DISTRICT COURT, COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock St., Denver, CO 80202 (720) 865-8612 **Plaintiff:** Gerald Rome, Securities Commissioner for the State of Colorado **v.** **Defendants:** Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC **Attorney for Creditor, Greeley Asset Funding, LLC:** Charles H. Jacobs, #1919 Alan S. Thompson, #20238 Lohf Shaiman Jacobs Hyman & Feiger PC 950 South Cherry Street, Suite 900 Denver, Colorado 80246 Phone No.: (303) 753-9000 Fax No.: (303) 753-9997 E-mail: cjacobs@lohfshaiman.com athompson@lohfshaiman.com	▲ **COURT USE ONLY** ▲ **Case Number: 2018CV33011** **Div.:/Ctrm.: 424**

GREELEY ASSET FUNDING, LLC'S RESPONSE/OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HAPPY CANYON SHOPPES

Creditor, Greeley Asset Funding, LLC ("GAF"), by and through its undersigned counsel, and pursuant to paragraphs 10 and 34 of the Order Appointing Receiver, hereby responds and objects to the Receiver's Motion for Order Authorizing Sale of Happy Canyon Shoppes ("Motion"), as follows:

INTRODUCTION

Approval of the needlessly hasty sale of Happy Canyon Shoppes as proposed by the Motion will unfairly harm GAF. The Receiver proposes to sell only a portion of a project the original developers intended to operate, market and sell as a whole, foregoing potential value.

As the proposed sale is not in the best interest of the Receivership or the creditors, particularly GAF, the Court should deny the Motion, and/or hold a hearing to consider a sale process under equitable terms.

BACKGROUND

1. GAF generally agrees with the comprehensive factual recitation contained in the Motion but points to specific facts, and provides additional background, relevant to its objection as follows in this Response and Objection.

2. On July 24, 2018, GAF loaned $2.75 Million (the "GAF Loan") to DBHC Holdings, LLC ("DBHC"), a limited liability company solely owned by Gary Dragul ("Dragul").

3. DBHC wholly owns two subsidiary single-purpose limited liability companies: HC Shoppes 18A, LLC ("18A") and HC Shoppes 18B, LLC ("18B"). 18A and 18B used the proceeds from the GAF Loan together with proceeds from a $19.5 Million loan made by AFF II, Denver, LLC (the "1st Ardent Loan") to purchase the real property described in the Motion as the Shoppes.

4. The GAF Loan is memorialized by two promissory notes (the "GAF Notes"), one for repayment of $2.75 Million in principal, bearing interest at a rate of 10% per annum, and a second "Additional Interest" promissory note (considered by the parties as an "equity kicker") entitling GAF to payment of a portion of the net proceeds, if any, that would be realized upon sale of the Shoppes.

5. Dragul personally guaranteed the GAF Loan, and pledged his 100% interest in DBHC, as collateral to secure it. Dragul also caused DBHC to pledge its 100% interest in 18A and 18B to GAF as further security for the GAF Loan.

6. The 1st Ardent Loan for $19,500,000 is secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing on the Shoppes Property dated July 27, 2018, and recorded August 1, 2018 in the records of the Clerk and Recorder of Denver (the "Shoppes Deed of Trust").

7. The 18A and 18B Operating Agreements of 18A and 18B both contain the following relevant language:

> 4. Purpose. The sole purpose of the Company comprises, and the nature of the business conducted and promoted by the Company is and shall be: (i) acquiring, owning, holding title to, pledging, mortgaging, developing, leasing, financing, operating and disposing of its undivided interest in the Property; . . .
>
> 5. Management; Powers.
>
> * * *
>
> b) Notwithstanding anything else to the contrary herein, until that certain loan in the amount of $19,500,000.00 made by AFF II Denver, LLC to the Company and certain other related entities ("**Ardent Loan**") has been paid in full, the Company shall at all times be a Single Purpose Entity. For purposes herein, "**Single Purpose Entity**" shall mean: a person . . ., which (i) is formed or organized solely for the purpose of owning, with HC Shoppes 18 [A]B,LLC, a Delaware limited liability company, as tenants-in-common ("**Tenants-in-Common**"), that certain real estate situated at 4992-5082 E. Hampden Avenue, Denver, Colorado, USA, as more particularly described on **Exhibit A** attached hereto (the "**Property**"); . . . (iv) does not incur, create or assume any debt other than the Ardent Loan, and trade payables incurred in the ordinary course of business; (v) does not guarantee, hold itself out to be responsible for, or otherwise become liable on or in connection with any debt or other obligation of any other person, and *does not pledge its assets for the benefit of any other person*, ...

[See relevant portions of 18A and 18B Operating Agreements, attached hereto as **Exhibit 1** at p. 2, (emphasis added)].

8. After 18A and 18B adopted this Operating Agreement language Ardent provided its written consent to, and made the GAF Loan. (See Consent to Mezzanine Loan and Notice Agreement, attached hereto as **Exhibit 2**.)

9. A mere ten days after acquisition of the Shoppes, *and without notifying GAF*, DBHC and Dragul acquired the Marketplace or "Box" property ("Marketplace/Box Property"), the parcel adjacent to and across the parking lot from the Shoppes as described in the Motion, using some of the loan proceeds from a second Ardent Loan ("2d Ardent Loan") made to three other Dragul affiliates: Happy Canyon Box 17A, LLC ("17A"), Happy Canyon Box 17B, LLC ("17B"), and Happy Canyon 17C, LLC ("17C"). The 2d Ardent Loan provided funds availability of $8,900,000 to be used in the acquisition and development of the Marketplace/Box Property. Nevertheless, the 2d Ardent Loan is secured by a Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing on the Marketplace/Box Property in the stated principal amount of $28,400,000 dated August 7, 2018, and recorded August 8, 2018 in the records of the Clerk and Recorder of Denver, and encumbers both the Marketplace/Box Property and the Shoppes (the "Marketplace Deed of Trust"). Dragul executed the Marketplace Deed of Trust, on behalf of 17S, 17B, 17C, 18A and 18B despite the fact that 18A and 18B received no value or benefit in exchange for its permitting the Shoppes to be added collateral for the 2d Ardent Loan, and despite prohibitive language in the 18A and 18B Operating Agreements.

10. On the same date, August 7, 2018, Dragul executed and delivered to Ardent the First Amendment to Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing, recorded with the Clerk and Recorder of Denver on August 8, 2018 (the "First Amendment"), amending the Shoppes Deed of Trust in a manner consistent with the terms of the Marketplace Deed of Trust by: (a) cross-collateralizing it with the Marketplace Deed of Trust; and (b) increasing the maximum principal amount secured by the Shoppes Deed of Trust to $28,400,000, an amount far in excess of the value of the Shoppes property. Neither the Shoppes Deed of Trust, the Marketplace Deed of Trust, nor the First Amendment contain provisions for

partial release upon sale of the Shoppes Property. Hence, Ardent is under no compulsion to provide a partial release upon receipt of less than 100% of Shoppes Property sale proceeds.

11. Dragul did not amend the 18A or 18B Operating Agreements to reflect authorization to increase the defined Ardent Loan ($19,500,000), and neither Ardent nor Dragul disclosed to GAF that Dragul would sign the First Amendment with the cross-collateralization and increase principal amount provisions, contrary to the Operating Agreement language.

12. Unless Ardent agrees to release the Shoppes Deed of Trust (and its cross collateralization of the Shoppes Property) for payment of the current balance due under the 1st Ardent Loan, approval of the sale now proposed by the Receiver will consume all of the Shoppes Property sale proceeds, leaving nothing for GAF (believed to be the only 18A and 18B creditor), or for the Receiver for administration as part of the Receivership estate.

13. Assuming Ardent will not agree to limit the amount it receives from the Shoppes Property sale, equity will require Court intervention with respect to the two Ardent Loans so as to protect GAF, at least by requiring a simultaneous sale of the Shoppes and the Marketplace/Box Property, sequestering proceeds from the sale of Shoppes until sale of the Marketplace/Box, or such other equitable remedy as appropriate for all concerned.

14. 18A and 18B did not receive any proceeds from the 2d Ardent Loan, and execution of the Marketplace Deed of Trust and First Amendment provided no actual value to GAF. In fact, the $8,900,000 addition to the principal amount of the Shoppes Deed of Trust provided for by the Marketplace Deed of Trust and the First Amendment far over-encumbered the Shoppes Property and had the effect of rendering 18A and 18B insolvent, *i.e.*, it caused its assets to have far less value than its obligations.

15. Dragul appears to have intended to develop the Shoppes Property and the Marketplace/Box Property into one unitized shopping center with the hope, but not with any certainty, that in so doing, the combined center would be more valuable than two properties viewed separately.

16. GAF is certain that, as a combined development, the Marketplace/Box Property and the Shoppes Property together have or will have sufficient value to pay the 1st and 2d Ardent Loans, and the GAF Loan. However, if proceeds from the sale of Shoppes are used to pay the cross-collateralized 2nd Ardent Loan, nothing will be left to pay the GAF Loan.

17. The Motion incorrectly describes the deadlines for listing and sale of the Shoppes and Marketplace/Box properties. There is no April 15, 2019 deadline to "enter into a binding agreement to sell the Shoppes." Rather, the Forbearance Agreement (Exhibit 1 to the Motion) states at ¶ 4:

> The Receiver and the Borrower Parties [Dragul and his entities] . . . shall, no later than April 15, 2019, enter into a binding listing agreement for the property for sale and/or for refinance with an institutional sale or financing broker . . . . The Receiver and the Borrowing Parties . . . .shall, no later than August 30, 2019, (a) enter into a binding agreement to sell and/or refinance the Property . . . and close such transaction.

18. Contrary to the Motion's assertion, there is no guarantee that the sale of the Marketplace/Box Property separately "would generate additional proceeds for the estate and resolve the Ardent cross-collateralization issue." (Motion at 17.) Dragul has only a 9.417% interest in the 17A, B and C Borrowers under the 2d Ardent Loan. (See November 28, 2018 Receiver's Preliminary Report herein, at 5). Absent an agreement with the Receiver, Ardent, and any other interested creditors, the Receiver will receive only 9.41% of the net proceeds from a separate subsequent sale of the Marketplace/Box Property.

ARGUMENT

19. Dragul, GAF and Ardent all understood or should have understood that the development concept of the Shoppes *and* the Marketplace/Box Properties, and maximization of their value, called for their simultaneous sale, probably to one purchaser.

20. Under the circumstances presented here, the Receiver has the authority, and arguably the duty as a fiduciary for the benefit of creditors including GAF, not to close the proposed sale of the Shoppes separately.

21. Moreover, the Court has the inherent authority either to condition the sale of the Shoppes Property on a simultaneous sale of the Marketplace/Box Property or, to permit the proposed sale but only after avoidance of Ardent's cross-collateralization lien.

22. Colorado law provides that "[a] receiver is a fiduciary of the court and of the persons interested in the estate of which he is the receiver." *Zeligman v. Juergens*, 762 P.2d 783, 785 (Colo. App. 1988); *see also Eller Indus., Inc. v. Indian Motorcycle Mfg., Inc.*, 929 F. Supp. 369, 372 (D. Colo. 1995); *Midland Bank v. Galley Co.*, 971 P.2d 273, 279 (Colo. App. 1998). The receiver's duty "is to collect the assets, obey the court's order and in general to *maintain and protect the property and the rights of the various parties*." *Zeligman*, 762 P.2d at 785 (citing *Hart v. Ed-Ley Corp.*, 482 P.2d 421, 425 (Colo. App. 1971)) (emphasis added).

23. At its core, the receivership "is not a finality within itself, but is only a means to an end that the court might be enabled to do equal justice to all parties before it." *Savageau v. J. & R. A. Savageau, Inc.*, 285 P.2d 810, 813 (Colo. 1955).

24. "The first duty of a court having possession of property is to preserve it for the litigants." *Colorado Wool Mktg. Ass'n v. Monaghan*, 66 F.2d 313, 315 (10th Cir. 1933)

(referencing a receivership ordered by a Colorado state court); *accord Hart v. Ed-Ley Corp.*, 482 P.2d 421, 425 (Colo.App. 1971).

25. The Stipulated Order Appointing Receiver ("Order Appointing Receiver") herein provides the Receiver, *inter alia,* with the following instructions and authority:

> Consistent with Colorado's dissolution statutes and applicable law, and as set forth in greater detail below, the Receiver may, in the exercise of reasonable judgment, investigate any claims and causes of action which may be pursued for the benefit of Dragul, [his entities], their creditors, members, and equity holders, and make recommendations to interested parties and this Court regarding the prosecution of any such claims and causes of action . . . .

(¶9, Order Appointing Receiver)

> The Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court except as expressly provided herein:
>
> (s) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of Creditors, in order to assure the equal treatment of all similarly situated Creditors

(¶13, Order Appointing Receiver).

26. The circumstances surrounding the 2nd Ardent Loan and the First Amendment cross-collateralization provisions burdening the Shoppes Property arguably constitute a transfer in violation of C.R.S. § 38-8-106, which provides that a

> transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

27. Here, at the time of the 2d Ardent Loan, the Marketplace Deed of Trust and the First Amendment: (a) 18A and 18B had already entered into the GAF Notes[1]; (b) 18A's and 18B's Operating Agreements prohibited them from pledging their assets for the benefit of third parties; (c) Ardent paid 18A and 18B no consideration for the cross- collateralization; and (d) After cross-collateralization, the only assets 18A and 18B held were over encumbered, rendering 18A and 18B insolvent.

28. Pursuant to paragraph 13(s) of the Order Appointing Receiver and its duties under this equitable receivership, the Receiver is obligated to test the possibility that the cross-collateralization created by the Marketplace Deed of Trust and the First Amendment executed in connection with the 2d Ardent Loan qualifies as a fraudulent transfer before the proposed sale is approved. See *Pomeranz v. Nat'l Beet Harvester Co.*, 261 P. 861, 863–64 (Colo. 1927) (While the court which appoints a receiver exercises general control, to the exclusion of other courts, of the property that comes into possession of the receiver, such power of control does not deprive a stranger, who claims by paramount title, of the right to have the suit or proceeding instituted by the receiver to try questions of title.)

29. Additionally, in fulfillment of his duties and for the benefit of the Estate, the Receiver should also consider pursuing such a claim before agreeing to sell the Shoppes Property and permitting payment of what will be all of the net proceeds to Ardent.

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[1] GAF maintains that the Notes are not usurious because, among other reasons, the rate could not be determined usurious when calculated on the unpaid balance assuming the debt is paid according to their terms at the end of the agreed term (see C.R.S. § 5-12-103) and, they contain language limiting the effect of the interest potentially due thereunder if such language is determined usurious. In any event, determination of whether GAF's Notes are usurious, what, if any, remedy is appropriate, will not help the Court determine whether the proposed sale of Shoppes is in the best interest of Creditors, including GAF, and the Receivership Estate.

30. The 2d Ardent Loan and its cross-collateralization create circumstances that fail the fourth factor of the seven factor test urged by the Receiver, as announced in *In re Med. Software Sols.*, 286 B.R. 431, 441 (Bankr. D. Utah 2002).

31. The fourth factor is "effect of the proposed disposition on future plans of reorganization." While not a bankruptcy case *per se*, continuation of the Receivership after the proposed sale of Shoppes is analogous to a reorganization. Should the sale of Shoppes go forward as proposed, without intervention from the Court or cooperation from Ardent in allocation of sale proceeds, the 1st and 2d Ardent Loans will be satisfied from the sale proceeds, nothing will be left to pay the GAF Loan, and the Receiver will not realize on any equity in the Shoppes. Having paid more than its proportional share of the overall obligation, 18A and 18B will be left with a common law contribution claim, which the Receiver will have a duty to pursue. See *Colantuno v. Tennenbaum & Co., Inc.*, 23 P.3d 708 (Colo. 2001)(Discussing common law equitable contribution). Accordingly, the possibility that the proposed Shoppes sale will impose additional litigation responsibilities on the Receiver, and attendant cost obligations on the Estate, especially when potential better alternatives exist, militate against approval of the Motion.

32. Also, the Receiver provided no support for its contention that it lacks sufficient resources to service the 1st and 2nd Ardent Loans. To GAF's knowledge, neither Ardent nor the Receiver have provided information about, or an accounting of, revenue received from the Shoppes, nor has the Receiver provided information about whether other Receivership assets or revenue is available to service the 1st and 2nd Ardent Loans. The Court should explore this issue further before determining the Motion.

33. Finally, should the Receiver continue promoting the sale of Shoppes as proposed, and the Court finds such a sale to be in the best interest of the estate and creditors, it nevertheless has equitable powers to approve the sale while still providing GAF relief:

a. The Court could void the cross-collateralization lien created by the Marketplace Deed of Trust and the First Amendment such that the Shoppes Property sale occurs free and clear of such liens, and/or the Court could order sale proceeds to be held pending sale of the Marketplace/Box Property. While Colorado courts have not addressed the issue, the majority of other jurisdictions hold that "a court has the inherent power to authorize the sale of property *in custodia legis* free and clear of liens [similar to a sale under Section 363 of the Bankruptcy Code], the liens being impressed upon the proceeds of the sale." 65 AM. JUR. 2d *Receivers* § 343; *see, e.g., Van Huffel v. Harkelrode*, 284 U.S. 225, 227 (1931) (holding that equitable powers like "the power to sell property of the bankrupt free from incumbrances. . . ha[ve] long been exercised by federal courts sitting in equity when *ordering sales by receivers* or on foreclosure") (emphasis added); *Melrose v. Indus. Assocs.*, 72 A.2d 469, 471(Conn. 1950) (citing *Van Huffel*, 284 U.S. at 227) ("The right of a court to order a sale of property in receivership free of encumbrances in a proper case is generally recognized."); *Stock Bldg. Supply, LLC v. Crosswinds Communities, Inc.*, 893 N.W.2d 165, 174 (Mich. App. 2016) (conducting a review of case law and holding that a receiver's sale free and clear of liens is valid where proceeds go to the creditors); *J. W. Pierson Co. v. W. Orange-Verona Bldg. Co.*, 164 A. 567, 568 (N.J. Ch. 1933) ("The power of sale of property *in custodia legis* free and clear of liens, justiciable in the suit in which it was taken, is inherent in the court."); *Chapman v. Schiller*, 83 P.2d 249, 251 (Utah 1938) ("Court[s have the] power in

reference to receiverships[] to sell on terms fixed by the court, independently of foreclosure statutes.").

b. Courts have long recognized their inherent power to craft this sort of equitable remedy. *See, e.g., Mellen v. Moline Malleable Iron Works*, 131 U.S. 352, 367 (1889) ("[T]he removal of alleged liens or incumbrances upon property, the closing up of the affairs of insolvent corporations, and the administration and distribution of trust funds are subjects over which courts of equity have general jurisdiction."); *United States v. Par. Chem. Co.*, No. 2:09-CV-804-CW, 2017 WL 4857547, at *10 (D. Utah Oct. 24, 2017), *aff'd in part* No. 17-4192, 2019 WL 81978 (10th Cir. Jan. 3, 2019) ("The court clearly possesses the authority to order the sale of the Trust Property 'free of all encumbrances.'").

c. The Court could postpone sale of the Shoppes Property until sale of the Marketplace/Box Property so both sell simultaneously—just as GAF, the Dragul entities *and Ardent* originally intended; or

d. The Court could allocate Shoppes sale proceeds by and among Ardent and GAF in proportion to their respective contributions to the overall debt.

CONCLUSION

34. There remains plenty of time under the Forbearance Agreement to conduct a hearing, consider whether such sale is in the best interest of the Receivership and its creditors, and explore designing a sale of the Shoppes Property (and of Marketplace/Box Property) that serves equity, justice and the best interest of all parties much better than the hasty, unrefined sale of Shoppes as proposed.

WHEREFORE, Creditor, Greeley Asset Funding, LLC, respectfully objects to and requests that the Court deny, the Receiver's Motion for Order Approving Sale of Happy Canyon Shoppes, or, in the alternative, conduct a hearing on the matter to determine if such sale is in the best interest of the Receivership and creditors, and otherwise impose equitable conditions on the sale of the Shoppes Property that better serve all parties, including GAF.

RESPECTFULLY SUBMITTED this 25th day of January, 2019.

LOHF SHAIMAN JACOBS HYMAN & FEIGER PC

By: _____

Charles H. Jacobs
Alan S. Thompson

Attorneys for Creditor,
Greeley Asset Funding, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 25th day of January, 2019, she served a copy of the foregoing **GREELEY ASSET FUNDING, LLC'S RESPONSE/OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HAPPY CANYON SHOPPES** via e-mail upon the following:

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s/ Laura K. Johnson
Laura K. Johnson, Paralegal

In accordance with C.R.C.P. 121 §1-26(9) a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

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 MANAGERS 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.

OPERATING AGREEMENT OF HC SHOPPES 18 A, LLC

This Operating Agreement of HC Shoppes 18 A, LLC (this "**Agreement**") is made and entered into effective as of July 20, 2018 (the "**Effective Date**"), by Gary J. Dragul, as its sole member (the "**Member**").

WHEREAS, the Company (as defined below) was formed on June 7, 2018 pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq.), as amended from time to time (the "**Act**"), at which time a Certificate of Formation for the Company was filed in accordance with the Act.

WHEREAS, the Member desires to enter into this Agreement to define formally and to express the terms of the Company and its rights and obligations with respect thereto.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the Member hereby agrees as follows:

1. Name. The name of the limited liability company is HC Shoppes 18 A, LLC, a Delaware limited liability company (the "**Company**").

2. Perpetual Duration. The Company's duration shall be perpetual.

3. Registered Office and Principal Place of Business. The address of the Company's registered office in the State of Delaware shall be 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of its registered agent at such address shall be Corporation Service Company. The principal place of business of the Company shall be located at 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111, or such other location hereafter determined by Member.

4. Purpose. The sole purpose of the Company comprises, and the nature of the business conducted and promoted by the Company is and shall be: (i) acquiring, owning, holding title to, pledging, mortgaging, developing, leasing, financing, operating and disposing of its undivided interest in the Property; any such other acts or activities relating to its undivided interest in the Property as shall be approved by the Manager and the Member pursuant to the terms and conditions of this Agreement; and (iii) engaging in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the abovementioned purposes.

5. Management; Powers.

a) GDA Real Estate Management, Inc., a Colorado corporation shall serve as the initial manager of the Company (the "**Manager**") and shall manage and conduct the business and affairs of the Company and all decisions regarding the management of the Company. The Company, the Member and the Manager on behalf of the Company shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act. To the extent of its powers set forth in this Agreement, the Member and the Manager are agents of the Company for the purpose of the Company's business, and the actions of the Member or the Manager taken in accordance with such powers set forth in this Agreement shall bind the Company. Subject to subsections (c) and (d) below, the Member and the Manager shall each have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes of the Company including all powers, statutory or otherwise, possessed by members and managers, as applicable, under the laws of the State of Delaware.

b) Notwithstanding anything else to the contrary herein, until that certain loan in the amount of $19,500,000.00 made by AFF II Denver, LLC to the Company and certain other related entities ("**Ardent Loan**") has been paid in full, the Company shall at all times be a Single Purpose Entity. For purposes herein, "**Single Purpose Entity**" shall mean: a person (other than an individual, a government, or any agency or political subdivision thereof), which (i) is formed or organized solely for the purpose of owning, with HC Shoppes 18 B, LLC, a Delaware limited liability company, as tenants-in-common ("**Tenants-in-Common**"), that certain real estate situated at 4992-5082 E. Hampden Avenue, Denver, Colorado, USA, as more particularly described on **Exhibit A** attached hereto (the "**Property**"); (ii) does not engage in any business other than the ownership, management and operation of the Property; (iii) does not have any assets other than those related to its interest in the Property; (iv) does not incur, create or assume any debt other than the Ardent Loan, and trade payables incurred in the ordinary course of business; (v) does not guarantee, hold itself out to be responsible for, or otherwise become liable on or in connection with any debt or other obligation of any other person, and does not pledge its assets for the benefit of any other person, (vi) does not enter into any contract or agreement with any stockholder, partner, principal, member or affiliate of such person or any affiliate of any such stockholder, partner, principal, member or affiliate, other than that certain Management Agreement by and among the Tenants-in-Common and GDA Real Estate Management, Inc., dated of even date

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Operating Agreement of HC Shoppes 18 A, LLC, a Delaware limited liability company, effective as of the Effective Date.

MANAGER:

GDA Real Estate Management, Inc.,
a Colorado corporation,

By: _____
Gary J. Dragul, President

MEMBER:

_____
Gary J. Dragul

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 MANAGERS 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.

OPERATING AGREEMENT
OF HC SHOPPES 18 B, LLC

This Operating Agreement of HC Shoppes 18 B, LLC (this "**Agreement**") is made and entered into effective as of July 20, 2018 (the "**Effective Date**"), by Gary J. Dragul, as its sole member (the "**Member**").

WHEREAS, the Company (as defined below) was formed on June 7, 2018 pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. § 18-101, et seq.), as amended from time to time (the "**Act**"), at which time a Certificate of Formation for the Company was filed in accordance with the Act.

WHEREAS, the Member desires to enter into this Agreement to define formally and to express the terms of the Company and its rights and obligations with respect thereto.

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the Member hereby agrees as follows:

1. Name. The name of the limited liability company is HC Shoppes 18 B, LLC, a Delaware limited liability company (the "**Company**").

2. Perpetual Duration. The Company's duration shall be perpetual.

3. Registered Office and Principal Place of Business. The address of the Company's registered office in the State of Delaware shall be 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and the name of its registered agent at such address shall be Corporation Service Company. The principal place of business of the Company shall be located at 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111, or such other location hereafter determined by Member.

4. Purpose. The sole purpose of the Company comprises, and the nature of the business conducted and promoted by the Company is and shall be: (i) acquiring, owning, holding title to, pledging, mortgaging, developing, leasing, financing, operating and disposing of its undivided interest in the Property; any such other acts or activities relating to its undivided interest in the Property as shall be approved by the Manager and the Member pursuant to the terms and conditions of this Agreement; and (iii) engaging in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Delaware that are related or incidental to and necessary, convenient or advisable for the accomplishment of the abovementioned purposes.

5. Management; Powers.

a) GDA Real Estate Management, Inc., a Colorado corporation shall serve as the initial manager of the Company (the "**Manager**") and shall manage and conduct the business and affairs of the Company and all decisions regarding the management of the Company. The Company, the Member and the Manager on behalf of the Company shall have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to the Act. To the extent of its powers set forth in this Agreement, the Member and the Manager are agents of the Company for the purpose of the Company's business, and the actions of the Member or the Manager taken in accordance with such powers set forth in this Agreement shall bind the Company. Subject to subsections (c) and (d) below, the Member and the Manager shall each have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes of the Company including all powers, statutory or otherwise, possessed by members and managers, as applicable, under the laws of the State of Delaware.

b) Notwithstanding anything else to the contrary herein, until that certain loan in the amount of $19,500,000.00 made by AFF II Denver, LLC to the Company and certain other related entities ("**Ardent Loan**") has been paid in full, the Company shall at all times be a Single Purpose Entity. For purposes herein, "**Single Purpose Entity**" shall mean: a person (other than an individual, a government, or any agency or political subdivision thereof), which (i) is formed or organized solely for the purpose of owning, with HC Shoppes 18 A, LLC, a Delaware limited liability company, as tenants-in-common ("**Tenants-in-Common**"), that certain real estate situated at 4992-5082 E. Hampden Avenue, Denver, Colorado, USA, as more particularly described on **Exhibit A** attached hereto (the "**Property**"); (ii) does not engage in any business other than the ownership, management and operation of the Property; (iii) does not have any assets other than those related to its interest in the Property; (iv) does not incur, create or assume any debt other than the Ardent Loan, and trade payables incurred in the ordinary course of business; (v) does not guarantee, hold itself out to be responsible for, or otherwise become liable on or in connection with any debt or other obligation of any other person, and does not pledge its assets for the benefit of any other person, (vi) does not enter into any contract or agreement with any stockholder, partner, principal, member or affiliate of such person or any affiliate of any such stockholder, partner, principal, member or affiliate, other than that certain Management Agreement by and among the Tenants-in-Common and GDA Real Estate Management, Inc., dated of even date

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Operating Agreement of HC Shoppes 18 B, LLC, a Delaware limited liability company, effective as of the Effective Date.

MANAGER:

GDA Real Estate Management, Inc.,
a Colorado corporation,

By: _____
Gary J. Dragul, President

MEMBER:

_____
Gary J. Dragul

EXHIBIT 1

CONSENT TO MEZZANINE LOAN

AND NOTICE AGREEMENT

AFF II Denver, LLC, a Delaware limited liability company ("**Senior Lender**") is making a loan in the original principal amount of $19,500,000 to HC Shoppes 18 A, LLC, a Delaware limited liability company and HC Shoppes 18 B, LLC, a Delaware limited liability company (jointly, severally and collectively, the "**Borrower**") (the "**Senior Loan**"). Simultaneously therewith, Greeley Asset Funding, LLC, a Delaware limited liability company ("**Mezzanine Lender**") is making a loan to Borrower in the principal amount of $2,750,000 ("**Mezzanine Loan**"). Senior Lender hereby consents to the Mezzanine Loan.

Each of Senior Lender and Mezzanine Lender shall endeavor to provide notice to the other, at their respective address set forth below or at such other address provided by such party to the other from time to time, following an Event of Default (as defined in the loan documents evidencing each of the Senior Loan and Mezzanine Loan) that is continuing; provided, however, that neither party will be under any legal obligation to do so.

Dated: July ___, 2018.

AFF II Denver, LLC,
a Delaware limited liability company

By: _____
Name: Dror Bezalel
Title: Authorized Signatory

Address for notices:
2100 Powers Ferry Road SE
Suite 350
Atlanta, GA 30339

Greeley Asset Funding, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Address for notices:
Greeley Asset Funding, LLC
c/o Stacy L. Sokol, Esq.
1875 Century Park East, Suite 600
Los Angeles, CA 90067