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DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO
Court Address: 1437 Bannock Street
Denver, CO 80202
Telephone: 303-606-2429

Plaintiff: DAVID S. CHEVAL, Acting Securities Commissioner for the State of Colorado,

v.

Defendants: GARY J. DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC.

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Case Number: 2018CV33011

Courtroom 424

NON-PARTIES ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.'S RESPONSE TO RECEIVER'S MOTION FOR TURNOVER

Non-parties Alan C. Fox and ACF Property Management, Inc., through counsel, hereby respond in opposition to the Receiver's Motion for Turnover vs. Alan C. Fox and ACF Property Management, Inc. ("Motion"), and in support thereof, state as follows:

I. INTRODUCTION

Defendant Gary Dragul and associated persons created and managed certain Special Purpose Entities ("SPEs") that invested in entities owned and controlled by non-party ACF Property Management Inc. (collectively with non-party Alan Fox, "ACF"). ACF is a creditor of the Receivership Estate, holding claims in the total amount of over $6 million.

On August 30, 2018, Harvey Sender was appointed as Receiver over the assets of Gary Dragul, GDA Real Estate Services ("GDARES") and GDA Real Estate Management ("GDAREM") ("Receivership Order"). The Receivership Order granted the Receiver significant powers, but his powers are not unlimited. The Receiver may ***not*** disregard the property rights of third parties, ***nor*** can he invade their privacy. But, by his overreaching Motion, the Receiver asks the Court for those precise powers.

Having nearly depleted the Receivership Estate over the eighteen months since his appointment, the Receiver is now demanding confidential documents concerning ACF's business to which he is not entitled, distributions that are not the property of the Estate which he admitted he intends to divert, and conveyance of assets that ACF purchased in good faith and for a reasonably equivalent value. Further, the Receiver asks the Court to grant this extreme relief without even attempting to meet his burden to show his entitlement and without conducting any meaningful conferral. The Receiver's Motion should be denied.

II. ACF HAS FULLY COMPLIED WITH ITS OBLIGATIONS IN RESPONSE TO THE RECEIVER'S REQUEST FOR DOCUMENTS.

ACF has agreed to make available for the Receiver's inspection, subject to a confidentiality agreement: (1) the operating agreements of ACF limited liability companies ("ACF LLCs") in which Dragul or his entities (collectively "Dragul") currently have a membership interest, (2) the

ACF LLCs' state and federal tax returns for the most recent three years, and (3) the ACF LLCs' detailed financial statements (which are contained in the tax returns) for the most recent three years. Mot., Ex. 2 p. 2. The only basis for the Receiver's right to access these records is Dragul's rights of inspection as a member of the ACF LLCs. Once the issue is correctly framed it becomes clear that: (1) the Court lacks jurisdiction to rule on a certain portion of the Receiver's request; and (2) ACF has agreed to make available all the documents that the Receiver is entitled to access.

A. The Receiver's Right to the Documents Arises Solely from Dragul's Right of Inspection as a Member of the ACF Entities.

As a member of the ACF LLCs, Dragul has the right to inspect certain of their books and records subject to standards set forth in the operating agreements and applicable LLC statutes. Contrary to the Receiver's argument, the Receivership Order does not give him the right to receive any of the documents he requested. The Receiver relies on Section 11 of the Receivership Order that requires "[a]ny creditors… that are in the possession of… any books, records, or assets of ***the Receivership Estate***… to deliver immediately to the Receiver all of the receivership Property…" **Exhibit A**, Declaration of Sharon Ben-Shahar Mayer, Ex. 1 ¶ 11 (emphasis added). The documents requested by the Receiver, however, are not and have never been part of the "Receivership Estate." The "Receivership Estate" is defined in Section 9 of the Receivership Order as "Dragul [except for his personal residence], GDARES, GDAREM, and all of their assets, including but not limited to, all real and personal property, [and] their interest in any subsidiaries or related companies…" *Id.*, Ex. 1 ¶ 9. The documents the Receiver has requested are highly-confidential business records of the ***ACF entities***. Dragul's membership interest in those ACF entities does not mean their business records belong to him or are otherwise part of the Receivership Estate.

Nor does Section 10 of the Receivership Order require ACF to produce the records the Receiver has requested. Section 10 provides that "Dragul, GDARES, GDAREM, and all persons in active participation [with] them… are hereby ordered to deliver immediately to the Receiver or his agents all of the Receivership Property and to fully cooperate with the Receiver, including, but not limited to, providing the Receiver all reasonably requested documents, records…related to the operations of any subsidiaries or related companies." *Id.*, Ex. 1 ¶ 10. ACF is not a person "in active participation" with Dragul or his entities; it is not Dragul's partner, manager, agent or any other representative who is subject to the directive of Section 10. Moreover, the requested documents are not "Receivership Property", nor are they related to the operations of Dragul's entities. The Receiver's reliance on the Receivership Order therefore is misguided.

B. This Court Lacks Jurisdiction to Rule on the Receiver's Request for the Books and Records of Five of the ACF LLCs.

Under the "internal affairs doctrine," the internal affairs of a company are governed by the statutes and case law of the states in which the company was formed. *See e.g.*, C.R.S. § 7-90-805(4). A member's request to inspect the books and records of an LLC falls squarely within the internal affairs of the company. *See Rein v. ESS Group, Inc.*, 184 A.3d 695, 701 (R.I. 2018) (denial of shareholder access to review corporation's books and records, involved "internal affairs" of corporation). The following five ACF entities were formed under Delaware law: (1) 10 Quivira Plaza 14A, LLC, (2) Shoppes at Bedford 15 A, LLC, (3) ACF Lakewood 11, LLC, (4) Crystal Falls Town Center, LLC, and (5) Meadows Shopping Center 05 A, LLC (collectively, the "Delaware LLCs"). Ex. A, Mayer Decl., ¶ 19. The Receiver's request for the books and records of the five Delaware LLCs therefore is governed by Delaware law.

Under Delaware law, the Delaware Chancery Court has exclusive jurisdiction over disputes involving the right of a member to access the books and records of an LLC. 6 Del. C. § 18-305(f) ("The Court of Chancery is hereby vested with exclusive jurisdiction to determine whether or not the person seeking such information is entitled to the information sought."). Courts outside Delaware have deferred to the Chancery Court's exclusive jurisdiction in declining to hear such disputes involving Delaware LLCs. *See Camacho v. McCallum,* No. 16 CVS 602, 2016 WL 6237825 at *3–5 (N.C. Super. Ct. Oct. 25, 2016) (granting a motion to dismiss a claim for inspection of records of a Delaware LLC for lack of subject matter jurisdiction in light of the Delaware Chancery Court's exclusive jurisdiction); *Shaffer v. Health Acquisition Company*, LLC, No. 4:18-cv-00601-NKL, 2019 WL 1049392 at *4 (W.D. Mo., Mar. 5, 2019) (dismissing a claim for accounting of a Delaware LLC brought under § 18-305 in light of the Delaware Chancery Court's exclusive jurisdiction). This Court too must dismiss the Receiver's request for documents concerning the five Delaware LLCs for lack of subject matter jurisdiction.

C. ACF's Agreement to Allow Inspection of Certain Documents is Consistent with the Scope of Dragul's Inspection Rights as a Member of the Subject LLCs.

A member's right to inspect an LLC's books and records is governed by the applicable state of formation's statutes[1] and the LLC's operating agreement. ACF's agreement to make certain documents available for inspection is consistent with the contours of that right.

A Member Can Only Review Records of LLCs In Which He Has an Interest. Only a current member has the right to inspect the records of an LLC. The Receiver therefore has no right to inspect records of the four ACF entities in which Dragul no longer has a membership interest.

[1] The ACF entities at issue were formed under the laws of Colorado, Delaware, Washington, Arizona and Texas. Ex. A, Mayer Decl., ¶ 19.

See Mot. at 3. ACF thus properly limited the Receiver's inspection to the records of the twelve ACF entities in which Dragul currently has an interest.

No Right to Demand Production. The applicable statutes uniformly grant LLC members the right to inspect the books and records of the LLC at their location and at the members' expense. They do not require the LLCs to produce any documents to the members. *See* C.R.S. § 7-80-408 (Colorado); A.R.S. § 29–607 (Arizona); Tex. Bus. Org. Code §§ 3.151, 3.153 (Texas); Wash. Rev. Code Ann. § 25.15.136 (Washington); 6 Del. C. § 18-305 (Delaware). ACF therefore was not required to produce documents to the Receiver; all it was required to do was to make the records available for inspection at ACF's offices, and that is what it agreed to do.[2]

No Right to Inspect Loan and Appraisal Documents. The applicable LLC statutes generally give members the right to review the LLC's operating agreement, financial statements, state and federal tax returns and a list of current members of the LLC.[3] *See* C.R.S. § 7-80-408; A.R.S. § 29–607 (AZ); Tex. Bus. Org. Code §§ 3.151, 3.153 (TX); Wash. Rev. Code Ann. § 25.15.136 (Wash.); 6 Del.C. § 18-305 (Del.). The ACF LLC's operating agreements provide for inspection rights consistent with the applicable statutes. *See e.g.*, Ex. A, Mayer Decl., Ex. 9 ¶ 8.2, Ex. 10 ¶ 8.2. None of the statutes or operating agreements specifically list operational documents, such as loan agreements and real estate appraisals, among the documents a member is entitled to inspect.

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[2] The Receiver incorrectly speculates that ACF "apparently seeks to limit the Receiver to inspecting (not copying)" the documents. Mot. at 5. Had the Receiver engaged in meaningful meet and conferral, as required by the Court, he would have known that ACF never intended to prevent the Receiver from copying documents.

[3] Some statutes delineate other records that a member may inspect, which are not at issue here.

Importantly, all jurisdictions limit the members' inspection rights only to those books and records that are essential for a purpose reasonably related to the members' interest in the LLC. *Id.* "If the books and records are not 'essential' for the stockholder's purpose, then the inspection can be denied as seeking materials beyond what is 'needed to perform the task.'" *Sanders v. Ohmite Holdings, LLC*, 17 A.3d 1186, 1195 (2011); *Magid v. Acceptance Ins. Cos.*, No. CIV.A. 17989-NC., 2001 WL 1497177 at *3 n. 10 (Del. Ch. 2001) (inspection rights are "limited to those documents that are 'necessary, essential and sufficient for the shareholders' purpose.'"); *Madison Ave. Inv. Partners, LLC v. America First Real Estate Inv. Partners, L.P.*, 806 A.2d 165, 178–179 (Del. Ch. 2002) (inspection of all mortgage, loan, note and debt agreements and all non-public financial statements relating to the real estate held or owned by the partnerships was not reasonably necessary to value the member's investment). If the member already has sufficient information from other sources or from other books and records requests, then the inspection similarly can be curtailed. *See Sanders*, 17 A.3d at 1194-95. The burden of proof is always on the party seeking inspection. *Id.*

The Receiver claims that he needs the requested documents "to determine, *inter alia*: (a) whether the Estate has received the distributions to which it is entitled from the ACF SPEs; [and] (b) the value of the Estate's interest in the ACF SPEs so they can be marketed and sold." Mot. at 4.[4] Neither of these stated purposes justifies the breadth of his requests. First, as more fully discussed below, the distributions at issue are not part of the Estate but rather should be distributed

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[4] Although the Receiver states he intends to sell the interests, his actions suggest otherwise. The Receiver is well aware that each of Dragul's membership interests in the ACF entities is subject to ACF's right of first refusal set forth in the applicable operating agreements. *See e.g.*, Ex. A, Mayer Decl., Ex. 9 ¶ 9.3, Ex. 10 ¶ 9.2. The Receiver therefore cannot sell Dragul's interests to anyone without first offering them to ACF, but in the eighteen months since his appointment has made no effort to do so.

to Dragul's investors. Second, the documents that ACF previously produced, including the ACF entities' quarterly and annual financial statements and 2018 K-1s, along with the documents that ACF has already agreed to make available, contain all the information needed to determine what distributions, if any, were due to Dragul and the value of his interests. ACF therefore has reasonably offered to make available the operating agreements, tax returns, and financial statements of the ACF LLCs, but declined to allow inspection of loan agreements and appraisal documents. The Receiver thus cannot satisfy his burden of showing a need for these additional documents and his request should be rejected. This is particularly so, given the competitive business information in the documents and their proprietary value to ACF.

No Justification for Invading Third Party Privacy Rights. None of the Receiver's articulated purposes justify his demand for detailed information concerning past and current members of the LLC. Such private information concerning third parties is neither necessary to assess Dragul's entitlement to distributions nor essential to determine the value of his membership interest. Of course, the identities of an LLC's members are particularly sensitive; at least two LLCs are explicitly permitted by law to redact it absent a showing of good cause. *See* Wash. Rev. Code Ann. § 25.15.136(2) (the company may redact the list of members unless the member seeking to inspect the records shows a legitimate purpose that is reasonably related to the member's interest in the LLC). And the operating agreement of another LLC contains a specific waiver by the members of any right to obtain "the names, addresses and financial information of other Members." Ex. A, Mayer Decl., Ex. 9 ¶ 8.2. ACF therefore appropriately refused the Receiver's overreaching request for current and past LLC members.[5]

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[5] Here, the Receiver requested a detailed list of members "during the last five years." Mot. at 4. No jurisdiction allows inspection of *historical* membership information.

Period of Time of Tax Return Request is Overbroad. ACF's agreement to make available the tax returns and financial statements for the most recent three years – rather than the five years demanded by the Receiver - is consistent with the LLCs obligation to maintain their records. The applicable statute in Arizona, for example, requires a company to maintain such documents only for the past three years. *See* A.R.S. § 29–607. The operating agreements of eight of the entities (Paradise Valley Festival, Tower Plaza 12, Southwest Commons 05 A, ACF Lakewood 11, Meadows Shopping Center 05 A, Trophy Club 12, Arapahoe Village and Greentree Plaza 06) similarly require the companies to keep such records only for the most recent three years. *See e.g.*, Ex. A, Mayer Decl. Ex. 10 ¶ 8.2.

Request for Confidentiality Agreement Was Reasonable. ACF's request that the Receiver sign a confidentiality agreement as a condition for his inspection of the records was entirely appropriate. A manager of an LLC may impose reasonable conditions on the member's right to inspect the records. *See e.g.,* C.R.S. § 7-80-408 (right to inspect is "subject to such reasonable standards as may be established by the members or managers…"); 6 Del. C. § 18-305 (same). Courts have held that requiring a member to sign a confidentiality agreement as a condition for inspection of company records is reasonable. *See NAMA Holdings, LLC v. World Market Center Venture*, LLC, 948 A.2d 411, 420 (2007) (referring to a confidentiality agreement as an "item that is a virtual *sine qua non* of a books and records inspection conducted of a Delaware entity" and finding it was reasonable for the manager to require an investor to sign a confidentiality agreement as a condition for his inspection of records); *Stroud v. Grace*, 606 A.2d 75, 89 (Del. 1992) ("it is entirely reasonable for a court to make the execution of a confidentiality agreement a prerequisite to disclosure of confidential information to stockholders….").

The documents sought by the Receiver are highly-confidential business records containing sensitive financial information and tax returns. ACF properly required the Receiver to enter into a confidentiality agreement before reviewing any records and the Receiver's refusal to do so lacks merit and calls into question his motive.[6]

III. THE RECEIVER SHOULD NOT BE ALLOWED TO DIVERT DISTRIBUTIONS.

ACF has certain obligations to make distributions to investors. Yet the Receiver has confirmed that all the distributions ACF paid since the Receiver had control over Dragul's accounts "were deposited into the general Receivership account" from which the Receiver pays himself, and were ***not*** distributed to downstream investors. Ex. A, Mayer Decl., Ex. 2 p. 4-5. This is particularly concerning because, as the Receiver concedes, Dragul is not the sole owner of the Dragul-created SPEs. Instead, independent investors have membership interests in those SPEs. Mot. at 3. In fact, in some cases Dragul has ***no*** equity in the SPEs and serves only as their manager.

While the Receivership Order authorizes the Receiver to take over Dragul's management rights in the SPEs, it does not nullify the membership rights of investors. In fact, the Receivership Order specifically limits the Receiver's power to exercise Dragul's management rights in a manner "consistent with the governance documents or operating agreements applicable to the subsidiaries and related companies…." *Id.*, ¶ 13(b). The operating agreements of the Dragul-created SPEs protect the membership rights of the investors and ***require*** the manager to distribute to the members the cash flow for each quarter (less reserves) within 30 days following a calendar quarter. *See e.g.*, Ex. A, Mayer Decl., Ex. 3 at ¶ 6.01. The Receiver's concession that ACF's distributions

[6] ACF suspects the Receiver intends to improperly share the documents with counsel for plaintiffs in unrelated cases, for purposes entirely unrelated to Dragul's membership interest.

to the Estate were not distributed to downstream investors appears to confirm an ongoing material breach of these agreements.

In other words, the Receiver is treating post-appointment distributions as assets of the Estate, notwithstanding that the SPEs are not wholly owned by Dragul and without regard to other investors' contractual rights to pro rata shares of distributions. Instead of managing the SPEs consistently with the operating agreements, with each distribution, the Receiver has created new, post-appointment losses for the investors and intends to continue to do so. The Receiver's defense that those investors "will retain claims against the Estate" is disingenuous because, as he is well aware, the time to file claims expired long ago on February 1, 2019. *See* Nov. 13, 2018, Order Granting Mot. to Establish Claims Admin. Procedure and to Set Claims Bar Date, at p. 1.

When a debtor in receivership is a party to an executory contract, the receiver has the right to elect whether or not to adopt or abandon the contract. 75 C.J.S. *Receivers* § 155; 66 Am.Jur.2d *Receivers* § 223 (1973); *Athanason v. Hubbard*, 218 So. 2d 475, 477 (Fla. 2d DCA 1969). Adoption of existing executory contracts may be inferred by the actions of the receiver or acceptance of the benefits of the contract. 2 R.E. Clark, *Clark on Receivers* §§ 428–428(c) (1959). Having elected to accept the benefit of a contract, however, a receiver is bound by it, and may not pick and choose which parts of a contract he or she will honor. *Hawaii Ventures, LLC v. Otaka, Inc.*, 114 Haw. 438, 164 P.3d 696 (2007); 75 C.J.S. *Receivers* § 158. Thus, once adopted, the contract must be carried out in all respects, with its burdens as well as its benefits. *Real Estate Marketers, Inc. v. Wheeler*, 298 So. 2d 481 (Fla. 1st DCA 1974).

The operating agreements of the Dragul SPEs are executory contracts, requiring the Receiver to distribute funds to the investors within 30 days of the end of each quarter. Having assumed the management of the SPEs, the Receiver may not refuse to carry out his obligations

under these contracts. Thus, ACF is understandably concerned that the Receiver's malfeasance could expose ACF to claims by Dragul's investors if it continues to pay distributions to the Estate knowing the Receiver is improperly diverting them to the general Receivership account. ACF should not be compelled to expose itself to such claims.[7]

IV. THE RECEIVER'S REQUEST FOR CONVEYANCE OF ASSETS SHOULD BE DENIED.

In or about June or July 2019, Gary Dragul approached ACF and offered to sell it the membership interests of SSC 02 LLC in three ACF companies: Kenwood Pavilion 14 A LLC, College Marketplace 16 LLC and Fenton Commons 16, LLC. Dragul represented that SSC 02 was owned by his children and not the property of the Receivership. In an abundance of caution, ACF verified Dragul's representation by requesting a copy of SSC 02's operating agreement and any other proof of the children's ownership. Ex. A, Mayer Decl., Ex. 4. In response, Susan Markusch, GDA's CFO, sent to ACF the operating agreement of SSC 02, reflecting that each of Dragul's three children owned a 33% membership interest (with Dragul owning only a 1% interest). *Id.*, Ex, 5. She also provided Articles of Amendment filed with the Secretary of State reflecting that Shelley Dragul was the manager of SSC 02. *Id.*, Ex. 6. In reliance on these documents, ACF moved forward with the acquisition effective July 1, 2019, and paid $60,000 in exchange for the assets. *Id.*, Exs. 7, 8. Months later, on December 2, 2019, the Receiver entered into a settlement agreement with Dragul, purportedly making SSC 02 the property of the Estate. *See* Dec. 5, 2019, Mot. to Approve Settlement Agreement, at p. 4, ¶ 7(A).

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[7] Questioning ACF's sincerity, the Receiver argues ACF "professed no such concerns during the many years he paid distributions to Dragul… while Dragul routinely personally pocketed a disproportionate share." Mot. at 6. That assumes a lot. Until the Receiver informed ACF that investors were not receiving their distributions, ACF had no reason to suspect that. Having now been put on notice, ACF is forced to withhold distributions until the issue is resolved.

The Receiver speculates that ACF "conspired" with Dragul because prior to entering into this transaction ACF had been served with the Receiver's June 4, 2019 motion for turnover, in which the Receiver claimed that SSC 02 was the property of the Estate. As a creditor of the Estate, ACF receives via email dozens of filings in the case that may or may not have any bearing on its particular creditor claim. Fox does not believe he reviewed the Receiver's June 4th motion and is certain he has not reviewed all filings that he received via email service. Regardless, ACF was aware of the Receivership, which is precisely why it asked Dragul to provide proof that SSC 02 was not owned by Dragul. Dragul provided that proof in the form of the SSC 02 operating agreement and ACF had no reason to question its authenticity. If the operating agreement was a sham and the Receiver was deceived by it, as he claimed in his turnover motion, so was ACF.

Moreover, ACF was not required to simply accept the Receiver's argument that SSC 02 was the property of the Estate. This Receiver has taken aggressive and overreaching positions before and his claim regarding SSC 02 is no different.[8] Because the Receiver ultimately entered into a settlement with Dragul concerning the assets of SSC 02, his allegations to this day have never been tested in Court. No Court has ever ruled that SSC 02 was owned by the Estate prior to December 17, 2019 – the date the Court approved the settlement agreement.

The Colorado Uniform Fraudulent Transfer Act ("CUFTA") provides, in pertinent part that a transfer of assets "is fraudulent as to a creditor…if the debtor made the transfer:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

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[8] ACF has been the subject of the Receiver's factually incorrect allegations. In January 2020, for example, the Receiver filed a frivolous complaint against ACF and others, in which he alleged "a judgment for approximately $14 million was recently entered in California against Fox." Receiver Compl. ¶ 63. Yet the Receiver was well aware – but failed to mention - that the judgment to which he referred had been vacated long before.

> (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
>
> …(II) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due."

C.R.S. § 38-8-105(1). To invalidate a transfer, the burden of proof lies with the plaintiff to prove each element of fraudulent transfer. *See In re Thomason*, 202 B.R. 768, 771 (Bankr. D. Colo. 1996). The Receiver has made ***no effort*** to meet his burden of proof. Other than stating that ACF had notice of his June 4th turnover motion, he has provided no facts or evidence supporting his position that SSC 02 in fact was the property of the Estate. The Receiver has not shown that the operating agreement of SSC 02 is a sham. Nor has he shown that SSC 02 was owned by Dragul, rather than by his children.

Moreover, under CUFTA, a transfer of assets is not voidable "against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee." C.R.S. § 38-8-109. "Reasonably equivalent value, in the context of CUFTA, is not wholly synonymous with market value. However, market value is an important factor to consider in the assessment." *Schempp v. Lucre Management Group, LLC*, 18 P.3d 762, 765 (Colo. App. 2000) as modified on denial of reh'g (Colo. App.). Determination of reasonably equivalent value requires analysis of all the facts and circumstances surrounding the transaction. *Silverberg v. Colantuno*, 991 P.2d 280 (Colo. App. 1998). The Receiver argues that in light of Dragul's financial straits at the time "Fox's purchase may not have been for fair market value." Mot. at 9. This argument fails because the Receiver: (1) speculates as to the application of the wrong standard; and (2) does not even attempt to meet his burden to show the market value or the surrounding circumstances regarding whether $60,000 was a reasonably equivalent value under CUFTA.

The Receiver also fails to show lack of good faith. The term "good faith" is not defined in CUFTA, but the strictest definition of "good faith" proposed in other contexts includes an objective element, *i.e.*, whether the transferee was aware of facts sufficient to put a reasonable person on inquiry notice. In other contexts, courts have held that a person meets the objective good faith test if he was on inquiry notice and conducted a diligent investigation that allayed his concerns. *See, e.g., In re Manhattan Inv. Fund Ltd.*, 397 B.R. 1, 23 (S.D.N.Y. 2007) (defendant broker acted in good faith when he was on inquiry notice and did investigate but did not reveal the wrongdoing). Here, with respect to inquiry notice, ACF conducted a diligent investigation by requesting proof that Dragul did not own SSC 02. Dragul provided such proof in the form of the operating agreement and the Articles of Amendment. ACF therefore meets the strictest standard of good faith. Finally, it would be unjust to order ACF to convey these assets without returning the consideration ACF paid for them.

V. THE RECEIVER FAILED TO MEET AND CONFER IN GOOD FAITH.

Prior to filing his Motion, the Receiver paid only lip service to his meet and confer obligations under C.R.C.P 121, § 1-15(8) with respect to his demand for the documents and conveyance of assets. The Receiver first made these demands by email dated February 26, 2020. Sixteen days later, he filed his Motion.[9] Ex. A, Mayer Decl., ¶¶ 10-14. Before the Receiver filed this Motion, ACF had already ***agreed*** to make many of the documents the Receiver requested available for his inspection, and invited the Receiver to further meet and confer regarding other requested categories. Mot. Ex. 2 p. 1. The Receiver never responded to ACF's counsel's email,

[9] Although in his February 26, 2020 email the Receiver's counsel professed that it was a "final attempt" to confer and resolve issues, as noted, his email contained an entirely new request for documents and conveyance of assets. Ex. A, Mayer Decl., ¶ 10.

never offered any basis for his demand for the disputed categories and never attempted to schedule a time to inspect the documents that were made available to him.

To create the false impression that he fulfilled his meet and confer obligations, the Receiver states "[s]ince September 2019" he has been asking ACF to produce "financial documents" relating to Dragul's SPEs. Mot. p. 4. But this is a self-serving, inaccurate statement. The documents the Receiver requested prior to February 2020, were *different* documents than those he seeks in this Motion, and were, in fact, produced by ACF. Ex. A, Mayer Decl. ¶¶ 3, 5-9. Specifically, prior to February 2020 the Receiver requested the ACF entities' K-1s, financial statements and details regarding distributions. Trusting the Receiver was acting in good faith, ACF produced all the requested documents and information. *Id.*

Similarly, the Receiver demanded the conveyance of assets that ACF acquired from SSC 02, and that ACF forego the $60,000 it paid therefor, in a single paragraph in his February 26, 2019 email, without referencing any authority or relevant facts. Mot. Ex. 2 p. 4. Rather, he baldly stated that it was "apparent" that ACF was "on notice" the Receiver claimed SSC 02 was the property of the Estate. Mot. Ex. 2. ACF requested additional information regarding the Receiver's claim, and ACF diligently considered the Receiver's demand. The Receiver, however, chose not to wait for ACF's response and instead precipitously filed this Motion. Ex. A, Mayer Decl., ¶ 14. The Receiver therefore failed in his "complete and good faith" conferral obligation, which itself necessitates the denial of his Motion. *See Pretrial Order at § II*.

VI. CONCLUSION

For all the foregoing reasons ACF respectfully urges the Court to deny the Receiver's Motion in its entirety.

DATED: April 13, 2020

Respectfully submitted,

MOYE WHITE LLP

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2020 a true and correct copy of the foregoing was electronically filed via CCEF and served on the following:

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CASE NUMBER: 2018CV33011

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Telephone: 303-606-2429	
Plaintiff: DAVID S. CHEVAL, Acting Securities Commissioner for the State of Colorado, v. **Defendants:** GARY J. DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC.	▲COURT USE ONLY ▲
Attorneys for Non-Parties Alan C. Fox and ACF Property Management, Inc.: Lucas T. Ritchie, Atty. Reg. No. 35805 Eric B. Liebman, Atty. Reg. No. 27051 Joyce C. Williams, Atty. Reg. No. 52930 MOYE WHITE LLP 16 Market Square 6th Floor 1400 16th Street Denver, CO 80202 Telephone: 303-292-2900 Email: Luke.Ritchie@moyewhite.com Eric.Liebman@moyewhite.com Joyce.Williams@moyewhite.com and Gary S. Lincenberg *(pro hac vice admission pending)* Sharon Ben-Shahar Mayer *(pro hac vice admission pending)* BIRD, MARELLA, BOXER, WOLPERT, NESSIM, DROOKS, LINCENBERG & RHOW, P.C. 1875 Century Park East, Twenty-Third Floor Los Angeles, CA 90067 Telephone: 310-201-2100 Email: glincenberg@birdmarella.com smayer@birdmarella.com	Case Number: 2018CV33011 Courtroom 424

DECLARATION OF SHARON BEN-SHAHAR MAYER IN SUPPORT OF RESPONSE TO MOTION FOR TURNOVER

I, Sharon Ben-Shahar Mayer, pursuant to C.R.S. § 13-27-101 *et seq.*, under penalty of perjury in the State of Colorado, hereby declare the following is true and correct to the best of my knowledge:

EXHIBIT A

1. I am an active member of the Bar of the State of California and a Principal with Bird, Marella, Boxer, Wolpert, Nessim, Drooks, Lincenberg & Rhow ("Bird Marella"), A Professional Corporation. Bird Marella and I represent non-parties Alan C. Fox and ACF Property Management, Inc. (collectively, "ACF") in connection with the matters discussed herein. On March 24, 2020, my partner, Gary L. Lincenberg, and I submitted verified motions requesting *pro hac vice* admission in the above-captioned action in order to serve as co-counsel of record along with ACF's counsel in Colorado, Lucas T. Ritchie and Eric B. Liebman of Moye White, LLP. Those verified motions are currently pending before the Court. I make this declaration in support of ACF's response brief filed in opposition to the Receiver's Motion for Turnover ("Motion"). Except for those matters stated on information and belief, I have personal knowledge of the matters set forth herein and if called as a witness to testify, I could and would truthfully testify consistent with them.

2. Attached as **Exhibit 1** is a true and correct copy of the August 30, 2018 order appointing Harvey Sender as Receiver over the assets of Gary Dragul, GDA Real Estate Services and GDA Real Estate Management (collectively, "Dragul").

3. In late August 2019, Rachel Sternlieb, counsel for the Receiver, contacted an attorney representing ACF in another, unrelated matter, and requested the 2018 I.R.S. Schedule K-1s for three entities. Ms. Sternlieb later expanded her requests, to include – for 23 ACF entities – K-1s, the most recent financial statements, and records of distributions for 2018. *See* Mot., Ex. 1.

4. In October 2019, ACF hired the Bird Marella firm to represent them in connection with the Receiver's requests for documents.

5. On October 18, 2019, Mr. Lincenberg responded in writing to the Receiver's request. In addition to producing requested documents at that time, Mr. Lincenberg also explained to the Receiver that, nine of the 23 entities listed in the Receiver's request are irrelevant because Dragul has held an interest in only 14 of them in the time since the Receiver's appointment. With respect to those 14 entities, ACF produced K-1s for each entity, financial statements for Q4 2018 (which provided cumulative data for the entire year) and Q2 2019 (which was the most recent statement). Mr. Lincenberg explained that the financial statements for Q4 2018 provided detailed information concerning distributions. With that, ACF understood that it produced all the requested documents. Mr. Lincenberg also advised the Receiver that because ACF had never been instructed by the Receiver to alter distributions associated with Dragul's investments, ACF presumed that the Receiver assumed control of Dragul's accounts and continued to make distributions according to the standing instructions for each entity. In light of the Receiver's requests relating to those investments, however, ACF suspended all direct deposits "pending further discussion with [the Receiver] about where those distributions should be sent and how to ensure the receiver does not inadvertently interfere with distributions to other investors." Mot. Ex. 3.

6. Ms. Sternlieb responded on October 23, 2019, accusing ACF of knowingly violating the Receivership Order by continuing to pay distributions to the entities based on the standing instructions. Ms. Sternlieb also requested additional information relating to the distribution of funds by the ACF entities. Attached as **Exhibit 2** is a true and correct copy of that email from Ms. Sternlieb, along with subsequent emails exchanged as part of the same thread between my colleagues at Bird Marella and the Receiver's counsel.

7. On November 1, 2019, my colleague Jimmy Threatt responded to Ms. Sternlieb by email, rejecting her accusations. In this email, Mr. Threatt provided the additional information requested by Ms. Sternlieb and directed her to previously produced documents where the remaining requested information could be found. Mr. Threatt also expressed a concern regarding any claims that Dragul's downstream investors may have should the Receiver fail to provide them with their respective shares of the distributions, and asked the Receiver's counsel to clarify the Receiver's intentions with respect to any future distributions. *See* Ex. 2 p. 2-3.

8. Over a month and a half later, on December 17, 2019, Receiver's counsel Michael Gilbert wrote back, requesting new and additional information. Specifically, Mr. Gilbert requested a list of the 14 entities in which Dragul had an interest, the size of each of Dragul's interests, the 2018-2019 financial statements of those entities (which had already been produced), and documents relating to ACF's acquisition of SSC 02 LLC's interest in certain unspecified properties. At that time, Mr. Gilbert first informed us that ACF's distributions to the Estate had been deposited into the general "Receivership account" and had not been distributed to downstream investors, who would be treated "in *pari materia*" with Dragul's other creditors. *See* Ex. 2 p. 1-2.

9. On January 27, 2020, Mr. Lincenberg sent a letter to the Receiver attaching all the newly requested documents. These included: (a) a summary chart reflecting the ACF-managed entities in which Dragul had an interest since the Receiver was appointed and the size of his interest; (b) correspondence reflecting certain exchanges and transactions that affected Dragul's holdings; (c) financial statements for each entity for Q3 2018; and (d) documents relating to ACF's acquisition of SSC 02 LLC's membership interest in Kenwood Pavilion, College Marketplace, and Fenton Commons. In his letter, Mr. Lincenberg explained that the summary chart reflected 15

entities because Dragul's investment in one of the ACF entities was converted to an investment in two separate properties. He also confirmed that this document production, along with all the documents previously produced, fully satisfied all of the Receiver's then-outstanding document requests. Mr. Lincenberg also notified the Receiver that in light of his admission that none of ACF's prior distributions were distributed to downstream investors, ACF would not make further distributions until this issue was resolved. *See* Mot. Ex. 4.

10. On February 26, 2020, Mr. Gilbert emailed my office in what he stated was a "final attempt" to confer and resolve issues, but in fact was an entirely new request for documents. In this new request, Mr. Gilbert sought the following documents, none of which had previously been requested:

a. Operating agreements for 16 ACF entities in which Dragul owned a membership interest since the Receiver was appointed.[1]

b. Tax returns for each entity for the last five years.

c. Detailed financial statements (including balance sheets, income statements, and statements of cash flows) for each entity for the last five years.

d. Debt/loan documents relating to the financing of each entity and any related financing information.

e. Documents showing in detail the owners of each entity, including their ownership percentage, and any changes in ownership during the last five years.

f. The most recently available appraisals of the real estate owned by each entity.

Mot. Ex. 2, pp. 4-6.

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[1] As noted, Dragul's investment in one entity was converted into an investment in two different entities, which brought the number of ACF entities in which Dragul had an interest to 15. In addition, another Dragul investment was converted into an investment in a different entity, and since the Receiver included in his demand all entities in which Dragul had an interest from the Receiver's appointment forward even if he no longer held any interest in that entity, the Receiver's list included 16 ACF entities.

11. In the same email, Mr. Gilbert demanded that ACF "reconvey" to the Estate the membership interests it acquired from SSC 02 LLC and asked it to reconsider its position on the issue of the distributions. Mot. Ex. 2.

12. Mr. Lincenberg and I had a meet and confer call with the Receiver's counsel Mr. Gilbert and Ms. Sternlieb on Tuesday, March 3, 2020. Other members of ACF's legal team, Messrs. Ritchie and Liebman, were also on the line during that conference call. During that call, we asked for additional information regarding the basis for the Receiver's claim that the membership interest ACF acquired from SSC 02 was the property of the Estate and noted that ACF's response to the requests for new documents would be forthcoming. The parties agreed that the distribution issue likely would have to be resolved by the Court.

13. On March 10, 2020, I followed up with an email, advising Receiver's counsel that ACF would make available for the Receiver's inspection the operating agreements, tax returns for the most recent three years, and detailed financial statements for the most recent three years (which are included in the tax returns) of the twelve entities in which Dragul currently has a membership interest. I explained we did not believe the Receiver was entitled to loan documents and property appraisals but invited the Receiver's counsel to identify any authority suggesting otherwise. I noted we were still considering the Receiver's claims regarding SSC 02 LLC. Mot. Ex. 2, p. 1.

14. The Receiver never contacted my office to schedule a time for the document inspection, never responded to my email, and did not wait for our response regarding his demand for the assets acquired from SSC 02 LLC. Instead, he filed his present Motion, without completing the extant conferral.

15. On information and belief, attached as **Exhibit 3** is a true and correct copy of selected pages of the operating agreement of GDA Market at Southpark, with confidential information redacted.

16. Attached as **Exhibits 4, 5, 6, 7,** and **8** are true and correct copies of the following:

- email dated July 22, 2019 from Alan Fox to Gary Dragul regarding SSC 02, **Ex. 4**;
- email dated July 22, 2019 from Susan Markusch to Alan Fox and Lauren Hunsaker, attaching the operating agreement for SSC 02 LLC, **Ex 5**;
- email dated July 23, 2019 from Susan Markusch to Alan Fox and Lauren Hansaker, with attachments, **Ex 6**;
- Membership Interest Purchase, Assignment and Assumption Agreement and Release regarding SSC 02 LLC, **Ex 7**; and
- email dated July 24, 2019 from Lauren Hansaker to Susan Markusch, confirming that payment has been made, **Ex. 8**.

ACF produced all documents comprising Exhibits 4 through 8 to the Receiver on January 27, 2020.

17. Attached as **Exhibit 9** is a true and correct copy of selected pages from the operating agreement for Crystal Falls Town Center LLC, with confidential information redacted.

18. Attached as **Exhibit 10** is a true and correct copy of selected pages from the operating agreement for Meadows Shopping Center 05 A LLC, with confidential information redacted.

19. The schedule at page 3 of the Receiver's Motion confirms Dragul currently has a membership interest in 12 out of the 16 ACF entities listed therein. I reviewed the operating agreements of the 12 ACF LLCs in which Dragul currently has a membership interest, and from that review I compiled the following table listing the entities and their state of formation:

ACF Entity	State of Formation
10 Quivira Plaza	Delaware
Shoppes at Bedford	Delaware
ACF Lakewood 11 LLC	Delaware
Tower Plaza 12	Colorado
Arapahoe Village	Washington
Greentree Plaza 06	Washington
Paradise Valley Festival	Arizona
Scottsdale Crossing	Arizona
Crystal Falls Town Center	Delaware
Meadows Shopping Center 05 A	Delaware
Southwest Commons 05 A	Colorado
Trophy Club 12	Texas

FURTHER, DECLARANT SAYS NOT.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

Executed on April 13, 2020, at Los Angeles, California.

Sharon Ben-Shahar Mayer

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	
GERALD ROME, Securities Commissioner for the State of Colorado, Plaintiff, v. GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC Defendants.	▲ COURT USE ONLY ▲
BY THE COURT	Case No.: 2018 CV 33011 Courtroom: 424

STIPULATED ORDER APPOINTING RECEIVER

Attachment to Order - 2018CV33011

THIS MATTER having come before this Court on the Stipulated Motion to Appoint Receiver (the "Motion") filed by the Plaintiff Gerald Rome, Securities Commissioner for the State of Colorado and Defendants Gary Dragul ("Dragul"), GDA Real Estate Services, LLC ("GDARES"), and GDA Real Estate Management, Inc. ("GDAREM"), and the Court, being otherwise fully advised in the premises,

HEREBY FINDS:

1. The Court has jurisdiction and venue is proper pursuant to C.R.C.P. 98(a).

2. Dragul is an individual and a resident of Colorado, and the manager of

EXHIBIT 1

GDARES and GDAREM, among other businesses.

3. GDARES is a Colorado limited liability company with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

4. GDAREM is a Colorado corporation with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

5. The Parties have stipulated to the appointment of a Receiver without bond or other security for Dragul, GDARES, and GDAREM, as well as for their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses as set forth herein.

6. The appointment of a receiver is reasonable and necessary for the protection of the assets and the rights of the parties in this case. Based on the standards set forth in C.R.C.P. 66 and case law thereunder, the Parties have stipulated that the Commissioner is entitled to entry of this Order.

7. Nothing in this stipulated Order shall be deemed an admission by Dragul to any allegations or as a waiver of any defenses thereto or limit Dragul's 4th, 5th, or 6th Amendment rights or other Constitutional and statutory protections and privileges afforded to any criminal defendant, or prevent him from invoking such rights in his personal capacity. Nothing in this Order operates as a waiver or an abrogation of the attorney-client privilege held by Dragul in his personal capacity.

8. Harvey Sender of Sender & Smiley LLC, has been determined to be suitable to serve as Receiver for Dragul (as such term is defined below in this

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Order), GDARES and GDAREM, as set forth in this Order. Mr. Sender's business address is 600 17th Street, Suite 2800, Denver, Colorado 80202.

IT IS THEREFORE ORDERED THAT:

9. Harvey Sender ("the Receiver") is hereby appointed as Receiver for Dragul (limited to the definition of the "Receivership Property" or "Receivership Estate" as defined herein), GDARES, GDAREM, and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights, claims, and causes of action, wherever located, including without limitation the "LLC Entities" identified in the Commissioner's Motion and Complaint for Injunctive and Other Relief, or assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds (the "Receivership Property," and altogether this "Receivership Estate"). Except that the personal residence of Dragul, located at 10 Cherry Vale Drive, Englewood, Colorado 80113, shall not be considered "Receivership Property" or part of the "Receivership Estate," unless the Receiver determines that an improvement to or increase in equity in such residence is directly related to the proceeds from the sale of the securities or matters referenced in the Complaint, in which case the improvements or equity shall be considered "Receivership Property" or part of the "Receivership Estate." Consistent with

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Colorado's dissolution statutes and applicable law, and as set forth in greater detail below, the Receiver may, in the exercise of his reasonable judgment, investigate any claims and causes of action which may be pursued for the benefit of Dragul, GDARES, GDAREM, their creditors, members, and equity holders, and make recommendations to interested parties and this Court regarding the prosecution of any such claims and causes of action; establish a process for the assertion of claims against the Receivership Estate; make recommendations to this Court for the allowance and payment of such claims; and investigate and make recommendations to this Court for the ongoing operation, sale or distribution of any remaining Receivership Property, or the proceeds thereof, pursuant to the terms hereof.

10. Dragul, GDARES, and GDAREM, and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (collectively, the "Representatives"), are hereby ordered to deliver immediately to the Receiver or his agents all of the Receivership Property and to fully cooperate with the Receiver including, but not limited to, providing the Receiver all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials; together with stock certificates or other indicia of

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ownership of any subsidiaries or related companies, and any and all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials, related to the operation of any subsidiaries or related companies. Dragul, GDARES, and GDAREM and their Representatives, when necessary or when requested (subject to Dragul's Constitutional protections, including the Fifth Amendment), shall explain the operation, maintenance and management of the Receivership Property, including any subsidiaries or related entities or companies, to the Receiver or his agents, without compensation therefor. Any claims for nonpayment for services shall not be used as a defense to turning over Receivership Property. All privileges in connection with professional representation of GDARES and GDAREM shall accrue to the sole benefit of the Receiver and the Receivership Estate and may only be waived by the Receiver, except that Dragul maintains all such privileges in his personal capacity. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of any Representatives or any other foregoing persons acting on behalf of or for Dragul, GDARES and GDAREM, to comply fully and completely with this Order.

11. Any creditors of Dragul, GDARES or GDAREM that are in the possession of, or have taken any action to seize any books, records, or assets of the Receivership Estate (hereinafter called "Creditors") and all persons in active

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participation with such Creditors, including without limitation, such Creditors' officers, managers, members, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (hereafter called "Creditors' Representatives") are hereby ordered to deliver immediately to the Receiver all of the Receivership Property in such Creditors' or Creditors' Representatives' possession, and to fully cooperate with the Receiver in connection with such turnover. Any claims against Dragul, GDARES or GDAREM shall not be used as a defense to turning over as set forth in this paragraph. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of Creditors or Creditors' Representatives or any other foregoing persons acting on behalf of or for the Creditors to comply fully and completely with this Order.

12. If the Receiver determines, after reasonable inquiry that a person or entity is in violation of the turnover provisions set forth in Paragraphs 9 and 10 of this Order, the Receiver is instructed to give written notice thereof to the person or entity violating such provisions, with a copy of this Order attached, demanding turnover of such Receivership Property. If the person or entity in possession fails or refuses to turn over the Receivership Property after receiving notice, the Receiver shall file a Request for an Order to Show Cause with this Court.

13. The Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated

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herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court, except as expressly provided herein:

(a) To take from Dragul's, GDARES' and GDAREM's Representatives, and all persons acting in participation with Dragul, GDARES and GDAREM, and from Creditors and Creditors' Representatives, immediate possession and control of all of the assets of Dragul, GDARES and GDAREM, including the Receivership Property, to the exclusion of Dragul, GDARES and GDAREM, and their Representatives or all persons acting in participation with Dragul, GDARES and GDAREM, and Creditors and Creditors' Representatives;

(b) To exercise such control over all subsidiaries and related companies owned or managed by Dragul, GDARES and GDAREM, consistent with the governance documents or operating agreements applicable to the subsidiaries and related companies, including to exercise all rights of Dragul, GDARES and GDAREM to elect new officers, directors, or management of the subsidiaries and related companies, in their respective capacities and not as an assignee;

(c) To take charge of the subject Receivership Property, regardless of where such property is located, including, but not limited to, bank accounts, cash, checks, drafts, notes, security deposits, bonds, books, records, contracts, claims, leases, files, furniture, certificates, licenses, fixtures and equipment, property located in any real property either owned or leased by Dragul, GDARES and GDAREM and any personal property located in storage facilities;

(d) As appropriate, to take possession of offices of Dragul, GDARES

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and GDAREM and to change any and all locks on such offices and to limit access to such offices to the Receiver and his agents, subject to any privileges maintained by Dragul in his personal capacity;

(e) To collect in a timely fashion all accounts receivable and other obligations due to Dragul, GDARES and GDAREM, including, as necessary to negotiate and deposit checks made payable to them into accounts maintained by the Receiver and as necessary to review mail directed to Dragul, GDARES and GDAREM and their Representatives in order to collect incoming accounts receivable and other obligations due and owing to Dragul, GDARES and GDAREM;

(f) To contract for and obtain such services as utilities, supplies, equipment and goods as is reasonably necessary to manage, preserve, and protect the Receivership Property as the Receiver may reasonably deem necessary; however, no contract shall extend beyond the termination of the Receivership without the permission of the Court;

(g) To obtain, review and analyze Dragul, GDARES and GDAREM books and records relating to the Receivership Property, including without limitation accounting records, banking records, tax records, and any other books or documents necessary to perform the duties of the Receiver;

(h) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

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(i) To borrow from third parties on such reasonable terms as may be acceptable to the Receiver, such funds that may be required for the fulfillment of the Receiver's obligations hereunder, and to meet the needs of the Receivership Estate in excess of the income from the Receivership Estate. The Receiver may issue Receiver's Certificates secured by all assets of the Receivership Estate, including, but not limited to, all claims on insurance policies, surety bonds, and similar assets of the Receivership Estate, in exchange for funds advanced during the term of this receivership, and such Receiver Certificates shall be a first and prior lien and preference claim upon the Receivership Property or a portion of it at the Receiver's election;

(j) To open and maintain accounts at a financial institution insured by the federal government in the name of the Receiver and to deposit all sums received by the Receiver into such account and to make such withdrawals as are necessary to pay the reasonable costs and expenses incurred by the Receiver;

(k) To exercise all rights of an owner incidental to the ownership of the Receivership Property;

(l) 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 companies affiliated with the Receiver, or other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver's discretion;

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(m) In the Receiver's discretion as appropriate, 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.

(n) After consultation with the Commissioner and agreement on the amount and funding of a budget related thereto, to institute such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order to protect the Receivership Property, and to prosecute causes of action of Dragul, GDARES and GDAREM against third parties in this or any other jurisdictions, including foreign countries;

(o) After consultation with the Commissioner and agreement on the amount and funding of a budget related to anticipated out of pocket expenses related thereto, to retain special counsel, and other professionals as needed, on a contingency fee basis containing commercially reasonable terms, as determined by the Receiver in the exercise of his reasonable business judgment, to recover possession of the Receivership Property from any persons who may now or in the future be wrongfully possessing Receivership Property or any part thereof, including claims premised on fraudulent transfer or similar theories, in this or any other jurisdictions, including foreign countries;

(p) To notify any and all insurers under insurance policies and issuers of surety bonds affecting the Receivership Property of the pendency of these proceedings, and that any proceeds paid under any such insurance policy or surety

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bond shall be paid to the Receiver to be administered for the benefit of all creditors of Dragul, GDARES and GDAREM;

(q) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(r) To notify and make demands on any insurers under insurance policies and issuers of any such policies or surety bonds affecting Receivership Property for the turnover and payment of proceeds to the Receiver for the benefit of Creditors, and as necessary, and after consultation with Plaintiffs and agreement on the amount and funding of a budget related thereto, commence litigation against such insurers and/or sureties in order to recover the proceeds of such insurance policies and surety bonds for the benefit of Dragul, GDARES and GDAREM and their creditors; and further provided that, in connection with any such claims or causes of action, the Receiver shall not be deemed to be asserting claims of Dragul, GDARES and GDAREM pursuant to any "insured vs. insured" exclusions that may be set forth in such insurance policies or surety bonds, but rather shall, in accordance with subparagraph (p) below, be deemed to be prosecuting claims of creditors of Dragul, GDARES and GDAREM in connection therewith;

(s) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of

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Creditors, in order to assure the equal treatment of all similarly situated Creditors;

(t) In the Receiver's discretion as appropriate, to consider the potential sale of assets of Dragul, GARDES, and GARDEM to a third-party or to sell or otherwise dispose of any personal property of the Receivership Estate, provided that Court approval shall not be required of any sale or disposition of any property being sold for a sales price of less than $10,000;

(u) To establish a procedure for the assertion of claims against Dragul, GDARES and GDAREM or the Receivership Property, for the resolution of any disputes regarding such claims, and for the distribution of the proceeds of the Receivership Property;

(v) To issue subpoenas, institute, prosecute, defend, compromise, or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection, preservation and maintenance of the Receivership Assets or proceeds therefrom;

(w) To do such other and further lawful acts as the Receiver reasonably deems necessary for the effective recovery of the Receivership Property, and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado, or the laws of the United States; and

(x) To do any and all acts necessary, convenient or incidental to the foregoing provisions of this Order and this equity receivership.

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14. The Receiver is further directed to review the books and records of Dragul, GDARES and GDAREM, to account for receipts and disbursements of their funds, and to provide a report and accounting of their operations, for a period of time determined by the Receiver to be reasonable under the circumstances, to this Court and to the Commissioner, and any parties that have filed an entry of appearance herein. An initial report shall be filed with the Court within ninety (90) days of entry of this Order. In such report, the Receiver shall identify any claims and causes of action of Dragul, GDARES and GDAREM, identified as of the date of such report, including under insurance policies, on surety bonds, against any of their representatives or third parties, or arising under the Uniform Fraudulent Transfer Act, or any similar statute; and the Receiver's recommendations related thereto. The Receiver shall be authorized to act on his recommendations upon agreement with the Commissioner regarding budgets related to the prosecution thereof, and funding of such litigation, as set forth in this Order.

15. To the extent they have not already done so, Dragul, GDARES and GDAREM and their representatives, Creditors, and Creditors' Representatives, and their agents, are ordered to deliver over immediately to the Receiver, or his agents, all Receivership Property, including, but not limited to, unpaid bills, bank accounts, cash, checks, drafts, notes, security deposits, books, records, contracts, claims, leases, deeds, files, furniture, certificates, licenses, fixtures, escrow, sales contracts, equipment, and stock certificates or other evidence of ownership related to the Subsidiaries, relating to the Receivership Property and shall continue to

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deliver immediately to the Receiver any such property received at any time in the future.

16. Any parties holding claims against Dragul, GDARES and GDAREM or the Receivership Estate shall not be entitled to participate as creditors in the distribution of recoveries from the Receiver's administration of the Receivership Estate and collection and liquidation of the assets thereof, unless such parties: (I) agree not to file or prosecute independent claims such parties may have (a) on insurance policies and surety bonds issued in connection with Dragul, GDARES and GDAREM operations, or (b) against Dragul, GDARES and GDAREM or any of their Representatives, and (II) promptly dismiss any lawsuits currently pending in connection therewith.

17. If necessary, the Receiver may request of this Court letters rogatory or commissions or supplemental orders as necessary to require out-of-state directors, officers, employees, agents, representatives, managers, attorneys, accountants, banks, contractors, or any other person acting in t participation with Dragul, GDARES and GDAREM and their Representatives, through the appropriate court of appropriate jurisdiction, to comply with any of the Orders of this Court.

18. The Receiver shall be compensated for his services at the rate of $400 per hour, together with reimbursement for all reasonable costs and expenses incurred in connection with his duties, which compensation and reimbursement shall be paid from the assets of the Receivership Estate, proceeds of the disposition of Receivership Property, or the proceeds of loans secured by the Receiver.

Attachment to Order - 2018CV3011

19. Except as may be expressly authorized by the Court, Dragul, GDARES and GDAREM and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them, are enjoined from:

(a) Collecting any revenues from the Receivership Property, or withdrawing funds from any bank or other depository account relating to the Receivership Property;

(b) Binding, or purporting to bind, Dragul, GDARES and GDAREM or the Receivership Estate, to any contract or other obligation;

(c) Holding themselves out as, or acting or attempting to take any and all actions of any kind or nature as Representatives of Dragul, GDARES and GDAREM, or subsidiary entities they own or control, or in any other purported capacity, except with the permission of the Receiver or by further order of this Court; and

(d) Otherwise interfering with the operation of the Receivership Property, or the Receiver's discharge of his duties hereunder.

20. Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Order.

21. Should the Receiver determine that tax returns were not filed for periods prior to the entry of this Order for which tax returns were required of

Attachment to Order - 2018CV33011

Dragul, GDARES and GDAREM, as funds are available in the Receivership Estate, the Receiver shall use reasonable efforts to have prepared and filed tax returns for any missing periods prior to the entry of this Order. To the extent it is determined that any outstanding tax obligations are due to the Internal Revenue Service, the Colorado Department of Revenue, or any other taxing authorities for any period of time prior to the entry of this Order, such taxes shall be paid, as funds are available in the Receivership Estate. The Receiver shall not be considered a responsible person, or otherwise have any personal liability, for any unpaid tax obligations of Dragul, GDARES and GDAREM (including for any trust fund taxes, such as payroll or sales tax) withheld but not paid to the proper taxing authority for any period prior to the entry of this Order. The Receiver shall file tax returns for periods commencing on the date of the entry of this Order through completion of the dissolution of Dragul, GDARES and GDAREM and discharge of the Receiver, as required by applicable federal, state, or local law.

22. The Receiver is directed and empowered to apply revenues, incomes and sales proceeds collected by the Receiver:

(a) First, to payment of costs and expenses of the Receivership Estate, and including the costs and expenses of preserving and liquidating the Receivership Property, taxes incurred from the appointment of the Receiver through the conclusion of the Receivership Proceeding and discharge of the Receiver, and to compensation due the Receiver and any employees, consultants, or professionals retained by the Receiver or employed by the Receiver to operate

Attachment to Order - 2018CV33011

GDARES or GDAREM;

(b) Second, to the payment of any outstanding Receiver's Certificates;

(c) Third, to creditors holding obligations secured by the Receivership Property, in the order of their priority of record;

(d) Fourth, to the payment of any unsecured tax obligations determined to be due for periods prior to the entry of this Order, pursuant to the tax filing obligations imposed on the Receiver;

(e) Fifth, to the payment of unsecured creditors determined to hold legitimate claims against Dragul, GDARES and GDAREM pursuant to the claims administration procedure adopted by the Receiver, in their legal order of priority; and

(f) Sixth, to the preferred and common partners, members, or other equity interest holders of Dragul, GDARES and GDAREM, as their rights are defined in their governing documents, with the exception of any rights or interests held or owned by or for the benefit of Dragul, GDARES or GDAREM, or any insiders or related parties, with all such rights or interests to be determined by the Court.

23. The debts or liabilities incurred by the Receiver in the course of his operation and management of the Receivership Property, whether in the Receiver's name or in the name of the Receivership Property, shall be the debts and

Attachment to Order - 2018CV33011

obligations of the Receivership Estate only, and not of the Receiver in a personal capacity.

24. The Receiver shall enjoy and have the judicial immunity usually applicable to receivers in law and equity. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver are protected and privileged with the same judicial immunity as the Receiver has under this Order.

25. Nothing herein contained shall be construed as interfering with or invalidating any lawful lien or claim by any person or entity.

26. It is further Ordered that all actions in equity or at law against the Receiver, Dragul, GDARES and GDAREM, or the Receivership Estate are hereby enjoined (and any actions already pending are hereby stayed), pending further action by this Court. The Receiver is instructed to file a request for an Order to Show Cause if any business, entity, or person commences or continues the prosecution of any action in any other court seeking relief in equity or at law against the Receiver, Dragul, GDARES and GDAREM or the Receivership Estate without first seeking relief from this stay of proceedings.

27. The Receiver shall continue in possession of the Receivership Property until the completion of the disposition of this litigation which may anticipate the wind-up of the affairs of Dragul, GDARES and GDAREM.

28. Dragul, GDARES and GDAREM, and their Representatives, or anyone else in possession of records related to the Receivership Property, shall respond in a timely fashion to requests and inquiries from the Receiver concerning

Attachment to Order - 2018CV33011

such records, record keeping protocols, filing systems, information sources, algorithms and processes used to store, compile, organize, or manipulate data, and similar matters. With respect to any information or records stored in computer-readable for or located on computers Dragul, GDARES and GDAREM, and their Representatives, the person in possession of such information or records shall provide the Receiver full access to all media on which such records are located and all computers and the necessary application, system, and other software necessary to review, understand, print, and otherwise deal with such computerized records and all passwords and security codes necessary to access such computerized records, regardless of whether such records are separate or commingled with other information, except that information subject to the attorney-client privilege held by Dragul in his personal capacity shall remain privileged. Any such claimed privileged information, or information that may reasonably be considered to be privileged information, obtained by Receiver or commingled with other information shall be disgorged by the Receiver and notice given to Dragul regarding the privileged information and its disposition by the Receiver. In the event that the Receiver questions or disputes that any such information is privileged, the dispute shall be submitted to the Court, together with the disputed information for in camera review.

29. The Receiver may at any time, on proper and sufficient notice to all parties who have appeared in this action, apply to this Court for further

Attachment to Order - 2018CV30311

instructions whenever such instructions shall be deemed to be necessary to enable the Receiver to perform the duties of his office properly.

30. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of (a) any substance deemed a "hazardous substance", "pollutant," "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken and to be taken by the Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

Attachment to Order - 2018CV33011

31. The Receiver shall take appropriate action as necessary with respect to the January 20, 2015 "CDPHE Stipulation and Order," as defined and with background provided in the Motion Appointing Receiver.

32. Pursuant to C.R.C.P. 66(d)(3), the Receiver shall provide written notice of this action and entry of this Order to any persons in possession of Receivership Property or otherwise affected by this Order, including all known Creditors of Dragul, GDARES and GDAREM, subsidiaries and any their respective Representatives.

33. After the initial report required pursuant to this Order, the Receiver shall make periodic reports of the condition of the Receivership Estate on intervals to be agreed to by the Receiver and the Commissioner as is reasonably necessary to provide timely reporting of the operations of the Receivership Estate to all interested parties, without imposing undue burden and expense on the Receivership Estate. The Receiver shall not be required to, but as reasonably necessary, may follow generally accepted accounting principles or use auditors or accountants in the preparation of his reports to the Court.

34. Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects to the request for Court approval within ten (10) days after service by the Receiver or written notice of such request. Service of motions by facsimile and electronic transmission is acceptable.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver is hereby authorized, empowered and

Attachment to Order - 2018CV33011

directed to apply to this Court, with notice to the Commissioner for issuance of such other Orders as may be necessary and appropriate in order to carry out the mandate of this Court.

IT IS FURTHER ORDERED that this Order shall be effective immediately and will remain in effect until terminated or modified by further Order of this Court.

DATED this ______ day of August, 2018.

BY THE COURT:

____

MARTIN F. EGELHOFF
Denver District Court Judge

Attachment to Order - 2018CV33011

From:	Michael T. Gilbert <mgilbert@allen-vellone.com>
Sent:	Tuesday, December 17, 2019 3:16 PM
To:	Jimmy Threatt; Rachel Sternlieb
Cc:	Pat Vellone; Gary S. Lincenberg; 'Harvey Sender (hsender@sendersmiley.com)'
Subject:	RE: RE: Receiver's Request for Documents from ACF
Attachments:	20191018 ACF Letter to MG-RS re Fox Docs.pdf; Wire transfer instructions NEW 112019.pdf; 20191202 Dragul-Rec Agr re Turnover fully executed with Exs.pdf; 20191217 O re MTN APPROVE SA DRAGUL re TURNOVER.pdf; 20191217 O re MTN Approve SA with Dragul re Turnover.pdf

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

Messrs. Threatt and Lincenberg:

Forgive us for not responding sooner to your November 11th email (below) and your October 18th letter (attached).

We have confirmed that the following distributions were paid to the Estate by ACF managed entities during the Receivership, which is consistent with your letter and the accounting documents you provided with it:

	ACF Property	GDA Entity	Interest Owned	Distributions Through June 2019
1	Shoppes at Bedford 15 A, LLC	Gary Dragul	7.317%	$0.00
2	10 Quivera Plaza 14 A, LLC	Gary Dragul	0.818%	$969.18
3	Laveen Ranch Marketplace 12, LLC	Fort Collins WF C2, LLC	N/A - Sold	$9,375.00
4	Crystal Falls Town Center	Fort Collins WF C2, LLC	1.959%	$588.00
5	Meadows Shopping Center 05 A, LLC	Fort Collins WF C2, LLC	8.264%	$56,092.00
6	Southwest Commons 05 A, LLC	Fort Collins WF C2, LLC	3.500%	$0.00
7	Trophy Club 12, LLC	Fort Collins WF C2, LLC	9.375%	$31,408.00
8	Tower Plaza 12, LLC	GDA Market at Southpark	2.927%	$0.00
9	ACF Lakewood 11, LLC	GDA Village Crossroads, LLC	12.332%	$105,120.00
10	TJM Shopping Center 05 A, LP	SSC 02, LLC	0.221%	$0.00
11	Kenwood Pavilion 12 A, LLC	SSC 02, LLC	0.581%	$0.00
	Total			$210,548.18

Your October 18th letter refers to 23 ACF-managed entities in which Dragul has been an investor and/or manager of investments for other individuals, and that Dragul continues to hold an interest in 14 of them. Please provide a list of those 14 entities and state Dragul's (or his entities') interest in them, and produce 2018 and available 2019 financial statements (if not already produced) for those entities.

Your October 18th letter indicates ACF has withheld at least the following distributions:

(1) November and December 2018, distributions for Dragul's personal investment in 10 Quivera Plaza 14 A, LLC;

EXHIBIT 2

(2) All distributions for Kenwood Pavilion 14 A, LLC, and TJM Shopping Center 05 A, LLC from December 2018 through June 2019;

(3) Two distributions related to Scottsdale Retail Center 02, LLC and ACF Lakewood 11, LLC.

Dragul's personal assets are part of the Receivership Estate, as are the assets of GDA Village Crossroads, LLC; today the Court entered orders confirming that SSC 02, LLC's assets are also property of the Estate (see attached Settlement Agreement and Court orders approving it). So all of the withheld distributions should be turned over to the Receivership Estate. Accordingly, please arrange to wire transfer all withheld distributions and any future distributions to the Receivership account (wire instructions are attached). Also, please provide us with the documents concerning ACF's July 2019 purchase of SSC 02's interests in these properties. At the time of that transaction a Joint Turnover Motion filed by the Securities Commissioner of the State of Colorado and the Receiver was pending in the Receivership Court seeking an order requiring all SSC 02 assets be turned over to the Estate.

With respect to your November 1st email, investors in Dragul formed entities that invested in ACF managed properties will be and have been treated *in pari materia* with Dragul's other defrauded investors and many of them have filed claims against the Estate. ACF distributions to the Estate were deposited into the general Receivership account and were not distributed to downstream investors. Those investors will retain claims against the Estate, but this provides no basis for withholding future distributions.

Finally, we would request that you respond to our remaining document requests which you indicated were under consideration.

Please let me know if you have any questions.

Thanks, Michael

Michael T. Gilbert
Attorney At Law
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202

(720) 245-2406 | Direct
(303) 893-8332 | Fax

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From: Jimmy Threatt <jthreatt@birdmarella.com>
Sent: Friday, November 1, 2019 5:52 PM
To: Rachel Sternlieb <rsternlieb@allen-vellone.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Pat Vellone <PVellone@allen-vellone.com>; Gary S. Lincenberg <glincenberg@birdmarella.com>
Subject: RE: RE: Receiver's Request for Documents from ACF

Ms. Sternlieb,

We write in response to your email of October 23.

First, any suggestion that Mr. Fox knowingly violated the Receivership Order is without merit. As you know, paragraphs 9 and 10 of the Order require parties to turn over property comprising the Receivership Estate to the Receiver. Paragraph 12 provides a procedure should the Receiver conclude that any party is in violation of those provisions, specifically that the Receiver "give written notice thereof to the person or entity violating such provisions, with a copy of this Order attached." It is our understanding that Mr. Fox has never been notified by the Receiver that he was in violation of the Order, notwithstanding other communications he has had with the Receiver. Mr. Fox's mere knowledge that a Receiver had been appointed does not mean he knowingly violated the Order by continuing to make distributions. Indeed, absent any notice from the Receiver, it was eminently reasonable for Mr. Fox to believe that all outgoing distributions to which Dragul was previously entitled, made pursuant to long-standing instructions, were in the possession of the Receiver, because it presumably had assumed control of the accounts associated with Dragul's entities. This runs in stark contrast to the example you cite, specifically the consulting work Mr. Fox hired Dragul to perform in September 2018, *after the Receiver was appointed*. As a new arrangement, terms of payment had to be negotiated, thus leading to Mr. Fox's reasonable inquiry about the role, if any, the Receiver would play with respect to fees earned by Dragul.

Turning to your additional document requests, as for the second one, the vast majority of distributions were made by check, payable to the relevant entity managed by Dragul. There were, however, three entities for which distributions were made by direct deposit: (1) Fort Collins WF, LLC (Routing No. 102001017; Account No. 282220901); (2) PR Investments, LLC (Routing No. 102001017; Account No. 282893921); and (3) GDA Village Crossroads, LLC (Routing No. 102001017; Account No. 282226817). Moreover, as set out in our letter of October 18, the quarterly financial statements we have already provided contain the other information sought in your second request, namely the amount and date of each distribution.

We have taken your remaining document requests under consideration. You have suggested that any claims by Dragul investors would properly be directed only towards the Receiver. However, we have concerns about the allegations those investors may make should the Receiver elect not to provide them with the entirety of the distributions made by ACF. Accordingly, we would appreciate an accounting of how the Receiver has managed all funds distributed to it by ACF since being appointed on August 30, 2018. For every entity now managed by the Receiver in lieu of Dragul, please indicate the amount of each ACF distribution that was provided to Dragul's downstream investors and the amount, if any, withheld by the Receiver. To the extent the Receiver has not received distributions from ACF, please state your intention with respect to any such future distributions, including the funds that have so far been withheld by ACF.

Jimmy Threatt
Associate
T: 310.201.2100
F: 310.201.2110
E: jthreatt@birdmarella.com
Bird, Marella, Boxer, Wolpert, Nessim,
Drooks, Lincenberg & Rhow, P.C.
1875 Century Park East, 23rd Floor
Los Angeles, California 90067-2561
www.BirdMarella.com

From: Rachel Sternlieb <rsternlieb@allen-vellone.com>
Sent: Friday, November 1, 2019 9:41 AM
To: Gary S. Lincenberg <glincenberg@birdmarella.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Pat Vellone <PVellone@allen-vellone.com>; Jimmy Threatt <jthreatt@birdmarella.com>
Subject: RE: RE: Receiver's Request for Documents from ACF

Mr. Lincenberg:

I am following-up with you on my email below of last Wednesday. Please advise the status of our outstanding requests.

Very truly,

Rachel A. Sternlieb
Attorney at Law
Allen Vellone Wolf Helfrich & Factor P.C.

(303) 534-4499 | Main
(720) 245-2403 | Direct

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From: Rachel Sternlieb
Sent: Wednesday, October 23, 2019 4:31 PM
To: 'Gary S. Lincenberg' <glincenberg@birdmarella.com>
Cc: Michael T. Gilbert <mgilbert@allen-vellone.com>; Pat Vellone <PVellone@allen-vellone.com>; Jimmy Threatt <jthreatt@birdmarella.com>
Subject: RE: Receiver's Request for Documents from ACF

Mr. Lincenberg:

Thanks for your October 18, 2019, letter and the attached documents. We appreciate your cooperation, but we need some additional documents. In your letter, you confirm you have withheld accounting documents that we requested concerning the various entities in which Dragul or his entities invested because you believe them to be "unnecessary in light of the information being produced." To the contrary, we need those accounting documents to determine precisely when distributions were made so that we can figure out what distributions should have been paid to the Estate rather than to Dragul in violation of the Receivership Order.

Your assertion that "ACF was never instructed by the receiver to alter the distributions associated with Dragul's investments," is not justification for violating the Receivership Order, which Mr. Fox has been aware of for over a year. For example, Mr. Fox hired Mr. Dragul to

perform consulting work as early as September 12, 2018 – weeks after the Receiver was appointed. As noted in the attached email, Mr. Fox specifically asked for the Receiver's written approval for Dragul to do so and earn finders fees and was concerned that paying those fees could be construed as violating the Receivership Order. The Receiver spoke with Eric Diamond, then-CFO of ACF, on September 26, 2019, regarding Dragul's work and the Estate's portion of the fees to be paid to Mr. Dragul. Subsequently, I reached out to Mr. Diamond in February to request the very same information and documents that we have sought from you, with respect to the Fort Collins and Southpark investments.

So for us to evaluate the precise amount of the Estate's claims against Dragul for turnover of these distributions, we ask that you produce the following documents and information as soon as possible:

1. Provide a complete accounting for the funds being held by ACF related to the various entities included in your letter, including 10 Quivera Plaza 14 A, ACF Lakewood 11, Scottsdale Retail Center 02, Kenwood Pavilion 12 A, and TJM Shopping Center 05 A.
2. Provide the amount, date, and which bank account each distribution was deposited into for each distribution made on or after August 30, 2018.
3. Provide any correspondence related to the various entities, including changes to the deposit instructions for distributions received on or after August 30, 2018.
4. Per footnote 3 of your letter, Mr. Dragul sold his interest in Kenwood Pavilion 12 A and TJM Shopping Center 05 A as manager of SSC 02, LLC to the Alan C. Fox Revocable Trust on July 1, 2019. Provide all documents, agreements, and correspondence related to these transactions.

If you would like to discuss this matter further, please don't hesitate to give us a call. We look forward to your response.

Very truly,

Rachel A. Sternlieb
Attorney at Law
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202

rsternlieb@allen-vellone.com
www.allen-vellone.com

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(303) 893-8332 | Fax

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as a result of your consent. If you no longer wish for communications to be sent in this manner, please notify Allen Vellone Wolf Helfrich & Factor P.C. or me immediately. IRS CIRCULAR 230 DISCLOSURE: Pursuant to requirements imposed by the Internal Revenue Service, any tax advice contained in this communication, including any attachments, is not intended to be used, and cannot be used, for purposes of avoiding penalties imposed under the United States Internal Revenue Code or promoting, marketing or recommending to another person any tax-related matter. Contact Allen Vellone Wolf Helfrich & Factor P.C. for formal written advice on this matter.

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

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

OPERATING AGREEMENT

OF

GDA MARKET AT SOUTHPARK, LLC

a Colorado limited liability company

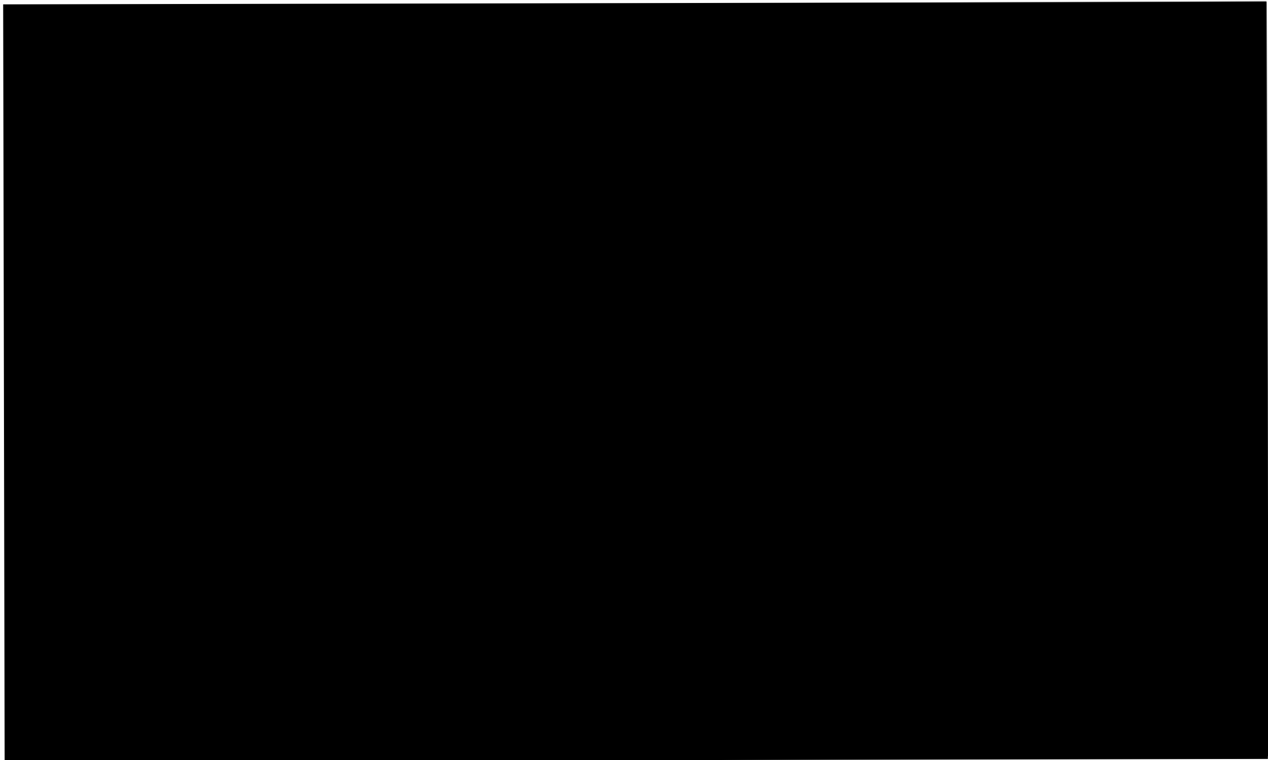
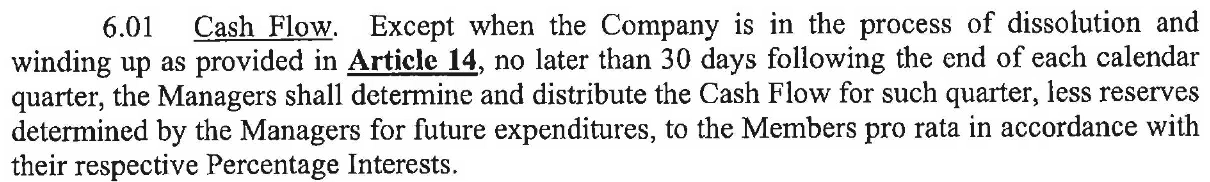


EXHIBIT 3

ARTICLE 6
DISTRIBUTIONS



6.01 Cash Flow. Except when the Company is in the process of dissolution and winding up as provided in **Article 14**, no later than 30 days following the end of each calendar quarter, the Managers shall determine and distribute the Cash Flow for such quarter, less reserves determined by the Managers for future expenditures, to the Members pro rata in accordance with their respective Percentage Interests.

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

From: Alan C. Fox
To: garyjdragul@gmail.com
Cc: Lauren Hunsaker
Subject: SSC 02
Date: Monday, July 22, 2019 11:13:56 AM
Attachments: image002.png

I can buy out the small interests in College Marketplace, Fenton Commons, and Kenwood Plaza for $60,000. I would need copies of Operating Agreement and whatever else you have to prove that this was an investment for your three children, and that neither you or Shelly do not and never have had an equity interest in this entity.
Thanks.
Alan

FOx Image

New York Times Bestselling Author of the People Tools Series

Benji & The 24 Pound Banana Squash Available October 16th, 2017!

alancfox.com

EXHIBIT 4

From:	Susan Markusch
To:	Alan C. Fox; Lauren Hunsaker
Subject:	Operating Agreement
Date:	Monday, July 22, 2019 12:07:36 PM
Attachments:	Operating Agreement SSC 02, LLC signed.pdf

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

Dear Alan and Lauren:

Please find attached the Operating Agreement for SSC 02, LLC.

Thank you,
Susan Markusch
303-929-4321

EXHIBIT 5

From:	Alan C. Fox
To:	garyjdragul@gmail.com
Cc:	Lauren Hunsaker
Subject:	SSC 02
Date:	Monday, July 22, 2019 11:13:56 AM
Attachments:	image002.png

I can buy out the small interests in College Marketplace, Fenton Commons, and Kenwood Plaza for $60,000. I would need copies of Operating Agreement and whatever else you have to prove that this was an investment for your three children, and that neither you or Shelly do not and never have had an equity interest in this entity.
Thanks.
Alan

FOx Image

New York Times Bestselling Author of the People Tools Series

Benji & The 24 Pound Banana Squash Available October 16th, 2017!

alancfox.com

OPERATING AGREEMENT

OF

SSC 02, LLC

A COLORADO LIMITED LIABILITY COMPANY

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

OPERATING AGREEMENT
SSC 02, LLC
A COLORADO LIMITED LIABILITY COMPANY

THIS OPERATING AGREEMENT is made as of this 22nd day of April, 2002, by and among the members of SSC 02, LLC, a Colorado limited liability company (the "Company"), who have signed this Operating Agreement.

NOW THEREFORE, pursuant to the Act, the following shall constitute the Operating Agreement, as amended from time to time, for SSC 02, LLC, a Colorado limited liability company.

ARTICLE 1
DEFINITIONS

The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "Act" means the version of the Colorado Limited Liability Company Act adopted by the State of Colorado, Colo. Rev. Stat. §§7-80-101 to 7-80-913, as amended from time to time.

(b) "Adjusted Capital Account Deficit" with respect to any Member means, the deficit balance, if any, in such Member's Capital Account as of the end of any Fiscal Year after giving effect to the following adjustments: (i) credit to such Capital Account the sum of (A) any amount which such Member is obligated to restore to such Capital Account pursuant to any provision of this Agreement, plus (B) an amount equal to such Member's share of Partnership Minimum Gain as determined under Regulation Section 1.704-2(g)(1) and such Member's share of Partner Nonrecourse Debt Minimum Gain as determined under Regulation Section 1.704-2(i)(5), plus (C) any amounts which such Member is deemed to be obligated to restore pursuant to Regulation Section 1.704-1(b)(2)(ii)(c); and (ii) debit to such Capital Account the items described in Regulation Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

(c) "Affiliate" with respect to any Person, shall mean any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For the purposes of this definition "control" when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, including trust agreement, or otherwise, and the term "controlled" has the meaning correlative to the foregoing.

(d) "Agreement" means this Operating Agreement.

(e) "Asset Value" with respect to any Company asset means:

(i) The fair market value when contributed of any asset contributed to the Company by any Member;

(ii) The fair market value on the date of distribution of any asset distributed by the Company to any Member as consideration for an Interest in the Company;

(iii) The fair market value of all Property at the time of the happening of any of the following events: (A) the admission of a Member to, or the increase of an Interest of an existing Member in, the Company in exchange for a Capital Contribution; or (B) the liquidation of the Company under Regulation Section 1.704-1(b)(2)(ii)(g); or

(iv) The Basis of the asset in all other circumstances.

(f) "Bankruptcy" with respect to the Company or any Member means any one of:

(i) Filing a voluntary petition in bankruptcy or for reorganization or for adoption of an arrangement under the Bankruptcy Code;

(ii) Making a general assignment for the benefit of creditors;

(iii) The appointment by a court of a receiver for all or a portion of the property of the Company or such Member, as appropriate;

(iv) The entry of an order for relief in the case of an involuntary petition in bankruptcy; or

(v) The assumption of custody or sequestration by a court of competent jurisdiction of all or substantially all of the Company's or such Member's property, as appropriate.

(g) "Basis" with respect to an asset means the adjusted basis from time to time of such asset for federal income tax purposes.

(h) "Capital Account" means an account maintained for each Member in accordance with Regulation Sections 1.704-1(b) and 1.704-2 and to which the following provisions apply to the extent not inconsistent with such Regulations:

(i) There shall be credited to each Member's Capital Account (A) such Member's Capital Contributions; (B) such Member's distributive share of Profits; (C) any items of income or gain specially allocated to such Member under Section 5.03 of this Agreement; and (D) the amount of any Company liabilities (determined as provided in Code Section 752(c) and the Regulations thereunder) assumed by such Member or to which Property distributed to such Member is subject;

(ii) There shall be debited to each Member's Capital Account (A) the amount of money and the Asset Value of any Property distributed to such Member pursuant to this Agreement; (B) such Member's distributive share of Losses; (C) any items of expense or loss which are specially allocated to such Member under Section 5.03 of this Agreement, and (D) the amount of liabilities (determined as provided in Code Section 752(c) and the Regulations thereunder) of such Member assumed by the Company or to which Property contributed to the Company by such Member is subject; and

(iii) The Capital Account of any transferee Member shall include the appropriate portion of the Capital Account of the Member from whom the transferee Member's Interest was obtained.

(i) "Capital Contribution" means the amount of money and the Asset Value of any property other than money contributed to the Company by a Member with respect to such Member's Interest in the Company.

(j) "Cash Flow" means the Operating Cash Flow and Sales or Refinancing Cash Flow for any given period.

(k) "Code" means the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(l) "Company" means SSC 02, LLC, a Colorado limited liability company.

(m) "Depreciation" for any Fiscal Year or other period means the cost recovery deduction with respect to an asset for such year or other period as determined for federal income tax purposes, provided that if the Asset Value of such asset differs from its Basis at the beginning of such year or other period, depreciation shall be determined as provided in Regulation Section 1.704-1(b)(2)(iv)(g)(3).

(n) "Entity" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association.

(o) "Fiscal Year" means the taxable year of the Company for federal income tax purposes as determined by Code Section 706 and the Regulations thereunder.

(p) "Initial Capital Contributions" means the amount of Capital Contributions set forth on Exhibit A, attached hereto and incorporated herein.

(q) "Interest" means the ownership interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which such member may be entitled as provided in this Agreement or the Act, together with the obligations of such Member to comply with all the terms and provisions of this Agreement and the Act. Such Interest of each Member shall, except as specifically provided herein, be the ratio of the aggregate of such benefits or obligations specified in this Agreement as such Member's Percentage Interest.

(r) "Majority In Interest" means Members holding a majority of the Percentage Interests.

(s) "Managers" shall mean one or more managers. Specifically, "Manager" shall mean Gary J. Dragul, or any other Persons that succeed such Manager in that capacity. References to the Manager in the singular or as him, her, it, itself, or other like references shall also, where the context so requires, be deemed to include the plural or the masculine or feminine reference, as the case may be.

(t) "Member" means each of the parties who executes a counterpart of this Agreement as a Member and each of the parties who may hereafter become additional or substituted Members.

(u) "Operating Agreement" means this Operating Agreement as originally executed and as amended from time to time.

(v) "Operating Cash Flow" means with respect to any given period the net income of the Company as determined for federal income tax purposes, increased by cost recovery and other deductions used in determining such net income that do not involve cash expenditures, and decreased by debt service payments and expenditures required to be capitalized for federal income tax purposes.

(w) "Percentage Interest" with respect to each Member, means the percentages as shown on Exhibit A hereof.

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

(y) "Priority Return" means, with respect to each Member, the amount equal to zero percent (0%) per annum, determined on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days occurring in the period for which the Priority Return is being determined, noncompounded and cumulative to the extent not distributed in any given quarter pursuant to Sections 6.01(a), 6.01(b) and 14.03(c) hereof, of the average daily balance of such Member's Unreturned Capital from time to time during the period to which the Priority Return relates, commencing on the date such Member first made a Capital Contribution to the Company pursuant to Section 4.01 hereof.

(z) "Profits" and "Losses" for any Fiscal Year or other period means an amount equal to the Company's taxable income or loss for such year or period determined in accordance with Code Section 703(a) and the Regulations thereunder with the following adjustments:

(i) All items of income, gain, loss and deduction of the Company required to be stated separately shall be included in taxable income or loss;

(ii) Income of the Company exempt from federal income tax shall be treated as taxable income;

(iii) Expenditures of the Company described in Code Section 705(a)(2)(B) or treated as such expenditures under Regulation Section 1.704-1(b)(2)(iv)(i) shall be subtracted from taxable income;

(iv) The difference between Basis and Asset Value shall be treated as gain or loss upon the happening of any event described in Article 1(d)(i), (ii) or (iii);

(v) Gain or loss resulting from the disposition of Property from which gain or loss is recognized for federal income tax purposes shall be determined with reference to the Asset Value of such Property;

(vi) Depreciation shall be determined based upon Asset Value instead of as determined for federal income tax purposes; and

(vii) Items which are specially allocated under Section 5.03 of this Agreement shall not be taken into account.

(aa) "Property" means all real and personal property, tangible and intangible, owned by the Company.

(bb) "Regulations" means the federal income tax regulations, including temporary (but not proposed) regulations, promulgated under the Code.

(cc) "Sales or Refinancing Cash Flow" means, for any given period, the cash proceeds received from the Company from the sale, other disposition, or refinancing of any or all of the Property (including payments of principal and interest on obligations received by the Company in connection with such sale or other disposition) in excess of amounts necessary to discharge Company obligations with respect to such Property.

(dd) "Substitute Member" means any Person who or which is admitted to the Company as a substitute Member pursuant to Colo. Rev. Stat. § 7-80-702(2).

(ee) "Unreturned Capital" of any Member on any date shall be equal to the excess, if any, of (a) the aggregate Capital Contributions of such Member as of such date, over (b) the aggregate distributions to such Member of Cash Flow pursuant to Section 6.01(b), 6.02(b), and 14.03(d) hereof.

(ff) "Unreturned Priority Return" of any Member on any date shall be eqûal to the excess, if any, of (a) the cumulative Priority Return of such Member from the inception of the Company, over (b) the sum of all prior distributions to such Member pursuant to Section 6.01(a), 6.02(a) and 14.03(c) hereof.

ARTICLE 2
FORMATION OF COMPANY

2.01 Formation. On April 22, 2002, the parties hereto organized the Company as a Colorado limited liability company under and pursuant to the Act.

2.02 Name. The name of the Company is SSC 02, LLC, a Colorado limited liability company.

2.03 Principal Place of Business. The principal place of business of the Company shall be 8301 E. Prentice Avenue, Suite 210, Englewood, CO 80111. The Company may locate its places of business and registered office at any other place or places as the Managers may from time to time deem advisable.

2.04 Registered Office and Registered Agent. The Company's registered office shall be at the office of its registered agent at 8301 E. Prentice Avenue, Suite 210, Englewood, CO 80111 and the name of its initial registered agent at such address shall be GDA Real Estate Services, LLC.

2.05 Articles of Organization. The Articles of Organization are hereby adopted and incorporated by reference in this Operating Agreement. In the event of any inconsistency between the Articles of Organization and this Agreement, the terms of the Articles of Organization shall govern.

ARTICLE 3
BUSINESS OF COMPANY

3.01 Permitted Businesses. The business of the Company shall be:

(a) To engage in any lawful business subject to any provisions of law governing or regulating such business within the State;

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

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

ARTICLE 4
CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS

4.01 Members Original Capital Contributions. The Initial Capital Contributions to the Company of each of the Members shall be made concurrently with their respective execution and delivery of this Operating Agreement in the dollar amounts set forth in Exhibit A.

4.02 Withdrawal or Reduction of Members' Contributions to Capital.

(a) A Member shall not receive out of the Company's Property any part of such Member's contributions to capital until all liabilities of the Company, except liabilities to Members on account of their contributions to capital, have been paid or there remains Property of the Company sufficient to pay them.

(b) A Member, irrespective of the nature of such Member's contribution, has the right to demand and receive only cash in return for such Member's contribution to capital.

4.03 Additional Capital Contributions. Except with respect to the Initial Capital Contributions and as otherwise provided for herein or under the Act, no Member shall be obligated to make any additional Capital Contributions to the Company, except with the prior written approval of Manager. If the Company needs additional capital to meet its obligations, the Company may borrow all or part of such additional capital from any source, including, without limitation, any Member. No Member shall be obligated to make a loan to the Company.

4.04 No Third Party Beneficiaries. The provisions of this Article 4 are not intended to be for the benefit of and shall not confer any rights on any creditor or other Person (other than a Member in such Member's capacity as a Member) to whom any debts, liabilities or obligations are owed by the Company or any of the Members.

4.05 Miscellaneous.

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

(b) **No Withdrawal of Capital Contribution.** No Member may withdraw any capital from the capital of the Company except as expressly provided herein or under the Act.

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

ARTICLE 5
ALLOCATIONS

5.01 Profits and Losses. Subject to the special allocations provisions of Section 5.03 of this Agreement, the Members' distributive shares of the Profits or Losses of the Company for any Fiscal Year shall be as follows:

(a) **Profits.** Profits shall be allocated in the following order of priority:

(i) First, to the Members pro rata in accordance with their respective Unreturned Priority Return until the aggregate amounts allocated to the Members pursuant to this Section 5.01(a)(i) for such Fiscal Year and all previous Fiscal Years is equal to the Priority Return accrued to the Members from the commencement of the Company to a date thirty (30) days after the end of such Fiscal Year; and

(ii) Second, to the Members, pro rata in accordance with their respective Percentage Interests until the aggregate Profits allocated pursuant to this Section 5.01(a)(ii) equal the aggregate Losses allocated pursuant to Section 5.01(b) below for all previous Fiscal Years

(iii) The balance, to each Member pro rata in proportion with such Member's respective Percentage Interest..

(b) **Losses.** Losses of the Company shall be allocated to the Members pro rata in accordance with their respective adjusted Capital Accounts.

5.02 General Provisions.

(a) Except as otherwise provided in this Agreement, the Members' distributive shares of all items of Company income, gain, loss, and deduction are the same as their distributive shares of Profits and Losses.

(b) The Managers shall allocate Profits, Losses, and other items properly allocable to any period using any method permitted by Code Section 706 and the Regulations thereunder.

(c) To the extent permitted by Regulations Section 1.704-2(h) and Section 1.704-2(i)(6), the Managers shall endeavor to avoid treating distributions of Operating Cash Flow and of Sales and Refinancing Cash Flow as being from the proceeds of a Nonrecourse Liability or a Partner Nonrecourse Debt (as defined in Regulation Sections 1.704-2(b)(3) and 1.704-2(b)(4), respectively).

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

(e) The Members agree to report their shares of income and loss for federal income tax purposes in accordance with the provisions of this Article 5.

5.03 Special Provisions.

(a) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Article 5, if there is a net decrease in Partnership Minimum Gain (as defined in Regulation Section 1.704-2(d)) during any Fiscal Year, then each Member shall be allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Regulation Section 1.704-2(f) as is necessary to meet the requirements for a minimum gain chargeback as provided in that Regulation.

(b) **Partner Nonrecourse Debt Minimum Gain Chargeback.** Notwithstanding any other provision of this Article 5 except Section 5.03(a), if there is a net decrease in Partner Nonrecourse Debt Minimum Gain (as defined in accordance with Regulation Section 1.704-2(i)(3)) attributable to a Partner Nonrecourse Debt (as defined in Regulation Section 1.704-2(b)(4)) during any Fiscal Year, any Member who has a share of the Partner Nonrecourse Debt Minimum Gain attributable to such Partner Nonrecourse Debt determined in accordance with Regulation Section 1.704-2(i)(5), shall be

allocated such amount of income and gain for such year (and subsequent years, if necessary) determined under and in the manner required by Regulation Section 1.704-2(i)(4) as is necessary to meet the requirements for a chargeback of Partner Nonrecourse Debt Minimum Gain as is provided in that Regulation.

(c) **Qualified Income Offset**. If a Member unexpectedly receives any adjustment, allocation or distribution described in Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specifically allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Subsection shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in Section 5.01 and this Section 5.03 of this Agreement tentatively have been made as if this Subsection (c) were not in this Agreement.

(d) **Limitation on Losses**. Not withstanding anything else contained in this Agreement, Losses allocated to any Member pursuant to Section 5.01 of this Agreement shall not exceed the maximum amount of Losses that may be allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of the Fiscal Year for which the allocation is made.

(e) **Code Section 754 Adjustment.** To the extent that an adjustment to the Basis of any asset pursuant to Code Section 734(b) or Code Section 743(b) is required to be taken into account in determining Capital Accounts as provided in Regulation Section 1.704-1(b)(2)(iv)(m), the adjustment shall be treated (if an increase) as an item of gain or (if a decrease) as an item of loss, and such gain or loss shall be allocated to the Members consistent with the allocation of the adjustment pursuant to such Regulation.

(f) **Nonrecourse Deductions.** Nonrecourse Deductions (as determined under Regulation Section 1.704-2(c)) for any Fiscal Year shall be allocated among the Members in proportion to their Percentage Interests.

(g) **Partner Nonrecourse Deductions.** Any Partner Nonrecourse Deductions (as defined under Regulation Section 1.704-2(i)(2)) shall be allocated pursuant to Regulation Section 1.704-2(i) to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which it is attributable.

(h) **Purpose and Application.** The purpose and the intent of the special allocations provided for in this Section 5.03 are to comply with the provisions of Regulation Sections 1.704-1(b) and 1.704-2, and such special allocations are to be made so as to accomplish that result. However, to the extent possible, the Managers, in allocating items of income, gain, loss, or deduction among the Members, shall take into account the special allocations in such a manner that the net amount of allocations to each Member shall be the same as such Member's distributive share of Profits and Losses would have been had the events requiring the special allocations not taken place. The Managers shall apply the provisions of this Section 5.03 in whatever order the Managers reasonably believe will minimize any economic distortion that otherwise might result from the application of the special allocations.

5.04 Code Section 704(c) Allocations. Solely for federal, state, and local income tax purposes and not with respect to determining any Member's Capital Account, distributive shares of Profits, Losses, other items, or distributions, a Member's distributive share of income, gain, loss, or deduction with respect to any Property (other than money) contributed to the Company, or with respect to any Property the Asset Value of which was adjusted as provided in Article 1(d)(iii) of this Agreement upon the acquisition of an additional Interest in the Company by a new Member or existing Member in

exchange for a Capital Contribution, shall be determined in accordance with Code Section 704(c) and the Regulations thereunder or with the principles of such provisions.

5.05 Allocations Relating to Taxable Issuance of Interest. Any income, gain, loss or deduction realized, by the Company as a direct or indirect result of the issuance of an Interest by the Company (the "Issuance Items") shall be allocated among the Members, so that, to the extent possible, the net amount of such Issuance Items, together with all other allocations under this Agreement to each Member, shall be equal to the net amount that would have been allocated to each such Member if the Issuance Items had not been realized.

ARTICLE 6
DISTRIBUTIONS

6.01 Cash Flow From Operations. Except when the Company is in the process of dissolution and winding up as provided in Article 14 of this Agreement, no later than 30 days following the end of each calendar quarter, the Managers shall determine and distribute the Cash Flow from operations for such quarter, less reserves determined by the Managers in their sole and absolute discretion, to the Members as follows:

(a) First, for so long as Members Unreturned Priority Return is in excess of $0.00, 100% shall be distributed to the Members prorata in accordance with outstanding amount of their respective Unreturned Priority Return;

(b) The balance, if any to the Members pro rata in accordance with their respective Percentage Interests.

6.02 Cash Flow From Sales or Refinancing. Except when the Company is in the process of dissolution and winding up as provided in Article 14 of this Agreement, no later than 30 days following the end of each calendar quarter, the Managers shall determine and distribute the Cash Flow from sales or refinancing for such quarter, less reserves determined by the Managers in their sole and absolute discretion, to the Members as follows:

(a) First, for so long as Members Unreturned Priority Return is in excess of $0.00, 100% shall be distributed to the Members prorata in accordance with outstanding amount of their respective Unreturned Priority Return;

(b) The balance, if any to the Members pro rata in accordance with their respective Percentage Interests.

6.03 Division Among Members. If there is a change in a Member's Interest in the Company during a Fiscal Year, any distributions thereafter shall be made so as to take into account the varying Interests of the Members during the period to which the distribution relates in any manner chosen by the Managers that is provided in Code Section 706(d) and the Regulations thereunder.

ARTICLE 7
BOOKS, RECORDS, AND ACCOUNTING

7.01 Books and Records. The Company shall maintain at its principal place of business books of account that accurately record all items of income and expenditure relating to the business of the Company and that accurately and completely disclose the results of the operations of the Company. Such books of account shall be maintained on the method of accounting selected by the Managers according to generally accepted accounting principles consistently applied, and on the basis of the Fiscal Year. Each

Member, upon not less than seventy-two (72) hours advance written notice to the Managers, at such Member's own expense, shall have the right to inspect, copy, and audit the Company's books and records at any time during normal business hours without notice to any other Member.

7.02 Reports. Within seventy-five (75) days after the close of each Fiscal Year, the Managers shall furnish to each Member a copy of the income and loss statement and of the balance sheet of the Company for such Fiscal Year, and a statement disclosing all allocations of income, gain, loss, or deduction, items thereof among the Members and distributions made by the Company to the Members during such year. The statements of income and loss and balance sheets to be delivered hereunder may be unaudited in the sole discretion of the Managers.

7.03 Tax Returns. The Managers shall cause independent certified public accountants of the Company to prepare and timely file all income tax and other tax returns of the Company. The Managers shall furnish to each Member a copy of all such returns together with all schedules thereto and such other information which each Member may request in connection with such Member's own tax affairs.

7.04 Special Basis Adjustment. At the request of either the transferor or transferee in connection with a transfer of an Interest in the Company approved by the Members pursuant to Article 13 of this Agreement, the Managers shall cause the Company to make the election provided for in Code Section 754 and maintain a record of the adjustments to Basis of Property resulting from that election. Any such transferee shall pay all costs incurred by the Company in connection with such election and the maintenance of such records.

7.05 Tax Matters Partner.

(a) Gary J. Dragul is hereby designated the Tax Matters Partner (as defined in the Code) on behalf of the Company.

(b) Without the consent of the Managers, the Tax Matters Partner shall have no right to extend the statute of limitations for assessing or computing any tax liability against the Company or the amount of any Company tax item.

(c) If the Tax Matters Partner elects to file a petition for readjustment of any Company tax item (in accordance with Code Section 6226(a)) such petition shall be filed in the United States Tax Court unless the Managers agree otherwise.

(d) The Tax Matters Partner shall, within ten (10) business days of receipt thereof, forward to each Member a photocopy of any correspondence relating to the Company received from the Internal Revenue Service. The Tax Matters Partner shall, within ten (10) business days thereof, advise each Member in writing of the substance of any conversation held with any representative of the Internal Revenue Service.

(e) Any reasonable costs incurred by the Tax Matters Partner for retaining accountants and/or lawyers on behalf of the Company in connection with any Internal Revenue Service audit of the Company shall be expenses of the Company. Any accountants and/or lawyers retained by the Company in connection with any Internal Revenue Service audit of the Company shall be selected by the Tax Matters Partner and the fees therefor shall be expenses of the Company.

7.06 Bank Accounts. The Managers shall establish and maintain one or more separate accounts in the name of the Company in one or more federally insured banking institutions of its choosing into which shall be deposited all funds of the Company and from which all Company expenditures and other disbursements shall be made. Unless otherwise decided by the Managers, funds may be withdrawn

from such accounts on the signatures of any Manager, individually and not collectively, or such other Person or Persons that the Managers shall determine.

ARTICLE 8
MANAGEMENT

8.01 Management. The business and affairs of the Company shall be managed by the designated Managers. The Managers shall direct, manage and control the business of the Company to the best of such Managers' ability and shall have full and complete authority, power and discretion to make any and all decisions and to do any and all things which the Managers shall deem to be reasonably required in light of the Company's business and objectives.

8.02 Number, Tenure and Qualifications. There shall be only one Manager of the Company. The initial Manager, Gary J. Dragul, shall hold office until his death or until such time as he shall become incapacitated at which time Shelly R. Dragul shall become Manager.

8.03 Certain Powers of Managers. Without limiting the generality of Section 8.01, unless expressly provided to the contrary herein, the Managers shall have power and authority, only upon unanimous decision of each of the Managers, on behalf of the Company:

(a) To acquire property from any Person as the Managers may determine. The fact that a Member is directly or indirectly affiliated or connected with any such Person shall not prohibit the Managers from dealing with that Person;

(b) To borrow money on behalf of the Company from banks, other lending institutions, the Members, or affiliates of the Members on such terms as they deem appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in the assets of the Company to secure repayment of the borrowed sums. Except as otherwise provided in the Act, no debt shall be contracted or liability incurred by or on behalf of the Company except by the Company's Managers;

(c) To purchase liability and other insurance to protect the Company's Property and business;

(d) To hold and own any and all Company Property on behalf of and in the name of the Company;

(e) To invest any Company funds temporarily (by way of example but not limitation) in time deposits, short-term governmental obligations, commercial paper or other investments;

(f) To sell or otherwise dispose of all or substantially all of the assets of the Company as part of a single transaction or plan so long as such disposition is not in violation of or a cause of a default under any other agreement to which the Company may be bound;

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

(h) To employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;

(i) To enter into any and all other agreement on behalf of the Company, with any other Person for any purpose, in such forms as the Managers may approve; and

(j) To do and perform all other acts as may be necessary or appropriate to the conduct of the Company's business.

Unless authorized to do so by this Operating Agreement or by the Managers of the Company, no Member, agent, or employee of the Company shall have any power or authority to bind the Company in any way, to pledge its credit or to render it liable pecuniarily for any purpose. However, the Managers may act by a duly authorized attorney-in-fact.

8.04 Liability for Certain Acts. A Manager of the Company shall perform such Manager's duties, including duties as a member of any committee upon which such Manager may serve, in good faith, in a manner such Manager reasonably believes to be in the best interests of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. A Person who so performs such Person's duties shall not have any liability by reason of being or having been a Manager of the Company.

In performing the duties of a Manager, a Manager shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by persons and groups listed in Subsections (a), (b) and (c) of this Section 8.04 unless such Manager has knowledge concerning the matter in question that would cause such reliance to be unwarranted:

(a) one or more employees or other agents of the Company whom the Manager reasonably believes to be reliable and competent in the matters presented;

(b) counsel, public accountants, or other persons as to matters that the Manager reasonably believes to be within such persons' professional or expert competence; or

(c) a committee, upon which such Manager does not serve, duly designated in accordance with the provisions of this Operating Agreement, as to matters within its designated authority, which committee the Manager reasonably believes to merit confidence.

A Manager does not, in any way, guarantee the return of the Members' Capital Contributions or a profit for the Members from the operations of the Company. A Manager shall not be responsible to any Members because of a loss of their investment in the Company or a loss in the operations of the Company, unless the loss shall have been the result of the Manager not acting in good faith as provided in this Section. A Manager shall incur no liability to the Company or to any of the Members as a result of engaging in any other business or venture. Managers shall be entitled to any other protection afforded to Managers under the Act.

8.05 Managers Have No Exclusive Duty to Company. A Manager shall not be required to manage the Company as such Manager's sole and exclusive function, and each Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Neither the Company nor any Member shall have any right, by virtue of this Agreement, to share or participate in such other investments or activities of any Manager or to the income or proceeds derived therefrom.

8.06 Indemnity of the Managers, Employees or Agents.

(a) The Company shall indemnify every member, manager, employee and agent in respect to the payments made and personal liabilities reasonably incurred by that member, manager, employee or agent in the ordinary and proper conduct of the Company's business or property.

(b) The Company may purchase and maintain insurance on behalf of a person who is or was a manager, employee, fiduciary, or agent of the Company or who, while a manager, employee, fiduciary, or agent of the Company, is or was serving at the request of the Company as manager, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic limited liability company or any corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of this Article. Any such insurance may be procured from any insurance company designated by the Members of the Company holding a Majority in Interest, whether such insurance company is formed under the laws of the State of Colorado or any other jurisdiction of the United States or elsewhere.

(c) Any indemnification of or advance of expenses to a manager in accordance with this Article, if arising out of a proceeding by or on behalf of the Company, shall be reported in writing to the Members with or before the notice of the next Members' meeting.

(d) The indemnification set forth in this Article shall in no event cause the Members to incur any liability, or result in any liability of the Members to any third party, beyond those liabilities specifically enumerated in the Articles of Organization, the Act or this Agreement.

8.07 Transactions with Company or Otherwise. Any of the Managers, or any agent, servant, or employee of any of the Managers, may engage in and possess any interest in other businesses or ventures of every nature and description, independently or with other Persons, whether or not directly or indirectly in competition with the business or purpose of the Company, and neither the Company nor any of the Members shall have any rights, by virtue of this Agreement or otherwise, in and to such independent ventures or the income or profits derived therefrom, or any rights, duties, or obligations in respect thereof. The Managers may lend money to, act as surety for, and transact other business with the Company and shall have the same rights and obligations with respect thereto as a Person who is not a Manager of the Company, except that nothing contained in this Section shall be construed to relieve a Manager from any duties to the Company.

8.08 Regular Meetings. A regular meeting of the Managers shall be held without the requirement of any other notice immediately after, and at the place as determined by the Managers. The Managers may provide, by resolution, the time and place, either within or without the State of Colorado, for the holding of additional regular meetings without notice other than such resolution.

8.09 Special Meetings. Special Meetings of the Managers shall be called by or at the request of any Manager. The Persons calling the special meetings of the Managers may fix any place, either within or without the State of Colorado, as the place for holding any special meeting of the Managers.

8.10 Notice. Written notice of any special meeting of Managers shall be given to every Manager at least twenty-four (24) hours prior to such meeting.

Any Manager may waive notice of any meeting. The attendance of a Manager at any meeting shall constitute a waiver of notice of such meeting, except where a Manager attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Managers need be specified in the notice or waiver of notice of such meeting.

When any notice is required to be given to a Manager, a waiver thereof in writing signed by such Manager, whether before, at, or after the time stated therein, shall constitute the giving of such notice.

8.11 Quorum. All of the Managers fixed by or pursuant to Section 8.02 of this Agreement shall constitute a quorum for the transaction of business at any meeting of the Managers, but if less than all of the Managers are present at a meeting, a majority of the Managers present may adjourn the meeting from time to time without further notice.

8.12 Manner of Acting. In all actions to be taken by the Managers pursuant to this Agreement, unless expressly provided to the contrary herein, the signature of any one manager shall be sufficient to evidence said act and each individual manager may act unilaterally on behalf of the Company and said Manager's act shall be valid and binding upon the Company.

8.13 Informal Act by Managers. Any action required or permitted to be taken at a meeting of the Managers or of any committee designed by said Managers may be taken without a meeting if the action is evidenced by the signature of the number of Managers that would be required to approve such action at a meeting of the Managers at which all Managers were represented in person or by proxy, describing the action taken, and delivered to the Person having custody of the Company records for inclusion in the minutes or for filing with the records. Such consent has the same force and effect as a vote of the Managers or committee members and may be stated as such in any document.

8.14 Participation by Electronic Means. Any Manager or any committee designated by the Managers may participate in a meeting of the Managers or committee by means of telephone conference or similar communications equipment by which all Persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

8.15 Resignation. Any Manager of the Company may resign at any time by giving written notice to the Members of the Company. The resignation of any Manager shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.16 Removal. A Manager cannot be removed by the vote of the Members holding a Majority in Interest. The initial Manager, Gary J. Dragul, shall remain Manager until his death or until he becomes incapacitated, at which time Shelly R. Dragul shall become sole Manager.

8.17 Salaries. The salaries and other compensation of the Managers shall be fixed from time to time by an affirmative vote of Members holding at least a Majority In Interest, and no Manager shall be prevented from receiving such salary by reason of the fact that such Manager is also a Member of the Company.

8.18 Committees. The Managers may, by resolution adopted by all of the Managers, designate two or more Managers to constitute a committee, any of which shall have the authority in the management of the Company as the Managers shall designate.

8.19 Presumption of Assent. A Manager of the Company who is present at a meeting of the Managers or committee thereof at which action on any matter is taken shall be presumed to have assented to the action taken unless such Manager objects at the beginning of such meeting to the holding of the meeting or to the transacting of business at the meeting, unless such Manager's dissent is entered in the minutes of the meeting, or unless such Manager shall file such Manager's written dissent to such action with the presiding Manager of the meeting before the adjournment thereof or shall forward such dissent

by registered mail to the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Manager who voted in favor of such action.

8.20 Prohibition Against Publicly Traded Partnership. The Manager shall take all action necessary to prevent the Company from qualifying as a publicly traded partnership with the meaning of Code Section 7704, including, without limitation, limiting the number of Members to less than 500 in compliance with the safe harbor under IRS Notice 88-75.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

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

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

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

(c) To the best of such Member's knowledge, neither the execution of nor the compliance with this Agreement has resulted or will result in a default under, or will create, any encumbrance on the Property, and there is no action pending or threatened which questions the validity or enforceability of this Agreement as to such Member.

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

(e) The Interests to be acquired hereunder are being acquired by the Member for investment only and for such Member's own account; no Person other than the Member has or shall have any beneficial interest in the Interests; and the Member has no present intention of distributing, reselling or assigning the Interests.

(f) Such Member understands that the Interests have not been registered under the Securities Act or under the laws of any jurisdiction; that the Company does not intend and is under no obligation to so register the Interests; that the Interests may not be sold, assigned, pledged or otherwise transferred except upon delivery to the Company of an opinion of counsel satisfactory to the Managers that registration under the Securities Act is not required for such transfer, or the submission to the Managers of such other evidence as may be satisfactory to the Managers, to the effect that any such transfer will not be in violation of the Securities Act, applicable state securities laws or any rule or regulation promulgated thereunder; and that legends to the foregoing effect will be placed on all documents evidencing the Interests. The Member understands that the foregoing does not limit other restrictions regarding the transfer of its Interests set forth in this Agreement or in the Act.

(g) Such Member is aware that the investment in the Company involves a high degree of risk, limited liquidity and substantial restrictions on transferability.

(h) Such Member is able to bear the economic risk of its investment in the Company and the loss of all or substantially all of such investment.

(i) Such Member, either itself or through its shareholders, partner or advisors, is sophisticated and experienced in investment matters, and, as a result, is in a position to evaluate the merits and risks of an investment in the Company.

(j) Such Member has made, and is solely responsible for making, its own independent evaluation of the economic, credit and other risks involved in its investment in the Company and its own independent decision to make such investment; such Member has been given the opportunity to ask questions of, and receive answers from, the Company with respect to the business to be conducted by the Company, the financial condition and capital of the Company and the terms and conditions of the offering of the Interests; and such Member has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information that was provided in order for such Member to evaluate the merits and risks of investment in the Company to the extent that the Company possesses such information or can acquire it without unreasonable effort or expense; such Member has been furnished with a copy of the Articles of Organization, this Agreement, to which it is a party, and any other documents that such Member has deemed necessary and requested in connection with its evaluation of the offering of the Interests in the Company, and has relied solely on such Member's own independent evaluation of the economic, credit and other risks involved in its investment in the Company in making such Member's investment decision.

ARTICLE 10
RIGHTS AND OBLIGATIONS OF MEMBERS

10.01 Limitation of Liability. Each Member's liability shall be limited as set forth herein and in the Act and other applicable law.

10.02 Company Debt Liability. A Member will not personally be liable for any debts or losses of the Company, except as provided in the Act.

10.03 List of Members. Upon written request of any Member, the Managers shall provide a list showing the names, addresses and Percentage Interests of all Members in the Company.

10.04 Approval of Sale of All Assets. The Members shall not have the right to approve the sale, exchange or other disposition of all, or substantially all, of the Company's assets which is to occur as part of a single transaction or plan.

10.05 Company Books. The Managers shall maintain and preserve, during the term of the Company, and for five (5) years thereafter, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

10.06 Priority and Return of Capital. Except as specifically provided herein, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or distributions; provided that this Section shall not apply to loans (as distinguished from Capital Contributions) which Member has made to the Company.

10.07 Loans by Members to Company. With the consent of the Managers, any Member may loan money to, act as surety for, or transact other business with the Company, and, subject to other applicable laws, shall have the same rights and obligations with respect thereto as a Person who is not a Member, but no such transaction shall be deemed to constitute a Capital Contribution to the Company and shall not increase the Capital Account of any Member engaging in any such transaction. Unless the Members agree to the contrary, the terms of any such loan must be no less favorable to the Company than

the terms that would apply with respect to a loan of a similar amount for a similar purpose by an unrelated lending institution.

10.08 Outside Activity. Each Member, including but not limited to the Managers, may engage in any capacity (as owner, employee, consultant, or otherwise) in any activity, whether or not such activity competes with or is benefitted by the business of the Company, without being liable to the Company or the other Members for any income or profit derived from such activity. No Member shall be obligated to make available to the Company or any other Member any business opportunity of which such Member is or becomes aware.

ARTICLE 11
MEETINGS OF MEMBERS

11.01 Annual Meeting. Notwithstanding anything herein to the contrary, the Company shall have no annual meetings.

11.02 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by any Manager or by any Member or Members holding at least 10% of the Percentage Interests.

11.03 Place of Meetings. The voting Members may designate any place, either within or outside the State of Colorado, as the place of meeting for any meeting of the Members. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal business office of the Company in the State of Colorado.

11.04 Notice of Meetings. Except as otherwise provided for herein, written notice stating the place, day and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Managers or Person calling the meeting, to each Member entitled to vote at such meeting.

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

11.06 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is sent or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

11.07 Quorum. Members holding at least a Majority In Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Percentage Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. The Members

present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of Members owning that number of Percentage Interests whose absence would cause less than a quorum.

11.08 Manner of Acting. If a quorum is present, the affirmative vote of all Members, whether present or not present, holding at least a Majority In Interest and entitled to vote on the subject matter shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization, or by this Operating Agreement.

11.09 Proxies. At all meetings of Members, a Member may vote in person or by proxy executed in writing by the Member or by a duly authorized attorney-in-fact. Such proxy shall be filed with the Managers of the Company before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Any voting Member participating in a meeting of the Members by means of telephone conference or similar communications equipment by which all Persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

11.10 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by the Members holding the number of Percentage Interests that would be required to approve such action at a meeting of the Members at which all Members were represented in person or by proxy and delivered to the Managers of the Company for inclusion in the minutes or for filing with the Company records. Action taken under this Section 11.10 is effective when all Members holding the number of Percentage Interests that would be required to approve such action at a meeting of the Members at which all Members were represented in person or by proxy have signed the consent, unless the consent specifies a different effective date.

The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

11.11 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the Managers or any voting Member shall demand that voting be by ballot.

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

ARTICLE 12
TRANSFERABILITY

12.01 Restrictions on Transferability. No transfer of all or any part of a Member's Interest in the Company (including the transfer of any rights to receive or share in profits, losses, income or the return of contributions; a pledge or hypothecation of an Interest; or transfer by way of sale, give, exchange, assignment, devise or bequest) (collectively, a "Transfer") shall be effective unless and until written notice (including the name and address of the proposed purchaser, transferee or assignee and the date of such Transfer) has been provided to the Company and the Managers. A sale by a Member of all or substantially all of its assets or all or substantially all of its stock if such Member is a publicly traded corporation, a merger of a Member with another corporation or other entity, the transfer of twenty-five percent (25%) or more of the stock in a corporate Member whose stock is not publicly traded, or transfer of twenty-five percent (25%) or more of the beneficial ownership interest in a partnership or limited liability company Member shall constitute a Transfer, which is restricted hereunder. Notwithstanding anything contained herein to the contrary, if the Managers do not approve of the proposed Transfer by

written consent, which may be withheld in their sole discretion, the proposed purchaser, transferee or assignee of the selling Member's Interest shall have no right to participate in the management of the business and affairs of the Company or to become a Substitute Member and the transferor and transferee of said Interest shall be in default hereof. The purchaser, transferee or assignee shall be entitled only to receive the share of profits or other compensation by way of income and the return of contributions to which that purchaser, transferee or assignee would otherwise be entitled.

12.02 Restrictions on Resignation. Notwithstanding anything to the contrary contained herein or under the Act, no Member shall have the right to resign from the Company. In the event a Member does resign in violation of the foregoing provision, (i) the Company shall not be obligated to pay any amounts to the Member, nor to distribute any of the Property to the Member or any interest therein, (ii) the Member shall be deemed to have forfeited any rights to legal or beneficial ownership of his Interest, and (iii) the Company may recover from the resigning Member damages for breach of this Agreement.

12.03 Right of First Refusal. If any Member desires to assign or otherwise transfer all or any portion of such Member's Company Interest (the "Offered Interest"), the Member desiring to so transfer the Offered Interest (the "Selling Member") shall give written notice (the "Offering Notice") to the Managers of the Selling Member's intention to so transfer. The Offering Notice shall specify the Offered Interest to be transferred, the consideration to be received therefor, the identity of the proposed purchaser, and the exact terms upon which the Selling Member intends to so transfer. For one hundred twenty (120) days after the effective date of the Offering Notice (the "Review Period"), the Managers shall have the option to elect to purchase from the Selling Member all (but not less than all) of the Offered Interest at the same price and on the same terms as are specified in the Offering Notice by delivering to the Selling Member a written offer to purchase the Offered Interest. If the Managers elect to so purchase all of the Offered Interest within the time period specified, then the purchase by the Managers of the Offered Interest shall be consummated at the principal place of business of the Company on the terms and conditions set forth in the Offering Notice. At the closing, the Selling Member shall deliver the Offered Interest free and clear of all liens, security interest and competing claims (other than security interest granted in favor of the Managers) and shall deliver to the Managers such instruments of transfer and such evidence of due authorization, execution and delivery and of the absence of any such liens, security interest or competing claims as the Managers reasonably request. If, within the Review Period the Managers fail to timely and validly offer to purchase all of the Offered Interest, then the Selling Member may, within ninety (90) days after the expiration of such thirty (30) day period, transfer the Offered Interest to the person or entity identified in the Offering Notice on the same terms and conditions and at the same price specified in the Offering Notice. If the Selling Member fails to so transfer the Offered Interest within such ninety (90) day period, then, prior to transferring the Offered Interest, the Selling Member shall resubmit an Offering Notice in accordance with the provisions of this Section and shall comply with the other terms of this Section. Notwithstanding anything in this Section 12.03 to the contrary, all transfers pursuant to this Section 12.03 are subject to the restrictions set forth in Section 12.01 hereof.

ARTICLE 13
ADMISSION OF ADDITIONAL MEMBERS

From the date of the formation of the Company, with the written consent of the Managers, and subject to applicable laws, any Person may, subject to the terms and conditions of this Agreement: (a) become an additional Member in this Company by the sale of new Interests for such consideration as the Managers shall determine, or (b) become a Substitute Member as a transferee of a Member's Interest or any portion thereof.

ARTICLE 14
DISSOLUTION AND TERMINATION

14.01 Dissolution.

(a) The Company shall be dissolved upon the occurrence of any of the following events ("Dissolution Event"): by the written agreement of all of the Managers.

(b) As soon as possible following the occurrence of any of the events specified in this Section effecting the dissolution of the Company, the appropriate representative of the Company shall execute a statement of intent to dissolve in such form as shall be prescribed by the Colorado Secretary of State and file duplicate originals of the same with the Colorado Secretary of State's office.

14.02 Effect of Filing of Dissolving Statement. Upon the filing with the Colorado Secretary of State of a statement of intent to dissolve, the Company shall cease to carry on its business, except insofar as may be necessary for the winding up of its business, but its separate existence shall continue until articles of dissolution have been filed with the Secretary of State or until a decree dissolving the Company has been entered by a court of competent jurisdiction.

14.03 Distribution of Assets Upon Dissolution. In settling accounts after dissolution, the liabilities of the Company shall be entitled to payment in the following order:

(a) to creditors, in the order of priority as provided by law (except to Members on account of their Capital Contributions);

(b) to Members and former Members in satisfaction of liabilities for distributions under Section 7-80-601 or 7-80-603 of the Act;

(c) to the Members pro rata in accordance with their respective Percentage Interests until the Members have received an amount which, when aggregated with all previous distributions to the Members pursuant to Sections 6.01(a) and 6.02(a) above, causes the Unreturned Priority Return to equal $0.00;

(d) to the Members pro rata in accordance with their respective Percentage Interests until the Members have received an amount which, when aggregated with all previous distributions to the Members pursuant to Section 6.01(b) and 6.02(b) above, causes the Unreturned Capital to equal $0.00; and

(e) to Members pro rata in accordance with the positive balances in their Capital Accounts after taking into account all adjustments to the Capital Accounts for all periods.

14.04 Articles of Dissolution. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining Property and assets have been distributed to the Members, articles of dissolution shall be executed in duplicate and verified by the Person signing the articles, which articles shall set forth the information required by the Act.

14.05 Filing of Articles of Dissolution.

(a) Duplicate originals of such articles of dissolution shall be delivered to the Colorado Secretary of State.

(b) Upon the filing of the articles of dissolution, the existence of the Company shall cease, except for the purpose of suits, other proceedings and appropriate action as provided in the Act. The Managers shall thereafter be trustees for the Members and creditors of the Company and as such shall

have authority to distribute any Company Property discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the Company.

14.06 Winding Up. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of its Capital Contribution. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member. The winding up of the affairs of the Company and the distribution of its assets shall be conducted exclusively by the Managers, who are hereby authorized to take all actions necessary to accomplish such distribution, including without limitation, selling any Company assets the Managers deem necessary or appropriate to sell.

14.07 No Restoration of Deficit Capital Accounts. If the Company is deemed to be liquidated for federal income tax purposes within the meaning of Regulation Section 1.704-1(b)(2)(ii)(g), distributions under Section 14.03(c), (d) and (e) shall be made in compliance with Regulation Section 1.704-1 (b)(2)(ii)(b)(2) to those Members who have positive Capital Accounts. If the Capital Account of any Member has a deficit balance after such distributions (after giving effect to all contributions, distributions, and allocations for all taxable years), such Member shall have no obligation to make any contribution to the capital of the Company with respect to such deficit and such deficit shall not be considered a debt owed to the Company or any other Person for any purpose whatsoever. In the discretion of the Managers, a pro rata portion of the amounts that otherwise would be distributed to the Members under this Article may be withheld to provide a reasonable reserve for unknown or contingent liabilities of the Company.

14.08 Deemed Liquidation. If no Dissolution Event has occurred, but the Company is deemed liquidated for federal income tax purposes within the meaning of Regulation Section 1.704-1 (b)(2)(ii)(g), the Company shall not be wound up and dissolved but its assets and liabilities shall be deemed to have been distributed to the Members and contributed to a new Company which shall operate and be governed by the terms of this Agreement.

14.09 Notice of Dissolution. Within thirty (30) days after the happening of a Dissolution Event, the Managers shall give written notice thereof to each of the Members, to all creditors of the Company, to the banks and other financial institutions with which the Company normally does business, and to all other parties with whom the Company regularly conducts business, and shall publish notice of dissolution in a newspaper of general circulation in each place in which the Company generally conducts business.

ARTICLE 15
DEFAULT AND REMEDIES

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

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

City and County of Denver or any other court of competent jurisdiction, at the option of the Non-Delinquent Member.

15.03 Additional Remedies for Operating Shortfalls. In the event that a Member fails to make all or any portion of and Additional Capital Contribution (the "Delinquent Contribution") required of such Member pursuant to Section 4.03 by the time required thereunder (the "Delinquent Member"), said Member shall be in default of this Agreement and, in addition to and not in limitation of a Member's rights pursuant to this Section 15, the other Members shall have the right to take any or all of the following actions:

(a) To advance in any proportion the amounts necessary to make the payment due from the Member who has failed to make it (a "Delinquency Loan"). Such advances with interest thereon at 18% per annum shall be repaid to the advancing Member from the first available funds produced from the Property prior to the distribution of any funds to any of the Members.

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

(c) After a Member has been a Delinquent Member for ninety (90) days, to contribute to the Company an amount equal to the then outstanding balance of the Delinquent Contribution, plus any interest accrued thereon (the "Contribution"), either by a cancellation of the Delinquent Member's obligations under any Delinquency Loan as a result of the Delinquent Member's delinquency, by a contribution of cash, or by a combination of both by a Member (a "Contributing Member"). The Percentage Interests of the Members shall then be adjusted accordingly, such that the Delinquent Member's Percentage Interest shall be reduced by an amount (the "Reduction Amount") equal to a fraction, the numerator of which is the aggregate amount of the Contribution times one and one-half (1½) and the denominator of which is the aggregate amount of all Investments made by the Members, and the Percentage Interest of the Contributing Members shall be increased by the total percentage by which the Delinquent Member's Percentage Interest was reduced as provided above.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.01 Notices. Any notice or communication required or permitted to be given by any provision of this Agreement, including but not limited to any consents, shall be in writing and shall be deemed to have been given and received by the Person to whom directed (a) when delivered personally to such Person or to an officer or partner of the Member to which directed, (b) twenty-four (24) hours after transmitted by facsimile, evidence of transmission attached, to the facsimile number of such Person who has notified the Company and all of the Members of its facsimile number, or (c) three (3) business days after being posted in the United States mails if sent by registered or certified mail, return receipt requested, postage and charges prepaid, or one (1) business day after deposited with overnight courier, return receipt requested, delivery charges prepaid, in either case addressed to the Person to which directed at the address of such Person as it appears in this Agreement or such other address of which such Person has notified the Company and all of the Members.

16.02 Application of Colorado Law. This Agreement, and the application of interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Colorado, and specifically the Act.

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

16.04 Amendments. Any amendment to this Operating Agreement may be proposed to the Members by Members holding not less than a Majority In Interest. A vote on an amendment to this Operating Agreement shall be taken within thirty (30) days after notice thereof has been given to the Members unless such period is otherwise extended by applicable laws, regulations, or agreement of the Members. A proposed amendment shall become effective at such time as it has been approved by a Majority in Interest of the Members and the Manager.

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

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

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

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

16.09 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

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

16.11 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditors of the Company.

16.12 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

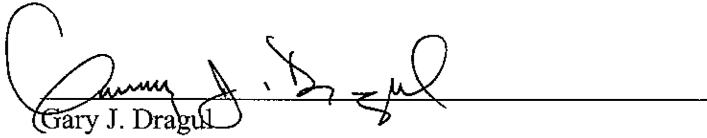
16.13 Further Assurances. The Members and the Company agree that they and each of them will take whatever action or actions as are deemed by counsel to the Company to be reasonably necessary or desirable from time to time to effectuate the provisions or intent of this Agreement, and to that end, the Members and the Company agree that they will execute, acknowledge, seal, and deliver any further instruments or documents which may be necessary to give force and effect to this Agreement or any of the provisions hereof, or to carry out the intent of this Agreement or any of the provisions hereof.

16.14 Entire Agreement. This Agreement and each of the exhibits attached hereto set forth all (and are intended by all parties hereto to be an integration of all) of the promises, agreements, conditions, understandings, warranties, and representations among the parties hereto with respect to the Company; and there are no promises, agreements, conditions, understandings, warranties, or representations, oral or written, express or implied, among them other than as set forth herein.

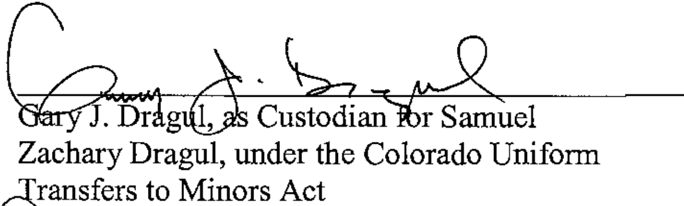
16.15 Attorneys' Fees. Should any party hereto institute any action or proceeding in court to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys' fees and all court costs in connection with said proceeding.

CERTIFICATE

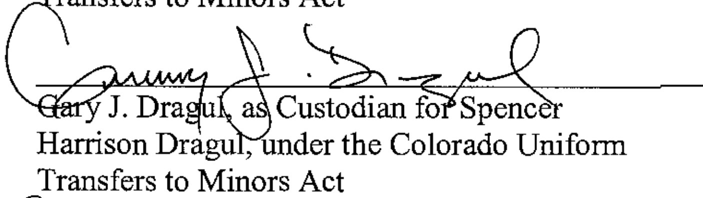
The undersigned hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the Operating Agreement of SSC 02, LLC adopted by the Members of the Company as of April 22, 2002.



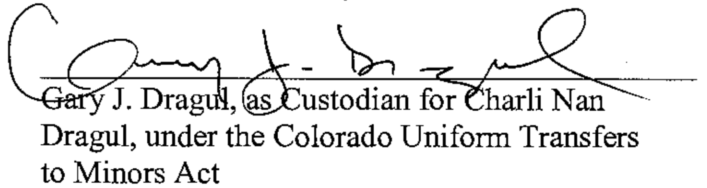
Gary J. Dragul



Gary J. Dragul, as Custodian for Samuel Zachary Dragul, under the Colorado Uniform Transfers to Minors Act



Gary J. Dragul, as Custodian for Spencer Harrison Dragul, under the Colorado Uniform Transfers to Minors Act



Gary J. Dragul, as Custodian for Charli Nan Dragul, under the Colorado Uniform Transfers to Minors Act

EXHIBIT A

NAMES, ADDRESSES, INITIAL CAPITAL CONTRIBUTIONS
AND PERCENTAGE INTERESTS OF MEMBERS

Name and Address	Initial Capital Contribution	Percentage Interest
Gary J. Dragul 9521 E. Maplewood Circle Englewood, CO 80111		1%
Samuel Zachary Dragul 9521 E. Maplewood Circle Englewood, CO 80111		33%
Spencer Harrison Dragul 9521 E. Maplewood Circle Englewood, CO 80111		33%
Charli Nan Dragul 9521 E. Maplewood Circle Englewood, CO 80111		33%
TOTALS	**$1,000.00**	**100%**

To: Alan C. Fox[Alan@acfpm.com]; Lauren Hunsaker[Lauren@acfpm.com]
From: Susan Markusch
Sent: Tue 7/23/2019 5:16:43 PM
Importance: Normal
Subject: SSC 02, LLC
MAIL_RECEIVED: Tue 7/23/2019 5:17:44 PM
Articles of Amendment.pdf

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

Dear Alan and Lauren:
Please find attached The Articles of Amendment filed with the State of Colorado that states Shelly R. Dragul is the manager of SSC 02, LLC.

Also, the wire instructions for SSC 02, LLC are below:

Academy Bank
10900 East Briarwood Avenue
Centennial, CO 80112
ABA :# 107001481

SSC 02, LLC
8480 East Orchard Road, Suite 6500
Greenwood Village, CO 80111
Acct : 9202997536

Thank you,
Susan Markusch
303-929-4321

EXHIBIT 6

MEMBERSHIP INTEREST PURCHASE, ASSIGNMENT AND ASSUMPTION AGREEMENT AND RELEASE

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

This Membership Interest Purchase, Assignment and Assumption Agreement and Release (this "Agreement") dated as of July 1, 2019 (the "Effective Date"), is made by and between **SSC 02, LLC** ("Assignor") and **The Alan C. Fox Revocable Trust dated December 2, 1999** ("Assignee").

RECITALS

A. Assignor previously purchased a **0.115%** member interest (the "Interests") in **College Marketplace 16, LLC**, an Arkansas limited liability company, a **0.221%** member interest in **Fenton Commons 16, LLC**, a Colorado limited liability company, and a **0.581%** member interest in **Kenwood Pavilion 14 A, LLC,** a Delaware limited liability company (the "Companies").

B. The Companies are governed pursuant to those certain Operating Agreements of College Marketplace 16, LLC, dated May 16, 2016, Fenton Commons 16, LLC, dated March 11, 2016, and Kenwood Pavilion 14 A, LLC, dated July 23, 2014 (the "Operating Agreements").

C. Assignor wishes to sell, assign, transfer and convey the Interests to Assignee, and Assignee wishes to purchase the Interests and assume the obligations associated with the Interests, subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the respective representations, warranties, covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. PURCHASE AND SALE OF THE INTEREST

1.1 Sale and Assignment of Interest. On and subject to the terms and conditions of this Agreement, Assignor hereby sells, transfers, conveys and assigns to Assignee, and Assignee here by purchases from Assignor, the Interests for the consideration specified in Section 1.2.

1.2 Purchase Price. The aggregate purchase price for the Interests (the "Purchase Price") to be tendered by Assignee on or before **July 31, 2019,** following the execution and delivery of this Agreement by the parties is **$60,000.00** (Sixty Thousand and no/100 Dollars).

2. ASSIGNMENT AND ASSUMPTION

2.1 Effect of Transfer and Withdrawal. As of the Effective Date, any and all capital accounts of Assignor in respect of the Interest shall be transferred to Assignee. The portion of the profits and losses of Assignor and portions of all other items of income, gain, loss, deduction and credit allocable to the Interest shall be credited or charged for the period from and after the

EXHIBIT 7

RECEIVED JUL 24 2019

Effective Date, as the case may be, to Assignee and not to Assignor. Assignee shall be entitled to all distributions or payments in respect of the Interest made on or after the Effective Date, regardless of the source of those distributions or payments or when the same was earned or received by Assignee. Assignee hereby assumes and shall be responsible for all liabilities and obligations (including all capital contributions) in respect of the Interest after the Effective Date.

2.2 Continuation of the Company. Assignor, Assignee and the Companies agree that: (a) neither the sale, transfer, conveyance or assignment of the Interest, nor Assignor's dissociation as a member of the Companies in respect of the Interests, as provided in this Agreement will dissolve the Companies; and (b) the Companies shall continue to exist as a limited liability companies under the Laws (as defined below) of the State of its organization.

3. REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Assignor. Assignor represents and warrants to Assignee that the statements contained in this Sections 3.2 to 3.6 are true, correct and complete as of the Effective Date.

3.2 The Interests. Assignor holds of record and owns beneficially the Interest, free and clear of any lien, claim or encumbrance (an "Encumbrance") (other than restrictions on transfer under the Operating Agreement, the Securities Act of 1933, as amended, or state securities laws). Assignor is not a party to any Contract (as defined below) (other than this Agreement and the Operating Agreement) that could require Assignor to sell, transfer, or otherwise dispose of any ownership interest in the Interest. Assignor is not a party to any other Contract with respect to any ownership interest in the Interest.

3.2 Capacity and Enforceability. Assignor has the relevant capacity necessary to execute and deliver this Agreement and to perform and consummate the transactions contemplated hereby (the "Transaction"). Assignor has taken all action necessary to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the Transaction. This Agreement has been duly executed and delivered by Assignor, and is enforceable against Assignor in accordance with its terms except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium or other Laws (as defined below) relating to or affecting rights of creditors and general principles of equity.

3.3 No Violation; Necessary Approvals. The execution and delivery by Assignor of this Agreement, the performance of Assignor hereunder, and the consummation of the Transaction by Assignor: (i) will not with or without notice or lapse of time, constitute, create or result in a breach or violation of, default under loss of benefit or right under or acceleration of performance of any obligation required under any (A) law (statutory, common or otherwise), constitution, ordinance, rule, regulation, executive order or other similar authority ("Law") enacted, adopted, promulgated or applied by any legislature, agency, bureau, branch, department, division, commission, court, tribunal or other similar recognized organization or body of any federal state, county, municipal, local or foreign government or other similar recognized organization or body exercising similar power or authority (a "Governmental Body"), (B) order, ruling, decisions, award, judgment, injunction ("Order") or similar determination or finding by, before or under the supervision of any Governmental Body or arbitrator, (C) contract, agreement, arrangement,

commitment, instrument, document or similar understanding (whether written or oral) ("Contract") or permit, license, certificate, waiver, notice and similar authorization ("Permit") to which, in the case of (A), (B) or (C), Assignor is a party or by which it is bound or any of its assets are subject; (ii) does not result in the imposition of any Encumbrance upon the assets owned by Assignor; (iii) does not require any consent under any Contract to which Assignor is a party or by which it is bound or any of its assets are subject; (iv) does not require any Permit under any Law or Order other than notifications or other filings with state or federal regulatory agencies after the Closing that are necessary or convenient and do not require approval of the agency as a condition of the validity of the Transaction; and (v) does not violate any rights of first refusal, preferential purchase or similar rights with respect to the Interest.

3.4 Brokers' Fees. Assignor has no liability or obligation to pay any compensation to any broker, finder or agent with respect to this Transaction for which Assignee could become directly or indirectly liable.

3.5 Operating Agreement. Assignor is not in breach of any of the terms of the Operating Agreement.

3.6 No Reliance. Assignor has not been induced by or relied upon any representations, warranties or statements, whether express or implied, made by the Companies or Assignee or any of their affiliates, officers, directors, attorneys, employees, agents, consultants or other representatives that are not expressly set forth herein, whether or not any such representations, warranties or statements were made in writing or orally, and whether related to its initial acquisition or present transfer of the Interest.

3.7 Representations and Warranties of Assignee. Assignee represents and warrants to Assignor that the following statements contained in this Section 3.2 are correct and complete as of the Effective Date: Assignee has the relevant capacity necessary to execute and deliver this Agreement and to perform and consummate the Transaction. Assignee has taken all actions necessary to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the Transaction. This Agreement has been duly executed and delivered by Assignee, and is enforceable against Assignee in accordance with its terms except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting rights of creditors and general principles of equity.

4. INDEMNIFICATION

4.1 Indemnification. Assignor agrees to indemnify and hold Assignee and its members, managers, officers, agents, attorneys, employees, representatives, affiliates and controlling persons harmless from and against any and all losses, damages, claims, obligations, assessments, liabilities or expenses of any nature whatsoever (including, without limitation, attorneys' fees and disbursements) which Assignee may incur, sustain or suffer, or which may be asserted against Assignee, due to or arising out of (in each case in whole or in part) (a) a breach of any representation, warranty or acknowledgement made by Assignor in this Agreement, or (b) any failure by Assignor to fulfill its covenants or agreements set forth herein. Assignor will also promptly reimburse each indemnified party for all expenses (including counsel fees and expenses) as they are incurred by such indemnified party in connection with investigating, preparing for,

defending, or providing evidence in, any pending or threatened claim or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the Companies or Assignee is a party to such claim or proceeding) or in enforcing this Agreement.

5. RELEASE

5.1 Assignor Release. Except for those obligations arising from this Agreement, Assignor, on behalf of itself/himself/herself and on behalf of each of its/his/her respective successors, assigns, managers, members, partners, directors, officers, employees, principals, attorneys, agents, representatives, insurers, heirs, beneficiaries, executors, administrators, trustees, spouse, children, relatives, affiliates, brokers, advisors, consultants, representatives and all persons or entities acting through or on behalf of each of them as well as their respective assigns ("Releasing Parties") agrees that upon receipt of the Purchase Price to release and forever discharge, to the fullest extent allowed by law, Assignee and its respective affiliates, officers, directors, employees, attorneys, insurers, heirs, beneficiaries, administrators, trustees, spouse, children, relatives, partners shareholders, members, managers, agents, consultants, brokers, advisors and representatives, as well as their respective successors and assigns ("Released Parties") from any and all claims, demands, obligations, rights, causes of action, losses, liens, costs or expenses, agreements, contracts, covenants, actions, suits, debts, attorneys' fees, damages, judgments, orders, and liabilities, of whatever kind or nature, whether known or unknown, in law or in equity or otherwise, whether foreseen or unforeseen, suspected or unsuspected, whether or not concealed or hidden, anticipated or unanticipated, certain or speculative, arising on or before the date hereof, which Assignor and/or Releasing Parties ever had, now has or hereafter can, shall or may have for, upon or by reason of any matter, cause, or thing whatsoever (collectively "Released Claims"), including, but not limited to those which are based upon, arise under or are related to (i) the purchase and ownership of the Interest by Assignor, (ii) this Agreement or the transaction contemplated hereby, (iii) any distributions in respect of the Interest, or (iv) any amount due or payable to Assignor pursuant to this Agreement or the Operating Agreement.

5.2 The foregoing release provision shall survive the Closing or any termination of this Agreement. In connection with this release, Assignor on its own behalf and on behalf of the Releasing Parties, expressly waives any rights that it may have under Section 1542 of the California Civil Code which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

and all similar provisions or rules of law. To the greatest extent permitted by law, Assignor on behalf of each of the Releasing Parties, by initialing this provision of the Agreement below, hereby agrees, represents and warrants that it/he/she realizes and acknowledges that factual matters now unknown to its/his/her may have given or may hereafter give rise to Released Claims released herein which are presently unknown, unanticipated and unsuspected, and further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization, and that Assignor on behalf of each of the Releasing Parties nevertheless intends

to release, discharge and acquit each of the Released Parties from any and all such unknown Released Claims.

Assignor's Initials

5.3 Assignor represents and warrants that it/he/she holds the rights to the Released Claims and has not assigned, transferred or hypothecated the Interests. Assignor agrees that in the event that any claim, demand or suit shall be made or instituted against Assignee and/or Released Parties alleging that Assignor was not the holder of the rights to the Released Claims or because said claims have been assigned, transferred, or rescinded by Assignor or other individuals and entities, then Assignor shall indemnify, defend and hold harmless Assignee and/or Released Parties from and against any such claim, suit or demand.

6. MISCELLANEOUS

6.1 Future Cooperation. Assignor and Assignee agree to cooperate at all times from and after the Effective Date with respect to any of the matters described herein, and to execute such further documents as may be reasonably requested for the purpose of giving effect to, evidencing or giving notice of, the transactions evidence by this Agreement.

6.2 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

6.3 Modification and Waiver. No supplement, modification, waiver or termination of this Agreement or any provisions hereof shall be binding unless executed in writing by all parties hereto. No waiver of any of the provisions of this Assignment Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

6.4 Governing Law and Consent to Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of California. Assignor and Assignee irrevocably (a) agree that any suit, action or proceeding arising out of or relating to this Agreement shall be brought in the Courts of the United States of America located in the Central District of California or in a state court of record in Los Angeles County, California, (b) consent to the jurisdiction of each such court in any such suit, action or proceeding and (c) waive any objection which he/she/ it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. Assignor irrevocably consents to the service of any and all process in any such suit, action or proceeding by service of copies of such process to Assignor at its address provided below its signature hereto. Nothing in this Section 6.4, however, shall affect the right of Assignee to serve legal process in any other manner permitted by law or affect the right of Assignee to bring any suit, action or proceeding against Assignor or its property in the courts of any other jurisdictions.

6.5 Attorneys' Fees. If any action shall be instituted by either Assignor or Assignee for the enforcement or interpretation of any of its rights or remedies in or under this Agreement,

the prevailing party shall be paid by the losing party all reasonable costs incurred by the prevailing party in said action and any appeal therefrom, including reasonable attorneys' fees and court costs to be fixed by the court therein.

6.6 Severability. Assignor and Assignee hereto intend this Agreement to be severable. In the event that any provision, clause, sentence, section or other part of the Agreement is held to be invalid, illegal, inapplicable, unconstitutional, contrary to public policy, void or unenforceable in law to any person or circumstance, Assignor and Assignee hereto intend that the balance of the Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is held to be invalid, illegal, inapplicable, unconstitutional, contrary to public policy, void or unenforceable in law to any person or circumstance, Assignor and Assignee hereto shall undertake to negotiate in good faith to modify this Agreement so as to give effect its purpose as closely and as fully as possible in an acceptable manner to all parties hereto.

6.7 Confidentiality. Assignor and Assignee agree that they shall maintain in confidence the terms and conditions of the Agreement Transaction, and the compromise and settlement effected hereby. The parties may only disclose that "they have amicably resolved all matters between them.: No disclosure of the Agreement, Transaction, or the compromise and settlement effected hereby, shall be made by the parties to any person or entity, *except* disclosures in proceedings to enforce or otherwise related to this Agreement, or if compelled in judicial or other legal process (including, without limitation, disclosures required by the Securities Exchange Commission) or in the connection with the filing of tax returns and disclosures for legitimate business purposes on a need-to-know basis to the parties' attorneys, accountants, investors, officers, directors, members, employees, and representatives. Prior to responding to any request or order by any court for disclosure of the Agreement, Transaction and/or the compromise and settlement effected thereby, the party to whom the request or order is directed shall promptly notify counsel for the other party or the other party of such request or order.

6.8 Liquidated Damages. The parties acknowledge and agree that any loss or damages likely to be incurred as a result of a violation of the confidentiality provision in Section 5.7 would be incapable of or difficult to precisely ascertain. The parties thus agree that $100,000.00 should be paid for each violation and that such amount bears a reasonable relationship, and is not disproportionate to the probable loss likely to be incurred in connection with any such violation of such provision. The parties further agree that they have agreed to such amount in consideration of the uncertainty and cost of litigation regarding the question of actual damages.

6.9 Compromise. The parties agree that this Agreement is in compromise of disputes between them, and it shall not be considered as an admission of the truth or correctness of any allegation or claim against them, or of fault or liability by them, each party denying any fault or liability by such party.

6.10 Full and Independent Knowledge. Each of the parties represents that he/she/it has been represented by an attorney in connection with the Agreement and Transaction, and that he/she/it has carefully read and understands the scope and effect of each provision contained herein and therein. Each of the parties further represents that he/she/it does not rely and has not relied upon any representation or statement made by any other party or any of such party's

representatives with regard to the subject matter of this Agreement and the Transaction and has voluntarily entered into this Agreement, the Transaction, and the settlement effectuated thereby

6.11 Entire Agreement. This Agreement embody the entire agreement and understanding between Assignor and Assignee with respect to the sale contemplated hereby and supersede and cancel all prior applications, expressions of interest, commitments, agreements and understandings, whether oral or written, relating to the subject matter hereof, except as specifically agreed in writing to the contrary.

6.12 Counterparts. Any number of counterparts of this Agreement may be executed. Each counterpart will be deemed to be an original instrument, and all counterparts taken together will constitute one agreement. This Agreement may be executed by facsimile or other electronic transmission.

6.13 Certain Interpretive Matters. All pronouns used herein shall include the neuter, masculine or feminine. The headings contained in this Agreement are provided for convenience only and will not affect its construction or interpretation.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Membership Interest Purchase, Assignment and Assumption Agreement as of the Effective Date.

ASSIGNOR:

SSC 02, LLC

By: ______________________
Shelly R. Dragul Manager

ASSIGNEE:

THE ALAN C. FOX REVOCABLE TRUST DATED DECEMBER 2, 1999

By: ______________________
Alan C. Fox, Trustee

By signing below, ACF Property Management, Inc., as the Manager of the Companies, hereby consents to the Transaction described in this Agreement as of the date first written above.

MANAGER:

ACF PROPERTY MANAGEMENT, INC.,
a California corporation

By: ______________________
Alan C. Fox, President

State of Colorado

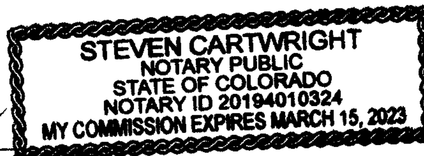
County of Arapahoe

This record was acknowledged before me on 07-23-2019 (date) by Shelly Dragul as Manager of SSC 02, LLC.

____

Notary Public

Title of Office: Personal Banker / Notary Public
My commission expires: 03-15-2023



To: 'Susan Markusch'[smarkusch96@gmail.com]
From: Lauren Hunsaker
Sent: Wed 7/24/2019 7:47:22 PM
Importance: Normal
Subject: FW: SSC 02, LLC
MAIL_RECEIVED: Wed 7/24/2019 7:47:00 PM
Articles of Amendment.pdf

DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

The wire has been sent- FedRef 0724L2LFCK1C003259

Thanks,

Lauren Hunsaker

Executive Assistant

ACF PROPERTY MANAGEMENT, INC.
12411 Ventura Boulevard

Studio City, CA 91604

818-505-6777 x384

From: Lauren Hunsaker
Sent: Wednesday, July 24, 2019 12:36 PM
To: 'Susan Markusch' <smarkusch96@gmail.com>
Subject: FW: SSC 02, LLC

Hi Susan

I just left you a voicemail- would you please call me back to verbally confirm the below wire instructions?

Thanks,

EXHIBIT 8

Lauren Hunsaker

Executive Assistant

ACF PROPERTY MANAGEMENT, INC.
12411 Ventura Boulevard

Studio City, CA 91604

818-505-6777 x384

From: Susan Markusch [mailto:smarkusch96@gmail.com]
Sent: Tuesday, July 23, 2019 10:17 AM
To: Alan C. Fox <Alan@acfpm.com>; Lauren Hunsaker <Lauren@acfpm.com>
Subject: SSC 02, LLC

Dear Alan and Lauren:

Please find attached The Articles of Amendment filed with the State of Colorado that states Shelly R. Dragul is the manager of SSC 02, LLC.

Also, the wire instructions for SSC 02, LLC are below:

Academy Bank

10900 East Briarwood Avenue

Centennial, CO 80112

ABA :# 107001481

SSC 02, LLC

8480 East Orchard Road, Suite 6500

Greenwood Village, CO 80111

Acct : 9202997536

Thank you,

Susan Markusch

303-929-4321

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

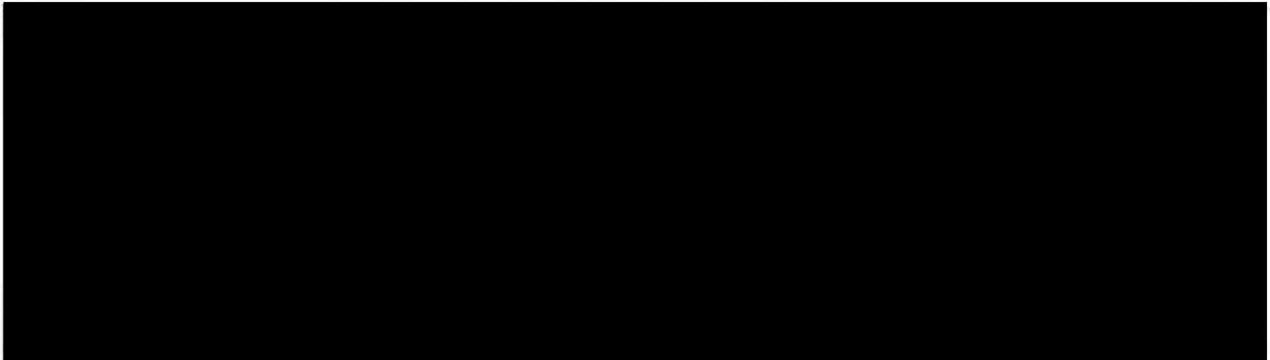
DATE FILED: April 13, 2020 7:11 PM
FILING ID: 806377FED0E96
CASE NUMBER: 2018CV33011

OPERATING AGREEMENT

OF

CRYSTAL FALLS TOWN CENTER 19 B, LLC

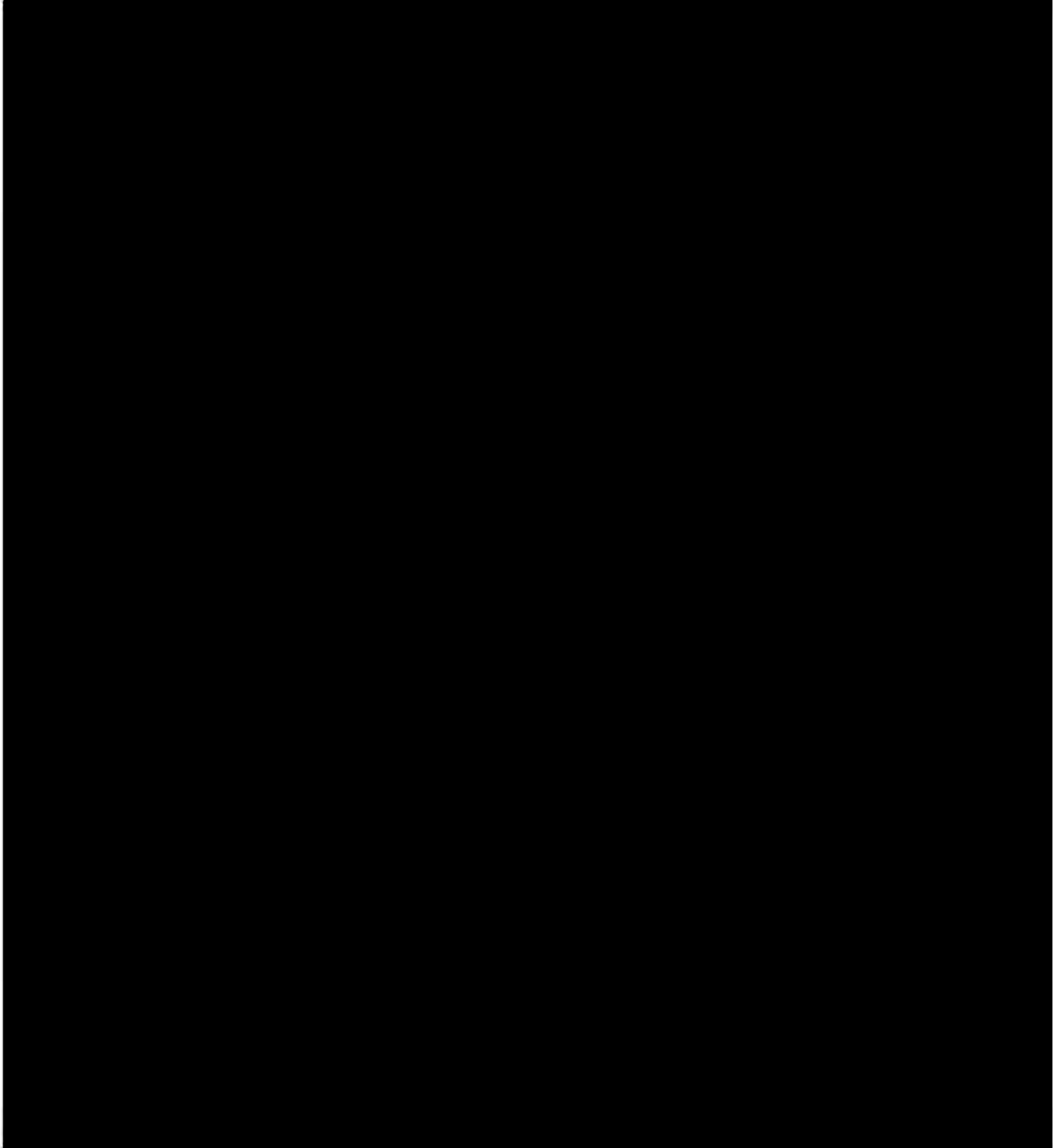
a Delaware limited liability company



1.1 Formation of the Company. On April 22, 2019, the Company was formed as a Delaware limited liability company under and pursuant to the Act by filing with the Secretary of State of the State of Delaware the Certificate of Formation. The rights and obligations of the Company and the Members shall be as provided in the Act, the Certificate of Formation, and this Agreement. This Agreement is subject to, and governed by, the Act and the Certificate of Formation. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act, or the provisions of the Certificate of Formation, such provisions of the Act, or the Certificate of Formation, as the case may be, shall be controlling. The Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business. Lauren Hunsaker is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of

EXHIBIT 9

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



ARTICLE 8

BOOKS RECORDS AND ADMINISTRATION

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

8.2 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at 12411 Ventura Boulevard, Studio City, CA 91604, or at such other location as the Manager shall advise the Members in

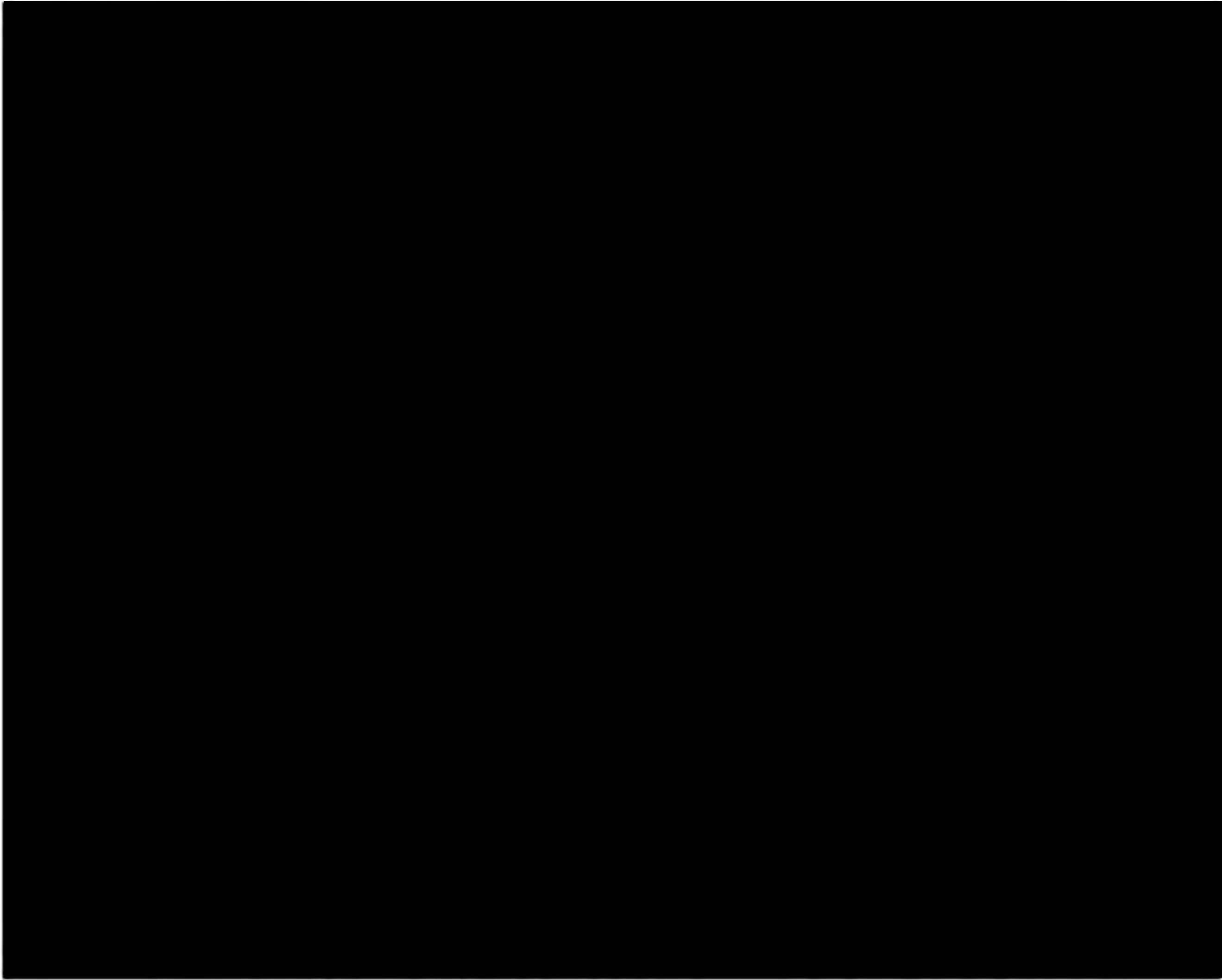
writing. Upon reasonable request, each Member, and such Member's duly authorized representative, shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense. Notwithstanding the foregoing, each Member acknowledges the confidential nature of this Agreement, including, without limitation, the names, addresses and financial information of other Members, and agrees to waive any right to obtain from the Company or otherwise, or, if obtained, to use in any manner or for any purpose whatsoever, the names, addresses or any other information of any of the other Members.

ARTICLE 9

RESTRICTIONS ON TRANSFERABILITY

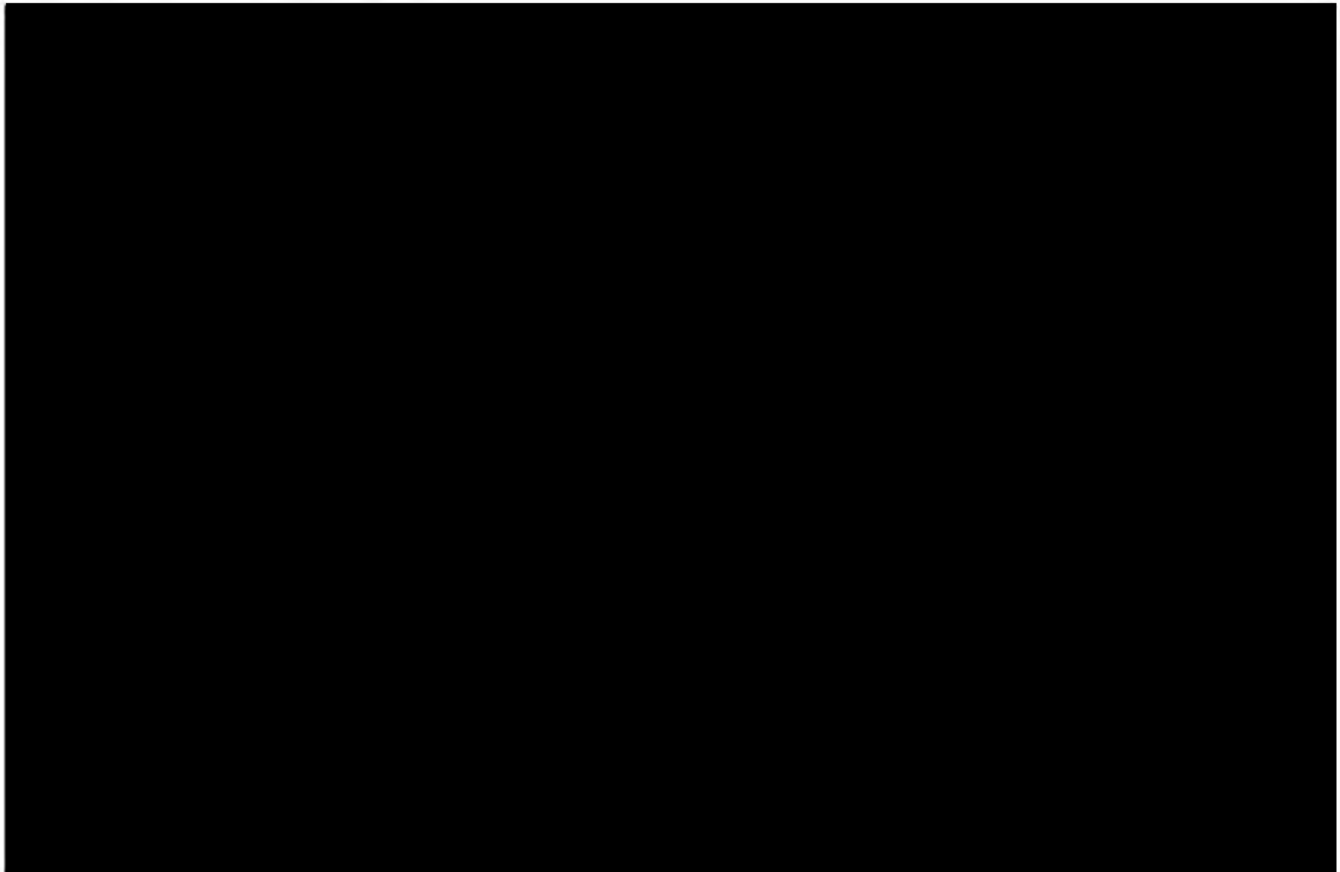
9.1 General. No Member shall Transfer (as defined in **Article 9.2(c)** below) or encumber all or any portion of its interest in the Company without the written consent of the Manager , in its sole and absolute discretion, and in accordance with **Article 17.7**, and no Member shall permit any Transfer of any direct, indirect or beneficial interests in (a) such Member; or (b) in any other entity which owns, directly or indirectly, through one or more intermediate entities, any ownership interest in such Member, without, in each case, first obtaining the written consent of the Manager and complying with **Article 17.7**. Any Transfer or encumbrance in violation of this **Article 9.1** (each called a "**Prohibited Transfer**") shall be null and void and of no legal effect upon the Company, and the Company will not be required to accept, recognize or be bound by such Prohibited Transfer and the purported transferee thereof shall acquire no rights in the Percentage Interest which is the subject of a Prohibited Transfer. The failure of Manager or the Company to exercise any option resulting from a Prohibited

Transfer pursuant to **Article 9.3** and **Article 9.4**, respectively, shall not be deemed a consent to any Prohibited Transfer, and the purported transferee of such interest shall not become a Member, nor shall the Company be required to accept, recognize or be bound by such Prohibited Transfer. The terms of this Section may be specifically enforced against a transferee or encumbrancer.



9.3 Right of First Refusal. Other than with respect to a Transfer to a Family Member, if any Member desires to Transfer all or any portion of such Member's Percentage Interest (the "**Offered Interest**"), the Member desiring to so transfer the Offered Interest (the "**Selling Member**") shall give written notice (the "**Offering Notice**") to the Manager of the Selling Member's intention to so transfer; provided, however, the following shall be excluded from the provisions of this **Article 9.3**: (a) sales by Fox and his Family Members, and (b) sales to Fox. The Offering Notice shall specify the Offered Interest to be transferred, the consideration to be received therefor, the identity of the proposed purchaser, and the exact terms upon which the Selling Member intends to so transfer. For thirty (30) days after the effective date of the Offering Notice (the "**Review Period**"), the Manager shall have the option to elect to purchase from the Selling Member all (but not less than all) of the Offered Interest at the same price and

on the same terms as are specified in the Offering Notice by delivering to the Selling Member a written offer to purchase the Offered Interest. Notwithstanding the foregoing, Manager may designate an alternate transferee to purchase the Offered Interest. If the Manager elects to so purchase all of the Offered Interest within the time period specified, or to designate an alternate transferee that will purchase the Offered Interest, then the purchase of the Offered Interest shall be consummated at the principal place of business of the Company on the terms and conditions set forth in the Offering Notice. At the closing, the Selling Member shall deliver the Offered Interest free and clear of all liens, security interest and competing claims (other than security interest granted in favor of the Manager or its designee) and shall deliver to Manager (or its designee) such instruments of transfer and such evidence of due authorization, execution and delivery and of the absence of any such liens, security interest or competing claims as Manager or its designee reasonably requests. If, within the Review Period, Manager fails to timely and validly offer to purchase all of the Offered Interest (or to designate an alternate transferee that will purchase the Offered Interest), then the Selling Member may, within ninety (90) days after the expiration of such thirty (30) day period, transfer the Offered Interest to the person or entity identified in the Offering Notice on the same terms and conditions and at the same price specified in the Offering Notice. If the Selling Member fails to so transfer the Offered Interest within such ninety (90) day period, then, prior to transferring the Offered Interest, the Selling Member shall resubmit an Offering Notice in accordance with the provisions of this **Article 9.3** and shall comply with the other terms of this **Article 9.3**. Notwithstanding anything in this **Article 9.3** to the contrary, all transfers pursuant to this **Article 9.3** are subject to the restrictions set forth in **Article 9.1** hereof. Manager shall have the right at any time to assign its right of first refusal in this **Article 9.3**.



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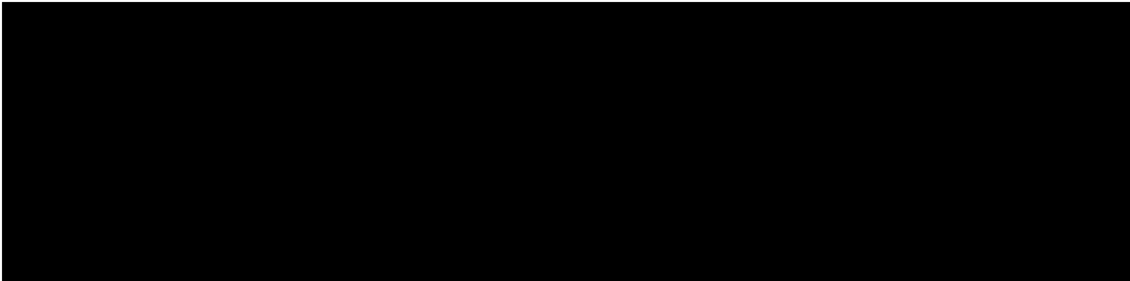
LIMITED LIABILITY COMPANY AGREEMENT

OF

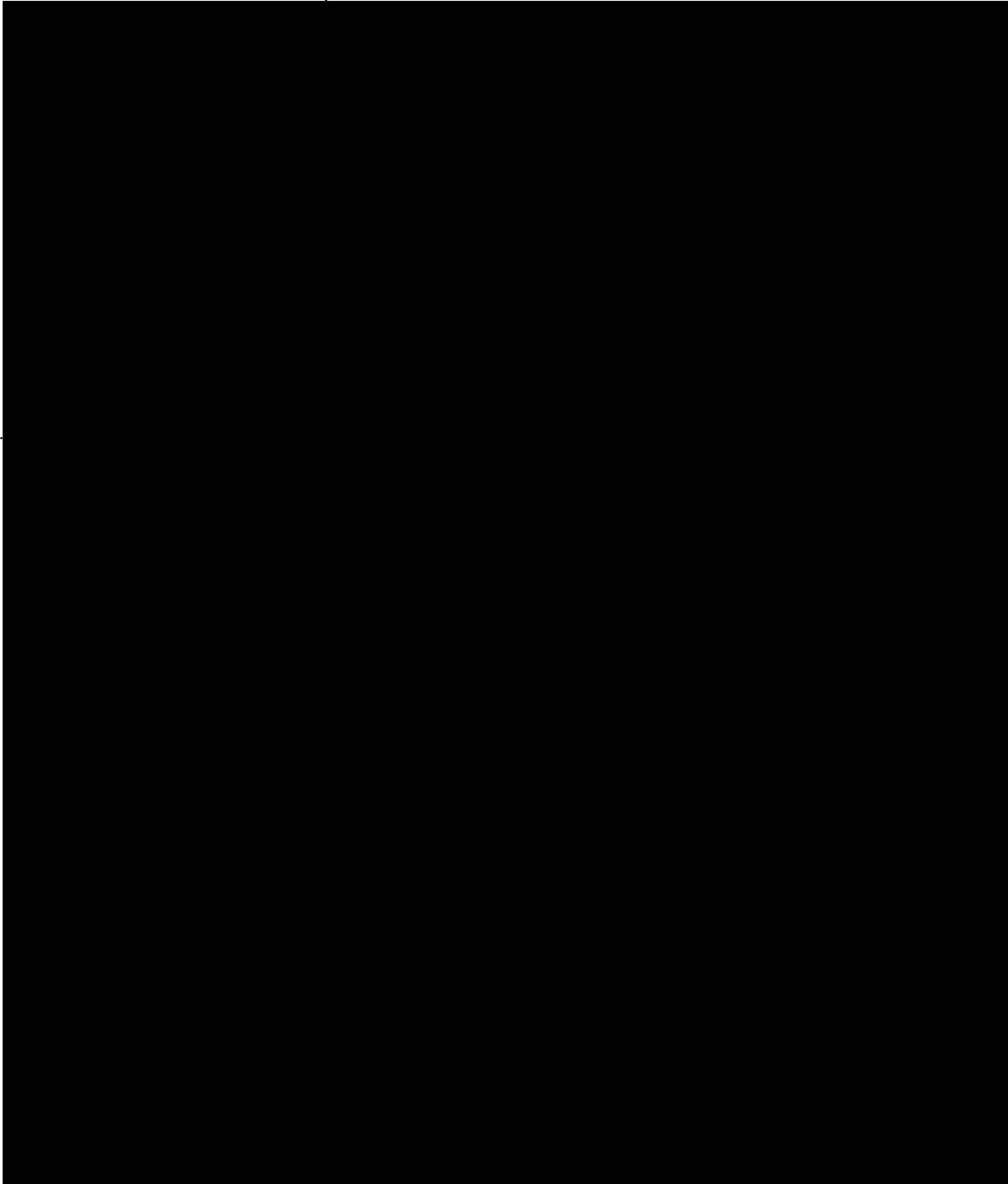
Meadows Shopping Center 05 A, LLC, a Delaware limited liability company

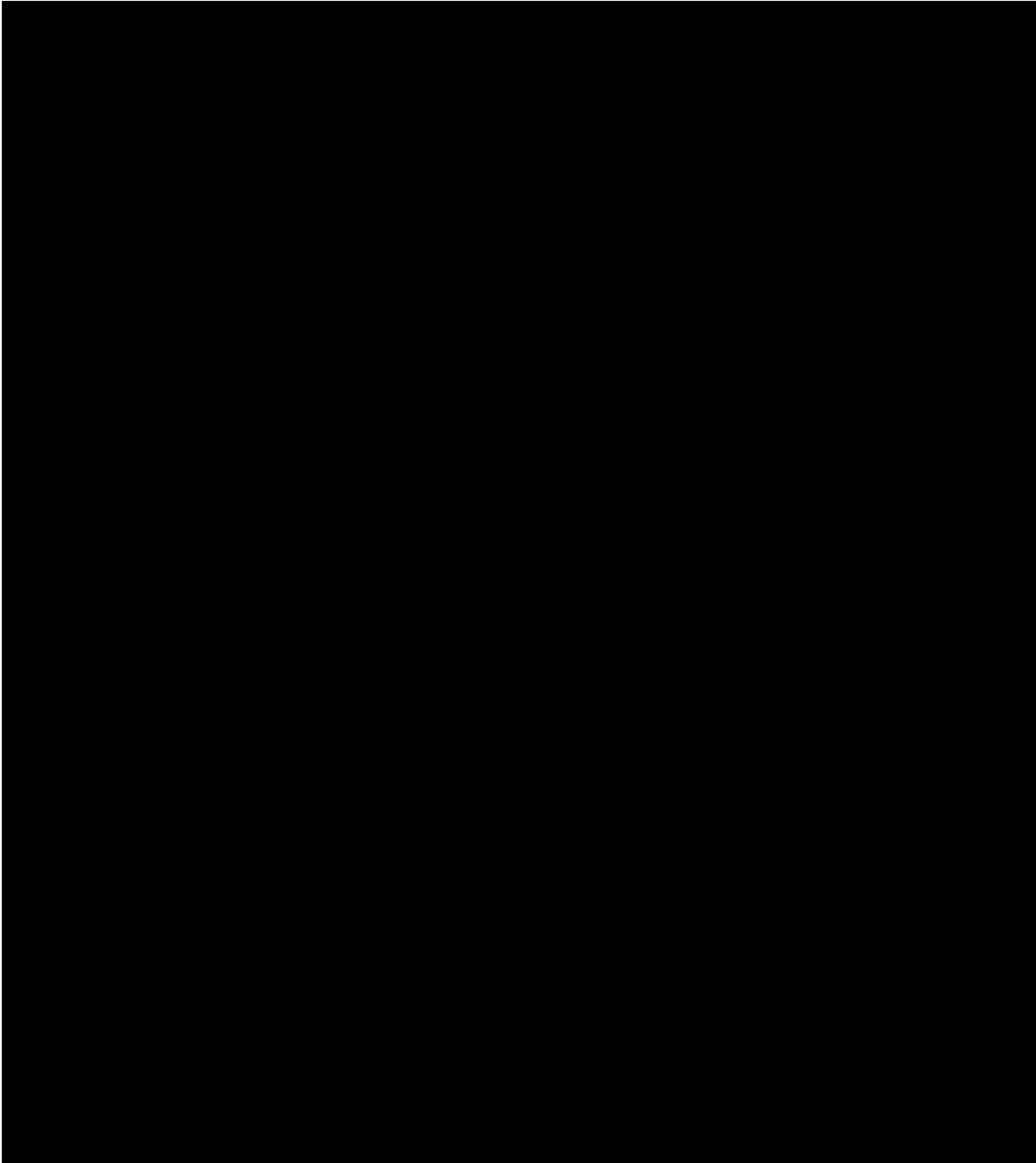


1.1 Formation of the Company. On March 30, 2005, Meadows Shopping Center 05 A, LLC (the "Converting Entity") was formed as a Colorado limited liability company. On the date hereof, the Converting Entity, was converted to Meadows Shopping Center 05 A, LLC, a Delaware limited liability company (the "Company") pursuant to Section 18-214 of the Act and pursuant to the filing with the Secretary of State of the State of Delaware of a Certificate of Conversion and a Certificate of Formation (the "Conversion"). Effective as of the time of the Conversion, (i) the organizational documents of the Converting Entity, as amended, are replaced and superseded in their entirety by this Agreement, (ii) all of the equity interests held by the sole member of the Converting Entity immediately prior to the Conversion are converted into all of the limited liability company interests in the Company, (iii) the sole member of the Converting Entity is automatically admitted to the Company as the sole member of the Company, (iv) all certificates, if any, evidencing equity interests in the Converting Entity issued by the Converting Entity and outstanding immediately prior to the Conversion shall be surrendered to the Company, and (v) the Converting Entity is being continued without dissolution in the form of a Delaware limited liability company. The rights and obligations of the Company and the Members shall be as provided in the Act and this Agreement. This Agreement is subject to, and governed by, the Act. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act, such provisions of the Act shall be controlling. Karen Rae Smith is hereby designated as an "authorized person" within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation and the Certificate of Conversion of the Company with the Secretary of State of the State of Delaware. Upon the filing of the Certificate of Formation and the Certificate of Conversion with the Secretary of State of the State of Delaware, her powers as an "authorized person" ceased, and the Manager thereupon

EXHIBIT 10

became the designated "authorized person" and shall continue as the designated "authorized person" within the meaning of the Act. The Manager shall execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business.





ARTICLE 8.0

BOOKS RECORDS AND ADMINISTRATION

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

fiscal year of the Company for financial reporting and for federal income tax purposes shall be the calendar year.

8.2 Location and Access to Books and Records. All accounts, books and other relevant Company documents shall be maintained by the Manager at 12411 Ventura Blvd., Studio City, CA 91604, or at such other location as the Manager shall advise the Members in writing. Upon reasonable request, each Member, and such Member's duly authorized representative, shall have the right, during ordinary business hours, to inspect and copy such Company documents at the Member's expense.

The Company shall keep at the above address the following:

A. A current list containing the full name and last known business, residence or mailing address of each Member.

B. A copy of the initial Certificate and all amendments.

C. Copies of all written operating agreements of the Company and all amendments to operating agreements including any prior written operating agreements no longer in effect.

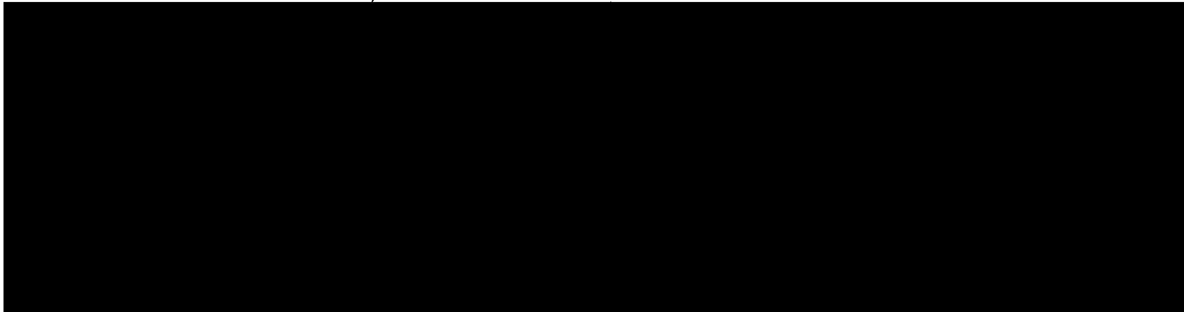
D. Copies of any written and signed promises by Members to make Capital Contributions to the Company.

E. Copies of the Company's federal, state, and local income tax returns and reports, if any, for the three most recent years.

F. Copies of any prepared financial statements of the Company for the three most recent years.

G. Minutes of any meeting for which minutes were taken; and

H. Any written consents obtained from Members for actions taken by Members without a meeting.



ARTICLE 9.0

RESTRICTIONS ON TRANSFERABILITY

9.1 General. Except as otherwise specifically provided herein, a Member shall not have the right to sell, Assign, transfer, exchange or otherwise transfer for consideration (collectively, "Sell" or "Sale"), or to give, bequeath or otherwise transfer for no consideration whether or not by operation of law

(collectively "Gift") or in any other manner whatsoever dispose of all or any part of the Member's Membership Interest in the Company; provided, however, each Member may sell or gift its Economic Interest (as defined in Article 9.5) without the consent of the Manager and without causing application of the right of first refusal under Article 9.2, provided such sale or gift is in compliance with Article 9.3. Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests imposed by this Agreement in view of the Company's purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable. In the event that any Member pledges or otherwise encumbers any of its Membership Interests as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all the terms and conditions of this Article 9.0. Notwithstanding anything in this Agreement to the contrary, for so long as the Loan, as defined in Article 17.0 below, is outstanding, no transfer of any direct or indirect ownership in the Company may be made except in accordance with the terms of the Loan Documents, as defined in Article 17.0 below.

9.2 Right of First Refusal.

A. In the event a Member other than Alan C. Fox ("Fox") desires to Sell all or any portion of its Membership Interest in the Company to a third party purchaser or to any other Member, the Selling Member shall

obtain from such third party purchaser or other Member a bona fide written offer ("Purchase Offer") to purchase such Membership Interest in the Company, the terms and conditions upon which the purchase is to be made and the consideration offered therefore. The Selling Member shall give written notification to. Fox of its intention to so transfer such Membership Interest in the Company, furnishing to Fox a copy of the aforesaid Purchase Offer to purchase such Membership Interest in the Company.

B. Fox shall have a right of first refusal to purchase all the Membership Interest proposed to be sold by the Selling Member upon the same terms and conditions as stated in the Purchase Offer. Within 30 days after receipt of written notice from the Selling Member, Fox shall notify the Selling Member and the Manager whether it intends to exercise its option to purchase the Membership Interest and what percentage, if any, of the Membership Interest Fox desires to purchase. The failure of Fox to so notify the Selling Member and the Manager of his desire to exercise this right of first refusal within said 30-day period shall result in the termination of the right of first refusal by Fox, and the Selling Member shall be entitled to consummate the Sale of its Membership Interest in the Company, or such portion of its Membership Interest, if any, with respect to which the right of first refusal has not been exercised, to such third party purchaser submitting the Purchase Offer upon the terms and conditions set forth in the Purchase Offer; provided that if such Sale is not consummated within 90 days after expiration of the 30-day period described above, such Membership Interest may not thereafter be sold unless the provisions of this Article 9.0 are complied with again in connection with such Sale. For these purposes, the Purchase Offer shall constitute adequate notice by Fox of his exercise of his rights hereunder.

In the event Fox gives written notice to the Selling Member and the Manager of his desire to exercise this right of first refusal and to purchase the Selling Member's Membership Interest upon the same terms and conditions as are stated in the Purchase Offer, Fox shall have the right to designate the time, date and place of closing, provided that the date of closing shall be within 60 days after receipt of written notification from the Selling Member of the Purchase Offer. At the closing Fox shall pay the Selling Member his allocated portion of the purchase price, and the Selling Member will execute an assignment to Fox for the portion of the Membership Interest purchased by him. Payment will be made by check at the closing unless the Purchase Offer provided for extended payment terms in which event, payment shall be made as comparable as possible to the terms set forth in the Purchase Offer.