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

HAGSHAMA'S OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF CLEARWATER COLLECTION

Hagshama Forida 13 Clearwater, LLC and Cofund V, LLC ("Hagshama") object to the proposed sale because the Receiver has no authority to sell the real property at issue ("Clearwater") under the governing tenancy-in-common and operating agreements. The property is not part of the Receivership Estate. This proposed sale, which is being made at an artificially low price because of the circumstances, will create substantial losses for the majority owners—the innocent investor victims.

Background

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

18CV 33011-18
esk

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

Individual Israeli investors, organized as Hagshama Florida 13 Clearwater, LLC, and Cofund V, LLC, own 100% of GDA Clearwater Investors, LLC, which owns 65.18% of Clearwater Collection 15, LLC. Clearwater Collection 15 owns 82.52% of the real property at issue (and holds title to the property). The individuals associated with Hagshama paid $3,000,000 for this interest. None of these Hagshama entities are part of the Receivership Estate. Mr. Dragul and investors related to him own the remaining portions of Clearwater through other entities. Clearwater Collection 15 owns the real property as a tenant-in-common, subject to a Tenancy-in-Common Agreement. (Attached as Ex. A.)

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

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

Basis for Objection

This Court appointed Mr. Sender as Receiver for Mr. Dragul, GDA Real Estate Services, LLC, GDA Real Estate Management, LLC and their "respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses." (Receivership Order ¶¶ 5, 9.) Hagshama Florida 13 Clearwater, LLC, Cofund V, LLC and GDA Clearwater Investors, LLC are wholly or majority owned by Hagshama and are not properties, assets, or interests of Mr. Dragul, GDA Real Estate Services, LLC, or GDA Real Estate Management, LLC, and so are not part of the Receivership Estate.

Similarly, the real property, Clearwater, which is 53.78% owned by Hagshama is not part of the Receivership Estate. The Receivership Estate owns interests in the Dragul-related entities associated with the real estate, but that does not turn the entire property into a Receivership Asset. The Receivership Assets are the Dragul-owned equity interests.

The Tenancy-in-Common Agreement, has provisions limiting the right of the tenants to transfer their interest in the underlying real estate (Ex. A, TIC § 6.9), including if bankruptcy occurs (Ex. A, TIC § 6.10). The Receiver has followed none of these provisions. And, critically,

the Tenancy-in-Common Agreement does not give the minority owner any right to sell the entire property without the authorization of the majority owner. (Ex. A.)

Hagshama's approval right over any sale of the property is reinforced in the applicable operating agreement.[1] The manager of the Hagshama entities is GDA Clearwater Management, LLC, which is part of the Receivership Estate. The Receivership Order is clear that the Receiver's actions must be "consistent with the governance documents or operating agreements applicable to [them]." (Receivership Order ¶ 13(b).) Under the operating agreements, Clearwater Management's authority and discretion is limited. In particular, it may not sell the underlying property without Hagshama's consent. (GDA Clearwater Investors, LLC Operating Agreement § 6.13(d), attached as Ex. B.)

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

---

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

entities now controlled by the Receiver. The Receiver has no more right to ignore these contracts than it would a loan or any other contract.

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

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

Conclusion

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

Respectfully submitted this 1st day of March, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

s/Kenneth F. Rossman, IV
Kenneth F. Rossman, IV, No. 29249

Attorney for Hagshama

Certificate of Service

I certify that on the 1st day of March, 2019, the foregoing was served electronically by the Colorado Court's E-filing service, which caused electronic notice to be served on:

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

Jeffery A. Springer, Esq.
Springer and Steinberg P.C.
1600 Broadway, Suite 1200
Denver, Colorado 80202
Counsel for Defendants, Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC

Michael T. Gilbert, Esq.
Patrick D. Vellone, Esq.
Rachel A. Sternlieb, Esq.
Allen Vellone Wolf Helfrich and Factor PC
1600 Stout St., Suite 1100
Denver, CO 80202
Counsel for Receiver Harvey Sender

Geoffrey D. Fasel, Esq.
900 W. 48th Place, Suite 900
Kansas City, MO 64112
gfasel@polsinelli.com
Counsel for Odyssey Real Estate Partners

Richard Bolton, Esq.
Ragsdale Liggett PLLC
2840 Plaza Place, Suite 400
Raleigh, NC 27612
robolton@rl-law.com
Counsel for Nova Capital Partners, LLC

s/Kenneth F. Rossman, IV
Lewis Roca Rothgerber Christie LLP

TENANCY-IN-COMMON AGREEMENT
(Clearwater Collection Shopping Center)

THIS TENANCY-IN-COMMON AGREEMENT (this "**Agreement**"), dated as of August 10, 2015 (the "**Effective Date**"), is by and between CLEARWATER COLLECTION 15, LLC, a Delaware limited liability company ("**Collection**") and CLEARWATER PLAINFIELD 15, LLC, a Delaware limited liability company ("**Plainfield**"), each hereinafter referred to individually as a "**Tenant**" or collectively as the "**Tenants**."

A. Tenants are, or will become, the owner of the fee simple title to the real property known as Clearwater Collection Shopping Center located at 21800 US Hwy 19 North, Clearwater FL 33765, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"), as tenants-in-common, subject to the terms and conditions of this Agreement.

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

C. The Property is or will become encumbered by a Mortgage, Assignment of Leases and Rents, Fixture Filing and Security Agreement ("**Mortgage**") by Tenants in favor of Rialto Mortgage Finance, LLC, a Delaware limited liability company ("**Lender**") and a Promissory Note (the "**Note**") executed by Tenants in favor of Lender in the original principal amount of Thirteen Million Three Hundred Fifty Thousand and No/100 Dollars ($13,350,000.00). (The Note and all other obligations under the Mortgage or any other loan document executed in connection therewith shall be referred to hereunder as the "**Loan**").

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

ARTICLE I
Declaration of Intention

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

Collection	82.52%
Plainfield	17.48%

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

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

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

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

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

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

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

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

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

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

2.4 Notwithstanding anything to the contrary contained in this **Article 2**, but subject to **Article 7** hereof, each Tenant agrees to protect, defend, indemnify and hold harmless the other Tenants: (a) against all debts, liens, judgments or charges of any nature accruing against the

Property or a Tenant by reason of any act of the indemnifying party; and (b) to the extent that any Tenant incurs liability for repayment of any loan obtained by the Tenants, or any other obligation relating to the Property, in excess of its respective Percentage Interest. This indemnity shall include, without limitation, all costs and reasonable attorneys' fees incurred in connection with such excess obligation or with the enforcement of this indemnity.

ARTICLE III
Time Devoted to the Business

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

ARTICLE IV
Management and Operation of the Property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE V
Arbitration; Attorneys' Fee and Costs

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

ARTICLE VI
Miscellaneous

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

To Collection:

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

with a copy to:

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

To Plainfield:

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

with a copy to:

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

Any Tenant shall promptly notify the other Tenant of any change in its principal address or telephone number by giving written notice in the manner set forth above, with a copy of such notice to the Lender pursuant to the terms of the Loan.

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

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

6.4 Amendments. This Agreement may not be amended unless such the amendment is in writing and approved unanimously by the Tenants.

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

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

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

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

6.9 Right of First Offer.

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

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

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

highest offer, which transaction shall be completed, if at all, within 90 days after the end of the Offer Period.

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

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

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

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

(c) Notwithstanding anything else to the contrary herein, no Tenant shall have the right to Transfer an Interest, or any ownership interest in a Tenant, to the extent the same is prohibited by, or would constitute an default under the terms of the Loan.

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

(e) Notwithstanding anything to the contrary herein, any transfer or sale pursuant to this **Section 6.9** is subject to the terms and provision of the Loan Agreement.

6.10 Bankruptcy.

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

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

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

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

reasonable security agreement and related documents. The interest rate for such note shall be 1% above the Prime Rate. However, if the interest rate exceeds the maximum legal rate of interest then interest shall accrue at the maximum legal rate.

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

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

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

(f) Notwithstanding anything to the contrary herein, any transfer or sale pursuant to this **Section 6.10** is subject to the terms and provision of the Loan Agreement.

ARTICLE VII
Provisions Related to the Loan

Notwithstanding anything contained in this Agreement to the contrary, for so long as the Loan, or any portion thereof remains outstanding and all obligations of the Tenants under the Loan Documents are satisfied, the provisions of this **Article 7** shall apply. In the event of a conflict between this **Article 7** and any other provision of this Agreement, this **Article 7** shall control.

7.1 Co-tenancy

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

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

7.2. Management. Any change in the identity of the property manager of the Property shall be subject to Lender's prior approval.

7.3 Successor. Any successor to any portion of the interest of any Tenant in the Property, other than a single grantee or assignee of the interests of the Tenants, shall be deemed to accept the interest so conveyed upon and subject to the terms and provisions of this Agreement and to have assumed all obligations of the grantor or assignor accruing from and after the effective date of such conveyance, subject to the limitations on personal liability contained herein, which limitations shall be deemed applicable to the grantee to the extent that they were applicable to the grantor. Furthermore, so long as the Loan or any portion thereof remains outstanding, any proposed successor to any portion of the interest of any Tenant in the Property shall be subject to the prior written approval of the Lender and shall be required to assume all obligations of the grantor or assignor under this Agreement and the Loan.

7.4 Waiver. Each Tenant hereby waives any and all rights of subrogation, reimbursement, contribution, indemnity or otherwise arising by contract or operation of law (including, without limitation, any lien rights) from or against any other Tenant.

7.5 Amendment. Tenants hereby further covenant and agree that they shall not amend, modify or terminate this Agreement without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion. Any amendment, modification and/or termination of this Agreement made without Lender's prior written consent shall be an Event of Default under the Loan Documents. Notwithstanding the foregoing, amendments or modifications to this Agreement that do not materially or adversely affect the Lender or the Loan shall be permitted, without Lender's consent.

7.6 Subordination. It is agreed by each Tenant that (i) any purchase rights or rights of first refusal in favor of any Tenant shall be subject and subordinate to the Mortgage, (ii) any lien rights among each Tenant shall be subject and subordinate to the Mortgage, (iii) all indemnities and other rights and remedies of each Tenant shall be subject and subordinate to the Mortgage; and (v) all payments under the Mortgage have priority over distributions to the Tenants and distributions shall in all ways be subordinate and subject to the terms and conditions of the Mortgage.

7.7 Memorandum. Not later than ten (10) days following the Effective Date, the Manager shall record in the official records of Pinellas County, Florida, a memorandum of this this Agreement.

7.8 Governing Law/Venue. The laws of the State of Florida govern the enforcement and interpretation of this Agreement. The venue for any action related to this Agreement shall be in the County of Pinellas, Florida.

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

7.10 Third Party Beneficiary. With respect to all terms and provisions of this Agreement relating to the Loan, the Lender is hereby deemed to be a third-party beneficiary, and may enforce the terms hereof against any party hereto.

7.11 Representative Tenant. It is agreed by each Tenant that (i) Collection is authorized to be the sole contact and notice party for the Lender with respect to the Loan and shall act as each such Tenant's attorney-in-fact to receive all notices, including, without limitation, service of process for each such Tenant, and (ii) Collection shall keep all books and records pertaining to the Loan and the Property separate from any other property of Collection. Collection hereby agrees to provide such notices received from Lender to Plainfield, but failure to do so will not alter the effect of such notice under the Loan.

[Signature Page Immediately Follows]

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

CLEARWATER COLLECTION 15, LLC,
a Delaware limited liability company

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

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

By: _____
Gary J. Dragul, President

CLEARWATER PLAINFIELD 15, LLC,
a Delaware limited liability company

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

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

By: _____
Gary J. Dragul, President

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

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 TAKEN FOR U.S. HIGHWAY 19 PURSUANT TO DOCUMENTS RECORDED AT BOOK 10598, PAGE 2406, BOOK 10714, PAGE 620, BOOK 10714, PAGE 624, BOOK 10714, PAGE 628, BOOK 10741, PAGE 2041, BOOK 11704, PAGE 1408, BOOK 11611, PAGE 1495, BOOK 10604, PAGE 2207, BOOK 10662, PAGE 353, AND BOOK 10874, PAGE 2276, OF THE PUBLIC RECORDS OF PINELLAS COUNTY, FLORIDA.

ALSO BEING DESCRIBED AS:

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 7, TOWNSHIP 29 SOUTH, RANGE 16 EAST, PINELLAS COUNTY, FLORIDA AND BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 7, TOWNSHIP 29 SOUTH, RANGE 16 EAST; THENCE N.89°36'10"'W, ALONG THE SOUTHERLY BOUNDARY OF SAID SECTION, 450.02 FEET; THENCE LEAVING SAID LINE, N.00°54'44"E., 50.00 FEET TO THE POINT OF BEGINNING; SAID POINT BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF DREW STREET (100 FOOT RIGHT-OF-WAY); THENCE N.89°36'10"W., ALONG SAID LINE, 250.00 FEET; THENCE LEAVING SAID LINE, N.00°54'44"E., 350.02 FEET; THENCE N.89°36'10"W., 395.28 FEET TO A POINT ON THE EASTERLY BOUNDARY OF AN F.P,C. RIGHT-OF-WAY AS RECORDED IN O.R. BOOK 1479, PAGE 95; THENCE N.00°43'43"E., ALONG SAID LINE, 946.94 FEET; THENCE LEAVING SAID LINE, S.89°47'45"E., 247.55 FEET; THENCE S.00°30'00'W., 117.02 FEET; THENCE N.89°30'00"W., 15.00 FEET; THENCE S.00°30'00"W., 172.56 FEET; THENCE S.44°30'00"E., 29.09 FEET; THENCE S.89°30'00"E., 127.15 FEET; THENCE S.37°57'26"E., 44.41 FEET; THENCE S.00°30'00"W., 238.35 FEET; THENCE S.89°30'00"E., 267.00 FEET; THENCE N.00°30'00"E., 69.35 FEET; THENCE S.89°30'00"E., 269.69 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF U.S. HIGHWAY 19 (STATE ROAD 55) RIGHT-OF-WAY WIDTH VARIES AS RECORDED IN O.R. BOOK 10598, PAGE 2406, SAID POINT LYING ON A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 7664.44 FEET; THENCE ALONG THE ARC OF SAID RIGHT-OF-WAY CURVE 227.00 FEET THROUGH A CENTRAL ANGLE OF 01'41 '49" (CHORD BEARING S.01°57'06'W., 226.99 FEET); THENCE S.00°58'18'W.,

109.07 FEET; THENCE S.00°57'32"W., 46.60 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, N.89°36'10"W., 295.69 FEET; THENCE S.00°54'44"W., 400.02 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 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.

PARCEL 3:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 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.

PARCEL 4:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 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.

PARCEL 5:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 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.

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

OPERATING AGREEMENT

OF

CLEARWATER COLLECTION 15, LLC
a Delaware limited liability company

THIS OPERATING AGREEMENT OF CLEARWATER COLLECTION 15, LLC is made and entered into as of May 21, 2015 (the "**Effective Date**") by and between those Members listed on **Exhibit A** and the other signatories hereto. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in **ARTICLE 12**.

ARTICLE 1

FORMATION OF THE COMPANY

1.1 Formation of the Company. On May 21, 2015, the Company was formed as a Delaware limited liability company under and pursuant to the Act by filing with the Secretary of State of the State of Delaware a Certificate of Formation. The rights and obligations of the Company and the Members shall be as provided in the Act, the Certificate of Formation, and this Agreement. This Agreement is subject to, and governed by, the Act and the Certificate of Formation. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act, or the provisions of the Certificate of Formation, such provisions of the Act, or the Certificate of Formation, as the case may be, shall be controlling. The Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business. Orlene Mitchell is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State

of Delaware, Orlene Mitchell's powers as an "authorized person" ceased, and the Manager thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act.

1.2 Name. The name of the Company shall be Clearwater Collection 15, LLC, and all business of the Company shall be conducted in such name.

1.3 Address.

A. Registered Office and Registered Agent. The Company's registered office in the State of Delaware shall be located at 2711 Centerville Rd., Suite 400, Wilmington, Delaware 19808, and the registered agent of the Company for service of process at such address shall be Corporation Service Company, or such other registered office and registered agent as the Manager may from time to time select in accordance with the Act.

B. Principal Place of Business. The principal place of business of the Company shall be located at 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111, or at such other location as may hereafter be determined by the Manager.

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

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

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

1.7 Term. The Company as hereby constituted shall continue in existence for perpetuity, unless dissolved or terminated pursuant to the Act or the provisions of this Agreement.

ARTICLE 2

BUSINESS OF THE COMPANY

2.1 Business of the Company. Subject to **ARTICLE 15**, the business of the Company shall be:

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

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

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

Without limiting the generality of the foregoing, the Company has acquired or will acquire an undivided 81.87% tenancy-in-common interest in a property known as Clearwater Collection in Clearwater, Florida (the "**Property**") pursuant to real estate acquisition agreements and documents (the "**Acquisition Documents**"). The Company intends to obtain a loan in connection with the acquisition of the Property, in the original principal amount of $13,350,000.00 (the "**Loan**"), which Loan will be held by RIALTO MORTGAGE FINANCE, LLC, a Delaware limited liability company, its successors and/or assigns ("**Lender**"), and which will be evidenced by a promissory note and other loan documents (the "**Loan Documents**"), and secured by a Deed of Trust on the Property (the "**Mortgage**"). The Manager is authorized and directed to do all such acts and to execute, deliver and perform all such documents and instruments as the Manager deems necessary or advisable to carry out the acquisition of the Property and obtain the Loan, on behalf of the Company. All such material instruments and documents shall be in such form and contain such terms as may be approved by the Manager and a Majority in Interest. The Company is hereby authorized to purchase the Property, to execute, deliver and perform, and the Manager on behalf of the Company is hereby authorized to execute and deliver, the Acquisition Documents, the Loan Documents, and all other documents, agreements, certificates, or financing statements contemplated thereby or related thereto, as provided in this **ARTICLE 2**.

ARTICLE 3

MEMBERS AND MEMBERSHIP INTERESTS

3.1 Members and Membership Interests.

(a) Classification of Members. There shall be two classes of Membership Interests, Class A Membership Interests and Class B Membership Interests, with the rights and privileges set forth in this Agreement.

(b) Class A Membership Interests. Class A Membership Interests shall be voting Membership Interests. The Members intend that the Membership Interests received by the Class A Members shall be capital interests in the Company for federal and state income tax purposes.

(c) Class B Membership Interests. Class B Membership Interests shall be non-voting Membership Interests. The Members intend that the Membership Interests received by the Class B Member shall be profits interests in the Company (and not capital interests) for federal and state income tax purposes. No Capital Contributions shall be required or will be accepted by the Company for a Class B Membership Interest. The Membership Interest received by the Class B Member has been intentionally designed and structured to comply with Revenue

Procedure 93-27 and 2001-43 and qualify as a profits interest (not a capital interest) for federal and state income tax purposes, so that the Class B Member shall not be treated as realizing income for such purposes upon the issuance of such Membership Interest and so that neither the Company nor any Member shall be entitled to any deduction (either immediately or through depreciation or amortization) by reason of such issuance. In addition, the parties acknowledge that it is their intent that if the Company were to liquidate immediately after the issuance to the Class B Member of its Membership Interest in the Company, the Class B Member would not be entitled to receive any distribution with respect to its Membership Interest in the Company.

3.2 Initial Capital Contributions. On or prior to the Effective Date, the Class A Members shall have contributed to the Company the cash set forth on **Exhibit A** attached hereto and incorporated herein.

3.3 Capital Contributions After the Effective Date.

(a) Members will be required to make additional Capital Contributions to the Company from time to time upon the written request of the Manager. Upon receipt of written notice of the Manager, each Member shall deliver to the Company its pro rata share of the required additional Capital Contribution (in proportion to the respective Percentage Interest of each Member on the date such notice is given) no later than 10 days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this **Section 3.3** shall be deemed to be made for the benefit of any Person other than the Members and the Company, and no other Person shall under any circumstances have any right to compel any actions or payments by the Members.

(b) In the event any Member fails to make an additional Capital Contribution on or before the date when such amount is due ("**Capital Contribution Due Date**"), the Member shall be deemed not to be in default hereunder (such Member shall be hereinafter referred to as a "**Nonpaying Member**"). Following the Capital Contribution Due Date, in the event of a Nonpaying Member, the Manager shall either, subject to the Loan Agreement (i) permit the other Members, on a pro rata basis in accordance with their Participation Interest on the Capital Contribution Due Date, to pay the amount of the unpaid Capital Contribution of the Nonpaying Member as a Member Loan in accordance with the procedures set forth below in **Section 3.3(c)**, or (ii) permit the other Members, on a pro rata basis in accordance with their respective Participation Interests on the Capital Contribution Due Date, to make a Deficit Capital Contribution (as defined below) in the amount of the unpaid Capital Contribution, and the Nonpaying Member's Percentage Interest shall be diluted in accordance with the procedures set forth below in **Section 3.3(d)** (collectively, the "**Nonpaying Member Options**"). The Nonpaying Member Options shall not be obligatory or exclusive, and with the approval of a Majority in Interest, the Manager may (i) decline to allow the Nonpaying Member Options, (ii) allow any combination of the Nonpaying Member Options, or (iii) sell additional Membership Interests to New Members in the dollar amount of the Capital Contribution that is not paid by the Nonpaying Member or subject to a Nonpaying Member Option, in accordance with **Section 9.7**, and subject to compliance with **Section 9.8**.

(c) If the Manager elects to allow any Member Loans, they shall be made in accordance with and subject to the following terms:

(i) The other Members participating in the Member Loans shall pay on behalf of the Nonpaying Member all or any part of the unpaid Capital Contribution, and the Nonpaying Member shall pay such Member(s) (A) interest on such amount at the rate of the Prime Rate plus 10% per annum, compounded monthly (or, if less, the highest rate permitted by law) from the date the unpaid Capital Contribution is paid by such Member until the date of repayment in full by the Nonpaying Member, and (B) a loan processing fee equal to 5% of the unpaid Capital Contribution, which obligation to pay is, to the fullest extent permitted by law, automatically secured by the Nonpaying Member's Membership Interest and will be paid only from distributions otherwise to be made to such Nonpaying Member hereunder, with the understanding that the Nonpaying Member shall have no obligation or liability to pay the Member Loan except to the extent of distributions it is otherwise scheduled to receive hereunder (a "**Member Loan**"). The Member Loan shall be repaid on a schedule to be determined by Manager in its sole discretion so long as the payments do not exceed the amounts scheduled to be distributed to such Nonpaying Member hereunder in absence of the Member Loan. Until a Member Loan is paid in full (including all interest and fees thereon), the Nonpaying Member consents to the payment and the Manager is empowered to pay to the Member or Members who made such Member Loan all distributions to which the Nonpaying Member would be entitled under this Agreement, not to exceed the amount of such Member Loan (including interest and fees).

(ii) For so long as a Member Loan is outstanding, the Percentage Interest of the Member or Members who made such Member Loan, for the sole purpose of all votes of Members hereunder, shall be increased as if such Member Loan was a Deficit Capital Contribution by each lending Member as described in **Section 3.3(d)**.

(d) The other Members contributing capital to the Company in an amount equal to the unpaid additional Capital Contribution of a Nonpaying Member (a "**Deficit Capital Contribution**") shall make such Deficit Capital Contribution by either a cancellation of some or all of a Member Loan or by a contribution of cash, or a combination of both. If one or more Members elect to make Deficit Capital Contributions:

(i) the Percentage Interest of the Nonpaying Member shall be reduced to a fraction, the numerator of which equals the aggregate Capital Contributions of the Nonpaying Member and the denominator of which equals the sum of (A) 200% of the Deficit Capital Contribution made as a result of the Nonpaying Members' failure to make the additional capital contribution (including any interest and fees thereon if any portion of the Deficit Capital Contribution is made by cancellation of all or a portion of a Member Loan) and (B) the aggregate Capital Contributions of all Members (including the additional Capital Contributions made pursuant to this **Section 3.3**) except those Capital Contributions described in the preceding clause (A); and

(ii) the Percentage Interest of each Member making a Deficit Capital Contribution shall be increased by a like amount, based on the Deficit Capital Contribution made by each such Member.

3.4 Loans. Subject to the Loan Agreement, and **ARTICLE 15** hereof, while the Loan is outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan

Documents), the Company may, as determined by the Manager and permitted by the Loan Documents or approved by Lender, borrow money from one or any of the Members or third Persons. Any loan agreement or other documentation that is negotiated with a Member or one or more of its Affiliates must be upon the same or better terms to the Company than those then available from recognized financial institutions. A loan permitted by this **Section 3.4** will not be considered a contribution to the capital of the Company. Each Member will comply and cause its Affiliates to comply with the terms and conditions of any loan documents entered into with respect to a loan permitted by this **Section 3.4**.

3.5 Limitation on Liability. Except as otherwise expressly provided by the Act or this Agreement, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and neither the Members nor the Manager nor the Independent Director shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Member or Manager or the Independent Director of the Company. No Member shall be required to loan any funds to the Company.

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

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

3.8 Percentage Interests. Each Member's (a) Percentage Interests in the Company and (b) Capital Contributions are set forth on **Exhibit A**, which the Manager shall amend from time to time to maintain the accuracy thereof (including for the effect of any transactions under **Section 3.3**), and which shall be conclusive absent manifest error.

ARTICLE 4

MEMBERS' CAPITAL ACCOUNTS

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

4.2 Withdrawal or Reduction of Members' Contributions to Capital.

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

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

(c) A Member, irrespective of the nature of the Member's contribution, has only the right to demand and receive cash in return for such Member's contribution to capital; however, the foregoing does not preclude the Company, subject to the limitation of **Section 10.3**, from distributing property other than cash to any Member.

4.3 Modification of Capital Account. Because the Members intend that Capital Accounts be maintained in accordance with the Code, the Regulations and applicable law, to accomplish that purpose, the Manager is authorized to modify the manner in which the Capital Accounts are maintained and adjustments thereto are computed, and to make any appropriate adjustments thereto, to assure such compliance, including any adjustments made pursuant to Section 1.704-1(b)(2)(iv)(f) of the Regulations; provided, however, that such modifications and adjustments will not materially alter the economic agreement between or among the Members.

4.4 No Obligation to Restore. As specified in **Section 10.3**, no Member shall have any liability to restore all or any portion of a Deficit Capital Account of such Member.

4.5 Miscellaneous.

(a) No Interest on Capital Contribution. No Member shall be entitled to or shall receive interest on such Member's Capital Contribution.

(b) No Priority of Return of Capital Contribution. Except as set forth in **ARTICLE 5** and **Section 10.3** of this Agreement, no Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

ARTICLE 5

ALLOCATIONS AND DISTRIBUTIONS

5.1 Net Profits. Except as otherwise provided in this Agreement, including the special allocation provisions set forth in **ARTICLE 11**, Net Profits, Net Losses and, to the extent necessary, individual items of income, gain, loss or deduction, of the Company shall be allocated among the Members in a manner such that, after giving effect to the special allocations set forth in **ARTICLE 11** or elsewhere in this Agreement, the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (a) the distributions that would be made to such Member pursuant to **Section 10.3(b)** if the Company were dissolved, its affairs wound up, its assets sold for cash equal to their book values (as adjusted from time to time in accordance with this Agreement), all Company liabilities were satisfied (limited with respect to each nonrecourse liability, including "partner nonrecourse debt" obligations as defined in Section 1.704-2(b)(4) of the Regulations, to the book values of the assets securing such liability), minus (b) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. Notwithstanding the foregoing, the Manager may make such allocations as it deems reasonably necessary to give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose.

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

5.3 Reporting by Members. The Members agree to report their shares of income and loss for federal income tax purposes in accordance with this **ARTICLE 5** and **ARTICLE 11**.

5.4 Distributions. Except as otherwise provided in **Section 10.3** with respect to distributions upon dissolution and liquidation and in **Section 5.6** with respect to tax distributions, the Manager may determine, in its discretion, when and how much of the Distributable Cash of the Company, if any, will be distributed to the Members.

(a) Any distribution of Distributable Cash under this **Section 5.4** shall be made as follows:

(i) First, 100% to the Class A Members, pro rata in proportion to their Undistributed 12% Preferred Return balances, until there shall have been distributed to each Class A Member an amount sufficient to cause such Class A Member's Undistributed 12% Preferred Return balance to be reduced to zero;

(ii) Second, 100% to the Class A Members, pro rata in proportion to their Undistributed Capital Contributions, until there shall have been distributed to each Class A Member an amount sufficient to cause such Class A Member's Undistributed Capital

Contributions to be reduced to zero;

(iii) Third, 60% to the Class A Members, pro rata in proportion to their Undistributed 16% Preferred Return balances, and 40% to the Class B Member, until there shall have been distributed to each Class A Member (pursuant to both **Section 5.4(a)(i)** and this **Section 5.4(a)(iii)**) an amount sufficient to cause such Class A Member's Undistributed 16% Preferred Return balance to be reduced to zero;

(iv) Thereafter, 50% to the Class A Members, pro rata in accordance with their Percentage Interests, and 50% to the Class B Member.

(b) The Manager shall have the discretion to make distributions of property other than cash based upon the Manager's determination of the fair market value of such property at the time of the distribution; provided, however, that such distributions shall be made in accordance with the provisions of this **Section 5.4**.

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

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

5.6 Tax Distributions. So long as the Company is not prohibited from making a Tax Distribution under any contract to which it is a party or the Act, the Manager shall, to the extent there is Distributable Cash available on the date of the Tax Distribution, cause the Company to make distributions ("**Tax Distributions**") from Distributable Cash to each Member in an amount equal to the Tax Rate (as defined below) multiplied by the taxable income allocated to such Member pursuant to this Agreement for such year other than taxable income attributable to a Section 704(c) adjustment (notwithstanding that such amount allocated to such Member may not give rise to any tax liability). The determination of a Member's taxable income for the current year shall be reduced by any cumulative taxable loss previously allocated to each Member (including Losses allocated to a predecessor of a Member) in prior Fiscal Years which has not been offset by subsequent allocations of taxable income. Tax Distributions shall be made not

later than 90 days following the close of each Fiscal Year of the Company. For purposes of calculating the amount of any Tax Distribution, the "Tax Rate" shall equal the highest aggregate marginal federal, state and local income tax rate applicable to any of the Members for the tax year to which such Tax Distribution applies. Tax Distributions under this **Section 5.6** shall be considered to be an advance or credit against distributions to the Members under **Sections 5.4 and 10.4(b)(ii)**. Distributions actually made to a Member during the calendar year with respect to which a Tax Distribution pursuant to this **Section 5.6** would otherwise be made will reduce the Tax Distributions otherwise contemplated by this **Section 5.6** with respect to such calendar year.

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

ARTICLE 6

CONSENTS, VOTING AND MEETINGS

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

(a) By written consent describing the action taken, signed by the Members holding the amount of Percentage Interests that would be required to approve such action, received by the Manager prior to permitting the occurrence of the action for which such consent, approval or election is solicited. In the event the Percentage Interest required to approve an action is not otherwise defined herein, the Percentage Interests required shall be a Majority in Interest; or

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

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

6.3 Meetings. Meetings of the Members may be called by the Manager.

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

6.5 Notice of Meetings. Except as provided in **Section 6.6**, notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be

given not less than 10 nor more than 50 days before the date of the meeting in accordance with the notice provisions of this Agreement.

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

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

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

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

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

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

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

6.13 Member Approval Required. The Manager or the Company may not take any of the following actions without also receiving the approval of a Majority in Interest either in writing or at a duly called and held meeting:

(a) admit any New Member or issue Membership Interests, options, warrants or other securities, of the Company;

(b) declare Bankruptcy of the Company;

(c) commence or effect a Dissolution Event;

(d) enter into an Approved Sale;

(e) exercise the Company's rights pursuant to the right of first refusal set forth in **Section 9.3** or the Membership Purchase Option set forth in **Section 9.4**;

(f) adopt any amendment to this Agreement or the Articles, except where the Manager is given the express right to amend this Agreement pursuant to **Section 13.6**;

(g) enter into any transaction between the Company and a Member or an Affiliate of a Member, including the employment or retention of services of any such Person, other than the initial appointment of Manager, Operator and Property Manager;

(h) provide for any compensation to be paid to the Manager, or provide for any compensation to be paid to the Operator or the Property Manager, other than the payments expressly provided for in **Section 7.3** and **Section 7.4**, and other compensation that would be standard in the Company's industry for Persons acting as Operator or Property Manager, taking into consideration the payments already provided for in **Section 7.3** and **Section 7.4**;

(i) incur indebtedness on behalf of the Company from banks, other lending institutions, Members or Affiliates of a Member (subject to **Section 3.4** in the case of loans from Members or their Affiliates), materially amend the Loan or any other indebtedness (with any increase in principal amount or interest rate, adverse change in economic or payment terms, or adverse change in the equity transfer restrictions relating to the Membership Interests being deemed material), provide for the guarantee by the Company of the indebtedness of any other Person, or otherwise commit the credit of the Company or grant any collateral or security interest in the Property or assets of the Company;

(j) amend the TIC Agreement, or take any action (including any waiver) under the TIC Agreement that could be adverse to the Company's rights and interests, or the individual interests of any Member in the Company; and

(k) in its capacity as the manager of Clearwater Plainfield 15, LLC, a Delaware limited liability company, engage in an activity described in Sections 6.13(b), (c), (d), (g), (h), (i) or (j) hereinabove.

6.14 Membership Certificates. The Company may, but shall not be required, to issue one or more certificates evidencing a Member's Membership Interests. Certificates shall be in such form as may be approved by the Manager, shall be signed by the Manager, and shall bear conspicuous legends evidencing the restrictions on transfer described in, and the purchase rights of the Company and Members set forth in, Article IV. All issuances, reissuances, exchanges and other transactions in Membership Interests that have been certificated shall be recorded in a

permanent ledger as part of the books and records of the Company.

ARTICLE 7

RIGHTS AND DUTIES OF THE MANAGER

7.1 Management.

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

(b) Day-to-Day Management by the Manager. Subject to the Loan Agreement and the limitations and restrictions set forth in this Agreement, including **Section 6.13**, the Manager may exercise the following specific rights and powers without any further consent of the Members being required:

(i) Power to acquire real and personal property from any Person as the Manager may direct;

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

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

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

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

(vi) Power to sell or otherwise dispose of any real property or other property owned by the Company;

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

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

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

(x) Power to establish and pay compensation to any employee of the Company, other than the Manager, the Operator and the Property Manager;

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

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

(xiii) Subject to **ARTICLE 15**, power to institute, prosecute, defend, settle, compromise, dismiss lawsuits or other judicial or administrative proceedings brought on or in behalf of, or against, the Company, the Manager or the Members in connection with the activities arising out, connected with, or incident to the business of the Company, and to engage counsel or others in connection therewith;

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

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

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

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

(xviii) Power to designate an employee or agent to be responsible for the daily and continuing operations of the business affairs of the Company; provided that all decisions affecting the policy and management of the Company, including the control, employment, compensation and discharge of employees, the employment of contractors and

subcontractors and the control and operation of the premises and property, including the improvement, rental, lease, maintenance and all other matters pertaining to the operation of the assets or property of the Company, shall be made by the Manager;

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

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

(xxi) Power to act for the Company, in the Company's status as Manager under the TIC Agreement, and to take such actions as are in the best interests of the Company and all of its Members under the TIC Agreement; and

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

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

7.2 Number; Tenure.

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

(b) Tenure. GDA Clearwater Management, LLC, a limited liability company, shall act as Manager until its dissolution, resignation or removal under this Agreement; provided, however, and subject to **ARTICLE 15**, that the Manager may be removed by Members holding at least 75% of the Percentage Interests eligible to vote, excluding any voting Percentage Interests held by the Manager and its Affiliates, if the Manager has engaged in gross negligence, fraud, willful misconduct, or a material wrongful taking or becomes a Delinquent Party. Upon such a removal, a successor Manager shall be appointed upon approval of Members holding at least 75% of the Percentage Interests eligible to vote, excluding any voting Percentage Interests held by the Manager and its Affiliates, and such successor Manager has executed a counterpart to this Agreement. Any successor Manager shall hold office until such Manager's dissolution,

resignation or removal; provided, however, that such Manager may not resign or be removed unless a new successor Manager has been appointed and has executed a counterpart to this Agreement. In such event, all voting Members agree to promptly work on installing a successor Manager. It is the intent and agreement of all voting Members to negotiate and act in good faith in the selection of a successor Manager. If the voting Members are unable to select a successor Manager in a timely manner, the voting Members agree to participate in mediation with a business mediator in order to attempt to select a successor Manager.

7.3 Management Fee. The Property Manager shall be entitled to receive from the Company a management fee equal to 4% of the monthly effective gross income of the Company (the "**Management Fee**"). The Management Fee for a given calendar month shall be due and payable no later than ten business days following the last day of such calendar month. The Management Fee will be prorated for the calendar month during which the Effective Date occurs and the calendar month during which the Company's dissolution is effective. The Management Fee may be paid from Capital Contributions or from amounts otherwise available for distribution to the Members. From time to time, in its sole discretion, the Property Manager may choose to waive, reduce or defer all or part of the Management Fees. Any deferred Management Fee shall be paid by the Company within 30 days after request from the Property Manager. The Company's agreement with the Property Manager with respect to the Management Fee shall make clear that any fees and expenses incurred by the Property Manager to third party property managers shall be paid by the Property Manager out of the Management Fee, and the Company shall have no liability therefor.

7.4 Operator Fees. In consideration of services to be provided to the Company, the Company shall pay to the Operator the fees described in this **Section 7.4**, and the Members consent to the payment of such fees to the Operator by the Company.

(a) Acquisition Fee. Upon the acquisition of the Property by the Company, the Operator shall be paid by the Company an acquisition fee (the "**Acquisition Fee**") in an amount equal to 1% of the full purchase price of the Property (including the amount of any debt assumed in connection with such acquisition). The Acquisition Fee may be paid from Capital Contributions or from amounts otherwise available for distribution to the Members.

(b) Disposition Fee. Upon the Disposition of the Property, the Operator shall be paid by the Company a disposition fee (the "**Disposition Fee**") in an amount equal to 1% of the full sales price of the Property (including the amount of any debt assumed by another party in connection with such Disposition). The Disposition Fee may be paid from the proceeds of such Disposition, from Capital Contributions or from amounts otherwise available for distribution to the Members.

(c) Leasing Fees.

(i) In the event that the Company enters into a lease of any portion of the Property with a new tenant (a "**New Lease**"), the Operator shall be paid a fee (a "**Leasing Fee**") in the amount of $1.00 per square foot per lease year. 50% of the Leasing Fee shall be payable upon the execution and delivery of the Lease by the Company and satisfaction or waiver of all conditions to the effectiveness of the New Lease, and the remaining 50% shall be payable

upon the earlier to occur of the tenant's taking occupancy of the leased space and the receipt by the Company of the first payment of rent from such tenant.

(ii) In the event that the Company renews a lease of any portion of the Property with an existing tenant (a "**Lease Renewal**"), the Operator shall be paid fees in the amount of $0.70 per square foot per lease year, (the "**Renewal Fee**"). 50% of the Renewal Fee shall be payable upon the execution and delivery of the Lease Renewal by the Company and satisfaction or waiver of all conditions to the effectiveness of the Lease Renewal, and the remaining 50% shall be payable upon the first payment of rent from such tenant under the Lease Renewal.

7.5 Devotion to Duty.

(a) Duty of Good Faith; Exoneration. The Manager shall perform its duties as the manager of the Company in good faith and in a manner it reasonably believes to be in the best interest of the Company and shall exercise reasonable skill, care and business judgment. Unless fraud, deceit, gross negligence, willful misconduct, bad faith, breach of fiduciary duty or a wrongful taking shall be proved by a nonappealable court order, judgment, decree or decision, neither the Manager nor any of its employees or agents shall be liable or obligated to the Company or any other Person bound by this Agreement for any mistake of fact or judgment or for the doing of any act or the failure to do any act by the Manager in conducting the business, operations and affairs of the Company, which may cause or result in any loss or damage to the Company or the Members. The Manager does not in any way guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company.

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

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

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

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

7.6 Manager Has No Exclusive Duty to Company. The Manager shall not be required

to manage the Company as its sole and exclusive function or business, and may have other business interests, which may compete with the business of the Company. The Manager may engage in other activities in addition to those relating to the Company, and may receive and enjoy profits or compensation (including management fees) therefrom. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom.

7.7 Indemnification. To the fullest extent permitted by Law, the Company shall and does hereby agree to indemnify and hold harmless against any liabilities and pay all judgments and claims against the Manager, each Member (including a Member in its role as Tax Matters Partner, if applicable), their respective Affiliates, and each of their respective members, officers, directors, employees, agents, stockholders, shareholders and partners (the "**Indemnified Parties**", each of which shall be a third party beneficiary of this Agreement solely for purposes of this **Section 7.6**), from and against any loss or damage incurred by them or by the Company for any act or omission taken or suffered by the Indemnified Parties (including any act or omission taken or suffered by any of them in reliance upon and in accordance with the opinion or advice of experts, including of legal counsel as to matters of law, of accountants as to matters of accounting, or of investment bankers or appraisers as to matters of valuation) by reason of the fact and while serving as the Manager, a Member, an Affiliate of either, and each of their respective members, officers, directors, employees, agents, stockholders, shareholders and partners or an officer of the Company, or was serving at the request of the Company as a director, officer, manager, employee or agent of another Entity, including costs and reasonable attorneys' fees and any amount expended in the settlement of any claims or loss or damage, except with respect to any act or omission with respect to which a court of competent jurisdiction has issued a final, nonappealable judgment that such Indemnified Party was grossly negligent, engaged in willful misconduct or intentionally breached this Agreement.

(a) The satisfaction of any indemnification obligation pursuant to this **Section 7.6** shall be from and limited to Company assets (including insurance and any agreements pursuant to which the Company, the Manager, Members or officers or employees are entitled to indemnification) and no Member, in its capacity as such, shall be subject to personal liability.

(b) Expenses reasonably incurred by an Indemnified Party in defense or settlement of any claim that may be subject to a right of indemnification hereunder shall be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of such Indemnified Party to repay such amount to the extent that it shall be determined upon final adjudication after all possible appeals have been exhausted that such Indemnified Party is not entitled to be indemnified hereunder.

(c) The Company may purchase and maintain insurance on behalf of one or more Indemnified Parties and other Persons against any liability which may be asserted against, or expense which may be incurred by, any such Person in connection with the Company's activities, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

7.8 Resignation. Subject to **Section 7.2(b)** and **ARTICLE 15**, the Manager may

resign at any time by giving written notice to the Members. The resignation of any Manager shall take effect upon appointment of a replacement Manager in accordance with **Section 7.2(b)**.

7.9 Reimbursement. The Manager shall be entitled to reimbursement from the Company for all out-of-pocket expenses of the Manager reasonably incurred and actually paid by the Manager on behalf of the Company.

ARTICLE 8

BOOKS RECORDS AND ADMINISTRATION

8.1 Books and Records. The books and records of the Company will be kept, and the final financial position and results of its operations recorded, in accordance with the accounting methods elected to be followed by the Manager on behalf of the Company for federal income tax purposes. The Fiscal Year of the Company for financial reporting and for federal income tax purposes shall be the calendar year.

8.2 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at Manager at the principal office of the Company, or at such other location as the Manager shall advise the Members in writing. Upon reasonable request, each Member, and such Member's duly authorized representative, shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

8.3 Tax Returns and Other Elections. The Manager shall cause the preparation and timely filing of all tax returns required to be filed pursuant to the Code and all other tax returns deemed necessary in each jurisdiction in which the Company does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the Fiscal Year.

8.4 Tax Matters Partner. GDA Clearwater Management, LLC shall be designated to be the "tax matters partner" (as defined in the Code) on behalf of the Company if such designation is appropriate, and if GDA Clearwater Management, LLC is not a Member or GDA Clearwater Management, LLC is unable to be the tax matters partner, a tax matters partner shall be designated by a Majority in Interest of the Members, subject to the approval of the Manager. Any reasonable cost incurred by the tax matters partner, if any, in connection with performing his or her duties as tax matters partner, including retaining accountants and attorneys, shall be expenses of the Company.

ARTICLE 9

RESTRICTIONS ON TRANSFERABILITY; NEW AND SUBSTITUTED MEMBERS

9.1 General.

(a) Except as set forth in Section 9.2, no Member shall Transfer (as defined in **Section 9.1(c)**) or encumber all or greater than 49% of its Membership Interest in the Company without complying with this **ARTICLE 9**. All Transfers shall be subject to the terms of the

Loan with regard to Transfers and the Members hereby agree to comply with the same, subject to the Members' rights to approve any changes to the transfer restrictions of the Loan from those in place as of the Effective Date. All Transfers that are subject to Lender review, approval or notification shall be coordinated with the Manager who shall direct and coordinate such communications with the Lender. Any costs or expenses of the Manager or the Lender in connection with a Transfer shall be paid upon reasonable demand by the transferring Member.

(b) Any Transfer or encumbrance in violation of the Loan Agreement and this **Section 9.1** (each called a "**Prohibited Transfer**") shall be null and void and of no legal effect upon the Company, and the Company will not be required to accept, recognize or be bound by such Prohibited Transfer and the purported transferee thereof shall acquire no rights in the Membership Interest which is the subject of a Prohibited Transfer. In the event of a Prohibited Transfer, the purported transferee of such Membership Interest shall not become a Member, nor shall the Company be required to accept, recognize or be bound by such Prohibited Transfer. The terms of this **ARTICLE 9** may be specifically enforced against a transferee or encumbrancer.

(c) For the purposes of this Agreement, "**Transfer**" shall mean a direct, indirect, or beneficial, sale, assignment, transfer, or other disposition (whether voluntary, involuntary, or by operation of law); a gift, bequest, or other transfer for no consideration; a granting, pledging, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law). An Approved Sale shall not constitute a Transfer.[1]

9.2 Transfers to Family Members and Affiliates. A Member may Transfer some or all of its Membership Interests to a Family Member (as defined below) or an Affiliate. For purposes of this Agreement, "**Family Member**" shall mean (i) the Relatives (as defined below) of either (A) a Member who is an individual, (B) the beneficiary of Member who is a trust, provided that the beneficiary is an individual and has a right, together with its other Relatives, to receive a majority of the trust assets, or (C) the sole owner of a Member that is an Entity; (ii) a trust for the benefit of any of the foregoing parties described in subsection (i) of this definition; (iii) an Entity wholly owned or controlled by Persons described in subsection (i) of this definition; and (iv) an employee of Manager or Affiliate of the same, provided such employees are permitted to only own indirect interests through an entity controlled by Manager or its Affiliate. For purposes of this Agreement, "**Relatives**" shall mean spouses, parents, grandparents, children (including adopted children), grandchildren, and siblings.

9.3 Right of First Refusal. Subject to the Loan Agreement, other than with respect to (i) a Transfer to a Family Member or an Affiliate in accordance with **Section 9.2**, (ii) a sale of a Membership Interest upon the occurrence of a Trigger Event pursuant to **Section 9.4**, (iii) a Transfer in connection with an Approved Sale, or (iv) with respect to a Transfer by the Manager or an Affiliate thereof of less than 75.8% of its Membership Interest (exclusive of Transfers to Family Members), if any Member desires to Transfer all or greater than 49% of its Member's Membership Interest (exclusive of Transfers to Family Members; the "**Offered Interest**"), the Member desiring to so transfer the Offered Interest (the "**Selling Member**") shall give written

[1] NTD: Review definition of "Transfer" after Loan Docs are finalized

notice (the "**Offering Notice**") to the Company and to the other Members (the "**Other Members**") of the Selling Member's intention to so Transfer.

(a) The Offering Notice shall specify the Offered Interest to be transferred, the consideration to be received therefor, the identity of the proposed purchaser, and the exact terms upon which the Selling Member intends to so transfer. For 30 days after the effective date of the Offering Notice (the "**Review Period**"), the Company and the Other Members shall have the option to purchase from the Selling Member all (but not less than all) of the Offered Interest at the same price and on the same terms as are specified in the Offering Notice (the "**Purchase Option**").

(b) The Company and any Other Member may exercise their Purchase Option by delivering to the Selling Member, with a copy to the Other Members and the Company, as applicable, a written offer to purchase the Offered Interest within the Review Period (a "**Purchase Election**"). If the Company does not elect to purchase all of the Offered Interest, then the Other Members who delivered a written offer to purchase as described above (the "**Purchasing Members**") shall be obligated to purchase that portion of the Offered Interest not elected by the Company, allocated as between the Purchasing Members in accordance with their Participation Interests (measured as of first day of the Review Period), at the same price and on the same terms as are specified in the Offering Notice.

(c) If the Company and any Purchasing Members have not committed to purchase the entire Offered Interest within the Review Period, then the Purchase Option will terminate and the Selling Member may, within 90 days after the expiration of the Review Period, transfer the Offered Interest to the person or entity identified in the Offering Notice on the same terms and conditions and at the same price specified in the Offering Notice. If the Selling Member fails to so transfer the Offered Interest within such 90-day period, then, prior to transferring the Offered Interest, the Selling Member shall resubmit an Offering Notice in accordance with the provisions of this **Section 9.3** and shall comply with the other terms of this **Section 9.3**

(d) If the Purchase Option is exercised as to all of the Offered Interest, then the Purchase Option shall be consummated at the principal place of business of the Company on the terms and conditions set forth in the Offering Notice within 60 days after delivery of the Purchase Election. At the closing, the Selling Member shall deliver the Offered Interest free and clear of all liens, security interest and competing claims (other than security interest granted in favor of the Persons exercising the Purchase Option hereunder) and shall deliver to the Persons exercising the Purchase Option instruments of transfer and such evidence of due authorization, execution and delivery and of the absence of any such liens, security interest or competing claims as such Persons reasonably request.

9.4 Membership Purchase Option.

(a) The occurrence of a Trigger Event (as defined in **Section 9.4(e)(i)** below) by or with respect to a Member will not cause the termination or dissolution of the Company, and the business of the Company shall continue unless otherwise dissolved in accordance with **ARTICLE 10**. Upon the first to occur of (a) written notice from a Member to the Company of

the occurrence of a Trigger Event by such Member (the "**Trigger Event Member**") or (b) the Manager of the Company becoming aware of a Trigger Event with respect to a Trigger Event Member, the Company shall provide written notice of such Trigger Event to the remaining Members (the "**Non-Trigger Members**"), and the Company and the Non-Trigger Members shall have the option (the "**Trigger Option**") to purchase the entire Membership Interest of the Trigger Event Member for a 30-day period (the "**Trigger Period**") after the date of such written notice of the Trigger Event.

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

(c) Unless otherwise agreed, upon the occurrence of a Trigger Event, the purchase price for the Trigger Event Member's Membership Interest shall be equal to 85% of the Net Equity of such Membership Interest; provided, however, that if the Trigger Event is a Prohibited Transfer the purchase price for the purchase of the interest of the transferring or Trigger Event Member shall be the lower of 85% of: (i) the purchase price agreed upon by the transferring or Trigger Event Member in connection with the Prohibited Transfer; or (ii) the Net Equity of the transferred Membership Interest. "**Net Equity**" of a Membership Interest as of any day means the amount that would be distributed with respect to such Membership Interest to the Member who holds such Membership Interest in liquidation of the Company pursuant to **Section 10.3(b)** if: (A) all of the Company's assets were sold for their Asset Values, as reasonably determined pursuant to **Section 9.4(d)(iii)**; (B) the Company paid its accrued, but unpaid, liabilities (including normal brokerage fees for the sale of Company assets) and established reserves pursuant to **Section 10.3(b)(i)** for the payment of reasonably anticipated contingent liabilities; (C) the Company allocated all Net Profits or Net Losses to the Members pursuant to **ARTICLE 5** and **ARTICLE 11**; and (D) the Company distributed the remaining proceeds to the Members in liquidation in accordance with **Section 10.3(b)(ii)**, all as of such day.

(d) Payment of the purchase price shall be made in cash or certified funds at time of closing if the purchase price is less than $50,000. If the purchase price is $50,000 or more, payment of the purchase price shall be made by: (i) the cash payment of the greater of $50,000 or 25% of the purchase price at closing; and (ii) delivery of the purchaser's promissory note for the balance of the purchase price, payable in equal quarterly installments, including

principal and interest on unpaid balances at the rate hereinafter specified over three years from date of closing. Such note shall contain customary provisions, including but not limited to, acceleration on default and payment of collection costs (including reasonable attorney's fees) on default and shall provide prepayment may be made at any time without penalty. The promissory note shall be secured by a pledge of the Trigger Event Member's Membership Interest, pursuant to a commercially reasonable security agreement and related documents. The interest rate for such note shall be 1% above the Prime Rate. However, if the interest rate exceeds the maximum legal rate of interest then interest shall accrue at the maximum legal rate. Notwithstanding the foregoing, if the Trigger Event is a Prohibited Transfer the purchase price shall be payable, at the election of the Company, either: (A) pursuant to the terms otherwise applicable under this **Section 9.4(c)**; or (B) pursuant to the terms of payment agreed upon by the transferring or Trigger Event Member in connection with the Prohibited Transfer.

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

(i) "**Trigger Event**" shall mean any of the following occurrences: (A) a Prohibited Transfer; or (B) Bankruptcy, Dissolution or Withdrawal of a Member.

(ii) "**Dissolution**" shall mean the legal dissolution, by operation of law or otherwise, of an Entity that is also a Member.

(iii) "**Asset Value**" shall mean the fair market value of all of the Company's assets, including the Property, as determined based on a valuation as of the last day of the month immediately prior to the Trigger Event. For purposes of this Agreement, Asset Value shall be established in good faith by the Manager. The cost of the appraisal shall be deducted from the purchase price to be paid to the Trigger Event Member for the Trigger Event Member's Membership Interest.

(f) Nothing in this **Section 9.4** shall prohibit the Company from structuring the retirement of a Trigger Event Member's Membership Interest in the Company in a manner different from the one set forth herein, subject to the prior written consent of (i) the Manager, (ii) a Majority in Interest of the Non-Trigger Members and (iii) the Trigger Event Member.

9.5 Status of Transferee in Violation of this Article 9. Notwithstanding the provisions of this **ARTICLE 9** to the contrary, the Company may, with the written consent of the Manager (which consent may be given or withheld in the Manager's sole discretion) and subject to the written approval of a Majority in Interest of those Members whose Membership Interests were not the subject of the Prohibited Transfer, treat the transferee of a Membership Interest in a Prohibited Transfer as a full Member, which Transfer shall be upon and subject to the terms set forth in the Manager's and approving Members' consent(s).

9.6 Cessation of Membership. Except as otherwise provided in this Agreement, no Member shall withdraw as a Member from the Company (a "**Cessation of Membership**"). In the event of a Cessation of Membership of a Member in violation of this Agreement, then the Company may recover damages from the Member and offset any amounts otherwise distributable to the Company.

9.7 New and Substituted Members.

(a) Subject to compliance with **Section 9.7(e)**, below, from the date of the formation of the Company, and subject to the Loan Agreement, any Person may become a Member in the Company (i) by the issuance or sale by the Company of new Membership Interests approved by the Manager and a Majority in Interests, or (ii) in connection with a Transfer permitted pursuant to **Section 9.2** (each, a "**New Member**").

(b) Any existing Member that receives additional Membership Interests either as a Purchasing Member, a Trigger Purchase Member or pursuant to **Section 9.2** (each, a "**Substituted Member**") shall receive such additional Membership Interests subject to compliance with **Section 9.7(e)**.

(c) New Percentages Interests issued in connection with admission of New Members may have different rights or obligations than those associated with then-existing Membership Interests, including but not limited to different economic and voting rights.

(d) No New Members or Substituted Members (with respect to the additional Membership Interests received) shall be entitled to any retroactive allocation of losses, profits, income, expenses or deductions incurred by the Company prior to the date such Member became the owner of the Membership Interests; however, the Manager may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

(e) As a condition precedent to admission of any Person as a New Member or Substituted Member, the Selling Member, Trigger Event Member, New Member or Substitute Member, as applicable, must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary or desirable, including, without limitation, to: (i) constitute such New Member or Substituted Member as such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the Company after the completion of the issuance of a Membership Interest to a New Member or Transfer of a Membership Interest to a Substituted Member under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, the termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable state and federal securities laws and regulations.

(f) Any Transfer of a Member's Membership Interest in the Company shall be conditioned upon payment by the Selling Member, Trigger Event Member, New Member or Substitute Member, as applicable, of all costs and expenses incurred by the Company and the Manager in reviewing, approving and documenting the Transfer. All such amounts shall be payable within five days after notice from the Company. The recipient of a Transfer of a

Membership Interest in accordance with this **ARTICLE 9** shall thereafter be a Member, subject to the limitations set forth in this Agreement.

9.8 Preemptive Rights.

(a) If the Company, in accordance with the Loan Agreement, and with the approval of a Majority in Interest, at any time or from time to time makes any non-public offering of an Issued Interest, each of the Members shall first be offered the opportunity to acquire from the Company for the same price and on the same terms as such Issued Interest is proposed to be offered to others, up to the amount of Issued Interest as is required to enable it to maintain its then existing Percentage Interest in the Company. The amount of Issued Interest each of the Members shall be entitled to purchase shall be determined by multiplying (x) the total amount of such offered Issued Interest (or, in the case of options, warrants or other rights obligating the Company to issue Membership Interests or other equity interests, the total amount of such Membership Interest or other equity interests covered by such options, warrants or rights), by (y) a fraction, the numerator of which is the Percentage Interest held by such Member, and the denominator of which is one hundred (100).

(b) In the event the Company proposes to offer any Issued Interest, it shall give each of the Members written notice of its intention ("**Participation Notice**"), describing the type of Issued Interest to be offered, and the price and other terms upon which the Company proposes to offer the same. Each of the Members shall have thirty (30) days from the date of receipt of any such notice (the "**Participation Election Period**") to notify the Company in writing that it intends to exercise all or a portion of its preemptive rights under this **Section 9.8** (a "**Participation Election**") and specify the amount of Issued Interest such Member desires to purchase. The amount a Member electing to exercise preemptive rights is entitled to purchase shall be determined as follows: (1) first, the lesser of (x) the amount of such Issued Interest specified by such electing Member in his or its Participation Election or (y) such electing Member's Participation Interest; (2) second, the balance, if any, not allocated under clause (1), above, shall be allocated to those electing Members who indicated in their Participation Election the desire to purchase greater than their Participation Interest (measured as of the first day of the Participation Election Period), up to the amount of such excess. The Participation Election shall constitute an agreement of such Member to purchase the amount of Issued Interest so determined upon the price and other terms set forth in the Participation Notice.

(c) If a Member exercises its preemptive right under this **Section 9.8**, the closing of the purchase of the Issued Interest with respect to which such right has been exercised shall take place within thirty (30) calendar days after the giving of notice of such exercise, which thirty (30) day period may be extended by the Manager for an additional period of up to ninety (90) calendar days in order to comply with applicable laws and regulations or for such other reason as may be deemed appropriate by the Manager. Each of the Company and any Member which has agreed to purchase an Issued Interest agrees to use its commercially reasonable efforts to secure any regulatory approvals or other consents, and to comply with any law or regulation necessary in connection with the offer, sale and purchase of such Issued Interest.

(d) In the event the Members fail to exercise their preemptive rights as to the full amount of the Issued Interests proposed to be sold by the Company pursuant to the

Participation Notice within the Participation Election Period or, if so exercised, such Member is unable to consummate such purchase within the time period specified in **Section 9.8(c)** (as such period may be extended) because of its failure to obtain any required regulatory consent or approval, the Company shall thereafter be entitled during the period of 180 days following the conclusion of the applicable period to sell or enter into an agreement to sell to a third party (that is, any Person that is not a Member or an Affiliate of a Member) the Issued Interest not elected to be purchased pursuant to this **Section 9.8** or which such electing Member is unable to purchase because of such failure to obtain any such consent or approval, at a price and upon terms no more favorable to the purchasers of such securities than were specified in the Participation Notice. In the event the Company has not sold the Issued Interest within such 180 day period, the Company shall not thereafter offer, issue or sell such Issued Interest without first offering such securities to the Members in the manner provided above.

ARTICLE 10

DISSOLUTION AND TERMINATION

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

(a) Approval of the Manager and a Majority in Interest of the Members pursuant to **Section 6.13**;

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

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

(d) The entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act.

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

10.3 Winding Up, Liquidation and Distribution of Assets.

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

(b) Winding Up. If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with or not necessary or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Certificate of Cancellation has been filed in accordance with the Act. The Liquidator shall be responsible for overseeing the winding up of the Company, shall take full account of the Company's liabilities and property, shall cause the property to be liquidated as promptly as is consistent with obtaining the fair value thereof (except to the extent the Liquidator determines to distribute any assets to the Members in kind), shall allocate any profit and loss resulting from such sales to the Members as set forth in **ARTICLE 5** and **ARTICLE 11** and shall cause the proceeds therefrom, to the extent thereof, to be applied and distributed in the following order:

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

(ii) Second, in accordance with **Section 5.4**.

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

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

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

the information required by the Act.

10.5 Filing of Certificate of Cancellation.

(a) The Certificate of Cancellation shall be filed with the Office of the Secretary of State for the State of Delaware.

(b) Upon the filing of the Certificate of Cancellation in accordance with the Act, the separate legal existence of the Company shall cease. Prior to such filing, the Liquidator shall have authority to distribute any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company. The Liquidator shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

10.6 Return of Contribution Nonrecourse to Other Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Member's Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Member or Members shall have no recourse against any other Member.

ARTICLE 11

SPECIAL ALLOCATIONS

Notwithstanding **ARTICLE 5**, the following provisions shall govern allocations:

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

11.2 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated and credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations the Deficit Capital Account so created as quickly as possible. It is the intent that this **Section 11.2** be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

11.3 Gross Income Allocation. In the event any Member would have a Deficit Capital

Account at the end of any Company taxable year which is in excess of the sum of any amount that such Member is obligated or deemed obligated to restore to the Company pursuant to this Agreement or under Regulations Section 1.70.4-2(g)(1) and such Member's share of Member nonrecourse minimum gain (as determined in accordance with Section 1.704-2(i)(5) of the Regulations), the Capital Account of such Member shall be specially allocated and credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

11.4 Minimum Gain Chargeback. Notwithstanding any other portion of this **ARTICLE 11** and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company Minimum Gain or Partner Nonrecourse Debt Minimum Gain during a taxable year of the Company, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704(g) of the Regulations. This **Section 11.4** is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion, in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion the Managers may in their discretion (and shall if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704-2(f)(4).

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

11.6 Allocation of Nonrecourse Deductions. "Nonrecourse deductions" (as described in Section 1.704-2(b)(4)(iv)(a) of the Regulations) shall be allocated to the Members in accordance with their respective Percentage Interests.

11.7 Intention of Allocation. Any credit or charge to the Capital Accounts of the Members pursuant to **Sections 11.1** through **11.6** ("**Regulatory Allocations**") shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to **Section 5.1** so that the net amount of any items charged or credited to Capital Accounts pursuant to **Section 5.1** shall to the extent possible be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of **ARTICLE 5** if the special allocations required by **Sections 11.1** through **11.6** had not occurred; provided, however, that no such allocation will be made pursuant to this **Section 11.7** if (i) the Regulatory Allocation had the effect of offsetting a prior Regulatory Allocation or (ii) the Regulatory Allocation likely (in the opinion of the Company's accountants or tax counsel) will be offset by another Regulatory Allocation in the future (*e.g.*, Regulatory Allocation of "nonrecourse

deductions" under **Section 11.5** that likely will be subject to a subsequent "minimum gain chargeback" under **Section 11.4**).

11.8 Code Section 704(c) Allocations.

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

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

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

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

(ii) the Net Pre-contribution Gain of the Member. The Net Pre-contribution Gain means the net gain (if any) which would have been recognized by the distributee Member under Section 704(c)(1)(B) of the Code if all property which (A) had been contributed to the Company within seven years of the distribution and (B) is held by the Company immediately before the distribution had been distributed by the Company to another Member.

If any portion of the property contributed consists of property which had been contributed by the distributee Member to the Company then such property shall not be taken into account under this **Section 11.8** and shall not be taken into account in determining the amount of the Net Pre-contribution Gain. If the property distributed consists of an interest in an Entity the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

11.9 Revaluation of Capital Accounts. In connection with a Capital Contribution of money or other property (other than a de minimis amount) by a New Member or existing

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

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

11.11 Other Allocations.

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

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

(c) Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Section 1.752-3(a)(3) of the Regulations, the Member's interest in Company profits are in proportion to their Percentage Interest.

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

(e) Except as otherwise provided in the preceding provisions of **ARTICLE 11**, where Net Profits, Net Losses, tax credits or cash distributions are allocated according to Capital Account balances, all Net Profits, Net Losses, tax credits or cash distributions shared by the Members shall be allocated to the Members in proportion to each Member's Percentage Interest.

(f) To the extent that interest on loans made by a Member or its Affiliates is

determined to be deductible by the Company in excess of the amount of interest actually paid, such additional interest deduction shall be allocated solely to that Member.

ARTICLE 12

GLOSSARY OF DEFINED TERMS

"**12% Preferred Return**" means, with respect to a Class A Member, an amount computed as if such Member were earning a rate of interest of 12% per annum, without compounding, calculated on the outstanding balance from time to time of such Member's Undistributed Capital Contributions with respect to such Member's Class A Membership Interest. The 12% Preferred Return shall be calculated from and after the date on which each Capital Contribution is made until the applicable Distribution Date.

"**16% Preferred Return**" means, with respect to a Class A Member, an amount computed as if such Member were earning a rate of interest of 16% per annum, without compounding, calculated on the outstanding balance from time to time of such Member's Undistributed Capital Contributions with respect to such Member's Class A Membership Interest. Distributions pursuant to **Section 5.4(a)(i)** and **Section 5.4(a)(iii)** shall reduce the undistributed balance of the 16% Preferred Return.

"**Acquisition Documents**" has the meaning set forth in **Section 2.1**.

"**Act**" means the Delaware Limited Liability Company Act, 6 Del. C. 18-101, et seq., as amended from time to time, and any provisions of any successor act.

"**Affiliate**" means any Person controlling or controlled by or under common control with the Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any Member or employee of the Company, or any affiliate thereof and (ii) any Person which receives compensation for administrative, legal or accounting services from the Company, or any affiliate of the Company. For purposes of this definition, "control" when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"**Agreement**" means this Operating Agreement of Clearwater Collection 15, LLC together with the exhibits attached hereto, as amended from time to time. All exhibits to this Agreement are fully incorporated by reference herein.

"**Approved Sale**" means (a) the sale of all or substantially all of the Property or any sale of the Company in a single transaction or a series of related transactions to a third party or a group of third parties, acting in concert, or (b) a transaction pursuant to which a third party or group desires to acquire greater than 50% of the outstanding Percentage Interests in the Company (whether by sale of Membership Interests by the Members, merger, consolidation, recapitalization, reorganization or otherwise).

"**Asset Value**" has the meaning set forth in **Section 9.4(e)(iii)**.

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

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

"**Bankruptcy**" means, with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

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

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

"**Capital Contribution Due Date**" has the meaning set forth in **Section 3.3(b)**.

"**Certificate of Cancellation**" has the meaning set forth in **Section 10.4**.

"**Certificate of Formation**" means the certificate of formation of the Company filed with the Secretary of State of the State of Delaware on May 21, 2015, as amended or amended and restated from time to time.

"**Cessation of Membership**" has the meaning set forth in **Section 9.6**.

"**Class A Member**" means any Member holding a Class A Membership Interest in such Member's capacity as holding same, and each of the Persons who are hereinafter admitted to the Company as a Class A Member in accordance with the terms of this Agreement.

"**Class A Membership Interest**" means the Membership Interest of a Class A Member in the Company, including, without limitation, rights to (a) vote on various Company matters as hereinafter set forth, and (b) to receive distributions (liquidating or otherwise) and allocations of Net Profits and Net Losses.

"**Class B Member**" means any Member holding a Class B Membership Interest in such Member's capacity as holding same, and each of the Persons who hereinafter is admitted to the Company as a Class B Member in accordance with the terms of this Agreement.

"**Class B Membership Interest**" means the Membership Interest of a Class B Member in the Company, including, without limitation, rights to receive distributions (liquidating or otherwise) and allocations of Net Profits and Net Losses, but expressly does not include the right to vote except as may be required by the Act.

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

"**Company**" means Clearwater Collection 15, LLC, a Delaware limited liability company.

"**Company Minimum Gain**" shall mean the excess of liabilities to which property of the Company is subject and for which no Member has any economic risk of loss, over the adjusted basis of such property for federal income tax purposes or, if there has been a revaluation of the assets as permitted or required under Sections 1.704-1(b)(2)(iv)(d), (f) or (r) of the Regulations, over the adjusted "book value" of the assets computed as required under Section 1.704-2(b)(2)(iv)(g) of the Regulations.

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

(a) Credit to such Capital Account of the sum of (i) any amount which such Member is obligated to restore to such Capital Account pursuant to any provision of this Agreement, plus (ii) an amount equal to such Member's share of Company Minimum Gain as determined under Section 1.704-2(g) of the Regulations, plus (iii) any amounts which such Member is deemed to be obligated to restore pursuant to Section 1.704-1(b)(2)(ii)(c) of the Regulations; and

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

"**Delinquent Party**" has the meaning set forth in **Section 13.18.**

"**Disposition**" means the sale, exchange, redemption, assignment, transfer, repayment, repurchase, refinancing or other disposition of the Property by the Company for cash or for Marketable Securities which can be distributed to the Members.

"**Disposition Fee**" has the meaning set forth in **Section 7.4(b)**.

"**Dissolution**" has the meaning set forth in **Section 9.4(d)(ii)**.

"**Dissolution Events**" has the meaning set forth in **Section 10.1**.

"**Distributable Cash**" means, as of any Distribution Date, all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions to the Company by the Members) less (i) all current principal and interest payments on indebtedness of the Company (including without limitation the Loan and any Member Loan) reasonably anticipated by the Manager to be payable and all other sums reasonably anticipated to be currently payable to lenders, (ii) all fees (including without limitation Management Fees, Acquisition Fees, Disposition Fees, Leasing Fees, and Renewal Fees, expenses and cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, and (iii) such Reserves as the Manager determines are necessary for the proper operation of the Company's business.

"**Distribution Date**" means the date of a distribution pursuant to **Section 5.4**.

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

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

"**Dragul**" means Gary J. Dragul.

"**Fiscal Year**" means the Company's fiscal year, which shall be the calendar year unless otherwise determined by the Manager.

"**Issued Interest**" means a Membership Interest of the Company or other equity securities of the Company that the Company proposes to offer, issue, sell, exchange, transfer, assign or otherwise dispose of following the date hereof (including any options, warrants or other rights obligating the Company to issue a Membership Interest or other equity interests).

"**Lease Renewal**" has the meaning set forth in **Section 7.4(c)(ii)**.

"**Leasing Fee**" has the meaning set forth in **Section 7.4(c)(i)**.

"**Lender**" has the meaning set forth in **ARTICLE 2**.

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

"**Loan**" has the meaning set forth in **ARTICLE 2**.

"**Loan Documents**" has the meaning set forth in **ARTICLE 2**.

"**Majority in Interest**" means Members holding more than 50% of the aggregate Percentage Interests of the Class A Members.

"**Management Fee**" has the meaning set forth in **Section 7.3**.

"**Manager**" means GDA Real Estate Management, Inc., a Colorado corporation, or any other Persons that succeeds it in that capacity. References to the Manager in the singular or as him, her, it, itself or other like references shall also, where the context so requires, be deemed to include the plural or the masculine, feminine or neuter reference, as the case may be. The Manager is hereby designated a "manager" within the meaning of the Act.

"**Marketable Securities**" means securities which are listed or admitted to trading on any national securities exchange or reported through the automated quotation system of a registered securities association.

"**Member Loan**" has the meaning set forth in **Section 3.3(c)(i)**.

"**Member Nonrecourse Debt Minimum Gain**" means "partner nonrecourse debt minimum gain" as defined in Section 1.704-2(i)(2) of the Regulations and shall be determined in the manner set forth in Section 1.704-2(i)(3) of the Regulations.

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

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

"**Mortgage**" has the meaning set forth in **ARTICLE 2.**

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

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

"**New Lease**" has the meaning set forth in **Section 7.4(c)(i)**.

"**New Member**" has the meaning set forth in **Section 9.7**.

"**Non Delinquent Party**" has the meaning set forth in **Section 13.19**.

"**Nonpaying Member**" has the meaning set forth in **Section 3.2**.

"**Nonpaying Member Options**" has the meaning set for in **Section 3.2**.

"**Non-Trigger Members**" has the meaning set forth in **Section 9.4(a)**.

"**Operator**" means GDA Real Estate Services LLC, or, with prior written approval of a Majority in Interest, such other of Operator's Affiliates as it shall designate from time to time.

"**Participation Election**" has the meaning set forth in **Section 9.8(b)**.

"**Participation Election Period**" has the meaning set forth in **Section 9.8(b)**.

"**Participation Interest**" of a Member means (a) the Percentage Interest of such Member *divided by* (b) the Percentage Interests held by: (i) with respect to **Section 3.3**, all of the Members other than the Nonpaying Member(s), (ii) with respect to **Section 9.3**, all of the Purchasing Members, (iii) with respect to **Section 9.4**, all of the Trigger Purchase Members, and (iv) with respect to **Section 9.8**, all of the Members electing to participate in a purchase of Issued Interests.

"**Participation Notice**" has the meaning set forth in **Section 9.8(b)**.

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

"**Person**" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such "Person" where the context so admits.

"**Prime Rate**" shall mean the interest rate identified as the "Prime Rate" in the Western Edition of The Wall Street Journal. If for any reason the Prime Rate is no longer published in The Wall Street Journal, the Manager shall select another financial publication and reasonably equivalent announced rate as was announced in The Wall Street Journal.

"**Property**" has the meaning set forth in **ARTICLE 2**.

"**Property Manager**" means GDA Management Services, LLC, a Colorado limited liability company, or any other Persons that succeeds it in that capacity. References to the Property Manager in the singular or as him, her, it, itself or other like references shall also, where the context so requires, be deemed to include the plural or the masculine, feminine or neuter reference, as the case may be.

"**Purchase Election**" has the meaning set forth in **Section 9.3(b)**.

"**Purchasing Members**" has the meaning set forth in **Section 9.3(b)**.

"**Purchase Option**" has the meaning set forth in **Section 9.3(a)**.

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

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

"**Renewal Fee**" has the meaning set forth in **Section 7.4(c)(ii)**.

"**Reserves**" means, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient by the Managers as set forth herein for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the Company's business.

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

"**Selling Member**" has the meaning set forth in **Section 9.3**.

"**Special Member**" means a Person or Entity who is not a Member of the Company but has agreed to act as a special member under the terms of this Agreement with only the rights and duties expressly set forth in **Section 15.2** of this Agreement and only upon the occurrence of certain events that cause the last remaining Member to cease to be a Member of the Company. The Special Member shall be GDA Real Estate Management, Inc., a Colorado corporation; provided that if the Manager is changed pursuant to Section 7.2 of this Agreement, the new Manager appointed pursuant to Section 7.2 shall be the Special Member.

"**Substituted Member**" has the meaning set forth in **Section 9.7**.

"**TIC Agreement**" means the Tenancy-in-Common Agreement of even date herewith by and between the Company and Clearwater Plainfield, LLC, a Delaware limited liability company.

"**Substituted Member**" has the meaning set forth in **Section 9.7**.

"**Transfer**" has the meaning set forth in **Section 9.1(c)**.

"**Trigger Election**" has the meaning set forth in **Section 9.4(b)**.

"**Trigger Event**" has the meaning set forth in **Section 9.4(e)(i)**.

"**Trigger Option**" has the meaning set forth in **Section 9.4(a)**.

"**Trigger Period**" has the meaning set forth in **Section 9.4(a)**.

"**Trigger Purchase Member**" has the meaning set forth in **Section 9.4(b)**.

"**Undistributed Capital Contributions**": in the case of a Class A Member, means, as of each date of calculation, a Class A Member's aggregate Capital Contributions with respect to such Member's Class A Membership Interest, less any amount distributed to such Member as a return of such Capital Contributions pursuant to **Section 5.4(a)(ii); and**.

"**Undistributed 12% Preferred Return**": in the case of a Class A Member, means, as of each date of calculation, the excess of a Class A Member's 12% Preferred Return as of such date over total distributions of such 12% Preferred Return to such Member pursuant to **Section 5.4(a)(i)**; and .

"**Undistributed 16% Preferred Return**" means, as of each date of calculation, the excess of a Class A Member's 16% Preferred Return as of such date over total distributions to such Class A Member pursuant to **Section 5.4(a)(i)** and **Section 5.4(a)(iii)**.

ARTICLE 13

MISCELLANEOUS PROVISIONS

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

13.2 Alienation of Membership Interest. No Member shall, except in accordance with **ARTICLE 9**, sell, Assign or otherwise Transfer its Membership Interest in the Company or in its capital assets or property, or do any act detrimental to the best interests of the Company.

13.3 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes (a) if delivered personally to the party or to an executive officer of the party to whom the same is directed, (b) if sent by registered or certified mail, postage and charges prepaid or by a recognized overnight delivery service, addressed to the Member's, Manager's and/or Company's address, as appropriate, which is set forth in this Agreement, or (c) upon email transmission to the email address of the party being notified as shown in the Company's records. Except as otherwise provided herein, any such notice shall be deemed to be given under clause (a) upon delivery, under clause (b) three business days after mailing or one business day after delivery to the overnight delivery service, or under clause (c) upon transmission of the email.

13.4 Application of State Law. This Agreement and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware and specifically the Act (without regard to principles of conflicts of law).

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

13.6 Amendment. This Agreement may not be amended except by consent of the Manager and a Majority in Interest of the Members. Notwithstanding the foregoing, the Manager may unilaterally amend or amend and restate this Agreement without obtaining the consent of the Members with regard to the addition of special purpose entity provisions requested by any lender or with regard to any other lender issues that do not have an adverse economic impact on the Members or to amend **Exhibit A** to reflect the admission of New Members or Substitute Members or as permitted by **Section 3.8** of this Agreement.

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

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

13.9 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

13.10 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

13.11 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

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

13.13 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

13.14 Not for Creditors' Benefit. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company. Furthermore, this Agreement is made solely and specifically for the benefit of the parties hereto, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other Person will have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise, with the exception of the Operator and Property Manager, which shall be third-party beneficiaries solely as to the provisions of **Section 7.3** and **Section 7.4** hereof.

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

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

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

13.18 Default. The failure of a Member or Manager hereto to comply with any of the provisions of this Agreement or the Act (as modified hereby) when due and the continuance of such failure for a period of 30 days for a non-monetary default or such longer period if not reasonably curable within such 30 day period and such failing member commences such cure within 10 days and diligently pursues the cure thereof, or 5 days for a monetary default, after written notice thereof is given to such party by the other party specifying the nature thereof, shall constitute a default hereunder and shall be considered a "**Delinquent Party**."

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

13.20 Percentage Interests Owned by One or More Persons. If any Percentage Interests are owned jointly by one or more Persons as a tenancy in common or joint tenancy, in any

matters requiring consent or approval under this Agreement, the consent or approval of one of the Persons owning the Percentage Interests shall be deemed to be the consent of all Persons owning the Percentage Interests.

ARTICLE 14

COMPLIANCE WITH ANTI-TERRORISM ORDERS

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

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

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

(b) is a Person who has been determined by competent authority to be subject to the prohibitions contained in the Orders;

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

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

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

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

14.5 Representations and Warranties. In the event that a representation or warranty of a Member set forth in **ARTICLE 14** becomes untrue at any time during the term of this Company, then such event shall be a Trigger Event as to such Member pursuant to **Section 9.4** and the Company and Non-Trigger Members shall have the right to purchase the Membership

Interest of the Member so violating said provision pursuant to the same terms and conditions as are contained in **Section 9.4**, except that the purchase price shall be 10% of the Net Equity of the Membership Interest rather than 85% of the Net Equity of the Membership Interest and the time frame within which the Company and Non-Trigger Members may cause said purchase shall be determined by the Manager in its sole and absolute discretion.

ARTICLE 15

SPE SPECIAL LIMITATIONS

For so long as the Loan is outstanding, or until the Company defeases the Loan in accordance with the terms of the Loan Documents, the following provisions shall apply and the Company shall remain a Single Purpose Entity (defined terms in this Article 15 shall have the meaning set forth in the Loan Documents); provided however, that, notwithstanding any other provision in this Agreement to the contrary, the Manager may elect, only with the approval of a Majority in Interest, to continue the application of any or all of the following provisions, or to modify the same as required by any successor lender, at any time after the Loan is discharged or defeased, by entering into an amendment to this Agreement therefor:

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

(a) is organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, obtaining the Loan from Lender and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing; (ii) acting as a managing member of the limited liability company that owns the Property; or (iii) acting as a general partner of the limited partnership that owns the Property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(gg) intentionally omitted;

(hh) intentionally omitted;

(ii) intentionally omitted;

(jj) is as of the date hereof, and will continue to be, a Delaware limited liability company that has Organizational Documents that provide that, as long as any portion of the Debt remains outstanding: (i) the Company shall be dissolved, and its affairs shall be wound up, only upon the first to occur of the following: (A) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the business of the Company is continued in a manner permitted by its this Agreement or the Delaware Limited Liability Company Act (the "Act"), or (B) the entry of a decree of judicial dissolution under Section 18-802 of the Act; (ii) except as expressly permitted pursuant to the

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

(kk) intentionally omitted;

(ll) intentionally omitted; and

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

15.2 Independent Director.

(a) Appointment of Independent Director. As a condition to allow the Tenants in Common to enter into the Loan, the Lender is requiring that the Company have an

Independent Director. Therefore, as long as the Loan remains outstanding, the Members shall cause the Company at all times to have at least one Independent Director who will be appointed by the Manager. The initial Independent Director designated by the Manager is Julia A. McCullough.

(b) Duties of the Independent Director.

(i) The board of directors or managers of the Company (as applicable) shall not take any action which, under the terms of any Organizational Documents (including, if applicable, any voting trust agreement with respect to any common stock), that requires a unanimous vote of the board of directors or managers of the Company unless, at the time of such action, there shall be at least one Independent Director of the board of directors or managers of Company (and such Independent Director has participated in such vote). When voting with respect to any of the matters set forth in Section 15.1(mm), each Independent Director shall consider only the interests of the Company, including its creditors. Except for duties to the Company as set forth in the immediately preceding sentence (including duties to the Member, Manager and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), the Independent Director shall not have any fiduciary duties to the Member, Manager, any Officer or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, an Independent Director shall not be liable to the Company, the Member or any other Person bound by this Agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement and the Independent Director shall have no authority to bind the Company. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

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

(c) Definition of Independent Director. As used herein, the term "Independent Director" shall mean an individual who (i) has at least three (3) years prior employment experience and continues to be employed as an independent director, independent manager or independent member by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors, independent managers and independent members, another nationally-recognized company that provides such services and which is reasonably approved by Lender; (ii) is not on the board of directors or managers of more than two (2) Affiliates of the related Single Purpose

Entity (other than in its capacity as Independent Director); and (iii) is not, and has never been, and will not, while serving as an Independent Director, be, any of the following: (A) a stockholder, director, manager, officer, employee, partner, member, attorney or counsel of such entity, any Affiliate of such entity or any direct or indirect equity holder of any of them (other than a nationally-recognized company that routinely provides professional independent directors, independent managers or independent members and other corporate services to such entity or any Affiliate of such entity in the ordinary course of its business), (B) a creditor, customer, supplier, service provider (including provider of professional services) or other Person who derives any of its purchases or revenues from its activities with such entity or any Affiliate of such entity, (C) a member of the immediate family of any such stockholder, director, manager, officer, employee, partner, member, creditor, customer, supplier, service provider or other Person, or (D) a Person controlling or under common control with any of (A), (B) or (C) above (other than a nationally-recognized company that routinely provides professional independent directors, independent managers or independent members and other corporate services to such entity or any Affiliate of such entity in the ordinary course of its business). A natural person who satisfies the foregoing definition other than clause (iii)(A) or (iii)(B) shall not be disqualified as a result of clause (iii)(A) or (iii)(B) by reason of (I) being an Independent Director, or having been or becoming an Independent Director of, an Affiliate of the Company that is not in the chain of ownership of the Company and that is required by a creditor to be a "single purpose entity" or (II) being, having been or becoming a member of such entity pursuant to an express provision in such entity's operating agreement providing for the appointment of such Independent Director as a member of such entity upon the occurrence of any event pursuant to which Sole Member ceases to be a member of such entity (including the withdrawal or dissolution of Sole Member); provided that, in the case of (I) and (II) above, such Independent Director has and/or will at all times be employed by a company that routinely provides professional independent directors, independent managers or independent members and the fees or other compensation that such individual earns by serving as an Independent Director of one or more Affiliates of such entity in any given year constitute, in the aggregate, less than five percent (5%) of such individual's income for such year.

15.3 Special Members.

(a) Upon the occurrence of any event that causes the last remaining Member of the Company or the sole Member of the Company if the Company is a single member limited liability company (such last remaining member or single member shall be referred to herein as "Sole Member") to cease to be a member of the Company (other than (i) upon an assignment by Sole Member of all of its limited liability company interests in such entity and the admission of the transferee, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents, or (ii) the resignation of Sole Member and the admission of an additional Member of the Company, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents), the Special Member(s) of the Company, which shall be the Independent Director, without any action of any Person and simultaneously with Sole Member ceasing to be a member of the Company, shall automatically be admitted as a member of the Company and shall preserve and continue the existence of the Company without dissolution. So long as any portion of the Debt is outstanding, no Special Member may resign or transfer its rights as a Special Member unless (A) a successor Special Member has been admitted to the Company as a Special Member, provided, however, the Special Member shall automatically

cease to be a member of the Company upon the admission to the Company of a substitute Member; and (B) such successor Special Member has also accepted its appointment as an Independent Director of the Company. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a Membership Interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, the Person acting as Special Member shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, the Person acting as Special Member shall not be a member of the Company. The Manager shall at all times cause there to be a Person bound by this Agreement as Special Member.

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

15.4 Lender is an intended third-party beneficiary of the "special purpose" and "separateness" provisions of the this Article 15.

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

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

This Agreement has been entered into as of the date first set forth above.

MEMBERS:

CLASS A MEMBERS:

GDA CLEARWATER 15, LLC
a Delaware limited liability company

By: GDA Clearwater Management, LLC,
a Colorado limited liability company
Its: Manager

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

By: _____
Gary J. Dragul
Its: President

GDA CLEARWATER INVESTORS, LLC
a Delaware limited liability company

By: GDA Clearwater Management, LLC,
a Colorado limited liability company
Its: Manager

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

By: _____
Gary J. Dragul
Its: President

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

CLASS B MEMBER:

GDA Clearwater Management, LLC
a Colorado limited liability company

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

By: _____
Gary J. Dragul
Its: President

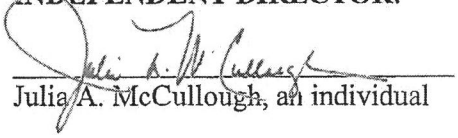
MANAGER:

GDA Clearwater Management, LLC
a Colorado limited liability company

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

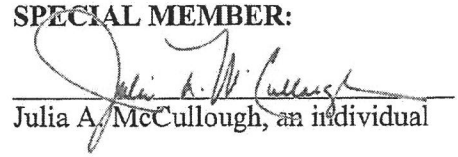
By: _____
Gary J. Dragul
Its: President

INDEPENDENT DIRECTOR:



Julia A. McCullough, an individual

SPECIAL MEMBER:



Julia A. McCullough, an individual

EXHIBIT A

Names; Addresses; Membership Interests;
Capital Contributions; Percentage Interests

NAME	CLASS OF MEMBERSHIP INTEREST	ADDRESS	VALUE OF CAPITAL CONTRIBUTION	PERCENTAGE INTEREST
GDA Clearwater 15, LLC	Class A	5690 DTC Boulevard Suite 515 Greenwood Village, CO 80111 Email: gary@gdare.com	$1,290,000	34.82%
GDA Clearwater Investors, LLC	Class A	5690 DTC Boulevard Suite 515 Greenwood Village, CO 80111 Email: gary@gdare.com	$3,000,000	65.18%
GDA Clearwater Management, LLC	Class B	5690 DTC Boulevard Suite 515 Greenwood Village, CO 80111 Email: gary@gdare.com	-0-	-0-
TOTALS			$4,290,000	100%