DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO 7325 S. Potomac Street Centennial, CO 80112	DATE FILED: April 12, 2018 3:18 PM FILING ID: 34D0C8756ABED CASE NUMBER: 2018CR1092
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. GARY JULE DRAGUL, DOB 05/07/1962, Defendant.	▲ COURT USE ONLY ▲
CYNTHIA H. COFFMAN, Attorney General DANIEL A. PIETRAGALLO, 41794 * Assistant Attorney General MICHAEL J. BELLIPANNI #24421 * Senior Assistant Attorney General 1300 Broadway, 9th Floor Denver, CO 80203 (720) 508-6698; (720) 508-6699 *Counsel of Record	Case No.: 18CR1092 Div.: 407

COLORADO STATE GRAND JURY INDICTMENT

COUNT ONE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to [redacted]}

COUNT TWO: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to [redacted]}

COUNT THREE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to [redacted]}

COUNT FOUR: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to [redacted]}

COUNT FIVE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to [redacted]}

COUNT SIX: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to r}

COUNT SEVEN: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to

COUNT EIGHT: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to

COUNT NINE: SECURITIES FRAUD, §§ 11-51-501(1)(c) and 11-51-603(1), C.R.S. (Class 3 Felony) {50053} {as to all investors}

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. **GARY JULE DRAGUL,** **DOB: 05/07/1962** Defendant.	▲ **COURT USE ONLY** ▲
CYNTHIA H. COFFMAN, Attorney General DANIEL A. PIETRAGALLO #41794 * Assistant Attorney General MICHAEL J. BELLIPANNI #24421 * Senior Assistant Attorney General 1300 Broadway, 9th Floor Denver, CO 80203 (720) 508-6000 * Counsel Of Record	Case No.: 2017CR001 Ct. Rm. 259
COLORADO STATE GRAND JURY INDICTMENT	

Of the 2017-2018 term of the City and County of Denver Court in the year 2018, the 2017-2018 Colorado State Grand Jurors, chosen, selected and sworn in the name and by the authority of the People of the State of Colorado, upon their oaths. present the following:

ESSENTIAL FACTS

Gary Jule Dragul (hereinafter DRAGUL) is the president of and registered agent for GDA Real Estate Services, LLC, a Colorado company located in Arapahoe County. At all times relevant herein, DRAGUL managed GDA Real Estate Services, LLC (hereinafter referred to as GDA). GDA's primary business is to take investor money and derive profit from organizing and establishing limited liability companies (LLC's) that purchase and manage commercial shopping centers and other commercial real estate ventures. DRAGUL and GDA would offer investors membership interests in these LLC's, with the expectation that the investors would profit from the future stream of income, as well as the potential future appreciation of the property. Many of these investment opportunities resulted in significant losses to the investors.

In addition to selling membership interests in numerous LLC's, DRAGUL and GDA also offered investors promissory notes with varying interest rates and durations (typically between three and eighteen months). Most promissory notes were to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. Despite being considered securities, which required registration with the Securities Exchange Commission and the Colorado Division of Securities, DRAGUL failed to register any of the promissory notes and was never licensed to sell securities.

As part of the investigation by the Colorado Division of Securities, DRAGUL and GDA provided copies of business records, including but not limited to: general ledgers, balance sheets, income statements, offering documents, emails, and copies of promissory notes. Based on a review of the GDA general ledger and other GDA business documents, it appears that GDA accrued millions of dollars in unsecured debt related to promissory notes issued in 2007 and 2008.

Based on a review of the GDA general ledger, DRAGUL raised significant capital though promissory notes issued in both 2007-2008 and 2013. Despite still owing over $4,000,000 on the 2007-2008 promissory notes, DRAGUL and GDA failed to disclose this material fact when soliciting new promissory notes in 2013.

By December 31, 2012 GDA had a total outstanding debt that reflects negative equity of over $8.7 million and a cash deficit of over $290,000. This includes over $4 million that was owed pursuant to unpaid overdue promissory notes issued by DRAGUL and GDA in 2007 and 2008. These unpaid notes and other financial issues became the subject of numerous lawsuits that were filed against DRAGUL and GDA, between 2011 and 2013. Despite these pending lawsuits and the substantial debt, DRAGUL and GDA failed to disclose such material information to investors when they offered additional promissory notes in 2013.

Additionally, DRAGUL and GDA incurred substantial investor debt and defaulted on several promissory notes, which ultimately led to them being named as Defendants in numerous civil law suits, including but not limited to the following:

- 2011CV2517 (Arapahoe County) – DRAGUL and GDA were sued by for two unpaid overdue promissory notes from 2008, which totaled $200,000. On or about March 31, 2013 the parties entered into a confidential settlement agreement to resolve the case.

- 2012CV1317 (Arapahoe County) – DRAGUL and GDA were sued by for an unpaid overdue promissory note for $75,000, which was issued in 2008. At the time the lawsuit was filed on July 17, 2012, the complaint alleged that Mr. was still owed his entire principal amount of $75,000 plus interest.

- 2012CV1869 (Arapahoe County) – DRAGUL and GDA were sued by First Citizens Bank and Trust Company for defaulting on promissory notes issued in 2007. At the time the lawsuit was filed on October 9, 2012, First Citizens sought payment from the following entities, in the following amounts:

  - Syracuse, LLC (a GDA company) defaulted on a promissory note in the amount of $4.5 million dollars.
  - DRAGUL personally defaulted on a home equity line of credit and promissory note in the amount of $1.33 million dollars.
  - GDA and MC Liquor 02, LLC defaulted on a promissory note in the amount of $607,312.
  - DRAGUL personally guaranteed all of the above loans.

- 2013CV200319 (Arapahoe County) – DRAGUL and GDA were sued by their landlord "8301 East Prentice Avenue, LLC", for eviction and possession of the property. The lawsuit alleged that DRAGUL and GDA failed to vacate the office space after their lease expired.

- 2013CV31341 (Arapahoe County) – DRAGUL and GDA were sued by for two unpaid overdue promissory notes from 2007 and 2008, which totaled $100,000. At the time the lawsuit was filed on October 7, 2013, the complaint alleged that Mr. Evans was only repaid $12,095.88.

Neither the lawsuits nor the status of the underlying promissory notes on which DRAGUL and GDA defaulted were disclosed to the victims named herein.

Beginning in January of 2013 and continuing through August of 2013, DRAGUL and GDA issued thirty-one (31) promissory notes to twenty-one (21) investors, which raised approximately $2.4 million in new capital. The total amount of those promissory notes exceeded $3 million, because DRAGUL and GDA rolled over prior investments into some of the new promissory notes.

Of those thirty-one promissory notes that were issued in 2013, only ten notes with five investors (and were repaid consistent with their original terms. As of 2016, approximately twenty of the promissory notes were still unpaid and outstanding.

The promissory notes issued by DRAGUL and GDA constitute "securities" pursuant to § 11-51-201 (17) C.R.S. Accordingly, such investments are subject to the provisions of the Colorado Securities Act.

In soliciting the promissory notes, DRAGUL made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over $8.5 million, including over $4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in numerous civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors. Specifically, some of the 2013 promissory note investors were paid back consistent with the terms of their promissory notes, while DRAGUL and GDA withheld payments to other similarly situated investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC)

In order to solicit the 2013 GDA promissory notes, DRAGUL used an unregistered promoter from North Carolina named Marlin Hershey to offer GDA promissory notes. Based on internal emails, GDA was desperately trying to raise additional operating capital to fund the business. Hershey approached several of the victims with offerings for GDA promissory notes. He represented that DRAGUL and GDA were very successful and that DRAGUL was worth millions of dollars. Hershey was paid a ten percent commission for finding investors for the GDA promissory notes. Hershey recruited a number of investors from Pennsylvania, North Carolina, Florida, and Texas. While most investors from Colorado were selectively repaid in full, DRAGUL and GDA stopped making payments to many out-of-state investors that were recruited by Marlin Hershey.

Additionally, DRAGUL and GDA engaged in a course of business that involved comingling funds from numerous LLC accounts in order to make payments related to GDA's operating costs. Specifically, a review of the general ledger, balance sheets, and emails indicates that DRAGUL was transferring money from various LLC's and listing the debt as notes payable to those entities in the GDA general ledger. This appears to be a regular business practice, as investigators found frequent emails (almost daily during the time period when promissory notes were being solicited) to DRAGUL advising him that he would need substantial capital to fund certain overdrawn account(s) and asking which other account(s) he would like to draw funds from.

DRAGUL also misappropriated investor funds for personal use by diverting substantial amounts of money to accounts held personally by him and his wife. An analysis of inflows for GDA between January 1, 2013 and August 30, 2013, shows that GDA solicited and received investor funds of over $2.37 million dollars. During that same time period, an analysis of outflows for GDA shows that DRAGUL transferred a total of over $3.8 million to his personal bank accounts and over $2.1 million to his wife Shelly Dragul's personal bank accounts.

DRAGUL and GDA continued the acts, practices and course of business designed to defraud investors in and between January 1, 2013 and ending on or about August 30, 2013. After obtaining investor funds, DRAGUL and GDA continued to solicit, accept, and hold investor funds, knowing that they could not generate the promised returns. DRAGUL used investor funds to pay personal expenses and continued to make material misstatements and omissions to the investors after their initial investments. DRAGUL thereby induced investors to maintain their investments with him, and to make subsequent investments. These resulting business practices operated as a fraud or deceit upon DRAGUL and GDA's investors.

COUNT ONE
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to }

On or about and between December 1, 2012 and January 16, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

COUNT TWO:
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to }

On or about and between December 1, 2012 and January 11, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to , directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

COUNT THREE
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to }

On or about and between December 1, 2012 and January 11, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

COUNT FOUR:
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to [redacted]}

On or about and between December 1, 2012 and January 11, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to [redacted], directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Counts One through Four are as follows:

1. The [redacted] family resides in Shelby, North Carolina and was introduced to GARY DRAGUL and GDA through Marlin Hershey. The [redacted] so had other investments in GDA LLC's.

2. On or about January 7, 2013, [redacted] and [redacted] invested $200,000 in a promissory note with GDA. The [redacted] rolled over $100,000 from a prior investment and sent GDA a check for $100,000 dated January 14, 2013.

3. On or about January 7, 2013, [redacted] invested $50,000 in a promissory note with GDA. [redacted] sent GDA a check for $50,000 dated January 10, 2013.

4. On or about January 7, 2013, [redacted] invested $50,000 in a promissory note with GDA. [redacted] sent GDA a check for $50,000 dated January 10, 2013.

5. On or about January 7, 2013, [redacted] invested $50,000 in a promissory note with GDA. [redacted] sent GDA a check for $50,000 dated January 10, 2013.

6. Each of the above-referenced promissory notes was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. Each loan was to be repaid in full, with interest, within eighteen months.

7. In reference to and , DRAGUL and GDA issued interest payments for the first six months, but only issued six principal payments thereafter. It should be noted that those six payments were spread out between August of 2013 and November of 2014, indicating an inconsistent payment history. The have not been issued a payment by DRAGUL or GDA on the promissory note since November of 2014.

8. In total, the have only been repaid approximately $111,856.03 from the initial promissory note investment of $200,000 in 2013.

9. In reference to and , DRAGUL and GDA issued interest payments for the first six months, but only issued three principal payments thereafter. and have not been issued a payment by DRAGUL or GDA on any of their promissory notes since January of 2014.

10. In total, , and have only been repaid approximately $14,637.11 from each of their initial promissory note investments of $50,000 in 2013.

11. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over $8.5 million, including over $4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT FIVE:
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to [redacted]

On or about and between January 1, 2013 and January 17, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL (DRAGUL), in connection with the offer, sale, or purchase of any security to [redacted] directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Five are as follows:

12. [redacted] is a resident of Lancaster, Pennsylvania and was introduced to GARY DRAGUL and GDA through Marlin Hershey.

13. On or about January 11, 2013, [redacted] invested $50,000 in a promissory note with DRAGUL and GDA. Ms. [redacted] sent GDA a check for $50,000 dated January 15, 2013.

14. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.

15. Ms. [redacted] was told that her money would be invested in a Senor Frogs restaurant in Las Vegas. An analysis of the bank accounts in this case indicates that the money was transferred to DRAGUL's personal bank accounts and used for personal expenses.

16. DRAGUL and GDA issued interest payments for the first six months, but only issued four principal payments thereafter. Ms. [redacted] has not been issued any payments by DRAGUL or GDA on the promissory note since December of 2013.

17. In total, Ms. [redacted] has only been repaid approximately $30,402.68 from her initial investment of $50,000 in 2013.

18. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over $8.5 million, including over $4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT SIX:
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to [redacted]}

On or about and between January 1, 2013 and February 7, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to [redacted] and [redacted], directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Six are as follows:

19. [redacted] and [redacted] are residents of Lancaster, Pennsylvania and were introduced to GARY DRAGUL and GDA through Marlin Hershey. The [redacted] also had other investments in GDA LLC's.

20. On or about January 17, 2013, [redacted] invested $50,000 in a promissory note with DRAGUL and GDA. The [redacted] sent GDA a check for $50,000 dated February 4, 2013.

21. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.

22. DRAGUL and GDA issued interest payments for the first six months, but only issued four principal payments thereafter. The [redacted] have not been issued a payment by DRAGUL or GDA on the promissory note since December of 2013.

23. In total, [redacted] and [redacted] have only been repaid approximately $19,856.96 from their initial investment of $50,000 in 2013.

24. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over $8.5 million, including over $4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT SEVEN:
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to '

On or about and between February 7, 2013 and February 13, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Eight are as follows:

25. is a resident of Reading, Pennsylvania and was introduced to GARY DRAGUL and GDA through Marlin Hershey. also had other investments in GDA LLC's.

26. On or about February 7, 2013, invested $150,000 in a promissory note with DRAGUL and GDA. Mr. sent GDA a check for $150,000 which was dated February 13, 2013.

27. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.

28. Mr. received interest payments for the first six months, but only received two payments thereafter. DRAGUL and GDA failed to make any additional principal payments after October of 2013.

29. As of late 2016, Mr. had only been repaid approximately $31,391.71 from his initial investment of $150,000 in 2013.

30. Mr. was forced to file a lawsuit against DRAGUL and GDA in 2015, in Arapahoe County (2015CV32922), for defaulting on the promissory note. DRAGUL and GDA agreed to settle the debt by paying $121,000 in $1,250 increments, over 96 months with no interest.

31. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over $8.5 million, including over $4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT EIGHT:
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to'

On or about and between March 5, 2013 and March 8, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to _____ directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Nine are as follows:

32. _____ and _____ are residents of Lancaster, Pennsylvania and were introduced to GARY DRAGUL and GDA through Marlin Hershey. The Hess family also had other investments in GDA LLC's.

33. On or about March 5, 2013, and invested $75,000 in a promissory note with DRAGUL and GDA. James and Susan Hess rolled over $44,656.05 from a previous investment and sent GDA two checks totaling $30,343.95 that were dated March 8, 2013.

34. The above-referenced promissory note was to be repaid over an eighteen month period at an interest rate of ten percent, with payments of interest only for the first six months, followed by twelve monthly payments of principle and interest. The loan was to be repaid in full, with interest, within eighteen months.

35. DRAGUL and GDA issued interest payments for the first six months, but only issued one principal payment thereafter. DRAGUL and GDA have not issued any payment on this promissory note since October of 2013.

36. In total, and have only been repaid approximately $8,879.70 from their initial investment of $50,000 in 2013.

37. In soliciting the promissory notes, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL failed to disclose to investors that GDA had negative equity of over $8.5 million, including over $4 million in unpaid overdue promissory notes that were issued in 2007 and 2008.
- DRAGUL and GDA did not disclose to investors that they were named as Defendants in several civil law suits for failing to timely repay other promissory notes.
- DRAGUL and GDA failed to disclose to investors that DRAGUL would use investor funds to pay for his personal expenses, including but not limited to payments to Las Vegas casinos, credit card companies, and liquor stores.
- DRAGUL and GDA failed to disclose that they would engage in the selective repayment of investors.
- DRAGUL and GDA failed to disclose that DRAGUL would use investor funds to pay for travel using a private jet (SC Aviation 06, LLC).

COUNT NINE:
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1) {as to all investors}

On or about and between January 1, 2013 and August 30, 2013, with a date of discovery on or after August 30, 2013, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer or sale of any security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any course of business which operated or would have operated as fraud or deceit upon investors, including [redacted] and additional persons both known and unknown to the Grand Jury, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1), and against the peace and dignity of the People of the State of Colorado.

The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offense as set forth in Count Nine are as follows:

38. For approximately eight months, between January 1, 2013 and August 30, 2013, DRAGUL and GDA made numerous fraudulent sales of securities, based on materially false statements and omissions to the following investors: [redacted]

39. In connection with the fraudulent sale of these securities, DRAGUL and GDA conducted business in Colorado.

40. The investments DRAGUL and GDA solicited directly or indirectly, in connection with this count, on and between January 1, 2013 and August 30, 2013, include one or more of the following:

a) [redacted], residents of Shelby, North Carolina, invested approximately two hundred thousand dollars ($200,000.00) in a promissory note on or about January 7, 2013.

b) [redacted] a resident of Shelby, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in a GDA promissory note on or about January 7, 2013.

c) [redacted] a resident of Shelby, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in a GDA promissory note on or about January 7, 2013.

d) [redacted], a resident of Shelby, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in a GDA promissory note on or about January 7, 2013.

e) [redacted], a resident of Lancaster, Pennsylvania invested approximately fifty thousand dollars ($50,000.00) in a GDA promissory note on or about January 11, 2013.

f) [redacted] residents of Lancaster, Pennsylvania, invested approximately fifty thousand dollars ($50,000.00), in a GDA promissory note on or about January 17, 2013.

g) [redacted] a resident of Lancaster, Pennsylvania, invested approximately one hundred and fifty thousand dollars ($150,000) in a GDA promissory note on or about February 7, 2013.

h) [redacted] residents of Lancaster, Pennsylvania, invested approximately seventy-five thousand hundred dollars ($75,000) in a GDA promissory note on or about March 5, 2013.

k) [redacted] a resident of East Earl, Pennsylvania, invested approximately two hundred thousand dollars ($200,000) in a GDA promissory note on or about January 7, 2013.

l) [redacted], a company based in Huntersville, North Carolina, invested approximately one hundred and twenty-five thousand dollars ($125,000.00) in two separate GDA promissory notes on or about January 7, 2013.

m) [redacted] resident of Lititz, Pennsylvania, invested approximately one hundred and fifty thousand dollars ($150,000) in a GDA promissory note on or about February 7, 2013.

n) [redacted], a company based in Lititz, Pennsylvania, invested approximately fifty thousand dollars ($50,000) in a GDA promissory note on or about March 15, 2013.

o) [redacted] a resident of East Earl, Pennsylvania, invested approximately two hundred thousand dollars ($200,000.00) in two GDA promissory notes on or about June 10, 2014.

p) [redacted] a resident of Houston, Texas, invested approximately one hundred and twenty-five thousand dollars ($125,000.00) in a GDA promissory note on or about April 24, 2013.

q) [redacted] a company based in Fort Mill, South Carolina, invested approximately five hundred and fifty thousand dollars ($550,000) in five separate GDA promissory notes between or about June 6, 2013 and June 24, 2013.

41. In connection with the fraudulent sale of these securities, DRAGUL and GDA engaged in a course of business which operated as a fraud, in part, by accepting funds into this investment scheme and failing to disclose material facts to investors prior to making their investments. The circumstances surrounding the sales, acts, practices and course of business engaged in by DRAGUL and GDA, including the untrue statements of material fact and failure to disclose, are described in the narrative of Essential Facts, and the paragraphs following Counts One through Eight, each of which are hereby incorporated by reference.

42. DRAGUL and GDA never told the investors of the true risks associated with the investments. DRAGUL and GDA made and maintained numerous untrue statements of material facts to these investors prior and subsequent to their investments with him. DRAGUL and GDA also failed to disclose material information to these investors. The investments remain unpaid and past due.

43. In addition to failing to disclose the actual financial condition of DRAGUL and GDA, as well as the actual risks associated with the GDA promissory note investments, DRAGUL and GDA engaged in a course of selective repayment. Colorado investors were also repaid, while many out-of-state investors stopped receiving any promissory note payments from DRAGUL and GDA.

CYNTHIA H. COFFMAN,
ATTORNEY GENERAL

By:

Daniel A. Pietragallo, Reg. No. 41794
Assistant Attorney General
Criminal Justice Section

The 2017 - 2018 State Grand Jury presents the within Indictment, and the same is hereby ORDERED FILED this 12th day of April, 2018.

Pursuant to C.R.S. 13-73-107, the Court hereby designates the County of Jefferson County, Colorado, as the county of venue for the purposes of trial.

MICHAEL A. MARTINEZ
Chief Judge, Second Judicial District

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

OPERATING AGREEMENT

OF

GDA CLEARWATER 15, LLC
a Delaware limited liability company

THIS OPERATING AGREEMENT OF GDA CLEARWATER 15, LLC is made and entered into as of the 11th day of August, 2015, by and between those Members listed on **Exhibit A** and the other signatories hereto, on the following terms and conditions. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in **Article 13**.

ARTICLE 1

FORMATION OF THE COMPANY

1.1 Formation of the Company. On July 15, 2015, the Company was formed as a Delaware limited liability company under and pursuant to the Act by filing with the Secretary of State of the State of Delaware 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. Julie R. Sander is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered

and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, Julie R. Sander powers as an "authorized person" ceased, and the Manager thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act.

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

1.3 Address.

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

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

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

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

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

ARTICLE 2
BUSINESS OF THE COMPANY

2.1 Business of the Company. The business of the Company shall be:

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

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

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

Without limiting the generality of the foregoing, the Company will hold a membership interest in Clearwater Collection 15, LLC which will hold an undivided tenancy-in-common interest in property known as Clearwater Collection in Clearwater, Florida (the "**Property**"), expected to be financed with a loan in connection with the acquisition of the Property (the "**Loan**"), which will be evidenced by a promissory note and other loan documents (the "**Loan Documents**").

ARTICLE 3

MEMBERS AND MEMBERSHIP INTERESTS

3.1 Classes of Membership Interests, Members and Membership Interests. There shall be three classes of Members, Class A Members, Class B Members and Class C Members, each with the rights and privileges set forth in this Agreement. The names, addresses, Capital Contributions, and number of Class A Units, Class B Units and Class C Units held by each Member shall be as set forth on **Exhibit A** attached hereto and made a part hereof, which **Exhibit A** shall be amended from time to time upon any transfer of Units, addresses or Capital Contributions of the Members, or upon the admission or Cessation of Membership of any Member. The Persons listed on **Exhibit A** on the date hereof are hereby admitted to the Company as members of the Company upon their execution of a counterpart of this Agreement. All Members will pay their Capital Contribution in cash, property or by check upon their admission as a Member. If a Member contributes property to the Company, the value of the Capital Contribution shall be determined by the Manager.

3.2 Additional Capital Contributions. Members other than Class B Members will be required to make additional Capital Contributions from time to time upon the written request of the Manager, provided that the maximum total additional Capital Contribution from any Class A Member or Class C Member shall not exceed thirty percent (30%) of such Member's initial Capital Contribution without the consent of a Majority in Interest and the approval of the Manager. Upon receipt of written notice of the Manager (and upon consent of a Majority in Interest if required pursuant to the preceding sentence), each Class A Member and Class C Member shall deliver to the Company its pro rata share of the required additional Capital Contribution (in proportion to its Percentage Interest of the Class A Member or Class C Member, as the case may be, on the date such notice is given) no later than ten (10) days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this **Article 3.2** shall be deemed to be made for the benefit of any Person other than the Members and the Company, and no such third Person shall under any circumstances have any right to compel any actions or payments by the Members.

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, to (1) allow one or more nondefaulting Member 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 **Article 3.2(a)**, (2) 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 **Article 3.2(b)** or (3) allow one more of the nondefaulting Members to exercise the Purchase Option (as defined below) to purchase the Defaulting Member's Percentage Interest in accordance with the procedures set forth below in **Article 3.2(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 twenty percent (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 five percent (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 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 **Article 3.2(a)(i)**, together with interest 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 **Article 3.2**) 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 by the Dilution Formula.

3.3 Loans. While the Loan is outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), the Company may, as determined by the Manager, borrow money from one or any of the Members or third Persons. In the event that a loan agreement is negotiated with a Member or their Affiliates, such Person shall be entitled to receive interest at a rate and upon such terms to be determined by the Manager, which will be upon the same terms or better terms to the Company than those then available from recognized financial institutions, and said loan shall be repaid by the Company to the Member, with interest, according to the terms of the loan. The loan may be evidenced by a promissory note payable by the Company in a form approved by the Manager. Such interest and repayment of the amounts so loaned are to be entitled to priority of payment over the division and distribution of Capital Contributions and profit among Members with respect to their Membership Interests. Loans by any Member to the Company will not be considered contributions to the capital of the Company. Each Member will comply and cause its beneficial owners to comply with the terms and conditions of any loan documents entered into by the Company to the extent the same pertain to said Member or beneficial owner.

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

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

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

3.7 Property Transfers. If the Company transfers an undivided interest in the Property to one or more of the Members in exchange for such Member's Membership Interest, the Percentage Interests of each of the remaining Members in the Company shall increase by a proportional amount relative to the amount so transferred, as reasonably determined by the Manager.

ARTICLE 4

MEMBERS' CAPITAL ACCOUNTS

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

4.2 No Withdrawal or Reduction of Members' Contributions to Capital.

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

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

(c) A Member, irrespective of the nature of the Member's contribution, has only the right to demand and receive cash in return for such Member's contribution to capital; however, the foregoing does not preclude the Company, subject to the limitation of **Article 11.3**, from distributing property other than cash to any Member.

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

4.4 Miscellaneous.

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

(b) No Priority of Return of Capital Contribution. No Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

ARTICLE 5

ALLOCATIONS AND DISTRIBUTIONS

5.1 Net Profits. Except as otherwise provided in this Agreement, including the special allocation provisions set forth in **Article 12** of this Agreement, 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 12** or elsewhere in this Agreement, the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to **Article 11.3(b)** of this Agreement 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 (ii) such

Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. Notwithstanding the forgoing, the Manager may make such allocations as it deems reasonably necessary to give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose.

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

5.3 Reporting by Members. The Members agree to report their shares of income and loss for federal income tax purposes in accordance with this **Article 5** and **Article 12**.

5.4 Distributions. Except upon dissolution and liquidation as set forth in **Article 11.3**, the Manager may determine, in its discretion, when and how much of the Distributable Cash, if any, will be distributed to the Members in proportion to their Percentage Interests.

For any fiscal year, "**Distributable Cash**" shall mean all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions to the Company by the Members) less (i) all current principal and interest payments on indebtedness of the Company reasonably anticipated by the Manager to be payable and all other sums reasonably anticipated to be currently payable to lenders, (ii) all cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, and (iii) such Reserves as the Manager determines is necessary for the proper operation of the Company's business. The Manager shall have the discretion to make distributions of property other than cash based upon the Manager's determination of the fair market value of such property at the time of the distribution.

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

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

of any of the assets of the Company will be allocated solely to the holders of Membership Interests in the Company as of the date the sale or other disposition occurs.

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

ARTICLE 6

CONSENTS VOTING AND MEETINGS

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

(a) By written consent describing the action to be taken, signed by the Members holding at least the amount of Percentage Interests that would be required to approve such action, received by the Manager prior to the taking of the action 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 at least the amount of Percentage Interests that would be required to approve such action at any meeting called pursuant to **Article 6.3** to consider the action for which the consent, approval or election is solicited.

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

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

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

6.5 Notice of Meetings. Except as provided in **Article 6.6**, notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than 10 nor more than 50 days before the date of the meeting in accordance with the notice provisions of this Agreement.

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

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

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

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

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

6.11 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 and the Manager 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 nor the Manager shall be obligated to make available to the Company or any other Member any business opportunity of which such Member is or becomes aware.

6.14 Sale of Assets. The Manager may sell all or any of the assets of the Company without the consent of the Members.

ARTICLE 7

RIGHTS AND DUTIES OF THE MANAGER

7.1 Management.

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

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

(i) Power to acquire real and personal property from any Person as the Manager may direct. 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 **Article 3.3** in the case of loans from the Members or their Affiliates), and in connection therewith, to hypothecate, encumber and grant security interests in the assets of 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) Except as provided in **Article 6.14**, 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, provided that all decisions affecting the policy and management of the Company, including the control, employment, compensation and discharge of employees, the employment of contractors and subcontractors and the control and operation of the premises and property, including the improvement, rental, lease, maintenance and all other matters pertaining to the operation of the assets or property of the Company, shall be made by the Manager;

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

(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 for the preservation of Company assets, if, under the circumstances, in the good faith estimation of the Manager, there is insufficient time to allow it to obtain the approval of the Members to such action and any delay would materially increase the risk to life or health or preservation of assets. In such event, the Manager shall notify the Members of each such action contemporaneously therewith or as soon as reasonably practicable thereafter.

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

7.2 Number Tenure 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. GDA Clearwater Management, LLC, a Colorado corporation, shall act as Manager until its dissolution, resignation or removal under this Agreement; provided, however, the Manager may not resign or be removed unless a successor Manager has been appointed and approved by Members owning at least 75% of the Percentage Interests, and the Manager has executed a counterpart to this Agreement. Any new Manager shall be elected by Members owning at least seventy-five (75%) of the Percentage Interests, and the new Manager has executed a counterpart to this Agreement. Notwithstanding the foregoing, the Manager may

only be removed by the Members if it has (i) engaged in gross negligence, fraud, willful misconduct or a material wrongful taking or (ii) become a Delinquent Member. If a Manager wishes to resign or is to be removed, all Members agree to promptly work on installing a new Manager. 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.

7.3 Devotion to Duty.

(a) Duty of Good Faith; Exoneration. The Manager shall perform its duties as the manager of the Company in good faith and in a manner it reasonably believes to be in the best interest of the Company and shall exercise reasonable skill, care and business judgment. Unless fraud, deceit, gross negligence, willful misconduct, bad faith, breach of fiduciary duty or a wrongful taking shall be proved by a nonappealable court order, judgment, decree or decision (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 the Members. The Manager does not in any way guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company.

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

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

(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 otherwise lacks the authority to act for the Company and the Person with whom the Manager is dealing has knowledge of the fact

that the Manager has no such authority.

7.4 Manager Has No Exclusive Duty to Company. The Manager shall not be required to manage the Company as its sole and exclusive function or business, and may have other business interests, which may compete with the business of the Company. The Manager may engage in other activities in addition to those relating to the Company, and may receive and enjoy profits or compensation (including management fees) therefrom. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of the Manager or to the income or proceeds derived therefrom.

7.5 Indemnification. To the fullest extent permitted by Law, the Company shall and does hereby agree to indemnify and hold harmless against any liabilities and pay all judgments and claims against the Manager, each Member (including a Member in its role as Tax Matters Partner, if applicable), their respective Affiliates, and each of their respective members, officers, directors, employees, agents, stockholders, shareholders and partners (the "**Indemnified Parties**", each of which shall be a third party beneficiary of this Agreement solely for purposes of this **Section 7.5**), from and against any loss or damage incurred by them or by the Company for any act or omission taken or suffered by the Indemnified Parties (including any act or omission taken or suffered by any of them in reliance upon and in accordance with the opinion or advice of experts, including of legal counsel as to matters of law, of accountants as to matters of accounting, or of investment bankers or appraisers as to matters of valuation) by reason of the fact and while serving as the Manager, a Member, an Affiliate of either, and each of their respective members, officers, directors, employees, agents, stockholders, shareholders and partners or an officer of the Company, or was serving at the request of the Company as a director, officer, manager, employee or agent of another Entity, including costs and reasonable attorneys' fees and any amount expended in the settlement of any claims or loss or damage, except with respect to any act or omission with respect to which a court of competent jurisdiction has issued a final, nonappealable judgment that such Indemnified Party was grossly negligent, engaged in willful misconduct or intentionally breached this Agreement.

(a) The satisfaction of any indemnification obligation pursuant to this **Section 7.5** shall be from and limited to Company assets (including insurance and any agreements pursuant to which the Company, the Manager, Members or officers or employees are entitled to indemnification) and no Member, in its capacity as such, shall be subject to personal liability.

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

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

such liability under the provisions of this Agreement.

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

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

ARTICLE 8

BOOKS RECORDS AND ADMINISTRATION

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

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

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

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

ARTICLE 9

RESTRICTIONS ON TRANSFERABILITY

9.1 General. No Member shall Transfer (as defined in **Article 9.2(c)** below) or encumber all or any portion of its interest in the Company without the written consent of the

Manager, in its sole and absolute discretion, and no Member shall permit any Transfer of any direct, indirect or beneficial interests in (a) such Member; or (b) in any other entity which owns, directly or indirectly, through one or more intermediate entities, any ownership interest in such Member, without first obtaining the written consent of the Manager. Any Transfer or encumbrance in violation of this **Article 9.1** (each called a "**Prohibited Transfer**") shall be null and void and of no legal effect upon the Company, and the Company will not be required to accept, recognize or be bound by such Prohibited Transfer and the purported transferee thereof shall acquire no rights in the Percentage Interest which is the subject of a Prohibited Transfer. The failure of Manager or the Company to exercise any option resulting from a Prohibited Transfer pursuant to **Article 9.3** and **Article 9.4**, respectively, shall not be deemed a consent to any Prohibited Transfer, and the purported transferee of such interest shall not become a Member, nor shall the Company be required to accept, recognize or be bound by such Prohibited Transfer. The terms of this Section may be specifically enforced against a transferee or encumbrancer.

9.2 Transfers to Family Members.

(a) The Manager shall not unreasonably withhold its consent to a Transfer to a Family Member (as defined below) if such Transfer: (i) will not require lender consent or payment of any amount pursuant to any of the Applicable Loan Documents (as defined below); (ii) will not violate the terms of any Applicable Loan Documents; and (iii) will not apply to the calculation of any percentage ownership thresholds relating to Transfers set forth in the Applicable Loan Documents.

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

(c) For the purposes of this Agreement, "**Transfer**" shall mean (i) the most broadly defined definition of "transfer" set forth in any of the Loan Documents or any other present or future loan to the Company or secured by the Property (any "**Applicable Loan Documents**"), or (ii) the following, whichever more broadly defines the meaning of Transfer: a sale, assignment, transfer, or other disposition (whether voluntary, involuntary, or by operation of law); a gift, bequest, or other transfer for no consideration; a granting, pledging, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law); an issuance or other creation of a direct or indirect ownership interest; a withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity; or a merger, consolidation, dissolution or liquidation of a legal entity.

9.3 Right of First Refusal. Other than with respect to a Transfer to a Family Member, if any Member desires to Transfer all or any portion of such Member's Percentage Interest (the "**Offered Interest**"), the Member desiring to so transfer the Offered Interest (the "**Selling Member**") shall give written notice (the "**Offering Notice**") to the Manager of the Selling Member's intention to so transfer; provided, however, the following shall be excluded from the provisions of this **Article 9.3**: (a) sales by Dragul and his Family Members, and (b) sales to Dragul. The Offering Notice shall specify the Offered Interest to be transferred, the consideration to be received therefor, the identity of the proposed purchaser, and the exact terms upon which the Selling Member intends to so transfer. For thirty (30) days after the effective date of the Offering Notice (the "**Review Period**"), the Manager shall have the option to elect to purchase from the Selling Member all (but not less than all) of the Offered Interest at the same price and on the same terms as are specified in the Offering Notice by delivering to the Selling Member a written offer to purchase the Offered Interest. Notwithstanding the foregoing, Manager may designate an alternate transferee to purchase the Offered Interest. If the Manager elects to so purchase all of the Offered Interest within the time period specified, or to designate an alternate transferee that will purchase the Offered Interest, then the purchase of the Offered Interest shall be consummated at the principal place of business of the Company on the terms and conditions set forth in the Offering Notice. At the closing, the Selling Member shall deliver the Offered Interest free and clear of all liens, security interest and competing claims (other than security interest granted in favor of the Manager or its designee) and shall deliver to Manager (or its designee) such instruments of transfer and such evidence of due authorization, execution and delivery and of the absence of any such liens, security interest or competing claims as Manager or its designee reasonably requests. If, within the Review Period, Manager fails to timely and validly offer to purchase all of the Offered Interest (or to designate an alternate transferee that will purchase the Offered Interest), then the Selling Member may, within ninety (90) days after the expiration of such thirty (30) day period, transfer the Offered Interest to the person or entity identified in the Offering Notice on the same terms and conditions and at the same price specified in the Offering Notice. If the Selling Member fails to so transfer the Offered Interest within such ninety (90) day period, then, prior to transferring the Offered Interest, the Selling Member shall resubmit an Offering Notice in accordance with the provisions of this **Article 9.3** and shall comply with the other terms of this **Article 9.3**. Notwithstanding anything in this **Article 9.3** to the contrary, all transfers pursuant to this **Article 9.3** are subject to the restrictions set forth in **Article 9.1** hereof. Manager shall have the right at any time to assign its right of first refusal in this **Article 9.3**.

9.4 Membership Purchase Option.

(a) The occurrence of a Trigger Event, as defined in **Article 9.4(d)(i)** below, will not cause the termination or dissolution of the Company, and the business of the Company shall continue. Upon the occurrence of a Trigger Event by a Member (the "**Trigger Event Member**"), the Manager (or its designee) shall have the option to purchase the entire Percentage Interest of the Trigger Event Member for a thirty day period after the effective date of the Trigger Event. If Manager does not elect to purchase (or designate an alternate purchaser to purchase) the entire Percentage Interest of the Trigger Event Member within such thirty (30) day period, the Company shall have the option to purchase such Percentage Interest during the sixty (60)-day period following the expiration of such thirty (30) day period.

(b) Unless otherwise agreed, upon the occurrence of a Trigger Event, the purchase price for the Trigger Event Member's Percentage Interest shall be equal to eighty-five percent (85%) of the Net Equity of such Percentage Interest; provided, however, that if the Trigger Event is a Prohibited Transfer the purchase price for the purchase of the interest of the transferring or Trigger Event Member shall be the lower of eighty-five percent (85%) of: (i) the purchase price agreed upon by the transferring or Trigger Event Member in connection with the Prohibited Transfer; or (ii) the Net Equity of the transferred Percentage Interest. "**Net Equity**" of a Percentage Interest as of any day means the amount that would be distributed with respect to such Percentage Interest to the Member who holds such Percentage Interest in liquidation of the Company pursuant to **Article 8.3(c)** if: (A) all of the Company's assets were sold for their Asset Values, as reasonably determined pursuant to **Article 9.4(d)(iii)**; (B) the Company paid its accrued, but unpaid, liabilities (including normal brokerage fees for the sale of Company assets) and established reserves pursuant to **Article 8.3(b)** for the payment of reasonably anticipated contingent liabilities; (C) the Company allocated all Profits or Losses to the Members pursuant to **Article 3**; and (D) the Company distributed the remaining proceeds to the Members in liquidation in accordance with **Article 8.3(c)**, all as of such day.

(c) Payment of the purchase price shall be made in cash or certified funds at time of closing if the purchase price is less than fifty thousand dollars ($50,000). If the purchase price is fifty thousand dollars ($50,000) or more, payment of the purchase price shall be made by: (i) the cash payment of the greater of fifty thousand dollars ($50,000) or twenty-five percent (25.0%) of the purchase price at closing; and (ii) delivery of the purchaser's promissory note for the balance of the purchase price, payable in equal quarterly installments, including principal and interest on unpaid balances at the rate hereinafter specified over three (3) years from date of closing. Such note shall contain the normal provisions, including but not limited to, acceleration on default and payment of collection costs (including reasonable attorney's fees) on default and shall provide prepayment may be made at any time without penalty. The promissory note shall be secured by a pledge of the Trigger Event Member's Percentage Interest, pursuant to a commercially reasonable security agreement and related documents. The interest rate for such note shall be one percent (1%) above the Prime Rate. However, if the interest rate exceeds the maximum legal rate of interest then interest shall accrue at the maximum legal rate. Notwithstanding the foregoing, if the Trigger Event is a Prohibited Transfer the purchase price shall be payable, at the election of the Company, either: (A) pursuant to the terms otherwise applicable under this **Article 9.4(c)**; or (B) pursuant to the terms of payment agreed upon by the transferring or Trigger Event Member in connection with the Prohibited Transfer.

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

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

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

(iii) "**Asset Value**" shall mean the fair market value of all of the Company's assets, including the Property, as determined based on a valuation as of the last day

of the month immediately prior to the Trigger Event. For purposes of this Agreement, Asset Value shall be established by the Manager. The cost of the appraisal shall be deducted from the purchase price to be paid for the Trigger Event Member's Interest.

(e) Nothing in this **Article 9.4** shall prohibit the Manager or the Company from structuring the retirement of a Trigger Event Member's Percentage Interest in the Company in a manner different from the one set forth herein, which shall not require the prior consent of the other Members other than the Trigger Event Member.

9.5 Status of Transferee in Violation of this **Article 9**. Notwithstanding the provisions of **Article 9.1**, the Company may, with the written consent of the Manager, in its sole discretion, treat the transferee of an interest transferred in violation of this **Article 9**, as a full Member, which consent shall be upon and subject to the terms set forth in the Manager's consent.

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

9.7 New and Substituted Members.

(a) From the date of the formation of the Company, any Person may become a Member in the Company either (i) by the issuance or sale by the Company of new Percentage Interests ("**New Member**"), provided the admission of the New Member is approved by the Manager, or (ii) as set forth in this **Article 9** as a transferee of a Member's Percentage Interest or any portion thereof, as approved by the Manager ("**Substituted Member**"), subject to the terms and conditions of this Agreement. The Manager shall have the right in its sole and absolute discretion to adjust each Member's Percentage Interest in connection with the admission of a New Member or Substituted Member. In Manager's sole and absolute discretion, new Percentages Interests issued in connection with admission of New Members or Substituted Members may have different rights or obligations than those associated with then-existing Percentage Interests, including but not limited to different economic and voting rights. 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.

(b) As a condition precedent to admission of any Person as a New Member or Substituted Member, the Selling Member, Trigger Event Member, New Member or Substitute Member, as applicable, must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary or desirable, including, without limitation, to: (i) constitute such New Member or Substituted Member as

such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the Company after the completion of the issuance of a Percentage Interest to a New Member or transfer of a Percentage 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.

(c) Any Transfer of a Member's Percentage Interest shall be conditioned upon payment by the Selling Member, Trigger Event Member, New Member or Substitute Member, as applicable, of all costs and expenses incurred by the Company and the Manager in reviewing, approving and documenting the Transfer. All such amounts shall be payable within five (5) days after notice from the Company. The recipient of a transfer of a Percentage Interest in accordance with this **Article 9** shall thereafter be a Member, subject to the limitations set forth in this Agreement.

ARTICLE 10

NEW AND SUBSTITUTED MEMBERS

10.1 New and Substituted Members. From the date of the formation of the Company, any Person may become a Member in the Company either (i) by the issuance or sale by the Company of new Membership Interests ("**New Member**"), provided the admission of the New Member is approved by the Manager, or (ii) as set forth in **Article 9** as a transferee of a Member's Membership Interest or any portion thereof, approved by the Manager ("**Substituted Member**"), subject to the terms and conditions of this Agreement. The Manager shall have the right to adjust each Member's Percentage Interest in connection with the admission of a New Member or Substituted Member. No New Members or Substituted Members shall be entitled to any retroactive allocation of losses, profits, income, expenses or deductions incurred by the Company; however, the Manager may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

10.2 Requirements for Admission of a New or Substituted Member. As a condition precedent to admission of any Person as a New Member or Substituted Member, such Person must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary or desirable to: (i) constitute such New Member or Substituted Member as such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the

existence of the Company after the completion of the issuance of a Membership Interest to a New Member or transfer of a Membership Interest to a Substituted Member under the laws of each jurisdiction in which the Company is qualified, organized or does business; (iv) maintain the status of the Company as an association not taxable as a corporation under the then applicable provisions of the Code; (v) not cause, either alone or when combined with other transactions, the termination of the Company within the meaning of Code Section 708; and (vi) assure compliance with any applicable state and federal securities laws and regulations. Any such admission of a Person as a New Member shall be effective upon such Person's compliance with the foregoing conditions applicable to a New Member, as evidenced by the reflection of such Person on **Exhibit A** as a member of the Company.

ARTICLE 11

DISSOLUTION AND TERMINATION

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

(a) Subject to the limitations and restrictions set forth in this Agreement, the written consent of the Manager and a Majority in Interest.

(b) Subject to the limitations and restrictions set forth in this Agreement, the written consent of the Manager.

(c) 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.

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

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

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

11.3 Winding Up, Liquidation and Distribution of Assets.

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

(b) Winding Up. If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with or not necessary or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Certificate of Cancellation has been filed in accordance with the Act. The Liquidator shall be responsible for overseeing the winding up of the Company, shall take full account of the Company's liabilities and property, shall cause the property to be liquidated as promptly as is consistent with obtaining the fair value thereof (except to the extent the Liquidator determines to distribute any assets to the Members in kind), shall allocate any profit and loss resulting from such sales to the Members as set forth in **Article 5** and **Article 12** and shall cause the proceeds therefrom, to the extent thereof, to be applied and distributed in the following order:

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

(ii) Second, in accordance with Section 5.5.

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

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

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

11.5 Filing of Certificate of Cancellation.

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

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

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

ARTICLE 12

SPECIAL ALLOCATIONS

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

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

12.2 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated and credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations the Deficit Capital Account so created as quickly as possible. It is the intent that this **Article 12.2** be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the Regulations.

12.3 Gross Income Allocation. In the event any Member would have a Deficit Capital Account at the end of any Company taxable year which is in excess of the sum of any amount that such Member is obligated or deemed obligated to restore to the Company pursuant to this Agreement or under Regulations Section 1.70.4-2(g)(1) and such Member's share of Member

nonrecourse minimum gain (as determined in accordance with Section 1.704-2(i)(5) of the Regulations), the Capital Account of such Member shall be specially allocated and credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

12.4 Minimum Gain Chargeback. Notwithstanding any other portion of this **Article 12** and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company Minimum Gain or Partner Nonrecourse Debt Minimum Gain during a taxable year of the Company, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704(g) of the Regulations. This **Article 12.4** is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion, in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion the Managers may in their discretion (and shall if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704-2(f)(4).

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

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

12.7 Intention of Allocation. Any credit or charge to the Capital Accounts of the Members pursuant to **Articles 12.1 through 12.6** ("Regulatory Allocations") shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to **Articles 5.1** so that the net amount of any items charged or credited to Capital Accounts pursuant to **Articles 5.1** shall to the extent possible be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of **Article 5** if the special allocations required by **Articles 12.1 through 12.6** had not occurred; provided, however, that no such allocation will be made pursuant to this **Section** Error! Reference source not found. if (i) the Regulatory Allocation had the effect of offsetting a prior Regulatory Allocation or (ii) the Regulatory Allocation likely (in the opinion of the Company's accountants or tax counsel) will be offset by another Regulatory Allocation in the future (*e.g.*, Regulatory Allocation of "nonrecourse deductions" under **Section** Error! Reference source not found. that likely will be subject to a subsequent "minimum gain chargeback" under **Section 12.4**).

12.8 Code Section 704(c) Allocations.

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

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

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

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

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

If any portion of the property contributed consists of property which had been contributed by the distributee Member to the Company then such property shall not be taken into account under this **Article 12.8** and shall not be taken into account in determining the amount of the Net Pre-contribution Gain. If the property distributed consists of an interest in an Entity the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

12.9 Revaluation of Capital Accounts. In connection with a Capital Contribution of money or other property (other than a de minimis amount) by a New Member or existing Member as consideration for the Member's Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a de minimis

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

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

12.11 Other Allocations.

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

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

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

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

(e) Except as otherwise provided in the preceding provisions of **Article 12**, where Net Profits, Net Losses, tax credits or cash distributions are allocated according to Capital Account balances, all Net Profits, Net Losses, tax credits or cash distributions shared by the Members shall be allocated to the Members in proportion to each Member's 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 13

GLOSSARY OF DEFINED TERMS

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

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

"**Agreement**" means this Operating Agreement of GDA Clearwater 15, LLC 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.

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

appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

"**Certificate of Cancellation**" has the meaning set forth in **Section** Error! Reference source not found..

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

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

"Certificate of Formation" means the certificate of formation of the Company filed with the Secretary of State of the State of Delaware on May 22, 2015, as amended or amended and restated from time to time.

"**Cessation of Membership**" has the meaning set forth in **Section** Error! Reference source not found..

"**Class A Member**" means any Member holding Class A Units in such Member's capacity as such, and each of the Persons who are hereinafter admitted to the Company as a Class A Member in accordance with the terms of this Agreement, in each case including, without limitation, rights to (a) vote on various Company matters as hereinafter set forth, and (b) to receive distributions (liquidating or otherwise) and allocations of Net Profits and Net Losses.

"**Class A Unit**" means a Class A Unit issued to a Class A Member in its capacity as such.

"**Class B Member**" means any Member holding Class B Units in such Member's capacity as such, and each of the Persons who are hereinafter admitted to the Company as a Class B Member in accordance with the terms of this Agreement, including, without limitation, rights to receive distributions (liquidating or otherwise) and allocations of Net Profits and Net Losses, but expressly does not include the right to vote except as may be required by the Act.

"**Class B Unit**" means a Class B Unit issued to a Class B Member in its capacity as such.

"**Class C Member**" means any Member holding Class C Units in such Member's capacity as such, and each of the Persons who are hereinafter admitted to the Company as a Class C Member in accordance with the terms of this Agreement, in each case including, without limitation, rights to (a) vote on various Company matters as hereinafter set forth, and (b) to receive distributions (liquidating or otherwise) and allocations of Net Profits and Net Losses.

"**Class C Unit**" means a Class C Unit issued to a Class C member in its capacity as such.

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

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

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

"**Default Date**" has the meaning set forth in **Article 3.2**.

"**Defaulting Member**" has the meaning set forth in **Article 3.2**.

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

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

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

"**Delinquent Party**" has the meaning set forth in **Article 14.20.**

"**Dissolution Events**" has the meaning set forth in **Article 11.1**.

"**Distributable Cash**" has the meaning set forth in **Article 5.5**.

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

"**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.

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

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

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

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

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

"**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.

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

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

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

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

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

"**Non Delinquent Party**" has the meaning set forth in **Article 14.21**.

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

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

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

"**Purchase Offer**" means the bona fide offer to purchase a Membership Interest in the Company as set forth in **Article 9.2**.

"**Purchase Option**" has the meaning set forth in **Article 3.2**.

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

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

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

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

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

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

"**Transferring Member**" has the meaning set forth in **Article 9.3**.

ARTICLE 14

MISCELLANEOUS PROVISIONS

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

14.2 Alienation of Membership Interest. No Member shall, except as provided in **Article 9**, sell or Assign its Membership Interest in the Company or in its capital assets or

property; or do any act detrimental to the best interests of the Company.

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

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

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

14.6 Amendment. Except as otherwise provided in this Agreement, this Agreement may not be amended except with the consent of a Majority in Interest of the Members 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 or to amend **Exhibit A** to reflect the admission of New Members or Substitute Members or as otherwise permitted by this Agreement.

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

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

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

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

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

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

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

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

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

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

14.17 Lack of Registration. The Members recognize that (i) no Membership Interest has been registered under any of the Securities Acts, in reliance upon an exemption from such registration, (ii) no Member may sell, offer for sale, transfer, pledge or hypothecate its Membership Interest in the Company or any portion thereof in the absence of an effective registration statement covering such interest under the Securities Acts, unless such sale, offer of sale, transfer, pledge or hypothecation is exempt from registration under the Securities Acts as approved by the Company, (iii) the Company has no obligation to register the Membership Interests for sale or to assist in establishing an exemption from registration for any proposed sale, and (iv) the restrictions on transfer severely affect the liquidation of the investment.

14.18 Investment Interest. Each Member is acquiring its Membership Interest for its own account for investment purposes and not with a view to, or for sale in connection with, any distribution of any Membership Interest thereof and with no present intention of selling or assigning any Membership Interest. Each Member further acknowledges that there is no public market for the Membership Interests, and that there may never be a public market for such Membership Interests, and that even if a market develops for such Membership Interest, a Member may never be able to Sell or dispose of such Membership Interests and may thus have to bear the risk of investment in such securities for a substantial period of time. Each Member further acknowledges that it has such knowledge and experience in financial and business matters that it is capable of evaluating the risks of its investment in the Company and is able to bear the economic risk of such investment. Each Member believes it has made an informed judgment with respect to its investment in the Company.

14.19 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.

14.20 Default. The failure of a Member or Manager hereto to comply with any of the monetary provisions of this Agreement when due or the failure of any party hereto to comply with any of the non-monetary provisions of this Agreement and the continuance of such non-monetary failure for a period of thirty (30) days after written notice thereof is given to such party by the other party specifying the nature thereof shall constitute a default hereunder and shall be considered a "**Delinquent Party**."

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

14.22 Percentage Interests Owned by One or More Persons. If any Percentage Interests are owned jointly by one or more Persons as a tenancy in common or joint tenancy, in any matters requiring consent or approval under this Agreement, the consent or approval of one of the Persons owning the Percentage Interests shall be deemed to be the consent of all Persons owning the Percentage Interests.

ARTICLE 15

REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties. Each Member hereby represents and warrants that as of the date hereof each of the following is a true, accurate, and full disclosure of all pertinent facts, and further represents and warrants as follows:

(a) Such Member, if other than an individual, is a duly organized entity under the laws of its state of organization and has the requisite power and authority to enter into and carry out the terms of this Agreement, and all required action has been taken to authorize such Member to execute and consummate this Agreement.

(b) Such Member has been duly authorized to enter into this Agreement, and such Member is not a "foreign person" as defined under Code Section 1445(f)(3).

(c) The address shown in **Exhibit A** constitutes such Member's legal and permanent residence.

(d) Such Member understands that the Membership Interests may not be Assigned or otherwise transferred except upon delivery to the Company of an opinion of counsel satisfactory to the Managers that registration under the Securities Acts is not required for such transfer, or the submission to the Managers of such other evidence as may be satisfactory to the Managers, to the effect that any such transfer will not be in violation of the Securities Acts or any rule or regulation promulgated thereunder; and that legends to the foregoing effect will be placed on all documents evidencing the Membership Interests. The Member understands that the foregoing does not limit other restrictions regarding the transfer of its Membership Interests set forth in this Agreement or in the Act.

(e) Such Member has been given the opportunity to ask questions of, and receive answers from, the Company with respect to the business to be conducted by the Company. Such Member has been furnished with a copy of the Certificate of Formation, this Agreement, to which it is a party, and any other documents that such Member has deemed necessary and requested in connection with the business to be conducted by the Company.

ARTICLE 16

COMPLIANCE WITH ANTI-TERRORISM ORDERS

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

16.2 Representation of Members. Each Member represents and warrants to the

Company that neither said Member nor the beneficial owner(s) of said Member:

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

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

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

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

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

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

16.5 Representations and Warranties. In the event that a representation or warranty of a Member set forth in **Article 16** becomes untrue at any time during the term of this Company, then the Manager shall have the right to purchase the Membership Interest of the Member so violating said provision pursuant to the same terms and conditions as are contained in **Article 3.2**, except that the purchase price shall be 10% of the fair market value rather than fair market value and the time frame within which the Manager may cause said purchase shall be determined by the Manager in its sole and absolute discretion.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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

MEMBERS:

Gary J. Dragul

HELMS PARTNER LIMITED PARTNERSHIP

By: _____
Name: _____
Title: _____

Aaron Metz

Marc Diamant

HILLTOPPERS CAPITAL GROWTH, LLC

By: _____
Name: William S. Dickey
Title: CEO

David Haar

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

MEMBERS:

_____
Gary J. Dragul

HELMS FAMILY LIMITED PARTNERSHIP

By: _____
Name: Christopher A. Helms
Title: Member, Helms Family GP, LLC

_____
Aaron Metz

_____
Marc Diamant

HILLTOPPERS CAPITAL GROWTH, LLC

By: _____
Name: William S. Dickey
Title: _____

_____
David Haar

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

MEMBERS:

Gary J. Dragul

HELMS PARTNER LIMITED PARTNERSHIP

By: _____
Name: _____
Title: _____

Aaron Metz

Marc Diamant

HILLTOPPERS CAPITAL GROWTH, LLC

By: _____
Name: William S. Dickey
Title: CEO

David Haar

MANAGER:

GDA Clearwater Management, LLC,
a Colorado limited liability company

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

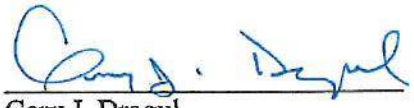
By: 
Gary J. Dragul
Its: President

EXHIBIT A

Names; Addresses; Capital Contributions and Percentage Interests

NAME	ADDRESS	VALUE OF CAPITAL CONTRIBUTION	PERCENTAGE OF INTEREST
Gary J. Dragul	5690 DTC Boulevard Suite 515 Greenwood Village, CO 80111 Email: gary@gdare.com	$650,000	60.06%
Helms Family Limited Partnership	11705 Durrette Dr. Houston TX 77024 Attn: Helms Family G.P., LLC Christopher A. Helms and Katherine Helms, Members Email: chelms@usshaleadvisors.com	$250,000	15.60%
Aaron Metz	519 Prospect Dr. Castle Rock CO 80108 Email: aaron@gdare.com	$100,000	6.24%
Marc Diamant	Brownstein Hyatt Farber Schreck, LLP 410 17th Street Suite 2200 Denver CO 80202 Email: mdiamont@bhfs.com	$50,000	3.12%
Hilltoppers Capital Growth. LLC	6130 S. Elm Court Centennial CO 80121 Attn: William S. Dickey Email: bdickey@usshaleadvisors.com	$100,000	6.24%
David Haar	7972 S. Vincennes Way Centennial CO 80112 Email: ddhaar@msn.com	$140,000	8.74%
TOTALS		$1,290,000	100%

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

OPERATING AGREEMENT

OF

CLEARWATER PLAINFIELD 15, LLC
a Delaware limited liability company

THIS OPERATING AGREEMENT OF CLEARWATER PLAINFIELD 15, LLC is made and entered into as of the 21st day of May, 2015, by and between those Members listed on **Exhibit A** and the other signatories hereto, on the following terms and conditions. Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth in **Article 13**.

ARTICLE 1

FORMATION OF THE COMPANY

1.1 Formation of the Company. On May 21, 2015, the Company was formed as a Delaware limited liability company under and pursuant to the Act by filing with the Secretary of State of the State of Delaware 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. Julie R. Sander is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered

and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation with the Secretary of State of the State of Delaware, Julie R. Sander's powers as an "authorized person" ceased, and the Manager thereupon became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act.

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

1.3 Address.

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

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

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

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

1.6 Income Tax Classification. The following provision shall apply at any time the Company has only one Member: the Company is a single-member entity, disregarded for federal and state income tax purposes. In all other instances, it shall be deemed the intention of the parties hereto that the Company be treated as a partnership for federal income tax purposes as defined in Section 7701 of the Code.

1.7 Purpose of the Company. It is the intention of the sole Member of the Company (as of the date of this Agreement) that the Property qualify as the Member's "replacement property" in a "deferred exchange" as those terms are defined in Section 1.1031(k)-1(a) of the Regulations.

ARTICLE 2

BUSINESS OF THE COMPANY

2.1 Business of the Company. Subject to **Article 17** of this Agreement, the business

of the Company shall be:

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

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

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

Without limiting the generality of the foregoing, the Company, as a tenant in common with Clearwater Collection 15, LLC (collectively, the "**Tenants in Common**"), has acquired or will acquire property known as Clearwater Collection in Clearwater, Florida (the "**Property**"). The Company and the Tenants in Common intend to obtain a loan in connection with the acquisition of the Property, in the original principal amount of $13,350,000.00 (the "**Loan**"), which Loan will be held by RIALTO MORTGAGE FINANCE, LLC, a Delaware limited liability company, its successors and/or assigns, ("**Lender**"), and which will be evidenced by a promissory note and other loan documents (the "**Loan Documents**"), and secured by a Deed of Trust on the Property (the "**Mortgage**"). The Manager is authorized and directed to do all such acts and to execute, deliver and perform all such documents and instruments as the Manager deems necessary or advisable to carry out the acquisition of the Property and obtain the Loan, on behalf of the Company and the Tenants in Common. All such instruments and documents shall be in such form and contain such terms as may be approved by the Manager. The Company is hereby authorized to execute, deliver and perform, and the Manager on behalf of the Company is hereby authorized to execute and deliver, the Loan Documents, the Tenancy in Common Agreement, and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any other Person notwithstanding any other provision of this Agreement. The foregoing authorization shall not be deemed a restriction on the powers of the Manager to enter into other agreements on behalf of the Company.

ARTICLE 3

MEMBERS AND MEMBERSHIP INTERESTS

3.1 Members and Membership Interests. The names, addresses, Capital Contributions and Percentage Interests of the Members shall be as set forth on **Exhibit A** attached hereto and made a part hereof, which **Exhibit A** shall be amended from time to time upon any change in the Percentage Interests, addresses or Capital Contributions of the Members, or upon the admission or cessation of membership of any Member. The Persons listed on **Exhibit A** on the date hereof are hereby admitted to the Company as members of the Company upon their execution of a counterpart of this Agreement. All Members will pay their Capital Contribution in cash, property or by check upon their admission as a Member. If a Member contributes property to the Company, the value of the Capital Contribution shall be determined by the Manager.

3.2 Additional Capital Contributions. Members will be required to make additional Capital Contributions to the Company from time to time upon the written request of the Manager, provided that the maximum total additional Capital Contribution from any Member shall not exceed thirty percent (30%) of such Member's initial Capital Contribution without the consent of a Majority in Interest of the Members and the approval of the Manager. Upon receipt of written notice of the Manager (and upon consent of a Majority in Interest of the Members if required pursuant to the preceding sentence), each Member shall deliver to the Company its pro rata share of the required additional Capital Contribution (in proportion to the respective Percentage Interest of the Member on the date such notice is given) no later than 10 days following the date such notice is given. None of the terms, covenants, obligations or rights contained in this **Article 3.2** shall be deemed to be made for the benefit of any Person other than the Members and the Company, and no such third Person shall under any circumstances have any right to compel any actions or payments by the Members.

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 (1) allow one or more nondefaulting Member 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 **Article 3.2(a)**, (2) 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 **Article 3.2(b)** or (3) allow one more of the nondefaulting Members to exercise the Purchase Option (as defined below) to purchase the Defaulting Member's Percentage Interest in accordance with the procedures set forth below in **Article 3.2(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 twenty percent (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 five percent (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 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 **Article 3.2(a)(i)**, together with interest 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 **Article 3.2**) 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, subject to the Loan Agreement, 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 by the Dilution Formula.

3.3 Loans. Subject to the Loan Agreement and **Article 17** hereof, while the Loan is outstanding (or until the Company defeases the Loan in accordance with the terms of the Loan Documents), the Company may, as determined by the Manager, borrow money from one or any of the Members or third Persons. In the event that a loan agreement is negotiated with a Member or their Affiliates, such Person shall be entitled to receive interest at a rate and upon such terms to be determined by the Manager, which will be upon the same terms or better terms to the Company than those then available from recognized financial institutions, and said loan shall be repaid by the Company to the Member, with interest, according to the terms of the loan. The loan may be evidenced by a promissory note payable by the Company in a form approved by the Manager. Such interest and repayment of the amounts so loaned are to be entitled to priority of payment over the division and distribution of Capital Contributions and profit among Members with respect to their Membership Interests. Loans by any Member to the Company will not be considered contributions to the capital of the Company. Each Member will comply and cause its beneficial owners to comply with the terms and conditions of any loan documents entered into by the Company to the extent the same pertain to said Member or beneficial owner.

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

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

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

Company and the other Members from any liability or obligation they may incur in respect thereof.

3.7 Membership Transfers. If the Company transfers an undivided interest in the Property to one or more of the Members in exchange for such Member's Membership Interest, the Percentage Interests of each of the remaining Members in the Company shall increase by a proportional amount relative to the amount so transferred, as reasonably determined by the Manager.

ARTICLE 4

MEMBERS' CAPITAL ACCOUNTS

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

4.2 Cessation of Membership or Reduction of Members' Contributions to Capital.

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

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

(c) A Member, irrespective of the nature of the Member's contribution, has only the right to demand and receive cash in return for such Member's contribution to capital; however, the foregoing does not preclude the Company, subject to the limitation of **Article 11.3**, from distributing property other than cash to any Member.

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

4.4 No Obligation to Restore. As specified in **Article 11.3**, no Member shall have any liability to restore all or any portion of a Deficit Capital Account of such Member.

4.5 Miscellaneous.

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

(b) No Priority of Return of Capital Contribution. No Member shall have any priority over any other Member with respect to the return of any Capital Contribution.

ARTICLE 5

ALLOCATIONS AND DISTRIBUTIONS

5.1 Net Profits. Except as otherwise provided in this Agreement, including the special allocation provisions set forth in **Article 12** of this Agreement, 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 12** or elsewhere in this Agreement, the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal (proportionately) to (i) the distributions that would be made to such Member pursuant to **Article 11.3(b)** of this Agreement 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 (ii) such Member's share of Company Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. The Manager may make such allocations as it deems reasonably necessary to give economic effect to the provisions of this Agreement taking into account such facts and circumstances as the Manager deems reasonably necessary for this purpose.

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

5.3 Reporting by Members. The Members agree to report their shares of income and loss for federal income tax purposes in accordance with this **Article 5** and **Article 12**.

5.4 Distributions. Except upon dissolution and liquidation as set forth in **Article 11.3**, at such times as the Manager may determine, but at least quarterly, the Distributable Cash of the Company, if any, will be distributed to the Members in proportion to their respective Percentage Interests.

For any fiscal year, "**Distributable Cash**" shall mean all cash funds of the Company on hand from time to time (other than cash funds obtained as Capital Contributions to the Company by the Members) less (i) all current principal and interest payments on indebtedness of the Company reasonably anticipated by the Manager to be payable and all other sums reasonably

anticipated to be currently payable to lenders, (ii) all cash expenditures incurred incident to the normal operation of the Company's business but not yet paid, and (iii) such Reserves as the Manager determines is necessary for the proper operation of the Company's business. The Manager shall have the discretion to make distributions of property other than cash based upon the Manager's determination of the fair market value of such property at the time of the distribution.

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

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

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

ARTICLE 6

CONSENTS VOTING AND MEETINGS

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

(a) By written consent describing the action taken, signed by the Members holding the 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 **Article 6.3** to consider the action for which the consent, approval or election is solicited.

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

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

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

6.5 Notice of Meetings. Except as provided in **Article 6.6**, notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than 10 nor more than 50 days before the date of the meeting in accordance with the notice provisions of this Agreement.

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

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

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

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

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

the meeting.

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

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

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

6.14 Sale of Assets. Subject to the Loan Agreement, the Manager may sell all or any of the assets of the Company without the consent of the Members.

ARTICLE 7

RIGHTS AND DUTIES OF THE MANAGER

7.1 Management.

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

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

(i) Power to acquire real and personal property from any Person as the Manager may direct. 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 **Article 3.3** in the case of loans from the Members or their Affiliates), and in connection therewith, to hypothecate, encumber and grant security interests in the assets of 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) Except as provided in **Article 6.14**, 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) Subject to **Article 17**, 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 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 for the preservation of Company

assets, if, under the circumstances, in the good faith estimation of the Manager, there is insufficient time to allow it to obtain the approval of the Members to such action and any delay would materially increase the risk to life or health or preservation of assets. In such event, the Manager shall notify the Members of each such action contemporaneously therewith or as soon as reasonably practicable thereafter.

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

7.2 Number Tenure Election and Qualifications.

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

(b) Tenure. GDA Clearwater Management, LLC, a Colorado corporation, shall act as Manager until its dissolution, resignation or removal under this Agreement; provided, however, the Manager may not resign or be removed unless a successor Manager has been appointed and approved by Members owning at least 75% of the Percentage Interests, and the Manager has executed a counterpart to this Agreement. Any new Manager shall be elected by Members owning at least 75% of the Percentage Interests, and any new Manager shall hold office until such Manager's dissolution, resignation or removal; provided, however, the Manager may not resign or be removed unless a successor Manager has been appointed and has executed a counterpart to this Agreement. In such event, all Members agree to promptly work on installing a successor Manager. It is the intent and agreement of all Members to negotiate and act in good faith in the selection of a successor Manager. If the Members are unable to select a successor Manager in a timely manner, the Members agree to participate in mediation with a business mediator in order to attempt to select a successor Manager.

7.3 Devotion to Duty.

(a) Duty of Good Faith; Exoneration. The Manager shall perform its duties as the manager of the Company in good faith, in a manner it reasonably believes to be in the best interest of the Company and shall exercise reasonable skill, care and business judgment. Unless fraud, deceit, gross negligence, willful misconduct, bad faith, breach of fiduciary duty or a wrongful taking shall be proved by a nonappealable 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 in good faith on information, opinions, reports or statements of the following persons or groups, unless the Manager has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

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

(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 otherwise lacks the authority to act for the Company and the Person with whom the Manager is dealing has knowledge of the fact that the Manager has no such authority.

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

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

7.6 Indemnity of the Manager. The Manager shall be entitled to be indemnified by the Company to the fullest extent permitted by law, and shall be entitled to the advance of expenses, including reasonable attorneys' fees in the defense or prosecution of a claim in any such capacity; provided that the foregoing indemnity shall not apply to any acts of fraud or gross negligence committed by the Manager. The Company may purchase and maintain insurance on behalf of the Manager against any liability asserted against or incurred by the Manager or arising out of its status as such, if the Manager determines to do so.

7.7 Removal. Notwithstanding the foregoing, at a meeting called expressly for that purpose, the Manager may be removed, with or without cause, by the vote of Members holding at least 75% of the Percentage Interests.

7.8 Resignation. Subject to **Article 7.2(b)** and **Article 17**, the Manager may resign at any time by giving written notice to the Members. The resignation of any Manager shall take effect upon appointment of a replacement Manager in accordance with **Article 7.2(b)**.

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

ARTICLE 8

BOOKS RECORDS AND ADMINISTRATION

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

8.2 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at Manager at the principal office of the Company provided in **Article 1.3B**, or at such other location as the Manager shall advise the Members in writing. Upon reasonable request, each Member, and such Member's duly authorized representative, shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

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

8.4 Tax Matters Partner. The following provisions shall apply at any time the Company has more than one Member: if Dragul is a Member, Gary J. Dragul shall be designated to be the "tax matters partner" (as defined in the Code) on behalf of the Company if such designation is appropriate, and if Dragul is not a Member or Gary J. Dragul is unable to be the tax matters partner, a tax matters partner shall be designated by a Majority in Interest of the Members, subject to the approval of the Manager. Any reasonable cost incurred by the tax matters partner, if any, in connection with performing his or her duties as tax matters partner, including retaining accountants and attorneys, shall be expenses of the Company.

ARTICLE 9

RESTRICTIONS ON TRANSFERABILITY

9.1 General. No Member shall Transfer (as defined in **Article 9.2(c)** below) or encumber all or any portion of its interest in the Company without the written consent of the Manager, in its sole and absolute discretion, and no Member shall permit any Transfer of any direct, indirect or beneficial interests in (a) such Member; or (b) in any other entity which owns,

directly or indirectly, through one or more intermediate entities, any ownership interest in such Member, without first obtaining the written consent of the Manager. Any Transfer or encumbrance in violation of the Loan Agreement and this **Article 9.1** (each called a "**Prohibited Transfer**") shall be null and void and of no legal effect upon the Company, and the Company will not be required to accept, recognize or be bound by such Prohibited Transfer and the purported transferee thereof shall acquire no rights in the Percentage Interest which is the subject of a Prohibited Transfer. The failure of Manager or the Company to exercise any option resulting from a Prohibited Transfer pursuant to **Article 9.3** and **Article 9.4**, respectively, shall not be deemed a consent to any Prohibited Transfer, and the purported transferee of such interest shall not become a Member, nor shall the Company be required to accept, recognize or be bound by such Prohibited Transfer. The terms of this Section may be specifically enforced against a transferee or encumbrancer.

9.2 Transfers to Family Members.

(a) The Manager shall not unreasonably withhold its consent to a Transfer to a Family Member (as defined below) if such Transfer: (i) will not require lender consent or payment of any amount pursuant to any of the Applicable Loan Documents (as defined below); (ii) will not violate the terms of any Applicable Loan Documents; and (iii) will not apply to the calculation of any percentage ownership thresholds relating to Transfers set forth in the Applicable Loan Documents.

(b) For purposes of this Agreement, "**Family Member**" shall mean (i) the Relatives (as defined below) of either (A) a Member who is an individual, (B) the beneficiary of Member who is a trust, provided that the beneficiary is an individual and has a right, together with its other Relatives, to receive a majority of the trust assets, or (C) the sole owner of a Member that is an Entity provided that such owner is an entity; (ii) a trust for the benefit of any of the foregoing parties described in subsection (i) of this definition; and (iii) an Entity wholly owned or controlled by the foregoing parties described in subsection (i) of this definition. For purposes of this Agreement, "**Relatives**" shall mean spouses, parents, grandparents, children (including adopted children), grandchildren, and siblings.

(c) For the purposes of this Agreement, "**Transfer**" shall mean (i) the most broadly defined definition of "transfer" set forth in any of the Loan Documents or any other present or future loan to the Company or secured by the Property (any "**Applicable Loan Documents**"), or (ii) the following, whichever more broadly defines the meaning of Transfer: a sale, assignment, transfer, or other disposition (whether voluntary, involuntary, or by operation of law); a gift, bequest, or other transfer for no consideration; a granting, pledging, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law); an issuance or other creation of a direct or indirect ownership interest; a withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity; or a merger, consolidation, dissolution or liquidation of a legal entity.

9.3 Right of First Refusal. Other than with respect to a Transfer to a Family Member, and subject to the Loan Agreement, if any Member desires to Transfer all or any portion of such Member's Percentage Interest (the "**Offered Interest**"), the Member desiring to so transfer the Offered Interest (the "**Selling Member**") shall give written notice (the "**Offering Notice**") to the

Manager of the Selling Member's intention to so transfer; provided, however, the following shall be excluded from the provisions of this **Article 9.3**: (a) sales by Dragul and his Family Members, and (b) sales to Dragul. The Offering Notice shall specify the Offered Interest to be transferred, the consideration to be received therefor, the identity of the proposed purchaser, and the exact terms upon which the Selling Member intends to so transfer. For thirty (30) days after the effective date of the Offering Notice (the "**Review Period**"), the Manager shall have the option to elect to purchase from the Selling Member all (but not less than all) of the Offered Interest at the same price and on the same terms as are specified in the Offering Notice by delivering to the Selling Member a written offer to purchase the Offered Interest. Notwithstanding the foregoing, Manager may designate an alternate transferee to purchase the Offered Interest. If the Manager elects to so purchase all of the Offered Interest within the time period specified, or to designate an alternate transferee that will purchase the Offered Interest, then the purchase of the Offered Interest shall be consummated at the principal place of business of the Company on the terms and conditions set forth in the Offering Notice. At the closing, the Selling Member shall deliver the Offered Interest free and clear of all liens, security interest and competing claims (other than security interest granted in favor of the Manager or its designee) and shall deliver to Manager (or its designee) such instruments of transfer and such evidence of due authorization, execution and delivery and of the absence of any such liens, security interest or competing claims as Manager or its designee reasonably requests. If, within the Review Period, Manager fails to timely and validly offer to purchase all of the Offered Interest (or to designate an alternate transferee that will purchase the Offered Interest), then the Selling Member may, within ninety (90) days after the expiration of such thirty (30) day period, transfer the Offered Interest to the person or entity identified in the Offering Notice on the same terms and conditions and at the same price specified in the Offering Notice. If the Selling Member fails to so transfer the Offered Interest within such ninety (90) day period, then, prior to transferring the Offered Interest, the Selling Member shall resubmit an Offering Notice in accordance with the provisions of this **Article 9.3** and shall comply with the other terms of this **Article 9.3**. Notwithstanding anything in this **Article 9.3** to the contrary, all transfers pursuant to this **Article 9.3** are subject to the restrictions set forth in **Article 9.1** hereof. Manager shall have the right at any time to assign its right of first refusal in this **Article 9.3**.

9.4 Membership Purchase Option.

(a) The occurrence of a Trigger Event, as defined in **Article 9.4(d)(i)** below, will not cause the termination or dissolution of the Company, and the business of the Company shall continue. Upon the occurrence of a Trigger Event by a Member (the "**Trigger Event Member**"), the Manager (or its designee) shall, subject to the Loan Agreement, have the option to purchase the entire Percentage Interest of the Trigger Event Member for a thirty day period after the effective date of the Trigger Event. If Manager does not elect to purchase (or designate an alternate purchaser to purchase) the entire Percentage Interest of the Trigger Event Member, within such thirty (30) day period, the Company shall have the option to purchase such Percentage Interest during the sixty (60)-day period following the expiration of such thirty (30) day period.

(b) Unless otherwise agreed, upon the occurrence of a Trigger Event, the purchase price for the Trigger Event Member's Percentage Interest shall be equal to eighty-five percent (85%) of the Net Equity of such Percentage Interest; provided, however, that if the

Trigger Event is a Prohibited Transfer the purchase price for the purchase of the interest of the transferring or Trigger Event Member shall be the lower of eighty-five percent (85%) of: (i) the purchase price agreed upon by the transferring or Trigger Event Member in connection with the Prohibited Transfer; or (ii) the Net Equity of the transferred Percentage Interest. "**Net Equity**" of a Percentage Interest as of any day means the amount that would be distributed with respect to such Percentage Interest to the Member who holds such Percentage Interest in liquidation of the Company pursuant to **Article 8.3(c)** if: (A) all of the Company's assets were sold for their Asset Values, as reasonably determined pursuant to **Article 9.4(d)(iii)**; (B) the Company paid its accrued, but unpaid, liabilities (including normal brokerage fees for the sale of Company assets) and established reserves pursuant to **Article 8.3(b)** for the payment of reasonably anticipated contingent liabilities; (C) the Company allocated all Profits or Losses to the Members pursuant to **Article 3**; and (D) the Company distributed the remaining proceeds to the Members in liquidation in accordance with **Article 8.3(c)**, all as of such day.

(c) Payment of the purchase price shall be made in cash or certified funds at time of closing if the purchase price is less than $50,000. If the purchase price is $50,000 or more, payment of the purchase price shall be made by: (i) the cash payment of the greater of $50,000 or 25.0% of the purchase price at closing; and (ii) delivery of the purchaser's promissory note for the balance of the purchase price, payable in equal quarterly installments, including principal and interest on unpaid balances at the rate hereinafter specified over three (3) years from date of closing. Such note shall contain the normal provisions, including but not limited to, acceleration on default and payment of collection costs (including reasonable attorney's fees) on default and shall provide prepayment may be made at any time without penalty. The promissory note shall be secured by a pledge of the Trigger Event Member's Percentage Interest, pursuant to a commercially reasonable security agreement and related documents. The interest rate for such note shall be one percent (1) above the Prime Rate. However, if the interest rate exceeds the maximum legal rate of interest then interest shall accrue at the maximum legal rate. Notwithstanding the foregoing, if the Trigger Event is a Prohibited Transfer the purchase price shall be payable, at the election of the Company, either: (A) pursuant to the terms otherwise applicable under this **Article 9.4(c)**; or (B) pursuant to the terms of payment agreed upon by the transferring or Trigger Event Member in connection with the Prohibited Transfer.

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

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

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

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

(e) Nothing in this **Article 9.4** shall prohibit the Manager or the Company from structuring the retirement of a Trigger Event Member's Percentage Interest in the Company in a manner different from the one set forth herein, which shall not require the prior consent of the other Members other than the Trigger Event Member.

9.5 Status of Transferee in Violation of this **Article 9**. Notwithstanding the provisions of **Article 9.1**, the Company may, with the written consent of the Manager, in its sole discretion, treat the transferee of an interest transferred in violation of this **Article 9**, as a full Member, which consent shall be upon and subject to the terms set forth in the Manager's consent.

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

9.7 New and Substituted Members.

(a) From the date of the formation of the Company, subject to the Loan Agreement, any Person may become a Member in the Company either (i) by the issuance or sale by the Company of new Percentage Interests ("**New Member**"), provided the admission of the New Member is approved by the Manager, or (ii) as set forth in this **Article 9** as a transferee of a Member's Percentage Interest or any portion thereof, as approved by the Manager ("**Substituted Member**"), subject to the terms and conditions of this Agreement. The Manager shall have the right in its sole and absolute discretion to adjust each Member's Percentage Interest in connection with the admission of a New Member or Substituted Member. In Manager's sole and absolute discretion, new Percentages Interests issued in connection with admission of New Members or Substituted Members may have different rights or obligations than those associated with then-existing Percentage Interests, including but not limited to different economic and voting rights. 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.

(b) As a condition precedent to admission of any Person as a New Member or Substituted Member, the Selling Member, Trigger Event Member, New Member or Substitute Member, as applicable, must execute, acknowledge and deliver to the Company such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and perform all such other acts which the Manager may deem necessary or desirable, including, without limitation, to: (i) constitute such New Member or Substituted Member as such; (ii) confirm that the New Member or Substituted Member has accepted, assumed and agreed to be subject and bound by all the terms, obligations and conditions of this Agreement, as the same may have been further amended; (iii) preserve the Company after the completion of the issuance of a Percentage Interest to a New Member or transfer of a Percentage 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.

(c) Any Transfer of a Member's Percentage Interest in the Company shall be conditioned upon payment by the Selling Member, Trigger Event Member, New Member or Substitute Member, as applicable, of all costs and expenses incurred by the Company and the Manager in reviewing, approving and documenting the Transfer. All such amounts shall be payable within five (5) days after notice from the Company. The recipient of a transfer of a Percentage Interest in accordance with this **Article 9** shall thereafter be a Member, subject to the limitations set forth in this Agreement.

ARTICLE 10

NEW AND SUBSTITUTED MEMBERS

10.1 New and Substituted Members. From the date of the formation of the Company, subject to the Loan Agreement, any Person may become a Member in the Company either (i) by the issuance or sale by the Company of new Membership Interests ("**New Member**"), provided the admission of the New Member is approved by the Manager, or (ii) as set forth in **Article 9** as a transferee of a Member's Membership Interest or any portion thereof, approved by the Manager ("**Substituted Member**"), subject to the terms and conditions of this Agreement. The Manager shall have the right to adjust each Member's Percentage Interest in connection with the admission of a New Member or Substituted Member. No New Members or Substituted Members shall be entitled to any retroactive allocation of losses, profits, income, expenses or deductions incurred by the Company; however, the Manager may, at its option, at the time a Member is admitted, close the Company books (as though the Company's tax year had ended) or make pro rata allocations of loss, profit, income, expense and deductions to a New Member or Substituted Member for that portion of the Company's tax year in which the New Member or Substituted Member was admitted in accordance with the provisions of Section 706(d) of the Code and the Regulations promulgated thereunder.

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

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

ARTICLE 11

DISSOLUTION AND TERMINATION

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

(a) Subject to the limitations and restrictions set forth in this Agreement, the written consent of Members holding 50% of the Membership Interests and the written consent of the Manager.

(b) Subject to the limitations and restrictions set forth in this Agreement, the written consent of the Manager.

(c) 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.

(d) 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.

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

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

11.3 Winding Up, Liquidation and Distribution of Assets.

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

(b) Winding Up. If the Company is dissolved and its affairs are to be wound up, the Company shall continue solely for the purpose of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members and no Member shall take any action that is inconsistent with or not necessary or appropriate for winding up the Company's business and affairs. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the property and assets of the Company have been distributed pursuant to this Agreement and the Certificate of Cancellation has been filed in accordance with the Act. The Liquidator shall be responsible for overseeing the winding up of the Company, shall take full account of the Company's liabilities and property, shall cause the property to be liquidated as promptly as is consistent with obtaining the fair value thereof (except to the extent the Liquidator determines to distribute any assets to the Members in kind), shall allocate any profit and loss resulting from such sales to the Members as set forth in **Article 5** and **Article 12** and shall cause the proceeds therefrom, to the extent thereof, to be applied and distributed in the following order:

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

(ii) Second, in accordance with Section 5.5.

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

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

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

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

11.5 Filing of Certificate of Cancellation.

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

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

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

ARTICLE 12

SPECIAL ALLOCATIONS

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

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

12.2 Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations, or distributions described in Sections 1.704-1(b)(2)(ii)(d)(4), (5), or (6) of the Regulations, which create or increase a Deficit Capital Account of such Member, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated and credited to the Capital Account of such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations the Deficit Capital Account so created as quickly as possible. It is the intent that this **Article 12.2** be interpreted to comply with the alternate test for economic effect set forth in Section 1.704-1(b)(2)(ii)(d) of the

Regulations.

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

12.4 Minimum Gain Chargeback. Notwithstanding any other portion of this **Article 12** and except as provided in Section 1.704-2(f) of the Regulations, if there is a net decrease in the Company Minimum Gain or Partner Nonrecourse Debt Minimum Gain during a taxable year of the Company, then the Capital Accounts of each Member shall be allocated items of income (including gross income) and gain for such year (and, if necessary, for subsequent years) in an amount equal to the total net decrease in the Company's minimum gain multiplied by the Members' percentage share of the Company's minimum gain at the end of the preceding taxable year determined in accordance with Section 1.704(g) of the Regulations. This **Article 12.4** is intended to comply with the minimum gain chargeback requirement of Section 1.704-2(f) of the Regulations and shall be interpreted consistently therewith. The items to be so allocated shall be determined in accordance with Sections 1.704-2(f)(6) and 1.704-2(j)(2) of the Regulations. In any taxable year that the Company has a net decrease in the Company's minimum gain, if the minimum gain chargeback requirement would cause a distortion, in the economic arrangement among the Members and it is not expected that the Company will have sufficient other income to correct that distortion the Managers may in their discretion (and shall if requested to do so by a Member) seek to have the Internal Revenue Service waive the minimum gain chargeback requirement in accordance with Regulation Section 1.704-2(f)(4).

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

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

12.7 Intention of Allocation. Any credit or charge to the Capital Accounts of the Members pursuant to **Articles 12.1 through 12.6** shall be taken into account in computing subsequent allocations of Net Profits and Net Losses pursuant to **Articles 5.1** so that the net amount of any items charged or credited to Capital Accounts pursuant to **Articles 5.1** shall to the extent possible be equal to the net amount that would have been allocated to the Capital Account of each Member pursuant to the provisions of **Article 5** if the special allocations required by **Articles 12.1 through 12.6** had not occurred.

12.8 Code Section 704(c) Allocations.

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

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

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

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

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

If any portion of the property contributed consists of property which had been contributed by the distributee Member to the Company then such property shall not be taken into account under this **Article 12.8** and shall not be taken into account in determining the amount of the Net Pre-contribution Gain. If the property distributed consists of an interest in an Entity the preceding sentence shall not apply to the extent that the value of such interest is attributable to the property contributed to such Entity after such interest had been contributed to the Company.

12.9 Revaluation of Capital Accounts. In connection with a Capital Contribution of money or other property (other than a de minimis amount) by a New Member or existing Member as consideration for the Member's Membership Interest, or in connection with the liquidation of the Company or a distribution of money or other property (other than a de minimis

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

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

12.11 Other Allocations.

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

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

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

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

(e) Except as otherwise provided in the preceding provisions of **Article 12**, where Net Profits, Net Losses, tax credits or cash distributions are allocated according to Capital Account balances, all Net Profits, Net Losses, tax credits or cash distributions shared by the Members shall be allocated to the Members in proportion to each Member's 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 13

GLOSSARY OF DEFINED TERMS

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

"**Affiliate**" means, as to any Person, any other Person that (i) directly or indirectly, owns ten percent (10%) or more of legal, beneficial or economic interests in such Person, (ii) is in control of, is controlled by or is under common ownership or control with such Person, (iii) is a director or officer of such Person or of an Affiliate of such Person and/or (iv) is the spouse, issue or parent of such Person or of an Affiliate of such Person.

"**Agreement**" means this Operating Agreement of Clearwater Plainfield 15, LLC 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.

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

shall supersede and replace the definition of "Bankruptcy" set forth in Sections 18-101(1) and 18-304 of the Act.

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

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

"Certificate of Formation" means the certificate of formation of the Company filed with the Secretary of State of the State of Delaware on May 22, 2015, as amended or amended and restated from time to time.

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

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

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

"**Default Date**" has the meaning set forth in **Article 3.2**.

"**Defaulting Member**" has the meaning set forth in **Article 3.2**.

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

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

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

"**Delinquent Party**" has the meaning set forth in **Article 14.20.**

"**Dissolution Events**" has the meaning set forth in **Article 11.1**.

"**Distributable Cash**" has the meaning set forth in **Article 5.5**.

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

"**Economic Interest**" has that meaning set forth in **Article 9.5A**.

"**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.

"**Gift**" has the meaning set forth in **Article 9.1**.

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

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

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

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

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

"**Majority in Interest**," whenever any matter is required to be approved by a Majority in Interest of the Members, means such matters shall be considered consented to upon the receipt of affirmative approval or consent of the Members owning greater than 50% of the Percentage Interests.

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

"**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.

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

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

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

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

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

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

"**Non Delinquent Party**" has the meaning set forth in **Article 14.21**.

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

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

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

"**Purchase Offer**" means the bona fide offer to purchase a Membership Interest in the Company as set forth in **Article 9.2**.

"**Purchase Option**" has the meaning set forth in **Article 3.2**.

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

"**Related Party**" means, in the case of a Member that is not an individual, a shareholder of a Member, if such Member is a corporation, a member of a Member, if such Member is a

limited liability company, a partner in a Member, if such Member is a partnership, or if such Member is another type of Entity, the owner or holder of the beneficial interests in such Member.

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

"**Sale**" has the meaning set forth in **Article 9.1**.

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

"**Sell**" has the meaning set forth in **Article 9.1**.

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

"**Special Member**" means, upon such Person's admission to the Company as member of the Company pursuant to **Article 17**, a Person executing this Agreement as Special Member, in such Person's capacity as a Special Member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

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

"**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**.

"**Transferring Member**" has the meaning set forth in **Article 9.3**.

ARTICLE 14

MISCELLANEOUS PROVISIONS

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

14.2 Alienation of Membership Interest. No Member shall, except as provided in **Article 9**, Sell or Assign its Membership Interest in the Company or in its capital assets or

property; or do any act detrimental to the best interests of the Company.

14.3 Notices. Any notice, demand or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served for all purposes (i) if delivered personally to the party or to an executive officer of the party to whom the same is directed, (ii) if sent by registered or certified mail, postage and charges prepaid or by a recognized overnight delivery service, addressed to the Member's, Manager's and/or Company's address, as appropriate, which is set forth in this Agreement, or (iii) upon fax; transmission to the fax number of the party being notified as shown in the Company's records with a copy of said notice given by one of the other methods set forth in this **Article 14.3**. 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) upon completion of the fax transmission.

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

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

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

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

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

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

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

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

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

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

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

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

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

14.17 Lack of Registration. The Members recognize that (i) no Membership Interest has been registered under any of the Securities Acts, in reliance upon an exemption from such registration, (ii) no Member may Sell, offer for Sale, transfer, pledge or hypothecate its Membership Interest in the Company or any portion thereof in the absence of an effective registration statement covering such interest under the Securities Acts, unless such Sale, offer of Sale, transfer, pledge or hypothecation is exempt from registration under the Securities Acts as approved by the Company, (iii) the Company has no obligation to register the Membership Interests for Sale or to assist in establishing an exemption from registration for any proposed

Sale, and (iv) the restrictions on transfer severely affect the liquidation of the investment.

14.18 Investment Interest. Each Member is acquiring its Membership Interest for its own account for investment purposes and not with a view to, or for Sale in connection with, any distribution of any Membership Interest thereof and with no present intention of selling or assigning any Membership Interest. Each Member further acknowledges that there is no public market for the Membership Interests, and that there may never be a public market for such Membership Interests, and that even if a market develops for such Membership Interest, a Member may never be able to Sell or dispose of such Membership Interests and may thus have to bear the risk of investment in such securities for a substantial period of time. Each Member further acknowledges that it has such knowledge and experience in financial and business matters that it is capable of evaluating the risks of its investment in the Company and is able to bear the economic risk of such investment. Each Member believes it has made an informed judgment with respect to its investment in the Company.

14.19 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.

14.20 Default. The failure of a Member or Manager hereto to comply with any of the monetary provisions of this Agreement when due or the failure of any party hereto to comply with any of the non-monetary provisions of this Agreement and the continuance of such non-monetary failure for a period of thirty (30) days after written notice thereof is given to such party by the other party specifying the nature thereof shall constitute a default hereunder and shall be considered a "**Delinquent Party**."

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

14.22 Percentage Interests Owned by One or More Persons. If any Percentage Interests are owned jointly by one or more Persons as a tenancy in common or joint tenancy, in any matters requiring consent or approval under this Agreement, the consent or approval of one of the Persons owning the Percentage Interests shall be deemed to be the consent of all Persons owning the Percentage Interests.

Sale, and (iv) the restrictions on transfer severely affect the liquidation of the investment.

14.18 Investment Interest. Each Member is acquiring its Membership Interest for its own account for investment purposes and not with a view to, or for Sale in connection with, any distribution of any Membership Interest thereof and with no present intention of selling or assigning any Membership Interest. Each Member further acknowledges that there is no public market for the Membership Interests, and that there may never be a public market for such Membership Interests, and that even if a market develops for such Membership Interest, a Member may never be able to Sell or dispose of such Membership Interests and may thus have to bear the risk of investment in such securities for a substantial period of time. Each Member further acknowledges that it has such knowledge and experience in financial and business matters that it is capable of evaluating the risks of its investment in the Company and is able to bear the economic risk of such investment. Each Member believes it has made an informed judgment with respect to its investment in the Company.

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14.22 Percentage Interests Owned by One or More Persons. If any Percentage Interests are owned jointly by one or more Persons as a tenancy in common or joint tenancy, in any matters requiring consent or approval under this Agreement, the consent or approval of one of the Persons owning the Percentage Interests shall be deemed to be the consent of all Persons owning the Percentage Interests.

ARTICLE 15

REPRESENTATIONS AND WARRANTIES

15.1 Representations. Each Member hereby represents and warrants that as of the date hereof each of the following is a true, accurate, and full disclosure of all pertinent facts, and further represents and warrants as follows:

(a) Such Member, if other than an individual, is a duly organized entity under the laws of its state of organization and has the requisite power and authority to enter into and carry out the terms of this Agreement, and all required action has been taken to authorize such Member to execute and consummate this Agreement.

(b) Such Member has been duly authorized to enter into this Agreement, and such Member is not a "foreign person" as defined under Code Section 1445(f)(3).

(c) The address shown in **Exhibit A** constitutes such Member's legal and permanent residence.

(d) Such Member understands that the Membership Interests may not be Assigned or otherwise transferred except upon delivery to the Company of an opinion of counsel satisfactory to the Managers that registration under the Securities Acts is not required for such transfer, or the submission to the Managers of such other evidence as may be satisfactory to the Managers, to the effect that any such transfer will not be in violation of the Securities Acts or any rule or regulation promulgated thereunder; and that legends to the foregoing effect will be placed on all documents evidencing the Membership Interests. The Member understands that the foregoing does not limit other restrictions regarding the transfer of its Membership Interests set forth in this Agreement or in the Act.

(e) Such Member has been given the opportunity to ask questions of, and receive answers from, the Company with respect to the business to be conducted by the Company. Such Member has been furnished with a copy of the Certificate of Formation, this Agreement, to which it is a party, and any other documents that such Member has deemed necessary and requested in connection with the business to be conducted by the Company.

ARTICLE 16

COMPLIANCE WITH ANTI-TERRORISM ORDERS

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

16.2 Representation of Members. Each Member represents and warrants to the

Company that neither said Member nor the beneficial owner(s) of said Member:

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

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

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

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

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

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

16.5 Representations and Warranties. In the event that a representation or warranty of a Member set forth in **Article 16** becomes untrue at any time during the term of this Company, then the Manager shall have the right to purchase the Membership Interest of the Member so violating said provision pursuant to the same terms and conditions as are contained in **Article 3.2**, except that the purchase price shall be 10% of the fair market value rather than fair market value and the time frame within which the Manager may cause said purchase shall be determined by the Manager in its sole and absolute discretion.

ARTICLE 17

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 17** 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:

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

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

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

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

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

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

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

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

(h) has not incurred and will not incur any Indebtedness, other than the following: (i) the Debt and (ii) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding two percent (2%) of the original principal

amount of the Loan at any one time; provided that any Indebtedness incurred pursuant to clause (ii) shall be (A) outstanding not more than sixty (60) days and (B) incurred in the ordinary course of business. No Indebtedness, other than the Debt, may be secured (senior, subordinate or pari passu) by the Property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(gg) intentionally omitted;

(hh) intentionally omitted;

(ii) intentionally omitted;

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

set forth in Section 18-804 of the Act; and (vi) to the fullest extent permitted by applicable law, each member and Special Member, if any, shall irrevocably waive any right or power that they might have to cause the Company or any of its assets or properties to be partitioned, to cause the appointment of a receiver for all or any portion of the assets or properties of the Company, to compel any sale of all or any portion of the assets or properties of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company;

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

17.2 Independent Director.

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

(b) Duties of the Independent Director.

(i) The board of directors or managers of the Company (as applicable) shall not take any action which, under the terms of any Organizational Documents (including, if applicable, any voting trust agreement with respect to any common stock), that requires a unanimous vote of the board of directors or managers of the Company unless, at the time of such action, there shall be at least one Independent Director of the board of directors or managers of Company (and such Independent Director has participated in such vote). When voting with respect to any of the matters set forth in Section 17.1(mm), each Independent Director shall consider only the interests of the Company, including its creditors. Except for duties to the Company as set forth in the immediately preceding sentence (including duties to the Member, Manager and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (i) all other interests of the Member, (ii) the interests of other Affiliates of the Company, and (iii) the interests of any group of Affiliates of which the Company is a part), the Independent Director shall not have any fiduciary duties to the Member, Manager, any Officer or any other Person bound by this Agreement; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, including Section 18-1101(e) of the Act, an Independent Director shall not be liable to the Company, the Member or any other Person bound by this Agreement for breach of contract or breach of duties (including fiduciary duties), unless the

Independent Director acted in bad faith or engaged in willful misconduct. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement and the Independent Director shall have no authority to bind the Company. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

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

(c) Definition of Independent Director. As used herein, the term "Independent Director" shall mean an individual who (i) has at least three (3) years prior employment experience and continues to be employed as an independent director, independent manager or independent member by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors, independent managers and independent members, another nationally-recognized company that provides such services and which is reasonably approved by Lender; (ii) is not on the board of directors or managers of more than two (2) Affiliates of the related Single Purpose Entity (other than in its capacity as Independent Director); and (iii) is not, and has never been, and will not, while serving as an Independent Director, be, any of the following: (A) a stockholder, director, manager, officer, employee, partner, member, attorney or counsel of such entity, any Affiliate of such entity or any direct or indirect equity holder of any of them (other than a nationally-recognized company that routinely provides professional independent directors, independent managers or independent members and other corporate services to such entity or any Affiliate of such entity in the ordinary course of its business), (B) a creditor, customer, supplier, service provider (including provider of professional services) or other Person who derives any of its purchases or revenues from its activities with such entity or any Affiliate of such entity, (C) a member of the immediate family of any such stockholder, director, manager, officer, employee, partner, member, creditor, customer, supplier, service provider or other Person, or (D) a Person controlling or under common control with any of (A), (B) or (C) above (other than a nationally-recognized company that routinely provides professional independent directors, independent managers or independent members and other corporate services to such entity or any Affiliate of such entity in the ordinary course of its business). A natural person who satisfies the foregoing definition other than clause (iii)(A) or (iii)(B) shall not be disqualified as a result of clause (iii)(A) or (iii)(B) by reason of (I) being an Independent Director, or having been or becoming an Independent Director of, an Affiliate of the Company that is not in the chain of ownership of the Company and that is required by a creditor to be a "single purpose entity" or (II) being, having been or becoming a member of such entity pursuant to an express provision in such entity's operating agreement providing for the appointment of such Independent Director as a member of such entity upon the occurrence of any event pursuant to which Sole Member ceases to be a member of such entity (including the withdrawal or dissolution of Sole Member); provided that, in the case of (I) and (II) above, such Independent Director has and/or will at all times be employed by a company that routinely provides

professional independent directors, independent managers or independent members and the fees or other compensation that such individual earns by serving as an Independent Director of one or more Affiliates of such entity in any given year constitute, in the aggregate, less than five percent (5%) of such individual's income for such year.

17.3 Special Members.

(a) Upon the occurrence of any event that causes the last remaining Member of the Company or the sole Member of the Company if the Company is a single member limited liability company (such last remaining member or single member shall be referred to herein as "Sole Member") to cease to be a member of the Company (other than (i) upon an assignment by Sole Member of all of its limited liability company interests in such entity and the admission of the transferee, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents, or (ii) the resignation of Sole Member and the admission of an additional Member of the Company, if permitted pursuant to the Organizational Documents of the Company and the Loan Documents), the Special Member(s) of the Company, which shall be the Independent Director, without any action of any Person and simultaneously with Sole Member ceasing to be a member of the Company, shall automatically be admitted as a member of the Company and shall preserve and continue the existence of the Company without dissolution. So long as any portion of the Debt is outstanding, no Special Member may resign or transfer its rights as a Special Member unless (A) a successor Special Member has been admitted to the Company as a Special Member, provided, however, the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Member; and (B) such successor Special Member has also accepted its appointment as an Independent Director of the Company. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a Membership Interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of each Special Member, the Person acting as Special Member shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, the Person acting as Special Member shall not be a member of the Company. The Manager shall at all times cause there to be a Person bound by this Agreement as Special Member.

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

17.4 Lender is an intended third-party beneficiary of the "special purpose" and "separateness" provisions of this **Article 17**.

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

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

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

MEMBER:

Plainfield 09 A, LLC,
an Indiana limited liability company

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

By: _____
Gary J. Dragul, President

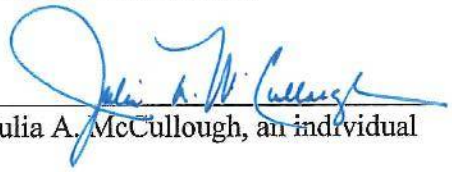
MANAGER:

GDA Clearwater Management, LLC,
a Colorado limited liability company

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

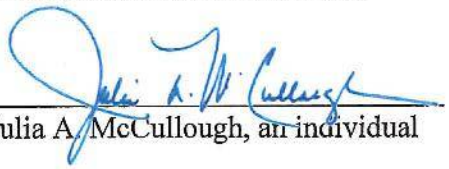
By: _____
Gary J. Dragul, President

SPECIAL MEMBER:



Julia A. McCullough, an individual

INDEPENDENT DIRECTOR:



Julia A. McCullough, an individual

EXHIBIT A

Names; Addresses; Capital Contributions and Percentage Interests

NAME	ADDRESS	VALUE OF CAPITAL CONTRIBUTION	PERCENTAGE OF INTEREST
Plainfield 09 A, LLC, an Indiana limited liability company	5690 DTC Boulevard, Suite 515, Greenwood Village, Colorado 80111	$10.00	100%
TOTALS			100%