DATE FILED: December 20, 2018 4:15 PM
FILING ID: 28595D2692AE0
CASE NUMBER: 2018CV33011

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
Plaintiff: CHRIS MYKLEBUST, SECURITIES COMMISSIONER FOR THE STATE OF COLORADO v. **Defendants:** GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, AND GDA REAL ESTATE MANAGEMENT, LLC	▲COURT USE ONLY▲
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424

RECEIVER'S EXPEDITED MOTION FOR ORDER TO SHOW CAUSE AND REQUEST FOR FORTHWITH HEARING

Harvey Sender, the duly-appointed receiver ("Receiver") for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, "Dragul and the GDA Entities"), pursuant to C.R.C.P. 107(c), hereby requests that the Court enter an Order to Show Cause why U.S. Real Estate Credit Holdings III, L.P. ("Lender") and its counsel of record, Jonathan S. Hawkins ("Hawkins"), Louis F. Solimine, and Anthony

Hornback (collectively "Lender's Counsel") should not be held in contempt of Court for violating this Court's August 30, 2018, Receivership Order.

I. Background of dispute and conferral pursuant to C.R.C.P. 121, § 1-15(8) and notice of motion requesting immediate attention pursuant to C.R.C.P. § 121 1-15(4).

1. This Court's August 30, 2018, Stipulated Order Appointing Receiver ("Receivership Order") enjoins all actions in equity or at law against the Receiver, Dragul, the GDA Entities, or the Receivership Estate, absent an order from this Court. Receivership Order ¶ 26, at 18.

2. A Notice of Property Subject to Receivership was recorded with the Hamilton County, Ohio Recorder's Office on October 29, 2018, providing record notice of the Receivership Order. A copy is attached as **Exhibit 1.**

3. One Dragul related entity – PS 16, LLC ("Borrower") – executed a $12.97 million promissory note to Lender[1] on January 22, 2016, which was personally guaranteed by Dragul.

4. The loan is secured by a first mortgage lien on real property, namely a shopping center known as Prospect Square, located at 9690 Colerain Avenue, Cincinnati, Ohio 45229, and referenced as Tax Parcel Nos. 510-0103-0117; 510-0103-0124; 510-0103-0125; 510-0103-0126; 510-0103-0127; 510-0103-0301; and 510-0103-0302 by the Hamilton County, Ohio Recorder (the "Property"). As additional security for the Note, Borrower also executed an Assignment of Leases and Rents, effective January 22, 2016.

[1] Lender is the successor in interest to the original lender, Calmwater Capital, which assigned its interests and rights under the Note, the Mortgage, the Assignment of Leases and Rents, and the Dragul Guarantee to U.S. Real Estate on May 27, 2016.

5. There are two structures on the Property, consisting of 118,000 square feet of partially-leased commercial real estate. At present, the Property is 79.4% leased and under the Receiver's instruction and direction, lease negotiations are nearly finalized for the lease of an additional 16% of the total Property.

6. The Property is wholly-owned by PS 16, LLC, which is in-turn is owned by: GDA PS Member, LLC (10%), Hagshama Prospect Square, LLC (48.84%) and CoFund 2, LLC (41.52%). *See* Prospect Square Ownership Structure Chart, attached as **Exhibit 2.** PS 16, LLC is managed by GDA PS Management, LLC, a Dragul wholly-owned entity.

7. On December 3, 2018, counsel for the Receiver became aware of an action filed in Ohio state court against Dragul and a Dragul Entity. Counsel received a copy of an Order Appointing Receiver ("Subsequent Receivership Order") filed in the Hamilton County, Ohio Court of Common Pleas (the "Hamilton County Court"), with respect to the Property located in Cincinnati, Ohio. *See* **Exhibit 3** (Affidavit of Michael T. Gilbert ("MTG Aff.")), at ¶ 4, *see also* **Ex. A** to MTG Aff. (Subsequent Receivership Order).

8. Immediately upon receipt of the Subsequent Receivership Order, undersigned contacted counsel for the Receiver on December 3rd and provided him with a copy of this Court's Receivership Order pointing out the litigation stay imposed by the Order. **Ex. 3** (MTG Aff.), at ¶5.

9. That same day, undersigned also contacted counsel for Lender, *via* email, attaching a copy of the August 30, 2018 Receivership Order as well as information showing that Receivership Order had been recorded in Hamilton County, Ohio on October 29, 2018. **Ex. 3** at ¶6, *see also* **Ex. B** to MTG Aff. Undersigned also notified Lender's Counsel in the December 3rd

email that its lawsuit violated this Court's stay Order. *See* **Ex. B** to MTG Aff. (12/03/2018 Email Chain with Mr. Hawkins).

10. During a telephone conversation with Lender's Counsel the following day, Mr. Hawkins said that notwithstanding this Court's stay, he intended to proceed to foreclose the Property. Receivership Order. at ¶7. Significantly, during this conversation Mr. Hawkins admitted that he and his client had actual knowledge of the Receivership Order before filing the Ohio action and seeking the *ex parte* appointment of a receiver there. *Id.* at ¶7-8.

11. Notwithstanding their actual and record notice, Lender and its Counsel did not ask this Court for relief before filing the Ohio State Court case. More egregiously, they concealed the Colorado Receivership Order and its litigation stay from both the Ohio state court and the Ohio receiver they had appointed *ex parte* on November 29, 2018.

12. After that phone call, Mr. Hawkins stated that his client, the Lender, "does not consent to the exercise of any personal jurisdiction over it or any of its officers, directors, agents or attorneys, and is providing the requested information in an effort to resolve the disputed efforts of the Colorado receiver to exercise control over property it deems beyond the scope of the Colorado state court's authority and beyond the scope of the actual authority exercised pursuant to the express terms of the order of appointment." **Ex. 3** (MTG Aff.), at ¶11; *see also* MTG Aff. at **Ex. E (**Gilbert and Hawkins Email Chain) at p. 4**.**

13. Moreover, following undersigned's receipt and review of Lender's Complaint and Motion for Appointment of a Receiver, a detailed email was sent to Lender's Counsel outlining the violations of this Court's Receivership Order that both he and his client had committed by proceeding with their Ohio foreclosure action and the appointment of a subsequent receiver over

the Property. **Ex. 3** (MTG Aff.), at ¶12; *see also* MTG Aff. at **Ex. E** (Gilbert and Hawkins Email Chain), at p. 4.

14. In an attempt to amicably resolve these issues with Lender, Mr. Sender and undersigned counsel spoke with Mr. Hawkins on December 14, 2018. During the call, undersigned advised Mr. Hawkins that the Receiver is in the process of negotiating several transactions that result in Lender's loan being paid in full within 60-900 days. **Ex. 3** (MTG Aff.), at ¶13.

15. Notwithstanding this, Mr. Hawkins indicated during the December 14th call that he and the Lender would not halt their Ohio litigation, but instead intended to proceed to foreclose the Property and pursue their claims against Dragul and the Dragul Entities. **Ex. 3** (MTG Aff.), at ¶14.

16. Based on an appraisal Lender provided, it appears there is substantial equity in the Property that would be lost to the Receivership Estate if Lender is allowed to proceed to foreclose the Property. **Ex. 3** at ¶14.

17. Unlike Lender and Lender's Counsel, on December 15, 2018, counsel for the Ohio receiver notified undersigned that his client "does not intend to take further action with respect to the Property and does not anticipate doing so until he receives further direction from the Ohio Court." **Ex. 3** (MTG Aff.), at ¶15.

18. In response to the Ohio receiver's unwillingness to violate this Court's Receivership Order, and in further violation of that Order, on December 18, 2018, Lender filed an Amended Complaint and an *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction ("Motion for TRO") in the Hamilton County Court. **Ex. 3** (MTG Aff.), at ¶ 16; *see also* MTG Aff. at **Ex. F** (Amended Complaint) and **Ex. G** (Motion for TRO). In its Motion for TRO,

the Lender seeks to enjoin the Receiver's ability to carry out his duties in managing, administering, and controlling the Property, an asset of this Receivership Estate. *See* MTG Aff. at **Ex. G**.

19. Apparently recognizing that Lender's claims seeking money judgments against Dragul and a Dragul Entity violated the Receivership Order, Lender's Amended Complaint omits those claims. *See* MTG Aff. at **Ex. F** (Amended Complaint)**,** *compare* MTG Aff. at **Ex. C** (Original Complaint).

20. Despite the Receivers' attempts to resolve this dispute, Lender and Lender's Counsel continue to pursue the Ohio foreclosure and to take actions in Ohio seeking to limit the authority the Receiver was granted by this Court.

21. Because of the nature of the recently filed TRO, pursuant to C.R.C.P. 121-1-15(4), the Receiver requests that the Court set this motion for a forthwith hearing.

II. Lender and Lender's Counsel are violating this Court's Receivership Order.

A. The Property is part of the Receivership Estate.

22. Lender and its Counsel take the position that their Ohio litigation is not enjoined by the Receivership Order for three reasons. First, Lender contends the Property is not part of the Receivership Estate. MTG Aff. at **Ex. G** (Motion for TRO), at p. 11. Second, they claim that because the Property is in Ohio, this Court lacks jurisdiction to enjoin them. Third, they attempt to convey a sense of urgency by unjustifiably, and without any evidentiary support, arguing that the Lender presently faces the threat of immediate irreparable harm if the Receiver continues to manage and control the Property. MTG Aff. at **Ex. G** (Motion for TRO), at pp. 17-18. None of these arguments justifies their disregard of this Court's stay order.

23. Lender and Lender's Counsel argument that the Receivership Order "does not purport to place the assets owned by the "LLC entities" into the Colorado Receivership Estate[,]" is based on a selective and flawed reading of paragraph 9 of the Receivership Order. In their view, paragraph 9 means that the Receivership Estate includes only the "***assets*** that Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC may own, including the ***interests*** in the LLC Entities that are within such estate." MTG Aff. at **Ex. G** (Motion for TRO), at p. 11 (emphasis in original). This interpretation disregards other operative language in the same paragraph of the Receivership Order.

24. Paragraph 9 defines the Receivership Estate to include Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC

> and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, *their interests in any subsidiaries or related companies, management and control rights*, claims, and causes of action, wherever located, including without limitation the "LLC Entities" identified in the Commissioner's Motion and Complaint for Injunctive and Other Relief, or assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds . . . .

Receivership Order ¶ 9, at 3 (italics added).

25. Lender and its Counsel fail to acknowledge the "investor funds" provision. PS 16, LLC was capitalized with investor monies obtained from Israeli investment funds, Hagshama Prospect Square, LLC and CoFund 2, LLC (which hold 48.84% and 41.52% interests, respectively, in the Property). **Ex. 2** (Prospect Ownership Chart). Moreover, GDA PS Member, LLC (which holds a 10% interest in the Property), is owned by Dragul (67.86%) and individual investors. *Id.*

And as confirmed by a certification under oath provided to the Lender when the loan was funded, PS 16, LLC is managed by GDA PS Management – a wholly-owned Dragul entity. A copy of the Certificate of PS 16, LLC is attached as **Exhibit 4**.

26. In turn, GDA PS Management, LLC is managed by GDA Real Estate Management, Inc. A copy of the Certificate of GDA PS Management, LLC is attached as **Exhibit 5**. Dragul is the president of GDA Real Estate Management, Inc. As such, PS 16, LLC, which owns the Property, was capitalized with investor funds and is managed by Dragul, and therefore property of the Receivership Estate pursuant to the express provisions of the Receivership Order.

B. The Stay imposed by this Court's Receivership Order applies to the Property.

27. The Receiver is an officer of this Court, which has jurisdiction over the Receivership Estate. *See, e.g.*, *Midland Bank v. Galley Co.*, 971 P.2d 273, 276 (Colo. 1998). The order appointing a receiver is the measure of his power. *Id.* at 277. The Receivership Order appointed the Receiver over *all* of the real and personal property of Dragul, the GDA Entities, *and* their interests in any subsidiaries or related companies, management and control rights, *wherever located*. Receivership Order ¶ 9, at 3 (italics added). This Court vested the Receiver with authority to take charge of all "Receivership Property, *regardless of where such property is located*. *Id.* ¶13(c), at 7 (italics added).

28. Upon appointment of a receiver, all property in the possession of the entities placed into receivership passes into the custody of the receivership court and becomes subject to its authority and control. *E.g. Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995). The receivership court has the power to enjoin actions or issue blanket stay orders of all proceedings against receivership property and such stays bind non-parties. *See id.* at 373.

29. A receiver's duties include protecting the property of the estate and ensuring that it is not improperly diminished during the pendency of the receivership. *E.g.*, *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). The purpose of a receivership litigation stay is clear. "A receiver must be given a chance to do the important job of marshaling and untangling a company's assets without being forced into court by every investor or claimant." *Id.* at 1198 (quoting *United States v. Acorn Tech. Fund, L.P.*, 429 F.3d 438, 443 (3d Cir. 2005)). The facts and holding in *Vescor* are instructive.

30. In *Vescor*, a receiver was appointed by a Utah district court pursuant to a motion filed by the S.E.C. in the wake of a Ponzi scheme. *Vescor Capital Corp. v. Valle Verde L.P.*, No. 2:07-CV-363, 2009 WL 223532, at *1-2 (D. Utah Jan. 29, 2009). The receivership property included real estate in Las Vegas. Before the Vescor receiver was appointed, one of Vescor's secured lenders had filed foreclosure actions in Nevada. Upon learning of the receivership – unlike Lender and Pettit here – the secured lender filed a motion to lift the receivership stay to proceed with its foreclosure. The district court denied the motion to lift the stay and the Tenth Circuit affirmed. *Vescor*, 599 F.3d at 1191.

31. The secured lender in *Vescor* argued it was entitled to pursue its foreclosure action notwithstanding the receivership because it was a secured creditor with a valid lien against the Nevada real property and thus, was entitled to priority over unsecured creditors with respect to that real estate. 599 F.3d at 1193. The Vescor receiver – while not disputing the validity of the lender's liens – argued that various transactions concerning the lender had not been properly accounted for, that money from investors had been comingled in Vescor's accounts and used to pay various

obligations, and that the receiver needed time to sort out the accounting irregularities. This is precisely the situation here. As alleged in the Commissioner's complaint in this case:

> The funds held in the various [Dragul] LLC Entities were transferred, dissipated, diverted, and/or misappropriated by Dragul. These commingled investor funds were dispersed without regard for corporate formalities or distinctions. This scheme resulted in investors not having their funds held or invested when Dragul represented they would be held or invested. Dragul used the GDA account and the LLC Entities' accounts as if they were interchangeable. This commingling of funds was the mechanism created by Dragul as part of his scheme to defraud the investors. None of the investor funds transferred in or out of any particular LLC Entity can be identified substantially as an asset of any LLC Entity, and as a result, the investor funds have lost their identity and have become untraceable.

Complaint for Injunctive and Other Relief ¶ 24, at 7 (August 15, 2018).

32. This Court's Receivership Order sets forth the following priority for paying valid claims against the Estate: (1) administrative claims and post-Receivership taxes; (2) Receiver's certificates; (3) secured claims; (4) unsecured pre-Receivership tax claims; (5) unsecured creditors; and (6) equity interests.

33. The Receiver's forensic accountants are in the process of reviewing documents but have not yet begun to trace funds routinely transferred among the various Dragul entities. At one point, the Dragul Entities held over a hundred separate bank accounts and routinely comingled money among them. The amount of claims against the Receivership Estate is currently unknown, as is whether the assets of the Estate will be sufficient to pay its liabilities.

34. Upon information and belief, there is equity in the Prospect Square Property, and the Receiver seeks to preserve that equity for the benefit of defrauded investors. Lender and its Counsel, on the other hand, seek to circumvent the process established by this Court for paying

claims, including secured claims, in order to obtain preferential payment of the Lender's claim, and to reap the benefit of any equity in the Property. While it may be true here, as it was in *Vescor*, that "secured interest holders will generally receive preferential treatment under a receiver's final distribution plan, [] we are not yet at that stage of the proceedings." *Vescor*, 599 F.3d at 1195. The very reason for the litigation stay is to allow the Receiver time to evaluate and pay claims in an orderly fashion. Given what the Receiver believes may be an equity cushion in the Property, there is no compelling reason to allow Lender and its Counsel to violate the Court's stay order to proceed with their declaratory judgment and foreclosure action in Ohio.

C. Lender is in no danger of immediate and irreparable harm if the Receiver proceeds as he has since his Appointment over the Property.

35. Lender and Hawkins attempt to convey a sense of urgency by claiming Lender will suffer immediate irreparable harm if the Receiver continues to manage and control the Property. MTG Aff. at **Ex. G** (Motion for TRO), at p. pp. 17-18.

36. Lender cites Dragul's apparent continued negotiation with prospective tenants as a basis that it will suffer irreparable harm. Undersigned advised Lender and Hawkins that such negotiations and communications with tenants and prospective tenants were under the Receiver's direction and control because Dragul does not have any binding authority. MTG Aff. at **Ex. E**, at pp. 1-2.

37. Lender has not represented an accurate picture to the Ohio court. For example, they did not inform the Ohio court about this Court's appointment of the Receiver on August 30, 2018. And they have represented to the Ohio court that "Since the filing of the Complaint [on November 29, 2018], [Lender] has collected rents from the tenants of the Property, which would have the effect of reducing the total amount of Indebtedness." **Ex. G** (Motion for TRO), at 4, n. 1. Lender

omitted to inform the Ohio court Lender has been sweeping all of the rental income from the Property beginning on July 2, 2018. From then through November 2018, it swept nearly $415,000 in rents from the Property while paying none of its expenses. *See* **Exhibit 6**.

38. Lender and its Counsel have also omitted to inform the Ohio court that since this Court appointed the Receiver on August 30, 2018, this Receivership Estate has paid all essential expenses for the Property. MTG Aff. at **Ex. E**, at pp. 1-2. These expenses, which include insurance, utilities, maintenance, and repairs, have been paid from the funds in the Receivership Estate unrelated to the Property.

WHEREFORE, the Receiver asks the Court to set a forthwith hearing and to enter an Order to Show Cause why Lender and Lender's Counsel should not be held in contempt for violating the stay imposed by this Court's Receivership Order.

Dated: December 20, 2018.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: */s/ Rachel A. Sternlieb*

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on December 20th, 2018, I served a true and correct copy of the foregoing **RECEIVER'S EXPEDITED MOTION FOR ORDER TO SHOW CAUSE AND REQUEST FOR HEARING** via CCE and/or *via* electronic mail to the following:

Robert W. Finke, Esq.
Matthew J. Bouillon Mascareñas, Esq.
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Counsel for U.S. Real Estate Credit Holdings III, LP

By: /s/ Terri M. Novoa
ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

Norbert A Nadel
Hamilton County Recorder's Office
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NOTICE OF PROPERTY SUBJECT TO RECEIVERSHIP ESTATE

PLEASE TAKE NOTICE, that on August 30, 2018, by Order issued in Denver District Court, State of Colorado, *Gerald Rome, Securities Commissioner for the State of Colorado vs. Gary Dragul, et al*, Case No. 2018cv33011 ("Receivership Order"), Harvey Sender was appointed as the Receiver for Gary J. Dragul, GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the "Receivership Estate" or the "Estate").

PLEASE TAKE FURTHER NOTICE, that certain property, more fully described on **Exhibit A** to this Notice, is identified as part of the Receivership Estate and is subject to the Receivership Order.

Dated October 26, 2018

ALLEN VELLONE WOLF HELFRICH & FACTOR, P.C.

By: _____

Michael T. Gilbert, Esq.
Rachel A. Sternlieb, Esq.
1600 Stout Street, Suite 1100
Denver, CO 80202
Attorneys for the Receiver, Harvey Sender

EXHIBIT 1

Property Legal Description

FEE PARCEL I:

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Township of Colerain, County of Hamilton and State of Ohio and being more particularly described as follows:

Commencing at a point in the centerline of Springdale Road, said point being the intersection of the centerline of Springdale Road and the North line of Section 9;

Thence with the centerline of Springdale Road, South 45 deg. 52' West, 197.82 feet;

Thence departing the said centerline of Springdale Road, South 43 deg. 53' East, 40.00 feet to the South line of Springdale Road and the point of beginning of the tract herein described;

Thence departing the South line of Springdale Road, South 43 deg. 53' East, 550.00 feet;

Thence, South 44 deg. 04' 35" East, 101.20 feet;

Thence South 30 deg. 21' 27" East, 252.00 feet;

Thence, South 59 deg. 38' 33" West, 257.49 feet;

Thence South 2 deg. 35' West, 182.01 feet;

Thence North 87 deg. 32' 48" West, 33.00 feet;

Thence, North 2 deg. 35' East, 130.70 feet;

Thence, North 87 deg. 19' West, 471.92 feet to the East line of Colerain Avenue;

Thence with the said East line of Colerain Avenue, North 17 deg. 14' 57" West, 385.45 feet;

Thence, departing the said East line of Colerain Avenue, North 75 deg. 10' East, 150.87 feet;

Thence North 38 deg. 31' East, 170.20 feet;

Thence North 45 deg. 52' East, 200.00 feet;

Thence, North 43 deg. 53' West, 210.00 feet to the said South line of Springdale Road;

Thence with the said South line of Springdale Road, North 45 deg. 52' East, 20.00 feet to the place of beginning.

FEE PARCEL II:

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Township of Colerain, County of Hamilton and State Ohio and being more particularly described as follows:

Commencing at the intersection of the centerline of Colerain Avenue and the centerline of Springdale Road;

Thence with the centerline of Colerain Avenue, South 17 deg. 11' East, 703.32 feet;

Thence departing the said centerline of Colerain Avenue, South 87 deg. 19' East 76.23 feet to a point, the real place of beginning of the tract herein described; said point being in the East right of way line of Colerain Avenue;

Thence South 87 deg. 19' East 400.97 feet;

Thence North 2 deg. 35' East 130.70 feet;

Thence North 87 deg. 19 West, 200.00 feet;

Thence South 2 deg. 35' West 106.70 feet;

Thence North 87 deg. 19 West, 75.91 feet;

Thence North 80 deg. 03' West, 125.35 feet to a point in the said East line of Colerain Road;

Thence with the East line of Colerain Road, South 03 deg. 40' 21" West, 39.86 feet to the place of beginning.

EASEMENT PARCEL III:

Non-Exclusive Easement Designated as Easement II in the Deed filed in Deed Volume 4229, Page 1007 over the following described property:

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Township of Colerain, County of Hamilton and State of Ohio and being more particularly described as follows:

Commencing at a point in the centerline of Springdale Road, said Point being the intersection of the centerline of Springdale Road and the North line of Section 9;

Thence with the centerline of Springdale Road, South 45 deg. 52' West, 177.82 feet;

Thence departing the said centerline of Springdale Road, South 43 deg. 53' East, 40.00 feet to the South line of Springdale Road and the real place of beginning;

Thence South 43 deg. 53' East, 210.00 feet;

Thence North 45 deg. 52' East, 92.82 feet;

Thence South 43 deg. 53' East, 180.26 feet;

Thence South 2 deg. 35' West, 17.23 feet;

Thence South 87 deg. 45' East, 69.89 feet;

Thence South 2 deg. 15' West, 65.00 feet;

Thence North 87 deg. 45' West, 50.68 feet;

Thence South 30 deg. 21' 27" East, 200.92 feet;

Thence South 59 deg. 38' 33" West, 20.00 feet;

Thence North 44 deg. 04' 35" West, 101.20 feet;

Thence North 43 deg. 53' West, 550.00 feet to the said South line of Springdale Road;

Thence with the said South line of Springdale Road, North 45 deg. 52' East, 20.00 feet to the place of beginning.

EASEMENT PARCEL IV:

Non-Exclusive Easements for Ingress and Egress as created in Instrument filed June 22, 1981 and recorded in Deed Book 4215, Page 1797, Recorder's Office, Hamilton County, Ohio.

EASEMENT PARCEL V:

Non-Exclusive Easements for Ingress, Egress and Sign as created in Grant and Deed of Easement for Ingress and Egress filed August 10, 1983 and recorded in Deed Book 4264, Page 435, Recorder's Office, Hamilton County, Ohio.

PROSPECT SQUARE: ORGANIZATIONAL CHART

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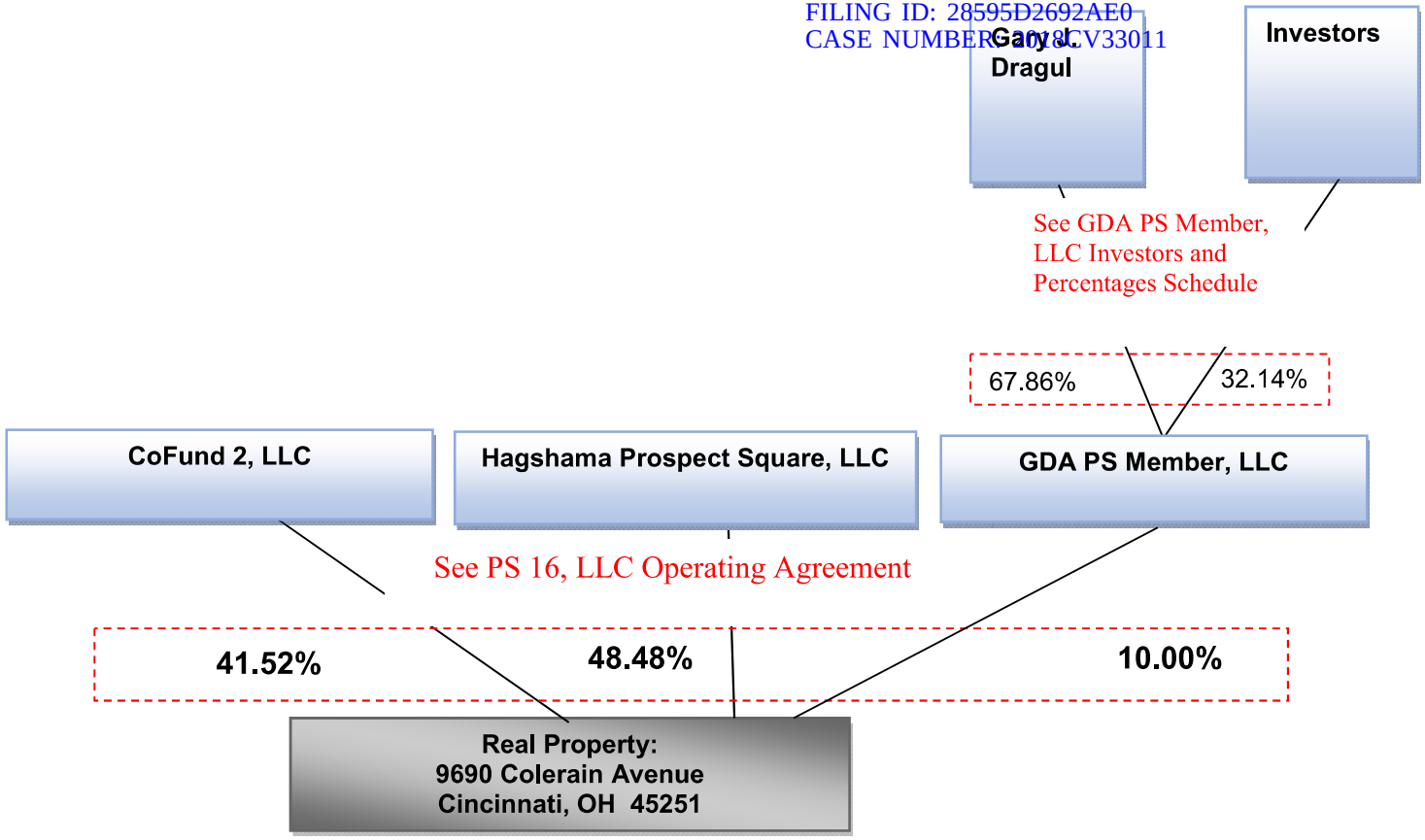

EXHIBIT 2

DATE FILED: December 20, 2018 4:15 PM
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DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
Plaintiff: CHRIS MYKLEBUST, SECURITIES COMMISSIONER FOR THE STATE OF COLORADO v. **Defendants:** GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, AND GDA REAL ESTATE MANAGEMENT, LLC	▲COURT USE ONLY▲
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424

AFFIDAVIT OF MICHAEL T. GILBERT IN SUPPORT OF MOTION FOR ORDER TO SHOW CAUSE

I, Michael T. Gilbert, being duly sworn, state as follows:

1. I am an attorney at Allen Vellone Wolf Helfrich & Factor P.C., 1600 Stout Street, Suite 1100, Denver, CO 80202.

2. I have been licensed to practice law in the State of Colorado since 1985.

3. I am counsel of record for Harvey Sender, the duly-appointed Receiver in this case.

EXHIBIT 3
Part 1 of 4

4. On December 3, 2018, I received a copy of a November 29, 2018, Order Appointing Receiver ("Subsequent Receivership Order") entered by the Ohio Court of Common Pleas in Hamilton County, Ohio (the "Ohio Court"), over the Prospect Square Property (the "Property") located in Cincinnati, Ohio. A copy of the Subsequent Receivership Order is attached as **Exhibit A.** The Property is a shopping mall and is part of this Receivership Estate.

5. After I received the Subsequent Receivership Order, I immediately contacted Jeffery Marks, counsel for the Ohio receiver, John A. Rothschild (the "Subsequent Receiver"), who had been appointed by the Ohio Court on November 29, 2018. I provided Mr. Marks with a copy of this Court's August 30, 2018, Receivership Order (the "Receivership Order").

6. On December 3, 2018, I also sent an email to counsel for the plaintiff in the Ohio action, U.S. Real Estate Holdings III, L.P. ("Lender"). Its counsel are Jonathan S. Hawkins, Louis F. Solimine, and Anthony Hornbach, of Thompson Hine LLP. I attached a copy of the Colorado Receivership Order and evidence the Order had been recorded in Hamilton County, Ohio on October 29, 2018. In my e-mail, I notified Lender's counsel that its Ohio action violated the stay imposed by this Court's Receivership Order. *See* 12/03/2018 Email Chain with Mr. Hawkins, attached as **Exhibit B.**

7. During a telephone conversation on December 4, 2018, Mr. Hawkins informed me that notwithstanding this Court's Receivership Order, Lender intended to proceed with its Ohio foreclosure action on the Property and maintained that the Subsequent Receiver had the sole and exclusive right to control the Property. I told Mr. Hawkins this violated this Court's Receivership Order.

8. Mr. Hawkins admitted during our December 4th call that both he and Lender had actual knowledge of this Court's Receivership Order before they filed their Ohio action. Before they filed their Ohio action, they did not request relief from this Court to do so, nor did they inform the Colorado Receiver of their *ex parte* filing until after the Subsequent Receiver had been appointed.

9. Following the December 4th telephone call, Mr. Hawkins provided me with copies of the November 29, 2018, Ohio Complaint that led to the appointment of the Subsequent Receiver. A copy of the Complaint and *Ex Parte* Motion for Emergency Appointment of a Receiver Pursuant to O.R.C. §2735, *et seq.* (the "Lender's Motion for Appointment of Receiver") are attached as **Exhibits C and D,** respectively. These were filed three months after Mr. Sender had been appointed Receiver over the Property.

10. The Ohio Complaint alleges that Lender's loan to PS 16, LLC ("Borrower"), a Dragul-related entity, is in default and that Borrower owes Lender approximately $10,047,065.26. *See* **Ex. C**, at p. 6. The Complaint prays for judgment against Borrower for this amount. Dragul owns an equity interest in Prospect Square 16, LLC, and is the manager of the Property through a wholly-owned Dragul entity, GDA PS Management.

11. Mr. Hawkins informed me, *via* email on December 4th, that the Lender "does not consent to the exercise of any personal jurisdiction over it or any of its officers, directors, agents or attorneys," and that Lender did not recognize this Court's or the Receiver's authority to manage or control the Property. *See* Gilbert and Hawkins Email Chain, attached as **Exhibit E**, at p. 4**.**

12. I responded to Mr. Hawkins's December 4th the same day and enumerated their various violations of this Court's Receivership Order. *See* **Ex. E**, at pp. 1-2.

13. After canceling a previously scheduled call to discuss a potential resolution of the conflicting receiver issue because "something came up," on December 14, 2018, Mr. Hawkins, Ms. Sternlieb from my office, Mr. Sender, and I had another conference call to discuss resolving these issues without judicial intervention. During the call, we told Mr. Hawkins the Receiver was presently negotiating a transaction that would get Lender paid in full perhaps within 60-90 days.

14. Notwithstanding this, Mr. Hawkins stated during our December 14th call that he and the Lender would proceed with their receivership and foreclosure action. Based on Lender's appraisal, it appears there may be substantial equity in the Property that would be lost to the Receivership Estate if Lender is allowed to foreclose the Property in Ohio. During the December 14th call, we told Mr. Hawkins that his continued maintenance of the Ohio action and efforts to have the Subsequent Receiver take control of the Property would require us to file the present motion seeking an order to show cause.

15. On December 15, 2018, counsel for the Subsequent Receiver notified me that his client "does not intend to take further action with respect to the Property and does not anticipate doing so until he receives further direction from the Ohio Court."

16. On the evening of December 19, 2018, Mr. Hawkins emailed me Lender's Amended Complaint together with an *Ex Parte* Motion for a Temporary Restraining Order and Temporary Injunction ("Motion for TRO"), both of which were filed in the Ohio Court earlier that day. The Amended Complaint and Motion for TRO are attached as **Exhibits F** and **G**. Apparently recognizing that Lender's original Complaint violated this Court's litigation stay, Lender's Amended Complaint omits the claims seeking a money judgment against Dragul and PS 16, LLC. *See* **Ex. F**. In its Motion for TRO, however, the Lender seeks to enjoin Mr. Sender from carrying

out the duties and responsibilities to manage and control the Property with which he was charged in this Court's Receivership Order. *See* **Ex. G.**

Dated: December 20, 2018.

MICHAEL T. GILBERT CODE VERIFIED

SUBSCRIBED AND SWORN BEFORE ME THIS
20 THDAY OF DECEMBER, 2018.

WITNESS by and official seal

My commission expires: 6/26/22

NOTARY PUBLIC

SEAL

FRANK B RANDI
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20184026491
MY COMMISSION EXPIRES JUN 26, 2022

DATE FILED: December 20, 2018 4:15 PM
FILING ID: 28595D2692AE0
CASE NUMBER: 2018CV33011

AFFIDAVIT OF MICHAEL T. GILBERT
EXHIBIT A

COPY OF ENTRY FILED
NOV 29 2018

COMMON PLEAS COURT
HAMILTON COUNTY, OHIO

U.S. REAL ESTATE CREDIT HOLDINGS III, LP	:	CASE NO. A 1806376
	:	
	:	JUDGE _____
Plaintiff,	:	
	:	**ORDER APPOINTING A RECEIVER PURSUANT TO O.R.C. § 2735 *et seq.***
v.	:	
	:	
PS 16, LLC, *et al.*	:	
	:	
Defendants.	:	
	:	

This matter came on to be heard upon the motion ("Motion") of Plaintiff, U.S. Real Estate Credit Holdings III, LP ("Plaintiff"), for entry of an order appointing a receiver to take exclusive and complete possession, custody and control of the property commonly known as and associated with Prospect Square, located at 9690 Colerain Avenue, Hamilton County, Ohio (the "Property") owned and/or titled in the name of Defendant, PS 16, LLC ("Borrower").

Having reviewed the pleadings, the Motion, the applicable loan documents, the qualifications of John A. Rothschild, Jr. ("Mr. Rothschild") and the affidavit of Simond Lavian in support of the Motion, and otherwise having been duly advised, the Court finds as follows:

A. The Mortgage referenced in and incorporated into Motion and attached to Plaintiff's Complaint (the "Complaint"), together with the provisions of Ohio Revised Code Chapter 2735 and other applicable Ohio law, authorize the appointment of a receiver.

EXHIBIT A

B. The appointment of a receiver is necessary to preserve and protect the Property and Plaintiff's rights in connection therewith.

C. The Borrower has expressly consented to the appointment of a receiver on an *ex parte* basis and waived all rights to notice and to contest the Motion or entry of this Order.

D. Adequate and sufficient grounds exist for the appointment of a receiver.

E. Mr. Rothschild is qualified and is willing to act as such receiver.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Mr. Rothschild is hereby appointed receiver (together with the receiver's designees and representatives, the "Receiver") for the Property, in existence or hereafter coming into existence consisting of (a) the real estate described in the Mortgage attached to the Complaint; together with (b) all improvements thereon including[1] buildings, fixtures and otherwise; (c) all tangible and intangible personal property located therein, including equipment, furnishings, inventory and supplies of Borrower; (d) all permits, licenses and contracts pertaining thereto; (e) all books records and contracts and other documents in connection therewith; and (f) all money, income, earnings and revenues, whether in the form of rents, issues, profits, proceeds, deposits (including, without limitation, tenant security deposits), receivables, accounts or otherwise, arising from operation of the Property such as from leases, concessions, services, sales, accounts, accounts receivable, licenses and otherwise (collectively, the "Revenues").

2. Upon filing of this Order, the Receiver shall file with the Clerk of this Court a receiver's oath (the "Oath") and a receiver's bond (the "Bond") in the amount of $10,000 conditioned upon the Receiver's pledge that it will discharge duties of a Receiver in this action and obey the orders of this Court. The filing of the Bond shall occur within five (5) business

[1] In this Order, the term "including" shall be interpreted to mean "including, without limitation".

days after the entry of this Order, but in the interim, the Receiver shall take and keep possession, custody and control of the Property to prevent waste thereto and shall have the power to collect the rents, issues, income and profits thereof; to apply the same consistently with this Order; to retain the remainder for eventual disposition as further set forth in this Order or as otherwise directed by the Court; to arrange for the preservation of the Property and its operation and maintenance; and is granted all powers necessary and usual in such cases for the protection, possession, control, management and operation of the Property during the pendency of this receivership, including the power to collect the accounts, income and profits of and from the operation of the Property. The cost of the Bond shall be an administrative expense of this action, and the Receiver shall be entitled to reimburse himself for the costs associated with obtaining the Bond (including the premium for the Bond) from proceeds from the Property. The Bond shall be maintained in full force and effect during the course of the receivership.

3. Subject to (a) the provisions of this Order and any subsequent orders; (b) the supervision of this Court; and (c) applicable law, including Ohio Revised Code Chapter 2735, effective upon the Receiver's signing the Oath and posting the Bond and thereafter until further order of this Court, to the fullest extent permitted by law, the Receiver shall be and is hereby authorized to enter forthwith, take and have complete, immediate and exclusive control, physical possession and custody of the Property, whether then managed by Borrower or its agents, to the exclusion of Borrower and Borrower's Representatives (hereinafter defined) so as (a) to be able to take all reasonable steps which, in the Receiver's sole judgment, are appropriate, reasonable, advisable or reasonably necessary to manage, control, operate, maintain, supervise, care for, protect, insure, secure, safeguard, prevent waste of and preserve the Property on a day-to-day basis (collectively, "manage the Property"); and (b) to incur such expenses and make such

disbursements out of the Revenues as may, in the Receiver's business judgment, be necessary and proper to manage the Property, including, without limitation, the actions described in **Exhibit 1** attached hereto.

4. Borrower, together with all persons acting on its behalf and actively participating and in concert with Borrower, including, without limitation, any management company, managers, officers, employees, agents, assignees, successors, representatives, attorneys, accountants, and Borrower's Members and all persons who claim under, in concert with or for them (collectively, "Borrower's Representatives"), shall fully cooperate with the Receiver, once the appointment becomes effective, including, without limitation, immediately taking the following actions:

(a). Relinquish, surrender and turn over possession and control of the Property to the Receiver;

(b). Immediately and continuously in the future deliver to the Receiver the following in their possession, custody and control and wherever located:

(i). All past and current Revenues in and coming into the possession, custody and control of Borrower and all Borrower's Representatives;

(ii). All Property office keys;

(iii). All computer equipment owned by Borrower together with software, computer databases, management files, furniture, accessories, peripherals and supplies in connection therewith, wherever located, and all passwords to enable the Receiver to access and use such computers and software;

(iv). Federal and state taxpayer identification numbers;

(v) All contracts for the construction or improvement of the Property and related documents, including lien waivers/releases, general and subcontracts, current or previously-asserted mechanics' or materialmans' liens;

(vi). All documents pertaining to the Property (either in the form of originals or copies certified to be true, correct and complete provided the Receiver may also inspect the originals), including, without limitation, all documents constituting or pertaining to the following:

(A). All financial books and records in whatever form (such as hard copy records, computer files, computer discs and otherwise) including, without limitation, financial statements, balance sheets, cash flow statements, operating statements, current aged account receivables report, current aged payable report, and current operating budgets;

(B). All bank and account records, including bank statements, check registers and cancelled checks with respect to bank accounts, trust accounts, deposit accounts (including accounts holding security deposits) savings accounts, money market accounts and otherwise (collectively, "Bank Accounts") at banks, depositaries, brokerages and otherwise (collectively, "Banks");

(C). All records pertaining to tenants, guests, lessees, licensees, customers, occupants or other persons using the Property or obtaining services therein (collectively, the "Users") including, without limitation, rent rolls, tenant application lists and leases;

(D). All site plans, floor plans, drawings, plans, specifications, schematics, measurements and surveys pertaining to the Property;

(E). All contracts including, without limitation, contracts with vendors, service providers, management companies, leasing or sales agents, any franchisor and otherwise;

(F). All business records and documents pertaining to tangible personal property including, without limitation, records and documents pertaining to equipment, furniture, supplies, vehicles, inventory and utilities;

(G). All insurance policies relating to the Property, declaration pages and certificates;

(H). All leases and documents pertaining to leases including, without limitation, equipment leases, concession agreements and otherwise;

(I). All licenses, permits or governmental approvals;

(J). All governmental inspections and complaints;

(K). All tax returns;

(L). Syndication reports;

(M). All documents and information necessary for the Receiver to file tax returns (to the extent that the Receiver determines to do so in his sole discretion) or for the Receiver to furnish to Borrower to file its own tax returns arising from the Receiver's management of the Property, including any records regarding previous tax appeals. For the avoidance of doubt, the Receiver, and the Receiver's employees, agents, and attorneys shall not be responsible for the preparation and filing of any tax returns for the Borrower or any affiliate(s) of the Borrower, including income, personal property, commercial activity, gross receipts, sales and use, or other tax returns. Upon reasonable request, the Receiver shall provide the Borrower

with information in the Receiver's possession that may be necessary for the Borrower or its affiliate(s) to prepare and file their own tax returns;

(N). All employee records pertaining to identification of employees, payroll records and employee files;

(O). All sale and marketing documents including brochures; and

(P). All other documents, records and information pertaining to the Property reasonably requested by the Receiver;

(c). Immediately provide access to the Receiver to all safes, vaults, locked drawers and offices and otherwise;

(d). Upon Receiver's request, explain to the Receiver the operation of the Property; and

(e). Otherwise promptly take other actions the Receiver reasonably requests and fully cooperate with the Receiver.

5. Borrower and the Borrower's Representatives are hereby enjoined from directly or indirectly doing the following with respect to the Property:

(a). Remaining in the Property;

(b). Interfering with, disrupting, disturbing or impairing the Receiver's possession and management of the Property;

(c). Removing, destroying or depleting personal property from or relating to the real property or concealing such personal property;

(d). Removing, destroying or deleting any documents or records;

(e). Cancelling or modifying any insurance pertaining to the Property;

(f). Taking any actions to commit or permit waste or to damage or decrease the value of the Property;

(g). Permitting any acts as to the Property in violation of law;

(h). Transferring, encumbering or otherwise disposing of the Property;

(i). Terminating licenses, permits, leases or contracts;

(j). Withdrawing, using and diverting monies in any Bank Accounts at any Banks; and

(k). Demanding, collecting, receiving, using, transferring, disbursing, assigning, encumbering and diverting Revenues.

6. To enable the Receiver to take possession, custody and control of and receive from all Banks all money on deposit in Bank Accounts at such institutions arising out of the Property in connection therewith, whether such funds be in an account in the name of Borrower or in the name of Borrower's Representatives, all Banks are hereby directed to cooperate with the Receiver to enable the Receiver to withdraw the funds from all Bank Accounts at the Banks.

7. The Receiver is authorized to use all improvements at the real property and to use all personal property located therein including, without limitation, fixtures, equipment, machinery, supplies and otherwise, to enable Receiver to carry out Receiver responsibilities.

8. The Receiver, by motion, may seek further or other instructions or further powers necessary to enable the Receiver to operate the Property. Without limiting the foregoing, the Receiver has the specific authority (but shall not be obligated) to file and prosecute to conclusion property tax appeal(s).

9. The Receiver shall not incur expenditures to make repairs or replacements or to renovate the Property without first obtaining a court order for that purpose, except for

(i) necessary expenditures under $5,000; and (ii) emergency repairs, including repairs immediately necessary for the preservation or safety of the Property or for the safety of the tenants and other users or required to avoid the suspension of any necessary service in and to the Property, any of which remains subject to final approval of the Court; provided, however, if the Receiver determines that any such expenditure will exceed Revenues, the Receiver shall not incur the obligation unless Plaintiff, in its sole discretion, first agrees to advance funds to pay for such expenditures and approves in writing such obligation and payment therefor prior to the Receiver incurring such obligation. Any such advances from Plaintiff for such purposes shall be secured by Plaintiff's mortgage lien interest and repaid in accordance with such terms as Plaintiff and the Receiver shall agree.

10. All advances from Plaintiff to the Receiver for the benefit of the Property shall be deemed protective advances under the Mortgage and shall be fully secured by such Mortgage.

11. All Users shall henceforth timely pay to the Receiver (and not Borrower or any Borrower's Representatives) all monies now or hereafter due or past due in connection with the occupancy or use of the Property.

12. At such times as are advisable and upon notice deemed acceptable, the Receiver shall allow Plaintiff and its representatives (including, without limitation, appraisers, real estate brokers, attorneys, environmental and other consultants and otherwise) to inspect and review the Property and its operations.

13. The Receiver (a) shall forthwith open in his name as Receiver a receiver's operating account at a federally-insured bank which is not a party herein; and (b) shall deposit therein all Revenues collected and received arising out of the Property and to withdraw therefrom all sums to make payments as authorized herein. The Receiver shall not commingle

such funds with his own funds or the funds of others. Upon receipt thereof, the Receiver shall furnish to Plaintiff monthly bank statements for all receiver accounts.

14. Each utility company providing services to the Property, including gas, electricity, water, sewer, trash collection, telephone, cable, communications or similar services (a) shall be prohibited from discontinuing service to the Property based upon any unpaid bills which Borrower incurred prior to the onset of the receivership; (b) shall forthwith transfer any deposits which it holds to the exclusive control of the Receiver and shall be prohibited from demanding that Receiver deposit additional funds in advance to maintain or secure such services; and (c) at the Receiver's request, shall promptly open new accounts under the name of the receivership and shall be prohibited from discontinuing services while the new receivership account is in process of being established.

15. Upon the Receiver's request, the U.S. Postal Service shall enable the Receiver to gain exclusive possession, custody and control of postal boxes which Borrower may have used prior to receivership and shall direct that mail related to the Property be re-directed to the Receiver.

16. The Receiver shall be compensated as follows: an hourly fee of $150/hour not to exceed $3,250 in the first and last months of the receivership and $2,500 per month for all intervening months. All travel, courier, express mail, legal fees (and the Receiver's counsel's expenses) and extraordinary expenses, subject to the other limitations set forth herein, will be considered a receivership administrative expense, invoiced to Plaintiff monthly, and paid, subject to Court approval as provided in Paragraph 17 below, from available Revenues (or, to the extent Revenues are insufficient, paid by Plaintiff and taxed as "Advances" as that term is used in the Complaint, with such Advances being secured by Plaintiff's mortgage lien); provided, however,

that the following framework shall apply with respect to the Receiver's payment of invoices from his counsel: (a) upon receipt, the Receiver shall transmit a copy of the invoice to counsel for the Plaintiff; (b) within fourteen days of such transmission, counsel for Plaintiff shall advise the Receiver and the Receiver's counsel of any disputes with respect to such invoice; (c) after the fourteenth day from the transmission of the invoice to Plaintiff's counsel, the Receiver may pay all undisputed portions of such invoice to his counsel; and (d) the Receiver, Plaintiff, and their respective counsel shall engage in good faith to resolve any disputes, and either the Receiver or the Plaintiff may, failing voluntary resolution, request that this Court resolve the matter. The disclosure to Plaintiff or its counsel of invoices of the Receiver's counsel (and/or other communications from the Receiver or his counsel to Plaintiff or its counsel regarding legal services provided by the Receiver's counsel) shall not constitute a waiver of the attorney-client privilege or any applicable attorney work product protections.

17. Within 30 days after the conclusion of each of the first three months of the receivership (beginning with the full or partial month during which the receivership begins) and quarterly thereafter, the Receiver shall prepare and file with the Clerk and serve upon all parties a report as to the operations of the prior month or quarter, as applicable, that shall (a) itemize all receipts and all disbursements (including for the Receiver's counsel); (b) itemize receivership actions taken and to be taken; and (c) itemize the condition of the Property. Unless a party herein files an objection to a report within 10 days of the filing of a report, such report shall be deemed approved on an interim basis by all parties and by this Court, subject to the Court's final approval at the time that the Court approves the Receiver's final report.

18. To the extent the Revenues exceed expenses, from time to time as Receiver deems appropriate after forecasting potential needs for reserves, the Receiver shall disburse funds to

Plaintiff to apply against the amounts which Borrower owes Plaintiff, and may do so without further order of the Court.

19. In carrying out duties as set forth in this Order, the Receiver shall be entitled to act in the exercise of sound business judgment as the Receiver deems appropriate within the Receiver's sole discretion and shall not be liable for any action taken or not taken in good faith, for any mistake of fact or error of judgment, or for any acts or omissions of any kind unless caused by Receiver's willful misconduct or gross negligence.

20. The Receiver may resign at the end of any quarterly reporting period provided that such Receiver furnishes all attorneys of record in this case at least 30 days' written notice of the Receiver's intent to resign, the Receiver has made all accounts as required in this Order, and the Receiver's resignation is accepted and approved by the Court. The Receiver may be removed upon 30 days' notice following written demand for such removal filed jointly by all attorneys of record in this action. Otherwise, removal of the Receiver shall be within the equitable discretion of the Court. Following removal, a successor receiver may be appointed with the consent of all attorneys of record in this action or upon motion by any party in order of this Court following notice and opportunity for hearing.

21. The Court shall retain jurisdiction and supervision of all matters concerning the Receiver, the receivership created hereby and the Property. Any and all actions which affect the Receiver or the Property shall be brought in this Court.

This is a final appealable order and there is no just reason for delay.

Judge 11/29/18

EXHIBIT 1

RECEIVER AUTHORITY

Subject to the provisions of this Order, to manage the Property, the Receiver is granted the fullest powers and duties of a receiver permitted under applicable law and in equity. Without limiting the generality of the foregoing, the Receiver is authorized (but not obligated) to take any or all of the following actions as such Receiver may deem appropriate, necessary, advisable and desirable:

(a) To invoice, collect and receive from tenants and other persons all Revenues in the form of cash, checks (which the Receiver may endorse), wired funds, credit card receipts and otherwise, now or hereafter due.

(b) To resolve and collect accounts, accounts receivable and claims.

(c) To open and review mail directed to Borrower and Borrower's Representatives so as to collect Revenues and otherwise.

(d) To immediately seize and assume exclusive possession, custody and control of and receive from all Banks all money on deposit in Bank Accounts at Banks arising out of the Property, in the name of Borrower, Borrower's Representatives or in the name of any other person or entity acting on behalf of Borrower.

(e) To hire, retain, supervise and discharge employees.

(f) To contract with independent contractors, such as management companies, consultants, attorneys, accountants, appraisers, real estate brokers (including Newmark Knight Frank, with whom the Receiver is associated), leasing agents, and otherwise, who shall be paid compensation consistent with reasonable and customary charges for similar services.

(g) To apply for, obtain, renew and keep in full force and effect all required licenses, permits, consents and approvals.

(h) To negotiate, enter into, amend, enforce and cancel agreements and enter into, contracts, including, without limitation, with vendors, service providers, any franchisor, and others but for a term not to extend beyond the receivership without first obtaining a court order; subject to court approval, to reject contracts and leases that are unexpired as of the onset of the receivership and that are burdensome to the receivership.

(i) To exercise all rights and powers that Borrower previously had exercised.

(j) To maintain, improve, repair, restore, renovate, or replace the Property.

(k) To obtain, renew and analyze past records for the Property.

(l) To use the Revenues to pay all ordinary, reasonable and necessary operating expenses incurred during the course of the receivership, to pay fees and expenses of the Receiver and professionals and to pay excess Revenues to Plaintiff.

(m) To prepare and file all necessary forms required by any federal, state, county or municipal authority having jurisdiction.

(n) To comply with all orders or notice of violations affecting the Property placed thereon by any federal, state, county or municipal authority having jurisdiction.

(o) To determine, obtain, modify, maintain and renew the proper insurance coverage in connection with the Property and management thereof; to cause the Receiver to be named as an additional insured and loss payee as his interest may appear; to notify insurers of the Property that the within proceedings are pending and that, subject to lienholder rights, the Receiver is entitled to receive insurance proceeds; and to name a property manager as an additional insured to the extent consistent with the Receiver's sound discretion.

(p) To prepare and file required tax returns arising from the Receiver's management of the Property.

(q) To set up and maintain orderly files containing documents and records.

(r) To prepare and maintain in the manner customary consistent with generally accepted accounting principles a system of accounting and complete books, records and reports in connection therewith.

(s) To provide to Plaintiff requested documents and information with respect to financial status, physical condition and operation of the Property and otherwise.

(t) To consider complaints and concerns of the Users of the Property.

(u) To initiate, prosecute, defend, settle, compromise and release, on behalf of the Receivership, all claims of or against Borrower relating to the Users of the Property.

(v) To commence and take all other lawful actions in the name of the Receiver including actions to enforce this order, to eject or evict Users, file and prosecute tax appeals, and otherwise.

(w) To change any and all locks and otherwise limit access to the Property.

(x) To seek assistance of law enforcement officials as necessary to preserve the peace and to protect assets.

(y) To market and enter into a contract for the sale of the Property, in whole or in part as the Receiver deems best suited to maximize sale proceeds, and take other actions ancillary thereto, including, without limitation, hiring a broker (including Newmark Knight Frank, with whom the Receiver is associated), soliciting prospects, providing to prospects access to the Property and Property information, negotiating sale terms, executing a contract with a prospect which the Receiver decides to be the highest and best offer, executing and delivering deeds and

other documents; provided, however any sale of the Property shall be subject to the following conditions:

(1) The sale and sale conditions, including any broker's commission, shall be subject to prior approval of this Court and Plaintiff;

(2) The purchaser shall pay the full amount of the sale proceeds in good funds no later than the closing;

(3) All liens of record which the Court determines to be valid and enforceable shall attach to the sale proceeds in the order of their respective priority; and

(4) Within 10 days after the closing of the sale of the Property, the Receiver shall file an affidavit as part of this court action and, therein, shall set forth the name of the Purchaser, the sale price and the sale date; and shall indicate that the Receiver sold the Property for the best price obtainable and in compliance with this Order; and shall further indicate the allocation of proceeds intended pursuant to subsections (A) through (F) of the immediately following paragraph;

(5) This Court shall file an order that, *inter alia*, approves and confirms the sale of the Property free and clear of all liens; authorizes the Receiver to execute and deliver a deed conveying the Property to the purchaser; directs the release of all liens of record; and authorizes the Receiver to disburse the sale proceeds in the following order:

(A) Customary closing costs;

(B) Any brokers' sale commission and expenses as agreed-upon by Receiver and Plaintiff prior to the sale and any other fees and expenses owed to broker;

(C) Court costs and other administrative expenses of this receivership, including all fees and expenses (including legal fees and expenses) due to the Receiver;

(D) Real estate taxes, assessments, interest and penalties paid to the Treasurer of Hamilton County on account of the Property at closing;

(E) In the order of their priority, amounts owed to (i) Plaintiff and (ii) other lienholders of record who have appeared in this action, answered the Complaint, and hold valid and enforceable liens; and

(F) Remaining proceeds to Borrower.

To the extent any dispute concerning the validity or priority of any lien is at issue after Receiver's receipt of sale proceeds from the sale of the Property, the Receiver shall hold such funds until further order of the Court.

(z) To generally do all other things consistent with this Order reasonably necessary or desirable to operate the Property.

AFFIDAVIT OF MICHAEL T. GILBERT
EXHIBIT B

Rachel Sternlieb

From:	Michael T. Gilbert
Sent:	Monday, December 03, 2018 4:42 PM
To:	Jon S. Hawkins (Jonathan.Hawkins@ThompsonHine.com); Louis F. Solimine (Louis.Solimine@ThompsonHine.com); Tony J. Hornbach (Tony.Hornbach@ThompsonHine.com)
Cc:	Jeffrey A. Marks (jamarks@vorys.com); Harvey Sender (hsender@sendersmiley.com); Rachel Sternlieb
Subject:	FW: Prospect Square Property
Attachments:	11-29-18 Order Appointing Receiver.pdf; 12-3-2018 Letter to Susan Markusch and Joy Allison.pdf; 20181026 Receiver's OSC MTN Hickory.pdf; 20180830 Receivership Order.pdf; 20181029 Notice of Receivership (Hamilton County).docx

Gentlemen:

I obtained your names from Jeff Marks who represents the Receiver Mr. Rothschild who was appointed at your client U.S. Real Estate Credit Holdings III, LP's request on November 29, 2018 ("USR").

I represent Harvey Sender, who on August 30, 2018, was appointed Receiver over Gary Dragul, GDA Real Estate Management, LLC ("GDAREM"), and a number of related SPEs, which include PS 16, LLC; PS 16, LLC is owned in part by Dragul and investors he solicited. A copy of the "Dragul Receivership Order" is attached. Pursuant to paragraph 26 of that Order, all actions at law or equity against GDAREM or related SPEs or their property were stayed as of August 30th unless relief is first obtained from the Colorado Receivership Court.

The November 29, 2018, Order Appointing Receiver ("Subsequent Receivership Order") was forwarded to me today with respect to the Prospect Square property in Cincinnati that is owned by PS 16, LLC. Our internal servers are down so I am unable to send you the original document, but I have attached a screen shot of the Notice of the Dragul Receivership Order that was filed in Hamilton County on October 29, 2018, before the Subsequent Receivership Order was entered. Mr. Marks has confirmed that neither he nor Mr. Rothschild was aware of the Dragul Receivership Order before Mr. Rothschild was appointed. I can only assume that you and U.S. Real Estate Credit Holdings III, LP ("USR") also lacked actual knowledge of the Dragul Receivership Order and did not conduct a title search before seeking to have Mr. Rothschild appointed.

We are not aware that you or USR provided any notice of your intent to seek the appointment of a Receiver, nor are we aware of any demands being made before doing so. We have been informed that your client has been sweeping the rents from the Prospect Square property since July 2018, and is holding $1.75 million from the King Soopers' lease buyout that belong to PS 16, LLC. These funds were to have been received by USR and applied to the principal balance of the PS 16 loan. Instead your client has retained the funds in a reserve account, failed to reduce the principal of its loan, continued to charge interest, declared a default, and swept the rents from the property.

EXHIBIT B

We hereby demand you inform the Hamilton County Court of the Dragul Receivership Order and have the Subsequent Receivership Order vacated immediately. Unless you do so, we will file an Order to Show Cause in the Colorado Receivership Court as to why USR should not be held in contempt for violating the Dragul Receivership Order. A copy of an Order to Show Cause we filed previously with respect to other Estate property is attached. Any further action taken by Mr. Rothschild or USR to control or take possession of the Prospect Property would also violate the Dragul Receivership Order.

Please contact me if you have any questions. We look forward to your immediate attention to this.

Thanks, Michael

Michael T. Gilbert
Attorney At Law
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202

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AFFIDAVIT OF MICHAEL T. GILBERT
EXHIBIT C

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COMMON PLEAS COURTS

COMMON PLEAS COURT
HAMILTON COUNTY, OHIO

U.S. REAL ESTATE CREDIT HOLDINGS III, LP 11755 Wilshire Blvd., Ste. 2500 Los Angeles, CA 90025 Plaintiff, v. **PS 16, LLC** c/o its Statutory Agent Corporation Service Company 50 West Broad Street, Ste. 1330 Columbus, OH 43215 and **GARY J. DRAGUL** 5690 DTC Blvd., Ste. 515 Greenwood Village, CO 80111 Defendants.	CASE NO. A 1 8 0 6 3 7 6 JUDGE _____ **COMPLAINT FOR MONEY, FORECLOSURE AND JUDICIAL SALE OF REAL ESTATE PURSUANT TO O.R.C. § 2735 *et seq.* AND RELATED RELIEF** Hamilton County Tax Parcel IDs: 510-0103-0117 510-0103-0124 510-0103-0125 510-0103-0126 510-0103-0127 510-0103-0301 510-0103-0302

PARTIES

1. Plaintiff, U.S. Real Estate Credit Holdings III, LP ("U.S. Real Estate"), is an Irish limited partnership with a place of business in Los Angeles, California.

2. Defendant, PS 16, LLC ("Borrower"), is a Delaware limited liability company with, on information and belief, a principal place of business in Greenwood Village, Colorado. Borrower was at all times relevant hereto, and still is, the owner of the real property located in Hamilton County, Ohio which is the subject of this action.

EXHIBIT C

3. Defendant, Gary J. Dragul ("Dragul"), is a Colorado citizen residing in Greenwood Village, Colorado and, on information and belief, is an officer, director, and/or member of Borrower.

JURISDICTION AND VENUE

4. Jurisdiction and venue are proper in Hamilton County, Ohio pursuant to Ohio Rules of Civil Procedure 3(C)(3) and (5).

BACKGROUND

5. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

6. In connection with a certain Loan Agreement between Borrower and Calmwater Capital 3, LLC ("Calmwater Capital"), Borrower executed and delivered to Calmwater Capital a certain Promissory Note in the original principal amount of $12,970,000.00 with an effective date of January 22, 2016 (including all allonges, the "Note"). A true and accurate copy of the Note is attached hereto as **Exhibit A** and is made an integral part hereof. The monies loaned to Borrower in connection with the Note were for commercial and business purposes.

7. Pursuant to the terms of the Note, beginning March 6, 2016, Borrower agreed to repay the holder of the Note the principal amount of $12,970,000.00, together with interest at the annual, non-default, interest rate of 9.75%. The final payment under the Note was due on February 1, 2018 (the "Maturity Date").

8. As security for the Note and "all other indebtedness now owing or which may hereafter be owing" including the Indebtedness, Collection Expenses, and Advances (all as defined below) due from Borrower, Borrower executed and delivered to Calmwater Capital an Open-End Mortgage, Security Agreement and Financing Statement with an effective date of January 22, 2016 (the "Mortgage") and thereby granted to Calmwater Capital a mortgage interest

in certain commercial real property located in Hamilton County, Ohio, together with all improvements thereto and fixtures thereon, the rents and profits resulting therefrom, and other interests, all as defined in the Mortgage, commonly known as 9690 Colerain Avenue and also commonly known as Prospect Square, and referenced as Tax Parcel Nos. 510-0103-0117; 510-0103-0124; 510-0103-0125; 510-0103-0126; 510-0103-0127; 510-0103-0301; and 510-0103-0302 by the Hamilton County, Ohio Recorder (the "Property"). The Mortgage was recorded in the Official Records of the Hamilton County Recorder on January 28, 2016 at Mortgage Book 13091, Page 01534. A true and accurate copy of the Mortgage is attached hereto as **Exhibit B** and is made an integral part hereof.

9. As additional security for the Note, and "all other indebtedness now owing or which may hereafter be owing" including the Indebtedness, Collection Expenses, and Advances (defined below) due from Borrower, Borrower also executed and delivered to Calmwater Capital an Assignment of Leases and Rents with an effective date of January 22, 2016 and thereby assigned to Calmwater Capital, among other things, all leases, deposits, rents, profits, and revenues affecting the Property (the "Assignment of Leases and Rents"). The Assignment of Rents and Leases was recorded in the Official Records of the Hamilton County Recorder on January 28, 2016 at Mortgage Book 13091, Page 01575. A true and accurate copy of the Assignment of Leases and Rents is attached hereto as **Exhibit C** and is made an integral part hereof.

10. On January 28, 2016, Calmwater Capital recorded a UCC-1 Financing Statement fixture filing with the Office of Recorder of Hamilton County, Ohio, a true and accurate copy of which is attached hereto as **Exhibit D** and is made an integral part hereof.

11. On January 27, 2016, Calmwater Capital filed a UCC-1 Financing Statement evidencing its security interest in the Property and related rights with the Delaware Secretary of State, a copy of which is attached hereto as **Exhibit E** and is made an integral part hereof.

12. In connection with and to induce Calmwater Capital to lend the sums evidenced by the Note, Gary J. Dragul executed and delivered to Calmwater Capital an unconditional guarantee with an effective date of January 22, 2016 (the "Dragul Guarantee") whereby Dragul absolutely and unconditionally guaranteed the prompt payment in full of all the Guaranteed Recourse Obligations of Borrower (as that term is defined in Section 1 of the Dragul Guarantee with reference to the recourse items set forth in Section 3 of the Note) due from Borrower. A true and accurate copy of the Dragul Guarantee is attached hereto as **Exhibit F** and is made an integral part hereof.

13. On or about May 27, 2016, Calmwater Capital assigned its interests and rights under the Note, the Mortgage, the Assignment of Leases and Rents, and the Dragul Guarantee to U.S. Real Estate. True and accurate copies of such assignments are attached hereto as **Exhibit G**, **Exhibit H**, and **Exhibit I**, and are made integral parts hereof.

14. On or around January 2018, Borrower indicated to U.S. Real Estate it would be unable to make the payment due at the Maturity Date. Because Borrower did not qualify for an extension of the Maturity Date, U.S. Real Estate and Borrower entered into and executed a forbearance agreement (together, with all renewals, modifications and extensions thereof, the "Forbearance Agreement"). A true and accurate copy of the Forbearance Agreement is attached to the Complaint as **Exhibit J**.

15. After execution of the Forbearance Agreement, Borrower defaulted by failing to make the required payments due for the months of May, June, July, and August 2018, which terminated the Forbearance Agreement (the "Forbearance Default").

16. On August 1, 2018, U.S. Real Estate notified Borrower, in writing, of the Forbearance Default and termination of the forbearance period under the Forbearance Agreement.

17. Upon the Forbearance Default, all Indebtedness became due and owing (the "Default"). Upon Default, U.S. Real Estate became immediately entitled to enforce its rights and remedies under the Note, the Mortgage, and the Assignment of Leases and Rents.

18. Concurrently with the filing of this complaint, U.S. Real Estate has filed a motion seeking the appointment of a receiver for the purposes of managing the Property, collecting its revenues, and selling the Property in accordance with Section 2735 of the Ohio Revised Code. In the Mortgage and Forbearance Agreement, Borrower consented, upon Default, to the appointment of such a receiver without regard to the value of the Property, the insufficiency of the value of the Property to satisfy the Indebtedness, and, in the Forbearance Agreement, waived all of Borrower's rights to contest the entry of an order appointing such a receiver.

FIRST CLAIM FOR RELIEF
(MONEY JUDGMENT AGAINST BORROWER)

19. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

20. U.S. Real Estate is in possession of the Note and is the current holder and owner of the Note.

21. The Maturity Date has passed and payment of the outstanding balance due under the Note has not been made. The failure to make such payment constitutes a Default, entitling U.S. Real Estate to the imposition of default interest from and after August 1, 2018.

22. Under and subject to the terms of the Note, Borrower now owes U.S. Real Estate the following sums:

Outstanding principal	$9,154,912.45
Accrued interest (ordinary)	$555,009.81
Accrued interest (default)	$239,284.61
Late charges	$0.00
Other fees	$97,858.39
TOTAL	$10,047,065.26 plus interest at the default *per diem* rate of $3,750.97 from and after November 9, 2018 (the "Indebtedness")

23. The Indebtedness due from Borrower is of limited recourse, such that any deficiency shall not be a liability of Borrower, except to the extent any such Indebtedness arises from those certain "Losses" as that term is defined and as set forth in Section 3 of the Note.

SECOND CLAIM FOR RELIEF
(FORECLOSURE OF REAL PROPERTY)

24. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

25. The Mortgage secures all Indebtedness due under the Note, including any renewals or extensions of the obligations thereunder. Except for any unpaid real estate taxes and assessments, by virtue of the perfected Mortgage, U.S. Real Estate now has a valid and enforceable first-priority lien on the Property.

26. As a result of the Default, the conveyance of the Mortgage has become absolute and, as a consequence, U.S. Real Estate is entitled to have the Mortgage foreclosed, to have the

Property sold, and to have the proceeds applied to all Indebtedness due under the Note and the Collection Expenses.

THIRD CLAIM FOR RELIEF
(COLLECTION OF LEASES AND RENTS)

27. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

28. The Mortgage secures "[a]ll leases, [] rental agreements, concessions and occupancy agreements, [], and all rents, royalties, issues, profits, revenue, income or other benefits" derived from the Property.

29. The Assignment of Leases and Rents further secures "any and all leases, licenses, rental agreements, concessions and occupancy agreements of whatever form now or hereafter affecting all or any part of the Property" as well as "all deposits (whether for security or otherwise), rents, issues, profits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property[.]"

30. The Assignment of Leases and Rents also states that upon the occurrence of a default, U.S. Real Estate is automatically entitled to "take possession of the Leases and collect the Rents."

31. Pursuant to the Mortgage and Assignment of Leases and Rents, U.S. Real Estate is immediately entitled to take possession of, and collect payments from, all leases and rents related to the Property.

FOURTH CLAIM FOR RELIEF
(MONEY JUDGMENT AGAINST GARY J. DRAGUL)

32. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

33. Pursuant to the Dragul Guarantee, as a result of the Default, Dragul owes U.S. Real Estate the Guaranteed Recourse Obligations of Borrower, if any.

FIFTH CLAIM FOR RELIEF
(COLLECTION EXPENSES)

34. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

35. Under and subject to the terms of the Note and the Mortgage, Borrower owes U.S. Real Estate all costs of collection it has incurred and will continue to incur to collect the Indebtedness and foreclose the Property including, without limitation, title exam costs, court costs, appraisal fees, and U.S. Real Estate's reasonable attorney fees and expenses (the "Collection Expenses").

SIXTH CLAIM FOR RELIEF
(ADVANCES)

36. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

37. The Mortgage provides that, if the Borrower fails to perform the obligations thereunder, Calmwater Capital (and now U.S. Real Estate as its assignee) may perform such obligations and make other protective advances for the preservation of the Property. The costs of such performance (for each instance, an "Advance"), together with interest as set forth in the Note, as applicable, shall be due from the Borrower and is an additional obligation secured by the Property.

38. U.S. Real Estate has or shall make Advances for the preservation of the Property in an amount to be determined at the conclusion of this action.

WHEREFORE, U.S. Real Estate demands judgment in its favor and against Defendants as follows:

1. On its First Claim for Relief, against Borrower, for the sum of $9,965,627.53 plus pre-judgment interest from and after November 9, 2018, at the rate of $3,750.97 *per diem*, until judgment, provided however, that insofar as the foregoing sum exceeds the net proceeds finally received by U.S. Real Estate (after payment of all Collection Expenses and Advances) and is not otherwise the result of Losses for which U.S. Real Estate retains rights of recourse, no such deficiency judgment is demanded hereby;

2. On its Second Claim for Relief, for an order declaring that the Mortgage is a valid and subsisting lien as to the Property; that the Mortgage be foreclosed; that the Property be sold, free of all liens and interests of all Defendants herein by a duly-appointed receiver therefore; that all Defendants be required to set forth any claim, lien or interest in or upon the Property that they may have or be forever barred; that all liens be marshaled; and that the proceeds of sale be applied to pay the sums due U.S. Real Estate by virtue of the Collection Expenses, Advances and Indebtedness in the order of its priority;

3. On its Third Claim for Relief against Borrower for U.S. Real Estate's immediate entitlement to take possession of, and collect payments from, all leases and rents related to the Property;

4. On its Fourth Claim for Relief, against Dragul, for the amount of the Guaranteed Recourse Obligations of Borrower, if any;

5. On its Fifth Claim for Relief, against Borrower and Dragul for the amount of the Collection Expenses U.S. Real Estate has incurred or may hereafter incur, including its reasonable attorney fees and expenses, which, except insofar as such Collection Expenses are or arise from Losses, shall be determined at the conclusion of this action solely for purposes of determining the extent of U.S. Real Estate's entitlement to the sale proceeds of the Property;

6. On its Sixth Claim for Relief, against Borrower and Dragul, jointly and severally, for any and all Advances that U.S. Real Estate which, except insofar as such Advances are or arise from Losses, shall be determined at the conclusion of this action solely for purposes of determining the extent of U.S. Real Estate's entitlement to the sale proceeds of the Property;

7. For U.S. Real Estate's court costs; and

8. For such other and further relief as this Court finds just and equitable.

Dated: November 29, 2018

Respectfully submitted,

THOMPSON HINE LLP

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Attorneys for Plaintiff U.S. Real Estate Credit Holdings III, LP

DATE FILED: December 20, 2018 4:15 PM
FILING ID: 28595D2692AE0
CASE NUMBER: 2018CV33011

AFFIDAVIT OF MICHAEL T. GILBERT
EXHIBIT F

COMMON PLEAS COURT
HAMILTON COUNTY, OHIO

U.S. REAL ESTATE CREDIT HOLDINGS III, LP 11755 Wilshire Blvd., Ste. 1425 Los Angeles, CA 90025 Plaintiff, v. **PS 16, LLC** c/o its Statutory Agent Corporation Service Company 50 West Broad Street, Ste. 1330 Columbus, OH 43215 **GARY J. DRAGUL** 5690 DTC Blvd., Ste. 515 Greenwood Village, CO 80111 **HARVEY SENDER, RECEIVER** c/o Sender & Smiley, LLC 600 17th Street Suite 2800 Denver, CO 80202 **GDA REAL ESTATE SERVICES, LLC** 5690 DTC Blvd., Ste. 515 Greenwood Village, CO 80111 **GDA REAL ESTATE MANAGEMENT, INC.** 5690 DTC Blvd., Ste. 515 Greenwood Village, CO 80111 **GDA MANAGEMENT SERVICES, LLC** 5690 DTC Blvd., Ste. 515 Greenwood Village, CO 80111 **GDA PS MANAGEMENT, LLC** 5690 DTC Blvd., Ste. 515 Greenwood Village, CO 80111	:	CASE NO. A1806376 JUDGE _____ **VERIFIED FIRST AMENDED COMPLAINT FOR FORECLOSURE, JUDICIAL SALE OF REAL ESTATE PURSUANT TO O.R.C. § 2735 *et seq.* AND DECLARATORY JUDGMENT** Hamilton County Tax Parcel IDs: 510-0103-0117 510-0103-0124 510-0103-0125 510-0103-0126 510-0103-0127 510-0103-0301 510-0103-0302

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COMMON PLEAS COURTS

and

JOHN ROTHSCHILD, RECEIVER
c/o Vorys, Sater, Seymour and Pease LLP
301 E. Fourth St., #3500
Great American Tower
Cincinnati, OH 45202

Defendants.

PARTIES

1. Plaintiff, U.S. Real Estate Credit Holdings III, LP ("U.S. Real Estate"), is an Irish limited partnership with a place of business in Los Angeles, California.

2. Defendant, PS 16, LLC ("Borrower"), is a Delaware limited liability company with, on information and belief, a principal place of business in Greenwood Village, Colorado. Borrower was at all times relevant hereto, and still is, the owner of the real property located in Hamilton County, Ohio which is the subject of this action.

3. Defendant, Gary J. Dragul ("Dragul"), is, on information and belief, a Colorado citizen residing in Greenwood Village, Colorado and is an officer, director, manager and/or member of Borrower and other defendants as identified herein.

4. GDA Real Estate Services, LLC ("RES") is a Colorado limited liability company with, on information and belief, a principal place of business in Greenwood Village, Colorado. On information and belief, Dragul is an officer, director, manager and/or member of RES.

5. GDA Real Estate Management, Inc. ("REM") is a Colorado corporation with, on information and belief, a principal place of business in Greenwood Village, Colorado. On information and belief, Dragul is an officer, director, and/or shareholder of REM. On information and belief, REM holds and has exercised management responsibilities for Borrower through its management of an affiliated entity, GDA PS Management, LLC.

6. GDA PS Management, LLC is a Colorado limited liability company with, on information and belief, a principal place of business Greenwood Village, Colorado. On information and belief, Dragul is an officer, director, manager and/or member of GDA PS Management, LLC. On information and belief, GDA PS Management, LLC is the member or non-member manager of Borrower. On information and belief, REM is the manager of GDA PS Management.

7. GDA Management Services, LLC is a Colorado limited liability company with, on information and belief, a principal place of business Greenwood Village, Colorado. On information and belief, Dragul is an officer, director, manager and/or member of GDA Management Services, LLC. On information and belief, GDA Management Services, LLC acts as property manager on behalf of Borrower, REM, and/or RES with respect to the Property (as that term is defined herein) that is the subject of this litigation.

8. Defendant, Harvey Sender, receiver ("Sender"), is, on information and belief, a Colorado citizen with a place of business in Denver, Colorado, who has been appointed by the District Court of Denver, Colorado (the "Denver Court") to take *custodia legis* of the assets of Dragul, RES, and REM. Together, Sender, RES, REM, and GDA Management Services, LLC and those acting by and through them shall hereafter be referred to as "Borrower Representatives."

9. Defendant, John Rothschild, receiver ("Receiver") is an Ohio citizen and is the duly-appointed receiver for the Property.

JURISDICTION AND VENUE

10. Venue is proper in Hamilton County, Ohio pursuant to Ohio Rules of Civil Procedure 3(C)(3) and (5).

11. Jurisdiction is proper for all nonresident defendants pursuant to Ohio Rules of Civil Procedure 4.3(A)(1) and (6) and Ohio Rev. Code §§ 2307.17, 2307.382(A)(1) and (8).

BACKGROUND

12. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

13. In connection with a certain Loan Agreement between Borrower and Calmwater Capital 3, LLC ("Calmwater Capital"), Borrower executed and delivered to Calmwater Capital a certain Promissory Note in the original principal amount of $12,970,000.00 with an effective date of January 22, 2016 (including all allonges, the "Note"). A true and accurate copy of the Note is attached hereto as **Exhibit A** and is made an integral part hereof. The monies loaned to Borrower in connection with the Note were for commercial and business purposes.

14. Pursuant to the terms of the Note, beginning March 6, 2016, Borrower agreed to repay the holder of the Note the principal amount of $12,970,000.00, together with interest at the annual, non-default, interest rate of 9.75%. The final payment under the Note was due on February 1, 2018 (the "Maturity Date").

15. As security for the Note and "all other indebtedness now owing or which may hereafter be owing" including the Indebtedness, Collection Expenses, and Advances (all as defined below) due from Borrower, Borrower executed and delivered to Calmwater Capital an Open-End Mortgage, Security Agreement and Financing Statement with an effective date of January 22, 2016 (the "Mortgage") and thereby granted to Calmwater Capital a mortgage interest in certain commercial real property located in Hamilton County, Ohio, together with all improvements thereto and fixtures thereon, the rents and profits resulting therefrom, and other interests, all as defined in the Mortgage, commonly known as 9690 Colerain Avenue and also

commonly known as Prospect Square, and referenced as Tax Parcel Nos. 510-0103-0117; 510-0103-0124; 510-0103-0125; 510-0103-0126; 510-0103-0127; 510-0103-0301; and 510-0103-0302 by the Hamilton County, Ohio Recorder (the "Property"). The Mortgage was recorded in the Official Records of the Hamilton County Recorder on January 28, 2016 at Mortgage Book 13091, Page 01534. A true and accurate copy of the Mortgage is attached hereto as **Exhibit B** and is made an integral part hereof.

16. As additional security for the Note, and "all other indebtedness now owing or which may hereafter be owing" including the Indebtedness, Collection Expenses, and Advances (defined below) due from Borrower, Borrower also executed and delivered to Calmwater Capital an Assignment of Leases and Rents with an effective date of January 22, 2016 and thereby assigned to Calmwater Capital, among other things, all leases, deposits, rents, profits, and revenues affecting the Property (the "Assignment of Leases and Rents"). The Assignment of Rents and Leases was recorded in the Official Records of the Hamilton County Recorder on January 28, 2016 at Mortgage Book 13091, Page 01575. A true and accurate copy of the Assignment of Leases and Rents is attached hereto as **Exhibit C** and is made an integral part hereof.

17. On January 28, 2016, Calmwater Capital recorded a UCC-1 Financing Statement fixture filing with the Office of Recorder of Hamilton County, Ohio, a true and accurate copy of which is attached hereto as **Exhibit D** and is made an integral part hereof.

18. On January 27, 2016, Calmwater Capital filed a UCC-1 Financing Statement evidencing its security interest in the Property and related rights with the Delaware Secretary of State, a copy of which is attached hereto as **Exhibit E** and is made an integral part hereof.

19. In connection with and to induce Calmwater Capital to lend the sums evidenced by the Note, Gary J. Dragul executed and delivered to Calmwater Capital an unconditional guarantee with an effective date of January 22, 2016 (the "Dragul Guarantee") whereby Dragul absolutely and unconditionally guaranteed the prompt payment in full of all the Guaranteed Recourse Obligations of Borrower (as that term is defined in Section 1 of the Dragul Guarantee with reference to the recourse items set forth in Section 3 of the Note) due from Borrower. A true and accurate copy of the Dragul Guarantee is attached hereto as **Exhibit F** and is made an integral part hereof.

20. On or about May 27, 2016, Calmwater Capital assigned its interests and rights under the Note, the Mortgage, the Assignment of Leases and Rents, and the Dragul Guarantee to U.S. Real Estate. True and accurate copies of such assignments are attached hereto as **Exhibit G**, **Exhibit H**, and **Exhibit I**, and are made integral parts hereof.

21. On or around January 2018, Borrower indicated to U.S. Real Estate it would be unable to make the payment due at the Maturity Date. Because Borrower did not qualify for an extension of the Maturity Date, U.S. Real Estate and Borrower entered into and executed a forbearance agreement (together, with all renewals, modifications and extensions thereof, the "Forbearance Agreement"). A true and accurate copy of the Forbearance Agreement is attached to the Complaint as **Exhibit J**.

22. After execution of the Forbearance Agreement, Borrower defaulted by failing to make the required payments due for the months of May, June, July, and August 2018, which terminated the Forbearance Agreement (the "Forbearance Default").

23. On August 1, 2018, U.S. Real Estate notified Borrower, in writing, of the Forbearance Default and termination of the forbearance period under the Forbearance Agreement.

24. Upon the Forbearance Default, all Indebtedness became due and owing (the "Default"). Upon Default, U.S. Real Estate became immediately entitled to enforce its rights and remedies under the Note, the Mortgage, and the Assignment of Leases and Rents.

25. On information and belief, in or around April 2018, unbeknownst to U.S. Real Estate, Dragul was indicted by the Colorado Attorney General on nine counts of securities fraud and other similar charges related to an alleged scheme involving RES and/or REM to defraud investors in various shopping centers, including the Property. On information and belief, the indictment alleges Dragul hid or failed to disclose substantial liabilities in soliciting investments and misappropriated investor capital for personal use or to repay unrelated liabilities in violation of Colorado law. On information and belief, as of the date of this First Amended Complaint, Dragul's criminal proceeding remains pending.

26. Following Dragul's indictment, without the knowledge of U.S. Real Estate, on or about August 19, 2018, by Dragul's agreement (the "Colorado Consent Order"), Dragul's assets were frozen and placed into the hands of Sender, who is acting as receiver appointed in the Colorado Attorney General's corollary civil proceeding, *Gerald Rome, Securities Commissioner for the State of Colorado v. Dragul, et al.*, before the Denver Court as Case No. 2018-CV-33011 (the "Colorado Civil Case"). Attached as **Exhibit K** is, on information and belief, a true and accurate copy of the Colorado Consent Order.

27. Pursuant to the terms of the Colorado Consent Order, Sender is appointed receiver of the assets of Dragul, REM and RES.

28. The Property belongs to Borrower, not Dragul, REM or RES, and is therefore not within the scope of the Colorado Consent Order.

29. Because the Property is in Ohio, not Colorado, the Denver Court, on information and belief, cannot properly exercise jurisdiction over the Property.

30. No party to the Colorado Civil Case served U.S. Real Estate or Calmwater Capital with the Colorado Consent Order.

31. No party to the Colorado Civil Case served U.S. Real Estate or Calmwater Capital with a motion made to the Denver Court seeking the entry of the Colorado Consent Order.

32. No party to the Colorado Civil case consulted U.S. Real Estate or Calmwater Capital about a motion seeking the Colorado Consent Order or the terms of the Colorado Consent Order, prior to the Colorado Consent Order's entry.

33. U.S. Real Estate and Calmwater Capital did not provide consent to the entry of the Colorado Consent Order. Only the consent of Dragul, RES, REM and the Colorado Attorney General are represented in the Colorado Consent Order.

34. Neither U.S. Real Estate nor Calmwater Capital are parties to any action in Colorado, including any action involving Dragul, REM, RES, Borrower, Sender or any related proceeding.

35. Despite the Colorado Consent Order, as late as October 17, 2018, Dragul continued to interact with U.S. Real Estate representatives with respect to the possible work-out of the Forbearance Default and new tenant negotiations as though nothing were amiss. A true and accurate copy of such correspondence, with redactions, is attached hereto as **Exhibit L**.

36. On November 29, 2018, U.S. Real Estate initiated this proceeding by filing a complaint (the "Original Complaint," amended by this First Amended Complaint) and a motion

seeking the immediate *ex parte* appointment of the Receiver (the "Receiver Motion") for the purposes of managing the Property, collecting its revenues, and selling the Property in accordance with Section 2735 of the Ohio Revised Code. The Receiver Motion sought the immediate appointment of the Receiver for the Property pursuant to the terms of, and consents given in, the Mortgage and Forbearance Agreement and pursuant to the rights available to U.S. Real Estate under Ohio Revised Code § 2735, *et seq.*

37. That same date, this Court granted the motion and entered an order appointing the Receiver and providing related relief (the "Appointment Order"). A copy of the Appointment Order is attached hereto as **Exhibit M**.

38. The Appointment Order authorizes Receiver to take exclusive custody and control of the Property and its revenues, "to the exclusion of Borrower and Borrower's Representatives." Further, the Appointment Order provides that:

> "Borrower, together with all persons acting on its behalf and actively participating and in concert with Borrower, including, without limitation, any management company, managers, officers, employees, agents, assignees, successors, representatives, attorneys, accountants, and Borrower's Members and all persons who claim under, in concert with or for them (collectively, "Borrower's Representatives"), shall fully cooperate with the Receiver, once the appointment becomes effective..."

Appointment Order, ¶ 4.

39. On November 30, 2018, the Appointment Order became effective when Receiver posted a bond and filed a written oath.

40. On December 3, 2018, Receiver, through counsel, transmitted a letter to GDA Management Services, LLC, which, on information and belief, has acted as property manager and/or leasing agent for REM, RES, Borrower, or some other designee of the foregoing with respect to the Property. On information and belief, by this transmission, Receiver served a copy

of the Appointment Order and requested the immediate turnover of items and documents related to the management of the Property.

41. That same date, counsel for Sender sent counsel for Receiver an e-mail demanding that Receiver seek to have this Court vacate its Appointment Order and threatening Receiver and its counsel with a motion for an order to show cause in the Denver Court. Similar threats were made to U.S. Real Estate and its counsel. Attached as **Exhibit N**, is a copy of e-mail correspondence directed to counsel for U.S. Real Estate (without attachments).

42. Despite advising Sender of his misinterpretation of the Colorado Consent Order and of the limits of the Denver Court's authority to control Property and parties with no connection to Colorado, particularly in the absence of due process of law, Sender has continued to make threats to U.S. Real Estate and Receiver.

43. In response to Sender's latest threat, counsel for Receiver has responded that, in light of the dispute, "[f]or the timebeing, the Receiver does not intend to take further action with respect to the Property and does not anticipate doing so unless and until he receives further direction from [this] Court." Attached to the Affidavit of Jeffrey Marks as Exhibit 3 is the most recent email exchange between Sender and counsel for Receiver of which U.S. Real Estate is aware.

44. Sender is unwilling to allow this Court's Receiver to do the job for which he was appointed or allow U.S. Real Estate to exercise rights available to it under Ohio law.

45. On information and belief, Sender has authorized (and may even be paying) Dragul, despite his pending criminal indictments, to continue to act as manager of the Property, hold himself out as "President" of REM, and negotiate with prospective tenants for the Property.

46. Absent prompt relief, U.S. Real Estate will suffer irreparable harm.

FIRST CLAIM FOR RELIEF
(DETERMINATION OF AMOUNT DUE ON NOTE)

47. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

48. U.S. Real Estate is in possession of the Note and is the current holder and owner of the Note.

49. The Maturity Date has passed and payment of the outstanding balance due under the Note has not been made. The failure to make such payment constitutes a Default, entitling U.S. Real Estate to the imposition of default interest from and after August 1, 2018.

50. Under and subject to the terms of the Note, Borrower now owes U.S. Real Estate the following sums:

Outstanding principal	$9,154,912.45
Accrued interest (ordinary)	$555,009.81
Accrued interest (default)	$239,284.61
Late charges	$0.00
Other fees	$97,858.39
TOTAL	$10,047,065.26 plus interest at the default *per diem* rate of $3,750.97 from and after November 9, 2018 (the "Indebtedness")

51. The Indebtedness due from Borrower is of limited recourse, such that any deficiency shall not be a liability of Borrower, except to the extent any such Indebtedness arises from those certain "Losses" as that term is defined and as set forth in Section 3 of the Note. U.S. Real Estate does not seek, by virtue of this First Amended Complaint, compensation for any Losses, as such Losses, if any, remain contingent or unliquidated. However, U.S. Real Estate reserves all rights with respect thereto and does not hereby waive its right to make appropriate claims for Losses should any become non-contingent and/or liquidated. U.S. Real Estate hereby

makes a similar reservation related to the Dragul Guarantee and the Guaranteed Recourse Obligations that may come to include such Losses.

SECOND CLAIM FOR RELIEF
(FORECLOSURE OF REAL PROPERTY)

52. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

53. The Mortgage secures all Indebtedness due under the Note, including any renewals or extensions of the obligations thereunder. Except for any unpaid real estate taxes and assessments, by virtue of the perfected Mortgage, U.S. Real Estate now has a valid and enforceable first-priority lien on the Property.

54. As a result of the Default, the conveyance of the Mortgage has become absolute and, as a consequence, U.S. Real Estate is entitled to have the Mortgage foreclosed, to have the Property sold, and to have the proceeds applied to all Indebtedness due under the Note and the Collection Expenses.

THIRD CLAIM FOR RELIEF
(COLLECTION OF LEASES AND RENTS)

55. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

56. The Mortgage secures "[a]ll leases, [] rental agreements, concessions and occupancy agreements, [], and all rents, royalties, issues, profits, revenue, income or other benefits" derived from the Property.

57. The Assignment of Leases and Rents further secures "any and all leases, licenses, rental agreements, concessions and occupancy agreements of whatever form now or hereafter affecting all or any part of the Property" as well as "all deposits (whether for security or

otherwise), rents, issues, profits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property[.]"

58. The Assignment of Leases and Rents also states that upon the occurrence of a default, U.S. Real Estate is automatically entitled to "take possession of the Leases and collect the Rents."

59. Pursuant to the Mortgage and Assignment of Leases and Rents, U.S. Real Estate is immediately entitled to take possession of, and collect payments from, all leases and rents related to the Property.

FOURTH CLAIM FOR RELIEF
(COLLECTION EXPENSES)

60. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

61. Under and subject to the terms of the Note and the Mortgage, Borrower owes U.S. Real Estate all costs of collection it has incurred and will continue to incur to collect the Indebtedness and foreclose the Property including, without limitation, title exam costs, court costs, appraisal fees, and U.S. Real Estate's reasonable attorney fees and expenses (the "Collection Expenses"), subject to the proviso set forth in paragraph 50 of this First Amended Complaint.

FIFTH CLAIM FOR RELIEF
(ADVANCES)

62. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

63. The Mortgage provides that, if the Borrower fails to perform the obligations thereunder, Calmwater Capital (and now U.S. Real Estate as its assignee) may perform such obligations and make other protective advances for the preservation of the Property. The costs of

such performance (for each instance, an "Advance"), together with interest as set forth in the Note, as applicable, shall be due from the Borrower and is an additional obligation secured by the Property, subject to the proviso set forth in paragraph 49 of this First Amended Complaint.

64. U.S. Real Estate has or shall make Advances for the preservation of the Property in an amount to be determined at the conclusion of this action.

SIXTH CLAIM FOR RELIEF
(DECLARATORY JUDGMENT)

65. U.S. Real Estate incorporates the allegations of the preceding paragraphs as if fully set forth herein.

66. A real, genuine controversy exists among U.S. Real Estate, Borrower Representatives, and Receiver regarding who may control the disposition of the Property.

67. This controversy is justiciable in character as U.S. Real Estate has a stake in the outcome of the controversy. Sender, acting as or through one or more of the Borrower Representatives, has directed his unjustified threats to both Receiver and U.S. Real Estate (and their respective attorneys) and improperly interferes with the administration of this Court's receivership, instituted at U.S. Real Estate's request and in accordance with the loan documents related to the Property that rightfully belongs in the Receiver's hands.

68. Speedy relief is required. Sender is presently interfering with this Court's ability to manage the Property through its Receiver. Absent a declaration on the rights of the parties from this Court, on information and belief, the Receiver will insist he lacks direction and Sender's threats will have been effective in rendering the Ohio laws enacted to protect creditors and this Court's ability to implement Ohio law over Ohio property entirely meaningless.

69. Left unchecked, it is U.S. Real Estate's belief that Sender's conduct threatens the territorial sovereignty of the State of Ohio.

WHEREFORE, U.S. Real Estate demands judgment in its favor and against Defendants as follows:

1. On its First Claim for Relief, against Borrower, for the sum of $9,965,627.53 plus pre-judgment interest from and after November 9, 2018, at the rate of $3,750.97 *per diem*, until judgment, provided however, that insofar as the foregoing sum exceeds the net proceeds finally received by U.S. Real Estate (after payment of all Collection Expenses and Advances) and is not otherwise the result of Losses for which U.S. Real Estate retains rights of recourse, no such deficiency judgment is demanded hereby;

2. On its Second Claim for Relief, for an order declaring that the Mortgage is a valid and subsisting lien as to the Property; that the Mortgage be foreclosed; that the Property be sold, free of all liens and interests of all Defendants herein by a duly-appointed receiver therefore; that all Defendants be required to set forth any claim, lien or interest in or upon the Property that they may have or be forever barred; that all liens be marshaled; and that the proceeds of sale be applied to pay the sums due U.S. Real Estate by virtue of the Collection Expenses, Advances and Indebtedness in the order of its priority;

3. On its Third Claim for Relief against Borrower for U.S. Real Estate's immediate entitlement to take possession of, and collect payments from, all leases and rents related to the Property (subject to any order of this Court empowering a receiver to so collect);

4. On its Fourth Claim for Relief, against Borrower and Dragul for the amount of the Collection Expenses U.S. Real Estate has incurred or may hereafter incur, including its reasonable attorney fees and expenses, which, except insofar as such Collection Expenses are or arise from Losses, shall be determined at the conclusion of this action solely for purposes of

determining the extent of U.S. Real Estate's entitlement to the sale proceeds of the Property, and not as a basis for a monetary deficiency judgment against Borrower or Dragul;

5. On its Fifth Claim for Relief, against Borrower and Dragul, jointly and severally, for any and all Advances that U.S. Real Estate which, except insofar as such Advances are or arise from Losses, shall be determined at the conclusion of this action solely for purposes of determining the extent of U.S. Real Estate's entitlement to the sale proceeds of the Property, and not as a basis for a monetary deficiency judgment against Borrower or Dragul;

6. On its Sixth Claim for Relief, for a judgment declaring the primacy of Ohio law designed to protect the interests of U.S. Real Estate and the Receiver's authorities under the Appointment Order and the primacy of the Appointment Order over the Colorado Consent Order with respect to the Property, and a preliminary and permanent injunction requiring Borrower Representatives to:

a. Cease any attempts to manage, control, possess, lease, collect rents or other income from, or sell any part of the Property; and

b. Cease any efforts to inhibit the conduct of Receiver as such relates to the duties and authorities granted to him by this Court pursuant to that certain Appointment Order which granted Receiver exclusive authority to, *inter alia*, manage, supervise, control, lease and collect rents and other income from the Property.

7. For U.S. Real Estate's court costs; and

8. For such other and further relief as this Court finds just and equitable.

Dated: December 18, 2018

Respectfully submitted,

THOMPSON HINE LLP

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Jonathan.Hawkins@ThompsonHine.com

Attorneys for Plaintiff U.S. Real Estate Credit Holdings III, LP

VERIFICATION

I, Simond Lavian, having been duly sworn, depose and state, under penalty of perjury, as follows:

I am the Director of Asset Management of Calmwater Asset Management, LLC, the Investment Manager of Plaintiff, U.S. Real Estate Credit Holdings III, LP. I have reviewed the foregoing Verified First Amended Complaint, and state that I have personal knowledge of the facts recited therein, and/or have reviewed documents related to the facts alleged, and/or have obtained information from persons employed by or on behalf of Plaintiff with personal knowledge. The information stated in the Verified First Amended Complaint as factual is true, and those factual matters which are stated on information and belief are believed to be true.

Dated: December 18, 2018.

Simond Lavian

See Attached Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

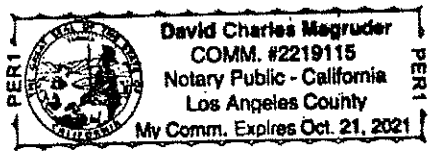
STATE OF CALIFORNIA)SS
COUNTY OF LOS ANGELES)

On December 18, 2018, before me, David Charles Magruder, Notary Public, personally appeared Simond Lavian, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



My Commission Expires: October 21, 2021

This area for official notarial seal

Notary Name: David Charles Magruder
Notary Registration Number: 2219115

Notary Phone: 310-405-7484
County of Principal Place of Business: Los Angeles

CERTIFICATE OF PS 16, LLC
January 21, 2016

DATE FILED: December 20, 2018 4:15 PM
FILING ID: 28595D2692AE9
CASE NUMBER: 2018CV33011

The undersigned, as an authorized signatory of and on behalf of GDA Real Estate Management, Inc., as the manager of GDA PS Management, LLC, a Colorado limited liability company, as the manager of PS 16, LLC, an Delaware limited liability company ("**Company**"), does hereby certify on behalf of the Company the following:

1. Attached hereto as **Exhibit "A"** is a true, correct and complete copy of the Certificate of Formation of the Company filed December 15, 2015, which has not been amended or modified and, on the date hereof, is in full force and effect, and no proceedings for the amendment, modification or rescission of the Certificate of Formation are pending or contemplated.

2. Attached hereto as **Exhibit "B"** is a true and correct and complete copy of the Amended and Restated Operating Agreement of the Company, which has not been amended or modified in any respect and remains in full force and effect as of the date hereof.

3. Attached hereto as **Exhibit "C"** is a true, correct and complete copy of the Certificate of Good Standing of the Company issued by the Secretary of State of Delaware, and no event has occurred as of the date hereof since the date of such certificate of good standing affecting the good standing of the Company under the laws of Delaware.

4. Attached hereto as **Exhibit "D"** is a true, correct and complete copy of the Certificate of Foreign Authority of the Company issued by the Secretary of State of Ohio.

[Signature page immediately follows]

EXHIBIT 4
Part 1 of 3

IN WITNESS WHEREOF, the undersigned has hereunto executed this Certificate of PS 16, LLC as of the date first set forth above.

PS 16, LLC,
a Delaware limited liability company

By: GDA PS Management, LLC,
a Colorado limited liability company,
its Manager

By: GDA Real Estate Management, Inc.,
a Colorado corporation,
its Manager

By: _____
Gary J. Dragul, President

EXHIBIT "A"

Certificate of Formation

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "PS 16, LLC", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF DECEMBER, A.D. 2015, AT 5:27 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

5908726 8100
SR# 20151370273

Authentication: 10625179
Date: 12-16-15

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:27 PM 12/15/2015
FILED 05:27 PM 12/15/2015
SR 20151370273 - File Number 5908726

STATE *of* DELAWARE
LIMITED LIABILITY COMPANY
CERTIFICATE *of* FORMATION

First: The name of the limited liability company is PS 16, LLC

Second: The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400 in the City of Wilmington. Zip code 19808. The name of its Registered agent at such address is Corporation Service Company

Third: (Use this paragraph only if the company is to have a specific effective date of dissolution: "The latest date on which the limited liability company is to dissolve is _____.")

Fourth: (Insert any other matters the members determine to include herein.)

In Witness Whereof, the undersigned have executed this Certificate of Formation this 15th day of December, 2015.

By: _____
Authorized Person (s)

Name: Yana Viteri

EXHIBIT "B"

Operating Agreement

THE SECURITIES REPRESENTED BY THIS INSTRUMENT OR DOCUMENT HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. WITHOUT SUCH REGISTRATION, SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED AT ANY TIME, EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE COMPANY THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER OR THE SUBMISSION TO THE MANAGER OF THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE MANAGER TO THE EFFECT THAT ANY SUCH TRANSFER OR SALE WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.

AMENDED AND RESTATED OPERATING AGREEMENT

OF

PS 16, LLC
a Delaware limited liability company

THIS AMENDED AND RESTATED OPERATING AGREEMENT OF PS 16, LLC is made and entered into as of the 22nd day of January, 2016 (the "**Effective Date**"), by and between those Members listed on **Exhibit A** and the other signatories hereto, on the following terms and conditions. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in **Article 13**.

ARTICLE 1

FORMATION OF THE COMPANY

1.1 Formation of the Company. On December 15, 2015, the Company was formed as a Delaware limited liability company under and pursuant to the Act by filing with the Secretary of State of the State of Delaware the Certificate of Formation. On December 15, 2015, Prospect Square 15, LLC, a Delaware limited liability company ("**Prospect Square 15**") entered into an Operating Agreement for the Company (the "**Initial Agreement**"). Effective as of the date hereof, Prospect Square 15 assigned all of its rights, title and interest in the Company to the Members listed on **Exhibit A**. From and after the date hereof, the Initial Agreement is replaced and superseded in its entirety by this Agreement and shall be of no further force and effect. The rights and obligations of the Company and the Members shall be as provided in the Act, the Certificate of Formation, and this Agreement. This Agreement is subject to, and governed by, the Act and the Certificate of Formation. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act, or the provisions of the Certificate of Formation, such provisions of the Act, or the Certificate of Formation, as the case may be, shall be controlling. The Manager shall execute, deliver and file any other certificates (and any

amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

1.2 Name. The name of the Company shall be PS 16, LLC, and all business of the Company shall be conducted in such name.

1.3 Address.

A. Principal Office. The initial principal office of the Company is located at 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111, or such other place as the Manager may from time to time determine.

B. Registered Agent and Registered Agent Address. The address of the registered office of the Company is 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of the registered agent of the Company for service of process at such address is Corporation Service Company (or such other registered office and registered agent as the Manager may from time to time select).

1.4 Maintenance of Company. The Manager shall do all such acts and things that may now or hereafter be required for the perfection and continuing maintenance of the Company as a limited liability company under the laws of the State of Delaware and to qualify the Company as a foreign limited liability company in any jurisdiction in which the Company may be deemed to be doing business.

1.5 Property. All property, real and personal, of the Company shall be owned by and legal title held in the name of the Company, and any conveyance from or to the Company shall be in the Company's name. No Member shall have any ownership interest in the property of the Company. Each Member's Membership Interest in the Company shall be personal property.

1.6 Partnership Classification. It shall be deemed the intention of the parties hereto that the Company be treated as a partnership for federal income tax purposes as defined in Section 7701 of the Code.

ARTICLE 2

BUSINESS OF THE COMPANY

2.1 Business of the Company. Subject as provided under paragraph **D** of this **Article 2.1**, the business of the Company shall be:

A. To accomplish any lawful business whatsoever, or which shall at any time appear conducive to, or expedient for the protection or benefit of the Company and its assets;

B. To exercise all powers necessary to or reasonably connected with the Company's business which may be legally exercised by limited liability companies under the Act; and

C. To engage in all activities necessary, customary, convenient or incident to any of the foregoing.

D. The Company has been formed for the purpose of increasing occupancy and rental income from the existing commercial space and reselling as a single property, as contemplated by the Business Plan (collectively, the "**Project**"), that certain real estate owned by the Company as of the Effective Date commonly known as "Prospect Square" located at 9654-9722 Colerain Avenue, Cincinnati, Ohio, U.S., as more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Property**"), and the Project shall be the sole and exclusive business of the Company.

The GDA Manager has obtained a loan from Calmwater Capital 3, LLC (together with its successors and/or assigns, the "**Lender**"), in connection with the Project, in the amount of approximately $12,970,000.00 in U.S. Dollars (the "**Loan**"), which Loan is evidenced by a promissory note and other loan documents (the "**Loan Documents**"), and secured by an Open End Mortgage, Security Agreement and Financing Statement on the Property. Subject to the provisions of this Agreement governing approval rights of the Members with respect to the authority of the Manager, the Manager is authorized and directed to do all such acts and to execute, deliver and perform all such documents and instruments as the Manager deems necessary or advisable to carry out the Company's obligations with respect to the Project, the Property, and the Loan, as the same may be determined pursuant to this Agreement. Subject to **Article 6.14** hereof, all such instruments and documents shall be in such form and contain such terms as may be approved by the Manager. Subject to **Article 6.14** hereof, the foregoing authorization shall not be deemed a restriction on the powers of the Manager to enter into other agreements on behalf of the Company.

ARTICLE 3

MEMBERS AND MEMBERSHIP INTERESTS

3.1 Members and Membership Interests. The names, addresses, Capital Contributions and Percentage Interests of the Members shall be as set forth on **Exhibit A** attached hereto and made a part hereof, which **Exhibit A** shall be amended from time to time upon any change in the Percentage Interests, addresses or Capital Contributions of the Members, or upon the admission or withdrawal of any Member. The Persons listed on **Exhibit A** on the date hereof are hereby admitted to the Company as members of the Company upon their execution of a counterpart of this Agreement. All Members will pay their Capital Contribution in cash upon their admission as a Member. If a Member contributes property to the Company, the value of the Capital Contribution shall be determined by the Manager, unless otherwise set forth on **Exhibit A** or **Article 3.2**.

3.2 Additional Capital Contributions and Cost Overruns. After the Capital Contribution set forth on **Exhibit A**, Members will not be required to make any additional Capital Contributions to the Company unless otherwise unanimously agreed in writing by the Members. In the event that the Manager determines that additional funds are required, the Manager shall give written notice to the Members of the additional amounts required, including each Member's proportionate share thereof corresponding to its Percentage Interest of such

additional amount. Each Member may, but shall not be obligated to (except as provided herein), elect to deliver to the Company its proportionate share thereof in the form of a loan in accordance with **Article 3.3** (a "**Member Loan**") by providing written notice thereof to the Manager within 7 days following receipt of Manager's notice and funding such amounts as directed by Manager no later than 30 days following the date such notice is given; provided, however, that for as long as GDA Manager is the Manager, GDA Manager shall or shall cause GDA Member to fund as a loan any amounts not funded as a loan by any other Member, subject as provided in **Article 7.10**. Notwithstanding anything herein to the contrary but subject to the following sentence, to the extent the Manager incurs expenses in exce ss of the Maximum Expenses that are paid for out of Distributable Cash (and provided that the same have been approved in accordance with **Article 7.10**, where such approval is required), such amounts shall be deemed to have been distributed to the Members and recontributed proportionately in accordance with each Member's amounts deemed distributed pursuant to **Article 5.4** as a Member Loan by each Member made in accordance with **Article 3.3**. Member Loans shall bear interest at a rate of 12% per annum. In the event that the Lender prohibits Member Loans, all amounts contributed by the Members shall be made as equity contributions ("**Special Cost Overrun Contributions**"), which Special Cost Overrun Contributions shall bear the Cumulative Overrun Return. None of the terms, covenants, obligations or rights contained in this **Article 3.2** shall be deemed to be made for the benefit of any Person other than the Members and the Company, and no such third Person shall under any circumstances have any right to compel any actions or payments by the Members.

3.3 Loans. Subject to the Members' rights pursuant to **Article 6.14** h ereof and subject to **Article 3.2** and, while the Loan is outstanding, subject to the Loan Documents, the Company may, as determined by the Manager, borrow money from one or any of the Members or third Persons. In the event that a loan agreement is negotiated with a Member or their Affiliates, such Person shall be entitled to receive interest at a rate and upon such terms to be determined by the Manager, which will be upon the same terms or better terms to the Company than those then available from recognized financial institutions, and said loan shall be repaid by the Company to the Member, with interest, according to the terms of the loan. The loan may be evidenced by a promissory note payable by the Company in a form approved by the Manager. Such interest and repayment of the amounts so loaned are to be entitled to priority of payment over the division and distribution of Capital Contributions and profit among Members with respect to their Membership Interests. Loans by any Member to the Company will not be considered contributions to the capital of the Company. Each Member will comply and cause its beneficial owners to comply with the terms and conditions of any loan documents entered into by the Company to the extent the same pertain to said Member or beneficial owner.

3.4 Limitation on Liability. No Member or Manager shall be liable under a judgment, decree or order of any court, or in any other manner, for a debt, obligation or liability of the Company solely by reason of being a member of the Company, except as provided by law and pursuant to this Agreement. Except as provided in **Article 3.2**, no Member shall be required to loan any funds to the Company.

3.5 No Individual Authority. No Member shall have any authority to act for, or to undertake or assume, any obligation, debt, duty or responsibility on behalf of any other Member or the Company.

3.6 No Member Responsible for Other Member's Commitment. If any Member (or any Member's shareholders, members, beneficiaries, trustees, agents or Affiliates) has incurred any indebtedness or obligation prior to or after the date hereof that relates to or otherwise affects the Company, the Company will not, to the fullest extent permitted by law, have any liability or responsibility for or with respect to the indebtedness or obligation, unless the indebtedness or obligation is assumed by the Company pursuant to a written instrument signed by the Manager on behalf of the Company. Furthermore, no Member will be responsible or liable for any indebtedness or obligation that is incurred prior to or after the date hereof by any other Member (or a Member's shareholders, members, beneficiaries, trustees, agents or Affiliates), unless the indebtedness or obligation is assumed by the Member pursuant to a written instrument signed by the Member assuming the liability or obligation. If a Member (or any Member's shareholders, beneficiaries, members, trustees, agents or Affiliates), whether prior to or after the date hereof, incurs or has incurred any debt or obligation that neither the Company nor the other Members is to have any responsibility or liability therefor, that Member (or that Member's shareholders, beneficiaries, members, trustees, agents or Affiliates) hereby indemnifies and holds harmless the Company and the other Members from any liability or obligation they may incur in respect thereof.

ARTICLE 4

MEMBERS' CAPITAL ACCOUNTS

4.1 Capital Accounts. A separate Capital Account will be established and maintained on behalf of each Member. The Capital Accounts shall be maintained in accordance with the Code, including Sections 704(b) and 704(c) of the Code, Regulations and other applicable authority. In the event of a permitted Sale (as defined in **Article 9.1**) or exchange of a Membership Interest, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest.

4.2 Withdrawal or Reduction of Members' Contributions to Capital.

A. No Member shall have the right to withdraw any amounts of the Member's Capital Contribution or amounts from its Capital Account or to demand and receive property of the Company or any distribution or return for the Member's Capital Contribution except as may be specifically provided in this Agreement or required by law, including the Act.

B. A Member shall not receive out of the Company's property any part of such Member's Capital Contributions until all liabilities of the Company, except liabilities to Members on account of their Capital Contributions have been paid or the Company has sufficient assets which, together with the Company's anticipated cash flow, will be sufficient to pay its liabilities as they come due.

C. A Member, irrespective of the nature of the Member's contribution, has only the right to demand and receive cash in return for such Member's contribution to capital;

however, the foregoing does not preclude the Company, subject to the limitation of **Article 11.3**, from distributing property other than cash to any Member.

4.3 Modification of Capital Account. Because the Members intend that Capital Accounts be maintained in accordance with the Code, the Regulations and applicable law, to accomplish that purpose, the Manager is authorized to modify the manner in which the Capital Accounts are maintained and adjustments thereto are computed, and to make any appropriate adjustments thereto, to assure such compliance; provided, however, that such modifications and adjustments will not materially alter the economic agreement between or among the Members.

4.4 No Obligation to Restore. As specified in **Article 11.3**, no Member shall have any liability to restore all or any portion of a Deficit Capital Account of such Member.

4.5 Miscellaneous.

A. No Interest on Capital Contribution. Without derogating from the provisions of **Article 5.4A** and **5.4D**, no Member shall be entitled to or shall receive interest on such Member's Capital Contribution.

B. No Priority of Return of Capital Contribution. Except as expressly provided herein, no Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

ARTICLE 5

ALLOCATIONS AND DISTRIBUTIONS

5.1 Allocations. Except as otherwise provided in this Agreement, the Company's Net Profit or Net Loss, as the case may be, and each individual item of income, loss, gain and deduction entering into the computation thereof, for each Fiscal Year shall be allocated the Members in a manner such that, after giving effect to the special allocations set forth in **Article 12** or elsewhere in this Agreement, the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to **Article 11.3B(iii)** if the Company were dissolved, its affairs wound up, its assets sold for cash equal to their Book Values, and the face amount of all advances and credits were repaid in cash to the Company, all Company liabilities were satisfied (limited with respect to each nonrecourse liability (including Member Nonrecourse Debt obligations) to the Book Values of the assets securing such liability), minus (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. Notwithstanding the foregoing, the Manager may make such allocations as it deems reasonably necessary to give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose. Any and all allocations shall be made in a manner that as nearly as possible takes account of the waterfall of distributions as set forth in **Article 5.4A** and **Article 5.4D** and that is in accordance with the Code and the Regulations, provided that to the extent possible, any such allocations shall not in

any way affect or negate the economic effect of the waterfall of distributions as set forth in **Article 5.4A** and **Article 5.4D**.

5.2 Change in Member's Membership Interest. If there is a change in any Member's Membership Interest in the Company during a fiscal year, each Member's distributive share of Net Profits or Net Losses or any item thereof for such fiscal year shall be determined by any method prescribed by Code Section 706(d) and the Regulations promulgated thereunder and that takes into account the varying interests of the Members of the Company during such fiscal year.

5.3 Reporting by Members. The Members agree to report their shares of income and loss for federal income tax purposes in accordance with this **Article 5** and **Article 12**.

5.4 Distributions.

A. Except upon dissolution and liquidation as set forth in **Article 11.3**, and subject to **Article 5.4B(i)** and **Article 7.2B(ii)**, at such times as the Manager may determine but no less frequently than quarterly, the Distributable Cash of the Company, if any, will be distributed to the Members as follows:

(i) First Priority Distributions. First, among such Members, in proportion to and to the extent of the sum of their respective (i) Unreturned Special Cost Overrun Contributions, and (ii) Undistributed Cumulative Overrun Returns, until the sum of each such Unreturned Special Cost Overrun and Undistributed Cumulative Overrun Return balances are reduced to zero;

(ii) Second Priority Distributions. Second, among such Members, in proportion to and to the extent of their Unreturned Contributed Capital Amounts, until each such Member's Unreturned Contributed Capital Amount balance is reduced to zero;

(iii) Third Priority Distributions. Third, to CoFund Investor and/or transferees to which its Membership Interest is Transferred pursuant to **Article 9.3** (its "**Permitted Transferees**"), each in proportion to and to the extent of its Undistributed Cumulative Return, until each such Member's Undistributed Cumulative Return balance is reduced to zero;

(iv) Fourth Priority Distributions. Fourth, to Hagshama Investor and/or transferees to which its Membership Interest is Transferred pursuant to **Article 9.3** (its "**Permitted Transferees**"), each in proportion to and to the extent of its Undistributed Cumulative Return, until each such Member's Undistributed Cumulative Return balance is reduced to zero;

(v) Fifth Priority Distributions. Fifth, to GDA Member and/or its Permitted Transferees, each in proportion to and to the extent of its Undistributed Cumulative Return, until each such Member's Undistributed Cumulative Return balance is reduced to zero;

(vi) Sixth Priority Distributions. Sixth, subject to **Article 5.4B**, the remaining Distributable Cash will be distributed as follows:

(a) Until each of CoFund Investor and Hagshama Investor (and/or their respective Permitted Transferees) achieve an IRR of 26.03% calculated as set forth in the Business Plan: (A) 29.77% to CoFund Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (B) 30.23% to Hagshama Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (C) 6.66% to GDA Member and/or its Permitted Transferees, among them in accordance with their Percentage Interests; and (D) 33.34% to GDA Manager;

(b) Thereafter: (A) 22.82% to CoFund Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (B) 23.18% to Hagshama Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (C) 8.99% to GDA Member and/or its Permitted Transferees, among them in accordance with their Percentage Interests; and (D) 45.01% to GDA Manager;

B. The Members acknowledge and agree that the provisions of this **Article 5.4B** relate to the performance of GDA Manager, the Project, and the Property and the Members', GDA Manager's, and Company's rights with respect thereto. The distribution percentages set forth in **Article 5.4A(vi)** and the corresponding percentages in **Article 5.4D(viii)** are subject to adjustment in accordance with this **Article 5.4B**.

(i) In the event that GDA Manager shall have committed fraud, willful misconduct, or gross negligence, then the GDA Manager's percentages under **Articles 5.4A(vi)(a)(E)** and **5.4A(vi)(b)(E)** shall be reduced to 0%, and the CoFund Investor's and Hagshama Investor's relative distribution percentages under **Articles 5.4A(vi)(a)** and **5.4A(vi)(b)** shall be increased so that the respective distribution percentages of each of the Members under each such Article equals such Member's Percentage Interest as set forth in **Exhibit A**.

(ii) If, prior to the date that is 36 months after the earlier of Effective Date and the date on which each of CoFund Investor and Hagshama Investor makes its initial Capital Contribution ("**Promoter's Target Date**"), the CoFund Investor and Hagshama Investor (and/or their respective Permitted Transferees) shall have received in the aggregate actual cash distributions (not taking into account for the purposes hereof distributions under Article 5.4A(i)) that represent a return of the CoFund Investor's and Hagshama Investor's initial Capital Contributions in full (collectively, "**Investor's Base Return**"), then, for each calendar month or portion thereof after CoFund Investor and Hagshama Investor and/or their respective Permitted Transferees have received Investor's Base Return that is prior to the Promoter's Target Date, the GDA Manager's percentages under **Articles 5.4A(vi)(a)(E)** and **5.4A(vi)(b)(E)** shall be increased by 1% (e.g. for a single month, from 33.34% to 34.34%), and the percentages of CoFund Investor and Hagshama Investor (and/or their respective Permitted Transferees) under **Articles 5.4A(vi)(a)** and **5.4A(vi)(b)** shall be decreased by 1% in the aggregate and in proportion to their Membership Interests (e.g. for a single month, from 60% to 59%), provided that the GDA Manager's percentages under **Articles 5.4A(vi)(a)(E)** and **5.4A(vi)(b)(E)** ma y not be increased by more than 6% in the aggregate. For illustrative purposes only, if the Investor's Base Return shall have occurred 1.5 months prior to the Promoter's Target Date, then the GDA Manager's percentages under **Articles 5.4A(vi)(a)(E)** and **5.4A(vi)(b)(E)** be increased by 1.5%.

(iii) If the CoFund Investor and Hagshama Investor and/or their respective Permitted Transferees have not received the Investor's Base Return on or before the Promoter's Target Date, then for each calendar month after the Promoter's Target Date until the CoFund Investor and Hagshama Investor and/or its Permitted Transferees have in the aggregate received the Investor's Base Return, the CoFund Investor's and Hagshama Investor's (and/or their respective Permitted Transferees') distribution percentages under **Articles 5.4A(vi)(a)** and **5.4A(vi)(b)** shall be increased in the aggregate by 1% of total Percentage Interests (e.g., for a single month, from 60% to 61% in the aggregate), in proportion to their Membership Interests (provided that such aggregate distribution percentages shall not be increased by more than 6% except as otherwise expressly provided herein), with a corresponding aggregate reduction for the GDA Manager (e.g. for a single month from 33.34% to 32.34%). For illustrative purposes only, if the Investor's Base Return shall have occurred 1.5 months after the Promoter's Target Date, then the CoFund Investor's and Hagshama Investor's (in the aggregate) distribution percentages under **Articles 5.4A(vi)(a)** and **5.4A(vi)(b)** shall be increased by 1.5%.

(iv) Notwithstanding anything to the contrary herein, if, by the Promoter's Target Date, the Company has not sold the Property, then the GDA Manager shall be required to and/or to cause the Company to buy out the CoFund Investor's, the Hagshama Investor's, and their respective Permitted Transferees' Membership Interests in the Company and pay each of the CoFund Investor and Hagshama Investor (and their respective Permitted Transferees) an amount equal to the CoFund Investor's and Hagshama Investor's (and their respective Permitted Transferees') Percentage Interest of the Appraised Value (as defined herein) within 6 months after the Promoter's Target Date (the "**Buy-out Period**"). Notwithstanding the foregoing, the GDA Manager shall have the right to extend the Buy-out Period for up to 3 months by delivering written notice of the same to CoFund Investor and Hagshama Investor, in which event, the GDA Manager's distribution percentages under **Articles 5.4A(vi)(a)(E)** and **5.4A(vi)(b)(E)** shall be reduced by an additional 1% for each month so extended.

(a) In connection with the buy-out obligation set forth above this **Article 5.4B(iv)**, then (A) the Member transferring its Membership Interest shall transfer its Membership Interest in the Company free and clear of all Encumbrances to the GDA Manager or Company, as applicable, upon completion by the GDA Manager or Company of its payment obligations under this **Article 5.4B(iv)**, and thereafter, such Member shall have no further rights in and to or against the Company, the GDA Manager or Dragul except with respect to the surviving obligations, and (ii) each of the Company, the GDA Manager, the GDA Member, and Dragul shall have no further rights against the such transferring Member, except with respect to its failure to transfer its Membership Interest free and clear of all Encumbrances and except for the surviving obligations. The provisions of this **Article 5.4B(iv)(a)** shall survive the termination or expiration of this Agreement.

(b) In the event that a determination of Appraised Value is required herein, the GDA Manager shall designate a qualified broker having experience in the appraisal of real and personal property of a nature similar to that which is owned by the Company, the CoFund Investor and Hagshama Investor as one shall select a broker so qualified, and the 2 brokers so selected shall forthwith determine the value of the Property and any other property or pro rata portion thereof owned directly or indirectly by the Company as of the date of the Promoter's Target Date (the value so determined, the "**Appraised Value**"). If the 2 brokers

so selected are unable to agree upon the Appraised Value, the 2 brokers shall select a third qualified broker whose determination as to the Appraised Value shall be final and binding, provided such amount determined by the third broker shall not be higher or lower than the maximum and minimum amounts determined by either of the 2 brokers selected by the parties. In the event that the value determined by the third broker is higher or lower than the maximum and minimum amounts determined by either of the 2 brokers selected by the parties, then the average of the value determined by the 2 brokers selected by the parties shall be the Appraised Value. Each of CoFund Investor and Hagshama Investor as one and the GDA Manager shall pay the fee of the broker selected by or on behalf of such party and, if a third broker is selected, the fee of the third broker shall be borne equally by the CoFund Investor and Hagshama Investor as one and the GDA Manager.

(v) If by the expiration of the Buy-out Period, as the same may be extended as set forth herein, the Company has not sold the Property or if the GDA Manager or the Company has not purchased the interest of CoFund Investor and Hagshama Investor, and their Permitted Transferees in the Company, then at any time thereafter, the CoFund Investor and Hagshama Investor shall have the right, as the sole and exclusive remedy of CoFund Investor and Hagshama Investor (and their Permitted Transferees) hereunder for such failure but without limiting any other rights or remedies that CoFund Investor and Hagshama Investor (and their Permitted Transferees) may have with respect to any other act or omission of GDA Manager or the Company hereunder, exercisable at the sole discretion of CoFund Investor and Hagshama Investor, and, while the Loan is outstanding, subject to the Loan Documents, to require the Company to sell the Property to a third party for market price; and if such right shall be exercised, the GDA Manager shall cause the Company to sell the Property and comply and act in accordance with such CoFund Investor's or Hagshama Investor's reasonable determinations and directions, provided that the sale price shall not be less than a price based on a fair market value of the entire Property t o be agreed upon by the GDA Manager and CoFund Investor and Hagshama Investor (and, if GDA Manager is not the Manager at such time, Manager), and, in the absence of such agreement, as determined in accordance with **Article 14.4**. Notwithstanding anything to the contrary herein, any and all of the net proceeds from such sale of the Property made in accordance with this **Article 5.4B(v)** shall be distributed in accordance with **Article 5.4D**. Subject to **Article 6.14**, Manager shall have the right to list the Property for sale and sell the same (or purchase or cause the Company to purchase CoFund Investor's and Hagshama Investor's (and their Permitted Transferees) interest in the Company at any time after 24 months after the Effective Date; provided, always, that CoFund Investor and Hagshama Investor and their Permitted Transferees receive (in distributions of net proceeds or buy-out consideration, as the case may be) an amount that causes CoFund Investor and Hagshama Investor to achieve an IRR of 26.03% on their respective Contributed Capital calculated as set forth in the Business Plan.

C. It is the intent of the Manager and the Members that a Member not receive a distribution from the Company to the extent that, after giving effect to the distribution, all liabilities of the Company, other than liabilities to Members on account of their Membership Interests, exceed the fair value of the assets of the Company. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not be required to make a distribution to the Member on account of its interest in the Company if such distribution would violate the Act or any other applicable law.

D. Except upon dissolution and liquidation as set forth in **Article 11.3**, and subject to **Article 5.4B(i)** and **Article 7.2B(ii)**, in the event of a sale pursuant to **Article 5.4.B(v)**, the Distributable Cash of the Company, if any, will be distributed to the Members as follows:

(i) First Priority Distributions. First, among such Members, in proportion to and to the extent of the sum of their respective (i) Unreturned Special Cost Overrun Contributions, and (ii) Undistributed Cumulative Overrun Returns, until the sum of each such Unreturned Special Cost Overrun and Undistributed Cumulative Overrun Return balances are reduced to zero;

(ii) Second Priority Distributions. Second, among the CoFund Investor and Hagshama Investor and/or their Permitted Transferees, in proportion to and to the extent of their Unreturned Contributed Capital Amounts, until each such Member's Unreturned Contributed Capital Amount balance is reduced to zero;

(iii) Third Priority Distributions. Third, to CoFund Investor and/or its Permitted Transferees, each in proportion to and to the extent of its Undistributed Cumulative Return, until each such Member's Undistributed Cumulative Return balance is reduced to zero;

(iv) Fourth Priority Distributions. Fourth, to Hagshama Investor and/or its Permitted Transferees, each in proportion to and to the extent of its Undistributed Cumulative Return, until each such Member's Undistributed Cumulative Return balance is reduced to zero;

(v) Fifth Priority Distributions. Fifth, to the GDA Member to the extent of its Unreturned Contributed Capital Amount, until each such Member's Unreturned Contributed Capital Amount balance is reduced to zero;

(vi) Sixth Priority Distributions. Sixth, to GDA Member and/or its Permitted Transferees, each in proportion to and to the extent of its Undistributed Cumulative Return, until each such Member's Undistributed Cumulative Return balance is reduced to zero;

(vii) Seventh Priority Distributions. Seventh, subject to **Article 5.4B**, the remaining Distributable Cash will be distributed as follows:

(a) Until each of CoFund Investor and Hagshama Investor (and/or their respective Permitted Transferees) achieve an IRR of 26.03% calculated as set forth in the Business Plan: (A) 29.77% to CoFund Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (B) 30.23% to Hagshama Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (C) 6.66% to GDA Member and/or its Permitted Transferees, among them in accordance with their Percentage Interests; and (D) 33.34% to GDA Manager;

(b) Thereafter: (A) 22.82% to CoFund Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (B) 23.18% to Hagshama Investor and/or its Permitted Transferees, among them in accordance with their Percentage Interests; (C) 8.99% to GDA Member and/or its Permitted Transferees, among them in accordance with their Percentage Interests; and (D) 45.01% to GDA Manager;

5.5 Allocation of Income and Loss and Distributions in Respect of Membership Interest Transferred. Distributions of Company assets may be made only to holders of Membership Interests shown on the books and records of the Company. To the fullest extent permitted by law, neither the Company nor any Member (who is not a recipient of such distribution) will incur any liability for making distributions in accordance with the provisions of the foregoing whether or not the Company or the Member has knowledge or notice of any transfer or purported transfer of ownership of a Membership Interest in the Company which has not been effected in accordance with this Agreement. Notwithstanding any provision above to the contrary, gain or loss to the Company realized in connection with the sale or other disposition of any of the assets of the Company will be allocated solely to the holders of Membership Interests in the Company as of the date the sale or other disposition occurs.

5.6 Withholding. If the Manager determines that the Company is required to withhold taxes on behalf of a Member, each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Manager determines that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Company pursuant to Code Sections 1441, 1442, 1445 or 1446, any other applicable sections of the Code or corresponding provisions of state, local, or foreign tax law.

5.7 Tax Liability Distributions. Notwithstanding the above, the Manager may at its election cause the Company to distribute from Distributable Cash or available reserves to each Member with respect to each fiscal year of the Company an amount (a Member's "Annual Tax Amount") up to the product of (i) the taxable income allocated to such Member pursuant to this Agreement for such year other than taxable income attributable to a Section 704(c) adjustment (notwithstanding that such amount allocated to such Member may not give rise to any tax liability) and (ii) the highest effective marginal combined U.S. federal, state and local income tax rate for a fiscal year prescribed for an individual resident applicable for an individual residing in any jurisdiction in which any Member resides, or in the case of any Member that is classified as a partnership for federal tax purposes, any member or partner thereof, taking into account the deductibility of state and local taxes and the character of the allocated income, less amounts previously distributed for such calendar year pursuant to **Articles 5.4A or 5.4D**, as applicable (the "**Member Tax Rate**"). In determining the Member Tax Rate, the Manager may provide written notice requesting from each of Co Fund Investor and Hagshama Investor, and their respective Permitted Transferees who are Members the rate for such Member pursuant to the foregoing sentence; provided, however, that if any Member does not deliver a written response to the Manager within 5 days after such request, the Manager shall be entitled to use the highest effective marginal combined U.S. federal, state and local income tax rate for a fiscal year applicable for an individual residing in Cherry Hills Village, Colorado. The determination of a Member's taxable income for the current year shall be reduced by any cumulative taxable loss previously allocated to each Member (including Losses allocated to a predecessor of a Member) in prior fiscal years which has not been offset by subsequent allocations of taxable income. Distributions of Annual Tax Amounts may be made not later than 75 days following the close of each Fiscal Year of the Company; provided that the Manager may make estimated quarterly distributions. Distributions to Members under this **Article 5.7** shall be an advance of and credited against distributions to the Members under this Agreement in the order that such

distributions would be made pursuant to **Articles 5.4A, 5.4D** (as applicable) and **11.3B(iii)**. Amounts otherwise to be distributed to such Member pursuant to **Articles 5.4A or 5.4D** (as applicable) shall be reduced by the amount of any prior advances made to such Member pursuant to this **Article 5.7** until all such advances are restored to the Company in full. For the avoidance of any doubt, any distributions under this **Article 5.7** shall not in any way affect or negate the waterfall of distributions as set forth in **Article 5.4A** and **Article 5.4D**.

5.8. Incorrect Distributions. To the extent distributions pursuant to this **Article 5** were incorrectly made, as determined by the financial statements of the Company prepared by the Manager or accountants for the Company retained by the Manager, the recipients shall promptly repay all incorrect payments and/or the Company shall have the right to set off any current or future amounts owing to such recipients against any such incorrectly paid amounts.

ARTICLE 6

CONSENTS VOTING AND MEETINGS

6.1 Member Approval. Any consent, approval or election required to be given in this Agreement by the Members may be given as follows:

A. By written consent describing the action taken, signed by the Members holding the number of Percentage Interests that would be required to approve such action, received by the Manager prior to the thing for which the consent, approval or election is solicited. In the event the Percentage Interest required to approve an action is not defined herein, the Percentage Interests required shall be more than 50%; or

B. By affirmative vote by the Members holding the number of Percentage Interests that would be required to approve such action at any meeting called pursuant to **Article 6.3** to consider the action for which the consent, approval or election is solicited.

6.2 No Annual Meeting Required. No annual meeting of the Members shall be required to be held.

6.3 Meetings. Meetings of the Members may be called by the Manager or by any Members holding at least 35% of the Percentage Interests.

6.4 Place of Meetings. The Manager may designate any place, inside or outside the State of Delaware as the place of meeting.

6.5 Notice of Meetings. Except as provided in **Article 6.6**, notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than 10 nor more than 50 days before the date of the meeting in accordance with the notice provisions of this Agreement.

6.6 Meeting of All Members. If all the Members shall meet at any time and place, either within or outside of the State of Delaware, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

6.7 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is given or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

6.8 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Manager of the Company before or at the time of the meeting. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. A facsimile or photocopy of such proxy or attorney-in-fact designation shall have the same force and effect as the original.

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

6.10 Telephonic Meetings. Any and all Members may participate in any annual or special Members' meeting by, or through the use of, any means of communication by which all Members participating and entitled to vote may simultaneously hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

6.11 Attendance Waives Notice. By attending a meeting, a Member waives objection to the lack of notice or defective notice unless the Member, at the beginning of the meeting, objects to the holding of the meeting or the transacting of business at the meeting. A Member who attends a meeting also waives objection to consideration at such meeting of a particular matter not within the purpose described in the notice unless the Member objects to considering the manner when it is presented.

6.12 Records of Meetings. The Manager or its designee shall keep and maintain minutes or other records of all meetings of the Members.

6.13 Outside Activity. Each Member, including but not limited to the Manager (if the Manager is a Member), may engage in any capacity (as owner, employee, consultant, or otherwise) in any activity, whether or not such activity competes with or is benefited by the business of the Company, without being liable to the Company or the other Members for any income or profit derived from such activity and notwithstanding any other duty existing at law or in equity. No Member shall be obligated to make available to the Company or any other Member any business opportunity of which such Member is or becomes aware.

6.14 Member Approval Required. The Manager may not take any of the following actions without also receiving the approval of CoFund Investor and Hagshama Investor, either in writing or at a duly called and held meeting:

A. Confess any judgment against the Company;

B. Consent to the appointment of any receiver of the Company's assets;

C. Declare bankruptcy of the Company;

D. Take any action in contravention of this Agreement;

E. Acquire any property or assigning, transferring, or pledging the rights of the Company in specific property, for other than the exclusive benefit of the Company and for the purposes of the Project;

F. Commingle the Company's funds with the Manager's or any other Person's funds;

G. Fill the vacancy of a Manager;

H. Remove a Manager;

I. Except as set forth in **Article 3.2**, the acceptance of any equity contributions and/or loans or advances for the Company, or admit any New Member or issue Membership Interests, options, warrants or other securities, of the Company;

J. Adopt any amendment to this Agreement or the Certificate of Formation, except where the Manager is given the express right to amend this Agreement pursuant to **Article 14.6**;

K. Enter into an agreement for the sale of the Property or any portion of the Property or allow the GDA Member or the Company to purchase the Membership Interests of CoFund Investor and Hagshama Investor and their Permitted Transferees for the Appraised Value or any other value, unless the same is after 24 months following the Effective Date hereof and in connection therewith CoFund Investor and Hagshama Investor and their Permitted Transferees receives an amount (in distributions of net proceeds or buy-out consideration, as the case may be) that would cause CoFund Investor and Hagshama Investor to achieve an IRR of 26.03% on their respective Contributed Capital calculated as set forth in the Business Plan;

L. Except as set forth in **Article 3.2**, incur or refinance indebtedness on behalf of the Company from banks, other lending institutions, Members or Affiliates of a Member (subject to **Article 3.3** in the case of loans from Members or their Affiliates), materially amend a Company loan or any other indebtedness (with any increase in principal amount or interest rate, or adverse change in economic or payment terms being deemed material), or incur any encumbrance on the Property;

M. Approve of any amendments to the Business Plan;

N. Commence or effect a Dissolution Event; and

O. Provide for any compensation to be paid to the Manager or its Affiliate, other than the payments expressly provided for in the Business Plan.

ARTICLE 7

RIGHTS AND DUTIES OF THE MANAGER

7.1 Management.

A. General Grant. The business and affairs of the Company shall be managed by the Manager, and the management and conduct of the business of the Company is vested in the Manager. The Manager shall direct, manage and control the business of the Company to the best of its ability and, except as otherwise provided in Article 6.14 and any other provision hereof, shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Manager shall deem to be reasonably required in light of the Company's business and objectives.

B. Day-to-Day Management by the Manager.

(i) The Manager shall use commercially reasonable efforts to manage the Project and the Property in accordance with the Business Plan, a nd to carry out and implement of all the activities required and/or contemplated by the Business Plan for the implementation of the Project, including, without limitation, the carrying out of the obligations and/or activities as set out in **Articles 15.2B**, **F**, **G**, **H**, and **I**. The Manager shall use commercially reasonable efforts to (a) undertake and manage the Project and achieve the goals of the Project in accordance with the Business Plan, and (b) not incur or commit to any cost or expense in excess of that as provided under or contemplated by the Business Plan, up to an aggregate of U.S.D. $17,386,754 (the "**Maximum Expenses**"). Subject to the Loan Documents and the limitations and restrictions set forth in this Agreement, including but not limited to the limitations and restrictions under **Article 6.14** to the extent applicable to any of the following, the Manager may exercise the following specific rights and powers without any further consent of the Members being required:

(ii) Subject to the Members' rights pursuant to **Article 6.14** hereof, power to acquire real and personal property from any Person as the Manager may direct. The fact that a Manager or Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

(iii) Subject to the Members' rights pursuant to **Article 6.14** hereof, except as set forth in **Article 3.2**, power to borrow money for the Company from banks, other lending institutions, Members or Affiliates of a Member on such terms as the Manager deems appropriate (subject to **Article 3.3** in the case of loans from the Members or their Affiliates), and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager;

(iv) Power to purchase liability and other insurance to protect the Company's property and business;

(v) Power to hold or own any Company real and/or personal properties in the name of the Company (subject to the right to acquire such property as set forth above);

(vi) Power to invest any Company funds temporarily (by way of example but not limitation) in time deposits short-term government obligations, commercial paper or other investments, which such investments shall be in the name of the Company and shall permit withdrawal or investments upon signature of the Manager alone;

(vii) Power to execute and negotiate on behalf of the Company all instruments and documents, including, without limitation, checks, drafts, notes and other negotiable instruments, mortgages or deeds of trust, security agreements, financing statements, documents providing for the acquisition, mortgage or disposition of the Company's property, assignments, bills of sale, leases, agreements, and any other instruments, agreements, contracts, documents and certifications necessary or convenient in the opinion of the Manager to the business of the Company;

(viii) Subject to the Member's rights pursuant to **Article 6.14** hereof, power to sell or otherwise dispose of any real property or other property owned by the Company;

(ix) Power to operate, maintain, improve, rent, or lease any real property or other property owned by the Company;

(x) Power to care for and distribute funds to the Members by way of cash income return of capital, or otherwise, all in accordance with and subject to the provisions of this Agreement;

(xi) Power to contract on behalf of the Company for the provision of services or goods by vendors, employees and/or independent contractors, including lawyers and accountants, and to delegate to such Persons the duty to manage or supervise any of the assets or operations of the Company;

(xii) Power to establish and pay compensation to any employee of the Company and the Manager to the extent only as provided in the Business Plan;

(xiii) Power to ask for, collect, or receive any rents, issues and profits or income from the assets of the Company, or any part or parts thereof, and to disburse Company funds for Company purposes subject to the provisions of this Agreement;

(xiv) Power to pay out taxes, licenses, or assessments of whatever kind or nature imposed on or against the Company or its property or assets, and for such purposes to make such returns and to do all other such acts or things as may be deemed necessary and advisable in connection therewith;

(xv) Power to institute, prosecute, defend, settle, compromise, dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, the Company, the Manager or the Members in connection with the activities arising out, connected with, or incident to the business of the Company, and to engage counsel or others in connection therewith;

(xvi) Power to execute for and on behalf of the Company and with respect to the business of the Company all applications for permits and licenses as the Manager deems necessary and advisable and to execute and cause to be filed and recorded documents that the Manager deems advisable;

(xvii) Power to perform all ministerial acts and duties relating to the payment of all indebtedness taxes and assessments due or to become due with respect to the business of the Company and to give or receive notices reports and other communications arising out of or in connection with the ownership indebtedness or maintenance of the business of the Company;

(xviii) Power to determine the amount of any Reserves and establish and fund such Reserves;

(xix) Power to give any approval under any management construction or other contract to which the Company is a party;

(xx) Power to designate an employee or agent to be responsible for the daily and continuing operations of the business affairs of the Company. All decisions affecting the policy and management of the Company, including the control, employment, compensation and discharge of employees, the employment of contractors and subcontractors and the control and operation of the premises and property, including the improvement, rental, lease, maintenance and all other matters pertaining to the operation of the assets or property of the Company shall be made by the Manager;

(xxi) Power to draw checks upon the bank accounts of the Company, to designate Persons authorized to sign on the Company's bank accounts and make, deliver, accept or endorse any commercial paper in connection with the business affairs of the Company;

(xxii) Power to make all elections for federal and state income tax purposes; provided that at any time the Company has more than one Member, such power shall include, but not be limited to, in the case of any transfer of all or any part of Membership Interests or upon the admission of New Members or Substituted Members, elections under Sections 734, 743 and 754 of the Code to adjust the basis of the assets of the Company; and

(xxiii) Power to take any other actions as the Manager in its reasonable judgment deems necessary for the protection of life or health for the preservation of Company assets, if, under the circumstances, in the good faith estimation of the Manager, there is insufficient time to allow it to obtain the approval of the Members to such action and any delay would materially increase the risk to life or health or preservation of assets. In such event, the Manager shall notify the Members of each such action contemporaneously therewith or as soon as reasonably practicable thereafter.

C. No Member Authority to Bind. Unless authorized to do so by this Agreement or by the Manager of the Company, no Member, agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose.

7.2 Number, Tenure, Election, and Qualifications.

A. Number. The number of Managers shall be one. The number of Managers may not be increased or decreased except by amendment to this Agreement. The Manager need not be a Member.

B. Tenure. GDA Windsor Management, LLC shall act as Manager until its resignation or removal under this Agreement; provided, however, the Manager may not be removed unless a successor Manager has been appointed and approved by Members owning 100% of the Percentage Interests (except as otherwise set forth herein in the event of the Manager's removal for fraud, gross negligence, or willful misconduct, or any other act or omission constituting Cause (as hereinafter defined)), and the Manager has executed a counterpart to this Agreement. Any new Manager shall be elected by Members owning 100% of the Percentage Interests, and any new Manager shall hold office until such Manager's dissolution, resignation or removal. In such event, all Members agree to promptly work on installing a successor Manager. It is the intent and agreement of all Members to negotiate and act in good faith in the selection of a successor Manager. If the Members are unable to select a successor Manager in a timely manner, the Members agree to participate in mediation with a business mediator in order to attempt to select a successor Manager.

(i) Notwithstanding the foregoing and notwithstanding anything else to the contrary contained herein, in the event that the Manager shall have been removed for fraud, gross negligence, or willful misconduct, or any other act or omission constituting Cause (as hereinafter defined), then a successor Manager may be elected by CoFund Investor and Hagshama Investor.

(ii) At the time of any removal of the GDA Manager pursuant to **Article 7.2B(i)** for any other act or omission constituting Cause (as described above; a "For Cause Removal"), CoFund Investor and Hagshama Investor may appoint a new property manager and a new asset manager to replace the Manager and/or its Affiliates in such roles. The fees paid to the new property manager and the new asset manager shall be hereinafter referred to as the "New Fees". The property management and asset management fees to be paid to the GDA Manager prior to removal shall be hereinafter referred to as the "GDA Fees". Following a For Cause Removal, all of GDA Manager's distributions pursuant to Article 5.4.A.(vii) and Article 5.4.D.(viii) shall be reduced by an amount equal to 25% of the GDA Fees (the "GDA Fee Contribution"). To the extent that the New Fees are less than the GDA Fees plus the GDA Fee Contribution, the same shall be retained by the Investors. To the extent that the New Fees are in excess of the GDA Fees plus the GDA Contribution, then the payment of such amounts in excess shall be paid by the Members prorata accordance with their Percentage Interests solely by and to the extent available by reducing the amounts otherwise paid to the same pursuant to Article 5.4.A.(vii) and Article 5.4.D.(viii).

7.3 Devotion to Duty.

A. Duty of Good Faith; Exoneration. The Manager shall perform its duties as the manager of the Company in good faith, in a manner it reasonably believes to be in the best interest of the Company and shall exercise reasonable skill, care and business judgment. Unless

fraud, deceit, gross negligence, willful misconduct, bad faith, breach of fiduciary duty, a wrongful taking, or material breach of this Agreement shall be proved by a nonappealable court order, judgment, decree or decision (unless a court order, judgment, decree or decision is issued that is not being appealed by the Manager within a reasonable period of time), neither the Manager nor any of its employees or agents shall be liable or obligated to the Company or any other Person bound by this Agreement for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the Manager in conducting the business, operations and affairs of the Company, which may cause or result in any loss or damage to the Company or its Members. The Manager does not in any way guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company.

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B. Reliance by Manager. In performing its duties as manager of the Company, the Manager shall be entitled to rely on information, opinions, reports or statements of the following persons or groups, unless the Manager has knowledge or reasonably ought to have knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(i) One or more employees, consultants, independent contractors or other agents engaged by the Company whom the Manager reasonably believes to be reliable and competent in the matters present;

(ii) Any attorney, public accountant or other person as to matters which the Manager reasonably believes to be within such person's professional or expert competence; or

(iii) A committee upon which the Manager does not serve, duly designated in accordance with this Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit confidence.

C. Ultra Vires Act. The Manager shall have no authority to do any act in contravention of the Act or this Agreement. The Manager is an agent of the Company for the purpose of its business, and the act of the Manager, including the execution in the Company name of any instrument for apparently carrying on in the usual way the business of the Company, binds the Company, unless the Manager so acting lacks the authority to act for the Company and the Person with whom the Manager is dealing has knowledge or ought to have knowledge after making reasonable inquiry, of the fact that the Manager has no such authority.

7.4 Manager Has No Exclusive Duty to Company. The Manager shall not be required to manage the Company as its sole and exclusive function or business, and any Manager may have other business interests, which may compete with the business of the Company, and such Manager may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of any of the Managers or to the income or proceeds derived therefrom.

7.5 Bank Accounts. As set forth above, the Manager may from time to time open bank accounts in the name of the Company, and the Manager shall have the right to designate the signatories thereon. The Manager shall provide the CoFund Investor and Hagshama Investor

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with electronic access to view the Company's bank accounts, provided that such electronic access does not grant the ability to draw or otherwise transact on such accounts.

7.6 Indemnity of the Manager. The Manager and any Affiliate of the Manager or GDA Member providing guaranties on behalf of the Company shall be entitled to be indemnified by the Company to the fullest extent permitted by law in connection with their activities related to the Company, the Project and the Property, and shall be entitled to the advance of expenses, including reasonable attorneys' fees in the defense or prosecution of a claim in any such capacity; provided that the foregoing indemnity shall not apply to any acts or omissions of fraud, gross negligence, willful misconduct, bad faith, breach of fiduciary duty, a wrongful taking, or a material breach of this Agreement committed by the Manager. The Company may purchase and maintain insurance on behalf of the Manager against any liability asserted against or incurred by the Manager or arising out of its status as such, if the Manager determines to do so.

7.7 Removal. Notwithstanding the foregoing, at a meeting called expressly for that purpose, the Manager may be removed by the vote of a Majority in Interest of the Members other than any Member who is an Affiliate of such Manager, in the event that the Manager shall materially breach or default in its duties, obligations or undertakings under this Agreement ("**Cause**"); provided that the CoFund Investor and Hagshama Investor shall have given the Manager 30 days prior written notice specifying the breach or default and the Manager shall have failed to remedy or rectify the breach within such period or such longer period; provided further, that if such cure cannot be reasonably cured within said 30 day period (but can be reasonably cured within a reasonable period), if Manager commences to cure such failure during such initial 30 day period and is diligently attempting to remedy or rectify the breach, then the Manager shall not be subject to removal for as long as it is diligently attempting to remedy or rectify the breach.

7.8 Resignation. Subject to **Article 7.2B**, but without derogating from GDA Manager's representations and undertakings contained herein, the Manager may resign at any time by giving written notice to the Members.

7.9 Reimbursement. The Manager shall be entitled to reimbursement from the Company for all expenses of the Company reasonably incurred and actually paid by the Manager on behalf of the Company to the extent only as provided under the Business Plan, as approved, deemed approved, or for which approval is not required, under **Article 7.10**, or otherwise expressly permitted hereunder.

7.10 Expenditures. For any expenditure exceeding the Maximum Expenses, the Manager will seek the Members' prior written approval, unless the same, if not spent, will have a negative impact on the Project, the tenants or revenues of the Company, which approval shall not be unreasonably withheld or conditioned. The Members will have 7 days following the request (which may be made via email), to reject with specific reasons for such objection, or the same will be deemed approved. If the Manager shall incur or commit to any cost or expense in excess of the Maximum Expenses without first obtaining the prior approval or deemed approval of the CoFund Investor and Hagshama Investor where such consent is required hereunder, then the Manager shall assume responsibility for all such excess costs, and which excess costs shall in no way represent costs of the Company or dilute the profits and/or IRR attributable to the CoFund

Investor and Hagshama Investor under the Business Plan, or the Membership Interests of CoFund Investor and Hagshama Investor.

ARTICLE 8

BOOKS RECORDS AND ADMINISTRATION

8.1 Books and Records. The Company will maintain a system of accounting and shall maintain books of account established and administered in accordance with generally accepted accounting principles and practice consistently applied and applicable for similar companies involved in similar activities, and will set aside on its books all such proper reserves as shall be required by generally accepted accounting principles. The books and records of the Company will be kept, and the final financial position and results of its operations recorded, in accordance with the accounting methods elected to be followed by the Manager in accordance with the previous sentence, on behalf of the Company for federal income tax purposes. The fiscal year of the Company for financial reporting and for federal income tax purposes shall be the calendar year.

8.2 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at the principal office of the Company provided in **1.3A**, or at such other location as the Manager shall advise the Members in writing. Upon written notice to the Manager, subject to applicable law, each Member, at such Member's own expense, shall have the right to inspect and audit the Company's books, records, documents (including minutes, accounting books and records), and other information during normal business hours for a purpose reasonably related to the Member's interests as a Member. If required by the Company's counsel, the Members shall sign a customary confidentiality undertaking prior to such inspection. This **Article 8.2** shall not limit any right that any party hereto may have under applicable law.

8.3 Tax Returns and Other Elections. The Manager shall cause the preparation and timely filing on or before their respective due dates (as the same may be extended with approval of CoFund Investor and Hagshama Investor) of all tax returns required to be filed pursuant to the Code and all other tax returns and tax elections deemed by the Manager to be in the Company's best interest in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Company's fiscal year. The Manager shall provide to the Members Schedule K-1 of IRS Form 1065 and other applicable tax information reporting forms to each Member by March 31st of each year (or, if the due date of the applicable return is extended (such extension requiring the prior consent of CoFund Investor and Hagshama Investor), no later than 14 days prior to such extended date) following the end of each taxable year.

8.4 Tax Matters Partner. The following provisions shall apply at any time the Company has more than one Member: if the GDA Member is a Member, GDA Member shall be designated to be the "tax matters partner" (as defined in the Code) on behalf of the Company, and if GDA Member is not a Member or GDA Member is unable to be the tax matters partner, a tax matters partner shall be designated by unanimous consent of the Members. Any reasonable cost incurred by the tax matters partner, if any, in connection with performing his or her duties as

tax matters partner, including retaining accountants and attorneys, shall be expenses of the Company.

8.5 Reporting. The Manager shall prepare and provide to the CoFund Investor and Hagshama Investor (and, at any time when the GDA Manager is not the Manager, the GDA Member), or, if specified below, all Members, the following:

A. Monthly, quarterly and annual reports on the progress of the Project, including without limitation, leasing and selling status reports, detailed operating statements, general ledger and trial balance on cash and accrual basis, variance analysis, tax reporting and cash flow report and projections, as well as monitoring reports of the engineering company that approves the works completed for the Lender and such other information relating to the financial condition, business, prospects or corporate affairs of Company as the CoFund Investor and Hagshama Investor (and, if applicable, GDA Member) may from time to time request, such monthly, quarterly and annual reports to be provided within 15 days, 30 days, and 60 days, respectively of the expiration of the relevant period.

B. Financial reports (including, without limitation, a profit and loss statement, balance sheet and cash flow report) on a quarterly, semi-annual and annual basis, with the annual reports verified by the relevant entities' accountants, such quarterly and annual reports to be provided within 30 days and 60 days respectively after the expiration of the relevant period. The CoFund Investor and Hagshama Investor (and, if applicable, the GDA Member) has the option to request the auditing of the financial statements of the Company at such Member's expense; provided, however, that the costs and expenses of the audit shall be paid by Manager if the audit discloses a monetary variance in excess of 5% of the annual project budget.

C. Photographs of the Property, provided by the Manager through an electronic sharing application or by email upon the occurrence of significant changes in the Project, no less frequently than once per month. Such photos will be sent or uploaded, as applicable, not later the 15th of each month.

D. Copies of all financial statements and reports delivered to the Lender or any other lender with respect to the Company pursuant to the documents that evidence or secure a loan made by such lender to the Company shall be provided to each Member promptly after delivery to such lender.

ARTICLE 9

RESTRICTIONS ON TRANSFERABILITY

9.1 General. To the full extent permitted by law, and except as otherwise specifically provided herein, a Member shall not have the right to directly or indirectly sell, Assign, transfer, exchange or otherwise transfer for consideration (collectively, "**Sell**" or "**Sale**"), or to give, bequeath or otherwise transfer for no consideration whether or not by operation of law (collectively "**Gift**") or in any other manner whatsoever dispose of all or any part of the Member's direct or indirect Membership Interest in the Company. Each Member hereby acknowledges the reasonableness of the restrictions on Sale and Gift of Membership Interests

imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, to the fullest extent permitted by law, the restrictions on Sale and Gift contained herein shall be specifically enforceable. In the event that any Member pledges or otherwise encumbers any of its Membership Interests as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all the terms and conditions of this **Article 9**. For purposes of this Agreement, "**Transfer**" shall mean Assign, Sell, Gift, or "Transfer" (or terms of similar import) in accordance with the broadest definition set forth in any documents pertaining to any present or future loan to the Company, or secured by the Property or any property owned by the foregoing (collectively, the "**Applicable Loan Documents**").

9.2 Additional Requirements.

A. In the event of a Transfer of a Membership Interest in the Company that is permitted under **Article 9.3**, and as a condition to recognizing the effectiveness and binding nature of any such Transfer and substitution of a transferee or assignee as a Member with respect to their Membership Interest as against the Company or otherwise, the Manager may require the Selling Member or Gifting Member and the proposed transferee, assignee or successor-in-interest or Substituted Member to execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Manager may deem necessary or desirable to (i) constitute such purchaser, transferee, assignee, successor-in-interest or Substituted Member as such; (ii) confirm that the transferee, assignee or successor-in-interest desiring to acquire a Membership Interest in the Company, or to be admitted as a Substituted Member, has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of the Agreement, as the same may have been further amended; (iii) preserve the Company after the completion of such Sale, transfer, assignment or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, a termination of the Company within the meaning of Code Section 708; (vi) assure compliance with any applicable State and Federal securities laws and regulations and any documents to which the Company is a party; and (vii) ensure compliance with or otherwise satisfy any approval rights or other requirements of any lender to the Company and with the provisions of the documents governing such lending relationship.

B. The Selling Member and the Gifting Member (collectively, the "**Transferring Member**") agree upon request of the Manager to execute such certificates or other documents and perform such other acts as may be reasonably requested by the Manager from time to time in connection with such Sale or Gift. The Transferring Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitations, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of **Article 9**.

9.3 Permitted Transfers. The Manager shall not unreasonably withhold its consent to a Transfer if (i) the transferee or other successor-in-interest (collectively, "**transferee**") complies with **Article 9.2**, (ii) (A) with respect to the CoFund Investor and Hagshama Investor, such

Transfer, when combined with all prior Transfers of Membership Interests with respect to such Member, neither Transfers more than 49% of the Membership Interests held by such Member nor has the effect of transferring Control of such Member, or (B) with respect to the GDA Member, such Transfer does not Transfer Control of such GDA Member, and (iii) the transferee will hold the Transferring Member's Membership Interest subject to the terms and conditions of this Agreement including, but not limited to, this **Article 9** with respect to any subsequent Sale or Gift.

9.4 Withdrawal. Except as otherwise provided in this Agreement, no Member shall resign as a Member from the Company. If a Member does resign in violation of this Agreement, then the Company may recover damages from the Member and offset against such damages any amounts otherwise distributable to the Member.

9.5 Transfers with Respect to GDA Member and GDA Manager. No Transfers of interests in GDA Member or GDA Manager shall be permitted without the prior written consent of CoFund Investor and Hagshama Investor. Notwithstanding, anything herein to the contrary, CoFund Investor's and Hagshama Investor's consent to a Transfer of interests in GDA Member or GDA Manager shall not be required in the event of (i) Transfer to (A) a trust or another estate planning entity established for the benefit of Dragul's spouse, parents, siblings and/or lineal descendants, or (B) any Person succeeding to the interests of Dragul following the death or legal incapacity of Dragul, (ii) any Transfers in GDA Member so long as GDA Manager retains Control over GDA Member, or (iii) any Transfers in GDA Manager so long as Dragul retains Control over GDA Manager.

ARTICLE 10

NEW AND SUBSTITUTED MEMBERS

10.1 New and Substituted Members. From the date of the formation of the Company, subject to the Loan Documents, any Person may become a Member in the Company either (i) by the issuance or sale by the Company of new Membership Interests ("**New Member**"), provided the admission of the New Member is approved by the Members unanimously, or (ii) as set forth in **Article 9** as a transferee of a Member's Membership Interest or any portion thereof, approved by the Members unanimously ("**Substituted Member**"), subject to the terms and conditions of this Agreement. The Manager shall have the right to adjust each Member's Percentage Interest (and distributions in accordance with **Article 5.4** to the extent a new class of membership with different economic rights are created) in connection with the admission of a New Member or Substituted Member. No New Members or Substituted Members shall be entitled to any retroactive allocation of losses, profits, income, expenses or deductions incurred by the Company; however, the Manager may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

10.2 Requirements for Admission of a New or Substituted Member. As a condition precedent to admission of any Person as a New Member or Substituted Member, such Person must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary or desirable to: (i) constitute such New Member or Substituted Member as such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the existence of the Company after the completion of the issuance of a Membership Interest to a New Member or transfer of a Membership Interest to a Substituted Member under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, the termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable state and federal securities laws and regulations. Any such admission of a Person as a New Member shall be effective upon such Person's compliance with the foregoing conditions applicable to a New Member, as evidenced by the reflection of such Person on **Exhibit A** as a member of the Company.

ARTICLE 11

DISSOLUTION AND TERMINATION

11.1 Dissolution. The Company shall dissolve only upon the happening of any of the following events (the "**Dissolution Events**"):

A. Subject to the limitations and restrictions set forth in this Agreement, the written consent of the CoFund Investor and Hagshama Investor (for so long as each is a Member), the GDA Member (for so long as it is a Member), and the Manager.

B. The occurrence of any event which makes it unlawful for the business of the Company to be carried on or for the Members to carry on the business of the Company.

C. The termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act.

11.2 Effect of Dissolution. Upon occurrence of a Dissolution Event, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until a certificate of cancellation (the "**Certificate of Cancellation**") has been filed with the Office of the Secretary of State for the State of Delaware. The Company shall exist as a separate legal entity until a Certificate of Cancellation is filed in accordance with the Act.

11.3 Winding Up, Liquidation and Distribution of Assets.

A. Accounting. Upon dissolution an accounting shall be made by the Company's independent accountants of the accounts of the Company and of the Company's assets, liabilities and operations, from the date of the last previous accounting until the date of dissolution. The Liquidator shall immediately proceed to wind up the affairs of the Company.

B. Winding Up. If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with or not necessary or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Certificate of Cancellation has been filed in accordance with the Act. The Liquidator shall be responsible for overseeing the winding up of the Company, shall take full account of the Company's liabilities and property, shall cause the property to be liquidated as promptly as is consistent with obtaining the fair value thereof (except to the extent the Liquidator determines to distribute any assets to the Members in kind with the prior consent of such Members), shall allocate any profit and loss resulting from such sales to the Members as set forth in **Article 5** and **Article 12** and shall cause the proceeds therefrom, to the extent thereof, to be applied and distributed in the following order:

(i) First, to the payment and discharge of all the Company's debts and liabilities to creditors other than Members, including all costs related to the dissolution, winding up and liquidation of distribution of assets; and including the establishment of such Reserves as may reasonably be determined by the Liquidator to be necessary to provide for contingent, conditional and unmatured liabilities of the Company (for the purpose of determining Capital Accounts of the Members, the amounts of such Reserves shall be deemed an expense of the Company);

(ii) Second, to the payment and discharge of all the Company's debts and liabilities to Members, other than on account of such Member's Membership Interest in the Company capital and profits;

(iii) The balance, if any, to the Members, in accordance with **Article 5.4A or 5.4D if applicable**. To the extent reasonably practical, any such distribution to Members in respect of their Capital Accounts shall be made in accordance with the time requirements set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations.

C. Valuation of Distributable Assets. Assets may be distributed to Members with the prior consent of such Members either in cash or in kind as determined by the Liquidator with any assets distributed in kind being valued for this purpose at the fair market value at the date of dissolution as determined by an independent appraisal or by the Liquidator. If such assets are distributed in kind such assets shall be deemed to have been sold as of the date of dissolution for their fair market value and the Capital Accounts shall be adjusted pursuant to the provisions of **Article 5** to reflect such deemed sale.

D. No Obligation to Restore Capital Account Deficit. Notwithstanding anything to the contrary in this Agreement, upon a liquidation within the meaning of Section 1.704-1(b)(2)(ii)(g) of the Regulations, if any Member has a Deficit Capital Account (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any contribution to the capital of the Company, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the Company or to any other Person for any purpose whatsoever.

E. Termination; Compliance with Laws. Upon the filing of the Certificate of Cancellation, the Company shall be deemed terminated. The Liquidator shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

11.4 Certificate of Cancellation. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all the remaining property and assets have been distributed to the Members, the Certificate of Cancellation shall be executed and verified by the Person signing the Certificate of Cancellation, which shall set forth the information required by the Act.

11.5 Filing of Certificate of Cancellation.

A. Such Certificate of Cancellation shall be filed with the Office of the Secretary of State for the State of Delaware.

B. Upon the filing of the Certificate of Cancellation in accordance with the Act, the separate legal existence of the Company shall cease. Prior to such filing, the Liquidator shall have authority to distribute in accordance with Article 5.4A or 5.4D as applicable, any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

11.6 Return of Contribution Nonrecourse to Other Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member's 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 cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE 12

SPECIAL ALLOCATIONS

Notwithstanding **Article 5**, the following provisions shall govern allocations. Any and all allocations hereunder or under any other provision of this Agreement shall be made in a manner that as nearly as possible takes account of the waterfall of distributions as set forth in **Article 5.4A** and **Article 5.4D** and that is in accordance with the Code and the Regulations, provided that to the extent possible, any such allocations shall not in any way affect or negate the economic effect of the waterfall of distributions as set forth in **Article 5.4A** and **Article 5.4D**:

12.1 Limitation. No allocations of loss deduction and/or expenditures described in Section 705(a)(2)(B) of the Code shall be charged to the Capital Accounts of any Member if such allocation would cause such Member to have or to increase a Deficit Capital Account. The amount of the loss, deduction and/or Code Section 705(a)(2)(B) expenditure which would have caused a Member to have a Deficit Capital Account shall instead be charged to the Capital Account of any Member which would not have a Deficit Capital Account as a result of the allocation, in proportion to their respective Capital Account balances, or, if no such Members exist, then to the Members in accordance with their Percentage Interests in the Company.

12.2 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated and credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations the Deficit Capital Account so created as quickly as possible. It is the intent that this **Article 12.2** be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

12.3 Gross Income Allocation. In the event any Member would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Member is obligated or deemed obligated to restore to the Company pursuant to this Agreement or under Regulations Section 1.704-2(g)(1) and such Member's share of Member nonrecourse minimum gain (as determined in accordance with Section 1.704-2(i)(5) of the Regulations), the Capital Account of such Member shall be specially allocated and credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

12.4 Minimum Gain Chargeback. Notwithstanding any other portion of this **Article 12** and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company's minimum gain as determined under Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations during a taxable year of the Company, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704-2(g) of the Regulations. This **Article 12.4** is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion, in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion the Managers may in their discretion (and shall if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704-2(f)(4).

12.5 Allocation of Member Nonrecourse Debt Deductions. Items of Company loss, deduction and expenditures described in Section 705(a)(2)(B) of the Code which are attributable to any nonrecourse debt of the Company and are characterized as Member nonrecourse debt deductions as determined under Section 1.704-2(i)(2) of the Regulations shall be charged to the Members' Capital Accounts in accordance with said Section 1.704-2(i) of the Regulations.

12.6 Allocation of Nonrecourse Deductions. Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Regulations) attributable to nonrecourse liabilities of the Company and thereafter throughout the full term of the Company nonrecourse deductions shall be allocated to the Members pro rata in accordance with their Percentage Interests.

12.7 Intention of Allocation. Any credit or charge to the Capital Accounts of the Members pursuant to **Articles 12.1 through 12.6** shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to **Article 5.1** so that the net amount of any items charged or credited to Capital Accounts pursuant to **Article 5.1** shall to the extent possible be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of **Article 5** if the special allocations required by **Articles 12.1 through 12.6** had not occurred.

12.8 Code Section 704(c) Allocations.

A. In accordance with Section 704(c)(1)(A) of the Code and Section 1.704-1(b)(2)(iv)(d)(3) of the Regulations if a Member contributes property with a fair market value that differs from its adjusted basis at the time of contribution income, gain, loss and deductions with respect to the property shall solely for federal income tax purposes be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company and its fair market value at the time of contribution. Such allocation shall be made in accordance with the remedial allocation method set forth in Section 1.704-3(d) of the Regulations.

B. Pursuant to Section 704(c)(1)(B) of the Code if any contributed property is distributed by the Company other than to the contributing Member within seven years of being contributed then, except as provided in Section 704(c)(2) of the Code the contributing Member shall be treated as recognizing gain or loss from the sale of such property in an amount equal to the gain or loss that would have been allocated to such Member under Section 704(c)(1)(A) of the Code if the property had been sold at its fair market value at the time of the distribution.

C. In the case of any distribution by the Company to a Member such Member shall be treated as recognizing gain in an amount equal to the lesser of:

(i) the excess (if any) of (A) the fair market value of the property (other than money) received in the distribution over (B) the adjusted basis of such Member's interest in the Company immediately before the distribution reduced (but not below zero) by the amount of money received in the distribution or

(ii) the Net Pre-contribution Gain of the Member. The Net Pre-contribution Gain means the net gain (if any) which would have been recognized by the

distributee Member under Section 704(c)(1)(B) of the Code if all property which (A) had been contributed to the Company within seven years of the distribution and (B) is held by the Company immediately before the distribution had been distributed by the Company to another Member.

If any portion of the property contributed consists of property which had been contributed by the distributee Member to the Company then such property shall not be taken into account under this **Article 12.8** and shall not be taken into account in determining the amount of the Net Pre-contribution Gain. If the property distributed consists of an interest in an Entity the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

12.9 Revaluation of Capital Accounts. In connection with a Capital Contribution of money or other property (other than a de minimis amount) by a New Member or existing Member as consideration for the Member's Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a de minimis amount) by the Company to a retiring Member, as consideration for a Membership Interest, the Capital Accounts of the Members shall be adjusted to reflect a revaluation of Company property (including intangible assets) in accordance with Regulation Section 1.704-1(b)(2)(iv)(f). If under Section 1.704-1(b)(2)(iv)(f) of the Regulations Company property that has been revalued is properly reflected in the Capital Accounts and on the books of the Company at a book value that differs from the adjusted tax basis of such property, then depreciation, depletion, amortization and gain or loss with respect to such property shall be shared among the Members in a manner that takes account of the variation between the adjusted tax basis of such property and its book value, in the same manner as variations between the adjusted tax basis and fair market value of property contributed to the Company are taken into account in determining the Members' share of tax items under Section 704(c) of the Code.

12.10 Recapture. All recapture of income tax deductions resulting from sale or other disposition of Company property shall be allocated to the Member or Members to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Member is allocated any gain from the sale or other disposition of such property.

12.11 Other Allocations.

A. For purposes of determining the Net Profits and Net Losses or other items allocable to any period, Net Profits, Net Losses and any other items shall be determined on a daily, monthly or other basis as determined by the Manager using any permissible method under Code Section 706 and the Regulations thereunder.

B. The Members are aware of the income tax consequences of the allocations made hereunder and hereby agree to be bound by the provisions of this Agreement in reporting their shares of Company income and loss for income tax purposes.

C. Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Section 1.752-3(a)(3) of

the Regulations, the Member's Interest in Company profits are in proportion to their Percentage Interest.

D. To the extent permitted by Section 1.704-2(h)(3) of the Regulations, the Manager shall endeavor to treat distributions of Distributable Cash as having been made from the proceeds of a nonrecourse liability or a Member nonrecourse debt only to the extent that such distributions would cause or increase the Deficit Capital Account for any Member.

E. Except as otherwise provided in the preceding provisions of **Article 12**, where Net Profits, Net Losses, tax credits or cash distributions are allocated according to Capital Account balances, all Net Profits, Net Losses, tax credits or cash distributions shared by the Members shall be allocated to the Members in proportion to each Member's Membership Interest.

F. To the extent that interest on loans made by a Member or its Affiliates is determined to be deductible by the Company in excess of the amount of interest actually paid, such additional interest deduction shall be allocated solely to that Member.

G. If any Company expenditure treated as a deduction on its federal income tax return is disallowed as a deduction on its federal income tax return and treated as a distribution pursuant to Section 731(a) of the Code, there shall be a special allocation of gross income to the Member deemed to have received such distribution equal to the amount of such distribution.

H. To the extent the Company is required by U.S. federal, state or local law or any tax treaty to withhold or to make tax payments on behalf of or with respect to any Member, the Manager shall withhold such amounts and make such tax payments as so required. The amount of such payments shall constitute an advance by the Company to such Member and shall be repaid to the Company by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Member or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member and if such proceeds are insufficient, such Member shall pay to the Company the amount of such insufficiency.

ARTICLE 13

GLOSSARY OF DEFINED TERMS

"**AAA**" has the meaning set forth in **Article 14.4A**.

"**Act**" means the Delaware Limited Liability Company Act, as amended from time to time, and any provisions of any successor act.

"**Affiliate**" means a Person directly or indirectly Controlling, Controlled by or under common Control with any other Person.

"**Agreement**" means this Amended and Restated Operating Agreement of PS 16, LLC, a Delaware limited liability company together with the exhibits attached hereto, as amended from

time to time. All exhibits to this Agreement are fully incorporated herein as though set forth at length.

"**Appraised Value**" has the meaning set forth in **Article 5.4B(iv)(b)**.

"**Assign**" means with respect to a Membership Interest, the offer, Sale, assignment, transfer, Gift or other disposition of, whether voluntarily or by operation of law, except that in the case of a bona fide pledge or other hypothecation, no Assignment shall be deemed to have occurred unless and until the secured party has exercised its right of foreclosure with respect thereto.

"**Assignment**" means any of the aforesaid transactions mentioned in the definition of "Assign" involving a Membership Interest or any part thereof.

"**Board of Arbitration**" has the meaning set forth in **Article 14.4A**.

"**Business Day**" means an y day other than Saturday, Sunday or any day on which commercial banks in New York City or in Israel are authorized or required to close.

"**Business Plan**" means that certain Business Plan in respect of the Project prepared by the Manager, attached hereto as **Exhibit C**, as the same may be amended or modified upon written consent of the Investor and the GDA Member.

"**Buy-out Period**" has the meaning set forth in **Article 5.4B(iv)**.

"**Capital Account**" means the capital account of each Member established and maintained in accordance with **Article 4.1**.

"**Capital Contribution**" means any contribution of cash or property or the obligation to contribute cash or property made by or on behalf of a Member.

"**Certificate of Cancellation**" has the meaning set forth in **Article 11.2**.

"**Certificate of Formation**" means the certificate of formation of the Company filed with the Secretary of State of the State of Delaware on December 15, 2015, as amended or amended and restated from time to time.

"**Claim**" or "**Claims**" shall mean any notice, letter and/or request containing a demand for payment and/or compensation and/or remedy, or the taking of any other action including, without limitation, the commencement of legal proceedings, any orders, decrees, injunctions or judgments, any private or governmental or class actions, suits, litigation, investigation, inquiries, or arbitration proceedings.

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

"**CoFund Investor**" means CoFund 2 LLC, a Florida limited liability company.

"**Company**" means PS 16, LLC, a Delaware limited liability company.

"**Contributed Capital**" shall mean a Member's initial Capital Contribution made pursuant to **Article 3.1**, plus any additional Capital Contributions made pursuant to **Article 3.2** other than Special Cost Overrun Contributions.

"**Control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting membership interests, by contract or otherwise; and the terms "**Controls**", "**Controlling**" and "**Controlled**" have the meanings correlative to the foregoing.

"**Cumulative Return**" of a Member shall mean a sum equal to 12% per annum, determined in accordance with the Business Plan, for the actual number of days occurring in the period for which the Cumulative Return is being determined, on the total amount of such Member's Contributed Capital, commencing on the Effective Date through the later of (i) the sale of the Property in its entirety, and (ii) the date on which the balance of such Member's Undistributed Cumulative Return equals zero.

"**Cumulative Overrun Return**" shall mean a sum equal to 12% per annum, determined in a manner determined by the Manager to be equivalent to the calculation of interest by the Lender under the Loan, for the actual number of days occurring in the period for which the Cumulative Return is being determined, on the balance of an Member's Unreturned Special Cost Overrun Contribution, commencing on the contribution of a Special Cost Overrun Contribution through the date of distribution.

"**Deficit Capital Account**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the taxable year, after giving effect to the following adjustments:

A. Credit to such Capital Account any amount which such Member is obligated to restore, under Section 1.704-1(b)(2)(ii)(c) of the Regulations, the unpaid principal balance of any promissory note (of which the Member is the maker) contributed to the Company by the Member, and any changes during such year and accompanying minimum gain (as determined in accordance with Section 1.704-2(d) (1) of the Regulations) and in the minimum gain attributable to any Company nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Regulations; and

B. Debit to such Capital Account the items described in Sections 1.704-1(b)-9(2)(ii)(d)(4), (5) and (6) of the Regulations.

"**Delinquent Party**" has the meaning set forth in **Article 14.21.**

"**Developer**" means the Manager.

"**Dissolution Events**" has the meaning set forth in **Article 11.1**.

"**Distributable Cash**" means all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions to the Company by the Members) less

(i) all current principal and interest payments on indebtedness of the Company reasonably anticipated by the Manager to be payable and all other sums reasonably anticipated to be currently payable to lenders, including with respect to any loan by any Member pursuant to **Article 3.2** or **Article 3.3**, provided, however, that the Manager may prepay any such loaned amounts with the consent of CoFund Investor and Hagshama Investor, (ii) all cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, and (iii) such Reserves as the Manager determines is necessary for the proper operation of the Company's business all of which deductions under (i), (ii) and (iii), to the extent only as provided for, and/or not exceeding such items as are provided by, the Business Plan, unless such deductions are with respect to costs or expenses approved, deemed approved, or for which approval is not required, under **Article 7.10**.

"**Dragul**" means Gary J. Dragul, an individual.

"**Effective Date**" has the meaning set forth in the preamble to this Agreement.

"**Encumbrance**" means any mortgage, charge, pledge, lien, restriction, assignment, hypothecation, security interest, title retention or any other agreement or arrangement the effect of which is the creation of security; or any other interest, equity or other right of any person (including any right to acquire, option, right of first refusal or right of pre-emption); or any agreement or arrangement to create any of the same.

"**Entity**" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust (including any beneficiary thereof), business trust, joint stock company, unincorporated organization, cooperative, association or government or any agency or political subdivision thereof.

"**Fiscal Year**" means the Company's fiscal year, which shall be the calendar year.

"**GDA Member**" means GDA PS Member, LLC, a Colorado limited liability company.

"**GDA Manager**" means GDA PS Management, LLC, a Colorado limited liability company.

"**Gift**" has the meaning set forth in **Article 9.1**.

"**Gifting Member**" means any Member who Gifts any part of its Membership Interest.

"**Hagshama Investor**" means Hagshama Prospect Square, LLC, a Florida limited liability company.

"**Investor's Base Return**" has the meaning set forth in **Article 5.4B(ii)**.

"**Investors**" means CoFund Investor and Hagshama Investor, collectively.

"**Liquidator**" means the Manager or such other Person who may be appointed as a liquidating trustee of the Company in accordance with applicable law who shall be responsible to take all action related to the winding up and distribution of the assets of the Company.

"**Lender**" has the meaning set forth in **Article 2.1**.

"**Loan**" has the meaning set forth in **Article 2.1**.

"**Loan Documents**" has the meaning set forth in **Article 2.1**.

"**Majority in Interest**," whenever any matter is required to be approved by a Majority in Interest of the Members, means such matters shall be considered consented to upon the receipt of affirmative approval or consent of the Members owning greater than 50% of all of the Percentage Interests (or such subset of the Percentage Interests as may be specified herein).

"**Manager**" means GDA Manager, or any other Persons that succeed it in that capacity. References to the Manager in the singular or as him, her, it, itself or other like references shall also, where the context so requires, be deemed to include the plural or the masculine, feminine or neuter reference, as the case may be.

"**Maximum Expenses**" has the meaning set forth in **Article 7.1B**.

"**Member Loan**" has the meaning set forth in **Article 3.2**.

"**Member Tax Rate**" has the meaning set forth in **Article 5.7**.

"**Members**" means initially those Persons listed on **Exhibit A** attached hereto as of the date of the Agreement, and includes those who may be admitted as members of the Company after the date of this Agreement in accordance with the terms of this Agreement, in each such Person's capacity as a member of the Company, so long as such Person is a member of the Company., provided, however, that the term "Member" shall not include the Special Member. For the purposes of the Act, the Members shall constitute a single class or group of members of the Company.

"**Membership Interest**" means the entire interest of a Member in the Company at any particular time, including the right of a Member to any and all benefits to which a Member may be entitled as provided in this Agreement and the Act, together with the obligation of the Member to comply with this Agreement and the Act.

"**Net Losses**" means the losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

"**Net Profits**" means the income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting and adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

"**New Member**" has the meaning set forth in **Article 10.1**.

"**Non Delinquent Party**" has the meaning set forth in **Article 14.22**.

"**Percentage Interest**" of a Member means that percentage of the Company's income and capital and voting rights for each Member as set forth on **Exhibit A** attached hereto and made a part hereof.

"**Permitted Transferees**" has the meaning set forth in **Article 5.4A(ii)**.

"**Person**" means an individual, corporation, partnership, limited liability company, trust, estate, unincorporated organization, association or other legally recognized entity.

"**Project**" has the meaning set forth in **Article 2.1**.

"**Promoter's Target Date**" has the meaning set forth in **Article 5.4B(ii)**.

"**Property**" has the meaning set forth in **Article 2.1**.

"**Regulations**" means the regulations, temporary and final, of the Treasury Department promulgated under the Code.

"**Related Party**" means, in the case of a Member that is not an individual, a shareholder of a Member, if such Member is a corporation, a member of a Member, if such Member is a limited liability company, a partner in a Member, if such Member is a partnership, or if such Member is another type of Entity, the owner or holder of the beneficial interests in such Member.

"**Reserves**" means, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Managers as set forth herein, for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business to the extent only as provided for, and/or not exceeding such items as are provided by, the Business Plan, unless such Reserves are with respect to costs or expenses approved, deemed approved, or for which approval is not required, under **Article 7.10**.

"**Sale**" has the meaning set forth in **Article 9.1**.

"**Securities Acts**" means the Securities Act of 1933, as amended, the Delaware Securities Act, as amended, and any other applicable state securities laws, as each may be amended, or any successor acts, and the regulations promulgated thereunder.

"**Sell**" has the meaning set forth in **Article 9.1**.

"**Selling Member**" means any Member which Sells, assigns, hypothecates, pledges or otherwise transfers all or any portion of its rights of Membership Interests in the Company, including both economic and voting rights.

"**Special Cost Overrun Contributions**" has the meaning set forth in **Article 3.2**.

"**Substituted Member**" has the meaning set forth in **Article 10.1**.

"**Transferring Member**" has the meaning set forth in **Article 9.2**.

"**Undistributed Cumulative Return**" of a Member shall mean, on any date, an amount equal to the excess, if any, of (a) the Cumulative Return of a Member at that time over (b) the sum, as of such date, of all distributions made to such Member pursuant to **Article 5.4A(ii)**, **5.4A(v)**, or **5.4A(v)**, or the applicable provisions of **Article 5.4D**, as applicable.

"**Undistributed Cumulative Overrun Return**" of a Member shall mean, on any date, an amount equal to the excess, if any, of (a) the Cumulative Overrun Return of a Member at that time over (b) the sum, as of such date, of all distributions made to such Member as Undistributed Cumulative Overrun Return distributions pursuant to **5.4A(i)** or the applicable provisions of **Article 5.4D**.

"**Unreturned Contributed Capital Amount**" of a Member shall mean, on any date, an amount equal to the excess, if any, of (a) the Contributed Capital of such Member over (b) the sum, as of such date, of all distributions made to such Member as Unreturned Contributed Capital Amounts pursuant to **Article 5.4A(i)** or the applicable provisions of **Article 5.4D.**

"**Unreturned Special Cost Overrun Contribution**" of a Member shall mean, on any date, an amount equal to the excess, if any, of (a) the Special Cost Overrun Contributions of such Member over (b) the sum, as of such date, of all distributions made to such Member as Unreturned Contributed Capital Amounts pursuant to **Article 5.4A(i)** or the applicable provisions of **Article 5.4D.**

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 Member's Personal Debts. In order to protect the property and assets of the Company from any claim against any Member, or Related Party (if applicable), for personal debts owed by such Member, or Related Party (if applicable), each Member, and Related Party (if applicable), shall promptly pay all debts owing by him, her or it, and such Member shall indemnify the Company from any claim that might be made to the detriment of the Company by any personal creditor of such Member, or Related Party (if applicable).

14.2 Alienation of Membership Interest. No Member shall, except as provided in **Article 9**, Sell or Assign its Membership Interest in the Company or in its capital assets or property.

14.3 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes (i) if delivered personally to the party or to an executive officer of the party to whom the same is directed, (ii) if sent by registered or certified mail, postage and charges prepaid or by a recognized overnight delivery service, addressed to the Member's, Manager's and/or Company's address, as appropriate, which is set forth in this Agreement, or (iii) if sent by facsimile, to the Member's, Manager's and/or Company's facsimile number, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given under clause (i) upon delivery, under clause (ii) three Business Days after mailing, or one Business Day after delivery to the overnight delivery service, or under clause (iii)

on the date of the facsimile receipt confirming delivery by facsimile. Notices to the Company or the Manager shall be addressed to c/o GDA Real Estate Services, LLC, 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, Attention: Gary J. Dragul, Fax: (303) 221-5501. All notices to the GDA Member or to the Manager shall be simultaneously copied to Brownstein Hyatt Farber Schreck, LLP, Attn: Robert Kaufmann, 410 17th Street, Suite 2200, Denver, CO 80202, Fax: (303) 223-0976, as the same may be changed in accordance wherewith.

14.4 Application of State Law. This Agreement and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware and specifically the Act (without regard to principles of conflicts of law). The Parties hereto agree to submit themselves to the jurisdiction of the courts situated within the State of New York with regard to any controversy arising out of or relating to this Agreement.

A. Any dispute under this Agreement or any Exhibit attached hereto shall be submitted to arbitration under the American Arbitration Association (the "**AAA**") in New York City, New York, and shall be finally and conclusively determined by the decision of a board of arbitration consisting of 3 members ("**Board of Arbitration**") selected as according to the rules governing the AAA. The Board of Arbitration shall meet on consecutive business days in New York City, New York, and shall reach and render a decision in writing (concurred in by a majority of the members of the Board of Arbitration) with respect to the claim filed. In connection with rendering its decisions, the Board of Arbitration shall adopt and follow the laws of the State of New York. To the extent practical, decisions of the Board of Arbitration shall be rendered no more than 30 calendar days following commencement of proceedings with respect thereto. The Board of Arbitration shall cause its written decision to be delivered to all parties involved in the dispute. Any decision made by the Board of Arbitration (either prior to or after the expiration of such 30 calendar-day period) shall be final, binding and conclusive on the parties to the dispute, and entitled to be enforced to the fullest extent permitted by law and entered in any court of competent jurisdiction. The prevailing party shall be awarded its costs, including attorneys' fees, from the non-prevailing party as part of the arbitration award. Any party shall have the right to seek injunctive relief from any court of competent jurisdiction in any case where such relief is available. The prevailing party in such injunctive action shall be awarded its costs, including reasonable attorneys' fees, from the non-prevailing party.

14.5 Waiver of Action of Partition. Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the property of the Company.

14.6 Amendment. Except as otherwise provided in this Agreement, this Agreement may not be amended except by the unanimous consent of the CoFund Investor, Hagshama Investor, the GDA Member, and the Manager. Notwithstanding the foregoing, the Manager may unilaterally amend or amend and restate this Agreement without obtaining the consent of the Members with regard to the addition of special purpose entity provisions requested by any lender or with regard to any other lender issues that do not have an adverse economic impact on the Members.

14.7 Confidentiality. Each of the parties hereto agrees that it shall keep confidential and not disclose to any third Person or use for its own benefit, without the consent of the other

parties hereto, any information with respect to any of the Company, the Project and/or its activities of which it becomes aware as a result of its participation in the Project or the Company, provided that a party may disclose any such information (a) as has become generally available to the public, (b) as may be required in response to any summons or subpoena or in connection with any litigation, (c) to the extent necessary in order to comply with any law, order, regulation or ruling applicable to such party, (d) to the extent necessary to comply with any reporting obligations to its partners/members/list of investors and (e) for operation and execution of the Business Plan.

14.8 Execution of Additional Instruments. Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

14.9 Construction of Terms. Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular or plural, and the identity of the person or persons, firm, corporation or other Entity as the context may require. Any reference in the Code or statutes or laws will include all amendments, modifications or replacements of the specific sections or provisions concerned.

14.10 Headings. The headings in this 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 Agreement or any provision hereof.

14.11 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 Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

14.12 Rights and Remedies Cumulative. The rights and remedies provided by this 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. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

14.13 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Furthermore, a new provision shall automatically be deemed added to this Agreement in lieu of such illegal, invalid or unenforceable provision, which new provision is as similar in terms to such illegal, invalid or unenforceable provision as is possible with the new provision still being legal, valid and enforceable.

14.14 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 Agreement, their respective heirs, legal representatives, successors and assigns.

14.15 Not for Creditors' Benefit. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company. Furthermore, this Agreement is

made solely and specifically for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person will have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

14.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the parties hereto. Signature pages may be detached and reattached to physically form one document.

14.17 Reliance on Authority of Person Signing Agreement. In the event that a Member is not a natural person, neither the Company, nor any Member will (i) be required to determine the authority of the individual signing this Agreement to make any commitment or undertaking on behalf of such Entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual, or (ii) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such Entity.

14.18 Lack of Registration. The Members recognize that (i) no Membership Interest has been registered under any of the Securities Acts, in reliance upon an exemption from such registration, (ii) no Member may Sell, offer for Sale, transfer, pledge or hypothecate its Membership Interest in the Company or any portion thereof in the absence of an effective registration statement covering such interest under the Securities Acts, unless such Sale, offer of Sale, transfer, pledge or hypothecation is exempt from registration under the Securities Acts as approved by the Company, (iii) the Company has no obligation to register the Membership Interests for Sale or to assist in establishing an exemption from registration for any proposed Sale, and (iv) the restrictions on transfer severely affect the liquidation of the investment. The terms of this **Article 14.18** shall survive the termination of this Agreement or transfer of a Member's interest herein.

14.19 Investment Interest. Each Member is acquiring its Membership Interest for its own account for investment purposes and not with a view to, or for Sale in connection with, any distribution of any Membership Interest thereof and with no present intention of selling or assigning any Membership Interest. Each Member further acknowledges that there is no public market for the Membership Interests, and that there may never be a public market for such Membership Interests, and that even if a market develops for such Membership Interest, a Member may never be able to Sell or dispose of such Membership Interests and may thus have to bear the risk of investment in such securities for a substantial period of time. Each Member further acknowledges that it has such knowledge and experience in financial and business matters that it is capable of evaluating the risks of its investment in the Company and is able to bear the economic risk of such investment. Without derogating from GDA Manager's representations and undertakings set forth herein, and without derogating from Dragul's Guarantee, each Member believes it has made an informed judgment with respect to its investment in the Company. Nothing contained herein shall derogate in any manner from the rights of CoFund Investor and Hagshama Investor to require GDA Manager and/or the Company to buy-out their Membership Interests or sell the Property, as provided herein. The terms of this

Article 14.19 shall survive the termination of this Agreement or transfer of a Member's interest herein.

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14.20 Creditors' Rights. If a court of competent jurisdiction charges the Membership Interest of any Member with payment of the unsatisfied amount of any judgment or claim, and the Company shall not be dissolved, unless otherwise dissolved pursuant to the provisions of this Agreement or the Act. Such judgment creditor shall not have the right to be admitted as a Member nor to exercise any rights of a Member under this Agreement or the Act, and shall have only the right to distributions to which the debtor Member would be entitled as a holder of the Membership Interest.

14.21 Default. The failure of a Member or Manager hereto to comply with any of the monetary provisions of this Agreement when due or the failure of any party hereto to comply with any of the non-monetary provisions of this Agreement and the continuance of such non-monetary failure for a period of 30 days after written notice thereof is given to such party by the other party specifying the nature thereof shall constitute a default hereunder and shall be considered a "**Delinquent Party**."

14.22 Remedies for Default. In the event that a party hereto becomes a Delinquent Party, in addition to and not in limitation of the remedies otherwise provided herein, the other party (the "**Non Delinquent Party**") may bring an action against the defaulting party for damages, specific performance, injunctive relief and/or any other remedy available at law or in equity. Each party by executing this Agreement hereby consents to any such action being brought in any court of competent jurisdiction, at the option of the Non-Delinquent Party.

14.22 Percentage Interests Owned by One or More Persons. If any Percentage Interests are owned jointly by one or more Persons as a tenancy in common or joint tenancy, in any matters requiring consent or approval under this Agreement, the consent or approval of one of the Persons owning the Percentage Interests shall be deemed to be the consent of all Persons owning the Percentage Interests.

ARTICLE 15

REPRESENTATIONS AND WARRANTIES

15.1 Representations. Each Member hereby represents and warrants that as of the date hereof each of the following is a true, accurate, and full disclosure of all pertinent facts, and further represents and warrants as follows:

A. Such Member, if other than an individual, is a duly organized entity under the laws of its state of organization and has the requisite power and authority to enter into and carry out the terms of this Agreement, and all required action has been taken to authorize such Member to execute and consummate this Agreement.

B. Such Member has been duly authorized to enter into this Agreement, and such Member is not a "foreign person" as defined under Code Section 1445(f)(3).

EXHIBIT 4
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C. The address shown in **Exhibit A** constitutes such Member's legal and permanent residence.

D. Such Member understands that the Membership Interests may not be Assigned or otherwise transferred except upon delivery to the Company of an opinion of counsel satisfactory to the Managers that registration under the Securities Acts is not required for such transfer, or the submission to the Managers of such other evidence as may be satisfactory to the Managers, to the effect that any such transfer will not be in violation of the Securities Acts or any rule or regulation promulgated thereunder; and that legends to the foregoing effect will be placed on all documents evidencing the Membership Interests. The Member understands that the foregoing does not limit other restrictions regarding the transfer of its Membership Interests set forth in this Agreement or in the Act.

E. Without derogating from the Manager's representations and undertakings contained herein, such Member has been given the opportunity to ask questions of, and receive answers from, the Company with respect to the business to be conducted by the Company. Such Member has been furnished with a copy of the Certificate of Formation, this Agreement, to which it is a party, and any other documents that such Member has deemed necessary and requested in connection with the business to be conducted by the Company.

F. Such Member does not (as defined below) maintain, contribute to, has any obligation to contribute to, or has any direct or indirect liability with respect to any "employee benefit plan," "multiemployer plan," or any other "plan" (each as defined in ERISA). Member is not an "employee benefit plan," as defined in Section 3(3) of ERISA, subject to Title I of ERISA, a "plan," as defined in Section 4975(e)(1) of the Code, subject to Code Section 4975, or a "governmental plan" within the meaning of Section 3(32) of ERISA. None of the assets of Member constitutes "plan assets" of one or more of any such plans under 29 C.F.R. Section 2510.3-101, as modified by Section 3(42) of the Code. If an investor or direct or indirect equity owner in the Company is a plan that is not subject to Title I of ERISA or Section 4975 of the Code, but is subject to the provisions of any federal, state, local, non-U.S. or other laws or regulations that are similar to those portions of ERISA or the Code, the assets of the Company do not constitute the assets of such plan under such other laws.

15.2 Representations, Warranties and Covenants of GDA Manager. The GDA Manager represents, warrants and covenants to CoFund Investor and Hagshama Investor that as of the date of this Agreement, and as of any other date thereafter as may be applicable or specified below, the following shall be true and correct:

A. The Property in its entirety has been purchased by the Company, prior to or on the Effective Date, free and clear of any and all Encumbrances whatsoever (except as disclosed in a Schedule of Encumbrances provided to CoFund Investor and Hagshama Investor prior to the Effective Date) for a total purchase price not exceeding that amount as contemplated by the Business Plan. As of the Effective Date, the Company is the owner of the legal and beneficial owner of the Property.

B. The GDA Manager, in good faith, and to the extent customary in the market in respect of properties similar to the Property, has conducted and completed a due

diligence investigation in connection with the Property and matters related to it and the implementation of the Project and has, to the best of its knowledge, found the Property suitable and appropriate for purchase by the Company for the purpose of the execution and implementation of the Business Plan. The GDA Manager has not made any material and knowing misrepresentation in or with respect to any documents and or information provided to the CoFund Investor and Hagshama Investor in connection with the Project prior to the date hereof, including but not limited to financial data, financial statements, information about the GDA Manager, agreements and other documents related to the Project, and specifically excluding any misrepresentations that were based upon inaccurate information provided to the GDA Manager, on which the GDA Manager reasonably relied.

C. Without limiting the generality of the foregoing, all assumptions, forecasts and projections supplied by or on behalf of the Manager as part of and for the purposes of the Business Plan to the CoFund Investor and Hagshama Investor have been prepared in good faith and with reasonable care by the Manager and believed by the GDA Manager to be not misleading.

D. Any and all permits, licenses and/or approvals from government, statutory and/or municipal authorities that may be necessary or required for the purposes of the carrying out of the Project and implementation of the Business Plan according to all applicable relevant laws have been obtained prior to the Effective Date. The GDA Manager shall arrange for the Property and Company to have full and comprehensive insurance with reputable and well regarded insurance companies in accordance with good industry practice.

E. As of the Effective Date, to the best knowledge of the GDA Manager, there is no Claim pending or threatened in connection with the Property, nor is there is any basis for the foregoing.

F. As of the Effective Date, the GDA Manager has obtained the Loan for the Company for its use towards the purchase of the Property, and the Company shall have entered into the Loan Documents, in the form and terms as contemplated by the Business Plan.

G. If and when relevant under the Business Plan, the GDA Manager shall use all commercially reasonable efforts in order to obtain any refinancing of the Loan for Company at the relevant time(s).

H. The GDA Manager will use commercially reasonable efforts to manage and/or assume responsibility for the day to day management of the Property and Project for the Company in accordance with the Business Plan and for the carrying out and implementation of all the activities required and/or contemplated by the Business Plan for the implementation of the Project. Neither the GDA Manager (nor any Person engaged on its behalf) shall be entitled to any management or other like fees and/or reimbursement of costs and expenses from the Company, except as specified herein and the Business Plan.

I. GDA Manager shall use its commercial reasonable efforts to achieve the goals of the Project, as contemplated by the Business Plan.

J. Each of GDA Manager and Company is duly incorporated or organized and validly existing under the laws of the State of Colorado and Delaware, respectively, and has the capacity and authority to execute and deliver this Agreement, to perform it respective obligations hereunder and to consummate the transactions contemplated hereby without the necessity of any further act or consent of, or to notify, any other person, governmental authority or third party whomsoever. This Agreement and each and every other agreement, document and instrument to be executed, delivered and performed by or on behalf of GDA Manager and Company respectively pursuant hereto has been or will be, when executed and delivered, duly executed and delivered by a duly authorized representative of GDA Manager and Company respectively, constitutes or will, when executed and delivered, constitute the legal, valid and binding obligations enforceable against GDA Manager and Company respectively in accordance with its terms.

K. Each of GDA Manager and Company has taken all corporate and other actions necessary to enable it to enter into and perform this Agreement. The execution and delivery of this Agreement by each of the Manager and Company does not, and the performance by the GDA Manager and Company of its respective obligations under this Agreement, will not, with or without the giving of notice or the lapse of time or both, (i) conflict with or violate the organizational documents of GDA Manager and Company respectively, or (ii) violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to GDA Manager and Company respectively, or any Affiliate or subsidiary of Company respectively or by which any of their respective properties or assets is bound or affected, or (iii) violate any license or contract or agreement or undertaking of the GDA Manager and Company and/or any Affiliate thereof with any third party.

L. Upon its formation pursuant to the Certificate of Formation, the Company was a newly formed entity, and as of the Effective Date, the Company does not have any debts, liabilities or obligations of any kind whatsoever, except as otherwise expressly disclosed in the Business Plan.

M. As of the Effective Date, the CoFund Investor's Membership Interest in the Company is free and clear from any Encumbrances and represents 41.52% of the total Membership Interests in the Company on a fully diluted basis, except as otherwise set forth in this Agreement.

N. As of the Effective Date, the Hagshama Investor's Membership Interest in the Company is free and clear from any Encumbrances and represents 48.48% of the total Membership Interests in the Company on a fully diluted basis, except as otherwise set forth in this Agreement.

O. As of the Effective Date, GDA Member's Membership Interest in Company represents 15% of the total Membership Interests in Company and on a fully diluted basis, except as otherwise set forth in this Agreement.

P. On the Effective Date, GDA Manager shall cause Dragul to deliver to each of CoFund Investor and Hagshama Investor that certain Guarantee and Undertaking, attached hereto as **Exhibits D1 and D2.**

15.3 Representations, Warranties and Covenants of CoFund Investor and Hagshama Investor. In addition to those other representations and warranties set forth herein, CoFund Investor and Hagshama Investor each hereby declares, represents, undertakes and obligates itself hereunder as of the Effective Date and/or as of any other date thereafter as may be applicable or specified below, as follows:

A. The CoFund Investor and Hagshama Investor acknowledge and agree that, while the GDA Manager will use commercially reasonable efforts to achieve the goals of the Business Plan, the returns budgeted under the Business Plan are not guaranteed.

B. The CoFund Investor and Hagshama Investor is each duly organized and validly existing under the laws of the State of Florida. Each of CoFund Investor and Hagshama Investor has the capacity and authority to execute and deliver this Agreement, and to perform hereunder and to consummate the transactions contemplated hereby without the necessity of any further act or consent of, or to notify, any other person, governmental authority or third party whomsoever. This Agreement and each and every other agreement, document and instrument to be executed, delivered and performed by or on behalf of the CoFund Investor and Hagshama Investor pursuant hereto has been duly executed and delivered by a duly authorized representative of the CoFund Investor and Hagshama Investor, and constitutes or will, when executed and delivered, constitute the legal, valid and binding obligations enforceable against each of CoFund Investor and Hagshama Investor in accordance with its terms.

C. Each of CoFund Investor and Hagshama Investor has taken all corporate and other actions necessary to enable it to enter into and perform this Agreement. The execution and delivery of this Agreement by the CoFund Investor or Hagshama Investor does not, and the performance by the CoFund Investor or Hagshama Investor of its obligations under this Agreement, will not, with or without the giving of notice or the lapse of time or both, (i) conflict with or violate the organizational documents of the CoFund Investor or Hagshama Investor, or (ii) violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to the CoFund Investor or Hagshama Investor, or (iii) violate any license or contract or agreement or undertaking of the CoFund Investor or Hagshama Investor with any third party.

15.4 The terms of this **Article 15** shall survive the termination of this Agreement or transfer of a Member's interest herein.

ARTICLE 16

INDEMNITY

16.1 GDA Manager Indemnities. Without limiting any rights that any party hereto may have under applicable law, the GDA Manager shall indemnify and hold harmless the CoFund Investor and Hagshama Investor, and their respective successors and assigns and their respective directors, officers, employees, agents and representatives from and against any and all actions, claims, actual losses, actual damages, costs (including reasonable fees and disbursements of lawyers), liabilities and other obligations arising or resulting from or caused by,

directly or indirectly, any or all of the following ("**Manager Indemnities**"): (a) any misrepresentation, breach, failure or non-performance of any of the GDA Manager's representations hereunder, (b) any failure or refusal by Manager to satisfy or perform any covenant, term or condition of this Agreement, which is required to be performed by the Manager, and/or (c) any Claim from any third parties (including, without limitation, municipal and governmental bodies) arising out of, caused by or based upon, directly or indirectly, any act or omission of the Manager in breach of this Agreement, as to any event or matter that occurred at any time after the Effective Date. For the avoidance of any doubt, it is hereby acknowledged and agreed that these Manager Indemnities shall not cover consequential losses.

16.2 The representations and Indemnities hereunder are separate and independent from and independent of any other representation and indemnity and shall not be limited by reference to or inference from the terms of any other representation and indemnity.

16.3 The GDA Manager acknowledges that the CoFund Investor and Hagshama Investor are each entering into this Agreement (and each of the transactions to take place under it) upon the basis of, and in reliance on, the Indemnities and the declarations, representations and undertakings given by GDA Manager hereunder. The Indemnities and the representations given by GDA Manager hereunder shall remain in full force and effect through and shall survive after the Effective Date.

16.4 For the avoidance of any doubt, neither CoFund Investor nor Hagshama Investor shall be under any obligation to indemnify any other party hereto, including any shareholder, officer or director of such other party, for any guarantee or surety such party or other Person may have given or shall give to any lender in respect of moneys lent by such lender to the Company. Nor, for the avoidance of any doubt, will CoFund Investor or Hagshama Investor be expected or required to provide any guarantee or surety to any lender of moneys to the Company.

ARTICLE 17

COMPLIANCE WITH ANTI-TERRORISM ORDERS

17.1 Compliance. Each Member represents and warrants that it and all of said Member's beneficial owners are in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Asset Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**").

17.2 Representation of Members. Each Member represents and warrants to the Company that neither said Member nor the beneficial owner(s) of said Member:

A. is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**");

B. is a Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders;

C. is owned or controlled by, nor acts for or on behalf of, any Person on the Lists or any other Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders;

D. shall transfer or permit the transfer of any interest in the Company or any Member to any Person who is or whose beneficial owners are listed on the Lists;

E. has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below). For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense, or

F. is currently under investigation by any Governmental Authority for alleged criminal activity.

17.3 Notification. If a Member obtains knowledge that any of its partners, members or stockholders or its beneficial owners become listed on the Lists or are indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, the Member shall immediately notify the Manager.

17.4 Entire Agreement. This Agreement (including any and all Exhibits and Schedules hereto) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes in their entirety any previous written or oral agreements between the Members with respect thereto.

17.5 Disbursements. If the Company or any Member is listed on the Lists, no earn-out disbursements, escrow disbursements, or other disbursements under the documents evidencing this Agreement shall be made and all of such funds shall be paid in accordance with the direction of the Manager or a court of competent jurisdiction.

17.6 Representations and Warranties. In the event that a representation or warranty of a Member set forth in **Article 17** becomes untrue at any time during the term of this Company, then the Manager shall have the right to purchase the Membership Interest of the Member so violating said provision. Upon such event, the purchase price of such Membership Interest shall be 50% of the fair market value of such Membership Interest, and the time frame within which the Manager may cause said purchase and the other terms of the closing of such purchase shall be determined by the Manager in its sole and absolute discretion. Each Member hereby irrevocably nominates, constitutes and appoints the Manager its true and lawful attorney-in-fact for the purposes of (i) executing in the selling Member's name, place, and stead all of the

instruments required to be executed by this **Article 17.6** and (ii) giving notices to creditors and others dealing with the Company of the termination of the selling Member's interest in the Company and publishing notice of the termination of selling Member's interest in the Company. The foregoing power of attorney, being coupled with an interest, is irrevocable.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been entered into to be effective as of the date first set forth above.

MANAGER:

GDA PS MANAGEMENT, LLC,
a Colorado limited liability company

By: GDA REAL ESTATE MANAGEMENT, INC., a Colorado corporation, its Manager

By:_____
Name: Gary J. Dragul
Title: President

MEMBERS:

GDA PS MEMBER, LLC,
a Colorado limited liability company

By: GDA PS Management, LLC,
a Colorado limited liability company,
its Manager

By: GDA Real Estate Management, Inc.,
a Colorado corporation,
its Manager

By: _____
Gary J. Dragul, President

COFUND 2, LLC, a Florida limited liability company

By:_____
Name: Hanania Shemesh
Title: Manager

HAGSHAMA PROSPECT SQUARE, LLC, a Florida limited liability company

By:_____
Name: Hanania Shemesh
Title: Manager

MEMBERS:

GDA PS MEMBER, LLC,
a Colorado limited liability company

By: GDA PS Management, LLC,
a Colorado limited liability company,
its Manager

By: GDA Real Estate Management, Inc.,
a Colorado corporation,
its Manager

By: _____
Gary J. Dragul, President

COFUND 2, LLC, a Florida limited liability company

By: C.F.M OPERATIONS LTD
R.N. 515282317
Name: ~~Hamania Shemesh~~ Shlomo Aharony
Title: Manager

HAGSHAMA PROSPECT SQUARE, LLC, a Florida limited liability company

By: _____
Name: Hamania Shemesh
Title: Manager

EXHIBIT A

Names; Addresses; Capital Contributions; Value of Capital Contribution; Percentage Interests

NAME	ADDRESS	VALUE OF CAPITAL CONTRIBUTION	PERCENTAGE OF INTEREST
CoFund 2, LLC	c/o 11 Granit St. Petach Tikva, Israel, Fax: +972-3-5389900	$2,000,000	41.52%
Hagshama Prospect Square, LLC	11 Granit St. Petach Tikva, Israel, Fax: +972-3-5389900	$2,335,079	48.48%
GDA PS Member, LLC	c/o GDA Real Estate Services, LLC, 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, Attention: Gary J. Dragul Fax: (303) 221-5501	$481,675	10%
TOTALS		$4,816,754	100%

EXHIBIT B

Property Legal Description

FEE PARCEL I:

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Township of Colerain, County of Hamilton and State of Ohio and being more particularly described as follows:

Commencing at a point in the centerline of Springdale Road, said point being the intersection of the centerline of Springdale Road and the North line of Section 9;

Thence with the centerline of Springdale Road, South 45 deg. 52' West, 197.82 feet;

Thence departing the said centerline of Springdale Road, South 43 deg. 53' East, 40.00 feet to the South line of Springdale Road and the point of beginning of the tract herein described;

Thence departing the South line of Springdale Road, South 43 deg. 53' East, 550.00 feet;

Thence, South 44 deg. 04' 35" East, 101.20 feet;

Thence South 30 deg. 21' 27" East, 252.00 feet;

Thence, South 59 deg. 38' 33" West, 257.49 feet;

Thence South 2 deg. 35' West, 182.01 feet;

Thence North 87 deg. 32' 48" West, 33.00 feet;

Thence, North 2 deg. 35' East, 130.70 feet;

Thence, North 87 deg. 19' West, 471.92 feet to the East line of Colerain Avenue;

Thence with the said East line of Colerain Avenue, North 17 deg. 14' 57" West, 385.45 feet;

Thence, departing the said East line of Colerain Avenue, North 75 deg. 10' East, 150.87 feet;

Thence North 38 deg. 31' East, 170.20 feet;

Thence North 45 deg. 52' East, 200.00 feet;

Thence, North 43 deg. 53' West, 210.00 feet to the said South line of Springdale Road;

Thence with the said South line of Springdale Road, North 45 deg. 52' East, 20.00 feet to the place of beginning.

FEE PARCEL II:

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Township of Colerain, County of Hamilton and State Ohio and being more particularly described as follows:

Commencing at the intersection of the centerline of Colerain Avenue and the centerline of Springdale Road;

Thence with the centerline of Colerain Avenue, South 17 deg. 11' East, 703.32 feet;

Thence departing the said centerline of Colerain Avenue, South 87 deg. 19' East 76.23 feet to a point, the real place of beginning of the tract herein described; said point being in the East right of way line of Colerain Avenue;

Thence South 87 deg. 19' East 400.97 feet;

Thence North 2 deg. 35' East 130.70 feet;

Thence North 87 deg. 19 West, 200.00 feet;

Thence South 2 deg. 35' West 106.70 feet;

Thence North 87 deg. 19 West, 75.91 feet;

Thence North 80 deg. 03' West, 125.35 feet to a point in the said East line of Colerain Road;

Thence with the East line of Colerain Road, South 03 deg. 40' 21" West, 39.86 feet to the place of beginning.

EASEMENT PARCEL III:

Non-Exclusive Easement Designated as Easement II in the Deed filed in Deed Volume 4229, Page 1007 over the following described property:

Situated in Section 9, Town 2, Entire Range 1, Miami Purchase, Township of Colerain, County of Hamilton and State of Ohio and being more particularly described as follows:

Commencing at a point in the centerline of Springdale Road, said Point being the intersection of the centerline of Springdale Road and the North line of Section 9;

Thence with the centerline of Springdale Road, South 45 deg. 52' West, 177.82 feet;

Thence departing the said centerline of Springdale Road, South 43 deg. 53' East, 40.00 feet to the South line of Springdale Road and the real place of beginning;

Thence South 43 deg. 53' East, 210.00 feet;

Thence North 45 deg. 52' East, 92.82 feet;

Thence South 43 deg. 53' East, 180.26 feet;

Thence South 2 deg. 35' West, 17.23 feet;

Thence South 87 deg. 45' East, 69.89 feet;

Thence South 2 deg. 15' West, 65.00 feet;

Thence North 87 deg. 45' West, 50.68 feet;

Thence South 30 deg. 21' 27" East, 200.92 feet;

Thence South 59 deg. 38' 33" West, 20.00 feet;

Thence North 44 deg. 04' 35" West, 101.20 feet;

Thence North 43 deg. 53' West, 550.00 feet to the said South line of Springdale Road;

Thence with the said South line of Springdale Road, North 45 deg. 52' East, 20.00 feet to the place of beginning.

EASEMENT PARCEL IV:

Non-Exclusive Easements for Ingress and Egress as created in Instrument filed June 22, 1981 and recorded in Deed Book 4215, Page 1797, Recorder's Office, Hamilton County, Ohio.

EASEMENT PARCEL V:

Non-Exclusive Easements for Ingress, Egress and Sign as created in Grant and Deed of Easement for Ingress and Egress filed August 10, 1983 and recorded in Deed Book 4264, Page 435, Recorder's Office, Hamilton County, Ohio.

EXHIBIT "C"

DE Certificate of Good Standing

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "PS 16, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE EIGHTH DAY OF JANUARY, A.D. 2016.

Jeffrey W. Bullock, Secretary of State

5908726 8300

SR# 20160123411

Authentication: 201645714

Date: 01-08-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

EXHIBIT "D"

OH Certificate of Foreign Authority

DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	PENALTY	CERT	COPY
01/15/2016	201601501756	REGISTRATION OF FOREIGN FOR PROFIT LLC (LFP)	99.00	100.00	0.00	5.00	5.00

Receipt

This is not a bill. Please do not remit payment.

CORPORATION SERVICE COMPANY
DEANNE SCHAUSEIL
50 W. BROAD STREET
COLUMBUS, OH 43215

STATE OF OHIO
CERTIFICATE

Ohio Secretary of State, Jon Husted
3850451

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

PS 16, LLC

and, that said business records show the filing and recording of:

Document(s)	Document No(s):
REGISTRATION OF FOREIGN FOR PROFIT LLC	**201601501756**
Effective Date: 01/14/2016	

United States of America
State of Ohio
Office of the Secretary of State

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 15th day of January, A.D. 2016.

Jon Husted

Ohio Secretary of State

Form 533B Prescribed by:

JON HUSTED
OHIO SECRETARY OF STATE

Toll Free: (877) SOS-FILE (877-767-3453)
Central Ohio: (614) 466-3910
www.OhioSecretaryofState.gov
busserv@OhioSecretaryofState.gov
File online or for more information: www.OHBusinessCentral.com

Mail this form to one of the following:

Regular Filing (non expedite)
P.O. Box 670
Columbus, OH 43216

Expedite Filing (Two business day processing time. Requires an additional $100.00)
P.O. Box 1390
Columbus, OH 43216

Registration of a Foreign Limited Liability Company

Filing Fee: $99

Form Must Be Typed

CHECK ONLY ONE (1) BOX

(1) ☒ Registration of a Foreign For-Profit Limited Liability Company
(106-LFA)
ORC 1705

Jurisdiction of Formation: Delaware

Date of Formation: 12/15/2015

(2) ☐ Registration of a Foreign Nonprofit Limited Liability Company
(106-LFA)
ORC 1705

Jurisdiction of Formation:

Date of Formation:

Name of Limited Liability Company in its jurisdiction of formation

PS 16, LLC

Name under which the foreign limited liability company desires to transact business in Ohio (if different from its name in its jurisdiction of formation) is:

Name must include one of the following words or abbreviations: "limited liability company," "limited," "LLC," "L.L.C.," "ltd.," or "ltd"

2016 JAN 11 PM 3:39

The address to which interested persons may direct requests for copies of the limited liability company's operating agreement, bylaws, or other charter documents of the company is:

ACF Property Management, Inc.
Name

12411 Ventura Boulevard
Mailing Address

Studio City | CA | 91604
City | State | ZIP Code

The limited liability company hereby appoints the following as its agent upon whom process against the limited liability company may be served in the state of Ohio. The name and complete address of the agent is

CSC-Lawyers Incorporating Service (Corporation Service Company)

Name

50 West Broad Street, Suite 1800

Mailing Address

Columbus	Ohio	43215
City	State	ZIP Code

The limited liability company irrevocably consents to service of process on the agent listed above as long as the authority of the agent continues, and to service of process upon the Ohio Secretary of State if:

a. an agent is not appointed, or
b. an agent is appointed but the authority of that agent has been revoked, or
c. the agent cannot be found or served after the exercise of reasonable diligence.

By signing and submitting this form to the Ohio Secretary of State, the undersigned hereby certifies that he or she has the requisite authority to execute this document.

Required
Must be signed by an authorized representative.

If authorized representative is an individual, then they must sign in the "signature" box and print their name in the "Print Name" box.

If authorized representative is a business entity, not an individual, then please print the business name in the "signature" box, an authorized representative of the business entity must sign in the "By" box and print their name in the "Print Name" box.

Signature

By (if applicable)

Print Name

ACF Property Management, Inc., its Manager

Signature

By (if applicable)

Yana Viteri, Vice President

Print Name

Signature

By (if applicable)

Print Name

UNITED STATES OF AMERICA
STATE OF OHIO
OFFICE OF THE SECRETARY OF STATE

I, Jon Husted, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign business entities; that said records show PS 16, LLC, an Ohio For Profit Limited Liability Company, Registration No. 3850451, was organized within the State of Ohio on January 14, 2016, is currently in FULL FORCE AND EFFECT upon the records of this office.

Witness my hand and the seal of the Secretary of State at Columbus, Ohio this 15th day of January, A.D. 2016.

Jon Husted

Ohio Secretary of State

Validation Number: 201601501756

CERTIFICATE OF GDA PS MANAGEMENT, LLC

January 21, 2016

DATE FILED: December 20, 2018 4:15 PM
FILING ID: 28595D2692AE0
CASE NUMBER: 2018CV33011

The undersigned, being the President of GDA Real Estate Management, Inc., a Colorado corporation, as the manager of GDA PS Management, LLC, a Colorado limited liability company ("**Company**"), does hereby certify on behalf of the Company that:

1. A true, complete and correct copy of the Articles of Organization of the Company, is attached hereto as **Exhibit "A"**. Other than as set forth on "Exhibit A," said Articles of Organization have not been amended or modified and, on the date hereof, are in full force and effect and no proceedings for the amendment, modification or rescission of the Articles of Organization are pending or contemplated.

2. A true, complete and correct copy of the Operating Agreement of the Company is attached hereto as **Exhibit "B"**, which has not been amended or modified in any respect and remains in full force and effect as of the date hereof.

3. Attached hereto as **Exhibit "C"** is a true, correct and complete copy of the Certificate of Good Standing of the Company issued by the Secretary of State of Colorado, and no event has occurred as of the date hereof since the date of such certificate of good standing affecting the good standing of the Company under the laws of Colorado.

[Signature page immediately follows]

IN WITNESS WHEREOF, the undersigned has hereunto executed this Certificate as of the date first set forth above.

GDA PS MANAGEMENT, LLC,
a Colorado limited liability company

By: GDA Real Estate Management, Inc.,
a Colorado corporation,
its Manager

By: _____
Gary J. Dragul, President

EXHIBIT "A"

Articles of Organization

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF DOCUMENTS FILED

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office, the attached documents are true and complete copies of all documents relating to:

GDA PS Management, LLC

Colorado Limited Liability Company

(Entity ID # 20151806915)

consisting of 3 pages as filed in this office.

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/13/2016 that have been posted, and by documents delivered to this office electronically through 01/15/2016 @ 11:05:48 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/15/2016 @ 11:05:48 in accordance with applicable law. This certificate is assigned Confirmation Number 9456762 .

Secretary of State of the State of Colorado

**********End of Certificate**********

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

Document must be filed electronically.
Paper documents are not accepted.
Fees & forms are subject to change.
For more information or to print copies
of filed documents, visit www.sos.state.co.us.

E-Filed

Colorado Secretary of State
Date and Time: 12/21/2015 04:04 PM
ID Number: 20151806915

Document number: 20151806915
Amount Paid: $50.00

ABOVE SPACE FOR OFFICE USE ONLY

Articles of Organization

filed pursuant to § 7-80-203 and § 7-80-204 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name of the limited liability company is

GDA PS Management, LLC.

(The name of a limited liability company must contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "limited", "l.l.c.", "llc", or "ltd.". See §7-90-601, C.R.S.)

(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)

2. The principal office address of the limited liability company's initial principal office is

Street address

5690 DTC Boulevard
(Street number and name)
Suite 515
Greenwood Village — CO — 80111
(City) *(State)* *(ZIP/Postal Code)*
(Province – if applicable) — United States *(Country)*

Mailing address
(leave blank if same as street address)

(Street number and name or Post Office Box information)
(City) *(State)* *(ZIP/Postal Code)*
(Province – if applicable) *(Country)*

3. The registered agent name and registered agent address of the limited liability company's initial registered agent are

Name
(if an individual)

(Last) *(First)* *(Middle)* *(Suffix)*

or

(if an entity) GDA Real Estate Management, Inc.

(Caution: Do not provide both an individual and an entity name.)

Street address

5690 DTC Boulevard
(Street number and name)
Suite 515
Greenwood Village — CO — 80111
(City) *(State)* *(ZIP Code)*

Mailing address
(leave blank if same as street address)

(Street number and name or Post Office Box information)

_____ CO _____.
(City) (State) (ZIP Code)

(The following statement is adopted by marking the box.)

☑ The person appointed as registered agent has consented to being so appointed.

4. The true name and mailing address of the person forming the limited liability company are

Name
(if an individual) _____ _____ _____ _____
(Last) (First) (Middle) (Suffix)

or

(if an entity) GDA Real Estate Management, Inc.

(Caution: Do not provide both an individual and an entity name.)

Mailing address 5690 DTC Boulevard
(Street number and name or Post Office Box information)
Suite 515
Greenwood Village CO 80111
(City) (State) (ZIP/Postal Code)
_____ United States .
(Province – if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ The limited liability company has one or more additional persons forming the limited liability company and the name and mailing address of each such person are stated in an attachment.

5. The management of the limited liability company is vested in
(Mark the applicable box.)

☑ one or more managers.

or

☐ the members.

6. *(The following statement is adopted by marking the box.)*

☑ There is at least one member of the limited liability company.

7. *(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

☐ This document contains additional information as provided by law.

8. *(Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)*

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are _____.
(mm/dd/yyyy hour:minute am/pm)

Notice:
Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

9. The true name and mailing address of the individual causing the document to be delivered for filing are

Sander (Last) Julie (First) Rachel (Middle) (Suffix)

Brownstein Hyatt Farber Schreck LLP
(Street number and name or Post Office Box information)

410 17th Street Suite 2200

Denver (City) CO (State) 80202 (ZIP/Postal Code)

(Province – if applicable) United States . (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

☐ This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:
This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

EXHIBIT "B"

Operating Agreement

OPERATING AGREEMENT
OF
GDA PS MANAGEMENT, LLC,
a Colorado limited liability company

This **OPERATING AGREEMENT** (this "**Agreement**") of GDA PS MANAGEMENT, LLC (the "**Company**") is entered into by its sole member, GARY J. DRAGUL ("**Member**") effective as of December 21, 2015.

RECITALS

A. The Company was formed as a limited liability company pursuant to and in accordance with the Colorado Limited Liability Company Act (C.R.S. Section 7-80-101, et. seq.) (the "**Act**") on August 18, 2015.

B. Member desires to adopt the Agreement as the operating agreement of the Company.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, Member agrees as follows:

1. Name. The name of the limited liability company is GDA PS MANAGEMENT, LLC.

2. Purpose. The Company was formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Act and engaging in any and all activities necessary or incidental to the foregoing.

3. Management. The Company shall be Manager managed. GDA Real Estate Management, Inc., a Colorado corporation, whose address is 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111, shall be the manager ("**Manager**") of the Company.

4. Powers. The day-to-day business and affairs of the Company shall be managed by Manager. Manager shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes of the Company. Manager is hereby authorized, empowered and directed in the name and on behalf of the Company to approve, execute and deliver any and all agreements, certificates or any other documents on behalf of the Company. Manager shall serve until the earlier of its resignation or removal by Member.

5. Perpetual Duration. The Company's duration shall be perpetual.

6. Disregarded Entity. For federal income tax purposes and, to the extent possible, for all other tax purposes, the Company shall be treated as a disregarded entity and its profits, losses and other tax attributes shall be reflected on the income tax returns of Member.

7. Contributions. The total capital contributions of Member to the Company and Member's percentage interest in the Company are set forth on Schedule A attached hereto. No member shall be entitled or required to make any additional contribution to the capital of the Company.

8. Admission of Additional Members. One or more additional members of the Company may be admitted to the Company with the written consent of Manager. On the admission of a new member, the Company shall be taxable as a partnership and the members shall amend this Agreement to comply with the provisions of Subchapter K of the Internal Revenue Code of 1986, as amended, and the Treasury regulations promulgated thereunder.

9. Distributions. Distributions shall be made to the members at the times and in the aggregate amounts determined by Member. Such distributions shall be allocated among the members in the same proportion as their then capital account balances.

10. Assignments. Member may assign in whole or in part its interest in the Company.

11. Resignation. Member shall not resign from the Company prior to the termination and winding up of the Company.

12. Liability of Members. The members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act.

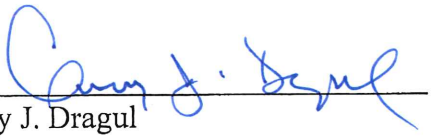
13. Amendment. This Agreement may be amended from time to time with the written consent of Member.

14. Governing Law. This Agreement shall be governed by, and construed under, the laws of the State of Colorado, all rights and remedies being governed by said laws.

[*INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS*]

IN WITNESS WHEREOF, this Agreement has been entered into to be effective as of the date first set forth above.

SOLE MEMBER:



Gary J. Dragul

CONSENT OF MANAGER:

GDA Real Estate Management Inc.,
a Colorado corporation

By: 

Gary J. Dragul, President

SCHEDULE A

Members/Address:	Contributions:	Percentage Interest:
Gary J. Dragul c/o GDA Real Estate Management, Inc. 5690 DTC Boulevard, Suite 515 Greenwood Village, Colorado 80111	$10	100%

006479\0181\14379998.1

EXHIBIT "C"

CO Certificate of Good Standing

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Wayne W. Williams, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

GDA PS Management, LLC

is a

Limited Liability Company

formed or registered on 12/21/2015 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20151806915 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 01/13/2016 that have been posted, and by documents delivered to this office electronically through 01/15/2016 @ 11:05:08 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 01/15/2016 @ 11:05:08 in accordance with applicable law. This certificate is assigned Confirmation Number 9456760 .

Secretary of State of the State of Colorado

**********End of Certificate**********

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

Summary of Lender Sweeps July 2018 - November 2018
PS 16, LLC KeyBank Lockbox Account No. *5258

Date of Withdrawal	Amount Withdrawn	Transferee Account	Ending Balance
7/2/2018	$2,511.00	U.S. Real Estate *2239	
7/6/2018	$6,750.67	U.S. Real Estate *2239	
7/26/2018	$30,887.00	U.S. Real Estate *2239	
7/30/2018	$21,740.58	U.S. Real Estate *2239	
7/31/2018	$2,511.00	U.S. Real Estate *2239	$2,500.00
July Total Lender Sweep	**$64,400.25**		
8/1/2018	$61,380.58	U.S. Real Estate *2239	
8/7/2018	$6,570.67	U.S. Real Estate *2239	
8/14/2018	$137.91	U.S. Real Estate *2239	
8/24/2018	$414.87	U.S. Real Estate *2239	
8/28/2018	$16,673.33	U.S. Real Estate *2239	
8/30/2018	$7,178.00	U.S. Real Estate *2239	
8/31/2018	$54,302.95	U.S. Real Estate *2239	
August Total Lender Sweep	**$146,658.31**		$2,500.00
9/4/2018	$9,588.63	U.S. Real Estate *2239	
9/10/2018	$6,570.67	U.S. Real Estate *2239	$26,241.20
September Total Lender Sweep	**$16,159.30**		
10/9/2018	$94,203.45	U.S. Real Estate *2239	$25,007.33
October Total Lender Sweep	**$94,203.45**		
11/6/2018	$83,887.91	U.S. Real Estate *2239	
11/16/2018	$10,375.67	U.S. Real Estate *2239	$81,069.15
November Total Lender Sweep	**$94,263.58**		
TOTAL SWEPT BY LENDER (JULY - NOVEMBER 2018)	**$415,684.89**	**U.S. Real Estate *2239**	**$81,069.15**

DATE FILED: December 20, 2018 4:15 PM
FILING ID: 285953D2B92AE0
CASE NUMBER: 2018CV33011

EXHIBIT 6

KeyBank
P.O. Box 93885
Cleveland, OH 44101-5885

[redacted]

13 T 968 00000 REM AO
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER
11501 OUTLOOK STREET, STE 300
OVERLAND PARK KS 66211-1807

Questions or comments?
Call 1-800-821-2829

Commercial Control Transaction [redacted]
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER

Beginning balance 6-30-18	$5,011.00
5 Additions	+31,656.12
5 Subtractions	-33,642.12
Net fees and charges	-525.00
Ending balance 7-31-18	**$2,500.00**

Additions

Deposits	*Date*	*Serial#*	*Source*	
	7-5	714359	Lockbox Deposit Po 00714359 For 2018-07-05	$6,570.67
	7-25	714359	Lockbox Deposit Po 00714359 For 2018-07-25	414.87
	7-26		Direct Deposit, Pnc Bank Edi Pymts	41900
	7-27	714359	Lockbox Deposit Po 00714359 For 2018-07-27	21,740.58
	7-30	714359	Lockbox Deposit Po 00714359 For 2018-07-30	2,511.00
			Total additions	**$31,656.12**

Subtractions

Withdrawals	*Date*	*Serial#*	*Location*	
	7-2	1837	Wire Withdrawal U.S. Real Estate 2239	$2,511.00
	7-6	1193	Wire Withdrawal U.S. Real Estate 2239	6,570.67
	7-26	1243	Wire Withdrawal U.S. Real Estate 2239	308.87
	7-30	1317	Wire Withdrawal U.S. Real Estate 2239	21,740.58
	7-31	1447	Wire Withdrawal U.S. Real Estate 2239	2,511.00
			Total subtractions	**$33,642.12**

[redacted]

[redacted]

Fees and charges

Date		Quantity	Unit Charge	
7-10-18	Jun Analysis Service Chg	1	525.00	-$525.00
	Fees and charges assessed this period			**-$525.00**

See your Account Analysis statement for details.

KeyBank - PS
BANK TRANSACTION RECONCILIATION
TUESDAY, OCTOBER 9, 2018 1:49 PM

[redacted] 07/01/2018 THRU 07/31/2018 LockBox GL056 /7.20

CLEARED DEPOSITS

TICKET#	DATE	AMOUNT	
11275	07/05/2018	6,570.67	Cleared On: 07/31/2018
11314	07/25/2018	414.87	Cleared On: 07/31/2018
11324	07/26/2018	419.00	Cleared On: 07/31/2018
11329	07/25/2018	6,149.16	Cleared On: 07/31/2018
11330	07/27/2018	15,591.42	Cleared On: 07/31/2018
11347	07/30/2018	2,511.00	Cleared On: 07/31/2018
* TOTAL DEPOSITS CLEARED*		31,656.12	

CLEARED MANUAL JOURNAL ENTRIES

ENTRY #	DATE	COMMENT	AMOUNT		
6728	07/31/2018	Funds to Wells Fargo	33,642.12-	OTHER	Cleared On: 07/31/2018
6731	07/31/2018		525.00-	DISBURSEMENT	Cleared On: 07/31/2018
* TOTAL MANUAL ENTRIES CLEARED			34,167.12-		

**** BANK RECONCILIATION****

CASH ACCOUNT BALANCE:		2,500.00
OUTSTANDING WITHDRAWALS/DEBITS:	+	.00
RECEIPTS IN TRANSIT:	-	.00
OTHER TRANSACTIONS:	+	.00
INTEREST NOT POSTED:	+	.00
BANK CHARGES NOT POSTED:	-	.00
ADJUSTED CASH BALANCE:		2,500.00
BALANCE FROM BANK STATEMENT:	-	2,500.00
DIFFERENCE:		.00

KeyBank
P.O. Box 93885
Cleveland, OH 44101-5885

[redacted]

13 T 968 00000 R E M AO
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER
11501 OUTLOOK STREET, STE 300
OVERLAND PARK KS 66211-1807

Questions or comments?
Call 1-800-821-2829

Commercial Control Transaction [redacted]
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER

Beginning balance 7-31-18	$2,500.00
10 Additions	+147,183.31
7 Subtractions	-146,658.31
Net fees and charges	-525.00
Ending balance 8-31-18	**$2,500.00**

Additions

Deposits	*Date*	*Serial#*	*Source*	
	8-1		Direct Deposit, Kroger Vendor Pay	$51,791.95
	8-1		Direct Deposit, Aaa Aca Gen Dis Gen Disbur	9,588.63
	8-6	714359	Lockbox Deposit Po 00714359 For 2018-08-06	6,570.67
	8-13	714359	Lockbox Deposit Po 00714359 For 2018-08-13	662.91
	8-23	714359	Lockbox Deposit Po 00714359 For 2018-08-23	414.87
	8-27	714359	Lockbox Deposit Po 00714359 For 2018-08-27	16,254.33
	8-28		Direct Deposit, Pnc Bank Edi Pymts	419.00
	8-29	714359	Lockbox Deposit Po 00714359 For 2018-08-29	7,178.00
	8-30	714359	Lockbox Deposit Po 00714359 For 2018-08-30	2,511.00
	8-31		Direct Deposit, Kroger Vendor Pay	51,791.95
			Total additions	**$147,183.31**

Subtractions

Withdrawals	*Date*	*Serial#*	*Location*	
	8-1	1678	Wire Withdrawal U.S. Real Estate 2239	$61,380.58
	8-7	1217	Wire Withdrawal U.S. Real Estate 2239	6,570.67
	8-14	1202	Wire Withdrawal U.S. Real Estate 2239	137.91
	8-24	1149	Wire Withdrawal U.S. Real Estate 2239	414.87
	8-28	1236	Wire Withdrawal U.S. Real Estate 2239	16,673.33
	8-30	1293	Wire Withdrawal U.S. Real Estate 2239	7,178.00
	8-31	1483	Wire Withdrawal U.S. Real Estate 2239	54,302.95
			Total subtractions	**$146,658.31**

[redacted]

Fees and charges

Date		*Quantity*	*Unit Charge*	
8-8-18	Jul Analysis Service Chg	1	525.00	-$525.00
	Fees and charges assessed this period			**-$525.00**

See your Account Analysis statement for details.

KeyBank - PS
BANK TRANSACTION RECONCILIATION
TUESDAY, OCTOBER 9, 2018 1:51 PM
[redacted] 08/01/2018 THRU 08/31/2018 LockBox GL056 / 7.20

CLEARED DEPOSITS

TICKET#	DATE	AMOUNT	
11361	08/01/2018	61,380.58	Cleared On: 08/31/2018
11385	08/06/2018	6,570.67	Cleared On: 08/31/2018
11434	08/13/2018	662.91	Cleared On: 08/31/2018
11435	08/23/2018	414.87	Cleared On: 08/31/2018
11436	08/27/2018	16,254.33	Cleared On: 08/31/2018
11437	08/28/2018	419.00	Cleared On: 08/31/2018
11438	08/29/2018	7,178.00	Cleared On: 08/31/2018
11439	08/30/2018	2,511.00	Cleared On: 08/31/2018
11440	08/31/2018	51,791.95	Cleared On: 08/31/2018
* TOTAL DEPOSITS CLEARED*		147,183.31	

CLEARED MANUAL JOURNAL ENTRIES

ENTRY #	DATE	COMMENT	AMOUNT		
7105	08/31/2018	Funds to Wells Fargo	146,658.31-	OTHER	Cleared On: 08/31/2018
7110	08/31/2018		525.00-	DISBURSEMENT	Cleared On: 08/31/2018
* TOTAL MANUAL ENTRIES CLEARED			147,183.31-		

**** BANK RECONCILIATION****

CASH ACCOUNT BALANCE:		2,500.00
OUTSTANDING WITHDRAWALS/DEBITS:	+	.00
RECEIPTS IN TRANSIT:	-	.00
OTHER TRANSACTIONS:	+	.00
INTEREST NOT POSTED:	+	.00
BANK CHARGES NOT POSTED:	-	.00
ADJUSTED CASH BALANCE:		2,500.00
BALANCE FROM BANK STATEMENT:	-	2,500.00
DIFFERENCE:		.00

KeyBank
P.O. Box 93885
Cleveland, OH 44101-5885

[redacted]

13 T 968 00000 REM AO
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER
11501 OUTLOOK STREET, STE 300
OVERLAND PARK KS 66211-1807

Questions or comments?
Call 1-800-821-2829

Commercial Control Transaction [redacted]
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER

Beginning balance 8-31-18	$2,500.00
5 Additions	+40,425.50
2 Subtractions	-16,159.30
Net fees and charges	-525.00
Ending balance 9-30-18	**$26,241.20**

Additions

Deposits	*Date*	*Serial#*	*Source*	
	9-4		Direct Deposit, Aaa Aca Gen Dis Gen Disbur	$9,588.63
	9-7	714359	Lockbox Deposit Po 00714359 For 2018-09-07	6,570.67
	9-26	714359	Lockbox Deposit Po 00714359 For 2018-09-26	7,592.87
	9-27		Direct Deposit, Pnc Bank Edi Pymts	419.00
	9-28	714359	Lockbox Deposit Po 00714359 For 2018-09-28	16,254.33
			Total additions	**$40,425.50**

Subtractions

Withdrawals	*Date*	*Serial#*	*Location*	
	9-4	2540	Wire Withdrawal U.S. Real Estate 2239	$9,588.63
	9-10	1319	Wire Withdrawal U.S. Real Estate 2239	6,570.67
			Total subtractions	**$16,159.30**

Fees and charges

Date		*Quantity*	*Unit Charge*	
9-12-18	Aug Analysis Service Chg	1	525.00	-$525.00
	Fees and charges assessed this period			**-$525.00**

[redacted]
3382

CLEARED DEPOSITS

TICKET#	DATE	AMOUNT	
11441	09/04/2018	9,588.63	Cleared On: 09/30/2018
11442	09/07/2018	6,570.67	Cleared On: 09/30/2018
11443	09/26/2018	7,592.87	Cleared On: 09/30/2018
11444	09/27/2018	419.00	Cleared On: 09/30/2018
11445	09/28/2018	16,254.33	Cleared On: 09/30/2018
* TOTAL DEPOSITS CLEARED*		40,425.50	

CLEARED MANUAL JOURNAL ENTRIES

ENTRY #	DATE	COMMENT	AMOUNT		
7107	09/30/2018	Funds to Wells Fargo	16,159.30-	OTHER	Cleared On: 09/30/2018
7112	09/30/2018		525.00-	DISBURSEMENT	Cleared On: 09/30/2018
* TOTAL MANUAL ENTRIES CLEARED			16,684.30-		

**** BANK RECONCILIATION****

CASH ACCOUNT BALANCE:		26,241.20
OUTSTANDING WITHDRAWALS/DEBITS:	+	.00
RECEIPTS IN TRANSIT:	-	.00
OTHER TRANSACTIONS:	+	.00
INTEREST NOT POSTED:	+	.00
BANK CHARGES NOT POSTED:	-	.00
ADJUSTED CASH BALANCE:		26,241.20
BALANCE FROM BANK STATEMENT:	-	26,241.20
DIFFERENCE:		.00

KeyBank
P.O. Box 93885
Cleveland, OH 44101-5885

Corporate Banking Statement
October 31, 2018

[redacted]

13 T 968 00000 R EM AO
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER
11501 OUTLOOK STREET, STE 300
OVERLAND PARK KS 66211-1807

Questions or comments?
Call 1-800-821-2829

Commercial Control Transaction [redacted]
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER

Beginning balance 9-30-18	$26,241.20
8 Additions	+93,494.58
1 Subtraction	-94,203.45
Net fees and charges	-525.00
Ending balance 10-31-18	**$25,007.33**

Additions

Deposits	*Date*	*Serial#*	*Source*	
	10-1		Direct Deposit, Kroger Vendor Pay	$51,791.95
	10-1		Direct Deposit, Aaa Aca Gen Dis Gen Disbur	9,588.63
	10-1	714359	Lockbox Deposit Po 00714359 For 2018-10-01	2,511.00
	10-5	714359	Lockbox Deposit Po 00714359 For 2018-10-05	6,570.67
	10-25	714359	Lockbox Deposit Po 00714359 For 2018-10-25	414.87
	10-29	714359	Lockbox Deposit Po 00714359 For 2018-10-29	19,687.46
	10-29		Direct Deposit, Pnc Bank Edi Pymts	419.00
	10-31	714359	Lockbox Deposit Po 00714359 For 2018-10-31	2,511.00
			Total additions	**$93,494.58**

Subtractions

Withdrawals	*Date*	*Serial#*	*Location*	
	10-9	2184	Wire Withdrawal U.S. Real Estate 2239	$94,203.45
			Total subtractions	**$94,203.45**

Fees and charges

Date		*Quantity*	*Unit Charge*	
10-9-18	Sep Analysis Service Chg	1	525.00	-$525.00
	Fees and charges assessed this period			**-$525.00**

[redacted]
1307
11/13/18

KeyBank - PS
BANK TRANSACTION RECONCILIATION

[redacted] 10/01/2018 THRU 10/31/2018 LockBox GL056 / 7.20

CLEARED DEPOSITS

TICKET #	DATE	AMOUNT	
11446	10/01/2018	63,891.58	Cleared On: 10/31/2018
11447	10/05/2018	6,570.67	Cleared On: 10/31/2018
11516	10/25/2018	414.87	Cleared On: 10/31/2018
11523	10/29/2018	20,106.46	Cleared On: 10/31/2018
11535	10/31/2018	2,511.00	Cleared On: 10/31/2018
* TOTAL DEPOSITS CLEARED*		93,494.58	

CLEARED MANUAL JOURNAL ENTRIES

ENTRY#	DATE	COMMENT	AMOUNT		
7335	10/09/2018	Funds to Wells Fargo	94,203.45-	OTHER	Cleared On: 10/31/2018
7338	10/31/2018		525.00-	DISBURSEMENT	Cleared On: 10/31/2018
* TOTAL MANUAL ENTRIES CLEARED			94,728.45-		

**** BANK RECONCILIATION****

CASH ACCOUNT BALANCE:		25,007.33
OUTSTANDING WITHDRAWALS/DEBITS:	+	.00
RECEIPTS IN TRANSIT:	-	.00
OTHER TRANSACTIONS:	+	.00
INTEREST NOT POSTED:	+	.00
BANK CHARGES NOT POSTED:	-	.00
ADJUSTED CASH BALANCE:		25,007.33
BALANCE FROM BANK STATEMENT:	-	25,007.33
DIFFERENCE:		.00

KeyBank
P.O. Box 93885
Cleveland, OH 44101-5885

Corporate Banking Statement
November 30, 2018

[redacted]

13 T 968 00000 REM AO
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER
11501 OUTLOOK STREET, STE 300
OVERLAND PARK KS 66211-1807

Questions or comments?
Call 1-800-821-2829

Commercial Control Transaction [redacted]
PS 16, LLC
LB FBO CALMWATER CAPITAL 3, LLC
ITS SUCCESSORS AND ASSIGNS AS LENDER

Beginning balance 10-31-18	$25,007.33
9 Additions	+150,850.40
2 Subtractions	-94,263.58
Net fees and charges	-525.00
Ending balance 11-30-18	**$81,069.15**

Additions

Deposits	*Date*	*Serial#*	*Source*	
	11-1		Direct Deposit, Kroger Vendor Pay	$51,791.95
	11-1		Direct Deposit, Aaa Aca Gen Dis Gen Disbur	9,588.63
	11-6	714359	Lockbox Deposit Po 00714359 For 2018-11-06	4,330.00
	11-13	714359	Lockbox Deposit Po 00714359 For 2018-11-13	6,570.67
	11-26	714359	Lockbox Deposit Po 00714359 For 2018-11-26	16,669.20
	11-26		Direct Deposit, Pnc Bank Edi Pymts	419.00
	11-29	714359	Lockbox Deposit Po 00714359 For 2018-11-29	7,178.00
	11-30		Direct Deposit, Kroger Vendor Pay	51,791.95
	11-30	714359	Lockbox Deposit Po 00714359 For 2018-11-30	2,511.00
			Total additions	**$150,850.40**

Subtractions

Withdrawals	*Date*	*Serial #*	*Location*	
	11-6	1196	Wire Withdrawal U.S. Real Estate 2239	$83,887.91
	11-16	1124	Wire Withdrawal U.S. Real Estate 2239	10,375.67
			Total subtractions	**$94,263.58**

[redacted]
1132
IC 12/5/18

[redacted]

Fees and charges

Date		*Quantity*	*Unit Charge*	
11-9-18	Oct Analysis Service Chg	1	525.00	-$525.00
	Fees and charges assessed this period			**-$525.00**

See your Account Analysis statement for details.

KeyBank - PS
BANK TRANSACTION RECONCILIATION

[redacted] 11/01/2018 THRU 11/30/2018 LockBox GL056 /7.20

CLEARED DEPOSITS

TICKET#	DATE	AMOUNT	
11548	11/01/2018	61,380.58	Cleared On: 11/30/2018
11562	11/06/2018	4,330.00	Cleared On: 11/30/2018
11571	11/13/2018	6,570.67	Cleared On: 11/30/2018
11588	11/26/2018	17,088.20	Cleared On: 11/30/2018
11599	11/29/2018	7,178.00	Cleared On: 11/30/2018
11603	11/30/2018	54,302.95	Cleared On: 11/30/2018
* TOTAL DEPOSITS CLEARED*		150,850.40	

CLEARED MANUAL JOURNAL ENTRIES

ENTRY #	DATE	COMMENT	AMOUNT		
7514	11/16/2018	Funds to Wells Fargo	94,263.58-	OTHER	Cleared On: 11/30/2018
7517	11/30/2018		525.00-	DISBURSEMENT	Cleared On: 11/30/2018
* TOTAL MANUAL ENTRIES CLEARED			94,788.58-		

**** BANK RECONCILIATION****

CASH ACCOUNT BALANCE:		81,869.15
OUTSTANDING WITHDRAWALS/DEBITS:	+	.00
RECEIPTS IN TRANSIT:	-	.00
OTHER TRANSACTIONS:	+	.88
INTEREST NOT POSTED:	+	.88
BANK CHARGES NOT POSTED:	-	.00
ADJUSTED CASH BALANCE:		81,069.15
BALANCE FROM BANK STATEMENT:	-	81,069.15
DIFFERENCE:		.00

DATE FILED: December 20, 2018 4:15 PM
FILING ID: 28595D2692AE0
CASE NUMBER: 2018CV33011

AFFIDAVIT OF MICHAEL T. GILBERT
EXHIBIT D

FILED
CLERK OF COURTS
HAMILTON COUNTY

NOV 29 2018

AFTAB PUREVAL
COMMON PLEAS COURTS

COMMON PLEAS COURT
HAMILTON COUNTY, OHIO

U.S. REAL ESTATE CREDIT HOLDINGS III, LP Plaintiff, v. **PS 16, LLC, *et al.*** Defendants.	CASE NO. A 1 8 0 6 3 7 6 JUDGE _____ ***EX PARTE* MOTION FOR EMERGENCY APPOINTMENT OF A RECEIVER PURSUANT TO O.R.C. § 2735 *et seq.***

INTRODUCTION

In addition to the filing of the *Complaint for Money, Foreclosure and Judicial Sale of Real Estate Pursuant to O.R.C. § 2735 et seq. and Related Relief* (the "Complaint"), Plaintiff U.S. Real Estate Credit Holdings III, LP ("U.S. Real Estate"), concurrently files this *Ex Parte* Motion Seeking the **Emergency** Appointment of a Receiver to take possession of the Property (the "Motion"). U.S. Real Estate incorporates herein the facts set forth in the Complaint and in the Affidavit of Simond Lavian filed in further support hereof (the "Affidavit").[1] Based on these facts and applicable law discussed herein, U.S. Real Estate is entitled to the appointment of a receiver on an emergency, *ex parte* basis. U.S. Real estate respectfully requests this Court enter an order granting the Motion and appoint John Rothschild (the "Proposed Receiver").

BACKGROUND

Defendant, PS 16, LLC ("PS 16"), is the owner of certain commercial real estate located at 9690 Colerain Avenue, Hamilton County, Ohio (the "Property"). The Property is a shopping center with commercial tenants providing goods and services to the public. PS 16 is a Delaware limited liability company whose members and manager are directly or indirectly controlled by

[1] All capitalized terms not herein defined shall have the definition established in the Complaint.

EXHIBIT D

Gary J. Dragul. *See* **Exhibit A** (Written Consent of PS 16, LLC dated December 22, 2015, identifying Dragul as (1) president of GDA Real Estate Management, Inc., the manager of GDA PS Management, LLC, which, in turn is the manager of PS 16 and (2) the president of GDA Real Estate Management, Inc.)

PS 16, acting through Dragul, is party to certain loan documents as set forth in the Complaint, including a Note in the principal amount of $12,970,000, a Mortgage, which is a first-priority lien on the Property and secures, *inter alia*, the Note, an Assignment of Leases and Rents, and a Forbearance Agreement (executed by Dragul in the capacities described above following the Maturity Date of the Note) (collectively, with other ancillary and related instruments, extensions, modifications, amendments and renewals, the "Loan Documents"). Dragul is also obligated on a limited-recourse guarantee for sums due under the Loan Documents.

In April 2018, unbeknownst to U.S. Real Estate, Dragul was indicted by the Colorado Attorney General on nine counts of securities fraud related to an alleged scheme involving his company, GDA Real Estate Services, LLC (an affiliate of PS 16 and its managers and members), to defraud investors in various shopping center ventures. The indictment alleges Dragul hid or failed to disclose substantial liabilities in soliciting investments and misappropriated investor capital for personal use or to repay unrelated liabilities in violation of various anti-fraud provisions of the Colorado Securities Act. *See* **Exhibit B** (press release from the Colorado Department of Regulatory Agencies).[2] Dragul's criminal proceeding remains pending; following initial motion practice, Dragul is presently scheduled for an arraignment hearing to take place on

[2] *Available at:* https://www.colorado.gov/pacific/dora/gary-jule-dragul-indicted-securities-fraud-colorado (last retrieved 11/29/2018).

December 7, 2018. *See* **Exhibit C** (copy of the case docket for the District Court, Arapahoe County, Colorado, *State v. Dragul*, No. 2018CR1092).[3]

Following Dragul's indictment, again, unbeknownst to U.S. Real Estate, on or about August 19, 2018, Dragul's assets were frozen and placed into the hands of a receiver appointed in a corollary civil proceeding, *Gerald Rome, Securities Commissioner for the State of Colorado v. Dragul, et al.*, Denver District Court Case No. 2018-CV-33011. *See* **Exhibit D** ("Assets of Gary Jule Dragul Frozen During Ongoing Securities Fraud Case," *Targeted News Service*, Aug. 20, 2018); **Exhibit E** (press release of Colorado Department of Regulatory Agencies, Sept. 4, 2018);[4] and **Exhibit F** (copy of order appointing receiver of Dragul's assets, assets of GDA Real Estate Management, Inc., "including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights..."). Despite the Colorado court's injunction, as late as October 17, 2018, Dragul continued to interact with U.S. Real Estate representatives with respect to the possible work-out of defaults that had arisen under the Loan Documents and new tenant negotiations as though nothing were amiss. *See* **Exhibit G** (redacted October 2018 exchanges of e-mail from Dragul to, among others, the undersigned counsel for U.S. Real Estate). In the course of this correspondence, Dragul did not disclose that his assets were frozen, did not disclose that he was under pending criminal indictment for his real estate investment management practices, and did not disclose that a receiver had been appointed to manage the affairs of the various investment vehicles on whose behalf he was purporting to act.

Dragul's use of his apparent authority to manage the Property, despite the injunction from the Colorado state court and pending criminal proceedings creates an untenable situation for U.S. Real Estate that poses an immediate threat to the economic value of the Property, which acts as

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[3] *Also available at:* https://www.courts.state.co.us/dockets/ (last retrieved 11/28/2018).
[4] *Available at:* https://www.colorado.gov/pacific/dora/gary-dragul-receiver-appointed (last retrieved 11/29/2018).

the sole, non-recourse collateral for the Note. As the e-mail exchanges in **Exhibit G** show, Dragul actively engaged with a prospective tenant (to replace the premises recently vacated by Kroger) despite injunctive prohibitions from the Colorado state court that expressly rescinded all of Dragul's and GDA Real Estate Management, Inc.'s "management and control rights." Moreover, Dragul's potential criminal liability for allegedly improper real estate transactions puts any efforts to secure replacement tenants or address current tenant matters at extreme and immediate risk.

Fortunately, the consents contained within the Loan Documents provide a ready solution. Article II, Section 3.1(d) of the Mortgage provides:

> Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and **without notice to Borrower** and **without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Borrower** or any person or person liable for the payment of the indebtedness secured hereby, and **Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender**, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that, the appointment of such receiver, trustee, or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Lender, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Security Instrument or deed in lieu of foreclosure.

(emphasis added). Upon the institution of this action, by virtue of PS 16's consent, U.S. Real Estate immediately became entitled to obtain, without notice and without regard to the value of the Property, the appointment of a receiver.

Furthermore, under the Forbearance Agreement, PS 16 reaffirmed U.S. Real Estate's entitlement to the appointment of a receiver, agreeing to such an appointment on an *ex parte* basis, waived all rights to contest such appointment, all without regard to the sufficiency of the value of the Property to satisfy the Indebtedness. Specifically, the Forbearance Agreement provides:

> 8. Right to Receiver Upon Ex Parte Motion. In further recognition of the risks associated with Lender's execution and performance of this Agreement, and in consideration of the recitals and mutual covenants contained herein and for other good and valuable consideration, including, without limitation, the agreement of Lender to temporarily forbear from the exercise of certain of Lender's rights and remedies, the receipt and sufficiency of all of which are hereby acknowledged, Borrower hereby agrees that upon the occurrence of any Default Event, Lender shall be entitled to the appointment of a receiver for all or any part of the Property upon the ex parte filing of an affidavit by Lender with a court of competent jurisdiction that such Default Event under this Agreement has occurred, and that Lender shall be entitled to such appointment of a receiver without any further showing required of Lender other than the filing of such affidavit. Borrower hereby expressly acknowledges and agrees that Lender shall be entitled to such appointment of a receiver for all or any part of the Property on an ex parte basis as a matter of strict right and without notice to Borrower and/or Guarantor and without regard to the adequacy of the Property for the repayment of the indebtedness secured by the Security Instrument or the solvency of Borrower or Guarantor. Borrower hereby irrevocably consents to such appointment of a receiver for all or any part of the Property on such filing of an affidavit by Lender on an ex parte basis and without further showing and waives any and all notices of and defenses to such appointment. Borrower expressly acknowledges and agrees that Lender is presently entitled to the appointment of a receiver for the Property, and that in entering into this Agreement and agreeing to forbear from the exercise of Lender's rights and remedies, Lender is postponing Lender's exercise of the right to have a receiver appointed at this time. Borrower and is aware of the showing which would be necessary for Lender to obtain the appointment of a receiver for the Property and it is in contemplation of the fact that Lender would be able to make the necessary showing at this time that Borrower is hereby consenting to the appointment of a receiver for the Property on an ex parte basis and without further showing other than the filing of an affidavit by Lender with a court of competent jurisdiction that such Default Event under this Agreement has occurred.

LAW AND ANALYSIS

A. Standard for Appointment of Receiver

Ohio Revised Code § 2735.01 provides:

> (A) A receiver may be appointed by...the court of common pleas...in the following cases:
>
> ***
>
> (2) In an action by a mortgagee, for the foreclosure of the mortgagee's mortgage and sale of the mortgaged property, when it appears that the mortgage property is in danger of being lost, removed, materially injured, diminished in value, or squandered, or that the condition of the mortgage has not been performed, and ... The mortgagor has consented in writing to the appointment of a receiver.
>
> (3) To enforce a contractual assignment of rents and leases.

The Hamilton County Court of Common Pleas Local Rule 45(B)(1) provides the party seeking the appointment of a receiver in a foreclosure case shall schedule a hearing *unless* the mortgage provides for appointment of a receiver without notice. Further, Local Rule 45(B(2)(a) states that the movant must demonstrate:

> (1) That legal or equitable grounds exist necessitating the appointment of a receiver, and (2) That the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgaged debt, or on grounds other than those prescribed herein.

However, as noted above, in 2015, the Ohio General Assembly amended the statute authorizing the appointment of a receiver such that where (1) the mortgage has not been performed and the mortgage contains the mortgagor's consent to such appointment; or (2) the mortgagor has assigned the rents and leases to the mortgagor. O.R.C. § 2735.01(A)(2)-(3).

Additionally, Ohio courts have held that a borrower may, in the mortgage, like PS 16 has here, waive a requirement that the mortgagee establish danger to the property or the mortgagee's insecurity. For example, in *City National Bank v. WBP Investments, LLC*, 10th Dist. Franklin

No. 10AP-1134, 2011-Ohio-6129, a mortgage assignee sought appointment of a receivership after the appellant-mortgagors failed to make payments under the mortgage. In upholding the trial court's appointment of a receiver, the appellate court found the underlying mortgage contained a clause "providing that [the mortgagors] consented to the appointment of a receiver" and that appellant-mortgagors "waived the right to object to the appointment of a receiver." *Id.* at ¶ 11. The court also determined, through the appellee-mortgagee's affidavit, that units on the property were vacant and abandoned, the property's management company terminated its services, and there was a leak in the roof.

The appellant-mortgagors asserted that, as a matter of law, they could not consent to the receivership clauses in the mortgage. *Id.* at ¶ 12. The court rejected this argument and found that "appellate courts in Ohio...have concluded that the requirements of R.C. 2735.01 may be waived by contract." *Id.*, *citing Huntington Nat'l Bank v. Prospect Park, LLC*, 8th Dist. Cuyahoga No. 96218, 2011-Ohio-5391, *Harajli Mgmt. & Inv., Inc. v. A&M Invest. Strategies, Inc.*, 167 Ohio App. 3d 546 (6th Dist. 2006), *Metro. Sav. Bank v. Papadelis*, 9th Dist. Medina No. 2380-M, 1995 Ohio App. LEXIS 4038; *Columbia Sav. v. Mentor Inn Prop. Co., Ltd.*, 11th Dist. Lake No. 93-L-007, 1993 Ohio App. LEXIS 4769; *Cypress Sav. Assn. v. Richfield Assoc.*, 9th Dist. Summit No. 13679, 1989 Ohio App. LEXIS 785.

Thus, the appellate court upheld the receivership clauses in the mortgage and held that the appellant-mortgagors waived their right to object to the appointment of a receiver, and found that Ohio courts do not require a movant to establish all of the elements under § 2735.01(B) if the mortgage contains receivership clauses. In *Metropolitan Savings Bank v. Papadelis*, 1995 Ohio App. LEXIS 4038 (9th Dist. Ct. App. 1995), the appellate court considered the lower court's ruling that the mortgagor waived its right to challenge the appointment of a receiver

based on O.R.C. § 2735.01(B) (i.e., whether the property was worth more than the outstanding amount owed). Finding the mortgage contained receivership language to that effect, the court held "that if the parties to a mortgage contracted to allow the mortgagee to foreclose upon the occasion of the mortgagor's default without regard to the ability of the property to discharge the mortgage debt, then such contractual agreement [is] enforceable." *Id.* at *8. Therefore, the court affirmed the lower court's decision to appoint a receiver without even determining whether the value of the property was greater than the outstanding amounts owed.

B. *Ex Parte* Appointment of a Receiver

As with other requirements previously found in O.R.C. § 2735.01, the right to notice and a hearing before the appointment of a receiver may also be waived by a mortgagor. *Cypress Sav. Assn., supra*; *Noel v. Fannie Mae*, 8th Dist. No. 99CA00036, 1999 Ohio App. LEXIS 3537. The holdings of such authorities conform to this Court's Local Rule 45(B)(1)(b).

APPLICATION OF LAW AND FACTS

In accordance with the foregoing legal principles and case law, U.S. Real Estate is entitled to the appointment of a receiver on an *ex parte*, emergency basis. The Mortgage and Forbearance Agreement each expressly provide that PS 16 consents to such appointment, without notice, and waives all grounds for objection. Therefore, Local Rule 45(B)(1)(b) does not require notice of this motion to PS 16. The language of these instruments unambiguously establishes that PS 16 consents to a receivership in the event of foreclosure. Further, just as in *Papadelis*, Borrower waived its right to object based on § 2735.01(B) because the Mortgage clearly states such waiver is "without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Borrower." PS 16 reaffirmed these commitments in the Forbearance Agreement, and expressly waived all defenses and right to

notice and consented to a receiver's appointment on an *ex parte* basis. PS 16 is bound by these terms and U.S. Real Estate is consequently entitled to the appointment of a receiver based upon the Mortgage.

Further, emergency relief is justified in this case. The civil and criminal proceedings involving PS 16's sole principal, Dragul, make property management during the course of this action an impossibility and, more troubling, may create irreparable harm to efforts to negotiate with prospective tenants or current tenants up for lease renewal. Without immediate relief, Dragul may continue to solicit new tenants or negotiate with current tenants that, upon learning of his questionable authority to act or his allegedly illegal schemes, may simply seek different lease opportunities, all to the determinant of U.S. Real Estate (who may be unable to look to PS 16 or Dragul for any deficiency in the final sale price).

THE PROPOSED RECEIVER IS QUALIFIED TO ACT AS RECEIVER

The Proposed Receiver is qualified to act as receiver in this matter. As set forth on **Exhibit H** attached hereto, the Proposed Receiver is an Ohio resident with requisite experience to manage the Property, collect the revenues thereof, and prepare it for a sale in a manner consistent with law and the orders of this Court. Upon approval of this motion, the Proposed Receiver shall (1) post an appropriate bond, which, based on the experience of the Proposed Receiver, U.S. Real Estate submits should be no more than $10,000.00; (2) execute or swear an oath in accordance with law; and (3) promptly take possession and control of the Property.

CONCLUSION

Based on the above statutes and case law, U.S. Real Estate is entitled to the **emergency** appointment of a receiver and respectfully requests the Court appoint the Proposed Receiver with the powers and duties set forth on the proposed order tendered herewith.

Dated: November 29, 2018

Respectfully submitted,

THOMPSON HINE LLP

Louis F. Solimine (#0014221)
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Attorneys for Plaintiff U.S. Real Estate Credit Holdings III, LP

4833-1125-1824.6

AFFIDAVIT OF MICHAEL T. GILBERT
EXHIBIT E

Rachel Sternlieb

From: Hawkins, Jonathan <Jonathan.Hawkins@thompsonhine.com>
Sent: Thursday, December 06, 2018 2:31 PM
To: Michael T. Gilbert
Cc: Harvey Sender (hsender@sendersmiley.com); Rachel Sternlieb; Solimine, Louis; Jeffrey A. Marks (jamarks@vorys.com); Simond Lavian (Simond@calmwatercapital.com)
Subject: RE: Prospect Square Ohio Receivership

Michael,

We'd like to set up a call with counsel and clients if that's possible. We can be available this evening or sometime tomorrow after 10:30 am (PST) / 1:30 pm (EST).

Can you let us know what time might work for you and Mr. Sender?

- Jon

Jonathan S. Hawkins | Partner | **Thompson Hine LLP**
10050 Innovation Drive, #400 | Miamisburg, OH 45342
O: 937.443.6860 | **M:** 937.307.8365 | **F:** 937.443.6635 | Bio

THOMPSON HINE

From: Michael T. Gilbert [mailto:mgilbert@allen-vellone.com]
Sent: Thursday, December 6, 2018 3:07 PM
To: Hawkins, Jonathan
Cc: Harvey Sender (hsender@sendersmiley.com); Rachel Sternlieb; Solimine, Louis; Jeffrey A. Marks (jamarks@vorys.com)
Subject: RE: Prospect Square Ohio Receivership

Jon:

We were tied up yesterday. Today I received the motion for appointment of receiver that you filed.

Here are my observations and our position:

The Complaint and Motion were filed in violation of the stay imposed by the Colorado Receivership Order of which you were aware before you filed them. You elected not to provide any notice of your Motion before filing it and did not seek relief from the Colorado Receivership Court before doing so.

1. The Complaint seeks money damages against Prospect Square 16, LLC, which in your papers you appear to acknowledge is part of the Dragul Receivership Estate.

EXHIBIT E

2. The Complaint seeks money damages against Gary Dragul. The Colorado Receivership Order clearly stays that claim absent relief from the Colorado Court.

3. The Complaint seeks to foreclose the Prospect Square property, which is also part of the Colorado Receivership Estate.

4. The appointment of your receiver purports to divest our Estate of management rights over the Prospect Square property, again in violation of the Colorado Receivership Order.

5. The stated basis for the Motion seems to be that USR may suffer immediate irreparable injury because Gary Dragul was indicted and is interacting with prospective tenants of the property. Had you contacted us before filing the Motion, we would have informed you that Mr. Dragul is working under our Receiver's direction and control and does not have binding authority. Mr. Dragul and his staff have been negotiating with prospective tenants at Mr. Sender's direction.

6. You state in your email below that Mr. Rothschild is in the process of documenting a lease for a portion of the former Kroger space. Mr. Rothschild lacks authority to do so because he was appointed in violation of the Colorado Receivership Order and Mr. Sender controls the management rights for the Prospect Square property. We are presently negotiating a lease for most of the Kroger space with a tenant (Big Lots), which we understand will be executed within the next week or so, and we are negotiating with another tenant (a fitness company) to lease the remaining space. Any action by Mr. Rothschild to interfere with or undermine that process will result in us seeking immediate relief from our Receivership Court and in Ohio as well.

7. Your Motion doesn't state that the essential expenses (insurance, utilities, etc.) on the property are not being paid, and they are, by our Receivership Estate. On the other hand, your client is sweeping the rents from the property, so our Estate has no corresponding income pay those expenses. Please provide an accounting if you have one of the lockbox account and of the current outstanding loan status.

8. As you indicated in our phone call on Tuesday December 4, 2018, USR's outstanding loan balance is about $10M. As indicated in the appraisal you shared (thank you), the prospective value of Prospect Square upon stabilization is $14,220,000. Stabilization is defined in the appraisal as 93% occupancy. According to the appraisal, the property is currently 79.4% occupied. The leases for the Kroger space that our Receiver is in the process of finalizing represent an additional 16% of the space and would bring occupancy to 95%. Your threatened foreclosure would potentially deprive our Receivership Estate of some $4 million in equity.

9. We are and have been actively negotiating to sell the Prospect Square property and other property of the Receivership Estate.

Here is our proposal.

1. We agree to negotiate a suitable Forbearance Agreement that will allow our Receiver to use income from the Prospect Square property to pay expenses (including TI) related to the property. The remaining rents would be paid toward URS's loan.

2. You immediately inform the Hamilton County court that Mr. Sender has been appointed Receiver in Colorado and he has the right to control and manage the Prospect Square property.

3. Mr. Rothschild's appointment be suspended during the Forbearance period.

If we cannot reach an agreement, we will move for an Order to Show Cause here in Colorado as to why you and USR should not be held in contempt.

I look forward to hearing from you.

Thanks, Michael

Michael T. Gilbert
Attorney At Law
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1600 Stout Street, Suite 1100
Denver, CO 80202

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(303) 893-8332 | Fax

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From: Hawkins, Jonathan <Jonathan.Hawkins@thompsonhine.com>
Sent: Wednesday, December 05, 2018 12:04 PM
To: Michael T. Gilbert <mgilbert@allen-vellone.com>
Cc: Harvey Sender (hsender@sendersmiley.com) <hsender@sendersmiley.com>; Rachel Sternlieb <rsternlieb@allen-vellone.com>; Solimine, Louis <Louis.Solimine@thompsonhine.com>
Subject: RE: Prospect Square Ohio Receivership

Hi Michael,

If you've had a chance to discuss with your client, I'd appreciate an update. The leasing agent that's responsible for shopping the Kroger space has reported to Mr. Rothschild that they are in the process of documenting a lease for a portion of the space and we'd like to have some certainty on the direction your client wants to go in, if at all possible, before things progress much further.

- Jon

Jonathan S. Hawkins | Partner | **Thompson Hine LLP**
10050 Innovation Drive, #400 | Miamisburg, OH 45342
O: 937.443.6860 | **M:** 937.307.8365 | **F:** 937.443.6635 | Bio

From: Hawkins, Jonathan
Sent: Tuesday, December 4, 2018 5:40 PM
To: 'Michael T. Gilbert'
Cc: 'Harvey Sender (hsender@sendersmiley.com)'; 'Rachel Sternlieb'; Solimine, Louis
Subject: RE: Prospect Square Ohio Receivership

Per my prior email, attached is the appraisal. We are supplying this with the expectation that it will be kept confidential with the receiver and his counsel.

I have forwarded your request for the remaining documents to USRE. Again, we reserve all of our rights.

From: Hawkins, Jonathan
Sent: Tuesday, December 4, 2018 5:36 PM
To: 'Michael T. Gilbert'
Cc: Harvey Sender (hsender@sendersmiley.com); Rachel Sternlieb
Subject: RE: Prospect Square Ohio Receivership

Michael,

Glad we could connect over the phone today. Attached are documents you requested. I look forward to hearing about how we might work together in resolving this matter. The foreclosure complaint shows the balance due as of early November (which includes application of the Kroger funds). I will send the appraisal separately since it is a large file.

In the meantime, I urge you to consider the following authorities:
Concerning state court receivers…
Booth v. Clark, 58 U.S. (17 How.) 322 (1855) (state court receiver "has no extra territorial power of official action;" held, NY receiver unable to seize or attach property in District of Columbia)
Oakes v. Lake, 209 U.S. 59 (1933) (state court receiver may appear in out-of-state jurisdiction to assert whatever rights it may hold as assignee when property seized in such foreign jurisdiction; res in foreign state not automatically bound to state authorizing appointment)
Cf. Grant v. A.B. Leach & Co., 280 U.S. 351 (1930) (Ohio state court receiver properly able to bring suit in Ohio federal court on bonds secured with property because receiver appointed in jurisdiction where property located, Ohio)
Concerning a state court's exercise of personal jurisdiction…
Cole v. Cunningham, 133 U.S. 107 (1890) (Massachusetts court could issue injunction against creditors exercising right of attachment against property located in New York *where the creditors are subject to the personal jurisdiction of the Massachusetts court due to their domicile there*)
See generally, Daimler AG v. Bauman, 571 U.S. 117 (2014) (describing the limits of general and specific personal jurisdiction)

Finally, please note that U.S. Real Estate does not consent to the exercise of any personal jurisdiction over it or any of its officers, directors, agents or attorneys, and is providing the requested information in an effort to resolve the disputed efforts of the Colorado receiver to exercise control over property it deems beyond the scope of the Colorado state court's authority and beyond the scope of the actual authority exercised pursuant to the express terms of the order of appointment. U.S. Real Estate and said officers, directors, agents and attorneys reserve all rights to contest such personal jurisdiction in an appropriate setting.

- Jon

Jonathan S. Hawkins | Partner | **Thompson Hine LLP**
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O: 937.443.6860 | **M:** 937.307.8365 | **F:** 937.443.6635 | Bio

From: Michael T. Gilbert [mailto:mgilbert@allen-vellone.com]
Sent: Tuesday, December 4, 2018 3:12 PM
To: Hawkins, Jonathan
Cc: Harvey Sender (hsender@sendersmiley.com); Rachel Sternlieb
Subject: Prospect Square Ohio Receivership

Jon:

Thanks for your time today. If you could share with me your Hamilton County Complaint, the appraisal we discussed, and a current accounting for the loan showing the application of the Kroger buyout proceeds and amounts due and owing I would appreciate it. Also, if you have a current statement for the lockbox account that would also be helpful.

As we discussed, I am meeting with my client tomorrow and will discuss this with him. Given my schedule, I may not be able to get back to you until later in the week.

Thanks, Michael

Michael T. Gilbert
Attorney At Law
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Denver, CO 80202

(720) 245-2406 | Direct
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DATE FILED: December 20, 2018 4:15 PM
FILING ID: 28595D2692AE0
CASE NUMBER: 2018CV33011

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
Plaintiff: CHRIS MYKLEBUST, SECURITIES COMMISSIONER FOR THE STATE OF COLORADO v. **Defendants:** GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, AND GDA REAL ESTATE MANAGEMENT, LLC	▲COURT USE ONLY▲
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424

[PROPOSED] ORDER GRANTING RECEIVER'S EXPEDITED MOTION FOR ORDER TO SHOW CAUSE AND REQUEST FOR FORTHWITH HEARING

THIS MATTER is before the Court on the Receiver's Expedited Motion for Order to Show Cause and Request for Hearing (the "Motion") filed by Harvey Sender, the duly appointed Receiver in this case (the "Receiver"). The Court has reviewed the Motion and the file and is otherwise advised.

THE COURT HEREBY ORDERS THAT U.S. Real Estate Credit Holdings III, LP ("Lender") and its counsel of record, Jonathan S. Hawkins, Louis F. Solimine, and Anthony Hornback (collectively "Lender's Counsel") shall appear before this Court on _____,

201__, at _____, and show cause why they should not be held in contempt for violating the terms of this Court August 30, 2018, Stipulated Order Appointing Receiver.

Dated: _____, 2018.

BY THE COURT:

_____
Hon. District Court Judge