnification.

(a) The Company shall indemnify, defend, hold harmless and pay all judgments and claims against the Managers and any Member arising from any liability or damage incurred by reason of any actions, inactions or decisions of such person that are within the scope of the authority provided hereunder or are taken upon advice of counsel, provided that the same were not fraud or the result of fraud, willful misconduct or gross negligence. The Company shall provide reasonable attorneys’ fees and other costs and expenses incurred by the Managers and Members in connection with the defense of any pending or threatened action or proceeding which arises out of conduct that is the subject of the indemnification provided hereunder, subject to the agreement of such Manager or Member, as the case may be, to reimburse the Company for such provision to the extent that it shall finally be determined by a court of competent jurisdiction that the Manager or Member was not entitled to indemnification under this Section.
(b) To the extent not contrary to the provisions of the Kansas Budget Law, K.S.A. § 79-2925, Kansas Cash Basis Law, K.S.A. § 10-1101, and Kansas Tort Claims Act, K.S.A § 75-6103, as each may be amended from time to time, each Manager and Member shall indemnify and hold harmless the Company and its other Members from and against any claim, loss, expense, liability, action or damage including, without limitation, reasonable costs and expenses of litigation and appeal by reason of said Manager’s fraud or Member’s fraud, willful misconduct or gross negligence.

10.03 Continuing Rights. Any repeal or modification of Section 10.01 or Section 10.02 shall not adversely affect any right or protection of the Managers or Members existing at or prior to the time of such repeal or modification.

ARTICLE XI
Inspection of Company Records

11.01 Records to be Kept. The Company shall keep at its principal place of business or at such other office as shall be designated by the Member:

(a) A current and past list in alphabetical order of the full name and last known mailing address of each Member and Manager;
(b) A copy of the filed Certificate and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any document has been executed;
(c) Copies of this Agreement, and all amendments hereto;
(d) Copies of the Company’s federal, state and local income tax returns and reports and financial statements, if any, for the three (3) most recent years or, if such returns and statements were not prepared, copies of the information and statements provided to the Members to enable them to prepare their tax returns for such period.

11.02 Inspection of Company Records. The books and records set forth in Section 11.01 shall be open to inspection upon the reasonable request of any Member at any reasonable time during usual business hours, for a purpose reasonably related to such Member's interest as a Member. Such inspection by a Member may be made in person or by agent or attorney, at the Member’s expense, and the right of inspection includes the right to copy and make extracts.

ARTICLE XII
Miscellaneous
12.01 *Amendments.* This Agreement may be amended only by the consent of a majority in Interest of Members or with the written consent of AHP Housing Fund 249, LLC.

12.02 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the Members and their respective heirs, administrators, executors, legal representatives, successors and permitted assigns.

12.03 *Entire Agreement.* This Agreement and the schedules attached hereto constitute the entire agreement among the Managers and Members with respect to the subject matter hereof and supersede all prior and contemporaneous agreements, representations, and understandings of the parties with respect to the Company.

12.04 *Third Parties.* Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto, and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein.

12.05 *Governing Law.* This Agreement shall be governed by and construed under the substantive laws of the State of Kansas without regard to its choice-of-law provisions.

12.06 *Titles and Subtitles; Form of Pronouns; Construction and Definitions.* The titles of the sections and paragraphs of this Agreement are for convenience only and are not to be considered in construing the Agreement. All pronouns used in this Agreement shall be deemed to include masculine, feminine and neuter forms; the singular number includes the plural and the plural number includes the singular. Unless the context otherwise requires, the term “including” shall mean “including, without limitation.”

12.07 *Severability.* If one or more provisions of this Agreement are held by a proper court to be unenforceable under applicable law, portions of such provisions, or such provisions in their entirety, to the extent necessary and permitted by law, shall be severed and the balance of this Agreement shall be enforceable in accordance with its terms.

12.08 *Notices.* Any and all notices or elections permitted or required to be made as provided in this Agreement shall be in writing, signed by the Member or Manager giving such notice or making such election, and shall be delivered by hand or by nationally recognized overnight courier service or sent by registered or certified U.S. Mail, postage prepaid, return receipt requested, to parties receiving the notice or election at their addresses set forth in Schedule A, or if to the Company, at its address set forth in Section 2.03, or such other address as may be designated from time to time by written notice to the Company and the Members.
12.09 *No Waiver.* The failure of any Member to insist upon strict performance of any covenant or obligation under this Agreement shall not be deemed a waiver or relinquishment of such Member's right to demand strict compliance in the future with respect to such covenant or obligation or any other covenant or obligation. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall be deemed to constitute a consent or waiver to or of any breach or default in the performance of the same or any other obligation under this Agreement.

12.10. *Counterparts.* This Agreement may be executed upon an original and one or more duplicate originals, all of which together shall constitute an agreement.

IN WITNESS WHEREOF, the Members hereby execute this Amended and Restated Operating Agreement as of the date first written above.

MEMBERS:

Keith B. Key Enterprises, LLC

By: ________________________________
Keith B. Key, President & CEO

The City of Wichita, Kansas

By: ________________________________
## SCHEDULE A
Names, Address, Initial Capital Contributions and Percentage Interests of Members and Managers

### MEMBERS:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Initial Capital Contribution</th>
<th>Percentage Interest for Voting Purposes Only</th>
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<tr>
<td>Keith B. Key Enterprises, LLC</td>
<td>112 Jefferson St., Columbus, OH 43215</td>
<td>$50</td>
<td>49%</td>
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<tr>
<td>The City of Wichita, Kansas</td>
<td>455 North Main Street, 10th Floor, Wichita, KS 67202</td>
<td>$50</td>
<td>51%</td>
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### MANAGERS

<table>
<thead>
<tr>
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<th>Percentage Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keith B. Key</td>
<td>112 Jefferson St., Columbus, OH 43215</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>