DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	
Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado v. **Defendants:** Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC	▲COURT USE ONLY▲
Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2018CV33011 Division/Courtroom: 424
RECEIVER'S REPLY IN SUPPORT OF HICKORY CORNERS SALE MOTION AND IN RESPONSE TO HAGSHAMA'S OBJECTION	

Harvey Sender, the duly-appointed receiver ("Receiver") for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, "Dragul and the GDA Entities"), submits this reply in support of his Motion for Order Authorizing Sale of Hickory Corners ("Sale Motion," filed Feb. 8, 2019), and in response to Hagshama's Objection to the Sale Motion ("Hag. Obj.," filed Feb. 19, 2019).

I. The Court should set Hagshama Objection's for a forthwith hearing.

The Receiver asks the Court to approve the sale of the Hickory Corners Property to Nova Capital Partners, LLC for $13.6 million. Hickory Corners is a retail shopping center in North

Carolina encumbered by two mortgages totaling about $10.1 million, both of which are in default. A foreclosure sale on the Hickory Corners Box portion of the property has been authorized by a North Carolina court to occur after April 9th. The proposed sale to Nova will stop the pending foreclosure and generate approximately $2.8 million for the Estate.

Hagshama paid $4.2 million for 65% of the equity in the entities that own the Hickory Corners Property. It also owns a majority interest in seven other Estate properties located in the United States.[1] On February 21, 2019, the Receiver filed additional sale motions seeking approval to sell two other Hagshama Project properties – Cassinelli and Clearwater. The Receiver continues to market the remaining Hagshama Project properties. Hagshama has informed the Receiver it intends to object to the sale of *any of those properties* for the same reasons it objects here.[2] Resolving the present issues will therefore be a bellwether. The Receiver asks the Court to set the Sale Motion for a forthwith hearing and approve the proposed sale, which will allow the Receiver to proceed to market and sell the remaining Hagshama properties without further delay, expense, or interference, and to prevent the Estate from losing the properties to foreclosure.

II. The Court should approve the proposed sale.

Hagshama objects to the Hickory Corners sale arguing: (1) the Receiver lacks authority under the governing documents to sell it; (2) the Property is not part of the Estate; and (3) the sale

[1] The Hagshama Projects other than Hickory Corners include: (1) Cassinelli Square (Cincinnati, OH), (2) Clearwater Collection (Clearwater, FL), (3) Delta Marketplace (Lansing, MI), (4) DU Student Housing (Denver, CO), (5) Happy Canyon Marketplace (Denver, CO), (6) Prospect Square (Cincinnati, OH), and (7) Windsor Square (Knoxville, TN). The Receiver's February 14th Motion for Order Authorizing the Sale of Estate's Interest in Hagshama Projects (the "Odyssey Sale Mtn.") describes the projects and Hagshama's interest in them.

[2] Indeed, on March 1, 2019, Hagshama objected to both the Cassinelli and Clearwater sale motions making the same arguments it makes here.

price is too low, which will cause Hagshama to lose some of its investment. Hagshama fails to address or acknowledge the economic realities facing the Estate, which are discussed in Section A, below. Sections B through D discuss Hagshama's separate arguments in reverse order.

A. Hagshama disregards the economic realities facing the Estate; absent the proposed sale, the Property will be lost to foreclosure and investors left with nothing.

As set forth in the Sale Motion, there are two separate Hickory Corners parcels, the Shops and the Box. The $9.3 million Rialto loan on the Shops has been in default since April 2018 – four months before the Receiver was appointed. Rialto has swept all rents since then. Under the proposed sale, the Buyer will assume the Rialto loan and avoid an exit fee/prepayment penalty of $1,667,413.60, an expense the Estate would otherwise bear.

The $1.1 million first mortgage on the Box has matured, and a forbearance agreement that Dragul negotiated was in default before the Receiver was appointed. The lender (Dynasty, LLC) has obtained a foreclosure order in North Carolina authorizing foreclosure of the Box after April 9, 2019. *See* **Exhibit 1**. When the Receiver was appointed, the Box was approximately 50% leased (as is the case today), and its only tenant (the Guitar Center) was owed over $800,000 for tenant improvements due to pre-Receivership lease defaults. The Guitar Center has withheld rent since August 2018 to offset the amount it claims to be owed.

The Box is further encumbered by a $500,000 junior lien that is also in default, and a mechanics' lien for $586,054.67.[3] The Estate lacks sufficient funds to pay critical expenses for the Property (*e.g.*, insurance and utilities), let alone service the debt, satisfy liens, or reimburse tenant

[3] *See* National Commercial Builders, Inc.'s Objection to Receiver's Motion for Order Authorizing Sale of Hickory Corners ("NCB Objection;" filed March 4, 2019). The Receiver believes NCB's lien claim is overstated by approximately $150,000, and that it is invalid because it was recorded in violation of the stay imposed by the Court's Receivership Order.

improvement expenses. Absent a sale, the Property will be lost to foreclosure and Hagshama and the other defrauded investors will lose their entire investments. A sale of the Property is the only feasible solution to obtain value and provide some return to investors.

B. The proposed sale is the best offer the Estate has received for the Property.

Hagshama objects the Property is being sold hastily "at an artificially low price because of the circumstances," which may cause it to lose some of its equity investment. *See* Hag. Obj. at 1. Hagshama fails to appreciate the Property is *in receivership*, its mortgages are in default, and foreclosure is imminent.

Despite having been afforded ample opportunity to do so, Hagshama has not produced a buyer willing to purchase the Property for *any* amount, let alone for more than the $13.6 million on the table. Nowhere in its Objection does Hagshama state what it believes the fair market value of the Property is *today*, or what it believes a fair and acceptable sale price would be. The Receiver's nationally-recognized commercial brokers marketed the Property and negotiated the best terms possible. If Hagshama believes the Property is underpriced, it should tender a better offer, or purchase the Property itself. It has done neither. Hagshama is responsible for the investments of approximately 32,000 individual investors, is involved in roughly 3,000 projects across the world, and has over $5 billion under management. *See* Hag. Obj. at 1-2. If the Property is in fact worth more than $13.6 million, Hagshama should solicit investors to buy it.

1. The Estate cannot afford to hold and develop the Property for sale at a later date.

It is abundantly clear Hagshama does not want to step up and buy the Property. Instead, it wants to block *any proposed sale* by the Receiver of any of its Project properties, including Hickory Corners, until: (a) the loans on the properties can be paid current or renegotiated by the

Receiver; (b) the outstanding liens and tenant improvement obligations are paid; and (c) the properties are fully-leased. While this might allow Hagshama to realize the full economic potential of Hickory Corners (and its other investment properties), and presumably obtain the 22% internal rate of return ("IRR") it projected for Hickory Corners, the Estate lacks the funds to do any of this.

Significantly, Hagshama has not offered to contribute one cent to pay the necessary operating expenses, cure the loan defaults, or stabilize the Property (or any of its seven other Project properties). It has done nothing to stave off the pending foreclosure. It has not offered to reimburse the Estate for the substantial fees and expenses the Estate has incurred attempting to preserve the Property over the last six months, which include hiring North Carolina counsel to address the pending foreclosure action there. This notwithstanding that the tenancy-in-common ("TIC") agreement Hagshama relies on requires it to pay its pro rata share of the costs, expenses, taxes, insurance premiums, and debt service for the Property. *See* Hag. Obj., **Ex. A**, Art. 2.1.[4] Hagshama has instead offered exactly nothing, leaving the Receiver to pay the essential Property expenses which the Estate now lacks funds to do. Hagshama has not complied with its obligations under the very agreements it relies on in arguing the Receiver lacks authority to sell the Property.

2. Denying the Sale Motion will leave nothing for investors.

Even more troubling, since at least October 2018, Hagshama has repeatedly threatened the Receiver with litigation if he attempts to sell the Hagshama Project properties to third-party buyers. As an alternative, Hagshama has agreed to and supported at least three proposed transactions in which a third-party would purchase the Estate's interest in the eight Hagshama Projects, solicit

[4] The TIC Agreement for the Shops is attached as Exhibit A to Hagshama's Objection. The TIC Agreement for the Box is, in all material respects, identical. They are jointly referred to as the "TIC Agreements."

individual investors to stay in the deals, cure the loan defaults, and, once stabilized, managed, and leased – sell the underlying properties. Only one of these prospective third-party buyers, Odyssey Acquisition, LLC ("Odyssey"), was actually willing to sign an agreement with the Receiver. *See* Odyssey Sale Mtn. After the Receiver obtained Court approval for that transaction, Odyssey almost immediately terminated the agreement, as had the two other prospective buyers that previously stood in its shoes.[5]

Hagshama also complains that it (and its individual investors) will lose more than half of its investment if the proposed sale is approved "on a property that had no problems until the appointment of the Receiver." Hag. Obj. at 3. Hagshama either disregards or is uninformed of the facts. As discussed, ***before*** the Receiver was appointed, the first and second mortgages on the Property were either in default or had matured, the Guitar Center was owed more than $800,000, a mechanics' lien claimant was owed $585,000, and the Box was only half occupied. As of August 16, 2018 – 14-days before the Receiver was appointed – the Hickory Corners bank accounts held a mere $85.70, collectively. Contrary to Hagshama's unsubstantiated statement, the Property was riddled with "problems" long before August 2018, problems decidedly not of the Receiver's making. Indeed, the Receiver's accountants have discovered material discrepancies in the compiled financial statements GDA provided to Hagshama, including the failure to report the $1.1 million loan from Dynasty that is now being foreclosed.

[5] All three of the prospective buyers of the Estate's interest in the Hagshama Projects withdrew soon after each beginning due diligence. The Receiver understands they couldn't obtain accurate information reflecting the identities and membership interests of investors, the amount of investor contributions, the debt encumbering the assets, and other essential information regarding the Projects. Another buyer also proposed to acquire the Estate's interests in the Hagshama Projects and other Estate assets, but it too withdrew during due diligence.

Hagshama is correct in one respect – it (and its investors) may lose some of its Hickory Corners investment. This is however Dragul's doing, not the Receiver's. If the Court allows Hagshama to thwart the sale, Hagshama and the other individual investors in the Property are in jeopardy of losing their *entire* investments. Hagshama's investors are no different than other investors solicited by Dragul who will also lose some percentage of their investments. The only difference is that Hagshama invested more. That, without more, does not justify this Court's denial of the proposed sale to Nova, which will bring real money into the Estate. *See S.E.C. v. Quan*, 2015 WL 8328050, at *6 (D. Minn. Dec. 8, 2015), *aff'd,* 870 F.3d 754 (8th Cir. 2017) ("there is no hard and fast rule that investors should be treated differently based on the risk level of their investment."). Something is better than nothing, which is what the Estate may net if the Sale Motion is denied and the Property foreclosed.

3. Hagshama has already recovered over 16% of its Hickory Corners investment.

This Court should not permit Hagshama, who is no more a victim of Dragul's fraud than any other individual investor, to defeat or undermine the Receiver's obligation to maximize the value of Estate assets and liquidate them to benefit *all creditors*. This is especially true considering Hagshama has been treated more favorably than other investors. For example, when Hickory Corners was purchased on January 27, 2017, Hagshama received syndication fees of $211,044. *See* **Exhibits 2**, **3**. It is unclear whether these fees were disclosed to the eight other individual Hickory Corners investors.[6]

[6] The Receiver is working to determine who actually invested in the Hagshama Projects and reconcile their ownership interests. The Receiver has not been able to obtain a comprehensive, accurate list of members for the Projects or the amounts they contributed. In some cases, the ownership interests listed in Dragul's records do not match the percentages shown in the tax returns. In one Hagshama Project (Clearwater) it appears Dragul oversold or gifted 190% of the

Hagshama also received $488,836 in Hickory Corners' distributions for 2017 and 2018. It is unclear what, if any payments were made to other investors. Hagshama has already recovered 16.75% of the principal it invested in Hickory Corners through its syndication fees and preferred distributions. The Receiver is still conducting his forensic analysis, but other investors likely received far less, if anything. Hagshama should not be allowed to prevent the Receiver's attempt to return *something* to investors in the blind hope (without corresponding financial commitment) that it *might*, in the future, recover its projected 22% IRR.

C. Hickory Corners is property of the Receivership Estate.

Hagshama next argues, incorrectly, that the Hickory Corners Property is not part of the Receivership Estate. The Estate includes:

> Dragul […], GDARES, GDAREM, and all of their assets, including, but not limited to, all real […] property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights […] wherever located, including without limitation the "LLC Entities" identified in the Commissioner's Motion and Complaint for Injunctive and Other Relief, or assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived from investor funds from the solicitation or sale of securities described in the Complaint, or derived directly or indirectly from investor funds . . . .

Rcvrshp. O. at 3, ¶ 9.

The Hickory Corners Shops and Box are each owned by two SPEs as tenants-in-common (Hickory Corners Shops A and B, and Hickory Corners Box A and B). The Hagshama entities (the "A" entities) each own 64.59% of the Property, the other non-Hagshama investors in the "B"

membership interests. And in other cases, it appears Dragul may have simply gifted membership interests to himself and others.

entities own the remaining 35.41%. Hagshama does not acknowledge that Dragul fraudulently solicited *all* of the Hickory Corners investors, both in the A and B entities. Because Hickory Corners was directly funded with Dragul-solicited investor funds (including Hagshama), it is part of the Estate.

Moreover, the Property (both the Shops and Box) – including the "A Entities" – is managed by Hickory Management, LLC (the "Manager"), a wholly-owned Dragul entity. Hagshama acknowledges Hickory Management, LLC is part of the Estate. Hagshama has taken no action to remove the Manager. The Property and its management rights are part of the Estate. *See S.E.C. v. Capital Consultants, LLC*, 397 F.3d 733, 749 (9th Cir. 2005) (real property managed by entity over which equity receiver was appointed was held to be part of the receivership estate).

D. The Court and the Receiver are vested with broad discretion concerning the administration and disposition of the Estate.

Rule 66 of the Colorado Rules of Civil Procedure and its federal counterpart governing equity receiverships do not instruct receivers how to specifically administer or manage a receivership estate. Rather, it advises receivers to adhere to traditional equity practices, or, where they exist, local rules for administrative matters such as disposition and distribution of assets. *S.E.C. v. Vescor Capital Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010). Case law addressing the administration of equity receiverships is sparse and typically limited to a case's particular facts. *F.D.I.C. v. Bernstein*, 786 F. Supp. 170, 177 (E.D.N.Y. 1992) (citing *S.E.C. v. Hardy*, 803 F.2d 1034 (9th Cir. 1986)). Notwithstanding the absence of generally applicable case law directly on point, the common thread of the cases is that the Court has extremely broad discretion to determine the appropriate actions of a Receiver in an equity receivership. *Id.* (citing *Hardy,* 803 F.2d at 1037 (citations omitted)). This Court's broad powers in its supervisory role stem from the inherent

powers granted courts of equity to fashion relief, combined with "the fact that most receiverships involve multiple parties and complex transactions," as is true here. *Hardy,* 803 F.2d at 1037; *see also Vescor Cap.,* 599 F.3d at 1194. The receiver in an equitable receivership likewise has broad power to administer the estate in a manner consistent with the best interests of the creditors.

1. The Receivership Order explicitly authorizes the proposed Hickory Corners sale.

Hagshama argues that each of its Project properties must stand alone and remain governed by the organizational documents applicable to each LLC. This argument rests on a singular provision of the Receivership Order that allows the Receiver to exercise *control* over all companies owned or managed by Dragul "consistent with the governance documents" or operating agreements applicable to each. Rcvrshp. O. at 8, ¶ 13(b). But, the Receiver is seeking to sell the Property, ***not*** manage it. Other provisions in the Receivership Order expressly allow him to do so and govern how sale proceeds are to be distributed. *Id.* at 12, ¶ 13(t) & at 16, ¶ 22.

In creating this equity receivership, this Court's focus, like all others, was "to safeguard the assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary." *Vescor Cap.*, 599 F.3d at 1194 (quoting *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551 (6th Cir. 2006)). To that end, the Receivership Order specifically authorizes the Receiver to undertake all actions to accomplish its overarching goals, including selling Estate assets and distributing the proceeds to pay (in the following order): (1) administrative expenses; (2) Receiver's certificates; (3) secured creditors; (4) unsecured tax obligations; (5) unsecured creditors; and (6) equity holders. Rcvrshp. O. at 16-17, ¶ 22. Hagshama has advised the Receiver that should a sale occur, the proceeds must be distributed in accordance with the waterfall provisions in the operating agreements. Here again Hagshama disregards the

clear mandate of this Court and primary goal of equity receiverships, such as this one, in which "[t]he court is not required to distribute the assets in accordance with the contractual rights of the parties[,]" as the primary concerns in distribution are fairness and equity. *Quan*, 870 F.3d at 762 (citing *Broadbent v. Advantage Software, Inc.*, 415 Fed. App'x 73, 78–79 (10th Cir. 2011), and *S.E.C. v. Credit Bancorp*, 290 F.3d 80, 89–90 (2d Cir. 2002)).

2. Hagshama cannot block the proposed sale based on fraudulently obtained LLC agreements.

Hagshama also ignores that both the Hickory Corners LLC documents were prepared and executed in furtherance of Dragul's fraudulent scheme.[7] In cases involving fraud, such as this, fairness and equity are paramount. *See Credit Bancorp,* 290 F.3d at 88–89 ("Courts have favored *pro rata* distribution of assets where, as here, the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders."). Fairness and equity require approval of the Hickory sale to preserve whatever equity is left for the benefit of ***all*** defrauded investors. As described in the Commissioner's Complaint, Dragul routinely and improperly commingled investor funds. *See* Compl. for Inj. and Other Relief at 5, ¶ 21 (filed Aug. 15, 2018) (the "Complaint"). Rather than treating the LLCs as separate and distinct legal entities, Dragul diverted funds from each, commingled them with his and his family's personal funds, and used what should have been entity funds for his and his family's personal benefit. *Id.* at 6, ¶ 22. The Complaint states:

> For example, a review of GDA Real Estate, LLC's primary operating account at Fortis Private Bank between April 1, 2017 and

7 Dragul has been indicted on 14 counts of securities fraud. His case has not yet gone to trial. The investigation being undertaken by the Receiver and his accountants – which is not completed – has revealed substantial comingling and diversion of investor funds, material inconsistencies in ownership structures, and significant accounting irregularities.

> June 30, 2017, showed that there were 138 deposits made into this GDA account totaling $23,581,993. Of these deposits, 106 (77%) were internal transfers from 20 different LLC Entity accounts or other accounts under Dragul's control to the GDA account. There were 429 withdrawals made from the GDA account totaling $23,654,879. Of these withdrawals from the GDA account, 344 (80%) were internal transfers to 24 different Entity LLC accounts and other accounts controlled by Dragul.

Id. at 7, ¶ 23. The Complaint explains:

> The funds held in the various LLC Entities were transferred, dissipated, diverted, and/or misappropriated by Dragul. These commingled investor funds were dispersed without regard for corporate formalities or distinctions. This scheme resulted in investors not having their funds held or invested when Dragul represented they would be held or invested. Dragul used the GDA account and the LLC Entities' accounts as if they were interchangeable. This commingling of funds was the mechanism created by Dragul as part of his scheme to defraud the investors. None of the investor funds transferred in or out of any particular LLC Entity can be identified substantially as an asset of any LLC Entity, and as a result, the investor funds have lost their identity and have become untraceable.

Id. at 7, ¶ 24.

Stated otherwise, the Dragul indictments and the Commissioner's Complaint describe an extensive and ongoing fraudulent scheme. The entities in which Hagshama invested were fraudulently capitalized and managed. Dragul used comingled funds to operate the underlying properties and to pay Hagshama preferred distributions without the knowledge and to the detriment of non-Hagshama investors. The Receiver's accountants have already identified significant comingling of funds between Hickory Corners and GDA Real Estate Services. In such cases, "the interests of the Receiver are very broad and include not only protection of the receivership *res*, but also protection of defrauded investors and considerations of judicial economy." *Vescor Cap.*, 599

F.3d at 1197 (quoting *S.E.C. v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985)). The Court should use its broad-ranging authority and approve the Hickory Corners sale.

3. The governing documents themselves conflict.

Finally, while the Hickory Corners TIC Agreements purport to require Hagshama's consent to the Manager selling the Property, only the Hagshama "A" entity operating agreement purports to do so. *See* Hag. Obj. at **Ex. B**, Arts. 7.1(viii) and 6.14(k). On the other hand, the "B" side operating agreement expressly authorizes the Manger to sell the Property without member consent. *See* Jan. 26, 2017 Hickory Corners B, LLC Operating Agreement, attached as **Exhibit 4**, at Art. 7.01(vii). As discussed, the interests of the other defrauded investors were acquired under and could arguably be governed by this B side operating agreement. It would be manifestly unfair to these other defrauded investors to bar the sale based on documents they likely never saw or agreed to.

Even assuming *arguendo* that the applicable documents preclude the Receiver from selling Hickory Corners (it is not clear they do), the Court should use its equitable powers to authorize the sale. *See, e.g.*, *Quan*, 870 F.3d at 762 (in federal equitable receiverships, administration of the estate is governed by fairness and equity even if contrary to operational business documents). The Court has broad "discretion to summarily reject formalistic arguments that would otherwise be available in a traditional lawsuit." *Broadbent,* 415 Fed. App'x at 78-79 (citing *Holmberg v. Armbrecht,* 327 U.S. 392, 396 (1946), and *Quilling v. Trade Partners, Inc.,* 572 F.3d 293, 299 (6th Cir. 2009) (citation omitted) ("Contractual claims notwithstanding, the insurance policies Liberte purchased were made part of an equitable receivership subject to the court's discretion.")); *U.S. v. Durham,* 86 F.3d 70, 73 (5th Cir. 1996) ("No one can dispute that tracing

would have been permissible under the circumstances of this case […] [h]owever, the court in exercising its discretionary authority in equity was not obliged to apply tracing."); *U.S. v. Vanguard Inv. Co.,* 6 F.3d 222, 227 (4th Cir. 1993) ("[A] district court in its discretionary supervision of an equitable receivership may deny remedies like rescission and restitution where the equities of the situation suggest such a denial would be appropriate."); *S.E.C. v. Elliott,* 953 F.2d 1560, 1569 (11th Cir. 1992) ("We cannot say that the district court abused its discretion by disallowing tracing.").

In *S.E.C. v. Hyatt*, 08 C 2224, 2016 WL 2766285, at *9 (N.D. Ill. May 13, 2016), the SEC sought and obtained an equitable receivership over two individuals and an LLC. The defendants had fraudulently solicitated investments in the LLC, obtaining over $21 million from approximately 120 investors to purchase an aircraft. Each individual investor received a membership interest in one of ten LLCs managed and operated by the LLC defendant. *Hyatt,* 2016 WL 2766285, at *1-2. However, neither the LLC defendant nor its manager purchased the aircraft. Instead they, like Dragul, comingled investor funds and misappropriated them for unrelated purposes. *Id.* Relying on its broad authority and guided by "equitable principles rather than [the entity's] operating documents," the Court approved a plan of distribution that was contrary to the governing LLC documents over a creditor's objection. *Id*. (quoting *Quan*, 2013 WL 1703499, at *5). Though not a typical Ponzi scheme case, the court in *Hyatt* applied the equitable principals "particularly appropriate in a Ponzi scheme case or in those situations where the funds of defrauded investors were comingled, and the victims were similarly situated with respect to the wrongdoing." *Id.* (citing *Credit Bancorp,* 290 F. 3d at 88-89).

The same equitable principles applied in *Hyatt* should govern here where there can be no dispute Dragul comingled funds from defrauded investors. The Receiver continues to examine whether and to what extent investor contributions were actually used to fund the particular project in which they received a membership interest. As it stands, Hagshama and the non-Hagshama investors are similarly situated with the exception that Hagshama received syndication fees and preferred distributions to the detriment of other investors. Allowing Hagshama to use the fraudulently created and managed LLC structure to bar the proposed sale would simply further Dragul's fraud and Hagshama's preferential treatment.

III. Conclusion

The Receiver asks the Court to set this matter for a hearing and thereafter enter orders approving the Hickory Corners Sale Motion and authorizing the Receiver to sell the remaining seven Hagshama Project properties. This will allow the Receiver to satisfy his obligation to marshal and distribute the assets of the Estate equitably among all defrauded investors while there may still be something left to salvage.

Dated: March 8, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: *s/ Patrick D. Vellone*

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on March 8, 2019, a true and correct copy of the **Receiver's Reply in Support of Hickory Corners Sale Motion and in Response to Hagshama's Objection** was filed and served via the Colorado Courts E-Filing system to the following:

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

By: /s/ Victoria Ray
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1254746 - DRS

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
BEFORE THE CLERK

COUNTY OF CATAWBA

18-SP-450

FILED
2019 FEB 25 AM 9:10
CATAWBA Co., C.S.C.
BY TMC

IN THE MATTER OF THE FORECLOSURE by Substitute Trustee Services, Inc., Substitute Trustee, of a Deed of Trust executed by Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC dated June 29, 2017 and recorded on July 3, 2017 in Book 3406 at Page 1133 of the Catawba County Public Registry.

ORDER

THIS CAUSE, coming on to be heard before and being heard before the Hon. Terri M. Lawson, Assistant Clerk of Superior Court of Catawba County, North Carolina, upon the hearing on the foreclosure of the above-captioned Deed of Trust on Thursday, February 21, 2019 at 10:00 a.m. Michael B. Stein appeared for the Lender, Dynasty, LLC; John McNames appeared for Harvey Sender, Receiver; and Cameron Scott appeared for Substitute Trustee Services, Inc., the Substitute Trustee; and the undersigned Assistant Clerk having determined that each of the parties hereto is properly before the Court, and after hearing and considering the evidence on behalf of the parties, finds the following as fact:

FINDINGS

1. This hearing was scheduled by Substitute Trustee Services, Inc., Substitute Trustee, under this proceeding to foreclose the above-described Deed of Trust pursuant to North Carolina General Statute § 45-21.16.

2. On June 29, 2017, Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC executed a Promissory Note in the original principal amount of $1,100,000.00 payable to Dynasty, LLC; that this Note was secured by an Unconditional Guaranty Agreement executed by Gary J. Dragul and a Deed of Trust executed by Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC.

3. Substitute Trustee Services, Inc. was duly substituted as Trustee in the above described Deed of Trust by Substitution of Trustee filed on October 18, 2018 and recorded in Book 3477 at Page 553 of the Catawba County Public Registry. By virtue of such substitution, the Substitute Trustee is empowered with all the rights and obligations conferred upon the original Trustee by the Deed of Trust recorded on July 3, 2017 in Book 3406 at Page 1133 of the Catawba County Public Registry.

4. Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, the makers of the Note and the Grantors in the Deed of Trust, and Gary D. Dragul, as Guarantor, have failed to pay as agreed under the terms of the Note, Guaranty and Deed of Trust. Indeed, the Note matured on its terms on September 29, 2018.

5. Due demand was made by Dynasty, LLC, as the holder of the Note and Deed of Trust, for payment of the delinquent indebtedness.

6. The above described Deed of Trust contains a power of sale authorizing the Trustee, upon default by Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, and upon instructions by the holder of the Note, to sell at public sale the real property described therein, after compliance with the terms of the Deed of Trust and Article 2A of Chapter 45 of the North Carolina General Statutes.

7. The Substitute Trustee under the above described Deed of Trust has been instructed by the holder of the above described Note to sell the real property described in the Deed of Trust at public sale, pursuant to the power of sale contained in the Deed of Trust.

8. The present record owners of the real property are Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC.

9. This loan is not a home loan as defined in G.S. § 45-101(1b) because it is a commercial loan (i.e., it was not made primarily for personal, family or household use). As a result, a pre-foreclosure notice was not required to be sent to any party under N.C.G.S. § 53-244.111(22) or N.C.G.S. § 45-102, and N.C.G.S. § 45-21.16C is not applicable.

10. The sale is not barred by G.S. § 45-21.12A.

11. Pursuant to the provisions of North Carolina General Statutes § 45-21.16(a) and (b), a copy of the Notice of Hearing and Notice of Substitute Trustee's Foreclosure Sale of Real Property were duly served upon Harvey Sender, as Receiver for GDA Real Estate Management, Inc. as Manager for Hickory Management, LLC as Manager for Hickory Corners Box 16 A, LLC on October 22, 2018; upon Harvey Sender, as Receiver for Gary J. Dragul, Member/Manager of Hickory Corners Box 16 B, LLC on October 22, 2018; upon Harvey Sender, as Receiver for Gary J. Dragul on October 22, 2018; upon Gary J. Dragul on October 22, 2018 and October 25, 2018; upon Gary J. Dragul as Manager of GDA Real Estate Management, Inc. as Manager for Hickory Management, LLC as Manager for Hickory Corners Box 16 A, LLC on October 25, 2018; upon Gary J. Dragul, Member/Manager of Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC on October 25, 2018 and upon Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, Attn: Gary Dragul, by United Parcel Service Next Day Air, Signature Required Requested.

12. No valid defense was presented to the Court by any party as to why the foreclosure should not be held.

13. On behalf of the Receiver, John McNames made an oral motion at hearing for dismissal of this foreclosure proceeding claiming that this proceeding is enjoined by the terms of an Order from a state court action in Colorado District Court to which the Lender, Dynasty, LLC was never made a party. The Receiver's motion to dismiss this foreclosure should be, and the same herewith, is denied.

14. The Receiver has filed Motions in the Colorado lawsuit contending that there is a good chance that the subject property should be sold by March 22, 2019. For that reason, the

Court finds that the foreclosure sale in this action shall not be held prior to April 9, 2019.

AND BASED UPON THE FOREGOING FINDINGS OF FACT, the undersigned Clerk of Superior Court hereby concludes as a matter of law as follows:

1. That there exists a valid indebtedness from Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC to Dynasty, LLC, the owner and holder of the Note.

2. That Dynasty, LLC is the holder of the above described Note and Deed of Trust evidencing such indebtedness.

3. That Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, the makers of the Note, and Gary D. Dragul, the Guarantor, are now in default under the terms of the above described Deed of Trust.

4. That Substitute Trustee Services, Inc., the Substitute Trustee, possesses the right to foreclose under the terms of the above described Deed of Trust in accordance with the provisions of North Carolina General Statutes Chapter 45, Article 2A.

5. That there has been proper notice of this hearing to those persons entitled to such notice under the provisions of N.C.G.S. § 45-21.16(a) and (b).

6. This loan is not a home loan as defined in G.S. § 45-101(1b) because it is a commercial loan (i.e., it was not made primarily for personal, family or household use). As a result, a pre-foreclosure notice was not required to be sent to any party under N.C.G.S. § 53-244.111(22) or N.C.G.S. § 45-102, and N.C.G.S. § 45-21.16C is not applicable.

7. That the sale is not barred by G.S. § 45-21.12A.

8. The Receiver's Motion to dismiss this foreclosure proceeding should be and the same herewith is denied.

NOW, THEREFORE, IT IS ORDERED that the Substitute Trustee, Substitute Trustee Services, Inc., be and is hereby authorized to proceed with the foreclosure under the terms and provisions of the Deed of Trust recorded on July 3, 2017 in Book 3406 at Page 1133 of the Catawba County Public Registry, including the publishing and otherwise giving notice of a sale and conducting a sale, pursuant to the provisions of Chapter 45 of the General Statutes of North Carolina and the terms and conditions of the above described Deed of Trust; however, such sale shall not occur prior to April 9, 2019.

This the 25th day of February, 2019.

Terri M Lawson

Hon. Terri M. Lawson
Assistant Clerk of Superior Court
Catawba County, North Carolina

FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237
Phone: (720) 200-1200 Fax: (303) 889-1959

Buyers/Borrowers Closing Statement

FINAL

Escrow No: FA556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s): Hickory Corners Box 16 A, LLC, a Delaware limited liability company
Hickory Corners Box 16 B, LLC, a Delaware limited liability company

Seller(s): HD Hickory, LLC, a North Carolina limited liability company

Lender: HD Hickory, LLC, a North Carolina limited liability company. **Loan #:**

Property: Office Max @ Hickory Corners South Shopping Center | HWY 70 SE
Hickory, NC 28602

Brief Legal:

Description	Debit	Credit
TOTAL CONSIDERATION:		
Total Consideration	1,760,000.00	
Earnest Money Deposit		10,000.00
Hagshama Closing Deposit		56,465.00
CoFund Closing Deposit		23,551.00
Closing Deposit from Shopping Center F0556414		484,370.25
Equity Deposit from GDA		500,000.00
NEW AND EXISTING ENCUMBRANCES:		
PurchaseMoneyFinancingInvestors Title Exchange, QI from HD Hickory, LLC, a North Carolina limited liability company.		1,000,000.00
ESCROW CHARGES		
Escrow Closing Charge to Fidelity National Title Insurance Company	387.50	
Escrow Loan Closing Charge to Fidelity National Title Insurance Company	550.00	
TITLE CHARGES:		
Owners Policy for $1,760,000.00 to Fidelity National Title Insurance Company	2,771.50	
Lenders Policy for $1,000,000.00 to Fidelity National Title Insurance Company	25.00	
ALTA 9.2 CCRs OP to Fidelity National Title Insurance Company	191.00	
ALTA 17 Access OP to Fidelity National Title Insurance Company	100.00	
ALTA 18 Single Tax Parcel OP to Fidelity National Title Insurance Company	100.00	
ALTA 22 Location OP to Fidelity National Title Insurance Company	100.00	
ALTA 25 Survey OP to Fidelity National Title Insurance Company	100.00	
ALTA 26 Subdivision OP to Fidelity National Title Insurance Company	100.00	
Out of Pocke Fees to Fidelity National Title Insurance Company	250.00	
RECORDING FEES:		
Recording Fee Escrow to Fidelity National Title Insurance Company	400.00	
ADDITIONAL CHARGES:		
Legal Fees to Brownstein Hyatt Farber Schreck, LLP	65,000.00	
Insurance Premium to Moody Insurance Agency	989.00	
Consulting Fee to Mansfield Equities	25,000.00	
PRORATIONS AND ADJUSTMENTS:		
2017 Real Estate Taxes from 1/1/2017 to 1/27/2017 based on the Annual amount of $13,271.30		945.35
January Rents		3,150.92
January NNN		337.09
YTD Cam Reconcilliation		801.54
COMMISSIONS:		
Fee to GDA Real Estate Service	219,612.15	
Fee to Hagshama	3,945.00	
Sub Totals	2,079,621.15	2,079,621.15
Balance Due From Buyer/Borrower		
Totals	2,079,621.15	2,079,621.15

APPROVED AND ACCEPTED

Sales or use taxes on personal property not included. Fidelity National Title Company assumes no responsibility for the adjustment of special taxes or assessments unless they are shown on the Treasurer's Certificate of Taxes Due. The condition of title to the property is to be determined by reference to the title evidence provided by Seller or by personal investigation. The above statement of settlement is approved as of the settlement date shown above and Escrow Holder is hereby authorized to disburse as Trustee funds as indicated.

FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237

Phone: (720) 200-1200 Fax: (303) 889-1959

Buyers/Borrowers Closing Statement

FINAL

Escrow No: FA556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s):

Hickory Corners Box 16 A, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGNATURE PAGE

By: Gary J. Dragul, President
Hickory Corners Box 16 B, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGNATURE PAGE

By: Gary J. Dragul, President

Closing Agent:

FIDELITY NATIONAL TITLE INSURANCE COMPANY

by Lindsey Mann

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

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

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

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

By: _____
Gary J. Dragul, President

FIDELITY NATIONAL TITLE INSURANCE COMPANY

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Buyers/Borrowers Closing Statement

FINAL

Escrow No: F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s): Hickory Corners 16 A, LLC, a Delaware limited liability company
Hickory Corners 16 B, LLC, a Delaware limited liability company

Seller(s): HD Hickory, LLC, a North Carolina limited liability company

Lender: Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. **Loan #:**

Property: Hickory Corners South Shopping Center | 1718 HWY 70 SE
Hickory, NC 28602

Brief Legal:

Description	Debit	Credit
TOTAL CONSIDERATION:		
Total Consideration	12,740,000.00	
Earnest Money Deposit		140,000.00
Hagshama Closing Deposit		2,964,403.00
CoFund Closing Deposit		1,236,447.00
NEW AND EXISTING ENCUMBRANCES:		
New Loan from Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.		9,300,000.00
NEW LOAN CHARGES: - Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successo		
Good Faith Deposit		30,000.00
Application Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	7,500.00	
Servicer Set Up Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	350.00	
Site Inspection Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	1,450.00	
Issuer Reg AB II Review to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	2,400.00	
Research & Report Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	375.00	
Stub Interest Payment to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	21,410.67	
Servicer Tax Escrow to Wells Fargo	19,134.05	
Servicer Insurance Escrow to Wells Fargo	22,332.66	
Servicer TI/LC Escrow to Wells Fargo	150,000.00	
Servicer Immediate Repair Escrow to Wells Fargo	72,988.75	
Servicer Roof Reserve Escrow to Wells Fargo	644,000.00	
Servicer Toys R Us Facade Reserve Escrow to Wells Fargo	20,000.00	
Origination Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	93,000.00	
ESCROW CHARGES		
Escrow Closing Charge to Fidelity National Title Insurance Company	387.50	
Escrow Loan Closing Charge to Fidelity National Title Insurance Company	550.00	
TITLE CHARGES:		
Title Search/Exam to Fidelity National Title Insurance Company	3,025.00	
Owners Policy for $12,740,000.00 to Fidelity National Title Insurance Company	11,472.40	
Lenders Policy for $9,300,000.00 to Fidelity National Title Insurance Company	25.00	
ALTA 9.2 CCRs OP to Fidelity National Title Insurance Company	1,274.00	
ALTA 17 Access OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 18 Tax Parcel OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 22 Location OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 25 Survey OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 26 Subdivision OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 1 Street Assessments LN to Fidelity National Title Insurance Company	100.00	
ALTA 3.1 Zoning LN to Fidelity National Title Insurance Company	2,325.00	
ALTA 8.2 Environmental LN to Fidelity National Title Insurance Company	250.00	
ALTA 9 Comprehensive LN to Fidelity National Title Insurance Company	930.00	
ALTA 17.2 Utility Access LN to Fidelity National Title Insurance Company	100.00	
ALTA 19 Contiguity LN to Fidelity National Title Insurance Company	100.00	
ALTA 24 Doing Business to Fidelity National Title Insurance Company	930.00	
ALTA 27 Usury LN to Fidelity National Title Insurance Company	250.00	
ALTA 28 Forced Removal LN to Fidelity National Title Insurance Company	930.00	
Waiver of Arbitration LN to Fidelity National Title Insurance Company	100.00	

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Escrow No: F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Description	Debit	Credit
Lack of Signature LN to Fidelity National Title Insurance Company	100.00	
Estimated Easement Search to Fidelity National Title Insurance Company	1,500.00	
RECORDING FEES:		
Recording Fee Escrow to Fidelity National Title Insurance Company	500.00	
ADDITIONAL CHARGES:		
Lender Legal Fee to Cassin & Cassin	35,000.00	
Insurance Premium to Moody Insurance Agency	8,338.00	
Fees to Reinhart & Associates	20,000.00	
ESA/PCA Report to CBRE dba IVI Assessment Services	4,700.00	
Appraisal to CBRE Inc Appraisal & Valuation	6,500.00	
Zoning Report to Howard Zoning Associates	675.00	
Insurance Review to Harbor Group Consulting	2,575.00	
Lien Searches to LexisNexis Risk Assets	5,465.22	
UW & Lease Abstracts to Situs Real NY	19,520.00	
Lender Environmental Consultant to The Driscoll Company dba TDC Consulting Groupl	125.00	
Engineering & Appraisal Review to Grindstone Management	1,120.00	
Invoices to CSC	3,617.88	
Survey Reimbursement to GDA Real Estate	3,400.00	
Survey Invoice to McNeill Surveying	5,207.71	
Clearing Account Acceptance Fee to REAM - Wells Fargo	2,500.00	
Fee to Park City Commercial Properties	50,000.00	
Lender Depsoit Reimbursement to GDA Real Estate Service	30,000.00	
Broker Fee to Vista Point Partners	25,000.00	
Funds to Close Office Max FA556414 to Fidelity National Title Insurance Company	484,370.25	
PRORATIONS AND ADJUSTMENTS:		
2017 Real Estate Taxes from 1/1/2017 to 1/27/2017 based on the Annual amount of $96,066.14		6,843.07
January Rents		15,820.84
Security Depostis		15,819.65
Service Contracts		215.32
Prepaid Rents		7,770.30
Earnest Money Release to Seller		100,000.00
Conns Free Rent		124,783.36
Allstate Insurance Free Rent		221.77
Lease Renewal Commissions Whipkey & Cochrane	6,000.00	
2nd PSA Amend 5.c credit		814,000.00
January NNN		2,054.59
YTD Cam Reconcilliation		5,806.71
Miracle Ear 2 months Free Rent	2,684.52	
COMMISSIONS:		
Fee to GDA Real Estate	19,998.00	
Fee to Hagshama	207,099.00	
Sub Totals	14,764,185.61	14,764,185.61
Balance Due From Buyer/Borrower		
Totals	14,764,185.61	14,764,185.61

APPROVED AND ACCEPTED

Sales or use taxes on personal property not included. Fidelity National Title Company assumes no responsibility for the adjustment of special taxes or assessments unless they are shown on the Treasurer's Certificate of Taxes Due. The condition of title to the property is to be determined by reference to the title evidence provided by Seller or by personal investigation. The above statement of settlement is approved as of the settlement date shown above and Escrow Holder is hereby authorized to disburse as Trustee funds as indicated.

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Escrow No: F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s):

Hickory Corners 16 A, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGANTURE PAGE

By: Gary J. Dragul, President
Hickory Corners 16 B, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGANTURE PAGE

By: Gary J. Dragul, President

Closing Agent:

FIDELITY NATIONAL TITLE INSURANCE COMPANY

by Lindsey Mann

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

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

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

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

By: _____
Gary J. Dragul, President

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

OPERATING AGREEMENT

OF

HICKORY CORNERS 16 B, LLC
a Delaware limited liability company

THIS OPERATING AGREEMENT OF HICKORY CORNERS 16 B, LLC is made and entered into as of the 26th day of January, 2017 (the "**Effective Date**"), by and between those Members listed on **Exhibit A** and the other signatories hereto, on the following terms and conditions. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in **Article XIV**.

ARTICLE I

FORMATION OF THE COMPANY

1.01 Formation of the Company. On November 3, 2016, the Company was formed as a Delaware limited liability company under and pursuant to the Act by filing with the Secretary of State of the State of Delaware the Certificate of Formation. The rights and obligations of the Company and the Members shall be as provided in the Act, the Certificate of Formation, and this Agreement. This Agreement is subject to, and governed by, the Act and the Certificate of Formation. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act, or the provisions of the Certificate of Formation, such provisions of the Act, or the Certificate of Formation, as the case may be, shall be controlling. The Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

1.02 Name. The name of the Company shall be Hickory Corners 16 B, LLC, and all business of the Company shall be conducted in such name.

1.03 Address.

(a) Principal Office. The initial principal office of the Company is located at 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111, or such other place as the Manager may from time to time determine.

(b) Registered Agent and Registered Agent Address. The address of the registered office of the Company is 2711 Centerville Rd., Suite 400, Wilmington, DE, 19808, and the name of the registered agent of the Company for service of process at such address is Corporation Service Company (or such other registered office and registered agent as the Manager may from time to time select).

1.04 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.

1.05 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.

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

ARTICLE II

BUSINESS OF THE COMPANY

2.01 Business of the Company. Subject as provided under **Section 2.02**, 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.

2.02 Specific Business. Without limiting the generality of **Section 2.01**, the Company has been formed for the purpose of, as a tenant in common with Hickory Corners 16 A, LLC, a Delaware limited liability company (together, the "**Tenants in Common**") acquiring and increasing occupancy and rental income from the existing commercial space and reselling as a

single property (collectively, the "**Project**"), that certain real estate owned by the Tenants in Common as of the Effective Date commonly known as "Hickory Corners" located at 1718 US Highway 70 Southeast Hickory, North Carolina, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "**Property**"), and, until the Loan is no longer outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), the Project shall be the sole and exclusive business of the Tenants in Common.

The GDA Manager may, without further consent or approval of the Members, cause the Tenants in Common to obtain a loan from Rialto Mortgage Finance, LLC, a Delaware limited liability company (together with its successors and/or assigns, the "**Lender**"), in connection with the Project, in an aggregate amount not to exceed $10,300,000.00 in U.S. Dollars (the "**Loan**"), which Loan will be evidenced by a promissory note and other loan documents (the "**Loan Documents**"), and secured by a Deed of Trust, Assignment of Leases and Rents, fixture Filing and Security Agreement on the Property. Subject to the provisions of this Agreement governing approval rights of the Members with respect to the authority of the Manager, the Manager is authorized and directed to do all such acts and to execute, deliver and perform all such documents and instruments as the Manager deems necessary or advisable to carry out the Company's obligations with respect to the Project, Property and the Loan, as the same may be determined pursuant to this Agreement. All such instruments and documents shall be in such form and contain such terms as may be approved by the Manager. The foregoing authorization shall not be deemed a restriction on the powers of the Manager to enter into other agreements on behalf of the Company.

ARTICLE III

MEMBERS AND MEMBERSHIP INTERESTS

3.01 Members and Membership Interests. There shall be one class of Membership Interests, with the rights and privileges set forth in this Agreement. The Members intend that the Membership Interests received by the Members shall be capital interests in the Company for federal and state income tax purposes.

3.02 Initial Capital Contributions. On or prior to the Effective Date, the Members shall have contributed to the Company the cash set forth on **Exhibit A**.

3.03 Additional Capital Contributions. Members will be required to make additional Capital Contributions 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 its Percentage Interest 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 3.03** shall be deemed to be made for the benefit of any Person other than the Members and the Company, and no such third Person shall under any circumstances have any right to compel any actions or payments by the Members.

In the event any Member fails to make an additional Capital Contribution on or before the date when such amount is due ("**Default Date**"), the Member shall be deemed to be in default hereunder (a "**Defaulting Member**"). Following the Default Date, the Manager shall have the right, from time to time, and subject to the Loan Agreement, to (a) allow one or more nondefaulting Members to pay the amount of the unpaid Capital Contribution of the Defaulting Member as a Delinquency Loan (as defined below) in accordance with the procedures set forth below in **Section 3.03(a)**, (b) allow one or more of the nondefaulting Members to make a Deficit Capital Contribution (as defined below) in the amount of the unpaid Capital Contribution and the Defaulting Member's Percentage Interest shall be diluted in accordance with the procedures set forth below in **Section 3.03(b)** or (c) allow one more of the nondefaulting Members to exercise the Purchase Option (as defined below) to purchase the Defaulting Member's Membership Interest in accordance with the procedures set forth below in **Section 3.03(c)** (collectively, the "**Default Options**"). The Default Options shall not be obligatory or exclusive, and Manager may decline to allow the Default Options or may allow any combination of the Default Options in its sole discretion. Manager shall not be obligated to offer the Default Options to all of the Members, and may elect to offer the Default Options to some but not all of the Members (or none of the Members) in its sole discretion.

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

(i) Manager may allow one or more nondefaulting Members to pay on behalf of the Defaulting Member all or any part of the unpaid Capital Contribution, and the Defaulting Member shall pay such nondefaulting Member or Members (A) interest on such amount at the rate of 20% 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 Defaulting 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 Defaulting Member's Membership Interest (a "**Delinquency Loan**"). The Delinquency Loan shall be repaid on a schedule to be determined by Manager in its sole discretion (and Manager may elect to require the loan processing fee to be due and payable immediately). Until the Delinquency Loan amounts are paid in full (including all interest and fees thereon), the Defaulting Member consents to the payment and the Manager is empowered to pay to the nondefaulting Member or Members who made a Delinquency Loan all distributions to which the Defaulting Member would be entitled under this Agreement, not to exceed the amount of the Delinquency Loan (including interest and fees).

(ii) The Delinquency Loan shall not be deemed repaid, and the associated default for the failure to make the additional Capital Contribution shall not be deemed cured, unless and until the Defaulting Member shall have repaid each Delinquency Loan to each nondefaulting Member who made a Delinquency Loan, together with all interest and fees accrued thereon. For so long as a Delinquency Loan is outstanding, such Member shall not be entitled to participate with regard to any consent, approval or election that may be required or permitted under this Agreement.

(iii) Any Delinquency Loan made by a nondefaulting Member in accordance with this **Section 3.03**, together with interest and fees thereon, shall constitute a debt

due and payable to such nondefaulting Member by the Defaulting Member and, without prejudice to any other means of recovery available to the nondefaulting Member, may be recovered in any court of competent jurisdiction.

(b) Manager may allow one or more nondefaulting Members to contribute capital to the Company in an amount equal to the unpaid additional Capital Contribution of the Defaulting Member (a "**Deficit Capital Contribution**"). The Deficit Capital Contribution may be made by either a cancellation of a Delinquency Loan or by a contribution of cash, or a combination of both. If one or more nondefaulting Members elect to make Deficit Capital Contributions:

(i) the Percentage Interest of the Defaulting Member shall be adjusted accordingly, such that the Defaulting Member's Percentage Interest shall be reduced to a fraction, the numerator of which equals the aggregate Capital Contribution of the Defaulting Member and the denominator of which equals the sum of (x) 200% of the Deficit Capital Contribution made as a result of the Defaulting 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 way of cancellation of a Delinquency Loan) and (y) the aggregate Capital Contributions of all Members (including the additional Capital Contributions made pursuant to this **Section 3.03**) except those Capital Contributions described in the preceding clause (x) (the "**Dilution Formula**"); and

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

(c) At any time that an additional Capital Contribution of a Defaulting Member remains unpaid or a Delinquency Loan remains outstanding, Manager may allow one or more nondefaulting Members to purchase the Defaulting Member's Membership Interest ("**Purchase Option**"). In conjunction with exercising the Purchase Option, the nondefaulting Member or Members exercising the Purchase Option must pay the unpaid additional Capital Contribution of the Defaulting Member. The price payable for the Membership Interest of such Defaulting Member shall be an amount equal to the fair market value of the Membership Interest, as determined by Manager in its sole discretion, provided that such Membership Interest shall first be diluted pursuant to the Dilution Formula.

3.04 Loans. Subject to **Sections 3.03** hereof, and, while the Loan is outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), subject to the Loan Agreement and **Article XVII** hereof, the Company may, as determined by the Manager, borrow money from one or any of the Members or third Persons. In the event that a loan agreement is negotiated with a Member or their Affiliates, such Person shall be entitled to receive interest at a rate and upon such terms to be determined by the Manager, which will be upon the same terms or better terms to the Company than those then available from recognized financial institutions, and said loan shall be repaid by the Company to the Member, with interest, according to the terms of the loan. The loan may be evidenced by a promissory note payable by the Company in a form approved by the Manager. Such interest and repayment of the amounts so loaned are to be entitled to priority of payment over the division and distribution of Capital

Contributions and profit among Members with respect to their Membership Interests. Loans by any Member to the Company will not be considered contributions to the capital of the Company. Each Member will comply and cause its beneficial owners to comply with the terms and conditions of any loan documents entered into by the Company to the extent the same pertain to said Member or beneficial owner.

3.05 Limitation on Liability. No Member, Manager, Independent Director or Special Member shall be liable under a judgment, decree or order of any court, or in any other manner, for a debt, obligation or liability of the Company solely by reason of being a Member, Manager, Independent Director or Special Member of the Company, except as provided by law and pursuant to this Agreement. Except as provided in **Section 3.03**, no Member shall be required to loan any funds to the Company.

3.06 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

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

3.08 Percentage Interests. Each Member's (a) Percentage Interests and (b) Capital Contributions are set forth on **Exhibit A**, which the Manager shall amend from time to time to maintain the accuracy thereof, and which shall be conclusive absent manifest error.

ARTICLE IV

MEMBERS' CAPITAL ACCOUNTS

4.01 Capital Accounts. A separate Capital Account will be established and maintained on behalf of each Member. The Capital Accounts shall be maintained in accordance with the Code, including Sections 704(b) and 704(c) of the Code, Regulations and other applicable authority. In the event of a permitted Sale (as defined in **Section 9.01**) or exchange of a

Membership Interest, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest.

4.02 Withdrawal or Reduction of Members' Contributions to Capital.

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

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

(c) A Member, irrespective of the nature of the Member's contribution, has only the right to demand and receive cash in return for such Member's contribution to capital; however, the foregoing does not preclude the Company, subject to the limitation of **Section 11.03**, from distributing property other than cash to any Member.

4.03 Modification of Capital Account. Because the Members intend that Capital Accounts be maintained in accordance with the Code, the Regulations and applicable law, to accomplish that purpose, the Manager is authorized to modify the manner in which the Capital Accounts are maintained and adjustments thereto are computed, and to make any appropriate adjustments thereto, to assure such compliance; provided, however, that such modifications and adjustments will not materially alter the economic agreement between or among the Members.

4.04 No Obligation to Restore. As specified in **Section 11.03**, no Member shall have any liability to restore all or any portion of a Deficit Capital Account of such Member.

4.05 Miscellaneous.

(a) No Interest on Capital Contribution. Without derogating from the provisions of **Section 5.04**, no Member shall be entitled to or shall receive interest on such Member's Capital Contribution.

(b) No Priority of Return of Capital Contribution. Except as expressly provided herein, no Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

ARTICLE V

ALLOCATIONS AND DISTRIBUTIONS

5.01 Net Profits. Except as otherwise provided in this Agreement, including the special allocation provisions set forth in **Article XII**, 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 XII** 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 11.03(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.

5.02 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.

5.03 Reporting by Members. The Members agree to report their shares of income and loss for federal income tax purposes in accordance with this **Article V** and **Article XII**.

5.04 Distributions. Except as otherwise provided in **Section 5.06** with respect to tax distributions, the Manager may determine, in its discretion, when and how much Distributable Cash of the Company, if any, will be distributed to the Members.

(a) Any distribution of Distributable Cash under this **Section 5.04** shall be 100% to the Members, pro rata in accordance with their Percentage Interests.

(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 such distribution; provided, however, that all such distributions shall be made in accordance with the provisions of this **Section 5.04**.

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

5.05 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.

5.06 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 may, in its sole discretion and 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 5.06** shall be considered to be an advance or credit against distributions to the Members under **Section 5.04** and **Section 11.03(b)(iii)**. Distributions actually made to a Member during the calendar year with respect to which a Tax Distribution pursuant to this **Section 5.06** would otherwise be made will reduce the Tax Distributions otherwise contemplated by this **Section 5.06** with respect to such calendar year.

5.07 Withholding. 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 VI

CONSENTS VOTING AND MEETINGS

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

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

(b) By affirmative vote by the Members holding the number of Percentage Interests that would be required to approve such action at any meeting called pursuant to **Section 6.03** to consider the action for which the consent, approval or election is solicited.

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

6.03 Meetings. Meetings of the Members may be called by the Manager or by any Members holding at least 35% of the Percentage Interests.

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

6.05 Notice of Meetings. Except as provided in **Section 6.06**, 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 days and not more than 50 days before the date of the meeting, and shall be given in accordance with the notice provisions of this Agreement.

6.06 Meeting of All Members. If all the Members shall meet at any time and place, either within or outside of the State of Delaware, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

6.07 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.

6.08 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 PDF or photocopy of such proxy or attorney-in-fact designation shall have the same force and effect as the original.

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

6.10 Telephonic or Electronic Meetings. 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 speak to and hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

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

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

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

ARTICLE VII

RIGHTS AND DUTIES OF THE MANAGER

7.01 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 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 Documents, the rights and powers of the Manager include, but are not limited to, the power and authority to do the following:

(i) Power to acquire real and personal property from any Person as the Manager may direct. The fact that a Manager or Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

(ii) Power to borrow money for the Company from banks, other lending institutions, Members or Affiliates of a Member on such terms as the Manager deems appropriate (subject to **Section 3.04** in the case of loans from the Members or their Affiliates), and in connection therewith, to hypothecate, encumber and grant security interests in the assets

of the Company to secure payment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager;

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

(iv) 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);

(v) 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;

(vi) 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;

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

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

(ix) 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;

(x) 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;

(xi) Power to establish and pay compensation to any employee of the Company and the Manager;;

(xii) 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;

(xiii) 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;

(xiv) 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;

(xv) 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;

(xvi) 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;

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

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

(xix) Power to designate an employee or agent to be responsible for the daily and continuing operations of the business affairs of the Company. 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;

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

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

(xxii) Power to take any other actions as the Manager in its reasonable judgment deems necessary for the protection of life or health or 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. In such event, the Manager shall notify the Members of each such action contemporaneously therewith or as soon as reasonably practicable thereafter.

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

7.02 Number, Tenure, Election, and Qualifications.

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

(b) Tenure. Hickory Management, LLC shall act as Manager until, subject to the Loan Agreement, its dissolution, resignation or removal under this Agreement. The Manager may only be removed by the Members if it has engaged in gross negligence, fraud, willful misconduct or a material wrongful taking and Members owning at least 75% of the Percentage Interests agree in writing to remove the Manager. If a Manager wishes to resign or is to be removed, all Members agree to promptly work on installing a new Manager. A successor Manager must be appointed and approved by Members owning at least 75% of the Percentage Interests and the successor Manager must execute a counterpart to this Agreement. It is the intent and agreement of all Members to negotiate and act in good faith in the selection of a new Manager. If the Members are unable to select a new Manager in a timely manner, the Members agree to participate in mediation with a business mediator in order to attempt to select a new Manager.

7.03 Devotion to Duty.

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

(b) Reliance by Manager. In performing its duties as manager of the Company, the Manager shall be entitled to rely on information, opinions, reports or statements of

the following persons or groups, unless the Manager has knowledge or reasonably ought to have knowledge concerning the matter in question that would cause such reliance to be unwarranted:

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

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

(iii) A committee upon which the Manager does not serve, duly designated in accordance with this Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit confidence.

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

7.04 Management Fee. The Property Manager shall be entitled to receive from the Company a management fee equal to the Company's percentage interest in the Property (the "**Property Percentage Interest**") multiplied by 4% of the monthly effective gross income of the Company time 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.

7.05 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 7.05**, and the Members consent to the payment of such fees to the Operator by the Company.

(a) 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 the Property Percentage Interest multiplied by 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.

(b) Leasing Fees.

(i) In the event that lease of any portion of the Property is entered into with a new tenant (a "**New Lease**"), the Operator shall be paid a fee (a "**Leasing Fee**") in the amount of the Property Percentage Interest multiplied by $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 the Property Percentage Interest multiplied by $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.

7.06 No Exclusive Duty to Company. The Manager shall not be required to manage the Company as its sole and exclusive function or business, and any Manager, Independent Director or Special Member may have other business interests, which may compete with the business of the Company, and such Manager, Independent Director or Special Member may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of any of the Managers, Independent Director or Special Member or to the income or proceeds derived therefrom.

7.07 Bank Accounts. As set forth above, the Manager may from time to time open bank accounts in the name of the Company, and the Manager shall have the right to designate the signatories thereon.

7.08 Indemnification.

(a) 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 7.08**), 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.

(b) The satisfaction of any indemnification obligation pursuant to this **Section 7.08** shall be from and limited to Company assets (including insurance proceeds) 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.

(c) 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.

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

ARTICLE VIII

BOOKS RECORDS AND ADMINISTRATION

8.01 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.

8.02 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at the principal office of the Company, 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 records and documents at the Member's expense to the extent required by the Act to be made available to a Member.

8.03 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.

8.04 Tax Matters Partner.

(a) If GDA Manager is a Manager, GDA Manager shall be the "tax matters partner" as defined in section 6231(a)(7) of the Code, and, after the effective date of the Bipartisan Budget Act of 2015, the "partnership representative" as defined in Section 6223 of the Code (in either case, the "**Tax Matters Partner**"). If GDA Manager is not a Manager or is unable to be the Tax Matters Partner, a Tax Matters Partner shall be designated by unanimous consent of the Members. The Tax Matters Partner is authorized and required to represent the Company, at the Company's expense, in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and to expend Company funds for professional services and costs associated therewith. The Tax Matters Partner shall give prompt notice to each other Member of any and all material notices it receives from the Internal Revenue Service or other taxing authority concerning the Company, including any notice of audit, any notice of action with respect to a revenue or taxing agent's report, any notice of a 30-day appeal letter or similar letter, and any notice of a deficiency in tax concerning the Company. The Tax Matters Partner shall at the Company's expense, furnish each Member with status reports regarding any negotiations between the Internal Revenue Service or other taxing authority and the Company. The Company shall reimburse the Tax Matters Partner for its reasonable out-of-pocket expenses incurred in performing its duties as Tax Matters Partner. The Tax Matters Partner shall not enter into any settlement with any taxing authority (federal, state or local), or extend the statute of limitations, on behalf of the Company or the Members, without the approval of at least 80% of the Percentage Interest.

(b) The Tax Matters Partner is authorized, in its sole discretion, to elect the safe harbor described in Internal Revenue Service Notice 2005-43, I.R.B. 2005-24 (June 13, 2005), or as otherwise described in a subsequent Revenue Procedure, proposed regulations, or other statutory or regulatory authority implementing the concepts articulated in Notice 2005 -43 (together referred to as "Notice 2005-43") (the safe harbor election referred to herein as the "**Safe Harbor Election**"), and if such election is made, the Company and each of its undersigned current and future Members agree to comply with all requirements of the Safe Harbor Election, as reasonably requested by the Manager, described in Notice 2005-43 with respect to all Percentages transferred in connection with the performance of services while the election remains effective. If a Member that is bound by these provisions Transfers a Percentage to another Person, the Person to whom the Percentage is transferred must assume the transferring Member's obligations under this Agreement.

(c) In order to make the Safe Harbor Election authorized hereby, the Company must, and the Tax Matters Partner is authorized to, prepare a document, executed by the Tax Matters Partner, stating that the Tax Matters Partner is electing, on behalf of the Company and each of its Members, to have the Safe Harbor Election described in Notice 2005-43 apply irrevocably with respect to all Percentage Interest transferred in connection with the performance of services while the Safe Harbor Election remains in effect. The Safe Harbor Election must specify the effective date of the Safe Harbor Election, and the effective date for the Safe Harbor Election may not be prior to the date that the Safe Harbor Election is executed. The Safe Harbor Election must be attached to the tax return for the Company for the taxable year that includes the effective date of the Safe Harbor Election.

(d) All Members shall comply with the requirements of the Safe Harbor Election and report consistently on their tax returns in accordance therewith, as reasonably requested by the Tax Matters Partner.

(e) Upon satisfying the requirements under Notice 2005-43 for termination of a Safe Harbor Election, the Tax Matters Partner may affirmatively terminate a Safe Harbor Election by preparing a document, duly executed by the Tax Matters Partner, indicating that the Tax Matters Partner, on behalf of the Company and each of its Members, is revoking its Safe Harbor Election under Notice 2005-43 and the effective date of the revocation, provided that the effective date may not be prior to the date the election to terminate is executed. Such termination election must be attached to the tax return for the Company for the taxable year that includes the effective date of the election.

ARTICLE IX

TRANSFERABILITY

9.01 Restrictions on Transferability. Except as otherwise specifically provided herein, a Member shall not have the right to directly or indirectly Sell, Assign, Transfer, exchange or otherwise Transfer for consideration (collectively, "**Sell**" or "**Sale**"), or to give, bequeath or otherwise Transfer for no consideration whether or not by operation of law (collectively "**Gift**") or in any other manner whatsoever dispose of all or any part of the Member's Membership Interest in the Company; provided, however, each Member may Sell or Gift its Economic Interest (as defined in **Section 9.05**) without the consent of the Manager and without causing application of the right of first refusal under **Section 9.02**, provided such Sale or Gift is in compliance with the Loan Agreement and **Section 9.03** hereof. Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable. In the event that any Member pledges or otherwise encumbers any of its Membership Interests as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all the terms and conditions of this **Article IX**. "**Transfer**" shall mean Assign, Sell, Gift, or "Transfer" (or terms of similar import) in accordance with the broadest definition set forth in any documents pertaining to any present or future loan to the Company, or secured by the Property or any property owned by the foregoing.

9.02 Right of First Refusal.

(a) In the event a Member other than Gary J. Dragul ("**Dragul**") desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser or to any other Member, the Selling Member shall obtain from such third party purchaser or other Member a bona fide written offer ("**Purchase Offer**") to purchase such Membership Interest in the Company, the terms and conditions upon which the purchase is to be made and the consideration offered therefor. The Selling Member shall give written notification to Dragul of its intention to so Transfer such Membership Interest in the Company, furnishing to Dragul a copy of the aforesaid Purchase Offer to purchase such Membership Interest in the Company.

(b) Dragul shall have a right of first refusal to purchase all the Membership Interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the Purchase Offer. Within 30 days after receipt of written notice from the Selling Member, Dragul shall notify the Selling Member and the Manager whether it intends to exercise its option to purchase the Membership Interest and what percentage, if any, of the Membership Interest Dragul desires to purchase. The failure of Dragul to so notify the Selling Member and the Manager of his desire to exercise this right of first refusal within said 30-day period shall result in the termination of the right of first refusal by Dragul, and the Selling Member shall be entitled, subject to the Loan Agreement, to consummate the Sale of its Membership Interest in the Company, or such portion of its Membership Interest, if any, with respect to which the right of first refusal has not been exercised, to such third party purchaser submitting the Purchase Offer upon the terms and conditions set forth in the Purchase Offer; provided that if such Sale is not consummated within 90 days after expiration of the 30-day period described above, such Membership Interest may not thereafter be sold unless the provisions of this **Section 9.02** are complied with again in connection with such Sale. For these purposes, the Purchase Offer shall constitute adequate notice by Dragul of his exercise of his rights hereunder.

9.03 Permitted Transfers.

(a) In the event of the Sale of the Selling Member's Membership Interest in the Company to a third-party purchaser or any other Member (either pursuant to the Purchase Offer or the right of first refusal under **Section 9.02**) or the Gift of a Membership Interest in the Company, and as a condition to recognizing the effectiveness and binding nature of any such Sale and (subject to **Section 9.05(a)**, below) substitution of a transferee or assignee as a Member with respect to their Membership Interest as against the Company or otherwise, the Manager may require the Selling Member or Gifting Member and the proposed transferee, assignee or successor-in-interest or Substituted Member to execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Manager may deem necessary or desirable to (i) constitute such purchaser, transferee, assignee, successor-in-interest or Substituted Member as such; (ii) confirm that the transferee, assignee or successor-in-interest desiring to acquire a Membership Interest in the Company, or to be admitted as a Substituted Member, has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of the Agreement, as the same may have been further amended; (iii) preserve the Company after the completion of such Sale, Transfer, Assignment or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, a termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable State and Federal Securities laws and regulations.

(b) The Selling Member and the Gifting Member (collectively, the "**Transferring Member**") agree upon request of the Manager to execute such certificates or other documents and perform such other acts as may be reasonably requested by the Manager from time to time in connection with such Sale or Gift. The Transferring Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or

expense (including, without limitations, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this **Article IX**.

9.04 Transfers Not Subject to Right of First Refusal. Subject to **Section 9.05(a)**, a Transferring Member may Transfer all or any portion of its Membership Interest without causing application of the right of first refusal under **Section 9.02**; provided, however, that (i) the transferee or other successor-in-interest (collectively, "**transferee**") complies with **Section 9.05**, (ii) that the transferee is either the Transferring Member's spouse, former spouse, sibling, or lineal descendant (including adopted children) or a trust created for one or more of their benefit, or in the case of a corporate Member, a Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the corporate Member; and (iii) the transferee will hold the Transferring Member's Membership Interest subject to the terms and conditions of this Agreement including, but not limited to, this **Article IX** with respect to any subsequent Sale or Gift. In the event of the Transfer of all or any portion of a Transferring Member's Membership Interest to one or more transferees who are under the age of majority, one or more trusts shall be established to hold the Transferring Member's Membership Interest or the Membership Interest shall be held by a conservator or custodian for the benefit of such transferee until the transferee reaches the age of majority.

9.05 Transfer of Membership Interest.

(a) Notwithstanding anything contained herein to the contrary (including, without limitation, **Sections 9.02, 9.03, and 9.04** hereof), if the Manager does not approve of the proposed Sale or Gift of the Transferring Member's Membership Interest, the proposed purchaser, transferee or assignee of the Transferring Member's Membership Interest shall have no right with respect to or by virtue of the Transferring Member's Membership Interest to participate in the management of the business and affairs of the Company or to become a Substituted Member. The purchaser, transferee, assignee or donee shall only be entitled to receive the share of profits or other compensation by way of income and the return of Capital Contributions, to which the Transferring Member would have otherwise been entitled (the "**Economic Interest**" of a Member). No Transfer of a Member's Membership Interest in the Company shall be effective unless and until written notice (including the name and address of the purchaser, transferee, assignee or donee and the date of such Transfer) has been provided to the Manager and if such notice is given and this **Article IX** has been complied with, the Transfer shall be effective as of the last day of the calendar month during which the notice was given. Each Member hereby acknowledges the reasonableness of the restrictions on Sale and Gift of Membership Interests imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on Sale and Gift contained herein shall be specifically enforceable.

(b) Upon and contemporaneously with any Sale or Gift of a Transferring Member's Economic Interest in the Company which does not at the same time Transfer the Transferring Member's other Membership Interests in the Company (including, without limitation, the voting rights of the Transferring Member), the Company shall purchase from the Transferring Member, and the Transferring Member shall sell to the Company for a purchase price of $10.00, all remaining Membership Interests not transferred by the Transferring Member which were previously attributable to the Transferring Member's Membership Interest,

including voting rights and associated rights to participate in the business and affairs of the Company attributable to the transferred Membership Interest. Upon the purchase by the Company of all such remaining Membership Interests not transferred by the Transferring Member which were previously attributable to the Transferring Member's Membership Interest, solely for purposes of determining the voting rights and associated rights to participate in the business and affairs of the Company, the Percentage Interests of the remaining Members shall be recomputed so that the Percentage Interests of the remaining Members shall be increased pro rata in accordance with the respective Percentage Interests then applicable for such remaining Members with respect to voting rights and associated rights.

9.06 Withdrawal. Except as otherwise provided in this Agreement no Member shall withdraw as a Member from the Company. If a Member does withdraw in violation of this Agreement, then the Company may recover damages from the Member and offset any amounts otherwise distributable to the Member.

ARTICLE X

NEW AND SUBSTITUTED MEMBERS

10.01 New and Substituted Members. From the date of the formation of the Company, subject to the Loan Documents, any Person may become a Member in the Company either (i) by the issuance or sale by the Company of new Membership Interests ("**New Member**"), provided the admission of the New Member is approved by unanimous consent of the Members, or (ii) as set forth in **Article IX**, as a transferee of a Member's Membership Interest or any portion thereof (a "**Substituted Member**"), subject to the terms and conditions of this Agreement. The Manager shall have the right to adjust each Member's Percentage Interest (and distributions in accordance with **Section 5.04** to the extent a new class of membership with different economic rights are created) in connection with the admission of a New Member or Substituted Member. No New Members or Substituted Members shall be entitled to any retroactive allocation of losses, profits, income, expenses or deductions incurred by the Company; however, the Manager may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

10.02 Requirements for Admission of a New or Substituted Member. As a condition precedent to admission of any Person as a New Member or Substituted Member, such Person must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary or desirable to: (i) constitute such New Member or Substituted Member as such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the existence of the Company after the completion of the issuance of a Membership Interest to a New Member or Transfer of a Membership Interest to a Substituted Member under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain

the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, the termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable state and federal securities laws and regulations. Any such admission of a Person as a New Member shall be effective upon such Person's compliance with the foregoing conditions applicable to a New Member, as evidenced by the reflection of such Person on **Exhibit A** as a member of the Company.

ARTICLE XI

DISSOLUTION AND TERMINATION

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

(a) Subject to the limitations and restrictions set forth in this Agreement, by election of the Manager.

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

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

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

11.03 Winding Up, Liquidation and Distribution of Assets.

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

(b) Winding Up. If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with or not necessary or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Certificate of Cancellation has been filed in accordance with the Act. The

Liquidator shall be responsible for overseeing the winding up of the Company, shall take full account of the Company's liabilities and property, shall cause the property to be liquidated as promptly as is consistent with obtaining the fair value thereof (except to the extent the Liquidator determines to distribute any assets to the Members in kind with the prior consent of such Members), shall allocate any profit and loss resulting from such sales to the Members as set forth in **Article V** and **Article XII** and shall cause the proceeds therefrom, to the extent thereof, to be applied and distributed in the following order:

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

(ii) Second, to the payment and discharge of all the Company's debts and liabilities to Members, other than on account of such Member's Membership Interest in the Company capital and profits;

(iii) The balance, if any, to the Members, in accordance with **Section 5.04(a)**. To the extent reasonably practical, any such distribution to Members in respect of their Capital Accounts shall be made within the time limits set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations.

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

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

(e) Termination; Compliance with Laws. Upon the filing of the Certificate of Cancellation, the Company shall be deemed terminated. The Liquidator shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

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

11.05 Filing of Certificate of Cancellation.

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

(b) Upon the filing of the Certificate of Cancellation in accordance with the Act, the separate legal existence of the Company shall cease. Prior to such filing, the Liquidator shall have authority to distribute in accordance with **Section 5.04(a)**, any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

11.06 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 XII

SPECIAL ALLOCATIONS

Notwithstanding **Article V**, the following provisions shall govern allocations. Any and all allocations hereunder or under any other provision of this Agreement shall be made in a manner that as nearly as possible takes account of the waterfall of distributions as set forth in **Section 5.04(a)** and that is in accordance with the Code and the Regulations, provided that to the extent possible, any such allocations shall not in any way affect or negate the economic effect of the waterfall of distributions as set forth in **Section 5.04(a)**:

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

12.02 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

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STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
BEFORE THE CLERK

COUNTY OF CATAWBA

18-SP-450

FILED
2019 FEB 25 AM 9:10
CATAWBA Co., C.S.C.
BY TMC

IN THE MATTER OF THE FORECLOSURE by Substitute Trustee Services, Inc., Substitute Trustee, of a Deed of Trust executed by Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC dated June 29, 2017 and recorded on July 3, 2017 in Book 3406 at Page 1133 of the Catawba County Public Registry.

ORDER

THIS CAUSE, coming on to be heard before and being heard before the Hon. Terri M. Lawson, Assistant Clerk of Superior Court of Catawba County, North Carolina, upon the hearing on the foreclosure of the above-captioned Deed of Trust on Thursday, February 21, 2019 at 10:00 a.m. Michael B. Stein appeared for the Lender, Dynasty, LLC; John McNames appeared for Harvey Sender, Receiver; and Cameron Scott appeared for Substitute Trustee Services, Inc., the Substitute Trustee; and the undersigned Assistant Clerk having determined that each of the parties hereto is properly before the Court, and after hearing and considering the evidence on behalf of the parties, finds the following as fact:

FINDINGS

1. This hearing was scheduled by Substitute Trustee Services, Inc., Substitute Trustee, under this proceeding to foreclose the above-described Deed of Trust pursuant to North Carolina General Statute § 45-21.16.

2. On June 29, 2017, Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC executed a Promissory Note in the original principal amount of $1,100,000.00 payable to Dynasty, LLC; that this Note was secured by an Unconditional Guaranty Agreement executed by Gary J. Dragul and a Deed of Trust executed by Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC.

3. Substitute Trustee Services, Inc. was duly substituted as Trustee in the above described Deed of Trust by Substitution of Trustee filed on October 18, 2018 and recorded in Book 3477 at Page 553 of the Catawba County Public Registry. By virtue of such substitution, the Substitute Trustee is empowered with all the rights and obligations conferred upon the original Trustee by the Deed of Trust recorded on July 3, 2017 in Book 3406 at Page 1133 of the Catawba County Public Registry.

4. Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, the makers of the Note and the Grantors in the Deed of Trust, and Gary D. Dragul, as Guarantor, have failed to pay as agreed under the terms of the Note, Guaranty and Deed of Trust. Indeed, the Note matured on its terms on September 29, 2018.

5. Due demand was made by Dynasty, LLC, as the holder of the Note and Deed of Trust, for payment of the delinquent indebtedness.

6. The above described Deed of Trust contains a power of sale authorizing the Trustee, upon default by Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, and upon instructions by the holder of the Note, to sell at public sale the real property described therein, after compliance with the terms of the Deed of Trust and Article 2A of Chapter 45 of the North Carolina General Statutes.

7. The Substitute Trustee under the above described Deed of Trust has been instructed by the holder of the above described Note to sell the real property described in the Deed of Trust at public sale, pursuant to the power of sale contained in the Deed of Trust.

8. The present record owners of the real property are Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC.

9. This loan is not a home loan as defined in G.S. § 45-101(1b) because it is a commercial loan (i.e., it was not made primarily for personal, family or household use). As a result, a pre-foreclosure notice was not required to be sent to any party under N.C.G.S. § 53-244.111(22) or N.C.G.S. § 45-102, and N.C.G.S. § 45-21.16C is not applicable.

10. The sale is not barred by G.S. § 45-21.12A.

11. Pursuant to the provisions of North Carolina General Statutes § 45-21.16(a) and (b), a copy of the Notice of Hearing and Notice of Substitute Trustee's Foreclosure Sale of Real Property were duly served upon Harvey Sender, as Receiver for GDA Real Estate Management, Inc. as Manager for Hickory Management, LLC as Manager for Hickory Corners Box 16 A, LLC on October 22, 2018; upon Harvey Sender, as Receiver for Gary J. Dragul, Member/Manager of Hickory Corners Box 16 B, LLC on October 22, 2018; upon Harvey Sender, as Receiver for Gary J. Dragul on October 22, 2018; upon Gary J. Dragul on October 22, 2018 and October 25, 2018; upon Gary J. Dragul as Manager of GDA Real Estate Management, Inc. as Manager for Hickory Management, LLC as Manager for Hickory Corners Box 16 A, LLC on October 25, 2018; upon Gary J. Dragul, Member/Manager of Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC on October 25, 2018 and upon Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, Attn: Gary Dragul, by United Parcel Service Next Day Air, Signature Required Requested.

12. No valid defense was presented to the Court by any party as to why the foreclosure should not be held.

13. On behalf of the Receiver, John McNames made an oral motion at hearing for dismissal of this foreclosure proceeding claiming that this proceeding is enjoined by the terms of an Order from a state court action in Colorado District Court to which the Lender, Dynasty, LLC was never made a party. The Receiver's motion to dismiss this foreclosure should be, and the same herewith, is denied.

14. The Receiver has filed Motions in the Colorado lawsuit contending that there is a good chance that the subject property should be sold by March 22, 2019. For that reason, the

Court finds that the foreclosure sale in this action shall not be held prior to April 9, 2019.

AND BASED UPON THE FOREGOING FINDINGS OF FACT, the undersigned Clerk of Superior Court hereby concludes as a matter of law as follows:

1. That there exists a valid indebtedness from Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC to Dynasty, LLC, the owner and holder of the Note.

2. That Dynasty, LLC is the holder of the above described Note and Deed of Trust evidencing such indebtedness.

3. That Hickory Corners Box 16 A, LLC and Hickory Corners Box 16 B, LLC, the makers of the Note, and Gary D. Dragul, the Guarantor, are now in default under the terms of the above described Deed of Trust.

4. That Substitute Trustee Services, Inc., the Substitute Trustee, possesses the right to foreclose under the terms of the above described Deed of Trust in accordance with the provisions of North Carolina General Statutes Chapter 45, Article 2A.

5. That there has been proper notice of this hearing to those persons entitled to such notice under the provisions of N.C.G.S. § 45-21.16(a) and (b).

6. This loan is not a home loan as defined in G.S. § 45-101(1b) because it is a commercial loan (i.e., it was not made primarily for personal, family or household use). As a result, a pre-foreclosure notice was not required to be sent to any party under N.C.G.S. § 53-244.111(22) or N.C.G.S. § 45-102, and N.C.G.S. § 45-21.16C is not applicable.

7. That the sale is not barred by G.S. § 45-21.12A.

8. The Receiver's Motion to dismiss this foreclosure proceeding should be and the same herewith is denied.

NOW, THEREFORE, IT IS ORDERED that the Substitute Trustee, Substitute Trustee Services, Inc., be and is hereby authorized to proceed with the foreclosure under the terms and provisions of the Deed of Trust recorded on July 3, 2017 in Book 3406 at Page 1133 of the Catawba County Public Registry, including the publishing and otherwise giving notice of a sale and conducting a sale, pursuant to the provisions of Chapter 45 of the General Statutes of North Carolina and the terms and conditions of the above described Deed of Trust; however, such sale shall not occur prior to April 9, 2019.

This the 25th day of February, 2019.

Terri M Lawson

Hon. Terri M. Lawson
Assistant Clerk of Superior Court
Catawba County, North Carolina

FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237
Phone: (720) 200-1200 Fax: (303) 889-1959

Buyers/Borrowers Closing Statement

FINAL

Escrow No: FA556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s): Hickory Corners Box 16 A, LLC, a Delaware limited liability company
Hickory Corners Box 16 B, LLC, a Delaware limited liability company

Seller(s): HD Hickory, LLC, a North Carolina limited liability company

Lender: HD Hickory, LLC, a North Carolina limited liability company. **Loan #:**

Property: Office Max @ Hickory Corners South Shopping Center | HWY 70 SE
Hickory, NC 28602

Brief Legal:

Description	Debit	Credit
TOTAL CONSIDERATION:		
Total Consideration	1,760,000.00	
Earnest Money Deposit		10,000.00
Hagshama Closing Deposit		56,465.00
CoFund Closing Deposit		23,551.00
Closing Deposit from Shopping Center F0556414		484,370.25
Equity Deposit from GDA		500,000.00
NEW AND EXISTING ENCUMBRANCES:		
PurchaseMoneyFinancingInvestors Title Exchange, QI from HD Hickory, LLC, a North Carolina limited liability company.		1,000,000.00
ESCROW CHARGES		
Escrow Closing Charge to Fidelity National Title Insurance Company	387.50	
Escrow Loan Closing Charge to Fidelity National Title Insurance Company	550.00	
TITLE CHARGES:		
Owners Policy for $1,760,000.00 to Fidelity National Title Insurance Company	2,771.50	
Lenders Policy for $1,000,000.00 to Fidelity National Title Insurance Company	25.00	
ALTA 9.2 CCRs OP to Fidelity National Title Insurance Company	191.00	
ALTA 17 Access OP to Fidelity National Title Insurance Company	100.00	
ALTA 18 Single Tax Parcel OP to Fidelity National Title Insurance Company	100.00	
ALTA 22 Location OP to Fidelity National Title Insurance Company	100.00	
ALTA 25 Survey OP to Fidelity National Title Insurance Company	100.00	
ALTA 26 Subdivision OP to Fidelity National Title Insurance Company	100.00	
Out of Pocke Fees to Fidelity National Title Insurance Company	250.00	
RECORDING FEES:		
Recording Fee Escrow to Fidelity National Title Insurance Company	400.00	
ADDITIONAL CHARGES:		
Legal Fees to Brownstein Hyatt Farber Schreck, LLP	65,000.00	
Insurance Premium to Moody Insurance Agency	989.00	
Consulting Fee to Mansfield Equities	25,000.00	
PRORATIONS AND ADJUSTMENTS:		
2017 Real Estate Taxes from 1/1/2017 to 1/27/2017 based on the Annual amount of $13,271.30		945.35
January Rents		3,150.92
January NNN		337.09
YTD Cam Reconcilliation		801.54
COMMISSIONS:		
Fee to GDA Real Estate Service	219,612.15	
Fee to Hagshama	3,945.00	
Sub Totals	2,079,621.15	2,079,621.15
Balance Due From Buyer/Borrower		
Totals	2,079,621.15	2,079,621.15

APPROVED AND ACCEPTED

Sales or use taxes on personal property not included. Fidelity National Title Company assumes no responsibility for the adjustment of special taxes or assessments unless they are shown on the Treasurer's Certificate of Taxes Due. The condition of title to the property is to be determined by reference to the title evidence provided by Seller or by personal investigation. The above statement of settlement is approved as of the settlement date shown above and Escrow Holder is hereby authorized to disburse as Trustee funds as indicated.

FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237

Phone: (720) 200-1200 Fax: (303) 889-1959

Buyers/Borrowers Closing Statement

FINAL

Escrow No: FA556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s):

Hickory Corners Box 16 A, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGNATURE PAGE

By: Gary J. Dragul, President
Hickory Corners Box 16 B, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGNATURE PAGE

By: Gary J. Dragul, President

Closing Agent:

FIDELITY NATIONAL TITLE INSURANCE COMPANY

by Lindsey Mann

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

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

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

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

By: _____
Gary J. Dragul, President

FIDELITY NATIONAL TITLE INSURANCE COMPANY

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Buyers/Borrowers Closing Statement

FINAL

Escrow No: F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s): Hickory Corners 16 A, LLC, a Delaware limited liability company
Hickory Corners 16 B, LLC, a Delaware limited liability company

Seller(s): HD Hickory, LLC, a North Carolina limited liability company

Lender: Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. **Loan #:**

Property: Hickory Corners South Shopping Center | 1718 HWY 70 SE
Hickory, NC 28602

Brief Legal:

Description	Debit	Credit
TOTAL CONSIDERATION:		
Total Consideration	12,740,000.00	
Earnest Money Deposit		140,000.00
Hagshama Closing Deposit		2,964,403.00
CoFund Closing Deposit		1,236,447.00
NEW AND EXISTING ENCUMBRANCES:		
New Loan from Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.		9,300,000.00
NEW LOAN CHARGES: - Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successo		
Good Faith Deposit		30,000.00
Application Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	7,500.00	
Servicer Set Up Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	350.00	
Site Inspection Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	1,450.00	
Issuer Reg AB II Review to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	2,400.00	
Research & Report Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	375.00	
Stub Interest Payment to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	21,410.67	
Servicer Tax Escrow to Wells Fargo	19,134.05	
Servicer Insurance Escrow to Wells Fargo	22,332.66	
Servicer TI/LC Escrow to Wells Fargo	150,000.00	
Servicer Immediate Repair Escrow to Wells Fargo	72,988.75	
Servicer Roof Reserve Escrow to Wells Fargo	644,000.00	
Servicer Toys R Us Facade Reserve Escrow to Wells Fargo	20,000.00	
Origination Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear.	93,000.00	
ESCROW CHARGES		
Escrow Closing Charge to Fidelity National Title Insurance Company	387.50	
Escrow Loan Closing Charge to Fidelity National Title Insurance Company	550.00	
TITLE CHARGES:		
Title Search/Exam to Fidelity National Title Insurance Company	3,025.00	
Owners Policy for $12,740,000.00 to Fidelity National Title Insurance Company	11,472.40	
Lenders Policy for $9,300,000.00 to Fidelity National Title Insurance Company	25.00	
ALTA 9.2 CCRs OP to Fidelity National Title Insurance Company	1,274.00	
ALTA 17 Access OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 18 Tax Parcel OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 22 Location OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 25 Survey OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 26 Subdivision OP & LN to Fidelity National Title Insurance Company	100.00	
ALTA 1 Street Assessments LN to Fidelity National Title Insurance Company	100.00	
ALTA 3.1 Zoning LN to Fidelity National Title Insurance Company	2,325.00	
ALTA 8.2 Environmental LN to Fidelity National Title Insurance Company	250.00	
ALTA 9 Comprehensive LN to Fidelity National Title Insurance Company	930.00	
ALTA 17.2 Utility Access LN to Fidelity National Title Insurance Company	100.00	
ALTA 19 Contiguity LN to Fidelity National Title Insurance Company	100.00	
ALTA 24 Doing Business to Fidelity National Title Insurance Company	930.00	
ALTA 27 Usury LN to Fidelity National Title Insurance Company	250.00	
ALTA 28 Forced Removal LN to Fidelity National Title Insurance Company	930.00	
Waiver of Arbitration LN to Fidelity National Title Insurance Company	100.00	

FIDELITY NATIONAL TITLE INSURANCE COMPANY

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Phone: (720) 200-1200 Fax: (303) 889-1959

Buyers/Borrowers Closing Statement

FINAL

Escrow No: F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Description	Debit	Credit
Lack of Signature LN to Fidelity National Title Insurance Company	100.00	
Estimated Easement Search to Fidelity National Title Insurance Company	1,500.00	
RECORDING FEES:		
Recording Fee Escrow to Fidelity National Title Insurance Company	500.00	
ADDITIONAL CHARGES:		
Lender Legal Fee to Cassin & Cassin	35,000.00	
Insurance Premium to Moody Insurance Agency	8,338.00	
Fees to Reinhart & Associates	20,000.00	
ESA/PCA Report to CBRE dba IVI Assessment Services	4,700.00	
Appraisal to CBRE Inc Appraisal & Valuation	6,500.00	
Zoning Report to Howard Zoning Associates	675.00	
Insurance Review to Harbor Group Consulting	2,575.00	
Lien Searches to LexisNexis Risk Assets	5,465.22	
UW & Lease Abstracts to Situs Real NY	19,520.00	
Lender Environmental Consultant to The Driscoll Company dba TDC Consulting Groupl	125.00	
Engineering & Appraisal Review to Grindstone Management	1,120.00	
Invoices to CSC	3,617.88	
Survey Reimbursement to GDA Real Estate	3,400.00	
Survey Invoice to McNeill Surveying	5,207.71	
Clearing Account Acceptance Fee to REAM - Wells Fargo	2,500.00	
Fee to Park City Commercial Properties	50,000.00	
Lender Depsoit Reimbursement to GDA Real Estate Service	30,000.00	
Broker Fee to Vista Point Partners	25,000.00	
Funds to Close Office Max FA556414 to Fidelity National Title Insurance Company	484,370.25	
PRORATIONS AND ADJUSTMENTS:		
2017 Real Estate Taxes from 1/1/2017 to 1/27/2017 based on the Annual amount of $96,066.14		6,843.07
January Rents		15,820.84
Security Depostis		15,819.65
Service Contracts		215.32
Prepaid Rents		7,770.30
Earnest Money Release to Seller		100,000.00
Conns Free Rent		124,783.36
Allstate Insurance Free Rent		221.77
Lease Renewal Commissions Whipkey & Cochrane	6,000.00	
2nd PSA Amend 5.c credit		814,000.00
January NNN		2,054.59
YTD Cam Reconcilliation		5,806.71
Miracle Ear 2 months Free Rent	2,684.52	
COMMISSIONS:		
Fee to GDA Real Estate	19,998.00	
Fee to Hagshama	207,099.00	
Sub Totals	14,764,185.61	14,764,185.61
Balance Due From Buyer/Borrower		
Totals	14,764,185.61	14,764,185.61

APPROVED AND ACCEPTED

Sales or use taxes on personal property not included. Fidelity National Title Company assumes no responsibility for the adjustment of special taxes or assessments unless they are shown on the Treasurer's Certificate of Taxes Due. The condition of title to the property is to be determined by reference to the title evidence provided by Seller or by personal investigation. The above statement of settlement is approved as of the settlement date shown above and Escrow Holder is hereby authorized to disburse as Trustee funds as indicated.

FIDELITY NATIONAL TITLE INSURANCE COMPANY

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Buyers/Borrowers Closing Statement

FINAL

Escrow No: F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

Buyer(s)/Borrower(s):

Hickory Corners 16 A, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGANTURE PAGE

By: Gary J. Dragul, President
Hickory Corners 16 B, LLC, a Delaware limited liability company

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

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

SEE ATTACHED SIGANTURE PAGE

By: Gary J. Dragul, President

Closing Agent:

FIDELITY NATIONAL TITLE INSURANCE COMPANY

by Lindsey Mann

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

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

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

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

By: _____
Gary J. Dragul, President

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

OPERATING AGREEMENT

OF

HICKORY CORNERS 16 B, LLC
a Delaware limited liability company

THIS OPERATING AGREEMENT OF HICKORY CORNERS 16 B, LLC is made and entered into as of the 26th day of January, 2017 (the "**Effective Date**"), by and between those Members listed on **Exhibit A** and the other signatories hereto, on the following terms and conditions. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in **Article XIV**.

ARTICLE I

FORMATION OF THE COMPANY

1.01 Formation of the Company. On November 3, 2016, the Company was formed as a Delaware limited liability company under and pursuant to the Act by filing with the Secretary of State of the State of Delaware the Certificate of Formation. The rights and obligations of the Company and the Members shall be as provided in the Act, the Certificate of Formation, and this Agreement. This Agreement is subject to, and governed by, the Act and the Certificate of Formation. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act, or the provisions of the Certificate of Formation, such provisions of the Act, or the Certificate of Formation, as the case may be, shall be controlling. The Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.

1.02 Name. The name of the Company shall be Hickory Corners 16 B, LLC, and all business of the Company shall be conducted in such name.

1.03 Address.

(a) Principal Office. The initial principal office of the Company is located at 5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111, or such other place as the Manager may from time to time determine.

(b) Registered Agent and Registered Agent Address. The address of the registered office of the Company is 2711 Centerville Rd., Suite 400, Wilmington, DE, 19808, and the name of the registered agent of the Company for service of process at such address is Corporation Service Company (or such other registered office and registered agent as the Manager may from time to time select).

1.04 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.

1.05 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.

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

ARTICLE II

BUSINESS OF THE COMPANY

2.01 Business of the Company. Subject as provided under **Section 2.02**, 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.

2.02 Specific Business. Without limiting the generality of **Section 2.01**, the Company has been formed for the purpose of, as a tenant in common with Hickory Corners 16 A, LLC, a Delaware limited liability company (together, the "**Tenants in Common**") acquiring and increasing occupancy and rental income from the existing commercial space and reselling as a

single property (collectively, the "**Project**"), that certain real estate owned by the Tenants in Common as of the Effective Date commonly known as "Hickory Corners" located at 1718 US Highway 70 Southeast Hickory, North Carolina, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "**Property**"), and, until the Loan is no longer outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), the Project shall be the sole and exclusive business of the Tenants in Common.

The GDA Manager may, without further consent or approval of the Members, cause the Tenants in Common to obtain a loan from Rialto Mortgage Finance, LLC, a Delaware limited liability company (together with its successors and/or assigns, the "**Lender**"), in connection with the Project, in an aggregate amount not to exceed $10,300,000.00 in U.S. Dollars (the "**Loan**"), which Loan will be evidenced by a promissory note and other loan documents (the "**Loan Documents**"), and secured by a Deed of Trust, Assignment of Leases and Rents, fixture Filing and Security Agreement on the Property. Subject to the provisions of this Agreement governing approval rights of the Members with respect to the authority of the Manager, the Manager is authorized and directed to do all such acts and to execute, deliver and perform all such documents and instruments as the Manager deems necessary or advisable to carry out the Company's obligations with respect to the Project, Property and the Loan, as the same may be determined pursuant to this Agreement. All such instruments and documents shall be in such form and contain such terms as may be approved by the Manager. The foregoing authorization shall not be deemed a restriction on the powers of the Manager to enter into other agreements on behalf of the Company.

ARTICLE III

MEMBERS AND MEMBERSHIP INTERESTS

3.01 Members and Membership Interests. There shall be one class of Membership Interests, with the rights and privileges set forth in this Agreement. The Members intend that the Membership Interests received by the Members shall be capital interests in the Company for federal and state income tax purposes.

3.02 Initial Capital Contributions. On or prior to the Effective Date, the Members shall have contributed to the Company the cash set forth on **Exhibit A**.

3.03 Additional Capital Contributions. Members will be required to make additional Capital Contributions 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 its Percentage Interest 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 3.03** shall be deemed to be made for the benefit of any Person other than the Members and the Company, and no such third Person shall under any circumstances have any right to compel any actions or payments by the Members.

In the event any Member fails to make an additional Capital Contribution on or before the date when such amount is due ("**Default Date**"), the Member shall be deemed to be in default hereunder (a "**Defaulting Member**"). Following the Default Date, the Manager shall have the right, from time to time, and subject to the Loan Agreement, to (a) allow one or more nondefaulting Members to pay the amount of the unpaid Capital Contribution of the Defaulting Member as a Delinquency Loan (as defined below) in accordance with the procedures set forth below in **Section 3.03(a)**, (b) allow one or more of the nondefaulting Members to make a Deficit Capital Contribution (as defined below) in the amount of the unpaid Capital Contribution and the Defaulting Member's Percentage Interest shall be diluted in accordance with the procedures set forth below in **Section 3.03(b)** or (c) allow one more of the nondefaulting Members to exercise the Purchase Option (as defined below) to purchase the Defaulting Member's Membership Interest in accordance with the procedures set forth below in **Section 3.03(c)** (collectively, the "**Default Options**"). The Default Options shall not be obligatory or exclusive, and Manager may decline to allow the Default Options or may allow any combination of the Default Options in its sole discretion. Manager shall not be obligated to offer the Default Options to all of the Members, and may elect to offer the Default Options to some but not all of the Members (or none of the Members) in its sole discretion.

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

(i) Manager may allow one or more nondefaulting Members to pay on behalf of the Defaulting Member all or any part of the unpaid Capital Contribution, and the Defaulting Member shall pay such nondefaulting Member or Members (A) interest on such amount at the rate of 20% 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 Defaulting 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 Defaulting Member's Membership Interest (a "**Delinquency Loan**"). The Delinquency Loan shall be repaid on a schedule to be determined by Manager in its sole discretion (and Manager may elect to require the loan processing fee to be due and payable immediately). Until the Delinquency Loan amounts are paid in full (including all interest and fees thereon), the Defaulting Member consents to the payment and the Manager is empowered to pay to the nondefaulting Member or Members who made a Delinquency Loan all distributions to which the Defaulting Member would be entitled under this Agreement, not to exceed the amount of the Delinquency Loan (including interest and fees).

(ii) The Delinquency Loan shall not be deemed repaid, and the associated default for the failure to make the additional Capital Contribution shall not be deemed cured, unless and until the Defaulting Member shall have repaid each Delinquency Loan to each nondefaulting Member who made a Delinquency Loan, together with all interest and fees accrued thereon. For so long as a Delinquency Loan is outstanding, such Member shall not be entitled to participate with regard to any consent, approval or election that may be required or permitted under this Agreement.

(iii) Any Delinquency Loan made by a nondefaulting Member in accordance with this **Section 3.03**, together with interest and fees thereon, shall constitute a debt

due and payable to such nondefaulting Member by the Defaulting Member and, without prejudice to any other means of recovery available to the nondefaulting Member, may be recovered in any court of competent jurisdiction.

(b) Manager may allow one or more nondefaulting Members to contribute capital to the Company in an amount equal to the unpaid additional Capital Contribution of the Defaulting Member (a "**Deficit Capital Contribution**"). The Deficit Capital Contribution may be made by either a cancellation of a Delinquency Loan or by a contribution of cash, or a combination of both. If one or more nondefaulting Members elect to make Deficit Capital Contributions:

(i) the Percentage Interest of the Defaulting Member shall be adjusted accordingly, such that the Defaulting Member's Percentage Interest shall be reduced to a fraction, the numerator of which equals the aggregate Capital Contribution of the Defaulting Member and the denominator of which equals the sum of (x) 200% of the Deficit Capital Contribution made as a result of the Defaulting 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 way of cancellation of a Delinquency Loan) and (y) the aggregate Capital Contributions of all Members (including the additional Capital Contributions made pursuant to this **Section 3.03**) except those Capital Contributions described in the preceding clause (x) (the "**Dilution Formula**"); and

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

(c) At any time that an additional Capital Contribution of a Defaulting Member remains unpaid or a Delinquency Loan remains outstanding, Manager may allow one or more nondefaulting Members to purchase the Defaulting Member's Membership Interest ("**Purchase Option**"). In conjunction with exercising the Purchase Option, the nondefaulting Member or Members exercising the Purchase Option must pay the unpaid additional Capital Contribution of the Defaulting Member. The price payable for the Membership Interest of such Defaulting Member shall be an amount equal to the fair market value of the Membership Interest, as determined by Manager in its sole discretion, provided that such Membership Interest shall first be diluted pursuant to the Dilution Formula.

3.04 Loans. Subject to **Sections 3.03** hereof, and, while the Loan is outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), subject to the Loan Agreement and **Article XVII** hereof, the Company may, as determined by the Manager, borrow money from one or any of the Members or third Persons. In the event that a loan agreement is negotiated with a Member or their Affiliates, such Person shall be entitled to receive interest at a rate and upon such terms to be determined by the Manager, which will be upon the same terms or better terms to the Company than those then available from recognized financial institutions, and said loan shall be repaid by the Company to the Member, with interest, according to the terms of the loan. The loan may be evidenced by a promissory note payable by the Company in a form approved by the Manager. Such interest and repayment of the amounts so loaned are to be entitled to priority of payment over the division and distribution of Capital

Contributions and profit among Members with respect to their Membership Interests. Loans by any Member to the Company will not be considered contributions to the capital of the Company. Each Member will comply and cause its beneficial owners to comply with the terms and conditions of any loan documents entered into by the Company to the extent the same pertain to said Member or beneficial owner.

3.05 Limitation on Liability. No Member, Manager, Independent Director or Special Member shall be liable under a judgment, decree or order of any court, or in any other manner, for a debt, obligation or liability of the Company solely by reason of being a Member, Manager, Independent Director or Special Member of the Company, except as provided by law and pursuant to this Agreement. Except as provided in **Section 3.03**, no Member shall be required to loan any funds to the Company.

3.06 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

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

3.08 Percentage Interests. Each Member's (a) Percentage Interests and (b) Capital Contributions are set forth on **Exhibit A**, which the Manager shall amend from time to time to maintain the accuracy thereof, and which shall be conclusive absent manifest error.

ARTICLE IV

MEMBERS' CAPITAL ACCOUNTS

4.01 Capital Accounts. A separate Capital Account will be established and maintained on behalf of each Member. The Capital Accounts shall be maintained in accordance with the Code, including Sections 704(b) and 704(c) of the Code, Regulations and other applicable authority. In the event of a permitted Sale (as defined in **Section 9.01**) or exchange of a

Membership Interest, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest.

4.02 Withdrawal or Reduction of Members' Contributions to Capital.

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

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

(c) A Member, irrespective of the nature of the Member's contribution, has only the right to demand and receive cash in return for such Member's contribution to capital; however, the foregoing does not preclude the Company, subject to the limitation of **Section 11.03**, from distributing property other than cash to any Member.

4.03 Modification of Capital Account. Because the Members intend that Capital Accounts be maintained in accordance with the Code, the Regulations and applicable law, to accomplish that purpose, the Manager is authorized to modify the manner in which the Capital Accounts are maintained and adjustments thereto are computed, and to make any appropriate adjustments thereto, to assure such compliance; provided, however, that such modifications and adjustments will not materially alter the economic agreement between or among the Members.

4.04 No Obligation to Restore. As specified in **Section 11.03**, no Member shall have any liability to restore all or any portion of a Deficit Capital Account of such Member.

4.05 Miscellaneous.

(a) No Interest on Capital Contribution. Without derogating from the provisions of **Section 5.04**, no Member shall be entitled to or shall receive interest on such Member's Capital Contribution.

(b) No Priority of Return of Capital Contribution. Except as expressly provided herein, no Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

ARTICLE V

ALLOCATIONS AND DISTRIBUTIONS

5.01 Net Profits. Except as otherwise provided in this Agreement, including the special allocation provisions set forth in **Article XII**, 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 XII** 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 11.03(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.

5.02 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.

5.03 Reporting by Members. The Members agree to report their shares of income and loss for federal income tax purposes in accordance with this **Article V** and **Article XII**.

5.04 Distributions. Except as otherwise provided in **Section 5.06** with respect to tax distributions, the Manager may determine, in its discretion, when and how much Distributable Cash of the Company, if any, will be distributed to the Members.

(a) Any distribution of Distributable Cash under this **Section 5.04** shall be 100% to the Members, pro rata in accordance with their Percentage Interests.

(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 such distribution; provided, however, that all such distributions shall be made in accordance with the provisions of this **Section 5.04**.

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

5.05 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.

5.06 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 may, in its sole discretion and 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 5.06** shall be considered to be an advance or credit against distributions to the Members under **Section 5.04** and **Section 11.03(b)(iii)**. Distributions actually made to a Member during the calendar year with respect to which a Tax Distribution pursuant to this **Section 5.06** would otherwise be made will reduce the Tax Distributions otherwise contemplated by this **Section 5.06** with respect to such calendar year.

5.07 Withholding. 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 VI

CONSENTS VOTING AND MEETINGS

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

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

(b) By affirmative vote by the Members holding the number of Percentage Interests that would be required to approve such action at any meeting called pursuant to **Section 6.03** to consider the action for which the consent, approval or election is solicited.

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

6.03 Meetings. Meetings of the Members may be called by the Manager or by any Members holding at least 35% of the Percentage Interests.

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

6.05 Notice of Meetings. Except as provided in **Section 6.06**, 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 days and not more than 50 days before the date of the meeting, and shall be given in accordance with the notice provisions of this Agreement.

6.06 Meeting of All Members. If all the Members shall meet at any time and place, either within or outside of the State of Delaware, and consent to the holding of a meeting at such time and place, such meeting shall be valid without call or notice, and at such meeting lawful action may be taken.

6.07 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.

6.08 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 PDF or photocopy of such proxy or attorney-in-fact designation shall have the same force and effect as the original.

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

6.10 Telephonic or Electronic Meetings. 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 speak to and hear each other during the meeting. A Member so participating is deemed to be present in person at the meeting.

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

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

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

ARTICLE VII

RIGHTS AND DUTIES OF THE MANAGER

7.01 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 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 Documents, the rights and powers of the Manager include, but are not limited to, the power and authority to do the following:

(i) Power to acquire real and personal property from any Person as the Manager may direct. The fact that a Manager or Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Manager from dealing with that Person;

(ii) Power to borrow money for the Company from banks, other lending institutions, Members or Affiliates of a Member on such terms as the Manager deems appropriate (subject to **Section 3.04** in the case of loans from the Members or their Affiliates), and in connection therewith, to hypothecate, encumber and grant security interests in the assets

of the Company to secure payment of the borrowed sums. No debt shall be contracted or liability incurred by or on behalf of the Company except by the Manager, or to the extent permitted under the Act, by agents or employees of the Company expressly authorized to contract such debt or incur such liability by the Manager;

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

(iv) 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);

(v) 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;

(vi) 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;

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

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

(ix) 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;

(x) 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;

(xi) Power to establish and pay compensation to any employee of the Company and the Manager;;

(xii) 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;

(xiii) 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;

(xiv) 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;

(xv) 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;

(xvi) 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;

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

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

(xix) Power to designate an employee or agent to be responsible for the daily and continuing operations of the business affairs of the Company. 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;

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

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

(xxii) Power to take any other actions as the Manager in its reasonable judgment deems necessary for the protection of life or health or 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. In such event, the Manager shall notify the Members of each such action contemporaneously therewith or as soon as reasonably practicable thereafter.

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

7.02 Number, Tenure, Election, and Qualifications.

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

(b) Tenure. Hickory Management, LLC shall act as Manager until, subject to the Loan Agreement, its dissolution, resignation or removal under this Agreement. The Manager may only be removed by the Members if it has engaged in gross negligence, fraud, willful misconduct or a material wrongful taking and Members owning at least 75% of the Percentage Interests agree in writing to remove the Manager. If a Manager wishes to resign or is to be removed, all Members agree to promptly work on installing a new Manager. A successor Manager must be appointed and approved by Members owning at least 75% of the Percentage Interests and the successor Manager must execute a counterpart to this Agreement. It is the intent and agreement of all Members to negotiate and act in good faith in the selection of a new Manager. If the Members are unable to select a new Manager in a timely manner, the Members agree to participate in mediation with a business mediator in order to attempt to select a new Manager.

7.03 Devotion to Duty.

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

(b) Reliance by Manager. In performing its duties as manager of the Company, the Manager shall be entitled to rely on information, opinions, reports or statements of

the following persons or groups, unless the Manager has knowledge or reasonably ought to have knowledge concerning the matter in question that would cause such reliance to be unwarranted:

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

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

(iii) A committee upon which the Manager does not serve, duly designated in accordance with this Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit confidence.

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

7.04 Management Fee. The Property Manager shall be entitled to receive from the Company a management fee equal to the Company's percentage interest in the Property (the "**Property Percentage Interest**") multiplied by 4% of the monthly effective gross income of the Company time 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.

7.05 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 7.05**, and the Members consent to the payment of such fees to the Operator by the Company.

(a) 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 the Property Percentage Interest multiplied by 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.

(b) Leasing Fees.

(i) In the event that lease of any portion of the Property is entered into with a new tenant (a "**New Lease**"), the Operator shall be paid a fee (a "**Leasing Fee**") in the amount of the Property Percentage Interest multiplied by $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 the Property Percentage Interest multiplied by $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.

7.06 No Exclusive Duty to Company. The Manager shall not be required to manage the Company as its sole and exclusive function or business, and any Manager, Independent Director or Special Member may have other business interests, which may compete with the business of the Company, and such Manager, Independent Director or Special Member may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of any of the Managers, Independent Director or Special Member or to the income or proceeds derived therefrom.

7.07 Bank Accounts. As set forth above, the Manager may from time to time open bank accounts in the name of the Company, and the Manager shall have the right to designate the signatories thereon.

7.08 Indemnification.

(a) 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 7.08**), 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.

(b) The satisfaction of any indemnification obligation pursuant to this **Section 7.08** shall be from and limited to Company assets (including insurance proceeds) 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.

(c) 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.

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

ARTICLE VIII

BOOKS RECORDS AND ADMINISTRATION

8.01 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.

8.02 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at the principal office of the Company, 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 records and documents at the Member's expense to the extent required by the Act to be made available to a Member.

8.03 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.

8.04 Tax Matters Partner.

(a) If GDA Manager is a Manager, GDA Manager shall be the "tax matters partner" as defined in section 6231(a)(7) of the Code, and, after the effective date of the Bipartisan Budget Act of 2015, the "partnership representative" as defined in Section 6223 of the Code (in either case, the "**Tax Matters Partner**"). If GDA Manager is not a Manager or is unable to be the Tax Matters Partner, a Tax Matters Partner shall be designated by unanimous consent of the Members. The Tax Matters Partner is authorized and required to represent the Company, at the Company's expense, in connection with all examinations of the Company's affairs by tax authorities, including resulting judicial and administrative proceedings, and to expend Company funds for professional services and costs associated therewith. The Tax Matters Partner shall give prompt notice to each other Member of any and all material notices it receives from the Internal Revenue Service or other taxing authority concerning the Company, including any notice of audit, any notice of action with respect to a revenue or taxing agent's report, any notice of a 30-day appeal letter or similar letter, and any notice of a deficiency in tax concerning the Company. The Tax Matters Partner shall at the Company's expense, furnish each Member with status reports regarding any negotiations between the Internal Revenue Service or other taxing authority and the Company. The Company shall reimburse the Tax Matters Partner for its reasonable out-of-pocket expenses incurred in performing its duties as Tax Matters Partner. The Tax Matters Partner shall not enter into any settlement with any taxing authority (federal, state or local), or extend the statute of limitations, on behalf of the Company or the Members, without the approval of at least 80% of the Percentage Interest.

(b) The Tax Matters Partner is authorized, in its sole discretion, to elect the safe harbor described in Internal Revenue Service Notice 2005-43, I.R.B. 2005-24 (June 13, 2005), or as otherwise described in a subsequent Revenue Procedure, proposed regulations, or other statutory or regulatory authority implementing the concepts articulated in Notice 2005 -43 (together referred to as "Notice 2005-43") (the safe harbor election referred to herein as the "**Safe Harbor Election**"), and if such election is made, the Company and each of its undersigned current and future Members agree to comply with all requirements of the Safe Harbor Election, as reasonably requested by the Manager, described in Notice 2005-43 with respect to all Percentages transferred in connection with the performance of services while the election remains effective. If a Member that is bound by these provisions Transfers a Percentage to another Person, the Person to whom the Percentage is transferred must assume the transferring Member's obligations under this Agreement.

(c) In order to make the Safe Harbor Election authorized hereby, the Company must, and the Tax Matters Partner is authorized to, prepare a document, executed by the Tax Matters Partner, stating that the Tax Matters Partner is electing, on behalf of the Company and each of its Members, to have the Safe Harbor Election described in Notice 2005-43 apply irrevocably with respect to all Percentage Interest transferred in connection with the performance of services while the Safe Harbor Election remains in effect. The Safe Harbor Election must specify the effective date of the Safe Harbor Election, and the effective date for the Safe Harbor Election may not be prior to the date that the Safe Harbor Election is executed. The Safe Harbor Election must be attached to the tax return for the Company for the taxable year that includes the effective date of the Safe Harbor Election.

(d) All Members shall comply with the requirements of the Safe Harbor Election and report consistently on their tax returns in accordance therewith, as reasonably requested by the Tax Matters Partner.

(e) Upon satisfying the requirements under Notice 2005-43 for termination of a Safe Harbor Election, the Tax Matters Partner may affirmatively terminate a Safe Harbor Election by preparing a document, duly executed by the Tax Matters Partner, indicating that the Tax Matters Partner, on behalf of the Company and each of its Members, is revoking its Safe Harbor Election under Notice 2005-43 and the effective date of the revocation, provided that the effective date may not be prior to the date the election to terminate is executed. Such termination election must be attached to the tax return for the Company for the taxable year that includes the effective date of the election.

ARTICLE IX

TRANSFERABILITY

9.01 Restrictions on Transferability. Except as otherwise specifically provided herein, a Member shall not have the right to directly or indirectly Sell, Assign, Transfer, exchange or otherwise Transfer for consideration (collectively, "**Sell**" or "**Sale**"), or to give, bequeath or otherwise Transfer for no consideration whether or not by operation of law (collectively "**Gift**") or in any other manner whatsoever dispose of all or any part of the Member's Membership Interest in the Company; provided, however, each Member may Sell or Gift its Economic Interest (as defined in **Section 9.05**) without the consent of the Manager and without causing application of the right of first refusal under **Section 9.02**, provided such Sale or Gift is in compliance with the Loan Agreement and **Section 9.03** hereof. Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable. In the event that any Member pledges or otherwise encumbers any of its Membership Interests as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all the terms and conditions of this **Article IX**. "**Transfer**" shall mean Assign, Sell, Gift, or "Transfer" (or terms of similar import) in accordance with the broadest definition set forth in any documents pertaining to any present or future loan to the Company, or secured by the Property or any property owned by the foregoing.

9.02 Right of First Refusal.

(a) In the event a Member other than Gary J. Dragul ("**Dragul**") desires to sell all or any portion of its Membership Interest in the Company to a third party purchaser or to any other Member, the Selling Member shall obtain from such third party purchaser or other Member a bona fide written offer ("**Purchase Offer**") to purchase such Membership Interest in the Company, the terms and conditions upon which the purchase is to be made and the consideration offered therefor. The Selling Member shall give written notification to Dragul of its intention to so Transfer such Membership Interest in the Company, furnishing to Dragul a copy of the aforesaid Purchase Offer to purchase such Membership Interest in the Company.

(b) Dragul shall have a right of first refusal to purchase all the Membership Interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the Purchase Offer. Within 30 days after receipt of written notice from the Selling Member, Dragul shall notify the Selling Member and the Manager whether it intends to exercise its option to purchase the Membership Interest and what percentage, if any, of the Membership Interest Dragul desires to purchase. The failure of Dragul to so notify the Selling Member and the Manager of his desire to exercise this right of first refusal within said 30-day period shall result in the termination of the right of first refusal by Dragul, and the Selling Member shall be entitled, subject to the Loan Agreement, to consummate the Sale of its Membership Interest in the Company, or such portion of its Membership Interest, if any, with respect to which the right of first refusal has not been exercised, to such third party purchaser submitting the Purchase Offer upon the terms and conditions set forth in the Purchase Offer; provided that if such Sale is not consummated within 90 days after expiration of the 30-day period described above, such Membership Interest may not thereafter be sold unless the provisions of this **Section 9.02** are complied with again in connection with such Sale. For these purposes, the Purchase Offer shall constitute adequate notice by Dragul of his exercise of his rights hereunder.

9.03 Permitted Transfers.

(a) In the event of the Sale of the Selling Member's Membership Interest in the Company to a third-party purchaser or any other Member (either pursuant to the Purchase Offer or the right of first refusal under **Section 9.02**) or the Gift of a Membership Interest in the Company, and as a condition to recognizing the effectiveness and binding nature of any such Sale and (subject to **Section 9.05(a)**, below) substitution of a transferee or assignee as a Member with respect to their Membership Interest as against the Company or otherwise, the Manager may require the Selling Member or Gifting Member and the proposed transferee, assignee or successor-in-interest or Substituted Member to execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Manager may deem necessary or desirable to (i) constitute such purchaser, transferee, assignee, successor-in-interest or Substituted Member as such; (ii) confirm that the transferee, assignee or successor-in-interest desiring to acquire a Membership Interest in the Company, or to be admitted as a Substituted Member, has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of the Agreement, as the same may have been further amended; (iii) preserve the Company after the completion of such Sale, Transfer, Assignment or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, a termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable State and Federal Securities laws and regulations.

(b) The Selling Member and the Gifting Member (collectively, the "**Transferring Member**") agree upon request of the Manager to execute such certificates or other documents and perform such other acts as may be reasonably requested by the Manager from time to time in connection with such Sale or Gift. The Transferring Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or

expense (including, without limitations, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this **Article IX**.

9.04 Transfers Not Subject to Right of First Refusal. Subject to **Section 9.05(a)**, a Transferring Member may Transfer all or any portion of its Membership Interest without causing application of the right of first refusal under **Section 9.02**; provided, however, that (i) the transferee or other successor-in-interest (collectively, "**transferee**") complies with **Section 9.05**, (ii) that the transferee is either the Transferring Member's spouse, former spouse, sibling, or lineal descendant (including adopted children) or a trust created for one or more of their benefit, or in the case of a corporate Member, a Person that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the corporate Member; and (iii) the transferee will hold the Transferring Member's Membership Interest subject to the terms and conditions of this Agreement including, but not limited to, this **Article IX** with respect to any subsequent Sale or Gift. In the event of the Transfer of all or any portion of a Transferring Member's Membership Interest to one or more transferees who are under the age of majority, one or more trusts shall be established to hold the Transferring Member's Membership Interest or the Membership Interest shall be held by a conservator or custodian for the benefit of such transferee until the transferee reaches the age of majority.

9.05 Transfer of Membership Interest.

(a) Notwithstanding anything contained herein to the contrary (including, without limitation, **Sections 9.02, 9.03, and 9.04** hereof), if the Manager does not approve of the proposed Sale or Gift of the Transferring Member's Membership Interest, the proposed purchaser, transferee or assignee of the Transferring Member's Membership Interest shall have no right with respect to or by virtue of the Transferring Member's Membership Interest to participate in the management of the business and affairs of the Company or to become a Substituted Member. The purchaser, transferee, assignee or donee shall only be entitled to receive the share of profits or other compensation by way of income and the return of Capital Contributions, to which the Transferring Member would have otherwise been entitled (the "**Economic Interest**" of a Member). No Transfer of a Member's Membership Interest in the Company shall be effective unless and until written notice (including the name and address of the purchaser, transferee, assignee or donee and the date of such Transfer) has been provided to the Manager and if such notice is given and this **Article IX** has been complied with, the Transfer shall be effective as of the last day of the calendar month during which the notice was given. Each Member hereby acknowledges the reasonableness of the restrictions on Sale and Gift of Membership Interests imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on Sale and Gift contained herein shall be specifically enforceable.

(b) Upon and contemporaneously with any Sale or Gift of a Transferring Member's Economic Interest in the Company which does not at the same time Transfer the Transferring Member's other Membership Interests in the Company (including, without limitation, the voting rights of the Transferring Member), the Company shall purchase from the Transferring Member, and the Transferring Member shall sell to the Company for a purchase price of $10.00, all remaining Membership Interests not transferred by the Transferring Member which were previously attributable to the Transferring Member's Membership Interest,

including voting rights and associated rights to participate in the business and affairs of the Company attributable to the transferred Membership Interest. Upon the purchase by the Company of all such remaining Membership Interests not transferred by the Transferring Member which were previously attributable to the Transferring Member's Membership Interest, solely for purposes of determining the voting rights and associated rights to participate in the business and affairs of the Company, the Percentage Interests of the remaining Members shall be recomputed so that the Percentage Interests of the remaining Members shall be increased pro rata in accordance with the respective Percentage Interests then applicable for such remaining Members with respect to voting rights and associated rights.

9.06 Withdrawal. Except as otherwise provided in this Agreement no Member shall withdraw as a Member from the Company. If a Member does withdraw in violation of this Agreement, then the Company may recover damages from the Member and offset any amounts otherwise distributable to the Member.

ARTICLE X

NEW AND SUBSTITUTED MEMBERS

10.01 New and Substituted Members. From the date of the formation of the Company, subject to the Loan Documents, any Person may become a Member in the Company either (i) by the issuance or sale by the Company of new Membership Interests ("**New Member**"), provided the admission of the New Member is approved by unanimous consent of the Members, or (ii) as set forth in **Article IX**, as a transferee of a Member's Membership Interest or any portion thereof (a "**Substituted Member**"), subject to the terms and conditions of this Agreement. The Manager shall have the right to adjust each Member's Percentage Interest (and distributions in accordance with **Section 5.04** to the extent a new class of membership with different economic rights are created) in connection with the admission of a New Member or Substituted Member. No New Members or Substituted Members shall be entitled to any retroactive allocation of losses, profits, income, expenses or deductions incurred by the Company; however, the Manager may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

10.02 Requirements for Admission of a New or Substituted Member. As a condition precedent to admission of any Person as a New Member or Substituted Member, such Person must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary or desirable to: (i) constitute such New Member or Substituted Member as such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the existence of the Company after the completion of the issuance of a Membership Interest to a New Member or Transfer of a Membership Interest to a Substituted Member under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain

the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, the termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable state and federal securities laws and regulations. Any such admission of a Person as a New Member shall be effective upon such Person's compliance with the foregoing conditions applicable to a New Member, as evidenced by the reflection of such Person on **Exhibit A** as a member of the Company.

ARTICLE XI

DISSOLUTION AND TERMINATION

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

(a) Subject to the limitations and restrictions set forth in this Agreement, by election of the Manager.

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

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

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

11.03 Winding Up, Liquidation and Distribution of Assets.

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

(b) Winding Up. If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with or not necessary or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Certificate of Cancellation has been filed in accordance with the Act. The

Liquidator shall be responsible for overseeing the winding up of the Company, shall take full account of the Company's liabilities and property, shall cause the property to be liquidated as promptly as is consistent with obtaining the fair value thereof (except to the extent the Liquidator determines to distribute any assets to the Members in kind with the prior consent of such Members), shall allocate any profit and loss resulting from such sales to the Members as set forth in **Article V** and **Article XII** and shall cause the proceeds therefrom, to the extent thereof, to be applied and distributed in the following order:

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

(ii) Second, to the payment and discharge of all the Company's debts and liabilities to Members, other than on account of such Member's Membership Interest in the Company capital and profits;

(iii) The balance, if any, to the Members, in accordance with **Section 5.04(a)**. To the extent reasonably practical, any such distribution to Members in respect of their Capital Accounts shall be made within the time limits set forth in Section 1.704-1(b)(2)(ii)(b)(2) of the Regulations.

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

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

(e) Termination; Compliance with Laws. Upon the filing of the Certificate of Cancellation, the Company shall be deemed terminated. The Liquidator shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final distribution of its assets.

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

11.05 Filing of Certificate of Cancellation.

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

(b) Upon the filing of the Certificate of Cancellation in accordance with the Act, the separate legal existence of the Company shall cease. Prior to such filing, the Liquidator shall have authority to distribute in accordance with **Section 5.04(a)**, any Company property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

11.06 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 XII

SPECIAL ALLOCATIONS

Notwithstanding **Article V**, the following provisions shall govern allocations. Any and all allocations hereunder or under any other provision of this Agreement shall be made in a manner that as nearly as possible takes account of the waterfall of distributions as set forth in **Section 5.04(a)** and that is in accordance with the Code and the Regulations, provided that to the extent possible, any such allocations shall not in any way affect or negate the economic effect of the waterfall of distributions as set forth in **Section 5.04(a)**:

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

12.02 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 12.02** be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

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

12.04 Minimum Gain Chargeback. Notwithstanding any other portion of this **Article XII** and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company's minimum gain as determined under Sections 1.704-2(b)(2) and 1.704-2(d) of the Regulations during a taxable year of the Company, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704-2(g) of the Regulations. This **Section 12.04** is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion, in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion the Managers may in their discretion (and shall if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704-2(f)(4).

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

12.06 Allocation of Nonrecourse Deductions. Beginning in the first taxable year in which there are allocations of "nonrecourse deductions" (as described in Section 1.704-2(b) of the Regulations) attributable to nonrecourse liabilities of the Company and thereafter throughout the full term of the Company nonrecourse deductions shall be allocated to the Members pro rata in accordance with their Percentage Interests.

12.07 Intention of Allocation. Any credit or charge to the Capital Accounts of the Members pursuant to **Sections 12.01** thr ough **Section 12.06**, inclusive, sha ll be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to **Section 5.01** so that the net amount of any items charged or credited to Capital Accounts pursuant to **Section 5.01** 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 V** if the special allocations required by **Section 12.01** through **Section 12.06**, inclusive had not occurred.

12.08 Code Section 704(c) Allocations.

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

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

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

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

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

If any portion of the property contributed consists of property which had been contributed by the distributee Member to the Company then such property shall not be taken into account under this **Section 12.08** and shall not be taken into account in determining the amount of the Net Pre-contribution Gain. If the property distributed consists of an interest in an Entity the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

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

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

12.11 Other Allocations.

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

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

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

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

(e) Except as otherwise provided in the preceding provisions of **Article XII**, 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.

(g) If any Company expenditure treated as a deduction on its federal income tax return is disallowed as a deduction on its federal income tax return and treated as a distribution pursuant to Section 731(a) of the Code, there shall be a special allocation of gross income to the Member deemed to have received such distribution equal to the amount of such distribution.

ARTICLE XIII

DEFAULT AND REMEDIES

13.01 Default. The failure of a Member hereto to comply with any of the monetary provisions of this Agreement when due or the failure of either party hereto to comply with any of the non-monetary provisions of this Agreement and the continuance of such non-monetary failure for a period of 30 days after written notice thereof is given to such party by the other party specifying the nature thereof shall constitute a default hereunder and shall be considered a "**Delinquent Member**" as further defined herein below. Notwithstanding anything herein to the contrary, the Independent Director and Special Member shall not be bound by, or subject to, this **Section 13.01**.

13.02 Remedies for Default. In the event that a party hereto becomes a Delinquent Member, in addition to and not in limitation of the remedies otherwise provided herein, the other party (the "**Non-Delinquent Member**") may bring an action against the defaulting party for damages, specific performance, injunctive relief and/or any other remedy available at law or in equity. Each party by executing this Agreement hereby consents to any such action being brought in the Denver District Court in and for the County of Denver or any other court of competent jurisdiction, at the option of the Non-Delinquent Member. Notwithstanding anything herein to the contrary, the Independent Director and Special Member shall not be bound by, or subject to, this **Section 13.02**.

ARTICLE XIV

GLOSSARY OF DEFINED TERMS

"**AAA**" has the meaning set forth in **Section 15.04(a)**.

"**Act**" means the Delaware Limited Liability Company Act, as amended from time to time, and any provisions of any successor act.

"**Affiliate**" means a Person directly or indirectly Controlling, Controlled by or under common Control with any other Person.

"**Agreement**" means this Operating Agreement of Hickory Corners 16 B, LLC, a Delaware limited liability company together with the exhibits attached hereto, as amended from

time to time. All exhibits to this Agreement are fully incorporated herein as though set forth at length.

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

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

"**Board of Arbitration**" has the meaning set forth in **Section 15.04(a)**.

"**Business Day**" means any day other than Saturday, Sunday or any day on which commercial banks in Denver, Colorado are authorized or required to close.

"**Capital Account**" means the capital account of each Member established and maintained in accordance with **Section 4.01**.

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

"**Certificate of Cancellation**" has the meaning set forth in **Section 11.02**.

"**Certificate of Formation**" means the certificate of formation of the Company filed with the Secretary of State of the State of Delaware on November 7, 2016, as amended or amended and restated from time to time.

"**Claim**" or "**Claims**" shall mean any notice, letter and/or request containing a demand for payment and/or compensation and/or remedy, or the taking of any other action including, without limitation, the commencement of legal proceedings, any orders, decrees, injunctions or judgments, any private or governmental or class actions, suits, litigation, investigation, inquiries, or arbitration proceedings.

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

"**Company**" means Hickory Corners 16 B, LLC a Delaware limited liability company.

"**Contributed Capital**" shall mean a Member's initial Capital Contribution made pursuant to **Section** Error! Reference source not found., plus any additional Capital Contributions made by such Member.

"**Control**" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting membership interests, by contract or otherwise; and the terms "**Controls**", "**Controlling**" and "**Controlled**" have the meanings correlative to the foregoing.

"**Default Date**" has the meaning set forth in **Section 3.03**.

"**Defaulting Member**" has the meaning set forth in **Section 3.03**.

"**Default Options**" has the meaning set forth in **Section 3.03**.

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

(a) Credit to such Capital Account any amount which such Member is obligated to restore, under Section 1.704-1(b)(2)(ii)(c) of the Regulations, the unpaid principal balance of any promissory note (of which the Member is the maker) contributed to the Company by the Member, and any changes during such year and accompanying minimum gain (as determined in accordance with Section 1.704-2(d) (1) of the Regulations) and in the minimum gain attributable to any Company nonrecourse debt (as determined under Section 1.704-2(i)(3) of the Regulations; and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)-9(2)(ii)(d)(4), (5) and (6) of the Regulations.

"**Deficit Capital Contribution**" has the meaning set forth in **Section 3.03**.

"**Delinquency Loan**" has the meaning set forth in **Section 3.03**.

"**Dilution Formula**" has the meaning set forth in **Section 3.03**.

"**Disposition**" means the sale, exchange, redemption, assignment, Transfer, repayment, repurchase, refinancing or other disposition by the Company of all or any portion of the Company's investment in the Property for cash or for securities which can be distributed to the Members and shall include the receipt by the Company of a liquidating dividend or other like distribution in cash or securities.

"**Disposition Fee**" has the meaning set forth in **Section 7.05(a)**.

"**Dissolution Events**" has the meaning set forth in **Section 11.01**.

"**Distributable Cash**" means all cash funds of the Company on hand from time to time less (i) all current principal and interest payments on indebtedness of the Company reasonably anticipated by the Manager to be payable and all other sums reasonably anticipated to be currently payable to lenders, including with respect to any loan by any Member pursuant to **Section 3.04**, (ii) all cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, and (iii) such Reserves as the Manager determines are necessary for the proper operation of the Company's business.

"**Dragul**" means Gary J. Dragul, an individual.

"**Economic Interest**" has the meaning set forth in **Section 9.01**.

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

"**Encumbrance**" means any mortgage, charge, pledge, lien, restriction, Assignment, hypothecation, security interest, title retention or any other agreement or arrangement the effect of which is the creation of security; or any other interest, equity or other right of any person (including any right to acquire, option, right of first refusal or right of pre-emption); or any agreement or arrangement to create any of the same.

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

"**Fiscal Year**" means the Company's fiscal year, which shall be the calendar year.

"**GDA Manager**" means Hickory Management, LLC, a Colorado limited liability company.

"**Gift**" has the meaning set forth in **Section 9.01**.

"**Gifting Member**" means any Member who Gifts any part of its Membership Interest.

"**Indemnified Parties**" has the meaning set forth in **Section 7.08**.

"**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.

"**Leasing Fee**" has the meaning set forth in **Section 7.05(b)(i)**.

"**Lease Renewal**" has the meaning set forth in **Section 7.05(b)(ii)**.

"**Lender**" has the meaning set forth in **Section 2.02**.

"**Loan**" has the meaning set forth in **Section 2.02**.

"**Loan Documents**" has the meaning set forth in **Section 2.02**.

"**Majority in Interest**" means, with respect to Members, Members owning greater than 50% of the Percentage Interests (or such subset of the Percentage Interests as may be specified herein).

"**Manager**" means GDA Manager, or any other Persons that succeed it in that capacity. References to the Manager in the singular or as "him", "her", "it", "itself", or other like references shall also, where the context so requires, be deemed to include the plural or the masculine, feminine or neuter reference, as the case may be.

"**Management Fee**" has the meaning set forth in **Section 7.04**.

"**Maximum Expenses**" has the meaning set forth in **Section 7.01(b)**.

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

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

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

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

"**New Lease**" has the meaning set forth in **Section 7.05(b)(i)**

"**New Member**" has the meaning set forth in **Section 10.01**.

"**Non-Delinquent Member**" has the meaning set forth in **Section 13.02**.

"**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.

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

"**Person**" means an individual, corporation, partnership, limited liability company, trust, estate, unincorporated organization, association or other legally recognized entity.

"**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 **Section 2.02**.

"**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 Offer**" has the meaning set forth in **Section 9.02(a)**.

"**Purchase Option**" has the meaning set forth in **Section 3.03(c)**.

"**Property Percentage Interest**" has the meaning set forth in **Section 7.04**.

"**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 7.05(b)(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.

"**Sale**" has the meaning set forth in **Section 9.01**.

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

"**Sell**" has the meaning set forth in **Section 9.01**.

"**Selling Member**" means any Member which Sells, Assigns, hypothecates, pledges or otherwise Transfers all or any portion of its rights of Membership Interests in the Company, including both economic and voting rights.

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

"**Substituted Member**" has the meaning set forth in **Section 10.01**.

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

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

"**Transfer**" has the meaning set forth in Section **9.01**.

"**Transferring Member**" has the meaning set forth in **Section 9.03**.

ARTICLE XV

MISCELLANEOUS PROVISIONS

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

15.02 Alienation of Membership Interest. No Member shall, except as provided in **Article IX**, Sell or Assign its Membership Interest in the Company or in its capital assets or property.

15.03 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes (i) if delivered personally to the party or to an executive officer of the party to whom the same is directed, (ii) if sent by registered or certified mail, postage and charges prepaid or by a recognized overnight delivery service, addressed to the Member's, Manager's and/or Company's address, as appropriate, which is set forth in this Agreement, or (iii) if sent by email, to the Member's, Manager's and/or Company's designated email address, as appropriate, which is set forth in this Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given under clause (i) upon delivery, under clause (ii) three Business Days after mailing, or one Business Day after delivery to the overnight delivery service, or under clause (iii) on the date of the email receipt confirming delivery by email. Notices to the Company or the Manager shall be addressed to c/o GDA Real Estate Services, LLC, 5690 DTC Boulevard, Suite 515, Greenwood Village, CO 80111, Attention: Gary J. Dragul, Email: gary@gdare.com. All notices to GDA Manager shall be simultaneously copied to Brownstein Hyatt Farber Schreck, LLP, Attn: Robert Kaufmann, 410 17th Street, Suite 2200, Denver, CO 80202, Email: rkaufman@bhfs.com, as the same may be changed in accordance wherewith.

15.04 Application of State Law. This Agreement and the application and interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Delaware and specifically the Act (without regard to principles of conflicts of law). The Parties hereto agree to submit themselves to the jurisdiction of the courts situated within the State of Colorado with regard to any controversy arising out of or relating to this Agreement.

(a) Any dispute under this Agreement or any exhibit attached hereto shall be submitted to arbitration under the American Arbitration Association (the "**AAA**") in Denver, Colorado, and shall be finally and conclusively determined by the decision of a board of arbitration consisting of 3 members ("**Board of Arbitration**") selected as according to the rules governing the AAA. The Board of Arbitration shall meet on consecutive business days in Denver, Colorado, and shall reach and render a decision in writing (concurred in by a majority of the members of the Board of Arbitration) with respect to the claim filed. In connection with rendering its decisions, the Board of Arbitration shall adopt and follow the laws of the State of Colorado. To the extent practical, decisions of the Board of Arbitration shall be rendered no more than 30 calendar days following commencement of proceedings with respect thereto. The Board of Arbitration shall cause its written decision to be delivered to all parties involved in the dispute. Any decision made by the Board of Arbitration (either prior to or after the expiration of such 30 calendar-day period) shall be final, binding and conclusive on the parties to the dispute, and entitled to be enforced to the fullest extent permitted by law and entered in any court of competent jurisdiction. The prevailing party shall be awarded its costs, including attorneys' fees, from the non-prevailing party as part of the arbitration award. Any party shall have the right to seek injunctive relief from any court of competent jurisdiction in any case where such relief is available. The prevailing party in such injunctive action shall be awarded its costs, including reasonable attorneys' fees, from the non-prevailing party. Notwithstanding anything herein to the contrary, the Independent Director and Special Member shall not be bound by, or subject to, this **Section 15.04(a)**.

15.05 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 and to revise Exhibit A to update the information set forth thereon.

15.06 Amendment. Except as otherwise provided in this Agreement, this Agreement may not be amended except with the consent of a Majority in Interest and the Manager. Notwithstanding the foregoing, the Manager may unilaterally amend or amend and restate this Agreement without obtaining the consent of the Members with regard to the addition of special purpose entity provisions requested by any lender or with regard to any other lender issues that do not have an adverse economic impact on the Members.

15.07 Confidentiality. Each of the parties hereto agrees that it shall keep confidential and not disclose to any third Person or use for its own benefit, without the consent of the other parties hereto, any information with respect to any of the Company, the Property and/or its activities of which it becomes aware as a result of its participation in the Property or the Company, provided that a party may disclose any such information (a) as has become generally available to the public not by breach of this Agreement, (b) as may be required in response to any summons or subpoena or in connection with any litigation, (c) to the extent necessary in order to comply with any law, order, regulation or ruling applicable to such party and(d) to the extent necessary to comply with any reporting obligations to its partners/members/list of investors.

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

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

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

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

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

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

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

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

15.16 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by 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.

15.17 Reliance on Authority of Person Signing Agreement. In the event that a Member is not a natural person, neither the Company, nor any Member will (a) 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 (b) be required to see to the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such Entity.

15.18 Lack of Registration. The Members recognize that (a) no Membership Interest has been registered under any of the Securities Laws, in reliance upon an exemption from such registration, (b) no Member may Sell, offer for Sale, Transfer, pledge or hypothecate its Membership Interest in the Company or any portion thereof in the absence of an effective registration statement covering such interest under the Securities Laws, unless such Sale, offer of Sale, Transfer, pledge or hypothecation is exempt from registration under the Securities Laws as approved by the Company, (c) the Company has no obligation to register the Membership Interests for Sale or to assist in establishing an exemption from registration for any proposed Sale, and (d) the restrictions on transfer severely affect the liquidation of the investment. The terms of this **Section 15.18** shall survive the termination of this Agreement or Transfer of a Member's interest herein.

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

15.20 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 XVI

COMPLIANCE WITH ANTI-TERRORISM ORDERS

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

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

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

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

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

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

(e) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below). For purposes hereof, the term "Patriot Act Offense" means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (a) the criminal laws against terrorism; (b) the criminal laws against money laundering, (c) the Bank Secrecy Act, as amended, (d) the Money Laundering Control Act of 1986, as amended, or the (e) Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense, or

(f) is currently under investigation by any Governmental Authority for alleged criminal activity.

16.03 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.

16.04 Entire Agreement. This Agreement (including any and all exhibits and schedules hereto) constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes in their entirety any previous written or oral agreements between the Members with respect thereto.

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

ARTICLE XVII

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 XVII** shall have the meaning set forth in the Loan Documents); provided however, that, notwithstanding any other provision in this Agreement to the contrary, the Manager may elect, without any further act, vote or approval of any Member, to continue the application of any or all of the following provisions, or to modify the same as required by any successor lender, at any time after the Loan is discharged or defeased, by entering into an amendment to this Agreement therefor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) has conducted and will conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any general partner, managing member, shareholder, principal or Affiliate of the

Company, but not including any Single Purpose Entity limited partnership of which the Company is expressly permitted to be a general partner in accordance with the terms hereof);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(gg) intentionally omitted;

(hh) intentionally omitted;

(ii) intentionally omitted;

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

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

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

17.02 Independent Director.

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

(b) Duties of the Independent Director.

(i) The Members or managers of the Company (as applicable) shall not take any of the actions identified in **Article 17.01(mm)** above, nor amend any provision of **Article XVII** above, unless, at the time of such action, there shall be at least one Independent Director of the Company (and such Independent Director has consented to such action). When voting with respect to any of the matters set forth in **Article 17.01(mm)**, each Independent Director shall consider only the interests of the Company, including its creditors. Except for

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

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

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

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

17.03 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 Independent Director shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, the Person acting as Special Member Independent Director shall not be a member of the Company. The Manager shall at all times cause there to be a Person bound by this Agreement as Special Member.

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

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

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

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

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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

MANAGER:

HICKORY MANAGEMENT, LLC,
a Colorado limited liability company

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

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

MEMBERS:

GDA HICKORY INVESTORS, LLC,
a Delaware limited liability company

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

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

By: _____
Gary J. Dragul, President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

MEMBERS:

GDA HICKORY 17, LLC,
a Delaware limited liability company

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

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

By: _____
Gary J. Dragul, President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

INDEPENDENT DIRECTOR:

By:_____
Name: Julia A. McCullough

EXHIBIT A

Names; Addresses; Value of Capital Contribution; Percentage Interests

NAME	ADDRESS	VALUE OF CAPITAL CONTRIBUTION	PERCENTAGE OF INTEREST
GDA Hickory Investors, LLC	5690 DTC Boulevard, Suite 515 Greenwood Village, Colorado 80111	$10	66.12%
GDA Hickory 17, LLC	5690 DTC Boulevard, Suite 515 Greenwood Village, Colorado 80111	$10	33.88%
TOTALS		$20	100%

EXHIBIT B

Legal Description

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

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