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DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	
Plaintiff: CHRIS MYKLEBUST SECURITIES COMMISSIONER FOR THE STATE OF COLORADO, v. **Defendants:** GARY DRAGUL, et al.	▲ COURT USE ONLY ▲ Case No: 2018CV033011
Attorney for Non-Party Hagshama: Kenneth F. Rossman, IV, No. 29249 LEWIS ROCA ROTHGERBER CHRISTIE LLP 1200 17th Street, Suite 3000 Denver, CO 80202-5835 303.623.9000 krossman@lrrc.com	Courtroom: 424

HAGSHAMA'S OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HICKORY CORNERS

Hagshama Hickory NC, LLC and CoFund 6, LLC (jointly "Hagshama") object to the proposed sale because the Receiver has no authority to sell the real property at issue ("Hickory Corners") under the governing tenancy-in-common and operating agreements. The property is not part of the Receivership Estate. This proposed sale, which is being made at an artificially low price because of the circumstances, will create substantial losses for the majority owners—the innocent investor victims.

Background

Hagshama is a private investment firm in Israel. It allows small investors to join in large-scale investments. It has been in operation since 2009 and has around 32,000 investors participating in roughly 3,000 projects around the world. Critically, each Hagshama-related investment is funded by a unique set of individual small investors. So, the individual Israeli

citizens who invested in Hickory—and who stand to lose much of their money if the proposed transaction goes through—differ from those who invested in the seven other Gary Dragul-related projects affected by the Receivership.

Individual Israeli investors, organized as Hagshama Hickory NC, LLC and CoFund 6, LLC, own 100% of Hickory Corners 16A, LLC and Hickory Corners Box 16A, LLC, which own 64.59% of the real property at issue (and hold title to the property). The individuals associated with Hagshama paid $4,200,852 for this interest. None of these Hagshama entities are part of the Receivership Estate. Mr. Dragul and investors related to him own the remaining 35.41% of Hickory Corners through other entities. The Dragul-related and Hagshama-related entities own the real property as tenants-in-common, subject to a Tenancy-in-Common Agreement. (Attached as Ex. A.)

This ownership structure highlights a critical fact about the Receivership—it comprises individual, discrete investments. In a typical investment fraud scheme, like a Ponzi scheme, the victims invest in a common investment, like a fund. The funds from later investors are then used to pay the earlier investors. Here, by contrast, there are a series of separate investments made by different individuals. Mr. Dragul is involved in each, but otherwise the investors are different for each project (although some individuals are involved in more than one investment). Therefore, just as it would have been improper for Mr. Dragul to have used funds from one investment to benefit another—if he did that —it is wrong for the Receiver to manage, or dispose of, one project to benefit others. Each investment stands alone.

In its rush to obtain cash for its operations and to move toward closure, the Receiver seeks approval of a transaction that would cause the Hagshama investors to lose more than half of their investment—on a property that had no problems until the appointment of the Receiver. The appointment of the Receiver, by itself, has adversely affected the potential of the assets, thus affecting the present value. Allowing a sale now heighten the negative impact on the Hagshama investors, who are very individuals who need protection.

Basis for Objection

This Court appointed Mr. Sender as Receiver for Mr. 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." (Receivership Order ¶¶ 5, 9.) Hickory Corners 16A and Hickory Corners Box 16A are wholly owned by Hagshama and are not properties, assets, or interests of Mr. Dragul, GDA Real Estate Services, LLC, or GDA Real Estate Management, LLC, and so are not part of the Receivership Estate.

Similarly, the property, Hickory Corners, which is majority owned by Hickory Corners 16A and Hickory Corners Box 16A is not part of the Receivership Estate. At most, the minority portion of the property held as a tenant-in-common by the Dragul-related entities may be part of the Estate. The Tenancy-in-Common Agreement, however, has provisions limiting the right of the tenants to transfer their interest in the underlying real estate (Ex. A, TIC § 6.9), including if bankruptcy occurs (Ex. A, TIC § 6.10). The Receiver has followed none of these provisions. And, critically, the Tenancy-in-Common Agreement does not give the minority owner any right to sell the entire property without the authorization of the majority owner. (Ex. A.)

Hagshama's approval right over any sale of the property is reinforced in the applicable operating agreements.[1] The manager of the Hagshama entities is Hickory Management, LLC, which is part of the Receivership Estate. The Receivership Order is clear that the Receiver's actions must be "consistent with the governance documents or operating agreements applicable to [them]." (Receivership Order ¶ 13(b).) Under the operating agreements, Hickory Management's authority and discretion is limited. In particular, it may not sell the underlying property without Hagshama's consent. (Hickory Corners 16A, LLC Operating Agreement § 6.1(K), attached as Ex. B, and Hickory Corners Box 16A, LLC Operating Agreement § 6.1(K), attached as Ex. C.)

Hagshama has not consented to this sale. With the Receivership Order, the Receiver stepped into the shoes of Mr. Dragul and his entities. The Order gives the Receiver special rights vis-à-vis the Receivership Estate. It does not, however, give the Receiver special authority to breach Mr. Dragul's contracts with others or control over property not within the Estate. Indeed, the Order specifically notes that the Receiver is bound by these things. (Receivership Order ¶ 13(b).) And, C.R.C.P. 66 does not give receivers authority to ignore contracts. The Tenancy-in-Common Agreement and the Operating Agreements are contracts between Hagshama and the

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[1] The entities were created under Delaware law, where LLCs are "creatures of contract." *Huatuco v. Satellite Healthcare*, 2013 WL 6460898, at *1 (Del. Ch. Dec. 9, 2013), aff'd, 93 A.3d 654 (Del. 2014). *See also TravelCenters of Am., LLC v. Brog*, 2008 WL 1746987, at *1 (Del. Ch. Apr. 3, 2008) (observing that "limited liability companies are creatures of contract"); 6 Del. C. § 18-1101(b).

entities now controlled by the Receiver. The Receiver has not more right to ignore these contracts than it would a loan.

The Receiver cites no authority for the proposition it, as an owner of a minority equity interest, may force the sale of property it does not control in violation of the operative contracts. The Receiver may suggest this Court has authority in equity to permit this action, but it is inequitable for the Receiver to impose substantial losses on the majority owners of Hickory Corners to benefit investors in other investments or the Receivership.

This is an important issue that may arise in seven additional projects. For this reason, Hagshama requests a hearing to address it with the Court.

Conclusion

The Receiver may sell Mr. Dragul's equity interest, which is part of the Receivership Estate, in Hickory Corners. The Receiver may also cause Hickory Manager to resign so it has no on-going expenses. He has no authority, however, to sell Hickory Corners itself without Hagshama's consent. Doing so would breach the Tenancy-in-Common Agreement and the governing Operating Agreements (and the basic law governing tenants in common). In his Motion, the Receiver does not acknowledge or address these issues because he cannot explain as a legal matter why they can be ignored. This Court should deny the Motion.

Respectfully submitted this 17th day of February, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP
s/Kenneth F. Rossman, IV
Kenneth F. Rossman, IV, No. 29249

Attorney for Hagshama

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of February, 2019, the foregoing was served via first class, U.S. mail, postage prepaid on the following:

Robert W. Finke, Esq.
Matthew J. Bouillon, Esq.
Sueanna P. Johnson, Esq.
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203
Counsel for Chris Myklebust, Securities Commissioner for the State of Colorado

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Springer and Steinberg P.C.
1600 Broadway, Suite 1200
Denver, Colorado 80202
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s/Kenneth F. Rossman, IV
Lewis Roca Rothgerber Christie LLP

TENANCY-IN-COMMON AGREEMENT
(Hickory Corners Shopping Center)

THIS TENANCY-IN-COMMON AGREEMENT (this "**Agreement**"), dated as of January 26, 2017 (the "**Effective Date**"), is made by and between HICKORY CORNERS 16 A, LLC, a Delaware limited liability company ("**Hickory A**"), and HICKORY CORNERS 16 B, LLC, a Delaware limited liability company ("**Hickory B**") each hereinafter referred to individually as a "**Tenant**" or collectively as the "**Tenants**."

A. Tenants are, or will become, the owner of the fee simple title to the real property known as Hickory Corners Shopping Center located at 1718 US Highway 70 Southeast Hickory, North Carolina, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"), as tenants-in-common, subject to the terms and conditions of this Agreement.

B. The Tenants now desire to create a tenancy-in-common (the "**Tenancy-in-Common**") in order to coordinate all actions taken with respect to the Property upon and following the vesting of fee simple title to the Property in the Tenants.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
Declaration of Intention

1.1 The relationship of the parties in the Property will be as tenants-in-common, each as to the following separate and undivided percentage interests (the "**Percentage Interests**"):

Hickory A	64.59%
Hickory B	35.41%

The parties shall have all the rights and privileges of such relationship in accordance with the laws of the State of North Carolina, subject, however, to the terms and conditions of this Agreement.

1.2 No Tenant shall have the right to bind any other Tenant, except as expressly set forth herein.

1.3 Nothing contained herein shall be deemed to create the relationship of partner or partnership or any relationship other than that of tenants-in-common.

1.4 The term of this Agreement shall commence on the Effective Date and shall continue until the later to occur of (i) the sale of all co-tenancy interests (each, an "**Interest**" and collectively, the "**Interests**"), (ii) the time when there is only one Tenant, or (iii) the sale of the Property and the distribution of all proceeds of sale to the Tenants.

ARTICLE II
Cash Proceeds and Expenses of the Property; Additional Contributions of Capital; Indemnification

2.1 Except as otherwise provided in any other agreements among the Tenants, all cash proceeds from operation, leasing, refinancing or sale of the Property shall be shared by each Tenant pro rata in accordance with its Percentage Interest.

2.2 Except as otherwise provided in any other agreements among the Tenants, all ownership and operation costs associated with the Property, including but not limited to costs and expenses incurred in connection with payment of taxes, insurance premiums, utilities, maintenance services, management services, repair services, improvement services, debt service, if any, and all other costs and expenses that may be reasonably necessary in connection with the ownership, operation, sale or leasing of the Property, shall be paid by each Tenant pro rata in accordance with its Percentage Interest within Ten (10) days after written request from the Manager appointed pursuant to **Section 4.1** below.

2.3 In the event that any Tenant shall not make such payment required by **Section 2.2**, the remaining Tenants shall have the following options:

(a) to advance in any proportion the amounts necessary to make the payment due from the Tenant who has failed to make the required payment. Such advances with interest thereon at such rates as may be allowed by law, but no more than 18% per annum, shall be repaid to the advancing Tenants from the first available funds produced from the Property prior to the distribution of any funds to any of the Tenants. The advances shall have a maturity date of no greater than thirty-one (31) days and shall be recourse to the non-paying Tenant. Such repayment shall be in the proportion that each of the advancing Tenant's Percentage Interests bear to each other; or

(b) to not make such advance, but to reduce from the first available funds produced from the Property that would have otherwise been distributable to the non-paying Tenant such amount of funds as to pay all interest, penalties, costs, expenses and damages related to or resulting from such non-paying Tenant's actions.

2.4 Notwithstanding anything to the contrary contained in this **Article 2**, but subject to **Article 7** hereof, each Tenant agrees to protect, defend, indemnify and hold harmless the other Tenants: (a) against all debts, liens, judgments or charges of any nature accruing against the Property or a Tenant by reason of any act of the indemnifying party; and (b) to the extent that any Tenant incurs liability for repayment of any loan obtained by the Tenants, or any other obligation relating to the Property, in excess of its respective Percentage Interest. This indemnity shall include, without limitation, all costs and reasonable attorneys' fees incurred in connection with such excess obligation or with the enforcement of this indemnity.

ARTICLE III
Time Devoted to the Business

Subject to the provisions of Article IV below, each Tenant shall devote such time and attention to the business of the Property as it may desire, and no Tenant shall be entitled to draw a salary for such services.

ARTICLE IV
Management and Operation of the Property

4.1 Upon the unanimous consent of the Tenants, the Tenants may elect a "Manager" of the Property and enter into a separate Property Management Agreement. The Manager, if so elected, subject to the following provisions of this **Section 4.1**, shall be responsible for the day-to-day business operations in connection with the leasing and operation of the Property. In addition, the Manager shall have the power to sign on behalf of the Tenants all documents necessary in connection with the leasing and operation of the Property, provided that the following shall require the prior unanimous written approval of the Tenants: (a) all sales of all or substantially all of the Property; (b) all loans or encumbrances secured by a mortgage or deed of trust encumbering the Property; (c) all liens to be recorded against the Property; and (d) other disposition(s) of all or substantially all of the Property. The Manager shall, at the cost and expense of the Tenants, conduct or cause to be conducted the day-to-day ordinary and usual business affairs relating to the leasing and ownership of the Property as the Manager deems necessary or desirable in its sole discretion, in accordance with and as limited by this Agreement, including without limitation performance of the following:

(a) to actively seek sound tenants for, and supervise and negotiate leasing of, all space available for lease in the Property;

(b) to supervise all accounting services, including the payment of payroll, suppliers, contractors and subtrades, and maintain all books of account and financial records relating to the leasing and ownership of the Property, and to provide all such other accounting and bookkeeping services as may be necessary or appropriate in fully documenting and recording matters relating to the leasing and ownership of the Property. Bank accounts shall be in the name of one or more Tenants and not the Manager. Excess cash flow after reserves will be distributed on no less frequent basis than quarterly;

(c) to the extent that funds are available therefore, to pay before delinquency and before the addition thereto of interest or penalties all taxes, assessments, rents and impositions applicable to the Property;

(d) to negotiate, enter into and supervise the performance of contracts covering the making of any repairs or alterations to or other construction upon the Property;

(e) to supply to the Tenants all information required by the Tenants for the preparation of their annual tax returns;

(f) to prepare and deliver to the Tenants reports from time to time of the state of the Property, which reports shall include factors of significance with respect to the leasing or operation of the Property;

(g) to coordinate the services of all employees, independent contractors, architects, engineers, accountants, lawyers, leasing agents, property managers and other persons and entities necessary or appropriate to carry out the leasing and operation of the Property;

(h) to maintain all funds relating to the leasing or ownership of the Property in an account or accounts in a bank or banks selected by the Manager;

(i) to comply promptly with all present and future laws, ordinances, rules, regulations and requirements of all federal, state, county, city or other governmental or quasi-governmental agencies which may be applicable to the Property or the leasing or ownership thereof;

(j) to supervise all matters coming within the terms of this Agreement and make final inspections of all completed work and approved bills for payment;

(k) to maintain, manage and operate the Property in an efficient manner and ensure the effective and expeditious fulfillment of all duties, obligations and functions of the Manager to the best interest and benefit of the Tenants; and

(l) to subject the Property or any portion or portions thereof to easements, rights of way or other similar rights, with or without compensation, as the Manager, in its reasonable discretion, may determine, subject to the unanimous approval of the Tenants.

4.2 Except as otherwise specifically provided in this Agreement or in any property management agreement regarding the Property, all decisions of the Tenants shall be made by Tenants holding a majority of the Percentage Interests.

4.3 The Tenants hereby initially appoint GDA Management Services, LLC as the Manager for a period of one (1) year. Said appointment shall automatically renew for one (1) year periods, unless any of the Tenants elect to remove the Manager. In such event, a new manager shall be elected to replace GDA Management Services, LLC upon the unanimous consent of the Tenants.

4.4 The Manager shall receive a fee for its services under this Agreement to be set forth in the Property Management Agreement.

4.5. The Tenants agree that they shall not amend the Property Management Agreement without the prior consent of Rialto Mortgage Finance, LLC and/or its successors and/or assigns ("**Lender**") for so long as that certain loan (the "**Loan**") from Lender to the Tenants encumbering the Property is outstanding (or until the Tenants defease the Loan).

<u>ARTICLE V</u>
<u>Arbitration; Attorneys' Fee and Costs</u>

5.1 It is the intention of the Tenants to first mediate any dispute that may arise amongst them based on this Agreement, by a mediator chosen through the collaborative efforts of their respective counsel. The cost of the mediator shall be shared equally by the Tenants and each Tenant shall bear the cost of their own attorney's fees. If such mediation is not successful, and in the event that any Tenant hereto shall commence any arbitration (if arbitration is consent to by the Tenants), legal action or proceeding, including, not by way of limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of this Agreement to be performed or kept, the Tenant prevailing in said action or proceeding shall recover, in addition to its court costs, its reasonable attorney's fees to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if any.

<u>ARTICLE VI</u>
<u>Miscellaneous</u>

6.1 <u>Notices</u>. All notices provided for under this agreement shall be in writing addressed and sent by registered or certified mail to the parties at their respective addresses below, or such addresses as last requested thereby in writing. Unless otherwise specifically provided for herein, all notices, payments, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, or (ii) when sent, if by email or facsimile transmission (provided sender receives printed confirmation of the successful delivery of such facsimile transmission), or (iii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iv) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

To Hickory A:

GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, Colorado 80111
Attn: Gary Dragul, President
E-mail: <u>AcquisitionsGaryDragul@gdare.com</u>
Telephone: (303) 221-5500

with a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Robert Kaufmann
Telephone: (303) 223-1176
E-mail: <u>rkaufmann@bhfs.com</u>

To Hickory B:

GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, Colorado 80111
Attn: Gary Dragul, President
E-mail: AcquisitionsGaryDragul@gdare.com
Telephone: (303) 221-5500

with a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Robert Kaufmann
Telephone: (303) 223-1176
E-mail: rkaufmann@bhfs.com

Any Tenant shall promptly notify the other Tenant of any change in its principal address or telephone number by giving written notice in the manner set forth above.

6.2 Benefit. This Agreement shall be binding upon and shall inure to the benefit of each of the Tenants, and their respective beneficiaries, heirs, executors, administrators, legal representatives, successors and assigns.

6.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. This Agreement may be delivered by facsimile or email and upon receipt shall be deemed originals and binding upon the parties hereto.

6.4 Amendments. This Agreement may not be amended unless such the amendment is in writing and approved unanimously by the Tenants. Notwithstanding anything herein to the contrary, this Agreement may not be terminated, canceled, modified, changed, supplemented, altered, amended or assigned without the prior written consent of Lender for so long as the Loan is outstanding (or the Tenants defease the Loan). Any such termination, cancellation, modification, change, supplement, alteration, amendment or assignment without the prior written consent of Lender in each case shall be void and of no force and effect

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

6.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

6.7 Time of the Essence. Time is of the essence of this Agreement.

6.8 No Third Party Beneficiaries. Except as otherwise provided in **Section 7.10** below, the provisions of this Agreement are not intended to be for the benefit of and shall not confer any rights on any creditor or other person or entity whom any debts, liabilities or obligations are owed by any of the Tenants.

6.9 Right of First Offer.

(a) If a Tenant ("**Selling Tenant**") desires to sell, transfer or assign (each, a "**Transfer**") all or any part of its Interest (the ("**Offered Interest**"), the Selling Tenant shall give written notice (the "**Offer Notice**") to the Manager and to the other Tenants (the "**Non-Selling Tenants**") of the Selling Tenant's intention to Transfer the Offered Interest upon the following terms and conditions:

(i) For a period ending five (5) business days after the Offer Notice is given (the "**Offer Period**"), any Non-Selling Tenant may advise the Selling Tenant in writing, with a copy to all other Non-Selling Tenants, of the price (which price shall include the assumption of the Selling Tenant's share of any debt on the Property) at which such Non-Selling Tenant (a "**Non-Selling Tenant Offeror**") would be willing to purchase all, but not less than all, of the Offered Interest.

(ii) Within five (5) days after the end of the Offer Period, the Selling Tenant shall accept or reject, by written notice given to the Non-Selling Tenant Offerors, the highest offer for the Offered Interest timely given to the Selling Tenant from such offerors. If the Selling Tenant fails to give a notice of acceptance or rejection to the Non-Selling Tenant Offeror within such five (5) day period, the highest offer shall be deemed rejected. If the Selling Tenant timely accepts, in writing, the highest offer, then the Selling Tenant and the Non-Selling Tenant Offeror whose offer has been accepted shall close the sale of the Offered Interest pursuant to **Section 6.9(a)(iv)**. If two or more Non-Selling Tenant Offerors timely offer the same price, and such offer is timely accepted, then such Non-Selling Tenant Offerors shall divide the right to purchase the Offered Interest in proportion to their respective Percentage Interests, or as they might otherwise agree. If the Selling Tenant rejects or is deemed to have rejected the highest offer, then the Selling Tenant shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price (which price shall include the assumption of the Selling Tenant's share of any debt on the Property) that is greater than the highest offer, which transaction shall be completed, if at all, within 90 days after the end of the Offer Period.

(iii) If the Non-Selling Tenants do not respond to the Selling Tenant's Offer Notice within the Offer Period, then the Selling Tenant shall be entitled to sell the Offered Interest to a third party in an all- cash transaction for a purchase price acceptable to the Selling Tenant, which transaction shall be completed, if at all, within 90 days after the end of the Offer Period.

(iv) The closing of a sale and purchase of the Offered Interest pursuant to this **Section 6.9(a)** shall occur at a time, place and date mutually agreeable to the selling and purchasing parties, but not more than 90 days after the end of the Offer Period.

(v) If any proposed transfer of the Offered Interest is not consummated within the time period set forth herein through no fault of the Non-Selling Tenant Offerors, then the Selling Tenant must once again comply with the terms and conditions of this **Section 6.9(a)** before selling all or any part of its Interest. If the proposed transfer of the Offered Interest is not consummated within the time period set forth herein as a result of the fault of the Non-Selling Tenant Offerors, the Selling Tenant shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price acceptable to the Selling Tenant, which transaction shall be completed at any time within 150 days after the end of the Offer Period.

(b) Notwithstanding anything else to the contrary herein, the terms of this **Section 6.9** shall not apply to, and no consent of any other Transfer shall be required in connection with: (i) a Transfer of an Interest to an Affiliate; (ii) the Transfer of an Interest upon the occurrence of a Bankrupcty pursuant to **Section 6.10** below; or (iii) sales of all or substantially all of the Property approved by the Tenants pursuant to **Section 4.1** above. For purposes of this Agreement: (I) "**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; and (II) "**Affiliate**" means any Person controlling or controlled by or under common control with the Tenant. For purposes of this definition, "control" when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing; and (III) "**Person**" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such "Person" where the context so admits.

(c) Notwithstanding anything else to the contrary herein, no Tenant shall have the right to Transfer an Interest, or any ownership interest in a Tenant.

(d) Notwithstanding anything else to the contrary herein, no Tenant may sell or transfer its co-tenancy interest unless the transferee enters into this Agreement on or prior to such transfer.

6.10 Bankruptcy.

(a) Upon the first to occur of (i) written notice from a Tenant to the Manager of the occurrence of a Bankruptcy by such Tenant (the "**Bankrupt Tenant**") or (ii) the Manager becoming aware of a Bankruptcy with respect to a Bankrupt Tenant, the Manager shall provide written notice of such Bankruptcy to the remaining Tenants (the "**Non-Bankrupt Tenants**"), and the Manager and the Non-Bankrupt Tenants shall have the option (the "**Bankruptcy Option**") to purchase the entire Interest of the Bankrupt Tenant for a 30-day period (the "**Bankruptcy Period**") after the date of such written notice of the Bankruptcy.

(b) The Manager and any Non-Bankrupt Tenant may exercise their Bankruptcy Option by delivering to the Bankrupt Tenant, with a copy to the Non-Bankrupt Tenants and the Manager, as applicable, a written offer to purchase some or all of the Interest of the Bankrupt Tenant within the Bankruptcy Period (a "**Bankruptcy Election**"). If the Manager does not elect to purchase all of the Interest, then the Non-Bankrupt Tenants who delivered a written offer to purchase as described above (the "**Bankruptcy Purchase Tenants**") may purchase that portion of such Interest not elected by the Manager, allocated as between the Bankruptcy Purchase Tenants as follows: (1) first, the lesser of (x) the amount of such Interest not purchased by the Manager that is specified by such Bankruptcy Purchase Tenant in the Bankruptcy Election or (y) such Bankruptcy Purchase Tenant's Percentage Interest; (2) second, the balance, if any, not allocated under clause (1), above, shall be allocated to those Bankruptcy Purchase Tenants who indicated in their Bankruptcy Election the desire to purchase greater than their Percentage Interest (measured as of the first day of the Bankruptcy Period), up to the amount of such excess. The Manager and the Bankruptcy Purchase Tenants may elect to purchase all or less than all of the Bankrupt Tenant's Interest.

(c) Unless otherwise agreed, upon the occurrence of a Bankruptcy, the purchase price for the Bankrupt Tenant's Interest shall be equal to 85% of the Bankrupt Tenant's Net Equity (as defined below). "**Net Equity**" means the Percentage Interest of the Bankrupt Tenant multiplied by the sum of: (A) the Asset Value (as defined below) of the Property, as reasonably determined pursuant to **Section 1.1(d)(ii)**; less (B) all accrued, but unpaid, liabilities of the Property, including, without limitation, normal brokerage fees for the sale of Property.

(d) Payment of the purchase price shall be made in cash or certified funds at time of closing if the purchase price is less than $50,000. If the purchase price is $50,000 or more, payment of the purchase price shall be made by: (i) the cash payment of the greater of $50,000 or 25% of the purchase price at closing; and (ii) delivery of the purchaser's promissory note for the balance of the purchase price, payable in equal quarterly installments, including principal and interest on unpaid balances at the rate hereinafter specified over three years from date of closing. Such note shall contain customary provisions, including but not limited to, acceleration on default and payment of collection costs (including reasonable attorney's fees) on default and shall provide prepayment may be made at any time without penalty. The promissory note shall be secured by a pledge of the Bankrupt Tenant's Interest, pursuant to a commercially reasonable security agreement and related documents. The interest rate for such note shall be 1% above the Prime Rate. However, if the interest rate exceeds the maximum legal rate of interest then interest shall accrue at the maximum legal rate.

(e) For purposes of this Agreement, the following definitions shall apply:

(i) "**Bankruptcy**" shall mean, with respect to any Person, if such Person (A) makes an assignment for the benefit of creditors, (B) files a voluntary petition in bankruptcy, (C) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (D) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (F) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (G) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

(ii) "**Asset Value**" shall mean the fair market value of the Property, as determined based on a valuation as of the last day of the month immediately prior to the Bankruptcy. For purposes of this Agreement, Asset Value shall be established in good faith by the Manager.

ARTICLE VII
Miscellaneous Provisions

7.1 Co-tenancy

(a) Each Tenant acknowledges and confirms that it owns or will own its interest in the Property as a tenant in common with the other Tenants, and that each Tenant's interest in the Property is its Percentage Interest. Each Tenant acknowledges that, no partnership exists between the Tenants with respect to the Property or any other matter.

(b) The Tenants hereby waive any right they may have to partition the Property or to file a partition action relating to the Property and specifically covenant not to undertake any such action.

7.2 Successor. Any successor to any portion of the interest of any Tenant in the Property, other than a single grantee or assignee of the interests of the Tenants, shall be deemed to accept the interest so conveyed upon and subject to the terms and provisions of this Agreement and to have assumed all obligations of the grantor or assignor accruing from and after the effective date of such conveyance, subject to the limitations on personal liability contained herein, which limitations shall be deemed applicable to the grantee to the extent that they were applicable to the grantor.

7.3 Waiver. Each Tenant hereby waives any and all rights of subrogation, reimbursement, contribution, indemnity or otherwise arising by contract or operation of law

(including, without limitation, any lien rights) from or against any other Tenant.

7.4 Governing Law/Venue. The laws of the State of North Carolina govern the enforcement and interpretation of this Agreement. The venue for any action related to this Agreement shall be in the County of Catawba, North Carolina.

7.5 Severability. If for any reason any provision of this Agreement, or the applicability of any such provision to a specific situation, is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be modified or deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.

7.6 Representative Tenant. It is agreed by each Tenant that (i) Hickory B is authorized to be the sole contact and notice party and shall act as each such Tenant's attorney-in-fact to receive all notices, including, without limitation, service of process for each such Tenant, and (ii) Hickory B shall keep all books and records pertaining to the Property separate from any other property of Hickory B. Hickory B hereby agrees to provide such notices received to Hickory A, but failure to do so will not alter the effect of such notice. Hickory B is hereby authorized to correspond with, and receive correspondence from, Lender for so long as that certain loan from Lender to Tenants is outstanding (or the Tenants defease the Loan). If requested by Lender, each Tenant will sign an investor certificate, which certificate shall provide the guarantor of the Loan with a limited power of attorney to correspond with the Lender on behalf of each Tenant.

7.7 Notice to Hickory A from Other Tenants. Hickory B agrees that should such entity give notice to Hickory A, such notice shall also be sent to Hickory A at the following address: 11 Granit St., Petach Tikva, Israel, Attn: Naor Cohen.

7.8 Subordination. It is agreed by each Tenant that (i) any purchase rights or rights of first refusal in favor of any Tenant shall be subject and subordinate to the Loan and the loan documents, (ii) all indemnities and other rights and remedies of each Tenant shall be subject and subordinate to the Loan and the loan documents; (iii) all payments under the Loan and the loan documents have priority over distributions to the Tenants and distributions shall in all ways be subordinate and subject to the terms and conditions of the Loan and the loan documents; and (iv) this Agreement shall be subordinate to the Loan and shall be subject to the terms and conditions of any loan documents entered into in connection with the Loan.

7.9 Single Asset Real Estate. Each of the Tenants hereby acknowledge that the Property is "single asset real estate" as defined in 11 U.S.C. §101(51B) and pursuant to 11 U.S.C. §362(d)(3).

7.10 Third Party Beneficiary. Each of the Tenants hereby acknowledge that Lender is a third-party beneficiary this Agreement.

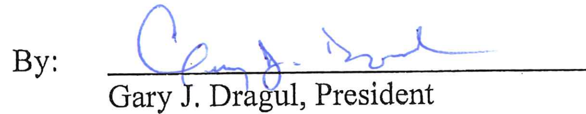
[Signature Page Immediately Follows]

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

HICKORY CORNERS 16 A, LLC,
a Delaware limited liability company

By: Hickory 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

HICKORY CORNERS 16 B, LLC,
a Delaware limited liability company

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

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

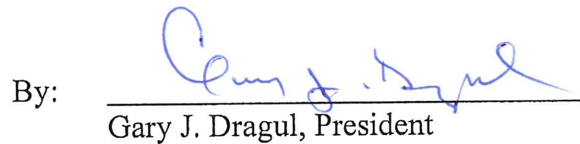
By: 
Gary J. Dragul, President

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT A

LEGAL DESCRIPTION

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE STATE OF NORTH CAROLINA, COUNTY OF CATAWBA AND DESCRIBED AS FOLLOWS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN CATAWBA COUNTY, HICKORY TOWNSHIP, NORTH CAROLINA AND BEING ALL OF TRACT NUMBER 1, HICKORY CORNERS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY JDN ENTERPRISES, INC. BY CRAIG S. MCNEILL (NORTH CAROLINA REGISTERED LAND SURVEYOR NO. 2563) ON DECEMBER 21, 1994, OF RECORD IN PLAT BOOK 21, PAGE 151, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

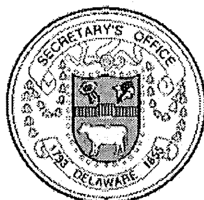
SAVE AND EXCEPT THAT PARCEL CONVEYED BY DEED RECORDED IN BOOK 2249, PAGE 1724, CATAWBA COUNTY REGISTRY.

FURTHER SAVE AND EXCEPT THAT PARCEL OF LAND CONTAINING 1.733 ACRES, MORE OR LESS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY MCNEILL SURVEYING & LAND PLANNING, PLLC, BY CRAIG S. MCNEILL (PROFESSIONAL LAND SURVEYOR # L-2563) OF RECORD IN PLAT BOOK __________, PAGE ________, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

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 "HICKORY CORNERS 16 A, LLC", FILED IN THIS OFFICE ON THE THIRD DAY OF NOVEMBER, A.D. 2016, AT 7:31 O`CLOCK P.M.



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SR# 20166494611

Authentication: 203280557
Date: 11-03-16

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

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:31 PM 11/03/2016
FILED 07:31 PM 11/03/2016
SR 20166494611 - File Number 6202868

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

First: The name of the limited liability company is
Hickory Corners 16 A, 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 3rd day of November, 2016.

By: /s/ Orlene Mitchell
Authorized Person (s)

Name: Orlene Mitchell

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.

OPERATING AGREEMENT

OF

HICKORY CORNERS 16 A, LLC

a Delaware limited liability company

THIS OPERATING AGREEMENT OF HICKORY CORNERS 16 A, LLC is made and entered into as of the 26th day of January, 2017 (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 November 3, 2016, 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. 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 Hickory Corners 16 A, 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 Rd., Suite 400, Wilmington, DE 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, as a tenant in common with Hickory Corners 16 B, LLC, a Delaware limited liability company (together, the "**Tenants in Common**") acquiring and 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 Tenants in Common as of the Effective Date commonly known as "Hickory Corners" located at 1718 US Highway 70 Southeast Hickory, North Carolina, as more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Property**"), and, until the Investors cease to be Members of the Company and the Loan is no longer outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), the Project shall be the sole and exclusive business of the Tenants in Common.

The GDA Manager may, without further consent or approval of the Members, cause the Tenants in Common to obtain a loan from Rialto Mortgage Finance, LLC, a Delaware limited liability company (together with its successors and/or assigns, the "**Lender**"), in connection with the Project, in an aggregate amount not to exceed $10,300,000.00 in U.S. Dollars (the "**Loan**"), which Loan will be evidenced by a promissory note and other loan documents (the "**Loan Documents**"), and secured by a Deed of Trust, Assignment of Leases and Rents, fixture Filing and Security Agreement 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 for the purpose of increasing the Project's profits or to prevent a material loss to the Company, the Manager shall give written notice to the Members of the additional amounts required. The Investors shall be entitled at their sole discretion to fund part or whole of the additional amounts

required by the Manager. To the extent that the Investors elected not to fund or to partially fund such additional amounts, then the other Members shall be entitled to fund such the additional amounts or such part that the Hagshama Investor elected not to fund, in accordance with such Members' proportionate share thereof corresponding to their Percentage Interest out of the aggregate Percentage Interest of such Members other than the Investors. Such funding shall be 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 excess 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 **Articles 3.2, 6.14**, and **7.10** hereof, and, while the Loan is outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), subject to the Loan Agreement and **Article 18** hereof, 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, Manager, Independent Director or Special Member 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, Manager, Independent Director or Special 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**, 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 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**.

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**, 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, to the Investors, pro rata among them in respect of their Unreturned Contributed Capital Amount, until Investors' Unreturned Contributed Capital Amount balance is reduced to zero;

(iii) Third Priority Distributions. Third, subject to **Article 5.4B**, until each of the Investors (and/or transferees to which their Membership Interest is Transferred pursuant to **Article 9.3** its "**Permitted Transferees**") achieve an IRR of 17.46% on its respective initial Capital Contribution calculated as set forth in the Business Plan ("**Target IRR**"), 100% to the Investors and/or their Permitted Transferees, among them in accordance with their Percentage Interests; and

(iv) Fourth Priority Distributions. Fourth, 100% to the GDA Member.

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.

(i) Notwithstanding anything to the contrary herein, at any time following the date that is 18 months after the Effective Date, GDA Member shall be entitled buy out the Investors' (and their respective Permitted Transferees') Membership Interests in the

Company for an amount that equals to their Unreturned Capital Contribution and an additional amount that shall reflect an annual IRR of 22% over each of the Investor's respective initial Capital Contribution calculated as set forth in the Business Plan (the "**Buy-Out Right**" and "**Buy-Out IRR**", respectively).

(ii) Notwithstanding anything to the contrary herein, if, by the lapse of 36 months after the Effective Date, the Company has not sold the Property, then the Investors shall be entitled to require the GDA Manager to cause the Company to, or the GDA Manager may elect to unilaterally, buy out the Investors', and their respective Permitted Transferees' Membership Interests in the Company and pay the Investors (and their respective Permitted Transferees) an amount that causes each of the Investors, together with all prior distributions, to receive its Unreturned Capital Contribution and to achieve the Target IRR on its respective Contributed Capital calculated as set forth in the Business Plan.

In connection with the buy-out alternatives set forth above this **Article 5.4B**, 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**, 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** shall survive the termination or expiration of this Agreement.

C. It is the intent of the Manager and the Members that a Member shall 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.

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 **Article 5.4A**, as applicable (the "**Member Tax Rate**"). In determining the Member Tax Rate, the Manager may provide written notice requesting from the Investors, 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 **Article 5.4A** and **11.3B(iii)**. Amounts otherwise to be distributed to such Member pursuant to **Article 5.4A** 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**.

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 or 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 nor permit to be taken any of the following actions on behalf of the Company, and, where indicated below, on behalf of the other Tenant in Common without also receiving the approval of and the Investors, either in writing or at a duly called and held meeting:

A. Confess any judgment against any of the Tenants in Common;

B. Consent to the appointment of any receiver of the assets of any of the Tenants in Common;

C. Declare bankruptcy of any of the Tenants in Common;

D. Take any action in contravention of this Agreement;

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

F. Commingle any of the Tenants in Common's funds with the Manager's or any other Person's funds;

G. Fill the vacancy of a manager of any of the Tenants in Common;

H. Remove a manager of any of the Tenants in Common;

I. Except as set forth in **Article 2.1** and **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 that the Manager may have the express right to unilaterally amend or amend and restate this Agreement or the Certificate of Formation without obtaining the consent of the Investors with regard to the addition of any 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 Investors or adversely impact any material rights of Investors under this Agreement.

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 Investors and their Permitted Transferees, unless the same is after: (i) 24 months following the Effective Date hereof and in connection therewith Investors and their Permitted Transferees receives an amount (in distributions of net proceeds or buy-out consideration, as the case may be) that would cause the Investors to achieve the Buy-Out IRR on their respective Contributed Capital calculated as set forth in the Business Plan; or (ii) 36 months following the Effective Date hereof and in connection therewith the Investors and their Permitted Transferees receives an amount (in distributions of net proceeds or buy-out consideration, as the case may be) that would cause the Investors to achieve the Target IRR on their respective Contributed Capital calculated as set forth in the Business Plan;

L. Except as set forth in **Article 2.1** and **Article 3.2**, incur or refinance indebtedness on behalf of the Tenants in Common 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 loan or any other indebtedness of any Tenant in Common (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 for any Tenant in Common; 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, and 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 on behalf of any of the Tenants in Common 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. $15,427,103.00 (the "**Maximum Expenses**"). Subject to the Loan Agreement 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 on behalf of any of the Tenants in Common 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 any of the Tenants in Common 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 any of Tenants in Common to secure payment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of an of the Tenants in Common except by the Manager, or to the extent permitted under the Act, by agents or employees of any of the Tenants in Common expressly authorized to contract such debt or incur such liability by the Manager;

(iv) Power to purchase liability and other insurance to protect the property and business of any of the Tenants in Common;

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

(vi) Power to invest any funds of any of the Tenants in Common 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 Tenants in Common and shall permit withdrawal or investments upon signature of the Manager alone;

(vii) Power to execute and negotiate on behalf of any of the Tenants in Common 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 property of any of the Tenants in Common, 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 any of the Tenants in Common;

(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 any of the Tenants in Common;

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

(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 any of the Tenants in Common 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 any of the Tenants in Common;

(xii) Power to establish and pay compensation to any employee of any of the Tenants in Common 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 Tenants in Common, or any part or parts thereof, and to disburse company funds for purposes of the Tenants in Common 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 any of the Tenants in Common or their 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) Subject to **Article 18**, power to institute, prosecute, defend, settle, compromise, dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, any of the Tenants in Common, their member or managers in connection with the activities arising out, connected with, or incident to the business of the Tenants in Common, and to engage counsel or others in connection therewith;

(xvi) Power to execute for and on behalf of any of the Tenants in Common and with respect to the business of any of the Tenants in Common 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 any of the Tenants in Common 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 any of the Tenants in Common;

(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 any of the Tenants in Common 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 any of the Tenants in Common. All decisions affecting the policy and management of any of the Tenants in Common, 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 any of the Tenants in Common shall be made by the Manager;

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

(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 the assets of any of the Tenants in Common, 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. Hickory 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 the Investors.

(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**"), the Investors 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".

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 non-appealable 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.

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 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, Independent Director or Special Member may have other business interests, which may compete with the business of the Company, and such Manager, Independent Director or Special Member 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, Independent Director or Special Member 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 Investors 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 Investors 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 Investors 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 Investors under the Business Plan, or the Membership Interests of the Investors.

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 **Article 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 the Investors) 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 the Investors), 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 Investors (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 Investors (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 Investors (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 Investors, 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 the Investors. Notwithstanding, anything herein to the contrary, Investors' 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 Agreement, 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 Investors (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**. 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**, 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 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**:

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 Operating Agreement of Hickory Corners 16 A, 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.

"**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 any 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 Investors and the GDA Member.

"**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 November 3, 2016, 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 6, LLC.

"**Company**" means Hickory Corners 16 A, 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 Overrun Return**" shall mean a sum equal to 10% 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 the Investors, (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 Hickory Member, LLC, a Colorado limited liability company.

"**GDA Manager**" means Hickory 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 Hickory NC, LLC, a Florida limited liability company.

"**Investors**" means Hagshama Investor and Cofund Investor.

"**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(i)**.

"**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**.

"**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**.

"**Special Member**" means, upon such Person's admission to the Company as a member of the Company pursuant to **Article 18**, a Person executing this Agreement as Independent Director, in such person's capacity as an Independent Director of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

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

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

"**Tenancy In Common Agreement**" means that certain agreement by and among the Tenants in Common governing their rights and responsibilities with respect to their undivided interest in the Property and the Loan.

"**Tenants in Common**" has the meaning set forth in **Article 2**.

"**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 **Article 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.**

"**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.**

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. Notwithstanding anything herein to the contrary, the Independent Director and Special Member shall not be bound by, or subject to, this Section 14.4 A.

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 Investors, 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 Hagshama Investor and Cofund 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.

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**." Notwithstanding anything herein to the contrary, the Independent Director and Special Member shall not be bound by, or subject to, this Section 14.21.

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. Notwithstanding anything herein to the contrary, the Independent Director and Special Member shall not be bound by, or subject to, this Section 14.22.

14.23 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

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 the Investors 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 the Investors prior to the Effective Date and attached hereto as Annex __) 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 Investors 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 Investors 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. 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).

G. 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.

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

I. 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.

J. 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.

K. 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.

L. As of the Effective Date, the Hagshama Investor's Membership Interest in the Company is free and clear from any Encumbrances and represents 70.57% of the total Membership Interests in the Company on a fully diluted basis, except as otherwise set forth in this Agreement.

M. As of the Effective Date, GDA Member's Membership Interest in Company represents 0% of the total Membership Interests in Company and on a fully diluted basis, except as otherwise set forth in this Agreement.

N. As of the Effective Date, the Cofund Investor's Membership Interest in the Company is free and clear from any Encumbrances and represents 29.43% of the total Membership Interests in the Company on a fully diluted basis, except as otherwise set forth in this Agreement.

15.3 <u>Representations, Warranties and Covenants of the Investors</u>. In addition to those other representations and warranties set forth herein, each of the Investors 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. Such 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. Each Investor is duly organized and validly existing under the laws of the State of Florida. Each 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 each Investor pursuant hereto has been duly executed and delivered by a duly authorized representative of such Investor, and constitutes or will, when executed and delivered, constitute the legal, valid and binding obligations enforceable against the respective Investor in accordance with its terms.

C. Each 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 each of the Investor does not, and the performance by the Investors of the 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 the respective Investor, or (ii) violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to the Investors, or (iii) violate any license or contract or agreement or undertaking of the Investors with any third party.

D. Each of the Investors acknowledges that it has been offered an opportunity to ask questions of, and receive answers from, the Company and the Manager concerning all material aspects of the Company and its proposed business, and that any request for such information has been fully complied with to the extent the Company possesses such information or can acquire it without unreasonable effort or expense.

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 Investors, and its 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 Investors are 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, the Investors shall not 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 the Investors 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.

ARTICLE 18

SPE SPECIAL LIMITATIONS

For so long as the Loan is outstanding, or until the Company defeases the Loan in accordance with the terms of the Loan Documents, the following provisions shall apply and the Company shall remain a Single Purpose Entity (defined terms in this **Article 18** shall have the meaning set forth in the Loan Documents); provided however, that, notwithstanding any other provision in this Agreement to the contrary, the Manager may elect, without any further act, vote or approval of any Member, to continue the application of any or all of the following provisions, or to modify the same as required by any successor lender, at any time after the Loan is discharged or defeased, by entering into an amendment to this Agreement therefor:

18.1 Separateness/Operations Matters. The Company hereby represents and warrants to, and covenants with, Lender that for as long as the Loan is outstanding, or until the Company defeases the Loan in accordance with the terms of the Loan Documents, the Company:

(a) is organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, obtaining the Loan from Lender and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(b) has not engaged and will not engage in any business or activity unrelated to (i) the acquisition, development, ownership, management or operation of the Property, (ii) acting as a managing member of the limited liability company that owns the Property; or (iii) acting as a general partner of the limited partnership that owns the Property;

(c) has not owned and will not own any assets other than (i) the Property, (ii) such incidental Personal Property as may be necessary for the operation of the Property, (iii) the membership interest in the limited liability company that owns the Property; or (iv) the general partnership interest in the limited partnership that owns the Property;

(d) has not engaged in, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, or transfer of its partnership or membership interests (if the Company is a general partner in a limited partnership or a member in a limited liability company) except as permitted by the Loan Documents;

(e) has preserved and will preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation and will not without the prior written consent of Lender, amend,

modify, terminate or fail to comply with the provisions of its Organizational Documents, or consent to or suffer the amendment, modification, termination or breach of any of the Organizational Documents, or amend, modify, terminate or fail to comply with, or consent or suffer the amendment, modification, termination or breach of any Organizational Documents of any entity in which it owns an interest in each case, to the extent pertaining to the Single Purpose Entity provisions contained therein;

(f) has not owned and will not own any subsidiary or make any investment in, any person or entity;

(g) has not commingled and will not commingle its assets with the assets of any of its general partners, managing members, shareholders, Affiliates, principals or of any other person or entity;

(h) has not incurred and will not incur any Indebtedness, other than the following: (i) the Debt and (ii) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding two percent (2%) of the original principal amount of the Loan at any one time; provided that any Indebtedness incurred pursuant to clause (ii) shall be (A) outstanding not more than sixty (60) days and (B) incurred in the ordinary course of business. No Indebtedness, other than the Debt, may be secured (senior, subordinate or pari passu) by the Property;

(i) has maintained and will maintain its financial statements, accounting records, bank accounts and other entity documents separate and apart from those of the partners, members, shareholders, principals and Affiliates of the Company, and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except that the Company's financial position, assets, results of operations and cash flows may be included in the consolidated financial statements of an Affiliate of the Company in accordance with GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(j) has not entered into or been a party to and will not enter into or be a party to any contract or agreement with any general partner, managing member, shareholder, principal or Affiliate of Borrower, any Guarantor, or any general partner, managing member, shareholder, principal or Affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties;

(k) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(l) has not made and will not make any loans to any third party;

(m) has held itself out and identified itself and will hold itself out and identify itself to the public as a legal entity separate and distinct from any other Person;

(n) has conducted and will conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or Affiliate of the Company, but not including any Single Purpose Entity limited partnership of which the Company is expressly permitted to be a general partner in accordance with the terms hereof);

(o) is and will endeavor to remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due to the extent the Property generates enough cash flow to permit the same;

(p) has maintained and will endeavor to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations to the extent the Property generates enough cash flow to permit the same;

(q) has filed and will file its own tax returns, if any, as may be required under applicable law, to the extent the Company is (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division solely for tax purposes of another taxpayer, and has paid and will pay any taxes so required to be paid under applicable law;

(r) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

(s) has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and pay the salaries of its own employees from its own funds;

(t) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of the Company;

(u) has held and will hold its assets in its own name and has conducted and will conduct its business in its own name;

(v) has paid and will pay its own liabilities and expenses to the extent the Property generates enough cash flow to permit the same;

(w) has observed and will observe all corporate, limited liability company or limited partnership formalities, as applicable;

(x) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except by virtue of its status as a Single Purpose Entity general partner of a Single Purpose Entity limited partnership that has been approved by Lender;

(y) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(z) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name;

(aa) has not pledged and will not pledge its assets for the benefit of any Person other than Lender pursuant to the terms of the Loan Documents;

(bb) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt, and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the debt is insufficient to pay such obligation;

(cc) does not and will not have any of its obligations guaranteed by any Affiliate of the Company except with respect to the Loan;

(dd) has complied and will comply with all of the terms and provisions contained in its Organizational Documents;

(ee) has acted and will continue to act in a manner to make the statement of facts contained in its Organizational Documents true and correct;

(ff) has considered and will continue to consider the interests of its creditors in connection with all actions;

(gg) intentionally omitted;

(hh) intentionally omitted;

(ii) intentionally omitted;

(jj) is as of the date hereof, and will continue to be, a Delaware limited liability company that has Organizational Documents that provide that, as long as any portion of the Debt remains outstanding: (i) the Company shall be dissolved, and its affairs shall be wound up, only upon the first to occur of the following: (A) 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 business of the Company is continued in a manner permitted by its this Agreement or the Delaware Limited Liability Company Act (the "Act"), or (B) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (ii) except as expressly permitted pursuant to the terms of the Loan Documents, (y) Sole Member may not resign (in the case of a single member limited liability company), and (z) no additional member shall be admitted to the Company; and (iii) upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes Sole Member to cease to be a member of

the Company (other than (A) upon an assignment by Sole Member of all of its limited liability company interests in the Company and the admission of the transferee, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents, or (B) the resignation of Sole Member and the admission of an additional member of the Company, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents), to the fullest extent permitted by law, the personal representative of such last remaining member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (1) to continue the existence of the Company, and (2) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company; (iv) the bankruptcy of Sole Member or a Special Member, if any, shall not cause such Sole Member or Special Member, if any, to cease to be a member of the Company and upon the occurrence of such event, the business of the Company shall continue without dissolution; (v) in the event of the dissolution of the Company, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of its assets and properties in an orderly manner), and its assets and properties shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (vi) to the fullest extent permitted by applicable law, each member and Special Member, if any, shall irrevocably waive any right or power that they might have to cause the Company or any of its assets or properties to be partitioned, to cause the appointment of a receiver for all or any portion of the assets or properties of the Company, to compel any sale of all or any portion of the assets or properties of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company;

(mm) will not, without the unanimous consent of the Members or managers, including the Independent Director, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, (ii) seek or consent to the appointment of a receiver, liquidator or any similar official for the Company or a substantial portion of its assets or properties, (iii) take any action that might cause the Company to become insolvent, (iv) make an assignment for the benefit of creditors, (v) admit in writing the Company's inability to pay its debts generally as they become due, (vi) declare or effectuate a moratorium on the payment of any obligations, or (vii) take any action in furtherance of any of the foregoing.

18.2 Independent Director.

A. Appointment of Independent Director. As a condition to allow the Company to enter into the Loan, the Lender is requiring that the Company have an Independent Director. Therefore, as long as the Loan remains outstanding, the Members shall cause the Company at all times to have at least one Independent Director who will be appointed by the Manager. The initial Independent Director designated by the Manager is Julia A. McCullough.

B. Duties of the Independent Director.

(i) The Members or managers of the Company (as applicable) shall not take any of the actions identified in **Article 18.1(mm)** above, nor amend any provision of

Article 18 above, unless, at the time of such action, there shall be at least one Independent Director of the Company (and such Independent Director has consented to such action). When voting with respect to any of the matters set forth in **Article 18.1(mm)**, each Independent Director shall consider only the interests of the Company, including its creditors. Except for duties to the Company as set forth in the immediately preceding sentence (including duties to the Member, Manager and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), the Independent Director shall not have any fiduciary duties to the Member, Manager, any Officer or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, an Independent Director shall not be liable to the Company, the Member or any other Person bound by this Agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement and the Independent Director shall have no authority to bind the Company. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company. Independent Director is hereby designated as a "Person" within the meaning of Section 18-101(12) of the Act, but for the avoidance of doubt, the Independent Director is not a "Manager" as the term is used in this Agreement

(ii) No Independent Director of such entity or general partner of such entity, as applicable, may be removed or replaced unless the Company provides Lender with not less than three (3) Business Days' prior notice of (1) the removal of any Independent Director, and (2) the identity of the replacement Independent Director, together with a certification that such replacement satisfies the requirements set forth in this Agreement relating to an Independent Director

C. Definition of Independent Director. As used herein, the term "Independent Director" shall mean an individual who (i) has at least three (3) years prior employment experience and continues to be employed as an independent director, independent manager or independent member by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors, independent managers and independent members, another nationally-recognized company that provides such services and which is reasonably approved by Lender; (ii) is not on the board of directors or managers of more than two (2) Affiliates of the related Single Purpose Entity (other than in its capacity as Independent Director); and (iii) is not, and has never been, and will not, while serving as an Independent Director, be, any of the following: (A) a stockholder, director, manager, officer, employee, partner, member, attorney or counsel of such entity, any Affiliate of such entity or any direct or indirect equity holder of any of them (other than in its capacity as Independent Director or Special Member provided by a nationally-recognized company that routinely provides professional independent directors, independent managers or independent members and other corporate services to such entity or any Affiliate of such entity in the ordinary course of its business), (B) a creditor, customer, supplier, service

provider (including provider of professional services) or other Person who derives any of its purchases or revenues from its activities with such entity or any Affiliate of such entity, (C) a member of the immediate family of any such stockholder, director, manager, officer, employee, partner, member, creditor, customer, supplier, service provider or other Person, or (D) a Person controlling or under common control with any of (A), (B) or (C) above (other than a nationally-recognized company that routinely provides professional independent directors, independent managers or independent members and other corporate services to such entity or any Affiliate of such entity in the ordinary course of its business). A natural person who satisfies the foregoing definition other than clause (iii)(A) or (iii)(B) shall not be disqualified as a result of clause (iii)(A) or (iii)(B) by reason of (I) being an Independent Director, or having been or becoming an Independent Director of, an Affiliate of the Company that is not in the chain of ownership of the Company and that is required by a creditor to be a "single purpose entity" or (II) being, having been or becoming a member of such entity pursuant to an express provision in such entity's operating agreement providing for the appointment of such Independent Director as a member of such entity upon the occurrence of any event pursuant to which Sole Member ceases to be a member of such entity (including the withdrawal or dissolution of Sole Member); provided that, in the case of (I) and (II) above, such Independent Director has and/or will at all times be employed by a company that routinely provides professional independent directors, independent managers or independent members and the fees or other compensation that such individual earns by serving as an Independent Director of one or more Affiliates of such entity in any given year constitute, in the aggregate, less than five percent (5%) of such individual's income for such year.

18.3 Special Members.

A. Upon the occurrence of any event that causes the last remaining Member of the Company or the sole Member of the Company if the Company is a single member limited liability company (such last remaining member or single member shall be referred to herein as "Sole Member") to cease to be a member of the Company (other than (i) upon an assignment by Sole Member of all of its limited liability company interests in such entity and the admission of the transferee, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents, or (ii) the resignation of Sole Member and the admission of an additional Member of the Company, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents), the Special Member(s) of the Company, which shall be the Independent Director, without any action of any Person and simultaneously with Sole Member ceasing to be a member of the Company, shall automatically be admitted as a member of the Company and shall preserve and continue the existence of the Company without dissolution. So long as any portion of the Debt is outstanding, no Special Member may resign or transfer its rights as a Special Member unless (A) a successor Special Member has been admitted to the Company as a Special Member, provided, however, the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member; and (B) such successor Special Member has also accepted its appointment as an Independent Director of the Company. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a Membership Interest in the Company. A Special Member, in its capacity as Special

Member, may not bind the Company. Except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, the Person acting as Independent Director shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, the Person acting as Independent Director shall not be a member of the Company. The Manager shall at all times cause there to be a Person bound by this Agreement as Special Member.

B. The Members agree that this Agreement constitutes a legal, valid and binding agreement, and is enforceable against the Member by the Independent Director, in accordance with its terms. In addition, the Independent Director shall be an intended beneficiary of this Agreement.

18.4 Indemnification of the Independent Director; Special Member. The Company shall indemnify and advance expenses incurred by the Independent Director or Special Member and any affiliate of the Independent Director or Special Member, as agreed to in writing by the Company and pursuant to that certain service agreement between the Company and Corporation Service Company.

18.5 Third-Party Beneficiary. Lender is an intended third-party beneficiary of the "special purpose" and "separateness" provisions of this **Article 18**.

18.6 Manager Consent. Notwithstanding anything to contrary in this Agreement, the consent of Manager shall be required to dissolve the Company or terminate the company's existence as a going business, initiate insolvency proceedings, appoint a receiver for any part of the Company's property, assign or convey any of the Company's right, title or interest in personal or real property for the benefit of creditors that is in contravention of the Loan Documents, enter into any type of creditor workout, or commence any proceeding under any bankruptcy or insolvency laws.

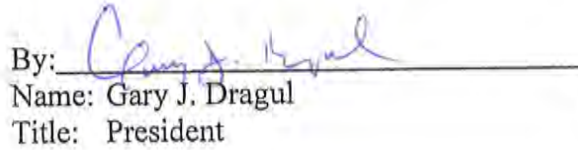
[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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

MANAGER:

HICKORY MANAGEMENT, LLC,
a Colorado limited liability company

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

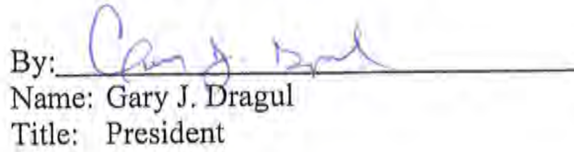


By:____________________________
Name: Gary J. Dragul
Title: President

MEMBERS:

GDA HICKORY MEMBER, LLC,
a Colorado limited liability company

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

By: 
Name: Gary J. Dragul
Title: President

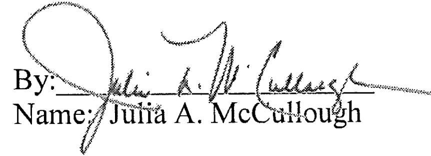
HAGSHAMA HICKORY NC, LLC,
a Florida limited liability company

By:____________________________________
Name: Hanania Shemesh
Title: Manager

COFUND 6, LLC,
a Florida limited liability company

By:____________________________________
Name: Hanania Shemesh
Title: Manager

INDEPENDENT DIRECTOR



By: _________________________
Name: Julia A. McCullough

EXHIBIT A

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

NAME	ADDRESS	VALUE OF CAPITAL CONTRIBUTION	PERCENTAGE OF INTEREST
Hagshama Hickory, NC, LLC	11 Granit St. Petach Tikva, Israel, Fax: +972-3-5389900	$2,964,403	70.57%
Cofund 6, LLC	11 Granit St. Petach Tikva, Israel, Fax: +972-3-5389900	$1,236,449	29.43%
GDA Hickory 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	$10	0%
TOTALS		$4,200,862	100%

EXHIBIT B

Legal Description

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE STATE OF NORTH CAROLINA, COUNTY OF CATAWBA AND DESCRIBED AS FOLLOWS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN CATAWBA COUNTY, HICKORY TOWNSHIP, NORTH CAROLINA AND BEING ALL OF TRACT NUMBER 1, HICKORY CORNERS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY JDN ENTERPRISES, INC. BY CRAIG S. MCNEILL (NORTH CAROLINA REGISTERED LAND SURVEYOR NO. 2563) ON DECEMBER 21, 1994, OF RECORD IN PLAT BOOK 21, PAGE 151, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

SAVE AND EXCEPT THAT PARCEL CONVEYED BY DEED RECORDED IN BOOK 2249, PAGE 1724, CATAWBA COUNTY REGISTRY.

FURTHER SAVE AND EXCEPT THAT PARCEL OF LAND CONTAINING 1.733 ACRES, MORE OR LESS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY MCNEILL SURVEYING & LAND PLANNING, PLLC, BY CRAIG S. MCNEILL (PROFESSIONAL LAND SURVEYOR # L-2563) OF RECORD IN PLAT BOOK 76, PAGE 175, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

EXHIBIT C

Business Plan

(Please see attached.)

Annex - Business Plan

Hickory Corners - Project Summary

GDA Real Estate Services

PROJECT STATISTICS & REVENUE ASSUMPTIONS

Shopping Center Statistics	
Property Type	Shopping Center
Number of Retail Units	16
Building Gross SF (GLA)	179,777 SF
Acreage	±16.87
Year Built/Renovated	1987/1998

Key Assumptions		
Model Start Date		30/11/2016
Sale Date	36	30/11/2019
Property Management Fees		4.00%
Capital Reserve		0.15 PSF
Annual Expense Growth		3.00%
Annual Income Growth		3.00%
Asset Management		0.50%
Preferred Return		12.00%
LP's Equity Share		64.60%
Hagshama & Cofund's Profit Share		36.05%

Sale Assumptions			
Forward 12 Month NOI			$1,446,624
Exit Cap Rate			8.00%
Sale Price	PSF 101		$18,082,796
Sale Costs & Disposition		3.00%	$542,484
Prepayment Fee		0.00%	$0
Total Sale Proceeds			$17,540,312
Loan Payback			$9,300,000
Profit from Sale			$8,240,312

Returns Summary	
Equity	$4,280,868
Total Distributions	$6,665,456
Profit	$2,384,588
Year 1 Cap Rate	9.21%

ACQUSITION ASSUMPTIONS

Acquisition Costs		
Purchase Price	PSF 81	$14,650,000
Seller's Credit		($814,000)
Office Max Reserves		$466,060
Reserves		$814,000
Closing Costs		$600,000
Hagshama's Fee		$211,043
Total Closing Costs		1,277,103
Total Cost		$15,927,103
Less Loan Amount		($9,300,000)
Total New Equity		$6,627,103

Loan Costs	
Loan Commitment Amount	$9,300,000
Loan Type	Fixed
Loan Term to Maturity	10 Year
Loan to Value	63%
Amortization	30 Year
Interest Rate	4.75%
Interest Only	Yes
IO Period (Months)	48
Repayment Date	30/11/2019
Loan Balance at Payback	$9,300,000

Sources and Uses			
Uses:		Sources:	
Acquisition Costs	$14,650,000	Equity -Hagshama LP	$3,020,868
Seller's Credit	($814,000)	Equity -CoFund LP	$1,260,000
Office Max Reserves	$466,060	Equity - GDA	$2,346,236
Reserves	$814,000	Debt	$9,300,000
Closing Costs	$600,000		
Hagshama's Fee	$211,043		
Total	$15,927,103	Total	$15,927,103

Hickory Corners - Cash Flow Pro Forma

	Year 1 נוב-17	Year 2 נוב-18	Year 3 נוב-19	Year 4 נוב-20
POTENTIAL GROSS REVENUE				
Base Rental Revenues	1,400,801	1,250,399	1,465,659	1,496,977
Reimbursement Reven	198,924	184,754	214,350	223,225
AT&T Cell Tower	39,672	45,623	45,623	45,623
General Vacancy	(30,632)	(22,195)	(34,224)	(36,013)
Effective Gross Income	1,608,766	1,458,580	1,691,408	1,729,813
	8.95	8.11	9.41	
Operating Expenses				
Cam	(55,000)	(56,650)	(58,350)	(60,100)
Insurance	(30,209)	(31,115)	(32,049)	(33,010)
Real Estate Taxes	(110,628)	(113,947)	(117,365)	(120,886)
Management Fee	(64,351)	(58,343)	(67,656)	(69,193)
Other Expenses				
Total Operating Expenses	(260,188)	(260,055)	(275,420)	(283,189)
Net Operating Income	1,348,578	1,198,525	1,415,988	1,446,624
Cap Rate	9.2%	8.2%	9.7%	9.9%
Leasing & Capital Costs				
Tenant Improvements				
Leasing Commissions				
Capital Reserves	(26,967)	(26,967)	(26,967)	(26,967)
Asset Management	(73,250)	(73,250)	(73,250)	(73,250)
Leasing & Capital Costs	(100,217)	(100,217)	(100,217)	(100,217)
Cash Flow Before Del	1,248,362	1,098,309	1,315,772	1,346,407
Debt Service				
Interest	(441,750)	(441,750)	(441,750)	(441,750)
Principle				
Total Debt Payments	(441,750)	(441,750)	(441,750)	(441,750)
Net Cash Flow	806,612	656,559	874,022	904,657

Sale Assumptions		
Sale NOI		$1,446,624
Exit Cap Rate		8.00%
Projected Sale Price	PSF 186	$18,082,796
Sale Costs & Disposition fee		$542,484
Prepayment Fee	0,00%	$0
Total Sale Proceeds		$17,540,312
Loan Payback		$9,300,000
Direct Profit from Sale		$8,240,312
Total Rent + Pref		2,337,192
Initial Investment		($6,627,103)
Total Profit		$3,950,401

Profit Distribution		Hagshama	Cofund
Equity	31/12/2016	($3,020,868)	($1,260,000)
Yr1	31/12/2017	$367,682	$153,360
Yr2	31/12/2018	$299,283	$124,830
Yr3	31/12/2019	$398,410	$166,175
Equity Repayment	31/12/2019	$1,955,493	$815,634
12% Pref	31/12/2019	$1,087,512	$453,600
Profit post 12% yield (Up to IRR of 17.45%)	31/12/2019	$595,214	$248,253
Target IRR %		17.46%	17.46%

HICKORY CORNERS BOX 16 A, LLC,
a Delaware limited liability company

HICKORY CORNERS BOX 16 B, LLC,
a Delaware limited liability company

By: Hickory Management, LLC,
a Colorado limited liability company,
Manager of each of the above entities

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

By: ______________________
Gary J. Dragul, President

HICKORY CORNERS 16 A, LLC,
a Delaware limited liability company

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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.

OPERATING AGREEMENT

OF

HICKORY CORNERS BOX 16 A, LLC
a Delaware limited liability company

THIS OPERATING AGREEMENT OF HICKORY CORNERS BOX 16 A, LLC is made and entered into as of the 26th day of January, 2017 (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 November 3, 2016, 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. 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 Hickory Corners Box 16 A, 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 Rd., Suite 400, Wilmington, DE 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, as a tenant in common with Hickory Corners Box 16 B, LLC, a Delaware limited liability company (together, the "**Tenants in Common**") acquiring and 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 Tenants in Common as of the Effective Date commonly known as "Hickory Corners OfficeMax Box" located at 1718 US Highway 70 Southeast Hickory, North Carolina, as more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference (the "**Property**"), and, until the Investors cease to be Members of the Company, the Project shall be the sole and exclusive business of the Tenants in Common.

The GDA Manager may, without further consent or approval of the Members, cause the Tenants in Common to obtain a loan from a reputable financial institution (together with its successors and/or assigns, the "**Lender**"), in connection with the Project, in an aggregate amount not to exceed $10,300,000.00 in U.S. Dollars (the "**Loan**"), which Loan will be evidenced by a promissory note and other loan documents (the "**Loan Documents**"), and secured by a Deed of Trust, Assignment of Leases and Rents, Fixture Filing and Security Agreement 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 for the purpose of increasing the Project's profits or to prevent a material loss to the Company, the Manager shall give written notice to the Members of the additional amounts required. The Investors shall be entitled at their sole discretion to fund part or whole of the additional amounts required by the Manager. To the extent that the Investors elected not to fund or to partially fund such additional amounts, then the other Members shall be entitled to fund such the additional

amounts or such part that the Hagshama Investor elected not to fund, in accordance with such Members' proportionate share thereof corresponding to their Percentage Interest out of the aggregate Percentage Interest of such Members other than the Investors. Such funding shall be 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 excess 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 **Article 3.2**, **Article 6.14**, **Article 7.10** and **Article 18** hereof, and, while the Loan is outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), subject to the Loan Agreement, 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**, 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 **Error! Reference source not found.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 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**.

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**, 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, to the Investors, pro rata among them in respect of their Unreturned Contributed Capital Amount, until Investors' Unreturned Contributed Capital Amount balance is reduced to zero;

(iii) Third Priority Distributions. Third, subject to **Article5.4B**, until each of the Investors (and/or transferees to which their Membership Interest is Transferred pursuant to **Article 9.3** its "**Permitted Transferees**") achieve an IRR of 17.46% on its respective initial Capital Contribution calculated as set forth in the Business Plan ("**Target IRR**"), 100% to the Investors and/or their Permitted Transferees, among them in accordance with their Percentage Interests; and

(iv) Fourth Priority Distributions. Fourth, 100% to the GDA Member.

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.

(i) Notwithstanding anything to the contrary herein, at any time following the date that is 18 months after the Effective Date, GDA Member shall be entitled buy out the Investors' (and their respective Permitted Transferees') Membership Interests in the Company for an amount that equals to their Unreturned Capital Contribution and an additional amount that shall reflect an annual IRR of 22% over each of the Investor's respective initial

Capital Contribution calculated as set forth in the Business Plan (the "**Buy-Out Right**" and "**<u>Buy-Out IRR</u>**", respectively).

(ii) Notwithstanding anything to the contrary herein, if, by the lapse of 36 months after the Effective Date, the Company has not sold the Property, then the Investors shall be entitled to require the GDA Manager to cause the Company to, or the GDA Manager may elect to unilaterally, buy out the Investors', and their respective Permitted Transferees' Membership Interests in the Company and pay the Investors (and their respective Permitted Transferees) an amount that causes each of the Investors, together with all prior distributions, to receive its Unreturned Capital Contribution and to achieve the Target IRR on its respective Contributed Capital calculated as set forth in the Business Plan.

In connection with the buy-out alternatives set forth above this **<u>Article5.4B</u>**, 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 **<u>Article 5.4B</u>**, 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 **<u>Article 5.4B</u>** shall survive the termination or expiration of this Agreement.

C. It is the intent of the Manager and the Members that a Member shall 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.

5.5 <u>Allocation of Income and Loss and Distributions in Respect of Membership Interest Transferred</u>. 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 <u>Withholding</u>. 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 **Article 5.4A**, as applicable (the "**Member Tax Rate**"). In determining the Member Tax Rate, the Manager may provide written notice requesting from the Investors, 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 **Article 5.4A** and **11.3B(iii)**. Amounts otherwise to be distributed to such Member pursuant to **Article 5.4A** 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**.

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 or 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 nor permit to be taken any of the following actions on behalf of the Company, and, where indicated below, on behalf of the other Tenant in Common without also receiving the approval of and the Investors, either in writing or at a duly called and held meeting:

A. Confess any judgment against any of the Tenants in Common;

B. Consent to the appointment of any receiver of the assets of any of the Tenants in Common;

C. Declare bankruptcy of any of the Tenants in Common;

D. Take any action in contravention of this Agreement;

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

F. Commingle any of the Tenants in Common's funds with the Manager's or any other Person's funds;

G. Fill the vacancy of a manager of any of the Tenants in Common;

H. Remove a manager of any of the Tenants in Common;

I. Except as set forth in **Article 2.1** and **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 that the Manager may have the express right to unilaterally amend or amend and restate this Agreement or the Certificate of Formation without obtaining the consent of the Investors with regard to the addition of any 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 Investors or adversely impact any material rights of Investors under this Agreement.

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 Investors and their Permitted Transferees, unless the same is after: (i) 24 months following the Effective Date hereof and in connection therewith Investors and their Permitted Transferees receives an amount (in distributions of net proceeds or buy-out consideration, as the case may be) that would cause the Investors to achieve the Buy-Out IRR on their respective Contributed Capital calculated as set forth in the Business Plan; or (ii) 36 months following the Effective Date hereof and in connection therewith the Investors and their Permitted Transferees receives an amount (in distributions of net proceeds or buy-out consideration, as the case may be) that would cause the Investors to achieve the Target IRR on their respective Contributed Capital calculated as set forth in the Business Plan;

L. Except as set forth in **Article 2.1** and **Article 3.2**, incur or refinance indebtedness on behalf of the Tenants in Common 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 loan or any other indebtedness of any Tenant in Common (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 for any Tenant in Common; 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, and 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 on behalf of any of the Tenants in Common 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. $500,000.00 (the "**Maximum Expenses**"). Subject to 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 on behalf of any of the Tenants in Common 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 any of the Tenants in Common 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 any of Tenants in Common to secure payment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of an of the Tenants in Common except by the Manager, or to the extent permitted under the Act, by agents or employees of any of the Tenants in Common expressly authorized to contract such debt or incur such liability by the Manager;

(iv) Power to purchase liability and other insurance to protect the property and business of any of the Tenants in Common;

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

(vi) Power to invest any funds of any of the Tenants in Common 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 Tenants in Common and shall permit withdrawal or investments upon signature of the Manager alone;

(vii) Power to execute and negotiate on behalf of any of the Tenants in Common 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 property of any of the Tenants in Common, 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 any of the Tenants in Common;

(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 any of the Tenants in Common;

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

(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 any of the Tenants in Common 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 any of the Tenants in Common;

(xii) Power to establish and pay compensation to any employee of any of the Tenants in Common 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 Tenants in Common, or any part or parts thereof, and to disburse company funds for purposes of the Tenants in Common 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 any of the Tenants in Common or their 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) Subject to **Article 18**, power to institute, prosecute, defend, settle, compromise, dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, any of the Tenants in Common, their member or managers in connection with the activities arising out, connected with, or incident to the business of the Tenants in Common, and to engage counsel or others in connection therewith;

(xvi) Power to execute for and on behalf of any of the Tenants in Common and with respect to the business of any of the Tenants in Common 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 any of the Tenants in Common 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 any of the Tenants in Common;

(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 any of the Tenants in Common 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 any of the Tenants in Common. All decisions affecting the policy and management of any of the Tenants in Common, 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 any of the Tenants in Common shall be made by the Manager;

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

(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 the assets of any of the Tenants in Common, 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. Hickory 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 the Investors.

(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**"), the Investors 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".

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 non-appealable 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.

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 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 Investors 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 Investors 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 7.2.B**, 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 7.1**, 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 Investors 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 Investors under the Business Plan, or the Membership Interests of the Investors.

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 **Article 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 the Investors) 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 the Investors), 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 Investors (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 Investors (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 Investors (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 Investors, 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 the Investors. Notwithstanding, anything herein to the contrary, Investors' 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 Agreement, 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 Investors (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 **Article5** 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**. 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, 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 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**:

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 Operating Agreement of Hickory Corners Box 16 A, 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.

"**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 any 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 Investors and the GDA Member.

"**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 November 3, 2016, 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 6, LLC.

"**Company**" means Hickory Corners Box 16 A, 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 Overrun Return**" shall mean a sum equal to 10% 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 the Investors, (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 Hickory Member, LLC, a Colorado limited liability company.

"**GDA Manager**" means Hickory 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 Hickory NC, LLC, a Florida limited liability company.

"**Investors**" means Hagshama Investor and Cofund Investor.

"**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. 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(i)**.

"**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**.

"**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**

“**Tenancy In Common Agreement**” means that certain agreement by and among the Tenants in Common governing their rights and responsibilities with respect to their undivided interest in the Property and the Loan.

“**Tenants in Common**” has the meaning set forth in Article 2.

“**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 **Article 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.**

“**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.**

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 Investors, 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 Hagshama Investor and Cofund 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.

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

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 the Investors 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 the Investors prior to the Effective Date and attached hereto as Annex __) 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 Investors 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 Investors 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. 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).

G. 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.

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

I. 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.

J. 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.

K. 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.

L. As of the Effective Date, the Hagshama Investor's Membership Interest in the Company is free and clear from any Encumbrances and represents 70.57% of the total Membership Interests in the Company on a fully diluted basis, except as otherwise set forth in this Agreement.

M. As of the Effective Date, GDA Member's Membership Interest in Company represents 0% of the total Membership Interests in Company and on a fully diluted basis, except as otherwise set forth in this Agreement.

N. As of the Effective Date, the Cofund Investor's Membership Interest in the Company is free and clear from any Encumbrances and represents 29.43% of the total Membership Interests in the Company on a fully diluted basis, except as otherwise set forth in this Agreement.

15.3 Representations, Warranties and Covenants of the Investors. In addition to those other representations and warranties set forth herein, each of the Investors 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. Such 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. Each Investor is duly organized and validly existing under the laws of the State of Florida. Each 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 each Investor pursuant hereto has been duly executed and delivered by a duly authorized representative of such Investor, and constitutes or will, when executed and delivered, constitute the legal, valid and binding obligations enforceable against the respective Investor in accordance with its terms.

C. Each 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 each of the Investors does not, and the performance by the Investors of the 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 the respective Investor, or (ii) violate any law, statute, ordinance, rule, regulation, order, judgment or decree applicable to the Investors, or (iii) violate any license or contract or agreement or undertaking of the Investors with any third party.

D. Each of the Investors acknowledges that it has been offered an opportunity to ask questions of, and receive answers from, the Company and the Manager concerning all

material aspects of the Company and its proposed business, and that any request for such information has been fully complied with to the extent the Company possesses such information or can acquire it without unreasonable effort or expense.

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 Investors, and its 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 Investors are 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, the Investors shall not 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 the Investors 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.

ARTICLE 18

SPE SPECIAL LIMITATIONS

For so long as the Loan is outstanding, or until the Company defeases the Loan in accordance with the terms of the Loan Documents, the following provisions shall apply and the Company shall remain a Single Purpose Entity (defined terms in this **Article 18** shall have the meaning set forth in the Loan Documents); provided however, that, notwithstanding any other provision in this Agreement to the contrary, the Manager may elect, without any further act, vote or approval of any Member, to continue the application of any or all of the following provisions, or to modify the same as required by any successor lender, at any time after the Loan is discharged or defeased, by entering into an amendment to this Agreement therefor:

18.1 Separateness/Operations Matters. The Company hereby represents and warrants to, and covenants with, Lender that for as long as the Loan is outstanding, or until the Company defeases the Loan in accordance with the terms of the Loan Documents, the Company:

(a) is organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, obtaining the Loan from Lender and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(b) has not engaged and will not engage in any business or activity unrelated to (i) the acquisition, development, ownership, management or operation of the Property, (ii) acting as a managing member of the limited liability company that owns the Property; or (iii) acting as a general partner of the limited partnership that owns the Property;

(c) has not owned and will not own any assets other than (i) the Property, (ii) such incidental Personal Property as may be necessary for the operation of the Property, (iii) the membership interest in the limited liability company that owns the Property; or (iv) the general partnership interest in the limited partnership that owns the Property;

(d) has not engaged in, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, or transfer of its partnership or membership interests (if the Company is a general partner in a limited partnership or a member in a limited liability company) except as permitted by the Loan Documents;

(e) has preserved and will preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation and will not without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of its Organizational Documents, or consent to or suffer the amendment, modification, termination or breach of any of the Organizational Documents, or amend, modify, terminate or fail to comply with, or consent or suffer the amendment, modification, termination or breach of any Organizational Documents of any entity in which it owns an interest in each case, to the extent pertaining to the Single Purpose Entity provisions contained therein;

(f) has not owned and will not own any subsidiary or make any investment in, any person or entity;

(g) has not commingled and will not commingle its assets with the assets of any of its general partners, managing members, shareholders, Affiliates, principals or of any other person or entity;

(h) has not incurred and will not incur any Indebtedness, other than the following: (i) the Debt and (ii) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding two percent (2%) of the original principal amount of the Loan at any one time; provided that any Indebtedness incurred pursuant to clause (ii) shall be (A) outstanding not more than sixty (60) days and (B) incurred in the ordinary course of business. No Indebtedness, other than the Debt, may be secured (senior, subordinate or pari passu) by the Property;

(i) has maintained and will maintain its financial statements, accounting records, bank accounts and other entity documents separate and apart from those of the partners, members, shareholders, principals and Affiliates of the Company, and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except that the Company's financial position, assets, results of operations and cash flows may be included in

the consolidated financial statements of an Affiliate of the Company in accordance with GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(j) has not entered into or been a party to and will not enter into or be a party to any contract or agreement with any general partner, managing member, shareholder, principal or Affiliate of Borrower, any Guarantor, or any general partner, managing member, shareholder, principal or Affiliate thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties;

(k) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(l) has not made and will not make any loans to any third party;

(m) has held itself out and identified itself and will hold itself out and identify itself to the public as a legal entity separate and distinct from any other Person;

(n) has conducted and will conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or Affiliate of the Company, but not including any Single Purpose Entity limited partnership of which the Company is expressly permitted to be a general partner in accordance with the terms hereof);

(o) is and will endeavor to remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due to the extent the Property generates enough cash flow to permit the same;

(p) has maintained and will endeavor to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations to the extent the Property generates enough cash flow to permit the same;

(q) has filed and will file its own tax returns, if any, as may be required under applicable law, to the extent the Company is (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division solely for tax purposes of another taxpayer, and has paid and will pay any taxes so required to be paid under applicable law;

(r) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

(s) has maintained and will maintain a sufficient number of employees, if any, in light of its contemplated business operations and pay the salaries of its own employees from its own funds;

(t) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of the Company;

(u) has held and will hold its assets in its own name and has conducted and will conduct its business in its own name;

(v) has paid and will pay its own liabilities and expenses to the extent the Property generates enough cash flow to permit the same;

(w) has observed and will observe all corporate, limited liability company or limited partnership formalities, as applicable;

(x) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except by virtue of its status as a Single Purpose Entity general partner of a Single Purpose Entity limited partnership that has been approved by Lender;

(y) has not and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(z) maintains and uses and will maintain and use separate stationery, invoices and checks bearing its name;

(aa) has not pledged and will not pledge its assets for the benefit of any Person other than Lender pursuant to the terms of the Loan Documents;

(bb) has not and will not have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt, and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the debt is insufficient to pay such obligation;

(cc) does not and will not have any of its obligations guaranteed by any Affiliate of the Company except with respect to the Loan;

(dd) has complied and will comply with all of the terms and provisions contained in its Organizational Documents;

(ee) has acted and will continue to act in a manner to make the statement of facts contained in its Organizational Documents true and correct;

(ff) has considered and will continue to consider the interests of its creditors in connection with all actions;

(gg) intentionally omitted;

(hh) intentionally omitted;

(ii) intentionally omitted;

(jj) is as of the date hereof, and will continue to be, a Delaware limited liability company that has Organizational Documents that provide that, as long as any portion of the Debt remains outstanding: (i) the Company shall be dissolved, and its affairs shall be wound up, only upon the first to occur of the following: (A) 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 business of the Company is continued in a manner permitted by its this Agreement or the Delaware Limited Liability Company Act (the "Act"), or (B) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (ii) except as expressly permitted pursuant to the terms of the Loan Documents, (y) the sole Member may not resign (in the case of a single member limited liability company), and (z) no additional member shall be admitted to the Company; and (iii) upon the occurrence of any event that causes the last remaining member of the Company to cease to be a member of the Company or that causes sole Member to cease to be a member of the Company (other than (A) upon an assignment by sole Member of all of its limited liability company interests in the Company and the admission of the transferee, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents, or (B) the resignation of sole Member and the admission of an additional member of the Company, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents), to the fullest extent permitted by law, the personal representative of such last remaining member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in the Company, agree in writing (1) to continue the existence of the Company, and (2) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of the Company, effective as of the occurrence of the event that terminated the continued membership of such member in the Company; (iv) the bankruptcy of sole Member shall not cause such sole Member to cease to be a member of the Company and upon the occurrence of such event, the business of the Company shall continue without dissolution; (v) in the event of the dissolution of the Company, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of its assets and properties in an orderly manner), and its assets and properties shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and (vi) to the fullest extent permitted by applicable law, each member shall irrevocably waive any right or power that they might have to cause the Company or any of its assets or properties to be partitioned, to cause the appointment of a receiver for all or any portion of the assets or properties of the Company, to compel any sale of all or any portion of the assets or properties of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company;

(mm) will not, without the unanimous consent of its board of directors or managers, (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, (ii) seek or consent to the appointment of a receiver, liquidator or any similar official for the Company or a substantial portion of its assets or properties, (iii) take any action that might cause the Company to become insolvent, (iv) make an assignment for the benefit of creditors, (v) admit in writing the Company's inability to pay its debts generally as they become due, (vi) declare or effectuate a moratorium on the payment of any obligations, or (vii) take any action in furtherance of any of the foregoing.

18.2 Third-Party Beneficiary. Lender is an intended third-party beneficiary of the "special purpose" and "separateness" provisions of this **Article 18**.

18.3 Manager Consent. Notwithstanding anything to contrary in this Agreement, the consent of Manager shall be required to dissolve the Company or terminate the company's existence as a going business, initiate insolvency proceedings, appoint a receiver for any part of the Company's property, assign or convey any of the Company's right, title or interest in personal or real property for the benefit of creditors that is in contravention of the Loan Documents, enter into any type of creditor workout, or commence any proceeding under any bankruptcy or insolvency laws.

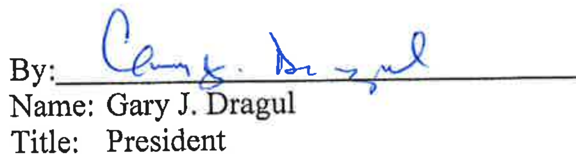
[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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

MANAGER:

HICKORY 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

HAGSHAMA HICKORY NC, LLC,
a Florida limited liability company

By:____________________________________
Name: Hanania Shemesh
Title: Manager

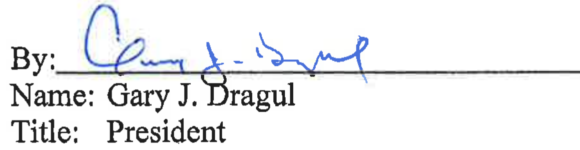
COFUND 6, LLC,
a Florida limited liability company

By:____________________________________
Name: Hanania Shemesh
Title: Manager

MEMBERS:

GDA HICKORY MEMBER, LLC,
a Colorado limited liability company

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



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

<u>EXHIBIT A</u>

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

NAME	ADDRESS	VALUE OF CAPITAL CONTRIBUTION	PERCENTAGE OF INTEREST
Hagshama Hickory Corners NC LLC	11 Granit St. Petach Tikva, Israel, Fax: +972-3-5389900	$56,465	70.57%
Cofund 6, LLC	11 Granit St. Petach Tikva, Israel, Fax: +972-3-5389900	$23,551	29.43%
GDA Hickory 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	$10	0%
TOTALS		$80,026	100%

EXHIBIT B

Legal Description

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE STATE OF NORTH CAROLINA, COUNTY OF CATAWBA AND DESCRIBED AS FOLLOWS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN CATAWBA COUNTY, HICKORY TOWNSHIP, NORTH CAROLINA AND BEING ALL OF TRACT NUMBER 1, HICKORY CORNERS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY JDN ENTERPRISES, INC. BY CRAIG S. MCNEILL (NORTH CAROLINA REGISTERED LAND SURVEYOR NO. 2563) ON DECEMBER 21, 1994, OF RECORD IN PLAT BOOK 21, PAGE 151, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

SAVE AND EXCEPT THAT PARCEL CONVEYED BY DEED RECORDED IN BOOK 2249, PAGE 1724, CATAWBA COUNTY REGISTRY.

FURTHER SAVE AND EXCEPT THAT PARCEL OF LAND CONTAINING 1.733 ACRES, MORE OR LESS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY MCNEILL SURVEYING & LAND PLANNING, PLLC, BY CRAIG S. MCNEILL (PROFESSIONAL LAND SURVEYOR # L-2563) OF RECORD IN PLAT BOOK __________, PAGE ________, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

EXHIBIT C

Business Plan

(Please see attached.)

Annex - Business Plan

Hickory Corners - Project Summary

GDA Real Estate Services

PROJECT STATISTICS & REVENUE ASSUMPTIONS

Shopping Center Statistics	
Property Type	Shopping Center
Number of Retail Units	16
Building Gross SF (GLA)	179,777 SF
Acreage	±16.87
Year Built/Renovated	1987/1998

Key Assumptions		
Model Start Date		30/11/2016
Sale Date	36	30/11/2019
Property Management Fees		4.00%
Capital Reserve		0.15 PSF
Annual Expense Growth		3.00%
Annual Income Growth		3.00%
Asset Management		0.50%
Preferred Return		12.00%
LP's Equity Share		64.60%
Hagshama & Cofund's Profit Share		36.05%

Sale Assumptions			
Forward 12 Month NOI			$1,446,624
Exit Cap Rate			8.00%
Sale Price	PSF 101		$18,082,796
Sale Costs & Disposition		3.00%	$542,484
Prepayment Fee		0.00%	$0
Total Sale Proceeds			$17,540,312
Loan Payback			$9,300,000
Profit from Sale			$8,240,312

Returns Summary	
Equity	$4,280,868
Total Distributions	$6,665,456
Profit	$2,384,588
Year 1 Cap Rate	9.21%

ACQUSITION ASSUMPTIONS

Acquisition Costs		
Purchase Price	PSF 81	$14,650,000
Seller's Credit		($814,000)
Office Max Reserves		$466,060
Reserves		$814,000
Closing Costs		$600,000
Hagshama's Fee		$211,043
Total Closing Costs		1,277,103
Total Cost		$15,927,103
Less Loan Amount		($9,300,000)
Total New Equity		$6,627,103

Loan Costs	
Loan Commitment Amount	$9,300,000
Loan Type	Fixed
Loan Term to Maturity	10 Year
Loan to Value	63%
Amortization	30 Year
Interest Rate	4.75%
Interest Only	Yes
IO Period (Months)	48
Repayment Date	30/11/2019
Loan Balance at Payback	$9,300,000

Sources and Uses			
Uses:		**Sources:**	
Acquisition Costs	$14,650,000	Equity -Hagshama LP	$3,020,868
Seller's Credit	($814,000)	Equity -CoFund LP	$1,260,000
Office Max Reserves	$466,060	Equity - GDA	$2,346,236
Reserves	$814,000	Debt	$9,300,000
Closing Costs	$600,000		
Hagshama's Fee	$211,043		
Total	$15,927,103	Total	$15,927,103

Hickory Corners - Cash Flow Pro Forma

	Year 1 נוב-17	Year 2 נוב-18	Year 3 נוב-19	Year 4 נוב-20
POTENTIAL GROSS REVENUE				
Base Rental Revenues	1,400,801	1,250,399	1,465,659	1,496,977
Reimbursement Reven	198,924	184,754	214,350	223,225
AT&T Cell Tower	39,672	45,623	45,623	45,623
General Vacancy	(30,632)	(22,195)	(34,224)	(36,013)
Effective Gross Income	1,608,766	1,458,580	1,691,408	1,729,813
	8.95	8.11	9.41	
Operating Expenses				
Cam	(55,000)	(56,650)	(58,350)	(60,100)
Insurance	(30,209)	(31,115)	(32,049)	(33,010)
Real Estate Taxes	(110,628)	(113,947)	(117,365)	(120,886)
Management Fee	(64,351)	(58,343)	(67,656)	(69,193)
Other Expenses				
Total Operating Expenses	(260,188)	(260,055)	(275,420)	(283,189)
Net Operating Income	1,348,578	1,198,525	1,415,988	1,446,624
Cap Rate	9.2%	8.2%	9.7%	9.9%
Leasing & Capital Costs				
Tenant Improvements				
Leasing Commissions				
Capital Reserves	(26,967)	(26,967)	(26,967)	(26,967)
Asset Management	(73,250)	(73,250)	(73,250)	(73,250)
Leasing & Capital Costs	(100,217)	(100,217)	(100,217)	(100,217)
Cash Flow Before Del	1,248,362	1,098,309	1,315,772	1,346,407
Debt Service				
Interest	(441,750)	(441,750)	(441,750)	(441,750)
Principle				
Total Debt Payments	(441,750)	(441,750)	(441,750)	(441,750)
Net Cash Flow	806,612	656,559	874,022	904,657

Sale Assumptions		
Sale NOI		$1,446,624
Exit Cap Rate		8.00%
Projected Sale Price	PSF 186	$18,082,796
Sale Costs & Disposition fee		$542,484
Prepayment Fee	0.00%	$0
Total Sale Proceeds		$17,540,312
Loan Payback		$9,300,000
Direct Profit from Sale		$8,240,312
Total Rent + Pref		2,337,192
Initial Investment		($6,627,103)
Total Profit		$3,950,401

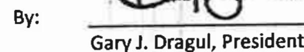
Profit Distribution		Hagshama	Cofund
Equity	31/12/2016	($3,020,868)	($1,260,000)
Yr1	31/12/2017	$367,682	$153,360
Yr2	31/12/2018	$299,283	$124,830
Yr3	31/12/2019	$398,410	$166,176
Equity Repayment	31/12/2019	$1,955,493	$815,634
12% Pref	31/12/2019	$1,087,512	$453,600
Profit post 12% yield (Up to IRR of 17.46%)	31/12/2019	$595,214	$248,263
Target IRR %		17.46%	17.46%

HICKORY CORNERS BOX 16 A, LLC,
a Delaware limited liability company

HICKORY CORNERS BOX 16 B, LLC,
a Delaware limited liability company

By: Hickory Management, LLC,
a Colorado limited liability company,
Manager of each of the above entities

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



By: ______________________
Gary J. Dragul, President

HICKORY CORNERS 16 A, LLC,
a Delaware limited liability company

HICKORY CORNERS 16 B, LLC,
a Delaware limited liability company

By: Hickory Management, LLC,
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Manager of each of the above entities

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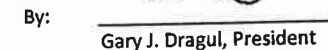

By: ______________________
Gary J. Dragul, President

INTERNAL SSC MEMORANDUM

Scanned/Saved **Save/scanned to e-file** **Save Signature to pleading** **Save to Index**	
Sent to Client on: **By:**	
Calendared: **By:**	*OR*
Notes:	