

FILED IN DENVER  
DISTRICT COURT  
DENVER, COLORADO

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO</p> <p><b>Court Address:</b> Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p>2019 FEB 19 PM 3:14 DATE FILED: February 19, 2019 CASE NUMBER: 2018CV33011</p>
<p><b>Plaintiff: Chris Mykelbust, Securities Commissioner for the State of Colorado</b></p> <p>v.</p> <p><b>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</b></p>	<p>◆ COURT USE ONLY ◆</p> <hr/> <p>Case No.: 2018CV33011</p> <p>Courtroom 424</p>
<p>Attorneys for Plaintiff: Duncan E. Barber, No. 16768</p> <p><b>SHAPIRO BIEGING BARBER OTTESON LLP</b> 7979 E. Tufts Avenue, Suite 1600 Denver, Colorado 80237 Phone Number: (720) 488-0220 Fax Number: (720) 488-7711 dbarber@sbbolaw.com</p>	
<p><b>LIMITED OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HICKORY CORNERS</b></p>	

WBF/CT Associates, LLC (“WBF/CT”), by and through its counsel, hereby objects, on a limited basis, to Receiver’s Motion for Order Authorizing Sale of Hickory Corners filed February 8, 2019 (the “Motion”).

WBF/CT does not object to Receiver’s proposed sale of Hickory Corners. Rather, WBF/CT objects to Receiver’s suggestion in the Motion that WBF/CT’s second deed of trust on

18CV33011-15AP

the “Box” property “may be avoidable under COLO. REV. STAT. § 38-8-105” (Motion at 6) and to preserve objections to the Receiver’s suggestion.<sup>1</sup>

### FACTUAL BACKGROUND

1. WBF/CT holds a Second Deed of Trust and Security Agreement, Assignment of Leases and Rents (the “Deed of Trust”) on property in Hickory, North Carolina, defined in the Motion as the “Box.” Motion ¶ 11. This Box is part of the Hickory Corners shopping center that Receiver proposes to sell. Motion ¶ 3.

2. Hickory Corners Box 16A, LLC (“Box 16A”) and Hickory Corners Box 16B, LLC (“Box 16B”) own the Box. Box 16A and Box 16B granted the Deed of Trust to WBF/CT in exchange for a \$500,000 loan from WBF/CT for improvements to the Box. *See* Affidavit of Chad Hurst in Support of Non-Party WBF/CT Associates, LLC’s Limited Objection to Receiver’s Motion for Order Authorizing Sale of Hickory Corners (the “Affidavit”) at ¶¶ 4, 8, 10, a copy of which is attached hereto. Gary Dragul also signed a Promissory Note in his personal capacity to secure the loan. Affidavit, ¶¶ 8, 9.

3. The Deed of Trust and Promissory Note were executed on March 13, 2018. The Motion states that the loan was made to “Gary Dragul personally.” Motion ¶ 16. However, the parties’ understanding at the time of the loan was that the loan proceeds would be used to improve the Box. Affidavit, ¶¶ 3, 4. This intent is reflected in the fact that the loan proceeds were not wired to a personal account of Gary Dragul, but were rather wired to an account belonging to GDA Hickory 17, LLC. Affidavit, ¶ 6, 7. Specifically, WGF/CT wired \$495,000 to

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<sup>1</sup> WBF/CT recognizes that Receiver has not sought to avoid the second deed of trust and enters this Limited Objection to ensure that its rights are fully protected. WBF/CT reserves the right to make additional arguments not presented in this Limited Objection in future filings.

GDA Hickory 17, LLC on March 13, 2018. Affidavit, ¶¶5-7.<sup>2</sup> As noted in the Receiver's Motion, GDA Hickory 17, LLC is an owner of Box 16B. Motion ¶¶ 9, 13.

### ARGUMENT<sup>3</sup>

4. Contrary to Receiver's suggestion, the Deed of Trust is not avoidable under COLO. REV. STAT. § 38-8-105 or its North Carolina counterpart, N.C. GEN. STAT. § 39-23.4. Box 16A and Box 16B received reasonably equivalent value in exchange for the Deed of Trust. Moreover, the Deed of Trust did not leave Box 16A or Box 16B with insufficient assets; to the contrary, as disclosed in the Motion, the value of the Box exceeds existing debts. Motion ¶ 21.

#### A. **Box 16A and Box 16B Received Reasonably Equivalent Value for the Deed of Trust.**

5. Box 16A and Box 16B received "reasonably equivalent value" for the \$500,000 Deed of Trust. COLO. REV. STAT. § 38-8-105; N.C. GEN. STAT. § 39-23.4. As explained above, WBF/CT's \$500,000 loan was to make improvements to the Box, which is owned by Box 16A and Box 16B. Affidavit, ¶¶ 3, 4. Pursuant to the parties' agreement and understanding—and in contrast to Receiver's suggestion—the loan funds were not transferred to Gary Dragul personally. Rather, the loan proceeds were transferred to GDA Hickory 17, LLC, an entity with

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<sup>2</sup> The \$495,000 transfer represents the full \$500,000 less a 1% origination fee.

<sup>3</sup> WBF/CT understands that principal business of Box 16A and Box 16B has been their interests in the Box property in North Carolina. Moreover, the Deed of Trust at issue is recorded in North Carolina and concerns North Carolina real property. Accordingly, should Receiver claim that the Deed of Trust is avoidable, that claim should be evaluated under North Carolina law. See *In re Unglaub*, 332 B.R. 303, 313 n.3 (Bankr. N.D. Ill. 2005) (applying Colorado law in action to set aside mortgage "because the relevant property is located in Colorado and the Mortgage [at issue] encumbering the Colorado Property was recorded in Colorado"); N.C. GEN. STAT. § 39-23.9A(b) (governing law for fraudulent transfer cases is "the local law of the jurisdiction in which the debtor is located when the transfer is made"); see also Kettering, *The Uniform Voidable Transactions Act; or, the 2014 Amendments to the Uniform Fraudulent Transfer Act*, 70 Bus. Law 777 (2015). Regardless of the applicable law, however, the Deed of Trust is not avoidable.

an interest in the Box. Affidavit, ¶ 6 [showing wire transfer of \$495,000 on March 13, 2018 to GDA Hickory 17, LLC].

6. That the funds were disbursed to a different (though related) entity, and that the Promissory Note was signed by a different (though related) person, is hardly dispositive. It is well established that “a debtor may ... receive ‘fair’ consideration even though the consideration given for his property or obligation goes initially to a third person.” *Rubin v. Manufacturers Hanover Tr. Co.*, 661 F.2d 979, 991 (2d Cir. 1981); *Williams v. Twin City Co.*, 251 F.2d 678, 681 (9th Cir. 1958) (holding in the context of an alleged constructively fraudulent transfer that “[c]onsideration can run to a third party, so long as it is given in exchange for the promise sought to be enforced.”).<sup>4</sup> So long as “the giving of the consideration to the third person otherwise confers an economic benefit upon the debtor, then the debtor’s net worth has been preserved.” *Rubin*, 661 F.2d at 991.

7. That is the case here, where the loan funds were transferred to GDA Hickory 17, the parent company of at least one of the Box entities, to make improvements to the Box property. *Id.* at 993 (noting “that the corporate separateness of the loan recipients from their guarantors” did not “preclude[] a finding of fair consideration”). Here, WBF/CT understands that the loan recipient and the guarantor “share identity of economic interests such that [Box 16A and Box 16B] share the benefit conferred on [GDA Hickory 17].” *Johnson v. First Nat. Bank*, 81 B.R. 87, 89 (Bankr. N.D. Fla. 1987). Accordingly, Box 16A and Box 16B received a benefit when the loan proceeds were transferred to GDA Hickory 17.

8. Moreover, there can be no question here that the loan secured by the Deed of Trust is “reasonably equivalent” to the loan. *See In re Grabill Corp.*, 121 B.R. 983, 996 (Bankr.

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<sup>4</sup> The Colorado Court of Appeals has noted that § 548 of the Bankruptcy Code and § 38-8-105 contain “very similar” language and “have the same purpose,” which makes “interpretations of § 548 instructive.” *Schempp v. Lucre Mgmt. Grp., LLC*, 18 P.3d 762, 764 (Colo. Ct. App. 2000).



N.D. Ill. 1990) (“When property is transferred for the purpose of security, it is sufficient that the value of the property secured not be disproportionate to the amount of the debt secured.”). Here, \$495,000 was transferred to GDA Hickory 17 pursuant to the Note and the Deed of Trust expressly “secure[s] payment of all amounts due or that may become due under the Note.” Affidavit, ¶¶ 8-10. That is, the amount secured by the Deed of Trust is commensurate with the amount owed under the \$500,000 Promissory Note.

**B. The Deed of Trust Did Not Leave Box 16A and Box 16B With Insufficient Assets.**

9. The facts at bar also do not support the second requirement for constructive fraud, that “the transfer would essentially leave the debtor with insufficient resources to repay the debt.” *Tarasiewicz v. Weiss*, 206 WL 2361733 (D. Colo. Aug. 14, 2006).<sup>5</sup>

10. More specifically, there is no evidence that, at the time they granted the Deed of Trust to WBF/CT, Box 16A and Box 16B were engaged in, or were about to engage in, a business or transaction for which their remaining assets were unreasonably small in proportion. N.C. GEN. STAT. § 39-23.4(a)(2)(a); COLO. REV. STAT. § 38-8-105(1)(b)(i). Nor is there evidence that Box 16A and Box 16B granted the Deed of Trust at a time they intended to, or believed they would, incur debts beyond their ability to pay as they came due. N.C. GEN. STAT. § 39-23.4(a)(2)(b); COLO. REV. STAT. § 38-8-105(1)(b)(ii).

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<sup>5</sup> WBF/CT does not read Receiver’s Motion to allege actual fraud as in COLO. REV. STAT. § 38-8-105(1)(a) (“actual intent to hinder, delay, or defraud any creditor of the debtor”) or N.C. GEN. STAT. § 39-23.4(a)(1) (same). See Motion ¶ 16. To the extent that Receiver may make such a contention, the factors for actual fraud (N.C. GEN. STAT. § 39-23.4(b); COLO. REV. STAT. § 38-8-105(2)) simply are not present here. Among other things, WBF/CT was not an “insider”; the Deed of Trust was not “concealed” (in fact, it was recorded into public record); the Deed of Trust did not constitute all or substantially all of Box 16A and Box 16B’s assets, nor have Box 16A and Box 16B become insolvent (a fact reinforced by Receiver’s analysis of assets after the contemplated sale (Motion ¶ 21)); Box 16A and Box 16B did not abscond; and, as detailed above, Box 16A and Box 16B received reasonably equivalent value in exchange for the Deed of Trust.

WBF/CT reserves the right to respond in detail to this provision if it is invoked in subsequent filings by Receiver seeking to avoid the Deed of Trust.

11. To the contrary, the Motion acknowledges that the contemplated sale would result in significant proceeds to the Hickory Corners entities after first mortgage liens and the Deed of Trust are satisfied, with approximately \$3.4 million left to pay other obligations once the first mortgage liens and WBF/CT Deed of Trust are paid. Motion ¶ 21. *Cf. Fifth Third Bank v. Morales*, 2017 WL 6492108 (D. Colo. Dec. 19, 2017) (finding that the challenged transaction left the debtor with insufficient assets where, among other things, the debtor had been found insolvent).

**C. Other Defenses.**

12. WBF/CT explicitly reserves the right to assert other defenses that are or may become applicable in any action seeking to avoid the Deed of Trust, including but not limited to the defenses set forth in N.C. GEN. STAT. §§ 39-23.8 and COLO. REV. STAT. § 38-8-109.

13. For example, the record reflects that WBF/CT is “a good-faith transferee,” and the record also reflects that the transfer was made “pursuant to a good-faith effort to rehabilitate” the Box entities, and “the transfer secured present value given for that purpose.” N.C. GEN. STAT. §§ 39-23.8(d), (f); COLO. REV. STAT. § 38-8-109(4), (6).

**CONCLUSION**

14. WBF/CT hereby asserts its limited objection and reserves its right.

15. Moreover, WBF/CT is willing to release its Deed of Trust at the closing of the underlying transaction upon full payment of the amounts owing under the Note and Deed of Trust and other loan documents.

WHEREFORE, WBF/CT asserts its limited objection, demands payment in full at the closing of the underlying transaction and for such other and further relief as is consistent with the foregoing.

DATED: February 15, 2019.

SHAPIRO BIEGING BARBER OTTESON LLP

By:         /s/ Duncan E. Barber        

Duncan E. Barber, #16768  
*Counsel for WBF/CT Associates, LLC*

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO</p> <p><b>Court Address:</b>  Denver District Court  1437 Bannock St.  Denver, CO 80202</p>	<p>DATE FILED: February 19, 2019  CASE NUMBER: 2018CV33011</p>
<p><b>Plaintiff: Chris Mykelbust, Securities Commissioner for the State of Colorado</b></p> <p>v.</p> <p><b>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</b></p>	<p>◆ COURT USE ONLY ◆</p> <hr/> <p>Case No.: 2018CV33011</p> <p>Courtroom 424</p>
<p>Attorneys for WBT/CT Associates, LLC:  Duncan E. Barber, No. 16768</p> <p><b>SHAPIRO BIEGING BARBER OTTESON LLP</b>  7979 E. Tufts Avenue, Suite 1600  Denver, Colorado 80237  Phone Number: (720) 488-0220  Fax Number: (720) 488-7711  dbarber@sbbolaw.com</p>	
<p><b>AFFIDAVIT OF CHAD HURST IN SUPPORT OF NON-PARTY WBF/CT ASSOCIATES, LLC'S LIMITED OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HICKORY CORNERS</b></p>	

STATE OF Pennsylvania )  
) ss.  
COUNTY OF Lancaster )

AFFIANT, being first duly sworn, states under oath as follows:

1. My name is Chad Hurst. I am more than eighteen years of age and am competent to testify as to the matters stated herein.

2. I am one of two principals of WBF/CT Associates, LLC, a Pennsylvania limited liability company at 9 Waterfront Estates DR., Lancaster, PA 17602.

3. In early 2018, I had conversations with Gary Dragul and my business partner at WBF/CT Associates, Tom Jordan, about providing a \$500,000 loan that was to be used for improvements to the "Box" property owned and operated by entities owned and controlled by Mr. Dragul.

4. WBF/CT Associates agreed to make the \$500,000 loan with the understanding that the loan proceeds would be used for improvements to the "Box" property.

5. On March 13, 2018, WBF/CT Associates made a wire transfer of \$495,000 to GDA Hickory 17, LLC.

6. A true and correct copy of an email exchange on March 12 and March 13, 2018 that contains the wiring instructions for the transfer to GDA Hickory 17, LLC and Tom Jordan's confirmation of those instructions is attached as Exhibit A.

7. A true and correct copy of the March 13, 2018 wire confirmation, which shows the transfer to GDA Hickory 17, LLC, less a 1% origination fee, is attached as Exhibit B.

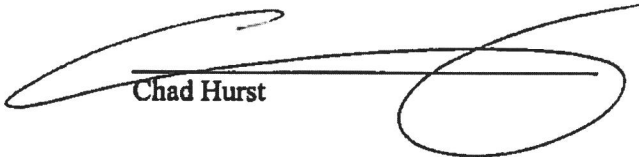
8. The loan was secured by a Promissory Note executed by Gary Dragul personally and a Second Deed of Trust and Security Agreement, Assignment of Leases and Rents (the "Second Deed of Trust") executed by Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC.

9. A true and correct copy of the Promissory Note is attached as Exhibit C.

10. A true and correct copy of the Second Deed of Trust is attached as Exhibit D.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

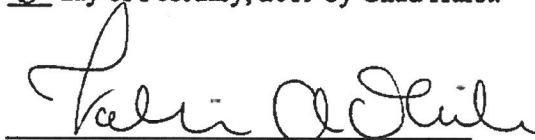
DATED this 18<sup>th</sup> day of February, 2019.

  
Chad Hurst

Subscribed and sworn before me this 18<sup>th</sup> day of February, 2019 by Chad Hurst.

My Commission expires: Aug. 31<sup>st</sup> 2020

[Stamp]

  
Notary Public

Commonwealth of Pennsylvania - Notary Seal  
Valerie A. Olweiler, Notary Public  
Lancaster County  
My commission expires August 31, 2020  
Commission number 1300606  
Member, Pennsylvania Association of Notaries

SBBO#545550

**From:** tom.val.jordan@comcast.net  
**Sent:** Tuesday, March 13, 2018 7:20 AM  
**To:** 'Susan Markusch'; 'Gary Dragul'; 'Elizabeth Gold'  
**Cc:** chadhurstrealtor@gmail.com; 'Beth Freestone'  
**Subject:** RE: \* Quick Funding Needs \*

Susan

Thanks for the wire instructions!

Elizabeth

Chad will get you the executed, notarized Loan Agreement for Hickory this morning.

Please forward the Borrower signed, notarized Loan Agreement when complete.

Let us know who will be filing our 2<sup>nd</sup> Deed of Trust and when it'll be filed.

Once we have executed Loan Agreement and understand when our 2<sup>nd</sup> Deed of Trust will be filed, we will initiate the wire to GDA Hickory.

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**From:** Susan Markusch <susan@gdare.com>  
**Sent:** Monday, March 12, 2018 10:09 PM  
**To:** Gary Dragul <gary@gdare.com>; 'tom.val.jordan@comcast.net' <tom.val.jordan@comcast.net>; Elizabeth Gold <elizabeth@gdare.com>  
**Cc:** chadhurstrealtor@gmail.com; Beth Freestone <beth@gdare.com>  
**Subject:** RE: \* Quick Funding Needs \*

Tom:

The wiring instructions for GDA Hickory are below.

Fortis Private Bank  
1550 17th Street, Suite 100  
Denver, CO 80202  
ABA/routing number [REDACTED]

Beneficiary Account # [REDACTED]  
Beneficiary Name: GDA Hickory 17, LLC  
Beneficiary address: 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111  
Beneficiary phone # 303-221-5500

Thank you,

Susan Markusch  
Controller  
GDA Real Estate Services, LLC



5690 DTC Boulevard, Suite 515  
Greenwood Village, CO 80111  
Phone (303) 221-5500  
Fax (303) 221-5501  
Cell (303) 929-4321

S&T BANK  
PO BOX 190  
INDIANA PA 15701

PAGE: 1  
DATE OF TRANSACTIONS: MAR 13, 2018  
ACCOUNT NUMBER: Redacted

FOR PERSONAL ASSISTANCE CALL:  
1-800-325-2265



WBF/CT ASSOCIATES LLC  
9 WATERFRONT ESTATES DR  
LANCASTER PA 17602-4133

**CONFIRMATION OF TRANSACTION NOTICE**

THE FOLLOWING TRANSACTIONS WERE POSTED TO YOUR ACCOUNT  
ON 03-13-18 FOR THE AMOUNT SHOWN:

DESCRIPTION	AMOUNT
OUTGOING WIRE FEE	25.00
Redacted GDA HICKORY 17, LL BENEFICIARY PHONE#	
WIRE TRANSFER OUT	495,000.00
Redacted GDA HICKORY 17, LL BENEFICIARY PHONE#	

Hickory Corners Loan \$500,000  
Less: Origination fee. (5,000)  $\frac{1}{2}$  to Chad  
Wine Amount \$495,000  $\frac{1}{2}$  to TUS

Ⓟ 3/13/18

## PROMISSORY NOTE

Greenwood Village, CO

March 13, 2018

This promissory note is executed by the undersigned ("**Borrower**") as of the 13 day of March, 2018 ("**Note**"). For value received, Borrower promises to pay to the order of WBF/CT Associates, LLC, a Pennsylvania limited liability company ("**Lender**"), at 9 Waterfront Estates Dr., Lancaster, PA 17602 or at such other address or place as Lender may from time to time designate in writing, the sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) ("**Loan Amount**"), plus interest on the unpaid principal balance in the amount of two percent (2%) per month, as further set forth herein. Borrower further agrees to pay to Lender a fee equal to Five Thousand and 00/100 Dollars (\$5,000.00), and if such amount is not paid by Borrower to Lender at the time the Initial Loan Amount is advanced to Borrower then it shall be deducted from the Initial Loan Amount advanced to Borrower.

The Loan Amount and any accrued and unpaid interest with respect thereto shall be due and payable by Borrower to Lender in a lump sum on the date that is seven (7) months following the date the Initial Loan Amount is delivered to Borrower by Lender ("**Maturity Date**").

This Note may be prepaid, in whole or in part, at any time without consent and without penalty, provided that if the Note is prepaid sooner than the Maturity Date such prepayment shall be accompanied by an amount equal to the difference between five (5) months' interest on the Initial Loan Amount and the amount of interest already paid to Lender by Borrower on the Initial Loan Amount. Any partial prepayment shall be applied to the principal portion of the monthly installments in the inverse order of their maturities. Any payment date falling on a Saturday, Sunday or holiday on which national banks located in Pennsylvania are not open for general banking business will be extended to the next business day.

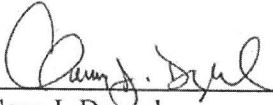
Borrower waives presentment for payment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note. The terms and provisions of this Note are intended to be and shall be governed, interpreted and construed pursuant to the laws of the State of Pennsylvania and venue for any legal action relating to the interpretation or enforcement of the provisions of this Note or the obligations arising hereunder shall be proper in Lancaster County, State of Pennsylvania.

If any interest rate, late charge, penalty, fee or cost provided for herein shall exceed that which is allowed pursuant to any applicable statute or law, said amount shall be deemed by the parties hereto to be modified so as to conform to and equal the maximum amount allowed by said statute or law. If any other provisions hereof are in conflict with any applicable statute or law and are determined to be not valid or enforceable, then each such provision shall be deemed null and void, but to the extent of such conflict only and without invalidating or affecting the remaining provisions hereof.

Any notice required or permitted to be given to Lender shall be sufficient if in writing and if personally delivered or if sent by certified or registered mail or nationally recognized overnight carrier to delivery on the next business day to the address set forth in the first paragraph above or

to such other address or such other address or place as Lender may from time to time designate in writing. Any notice required or permitted to be given to Borrower shall be sufficient if in writing and if personally delivered or if sent by certified or registered mail or nationally recognized overnight carrier to delivery on the next business day to the address set forth below or such other address as Borrower may from time to time designate in writing.

**BORROWER:**

  
Gary J. Dragul

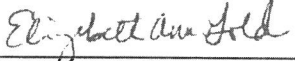
Address:

5690 DTC Boulevard, Suite 515  
Greenwood Village, CO 80111

STATE OF COLORADO )  
  ) ss.  
COUNTY OF ARAPAHOE )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of March, 2018, by Gary J. Dragul.

Witness my hand and official seal.  
My commission expires:

  
Notary Public

<p><b>ELIZABETH ANN GOLD</b> NOTARY PUBLIC - STATE OF COLORADO Notary ID #20024002805 My Commission Expires 1/8/2022</p>
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## PROMISSORY NOTE

Greenwood Village, CO

March 13, 2018

This promissory note is executed by the undersigned ("**Borrower**") as of the 13 day of March, 2018 ("**Note**"). For value received, Borrower promises to pay to the order of WBF/CT Associates, LLC, a Pennsylvania limited liability company ("**Lender**"), at 9 Waterfront Estates Dr., Lancaster, PA 17602 or at such other address or place as Lender may from time to time designate in writing, the sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) ("**Loan Amount**"), plus interest on the unpaid principal balance in the amount of two percent (2%) per month, as further set forth herein. Borrower further agrees to pay to Lender a fee equal to Five Thousand and 00/100 Dollars (\$5,000.00), and if such amount is not paid by Borrower to Lender at the time the Initial Loan Amount is advanced to Borrower then it shall be deducted from the Initial Loan Amount advanced to Borrower.

The Loan Amount and any accrued and unpaid interest with respect thereto shall be due and payable by Borrower to Lender in a lump sum on the date that is seven (7) months following the date the Initial Loan Amount is delivered to Borrower by Lender ("**Maturity Date**").

This Note may be prepaid, in whole or in part, at any time without consent and without penalty, provided that if the Note is prepaid sooner than the Maturity Date such prepayment shall be accompanied by an amount equal to the difference between five (5) months' interest on the Initial Loan Amount and the amount of interest already paid to Lender by Borrower on the Initial Loan Amount. Any partial prepayment shall be applied to the principal portion of the monthly installments in the inverse order of their maturities. Any payment date falling on a Saturday, Sunday or holiday on which national banks located in Pennsylvania are not open for general banking business will be extended to the next business day.

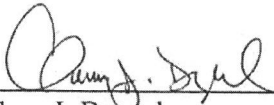
Borrower waives presentment for payment, protest and demand, notice of protest, demand and dishonor and non-payment of this Note. The terms and provisions of this Note are intended to be and shall be governed, interpreted and construed pursuant to the laws of the State of Pennsylvania and venue for any legal action relating to the interpretation or enforcement of the provisions of this Note or the obligations arising hereunder shall be proper in Lancaster County, State of Pennsylvania.

If any interest rate, late charge, penalty, fee or cost provided for herein shall exceed that which is allowed pursuant to any applicable statute or law, said amount shall be deemed by the parties hereto to be modified so as to conform to and equal the maximum amount allowed by said statute or law. If any other provisions hereof are in conflict with any applicable statute or law and are determined to be not valid or enforceable, then each such provision shall be deemed null and void, but to the extent of such conflict only and without invalidating or affecting the remaining provisions hereof.

Any notice required or permitted to be given to Lender shall be sufficient if in writing and if personally delivered or if sent by certified or registered mail or nationally recognized overnight carrier to delivery on the next business day to the address set forth in the first paragraph above or

to such other address or such other address or place as Lender may from time to time designate in writing. Any notice required or permitted to be given to Borrower shall be sufficient if in writing and if personally delivered or if sent by certified or registered mail or nationally recognized overnight carrier to delivery on the next business day to the address set forth below or such other address as Borrower may from time to time designate in writing.

**BORROWER:**

  
\_\_\_\_\_  
Gary J. Dragul

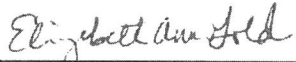
Address:

5690 DTC Boulevard, Suite 515  
Greenwood Village, CO 80111

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF ARAPAHOE        )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of March, 2018, by Gary J. Dragul.

Witness my hand and official seal.  
My commission expires:

  
\_\_\_\_\_  
Notary Public

<b>ELIZABETH ANN GOLD</b> NOTARY PUBLIC - STATE OF COLORADO Notary ID #20024002805 My Commission Expires 1/8/2022
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FILED Calawba County

on Apr 30, 2018 at 09:40:00 am

Excise Tax \$0.00 (AT)

INST. # 06851

DONNA HICKS SPENCER,  
Register of Deeds

EX 03450 Pg 0626-0638

✓ Return to:  
Rudy Merab  
First National Financial Title Services, Inc.  
120 Interstate North Parkway, Suite # 108  
Atlanta, GA 30339 (CASE)  
770-916-4354  
NC251706054RYA

This instrument was prepared by: Elizabeth Gold, 5690 DTC Blvd. # 515, Greenwood Village, CO 80111

**SECOND DEED OF TRUST AND SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS**

This Second Deed of Trust and Security Agreement, Assignment of Leases and Rents ("Second Deed of Trust") is made as of March 13, 2018,

BY: **HICKORY CORNERS BOX 16 A, LLC**, a Delaware limited liability company ("16 A"), whose mailing address is 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, and **HICKORY CORNERS BOX 16 B, LLC**, a Delaware limited liability company ("16 B"), whose mailing address is 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, as tenants in common (16 A and 16 B are collectively and individually referred to herein as "Grantor"), and

TO: **FIDELITY NATIONAL TITLE INSURANCE COMPANY, TRUSTEE**, whose mailing address is 421 Fayetteville St., Suite 215, Raleigh, NC 27601,

FOR THE BENEFIT OF: **WBF/CT ASSOCIATES, LLC**, a Pennsylvania limited liability company ("Beneficiary"), whose mailing address is 9 Waterfront Estates Dr., Lancaster, PA 17602.

**Recitals**

WHEREAS, 16 A is owner of an undivided 64.59% ownership interest as a tenant in common in the real property more particularly described in **Exhibit A** attached hereto and made a part hereof;

WHEREAS, 16 B is owner of an undivided 35.41% ownership interest as a tenant in common in the real property more particularly described in **Exhibit A** attached hereto and made a part hereof; and

WHEREAS, Beneficiary has agreed to provide to Gary J. Dragul ("Borrower") a loan ("Loan") in the principal amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00), as evidenced by the Promissory Note of even date herewith ("Note"), with a maturity date seven (7) months following the date of funding of the Note, and Grantor has agreed to grant this Second Deed of Trust as a second lien against such real property described in **Exhibit A** attached hereto (the "Land") to, subject to the existing lien in favor of Dynasty, LLC ("Existing Lien") to secure the repayment of Beneficiary's loan to Borrower.



## Agreements

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NOW, THEREFORE, in consideration of the loan, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

### 1. DEFINITIONS AND GENERAL RULES OF CONSTRUCTION

1.1. Definitions. In this Second Deed of Trust, all defined terms shall be capitalized and shall have the meaning assigned herein.

1.2. Tense; Gender; Section Headings. In this Second Deed of Trust, the singular includes the plural and *vice versa*. Each reference to any gender also applies to any other gender. The section headings are for convenience only and are not part of this Second Deed of Trust.

### 2. GRANTS AND ASSIGNMENTS

2.1. Grant. Grantor does, by these presents, subject to the Existing Lien, grant, bargain, sell, assign, convey and warrant generally unto Trustee, its successors and assigns forever, in fee simple, the Land and all improvements and fixtures thereon ("Property"), to have and to hold in trust in order to secure payment of all amounts due or that may become due under the Note ("Indebtedness") and any other documents evidencing the Note ("Loan Documents"); provided that if Grantor shall pay or cause to be paid the Indebtedness as and when the same shall become due and payable, then Beneficiary or Trustee shall release and reconvey the Property unto and at the expense of Grantor. Notwithstanding anything to the contrary set forth herein, the rights of Beneficiary pursuant to this Second Deed of Trust are junior to the rights of the holder of the Existing Lien and to the rights of the holder of any debt that replaces all or any part of the debt secured by the Existing Lien ("Future Lien") (the Existing Lien and Future Lien are collectively referred to as the "First Lien"). Beneficiary agrees to execute such documentation is reasonably necessary to confirm the subordination of its interest pursuant to this Second Deed of Trust to the interest of the holder or holder of the First Lien.

2.2. Assignment of Leases and Rents. Grantor, subject to the First Lien, assigns and transfers to Beneficiary all leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, oral or written, covering or affecting the Land, or any part thereof or any interest therein, and all extensions and renewals thereof and all substitutions therefore ("Leases") and all of the rents, revenues, income, profits and other benefits arising from the use and enjoyment of all or any portion of the Land or any interest therein ("Rents").

### 3. REPRESENTATIONS AND WARRANTIES

3.1. Representations and Warranties. To induce Beneficiary to make the Loan, Grantor hereby makes the following representations and warranties to Beneficiary:

a. No Violation. Grantor and the Property are in compliance with all laws, regulations, ordinances and orders of public authorities applicable to them. Grantor is obtaining the Loan solely for the purpose of holding, developing, and managing real property for profit, and Loan proceeds are not intended to be used, and will not be used, for family, household,

agricultural or personal purposes.

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b. Validity of Loan Documents. The Loan and the execution, delivery and performance by Grantor of the terms of the Loan: (i) are within the legal powers of Grantor; (ii) have received all necessary governmental approval; (iii) will not violate any provision of law, or any order of any court or other agency of government; and (iv) will not result in a breach of or constitute a default under any agreement or other instrument to which Grantor is a party or by which Grantor or the Property is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of Grantor's property or assets, except as contemplated by the provisions of the Loan Documents.

c. Accuracy of Information. All information, financial statements, reports, papers and data given to Beneficiary, with respect to Grantor, are complete, accurate and correct in all material respects. There has been no material adverse change in the business or financial condition of the Grantor since application for the loan secured hereby was first made to the Beneficiary.

d. Title to Property. Grantor is lawfully seized of the estate hereby conveyed and has the right to grant, convey and assign the Property. The Property is encumbered only by the First Lien, and Grantor will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Beneficiary's interest in the Property.

e. Taxes. Grantor has filed all required federal, state, county and municipal income tax returns and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments, and Grantor does not know of any basis for any additional assessment in respect of such taxes.

f. Environmental Protection. Except with respect to any matters which have been disclosed in writing by Grantor to Beneficiary prior to the date of this Second Deed of Trust, Grantor has not at any time caused or permitted the presence, use, generation, manufacture, production, processing, installation, release, discharge, storage (including aboveground and underground storage tanks for petroleum or petroleum products), treatment, handling or disposal at the Property of any hazardous materials ("Prohibited Activities or Conditions") and, to Grantor's knowledge, no Prohibited Activities or Conditions exist or have existed in, on or near the Property. Grantor has not received, and has no knowledge of the existence or issuance of, any Governmental Action.

g. USA Patriot Act. Neither Grantor nor any affiliate of Grantor is identified in any list of known or suspected terrorists published by any United States government agency, including, without limitation, (i) the annex to Executive Order 13224 issued on September 23, 2001 by the President of the United States and (ii) the Specially Designated Nationals List published by the United States Office of Foreign Assets Control ("Blocked Persons List").

h. Commercial Loan. The Grantor warrants and represents that the loan evidenced by the Note and secured hereby is being made solely to acquire or carry on a business or commercial enterprise and is a "commercial loan" under the laws of the State of North Carolina.

3.2. Continuing Nature of Representations and Warranties. Grantor hereby represents, warrants, covenants and agrees that the representations and warranties made by Grantor in Section 3.1 shall remain true and accurate in all respects throughout the term of the Loan.

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#### 4. COVENANTS OF GRANTOR

4.1. Payment of Principal and Interest. Borrower shall pay promptly when due the principal of the Note, interest accrued thereon, any prepayment and late charges provided in the Note, and all other sums secured by this Second Deed of Trust.

4.2. Taxes. Grantor shall pay all real estate taxes attributable to the Property when due.

4.3. Insurance. Grantor will at all times keep the Property insured for such losses or damage, in such amounts and by such companies as may be required by law and which Beneficiary may reasonably require, provided that, in any case, Grantor shall maintain: (i) physical hazard insurance on an "all risks" basis in an amount not less than 100% of the full replacement cost of the Property; (ii) flood insurance if and as required by Beneficiary may require from time to time, including builder's risk insurance in the case of construction loans. All policies regarding such insurance shall be issued by companies licensed to do business in the state where the policy is issued and also in the state where the Property is located, be otherwise reasonably acceptable to Beneficiary, provide deductible amounts reasonably acceptable to Beneficiary, name Beneficiary as mortgagee, loss payee and additional insured, and provide that no cancellation or material modification of such policies shall occur without at least ten (10) days prior written notice to Beneficiary. Such policies shall include, so long as reasonably available to Grantor, (i) a mortgage endorsement determined by Beneficiary in good faith to be equivalent to the "standard" mortgage endorsement so that the insurance, as to the interest of Beneficiary, shall not be invalidated by any act or neglect of the Grantor or the owner of the Property, any foreclosure or other proceedings or notice of sale relating to the Property, any change in the title to or ownership of the Property, or the occupation or use of the Property for purposes more hazardous than are permitted at the date of inception of such insurance policies; (ii) a replacement cost endorsement; (iii) an agreed amount endorsement; (iv) a contingent liability from operation endorsement; and (v) such other endorsements as Beneficiary may request. Grantor will furnish to Beneficiary upon request such original policies, certificates of insurance or other evidence of the foregoing as are acceptable to Beneficiary. The terms of all insurance policies shall be such that no coinsurance provisions apply, or if a policy does contain a coinsurance provision, Grantor shall insure the Property in an amount sufficient to prevent the application of the coinsurance provisions.

4.4. Preservation and Maintenance of Property. Grantor: (a) shall not commit waste or permit impairment or deterioration of the Property; (b) shall not abandon the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including Improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair; and (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

4.5. Protection of Beneficiary's Security. If Grantor fails to perform the covenants and agreements contained in this Second Deed of Trust, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Beneficiary therein, including but not limited to eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Beneficiary may make such appearances, disburse such sums and take such action as Beneficiary deems necessary, in its sole discretion, to protect Beneficiary's interest, including but not limited to: (a) disbursement of attorneys' fees; (b) entry upon the Property to make repairs; and (c) procurement of satisfactory insurance. Any amounts disbursed by Beneficiary pursuant to this Section, with interest thereon, shall become additional Indebtedness and shall be secured by this Second Deed of Trust. Such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the rate stated in the Note. Beneficiary shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section shall require Beneficiary to incur any expense or take any action.

4.6. Books and Records. Grantor shall keep and maintain at all times at Grantor's address stated above, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property (including but not limited to all bills, invoices, and contracts for electrical service, gas service, water and sewer service, waste management service, telephone service and management services).

4.7. Condemnation. Grantor shall notify Beneficiary promptly of any action or proceeding relating to any condemnation or other taking, whether direct or indirect, of the Property or any part thereof, and Grantor shall appear in and prosecute any such action or proceeding unless otherwise directed by Beneficiary.

4.8. Environmental Hazards.

a. No Prohibited Activity or Condition. Grantor shall not cause, permit or exacerbate any Prohibited Activity or Condition with respect to the Property, and Grantor shall take all appropriate steps (including but not limited to appropriate lease provisions) to prevent its employees, agents and contractors, and all tenants and other occupants on the Property, from causing, permitting or exacerbating any Prohibited Activities or Conditions. Grantor shall not lease or allow the sublease of all or any portion of the Property to any tenant or subtenant that, in

the ordinary course of its business, would cause, permit or exacerbate any Prohibited Activity or Condition, and all Leases shall provide that tenants and subtenants shall not cause, permit or exacerbate any Prohibited Activity or Condition.

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b. Compliance with Laws. Grantor shall comply in a timely manner with, and cause all employees, agents and contractors of Grantor and any other persons present on the Property to comply with all laws governing hazardous materials.

c. Certain Notices. Grantor shall notify Beneficiary promptly of: (i) the occurrence of any Prohibited Activity or Condition on the Property; (ii) Grantor's actual knowledge of the presence on or under any adjoining property of any hazardous materials which can reasonably be expected to have a material adverse effect on the Property or the value of the Property; (iii) Grantor's discovery of any occurrence or condition on the Property or any adjoining real property that could cause any restrictions on the ownership, occupancy, transferability or use of the Property under laws governing hazardous materials; (iv) any Governmental Action; and (v) any claim made or threatened by any third party against Grantor, Beneficiary or the Property relating to loss or injury resulting from any hazardous materials. Any such notice by Grantor shall not relieve Grantor of, or result in a waiver of, any obligation of Grantor under this Section.

d. Environmental Audits. Grantor shall pay promptly the costs of any environmental audits, studies or investigations (including but not limited to advice of legal counsel) and the removal of any hazardous materials from the Property required by Beneficiary following a reasonable determination by Beneficiary that there may be Prohibited Activities or Conditions in, on or near the Property. Grantor authorizes Beneficiary and Beneficiary's employees, agents and contractors to enter onto the Property for the purpose of conducting such environmental audits, studies and investigations. Any such costs and expenses incurred by Beneficiary (including but not limited to fees and expenses of attorneys and consultants, whether incurred in connection with any judicial or administrative process or otherwise) which Grantor fails to pay promptly shall become immediately due and payable and shall become additional Indebtedness secured by this Second Deed of Trust.

e. Indemnification. Grantor shall hold harmless, defend and indemnify Beneficiary and its officers, directors, trustees, employees and agents from and against all proceedings (including but not limited to Government Actions), claims, damages, penalties, costs and expenses (including but not limited to fees and expenses of attorneys and expert witnesses, investigatory fees, and cleanup and remediation expenses, whether or not incurred within the context of the judicial process), arising directly or indirectly from: (a) any breach of any representation, warranty or obligation of Grantor concerning Prohibited Activities or Conditions or the compliance of the Property with laws governing hazardous materials; or (b) the presence or alleged presence of hazardous materials in, on or near the Property.

4.9. USA Patriot Act. Grantor shall immediately notify Beneficiary in writing if Grantor becomes aware that Grantor is identified in any Blocked Persons List.

## 5. EVENTS OF DEFAULT AND REMEDIES



5.1. Events of Default. The occurrence of any one or more of the following events shall constitute an Event of Default under this Second Deed of Trust and under the other Loan Documents:

- a. Failure to Pay. Borrower fails to pay any portion of the Indebtedness as and when due and payable under the Note, this Second Deed of Trust or any of the other Loan Documents.
- b. False Representation. The failure of any representation or warranty made by Grantor to Beneficiary in this Second Deed of Trust, in any of the other Loan Documents or otherwise in connection with the Indebtedness to be true, accurate and complete in all material respects.
- c. Default under Loan Documents. A default occurs under any of the terms, conditions or covenants of any of the other Loan Documents, including without limitation, any guaranty agreements executed in connection with the Loan.
- d. Voluntary Bankruptcy, Etc. Grantor: (i) voluntarily is adjudicated as bankrupt or insolvent, (ii) seeks or consents to the appointment of a receiver or trustee for itself or for all or any part of its property, (iii) files a petition seeking relief under the bankruptcy or similar laws of the United States or any state or any other competent jurisdiction, (iv) makes a general assignment for the benefit of creditors, or (v) admits in writing its inability to pay its debts as they mature.
- e. Involuntary Bankruptcy, Etc. A court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of a Grantor, a receiver or trustee for a Grantor for all or any part of its property or approving a petition filed against it or him seeking relief under the bankruptcy or other similar laws of the United States or any state or other competent jurisdiction, and such order, judgment or decree shall remain in force undischarged or unstayed for a period of 30 calendar days.
- f. Organizational Existence of Grantor. If the Grantor's organizational existence shall be forfeited, revoked, dissolved or otherwise not properly maintained.

5.2. Remedies. Upon the occurrence of any Event of Default, Beneficiary may, subject to the First Lien, exercise any one or more of the following rights and remedies:

- a. Acceleration. Beneficiary may declare all of the Indebtedness to be immediately due and payable without further demand. The tender and acceptance of partial payments alone shall not rescind or affect in any way any acceleration of maturity.
- b. Entry and Operation of Property. Subject to the First Lien, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof, including but not limited to the execution, cancellation or modification of Leases, the collection of Rents and revenues of the Property, the making of repairs to the Property, and the execution or termination of contracts providing for the management or maintenance of the Property, all on such

terms as are deemed reasonable to protect the security of this Second Deed of Trust.

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c. Foreclosure and Sale. Subject to the First Lien, prior to commencing foreclosure proceedings pursuant to this Section 5.0(c), the Beneficiary shall provide notice to the Grantor in accordance with Section 6.1 hereof specifying: (i) the Event of Default which has occurred, (ii) the action required to cure such Event of Default, (iii) a date, not less than five (5) business days from the effective date of such notice to the Grantor, by which such Event of Default must be cured (it being understood and agreed that any cure involving the payment of funds must be made by cash, certified or cashiers funds or wire transfer), and (iv) that the failure to cure such Event of Default on or before the date specified in the notice may result in the Beneficiary commencing foreclosure proceedings pursuant to this Second Deed of Trust. Notwithstanding the provisions of the preceding sentence, the Beneficiary shall not be required to provide notice to the Grantor with respect to the occurrence of any Event of Default more than two (2) times during any twelve (12) month period of the term of the Loan as a condition to commencing foreclosure proceedings hereunder. If applicable, after the lapse of the foregoing notice and cure period, and during the continuance of any Event of Default, the Trustee, personally or by its agents or attorneys, may sell by power of sale the Mortgaged Property, or any part or parts thereof, and all estate, right, title, interest, claim and demand therein, at public auction to the highest bidder for cash at such time and place and upon such terms and conditions as the Trustee may deem appropriate or as may be required or permitted by applicable law or rule of court, having first given such notice prior to the sale of such time, place and terms by publication in at least one newspaper published or having a general circulation in the county or counties in which the Mortgaged Property is located or at such time or times as may be required by applicable law or rule of court, and at such other times and by such other methods, if any, as the Trustee may deem appropriate or as hereinafter provided. The Trustees, if and as directed by the Beneficiary, shall have all of the rights and may exercise all of the powers set forth in North Carolina law. The Trustee shall be authorized to retain an attorney to represent him in such proceedings. Additionally, the Trustee shall receive and apply all the proceeds from the sale of the Mortgaged Property, or any portion thereof, in accordance with North Carolina law. Beneficiary or its designee may purchase the Land at any sale. The Trustee shall deliver to the purchaser a Trustee's Deed conveying the Land without any covenant or warranty, express or implied. Disposition of such Mortgaged Property shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where it is located. Proceeds from any such sale shall be applied as hereinafter provided.

d. Other. Subject to the First Lien, Beneficiary may exercise any other remedy specifically granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise, including the appointment of a receiver or conservator for the Property, either pending a foreclosure sale or otherwise, irrespective of whether the Property is adequate security for the Indebtedness, and Grantor hereby consents to such appointment and will, upon Beneficiary's request, formally evidence such consent in writing in any proceeding for the appointment of a receiver.

5.3. Remedies Cumulative. Subject to the First Lien, each remedy provided in this Second Deed of Trust is distinct and cumulative to all other rights or remedies under this Second Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently, or



successively, in any order whatsoever.

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5.4. No Waiver. Any forbearance by Beneficiary in exercising any right or remedy under this Second Deed of Trust, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Beneficiary of payment of any portion of the Indebtedness after the due date of such payment shall not be a waiver of Beneficiary's right either to require prompt payment when due of all Indebtedness or to declare an Event of Default for failure to make such prompt payment.

## 6. MISCELLANEOUS

6.1. Notices. All notices, demands, requests and other communications required under this Second Deed of Trust shall be in writing and shall be deemed to have been properly given if sent by hand delivery, Federal Express (or similar overnight courier service), or by United States certified mail (return receipt requested), postage prepaid, addressed to the party for whom it is intended at its address hereinafter set forth:

If to Beneficiary:      WBF/CT Associates, LLC,  
                                    9 Waterfront Estates Dr.  
                                    Lancaster, PA 17602

If to Grantors:          Hickory Corners Box 16 A, LLC and  
                                    Hickory Corners Box 16 B, LLC  
                                    c/o Hickory Management, LLC  
                                    5690 DTC Boulevard, Suite 515  
                                    Greenwood Village, CO 80111

If to Trustee:            Fidelity National Title Insurance Company  
                                    421 Fayetteville St., Suite 215  
                                    Raleigh, NC 27601

Notice shall be deemed given as of the date of hand delivery, or as of the date specified for delivery if by overnight courier service, as the case may be.

6.2. Successors and Assigns Bound; Etc. The covenants and agreements contained in this Second Deed of Trust shall bind, and the rights under this Second Deed of Trust shall inure to, the respective successors and assigns of Beneficiary and Grantor. All covenants and agreements of Grantor shall be joint and several. In exercising any rights hereunder or taking any actions provided for in this Second Deed of Trust, Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary.

6.3. Governing Law. The validity of this Second Deed of Trust, each of its terms and provisions, and the rights and obligations of Grantor under this Deed of Trust, shall be governed by, interpreted, construed and enforced pursuant to and in accordance with the laws of the State of North Carolina (without regard to principles of conflicts of laws).

6.4. Severability. In the event that any provision of this Second Deed of Trust conflicts

with applicable law, such conflict shall not affect other provisions of this Second Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable.

6.5. Releases. Upon full payment of the Indebtedness and satisfaction of all obligations and covenants secured by this Second Deed of Trust, Beneficiary or Trustee shall release this Second Deed of Trust.

6.6. Waiver and Approval. To be effective, any waiver of any default or provision hereof or any approval required hereunder, such waiver or approval must be signed by an officer of Beneficiary and delivered to Grantor. No waiver of one default implies a waiver of any subsequent default.

## 7. CONSENTS AND WAIVERS

7.1. Certain Rights of Beneficiary. From time to time, Beneficiary may, at Beneficiary's option: (a) extend the time for payment of the Indebtedness; (b) reduce the payments on the Indebtedness; (c) release Grantor from any of its obligations with respect to the Indebtedness; (d) accept a renewal note or notes for the Indebtedness; (e) modify the terms and time of payment of Indebtedness; (f) release from the lien of this Second Deed of Trust any part of the Property; (g) take or release other or additional security; (h) reconvey any part of the Property; (i) consent to any plat or plan of the Property or to the granting of any easement; (j) join in any extension or subordination agreement; (k) agree to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments under the Note; and (l) waive or fail to exercise any right, power or remedy granted by law or herein or in any other instrument given at any time to evidence or secure the payment of the Indebtedness. No action taken by Beneficiary pursuant to the terms of this Section shall affect the obligation of Grantor or Grantor's successors or assigns to pay the Indebtedness or to observe the covenants of Grantor contained in this Second Deed of Trust, or shall affect the lien or priority of this Second Deed of Trust. Grantor shall pay Beneficiary a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Beneficiary's option, for any such action if taken at Grantor's request.

7.2. Consent to Jurisdiction. Grantor consents to the non-exclusive jurisdiction of any and all state and federal courts in the State of North Carolina with jurisdiction over Grantor and Grantor's assets. Grantor agrees that such assets shall be used first to satisfy all claims of creditors organized or domiciled in the United States of America, and that no assets of Grantor in the United States of America shall be considered part of any foreign bankruptcy estate. Grantor agrees that any controversy arising under or in relation to the Note, this Second Deed of Trust or any of the other Loan Documents shall be litigated exclusively in the State of North Carolina. The state and federal courts and authorities with jurisdiction in the State of North Carolina shall have non-exclusive jurisdiction over all controversies which may arise under or in relation to the Note and any security for the debt evidenced by the Note, including without limitation those controversies relating to the execution, interpretation, breach, enforcement or compliance with the Note, this Second Deed of Trust or any other issue arising under, related to, or in connection with any of the Loan Documents. Grantor irrevocably consents to service, jurisdiction, and venue of such courts for any litigation arising from the Note, this Second Deed

of Trust or any other Loan Document, and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

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7.3. Jury Trial Waiver. Grantor and Beneficiary jointly waive trial by jury in any action or proceeding to which Grantor and Beneficiary may be parties, arising out of or in any way pertaining to this Second Deed of Trust or any of the other Loan Documents. It is agreed and understood that this waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Second Deed of Trust. This waiver is knowingly, willingly and voluntarily made by Grantor, and Grantor hereby represents that no representations of fact or opinion have been made by any individual to induce this waiver of trial by jury or to in any way modify or nullify its effect. Grantor further represents that it has been represented in the signing of this Second Deed of Trust and in the making of this waiver by independent legal counsel, selected of its own free will, and that it has had the opportunity to discuss this waiver with counsel.

[Continued on Following Page]

IN WITNESS WHEREOF, Grantor has executed this Second Deed as of the day and year first written above.

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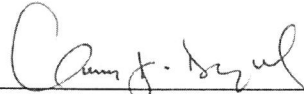
**GRANTOR:**

**16 A:**

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

By: Hickory Management, LLC, Its Manager

By: GDA Real Estate Management, Inc.,  
Its Manager

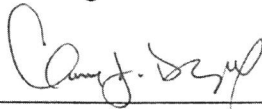
By:   
Gary J. Dragul, President

**16 B:**

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

By: Hickory Management, LLC, Its Manager

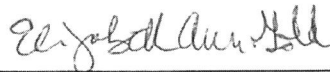
By: GDA Real Estate Management, Inc.,  
Its Manager

By:   
Gary J. Dragul, President

STATE OF COLORADO: COUNTY OF ARAPAHOE: To Wit:

I HEREBY CERTIFY that on this 13<sup>th</sup> day of March, 2018, before me personally appeared Gary J. Dragul, in his capacity as the President of GDA Real Estate Management, Inc., Manager of Hickory Management, LLC, Manager of 16 A and 16 B, personally known to me or to be the person whose name is subscribed to the within instrument and acknowledged that he executed the foregoing document in such capacity.

IN WITNESS MY Hand and Notarial Seal



My Commission Expires: 1/8/22 NOTARY PUBLIC (SEAL)

ELIZABETH ANN GOLD  
NOTARY PUBLIC - STATE OF COLORADO  
Notary ID #20024002805  
My Commission Expires 1/8/2022

**EXHIBIT A**

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Legal Description of the Land

The following described land and premises, with the improvements, easements, and appurtenances thereunto belonging, situate, lying and being in Catawba County, North Carolina, namely:

ALL THAT TRACT OR 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. Property Address: 1718 Highway 70 Southeast, Hickory, NC 28602

**Exhibit D**