

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO  Denver District Court  1437 Bannock St.  Denver, CO 80202</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>Plaintiff:</b> CHRIS MYKLEBUST, Securities Exchange Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC</p>	
<p>Attorneys for Receiver:  Patrick D. Vellone, #15284  Michael T. Gilbert, #15009  Rachel A. Sternlieb, #51404  ALLEN VELLONE WOLF HELFRICH &amp; FACTOR P.C.  1600 Stout St., Suite 1100  Denver, Colorado 80202  Phone Number: (303) 534-4499  pvellone@allen-vellone.com  mgilbert@allen-vellone.com  rsternlieb@allen-vellone.com</p>	<p>Case Number:  2018CV33011</p> <p>Division/Courtroom: 424</p>
<p><b>RECEIVER’S NOTICE CONCERNING EMPLOYMENT OF REVESCO PROPERTY SERVICES, LLC AS MANAGEMENT COMPANY</b></p>	

Harvey Sender, the duly-appointed Receiver in this case, hereby gives notice he has employed Revesco Property Services, LLC (“Revesco”) to act as manager of the commercial and residential property assets of the Receivership Estate as set forth below.

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

Relief against Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC (collectively, “Dragul and the DGA Entities”).

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

3. The Receivership Order gives the Receiver the authority to “hire and pay general counsel, accounting, and other professionals as may be reasonably necessary to the proper discharge of the Receiver’s duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of . . . other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver’s discretion[.]” Receivership Order at p. 9, ¶ 13(l).

4. The Order further permits the Receiver, in his discretion, “to hire and pay employees with the necessary skills and experience to operate GDARES and GDAREM efficiently and with least amount of cost or expense, and to preserve the assets of GDARES and GDAREM and the Receivership Estate[.]” Receivership Order at p. 10, ¶ 13(m).

5. The Receiver hereby gives notice that he has retained the nationally-recognized management company of Revesco act as manager of both commercial and residential Receivership Estate properties as set forth below. A copy of the March 12, 2019 Asset Management Agreement (Commercial) (the “Commercial Property Management Agreement”) is attached as **Exhibit 1**, and the March 12, 2019 Asset Management Agreement (Residential) is attached **Exhibit 2**.

6. Under both the Commercial and Residential Management Agreements, Revesco will be responsible for the following management services previously performed by Dragul and the GDA Entities: (1) leasing; (2) default of tenants; (3) property budget preparation subject to approval by the Receiver; (4) cash management; (5) risk management; (6) records and reporting for the properties concerning operation and maintenance, books, records and accounts, monthly

reports, year-end reporting and certified annual reports; (7) collection of income; (8) due diligence and underwriting during the acquisition period; (9) monitoring loan compliance; and (10) property tax appraisals. *See* **Ex. 1** and **Ex. 2**, at Exhibit C (Scope of Management Services).

7. Under the Commercial Management Agreement, the Receiver has agreed to pay Revesco: (i) a monthly Asset Management Fee for day-to-day operations equal to one-twelfth (1/12) of twenty-five cents (\$0.25) times the total number of square feet of the leasable area under management; and (ii) a monthly Property Management Fee equal to one twelfth (1/12) of three and one-half percent (3.5%) of estimated annual Gross Revenues for properties under management. The Asset Management Fee and Property Management Fee is estimated to be \$56,493.43 per month for the commercial properties. Under the Residential Management Agreement, the Receiver has agreed to pay Revesco a monthly Property Management Fee equal to \$300.00 for each individual residential property under management, for a total monthly property management fee of \$7,200.00 based on 24 current residential properties. The total current estimated Management Fee paid to Revesco per month for commercial and residential properties is \$63,693.43. *See* **Ex. 1** at §§ 8.1 – 8.2, and **Ex. 2**, at 8.1; *see also* Management Fee Calculation Table, attached as **Exhibit 3**.

8. The Receiver considered at least two other proposals submitted by management companies, both of which, however, would have cost the Estate more money. Thus, the Receiver ultimately determined that of the three proposals submitted and reviewed, Revesco's proposal was the most economically feasible option and in the best interest of the Estate and its creditors.

9. Both the Commercial and Residential Management Agreements have a term of one year. *See* **Ex. 1** and **Ex. 2**, at § 9.1. Should any of the properties subject to these Agreements sell before expiration of the term, the Agreement terminates as to that particular property, only, upon such sale. *Id.*, at §9.3.

#### **A. The Commercial Management Agreement**

10. The Receiver has retained Revesco to act as manager of the following commercial Receivership Estate properties. *See* **Ex. 1**, at Exhibit B (Property).

NO.	PROPERTY NAME	ADDRESS	CITY	STATE
1.	Ash and Bellaire Development Site	2166, 2176, 2186, & 2196 South Ash Street and 2175 & 2195 South Bellaire Street	Denver	CO
2.	Village Inn Pad	5290 East Arapahoe Road	Centennial	CO
3.	Cassinelli Square	11360 - 11500 Princeton Pike	Cincinnati	OH
4.	Clearwater Collection	21688 - 21800 Highway 19 North	Clearwater	FL
5.	Marketplace at Delta	416-647 Marketplace Boulevard	Lansing	MI
6.	DU Student Housing	2311, 2321, & 2329 South High Street	Denver	CO
7.	Happy Canyon (Shoppes and Box)	4950 & 4992-5082 East Hampden Ave	Denver	CO
8.	Hickory Corners (Shops and Box)	1718 US Highway 70 SE	Hickory	NC
9.	Prospect Square	9722 Colerain Ave	Cincinnati	OH
10.	Summit Marketplace	385 Crossing Drive	Lafayette	CO
11.	Windsor Square	101-245 Seven Oaks Drive North	Knoxville	TN

11. In addition to the monthly fee for asset management and general management of the commercial properties, Revesco will receive leasing commissions equal to 2% of the value of each new lease, as well as for non-contractual renewals, renegotiation and extensions. *Id.* at § 8.3. Revesco will be paid a fee for supervision of any construction or repair project that occurs at a rate of 5% of the construction costs incurred. *Id.* at § 8.4.

**B. The Residential Management Agreement:**

12. The Receiver also retained Revesco to manage the residential Receivership Estate properties. *See Ex. 2.* Pursuant to the Residential Management Agreement, the following Residential Receivership Estate properties will be managed by Revesco:

	OWNER OF PROPERTY	ADDRESS	CITY	STATE	ZIP
1	1600 North LaSalle 16, LLC (100% owned by Gary J. Dragul)	1660 N. LaSalle Drive, #3909	Chicago	IL	61614
2	4205 North LaSalle 18, LLC (100% owned by X12 Housing, LLC)	1660 N. LaSalle Drive, #4205	Chicago	IL	61614
3	5455 Landmark Place 17, LLC (100% owned by X12 Housing, LLC)	5455 Landmark Place, #509	Greenwood Village	CO	80111

	OWNER OF PROPERTY	ADDRESS	CITY	STATE	ZIP
4	5722 South Lansing 14, LLC (100% owned by X12 Housing, LLC)	5722 South Lansing Court	Englewood	CO	80111
5	5788 South Lansing 17, LLC (100% owned by X12 Housing, LLC)	5788 South Lansing Way	Englewood	CO	80111
6	6316 East Fair 16, LLC (100% owned by X12 Housing, LLC)	6316 East Fair Avenue	Centennial	CO	80111
7	7373 East Fremont 15, LLC (100% owned by X12 Housing, LLC)	7373 East Fremont	Centennial	CO	80112
8	7517 East Davies 17, LLC (100% owned by X12 Housing, LLC)	7517 East Davies Place,	Centennial	CO	80112
9	7842 East Briarwood 16, LLC (100% owned by X12 Housing, LLC)	7842 East Briarwood Boulevard,	Centennial	CO	80112
10	1777 Larimer 17, LLC (100% owned by X12 Housing, LLC)	1777 Larimer, Unit 703	Denver	CO	80202
11	901 Larimer 18, LLC (100% owned by X12 Housing, LLC)	1777 Larimer Street, #901	Denver	CO	80202
12	891 Fourteenth Street 16, LLC	891 14th Street, #2417	Denver	CO	80202
13	3142 South Leyden 14, LLC (100% owned by X12 Housing, LLC)	3142 South Leyden Street	Denver	CO	80222
14	355 South Holly 15, LLC (100% owned by X12 Housing, LLC)	3555 South Holly Street	Denver	CO	80237
15	3593 South Hudson 17, LLC (100% owned by X12 Housing, LLC)	3593 South Hudson Street	Denver	CO	80237
16	3675 South Hibiscus 17, LLC (100% owned by X12 Housing, LLC)	3675 South Hibiscus Way	Denver	CO	80237
17	41 South Fairway 17, LLC (100% owned by X12 Housing, LLC)	41 South Fairway	Beaver Creek	CO	81620
18	1002 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)	6937 East 6th Street, #1002	Scottsdale	AZ	85215
19	1004 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)	6937 East 6th Street, #1004	Scottsdale	AZ	85215
20	1005 East Scottsdale 6th 17, LLC (100% owned by X12 Housing, LLC)	6937 East 6th Street, #1005	Scottsdale	AZ	85215
21	11188 Campsie Fells 17, LLC (100% owned by X12 Housing, LLC)	11188 Campsie Fells Court	Las Vegas	NV	89141
22	Gary J. Dragul	2432 South Newport Street	Denver	CO	80224
23	Gary J. Dragul	2624 South Oneida Street	Denver	CO	80224

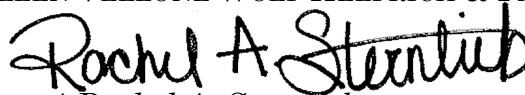
	OWNER OF PROPERTY	ADDRESS	CITY	STATE	ZIP
24.	Gary J. Dragul and Robert Eisen	4450 Timber Falls Court, #1720	Vail	CO	80111

13. In addition to the property management fee under the Residential Management Agreement, Revesco will receive: (a) a leasing fee equal to one month's rent or 20% of any nightly or short-term lease; (b) a disposition fee equal to 0.50% of the gross sales price upon sale, exchange or transfer of a property; and (c) a construction management fee equal to 5% of any construction costs for oversight of construction or repair. *See Ex. 2*, at §§ 8.2 – 8.4.

14. The Receiver will supplement and amend this Notice should there be any subsequent revisions to the terms of the Commercial and Management Agreements at the request of the lenders.

Dated: March 19, 2019

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: *s/ Rachel A. Sternlieb*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the March 19, 2019 a true and correct copy of **Receiver's Notice Concerning Employment of Revesco Property Services, LLC as Manager** was filed and served via the Colorado Courts E-Filing system to the following:

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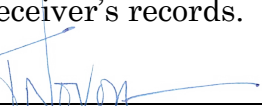
***Local Counsel for Dynasty, LLC***

s/ Terri M. Novoa   
Allen Vellone Wolf Helfrich & Factor P.C.

*In accordance with C.R.C.P. 121 § 1-26(7), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the Court upon request.*

**CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS**

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

s/ Terri M. Novoa   
Allen Vellone Wolf Helfrich & Factor P.C.



**ASSET MANAGEMENT AGREEMENT  
(Commercial)**

**THIS ASSET MANAGEMENT AGREEMENT** (this “Agreement”) is entered into as of the Effective Date (as defined below), by and between Harvey Sender in his capacity as Receiver of the Gary Dragul Receivership Estate (“Receiver”) and Revesco Property Services, LLC, a Colorado limited liability company (“Manager”).

**RECITALS**

A. Gary Dragul owned and managed various companies (collectively “Dragul”) for which he solicited investors to acquire residential and commercial real estate. Gary Dragul was indicted for securities fraud by the Attorney General for the State of Colorado. Harvey Sender, the Seller, was appointed Receiver by a Court Order dated August 30, 2018 entered in Rome v. Dragul, et al., Case Number 2018 CV 33011, District Court, Denver, Colorado (the “Receivership Court” and the “Receivership Order”) to take control of all Dragul assets (referred to as “Receivership Property” or “Receivership Estate”). See Receivership Order attached as **Exhibit A**. The Receivership Property includes all the assets of: (i) GDA Real Estate Services, LLC (“GDA RES”); (ii) GDA Real Estate Management, LLC (“GDA REM”). The Receivership Order authorizes the Receiver to sell assets of the Receivership Estate subject to Court approval. The Receiver seeks to hire a property management company to administer, manage and oversee the Receivership Estate.

B. The Receiver is the duly-appointed receiver for each of the commercial properties listed on **Exhibit B** (collectively, the “Property”).

C. The Property is subject to loans secured by mortgages or deeds of trust (the “Loans”) for the benefit of a lender (a “Lender”). These mortgages, deeds of trust and any other document related to the Loans are collectively referred to herein as the “Loan Documents.”

D. Receiver wishes to engage Manager to act as manager of the Property, and Manager wishes to accept such engagement, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**ARTICLE I  
COMMENCEMENT AND QUALIFICATION**

1.1 Commencement. Manager’s duties and responsibilities under this Agreement shall begin as of the last date this Agreement is signed by the Receiver and Manager (the “Effective Date”).

1.2 Qualification to Do Business. Manager represents and warrants that it has full power and authority to enter into this Agreement and that it is authorized to do business in the State of Colorado. To the extent required by applicable law, Manager will also qualify to do business in any other states in which the Property is located.

## **ARTICLE II**

### **MANAGER'S RIGHTS AND RESPONSIBILITIES**

2.1 Status of Manager. The Receiver and Manager do not intend to form a joint venture, partnership, or similar relationship. Instead, the parties intend that Manager shall act solely in the capacity of an independent contractor for the Receiver. Nothing in this Agreement shall cause Manager and Receiver to be joint venturers or partners of each other, and neither shall have the power to bind or obligate the other party by virtue of this Agreement, except as expressly provided in this Agreement. Nothing in this Agreement shall deprive or otherwise affect the right of either party to own, invest in, manage, operate, or conduct business activities which compete with the business of the Property.

2.2 Asset Management. Manager shall provide the following asset management services (the "Asset Management Services"): (a) all of the services assigned to or made the responsibility of the asset manager described in **Exhibit C** attached hereto; (b) serving as the administrator for the Receiver; and (c) facilitation of approvals of new leases, loans, and sales of assets.

2.3 Property Management. Manager shall use all commercially reasonable efforts to operate and maintain the Property in an efficient, economic, and satisfactory manner and shall manage the performance of everything reasonably necessary for the proper operation of the Property for the tenants thereof and the protection of the interests of the Receiver, including all of the services assigned to or made the responsibility of the Manager described in **Exhibit C** attached hereto, subject to (a) applicable governmental requirements; and (b) the terms and provisions of this Agreement. At the expense of Receiver, Manager shall keep the Property clean and in good repair, shall order and supervise the completion of such repairs as may be required, and shall generally do and perform, or cause to be done or performed, all things necessary, required, or desirable for the proper and efficient management, operation, and maintenance of the Property; provided Receiver, in a manner to be reasonably satisfactory to Manager, makes available to Manager sufficient sums to pay the costs thereof.

2.4 Employees/Independent Contractors of Manager. Manager shall employ, directly or through third party contractors (*e.g.*, an employee leasing company), at all times a sufficient number of capable employees and/or independent contractors to enable Manager to properly, adequately, safely, and economically manage, operate, and maintain the Property. All matters pertaining to the supervision of such employees shall be the responsibility of Manager. All salaries and benefits and positions of employees who perform work in connection with the Property shall be consistent with the Budget (as defined below).

2.5 Compliance with Laws; Other Matters. Manager shall use commercially reasonable efforts to comply, and to cause the Property to comply, with the Loan Documents and

all applicable governmental requirements, including without limitation Board of Fire Underwriters or other similar body, relative to the performance of its duties hereunder, ordinances, rules, regulations, and requirements. Manager may implement such procedures with respect to the Property as Manager may deem advisable for the more efficient and economic management and operation thereof. Manager shall pay from the Operating Account (as defined below) expenses incurred to remedy violations of laws; provided, however, at no time shall Manager be required to carry out any instruction from a Lender or Receiver or be responsible for any loss, damages, claims, violations of law, breach of the Loan Documents or other agreements if sufficient funds are not available in the Operating Account and Receiver has not provided sufficient additional funds to cover any shortfall in the Operating Account. Manager shall furnish to Receiver, promptly after receipt, but in no event less than seventy-two (72) hours from the time of receipt, any notice of violation of any governmental requirement or order issued by any governmental entity, any Board of Fire Underwriters or other similar body against the Property, any notice of default from the holder of any Loan Documents, or any notice of termination or cancellation of any insurance policy not immediately replaced by Manager.

## 2.6 Budgets and Operating Plan.

a. As soon as possible after the Effective Date, Manager shall deliver to Receiver an initial capital and operating budget (the "Budget") for the promotion, operating, leasing, repair, maintenance, and improvement of the Property for the remainder of the current calendar year, and such Budget shall be approved or disapproved by Receiver. The Budget shall conform to the requirements set forth in **Exhibit D** attached hereto and will include, among other things, a line item for monthly distributions to Receiver. Manager shall use commercially reasonable efforts to operate the Property in accordance with the Budget for each calendar year as approved in accordance with this Section 2.6. The Budget is and shall be presented on a monthly, cash basis. Manager shall deliver to the Receiver a Budget for each subsequent calendar year on or about October 31 of the calendar year before the budget year. Manager shall provide Receiver with such information regarding the Budget as may be reasonably requested, from time to time, by the Receiver. Receiver shall be deemed to have approved the Budget unless Receiver provides a written notice indicating the specific objection to the specific Budget item within fifteen (15) days from receipt of the Budget. Receiver agrees to use its reasonable efforts to respond timely to any request to approve the Budget, if a response is required. In the event that approval of the Budget is not obtained, Manager and Receiver shall negotiate in good faith for fifteen (15) days to resolve the issue and obtain an acceptable Budget. If the parties are unable to reach an agreement on any issue other than leasing matters during such fifteen-day period, the issue shall be resolved by binding arbitration with Receiver and Manager to pay the costs of the arbitration equally. Manager may take such action as it deems necessary with respect to Emergency Expenditures (as defined below), even if such items have not yet been approved. In the event the items that are objected to are operational expenditures, as opposed to capital expenditures, Manager shall be entitled to oversee and supervise the operation of the Property using the prior year's Budget, increased by five percent (5%) for all non-fixed increases and all fixed increases for costs such as taxes, insurance premiums and the like, for which the prior year's Budget shall be deemed increased until the approval is obtained. All items approved, or deemed approved, by Receiver require no further approval regardless of the amount of said items. Manager may at any time submit a revised Budget

to Receiver, and Receiver shall approve or disapprove such revised Budget in accordance with the same procedure as set forth in this Section 2.6.

b. Manager shall charge all expenses to the proper account as specified in the Budget, provided that Manager may reallocate savings from one line item to other line items for the benefit of Receiver without further approval. Manager shall submit, subject to the same procedures as set forth above, a revised Budget to Receiver before making any expenditure not within the Budget unless the expenditure: (i) is \$10,000.00 or less for any one item; (ii) is required to avoid personal injury, material property damage, a default under any Loan Documents, a violation of applicable law, or the suspension of a service (collectively, "Emergency Expenditures"); (iii) is, in Manager's reasonable judgment, needed for repairs or refurbishments to the Property and there are sufficient funds on account in the Capital Reserves or other reserve accounts (but not the Operating Account) from which to fund such expenditure; or (iv) is needed for renovations to the Property following a casualty (such expenditures in (i), (ii), (iii) and (iv) being referred to collectively as the "Expenditure Parameters"). The Expenditure Parameters may be amended from time to time by Manager following approval by Receiver in accordance with Section 2.6. Notwithstanding any provision herein to the contrary, Manager shall not make any expenditure which Receiver has expressly prohibited pursuant to a written notification to Manager.

c. Together with submission of the annual Budget and subject to the approval requirements of Receiver contained herein, Manager shall submit to Receiver an operating plan for the general operation of the Property for the subsequent year, including a proposed list of improvements to the Property, a general insurance plan, a marketing plan, and a plan for the general operation and maintenance of the Property (the "Operating Plan"). Manager may submit a revised Operating Plan to Receiver at any time.

d. Manager shall provide a Lender with copies of each Budget and reports relating to the Property as required under the Loan Documents and shall, subject to the availability of funds, comply with the provisions of the Loan Documents relating to the management of the Property, including without limitation those provisions related to the Budget, the Operating Plan, and expenditures.

## 2.7 Leasing.

a. Receiver hereby approves all Leases (as hereinafter defined) presently in effect as of the Effective Date. Approval of new Leases, amendment, renewals, and extensions shall be subject to the procedures set forth herein. To the extent required by the Loan Documents, the consent of a Lender shall be obtained prior to entering into new Leases, amendments, renewals, and extensions.

b. In connection with its leasing efforts, Manager or its agent may advertise the Property for lease. Manager and/or its agent shall use commercially reasonable efforts to obtain tenants for all rentable area in the Property and to enter into leases and rental agreements (collectively, "Leases") as provided herein. Lease terms must be approved by Receiver unless a lease is for one percent (1%) or less of the net rentable area of the Property and such lease is on a standard form which has been approved in advance by Receiver, in which case Manager can

approve such lease. New Leases, amendments, renewals, and extensions will be deemed approved (“Approved Leases”) unless Receiver gives written notice of rejection to Manager within seventy-two (72) hours of receipt of a copy of the proposed Lease, amendment, renewal, or extension along with a summary of the terms of the Lease, amendment, renewal, or extension. In addition, Receiver hereby grants to Manager a special power of attorney, for and on behalf of Receiver, to execute Approved Leases and any subordination and non-disturbance agreement, tenant estoppel certificate, and tenant notice related thereto. If Receiver objects to any such leasing matters within seventy-two (72) hours as provided above, Manager will not have authority to execute the rejected Leases on behalf of Receiver.

c. Except as provided in the Operating Plan, Manager shall not, without prior approval, give free rental, discounts, or rental concessions to any employees, officers, or shareholders of Manager or anyone related to such employees, officers, or shareholders unless such discounts or concessions are in lieu of salaries or other benefits to which they would be contractually entitled. Manager shall not lease any space in the Property to itself or to any of its affiliates or subsidiaries except as provided in the Operating Plan without Receiver approval.

d. Manager shall obtain a credit check for all prospective tenants. Manager shall retain such information for the duration of the tenancy and shall make it available to Receiver upon reasonable written request. Notwithstanding the foregoing, Manager does not guarantee the accuracy of any such information or the financial condition of any tenant.

e. Manager and Receiver agree that there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, religion, creed, handicap, sex, or national origin in the leasing of the Property, nor shall Manager or Receiver permit any such practice or practices of discrimination or segregation with respect to selection, location, number, or occupancy of tenants.

f. Manager shall engage contractors, engineers, architects and other consultants on behalf of Receiver to design and construct improvements to the Property other than those required to be performed by tenants under their Leases. Such design and construction improvements shall be as necessary as determined by the Receiver. Manager shall oversee the design and construction of such tenant improvements. For any contract requiring payment in excess of \$25,000.00, Manager shall follow the bidding requirements specified in Section 2.10.

g. All leasing efforts taken by Manager and/or its agents hereunder shall be subject to the terms of the Loan Documents.

2.8 Collection of Rents and Other Income. Manager shall bill all tenants and shall use its commercially reasonable efforts to collect all rent and other charges due and payable from any tenant or from others for services provided in connection with the Property. Manager shall hold in trust all monies collected from the tenants and shall promptly deposit all monies so collected in the Operating Account, unless otherwise required by the Loan Documents. In the event of a conflict between the terms of the Loan Documents and the terms of this Agreement, the terms of the Loan Documents shall control. Receiver shall be entitled to the income and revenue from the

Property, and Manager shall remit such balances to Receiver in accordance with the Budget and the terms of this Agreement.

2.9 Repairs and Maintenance. Manager shall use commercially reasonable efforts to maintain, or cause to be maintained, the buildings, appurtenances, and grounds of the Property, other than areas which are the exclusive responsibility of tenants, including without limitation all repairs, cleaning, painting, decorations, and alterations, including electrical, plumbing, carpentry, masonry, elevators, and such other routine repairs as are necessary or reasonably appropriate in the course of maintenance of the Property, subject to the limitations of this Agreement. Manager shall pay actual and reasonable expenses for materials and labor for such purposes from the Operating Account in accordance with the Budget unless the tenant of the Property is responsible for such costs and expenses as set forth in its Lease. Manager shall take commercially reasonable precautions against fire, vandalism, burglary, and trespass to the Property. Manager shall not be responsible for maintaining or repairing the Property if there are insufficient funds in the Operating Account.

2.10 Capital Expenditures. Provided that Manager adheres to the bid procedures prescribed below, if applicable, Manager may make any capital and other expenditure, without any further consent of Receiver, if such expenditure is within any Budget approved by Receiver or is within the Expenditure Parameters. All other expenditures shall be subject to submittal of a revised Budget to Receiver. Unless Receiver specifically waives such requirements or approves a particular contract, Manager shall award any contract for a capital improvement exceeding \$25,000.00 in cost on the basis of competitive bidding solicited from a minimum of two written bids. Manager shall accept the bid of the lowest bidder determined by Manager to be responsible, qualified, and capable of completing such improvements on a reasonable schedule.

2.11 Service Contracts, Supplies, and Equipment.

a. Manager may enter into or renew any contract for cleaning, maintaining, repairing, or servicing the Property or any of the constituent parts of the Property (including without limitation contracts for fuel oil, security, or other protection, extermination, landscaping, Architectural, or engineering services) contemplated by the Budget and/or the Operating Plan with any unrelated third party, without the consent of Receiver. Each such service contract shall (a) be in the name of Receiver or Manager as agent for Receiver; (b) be assignable to the transferee of Receiver; and (c) be for a term not to exceed one (1) year, unless such contract is one that typically exceeds a one-year term in the marketplace, such as a contract for cable or internet service, in which case Manager, may in its reasonable discretion, enter into a contract under terms which Manager deems consistent with the marketplace.

b. If this Agreement terminates, Manager, at the option of Receiver, shall assign to the nominee of Receiver all of Manager's interest in all service agreements pertaining to the Property, if any.

c. In accordance with the Budget and at the expense of Receiver or the tenant of the Property as set forth in its Lease, Manager shall purchase, provide, and pay from the Operating Account, provided there are sufficient funds, for all needed janitorial and maintenance supplies,

tools, and equipment, restroom and toilet supplies, light bulbs, paints, and similar supplies necessary for the efficient and economical operation and maintenance of the Property. Such supplies and equipment shall be the property of Receiver, or if applicable, the tenant of the Property. All such supplies, tools, and equipment shall be delivered to and stored at the Property and shall be used only in connection with the management, operation, and maintenance of the Property.

d. Manager shall use commercially reasonable efforts to purchase all goods, supplies, or services at the lowest cost reasonably available from reputable sources in the metropolitan area where the Property is located. In making any contract or purchase hereunder, Manager shall use commercially reasonable efforts to obtain favorable discounts for Receiver and all discounts, rebates, or commissions under any contract or purchase order made hereunder shall inure solely to the benefit of Receiver. Manager shall make payments under any such contract or purchase order from the Operating Account to enable the Receiver to take advantage of any such discount if Receiver provides sufficient funds therefor.

2.12 Taxes. Manager, unless otherwise requested, shall obtain and verify bills for real estate and personal property taxes, general and special real property assessments, and other like charges (collectively "Taxes") which are or may become liens against the Property. Manager may appeal such Taxes as Manager may decide, in its reasonable judgment, to be prudent. In the event Manager successfully appeals such Taxes, Manager shall be entitled to retain ten percent (10%) of savings resulting from said appeal, payable in the year or years in which the savings are realized by the Receiver. Manager shall report any such Taxes that materially exceed the amounts contemplated by the Budget to Receiver prior to Manager's payment thereof, if applicable. Manager, if requested by Receiver, will cooperate to prepare an application for correction of the assessed valuation to be filed with the appropriate governmental agency. Manager shall pay from funds provided by Receiver or from the Operating Account in compliance with the applicable terms of the Loan Documents, all utilities, Taxes, and payments due under the Leases or the Loan Documents, including debt service, reserves, or other payments due, if any, affecting the Property. To the extent contemplated by the Budget (as it may be revised from time to time), Manager may make any such payments without the approval of Receiver. Expenses for any Taxes not based upon the assessed valuation of the Property (or any portion thereof or interest therein), including without limitation state and federal income taxes, shall be paid by Receiver.

2.13 Tenant Relations. Manager will use commercially reasonable efforts to develop and maintain good tenant relations at the Property. At all times during the term hereof, Manager shall use its reasonable efforts to retain existing tenants at the Property and, after completion of the initial leasing activity, to retain the new tenants. Manager shall use commercially reasonable efforts to secure compliance by the tenants with the terms and conditions of their respective Leases.

2.14 Miscellaneous Duties. Manager shall: (a) maintain at the Manager's office, or at a designated office readily accessible to Receiver, orderly files containing rent records, insurance policies, leases and subleases, correspondence, receipted bills and vouchers, bank statements, canceled checks, deposit slips, debit and credit memos, and all other documents and papers pertaining to the Property or the operation thereof; (b) provide reports for the preparation and filing by Receiver of each income or other tax return required by any governmental authority on or before

the 15th of March each calendar year; (c) consider and record tenant service requests in systematic fashion showing the action taken with respect to each and thoroughly investigate and report to Receiver in a timely fashion with appropriate recommendations all complaints of a nature which might have a material adverse effect on the Property or the Budget; (d) monitor the moving in and out of tenants and subtenants; arrange, to the extent possible, the dates thereof to minimize disturbance to the operation of the Property and inconvenience to other tenants or subtenants; and render an assessment for damages and a recommendation on the disposition of any deposit held as security for the performance by the tenant under its Lease with respect to each unit vacated; (e) check all bills received for the services, work, and supplies ordered in connection with maintaining and operating the Property and, subject to availability of funds and except as otherwise provided in this Agreement, pay such bills when due and payable; (f) not knowingly permit the use of the Property for any purpose that might void any policy of insurance held by Receiver or which might render any loss thereunder uncollectible; (g) monitor and oversee any litigation regarding any matter affecting the use or operation of the Property, including any proceedings to collect rents from, or exercise any rights under any lease with, any tenant at the Property, including the selection and hiring of counsel with respect to representation for Receiver or Manager with respect to such matters; (h) assist Receiver with risk management analysis with respect to the Property, including offering recommendations with respect to applicable insurance under, and subject to the limitations of, Section 3.1 below; and (i) hold periodic conference calls with Receiver at least once per year during which call Manager shall apprise Receiver of the status of Property operations and shall answer questions raised by the Receiver. All such records created with respect to the foregoing activities are the property of Receiver and originals or copies thereof will be delivered to Receiver upon written request and at the expense of Receiver.

2.15 Authority to Execute Contracts. Manager is hereby authorized by Receiver to enter into an execute contracts and agreements by, for and on behalf of Receiver in the ordinary course of the operation and management of the Property, including but not limited to contracts and agreements with subcontractors, suppliers, maintenance companies, and other parties, provided that such contracts and agreements are not inconsistent with this Agreement, the Budget, the Operating Plan, and the Loan Documents. The foregoing notwithstanding, Manager may not, without Receiver approval, (i) execute any contract or agreement with respect to the sale of the Property or the financing or refinancing of any of the Loans; or (ii) except as provided in this Agreement, enter into any lease for all or any portion of the Property.

2.16 Hazardous Materials; Toxic Wastes; and Asbestos. If Manager becomes aware of the existence of hazardous materials or wastes, toxic substances or wastes, asbestos or asbestos-bearing materials, or the like at, in, on, or under the Property, Manager shall immediately notify Receiver of the condition. Manager shall determine any further course of action with respect to such hazardous condition, but in any event, Manager shall comply with all applicable environmental laws with respect to such hazardous condition; provided, however, Manager shall not be required to incur personal expenses to comply with applicable environmental laws. Manager shall not supervise or oversee any work involving remediation of any hazardous or potentially hazardous wastes or conditions unless specifically hired by Receiver to do so pursuant to a separate agreement between Receiver and Manager. Manager shall always use its good faith commercially reasonable efforts to prevent and detect the occurrence or existence of any hazardous condition at the Project.



2.17 Subcontract Right. Manager shall have the right to subcontract to third-party managers, some or all of the management responsibilities of Manager hereunder. No such subcontract shall relieve Manager of any of its obligations hereunder. Manager acknowledges that the right to subcontract may be conditioned upon the receipt of approval from a Lender (if applicable), which approval Receiver shall use commercially reasonable efforts to obtain, upon Manager's request.

### **ARTICLE III** **INSURANCE**

#### 3.1 Basic Insurance.

a. Manager, at the expense of Receiver, will obtain and keep in force adequate insurance against physical damage (such as fire with extended coverage endorsement, boiler, and machinery) and against liability for loss, damage, or injury to property or persons which might arise out of the occupancy, management, operation, or maintenance of the Property, as contemplated by the Operating Plan and to the extent available at commercially reasonable rates; all such insurance shall comply with applicable requirements of the Loan Documents. Manager shall not be required to maintain terrorism, earthquake, or flood insurance unless expressly directed to do so by a Lender but may do so at the expense of Receiver in Manager's reasonable discretion. Receiver and Manager shall be named as additional insureds with respect to liability insurance maintained on the Property.

b. Manager may cause such other persons, including a Lender, as it may reasonably determine should be so named, to be named as mortgagees, additional insureds, and/or loss payees on any such casualty or liability insurance. Manager shall distribute all insurance proceeds in accordance with the terms of the Loan Documents. In the event Manager receives insurance proceeds that are not governed by the terms of the Loan Documents, Manager will either (i) use such proceeds to replace, repair, or refurbish the Property; or (ii) distribute such proceeds to Receiver. Any insurance proceeds distributed to Receiver shall be distributed subject to the fees owed to Manager pursuant to this Agreement.

c. As part of the Operating Plan, Manager shall advise Receiver concerning the proper insurance coverage for the Property, taking into account the insurance requirements set forth in any Loan Document; shall furnish such information as Receiver may reasonably request to obtain insurance coverage; and shall reasonably aid and cooperate with respect to such insurance and any loss thereunder. Receiver acknowledges that Manager is not a licensed insurance agent or insurance expert. Accordingly, Manager shall be entitled to rely on the advice of a reputable insurance broker or consultant regarding the proper insurance for the Property.

d. Subject to the provisions of the Loan Documents, Manager shall investigate and submit, as soon as reasonably practicable, a written report to the insurance carrier and Receiver as to all accidents, claims for damage relating to the Receivership, operation, and maintenance of the Property, any damage to or destruction of the Property, and the estimated costs of repair thereof, and prepare and file with the insurance company in a timely manner required reports in connection

therewith. Notwithstanding the foregoing, Manager shall not be required to give such notice to Receiver if the amount of the claims, damage, or destruction, as reasonably estimated by Manager, does not exceed \$25,000.00 for any one occurrence. Subject to the provisions of the Loan Documents, Manager shall initiate, oversee litigation, and settle all claims against insurance companies arising out of any policies, including the execution of proofs of loss, the adjustment of losses, signing and collection of receipts, and collection of money, except that Manager shall not settle claims in excess of \$25,000.00 without submitting prior notice to the Receiver.

3.2 Coverage Required by a Lender. Manager shall at all times during the term of this Agreement, at its sole cost and expense, carry and maintain all insurance coverage required by a Lender or, if not specified by a Lender, the following insurance: (a) employee dishonesty coverage in an amount not less than \$1,000,000.00 for all employees of Manager who perform services pursuant to this Agreement or have access to funds of Receiver (whether held in the Operating Account or otherwise); (b) workers compensation coverage in compliance with applicable state and federal laws; and (c) general liability coverage in amounts consistent with coverage obtained by similar property managers in the county where the Property is located. All such policies shall name Receiver as an additional insured and shall not be terminable without at least thirty (30) days advance written notice to Receiver. Manager shall provide Receiver certificates of insurance evidencing the above coverages upon execution of this Agreement, and provide Receiver updated certificates upon policy renewal or issuance of any new policy thereof.

3.3 Additional Insurance. Any insurance obtained by Manager solely for its own account and not for the benefit of Receiver or the Property shall be Manager's own expense with any such proceeds for Manager's sole benefit.

3.4 Contractor's and Subcontractor's Insurance. Manager shall require all contractors and subcontractors entering upon the Property to perform services to have insurance coverage, at the contractor's or subcontractor's expense, in amounts reasonably satisfactory to Manager, but in any event as may be required by the Loan Documents. Manager may waive such requirements in its reasonable discretion if permitted by the Loan Documents. Manager shall obtain and keep on file a certificate of insurance that shows that each contractor and subcontractor is so insured.

3.5 Waiver of Subrogation. To the extent available at commercially reasonable rates, all property damage insurance policies required hereunder shall contain language whereby the insurance carrier thereunder waives any right of subrogation it may have with respect to Receiver or Manager.

#### **ARTICLE IV** **FINANCIAL REPORTING AND RECORD KEEPING**

4.1 Books of Accounts. Manager shall maintain adequate and separate books and records for the Property with the entries supported by sufficient documentation to reasonably ascertain their accuracy with respect to the Property. Receiver agrees to provide to Manager any financial or other information reasonably requested by Manager to carry out its services hereunder. Manager shall maintain such books and records at Manager's office, or at a designated office readily accessible to Receiver. Manager shall ensure such control over accounting and financial

transactions as is reasonably necessary to protect the assets of Receiver from theft, error, or fraudulent activity by Manager's employees. Manager shall bear actual losses suffered by Receiver arising from such instances, including without limitation the following: (a) theft of assets by Manager's employees, principals, officers, or those individuals associated or affiliated with Manager; (b) overpayment or duplicate payment of invoices arising from either fraud, gross negligence, or willful misconduct, unless credit is subsequently received by Receiver; (c) overpayment of labor costs arising from either the gross negligence, willful misconduct, or fraud of Manager, unless credit is subsequently received by Receiver; (d) overpayment resulting from payment from suppliers to Manager's employees or associates arising from the purchase of goods or services for the Property; and (e) unauthorized use of facilities by Manager or Manager's employees or associates.

4.2 Financial Reports and Other Notifications. On or before the thirtieth (30<sup>th</sup>) day following each calendar month, Manager shall deliver to Receiver a report of all Significant Transactions occurring during the prior month. "Significant Transactions" shall mean all collections, payables, delinquencies, uncollectible items, vacancies, and other matters pertaining to the management, operation, and maintenance of the Property during the applicable month and shall contain a comparison between actual expenses and expenses set forth in the Budget for such period. Manager shall deliver copies of items in Section 4.3(c), (d) and (j) below to Receiver at the time the monthly reports are furnished. Manager also shall deliver to Receiver within seventy-five (75) days after (i) the close of each calendar year; or (ii) termination of this Agreement, a balance sheet for the Property and information regarding the operation of the Property necessary for preparation of the tax returns for Receiver. The statement of income and expenses, the financial statements, and all other financial statements and reports shall be prepared on a modified cash basis according, to the extent possible, to generally accepted accounting principles (except that footnote disclosures are not required).

4.3 Supporting Documentation. As additional support to the monthly financial statement, Manager shall maintain and make available at Manager's office, or a designated office readily accessible to Receiver, copies of the following: (a) all bank statements, bank deposit slips, bank debit and credit memos, cancelled checks, and bank reconciliations; (b) detailed funds receipt and disbursement records, which shall include the check number, cash receipt number or other identifying numbers sufficient to establish an audit trail to the receipt of funds, the date and amount the funds were received or disbursed, the check number or electronic tracking number for funds disbursed, the payee of the disbursement the purpose of the receipt or disbursement and the balance after each recorded entry; (c) detailed trial balance for receivables and payables and billed and unbilled revenue items; (d) rent roll of tenants; (e) paid invoices or copies thereof; (f) summaries of any adjusting journal entries; (g) appropriate details of accrued expenses and property records; (h) information regarding the operation of the Property necessary for preparation by Receiver of tax returns; and (i) a calculation of all management fees paid to Manager. Manager shall deliver a copy of the documents described in (a) through (i) to Receiver upon written request at the sole cost and expense of Receiver.

4.4 Loan Reporting Requirements. Notwithstanding the foregoing, Manger shall also comply with all reporting requirements relating to the Property required under the Loan Documents.

4.5 Right to Audit. Manager shall cooperate with an audit of the financial records and the financial and tax reporting by independent and qualified auditor selected by Receiver, whose compensation is not based upon the outcome of the audit. The costs of such audit shall be paid from the Operating Account; provided, however, that in the absence of defects in internal control or errors in record keeping, Receiver may not audit Manager more often than once in any twelve (12) month period. If an audit reveals defects in internal control or errors in record keeping, Manager shall undertake with all appropriate diligence to correct such discrepancies either upon discovery or within a commercially reasonable period of time. Manager shall inform Receiver in writing of the action taken to correct any audit discrepancies.

## **ARTICLE V** **BANK ACCOUNTS**

5.1 Operating Account. Manager shall deposit all rents and other funds collected from the operation of the Property in a reputable bank or financial institution in a special trust or depository account maintained separately for the Property by Manager for the sole benefit of Receiver, unless otherwise required by the Loan Documents affecting the Property (such account or accounts, together with any interest earned thereon, shall hereinafter be referred to as the “Operating Account”). Manager shall maintain books and records of the funds deposited in the Operating Account and withdrawals therefrom. Manager shall use reasonable efforts to maintain the Operating Account so that an amount at least as great as the budgeted operating expenses for such month is in the Operating Account as of the first of each month. Subject to the availability of funds, Manager shall pay from the Operating Account, on behalf of Receiver, the operating expenses of the Property and any other payments relating to the Property as required by this Agreement. If more than one account is necessary to operate the Property, each account shall have a unique name. Within forty-five (45) days after receipt by Manager, all rents and other funds collected in the Operating Account after payment of all operating expenses, debt service, and such amounts as may be determined by Manager to be retained for reasonable or required reserves or improvements shall, to the extent permitted under the Loan Documents, be paid to Receiver.

5.2 Security Deposit Account. If applicable law requires a segregated account of security deposits, Manager will open a separate account at a reputable bank or other financial institution. Manager shall maintain such account in accordance with applicable law. Manager shall use the account only to maintain security deposits. Manager shall inform the bank or financial institution to hold the funds in trust for Receiver. Manager shall maintain detailed records of all security deposits deposited and allow Receiver or its designees access to such records. Manager may return such deposits to any tenant in the ordinary course of business in accordance with the terms of the applicable Lease. The foregoing notwithstanding, Manager shall have no liability with respect to, and shall be indemnified and held harmless by Receiver with respect to, any security deposits paid by any tenants prior to the date of this Agreement that were not turned over to Manager by or on behalf of Receiver.

5.3 Reserves Account. Subject to the terms of the Loan Documents, Manager will also open, on behalf of Receiver, one or more separate accounts to hold any capital reserves and tenant improvement/leasing commission reserves established for the benefit of Receiver, exclusive of

reserves required by a Lender to be held by a Lender. The reserves shall be the property of Receiver but shall be available to Manager for use in connection with making capital improvements to the Property and making tenant improvement/leasing commission payments, as applicable, provided that any withdrawals from the reserve accounts are set forth in the Budget, or are Emergency Expenditures, or are otherwise approved by Receiver and a Lender, if such Lender consent is required under the Loan Documents. Receiver may from time to time make additional deposits into the reserve accounts to be held and administered in accordance with this Agreement. Upon a sale of the Property, any funds remaining in any reserve accounts, after deduction for costs and expenses relating to such sale or disposition and payment of final operating invoices, shall be returned to Receiver.

5.4 Access to Accounts. As authorized by signature cards, representatives of Manager shall have access to and may draw upon all funds in the accounts described in Sections 5.1, 5.2 and 5.3 without the approval of Receiver, unless otherwise provided in the Budget or Section 5.3. In addition, representatives of Manager may draw upon any funds escrowed or held in reserve accounts for expenditures within the Expenditure Parameters or within an approved Budget without the approval of Receiver, provided the requirements of Section 2.10 and any additional Lender requirements are satisfied. Receiver may not withdraw funds from such accounts without Manager's signature, except following Manager's default under this Agreement beyond any applicable notice and cure period or the termination of this Agreement.

## **ARTICLE VI**

### **PAYMENTS OF EXPENSES**

6.1 Expenses. Manager shall pay all expenses of the operation, maintenance and repair with respect to the Property contemplated by the Budget directly from the Operating Account or shall be reimbursed by Receiver, subject to the conditions set forth in Section 2.6, and further subject to the condition that any such expenses are not the result of Manager's gross negligence or willful misconduct, including without limitation the following: (a) cost of the gross salary and wages or proportional shares thereof, payroll taxes, worker's compensation insurance, and all other benefits of on-site employees required to oversee and supervise the management, operation, and maintenance of the Property properly, adequately, safely, and economically, subject to this Agreement and provided that Manager shall not pay such employees in advance; (b) cost to correct the violation of any governmental requirement relating to the leasing, use, repair, and maintenance of the Property or relating to the rules, regulations, or orders of the local governmental or insurance entities if such cost is not the result of Manager's gross negligence or willful misconduct; (c) actual and reasonable cost of making all repairs, decorations, and alterations at the Property if such cost is not the result of Manager's gross negligence or willful misconduct; (d) cost incurred by Manager in connection with all service agreements, including costs under any agreement with Manager; (e) costs to comply with the reporting requirements under the Loan Documents; (f) cost of collection of delinquent rents collected by a collection agency or attorney; (g) legal fees and costs of attorneys; (h) cost of capital expenditures subject to the restrictions in Section 2.10; (i) cost of printed checks for each account required by this Agreement or Receiver; (j) costs of utilities; (k) cost of advertising; (l) cost of printed forms and supplies required for use at the Property; (m) management compensation set forth in Article 8; (n) cost of tenant improvements to the Property; (o) all hiring, relocation, and termination costs for any employee, including those individuals

whose salaries and benefits are paid by Receiver; (p) broker's commissions; (q) debt service; (r) the cost of services, contractors, and insurance; (s) reimbursement of Manager's out-of-pocket costs and expenses to the extent not prohibited by Article 7 below; (t) general accounting and reporting services within the reasonable scope of Manager's responsibility to Receiver; (u) costs of electronic data processing, forms, papers, ledgers, and other supplies and equipment used in connection with the Property for the preparation of reports, information and returns to be prepared by Manager under the terms of this Agreement; (v) all expenses of the Manager's on-site office and/or a reasonable allocation of the regional field office expenses of the Manager or its affiliate relating to the management of the Property such as rent, utilities, office supplies, office equipment, and all other miscellaneous administrative expenses; (w) all other costs directly related to the Property, including but not limited to communication costs (telephone, postage, etc.), computer rentals or time, supplies (paper, envelopes, business forms, checks, payroll forms and record cards, forms for governmental reports, etc.), printing, insurance, fidelity bonds, taxes and license fees, overhead and general office expenses allocable to the Property; (x) cost of routine travel by Manager's employees or associates to and from the Property; (y) commercially reasonable costs incurred from subcontractors, including leasing agents, in accordance with Section 2.17; (z) the costs of third-party asset underwriting support; and (aa) the costs of third-party prepared abstracts for all Leases, Loan Documents and service contracts in effect as of the Effective Date.

6.2 Operating Account Deficiency. Manager will recommend that minimum reserves be maintained at all times for the proper operation of the Property. If there are not sufficient funds in the Operating Account to make any such payment set forth above, Manager shall notify Receiver of the deficiency, if possible, at least thirty (30) days prior to any delinquency so that Receiver has an opportunity to deposit sufficient funds in the Operating Account to allow for such payment prior to the imposition of any penalty or late charge.

6.3 Property Onboarding. Receiver shall pay Manager a onetime fee of \$30,000.00 (calculated on the basis of \$2,500.00 per individual commercial property) in connection with setup and onboarding to Manager's accounting software.

## **ARTICLE VII**

### **MANAGER'S COSTS NOT TO BE REIMBURSED**

7.1 Non-Reimbursable Costs. The following expenses or costs incurred by or on behalf of Manager in connection with the management and leasing of the Property shall be at the sole cost and expense of Manager and shall not be reimbursed by Receiver: (a) cost attributable to losses arising from fraud, gross negligence, or willful misconduct on the part of Manager or the Manager's associates or employees; (b) cost of insurance purchased by Manager for its own account; and (c) Manager's costs of overhead, salaries, and other items except as expressly provided in Article 6.

7.2 Litigation. Manager will be responsible for, and will indemnify, defend and hold the Receiver harmless from, all costs relating to disputes with Manager's employees for worker's compensation to the extent not covered by insurance, discrimination, or wrongful termination, including legal fees and other expenses in connection therewith, unless such costs arise out of the gross negligence or willful misconduct of Receiver.

## **ARTICLE VIII** **COMPENSATION**

8.1 Asset Management Fee. Beginning on the Effective Date and pursuant to Section 8.5 below, Manager shall receive for its services rendered in managing the day-to-day operations of the Property in accordance with the terms of this Agreement, a monthly asset management fee (the “Asset Management Fee”) equal to one-twelfth (1/12) of twenty-five cents (\$0.25) multiplied times the total number of square feet of the leasable area of the Property.

8.2 Management Fee. Beginning on the Effective Date and pursuant to Section 8.8 below, Manager shall receive a monthly property management fee (the “Property Management Fee”) equal to one twelfth (1/12) of three and one-half percent (3.5%) of estimated annual Gross Revenues. As used herein, “Gross Revenues” shall mean the total collections estimated to be received from the Property, including but not limited to: all rents; income from operating expense reimbursements; income from the operation of concessions; parking revenues; roof-top revenues; payment for lease cancellations; proceeds from rental interruption or abatement insurance; security deposits applied to the payment of rent; and all other income or revenues in any way derived from the utilization or operation of the Property.

8.3 Commercial Leasing Oversight and Negotiation. Manager shall manage the leasing and oversee the leasing agent (if applicable) and shall receive leasing commissions for each new Lease of all or a portion of the Property, and for each non-contractual renewal, renegotiation or extension of a Lease of all or a portion of the Property, equal to two percent (2%) of the value of the Lease (each a “Leasing Commission”). The “value of the Lease” shall be calculated by totaling the estimated rent for the term of the Lease, renewal, renegotiation or extension.

8.4 Construction Management Fee. Manager, or its designated affiliate, shall receive, for its services in supervising any construction or repair project in or about the Property, a construction management fee (the “Construction Management Fee”) equal to: (a) five percent (5%) of any construction costs incurred which are expended for construction, tenant improvement, or repair projects, including related professional services.

8.5 Payment of Fees. The Asset Management Fee and Property Management Fee shall be paid in accordance with the fee application process required by the Receivership Court and upon the availability of Receivership Estate funds (subject to Section 9.2 below). The Leasing Commission shall be earned and paid when the Lease is signed (or reservation is made in the case of nightly or other short-term rentals). Any Leasing Commission is exclusive of and in addition to any third-party expenses, including without limitation, leasing agent fees and legal fees. The Construction Management Fee shall be earned and paid when the construction is substantially completed.

**ARTICLE IX**  
**TERMINATION OR NON-RENEWAL**

9.1 **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, and shall thereafter automatically renew for additional one (1) year periods, unless either party provides the other party with written notice its election not to renew by no later than ninety (90) days prior to the date on which the term of this Agreement would otherwise automatically renew.

9.2 **Termination for Nonpayment.** Manager shall have the right with written notice to Receiver to terminate this Agreement if the total amount of fees invoiced by Manager to Receiver exceed \$150,000.00 for more than ninety (90) days, including any fees invoiced by Manager to Receiver under any other agreement entered into by the parties. Manager shall continue to have a claim against the Receivership Estate for all unpaid fees, notwithstanding its election to terminate this Agreement as provided above.

9.3 **Termination on Sale.** Upon the sale or other transfer of any portion of the Property, this Agreement shall terminate as to such portion of the Property.

9.4 **Termination by Default.** In the event that Receiver or Manager shall default, with respect to any material covenant, term or provision of this Agreement, and the same shall not be cured or corrected within thirty (30) days following the receipt of the written notice from the non-defaulting party specifying the nature of such default, then the party not in default may terminate this Agreement upon ten (10) days' written notice to the defaulting party.

9.5 **Termination by Bankruptcy.** If a petition for bankruptcy, reorganization or rearrangement is filed under state or federal insolvency statutes by or against Receiver or Manager, or either party shall make an assignment for the benefit of creditors or take advantage of any insolvency act, then the party not seeking credit or relief may terminate this Agreement upon ten (10) days' written notice to the other party.

9.6 **Termination on Replacement.** In the event that the Receiver resigns, is removed, or is otherwise replaced as receiver with respect to any portion of the Property, Manager upon ten (10) days' written notice shall have the right to terminate this Agreement as to such portion of the Property.

9.7 **Final Accounting; Transition Period.** Within thirty (30) days after termination of this Agreement for any reason, Manager shall deliver, or cause to be delivered, to Receiver the following: (a) a final accounting, setting forth the balance of income and expenses of the Property as of the date of termination; (b) any balance or monies of Receiver or tenant security deposits held by Manager with respect to the Property; and (c) all materials and supplies, keys, books and records, contracts, leases, receipts for deposits, unpaid bills, and other papers or documents which pertain to the Property. Manager shall assign, transfer or convey to such person or persons as may be designated by Receiver, all service contracts and personal property relating to or used in the operation and maintenance of the Property, except any personal property which was paid for and is owned by Manager. In any instance where Manager is signatory to a vendor service contract,



Manager shall have the right to terminate said service contract. Upon any termination pursuant to this Article IX, Manager shall be entitled to receive any and all compensation and expense reimbursement which may be due Manager hereunder at the time of such termination, which obligation shall survive such termination.

**ARTICLE X**  
**MISCELLANEOUS**

10.1 Notices. All notices, demands, consents, approvals, reports, and other communications provided for in this Agreement shall be in writing and shall be given to Receiver or Manager at the address set forth below or at such other address as the may specify in writing:

Receiver: Harvey Sender, Receiver  
600 17th Street,  
Suite 2800 South,  
Denver, CO 80202  
Tel: (303) 454-0540  
EM: hsender@sendersmiley.com

With a Copy To: Allen Vellone Wolf Helfrich & Factor P.C.  
1600 Stout Street, Suite 1100  
Denver, CO 80202  
Attn: \_\_Matthew J. Roth, Esq.  
Tel: (303) 534-4499  
EM: mroth@allen-vellone.com

Manager: Revesco Property Services, LLC  
5291 East Yale Avenue  
Denver, CO 80222  
Attn: Marc Perusse  
EM: mperusse@revescoproperties.com

With a Copy To: Brian K. Fahselt, LLC  
1600 Stout Street, Suite 1400  
Denver, CO 80202  
Tel: (303) 446-9200  
EM: briank@fahselt-law.com

Such notice or other communications shall be delivered by a recognized overnight delivery service providing a receipt, facsimile transmission, electronic mail, or United States registered or certified mail, return receipt requested, postage prepaid if deposited in a United States Post Office or depository for the receipt of mail regularly maintained by the post office. Notices shall be effective when received and shall be deemed received at the time they are sent via facsimile to the facsimile number on record with Manager or at the time they are sent via email to the email address on record with Manager, or one (1) business day after deposit with a recognized overnight delivery service, or three (3) days after being mailed.

10.2 Assignment. Except as otherwise provided herein, Manager may not assign this Agreement without the prior written consent of Receiver, which consent may be withheld in Receiver's sole and absolute discretion.

10.3 Entire Agreement; Modification; Waiver. This Agreement and any agreement, document, or instrument referred to herein constitute the entire agreement between Receiver and Manager pertaining to the subject matter contained in such agreement and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties hereto. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party hereto to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.4 Governing Law. This Agreement shall be governed by, construed, enforced, and interpreted in accordance with the laws of the State of Colorado.

10.5 Licensing. To the extent that any fees or commissions otherwise payable to Manager hereunder may not be so paid because Manager does not hold the necessary licenses, Manager shall engage and appoint as agent an affiliated entity which does hold such licenses to so receive such fees or commissions on its behalf.

10.6 Indemnification by Manager. Manager shall indemnify, defend and hold Receiver and its principals, partners, managers, members, shareholders, officers, directors, and employees harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs, and expenses, including reasonable attorneys' fees and court costs, sustained or incurred by or asserted against Receiver by reason of the acts of Manager which arise out of the gross negligence, fraud, or willful misconduct of Manager, its agents or employees or the Manager's breach of this Agreement. If any person or entity makes a claim or institutes a suit against Receiver on a matter for which Receiver claims the benefit of the foregoing indemnification, then: (a) Receiver shall give Manager prompt notice thereof in writing; (b) Manager may defend such claim or action by counsel of its own choosing provided such counsel is reasonably satisfactory to Receiver; (c) neither Receiver nor Manager shall settle any claim without the other's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; and (d) this Section 10.6 shall not be so construed as to release Manager from any liability to Receiver that could arise under this Agreement for a breach of any of the covenants agreed to be performed under the terms of this Agreement. The provisions of this Section 10.6 shall survive any termination of this Agreement.

10.7 Indemnification of Manager. The parties hereby acknowledge and agree that Manager will be acting as an agent of Receiver under this Agreement. Receiver agrees to diligently pursue and to use best efforts to obtain for the benefit of Manager any and all indemnification to which Manager may be entitled to receive as an agent of Receiver. The provisions of this Section 10.7 shall survive any termination of this Agreement.

10.8 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof shall be stricken from this Agreement and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section 10.8, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

10.9 No Waiver. The failure by either party to insist upon the strict performance of or to seek remedy of any one of the terms or conditions of this Agreement or to exercise any right, remedy, or election set forth herein or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such term, condition, right, remedy, or election, but such item shall continue and remain in full force and effect. All rights or remedies of the parties specified in this Agreement and all other rights or remedies that they may have at law, in equity, or otherwise shall be distinct, separate, and cumulative rights or remedies, and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy of the parties.

10.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10.11 Attorneys' Fees. In the case of any dispute resolved by court action or arbitration, the substantially non-prevailing party (as determined by the court or arbitrator after considering the relative success of the parties, including the successful assertion of any defense) shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorneys' fees of both parties, any costs of producing witnesses, and any other reasonable costs or expenses incurred by the substantially prevailing party. If any party takes any action in court to appeal a decision of a court or arbitrator, or otherwise brings any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the substantially non-prevailing party shall pay to the substantially prevailing party a reasonable sum for attorneys' fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For purposes of this Section 10.11, attorneys' fees shall include without limitation fees incurred in the following: (a) post-judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third-party examinations; (d) discovery; and (e) bankruptcy litigation.

10.12 Power of Attorney. Wherever in this Agreement a power of attorney is granted to Manager, such power of attorney: (a) is a special power of attorney coupled with an interest, is irrevocable, shall survive the death, incapacity, termination, or dissolution of the grantor, and is limited to those matters herein set forth; (b) may be exercised by Manager, by and through one or more of its officers, for Receiver by the signature of Manager acting as attorney-in-fact for such person, or by such other method as may be required or requested in connection with the recording

or filing of any instrument or other document so executed; and (c) shall survive a replacement of Receiver. Notwithstanding anything to the contrary contained herein, if this Agreement is terminated, the special and limited power of attorney granted to Manager pursuant to this Section 10.15 shall irrevocably expire upon such termination.

10.13 Construction. Each gender shall include each other gender. When required by the context, the singular shall include the plural and vice-versa.

10.14 Headings. All headings are only for convenience and ease of reference and are irrelevant to the construction or interpretation of any provision of this Agreement.

10.15 Recitals. The Recitals contained at the beginning of this Agreement shall have the same force and effect as any other provisions of this Agreement.

10.16 Further Assurances. Receiver agrees to execute, with acknowledgment and affidavit if required, any and all documents and take all actions that may be reasonably required in furtherance of the provisions of this Agreement.

10.17 Counterparts; Facsimiles. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission or electronic mail) as against the party signing such counterpart, but which together shall constitute one and the same instrument. This Agreement may be executed by electronic signature, and signatures transmitted via facsimile or electronic mail shall be considered authentic and binding.

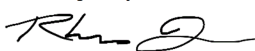
*[Remainder of Page Intentionally Left Blank; Signatures on Following Page]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**MANAGER:**

Revesco Property Services, LLC,  
a Colorado limited liability company

DocuSigned by:

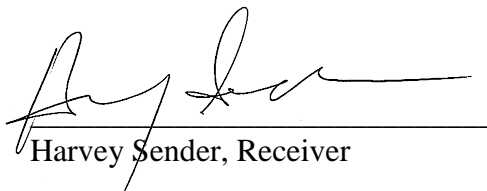


By: \_\_\_\_\_  
FDEF3586E4DE463...

Name: T. Rhys Duggan

Title: President

**RECEIVER:**

  
\_\_\_\_\_  
Harvey Sender, Receiver

**EXHIBIT A**

**Receivership Court Order**

**EXHIBIT B**

**Property**

1. 2195 South Bellaire Street, Denver, CO
2. 5290 East, Arapahoe Road, Centennial, CO
3. East Kemper & Princeton Parkway, Cincinnati, OH
4. 21800 US Highway 19 North, Clearwater, FL
5. 501 North Marketplace Boulevard, Lansing, MI
6. 335 Crossing Drive, Lafayette, CO
7. 297 North Seven, Oaks Drive, Knoxville, TN
8. 2311 South High Street, Denver, CO
9. 4950 East Hampton Avenue, Denver, CO
10. 5082 East, Hampton Avenue, Denver, CO
11. 1718 Highway 70 SE, Hickory, NC
12. 9722 Colerain, Avenue, Cincinnati, OH

**EXHIBIT C****[SCOPE OF MANAGEMENT SERVICES]**

<b>SERVICE</b>	<b>COMMENTS</b>
<b>Leasing</b>	Responsible for oversight of the leasing parameters in the Budget, subject to Receiver approval
<b>Default of Tenants</b>	Responsible for making decision as to whether a tenant may be placed in default and implementation of action to default tenant, including engaging legal representation to collect on money for possession of premises
<b>Property Budget</b>	Responsible for preparation of the Budget, subject to Receiver approval
<b>Cash Management</b>	Responsible for review and performance of actions regarding to disbursement of property level expenses, payment of debt service, disbursement to Receiver, reserve draw requests, investment of excess cash, depository account, operating account, any other account, operation of Property, and third-party contracts to maintain Property
<b>Risk Management</b>	Responsible for review and performance of actions regarding the Asset/Property level, the tenant level and third-party contracts
<b>Records and Reports</b>	Responsible for review and performance of actions regarding the operation and maintenance of Property; books, records, and accounts of Property; monthly reports to Receiver; year end reporting for tax package; and certified annual report
<b>Collection of Income</b>	Responsible for collections
<b>Due Diligence</b>	Responsible for assisting with the underwriting, including property and financial reviews during acquisition period; also responsible for assisting Receiver in providing due diligence documents to Buyers pursuant to sale transactions
<b>Monitoring Loan Compliance</b>	Responsible for monitoring
<b>Property Tax Appeal</b>	Responsible for working with consultant to implement process, charged at Property level



**EXHIBIT D**

[BUDGET GUIDELINES]

The Budget shall be prepared in accordance with the following guidelines:

- A. The Budget shall be in the Manager's standard form showing for the next contract year the revenues estimated to be derived from, and the expenses estimated to be incurred in, the operation of the Property during the next contract year, as detailed below.
- B. Any proposed Budget shall include:
  - (i) A statement of all revenues estimated to be derived from the Property under all Leases, all sums receivable in lieu thereof, including but not limited to insurance proceeds payable as a result of business interruption and damages payable in lieu of rent, and all anticipated advances required;
  - (ii) A statement of the following estimated costs and expenses regularly incurred in the Property's operation:
    - (a) All costs and expenses to be incurred by or on behalf of Receiver in connection with the management, operation, maintenance or repair of the Property, including but not limited to:
      - (1) All sums payable under service contracts, including, but not limited to, agreements related to air conditioning and heating, general cleaning, utilities, elevator servicing, refuse removal, grounds and plant maintenance, parking services, pest control, security, telephone, window cleaning, and similar services; and
      - (2) All other charges, costs and expenses of a regular nature for services and supplies provided to or for the benefit of the Property and in the normal operation thereof;
    - (b) Periodic debt service payments which may encumber the Property;
    - (c) The installments of impositions and insurance premiums as may be required;
    - (d) The fees payable to the Manager pursuant to this Agreement; and
    - (e) Anticipated monthly distributions to Receiver;
  - (iii) A statement of the following costs and expenses of an extraordinary nature:

- (a) Estimated costs and expenses to be incurred in connection with the provision of tenant improvements or any other capital improvements;
  - (b) If applicable, estimated sums payable as commissions, including commissions which may be paid to Manager or other outside parties, or other charges of a similar nature anticipated to be paid in connection with the procurement of revenue from the Property;
  - (c) Projected costs due to lack of reimbursement for claims under any policy of insurance covering the Property or cost arising from or under any guarantee, warranty, bond, or other contract relating to the Property as may be known at the time of budgeting; and
  - (d) Estimated costs and expenses, to the extent known at time of budgeting, to be incurred pursuant to the order or direction of any state, federal, or municipal authority having jurisdiction;
- (iv) Schedule of rental income pursuant to the current Property rent roll.
- C. If at any time and for any reason Manager anticipates or incurs a variance of more than \$5,000.00 in a Budget line item and a variance in excess of 10% of the expenses identified in the Budget, then the Manager shall highlight this variance in the monthly operating report to Receiver.

**ASSET MANAGEMENT AGREEMENT  
(Residential)**

**THIS ASSET MANAGEMENT AGREEMENT** (this “Agreement”) is entered into as of the Effective Date (as defined below), by and between Harvey Sender in his capacity as Receiver of the Gary Dragul Receivership Estate (“Receiver”) and Revesco Property Services, LLC, a Colorado limited liability company (“Manager”).

**RECITALS**

A. Gary Dragul owned and managed various companies (collectively “Dragul”) for which he solicited investors to acquire residential and commercial real estate. Gary Dragul was indicted for securities fraud by the Attorney General for the State of Colorado. Harvey Sender, the Seller, was appointed Receiver by a Court Order dated August 30, 2018 entered in Rome v. Dragul, et al., Case Number 2018 CV 33011, District Court, Denver, Colorado (the “Receivership Court” and the “Receivership Order”) to take control of all Dragul assets (referred to as “Receivership Property” or “Receivership Estate”). See Receivership Order attached as **Exhibit A**. The Receivership Property includes all the assets of: (i) GDA Real Estate Services, LLC (“GDA RES”); (ii) GDA Real Estate Management, LLC (“GDA REM”). The Receivership Order authorizes the Receiver to sell assets of the Receivership Estate subject to Court approval. The Receiver seeks to hire a property management company to administer, manage and oversee the Receivership Estate.

B. The Receiver is the duly-appointed receiver for each of the residential properties listed on **Exhibit B** (collectively, the “Property”).

C. The Property is subject to loans secured by mortgages or deeds of trust (the “Loans”) for the benefit of a lender (a “Lender”). These mortgages, deeds of trust and any other document related to the Loans are collectively referred to herein as the “Loan Documents.”

D. Receiver wishes to engage Manager to act as manager of the Property, and Manager wishes to accept such engagement, all on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**ARTICLE I  
COMMENCEMENT AND QUALIFICATION**

1.1 Commencement. Manager’s duties and responsibilities under this Agreement shall begin as of the last date this Agreement is signed by the Receiver and Manager (the “Effective Date”).

1.2 Qualification to Do Business. Manager represents and warrants that it has full power and authority to enter into this Agreement and that it is authorized to do business in the State of Colorado. To the extent required by applicable law, Manager will also qualify to do business in any other states in which the Property is located.

## **ARTICLE II**

### **MANAGER'S RIGHTS AND RESPONSIBILITIES**

2.1 Status of Manager. The Receiver and Manager do not intend to form a joint venture, partnership, or similar relationship. Instead, the parties intend that Manager shall act solely in the capacity of an independent contractor for the Receiver. Nothing in this Agreement shall cause Manager and Receiver to be joint venturers or partners of each other, and neither shall have the power to bind or obligate the other party by virtue of this Agreement, except as expressly provided in this Agreement. Nothing in this Agreement shall deprive or otherwise affect the right of either party to own, invest in, manage, operate, or conduct business activities which compete with the business of the Property.

2.2 Asset Management. Manager shall provide the following asset management services (the "Asset Management Services"): (a) all of the services assigned to or made the responsibility of the asset manager described in **Exhibit C** attached hereto; (b) serving as the administrator for the Receiver; and (c) facilitation of approvals of new leases, loans, and sales of assets.

2.3 Property Management. Manager shall use all commercially reasonable efforts to operate and maintain the Property in an efficient, economic, and satisfactory manner and shall manage the performance of everything reasonably necessary for the proper operation of the Property for the tenants thereof and the protection of the interests of the Receiver, including all of the services assigned to or made the responsibility of the Manager described in **Exhibit C** attached hereto, subject to (a) applicable governmental requirements; and (b) the terms and provisions of this Agreement. At the expense of Receiver, Manager shall keep the Property clean and in good repair, shall order and supervise the completion of such repairs as may be required, and shall generally do and perform, or cause to be done or performed, all things necessary, required, or desirable for the proper and efficient management, operation, and maintenance of the Property; provided Receiver, in a manner to be reasonably satisfactory to Manager, makes available to Manager sufficient sums to pay the costs thereof.

2.4 Employees/Independent Contractors of Manager. Manager shall employ, directly or through third party contractors (*e.g.*, an employee leasing company), at all times a sufficient number of capable employees and/or independent contractors to enable Manager to properly, adequately, safely, and economically manage, operate, and maintain the Property. All matters pertaining to the supervision of such employees shall be the responsibility of Manager. All salaries and benefits and positions of employees who perform work in connection with the Property shall be consistent with the Budget (as defined below).

2.5 Compliance with Laws; Other Matters. Manager shall use commercially reasonable efforts to comply, and to cause the Property to comply, with the Loan Documents and

all applicable governmental requirements, including without limitation Board of Fire Underwriters or other similar body, relative to the performance of its duties hereunder, ordinances, rules, regulations, and requirements. Manager may implement such procedures with respect to the Property as Manager may deem advisable for the more efficient and economic management and operation thereof. Manager shall pay from the Operating Account (as defined below) expenses incurred to remedy violations of laws; provided, however, at no time shall Manager be required to carry out any instruction from a Lender or Receiver or be responsible for any loss, damages, claims, violations of law, breach of the Loan Documents or other agreements if sufficient funds are not available in the Operating Account and Receiver has not provided sufficient additional funds to cover any shortfall in the Operating Account. Manager shall furnish to Receiver, promptly after receipt, but in no event less than seventy-two (72) hours from the time of receipt, any notice of violation of any governmental requirement or order issued by any governmental entity, any Board of Fire Underwriters or other similar body against the Property, any notice of default from the holder of any Loan Documents, or any notice of termination or cancellation of any insurance policy not immediately replaced by Manager.

## 2.6 Budgets and Operating Plan.

a. As soon as possible after the Effective Date, Manager shall deliver to Receiver an initial capital and operating budget (the "Budget") for the promotion, operating, leasing, repair, maintenance, and improvement of the Property for the remainder of the current calendar year, and such Budget shall be approved or disapproved by Receiver. The Budget shall conform to the requirements set forth in **Exhibit D** attached hereto and will include, among other things, a line item for monthly distributions to Receiver. Manager shall use commercially reasonable efforts to operate the Property in accordance with the Budget for each calendar year as approved in accordance with this Section 2.6. The Budget is and shall be presented on a monthly, cash basis. Manager shall deliver to the Receiver a Budget for each subsequent calendar year on or about October 31 of the calendar year before the budget year. Manager shall provide Receiver with such information regarding the Budget as may be reasonably requested, from time to time, by the Receiver. Receiver shall be deemed to have approved the Budget unless Receiver provides a written notice indicating the specific objection to the specific Budget item within fifteen (15) days from receipt of the Budget. Receiver agrees to use its reasonable efforts to respond timely to any request to approve the Budget, if a response is required. In the event that approval of the Budget is not obtained, Manager and Receiver shall negotiate in good faith for fifteen (15) days to resolve the issue and obtain an acceptable Budget. If the parties are unable to reach an agreement on any issue other than leasing matters during such fifteen-day period, the issue shall be resolved by binding arbitration with Receiver and Manager to pay the costs of the arbitration equally. Manager may take such action as it deems necessary with respect to Emergency Expenditures (as defined below), even if such items have not yet been approved. In the event the items that are objected to are operational expenditures, as opposed to capital expenditures, Manager shall be entitled to oversee and supervise the operation of the Property using the prior year's Budget, increased by five percent (5%) for all non-fixed increases and all fixed increases for costs such as taxes, insurance premiums and the like, for which the prior year's Budget shall be deemed increased until the approval is obtained. All items approved, or deemed approved, by Receiver require no further approval regardless of the amount of said items. Manager may at any time submit a revised Budget

to Receiver, and Receiver shall approve or disapprove such revised Budget in accordance with the same procedure as set forth in this Section 2.6.

b. Manager shall charge all expenses to the proper account as specified in the Budget, provided that Manager may reallocate savings from one line item to other line items for the benefit of Receiver without further approval. Manager shall submit, subject to the same procedures as set forth above, a revised Budget to Receiver before making any expenditure not within the Budget unless the expenditure: (i) is \$10,000.00 or less for any one item; (ii) is required to avoid personal injury, material property damage, a default under any Loan Documents, a violation of applicable law, or the suspension of a service (collectively, "Emergency Expenditures"); (iii) is, in Manager's reasonable judgment, needed for repairs or refurbishments to the Property and there are sufficient funds on account in the Capital Reserves or other reserve accounts (but not the Operating Account) from which to fund such expenditure; or (iv) is needed for renovations to the Property following a casualty (such expenditures in (i), (ii), (iii) and (iv) being referred to collectively as the "Expenditure Parameters"). The Expenditure Parameters may be amended from time to time by Manager following approval by Receiver in accordance with Section 2.6. Notwithstanding any provision herein to the contrary, Manager shall not make any expenditure which Receiver has expressly prohibited pursuant to a written notification to Manager.

c. Together with submission of the annual Budget and subject to the approval requirements of Receiver contained herein, Manager shall submit to Receiver an operating plan for the general operation of the Property for the subsequent year, including a proposed list of improvements to the Property, a general insurance plan, a marketing plan, and a plan for the general operation and maintenance of the Property (the "Operating Plan"). Manager may submit a revised Operating Plan to Receiver at any time.

d. Manager shall provide a Lender with copies of each Budget and reports relating to the Property as required under the Loan Documents and shall, subject to the availability of funds, comply with the provisions of the Loan Documents relating to the management of the Property, including without limitation those provisions related to the Budget, the Operating Plan, and expenditures.

## 2.7 Leasing.

a. Receiver hereby approves all Leases (as hereinafter defined) presently in effect as of the Effective Date. Approval of new Leases, amendment, renewals, and extensions shall be subject to the procedures set forth herein. To the extent required by the Loan Documents, the consent of a Lender shall be obtained prior to entering into new Leases, amendments, renewals, and extensions.

b. In connection with its leasing efforts, Manager or its agent may advertise the Property for lease. Manager and/or its agent shall use commercially reasonable efforts to obtain tenants for all rentable area in the Property and to enter into leases and rental agreements (collectively, "Leases") as provided herein. Lease terms must be approved by Receiver unless a lease is for one percent (1%) or less of the net rentable area of the Property and such lease is on a standard form which has been approved in advance by Receiver, in which case Manager can

approve such lease. New Leases, amendments, renewals, and extensions will be deemed approved (“Approved Leases”) unless Receiver gives written notice of rejection to Manager within seventy-two (72) hours of receipt of a copy of the proposed Lease, amendment, renewal, or extension along with a summary of the terms of the Lease, amendment, renewal, or extension. In addition, Receiver hereby grants to Manager a special power of attorney, for and on behalf of Receiver, to execute Approved Leases and any subordination and non-disturbance agreement, tenant estoppel certificate, and tenant notice related thereto. If Receiver objects to any such leasing matters within seventy-two (72) hours as provided above, Manager will not have authority to execute the rejected Leases on behalf of Receiver.

c. Except as provided in the Operating Plan, Manager shall not, without prior approval, give free rental, discounts, or rental concessions to any employees, officers, or shareholders of Manager or anyone related to such employees, officers, or shareholders unless such discounts or concessions are in lieu of salaries or other benefits to which they would be contractually entitled. Manager shall not lease any space in the Property to itself or to any of its affiliates or subsidiaries except as provided in the Operating Plan without Receiver approval.

d. Manager shall obtain a credit check for all prospective tenants. Manager shall retain such information for the duration of the tenancy and shall make it available to Receiver upon reasonable written request. Notwithstanding the foregoing, Manager does not guarantee the accuracy of any such information or the financial condition of any tenant.

e. Manager and Receiver agree that there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, religion, creed, handicap, sex, or national origin in the leasing of the Property, nor shall Manager or Receiver permit any such practice or practices of discrimination or segregation with respect to selection, location, number, or occupancy of tenants.

f. Manager shall engage contractors, engineers, architects and other consultants on behalf of Receiver to design and construct improvements to the Property other than those required to be performed by tenants under their Leases. Such design and construction improvements shall be as necessary as determined by the Receiver. Manager shall oversee the design and construction of such tenant improvements. For any contract requiring payment in excess of \$25,000.00, Manager shall follow the bidding requirements specified in Section 2.10.

g. All leasing efforts taken by Manager and/or its agents hereunder shall be subject to the terms of the Loan Documents.

2.8 Collection of Rents and Other Income. Manager shall bill all tenants and shall use its commercially reasonable efforts to collect all rent and other charges due and payable from any tenant or from others for services provided in connection with the Property. Manager shall hold in trust all monies collected from the tenants and shall promptly deposit all monies so collected in the Operating Account, unless otherwise required by the Loan Documents. In the event of a conflict between the terms of the Loan Documents and the terms of this Agreement, the terms of the Loan Documents shall control. Receiver shall be entitled to the income and revenue from the

Property, and Manager shall remit such balances to Receiver in accordance with the Budget and the terms of this Agreement.

2.9 Repairs and Maintenance. Manager shall use commercially reasonable efforts to maintain, or cause to be maintained, the buildings, appurtenances, and grounds of the Property, other than areas which are the exclusive responsibility of tenants, including without limitation all repairs, cleaning, painting, decorations, and alterations, including electrical, plumbing, carpentry, masonry, elevators, and such other routine repairs as are necessary or reasonably appropriate in the course of maintenance of the Property, subject to the limitations of this Agreement. Manager shall pay actual and reasonable expenses for materials and labor for such purposes from the Operating Account in accordance with the Budget unless the tenant of the Property is responsible for such costs and expenses as set forth in its Lease. Manager shall take commercially reasonable precautions against fire, vandalism, burglary, and trespass to the Property. Manager shall not be responsible for maintaining or repairing the Property if there are insufficient funds in the Operating Account.

2.10 Capital Expenditures. Provided that Manager adheres to the bid procedures prescribed below, if applicable, Manager may make any capital and other expenditure, without any further consent of Receiver, if such expenditure is within any Budget approved by Receiver or is within the Expenditure Parameters. All other expenditures shall be subject to submittal of a revised Budget to Receiver. Unless Receiver specifically waives such requirements or approves a particular contract, Manager shall award any contract for a capital improvement exceeding \$25,000.00 in cost on the basis of competitive bidding solicited from a minimum of two written bids. Manager shall accept the bid of the lowest bidder determined by Manager to be responsible, qualified, and capable of completing such improvements on a reasonable schedule.

2.11 Service Contracts, Supplies, and Equipment.

a. Manager may enter into or renew any contract for cleaning, maintaining, repairing, or servicing the Property or any of the constituent parts of the Property (including without limitation contracts for fuel oil, security, or other protection, extermination, landscaping, Architectural, or engineering services) contemplated by the Budget and/or the Operating Plan with any unrelated third party, without the consent of Receiver. Each such service contract shall (a) be in the name of Receiver or Manager as agent for Receiver; (b) be assignable to the transferee of Receiver; and (c) be for a term not to exceed one (1) year, unless such contract is one that typically exceeds a one-year term in the marketplace, such as a contract for cable or internet service, in which case Manager, may in its reasonable discretion, enter into a contract under terms which Manager deems consistent with the marketplace.

b. If this Agreement terminates, Manager, at the option of Receiver, shall assign to the nominee of Receiver all of Manager's interest in all service agreements pertaining to the Property, if any.

c. In accordance with the Budget and at the expense of Receiver or the tenant of the Property as set forth in its Lease, Manager shall purchase, provide, and pay from the Operating Account, provided there are sufficient funds, for all needed janitorial and maintenance supplies,



tools, and equipment, restroom and toilet supplies, light bulbs, paints, and similar supplies necessary for the efficient and economical operation and maintenance of the Property. Such supplies and equipment shall be the property of Receiver, or if applicable, the tenant of the Property. All such supplies, tools, and equipment shall be delivered to and stored at the Property and shall be used only in connection with the management, operation, and maintenance of the Property.

d. Manager shall use commercially reasonable efforts to purchase all goods, supplies, or services at the lowest cost reasonably available from reputable sources in the metropolitan area where the Property is located. In making any contract or purchase hereunder, Manager shall use commercially reasonable efforts to obtain favorable discounts for Receiver and all discounts, rebates, or commissions under any contract or purchase order made hereunder shall inure solely to the benefit of Receiver. Manager shall make payments under any such contract or purchase order from the Operating Account to enable the Receiver to take advantage of any such discount if Receiver provides sufficient funds therefor.

2.12 Taxes. Manager, unless otherwise requested, shall obtain and verify bills for real estate and personal property taxes, general and special real property assessments, and other like charges (collectively "Taxes") which are or may become liens against the Property. Manager may appeal such Taxes as Manager may decide, in its reasonable judgment, to be prudent. In the event Manager successfully appeals such Taxes, Manager shall be entitled to retain ten percent (10%) of savings resulting from said appeal, payable in the year or years in which the savings are realized by the Receiver. Manager shall report any such Taxes that materially exceed the amounts contemplated by the Budget to Receiver prior to Manager's payment thereof, if applicable. Manager, if requested by Receiver, will cooperate to prepare an application for correction of the assessed valuation to be filed with the appropriate governmental agency. Manager shall pay from funds provided by Receiver or from the Operating Account in compliance with the applicable terms of the Loan Documents, all utilities, Taxes, and payments due under the Leases or the Loan Documents, including debt service, reserves, or other payments due, if any, affecting the Property. To the extent contemplated by the Budget (as it may be revised from time to time), Manager may make any such payments without the approval of Receiver. Expenses for any Taxes not based upon the assessed valuation of the Property (or any portion thereof or interest therein), including without limitation state and federal income taxes, shall be paid by Receiver.

2.13 Tenant Relations. Manager will use commercially reasonable efforts to develop and maintain good tenant relations at the Property. At all times during the term hereof, Manager shall use its reasonable efforts to retain existing tenants at the Property and, after completion of the initial leasing activity, to retain the new tenants. Manager shall use commercially reasonable efforts to secure compliance by the tenants with the terms and conditions of their respective Leases.

2.14 Miscellaneous Duties. Manager shall: (a) maintain at the Manager's office, or at a designated office readily accessible to Receiver, orderly files containing rent records, insurance policies, leases and subleases, correspondence, receipted bills and vouchers, bank statements, canceled checks, deposit slips, debit and credit memos, and all other documents and papers pertaining to the Property or the operation thereof; (b) provide reports for the preparation and filing by Receiver of each income or other tax return required by any governmental authority on or before

the 15th of March each calendar year; (c) consider and record tenant service requests in systematic fashion showing the action taken with respect to each and thoroughly investigate and report to Receiver in a timely fashion with appropriate recommendations all complaints of a nature which might have a material adverse effect on the Property or the Budget; (d) monitor the moving in and out of tenants and subtenants; arrange, to the extent possible, the dates thereof to minimize disturbance to the operation of the Property and inconvenience to other tenants or subtenants; and render an assessment for damages and a recommendation on the disposition of any deposit held as security for the performance by the tenant under its Lease with respect to each unit vacated; (e) check all bills received for the services, work, and supplies ordered in connection with maintaining and operating the Property and, subject to availability of funds and except as otherwise provided in this Agreement, pay such bills when due and payable; (f) not knowingly permit the use of the Property for any purpose that might void any policy of insurance held by Receiver or which might render any loss thereunder uncollectible; (g) monitor and oversee any litigation regarding any matter affecting the use or operation of the Property, including any proceedings to collect rents from, or exercise any rights under any lease with, any tenant at the Property, including the selection and hiring of counsel with respect to representation for Receiver or Manager with respect to such matters; (h) assist Receiver with risk management analysis with respect to the Property, including offering recommendations with respect to applicable insurance under, and subject to the limitations of, Section 3.1 below; and (i) hold periodic conference calls with Receiver at least once per year during which call Manager shall apprise Receiver of the status of Property operations and shall answer questions raised by the Receiver. All such records created with respect to the foregoing activities are the property of Receiver and originals or copies thereof will be delivered to Receiver upon written request and at the expense of Receiver.

2.15 Authority to Execute Contracts. Manager is hereby authorized by Receiver to enter into an execute contracts and agreements by, for and on behalf of Receiver in the ordinary course of the operation and management of the Property, including but not limited to contracts and agreements with subcontractors, suppliers, maintenance companies, and other parties, provided that such contracts and agreements are not inconsistent with this Agreement, the Budget, the Operating Plan, and the Loan Documents. The foregoing notwithstanding, Manager may not, without Receiver approval, (i) execute any contract or agreement with respect to the sale of the Property or the financing or refinancing of any of the Loans; or (ii) except as provided in this Agreement, enter into any lease for all or any portion of the Property.

2.16 Hazardous Materials; Toxic Wastes; and Asbestos. If Manager becomes aware of the existence of hazardous materials or wastes, toxic substances or wastes, asbestos or asbestos-bearing materials, or the like at, in, on, or under the Property, Manager shall immediately notify Receiver of the condition. Manager shall determine any further course of action with respect to such hazardous condition, but in any event, Manager shall comply with all applicable environmental laws with respect to such hazardous condition; provided, however, Manager shall not be required to incur personal expenses to comply with applicable environmental laws. Manager shall not supervise or oversee any work involving remediation of any hazardous or potentially hazardous wastes or conditions unless specifically hired by Receiver to do so pursuant to a separate agreement between Receiver and Manager. Manager shall always use its good faith commercially reasonable efforts to prevent and detect the occurrence or existence of any hazardous condition at the Project.

2.17 Subcontract Right. Manager shall have the right to subcontract to third-party managers, some or all of the management responsibilities of Manager hereunder. No such subcontract shall relieve Manager of any of its obligations hereunder. Manager acknowledges that the right to subcontract may be conditioned upon the receipt of approval from a Lender (if applicable), which approval Receiver shall use commercially reasonable efforts to obtain, upon Manager's request.

### **ARTICLE III** **INSURANCE**

#### 3.1 Basic Insurance.

a. Manager, at the expense of Receiver, will obtain and keep in force adequate insurance against physical damage (such as fire with extended coverage endorsement, boiler, and machinery) and against liability for loss, damage, or injury to property or persons which might arise out of the occupancy, management, operation, or maintenance of the Property, as contemplated by the Operating Plan and to the extent available at commercially reasonable rates; all such insurance shall comply with applicable requirements of the Loan Documents. Manager shall not be required to maintain terrorism, earthquake, or flood insurance unless expressly directed to do so by a Lender but may do so at the expense of Receiver in Manager's reasonable discretion. Receiver and Manager shall be named as additional insureds with respect to liability insurance maintained on the Property.

b. Manager may cause such other persons, including a Lender, as it may reasonably determine should be so named, to be named as mortgagees, additional insureds, and/or loss payees on any such casualty or liability insurance. Manager shall distribute all insurance proceeds in accordance with the terms of the Loan Documents. In the event Manager receives insurance proceeds that are not governed by the terms of the Loan Documents, Manager will either (i) use such proceeds to replace, repair, or refurbish the Property; or (ii) distribute such proceeds to Receiver. Any insurance proceeds distributed to Receiver shall be distributed subject to the fees owed to Manager pursuant to this Agreement.

c. As part of the Operating Plan, Manager shall advise Receiver concerning the proper insurance coverage for the Property, taking into account the insurance requirements set forth in any Loan Document; shall furnish such information as Receiver may reasonably request to obtain insurance coverage; and shall reasonably aid and cooperate with respect to such insurance and any loss thereunder. Receiver acknowledges that Manager is not a licensed insurance agent or insurance expert. Accordingly, Manager shall be entitled to rely on the advice of a reputable insurance broker or consultant regarding the proper insurance for the Property.

d. Subject to the provisions of the Loan Documents, Manager shall investigate and submit, as soon as reasonably practicable, a written report to the insurance carrier and Receiver as to all accidents, claims for damage relating to the Receivership, operation, and maintenance of the Property, any damage to or destruction of the Property, and the estimated costs of repair thereof, and prepare and file with the insurance company in a timely manner required reports in connection

therewith. Notwithstanding the foregoing, Manager shall not be required to give such notice to Receiver if the amount of the claims, damage, or destruction, as reasonably estimated by Manager, does not exceed \$25,000.00 for any one occurrence. Subject to the provisions of the Loan Documents, Manager shall initiate, oversee litigation, and settle all claims against insurance companies arising out of any policies, including the execution of proofs of loss, the adjustment of losses, signing and collection of receipts, and collection of money, except that Manager shall not settle claims in excess of \$25,000.00 without submitting prior notice to the Receiver.

3.2 Coverage Required by a Lender. Manager shall at all times during the term of this Agreement, at its sole cost and expense, carry and maintain all insurance coverage required by a Lender or, if not specified by a Lender, the following insurance: (a) employee dishonesty coverage in an amount not less than \$1,000,000.00 for all employees of Manager who perform services pursuant to this Agreement or have access to funds of Receiver (whether held in the Operating Account or otherwise); (b) workers compensation coverage in compliance with applicable state and federal laws; and (c) general liability coverage in amounts consistent with coverage obtained by similar property managers in the county where the Property is located. All such policies shall name Receiver as an additional insured and shall not be terminable without at least thirty (30) days advance written notice to Receiver. Manager shall provide Receiver certificates of insurance evidencing the above coverages upon execution of this Agreement, and provide Receiver updated certificates upon policy renewal or issuance of any new policy thereof.

3.3 Additional Insurance. Any insurance obtained by Manager solely for its own account and not for the benefit of Receiver or the Property shall be Manager's own expense with any such proceeds for Manager's sole benefit.

3.4 Contractor's and Subcontractor's Insurance. Manager shall require all contractors and subcontractors entering upon the Property to perform services to have insurance coverage, at the contractor's or subcontractor's expense, in amounts reasonably satisfactory to Manager, but in any event as may be required by the Loan Documents. Manager may waive such requirements in its reasonable discretion if permitted by the Loan Documents. Manager shall obtain and keep on file a certificate of insurance that shows that each contractor and subcontractor is so insured.

3.5 Waiver of Subrogation. To the extent available at commercially reasonable rates, all property damage insurance policies required hereunder shall contain language whereby the insurance carrier thereunder waives any right of subrogation it may have with respect to Receiver or Manager.

#### **ARTICLE IV** **FINANCIAL REPORTING AND RECORD KEEPING**

4.1 Books of Accounts. Manager shall maintain adequate and separate books and records for the Property with the entries supported by sufficient documentation to reasonably ascertain their accuracy with respect to the Property. Receiver agrees to provide to Manager any financial or other information reasonably requested by Manager to carry out its services hereunder. Manager shall maintain such books and records at Manager's office, or at a designated office readily accessible to Receiver. Manager shall ensure such control over accounting and financial

transactions as is reasonably necessary to protect the assets of Receiver from theft, error, or fraudulent activity by Manager's employees. Manager shall bear actual losses suffered by Receiver arising from such instances, including without limitation the following: (a) theft of assets by Manager's employees, principals, officers, or those individuals associated or affiliated with Manager; (b) overpayment or duplicate payment of invoices arising from either fraud, gross negligence, or willful misconduct, unless credit is subsequently received by Receiver; (c) overpayment of labor costs arising from either the gross negligence, willful misconduct, or fraud of Manager, unless credit is subsequently received by Receiver; (d) overpayment resulting from payment from suppliers to Manager's employees or associates arising from the purchase of goods or services for the Property; and (e) unauthorized use of facilities by Manager or Manager's employees or associates.

4.2 Financial Reports and Other Notifications. On or before the thirtieth (30<sup>th</sup>) day following each calendar month, Manager shall deliver to Receiver a report of all Significant Transactions occurring during the prior month. "Significant Transactions" shall mean all collections, payables, delinquencies, uncollectible items, vacancies, and other matters pertaining to the management, operation, and maintenance of the Property during the applicable month and shall contain a comparison between actual expenses and expenses set forth in the Budget for such period. Manager shall deliver copies of items in Section 4.3(c), (d) and (j) below to Receiver at the time the monthly reports are furnished. Manager also shall deliver to Receiver within seventy-five (75) days after (i) the close of each calendar year; or (ii) termination of this Agreement, a balance sheet for the Property and information regarding the operation of the Property necessary for preparation of the tax returns for Receiver. The statement of income and expenses, the financial statements, and all other financial statements and reports shall be prepared on a modified cash basis according, to the extent possible, to generally accepted accounting principles (except that footnote disclosures are not required).

4.3 Supporting Documentation. As additional support to the monthly financial statement, Manager shall maintain and make available at Manager's office, or a designated office readily accessible to Receiver, copies of the following: (a) all bank statements, bank deposit slips, bank debit and credit memos, cancelled checks, and bank reconciliations; (b) detailed funds receipt and disbursement records, which shall include the check number, cash receipt number or other identifying numbers sufficient to establish an audit trail to the receipt of funds, the date and amount the funds were received or disbursed, the check number or electronic tracking number for funds disbursed, the payee of the disbursement the purpose of the receipt or disbursement and the balance after each recorded entry; (c) detailed trial balance for receivables and payables and billed and unbilled revenue items; (d) rent roll of tenants; (e) paid invoices or copies thereof; (f) summaries of any adjusting journal entries; (g) appropriate details of accrued expenses and property records; (h) information regarding the operation of the Property necessary for preparation by Receiver of tax returns; and (i) a calculation of all management fees paid to Manager. Manager shall deliver a copy of the documents described in (a) through (i) to Receiver upon written request at the sole cost and expense of Receiver.

4.4 Loan Reporting Requirements. Notwithstanding the foregoing, Manger shall also comply with all reporting requirements relating to the Property required under the Loan Documents.

4.5 Right to Audit. Manager shall cooperate with an audit of the financial records and the financial and tax reporting by independent and qualified auditor selected by Receiver, whose compensation is not based upon the outcome of the audit. The costs of such audit shall be paid from the Operating Account; provided, however, that in the absence of defects in internal control or errors in record keeping, Receiver may not audit Manager more often than once in any twelve (12) month period. If an audit reveals defects in internal control or errors in record keeping, Manager shall undertake with all appropriate diligence to correct such discrepancies either upon discovery or within a commercially reasonable period of time. Manager shall inform Receiver in writing of the action taken to correct any audit discrepancies.

## **ARTICLE V** **BANK ACCOUNTS**

5.1 Operating Account. Manager shall deposit all rents and other funds collected from the operation of the Property in a reputable bank or financial institution in a special trust or depository account maintained separately for the Property by Manager for the sole benefit of Receiver, unless otherwise required by the Loan Documents affecting the Property (such account or accounts, together with any interest earned thereon, shall hereinafter be referred to as the “Operating Account”). Manager shall maintain books and records of the funds deposited in the Operating Account and withdrawals therefrom. Manager shall use reasonable efforts to maintain the Operating Account so that an amount at least as great as the budgeted operating expenses for such month is in the Operating Account as of the first of each month. Subject to the availability of funds, Manager shall pay from the Operating Account, on behalf of Receiver, the operating expenses of the Property and any other payments relating to the Property as required by this Agreement. If more than one account is necessary to operate the Property, each account shall have a unique name. Within forty-five (45) days after receipt by Manager, all rents and other funds collected in the Operating Account after payment of all operating expenses, debt service, and such amounts as may be determined by Manager to be retained for reasonable or required reserves or improvements shall, to the extent permitted under the Loan Documents, be paid to Receiver.

5.2 Security Deposit Account. If applicable law requires a segregated account of security deposits, Manager will open a separate account at a reputable bank or other financial institution. Manager shall maintain such account in accordance with applicable law. Manager shall use the account only to maintain security deposits. Manager shall inform the bank or financial institution to hold the funds in trust for Receiver. Manager shall maintain detailed records of all security deposits deposited and allow Receiver or its designees access to such records. Manager may return such deposits to any tenant in the ordinary course of business in accordance with the terms of the applicable Lease. The foregoing notwithstanding, Manager shall have no liability with respect to, and shall be indemnified and held harmless by Receiver with respect to, any security deposits paid by any tenants prior to the date of this Agreement that were not turned over to Manager by or on behalf of Receiver.

5.3 Reserves Account. Subject to the terms of the Loan Documents, Manager will also open, on behalf of Receiver, one or more separate accounts to hold any capital reserves and tenant improvement/leasing commission reserves established for the benefit of Receiver, exclusive of

reserves required by a Lender to be held by a Lender. The reserves shall be the property of Receiver but shall be available to Manager for use in connection with making capital improvements to the Property and making tenant improvement/leasing commission payments, as applicable, provided that any withdrawals from the reserve accounts are set forth in the Budget, or are Emergency Expenditures, or are otherwise approved by Receiver and a Lender, if such Lender consent is required under the Loan Documents. Receiver may from time to time make additional deposits into the reserve accounts to be held and administered in accordance with this Agreement. Upon a sale of the Property, any funds remaining in any reserve accounts, after deduction for costs and expenses relating to such sale or disposition and payment of final operating invoices, shall be returned to Receiver.

5.4 Access to Accounts. As authorized by signature cards, representatives of Manager shall have access to and may draw upon all funds in the accounts described in Sections 5.1, 5.2 and 5.3 without the approval of Receiver, unless otherwise provided in the Budget or Section 5.3. In addition, representatives of Manager may draw upon any funds escrowed or held in reserve accounts for expenditures within the Expenditure Parameters or within an approved Budget without the approval of Receiver, provided the requirements of Section 2.10 and any additional Lender requirements are satisfied. Receiver may not withdraw funds from such accounts without Manager's signature, except following Manager's default under this Agreement beyond any applicable notice and cure period or the termination of this Agreement.

## **ARTICLE VI**

### **PAYMENTS OF EXPENSES**

6.1 Expenses. Manager shall pay all expenses of the operation, maintenance and repair with respect to the Property contemplated by the Budget directly from the Operating Account or shall be reimbursed by Receiver, subject to the conditions set forth in Section 2.6, and further subject to the condition that any such expenses are not the result of Manager's gross negligence or willful misconduct, including without limitation the following: (a) cost of the gross salary and wages or proportional shares thereof, payroll taxes, worker's compensation insurance, and all other benefits of on-site employees required to oversee and supervise the management, operation, and maintenance of the Property properly, adequately, safely, and economically, subject to this Agreement and provided that Manager shall not pay such employees in advance; (b) cost to correct the violation of any governmental requirement relating to the leasing, use, repair, and maintenance of the Property or relating to the rules, regulations, or orders of the local governmental or insurance entities if such cost is not the result of Manager's gross negligence or willful misconduct; (c) actual and reasonable cost of making all repairs, decorations, and alterations at the Property if such cost is not the result of Manager's gross negligence or willful misconduct; (d) cost incurred by Manager in connection with all service agreements, including costs under any agreement with Manager; (e) costs to comply with the reporting requirements under the Loan Documents; (f) cost of collection of delinquent rents collected by a collection agency or attorney; (g) legal fees and costs of attorneys; (h) cost of capital expenditures subject to the restrictions in Section 2.10; (i) cost of printed checks for each account required by this Agreement or Receiver; (j) costs of utilities; (k) cost of advertising; (l) cost of printed forms and supplies required for use at the Property; (m) management compensation set forth in Article 8; (n) cost of tenant improvements to the Property; (o) all hiring, relocation, and termination costs for any employee, including those individuals

whose salaries and benefits are paid by Receiver; (p) broker's commissions; (q) debt service; (r) the cost of services, contractors, and insurance; (s) reimbursement of Manager's out-of-pocket costs and expenses to the extent not prohibited by Article 7 below; (t) general accounting and reporting services within the reasonable scope of Manager's responsibility to Receiver; (u) costs of electronic data processing, forms, papers, ledgers, and other supplies and equipment used in connection with the Property for the preparation of reports, information and returns to be prepared by Manager under the terms of this Agreement; (v) all expenses of the Manager's on-site office and/or a reasonable allocation of the regional field office expenses of the Manager or its affiliate relating to the management of the Property such as rent, utilities, office supplies, office equipment, and all other miscellaneous administrative expenses; (w) all other costs directly related to the Property, including but not limited to communication costs (telephone, postage, etc.), computer rentals or time, supplies (paper, envelopes, business forms, checks, payroll forms and record cards, forms for governmental reports, etc.), printing, insurance, fidelity bonds, taxes and license fees, overhead and general office expenses allocable to the Property; (x) cost of routine travel by Manager's employees or associates to and from the Property; (y) commercially reasonable costs incurred from subcontractors, including leasing agents, in accordance with Section 2.17; (z) the costs of third-party asset underwriting support; and (aa) the costs of third-party prepared abstracts for all Leases, Loan Documents and service contracts in effect as of the Effective Date.

6.2 Operating Account Deficiency. Manager will recommend that minimum reserves be maintained at all times for the proper operation of the Property. If there are not sufficient funds in the Operating Account to make any such payment set forth above, Manager shall notify Receiver of the deficiency, if possible, at least thirty (30) days prior to any delinquency so that Receiver has an opportunity to deposit sufficient funds in the Operating Account to allow for such payment prior to the imposition of any penalty or late charge.

## **ARTICLE VII** **MANAGER'S COSTS NOT TO BE REIMBURSED**

7.1 Non-Reimbursable Costs. The following expenses or costs incurred by or on behalf of Manager in connection with the management and leasing of the Property shall be at the sole cost and expense of Manager and shall not be reimbursed by Receiver: (a) cost attributable to losses arising from fraud, gross negligence, or willful misconduct on the part of Manager or the Manager's associates or employees; (b) cost of insurance purchased by Manager for its own account; and (c) Manager's costs of overhead, salaries, and other items except as expressly provided in Article 6.

7.2 Litigation. Manager will be responsible for, and will indemnify, defend and hold the Receiver harmless from, all costs relating to disputes with Manager's employees for worker's compensation to the extent not covered by insurance, discrimination, or wrongful termination, including legal fees and other expenses in connection therewith, unless such costs arise out of the gross negligence or willful misconduct of Receiver.

## **ARTICLE VIII** **COMPENSATION**



8.1 Property Management Fee. Beginning on the Effective Date and pursuant to Section 8.5 below, Manager shall receive a monthly property management fee (the “Property Management Fee”) of three hundred dollars (\$300.00) for each individual residential property included within the Property.

8.2 Residential Leasing. In the event that Receiver elects to lease or rent all of any portion of the Property, Manager shall manage the leasing and oversee the leasing agent (if applicable) and shall receive leasing commissions therefore (each also a “Leasing Commission”) equal to one of the following amounts, as applicable: (a) one (1) month’s rent under the Lease; or (b) twenty percent (20%) of any nightly or short-term rental amount (*e.g.*, Airbnb).

8.3 Disposition Fee. Manager or its designated affiliate, shall earn a fee equal to 50 basis points (0.50%) of the gross sales price (the “Disposition Fee”) upon the sale, exchange or other transfer of all or any portion of the Property, regardless of whether an outside broker represents seller and/or a cooperating broker participates. In the event that this Agreement is terminated pursuant to Article 9, no Disposition Fee shall be paid with respect to sales, exchanges, or transfers occurring after the effective date of such termination, provided that if there is a sale, exchange, or other disposition to a buyer who was shown all or any portion of Property for prospective sale prior to termination and the sale is closed within one hundred twenty (120) days after the termination of this Agreement, Manager shall be entitled to receive the Disposition Fee. The Disposition Fee shall not apply to transfers of the Property which occur as the result of foreclosure.

8.4 Construction Management Fee. Manager, or its designated affiliate, shall receive, for its services in supervising any construction or repair project in or about the Property, a construction management fee (the “Construction Management Fee”) equal to: (a) five percent (5%) of any construction costs incurred which are expended for construction, tenant improvement, or repair projects, including related professional services.

8.5 Payment of Fees. The Property Management Fee shall be paid in accordance with the fee application process required by the Receivership Court and upon the availability of Receivership Estate funds (subject to Section 9.2 below). The Leasing Commission shall be earned and paid when the Lease is signed (or reservation is made in the case of nightly or other short-term rentals). Any Leasing Commission is exclusive of and in addition to any third-party expenses, including without limitation, leasing agent fees and legal fees. A Disposition Fee shall be payable upon the close of escrow and shall be paid from the sales proceeds in the closing escrow. The Construction Management Fee shall be earned and paid when the construction is substantially completed.

## **ARTICLE IX**

### **TERMINATION OR NON-RENEWAL**

9.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, and shall thereafter automatically renew for additional one (1) year periods, unless either party provides the other party with written notice its election not to

renew by no later than ninety (90) days prior to the date on which the term of this Agreement would otherwise automatically renew.

9.2 Termination for Nonpayment. Manager shall have the right with written notice to Receiver to terminate this Agreement if the total amount of fees invoiced by Manager to Receiver exceed \$150,000.00 for more than ninety (90) days, including any fees invoiced by Manager to Receiver under any other agreement entered into by the parties. Manager shall continue to have a claim against the Receivership Estate for all unpaid fees, notwithstanding its election to terminate this Agreement as provided above.

9.3 Termination on Sale. Upon the sale or other transfer of any portion of the Property, and receipt by Manager of the Disposition Fee therefore, this Agreement shall terminate as to such portion of the Property.

9.4 Termination by Default. In the event that Receiver or Manager shall default, with respect to any material covenant, term or provision of this Agreement, and the same shall not be cured or corrected within thirty (30) days following the receipt of the written notice from the non-defaulting party specifying the nature of such default, then the party not in default may terminate this Agreement upon ten (10) days' written notice to the defaulting party.

9.5 Termination by Bankruptcy. If a petition for bankruptcy, reorganization or rearrangement is filed under state or federal insolvency statutes by or against Receiver or Manager, or either party shall make an assignment for the benefit of creditors or take advantage of any insolvency act, then the party not seeking credit or relief may terminate this Agreement upon ten (10) days' written notice to the other party.

9.6 Termination on Replacement. In the event that the Receiver resigns, is removed, or is otherwise replaced as receiver with respect to any portion of the Property, Manager upon ten (10) days' written notice shall have the right to terminate this Agreement as to such portion of the Property.

9.7 Final Accounting; Transition Period. Within thirty (30) days after termination of this Agreement for any reason, Manager shall deliver, or cause to be delivered, to Receiver the following: (a) a final accounting, setting forth the balance of income and expenses of the Property as of the date of termination; (b) any balance or monies of Receiver or tenant security deposits held by Manager with respect to the Property; and (c) all materials and supplies, keys, books and records, contracts, leases, receipts for deposits, unpaid bills, and other papers or documents which pertain to the Property. Manager shall assign, transfer or convey to such person or persons as may be designated by Receiver, all service contracts and personal property relating to or used in the operation and maintenance of the Property, except any personal property which was paid for and is owned by Manager. In any instance where Manager is signatory to a vendor service contract, Manager shall have the right to terminate said service contract. Upon any termination pursuant to this Article IX, Manager shall be entitled to receive any and all compensation and expense reimbursement which may be due Manager hereunder at the time of such termination, which obligation shall survive such termination.

**ARTICLE X**  
**MISCELLANEOUS**

10.1 Notices. All notices, demands, consents, approvals, reports, and other communications provided for in this Agreement shall be in writing and shall be given to Receiver or Manager at the address set forth below or at such other address as the may specify in writing:

Receiver: Harvey Sender, Receiver  
600 17th Street,  
Suite 2800 South,  
Denver, CO 80202  
Tel: (303) 454-0540  
EM: hsender@sendersmiley.com

With a Copy To: Allen Vellone Wolf Helfrich & Factor P.C.  
1600 Stout Street, Suite 1100  
Denver, CO 80202  
Attn: \_\_Matthew J. Roth, Esq.  
Tel: (303) 534-4499  
EM: mroth@allen-vellone.com

Manager: Revesco Property Services, LLC  
5291 East Yale Avenue  
Denver, CO 80222  
Attn: Marc Perusse  
EM: mperusse@revescoproperties.com

With a Copy To: Brian K. Fahselt, LLC  
1600 Stout Street, Suite 1400  
Denver, CO 80202  
Tel: (303) 446-9200  
EM: briank@fahselt-law.com

Such notice or other communications shall be delivered by a recognized overnight delivery service providing a receipt, facsimile transmission, electronic mail, or United States registered or certified mail, return receipt requested, postage prepaid if deposited in a United States Post Office or depository for the receipt of mail regularly maintained by the post office. Notices shall be effective when received and shall be deemed received at the time they are sent via facsimile to the facsimile number on record with Manager or at the time they are sent via email to the email address on record with Manager, or one (1) business day after deposit with a recognized overnight delivery service, or three (3) days after being mailed.

10.2 Assignment. Except as otherwise provided herein, Manager may not assign this Agreement without the prior written consent of Receiver, which consent may be withheld in Receiver's sole and absolute discretion.

10.3 Entire Agreement; Modification; Waiver. This Agreement and any agreement, document, or instrument referred to herein constitute the entire agreement between Receiver and Manager pertaining to the subject matter contained in such agreement and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties hereto. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party hereto to provide a waiver in the future except to the extent specifically set forth in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

10.4 Governing Law. This Agreement shall be governed by, construed, enforced, and interpreted in accordance with the laws of the State of Colorado.

10.5 Licensing. To the extent that any fees or commissions otherwise payable to Manager hereunder may not be so paid because Manager does not hold the necessary licenses, Manager shall engage and appoint as agent an affiliated entity which does hold such licenses to so receive such fees or commissions on its behalf.

10.6 Indemnification by Manager. Manager shall indemnify, defend and hold Receiver and its principals, partners, managers, members, shareholders, officers, directors, and employees harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs, and expenses, including reasonable attorneys' fees and court costs, sustained or incurred by or asserted against Receiver by reason of the acts of Manager which arise out of the gross negligence, fraud, or willful misconduct of Manager, its agents or employees or the Manager's breach of this Agreement. If any person or entity makes a claim or institutes a suit against Receiver on a matter for which Receiver claims the benefit of the foregoing indemnification, then: (a) Receiver shall give Manager prompt notice thereof in writing; (b) Manager may defend such claim or action by counsel of its own choosing provided such counsel is reasonably satisfactory to Receiver; (c) neither Receiver nor Manager shall settle any claim without the other's written consent, which consent shall not be unreasonably withheld, conditioned, or delayed; and (d) this Section 10.6 shall not be so construed as to release Manager from any liability to Receiver that could arise under this Agreement for a breach of any of the covenants agreed to be performed under the terms of this Agreement. The provisions of this Section 10.6 shall survive any termination of this Agreement.

10.7 Indemnification of Manager. The parties hereby acknowledge and agree that Manager will be acting as an agent of Receiver under this Agreement. Receiver agrees to diligently pursue and to use best efforts to obtain for the benefit of Manager any and all indemnification to which Manager may be entitled to receive as an agent of Receiver. The provisions of this Section 10.7 shall survive any termination of this Agreement.

10.8 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid, in whole or in part for any reason, such illegal, unenforceable, or invalid provision or part thereof shall be stricken from this Agreement and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part

thereof of this Agreement is stricken in accordance with the provisions of this Section 10.8, then such stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

10.9 No Waiver. The failure by either party to insist upon the strict performance of or to seek remedy of any one of the terms or conditions of this Agreement or to exercise any right, remedy, or election set forth herein or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such term, condition, right, remedy, or election, but such item shall continue and remain in full force and effect. All rights or remedies of the parties specified in this Agreement and all other rights or remedies that they may have at law, in equity, or otherwise shall be distinct, separate, and cumulative rights or remedies, and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy of the parties.

10.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

10.11 Attorneys' Fees. In the case of any dispute resolved by court action or arbitration, the substantially non-prevailing party (as determined by the court or arbitrator after considering the relative success of the parties, including the successful assertion of any defense) shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorneys' fees of both parties, any costs of producing witnesses, and any other reasonable costs or expenses incurred by the substantially prevailing party. If any party takes any action in court to appeal a decision of a court or arbitrator, or otherwise brings any action for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the substantially non-prevailing party shall pay to the substantially prevailing party a reasonable sum for attorneys' fees incurred in bringing such suit and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For purposes of this Section 10.11, attorneys' fees shall include without limitation fees incurred in the following: (a) post-judgment motions and collection actions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third-party examinations; (d) discovery; and (e) bankruptcy litigation.

10.12 Power of Attorney. Wherever in this Agreement a power of attorney is granted to Manager, such power of attorney: (a) is a special power of attorney coupled with an interest, is irrevocable, shall survive the death, incapacity, termination, or dissolution of the grantor, and is limited to those matters herein set forth; (b) may be exercised by Manager, by and through one or more of its officers, for Receiver by the signature of Manager acting as attorney-in-fact for such person, or by such other method as may be required or requested in connection with the recording or filing of any instrument or other document so executed; and (c) shall survive a replacement of Receiver. Notwithstanding anything to the contrary contained herein, if this Agreement is terminated, the special and limited power of attorney granted to Manager pursuant to this Section 10.15 shall irrevocably expire upon such termination.

10.13 Construction. Each gender shall include each other gender. When required by the context, the singular shall include the plural and vice-versa.

10.14 Headings. All headings are only for convenience and ease of reference and are irrelevant to the construction or interpretation of any provision of this Agreement.

10.15 Recitals. The Recitals contained at the beginning of this Agreement shall have the same force and effect as any other provisions of this Agreement.

10.16 Further Assurances. Receiver agrees to execute, with acknowledgment and affidavit if required, any and all documents and take all actions that may be reasonably required in furtherance of the provisions of this Agreement.

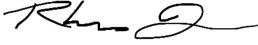
10.17 Counterparts; Facsimiles. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission or electronic mail) as against the party signing such counterpart, but which together shall constitute one and the same instrument. This Agreement may be executed by electronic signature, and signatures transmitted via facsimile or electronic mail shall be considered authentic and binding.

***[Remainder of Page Intentionally Left Blank; Signatures on Following Page]***

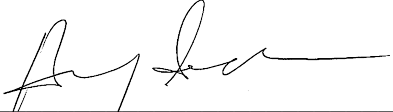
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**MANAGER:**

Revesco Property Services, LLC,  
a Colorado limited liability company

DocuSigned by:  
  
By: \_\_\_\_\_ March 12, 2019  
Name: T. Rhys Duggan  
Title: President

**RECEIVER:**

  
\_\_\_\_\_  
Harvey Sender, Receiver March 12, 2019

**EXHIBIT A**

**Receivership Court Order**



## **EXHIBIT B**

### **Property**

#### Metro-Denver

1. 5455 Landmark Place, #509, Greenwood Village, CO 80111
2. 5722 South Lansing Court, Englewood, CO 80111
3. 5788 South Lansing Way, Englewood, CO 80111
4. 6316 East Fair Avenue, Centennial, CO 80111
5. 7373 East Fremont, Centennial, CO 80112
6. 7517 East Davies Place, Centennial, CO 80112
7. 7842 East Briarwood Boulevard, Centennial, CO 80112
8. 1777 Larimer, Unit 703, Denver, CO 80202
9. 1777 Larimer Street, #901, Denver, CO 80202
10. 3142 South Leyden Street, Denver, CO 80222
11. 2432 South Newport Street, Denver, CO 80224
12. 2624 South Oneida Street, Denver, CO 80224
13. 3555 South Holly Street, Denver, CO 80237
14. 3593 South Hudson Street, Denver, CO 80237
15. 3675 South Hibiscus Way, Denver, CO 80237
16. 891 14th Street, #2417, Denver, CO 80202

#### Mountain (Colorado)

17. 41 South Fairway, Beaver Creek, CO 81620
18. 4450 Timber Falls Court, 1720, Vail, CO 80111

#### Out of State

19. 6937 East 6th Street, #1002, Scottsdale, AZ 85215
20. 6937 East 6th Street, #1004, Scottsdale, AZ 85215
21. 6937 East 6th Street, #1005, Scottsdale, AZ 85215
22. 11188 Campsie Fells Court, Las Vegas, NV 89141
23. 1660 N. LaSalle Drive, #3909 Chicago, IL 61614
24. 1660 N. LaSalle Drive, #4205 Chicago, IL 61614

**EXHIBIT C****[SCOPE OF MANAGEMENT SERVICES]**

<b>SERVICE</b>	<b>COMMENTS</b>
<b>Leasing</b>	Responsible for oversight of the leasing parameters in the Budget, subject to Receiver approval
<b>Default of Tenants</b>	Responsible for making decision as to whether a tenant may be placed in default and implementation of action to default tenant, including engaging legal representation to collect on money for possession of premises
<b>Property Budget</b>	Responsible for preparation of the Budget, subject to Receiver approval
<b>Cash Management</b>	Responsible for review and performance of actions regarding to disbursement of property level expenses, payment of debt service, disbursement to Receiver, reserve draw requests, investment of excess cash, depository account, operating account, any other account, operation of Property, and third-party contracts to maintain Property
<b>Risk Management</b>	Responsible for review and performance of actions regarding the Asset/Property level, the tenant level and third-party contracts
<b>Records and Reports</b>	Responsible for review and performance of actions regarding the operation and maintenance of Property; books, records, and accounts of Property; monthly reports to Receiver; year end reporting for tax package; and certified annual report
<b>Collection of Income</b>	Responsible for collections
<b>Due Diligence</b>	Responsible for assisting with the underwriting, including property and financial reviews during acquisition period; also responsible for assisting Receiver in providing due diligence documents to Buyers pursuant to sale transactions
<b>Monitoring Loan Compliance</b>	Responsible for monitoring
<b>Property Tax Appeal</b>	Responsible for working with consultant to implement process, charged at Property level

**EXHIBIT D**

[BUDGET GUIDELINES]

The Budget shall be prepared in accordance with the following guidelines:

- A. The Budget shall be in the Manager's standard form showing for the next contract year the revenues estimated to be derived from, and the expenses estimated to be incurred in, the operation of the Property during the next contract year, as detailed below.
  
- B. Any proposed Budget shall include:
  - (i) A statement of all revenues estimated to be derived from the Property under all Leases, all sums receivable in lieu thereof, including but not limited to insurance proceeds payable as a result of business interruption and damages payable in lieu of rent, and all anticipated advances required;
  
  - (ii) A statement of the following estimated costs and expenses regularly incurred in the Property's operation:
    - (a) All costs and expenses to be incurred by or on behalf of Receiver in connection with the management, operation, maintenance or repair of the Property, including but not limited to:
      - (1) All sums payable under service contracts, including, but not limited to, agreements related to air conditioning and heating, general cleaning, utilities, elevator servicing, refuse removal, grounds and plant maintenance, parking services, pest control, security, telephone, window cleaning, and similar services; and
      - (2) All other charges, costs and expenses of a regular nature for services and supplies provided to or for the benefit of the Property and in the normal operation thereof;
  
    - (b) Periodic debt service payments which may encumber the Property;
  
    - (c) The installments of impositions and insurance premiums as may be required;
  
    - (d) The fees payable to the Manager pursuant to this Agreement; and
  
    - (e) Anticipated monthly distributions to Receiver;
  
  - (iii) A statement of the following costs and expenses of an extraordinary nature:

- (a) Estimated costs and expenses to be incurred in connection with the provision of tenant improvements or any other capital improvements;
  - (b) If applicable, estimated sums payable as commissions, including commissions which may be paid to Manager or other outside parties, or other charges of a similar nature anticipated to be paid in connection with the procurement of revenue from the Property;
  - (c) Projected costs due to lack of reimbursement for claims under any policy of insurance covering the Property or cost arising from or under any guarantee, warranty, bond, or other contract relating to the Property as may be known at the time of budgeting; and
  - (d) Estimated costs and expenses, to the extent known at time of budgeting, to be incurred pursuant to the order or direction of any state, federal, or municipal authority having jurisdiction;
- (iv) Schedule of rental income pursuant to the current Property rent roll.
- C. If at any time and for any reason Manager anticipates or incurs a variance of more than \$5,000.00 in a Budget line item and a variance in excess of 10% of the expenses identified in the Budget, then the Manager shall highlight this variance in the monthly operating report to Receiver.

**Revesco Management Fee Summary  
Commercial and Residential**

Property	City	ST	Bldg SF	EGI	Commercial Mgmt I 3.5% EGI / yr	Commercial Mgmt II \$0.25 psf / yr	Total Mngmnt	Residential (\$300 * 24)	TOTAL / mo.
Ash & Bellaire	Denver	CO	5,580			\$116.25	\$116.25		
Village Inn Pad	Centennial	CO	4,826			\$100.54	\$100.54		
Cassinelli Square	Cincinnati	OH	158,888	438,968	\$1,280.32	\$3,310.17	\$4,590.49		
Clearwater Collection	Clearwater	FL	134,360	2,350,249	\$6,854.89	\$2,799.17	\$9,654.06		
Marketplace at Delta	Lansing	MI	174,353	2,733,784	\$7,973.54	\$3,632.35	\$11,605.89		
Summit Marketplace	Lafayette	CO	14,339	485,563	\$1,416.23	\$298.73	\$1,714.95		
Windsor Square	Knoxville	TN	299,329	2,063,400	\$6,018.25	\$6,236.02	\$12,254.27		
Happy Canyon Box	Denver	CO	41,376		\$0.00	\$862.00	\$862.00		
Happy Canyon Shoppes	Denver	CO	70,677	2,193,853	\$6,398.74	\$1,472.44	\$7,871.18		
Hickory Corners & Box	Hickory	NC	179,777	1,364,036	\$3,978.44	\$3,745.35	\$7,723.79		
Prospect Square	Cincinnati	OH							
					\$33,920.40	\$22,573.02	\$56,493.43	\$7,200.00	\$63,693.43