

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	
<p>Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	
<p>Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p>RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF CLEARWATER COLLECTION</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving the sale of real property known as the Clearwater Collection

shopping center (the “Property”) to Fortune Capital Partners, Inc. (“FCP”) for \$17,100,000 pursuant to the Purchase and Sale Agreement submitted as **Exhibit 1** with this motion (the “FCP PSA”).

I. The Receivership Order gives the Receiver the authority to sell Clearwater.

1. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner, Dragul, and the GDA Entities filed a Stipulated Motion for Appointment of Receiver, consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to COLO. REV. STAT. § 11-51-602(1), C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. The Receivership Order grants the Receiver the authority to sell or otherwise dispose of Estate property and obtain Court approval for any sale for greater than \$10,000 (Receivership Order at 12, ¶ 13(t)).

5. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days

after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on interested parties pursuant to this Court's February 1, 2019, Order concerning notice.

II. Clearwater: ownership, management, debt

6. The Property is a retail shopping center located at 21688-21800 US Highway 19N, Clearwater, Florida 33765. The Property has approximately 134,000 leasable square feet and is over 90% leased.

7. The Property was purchased for \$17,801,000 in August 2015, by Clearwater Collection 15, LLC ("Collection 15") and Clearwater Plainfield 15, LLC ("Plainfield 15"), which own the property as tenants-in-common, 82.52% and 17.48%, respectively. Attached as **Exhibit 2** is an Organizational Chart that shows the Property's complex ownership structure.

8. Collection 15 is a single purpose entity ("SPE") that is owned by two other SPEs, GDA Clearwater 15, LLC (34.82%) and GDA Clearwater Investors, LLC (65.18%).¹ The members of GDA Clearwater 15, LLC are Dragul, who purportedly holds a 5.38% interest, and 15 other individuals who purportedly own the remaining 94.62%.

9. GDA Clearwater Investors, LLC is owned by Hagshama Florida 13, LLC (71.43%) and CoFund V, LLC (28.57%) (the "Hagshama Entities"). The Property's

¹ The organizational chart attached as **Exhibit 2** is not consistent with the 2017 tax filings made in March 2018 which show that GDA Clearwater Investors, LLC holds a 72.63% interest in Clearwater Collection 15, LLC.

other tenant-in-common, Plainfield 15, is owned by yet another SPE, Plainfield 09 A, LLC, which is purportedly owned by Dragul (36.94%) and approximately 33 other individuals, most of whom originally invested in a prior Dragul-promoted project. Their interests were then “rolled over” or exchanged for ownership interests in Plainfield 15. The Hagshama Entities purportedly own a majority of the membership interests in the entities that ultimately own the Property.

10. Both Collection 15 and Plainfield 15 are managed by GDA Clearwater Management, LLC, a wholly-owned Dragul entity that is ultimately managed by GDA Real Estate Management, Inc., whose president and sole shareholder is also Dragul. Nearly all of the membership interests in the SPEs associated with the Property were solicited and obtained by Dragul. The Property is therefore property of the Estate the Receiver is authorized to sell.

11. The Property is encumbered by a deed of trust securing a \$13,350,000 million loan Rialto Mortgage Finance, LLC, made to Clearwater Collection 15, LLC and Clearwater Plainfield, LLC to acquire the Property (the “Rialto Loan”). In April 2018, before the Receiver was appointed, Rialto declared the Loan in default and began sweeping the rents from the Property and to apply them to its Loan. As of February 1, 2019, Rialto’s payoff demand was \$14,664,754.55, which included a prepayment penalty of \$1,866,060.16. The FCP PSA contemplates that FCP will assume the Rialto Loan thereby avoiding the prepayment fee and that the balance of the Rialto Loan FCP assumes will be credited to the \$17,100,000 purchase price.

III. Sale of Clearwater is in the best interests of the Estate and its creditors.

12. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver's proposed sale. In analogous bankruptcy contexts, approval of a sale of property pursuant to Section 363 of the Bankruptcy Code is warranted where there exists a "sound business reason." *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). "In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a 'business judgment test.'" *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

13. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property include (where applicable): (1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or lease the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted).

Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; see *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that “[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion”).

14. In the Receiver’s judgment, the proposed sale of the Property is in the best interest of the Estate and its creditors. The Receiver has hired the nationally-recognized firm of Marcus & Millichap to market the Property, has negotiated the price and terms with the Buyer, and believes both are reasonable. Under the FCP PSA, FCP has 45 days from February 15, 2019 (the contract’s “Effective Date”) – *i.e.*, until April 1, 2019 – to conduct due diligence. On or before February 20, 2019, Buyer is required to deposit \$350,000, and upon expiration of the due diligence period, an additional \$650,000. During the due diligence period, Buyer may cancel the FCP PSA for any reason and obtain the return of its deposit. Upon expiration of the due diligence period, Buyer shall be deemed to have accepted title to the Property and its deposits are non-refundable. Closing under the FCP PSA is to occur or on or before May 1, 2019.

15. On February 5, 2019, the Receiver entered into a Master Agreement with Hagshama, an Israeli investment company with affiliate entities operating in the United States, and Odyssey Acquisitions III, LLC, a Nevada limited liability company, and a subsidiary of Odyssey Real Estate Partners (“Odyssey”). On

February 14, 2019, the Receiver filed a motion to obtain Court approval of the Master Agreement.

16. Pursuant to the Master Agreement, Odyssey has agreed to purchase all of the Receivership Estate's interests in certain real estate properties and/or interests in entities which own certain real estate properties, including the Estate's interest in Clearwater. Under the Master Agreement, the Receiver is authorized to enter into the FCP PSA and seek Court approval of the Agreement; the FCP PSA acknowledges the Master Agreement and Odyssey's rights under it.

17. Pursuant to the Master Agreement, on February 15th the Receiver provided a copy of the FCP PSA to Hagshama and Odyssey. Odyssey has elected to include Clearwater in its purchase under the Master Agreement. By its current terms, the FCP PSA would automatically terminate upon Odyssey's election. FCP and the Receiver have, however, agreed to execute an extension/amendment to the FCP PSA to recognize that it will be a backup agreement if the Master Agreement does not close by March 16, 2019, and that will extend various deadlines under the PSA to accommodate that contingency. The Receiver seeks Court approval of the FCP PSA in the event the Master Agreement does not timely close.

18. At closing of the FCP PSA, a broker's fee of 1.25% (\$213,750) would be due. There will be additional closing costs, unpaid taxes, potentially other liens, and likely other expenses to pay at closing. Net proceeds from the proposed FCP sale are

presently estimated to be around \$4 million. If the net sales proceeds are distributed in accordance with applicable tenants-in-common and operating agreements, Hagshama and CoFund would receive approximately \$2 million, and other investors approximately \$1 million. Pending additional analysis and reconciliation, the Estate would receive approximately \$250,000 from the purported Dragul interest in the property. The Receiver has not yet determined whether the tenants-in-common and operating agreements are valid and enforceable or whether the net proceeds should be distributed in accordance with their terms. Alternatively, equity may best be served by disregarding these agreements and retaining the net proceeds in the Estate for distribution to all creditors.

19. Presently, the Rialto loan secured by the Property is in default and the Estate lacks cash flow to service it. Until approximately February 1, 2019, the Receiver had been using funds from other sources to fund critical expenses for the Property. Rialto has recently agreed to fund those critical expenses and has not yet commenced foreclosure proceedings against the Property.

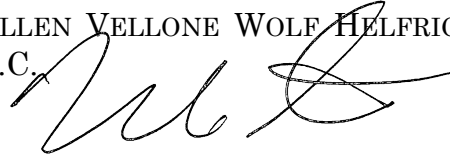
20. Regardless of how the net proceeds from the proposed sale are distributed, the proposed sale is in the best interest of the Estate because absent a timely sale the Clearwater Property may be lost to foreclosure and the Estate may receive nothing.

WHEREFORE, the Receiver asks the Court to grant this Motion, approve the proposed sale of the Property in accordance with the terms of the FCP PSA, and

authorize the Receiver to take any and all further actions necessary to consummate the sale.

Dated: February 21, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.



By: /s/ Michael T. Gilbert

Patrick D. Vellone

Michael T. Gilbert

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on February 21, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF CLEARWATER COLLECTION** via CCE to the following:

Robert W. Finke
Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
Ralph L. Carr Judicial Building
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Denver, Colorado 80203

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Dragul, GDA Real Estate Services,
LLC and GDA Real Estate
Management, LLC***

Kenneth F. Rossman
Lewis Roca Rothgerber Christie LLP
1200 17th Street, Suite 3000
Denver, Colorado 80202-5855

Counsel for Hagshama

By: /s/Victoria Ray _____

CERTIFICATION OF E-SERVICE ON CLAIMANTS

In accordance with this Court's February 1, 2019 Order clarifying notice procedures for this case, a copy of the Motion is also being served by electronic mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

By: /s/ Victoria Ray
Allen Vellone Wolf Helfrich & Factor P.C.

EXHIBIT 1

PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made by and between **FORTUNE CAPITAL PARTNERS, INC.**, a Florida corporation or its designee or assignee as “Buyer” and **Harvey Sender, in his capacity as RECEIVER of the Gary Dragul RECEIVERSHIP ESTATE pursuant to court order more fully described below as “Seller”** (collectively Buyer and Seller sometimes referred as the “Parties” or individually as a “Party).

RECITALS

A. Gary Dragul owned and managed various companies (collectively “Dragul”) for which he solicited investors to acquire residential and commercial real estate.

B. Harvey Sender, the Seller, was appointed Receiver by a Court Order dated August 30, 2018 entered in Rome v. Dragul, et al., Case Number 2018 CV 33011, District Court, Denver, Colorado (the “Receivership Court” and the “Receivership Order”) to take control of all Dragul assets (referred to as “Receivership Property” or “Receivership Estate”). See Receivership Order attached as **Schedule A**. The Receivership Property includes all the assets of GDA Real Estate Services, LLC (“GDA RES”), a Colorado limited liability company; GDA Real Estate Management, LLC (“GDA REM”), a Colorado limited liability company; CLEARWATER COLLECTION 15, LLC, a Delaware limited liability company, as to an undivided 82.52% ownership interest and CLEARWATER PLAINFIELD, LLC, a Delaware limited liability company, as to an undivided 17.48% ownership interest, collectively. The Receivership Order authorizes the Receiver to sell assets of the Receivership Estate subject to Court approval.

C. The “Clearwater Collection”, a commercial property which is the subject matter of this Agreement (and more fully described below), is an asset of the Receivership Estate.

D. The Receiver, as Seller, desires to sell and convey, and Buyer desires to purchase and acquire the Clearwater Collection, pursuant to the terms set forth below.

AGREEMENT

In consideration of the mutual covenants and promises herein set forth, the parties agree as follows:

1. **Definitions.** For purposes of this Agreement the following terms are hereby defined:

Buyer:	FORTUNE CAPITAL PARTNERS, INC. and/or assigns
Buyer’s Address:	2600 S. Douglas Road, PH-1

	Coral Gables, Florida 33134 Attn: Miguel Poyastro Fax: Email: miguel@fcpmiami.com
Buyer's Attorneys:	Law Offices of Machado & Herran, P.A. 8500 S.W. 8th Street, Suite 238 Miami, Florida 33144 Attn: Jose Luis Machado, Esq. Fax: 786-551-4618 Email: jose@machadolaw.com
Seller:	Harvey Sender, in his capacity as RECEIVER of the Gary Dragul RECEIVERSHIP ESTATE
Seller's Address:	5690 OTC Boulevard, Suite 515 Greenwood Village, CO 80111-3232
Seller's Attorneys:	Allen Vellone Wolf Helfrich & Factor, P.C. 1600 Stout Street, Suite 1100 Denver, CO 80202 Attn: Matthew J. Roth, Esq. Fax: 303-839-8332 Email: mroth@allen-vellone.com
The Purchase Price:	\$17,100,000.00 subject to prorations and adjustments as hereafter provided
The Deposit:	\$350,000.00, ("Initial Deposit") and \$650,000.00 ("Additional Deposit") to be delivered as provided in Section 3 hereof (individually and collectively, the "Deposit").
The Escrow Agent:	Buyer's Attorney
The Property:	That certain real property known as "Clearwater Collection, located 21688- 21800 US Highway N 19, Clearwater, FL 33765 comprised of the parcels with tax parcel identification number No.: 07- 29-16-16442-000-0020 and which is legally described on Exhibit "A" hereto, together with the following property and rights (referred to alternately as the "Property" or the "Subject Property"):
	(a) Improvements located thereon including the buildings and all appurtenances thereto, such as, but not limited to parking areas, signage, light fixtures, utility lines or connections and other installations and structures;

	<p>(b) All development rights, reservation of utility service rights, agreements for utility services, approvals, licenses, authorizations, permits, and other contract rights or intangible property pertaining to ownership and/or operation of the Property;</p>
	<p>(c) All strips and gores of land lying adjacent to the Property, together with all easements, privileges, rights-of-way, riparian and other water rights, lands underlying any adjacent streets or roads, and appurtenances pertaining to or accruing to the benefit of the Property; if any;</p>
	<p>(d) all equipment, mechanical systems, leasehold improvements, appliances, tools, machinery, supplies, building materials, office equipment, and other personal property of every kind and character owned by Seller (and not by any tenant or management agent) and attached to, appurtenant to, located in, or used in connection with the operation of, the Improvements or Property including, but not limited to, the items described on Exhibit B attached hereto, (said items being hereinafter collectively referred to as the "Personal Property").</p>
	<p>(d) All intangible property (collectively, the "Intangible Property") owned or held by Seller in connection with the Property, the Improvements or the Personal Property, including, but not limited to, (i) all leases and tenancy agreements identified on the Rent Roll (as hereinafter defined), security deposits thereunder, (said items being hereinafter collectively referred to as the "Tenant Leases"), (ii) all service contracts or similar instruments identified on the Schedule of Contracts attached hereto as Exhibit C (said items being hereinafter referred to as</p>

	<p>the “Contracts”) which are Assumed Contracts (as hereinafter defined), (iii) all building and trade names (including, but not limited to, all of Seller’s rights, if any, to use any name associated with the Property), (iv) all transferable licenses and warranties covering the Property or any part thereof, which are more fully identified on the List of Licenses and Warranties attached hereto as Exhibit D (collectively, the “Warranties”), (v) all transferable permits covering the Property or any part thereof, more fully identified in the list of permits attached hereto as Exhibit E (collectively, “Permits”), (vi) and all transferable utility contracts, telephone exchange numbers, advertising materials, plans and specifications, governmental approvals, licenses and development rights related to the Property and all site plans, surveys, as-built plans and specifications, soil tests and all other like information and documentation in Seller’s possession or control related to the Property.</p>
<p>Effective Date:</p>	<p>The date when the last one of the Seller and the Buyer has signed this Agreement.</p>
<p>Due Diligence Period:</p>	<p>The period commencing on Effective Date and ending on the 45th day following the Effective Date.</p>
<p>Permitted Exceptions:</p>	<p>Those existing and proposed restrictions, encumbrances, limitations, easements, covenants and conditions set forth in Schedule B-2 of the Title Commitment obtained by the Buyer, to the extent that Buyer does not object to same pursuant to Section 9 hereof.</p>
<p>The Title Commitment:</p>	<p>An Owner’s ALTA Form B Marketability policy of title insurance from the Title Insurance Company however the status of title to the Property and all exceptions which would appear in an owner’s policy of title insurance, if issued, and the requirements for issuance of such</p>

	policy.
Title Insurance Company:	Old Republic National Title Insurance Company.
Title Agent:	Buyer's Attorney
Survey:	a survey of the Property legally describing the Property and meeting the requirements of the Title Insurance Company in order to delete the standard survey exceptions and provide such endorsements to the Owner's Policy or Loan Policy as may be requested by the Buyer, certified to the Buyer and the Title Insurance Company.
Brokers:	Marcus & Millichap

Certain other terms are defined in this Agreement and shall have the meaning ascribed to such term as set forth herein.

2. **Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property for the Purchase Price.

3. **Deposit.** To secure the performance by Buyer of its obligations under this Agreement, Buyer shall, within five (5) business day of the Effective Date, deliver to the Escrow Agent an initial good faith deposit of Three Hundred Fifty Thousand (\$350,000.00) Dollars. Upon expiration of the Due Diligence Period, assuming Buyer has not previously terminated this Agreement, Buyer shall deliver to Escrow Agent an Additional Deposit of Six Hundred Fifty Thousand (\$650,000.00) Dollars. The Deposit need not be held by Escrow Agent in interest-bearing escrow accounts. In the event that the Escrow Agent does place the Deposit in an interest-bearing account, any interest earned thereon shall be (i) credited as part of the Purchase Price at closing, or (ii) constitute part of the Deposit and be paid to whomever is entitled to the Deposit in the event of a termination of this Agreement without a closing.

4. **Terms of Payment.** The Purchase Price shall be paid to Seller as follows:

\$ 1,000,000.00 being the Deposit, subject to any increase thereof for purposes of extending the Due Diligence Period shall be paid to Seller at "Closing".

\$ 16,100,000.00 approximately, in current funds at time of Closing, subject to prorations and adjustments as hereinafter provided, to be paid by wire transfer of federal funds;

provided however that if the Deposit is increased, then the balance to close shall be adjusted by such increased amount.

\$ 17,100,000.00 Total Purchase Price.

5. **Court Approval.** Within three (3) business days of the Effective Date, Seller shall file a motion seeking approval of this Agreement. The Receiver will use his reasonably diligent efforts to obtain approval of and will support this Agreement over the objection of any creditors or other interested parties; provided, however, that the Receiver, consistent with his fiduciary duties in the Receivership Case, shall, until the Receivership Court enters an order approving this Agreement, be free to entertain and to accept any competing offer that he deems in his sole and absolute discretion to be a higher or better offer. If the Receiver accepts and obtains Receivership Court approval of a higher and better offer, Buyer may seek reimbursement of its reasonable expenses incurred pursuant to this Agreement through the date Buyer is notified that the Receiver has accepted another offer. The Receiver's foregoing right to entertain and/or accept competing offers shall immediately and automatically terminate upon the Receivership Court's entry of an order approving this Agreement and after the Receivership Court's entry of the order approving this Agreement, the Receiver shall not accept or present to the Receivership Court any offers, backup offers to purchase the Property, whether solicited or unsolicited.

6. **Exclusive Jurisdiction.** This Agreement shall be null and void if it is not approved by an order of the Receivership Court on or before February 15, 2019. The Parties agree that the Receivership Court shall have exclusive jurisdiction to hear and determine all disputes, claims, or other actions arising from or relating to the Agreement. Each Party consents to the Court entering final orders, judgements and/or decrees.

7. **3rd Party Master Agreement Contingency.**

(a) Master Agreement. On February 5, 2019, the Receiver entered into a Master Agreement with Hagshama, an Israeli investment company, and Odyssey Acquisitions III, LLC, a Nevada limited liability company (collectively "Odyssey"). Pursuant to this Master Agreement, Odyssey has agreed to purchase some or all of the Receivership Estate's interests in certain real estate properties and/or interests in entities which own certain real estate properties. A copy of the Master Agreement is attached hereto as Schedule B. The Subject Property is one of the properties that may be purchased by Odyssey under the Master Agreement. Hagshama is a major investor in the entity that owns the Subject Property.

(b) Sale Contingency. Pursuant to the terms of the Master Agreement, the Receiver is free to market and solicit offers of the Subject Property, to execute letters of intent and to enter into a purchase and sale agreement of the Subject Property, including this Agreement. The Receiver is obligated to provide Hagshama

and Odyssey a copy of this Agreement upon its execution. Under the Master Agreement, Odyssey has 14 days from the date it receives notice of this Agreement to elect whether to exclude the Subject Property from the Master Agreement bulk purchase. Failure to elect within 14 days shall be deemed an election by Odyssey to include the Subject Property in its bulk purchase. Upon the affirmative election or deemed election by Odyssey to include the Subject Property in its bulk purchase, this Agreement shall automatically terminate, and all deposits made by Buyer shall be returned to Buyer and the Parties hereto shall be released of all obligations hereunder.

8. **Buyer's Right of Cancellation.** During the Due Diligence Period, Buyer shall (i) perform such environmental tests, building inspections and other studies as Buyer may deem appropriate, (ii) investigate compliance with building, zoning and use restrictions, and all other applicable laws, existing covenants and private restrictions; (iii) examine title to the Property, including any survey matters; (iv) determine the economic feasibility and suitability of the Property for Buyer's proposed use, including availability of adequate financing or investment (iv) otherwise make such investigations and analysis as Buyer deems appropriate; and (v) interview Tenants with a Seller representative, if Seller so desires. Unavailability of a Seller representative will not be cause to delay any Tenant interview.

Seller shall deliver the following items in Seller's possession or control on or before the Effective Date the following:

- (a) A copy of the existing Owner's Title Policy.
- (b) A copy of the existing survey for the Property.

Seller shall also deliver any of the following ("Seller Deliveries") that are in Seller's possession or control upon the Effective Date:

(c) Service contracts, utility agreements, reservation of utility services and other contract rights affecting the Property; all management contracts and leasing commission agreements shall be canceled at Seller's expense effective on the Closing Date.

(d) A copy of any building inspection, environmental audits for the Property or of any other study concerning the condition of the improvements and/or compliance with applicable laws;

(e) Any site plan, PUD or similar plan for the Property together with a copy of the as-built plans and specifications for the Property and all Certificates of Use or Occupancy, license, permits and the like related to the operation of the Property;

(f) Copies of all leases and lease guaranties, lease amendments and extensions, financial statements for tenants and guarantors, tenant correspondence for the past year, certificates of occupancy for all tenants, certificates of insurance from

tenants and current rent roll, together with summary billing statements for the past three months, current receivables aging report and CAM reconciliation statements and billings for past three years and a schedule of leasing commissions paid during 2017, 2018 and 2019;

(g) 2016, 2017, 2018 and 2019 YTD Operating statements for the Property.

(h) Any warranty of the structural, mechanical, electrical, HVAC, plumbing, or roof, or of any other personal property that is included in the Property, including without limitation any warranty with respect to the roof being replaced as of the date hereof;

(i) Copies of Seller's insurance policies for the Property and of insurance loss reports for past three years of operations;

(j) List of capital improvements applicable to prior three (3) years and of any planned capital improvements for 2019;

(k) Utility bills applicable 2017, 2018 and 2019 YTD;

(l) Real estate tax bills for the years 2016, 2017 and 2018 together with copies of any protest of such bills;

(m) Any notice of a violation of laws, ordinances, permit requirements or private restrictions that have been received by Seller during the past two years and the current status of each of these; and

(n) All loan documentation and information related to the existing loan that Seller currently has, which encumbers the Property.

Seller agrees to provide to Buyer within three (3) business days of Seller obtaining possession of same, but in any event, prior to Closing, any items described above which are prepared, produced or otherwise come into Seller's possession after the Effective Date and prior to Closing.

Buyer, his agents and authorized representatives, shall be permitted access to the Property at any time after the Effective Date for performing, at Buyer's sole cost and expense, such investigations. Buyer's investigation and inspection shall not unreasonably interfere with the use and operation of the Property by Seller or, subject to Buyer's rights to interview and communicate with the tenants, the tenants thereof, nor shall Buyer's inspection damage the Property in any material respect. Buyer shall have no right to conduct invasive testing, boring or drilling typically associated with a Phase 2 Environmental Site Assessment without Seller's prior approval, which may be given or withheld in Seller's sole subjective discretion. Any such testing, solely to the extent approved by Seller pursuant to the foregoing sentence, shall in any event shall

be conducted in accordance with standards customarily employed in the industry and in compliance with all governmental laws, rules, and regulations. Following each entry by Buyer with respect to inspections and/or tests on the Property, Buyer shall restore the Property substantially and materially to its original condition as existed prior to any such inspections and/or tests at Buyer's sole cost and expense. Seller shall reasonably cooperate with Buyer in its due diligence investigation. Buyer agrees to indemnify, defend, and hold Seller harmless from and against any claim for liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages, liens or injuries arising out of or resulting from the inspection of the Property by Buyer or its agents. Notwithstanding the foregoing, Buyer shall have no obligation with respect to matters merely discovered (but not caused) by Buyer, its agents, or consultants as a result of its investigation of the Property.

Buyer shall have the right, in its sole discretion for any or no reason, to terminate this Agreement by delivering written notice of Buyer's election to terminate this Contract on or before the last day of the Due Diligence Period (as the same may have been extended); in which case, this Agreement shall be terminated, all deposits made by Buyer shall be returned to Buyer and the parties shall be released of all obligations hereunder.

Upon expiration (without prior termination of this Agreement by the Buyer) of the Due Diligence Period, Buyer shall have accepted title to the Property subject to the Permitted Exceptions.

During the Due Diligence Period, Buyer shall inform the Seller, if Buyer, at its sole and absolute discretion, will assume the existing mortgage that Seller has on the Property.

9. **Title and Survey.** Within 40 days following the Effective Date (the "Title Examination Period"), Buyer shall deliver a copy of the Title Commitment and any Survey that Buyer may elect to obtain to Seller's Attorneys. Seller shall satisfy all "Requirements" set forth on said Title Commitment other than those that pertain to Buyer.

If the Title Commitment or Survey shows that Seller's title is subject to any exceptions or survey matters and if such exceptions or survey matter render title unmarketable or reflect an impermissible encroachment or violation of an easement, restriction, or covenant, (collectively a "Defect"), then Buyer shall, prior to expiration of the Title Examination Period, notify Seller in writing specifying the Defect(s), provided that if Buyer fails to give Seller written notice of Defect(s) before the expiration of the Title Examination Period, the Defects shown in the Title Commitment and Survey shall be deemed to be waived as title objections to closing this transaction. If Buyer delivers written notice of Defect(s) within the time provided, Seller may elect to: (i) cure such Defect(s) at any time prior to Closing or (ii) take no action with regard thereto. Seller shall give Buyer written notice of Seller's election within five (5) days after Seller's receipt of written notice of Defect(s) from Buyer. Seller's failure to provide such a notice within five (5) days shall be deemed to be Seller's notice that it will take no action with

respect to any Defect(s). If Buyer is dissatisfied with Seller's cure or election not to cure, Buyer may either (i) elect to waive such Defect(s) and proceed to Closing, or (ii) terminate this Agreement by delivering written notice to Seller within five (5) days of receiving notice of Seller's election (or of the end of Seller's period in which to so elect if no election is made by Seller) in which event Buyer shall receive the entirety of the Deposit then held by Title Company, including any interest accrued thereon, regardless of the Title Examination Period having then expired, whereupon the Agreement shall terminate and the Parties shall be relieved of any further liability or obligation hereunder except to the extent otherwise provided herein to survive termination. Buyer shall be permitted to make title objections to Defects on the title, which first appear of record after the effective date of the Title Commitment through the date of Closing and such Defects shall be treated in the same manner as described herein and Seller and Buyer shall have the cure rights and obligations as described herein. Buyer's failure to timely terminate in writing shall be deemed Buyer's election to waive such Defect(s) and proceed to closing. The Property shall be conveyed to Buyer by Seller subject to the Permitted Exceptions and any additional exceptions waived by Buyer. Seller shall execute appropriate documents as required for "gap coverage".

10 **Conditions Precedent**. Provided that Buyer has not elected to terminate this Agreement for any other reason permitted under this Agreement, Buyer's obligation to close the transaction contemplated herein shall be further subject to the following conditions precedent to Closing:

(a) Seller shall deliver title to the Property to Buyer in accordance with the Title Commitment and Survey, subject to the Permitted Exceptions and any additional exceptions waived pursuant to Section 9.

(b) There shall have been no other change in the physical condition or operation of the Property from the end of the Due Diligence Period through the Closing.

(c) All tenants whose leases do not provide for automatic subordination of the lease to new financing shall have delivered subordination and non-disturbance agreements in favor of Buyer's lender in a form reasonably acceptable to such lender;

(d) No Tenant Leases and/or Contracts, shall be entered into, modified, terminated or in any way amended without the prior written consent of the Buyer, which Buyer shall have the right to approve or disapprove at Buyer's sole and exclusive election;

(e) A court order from the Receivership Court, approving the sale of the Property to the Buyer, its successors and/or assign, in a form reasonably acceptable to the Buyer, approving the transfer of the Property; and

(f) An affirmative election by Odyssey to exclude the Subject Property from the Master Agreement bulk purchase, pursuant to Section 6 above.

In the event any of the foregoing conditions precedent are not fulfilled as of Closing, then Seller shall have an additional fifteen (15) days in which to cure the adverse condition(s) and satisfy such condition(s) precedent, failing which Buyer shall have the option of either: (i) canceling this Agreement by written notice to Seller, in which event the Escrow Agent shall return the Deposit and all interest thereon to Buyer, or (ii) waiving the condition and closing "as is", without reduction in the Purchase Price, in either case without any claim against Seller therefore.

11. **Seller Covenants.** In order to induce Buyer to enter into this Agreement and consummate this transaction, Seller covenants as follows:

(a) Seller shall provide to Buyer and/or its designee access to the Property as provided in Section 8 at reasonable times and upon prior notice.

(b) From and after the Effective Date, Seller shall not enter into any new lease, renew any existing lease or permit the modification or termination of any lease without the prior approval of Buyer, which approval shall not be unreasonably delayed or withheld.

(c) Seller shall keep in force through the Closing the Seller's existing policies of liability, fire, flood, windstorm, hazard and other casualty insurance on the Property, if any.

(d) Seller shall, upon receipt of a notice of any violation of law after the Effective Date, either (i) correct the violation at its expense or (ii) if the cost to cure such Violation exceeds \$25,000, provide such Notice of Violation to the Buyer, stating that Seller will not remedy same, in which case the Buyer may terminate this Agreement or accept the Property subject to such violation and a credit of \$25,000. However, if the Notice of Violation is a result of the intentional act of Seller or its agents, employees, or contractors, then Seller shall correct such violation prior to the Closing.

(e) Seller shall assist Buyer in securing not less than two (2) days prior to the end of the Due Diligence Period, from all tenants with a remaining lease term of more than one year (i) tenant estoppel certificates and guarantor estoppel certificates substantially in the form attached hereto as Exhibit G and G-1 and prior to Closing Seller shall assist Buyer in obtaining (ii) subordination and non-disturbance agreements ("SNDA") in form acceptable to Buyer's lender, if any, except that SNDAs will not be required for any tenant whose lease is, by its express terms, automatically subordinated to Buyer's mortgage financing unless such tenant has a recorded Memorandum of Lease in which case an SNDA will be required notwithstanding automatic subordination provisions in the lease.

12. **Seller's Representation.** Seller represents to Buyer that:

(a) Authority. Seller was appointed Receiver under the Receivership Order, to exercise ownership rights over the property of the Receivership Estate,

including the Property. Seller, as Court appointed Receiver, has the right, power, and authority to enter into this Agreement and to transfer the Property, subject to Court approval, to Seller. The person signing this Agreement on behalf of Seller is authorized to do so. This Agreement and all agreements, instruments and documents herein provided to be executed by Seller are duly authorized, executed and delivered by and binding upon Seller in accordance with their terms.

13. **Receiver (Seller) Disclaimer.** NOTWITHSTANDING ANY LANGUAGE IN THIS AGREEMENT TO THE CONTRARY, THE RECEIVER MAKES NO REPRESENTATION OR WARRANTY TO THE BUYER CONCERNING THE PROPERTY, EXPRESS OR IMPLIED, AND ANY SUCH OTHER OR ADDITIONAL REPRESENTATIONS OR WARRANTIES ARE HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE PREVIOUS SENTENCE, THE RECEIVER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY RELATED OR WITH RESPECT TO THE VALUE OF THE PROPERTY.

Buyer

14. **Buyer's Representation.** Buyer represents and warrants to Seller that (a) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida; (b) the execution, delivery and performance of this Agreement by Buyer has been duly authorized and no consent of any other person or entity to such execution, delivery and performance is required to render this document a valid and binding instrument enforceable against Buyer substantially in accordance with its terms; and (c) to Buyer's knowledge, neither the execution of this Agreement, nor the consummation of the transactions contemplated hereby or thereby will: (i) result in a breach of, or default under, any agreement to which Buyer is a party or (ii) violate any restrictions to which Buyer is subject.

15. **Tenant Estoppels.** Within the time period set forth in section 10(e) of this Agreement and provided this Agreement has not been terminated by Buyer in accordance with the terms hereof, Seller shall assist Buyer in obtaining estoppel certificates from tenants under the Tenant Leases and from any guarantor of a Tenant Lease in the form attached hereto as **Exhibit "G" and "G-1"** (the "Tenant Estoppel" and collectively the "Tenant Estoppels") or such other form as is reasonably acceptable to Buyer.

16. **As Is.** Buyer acknowledges that Buyer has not relied and will not rely on, and Seller is not liable for or bound by, any express or implied warranties, guarantees or representations made by Seller, its agents, officers, employees or representatives, directly or indirectly, verbally or in writing, unless specifically set forth herein or in any documentation given to Buyer by Sellers pursuant to the terms of this Agreement.

17. **Default by Buyer.** IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, THEN SELLER'S SOLE REMEDY SHALL BE THE RIGHT TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A

FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. THE FOREGOING IN NO WAY LIMITS SELLER FROM SEEKING INDEMNIFICATION FROM BUYER UNDER THE TERMS OF THE AGREEMENT.

18. **Default by Seller.** IN THE EVENT THAT SELLER DEFAULTS OR FAILS TO CONSUMMATE THIS AGREEMENT FOR ANY REASON, BUYER'S SOLE REMEDY SHALL BE THE RIGHT TO THE RETURN OF THE DEPOSIT, WHICH RETURN SHALL OPERATE TO TERMINATE THIS AGREEMENT.

19. **Prorations.** The items set forth below shall be prorated between Seller and Buyer as of the close of the day immediately preceding the Closing Date:

(a) **Real Estate Taxes.** Real estate or personal property taxes shall be prorated at Closing between the Seller and Buyer as is customary.

(b) **Improvement Liens.** Certified, confirmed or ratified liens for governmental improvements as of the date of the Closing, if any, shall be paid in full by Seller. Pending liens for governmental improvements as of the date of the Closing shall be assumed by the Buyer. Where the improvement has been substantially completed as of the date of Closing, such pending lien shall be considered certified for purposes hereof in an amount equal to the last estimate of the assessment for the improvement by the public body.

(c) **Rent.** Buyer shall receive a credit for any rent and other income (and any applicable state or local tax on rent) from the Property collected by Seller before Closing that applies to any period after Closing. Buyer shall promptly remit to the Seller any rent or other income from the Property collected by the Buyer after the Closing that applies to any period prior to the Closing. Buyer shall bill and make commercially reasonable efforts to collect any such rent or tenant reimbursements attributable to periods prior to the Closing, but shall not be obligated to engage a collection agency or take legal action to collect any rent or tenant reimbursements. Any rent received by Seller shall be remitted to Buyer to the extent applicable to periods subsequent to Closing, notwithstanding any arrearages in rent owed by such tenant to Seller. For purposes of this Agreement, any Rentals (whether base rent or "pass-throughs") shall be deemed delinquent when payment thereof is past due as of the Proration Date ("Delinquent Rentals"). Delinquent Rentals shall not be prorated until collected pursuant to this Section 19(c). To the extent either Seller or Buyer collects any Delinquent Rentals after the Closing Date, such Delinquent Rentals shall be first applied to rent presently due Buyer and the balance remitted to Seller to the extent of any Delinquent Rentals relating to the period prior to the Closing Date and not previously credited to Seller. Buyer agrees to use commercially reasonable efforts to

collect Delinquent Rentals. Seller shall not have the right to take any action against any tenant owing Delinquent Rentals relating to the period prior to the Closing Date that remains as tenant of the Property following Closing. Buyer and Seller agree to cooperate in a final reconciliation of tenant operating cost and tax pass-throughs within sixty (60) days of delivery to tenants of calendar year-end reconciliation statements, which shall be sent to tenants no later than April 15, 2020 and Seller shall be entitled to payment, upon collection by Buyer, of any additional amounts paid by tenants on account of such taxes and expenses applicable to the period prior to Closing. Seller shall reimburse Buyer, within ten (10) days following Buyer's demand therefore, any amount of tenant operating cost and tax pass-throughs, in respect of periods preceding the Closing Date that Buyer is required to rebate to tenants as a consequence of such reconciliation. The provisions of this section shall survive the Closing.

(d). Tenant Deposits. Buyer shall be credited and Seller shall be debited with an amount equal to all tenant deposits being held by Seller as of the Effective Date.

(e). Utilities. Utility charges for the Property shall be prorated as of Closing to the extent final meter readings have not been performed. Such proration shall be made within 30 days following the Closing. Seller shall be entitled to recover any and all deposits held by any utility company as of the Closing Date. Seller shall cooperate with Buyer in causing utilities accounts to be transferred to Buyer effective as soon as possible following Closing.

20. **Closing Costs**. The parties shall bear the following Closing costs:

(a) The Buyer shall be responsible for payment of the following: (i) the cost of examining title and obtaining any title insurance policy update or report on the Property, and the premiums and any other related fees and costs for any owner's title insurance policy, update and/or report, (ii) any and all costs and expenses of inspection and feasibility studies and reports incident to Buyer's inspections, (iii) recording costs on the conveyance documents and of any instruments necessary to satisfy title requirement related to Buyer and (iv) any costs and fees related to Buyer's financing.

(b) Seller shall be responsible for payment of the following: (i) any transfer tax, excise tax, documentary stamps tax or other tax of any nature imposed upon the transfer of real property by the jurisdiction in which the Property is located; (ii) the cost of the updated obtained by the Buyer during the Title Examination Period and any updates thereto; and (iii) recording fees, documentary stamp and surtax related to any document required to cure any title defect or to release or satisfy any lien or encumbrance or to satisfy any title requirement related to the Seller.

(c) Each party shall pay its own legal fees.

21. **Closing**. Subject to other provisions of this Agreement for extension, the closing (the "Closing") shall be held as an escrow closing by depositing the items set

forth below with the Title Agent on the 30th day following the expiration of the Due Diligence Period (the "Closing Date").

(a) At Closing. Seller shall execute and/or deliver (as appropriate) to the title agent, in escrow, for the benefit of the Buyer the following closing documents and items:

- (A) a warranty deed subject only to the Permitted Exceptions;
- (B) Bill of Sale for the Personal Property;
- (C) a mechanic's lien affidavit "gap and possession affidavit subject only to the rights of tenants under the leases described therein;
- (D) an assignment of leases and rents;
- (E) an assignment of the Contracts, Warranties, Permits, authorizations and other intangibles;
- (F) a standard form of non-foreign affidavit;
- (G) any "gap" affidavit, personal undertaking and/or indemnity required by the Title Commitment or in connection with the escrow closing procedure contemplated herein;
- (H) any documents necessary to satisfy the requirements of the Title Commitment other than such as relate to Buyer including evidence of the existence and authorization of Seller, a payoff letter from any mortgagee or other lien holder, and if such party is not a financial institution, the satisfaction of such mortgage and/or lien;
- (I) Rent Roll certified by Seller to be true and correct as of the Closing Date;
- (J) Evidence of termination of any contracts or agreements in effect for managing and leasing the Property;
- (K) a closing statement setting forth the Purchase Price, Deposit and all credits, adjustments and prorations between Buyer and Seller (the "Closing Statement");
- (L) any documents reasonably necessary in connection with a like-kind exchange transaction by either Buyer or Seller.
- (M) Notice to tenants advising of the sale of the Property to Buyer;

(N) Original tenant estoppel certificates and subordination and non-disturbance agreement to the extent not previously delivered.

(O) Copies of Leases (including all amendments, modifications and letter agreements) and copies of Contracts, Warranties and Permits. To the extent that Seller has original copies of Leases, Contracts, Warranties and Permits, Seller will provide the same to Buyer;

(P) Such additional documents relating to the Property as Buyer may reasonably request;

(Q) Keys to the Property.

(b) At Closing, Buyer shall execute and/or deliver to the title agent, in escrow, for the benefit of the Seller the following closing documents and items:

(A) the Purchase Price, subject to prorations and adjustments as provided in the Agreement;

(B) assumption of the Leases and Contracts, limited to obligations arising under these after the Closing Date;

(C) any documents necessary to satisfy the requirements of the Title Commitment that relate to Buyer (such as corporate documentation, non-identity affidavits, releases and satisfactions of liens);

(D) the Closing Statement;

(E) any documents reasonably necessary in connection with a like-kind exchange transaction by either Buyer or Seller.

The Title Agent shall hold all such deposits in escrow until Title Agent shall issue a "marked up" Owner's Policy Commitment deleting all requirements and the "Gap" and standard exceptions and shall have received in cleared funds and be prepared disburse all amounts payable to Seller or on behalf of Seller pursuant to the Closing Statement. If the Title Agent is not able to satisfy the foregoing conditions within five business days following the Closing Date as such period may be extended by agreement of Buyer and Seller, the Title Agent shall return all items on deposit in escrow with the Title Agent to the party who deposited same with Title Agent, except that the Deposit shall be returned to the Escrow Agent to be held and disbursed as required hereunder.

22. **Brokers.** The parties each represent and warrant to the other that they have not- dealt with any real estate broker, salesman or finder in connection with this transaction to whom a brokerage commission is due, except for the Broker. The Seller shall be required to pay a brokerage commission to the Broker, pursuant to a separate commission agreement between Broker and Seller. If a claim for brokerage in

connection with the transaction is made by any broker, salesman or finder claiming to have dealt through or on behalf of one of the parties hereto (“Indemnitor”), Indemnitor shall indemnify, defend and hold harmless the other party hereunder (“Indemnitee”), and Indemnitee’s officers, directors, agents and representatives, from all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney’s fees and court costs at trial and all appellate levels) with respect to said claim for brokerage. The provisions of this Section shall survive the Closing and any cancellation or termination of this Agreement.

23. **Assignability.** Buyer shall be entitled to assign its rights hereunder without the consent of Seller provided that the assignee expressly assumes in writing the obligations of Buyer in the Contract, to the full extent of such assignment.

24. **Escrow Agent.** The Escrow Agent shall not be liable for any actions taken in good faith, but only for its gross or willful negligence. The parties hereby indemnify and hold the Escrow Agent harmless from and against any loss, liability, claim or damage whatsoever (including reasonable attorney’s fees and paralegals’ fees and court costs at trial and all appellate levels) that the Escrow Agent may incur or be exposed to in its capacity as Escrow Agent hereunder except for a loss, liability, claim or damage directly resulting from its gross negligence or willful misconduct. If there be any dispute as to disposition of the Deposit held by the Escrow Agent pursuant to the terms of this Agreement, the Escrow Agent shall continue to hold the Deposit pending resolution of such dispute. The Escrow Agent shall not be liable for any failure of the depository.

25. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express) or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

If to the Buyer at: Buyer’s Address set forth on page 1.

With a copy to: Buyer’s Attorneys at the address set forth on page 1.

If to Seller at: Seller’s Address set forth on page 1

With a copy to: Seller’s Attorneys at the address set forth on page 1 .

Notices sent by email or facsimile shall be deemed given on the date of facsimile or email transmission provided that the original of such notice shall be personally delivered or sent by overnight courier and received on the following date. Notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails.

26. **Risk of Loss.** Risk of loss, destruction or damage to the Property or any portion thereof, from any and all causes whatsoever until consummation of the Closing shall be borne by Seller. In the event that the Property or any portion thereof is damaged by casualty or taken by eminent domain prior to Closing or becomes the subject of a condemnation proceeding or threat thereof, Buyer shall have the option of either: (i) canceling this Agreement and receiving a refund of the Deposit and all interest earned thereon, whereupon both parties shall be relieved of all further obligations under this Agreement or (ii) Buyer may proceed with Closing with a credit for any applicable deductible or co-insurance penalty and an assignment of all insurance claims and/or condemnation awards and settlements.

27. **Radon Gas.** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME.

28. **Miscellaneous.**

(a) This Agreement shall be construed and governed in accordance with the laws of the State of Florida and venue for any litigation shall be in the County where the property is located. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof and this Agreement shall not be more strictly construed against any one of the parties hereto.

(b) In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

(c) In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. The provisions of this sub-section shall survive the Closing coextensively with other surviving provisions of this Agreement.

(d) In construing this Agreement, the singular shall be held to include the plural, the plural shall include the singular, the use of any gender shall include every other and all genders, and captions and Section headings shall be disregarded.

(e) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute but one instrument. For purposes of executing this Agreement, a document (or signature page thereto) signed and transmitted by facsimile machine or telecopier shall be treated as an original document. The signature of any party thereon, for purposes hereof, shall be considered as an original signature, and the document transmitted shall be considered to have the same binding effect as an original signature on an original

document. At the request of any party, any facsimile or telecopy document shall be re-executed in original form by the Parties who executed the facsimile or telecopy document. No party may raise the use of a facsimile machine or telecopier machine as a defense to the enforcement of this Agreement or any amendment or other document executed in compliance with this sub-section.

(f) All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

(g) All Exhibit, Section and sub-section references in this Agreement shall be deemed to refer to the Exhibit, Section and sub-section in this Agreement.

(h) Time shall be of the essence for each and every provision hereof. If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or legal holiday, then the final day of the period or the date of such performance shall be extended to the next business day.

29. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Agreement shall be binding upon the parties and their respective successors and assigns.

30. **Discharge of Obligations.** The delivery to Buyer of the deed described herein, and Buyer's acceptance of said deed, shall be deemed the full performance and discharge of every covenant and obligation on the part of Seller to be performed under this Contract, except for any obligation surviving the Closing pursuant to an express provision of this Agreement.

31. **Like Kind Exchange.** Buyer and Seller agree to cooperate each with the other in the event that either or both of the parties seek to effect this transaction as part of a like-kind exchange under Section 1031 of the Internal Revenue Code; provided that each such party shall bear all expenses of its exchange agent.

32. **Prohibited Persons.** Neither Buyer nor any of its constituent partners, members or shareholders, nor any beneficial owner of Buyer or shareholder (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC") pursuant to the Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) ("Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of OFAC or any other applicable requirements contained in any enabling legislation or other Executive Orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively called the "Orders"); (iii) is engaged in activities prohibited in the Orders; or (iv) has been

convicted, pleaded nolo contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

33. **Exhibits.** This Agreement consists of 21 pages, plus the signature page and the following exhibits:

- Exhibit "A" – Legal Description
- Exhibit "A-1" – Seller's Owner's Title Policy
- Exhibit "A-2" – Seller's existing Survey
- Exhibit "B" – Personal Property
- Exhibit "C" – Contracts
- Exhibit "D" – Warranties
- Exhibit "E" – Permits
- Exhibit "F" – Leases
- Exhibit "F-1" – Rent Rolls
- Exhibit "F-2" – Amounts owed for leasing commissions or tenant improvement allowances, free rent period or pending tenant improvements
- Exhibit "G" – Tenant Estoppel Certificate
- Exhibit "G-1" – Guarantor Estoppel Certificate
- Schedule A -- Receivership Order
- Schedule B -- Master Agreement

[SIGNATURE PAGE TO FOLLOW]

EXECUTED BY Seller and Buyer as of the date set forth below their respective names.

Signed in the presence of:

SELLER:
HARVEY SENDER, in his capacity as
RECEIVER of the Gary Dragul
RECEIVERSHIP ESTATE

DocuSigned by:

Harvey Sender

2494E37B34E843C...

By: _____

Print Name:

2/15/2019 | 12:45:35 PST

Dated: _____

BUYER:

FORTUNE CAPITAL PARTNERS, INC.

Miguel Poyastro

By: _____

Name: Miguel Poyastro
Title: President

Dated: 1/29/2018

Ingris Perovani

Print Name:

Barbara B. Perez

Print Name: BARBARA B. PEREZ

EXHIBIT "A"
LEGAL DESCRIPTION

Fee Simple Parcel:

Lots 2, 3 and 4, THE CLEARWATER COLLECTION SECOND REPLAT, according to the Plat thereof, as recorded in Plat Book 107, Pages 24 and 25, of the Public Records of Pinellas County, Florida, less and except those portions thereof conveyed, taken or used for U.S. Highway 19.

Beneficial Easement Parcels:

Non-exclusive easements for the benefit of Fee Simple Parcel as set forth in Book 1479, Page 95, as affected by Official Records Book 7319, Page 993 and Official Records Book 14623, Page 2520, of the Public Records of Pinellas County, Florida.

Non-exclusive easement for the benefit of Fee Simple Parcel as set forth in Official Records Book 6440, Page 2002 as affected by Official Records Book 6735, Page 212, of the Public Records of Pinellas County, Florida.

Non-exclusive easements for the benefit of Fee Simple Parcel as set forth in Official Records Book 6440, Page 2013 as affected by Official Records Book 6735, Page 217; Official Records Book 6921, Page 129; Official Records Book 7541, Page 849; Official Records Book 7561, Page 2125; Official Records Book 9664, Page 451; Official Records Book 12196, Page 391; Official Records Book 14631, Page 1127 and Official Records Book 17589, Page 1477, of the Public Records of Pinellas County, Florida.

Non-exclusive easements for the benefit of Fee Simple Parcel as set forth in Book 6618, Page 2190 as affected by Book 8629, Page 152 and Book 8681, Page 394, of the Public Records of Pinellas County, Florida.

EXHIBIT "A-1"
Seller's Owner's Title Insurance Policy

Seller to Provide

Exhibit "A-2"
Seller's Existing Survey

Seller to Provide

EXHIBIT "B"
PERSONAL PROPERTY

Seller to Provide

**EXHIBIT "C"
CONTRACTS**

Seller to Provide

Exhibit "D"
WARRANTIES

Seller to Provide

EXHIBIT "E"
PERMITS

Seller to Provide

EXHIBIT "F"
Description of Leases

This Exhibit should include the following, as required by the Agreement:

(Exhibit "F" hereto sets forth a true and complete list of all of the Tenant Leases including any amendments thereto and lists the term of each lease, any extension period, minimum annual rent, any percentage rent, any security deposit and any exclusive use rights.)

EXHIBIT "F-1"
Rent Roll

Seller to Provide

Exhibit "F-2"

Unpaid Leasing Commissions and Tenant Inducement Costs

This Exhibit should reflect the items required by this provision of the Agreement:

Except as set forth in Exhibit F-2 (i) no leasing commission in connection with the Property is due or owing to any party or will be due in the future pursuant to any agreement made by Seller or any predecessor thereof to pay commissions upon any renewal of any lease or any sale of all or a portion of the Property; (ii) there are no unpaid tenant concessions or allowance or free rent periods owed to any tenant and (iii) all tenant improvements required to be performed by landlord under the leases have been performed in compliance with the leases.

EXHIBIT "G"
Tenant Estoppel Certificate

TENANT ESTOPPEL CERTIFICATE

_____ (the "**Tenant**") is the tenant under that certain lease dated _____, together with all amendments to such lease, each of which is listed below (such lease, together with all amendments listed below, the "**Lease**") with respect to Tenant's occupancy of approximately _____ square feet (the "**Leased Premises**") of the property commonly known as _____, located in _____, _____ (the "**Property**"). Tenant has been informed that _____ (the "**Lender**") is contemplating making a loan (the "**Loan**") to the owner of the Property (the "**Landlord**"), which Loan will be secured by, among other things, a first mortgage, deed of trust or security deed in respect of the Property and an assignment of leases and rents (collectively, the "**First Mortgage**").

Tenant hereby certifies and represents to Lender and to Landlord that, as of the date set forth by its signature below:

1. The Lease has not been amended, modified, or supplemented by any letter agreement or other written instrument, except as follows:
_____.
2. The Lease is in full force and effect. Tenant is the holder of the lessee's interest under the Lease. The Lease constitutes the only agreement to which Tenant is a party, or for the benefit of Tenant, with respect to the Property. Tenant is in sole possession of the Leased Premises, and has not subleased any portion of the Leased Premises, except as follows: _____.
3. The term of the Lease commenced on _____. The current expiration date of the Lease is _____. Pursuant to the Lease, Tenant has remaining _____ options to extend the term of the Lease, each for _____ years.
4. The current monthly minimum rent due under the Lease is \$_____ per month. Tenant is currently obligated to pay said minimum rent, and has paid such minimum rent through _____. Additionally (and without limiting the rights of Tenant under the Lease to challenge said amounts or the rights of Landlord under the Lease to adjust said amounts), Tenant currently pays, on a monthly basis, estimated amounts on account of the following expenses:

Common Area Maintenance: \$ _____

Operating Expenses: \$ _____

Taxes: \$ _____

Insurance: \$ _____

5. Tenant is not entitled to any future rent rebate, free rent, or other rental concession, except as follows: _____. Except as set forth in the Lease with respect to Tenant's rights upon certain casualty or condemnation events, or upon certain breaches of the Lease by Landlord, Tenant has no right to terminate the Lease prior to the expiration date noted in Section 3 above except as follows [cite to specific provision of Lease or insert "NONE"]:
_____.
6. Tenant has accepted and taken possession of the Leased Premises. Tenant is open for business in the Leased Premises and doing business therefrom with the public. The Landlord has performed all of its obligations under the Lease regarding the construction and delivery of the Leased Premises, and the payment of any allowances or other monies in connection therewith, except as follows: _____.
7. To the best of Tenant's knowledge, neither Landlord nor Tenant is in breach of, or in default under, the Lease, and Tenant knows of no event or condition which, with the passage of time or the giving of notice or both, would constitute such a breach or default by Tenant or Landlord under the Lease. Neither Tenant nor, to the best of Tenant's knowledge, Landlord has exercised any option to terminate the Lease, or taken any other action, or received any notice, with respect to the termination of the Lease.
8. The amount of the security deposit retained by Landlord under the Lease is \$ _____. To Tenant's knowledge, no portion of the security deposit has been applied by Landlord against rents under the Lease.
9. Tenant has no option, or right of first refusal, or other preferential right, to purchase all or any part of the Property. Tenant has no option, or right of first refusal, or other preferential right, to lease space (other than the Leased Premises) at the Property, except as follows:
_____.
10. There are no actions, whether voluntary or otherwise, pending against the Tenant and/or any guarantor of the Tenant's obligations under the Lease pursuant to the bankruptcy or insolvency laws of the United States or any state.
11. No commission or other payment is due any real estate broker by Tenant in connection with the leasing of the Leased Premises to Tenant, and to Tenant's knowledge there are no agreements, oral or written, under which any real estate broker is entitled to any future payment or commission by Tenant in connection with the leasing of the Leased Premises to Tenant.

12. Neither Tenant nor, to Tenant's knowledge, Landlord, is in violation of any exclusive use, radius or non-competition clause in the Lease or in any other lease of any other portion of the Property. No use being made by any current tenant of the Property is in violation of Tenant's exclusive use rights.

13. Tenant has no claim against Landlord for overpayment of Tenant's share of common area maintenance or real estate tax contributions except as follows:

_____.

Tenant further agrees for the benefit of Lender as follows:

- A. Tenant irrevocably agrees that, should title to the Leased Premises and the Landlord's interest in the Property be transferred to Lender or to a designee or successor (a "New Owner"), by judicial or non-judicial foreclosure of the First Mortgage or by a conveyance in lieu thereof, then Tenant shall attorn to New Owner as the "landlord" under the Lease, which attornment shall be self-operative and effective without the execution of any further instrument, and Tenant shall be bound to New Owner, in accordance with the all of the provisions of the Lease, for the remaining term of the Lease.
- B. Tenant agrees that, except as expressly required under the Lease, Tenant will not prepay any rent more than thirty (30) days in advance of the due date thereof.
- C. Upon the receipt by Tenant of any written notice from Lender to do so, all Rent shall be paid by Tenant directly to Lender until further notice from Lender in writing. Landlord, by requesting this Certificate from Tenant, agrees that Tenant may comply with any such notice from Lender, and that any payment made to Lender shall constitute payment of rent under the Lease.

Tenant acknowledges that Lender, in making the Loan, is relying upon the accuracy of the statements of Tenant in this Certificate. This Certificate shall be binding upon Tenant and its successors and assigns and shall inure to the benefit of and be enforceable by Lender and its successors, assigns and designees, including, but not limited to, any New Owner (which successors, assigns and New Owner shall be deemed to be included within the term "Lender" for purposes of this Certificate).

IN WITNESS WHEREOF, Tenant has duly executed and delivered this Certificate as of the date set forth below.

Dated: _____, 20__

[Insert TENANT's legal name, as shown in Lease]

By: _____
Name:
Title:

**Exhibit G-1
ESTOPPEL LETTER
GUARANTOR OF LEASE**

[LETTERHEAD OF GUARANTOR]

_____, 20__

Buyer:

And

Lender:

Re: [TENANT] lease at [PROPERTY]
Lease dated _____, 20__

Ladies and Gentlemen:

The undersigned hereby certifies to you and confirms that its **[Unconditional Lease Guaranty]** dated _____, 20__ of the obligations of **[TENANT]**, under the above-referenced Lease remains in full force and effect and inures to the benefit of Landlord and its successors in title to the Premises. **[GUARANTOR]** further agrees not to amend, modify or cancel the **[Unconditional Lease Guaranty]** without written consent of **[LENDER]**, its successors and/or assigns.

Very truly yours,

[GUARANTOR]

By: _____ Name:

Title:

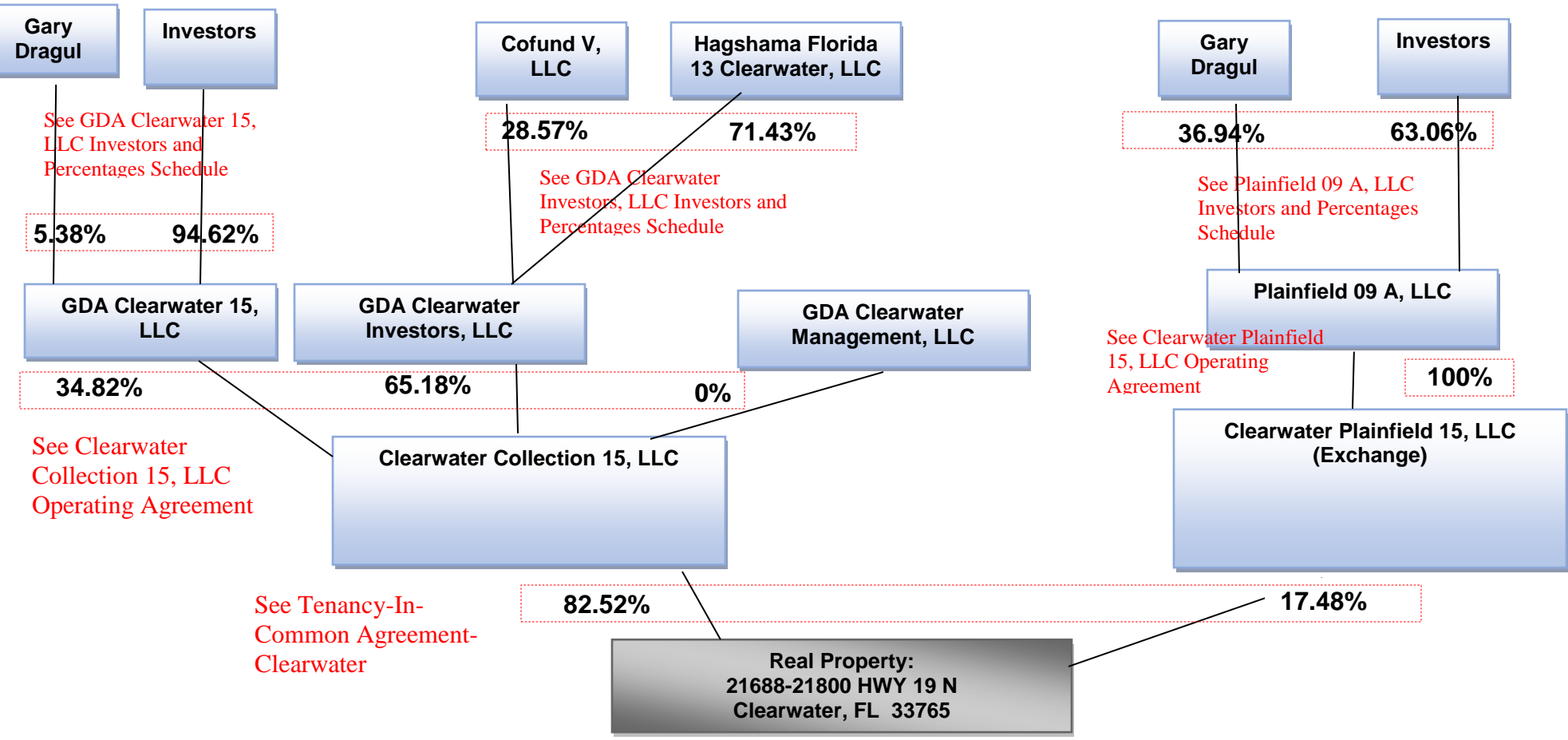
SCHEDULE "A"
RECEIVERSHIP ORDER

SCHEDULE "B"
MASTER AGREEMENT

EXHIBIT 2

CLEARATER: ORGANIZATIONAL CHART

(Clearwater, Florida)



GDA Clearwater 15, LLC-INVESTORS AND PERCENTAGES

GDA Clearwater 15, LLC	
Partner Name	
	% OWNED
	100.000000
3G2B Partners, LLC	5.800000
Ahrendt, Audrey	1.845386
Diamant, Marc	2.900000
Dragul, Gary	5.384604
Eisen, Charles	5.800000
Eisen, Robert & Jodi	5.800000
Friedman, Scott	3.480000
Haar, Darcea	4.060000
Haar, David	4.060000
Hilltoppers Capital Growth, LLC	5.800000
Hughes, Carol	2.900010
Hurst, Chad	17.390000
Leftin Investment Company	2.900000
Lone Pine Resources, LP	14.490000
Metz, Aaron J.	5.800000
ROSENBAUM, MARTIN	11.590000

Plainfield 09 A, LLC-INVESTORS AND PERCENTAGES

Plainfield 09 A, LLC	
Partner Name	% OWNED
	100.000000
1ST ANDERSON PROPERTIES	1.662200
AAFEDT, ERIC	1.207100
BUCKWALTER, REBA	1.207100
CHAPMAN, BRET D	1.448500
Consolidated CG of TX	2.414300
DEARDORFF, GERALD	3.621400
DETERER, WILLIAM	4.828500
Dragul, Gary	36.936400
EQUITY TRUST COMPANY CUSTODIAN FBO DAVID HOE IRA	0.651800
EQUITY TRUST COMPANY CUSTODIAN FBO LORI HOE IRA	0.482900
EVANS, CRAIG	1.207100
EVANS, LAURA	1.207100
EWELL, CALVIN	1.207100
Family Trust, The Benzmilller	4.828500
HAAR, DAVID A	0.482900
HBT PARTNERS ATTN: DAVID BOMBERGER	2.414300
HEFFLEY, JOHN	2.414300
HERSHEY, WENDY	0.320500
HOE, DAVID S	0.036200
HOE, LORI A	0.036200
LAPP, GIDEON	1.207150
LAPP, RHONDA	1.207150
MCCAFFREY, THOMAS	1.207100
MCMAHON, JAMES	1.207100
Miller, Steve	2.414300
MSHR, INC.	2.897100
NAYLOR, CRAIG	2.414300
NUTT, RAYMOND	1.207100
PENSCO TRUST COMPANY CUSTODIAN W. SCOTT ROCKEFELLER IRA	0.724300
RISSER, R. EUGENE	2.414300
Rosenbaum, Martin	2.414300
SARAH VINEYARD IRREVOCABLE TRUST	2.414300
TENNIS, JEFFREY	2.414300
VINEYARD, PHILIP	7.242800