

<p>DISTRICT COURT, DENVER COUNTY, COLORADO  1437 Bannock Street  Denver, CO 80202  (303) 606-2433</p> <hr/> <p><b>Plaintiff:</b> Tung Chan, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC.</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p><b>ATTORNEYS FOR RECEIVER HARVEY SENDER</b></p> <p>Patrick D. Vellone (#15284)  Michael T. Gilbert (#15009)  Rachel A. Sternlieb (#51404)  ALLEN VELLONE WOLF HELFRICH &amp; FACTOR P.C.  1600 Stout St., Suite 1900  Denver, Colorado 80202  Tel: (303) 534-4499  E-mail: pvellone@allen-vellone.com  E-mail: mgilbert@allen-vellone.com  E-mail: rsternlieb@allen-vellone.com</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p style="text-align: center;"><b>RECEIVER’S REPLY IN SUPPORT OF MOTION FOR TURNOVER vs. ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.</b></p>	

Harvey Sender, Receiver for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities, submits this reply in support of his March 13, 2020, Motion for Turnover Motion vs. Alan C. Fox and ACF Property Management, Inc. (“ACF”) (jointly, “Fox”) (the “Turnover Motion”).

## I. Introduction

Three undisputed facts drive the result here: (1) the Estate owns membership interests in at least 14 entities formed and managed by Fox (the “Fox Entities”);<sup>1</sup> (2) since October 2019, Fox has withheld all distributions owed to the Estate for those investments;<sup>2</sup> and (3) in July 2019, after having received actual notice that the Estate claimed ownership of all of SSC 02, LLC’s assets, Fox paid Dragul (not the Estate) \$60,000 for SSC 02’s interests in three Fox Entities, which the Receiver claimed were property of the Estate.

The three issues before the Court are: (1) whether Fox must turnover documents related to the Fox Entities, which the Receiver needs to value and market the Estate’s interests; (2) whether Fox must pay the Estate the past distributions he is withholding and future distributions; and (3) whether Fox must reconvey (or pay the Estate the value of) the SSC 02 interests he purchased from Dragul in July 2019.

## II. The Receivership Order requires Fox to turn-over the requested documents.

The Estate holds or held an interest in the following “Fox Entities”:

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<sup>1</sup> See Declaration of Sharon Ben-Shahar Mayer ¶ 5 (“Mayer Dec.”), attached as Exhibit A to Non-Parties Alan C. Fox and ACF Property Management, Inc.’s Response to Receiver’s Motion for Turnover (“Fox Response,” filed April 13, 2020).

<sup>2</sup> Mayer Dec. ¶ 5.

	<b>ACF Entity</b>	<b>Investor</b>	<b>Date of Acquisition</b>	<b>Date of Sale/Exchange</b>	<b>Dragul Ownership %</b>
1	10 Quivera Plaza 14 A, LLC	Gary Dragul	10/29/2014	N/A	0.818%
2	Shoppes at Bedford 15 A, LLC	Gary Dragul	3/26/2015	N/A	3.658%
3	Kenwood Pavilion 14 A, LLC	SSC 02, LLC	12/1/2014	7/1/2019	0.000%
4	Fenton Commons	SSC 02, LLC	3/11/2016	7/1/2019	0.000%
5	College Marketplace	SSC 02, LLC	6/28/2016	7/1/2019	0.000%
6	ACF Lakewood 11, LLC	GDA Village Crossroads, LLC	1/6/2012	N/A	12.332%
7	Tower Plaza 12, LLC	GDA Market at Southpark, LLC	2/8/2012	N/A	2.927%
8	Arapahoe Village	P.R. Investments	7/20/1995	N/A	1.500%
9	Greentree Plaza	P.R. Investments	8/31/2006	N/A	0.153%
10	Paradise Valley Festival	P.R. Investments	10/21/2004	N/A	0.533%
11	Scottsdale Crossing	P.R. Investments	10/27/1995	N/A	1.620%
12	Crystal Falls Town Center, LLC	Fort Collins WF, LLC	4/24/2019	N/A	1.959%
13	Meadows Shopping Center 05 A, LLC	Fort Collins WF, LLC	6/9/2005	N/A	8.264%
14	Southwest Commons 05 A, LLC	Fort Collins WF, LLC	8/18/2005	N/A	5.500%
15	Trophy Club 12, LLC	Fort Collins WF, LLC	3/15/2012	N/A	9.375%
16	Laveen Ranch Marketplace 12, LLC	Fort Collins WF, LLC	3/16/2012	4/24/2019*	0.000%

\*Per the Client Summary Report as of December 31, 2019, Laveen Ranch was exchanged into Crystal Falls on 4/24/19.

The Receivership Order requires the Receiver to liquidate these membership interests for the benefit of the Estate. To do so, the Receiver must value and market them, and for that the Receiver's valuation expert needs the following documents:

1. Operating agreements for each of the 16 entities identified above.
2. Tax returns for each entity for the last five years.
3. Detailed financial statements (including balance sheets, income statements, and statements of cash flows) for each entity for the last five years.
4. Debt/loan documents related to the financing of each entity and any related financing information.
5. Documents showing in detail the owners of each entity, including their ownership percentage, and any changes in ownership during the last five years.
6. The most recently available appraisals of the real estate owned by each entity.

Fox's Response is all over the map but at base is simply incorrect. Fox variously and contradictorily argues that: (1) he has already fully complied with his obligations to provide documents to the Receiver, Resp. at 2; (2) the Receiver may

travel to Fox’s offices in California and inspect three years of tax returns (which contain financial statements) and the operating agreements for the twelve LLCs in which the Estate currently holds an interest, subject to a “confidentiality agreement,” *id.* at 2, 6;<sup>3</sup> (3) the Receiver has no right to obtain *any* of the requested documents because they do not concern property of the Estate, *id.* at 3; (4) the Receiver’s right to review documents is based solely on the Estate’s status as a member of the LLCs, that member inspection rights are limited to a purpose reasonably related to the member’s interest in the LLC, and the documents the Receiver seeks are unrelated to any legitimate purpose; *id.* at 7; (6) although the Receiver wants to sell the Estate’s interest in the Fox Entities, the operating agreements Fox has not yet produced give him a right of first refusal so he is the only buyer, *id.* at 7, n.1;<sup>4</sup> (7) the Receiver has no right to obtain the “highly-confidential business records” he seeks, such as appraisals, loan documents, or documents concerning changes in membership during the last five years; *id.* at 3, 8; (8) this Court lacks subject matter jurisdiction over the Receiver’s request relating to 5 of the ACF Entities and the Receiver must file an independent action in

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<sup>3</sup> Fox previously produced some documents, including limited financial statements, without requiring a confidentiality agreement, and has not provided any proposed agreement to the Receiver. Any confidentiality agreement is likely to be of little utility because the documents the Receiver seeks are necessary to value its interest in the Fox Entities, will need to be provided to the Estate’s valuation expert, and then made available to potential purchasers. Relevant financial information may also need to be disclosed to the Court and all parties-in-interest in connection with any proposed sale of the Estate’s interests.

<sup>4</sup> Fox attaches only a few heavily redacted pages from three selected operating agreements to his Response.



Delaware to get them, *id.* at 5; and (9) the statutes of the various states in which the Fox Entities were formed limits the Estate’s right to obtain documents, *id.* at 3. *Etc.*

The only clear takeaway is that Fox refuses to provide the Receiver with all of the requested documents, all of which are most certainly readily available digitally. Fox is trying to make access to documents as difficult and expensive as possible by insisting the Receiver travel to California to inspect *some* of them. Given Covid-19, he knows travel to California will be difficult and expensive and will further deplete Estate resources.<sup>5</sup>

The documents the Receiver seeks *are* reasonably related to a legitimate business purpose: the sale of the Estate’s membership interests. Five-years of tax returns and financial records are needed because this represents a typical business cycle. Fox cannot limit the Receiver’s access to financial statements that may be appended to tax returns. Those financial statements will not contain the requisite level of detail for a valuation. For example, they won’t contain statements of cash flows, a fundamental valuation component. Documents concerning changes in ownership during the last five years (contra to Fox’s attempt to limit documents to a list of current members and their ownership interests) will presumably reflect arms-length membership transfers and will help establish value. Finally, the documents Fox has previously provided to the Receiver contain only “Client

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<sup>5</sup> Indeed, in a pending action in Denver District Court, Fox refused to attend his scheduled deposition in Colorado in part over concerns about the Coronavirus. See **Exhibit 6** (Exhibits 1-5 were submitted with the Turnover Motion).

Summary Reports,” which start with “Net Op. Income w/o Deprec.,” subtract debt service payments to establish a YTD Net cash flow figure. These statements lack any detail on rental revenues or the direct and indirect expenses of the Fox Entities.<sup>6</sup>

Nor is Fox – as his Response suggests – an unrelated, innocent third-party. As alleged in *Sender v. Dragul, et al.*, Case No. 2020CV30255, Denver District Court (pending before Judge McGahey), Fox is Dragul’s long-time co-conspirator and has profited handsomely from Dragul’s scheme. As discussed below, that conspiracy continued during this Receivership case. Fox was Dragul’s mentor and he and Dragul participated in Fox’s parallel investment schemes. *See, e.g., Shofler v. Fox*, Case No. BC 679 693 (Sup. Ct. Calif.) (Verified Third Amended Complaint Jan. 27, 2020) **Exhibit 7**. In an effort to conceal his fraud from investors, Fox has systematically refused to produce documents. *See, id.* at 49, Fifth Cause of Action. The Receiver suspects Fox’s refusal to provide basic, readily-available documents such as detailed financial statements, appraisals, and evidence of the debt encumbering the properties held by the Fox Entities is just a further effort to conceal his fraudulent conduct.

As set forth in the Turnover Motion, the Receivership Order requires Fox to produce the requested documents to the Receiver *in Colorado*. The Receiver

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<sup>6</sup> In some instances, the documents Fox previously produced show a negative “YTD Net Cash Flow” and no documents have been provided to explain how the SPE overcame those deficits

therefore asks the Court to order Fox to produce all of the requested documents to the Receiver’s counsel in Colorado within 14 days.

**III. Fox admits he is withholding more than \$180,000 in distributions owed to the Estate.**

Fox admits that under the various operating agreements (on which his Response relies but which he has not produced) he has “obligations to make distributions to investors.” Resp. at 10. Some of these “investors” are Dragul and the Dragul entities listed below; Fox doesn’t dispute that as of the end of February 2020, he owed them more than \$180,000:<sup>7</sup>

	ACF Entity	Investor	Projected			Total Distributions Owed
			Distributions Received 8/30/18 - 1/31/20	Distributions Missing 8/30/18 - 12/31/19	Distributions Missing 1/1/20 - 2/28/20	
1	10 Quivera Plaza 14 A, LLC	Gary Dragul	\$969	\$1,456	\$82	\$1,538
2	Shoppes at Bedford 15 A, LLC	Gary Dragul	\$0	\$0	\$0	\$0
3	Kenwood Pavilion 14 A, LLC	SSC 02, LLC	\$0	\$7,412	\$872	\$8,284
4	Fenton Commons	SSC 02, LLC	\$0	\$1,581	\$186	\$1,767
5	College Marketplace	SSC 02, LLC	\$0	\$1,037	\$122	\$1,159
6	ACF Lakewood 11, LLC	GDA Village Crossroads, LLC	\$109,120	\$26,836	\$13,566	\$40,402
7	Tower Plaza 12, LLC	GDA Market at Southpark, LLC	\$0	\$0	\$0	\$0
8	Arapahoe Village	P.R. Investments	\$0	\$0	\$0	\$0
9	Greentree Plaza	P.R. Investments	\$0	\$0	\$0	\$0
10	Paradise Valley Festival	P.R. Investments	\$0	\$2,499	\$294	\$2,793
11	Scottsdale Crossing	P.R. Investments	\$0	\$74,167	\$1,102	\$75,269
12	Crystal Falls Town Center, LLC	Fort Collins WF, LLC	\$5,860	\$5,274	\$3,516	\$8,790
13	Meadows Shopping Center 05 A, LLC	Fort Collins WF, LLC	\$75,208	\$16,111	\$10,744	\$26,855
14	Southwest Commons 05 A, LLC	Fort Collins WF, LLC	\$825	\$825	\$550	\$1,375
15	Trophy Club 12, LLC	Fort Collins WF, LLC	\$41,249	\$9,843	\$6,562	\$16,405
16	Laveen Ranch Marketplace 12, LLC	Fort Collins WF, LLC	\$15,000	\$0	\$0	\$0
	<b>Total</b>		<b>\$248,231</b>	<b>\$147,041</b>	<b>\$37,596</b>	<b>\$184,637</b>

As indicated in the table, from August 30, 2018, through January 31, 2020, Fox did pay some (but not all) of the required distributions to the Estate. He now attempts to justify his refusal to pay the additional distributions he owes professing concern the

<sup>7</sup> Because Fox refuses to produce current detailed financial statements, these are estimates based on past distributions.

Receiver has not paid previous distributions to *Dragul's* downstream investors, *i.e.*, distributions that would further maintain the façade that Dragul's enterprise was legitimate. Dragul personally is the only investor on the "Dragul side" of the Quivera Plaza and the Shoppes at Bedford etitites, so there are no "downstream investors" there.

With respect to GDA Village Crossroads, GDA Market at Southpark, P.R. Investments, and Fort Collins WF, these were entities Dragul formed and operated as part of *his* Ponzi scheme.<sup>8</sup> Although Fox argues the operating agreements of *those Dragul entities* require *Dragul* to distribute funds, Fox is not their manager nor a fiduciary to Dragul's investors. Indeed, how would Fox even know what Dragul's operating agreements require or who Dragul's investors are? As discussed in the Turnover Motion, Fox cannot mandate that some of Dragul's defrauded investors receive preferential distributions.

Moreover, Fox professed no concern about Dragul's investors when paying distributions to Dragul for years without that ensuring pro rata distributions were paid to Dragul's investors, all during the time that Dragul was pocketing a disproportionate share. Fox doesn't deny this, he just says this "assumes a lot," *i.e.*, that Fox knew Dragul was not making proportionate payments to his investors. Resp. at 12, n.7. Yet Fox continued to pay the distributions to Dragul even after Dragul was indicted in April 2018, and Fox and Dragul both routinely and systematically failed to distribute proportionate income or sales proceeds to their investors.

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<sup>8</sup> The SSC 02 distributions are discussed in section IV below.

Finally, Fox fails to address his previous admission that he believed it appropriate to withhold distributions because he “is a large claimant [against the Estate], [and] the appropriate course of action may be to offset any unpaid distributions against the claims that ACF has submitted to the Receiver.” *See* Turnover Motion **Exhibit 4**, at 2. Withholding funds owed to the Estate to offset his claim against the Estate violates the Receivership Order. Rcvrship. O, at ¶ 11.

#### **IV. Fox conspired with Dragul to transfer Estate assets.**

The Dragul Turnover Motion, which Fox admits was served on him on or about June 4, 2019, asserted that SSC 02, LLC – an entity purportedly owned by Dragul’s children and managed by his wife – was property of the Estate and that all of its assets must be turned over to the Receiver. Dragul and his family members conceded as much and the Court approved a settlement agreement on December 17, 2019, that required all of SSC 02’s assets to be turned over to the Receiver.

SSC 02’s assets included membership interests in three Fox Entities – Kenwood Pavilion 14 A, LLC (0.581% interest), Fenton Commons (0.221%), and College Marketplace (0.115%). The felony charges against him and this Receivership put Dragul in financial distress. Pursuant to their long-standing relationship, Fox agreed to help him out by diverting money owed to the Estate. Notwithstanding his actual notice of the June 4th Dragul Turnover Motion, which asserted that SSC 02 was property of the Estate, in July 2019, Fox purchased SSC 02’s interests in Kenwood, Fenton, and College Marketplace for \$60,000.

Fox does not dispute he was served with the June 4th Dragul Turnover Motion via email (as approved by the Court). Instead, he argues he didn’t know the Receiver

claimed SSC 02 was property of the Estate because he “receives via email dozens of filings in the case that may or may not have any bearing on its particular creditor claim.” Resp. at 13. And, “Fox does not believe he reviewed the Receiver June 4th motion and is certain he has not reviewed all filings that he received via email service.” *Id.* Willful ignorance is not a defense. *E.g., Janvey v. GMAG, L.L.C.*, 592 S.W.3d 125, 129 (Tex. 2019) (to prove good faith under UFTA transferee must show lack of willful ignorance). Fox doesn’t even try to explain why his CFO and his attorneys, who were also served with the Dragul Turnover Motion, failed to bring the issue to his attention. But this is just more dissembling. Fox actually knew long before June 4th that the Receiver claimed SSC 02 was property of the Estate, and he actively conspired with Dragul to keep its membership interests in the Fox Entities out of the Receiver’s hands.

On January 12, 2019, Dragul told Fox he was in desperate financial condition and asked him for \$1 million. **Exhibit 8**. On April 9, 2019, the Receiver’s counsel conferred with Dragul’s counsel regarding SSC 02 stating:

we have determined that SSC 02, LLC was funded with money from various accounts in which investor funds were deposited and comingled. . . . Considering this information, *the Receiver retracts any authority previously provided to **sell the storage unit or any other asset owned by SSC 02, LLC.** Further, we need a full accounting of all items in the storage facility as well as the assets held by SSC 02, LLC, including membership interests in any ACF owned entity as reflected by the attached check.*

**Exhibit 9** (emphasis added). A copy of the check referred to in the above quotation is attached as **Exhibit 10**. It specifically identifies SSC 02’s interests in Kenwood, Fenton, and College Marketplace, the very interests Fox paid \$60,000 for three-and-

a-half months later. **Within minutes of Dragul learning the Receiver was onto SSC 02, Dragul forwarded the Receiver’s April 9 email to Fox with the following note: “Alan, See below. Can we discuss.” Exhibit 11** (emphasis added). So, Fox knew **on April 9th** the Receiver was seeking turnover of SSC 02’s interests in Kenwood, Fenton, and College Marketplace. Nevertheless, without the Receiver’s knowledge or consent, and without Court approval, Fox paid Dragul \$60,000 for these interests in July 2019.

This was not the first time during the Receivership that Fox concealed payments to Dragul relating to the Fox Entities. In 2015, Dragul acquired a 7.317% membership interest in the Shoppes at Bedford 15A, LLC (one of the Fox Entities), an interest purportedly then worth \$654,871.50. **Exhibit 12.** On November 1, 2015, Dragul “gifted” 50% of his Bedford interest to his friend, lender, and frequent investor Marty Rosenbaum. *Id.* at 1-2.

In November 2018, months after the Receiver was appointed, Rosenbaum agreed to a proposed transaction in which Dragul would secure a \$200,000 loan from Fox with both his and Rosenbaum’s 3.6585% Bedford interests. **Exhibit 13.** But that transaction apparently didn’t happen. Instead, Rosenbaum sold his Bedford interest to Fox for \$100,000, which Rosenbaum then funneled to Dragul, and at the same time Fox paid Dragul an additional \$25,000.<sup>9</sup>

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<sup>9</sup> Because Fox refuses to produce documents concerning historical membership transfers for any of the Fox Entities, the complete details of this Bedford transaction remain unclear. Bedford is, however, one of the entities Fox claims is governed by Delaware law, and for which Fox contends the Receiver must file an independent action in Delaware to obtain documents. *Resp.* at 5.

The money trail starts with **Exhibit 16**, a November 9, 2018, email initiating a \$25,000 wire from Fox to Dragul’s wife Shelly “as a deposit re Bedford LLC Member Interest.” The trail continues with **Exhibit 18**, a November 15, 2018, email chain among Rosenbaum, Fox, and Dragul in which Rosenbaum transmits an executed \$100,000 “promissory note” and membership interest purchase agreement.<sup>10</sup> In this email, Rosenbaum confirms that “**Once I receive the wire . . . I will turn around and wire to Shelly’s account.**” **Exhibit 18**, at 3, ¶ 4. Finally, **Exhibit 17** shows Shelly Dragul received the \$25,000 wire from Fox on November 9, 2018, and the \$100,000 wire from Rosenbaum on November 16th.

Why Fox agreed to pay Rosenbaum \$100,000 for his 3.6585% Bedford interest but ended up paying \$125,000 is unclear without the documents the Receiver is requesting. But what is crystal clear is that without disclosing the completed November 2018 Rosenbaum transaction to the Receiver, in February 2019, Dragul asked the Receiver to consent to Dragul selling his 3.6585% Bedford interest to Fox for \$20,000, one-fifth what Fox paid Rosenbaum a few months before. *See Exhibit 19.*<sup>11</sup> GDA’s February 13, 2019, email stated “to get this [Dragul’s Bedford interest]

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<sup>10</sup> **Exhibit 14** (11/15/18 \$100,000 Promissory Note) and **Exhibit 15** (Membership Interest Purchase Agreement).

<sup>11</sup> On February 5, 2019, Fox emailed an unredacted copy of the Bedford Operating Agreement to Dragul indicating it contained a right of first refusal prohibiting the sale of Dragul’s interest to a third party without first offering it to Fox, and encouraging Dragul use this to “change the Receiver’s mind” about allowing Dragul to sell his membership interest to Fox for \$20,000. **Exhibit 24.** Fox had no trouble emailing an electronic copy of an operating agreement to his co-conspirator Dragul, while he now insists the Receiver file an independent action in Delaware to obtain it (or perhaps travel to California and execute a confidentiality agreement to review it).



out of the receivership estate, Alan is willing to purchase Gary's beneficial interest for \$20,000, payable immediately to the estate." Fox confirmed the offer with the Receiver on March 12, 2019. **Exhibit 20.**

The Receiver thereafter asked Fox for various documents, including tax returns, necessary to value the Estate's interest in Bedford, and assess the potential tax implications of the proposed purchase to determine whether the transaction was in the Estate's best interest. *See Exhibit 21*, at 1. The Receiver also had periodic communications with Fox's CFO on various issues. Fox plainly knew Dragul's interest in Bedford was property of the Estate and understood the Receiver needed to approve its sale. *See Exhibit 22.*<sup>12</sup>

Less than an hour after Fox and Dragul once again asked the Receiver to approve Fox's purchase of Dragul's Bedford interest (*see Exhibit 21*), Dragul sent Fox a copy of the Receiver's April 9, 2019, email demanding that SSC 02's interests in Kenwood, Fenton, and College Marketplace be turned over to the Estate. **Exhibit 23.**<sup>13</sup> Just like Bedford, Fox knew he couldn't purchase the SSC 02 interest absent the Receiver's consent and Court approval, but he went ahead and did so anyway.

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<sup>12</sup> Fox never provided the requested documents to the Receiver, and the Receiver never consented to Dragul's proposed sale of his 3.65% Bedford interest to Fox. It is little wonder Fox refuses to produce documents relating to the transfer of membership interests in the Fox Entities because those documents will further implicate Fox in Dragul's fraudulent scheme.

<sup>13</sup> Fox also refuses to produce documents concerning SSC 02's interests in Kenwood, Fenton, and College Marketplace arguing the Receiver has no right to inspect records of Fox Entities in which Dragul no longer holds a membership interest. *Resp.* at 5.

Fox spends two pages arguing he cannot be liable to reconvey the SSC 02 interests to the Estate under Colorado’s Uniform Fraudulent Transfer Act (“CUFTA”) because he purchased them in good faith for reasonably equivalent value. Resp. at 13-15. Fox misses the point. Under the Receivership Order, Dragul and all parties in active participation with him – which Fox clearly was and is – must fully cooperate in turning over all Estate assets and documents, including all stock certificates or other indicia of ownership of any subsidiaries or related companies. Rcvrship. O. at 4, ¶10. Similarly, Dragul’s creditors (which include Fox) must deliver all Receivership property in their possession and to “fully cooperate with the Receiver in connection with such turnover.” *Id.* at 5, ¶ 11. And the Receivership Order authorizes the Receiver to seek appropriate relief by motion. Fox’s surreptitious purchase of the SSC 02 interests, and his stubborn refusal to produce documents violates the Receivership Order, and the Court should award the Receiver his attorneys’ fees and costs for having to bring this motion.

Even if CUFTA did apply, the Receiver would prevail. Under CUFTA, Dragul’s transfer of the SSC 02 interests was intentionally fraudulent. *See* COLO. REV. STAT. § 38-8-105(1)(a). To retain the transfer, Fox would have to prove he took the transfer in good faith *and* paid reasonably equivalent value. COLO. REV. STAT. § 38-8-109(1). Fox cannot prove (and it is his burden to do so) that he took in good faith. Fox had actual knowledge the Receiver claimed SSC 02’s assets were property of the Estate *before* he paid Dragul \$60,000: he had consulted with Dragul about the Receiver’s position in April 2019, and he, his CFO, and his counsel were served with the Dragul

Turnover Motion on June 4, 2019. Notwithstanding this knowledge, in July 2019, Fox paid Dragul \$60,000 to get SSC 02's interests in the Fox Entities out of the Estate. This is the *opposite* of good faith.

Because Fox could never prove good faith (either objectively or subjectively), whether he paid reasonably equivalent value is irrelevant. But given Fox's February 2019 offer to pay the Estate \$20,000 for Dragul's 3.65% interest in Bedford – ***after a month earlier paying \$125,000 to obtain the same percentage interest from Rosenbaum***, Fox's knowledge of Dragul's dire financial condition, and Fox's refusal to produce the requested valuation documents, the \$60,000 price is highly suspect.

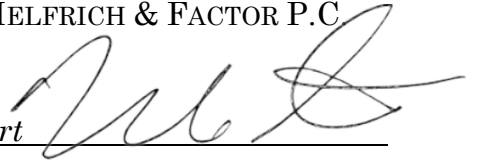
## V. Conclusion

The Receiver asks the Court to order Fox to produce the requested documents, turnover the \$180,000+ in withheld distributions and to pay future distributions to the Estate, convey to the Receiver the Estate's former SSC 02 interests in Kenwood Pavilion 14 A, LLC, Fenton Commons, and College Marketplace (or to pay the Estate the reasonable value thereof), and to award the Receiver his fees and costs in bringing this motion.

Dated: May 8, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: /s/ Michael T. Gilbert

A handwritten signature in black ink, appearing to read 'M T Gilbert', written over a horizontal line.

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on May 8, 2020, I served a true and correct copy of the foregoing **RECEIVER'S REPLY IN SUPPORT OF MOTION FOR TURNOVER vs. ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.** via CCE or first-class mail, postage prepaid, to the following:

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**Exhibit Index to Reply in Support of Turnover Motion  
Chan v. Dragul, et al.  
Denver District Court Case 2018 CV 33011**

Exhibit No.	Document Date	Exhibit Name
1	10/2/2019	Email thread with Brad Schacht re K-1 Report for GDA Village Crossroads/Lakewood Forest Shopping Center
2	3/10/2020	Email thread with Sharon Ben-Shahar Mayer re Conferral re Turnover request
3	10/18/2019	Letter from Gary Lincenberg re Requests for Documents from ACF Property Management
4	1/27/2020	Letter from Gary Lincenberg re ACF Property Management
5	1/28/2019	Claim Form filed by Alan Fox and ACF Property Management Inc.
6	3/7/2020	Reply March 7 email from Brewster to Vichick redacted
7	1/27/2020	Third Amended Complaint Superior Court, Los Angeles county Case No BC 679 693
8	1/12/2019	Dragul email to Fox asking for \$1M
9	4/9/2019	Email from Gilbert to Springer re SSC Turnover
10	7/31/2018	ACF Check to SSC 02, LLC
11	04/09/2019	Dragul email to Fox re SSC 02 turnover
12	11/9/2018	Freestone Email to Dragul re Interest in Bedford
13	11/9/2018	Rosenbaum, Dragul Fox Email re Rosenbaum's consent
14	11/15/2018	Rosenbaum & Fox Promissory Note
15	11/15/2018	Rosenbaum & Fox Bedford MIPA
16	11/9/2018	Markusch and Fox Email re \$25k Wire Deposit redacted
17	11/1/2018-11/30/2018	Excerpts from Shelly Dragul's Acct 3921_redacted
18	11/15/2018	Fox, Dragul & Rosenbaum Email Chain re Fox's Purchase of Bedford Interest redacted
19	2/13/2019	Cherry to Sender re Bedford offer from Fox redacted
20	3/12/2019	Fox email to Sender w Offer to Purchase Bedford
21	4/9/2019	Freestone-Dragul Fox Sender email re Bedford
22	4/4/2019	Fox, Sender and Dragul Email Chain re Bedford
23	4/9/2019	Dragul email to Fox re Turnover and SSC 02
24	2/5/2019	Email from Fox to Dragul re Bedford purchase

**From:** "Brewster, David A." <[dbrewster@ottenjohnson.com](mailto:dbrewster@ottenjohnson.com)>  
**Date:** March 7, 2020 at 10:45:22 AM MST  
**To:** "Vichick, Angela" <[AVichick@lrrc.com](mailto:AVichick@lrrc.com)>  
**Cc:** "Schacht, Brad W." <[brad@ottenjohnson.com](mailto:brad@ottenjohnson.com)>, "Rossman, Kenneth F." <[KRossman@lrrc.com](mailto:KRossman@lrrc.com)>  
**Subject:** Conferral - 2019CV32374 - Deposition of Alan Fox

[EXTERNAL]

---

Angela –

Good afternoon, I'm reaching out to you to confer about the deposition of Alan Fox scheduled for this Thursday March 12<sup>th</sup>. [REDACTED]

[REDACTED] Coupled with the risks we are hearing about the Coronavirus, we request that your deposition notice be vacated. [REDACTED]

[REDACTED] Of course, the

attached letter and the information I've shared in this e-mail are confidential medical information and I ask that you treat them as such.

Please let me know if you are willing to work with us to reschedule the deposition. I'm available on Monday morning as well if you'd like to discuss this further over the phone.

Best Regards,

**David A. Brewster**

Attorney at Law

**Otten Johnson Robinson Neff + Ragonetti PC**

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10 Attorneys for Plaintiffs

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13 RAYMOND SHOFLER and BARBARA  
14 SHOFLER, individually and on behalf of The  
15 Raymond and Barbara Shofler Family Trust  
16 and The Raymond Shofler IRA,

17 Plaintiffs,

18 vs.

19 ALAN C. FOX, individually and as Trustee  
20 of the Alan C. Fox Revocable Trust; ACF  
21 PROPERTY MANAGEMENT, INC., a  
22 California Corporation; and DOES 1 through  
23 100, inclusive,

24 Defendants.

CASE NO.: BC 679 693

(Related to BC679692, BC722995, BC723521,  
18STCV01178, 18STCV02200, 18STCV05912,  
19STCV11976, 19STCV16404, 19STCV43821,  
19STCV44851, 19STCV45048, 19STCV45365  
and 20STCV00211)

Hon. Teresa A. Beaudet – Dept. 50

**VERIFIED THIRD AMENDED COMPLAINT  
FOR:**

- (1) BREACH OF FIDUCIARY DUTY;
- (2) FRAUD (MISREPRESENTATION);
- (3) FRAUD (CONCEALMENT);
- (4) SECURITIES FRAUD;
- (5) VIOLATION OF CORPORATIONS  
CODE SECTION 17704.10

25 Plaintiffs Raymond Shofler and Barbara Shofler, individually and on behalf of The  
26 Raymond and Barbara Shofler Family Trust and The Raymond Shofler IRA, allege as  
27 follows:

**THE PARTIES**

28 1. Plaintiffs Raymond Shofler and Barbara Shofler (“Plaintiffs”) are married  
29 individuals, residing in Los Angeles County, California. At all relevant times, they have

1 been and still are trustees of The Raymond and Barbara Shofler Family Trust and The  
2 Raymond Shofler IRA. Plaintiffs bring this action both individually and in their capacity as  
3 trustees.

4  
5 2. Defendant Alan C. Fox ("Fox") is an individual residing in the County of Los  
6 Angeles, State of California. Fox is the trustee of the Alan C. Fox Revocable Trust and is  
7 named in this action in both his individual capacity and in his capacity as trustee.  
8 Reference in this Complaint to "Fox" includes reference to Fox individually and as the  
9 trustee of his trust, as well as in his capacity as president of defendant ACF Property  
10 Management, Inc. Fox is also an inactive member of the California Bar, admitted to  
11 practice in 1965, and active as recently as 2010. Fox was also licensed as a CPA,  
12 although he has allowed that license to lapse.

13  
14 3. Defendant ACF Property Management, Inc. ("ACF") is a California  
15 corporation with its offices in the County of Los Angeles, State of California. ACF is  
16 owned and controlled by Fox.

17  
18 4. Plaintiffs do not know the true names or capacities of the Defendants sued  
19 herein as Does 1 through 100 inclusive and will seek leave to amend this Complaint to set  
20 forth the true names and capacities of such fictitiously named Defendants when the same  
21 has been ascertained. Plaintiffs are informed and believe, and based on such information  
22 and belief alleges, that each of the fictitiously named Defendants is liable for some or all  
23 of the damages and other relief sought by this Complaint. Reference in this Complaint to  
24 the "Defendants," includes both the named defendants and all Doe Defendants.

**PLAINTIFFS' INVESTMENTS**

5. During the period from October 2004 through the present, Plaintiffs invested over \$1,750,000 in twenty separate shopping center investments, as follows:

**CHART 1**

#	INVESTMENT	INVESTOR	APPROX. DATE INVESTED	BENEFICIAL INTEREST ACQUIRED (%)	APPROX. AMOUNT INVESTED (\$)
1	Mall 205	Raymond <sup>1</sup>	10/8/04	.75	135,000
2	Paradise Valley	Plaintiffs	10/21/04	1.5	112,500
3	Pleasanton Plaza	Plaintiffs	4/25/05	1.579	150,000
4	Saddle Rock	Plaintiffs	12/6/04	1.818	100,000
5	Metroplex Center	Plaintiffs	2/10/05	0.575	100,000
6	Yosemite Park	Plaintiffs	7/21/05	1.0	102,000
7	East Thunderbird	Plaintiffs	3/1/06	0.4	94,000
8	Pipeline Village	Plaintiffs	9/21/06	1.0	85,500
9	Shafer Plaza	Plaintiffs	12/12/06	0.5	84,000
10	Deer Creek Lot 4	Plaintiffs	7/31/07	1.846	60,000
11	Writer Square	Plaintiffs	8/21/08	0.6	110,900
12	Market at SouthPark	IRA	8/10/09	0.5	52,500
13	Loggins Corners	IRA	1/31/12	0.581	21,788
14	Tower Plaza	IRA	2/8/12	.602	46,956
15	Cave Springs	Trust	5/14/13	0.75	44,100
16	TJ Maxx	Trust	11/1/13	1.303	123,820
17	Overland Crossing	Plaintiffs	12/13/13	1.237	150,260
18	Shops at Cicero	Trust	12/20/13	1.218	61,500
19	Fenton Commons	Plaintiffs	3/11/16	1.303	82,089
20	College Marketplace	Plaintiffs	5/28/16	0.675	65,812
				<b>TOTAL</b>	<b>1,782,725</b>

6. It has now been more than 15 years since Plaintiffs began investing and, as of the present writing, they have yet to receive their money back, even though the majority of the shopping centers have been sold.

7. Plaintiffs are informed and believe, and on that basis allege, that they continue to own interests in the entities that own Paradise Valley, Yosemite Park, Pipeline

<sup>1</sup> To the extent Plaintiffs acquired some of the investments in their own names, they were subsequently transferred to their trust.

1 Village, Deer Creek Lot 4, Tower Plaza, Cave Springs, Overland Crossing, Shops at  
2 Cicero, Fenton Commons, and College Marketplace. It is unclear what value, if any,  
3 those remaining interests have.

4  
5 8. Each of Plaintiffs' investments was fraudulently induced by the Defendants,  
6 as described in detail below.

7  
8 **DEFENDANTS' FRAUDULENT SCHEME**

9  
10 9. Over the past several decades, Defendants have syndicated approximately  
11 100 income properties, primarily shopping centers, in more than 10 states. Defendants  
12 continue to syndicate income properties to this day, employing the same scheme  
13 described below.

14  
15 10. Defendants begin by placing an investment property, usually a shopping  
16 center, under contract, sometimes using a third party to act as the buyer. Historically,  
17 that third party was Gary Dragul, who uses one of his entities, e.g., GDA Real Estate, to  
18 enter into the purchase contract. Defendants no longer use Dragul as their third-party  
19 buyer, because Dragul is now under two separate felony indictments for securities fraud  
20 and is in receivership.

21  
22 11. While the escrow for the purchase of a shopping center is open, Defendants  
23 form one or more single purpose entities, usually limited liability companies (LLCs), but  
24 sometimes limited partnerships (collectively, the "Investment Entities" and individually an  
25 "Investment Entity"). The Investment Entities ultimately assume the purchase contract  
26 and close the escrow. Defendants never bought any of the shopping centers at issue in  
27 this case. Rather, the Investment Entity(ies) bought the shopping centers.

28

1           12. While the escrow is still open, Defendants (and until recently, Dragul as well)  
2 begin to solicit investments from third parties, including Plaintiffs. Defendants solicit  
3 investments by sending prospective investors an Executive Summary and Financial  
4 Projections, always in the same format, which purport to summarize the investment  
5 (collectively, the "Offering Documents"). Defendants also send photographs of the  
6 property along with the Offering Documents. Sometimes a cover letter or e-mail with  
7 additional information touting the investment is also sent to investors. The material  
8 information, however, is almost exclusively contained in the Offering Documents, which  
9 were in the same format for each of the 20 investments at issue in this case.

10  
11           13. The Offering Documents tell potential investors the "Price" or "Purchase  
12 Price" of the shopping center, as well as the amount of the loan(s) against the property,  
13 the anticipated closing costs and the amount needed for an operating reserve. Based on  
14 those figures, the Offering Documents calculate the "Cash Required" to close escrow and  
15 fund the operating reserve. The Offering Documents also refer to the "Cash Required" as  
16 the "Net Investment." All of the investments at issue in this case follow that pattern.

17  
18           14. For example, attached as Exhibits 1 and 2 are true and correct copies of  
19 Defendants' Executive Summary and Financial Projections for a shopping center in  
20 Denver, Colorado known as Writer Square. Defendants used these two documents to  
21 solicit investments from Plaintiffs, as well as many other potential investors, in mid-2008.

22  
23           15. On Exhibit 2, Defendants inform investors that the "Purchase Price" of Writer  
24 Square is \$64,000,000. Defendants go on to state that there will be a loan of \$44,450,000  
25 and closing costs of \$750,000, and that Defendants intend to begin with an operating  
26 reserve of \$3,000,000. Defendants then perform the necessary arithmetic and show that  
27 the "Cash Required" to acquire the Writer Square Shopping Center, subject to a loan of  
28 \$44,450,000, together with an operating reserve of \$3,000,000, is \$23,300,000. In other

1 words, \$64,000,000 (price) + \$750,000 (loan and closing costs) + \$3,000,000 (reserve  
2 account) -\$44,450,000 (loan) = \$23,300,000.  
3

4 16. On Exhibit 1, Defendants again tell potential investors that the “Price” of  
5 Writer Square is \$64,000,000. Defendants then show the same figure of \$23,300,000,  
6 which they refer to as the “Net Investment.”  
7

8 17. Finally, the Executive Summary [Exhibit 1] states that a 0.3% membership  
9 interest in the Investment Entity can be acquired for \$69,900. This is consistent with the  
10 calculations in the Financial Projections, i.e. a 0.3% interest sold for \$69,900, evidences  
11 that a 100% interest can be bought for \$23,300,000. Defendants’ arithmetic is correct; the  
12 other information is all materially false.  
13

14 18. First and foremost, the Price is false. Attached as Exhibit 3 is a true and  
15 correct copy of the August 2008 Statement of Settlement for Buyers for the acquisition of  
16 Writer Square. It shows that three Investment Entities purchased Writer Square — Writer  
17 Square 08 A, LLC; Writer Square 08 B, LLC, and Writer Square 08 C, LLC (the “Writer  
18 Square Entities”). Each of the Writer Square Entities was controlled by ACF, which acted  
19 as their manager. Fox is the President of ACF and signed on behalf of each of the Writer  
20 Square Entities.  
21

22 19. Crucially, Exhibit 3 shows that the purchase price of Writer Square was  
23 \$58,400,000, not the \$64,000,000 represented in the Offering Documents. That fact  
24 alone allowed Defendants to defraud their investors out of more than \$5,000,000, i.e, the  
25 difference between the price as represented and the actual price. Moreover, Exhibit 3  
26 shows that prorations and credits for taxes, pre-paid rent and other items, which  
27 Defendants systematically omit from all their Offering Materials, exceeded the actual loan  
28 and closing costs. As a result, the actual amount of cash required to close escrow was  
29

1 under \$14,000,000. If one assumes that Defendants did create the promised \$3,000,000  
2 operating reserve, the cash required was just under \$17,000,000, as opposed to the  
3 \$23,300,000 claimed by Defendants.

4  
5 20. Furthermore, Defendants did not in fact fund the full operating reserve of  
6 \$3,000,000, thus allowing them to pocket additional cash upon closing. The initial  
7 operating reserve for Writer Square was well under \$500,000, and thus the real amount  
8 needed to close escrow and fund the actual operating reserve was not \$23,300,000, but  
9 something under \$15,000,000.

10  
11 21. Based on Defendants' misrepresentations, Defendants were thus able to  
12 take a secret profit of more than \$8,000,000 on the acquisition of Writer Square, i.e., the  
13 difference between the claimed Cash Required or Net Investment of \$23,300,000, and the  
14 actual amount of cash needed to close of under \$15,000,000. Defendants inflated the  
15 Cash Required – and thus the amount they charged investors for their interests – by more  
16 than 50%.

17  
18 22. Defendants took their secret profit of more than \$8,000,000 in various forms.  
19 First, as shown on Exhibit 3, defendant ACF took an undisclosed “consulting fee” of more  
20 than \$1,000,000 directly out of the escrow on the purchase of Writer Square. That fee  
21 constitutes an illegal real estate commission under Colorado law (where the property was  
22 located), because ACF did not have a real estate license in Colorado. Defendants also  
23 directed over \$750,000 of investor money to their partner, Gary Dragul, and his entities  
24 (collectively, “Dragul”). The fees paid to Dragul are illegal for the same reason, i.e., real  
25 estate commissions paid to an unlicensed individual or company.

26  
27 23. In addition, defendant Fox kept approximately 22% of Writer Square for  
28 himself, a share that his investors would have had to pay over \$5,000,000 to acquire (if

1 each .3% costs \$69,900, then 22% costs \$5,126,000). That 22% interest later allowed  
2 Fox to take 22% of the distributions from Writer Square, including the sale proceeds, even  
3 though he had not made any capital contribution to the Writer Square Entities. As noted  
4 below, that allowed Fox to take over \$5,700,000 from the sale of Writer Square in 2013,  
5 even though he had made no investment in that Investment Entity.

6  
7 24. The underlying investment in the Writer Square Shopping Center was highly  
8 successful. The three Writer Square Entities bought the property for \$58,400,000 in 2008  
9 and sold it for \$68,250,000 in 2013, a profit of nearly \$10,000,000 in five years.  
10 Moreover, based on Defendants' reports to the secured lender, it appears that the  
11 property was cash-flow positive at all times between 2008 and 2013.

12  
13 25. Nevertheless, because of Defendants' pervasive fraudulent conduct,  
14 investors made less than they would have in an interest-bearing savings account. Over  
15 the entire course of the Writer Square investment, which lasted approximately 5 years,  
16 Plaintiffs made a total return on their investment of approximately 0.6% per year, most of  
17 which was paid at the end of the investment.

18  
19 26. Defendants and Dragul, on the other hand, who had none of their cash at  
20 risk, made in excess of \$10,000,000 on the Writer Square investment, including, but not  
21 limited to:

22 **CHART 2**

23 Commission on purchase to ACF	\$1,168,000
24 Commission on purchase to GDA	\$709,193.96
25 Commission to SSC (a company owned by 26 Dragul in connection with the purchase or 27 leases of airplanes)	\$60,000
28 Refinance loan Origination fee to ACF	\$125,000
29 Commission to ACF on sale	\$1,365,000
Commission to GDA on sale	\$682,500
Management fees to ACF [estimated, based on gross income of \$4,000,000 a year for	\$800,000



1	five years]	
2	Monthly distributions to Fox [estimated, based on a 22% membership interest]	\$787,377
3	Sales proceeds to Fox [estimated, based on a 22% ownership interest and Defendants' own claim about net proceeds to the seller]	\$4,510,036
4	<b>Total</b>	<b>\$10,207,106.96</b>

5  
6 27. The information shown above is Plaintiffs' best current estimate of the profits  
7 Defendants generated from Writer Square. As discussed in more detail below,  
8 Defendants have refused to provide the records needed to establish those profits with  
9 more certainty.

10  
11 28. Defendants did not just lie about the price, cash required and net investment  
12 at the outset of each investment. Quite to the contrary, they repeated their lies over and  
13 over throughout the course of the investments. For example, on July 22, 2013,  
14 Defendants sent a letter to all investors in Writer Square, asking the investors to vote to  
15 approve the sale of the property. The letter tells investors that "The original investment  
16 was \$23,300,000..." A true and correct copy of that letter is attached as Exhibit 4.  
17 Whenever the topic arose, Defendants stuck to their original story: the purchase price for  
18 Writer Square had been \$64,000,000 and the amount invested had been \$23,300,000.

19  
20 29. Fox has admitted in sworn testimony that he never divulges the actual  
21 purchase prices of the shopping centers to investors:

22  
23 Q: Have you ever told any investor that the purchase price,  
24 the price listed on the Executive Summary, is different than the  
25 purchase price on the contract, pursuant to which the LLCs  
26 were buying the underlying shopping centers?

27 A: No.

28 30. Even in the few cases when potential investors have asked if the price set  
29 forth in the Offering Documents is really the actual purchase price of the property in

1 question, Fox refused to answer. He also instructed his staff not to provide the  
2 information. Fox has testified under oath as follows:

3  
4 Q: ...Isn't it true that there were perhaps five people who  
5 asked you information about the price of the property  
6 over the years that you well syndicating, and you  
7 refused to tell them the price?

8 A: Yes, I believe that's correct.

\*\*\*

9 Q: In fact, you told people on your staff not to answer the  
10 question what is the price of the property?

11 A: I may have.

12 31. Fox has further admitted under oath that all the potential investors to whom  
13 he refused to reveal the purchase price elected not to invest.

#### 14 DEFENDANTS' ATTEMPTS TO CONCEAL THEIR FRAUD

15 32. Defendants do not just lie about the purchase prices, they also take active  
16 steps to prevent potential investors, such as Plaintiffs, from finding out that the Price and  
17 Purchase Price shown on the Offering Documents are false.

18 33. For example, in or about April 2010, the Bell Creek Shopping Center was  
19 offered for sale through a licensed real estate broker for \$11,250,000. Defendants  
20 caused Dragul to enter into a contract to purchase the Bell Creek Shopping Center at a  
21 price of \$11,100,000. That price proved to be reasonable, as the contemporaneous  
22 appraisal obtained during escrow in connection with the purchase money loan reflected a  
23 fair market value of \$11,250,000. In this regard, Writer Square appraised during escrow  
24 for \$59,700,000.

25  
26 34. Once the shopping center was under contract, Fox and ACF sent their  
27 investors the Offering Documents along with a cover letter trumpeting the merits of the  
28 investment. According to Fox's cover letter, "the stars are in alignment" and Bell Creek

1 was a “nearly perfect investment opportunity.” In fact, Bell Creek had been for sale for  
 2 years.

3  
 4 35. The Offering Documents for the Bell Creek investment misrepresented that  
 5 the “Purchase Price” was \$12,500,000. In other words, Defendants overstated the  
 6 Purchase Price by \$1,400,000, or 13.6%. This was typical of Defendants’ practices.  
 7 Defendants usually tell investors that the price was about 10% to 15% more than was in  
 8 fact the case.

9  
 10 36. The following chart shows the Price/Purchase Price of the twenty shopping  
 11 centers in which Plaintiffs invested, as compared to the actual purchase prices paid by the  
 12 Investment Entities as disclosed in the escrow closing statements produced in discovery  
 13 in this action:

14  
 15 **CHART 3**

16 INVESTMENT	17 PURCHASE PRICE IN OFFERING DOCUMENTS (\$)	18 ACTUAL PURCHASE PRICE	19 UNDISCLOSED PROFIT ON PURCHASE	20 % MARKUP
21 Mall 205	59,700,000	52,920,000	6,780,000	12.8
22 Paradise Valley	22,400,000	20,300,000	2,100,000	10.3
23 Pleasanton Plaza	29,500,000	Unknown	Unknown	Unknown
24 Saddle Rock	18,950,000	17,756,000	1,194,000	6.7
25 Metroplex Center	52,200,000	44,250,000	7,950,000	18
26 Yosemite Park	31,400,000	28,245,000	3,155,000	11.2
27 East Thunderbird	53,500,000	43,977,273	9,522,727	21.7
28 Pipeline Village	18,250,000	16,210,000	2,040,000	12.6
29 Shafer Plaza	48,500,000	42,274,220	6,225,780	14.7
Deer Creek Lot 4	7,950,000	6,735,662	1,214,338	18
Writer Square	64,000,000	58,400,000	5,600,000	9.6
Market at SouthPark	24,750,000	22,000,000	2,750,000	12.5
Loggins Corners	7,187,500	5,250,000	1,937,500	37
Tower Plaza	18,250,000	17,025,000	1,225,000	7.2
Cave Springs	13,700,000	11,450,000	2,250,000	19.6
TJ Maxx	43,350,000	38,595,000	4,755,000	12.3
Overland Crossing	30,000,000	29,300,000	700,000	2.4

INVESTMENT	PURCHASE PRICE IN OFFERING DOCUMENTS (\$)	ACTUAL PURCHASE PRICE	UNDISCLOSED PROFIT ON PURCHASE	% MARKUP
Shops at Cicero	16,000,000	14,000,000	2,000,000	14.3
Fenton Commons	16,800,000	15,000,000	1,800,000	12
College Marketplace	25,500,000	23,338,000	2,162,000	9.3
<b>TOTALS</b>	<b>601,887,500</b>	<b>507,026,155</b>	<b>65,361,345</b>	

37. On June 22, 2010, Jerry Ross received the Offering Documents for Bell Creek, which informed him that the close of the purchase escrow by the investment entities would take place by July 31, 2010. In other words, Defendants solicited his investment prior to closing. Before making an investment decision, Ross did a brief Internet search to see if he could learn more about Bell Creek. That search led Ross to discover the listing for Bell Creek on Loopnet.com, showing the actual asking price of \$11,250,000.

38. On June 22, 2010, Ross e-mailed Fox asking about the disparity between the apparent listing price he had serendipitously found online, and the price shown in the Offering Documents he had received from Defendants:

I see online that the place was listed for sale at \$11,250,000.  
How come our Purchase price is \$12.5?

39. Caught red-handed, Fox initially turned to his partner, Dragul, and asked him, in an e-mail:

**How do I explain this to the investor?**

40. Fox then wrote back to Ross, in what proved to be a successful attempt to mislead him:

1 I have no idea where the \$11,250,000 price was posted or  
2 even if it was ever official.<sup>2</sup> Sometimes a broker will know  
3 that a property is available, then post his or her own "listing" at  
4 a price which was never even discussed with the owner.  
5 Years ago I made an offer on a Carmel motel located on  
6 Ocean Avenue. I had been trying to purchase that particular  
7 property for two or three years, and was delighted with the  
8 price which, as I best recall, was about \$8,000,000. I had  
9 thought the price should be more in the area of \$10,000,000,  
10 so I was extremely disappointed (but not terribly surprised) to  
11 learn directly from the owner (who pulled no punches) that the  
12 broker I was dealing with did not have a listing, the property  
13 was not for sale at the price quoted, and as the result of my  
14 dealing through an unauthorized broker the seller would not  
15 consider selling the property to me at any price. *Sic transit  
16 gloria.*

17  
18 41. At the time he wrote this email, Fox certainly knew that the \$11,250,000  
19 asking price was current. He also knew that he, through Dragul, had the shopping center  
20 in escrow at \$11,100,000. And, most importantly, he knew what Ross was asking and he  
21 succeeded in misleading Ross, who invested \$500,000 in Bell Creek. A true and correct  
22 copy of this email chain is attached as Exhibit 5.

23  
24 42. Fox later admitted the following in sworn testimony:

25 Q: So you knew that, regardless of what the listing was,  
26 you knew the property was being sold at \$11,100,000,  
27 correct?

28 A: There was a contract for that price, yes.

29 Q: Why didn't you write back to Jerry Ross and say, well,  
30 I'm buying it at \$11,100,000, and I'm selling it to you at  
31 12.5. That's why there is a difference.

32 A: I was looking at the first sentence on the second line,  
33 which is: I see online that the place was listed for sale at  
34 11.250. He knew the fact that the seller, from my e-  
35 mail, who I talked to at the ICSC convention had sold it  
36 twice before and deals have fallen through. There is a  
37 problem with the property, which you didn't read in the  
38 e-mail, which says, we took care of that problem at the  
39 property. That's what I do.

\*\*\*

40 Q: Jerry [Ross] asked you, how come our price is 12.5.  
41 Why didn't you tell him that you were buying it at 11  
42 million 1?

43  
44 <sup>2</sup> Unless otherwise noted, emphasis has always been added in this Complaint.

\*\*\*

- 1 A: Mr. Ross already knew that the purchase price was – I  
2 was syndicating – the syndication, including a loan and  
3 everything else, it was 12.5 million. He already knew  
4 that.  
5 Q: **Well, he knew you told him it was 12.5. He was  
6 asking, why are we paying more than the listing?  
7 Why didn't you answer that question?**  
8 A: **I didn't have enough information at that time.**  
9 Q: You knew the price was 11.1. And that's what you were  
10 paying for it; correct?  
11 A: Yes.  
12 Q: **What other information did you need to respond  
13 accurately to his question?**  
14 A: **First of all he did not ask a question about what I  
15 was paying. He did not ask that. He didn't ask that.  
16 He didn't ask that in this e-mail or string of e-mails.  
17 Your client never asked that question.**  
18 Q: **So when he wrote to you and said, "I see online that  
19 it's listed at 11,250. How come our price is 12.5?  
20 You don't think he was asking why is there a  
21 disparity?"**  
22 A: **He was asking how come our purchase price is  
23 12.5. Question mark. That's what he was asking.  
24 And his purchase price was 12.5 for the syndicated  
25 package including the loan and all the work I put in.**  
26 \*\*\*  
27 Q: He asked a simple question. It's listed at 11.250. Why  
28 am I paying 12.5?  
29 A: Yes.  
30 Q: **Why didn't you tell him because I'm marking it up  
31 from 11.1 to 12.5?**  
32 A: **I didn't say that in the e-mail.**  
33 Q: **You didn't say it because you didn't want him to  
34 know that you were marking it up, correct?**  
35 A: **I don't think that's correct.**  
36 \*\*\*  
37 Q: You knew at this time that you were in the process of  
38 buying the property for \$11,100,000?  
39 A: Yes, absolutely.  
40 Q: So the listing at 11 million, 250 was only slightly more  
41 than the price you were paying for it; correct?  
42 A: Yes.  
43 Q: **And you didn't, once again, tell Mr. Ross what was  
44 obviously the truth. I'm paying 11.1; I'm selling it to  
45 you at 12.5?**  
46 A: **That's correct. I did not tell him that.**  
47 Q: And you didn't tell him that because you were hiding the  
48 fact from him, Correct?  
49 A: No .  
50 \*\*\*  
51 Q: Why didn't you tell Mr. Ross that the reason the price  
52 stated in the Executive summary was 12 million 5 was  
53 because you decided to put that number down?  
54 A: I have no recollection.

1           43. In that same e-mail string with Jerry Ross, Fox told Ross that the real listing  
2 price was \$13,250,000. That was a lie. The listing price might once have been  
3 \$13,250,000, but that would have been several years earlier. Fox knew that because he  
4 and Dragul had twice before unsuccessfully tried to purchase Bell Creek at higher prices  
5 but had subsequently decided to cancel the escrows. Fox makes reference to those two  
6 failed transactions in his testimony quoted above, without mentioning that he and Dragul  
7 were in control of those deals.

8  
9           44. Again, in the same e-mail chain with Ross, Fox told Ross to “**PLEASE**  
10 **KEEP THIS CONFIDENTIAL**” (emphasis in original), in order to make sure that Ross did  
11 not talk to other potential investors, some of whom Ross knew. Fox specifically asked  
12 Ross not to contact the listing broker, claiming that “[i]t is vital to my ability to buy well that  
13 listing brokers trust me to keep their information entirely confidential.” That was a lie – the  
14 asking price was not in any way confidential, but rather was posted on the Internet. Of  
15 course, if Ross were to call the listing broker to get more information about Bell Creek, he  
16 likely would have found out that Fox had lied to him about the price of Bell Creek. Fox  
17 was lying to cover up his earlier lies.

18  
19           45. After Ross and numerous others had invested in Bell Creek, Fox was  
20 informed by ACF’s Chief Financial Officer, Ed Delava, that the \$11,100,000 purchase  
21 price was being advertised by Jones, Lang LaSalle, the broker who listed Bell Creek  
22 property. Upon learning this information, Fox immediately forwarded the advertisement to  
23 Gary Dragul telling him:

24                   “This has caused serious problems for me with investors.  
25                   Please make sure this NEVER happens again” (emphasis in  
26                   original).

1 Dragul responded that in the future “[w]e will put it in the contract [with the brokers] so  
2 they are precluded from advertising.”  
3

4 46. In other words, Fox and Dragul almost got caught by Jerry Ross in 2010. In  
5 response, they misled Ross and then conspired to take steps to make it less likely that  
6 other investors would find out that the purchase prices set forth in the Offering Documents  
7 are false. Those steps included but are not limited to: telling the staff at ACF not to tell  
8 investors about the actual purchase prices; telling Jerry Ross not to talk to anyone about  
9 the actual purchase price of Bell Creek; and telling real estate brokers not to disclose to  
10 anyone the actual purchase prices.  
11

12 47. Confronted with the evidence set forth above and asked under oath to  
13 elaborate on the “serious problems with investors” he was referring to in his e-mail to  
14 Dragul, Fox told yet another lie. He claimed that there were in fact no problems with  
15 investors and that he had lied to Dragul in order to get him to act quickly. Asked why he  
16 cared about the fact that the real purchase price of Bell Creek was being made public,  
17 Fox testified that he feared that his children (all of whom are over 30 years old) might be  
18 kidnapped as a result.  
19

20 **DEFENDANTS’ MISREPRESENTATIONS ABOUT THEIR ABILITY TO BUY**  
21 **PROPERTIES AT A DISCOUNT FOR THE BENEFIT OF INVESTORS**  
22

23 48. Defendants claim that Fox and Dragul are experts in getting quality  
24 investment properties at the best possible price for the benefit of all investors, including  
25 himself, his family and outside investors such as Plaintiffs. In sworn testimony, Fox  
26 touted his ability to buy properties at low prices and sell them at higher prices:  
27

28 Q: Don’t you promote yourself to potential investors by  
29



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telling them that you are able to buy properties cheaply, for less than other people can buy properties?

A: Yes.

49. Similarly, in letters Fox sent to the Plaintiffs he reiterated his ability to buy properties at a discount. For example, on January 31, 2005, Fox wrote to the Plaintiffs and other investors, as follows:

...There is, however, one area where we can "beat" the real estate market—by following the principle, "**Well bought is half sold.**"

A well located shopping center producing \$1,000,000.00 of annual operating income would sell today at a price between \$14,000,000 and \$17,200,000. That is a pretty large gap. Considering that the cash investment will be around \$5,000,000, that difference of \$3,200,000 in pricing is about 60% on your investment. **If we do nothing but buy at the low end of the range and sell at the high end we will enjoy an excellent return on our investment.**

50. On May 2, 2005, Fox wrote another letter to investors in which he stated:

Recently one of our appraisers, in researching comparable sales near Penny's Plaza in Pleasanton, told us that one property for sale received 120 offers, and he wondered how it was possible for us to purchase anything in today's Seller's market. ...The answer is that Gary Dragul is extremely well connected with sellers in the market, we often pre-empt the "bidding" process because we offer to complete due diligence in 7 days or less, and we are willing to commit as much as \$2,000,000.00 which we will lose if we fail to complete a purchase.

A true and correct copy of that letter sent to Plaintiffs is attached as Exhibit 6.

51. The May 2, 2005, letter is relevant for two reasons. First, Defendants reinforced their claim that Defendants shop for properties on behalf of investors. Second, Plaintiffs are informed and believe, and on that basis allege, that the balance of the claims are also false. For example, Defendants did not "pre-empt" the bidding process with

1 regards to any of the twenty investments at issue here. Defendants did not agree to a  
2 seven-day due diligence period with respect to any of the twenty investments at issue  
3 here. Defendants did not agree to forfeit any amount of money for simply deciding not to  
4 close, and Defendants did not in fact ever forfeit any earnest money.

5  
6 52. Similarly, in a letter sent to Plaintiffs and other investors on May 1, 2006,  
7 Fox stated:

8  
9 ACF Property Management, Inc. was incorporated in California  
10 on March 1, 1968. More than 38 years later, we are still at it,  
11 using our experience to know what most other people don't  
12 seem to know—**how to identify and purchase top quality  
13 investment property at a reasonable price.** Since we now  
14 have more than 500 investors (whew!) and a portfolio worth  
15 more than \$1,350,000,000.00 we must have learned  
16 something, and **we intend to apply that knowledge to  
17 provide our clients with a relatively secure investment, a  
18 reliable cash flow, and the opportunity for significant  
19 appreciation in value.**

20 Fox has also admitted in sworn testimony that that he understood that his investors relied  
21 on these letters when they decided to invest.

22  
23 53. Defendants therefore mislead investors into thinking that their interests are  
24 aligned, and that Defendants have no incentive to syndicate a shopping center unless the  
25 investment will make money. In fact, just the opposite is true. Defendants make most of  
26 their money up front, simply by buying the shopping centers and lying to investors about  
27 the purchase prices of the properties and the cash required to acquire them. As a result,  
28 Defendants were actually motivated to buy and sell as often as possible, despite the high  
29 transaction costs and without regard to the economics of the investments. Moreover,  
30 even if Defendants were able to buy shopping centers at low prices, that would not benefit  
31 investors. Rather, it would only serve to increase Defendants' profits.



1 because they were able to take over a million dollars in illegal commissions in connection  
2 with the sale and then tried to convince the investors to put their proceeds into another  
3 shopping center investment in which Defendants would again make the same  
4 misrepresentations and omissions, including misrepresenting the price and taking illegal  
5 and undisclosed commissions.

6  
7 58. The following chart shows some of the illegal commissions that Defendants  
8 took on the purchase and sale of shopping centers in which Plaintiffs invested:

9  
10 **CHART 4**

<b>INVESTMENT</b>	<b>UNDISCLOSED FEE TAKEN (\$)³</b>
Mall 205	1,530,000*
Pleasanton Plaza	618,000*
East Thunderbird	750,000
Pipeline Village	400,000
Shafer Plaza	1,200,000
Shafer Plaza	600,000
Deer Creek Lot 4	238,500
Writers Square	1,168,000
Writer Square	1,385,000*
Market at SouthPark	950,000
Market at Southpark	600,000*
Cave Springs	250,000
TJ Maxx	821,900
Shops at Cicero	500,000
Fenton Commons	400,000
College Marketplace	1,000,000
<b>TOTAL</b>	<b>12,411,400</b>

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21  
22 59. Defendants knew that investors believed that the price set forth in the  
23 Offering Documents was the actual price being paid by the Investment Entities for the  
24 properties in question. Fox has admitted under oath that, to his knowledge, every  
25 investor who discovered after the fact that the actual prices were lower has sued him for  
26 fraud. And, as noted above, those investors who found out before the investor made a

27  
28  
29 <sup>3</sup> Unless otherwise noted, the commission was taken on the purchase. Commissions  
taken on the sale of the properties are marked with an asterisk.

1 decision about investing, decided not to invest. Yet, after being aware of those facts, Fox  
2 continued to defraud Plaintiffs and others by continuing to misrepresent the purchase  
3 prices of the investment properties, the cash required/net investment.  
4

5 60. In addition to lying about the purchase price and cash required, Defendants  
6 made additional misrepresentations for the purpose of inducing investors such as the  
7 Plaintiffs to invest. For example, Fox told some investors that Defendants make their  
8 money in two ways: ACF earns a management fee of 4% of gross rent for managing  
9 shopping centers, and that Fox makes additional money by investing in the shopping  
10 centers on the same terms as other investors. Defendants specifically tell investors that  
11 they do not take a "promotional interest" or otherwise profit from the investments.  
12

13 61. Fox has attempted to justify his conduct by arguing that everyone has a right  
14 to make a profit. But that argument could be used to justify any type of wrong-doing.  
15 Fox has every right to make money legally, e.g., by charging a 4% management fee that  
16 is disclosed to investors and by receiving distributions on the same terms as other  
17 investors. He does not have the right to make money by committing fraud, e.g., by lying  
18 about the price of shopping centers.  
19

20 62. Fox has further attempted to justify his conduct by analogy to buying milk at  
21 the supermarket. We do not usually worry too much about what the supermarket paid for  
22 the milk, and in fact we assume that, in most cases, the supermarket paid less than the  
23 price it charges us. After all, everyone understands that the supermarket is in business to  
24 make a profit. The problem with that analogy, however, is that Defendants did not buy the  
25 shopping centers, nor did they sell shopping centers to their investors. Rather, the  
26 Investment Entities bought the shopping centers. Moreover, the supermarket is not a  
27 fiduciary, as is Fox and ACF.  
28

1 63. Defendants and their counsel keep pretending that Defendants sold real  
2 estate to investors.<sup>4</sup> Indeed, as of this writing, Defendants have a pending motion to  
3 compel answers at deposition which includes three questions that assume that  
4 Defendants were buying real property at one price, then selling that property to investors  
5 at another price. But that is simply not what happened. Defendants never bought real  
6 property, nor did they sell real property to Plaintiffs. In each case, the Investment  
7 Entity(ies) bought the real property. Plaintiffs bought interests in the Investment Entities  
8 based, in substantial part, on lies about what the Investment Entities paid for the shopping  
9 centers.

10  
11 64. Fox has also tried to justify his lies by claiming that he contributed the  
12 shopping centers to the Investment Entities. For example, in his deposition in this case,  
13 Fox testified that he contributed the shopping center known as Market at South Park, free  
14 and clear of all debt, to Market at Southpark 09, LLC. That is a false. Fox never bought  
15 Market at Southpark, and he certainly did not contribute it to the Investment Entity. The  
16 Investment Entity bought the shopping center, as evidenced by the closing statement and  
17 the deed.

18  
19 65. Moreover, as set forth below, Corporations Code Sections 17701.13(d)(1)  
20 and 17704.10 provide that the manager of an LLC must maintain a list of the members,  
21 along with their respective contributions to the LLC, and that the manager must provide  
22 that list upon request. Similarly, a general partner of a limited partnership has the same  
23 obligations pursuant to Corporations Code §§15901.11 and 15903.04. ACF is the  
24 manager of Market at Southpark 09, LLC. Plaintiffs have repeatedly asked for, among  
25 other things, a list of members/limited partners with their respective contributions to the  
26

27 <sup>4</sup> This is particularly ironic because, in the Ross litigation, Defendants and their counsel  
28 repeatedly accused Ross of alleging that he had purchased real estate from Defendants.  
29 Ross never made any such allegation.

1 Investment Entities, including Market at Southpark 09, LLC. Such a list (if accurate)  
2 would show that Fox did not contribute real property. Indeed, the documents Plaintiffs  
3 have seen, e.g., the Operating Agreement produced in this litigation by Defendants, show  
4 that Fox made only nominal contributions to the Investment Entities, e.g., \$10. Plaintiffs  
5 are informed and believe, and on that basis allege, that Fox never contributed any  
6 meaningful amount to any of the Investment Entities.

7  
8 66. Defendants' fraud is by no means limited to lies about the prices of the  
9 shopping centers and the "cash required"/"net investment" in connection with the  
10 acquisition of the shopping centers. Quite to the contrary, the fraud was pervasive and  
11 lasted throughout the entire investments.

12  
13 67. Defendants routinely lied to investors to induce them to vote for sales of  
14 various shopping centers and also for 1031 exchanges when shopping centers were sold.  
15 For example, on July 22, 2013, Defendants wrote a letter to investors in Writer Square,  
16 including the Plaintiffs, asking them to vote on the sale of that shopping center. That  
17 letter contains the claim that, "The original investment was \$23,300,000..." That  
18 statement is false. The figure of \$23,300,000 is the amount of the "Cash Required" and  
19 "Net Investment" as set forth in the Offering Documents. It was not the actual amount  
20 invested by anyone, nor any group of people. It was just a repeat of the earlier lies that  
21 Defendants told to induce Plaintiffs to invest in the first place.

22  
23 68. Moreover, whereas the initial lie was used to induce an investment in a  
24 shopping center, the repeat of the lie was used to induce a vote on the sale of the  
25 shopping center. And, as alleged previously, Defendants have a very substantial interest  
26 in causing as many sales as possible, because they used the sales as an opportunity to  
27 take additional undisclosed funds.

1           69. Similarly, with Loggins Corners, a shopping center located in Jefferson,  
2 Georgia, Defendants sent out at least two different letters to investors soliciting votes on a  
3 sale of the shopping center. Plaintiffs received one version, while other investors, such  
4 as Eric Ross and Jenny Zipkin, received a second version. Both versions are addressed  
5 to "Investors in Loggins Corners" and both are dated April 5, 2018. True and correct  
6 copies of the two versions are attached as Exhibits 8 and 9, respectively.

7  
8           70. The version of the letter Defendants sent to Plaintiffs states that: "[t]he total  
9 original investment in Loggins in January, 2012 was \$3,750,000." That statement was  
10 false. The price of Loggins Corners was not \$7,187,500, but rather \$5,250,000. The  
11 cash required to close escrow was, in fact, well under \$2,000,000, even if one assumed  
12 that the operating reserve had been funded. The total original investment was about half  
13 of what the Defendants told Plaintiffs.

14  
15           71. But Defendants did not simply make up the figure of \$3,750,000. In 2012,  
16 Defendants had provided Plaintiffs with the Offering Documents for the Loggins Corners'  
17 investment that claimed that the price of Loggins Corners was \$7,187,500 and that the  
18 Cash Required was \$3,750,000. Thus, when Defendants decided they wanted to sell  
19 Loggins Corners in 2018, Defendants had to tell the same lie, i.e., that the that the original  
20 investment had been \$3,750,000. A true and correct copy of the Executive Summary  
21 sent to Plaintiffs is attached as Exhibit 10.

22  
23           72. Jenny Zipkin and Eric Ross had not invested any cash in Loggins Corners.  
24 Thus, it made no sense for Defendants to tell them that the original investment was  
25 \$3,750,000. Accordingly, they received a letter that made no mention of the amount  
26 originally invested [Ex. 9].

27  
28           73. Plaintiffs are informed and believe, and on that basis allege, that there is at



1 least one more version of that April 5, 2018 letter to investors in Loggins Corners.  
2 Originally, in 2012, Defendants sent out a second set of Offering Documents to some  
3 investors, telling them that the price of Loggins Corners was \$7,737,500, and that the  
4 cash required was \$4,300,000. A true and correct copy of the Executive Summary  
5 showing this higher price is attached as Exhibit 11.

6  
7 74. Plaintiffs are informed and believe, and on that basis allege, that there is a  
8 version of the April 5, 2018 letter to investors in Loggins Corners that states that: “[t]he  
9 total original investment in Loggins in January 2012, was \$4,300,000.” Certainly,  
10 Defendants could not have sent investors who received the alternative set of Offering  
11 Documents the same letter that Plaintiffs received.

12  
13 75. Defendants did the same thing with regards to Market at Southpark, a  
14 shopping center in Colorado. The Offering Documents sent to Plaintiffs in 2009 reflected  
15 a purchase price of \$24,750,000, and a net investment of \$10,500,000. A true and  
16 correct copy of the version of the Executive Summary sent to Plaintiffs is attached as  
17 Exhibit 12.

18  
19 76. On May 13, 2011, Defendants sent a letter to “All Investors in Market at  
20 Southpark” in which they asked members to vote on a proposed sale. The version of the  
21 letter that Defendants sent to Plaintiffs states that: “[t]he total original investment in  
22 Market at South Park was \$10,500,00 in August, 2009.” That claim matches the Offering  
23 Documents the Plaintiffs had received. It is also false. A true and correct copy of the  
24 letter is attached as Exhibit 13.

25  
26 77. In fact, the price of Market at Southpark was not \$24,750,000, as reported in  
27 the Offering Documents sent to Plaintiffs. Rather, it was \$22,000,000. The cash  
28 required/net investment to close escrow and fund the operating reserve was not

1 \$10,500,000; it was about \$7,500,000, even assuming that Fox fully funded the promised  
2 operating reserve, which in fact he did not do.

3  
4 78. Moreover, other investors in Market at Southpark were originally charged  
5 different prices for the interests, based on different alleged amounts of cash required. For  
6 example, Fox family members were all charged lower prices for their LLC interests.  
7 Therefore, they could not receive letters saying that the original investment was  
8 \$10,500,000. Attached as Exhibit 14 is a true and correct copy of an internal e-mail from  
9 Alan Fox to Yana Viteri, then a Vice President of ACF, referencing the different prices  
10 charged to different Fox family members and the correspondingly different “total  
11 investments” for each.

12  
13 79. As a general practice, Defendants lied in their letters to investors soliciting  
14 votes on the sales of shopping centers, providing false accounts of the original purchase  
15 price of the properties and the original cash invested, among other things. Generally  
16 speaking, the lies told to each investor corresponded to the lies that investor was told  
17 when the shopping center was originally purchased. Writer Square, Market at Southpark  
18 and Loggins Corners are typical examples.

19  
20 80. Shafer Plaza, a shopping center located in Frisco, Texas, provides another  
21 example of Defendants lying to induce Plaintiffs and other investors to vote for sales, but  
22 this time based on different misrepresentations. Defendants syndicated that property in  
23 2006. Plaintiffs invested in Shafer Plaza based on a false claim that the price of the  
24 shopping center was \$48,500,000 (it was \$42,274,220, a \$6,225,780 difference). On  
25 September 1, 2017, Defendants sent Plaintiffs a letter addressed to “Investors in Shafer  
26 Plaza” regarding a possible sale of that property. The letter begins:

27  
28 We have a potential sale of Shafer Plaza at a gross  
price of \$33,250,000 before paying off **the loan of**

1           **\$32,485,321**, the cost of sale of approximately \$997,500, and  
2           providing a letter of credit to the Seller (sic.) of \$750,000 in  
3           order to protect against possible default in the future by Toys  
4           'R Us which leases 50,200 SF. This means that the net sale  
5           proceeds will be less than zero, **even before paying back the**  
6           **\$4,029,184 which I have personally loaned to the property.**

7                           **In other words, there will be no cash available to**  
8                           **investors from this sale....**

9           A true and correct copy of that letter is attached as Exhibit 15.

10           81.     The letter goes on to ask the investors to vote for a sale, even though the  
11           sale supposedly will not generate any proceeds. Fox induced the Plaintiffs to vote for the  
12           sale on the basis that his alleged loan of more than \$4,000,000 would not get repaid. Fox  
13           then promises Plaintiffs a small interest in a new shopping center investment, Lake Mary,  
14           if they would vote for the sale of Shafer Plaza before September 8, 2017.

15           82.     In reliance on the letter, Plaintiffs voted for the sale and returned their ballot  
16           on September 6, 2017. Defendants then breached their promise to provide the interest in  
17           the Lake Mary investment.

18           83.     Through discovery in this case, Plaintiffs have learned that the material  
19           information upon which they relied was false. Specifically, it was not true that "the net  
20           sale proceeds will be less than zero" and that Fox would be walking away from a  
21           purported loan to the Investment Entity(ies) in the sum of \$4,029,184. In fact, upon the  
22           sale of Shafer Plaza on November 8, 2017, ACF took an illegal commission of \$600,000,  
23           and Dragul's company, GDA Real Estate Services, was given an illegal commission of  
24           \$500,000. Moreover, those commissions were not disclosed to the Plaintiffs.

25           84.     Even after paying \$1,100,000 in undisclosed and illegal commissions,  
26           contrary to Fox's statement in the September 1, 2017 letter, the sale of Shafer Plaza did  
27

1 not result in net sale proceeds of “less than zero.” Rather, the net proceeds due to the  
2 Investment Entity(ies) was \$9,555,774.15. A true and correct copy of the closing  
3 statement is attached as Exhibit 16.  
4

5 85. On November 8, 2017, the escrow for the sale of Shafer Plaza closed.  
6 Exactly \$9,555,774.15 was transferred from the escrow to the operating account of Shafer  
7 Plaza 06 A, LLC, the entity in which Plaintiffs invested.  
8

9 86. On that same day, November 8, 2017, the entire \$9,555,774.15 was then  
10 transferred from the operating account of Shafer Plaza 06 A, LLC to the personal account  
11 of Alan Fox.  
12

13 87. When questioned about the September 1, 2017 letter, Fox claimed that the  
14 phrase “the loan of \$32,485,321” really means two loans: one loan from an outside lender  
15 in excess of \$21,000,000 (i.e., the one shown on the closing statement) and a second  
16 loan from Fox to the Investment Entity in excess of \$10,000,000.  
17

18 88. In other words, Fox now claims that, as of September 1, 2017, Shafer Plaza  
19 06 A, LLC owed him more than \$14,000,000, i.e., the \$10,000,000 plus loan which was  
20 largely paid off, and the exactly \$4,029,184 loan which was allegedly going unpaid.  
21

22 89. Plaintiffs filed the present action on October 13, 2017, about a month before  
23 the sale of Shafer Plaza. Plaintiffs learned about the funds Defendants and Dragul took  
24 from the escrow as a result of discovery in this case. Since learning of the Defendants’  
25 fraud, Plaintiffs have repeatedly demanded access to the books and records of the  
26 Investment Entities in which they invested, under the applicable Corporations Code. One  
27 reason for that demand has been to verify Fox’s claims, e.g., whether Fox made any  
28 loans to Shafer Plaza 06 A, LLC. A true and correct copy of an e-mail dated May 14,

1 2019, containing one of the many demands for access to the records is attached as  
2 Exhibit 17.

3  
4 90. As discussed in more detail below, Defendants have flatly refused to allow  
5 Plaintiffs or their counsel to look at or copy any original records. Instead, they have  
6 provided only electronic copies of some of the materials. Those materials are woefully  
7 incomplete, and, as relevant here, do not begin to substantiate Fox's claim that, as of  
8 September 1, 2017, Shafer Plaza 06 A, LLC, owed him more than \$14,000,000.

9  
10 91. Moreover, Fox produced various financial statements which list his assets,  
11 including loans he made. No loan to Shafer Plaza 06 A, LLC, is listed on those financial  
12 statements.

13  
14 92. Furthermore, Fox filed for divorce from Daveen Fox on April 16, 2016. Alan  
15 and Daveen Fox were married in 1981. Accordingly, if Shafer Plaza 06 A, LLC owed Alan  
16 Fox over \$14,000,000, as he now claims, that would have been a community asset that  
17 he had a fiduciary duty to disclose in the divorce proceedings. Plaintiffs are informed and  
18 believe, and on that basis allege, that Alan Fox made no such disclosure and that no such  
19 loan existed. If so, then Alan Fox is equitably estopped from arguing, in this case, that he  
20 was in fact owed that money.

21  
22 93. In addition to Defendants misrepresentations when investment properties  
23 were purchased and sold, Defendants also committed various forms of fraud and breach  
24 of fiduciary duty during the time the investment properties were being held.

25  
26 94. Defendants commingled the funds of the various Investment Entities without  
27 disclosing that fact to Plaintiffs and in violation of the Operating Agreements of the  
28 Investment Entities. In some cases, Defendants made loans to an Investment Entity that

1 allowed it to make distributions to investors, even though such distributions did not come  
2 from the operations of the borrowing entity, as represented. Moreover, some of the  
3 Operating Agreements of the loaning Investment Entity expressly barred loans to the  
4 borrowing Investment Entity and required the loaning Investment Entity to distribute to  
5 investors all available cash.

6  
7 95. For example, attached as Exhibit 18 is a true and correct copy of an e-mail  
8 showing the distributions from escrow on the 2013 sale of Writer Square. The document  
9 shows payments ranging between \$82,269 and \$600,000 to thirteen different Investment  
10 Entities, none of which had any ownership interest in Writer Square. Plaintiffs invested in  
11 both Writer Square 08 A, LLC, which paid the money, and in some of the Investment  
12 Entities that received the money, e.g., Paradise Valley and Loggins Corners 12, but not in  
13 others, such as Laveen Ranch Marketplace 12. It is also worth noting that \$853,533.36  
14 went directly from the escrow to Alan Fox's personal bank account, in violation of the  
15 Writer Square Operating Agreement.

16  
17 96. According to Defendants, the transfers shown in paragraph 95 were  
18 repayments of loans made by one Investment Entity to another. Again, despite Plaintiffs'  
19 repeated demands to inspect the books and records of all the Investment Entities in which  
20 they invested, Plaintiffs have not been provided with records sufficient to establish what  
21 loans were made, when the loans were made, what amounts were loaned, and on the  
22 terms of those loans. Plaintiffs have no way of knowing whether the purported  
23 repayments were correct.

24  
25 97. Defendants also commingled the funds of the various Investment Entities  
26 with their own funds and with their outside investments.

27  
28 98. For example, Defendants produced a purported general ledger for Market at

1 Southpark 09, LLC, that was provided by Defendants in response to Plaintiffs' demand for  
2 inspection under the Corporations Code. That general ledger reflects a bank account at  
3 Citi Smith Barney, although Defendants did not produce any records whatsoever related  
4 to the actual bank account. The general ledger shows that on November 30, 2009, a  
5 \$195,000 transfer from that bank account, described as "Loan to A Fox," was made.  
6 Plaintiffs believe that "A Fox" is Defendant Alan Fox.

7  
8 99. The same general ledger reflects a bank account at Nationwide Bank.  
9 Once again, Defendants did not produce any records whatsoever related to that bank  
10 account. The general ledger shows that on October 28, 2010, a \$200,000 transfer from  
11 that bank account described as "Ck to A. Fox re Vegas Investment" was made. Plaintiffs  
12 believe that means the money was loaned or given to one of the night clubs Alan Fox and  
13 Gary Dragul owned in Las Vegas.

14  
15 100. The same general ledger shows entries described as "Accrue Monthly  
16 Tronco Interest," and "Agassi-Pure Monthly Interest." Plaintiffs are informed and believe,  
17 and on that basis allege, that Tronco is a reference to an investment Alan Fox made in an  
18 oil-related company, while "Agassi-Pure" is another reference to the Las Vegas  
19 nightclubs, one of which was named "Pure" or "Pure Profit." Agassi is a reference to the  
20 tennis player Andre Agassi, whom Fox allegedly defrauded in connection with the night  
21 club business. There are many other transfers to and from Alan Fox and his related  
22 companies, including but not limited to an investment scheme whereby he and his son,  
23 Dana Steven Fox, bought life insurance policies from individuals.

24  
25 101. The same general ledger referenced above shows a transfer on January 25,  
26 2012, in the amount of \$38,874.62, which is described only as "Transfer to A. Fox." The  
27 general ledger does not show a check number, but instead simply states "Cash." The  
28 bank records Plaintiffs have obtained, mostly through a subpoena to City National Bank,

1 show constant transfers back and forth between the operating accounts of the various  
2 Investment Entities, on the one hand, and Alan Fox, on the other.

3  
4 102. The transfer of \$38,874.62 is marked as a “journal entry.” Indeed, many, if  
5 not most, of the dubious entries in the general ledgers provided by Defendants are journal  
6 entries.

7  
8 103. Plaintiffs' counsel showed the journal entries referenced above to Ed Delava  
9 at his deposition in this action. Delava was the CFO of ACF Property Management for  
10 most of the relevant time, and to this day still prepares all of Defendants' tax returns, as  
11 discussed in more detail below. Delava testified that he cannot tell what these entries  
12 mean without looking at the underlying journal. According to Delava, one need only open  
13 the general ledger on the computer, then click on the relevant entry to see the underlying  
14 journal entry. Despite all of Plaintiffs' Corporations Code requests, and all their discovery  
15 requests in this and the related cases, Defendants have never provided the underlying  
16 journal for any of the relevant Investment Entities.

17  
18 104. Defendants have also charged the Investment Entities for their own  
19 expenses. For example, the general ledgers produced by Defendants show that they  
20 charged each of the Investment Entities for software known as “Yardi.” Yardi is a  
21 property management software package licensed by ACF in connection with its property  
22 management business. Defendants have improperly charged each of the entities for a  
23 share of that software. Plaintiffs are informed and believe, and on that basis allege, that  
24 the total amount billed to the various investments exceeds what Defendants actually paid  
25 for the Yardi software.

26  
27 105. Similarly, Defendants charge each of the Investment Entities for the  
28 preparation of tax returns. The tax returns are, in fact, prepared by Ed Delava, who



1 prepares the returns for both the Investment Entities and for Fox and ACF for a flat fee of  
2 \$300,000. Defendants then bill the various Investment Entities about twice what they pay  
3 Delava for his services, thus making a substantial profit and getting their own tax returns  
4 prepared at the expense of the investors.

5  
6 106. Defendants also bill the Investment Entities for wages, cell phones,  
7 shipping, credit card bills and the like. But, despite Plaintiffs' numerous requests to  
8 review the books and records of the Investment Entities in which they invested,  
9 Defendants have not provided any of the underlying invoices or other documentation that  
10 would support such charges. Plaintiffs are informed and believe, and on that basis allege,  
11 that a large number of the charges are for Defendants' own expenses, and/or that some  
12 of those charges are just made up.

13  
14 107. Defendants have also taken money from the various of the Investment  
15 Entities in a manner that does not appear in the general ledgers. For example, on  
16 January 31, 2012, Loggins Corners 12, LLC paid an "advisory fee" of \$1,937,500 to ACF  
17 in connection with the exchange of Market at Southpark for Loggins Corners. That  
18 advisory fee was never disclosed to Plaintiffs, nor to any other investors. It was not  
19 authorized by the Operating Agreement of either Investment Entity, nor by any other  
20 agreement. Moreover, the amount was arbitrarily set by Alan Fox. In fact, Alan Fox was  
21 the only person who knew about and approved the \$1,937,500 advisory fee.

22  
23 108. According to her deposition testimony in this action, Yani Viteri, who signed  
24 the escrow instruction approving the advisory fee, did not know what she was signing.  
25 The instruction consists of two pages, the first of which has the substance and the second  
26 of which is little more than a signature block. Viteri was given the second page and  
27 instructed by Alan Fox to sign it, without ever seeing the first page, nor otherwise knowing  
28 what she was signing. Viteri further testified that that was a common practice: she was

1 given the signatures pages of escrow and other important documents and told to sign  
2 them, without ever even seeing the substantive portion of the documents. Viteri gave this  
3 testimony at a deposition where she was represented by a lawyer paid for by the  
4 Defendants.

5  
6 109. The \$1,937,500 advisory fee does not show up on either the seller's or  
7 buyer's settlement statement, and thus would be extremely hard to find or to know about.

8  
9 110. Defendants often used the sale of shopping centers as an opportunity to  
10 steal money from the entities without leaving a paper trail that can be followed. For  
11 example, when Market at Southpark was sold in 2011, Market at Southpark 09, LLC, the  
12 sole Investment Entity in that investment, was listed as the seller. But before escrow  
13 closed, Defendants formed a new entity, Village Crossroads 11, LLC, and transferred  
14 17% of the real property to that entity. That entity then received its pro-rata share of the  
15 proceeds, about \$5,100,000. Defendants then dissolved the entity. Whatever transaction  
16 allegedly occurred between Market at Southpark 09, LLC and Village Crossroads 11, LLC  
17 was without the permission or knowledge of investors, including the Plaintiffs, and in  
18 violation of the Operating Agreement of the Market at Southpark Investment Entity.  
19 Additionally, the nature of the transaction does not appear in any of the books and  
20 records of Market at Southpark 09, LLC, as produced by Defendants in response to  
21 Plaintiffs' Corporation Code demands.

22  
23 111. Similarly, Defendants make it impossible to know who is getting distributions  
24 from the Investment Entities and in what amount by causing all the distributions from all  
25 the Investment Entities to be paid into a single account held in the name of ACF. So, for  
26 example, on the Market at Southpark general ledger referenced above, there is a heading  
27 "Owners Distributions" under which all the payments are made to ACF, except for the one  
28 journal entry for a "Transfer to A Fox" as set forth above. As a result, Plaintiffs' names do

1 not appear on the general ledger of Market at Southpark as having received distributions,  
2 even though they did in fact receive them. Defendants have also failed to provide  
3 Plaintiffs with records from the ACF bank account through which all distributions are  
4 allegedly paid, claiming that that account is not a record of any of the Investment Entities  
5 in which Plaintiffs have invested.

6  
7 112. Defendants also had a practice of paying ACF and Gary Dragul (usually  
8 through one or more of his companies) commissions on the sale of shopping centers. For  
9 example, on the sale of Writer Square in 2013, ACF received a commission of \$1,365,000  
10 and Dragul received a commission of \$682,500. Again, those payments were not  
11 disclosed to investors, were not permitted by the respective Operating Agreements of the  
12 Investment Entities and were illegal under applicable State laws because the recipients  
13 were not licensed real estate brokers. The commissions generally do not appear in the  
14 books and records of the relevant Investment Entities, as produced by Defendants in  
15 response to Plaintiffs' Corporations Code demands.

16  
17 113. The amount of the commissions taken by Defendants and paid to Dragul  
18 were arbitrary. For example, in 2005, in connection with the purchase of Thornton Town  
19 Center, another investment property, Dragul sent an email to Fox asking: "Do you have  
20 an idea of what you want the GDA and ACF fee's to be?" Fox responded:

21  
22 \$300,000 for GDA.

23 I have completely run out of cash at ACF, so let's send \$950,000 at  
24 close to ACF General.

25 For Brookhill [another investment property] \$350,000 for GDA (I  
26 assume that something good will happen with the Burlington Coat Factory  
27 space), and \$950,000 at close to ACF General.

28 For the Provinces pad [another investment property]—nothing to  
29 GDA or ACF. The full net proceeds, to close on or before 11/3. Should be  
wired to the Frieda C. Fox Family Foundation money market account....

1 114. Taken together, Defendants' fraud caused otherwise excellent investments  
2 such as Writer Square and Market at Southpark to be unprofitable for Plaintiffs and other  
3 investors.

4  
5 115. With regards to Market at Southpark, the distributions made were  
6 remarkably similar. In 2009, Market at Southpark 09, LLC bought the shopping center for  
7 \$22,000,000 (as opposed to the alleged Price of \$24,750,000 shown in the Offering  
8 Documents). The shopping center was sold just two years later for \$30,000,000. But  
9 Defendants did not distribute the proceeds. Instead, Defendants recommended a 1031  
10 exchange into Loggins Corners and Tower Plaza (during which transaction they took the  
11 undisclosed \$1,937,500 exchange fee described above). Plaintiffs are informed and  
12 believe, and on that basis allege, that Defendants profited by over \$10,000,000 in  
13 connection with the Market at Southpark property, without ever placing their own money  
14 at risk.

15  
16 116. In 2009, Plaintiffs originally invested \$52,500 in Market at Southpark. As of  
17 today, more than ten years after Plaintiffs' original investment, they have received a grand  
18 total of \$57,218.73 from the Market at Southpark, Loggins Corners and Tower Plaza  
19 investments. Market at Southpark was sold, as was Loggins Corners, and Tower Plaza  
20 has not made a distribution to Plaintiffs in years. Again, it appears that Plaintiffs' total  
21 return on their original investment will be less than 1% per year.

22  
23 117. The rates of return Defendants projected in their Financial Projections  
24 represented a fair approximation of the return investors such as the Plaintiffs could have  
25 reasonably expected to achieve by investing in shopping centers. Defendants, however,  
26 have fallen far short of their own projections (which, on average, claimed that investors  
27 would receive an annual 15% return on their investments) and the market in general.  
28 Defendants' investments have not come close to approaching that 15% figure and, in

1 many situations, have been negative. It is one thing to miss a projection on a single  
2 Investment, but Fox's projections have been systematically and materially overstated for  
3 decades.

4  
5 118. The primary reason why their investments have not performed is the fraud  
6 and self-dealing committed by Defendants as alleged in this Complaint. Rather than  
7 "buying well," as Fox promised, the Investment Entities paid more than fair market value  
8 for the shopping centers. Fox then charged his illegal commissions, borrowed the entities'  
9 funds for his own investments, and charged the entities for Defendants' expenses, thus  
10 rendering the investments far less profitable than they should have been. Defendants, of  
11 course, knew exactly what they planned to do, and thus knew that the projections were  
12 overly optimistic from the beginning. Indeed, on average, and in the long run, Defendants  
13 have fallen far below their projections. Yet, to this day, Defendants continue to make  
14 projections of profits that they know they cannot meet, given the manner in which  
15 Defendants operate their business.

16  
17 **PLAINTIFFS' DELAYED DISCOVERY OF DEFENDANTS' ACTIONS**

18  
19 119. Plaintiffs began investing in 2004, and their most recent investment was in  
20 2016. In or around December 15, 2016, Plaintiffs received a letter relating to litigation  
21 filed by Jerry Ross, Eric Ross and Jenny Zipkin, which contained a copy of the First  
22 Amended Complaint in that case. As a result of that letter, Plaintiffs, for the first time,  
23 became aware of some of Defendants' fraud. Plaintiffs have learned much more as a  
24 result of the present litigation.

25  
26 120. Prior to receiving the letter referenced in paragraph 119, above, Plaintiffs  
27 had no reason to doubt Defendants' honesty, and did not know any facts that would lead  
28 them to suspect that Defendants were in fact highly dishonest. Moreover, Defendants, by

1 their repetition of the lies, their attempts to prevent others from revealing the truth, and  
2 their continuing failure to make disclosures, made it even less likely that Plaintiffs would  
3 discover the fraud and breaches of fiduciary duty.

4  
5 121. Defendants, on the other hand, have made tens of millions of dollars on the  
6 subject investments. As set forth in Chart 3 in paragraph 36, above, the average total  
7 profit Defendants made on the shopping center investments sold to Plaintiffs was 12.9%.  
8 As can be seen, in connection with Plaintiffs' twenty investments, Defendants made an  
9 initial undisclosed profit in excess of \$65,000,000 at the outset of the investments, not  
10 including the massive additional profits they took after the fact.

11  
12 122. The \$65,000,000 figure quoted above does not include distributions,  
13 commissions or other improper fees and charges to the various investment entities over  
14 the past 15 or so years.

15  
16 **PLAINTIFFS' RELIANCE**

17  
18 123. As alleged above, Defendants' sale of the interests in the Investment  
19 Entities is fraudulent from start to finish. Plaintiffs would never have invested in any of the  
20 investments if they had known, among other things, that:

21  
22 123.1 The Price, Cash Required and Net Investment shown on the Offering  
23 Documents was false;

24  
25 123.2 Defendants made their money by causing the Investment Entities to  
26 buy, refinance and sell shopping centers as often as possible;

27  
28 123.3 Defendants' were not negotiating the best possible deals on behalf of

1 all investors, but rather were negotiating the best possible deals for themselves, and then  
2 lying about the purchase price;

3  
4 123.4 They could not rely on Defendants' advice about when to buy, sell  
5 and refinance shopping centers;

6  
7 123.5 Defendants would charge undisclosed commissions and fees;

8  
9 123.6 Defendants would charge the Investment Entities for their own  
10 personal expenses;

11  
12 123.7 Defendants would commingle the funds of the various Investment  
13 Entities which they manage;

14  
15 123.7 Defendants would borrow from available cash from the Investment  
16 Entities, rather than distributing that cash to investors;

17  
18 123.8 Defendants would have loaned available cash to other entities in  
19 which Defendants held an interest that were unrelated to the investments they made,  
20 such as Pure, Tronco and others, rather than distributing that cash to investors;

21  
22 123.8 Defendants were failing to keep adequate records of the transactions  
23 involving the Investment Entities, e.g., of loans between investment entities and Alan Fox;

24  
25 123.9 Defendants had a practice of refusing to allow investors to review the  
26 original records of the Investment Entities as required by law and by the express terms of  
27 the Operating Agreements;

1           123.10 Defendants' advice to vote for a sale or a 1031 exchange was  
2 motivated by Defendants' greed and not by any reasonable business purpose, i.e. their  
3 approval of the sale of Shafer Plaza.  
4

5           124. Defendants have argued that Plaintiffs lack standing to assert claims of  
6 "operational fraud." That argument is both incorrect and legally meaningless. The term  
7 "operational fraud" is an invention of Defendants' counsel. The phrase does not appear in  
8 a single published opinion in the State of California. Apparently, "operational fraud" is a  
9 garbled version of an argument that Plaintiffs are making about improper derivative  
10 claims.  
11

12           125. The analysis of whether a particular claim is derivative is a function of who is  
13 damaged – the Investment Entity or the individual investor. The analysis is not based on  
14 whether the fraud occurs during the operation of an entity or at the outset. The entire  
15 "operational fraud" argument is an attempt by defense counsel to shift the focus from the  
16 legally relevant issue of damages, or who is harmed, to the issue of the nature of the  
17 wrongdoing.  
18

19           126. Defendants then argue that Plaintiffs lack standing to complain about  
20 wrongdoing in the course of the operations of the Investment Entities. That is incorrect.  
21 For example, Plaintiffs invested in Market at Southpark 09, LLC, in 2009. The LLC was  
22 supposed to invest in a shopping center in Colorado, but Alan Fox also caused Market at  
23 Southpark 09, LLC, to loan money to his night clubs in Las Vegas, and his oil business in  
24 Utah, among other personal ventures. Had Plaintiffs known about Defendants' intentions  
25 to use the Investment Entities as their personal piggy bank, they never would have  
26 invested in later investments syndicated by the Defendants, nor would they have voted for  
27 the sale of Market at Southpark and a 1031 exchange into other shopping center  
28 properties. Moreover, Plaintiffs certainly would never have invested again in a shopping  
29



1 center investment syndicated by the Defendants (e.g. in Cave Springs in 2013).

2

3 127. More generally, Plaintiffs would have stopped investing had they known of  
4 Defendants' pervasive "operational fraud" in each earlier investment. Similarly, Plaintiffs  
5 would have stopping relying on Defendants' advice about voting, had they known of the  
6 "operational fraud."

7

8 128. Plaintiffs are not seeking to recover damage done to the Investment Entities,  
9 i.e. Plaintiffs are not asserting derivative claims.

10

11 **PLAINTIFFS' DAMAGES AND REMEDIES**

12

13 129. First and foremost, Plaintiffs seek to rescind the transactions by which they  
14 purchased their interests in the various Investment Entities. Plaintiffs want no part of  
15 Defendants' fraudulent scheme and dubious investments.

16

17 130. In addition, Plaintiffs seek damages. Defendants have argued that they can  
18 simply return Plaintiffs' money, without interest, after more than 15 years, and call it even.  
19 That is not the law. Under California Civil Code §1692, Plaintiffs are entitled to receive  
20 "complete relief," including consequential damages. Plaintiffs are not required to commit  
21 to a specific measure of damages at this time. The measures mentioned here are to give  
22 additional notice to Defendants, so that they do not complain about lack of notice at time  
23 of trial.

24

25 131. Complete relief in this instance requires that Plaintiffs be made whole.  
26 Among other things, Plaintiffs are entitled to a fair return on their investments.

27

28 132. As alleged above, Plaintiffs believe that the projections made by Defendants

1 in their offering materials were fair and reasonable when made, and that the investments  
2 would have performed as projected, but for Defendants' fraud. In other words, if  
3 Defendants had not lied about the purchase prices and had not committed the other fraud  
4 referenced above, Plaintiffs' investments, on average and over the long run, could have  
5 and should have performed at the level projected by Defendants. That allegation is  
6 backed up by the fact that many of the underlying investments were, in fact, highly  
7 profitable. Even Writer Square, which Defendants have often complained was purchased  
8 right before the great recession, actually performed quite well. The problem is that  
9 Defendants' fraud allowed them to take about \$10,000,000 of profits, while investors got  
10 nothing. Moreover, the fact that Defendants owed Plaintiffs a fiduciary duty means that  
11 Plaintiffs are entitled to "benefit of the bargain" damages for fraud.

12

13 133. Alternatively, Plaintiffs seek a fair return on their investment, as measured  
14 by the performance of alternative investments that are reasonably similar in kind.

15

16 134. As another alternative, Plaintiffs seek damages based on the theory of non-  
17 restitutionary disgorgement.

18

19 135. Plaintiffs specifically reserve the right to assert at time of trial any other  
20 legally viable measure of damages.

21

22

### **FIRST CAUSE OF ACTION**

23

**(By All Plaintiffs For Breach of Fiduciary Duty Against All Defendants)**

24

25 136. Plaintiffs incorporate by this reference the allegations of paragraphs 1  
26 through 135 above as though set forth in full herein.

27

28 137. As syndicators and promoters of the investments, as officers, directors and

1 managers of the investment entities, Defendants owed Plaintiffs fiduciary duties in  
2 connection with the investments [see, *Cleveland v. Johnson*, 209 Cal. App. 4th 1315  
3 (2013)]. Those fiduciary duties included: (i) a duty fully to tell Plaintiffs of all material facts  
4 relating to their investments; (ii) a duty to account; (iii) a duty of loyalty; and (iv) a duty not  
5 to engage in self-dealing.

6  
7 138. Defendants breached their fiduciary duties to the Plaintiffs by, among other  
8 things: (i) making material misrepresentations about the purchase price and closing costs  
9 associated with each investment; (ii) failing to disclose that the Price shown on the  
10 Offering Documents exceeded the fair market value of the shopping centers, as  
11 established both by the price actually paid by the Investment Entities and by the  
12 contemporaneous appraisals; (iii) failing to disclose that the amount charged to Plaintiffs  
13 for their membership interests was calculated based on false assumptions about the  
14 purchase price of the shopping centers, the closing costs, the amount that would be  
15 placed into the operating reserve and the cash required to cover all of those obligations;  
16 (iv) by failing to disclose that Defendants and their partner, Dragul, stood to make six or  
17 seven figure profits, simply by closing each escrow (both buying and selling); (v)  
18 misstating or failing to disclose the fees and commissions that they intended to take; (vi)  
19 failing to disclose the conflicts of interest that arose, because Defendants were making  
20 substantial amounts of money – often millions of dollars – on each investment-related  
21 transaction, where that money was coming from the investors; (vii) failing properly to  
22 account for the proceeds of the investments; (viii) self-dealing; and (ix) failing to allow  
23 Plaintiffs, as they had been promised, to decide whether their investments would be  
24 “rolled over” to new properties in 1031 exchanges and not giving Plaintiffs the chance to  
25 simply “cash out.”

26  
27 139. As a direct and proximate result of Defendants’ breaches of their fiduciary  
28 duties, Plaintiffs have been damaged in a sum not yet ascertainable, but which they

1 believe is in excess of \$5,000,000, which includes what a reasonable return on the  
2 investments they made would have been if the misrepresentations and concealments had  
3 not been made.

4  
5 140. Defendants' breaches of their fiduciary duties were willful and done with the  
6 knowledge that they were improper. Plaintiffs therefore seek an award of punitive and  
7 exemplary damages in an amount sufficient to punish each of the Defendants, according  
8 to proof.

9  
10 **SECOND CAUSE OF ACTION**

11 **(By All Plaintiffs Against All Defendants for Fraud (Misrepresentations))**

12  
13 141. Plaintiffs incorporate by reference the allegations of paragraphs 1 through  
14 140 above as though set forth in full herein.

15  
16 142. As described above, including the allegations of paragraphs 18-20, 28, 35-  
17 36, 48-55, 60, 64, 67, 69-71, 73, 76-81, 83, 87, 91 and 118, Defendants made  
18 misrepresentations to the Plaintiffs that were material and were made in order to induce  
19 Plaintiffs to invest their money in the investments (collectively, the "Misrepresentations").

20  
21 143. Among other places and times, the Misrepresentations were made in the  
22 Executive Summary and Financial Projections for each investment, copies of which were  
23 provided to Plaintiffs before they invested. For example, as set forth above, the  
24 Misrepresentations about Writer Square were made in an Executive Summary and  
25 Financial Projections, which were delivered by way of a letter or e-mail that repeated and  
26 reaffirmed the false statements. Defendants repeated the false statements in numerous  
27 other written communications, including but not limited to the exhibits attached to this  
28 Complaint. In addition, Defendants repeated the false statements orally whenever the

1 topics came up.

2

3 144. Plaintiffs reasonably relied on Defendants' Misrepresentations in deciding to  
4 invest in the various projects. If the Misrepresentations had not been made, Plaintiffs  
5 would not have originally invested in the shopping center investments and would not have  
6 continued to invest.

7

8 145. As a direct and proximate result of their reliance on Defendants'  
9 Misrepresentations, and by failing to disclose material facts necessary in order to make  
10 the statements made, in light of the circumstances under which they were made, not  
11 misleading, Plaintiffs were induced by Defendants to invest over one million seven  
12 hundred thousand dollars. More than 15 years later, Plaintiffs still do not have all their  
13 money back, let alone a fair return on their investments.

14

15 146. Plaintiffs are informed and believe, and on that basis allege, that they have  
16 suffered actual damages of \$5,000,000 or more, which includes what a reasonable return  
17 on the investments they made would have been if the Misrepresentations had not been  
18 made.

19

20 147. Defendants' acts as alleged above were willful and were done with the  
21 knowledge that they were improper. Plaintiffs therefore seek an award of punitive and  
22 exemplary damages in an amount sufficient to punish each of the Defendants, according  
23 to proof.

24

25

**THIRD CAUSE OF ACTION**

26

**(By All Plaintiffs Against All Defendants for Fraud (Failure to Disclose))**

27

28

148. Plaintiffs incorporate by reference the allegations of paragraphs 1 through

1 147 above, as though set forth in full herein.

2  
3 149. As noted above, Defendants concealed material facts from Plaintiffs relating  
4 to the investments. These omissions involved almost all aspects of the shopping center  
5 investments and included the matters set forth in paragraphs 22, 26, 58, 94-95, 97-101,  
6 104-107, 1210, 112 and 117 (collectively, the "Omissions"). The Omissions began with  
7 the initial requests to invest and continued throughout the relationship of the parties.

8  
9 150. Defendants concealed the fact of the Omissions from the Plaintiffs in order  
10 to induce Plaintiffs to invest their money in the investments. Each of the Omissions was  
11 material. If the concealed information had been disclosed, Plaintiffs would not have  
12 originally invested in the shopping center investments or continued to invest.  
13 Furthermore, Plaintiffs would not have trusted any of Defendants' advice, e.g., to vote for  
14 sales of shopping centers and for 1031 exchanges.

15  
16 151. Among other places and times, the Omissions were made when the Offering  
17 Documents were sent to the Plaintiffs, including the Executive Summaries and Financial  
18 Projections for each investment, copies of which were provided to Plaintiffs shortly before  
19 they invested. Each of these documents was provided to Plaintiffs by ACF and was  
20 created by Fox. Defendants also failed to disclose the Omissions when the shopping  
21 centers were refinanced and sold.

22  
23 152. Plaintiffs were unaware of the Omissions at the time they made their  
24 investments and at all times that they agreed to take certain actions (e.g. agreeing to sell  
25 a shopping center) with respect to the investments. If the Plaintiffs had been aware of the  
26 Omissions, they would not have originally invested with the Defendants or continued to  
27 invest.

1 153. Plaintiffs are informed and believe, and on that basis allege, that they have  
2 suffered actual damages of \$5,000,000 or more, which includes what a reasonable return  
3 on the investments they made would have been if the Omissions had not been made.  
4

5 154. Defendants' acts as alleged above were willful and were done with the  
6 knowledge that they were improper. Plaintiffs therefore seek an award of punitive and  
7 exemplary damages in an amount sufficient to punish each of the Defendants, according  
8 to proof.  
9

10 **FOURTH CAUSE OF ACTION**

11 **(By All Plaintiffs Against All Defendants for Securities Fraud)**  
12

13 155. Plaintiffs incorporate by reference the allegations of paragraphs 1 through  
14 154 above, as though set forth in full herein.  
15

16 156. In violation of California Corporations Code §§ 25401, 25501, 25504 and  
17 25504.1, Defendants made sales of the investments to Plaintiffs: (i) by employing devices,  
18 schemes and artifices to defraud; (ii) by making untrue statements of material facts; (iii) by  
19 failing to state material facts necessary in order to make the statements made, in light of the  
20 circumstances under which they were made, not misleading; and (iv) by engaging in acts,  
21 practices and courses of business which operated as a fraud and deceit upon Plaintiffs.  
22

23 157. In this regard, in connection with the sale of the investments, Defendants  
24 made the Misrepresentations to the Plaintiffs. The Misrepresentations, which were  
25 prepared and disseminated by Defendants, appear in various documents, including the  
26 Executive Summaries and Financial Projections, and in e-mails and letters.  
27  
28

1           158. In addition to the affirmative Misrepresentations made by the Defendants,  
2 the Defendants had an obligation to disclose all material information about the  
3 investments to potential investors, including the Plaintiffs. The Defendants, in failing to  
4 disclose the Omissions, violated their obligations to the Plaintiffs. These failures to  
5 disclose include but are not limited to: (i) the actual purchase prices of the properties; (ii)  
6 the fair market value of the properties, as established both by the actual purchase prices  
7 and the contemporaneous appraisals; (iii) the amount of fees and commissions to be  
8 taken by the Defendants; (iv) Defendants' conflicts of interest; and (v) the actual closing  
9 costs incurred in connection with the acquisition and sale of the properties and the other  
10 Omissions set forth above.

11  
12           159. Plaintiffs reasonably relied on the Misrepresentations and Omissions in  
13 making their investments. Had Plaintiffs been aware of the falsity of the  
14 Misrepresentations, and the existence of the Omissions, Plaintiffs originally would have  
15 not made the investments or have continued to invest with the Defendants..

16  
17           160. As a direct and proximate result of Defendants' violations of the securities  
18 laws, Plaintiffs parted with in excess of \$1,750,000, a substantial portion of which was  
19 lost.

20  
21           161. Plaintiffs are informed and believe, and on that basis allege, that they have  
22 suffered actual damages of \$5,000,000 or more, which includes what a reasonable return  
23 on the investments they made would have been if the Misrepresentations and Omissions  
24 had not been made.

25  
26           162. Defendants' acts and Omissions, as alleged above were willful, and done  
27 with the knowledge that they were improper. Plaintiffs therefore seek an award of punitive  
28 and exemplary damages in an amount sufficient to punish each of the Defendants,



1 according to proof.

2  
3 **FIFTH CAUSE OF ACTION**

4 **(By All Plaintiffs Against ACF Property Management, Inc., and All DOES**  
5 **For Violation of Corporations Code §§17704.10 and 15903.04)**

6  
7 163. Plaintiffs incorporate by reference the allegations of paragraphs 1 through  
8 162 above, as though set forth in full herein.

9  
10 164. ACF is the manager and/or general partner of most or all of the Investment  
11 Entities in which Plaintiffs invested and became members.

12  
13 165. Corporations Code §17701.13 provides, in relevant part:

14 (d) Each limited liability company shall maintain in writing or in  
15 any other form capable of being converted into clearly legible  
16 tangible form at the office referred to in subdivision (a) all of  
the following:

17 (1) A current list of the full name and last known business or  
18 residence address of each member and of each transferee set  
forth in alphabetical order, together with the contribution and  
the share in profits and losses of each member and transferee.

19 (2) If the limited liability company is a manager-managed  
20 limited liability company, a current list of the full name and  
business or residence address of each manager.

21 (3) A copy of the articles of organization and all amendments  
22 thereto, together with any powers of attorney pursuant to  
23 which the articles of organization or any amendments thereto  
were executed.

24 (4) Copies of the limited liability company's federal, state, and  
25 local income tax or information returns and reports, if any, for  
the six most recent fiscal years.

26 (5) A copy of the limited liability company's operating  
27 agreement, if in writing, and any amendments thereto, together  
28 with any powers of attorney pursuant to which any written  
operating agreement or any amendments thereto were  
executed.

1 (6) Copies of the financial statement of the limited liability  
company, if any, for the six most recent fiscal years.

2 (7) The books and records of the limited liability company as  
3 they relate to the internal affairs of the limited liability company  
4 for at least the current and past four fiscal years.

5 166. Corporations Code §17704.10 provides, in relevant part:

6 (a) Upon the request of a member or transferee, for purposes  
7 reasonably related to the interest of that person as a member  
8 or a transferee, a manager or, if the limited liability company is  
9 member-managed, a member in possession of the requested  
10 information, shall promptly deliver, in writing, to the member or  
11 transferee, at the expense of the limited liability company, a  
copy of the information required to be maintained by  
paragraphs (1), (2), and (4) of subdivision (d) of  
Section 17701.13, and any written operating agreement of the  
limited liability company.

12 (b) Each member, manager, and transferee has the right, upon  
13 reasonable request, for purposes reasonably related to the  
interest of that person as a member, manager, or transferee,  
to each of the following:

14 (1) To inspect and copy during normal business hours any of  
15 the records required to be maintained pursuant to  
Section 17701.13.

16 (2) To obtain in writing from the limited liability company,  
17 promptly after becoming available, a copy of the limited liability  
18 company's federal, state, and local income tax returns for each  
year.

19 167. Similar obligations owed to limited partners in limited partnerships are  
20 contained in Corporations Code §§15901.11 and 15903.04.

21  
22 168. On February 9, 2018, Plaintiffs made a written request to ACF, through its  
23 counsel, for access to all documents relating to their investments in the relevant  
24 Investment Entities. A true and correct copy of the e-mail is attached as Exhibit 19.  
25 Plaintiffs made many other similar requests.

26  
27 169. Defendants failed to comply with Plaintiffs' requests. Similarly, Defendants  
28

1 have ignored numerous similar requests from other investors in the past.

2  
3 170. Defendants never once allowed Plaintiffs to inspect any original records at  
4 Defendants' office. Moreover, although Defendants have sent electronic copies of  
5 records, those records are woefully incomplete. Among other things, Defendants never  
6 once produced a list of investors showing the contributions of each member. As noted  
7 above, the amounts of contributions are important. Defendants have never produced  
8 records of various bank accounts held by the entities. Defendants have not produced the  
9 journal that underlies and explains all the journal entries on the general ledgers.  
10 Defendants have not produced invoices, bills and contracts that would explain and/or  
11 justify the various expenses charged to the entities. Defendants have not produced  
12 communications with other investors soliciting votes, e.g., the multiple versions of the  
13 Loggins Corners 12, LLC letters discussed above. Defendants have not produced copies  
14 of tax returns for many of the entities for many of the relevant years. That is only a partial  
15 list of what Defendants failed to produce. Plaintiffs cannot know the complete list because  
16 only Defendants know what other documents they are withholding.

17  
18 171. In addition, Defendants have produced documents that are not genuine. For  
19 example, Defendants produced fraudulent copies of tax returns for Loggins Corners 12,  
20 LLC. Asked about the documents at deposition, Alan Fox insisted that they were genuine  
21 and claimed that the documents were real, even when counsel pointed out the obvious  
22 problems with the documents, e.g., that Alan Fox was shown as the 100% owner and that  
23 there was no income or expense shown on the purported returns. To date, Defendants  
24 still have not provide the real returns, if any, that were filed with the IRS.

25  
26 172. Defendants' failure to comply with their statutory obligations is without  
27 substantial justification and therefore Plaintiffs are entitled to their attorneys' fees under  
28 Corporations Code §17704.10(g).

1 173. Defendants have argued that Plaintiffs' demands for records are not  
2 reasonably related to Plaintiffs' ownership in the entities. That is incorrect. Defendants  
3 have no interest in the records other than to address Plaintiffs' concerns about their  
4 investments. Among other things, Plaintiffs want the information in order to address the  
5 other claims in this litigation. And, Plaintiffs want the information so that they can meet  
6 with other investors, discuss Defendants' fraud on the entities and vote to fire Defendants  
7 as managers and to replace Defendants with honest operators.

8  
9 **PRAYER FOR RELIEF**

10  
11 WHEREFORE, Plaintiffs pray for Judgment against the Defendants, and each of  
12 them, as follows:

13  
14 1. For compensatory damages in an amount presently unknown but believed  
15 to be in excess of \$5,000,000;

16  
17 2. That this Court declare that Plaintiffs' investments in the real estate  
18 syndications sponsored by Defendants and invested in by Plaintiffs be rescinded and that:

19  
20 2.1 All consideration paid by Plaintiffs' in connection with their  
21 investments in the shopping centers syndicated by the Defendants be returned to them  
22 less any distributions received by Plaintiffs as a result of the investments; and

23  
24 2.2 Plaintiffs are awarded their consequential damages in an amount  
25 representing a fair and reasonable rate of return on the investments from the time the  
26 investments were made;

27  
28 3. For damages and all other forms of compensation legally permissible in

1 connection with the substantive claims alleged above, including without limitation non-  
2 restitutionary disgorgement, and/or benefit of bargain damages, in an amount according  
3 to proof;

4  
5 4. For punitive and exemplary damages against Defendants in an amount  
6 according to proof;

7 5. For an accounting;

8  
9 6. For an Order directing Defendants to immediately comply with Corporations  
10 Code §§17701.13 and 17704.10 by providing Plaintiffs with the relevant documents;

11  
12 7. For costs of suit, including, but not limited to, reasonable attorneys' fees;  
13 and

14  
15 8. For such other and further relief as the Court deems just and proper.  
16

17 Dated: January 27, 2020

RICHARD C. LEONARD  
STEVEN A. SCHUMAN  
LEONARD, DICKER & SCHREIBER LLP

18  
19  
20  
21 By: \_\_\_\_\_  
Richard C. Leonard  
Attorneys for Plaintiffs  
22  
23  
24  
25

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27  
28

# EXHIBIT 1

## EXECUTIVE SUMMARY

### WRITER SQUARE

- Location:** 1512 Larimer Street, Denver, Colorado 80202
- Price:** \$64,000,000.00.
- Property Description:** Writer Square is a 179,271 square foot prime mixed use development located in downtown Denver, Colorado. The office building stands ten stories tall, with 119,336 square feet of office space. This property occupies one full city block and includes 59,935 square feet of retail space. The building has a large two level subterranean parking garage which generates approximately 35% of the property's income stream. Major office tenants include Sage Hospitality, Cooper & Clough, P.C., Laramie Energy, Babcock & Brown Energy, Inc., and RMC Research. Many upscale retail tenants are located in Writer Square such as Sushi Han, Starbucks, Crepes and Crepes, Rocky Mountain Chocolate, Gallery One, Red Square Euro Bistro, and The Overland Sheepskin Co, Inc. The site also includes 42 luxury residential condominiums, which are not included in our purchase. Current office, retail, and parking rents are far below market.
- Area Description:** Writer Square enjoys a unique location adjacent to the Larimer Square Shopping and Entertainment District, the 16<sup>th</sup> Street Pedestrian Mall, and is located where the LoDo and Midtown office districts meet. The building is also in close proximity to luxury residential properties and the recently redeveloped Union Station. A new Four Seasons Hotel (with condos) is under construction across the street.
- Demographics:** Population growth within a mile radius of Writer Square has been 18.88% from 1990-2000 and 20.65% from 2000-2007. Growth for the next five years is estimated at another 10.31%. The 2007 estimated average household income in this area is \$88,799.
- Year Built:** 1981. In the last few years the parking garage has been renovated for more than \$1,000,000.
- Projected Annual Net Operating Income:** \$3,863,016.00.
- Cash Required:** \$23,300,000.00.
- Projected Return:** Projected cash flow is 6.46% in year one, increasing to 8.68% in year five.
- Minimum Investment:** \$69,900.00 for a .300% member interest.

FOR ADDITIONAL INFORMATION PLEASE CONTACT ALAN C. FOX OR  
CECILE GARCIA AT 818/505-6777 (alan@acfp.com; cecile@acfp.com)

# EXHIBIT 2



**FINANCIAL PROJECTIONS  
WRITER SQUARE  
DENVER, COLORADO**

FINAL

PROJECTIONS	ENTIRE BUILDING				
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
MONTHLY PROJECTED NET OPERATING INCOME	\$321,918	\$347,425	\$375,035	\$400,532	\$420,111
NET OPERATING INCOME	\$321,918	\$347,425	\$375,035	\$400,532	\$420,111
INTEREST INCOME ON RESERVE	10,000	8,000	8,000	4,000	2,000
DEBT SERVICE	(206,558)	(215,048)	(225,337)	(244,115)	(253,504)
PROJECTED MONTHLY CASH FLOW	\$125,360	\$139,477	\$165,698	\$160,417	\$168,607
PROJ. ANNUAL CASH FLOW	\$1,504,320	\$1,673,724	\$1,868,376	\$1,925,004	\$2,023,284
PROJ. ANNUAL PRINCIPAL PAID - 1ST TD	0	0	0	0	0
PROJ. ANNUAL APPRECIATION	1,621,105	1,621,105	1,621,105	1,621,105	1,621,105
TOTAL PROJ. ANNUAL RETURN	\$3,125,425	\$3,294,829	\$3,489,481	\$3,546,109	\$3,644,389

**PROJECTED PERCENTAGE RETURN ON INVESTMENT**

CASH	6.46%	7.18%	8.02%	8.26%	8.58%
PAYMENT ON PRINCIPAL	0.00%	0.00%	0.00%	0.00%	0.00%
APPRECIATION	6.96%	8.96%	6.96%	6.96%	6.96%
TOTAL	13.42%	14.14%	14.98%	15.22%	15.54%

**ASSUMPTIONS**

- PURCHASE PRICE \$64,000,000
  - LOAN AND CLOSING COSTS 750,000
  - OPERATING RESERVE 3,000,000
  - LOANS PAYABLE - 1ST TD (44,450,000) INTEREST ONLY - 5.5%, 5.75%, 6.00%, 6.60%, AND 6.75%.  
DUE IN FIVE YEARS.
- NET INVESTMENT \$23,300,000

5. LOCATION IS A TEN - ONE OF THE VERY BEST IN DOWNTOWN DENVER. RENT LEVELS FOR OFFICE SPACE (119,336 SF) CAN BE INCREASED BY 40%. RETAIL SPACE (59,935 SF) HAS SUBSTANTIAL UPSIDE RENT POTENTIAL. PARKING IS IDEALLY LOCATED ACROSS FROM LARIMER SQUARE, AND RENTS CAN BE INCREASED IMMEDIATELY.

6. DIAGONALLY ACROSS THE STREET FROM WRITER SQUARE IS THE FOUR SEASONS HOTEL AND RESIDENCES (UNDER CONSTRUCTION) -- A 145 UNIT, 34 STORY CONDOMINIUM PROJECT THAT IS CURRENTLY PRE-SELLING UNITS.

7. WRITER SQUARE IS ONE OF DENVER'S MOST VALUABLE CITY BLOCKS DUE TO ITS LOCATION BETWEEN THE POPULAR 10TH STREET PEDESTRIAN MALL AND THE HISTORIC LARIMER SQUARE SHOPPING AND ENTERTAINMENT DISTRICT. WE MAY BE ABLE TO CONSTRUCT ADDITIONAL VALUABLE RETAIL SPACE DIRECTLY ON THE 16TH STREET MALL.

8. ALAN C. FOX WILL PAY DOWN LOAN PRINCIPAL, MAKING THE INVESTOR LOAN INTEREST ONLY FOR FIVE YEARS. THE LOAN IS PERSONALLY GUARANTEED BY ALAN C. FOX.

9. MINIMUM INVESTMENT IS \$69,900.00 FOR A .300% MEMBER INTEREST.

10. TITLE MAY BE HELD BY SEVERAL LIMITED LIABILITY COMPANIES, IN ORDER TO PERMIT EXCHANGES.

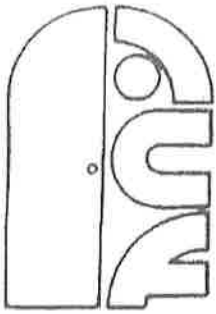
NOTE: EACH OWNER WILL RECEIVE A MONTHLY CASH DISTRIBUTION CHECK.

**EXHIBIT 2**

# **EXHIBIT 3**



# **EXHIBIT 4**



**ACF  
Property  
Management, Inc.**

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

July 22, 2013

To: All Investors in Writer Square

Re: Sale Ballot—Potential Sale of Writer Square

We purchased Writer Square on August 22, 2008, just three weeks before Lehmann Brothers filed for bankruptcy and the United States economy entered the Great Recession. In retrospect this was not great timing. The original investment was \$23,300,000 and we have spent more than \$2,000,000 in upgrades, and now face expense of more than \$1,000,000 for new tenants which have signed leases recently. The original cash distribution was \$1,500,000 annually, which was reduced to \$900,000 annually. There is no cash flow at the present time, but it should resume by the end of next year or early in 2015.

We have been working for six months with a potential buyer, which has tentatively agreed to buy Writer Square for \$68,250,000. This is a very high price even in today's improving market. This potential sale, which would close by the end of August or in early September, will net us no less than \$20,500,000 in cash. More importantly, if you reinvest your share of the cash you will be earning at least 7% on your money, beginning in a few months. This new cash flow would be more than \$1,500,000 through the end of 2014. From this point of view the cash back would be \$22,000,000. In addition we would have a new ten year loan on a new property.

I need your ballot back as soon as possible, but by Thursday, July 25th at the latest. Please fax your ballot at (818) 505-6778 or email it to Lauren ([lauren@acfpm.com](mailto:lauren@acfpm.com)) or Yana ([yana@acfpm.com](mailto:yana@acfpm.com)). I encourage you to vote for the sale, and let me know if you would like to reinvest.

If you have any questions, please contact Yana, Lauren, or me. I am out of the office this week, but I am fully available to answer any questions.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.

  
Alan C. Fox  
President

ACF/yv  
Enclosures

**EXHIBIT 4**

**R3017**

# **EXHIBIT 5**

Jerry Ross 1

Yana Viterl

**From:** Alan C. Fox  
**Sent:** Sunday, June 27, 2010 6:32 PM  
**To:** Jerry Ross  
**Subject:** RE: Bell Creek

My pleasure in providing whatever you need. My thoughts on the possibilities:

I agree with you on Village Crossroads - I like the property a lot, but Phoenix has always been volatile. If you plan to invest \$500K or more this year I would suggest \$146,250 for 1.5% of Village Crossroads (for the 9.12% beginning cash flow and for the possibility of renting several vacancies which would add to cash flow). I have assumed that the vacancies will not rent, even though I think they will. Also, Outback Steakhouse has exercised its option to extend for five years at a rent increase of 10.00% per annum (\$7,380.00). Then \$378,000.00 for 7% of Bell Creek Commons (almost all tenants are national with excellent credit, ten year loan). I would also give you the right to take up to \$200,000.00 out of Bell Creek Commons to put into any other investment which I may have available later this year. This way you start earning a 9% cash flow starting now, eliminate the risk that I won't have anything better, but can take advantage of another property or two if you like a later investment better.

Let me know what you think on this.

Thanks.

Alan

Alan C. Fox  
President  
ACF Property Management, Inc.  
12411 Ventura Boulevard  
Studio City, CA 91604

(818) 505-6777  
(818) 505-6778 fax

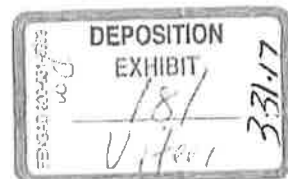
**From:** Jerry Ross [mailto:3877@earthlink.net]  
**Sent:** Sunday, June 27, 2010 10:39 AM  
**To:** Alan C. Fox  
**Subject:** RE: Bell Creek

Hi Alan.

Thanks for the info. I know you are a busy fellow so I appreciate your taking the time. I am going to participate in Bell Commons... I was targeting at least 500K this year split over a couple of properties from you and now that you say you may be acquiring one or two more, that seems like a good idea. Your thoughts? And what about Village Crossroads in Phoenix? I still have the prospectus (it's been sitting on my kitchen table ever since I got it, with me vacillating between Walmart (good) and Arizona (bad). Are you still bullish on it? (By the way, if you happen to be flying to any of your "available" or "potential" properties in the near future, I wouldn't mind hopping aboard to help me with my decisions.)

Best regards. And thanks again.

Jerry



**From:** Alan C. Fox [mailto:Alan@acfpm.com]  
**Sent:** Saturday, June 26, 2010 9:31 PM  
**To:** Jerry Ross  
**Subject:** FW: Bell Creek  
**Importance:** High

**From:** Alan C. Fox  
**Sent:** Saturday, June 26, 2010 9:28 PM  
**To:** Alan C. Fox  
**Subject:** RE: Bell Creek  
**Importance:** High

I'm back in Los Angeles, and will be working tomorrow so I would be available to discuss by phone or in person. Here are my thoughts:

1. I have no idea when the \$11,250,000.00 price was posted, or even if it was ever official. Sometimes a broker will know that a property is available, then post his or her own "listing" at a price which was never even discussed with the owner. Years ago I made an offer on a Carmel motel located on Ocean Avenue. I had been trying to purchase that particular property for two or three years, and was delighted with the price which, as best I recall, was about \$8,000,000.00. I had thought the price should be more in the area of \$10,000,000.00, so I was extremely disappointed (but not terribly surprised) to learn directly from the owner (who pulled no punches) that the broker I was dealing with did not have a listing, the property was not for sale at the price quoted, and as the result of my dealing through an unauthorized broker the seller would not consider selling the property to me at any price. Sic transit gloria.
2. I have attached the offering package which I received for Bell Creek Commons. As you can see, the asking price is \$13,250,000.00. The price to my investors is \$12,500,000.00 which is a cap rate of 7.86 on an NOI of \$981,878.00. Since there is a lot of money in hedge funds chasing relatively few outstanding shopping centers, prices have increased about 10% during the past six months. Several buyers would now pay a 7.25 Cap on this property, which is a price of \$13,543,145.00 – about 8.35% more than you are paying. I am under a confidentiality agreement on the offering package, so **PLEASE KEEP THIS CONFIDENTIAL**. It is vital to my ability to buy well that listing brokers (Jones Lang LaSalle in this case) trust me to keep their information entirely confidential. (Please note the final paragraph in the offering package.)
3. While ten year financing is certainly available, very few borrowers qualify. Since I am considered to be one of the most reliable shopping center borrowers in the United States, you have the benefit of our excellent loan.

I've only closed escrow on one property during the first six months of 2010, and may find one or two more, beyond Bell Creek Commons, between now and year end. A few excellent Shopping Centers are available for sale, but the combination of an excellent location, top national tenants on long term leases, and a cap rate of 7.5 or better are few and far between.

Please let me know if you need additional information, would like to get together, or would like to participate in Bell Creek Commons.

My apology for my delay in getting back to you on this.

Alan

Alan C. Fox  
President  
ACF Property Management, Inc.  
12411 Ventura Boulevard  
Studio City, CA 91604



(818) 505-6777  
(818) 505-6778 fax

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**From:** Alan C. Fox  
**Sent:** Tuesday, June 22, 2010 4:33 PM  
**To:** Jerry Ross  
**Subject:** RE: Bell Creek

The price in the offering package from the brokers was \$13,250,000.00. What online link were you looking at?

Alan

---

**From:** Jerry Ross [mailto:3877@earthlink.net]  
**Sent:** Tuesday, June 22, 2010 4:18 PM  
**To:** Alan C. Fox  
**Subject:** RE: Bell Creek

Almost last question. Probably one more.  
I see online that the place was listed for sale at \$11,250,000. How come our Purchase price is 12.5?  
Jerry

---

**From:** Alan C. Fox [mailto:Alan@acfpm.com]  
**Sent:** Tuesday, June 22, 2010 3:47 PM  
**To:** Jerry Ross  
**Subject:** RE: Bell Creek

Good to hear from you. To answer your questions:

1. The seller, whom I met in Las Vegas last month at the ICSC Convention, is a developer and, like most developers, needs to borrow money for another construction loan. His present loan is about 3 years old, and I believe that the lender is putting a lot of pressure on him to pay off his present loan.
2. He has had two other sales which fell through. I suspect that the reason for this is that the parking requirement for Best Buy was documented in an ambiguous way. We helped to clarify this issue by obtaining from Best Buy a written approval of present parking. Because he is pretty desperate, and really needs to close this time, we were able to negotiate what I think is an outstanding buy. Also, we put this under contract about 4 months ago - prices have risen slightly since then, so we have the advantage of hitting the market at the right time.
3. The 9%+ cash flow is primarily a function of a great price, but is also a function of very good ten year financing.

I intend to keep at least 10% (more likely 20%) for myself and my family. Where else can I get a secure, partially tax sheltered return of 9%+?

Please let me know if you need anything further. We will be closing shortly before the end of July.

Best personal regards.

Alan

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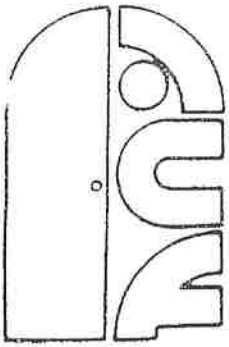
**From:** Jerry Ross [mailto:3877@earthlink.net]  
**Sent:** Tuesday, June 22, 2010 10:23 AM  
**To:** Alan C. Fox  
**Cc:** drctreric@aol.com  
**Subject:** Bell Creek

Dear Alan.

Yes, as you say the stars do seem to be in alignment. This investment looks great.... I would buy a substantial piece of it but can you fill me in a bit on some details? Since it's newly constructed, how come the developers are selling it. What happened there? And with a Best Buy and other majors there, how come you were able to get it at a price where it pays over 9% year?

Best,  
Jerry

# **EXHIBIT 6**



ACF  
Property  
Management, Inc.

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

May 2, 2005

Dr. and Mrs. Raymond A. Shofler  
4658 Arcola Ave.  
Toluca Lake, CA 91602

Re: *"The difficult we do immediately. The impossible takes  
a little longer."*  
--Slogan of the United States Army Services Forces

Dear Ray and Barbara:

Here at ACF we have always performed the difficult, and we are now well on our way to accomplishing the impossible. That is to say, we are purchasing outstanding properties in an extraordinarily difficult market. Please read the opening paragraphs of this letter carefully.

Recently one of our appraisers, in researching comparable sales near Penney's Plaza in Pleasanton, told us that one property for sale received 120 offers, and he wondered how it was possible for us to purchase anything in today's Seller's market. That's a good question. The answer is that Gary Dragul is extremely well connected with sellers in the market, we often pre-empt the "bidding" process because we offer to complete our due diligence in 7 days or less, and we are willing to commit as much as \$2,000,000.00 which we will lose if we fail to complete a purchase. We are interested only in top properties, and we always intend to pay less than other, slower buyers. Gary and I will hop on our airplanes within 24 hours to visit a promising new listing.

At the same time we are significantly upgrading our entire organization. Cathy Reynolds, our general manager, has been with ACF for more than 20 years. Ed Delava, our CFO, has been here since 1986. Cecile Garcia, Vice President, whom many of you have had contact with, is in her 9th year. Recently we have hired Sally Gerstel to head our accounting department, Pam Mendoza to replace Karyn as my personal assistant, and on July 1, 2003 we were rejoined by my son, Steven Fox who, while board certified in Internal Medicine and Pediatrics, has scaled back his practice to charity work one day per week, in order to focus once again on ACF, including meeting with most new investors. Over the past

**EXHIBIT 6**

ACF0000134

Dr. and Mrs. Raymond A. Shofler  
May 2, 2005

Page 2

two years he has also demonstrated an ability to keenly analyze potential new investments. We believe that we now have an excellent group of property managers, notably including Shelley in Denver, Debbie in Phoenix, and Vicky in Seattle, and are hiring qualified and motivated people in our accounting department. I expect, and will settle for nothing less, than excellence across the board.

Over the past 38 years our portfolio has grown to a gross value of slightly over one billion dollars (that certainly impresses me), and we intend to increase that by more than 20% this year. We are also exploring the possibility of exchanging approximately 10 shopping centers to a major, publicly traded REIT (Real Estate Investment Trust) on a tax deferred basis before the end of 2005. We will proceed if we obtain a significant premium for our properties, if we find a REIT which we believe has outstanding management, and, of course, if a majority of owners of those properties involved approve. This could be a way, at one stroke, to diversify our holdings over a REIT's entire portfolio of properties, maintain cash flow, and increase cash value at a great price while providing liquidity to each individual investor.

Since "A" properties are so difficult to acquire at a reasonable price, effective April 30, 2005 I am placing a moratorium on accepting an investment from a new client (other than exchanges of more than \$500,000.00). This will help you, because scarce new properties will only be available to you. Also, I have been disappointed in the past few years with the level of my personal service to our investors (have you tried to contact me three or four times before I replied?), and I intend to improve on my performance, partly with the capable assistance of Cecile, Pam, and Steven.

We remain at three vacancies (6.67%) for Saddle Rock Marketplace. Our operating performance for the first quarter was good. Our goal is to fill this center by year end.

We closed escrow for Metroplex on February 25, 2005 and began our regular monthly cash distribution on March 31. We have completed leasing of 6,946 SF to Fabric Discounters, and have 10,568 SF (4.99%) left to go. We are doing well here.

Still no renting at Mall 205, and several of our food court tenants have vacated. Our vacancy is 7.92%. We have changed leasing agents, and ACF has itself paid for an \$18,000.00 study to determine exactly which new tenants should be targeted for the available space. Even so, cash income has more than covered your regular monthly cash distribution.

During the next few months we are going to have to turn our 2,814 SF (3.22%) vacancy at Paradise Valley Festival into vanilla shell condition, at a rather high cost. Operating performance for the first three months has been excellent.

As long as interest rates remain at their present historically low levels we will continue to actively acquire outstanding shopping centers. If you are interested in a further

ACF0000135

Dr. and Mrs. Raymond A. Shofler  
May 2, 2005

Page 3

investment, please contact either me, my son Steve, or Cecile and we will forward investment information as properties become available. My next letter to you with your Client Summary Report will be mailed on October 31, 2005.

Best personal regards.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.

Alan C. Fox  
President

ACF/cjg  
Enclosures

ACF0000136

# EXHIBIT 7

**From:** Alan C. Fox  
**To:** Gary Dragul  
**CC:** DAVEEN FOX (daveen@daveen.com); Steven Fox  
**Date:** 8/20/2009 8:02:53 PM  
**Subject:** Money Partner -- This is Urgent

We currently are seeking to acquire 2 properties in Atlanta and 4 in Phoenix. Total cash which would have to be raised to purchase all 6 properties is about \$30,000,000.00. I don't think that you and I can raise that much money in the next four months. As you know, one of my strengths is planning for the future. This is why I always have had enough cash on hand to close every single escrow for the past 40 years. I haven't ever missed. I haven't ever turned down a new tenant because we lack money for commissions and tenant improvements. I have never missed or been late on the management fee payment to GDA. (In fact, as you know, last month, due to my own carelessness, I paid \$60,000.00 to GDA twice.)

I cannot, however, magically cause money to appear in my bank account, and I now face many more obligations (where does the Cherry Knolls money come from to buy out Safeway and put in two new tenants?) than I have for many years. Also, 90% of the reason why I am even considering purchasing properties now is to help you out. I do not need more money, so any profit from purchases is not especially valuable to me. What is important to me is:

1. I don't run out of cash. I am much closer to running out of cash now than I have been for many years.
2. I enjoy the time I spend in business and for personal activities. For obvious reasons I'm not enjoying the business and haven't since last October. And the financial (cash) stress is also affecting my personal time.

This is why we need a financial partner -- for you. The lead time on finding a financial partner and working out a deal which is satisfactory to both sides is at least 3 months. All of your fine work in getting centers under contract at great prices will be wasted if we lack the funds to close. And just finding a financial partner is not the entire solution. We have to negotiate a deal which will work for both you and me. I am not going to spend a lot of time and emotional energy for a small pay day. If I can earn more profit by syndicating one deal, why should I be interested in working four times as hard to provide four properties to a financial partner? Also, I am not very interested in future compensation. What I want, and need, is cash profit now. I think that you are in the same position.

You have been meeting with Steve Kantor for about 3 months, and I still have absolutely no idea of what "deal" he has in mind. As I have said, my life would be much less complicated and more enjoyable (and probably more profitable) if we only purchase two properties in the next six months. But whether it's two properties, or no properties, or 30 properties, I would be involved primarily to help you out. The reason I am writing this is to alert you in advance of what we need in order to go forward. Neither you or I can afford to jeopardize the entire enterprise by putting in more cash, which I do not have, for purchases which will only create more hassles in my life.

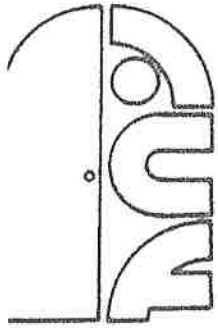
It seems to me that, as a minimum, we need to have a satisfactory agreement with a viable financial partner before we go hard on any more purchases.

Thanks.

Alan



# EXHIBIT 8



ACF  
Property  
Management, Inc.

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

April 5, 2018

To: Investors in Loggins Corners

Re: Potential Sale

We have an offer to sell Loggins Corners at \$6,625,000 which is a very good price in today's market. I estimate that the net cash available to investors at close, including our reserves, to be no less than \$2,350,000.00. The total original investment in Loggins in January, 2012 was \$3,750,000. The LLC has distributed \$1,752,000 in regular monthly cash distributions (through February 28, 2018) which means you will receive in sale and reserve proceeds slightly more than your net remaining investment in the LLC.

Even though this property is now fully leased and the economy is relatively strong, it has been historically very difficult to lease vacancies here. If the economy changes, we will once again face the challenge of replacing tenants. Therefore I strongly encourage you to vote for the sale. Since almost all investors have a positive capital account at 12/31/17 I am not recommending an exchange. Total outside commissions are 3% of the selling price, and ACF will charge nothing for its services.

Once the sale is completed, you will have an opportunity either to receive a distribution of your cash balance, or to reinvest your share of the sale proceeds into a much higher quality property which I will have available at that time – in about two months.

Please note that you will need to report this sale transaction on your 2018 income tax returns. Most investors in the LLC have a positive capital account and should not have to report significant capital gain on the sale—please consult your own CPA on this.

Please sign and return your ballot by no later than April 15 – preferably by e-mail to Lauren (lauren@acfpm.com) or by fax (818.505.6778). In the meantime, if you have any questions, please contact either Lauren or me (alan@acfpm.com).

Many thanks.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.

Alan C. Fox  
President

ACF  
Enclosures

**EXHIBIT 8**

**PROPOSED SALE**

This is a ballot to approve the potential sale and closing of **LOGGINS CORNERS**. Net cash to be received from the sale will be at least **\$2,350,000.00**, including present cash reserves.

I cast my ballot as follows:

YES-SELL

NO-DON'T SELL

---

If your executed ballot is not received within 14 business days we will assume that you are voting for a sale.

I PREFER TO REINVEST THE SALE PROCEEDS  
(SUBJECT TO MY APPROVAL OF THE NEW PROPERTY)

The Jerry Larry Ross Family Trust, dated November 16, 2007

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Jerry Larry Ross

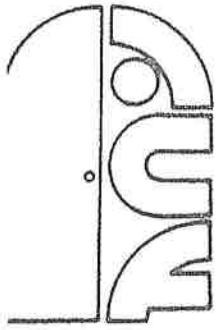
0.581%

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Date

6694\9000\1531307.2

# **EXHIBIT 9**



ACF  
Property  
Management, Inc.

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

April 5, 2018

To: Investors in Loggins Corners

Re: Potential Sale

We have an offer to sell Loggins Corners for \$6,625,000 which is a very good price in today's market. I estimate that the net cash to investors including our reserves to be no less than \$2,350,000.00.

Even though this property is now fully leased and the economy is relatively strong, it has been historically very difficult to lease the vacant space. If the economy changes, we will once again be facing the challenge of replacing tenants. Therefore I strongly encourage you to vote for the sale. Once the sale is completed, in about two months, you will receive your share of the cash available. The outside commission is 3% of the selling price. ACF will not be charging for its services.

Please note that you will need to report this transaction on your 2018 income tax returns. Please consult with your own CPA on this.

Please sign and return your ballot by no later than April 15 – preferably by e-mail to Lauren (lauren@acfpm.com) or by fax (818.505.6778). In the meantime, if you have any questions, please contact either Lauren or me (alan@acfpm.com).

Many thanks.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.

Alan C. Fox  
President

ACF  
Enclosures

**EXHIBIT 9**

**PROPOSED SALE**

This is a ballot to approve the potential sale and closing of **LOGGINS CORNERS**. Net cash to be received from the sale will be at least **\$2,350,000.00**, including present cash reserves.

I cast my ballot as follows:

YES-SELL

NO-DON'T SELL

---

If your executed ballot is not received within 14 business days we will assume that you are voting for a sale.

I PREFER TO REINVEST THE SALE PROCEEDS  
(SUBJECT TO MY APPROVAL OF THE NEW PROPERTY)

Eric Ross Trust

---

Eric Ross

2.907%

---

Date

6694\9000\1531307.2

# **EXHIBIT 10**

## EXECUTIVE SUMMARY

### LOGGIN'S CORNERS SHOPPING CENTER JEFFERSON, GEORGIA

- Location:** 1679, 1681, and 1689 Pendergrass Road, Jefferson, Georgia 30549
- Price:** \$7,187,500.00.
- Property Description:** Loggin's Corners Shopping Center is a 29,800 SF multi-tenant retail center that is 100% leased and occupied. This property is shadow anchored by a 78,849 SF Kroger Supermarket with Starbucks. This is one of the largest Kroger Supermarkets in Georgia which is also in the top two volume stores with weekly sales of \$725,000. Tenant mix includes Little Caesars's Pizza, H&R Block, Great Clips, Planet Nutrition, Salvador's Sicilian Grill.
- Area Description:** Located at the Southwest corner of the intersection of Old Pendergrass Road and Jefferson Bypass (US 129) in the City of Jefferson, GA, the center boasts great visibility with extensive street frontage and high daily traffic counts from both Jefferson Bypass Road and I-85 (14,610 and 52,820 respectively). Jefferson Bypass (US-129) is the main connector between I-85 and University of Georgia.
- Demographics:** Jefferson County is the 10<sup>th</sup> fastest growing county in the US with an estimated population of 99,254. Projected annual rate of population growth is about 4%. Median household income is \$50,462.
- Year Built:** 2006
- Projected Annual Net Operating Income:** \$487,200.
- Cash Required:** \$3,750,000.00.
- Projected Return:** Projected cash flow is 8.06% in year one, and averages 8.33% annually for the first five years of ownership.
- Minimum Investment:** \$37,500.00 for a 1.000% member interest.

FOR ADDITIONAL INFORMATION PLEASE CONTACT ALAN C. FOX, YANA VITERI, OR ED DELAVA AT 818/505-6777 (alan@acfpm.com; yana@acfpm.com; ed@acfpm.com)



# **EXHIBIT 11**

**EXECUTIVE SUMMARY**

**LOGGIN'S CORNERS SHOPPING CENTER  
JEFFERSON, GEORGIA**

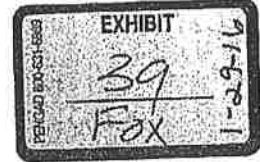
- Location:** 1679, 1681, and 1689 Pendergrass Road, Jefferson, Georgia 30549
- Price:** \$7,737,500.
- Property Description:** Loggin's Corners Shopping Center is a 29,800 SF multi-tenant retail center that is 100% leased and occupied. This property is shadow anchored by a 78,849 SF Kroger Supermarket with Starbucks. This is one of the largest Kroger Supermarkets in Georgia which is also in the top two volume stores with weekly sales of \$725,000. Tenant mix includes Little Caesars's Pizza, H&R Block, Great Clips, Planet Nutrition, Salvador's Sicilian Grill.
- Area Description:** Located at the Southwest corner of the intersection of Old Pendergrass Road and Jefferson Bypass (US 129) in the City of Jefferson, GA, the center boasts great visibility with extensive street frontage and high daily traffic counts from both Jefferson Bypass Road and I-85 (14,610 and 52,820 respectively). Jefferson Bypass (US-129) is the main connector between I-85 and University of Georgia.
- Demographics:** Jefferson County is the 10<sup>th</sup> fastest growing county in the US with an estimated population of 59,254. Projected annual rate of population growth is about 4%. Median household income is \$50,462.
- Year Built:** 2006
- Projected Annual Net Operating Income:** \$487,200.
- Cash Required:** \$4,300,000.
- Projected Return:** Projected cash flow is 7.03% in year one, and averages 7.27% annually for the first five years of ownership.
- Minimum Investment:** \$43,000.00 for a 1.000% member interest.

**FOR ADDITIONAL INFORMATION PLEASE CONTACT ALAN C. FOX, YANA VITERI, OR ED DELAYA AT 818/505-6777 (alan@acfp.com; yana@acfp.com; ed@acfp.com)**

# **EXHIBIT 12**

2 39

**EXECUTIVE SUMMARY  
THE MARKET AT SOUTHPARK  
LITTLETON (DENVER), COLORADO**



**Location:** 7901-8051 South Broadway, Littleton, CO 80122

**Price:** \$24,750,000.00.

**Property Description:** The Market at Southpark, is a 190,104 SF community shopping center located at the southwest corner of South Broadway and South Mineral Road in the high-end demographic trade area of Littleton, CO. This center is anchored by a 64,532 SF King Soopers (King Soopers is part of the Kroger Company and is the dominant grocer in the Denver market; it has a lease through 2024 with six 5-year options). Other large tenants include Office Depot (25,267 SF), and Big Lots (19,831 SF). The center offers a tremendous blend of tenancy and tenant longevity.

**Area Description:** The center is located in a densely populated area with superior visibility, access and signage, high traffic counts, and significant barriers to entry for new development. The Market at Southpark is located at one of the busiest intersections in Littleton with over 65,000 vehicles per day. South Broadway is one of the city's major north-south arterials.

**Demographics:** The Market at Southpark is located in a well-established suburban area that has experienced strong residential growth. Average household income within a 3-mile radius is in excess of \$117,000 and the population exceeds 92,000, while over 226,000 people reside within 5 miles. Approximately 54% of the population within a 1-mile radius has a Bachelor's Degree or better. The average age is 36.55, the prime spending demographic age.

**Year Built:** 1988 and 2004 (Blockbuster/Bear Rock Café Building)

**Projected Annual Net Operating Income:** \$1,973,304.00.

**Cash Required:** \$10,500,000.00.

**Projected Return:** Projected cash flow is 8.26% in year one, increasing to 8.69% in year five. Cash flow and payoff of loan principal averages 10.31% during the first five years of ownership.

**Minimum Investment:** \$52,500.00 for a .500% member interest.

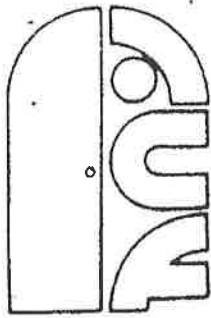
**FOR ADDITIONAL INFORMATION PLEASE CONTACT ALAN C. FOX,  
YANA VITERI, STEVEN FOX, OR ED DELAVA AT 818/505-6777  
(alan@acfpm.com; yana@acfpm.com; steven@acfpm.com; ed@acfpm.com)**

*emitted on 5/16/09*

ACF 0097

**EXHIBIT 12**

# **EXHIBIT 13**



ACF  
Property  
Management, Inc.

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

May 13, 2011

Market  
at  
South  
Park

To: All Investors in Market at Southpark

Re: Potential Sale

By the end of next week I will be signing a contract to sell fifteen of our better shopping centers to a major institutional buyer. While I expect the transaction to be completed by no later than September, the buyer has the right to "kick out" three of the centers, and I won't know until July 15th exactly which properties will actually close escrow.

The total original investment in Market at South Park was \$10,500,000.00 in August, 2009. I estimate that the total cash to be received from our pending sale will be a minimum of \$12,750,000.00, which means that we will have a very nice profit.

The present monthly cash distribution from Market at South Park is \$72,300.00. We will definitely have an exchange property available, and if you elect to exchange, the total regular monthly cash distribution should increase to about \$85,000.00.

In order to proceed with the sale, I need approval by a majority of the ownership by no later than close of business next Thursday, May 19th. Please sign and return your ballot immediately - preferably by fax (818.505.6778) or e-mail to Yana (yana@acfp.com) or Lauren (lauren@acfp.com) at my office. If you have any questions, please contact Yana, Ed, or me in our office.

Many thanks.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.

Alan C. Fox  
President

ACF/yv  
Enclosures

EXHIBIT 13

R3453

# **EXHIBIT 14**

Yana Viteri

From: Alan C. Fox  
Sent: Monday, July 20, 2009 3:38 PM  
To: yana@acfp.com  
Subject: Southpark - Sale to Fox Family Members  
Follow Up Flag: Follow up  
Flag Status: Red

The total investment for 100% of Southpark will be \$8,500,000.00 for Fox Family members, and \$9,500,000.00 for Kevin Fox and Carolyn Fox.

As soon as we have the entity info, please prepare documentation as follows:

1. Daveen Fox \$63,750 for .750%
2. Sara Fox \$127,500.00 for 1.50%. (Please give me a copy of her most recent Fidelity account statement.)
3. Heather Fox \$127,500.00 for 1.50%.
4. Ingrid Fox \$127,500.00 for 1.50%.
5. Craig Fox - see me \$15,000 for 1.000% . \$75,000 - new cash; balance to be with held
6. Steven Fox - see me
7. Kevin Fox - see me
8. Carolyn Fox - \$100,000.00 for 1.053%. I believe that we already have her check, but are holding it until she closes escrow on the sale of her condo.

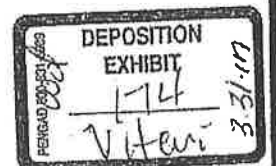
Thanks.

Alan

Alan C. Fox  
President  
ACF Property Management, Inc.  
12411 Ventura Blvd.  
Studio City, CA 91604

Phone: (818) 505-6777  
FAX: (818) 505-6778

7/21/2009



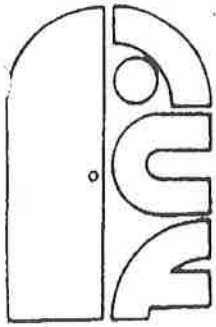
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10 F1

**EXHIBIT 14**



# **EXHIBIT 15**



ACF  
Property  
Management, Inc.

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

September 1, 2017

To: Investors in Shafer Plaza (Shoppes at Stonebriar)

Re: Potential Sale

We have a potential sale of Shafer Plaza at a gross price of \$33,250,000 before paying off the loan of \$32,485,321, the cost of sale of approximately \$997,500, and providing a letter of credit to the Seller of \$750,000 in order to protect against possible rent default in the future by Toys 'R Us which leases 50,200 SF. This means that the net sale proceeds will be less than zero, even before paying back the \$4,029,184 which I have personally loaned to the property.

In other words, there will be no cash available to investors from this sale. We have offered this property for sale for some time, and this is the very best offer we have been able to achieve. You have a positive capital account balance in Shafer Plaza 06 A, LLC as of December 31, 2016, which means that you should have a 2017 income tax write-off from this sale. We do not give income tax advice, and suggest that you check with your own income tax advisor to verify.

Before September 30<sup>th</sup> we will close escrow to purchase a TJ Maxx-anchored shopping center in Orlando, Florida, which will have a regular monthly cash distribution beginning October 31, 2017. As a courtesy to you, and **provided that you return the enclosed ballot to our office voting for the sale by no later than Friday, September 8, 2017**, I will make available to you, at no cost to you, an interest in the TJ Maxx investment.

I have enclosed Executive Summary, Financial Projections and photos for Lake Mary Village. If you own 1% in Shafer Plaza you will receive .25% in Lake Mary Village, and your regular monthly cash distribution beginning October 31 will be \$242.42. If you own more, or less, than 1% of Shafer Plaza your cash distribution will be adjusted up or down proportionately.

Please sign and return your ballot by no later than September 8 – preferably by e-mail to Yana (yana@acfpm.com) or Lauren (lauren@acfpm.com), or by fax (818.505.6778). If you have any questions, please contact Yana or me.

Many thanks.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.

Alan C. Fox  
President



ACF/yv  
Enclosures

ACF0000175

12-1

**EXHIBIT 15**

**PROPOSED SALE**


This is a ballot to approve the pending sale and closing of Shafer Plaza. There will be no cash to owners from this sale since owner equity is negative.

I cast my ballot as follows:

YES-SELL

NO-DON'T SELL

Raymond and Barbara Shofler Family Trust dated August 16, 2012

  
By: Raymond A. Shofler

  
Barbara Shofler

0.500%

9/6/17  
Date

# **EXHIBIT 16**

**NCS COLORADO, A DIVISION OF FIDELITY NATIONAL TITLE**

8055 E Tufts Ave, #300, Denver, CO 80237  
 Phone: (303) 291-9977 Fax: (303) 633-7720  
 Sellers Settlement Statement  
**FINAL**

Escrow No: N0011741 - 020 LM1      Close Date: 11/08/2017      Proration Date: 11/08/2017      Disbursement Date: 11/08/2017

Seller(s):                    Shafer Plaza 06 A, LLC, a Delaware limited liability company  
 Buyer(s)/Borrower(s): JAHCO Stonebriar LLC, a Delaware limited liability company  
 Property:                    Stonebriar Centre - 2601 Preston Road  
    Frisco, TX 75034

**Brief Legal:**

Description	Debit	Credit
<b>TOTAL CONSIDERATION:</b> Total Consideration		32,500,000.00
<b>NEW AND EXISTING ENCUMBRANCES:</b> Assumption from Wilmington Trust, National Association, as trustee, for the benefit of the registered holders of JPMBB Commercial Mortgage Securities Trust 2014-C21, Commercial Mortgage Pass-Through Certificates, Series 2014-C21 rather than Barclays Bank PLC.	21,026,736.54	
<b>NEW LOAN CHARGES:</b> - Wilmington Trust, National Association, as trustee, for the benefit of the regis		601,373.82
Tax Escrow		20,313.67
Insurance Premium Account		97,712.05
Replacement Reserves		
Require Repair Account		
Rollover Reserve Account		
Operating Expense Account		
Excess Cash Reserve Account		
Sun & ski Reserve Fund		
Toys R Us Reserve Fund		
<b>REAL ESTATE CLOSING CHARGES</b>	500.00	
Escrow Closing Charge to NCS Colorado, a division of Fidelity National Title	275.00	
Escrow Charge - Post Close Escrow Holdback to NCS Colorado, a division of Fidelity National Title		
<b>ADDITIONAL CHARGES:</b>	48,000.00	
Legal Fee to Brownstein, Hyatt, Farber and Schreck LLP	163,548.81	
Annual Payor Tax Escrow (Toys R Us) to NCS Colorado		
<b>PRORATIONS AND ADJUSTMENTS:</b>	402,671.59	
2017 Real Estate Taxes less Toys R Us from 1/1/2017 to 11/8/2017	15,000.00	
Uptown Cheapskate TI	137,041.55	
November Rents	38,333.59	
November NNN	139,418.93	
Security Deposits	18,807.77	
Prepaid Rents	411.53	
Service Contracts		22,622.87
YTD CAM Reconciliation 2017		2,800.00
Sun Ski Percentage Rent	182,050.00	
Mellow Mushroom Credit		9,027.45
Interest on \$21,026,736.54 from 11/8/2017 thru 11/10/2017 @ \$3,009.15 per day		
<b>COMMISSIONS:</b>	323,179.50	
\$323,179.50 (0% of \$32,500,000.00) to Strive Real Estate OBA JJ 2917 Enterprises LLC	500,000.00	
Fee to GDA Real Estate Service	600,000.00	
Fee to ACF Property Management		
<b>TITLE CHARGES:</b>	100,401.00	
Owners Policy for \$32,500,000.00 to NCS Colorado, a division of Fidelity National Title	23,890,075.81	33,253,849.96
Sub Totals	8,555,774.15	
Proceeds Due Seller	33,253,849.96	33,253,849.96
Totals		



**EXHIBIT 16**

13-1

# **EXHIBIT 17**



Steven Schuman &lt;sschuman@ldslaw.com&gt;

---

**Access to Records**


---

Steven Schuman &lt;sschuman@ldslaw.com&gt;

Tue, May 14, 2019 at 10:04 AM

To: "Estrada, Martin" &lt;Martin.Estrada@mto.com&gt;

Cc: "Yohalem, Mark" &lt;Mark.Yohalem@mto.com&gt;, "Schwab, John" &lt;John.Schwab@mto.com&gt;, "Levin, Daniel" &lt;daniel.levin@mto.com&gt;, "Baril, Jessica" &lt;Jessica.Baril@mto.com&gt;, "Thompson, Maggie" &lt;Maggie.Thompson@mto.com&gt;, Richard Leonard &lt;rleonard@ldslaw.com&gt;

Without waiving any rights or remedies, we will repeat our demands for inspection under the Corporations Code. This is not a discovery request.

Corporations Code §17701.13(d) requires that the manager of an LLC to keep:

"(1)A current list of the full name and last known business or residence address of each member and of each transferee set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and transferee.

(2) If the limited liability company is a manager-managed limited liability company, a current list of the full name and business or residence address of each manager.

(3) A copy of the articles of organization and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed.

(4) Copies of the limited liability company's federal, state, and local income tax or information returns and reports, if any, for the six most recent fiscal years.

(5) A copy of the limited liability company's operating agreement, if in writing, and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or any amendments thereto were executed.

(6) Copies of the financial statement of the limited liability company, if any, for the six most recent fiscal years.

(7) The books and records of the limited liability company as they relate to the internal affairs of the limited liability company for at least the current and past four fiscal years."

Corporations Code §17704.10(b)(1) entitles members "[t]o inspect and copy during normal business hours any of the records required to be maintained pursuant to Section 17701.13."

On behalf of the Shoflers, we hereby demand that ACF Property Management, Inc., allow us to inspect the lists required by Corporations Code §17701.13(d) for each LLC in which they invested. On behalf of the Rosses and the Estate of Walter Berman, we make the same demand for the same documents for Laveen Ranch.

We demand that you provide us and our copying company access to all of the documents listed above on Monday afternoon, May 20, 2019, at 2pm. If that does not fall within ordinary business hours for ACF, please advise us of their ordinary business hours so that we can reschedule for a date this week.

The statute expressly states that we can inspect and copy these documents during normal business hours. We have been making similar requests for years, and received very little satisfaction to date. We have no sympathy for your claim that Alan Fox is ill. First, Mr. Fox is not necessary to produce documents, based on his own deposition testimony. ACF is the manager of these entities, and it has tens (if not 100) employees. Second, Mr. Fox just posted a 500 word blog post this morning. If he is well enough to write blog posts for his own entertainment, he is well enough to talk to his lawyers and comply with his fiduciary obligations to his investors.

Alternatively, although we have an absolute right to review documents today (today being a Tuesday, a business day), we repeat our offer to instead provide us with an electronic copy of the information no later than May 30, 2019 at 2pm. If you wish to accept that offer, you need to promise us in writing that you will get us all the documents listed above by that date. If not, that is fine. You have no legal obligation to do so. But then we will simply enforce our legal right to inspect and copy the documents on May 20, 2019, at 2pm.

Our offer to accept electronic copies expires today at 5pm and may only be accepted in writing (e-mail).

[Quoted text hidden]

## EXHIBIT 17

# EXHIBIT 18



**From:** Aaron Metz  
**To:** Alan C. Fox; Ed Delava; Lauren McClelland; Yana Viteri; Kay Partch; Cathy Reynolds  
**CC:** Gary Dragul; Sara Hall  
**Date:** 9/6/2013 5:02:39 PM  
**Subject:** Writer Square Wires and Final Statements  
**Attachments:** Closing Proration Writer Square.xls; ss\_20130906103636.pdf

Alt:

Attached are final settlement statements and prorations. Wire confirmations are below.

Thanks,

Aaron J. Metz  
 Director of Acquisitions  
 GDA Companies  
 5690 DTC Boulevard, Suite 515  
 Greenwood Village, Colorado 80111  
 Phone: (303) 221-5500  
 Cell: (303) 898-7199  
 Fax: (303) 221-5501

Date	Amount	Entity	Reference	Status
09/06/2013	\$1,365,000.00	ACF PROPERTY MANAGEMENT, INC.	001419	Completed
10/06/2013	\$41,377,637.70	PWM PCG SERVICE TEAM	001451	Completed
09/06/2013	\$965,449.81	INVESTMENT PROPERTY EXCHANGE SERVICES	001408	Completed
09/06/2013	\$2,249,400.00	INVESTMENT PROPERTY EXCHANGE SERVICES	001449	Completed
09/06/2013	\$1,442,600.82	INVESTMENT PROPERTY EXCHANGE SERVICES	001453	Completed
09/06/2013	\$853,533.38	THE ALAN C. FOX REVOCABLE TRUST	001482	Completed
09/06/2013	\$14,539,894.62	WRITER SQUARE 08 A, LLC, A COLORADO LIMITED LIABIL	001416	Completed
09/06/2013	\$125,000.00	ALDERWOOD SHOPPING CENTER 04 E	001507	Completed
09/06/2013	\$175,000.00	DEVONSHIRE LTD	001510	Completed
09/06/2013	\$82,269.00	ESCONDIDO VALLEY CENTER 02	001534	Completed
09/06/2013	\$600,000.00	JEFFERSON VILLAGE 03	001479	Completed
10/06/2013	\$200,000.00	KC SHOPPING CENTER 01	001475	Completed
09/06/2013	\$150,000.00	ESCONDIDO GATEWAY 03	001580	Completed
09/06/2013	\$100,000.00	LAVEEN RANCH MARKETPLACE 12	001525	Completed

**EXHIBIT 18**

ACF0031673

09/06/2013	\$100,000.00	[REDACTED]	LOGGINS CORNERS 12	001481	Completed
09/06/2013	\$100,000.00	[REDACTED]	MESA SHORES	001522	Completed
09/06/2013	\$100,000.00	[REDACTED]	PARADISE VALLEY	001499	Completed
10/06/2013	\$200,000.00	[REDACTED]	PLAZA 205 SHOPPING CENTER 04 A	001540	Completed
09/06/2013	\$100,000.00	[REDACTED]	UNIVERSITY PLAZA 02	001539	Completed
09/06/2013	\$100,000.00	[REDACTED]	VISTA RIDGE 07 A	001493	Completed
09/06/2013	\$100,000.00	[REDACTED]	WASHINGTON POINT LENNANE 04	001494	Completed

Thank You

**Lindsey Mann**  
**Commercial Escrow Officer**  
**Fidelity National Title Insurance Company**  
**National Commercial / Major Accounts Division**  
**4643 S. Ulster Street, Suite 500**  
**Denver, CO 80237**  
**Direct: 720.200.1227 | Fax: 303.633.7624 | Cell: 303.968.6980**  
[lindsey.mann@fnf.com](mailto:lindsey.mann@fnf.com)

**\*Wire cut off time is 3:00pm MST\***

**\*\*Please note we require wired funds for closing. New company policy states that we have to confirm that funds are in our account with no ability of the funds being recalled. If you bring a cashier's check to closing we will not be able to disburse funds until our bank can confirm the funds have been deposited into our account. In some cases this may cause us to close in escrow.\*\***

From: Mann, Lindsey  
 Sent: Friday, September 06, 2013 10:02 AM  
 To: 'Aaron Metz'  
 Cc: Gary Dragut; Sara Hall  
 Subject: RE: Writer Statements

Just waiting on buyers okay and then I will send you and Gary wire confirmation when available.

Thank You

**Lindsey Mann**  
**Commercial Escrow Officer**  
**Fidelity National Title Insurance Company**  
**National Commercial / Major Accounts Division**  
**4643 S. Ulster Street, Suite 500**  
**Denver, CO 80237**  
**Direct: 720.200.1227 | Fax: 303.633.7624 | Cell: 303.968.6980**  
[lindsey.mann@fnf.com](mailto:lindsey.mann@fnf.com)

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**\*\*Please note we require wired funds for closing. New company policy states that we have to confirm that funds are in our account with no ability of the funds being recalled. If you bring a cashier's check to closing we will not be able to disburse funds until our bank can confirm the funds have been deposited into our account. In some cases this may cause us to close in escrow.\*\***

From: Aaron Metz [<mailto:aaron@gdare.com>]  
 Sent: Friday, September 06, 2013 9:52 AM

ACF0031674

**To: Mann, Lindsey**  
**Cc: Gary Dragut; Sara Hall**  
**Subject: Writer Statements**

Lindsey:

Can you reformat so that they each fit on one page when printed? Also, please email just me and Gary wire confirmations when available.

Thanks,

**Aaron J. Metz**  
**Director of Acquisitions**  
**GDA Companies**  
**5690 DTC Boulevard, Suite 515**  
**Greenwood Village, Colorado 80111**  
**Phone: (303) 221-5500**  
**Cell: (303) 898-7199**  
**Fax (303) 221-5501**

ACF0031675

# **EXHIBIT 19**



Steven Schuman &lt;sschuman@ldslaw.com&gt;

## Demand for Copies of All Tax Returns and Other Records

Fri, Feb 9, 2018 at 4:35 PM

Steven Schuman &lt;sschuman@ldslaw.com&gt;

To: James Turken &lt;jturken@eisnerlaw.com&gt;

Cc: Georgiana Nikias &lt;gnikias@eisnerlaw.com&gt;, Richard Leonard &lt;rleonard@ldslaw.com&gt;, Silvia Cerna &lt;SCerna@eisnerlaw.com&gt;, Rebecca Calkins &lt;RCalkins@eisnerlaw.com&gt;, Jordan Bender &lt;jbender@eisnerlaw.com&gt;, Christopher Kadish &lt;CKadish@eisnerlaw.com&gt;

Corporations Code Section 17701.13 provides, in relevant part:

(d) Each limited liability company shall maintain in writing or in any other form capable of being converted into clearly legible tangible form at the office referred to in subdivision (a) all of the following:

- (1) A current list of the full name and last known business or residence address of each member and of each transferee set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and transferee.
- (2) If the limited liability company is a manager-managed limited liability company, a current list of the full name and business or residence address of each manager.
- (3) A copy of the articles of organization and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed.
- (4) Copies of the limited liability company's federal, state, and local income tax or information returns and reports, if any, for the six most recent fiscal years.
- (5) A copy of the limited liability company's operating agreement, if in writing, and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or any amendments thereto were executed.
- (6) Copies of the financial statement of the limited liability company, if any, for the six most recent fiscal years.
- (7) The books and records of the limited liability company as they relate to the internal affairs of the limited liability company for at least the current and past four fiscal years.

Corporations Code Section 17704.10 provides, in relevant part:

(a) Upon the request of a member or transferee, for purposes reasonably related to the interest of that person as a member or a transferee, a manager or, if the limited liability company is member-managed, a member in possession of the requested information, shall promptly deliver, in writing, to the member or transferee, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2), and (4) of subdivision (d) of Section 17701.13, and any written operating agreement of the limited liability company.

(b) Each member, manager, and transferee has the right, upon reasonable request, for purposes reasonably related to the interest of that person as a member, manager, or transferee, to each of the following:

- (1) To inspect and copy during normal business hours any of the records required to be maintained pursuant to Section 17701.13.
- (2) To obtain in writing from the limited liability company, promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax returns for each year.

On behalf of Jerry Ross, Jenny Zipkin, Eric Ross, Gadi Maier, Marlene Maier, Elizabeth Blackford and Dr. Raymond Shofler: We hereby demand that Alan C. Fox and ACF Property Management provide us, on behalf of our clients, "a copy of the limited liability company's federal, state, and local income tax returns for each year.." We further demand that your client provide us with immediate access to allow records of the LLCs in which our clients invested, as provided for under Corporations Code Section 17701.13(d)(1)-(7).

We have made this request, in various forms, for over two years. If we do not receive the tax returns and have access to the documents by Wednesday, February 14, 2018, we will take appropriate action, including but not limited to filing a new

3/1/2018

Leonard, Dicker and Schreiber Mail - Demand for Copies of All Tax Returns and Other Records

action to compel the production and to place a receiver at ACF Property Manager, Inc., on the grounds that has possession of literally a billion dollars of investor money and yet refuses to turn over tax returns or bank statements.

All rights and remedies are reserved.

--

Steven A. Schuman, Esq.  
Leonard, Dicker & Schreiber, LLP  
9430 Olympic Blvd., Suite 400  
Beverly Hills, California 90212

310-551-1987 (phone)  
310-277-8050 (fax)

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing VERIFIED THIRD AMENDED COMPLAINT FOR: (1) BREACH OF FIDUCIARY DUTY; (2) FRAUD— (MISREPRESENTATION); (3) FRAUD (CONCEALMENT); (4) SECURITIES FRAUD; (5) VIOLATION OF CORPORATIONS CODE SECTION 17704.10 and; know its contents.

CHECK APPLICABLE PARAGRAPHS

[X] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.
I am an Officer a partner a of

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am one of the attorneys for a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on , at Toluca Lake , California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Raymond Shofler Type or Print Name Signature

PROOF OF SERVICE 1013a (3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of , State of California.

I am over the age of 18 and not a party to the within action; my business address is:

On, I served the foregoing document described as

on in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.
by placing the original a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

I deposited such envelope in the mail at , California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on , at , California.

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

Executed on , at , California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Type or Print Name

Signature

\*(BY MAIL SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX, OR BAG)

\*\* (FOR PERSONAL SERVICE SIGNATURE MUST BE THAT OF MESSENGER)

Rev. 7/99

---

**From:** Gary Dragul  
**Sent:** Saturday, January 12, 2019 2:24 PM  
**To:** Alan Fox  
**Subject:** Proposal

Alan,

First, let me start by saying thank you. I am referring to your blog of this past week, "kindness." I called you earlier in the week because I am completely out of creative and resourceful ideas of ways to help myself through this mess and you were very kind to me. It made my day.

Second, as the week went on my thoughts became more desperate and searching. I know I can do this, but I need help. Help is a word that is not a comfortable word for me to use in my vocabulary. However it is the truth. When I called you yesterday you were again very kind to me and you made my day again.

I have given this email lots of thought. I would be remiss if I didn't say thank you 1000 times for your kindnesses over the years. Just the opportunity to learn from you and be part of something so fun and great, I will never thank you enough. I have an education and experiences that nobody can take away. I am truly grateful.

I told you yesterday that I wanted to restore my position of being a problem solver, a fixer, and the most profitable part of your day. I want to take stress off of you and have the profits I make you help me financially through this. So, I offer the following.

1. Are there problem properties that you need an outsiders view and help with? An example is the Westview property in Lonetree. I was at the neighboring DSW Store last night. It appeared that you still have the 5000 sq ft vacancy. Maybe you have 10 or so properties that keep you awake at night. I can solve some specific leasing issues for you. Once solved, maybe I can sell them and roll the money into other deals. I don't want to upset the apple cart, but I am great at this. Also, it can easily be separated from day to day leasing. Some others properties that come to mind are Pipeline, Bedford, the Chicago property, 119th and Metcalf in Kansas and anything else that is keeping you from a good nights sleep.

2. Let's get real serious about what you want sold and exchanged in '19 ASAP. I will make this happen immediately.



3. I am great with things that are hard to solve. I don't care what it is. Anything! I am ready to get in the game and make stuff happen for you. My goal is to make you have more fun and worry less.

If you extend a plan for \$1 ml to help me through this issue I am sure I can return it 3 fold or more. I need help and I really don't know what to do. Please coach.... put me in!

Thank you for your kindness and for listening.

Love,

Gary

PS.. your partner in fun.....still!

Gary J. Dragul  
President  
RTG Capital Partners LLC  
Cell: (303) 929-3500

## Michael T. Gilbert

---

**From:** Michael T. Gilbert  
**Sent:** Tuesday, April 9, 2019 1:02 PM  
**To:** Jeffrey Springer (jspringer@springersteinberg.com)  
**Cc:** Sueanna Johnson; 'Harvey Sender (hsender@sendersmiley.com)'; Rachel Sternlieb (rsternlieb@allen-vellone.com); 'Patrick Vellone (pvellone@allen-vellone.com)'; Matthew J. Roth (MRoth@allen-vellone.com)  
**Subject:** Dragul -- Request for Turnover and Accounting  
**Attachments:** Senor Frogs and Treasure Island -- Lease Payment Analysis; 20180731 ACF Check to SSC 02, LLC.pdf; 2018 Fortis Statements SSC 02, LLC.pdf; 20190204 SSC Em from Dickey\_redacted.pdf

Jeff:

This email addresses a number of pressing Receivership issues we need to deal with promptly.

First, I have consulted with the Commissioner's counsel who informs me that consistent with the terms of the Receivership Order, there was never an agreement to exclude the personal property located at Dragul's Personal Residence from the scope of the Estate. Accordingly, I once again request that access to the house be provided so we can conduct a video inventory and liquidation valuation.

Second, it has come to our attention that Gary owns a "party bus" that was used for GDA recreational purposes and which has never been disclosed to the Receiver. Please let us know where the vehicle is so that we can make arrangements to pick it up and sell it.

Third, we understand from Tyler Dickey's February 4, 2019, email (attached) that Gary had a buyer lined up to purchase a storage unit allegedly owned by SSC 02, LLC. Since Harvey's emails with Mr. Dickey, we have determined that SSC 02, LLC was funded with money from various accounts in which investor funds were deposited and comingled. Attached are a few representative bank statements. Considering this information, the Receiver retracts any authority previously provided to sell the storage unit or any other asset owned by SSC 02, LLC. Further, we need a full accounting of all items in the storage facility as well as the assets held by SSC 02, LLC, including membership interests in any ACF owned entity as reflected by the attached check. If the storage unit or any of its contents have been sold, transferred, or disposed of in any way, we need a complete accounting.

Fourth, we demand an accounting of all income received by GDA and payments that it may have made since the Receiver was appointed concerning Rose, LLC. We have been asking for this – and Gary has been promising to provide it – since last October. As you will see from the attached email Gary sent on October 13, it appears Rose was entitled to receive more than \$50K/month in net payments from Senor Frogs. Despite repeated demands and assurances, no accounting has ever been provided.

Fifth, we demand an accounting of all rental income GDA/Dragul have received from the Estate's residential properties since August 30, 2018. We know that since the Receiver was appointed, Gary received rental income from at least the Beaver Creek, Scottsdale, and some of the local residential properties, which has not been reported to the Receiver. Also, Gary has no right to

use the Beaver Creek property for any purpose absent consent from the Receiver. And to do so, he will need to pay rent like any other user.

Sixth and finally, we know Gary's Cherry Hills house is listed for sale. We know that more than \$2 million in funds were paid from GDA accounts for mortgage payments and improvements on the house. Under the Receivership Order, any equity in the house traceable to investor funds is Estate property. We therefore request that you agree that any net proceeds from the sale of Dragul's Personal Residence be placed into an escrow account pending the Receiver's complete accounting for the source of those funds.

Unless we receive access to Dragul's Personal Residence, delivery of the "party bus," the requested accountings, and an agreement regarding the house sale proceeds, we will file a motion for an order to show cause and ask for an expedited hearing. This is our conferral under Rule 121 and the Receivership Order. Unless we receive a meaningful response by the close of business tomorrow, we will seek appropriate orders from the Court.

Thanks, Michael

***Michael T. Gilbert***

Attorney At Law

Allen Vellone Wolf Helfrich & Factor P.C.

1600 Stout Street, Suite 1100

Denver, CO 80202

[mgilbert@allen-vellone.com](mailto:mgilbert@allen-vellone.com)

(720) 245-2406 | Direct

(303) 893-8332 | Fax

The contents of this electronic mail (email), including attachments, are confidential and/or privileged and may not be disseminated without permission. Please notify the sender immediately if this email is received in error. PLEASE NOTE: Emails are not a secure method of communication and could be intercepted improperly by an unintended third-party.

ACF PROPERTY MANAGEMENT, INC.

Client Trust Account  
12411 Ventura Blvd  
Studio City, CA 91604  
818/505-6777

City National Bank  
One Centerpoint Drive #160  
La Palma, CA 90623

77762

16-1606/1220

\*\*\*\* FIVE HUNDRED EIGHTY NINE AND 93/100 DOLLARS

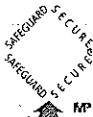
TO THE  
ORDER OF

07/31/2018

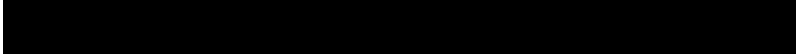
\$589.93\*\*\*\*\*

SSC 02, LLC  
c/o GDA Real Estate Services  
5690 DTC Boulevard, #515  
Greenwood Village, CO 80111

*Alan C Fox*



THIS CHECK IS VOID IF IT IS COPIED OR REPRODUCED IN ANY MANNER. IT IS VOID IF IT IS COPIED OR REPRODUCED IN ANY MANNER.



DATE:07/31/2018 CK#:77762 TOTAL:\$589.93\*\*\*\*\* BANK:New CT City National Checking(02ctcnb)  
PAYEE:SSC 02, LLC(cdssc)

Property	Account	Invoice - Date	Description	Amount
ho639	3400-0000	914625727 - 07/01/2018	:PostAPTTemplate <i>Kenwood</i>	435.75
ho650	3400-0000	914625727 - 07/01/2018	:PostAPTTemplate <i>Fenton Commons</i>	93.42
ho651	3400-0000	914625727 - 07/01/2018	:PostAPTTemplate <i>College Marketplace</i>	60.76
				589.93



---

**From:** Gary Dragul <gdprivileged@gmail.com>  
**Sent:** Tuesday, April 9, 2019 3:26 PM  
**To:** Alan C. Fox  
**Subject:** Fwd: Dragul -- Request for Turnover and Accounting  
**Attachments:** ATT00004.htm; 20190204 SSC Em from Dickey\_redacted.pdf; ATT00003.htm; 2018 Fortis Statements SSC 02, LLC.pdf; ATT00002.htm; 20180731 ACF Check to SSC 02, LLC.pdf; ATT00001.htm

Alan,

See below. Can we discuss.

Gary J. Dragul

303-929-3500

---

**From:** Jeffrey Springer <jspringer@springersteinberg.com>  
**Sent:** Tuesday, April 9, 2019 3:14 PM  
**To:** gdprivileged@gmail.com  
**Cc:** Michaela Lloyd  
**Subject:** Fwd: Dragul -- Request for Turnover and Accounting

I'll call you re this.

Begin forwarded message:

**From:** "Michael T. Gilbert" <[mgilbert@allen-vellone.com](mailto:mgilbert@allen-vellone.com)>  
**Date:** April 9, 2019 at 12:02:21 PM PDT  
**To:** "Jeffrey Springer ([jspringer@springersteinberg.com](mailto:jspringer@springersteinberg.com))" <[jspringer@springersteinberg.com](mailto:jspringer@springersteinberg.com)>

**Cc:** Sueanna Johnson <[Sueanna.Johnson@coag.gov](mailto:Sueanna.Johnson@coag.gov)>, "Harvey Sender ([hsender@sendersmiley.com](mailto:hsender@sendersmiley.com))" <[hsender@sendersmiley.com](mailto:hsender@sendersmiley.com)>, Rachel Sternlieb <[rsternlieb@allen-vellone.com](mailto:rsternlieb@allen-vellone.com)>, Pat Vellone <[PVellone@allen-vellone.com](mailto:PVellone@allen-vellone.com)>, "Matthew J. Roth" <[MRoth@allen-vellone.com](mailto:MRoth@allen-vellone.com)>

**Subject: Dragul -- Request for Turnover and Accounting**

Jeff:

This email addresses a number of pressing Receivership issues we need to deal with promptly.

First, I have consulted with the Commissioner's counsel who informs me that consistent with the terms of the Receivership Order, there was never an agreement to exclude the personal property located at Dragul's Personal Residence from the scope of the Estate. Accordingly, I once again request that access to the house be provided so we can conduct a video inventory and liquidation valuation.

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Third, we understand from Tyler Dickey's February 4, 2019, email (attached) that Gary had a buyer lined up to purchase a storage unit allegedly owned by SSC 02, LLC. Since Harvey's emails with Mr. Dickey, we have determined that SSC 02, LLC was funded with money from various accounts in which investor funds were deposited and comingled. Attached are a few representative bank statements. Considering this information, the Receiver retracts any authority previously provided to sell the storage unit or any other asset owned by SSC 02, LLC. Further, we need a full accounting of all items in the storage facility as well as the assets held by SSC 02, LLC, including membership interests in any ACF owned entity as reflected by the attached check. If the storage unit or any of its contents have been sold, transferred, or disposed of in any way, we need a complete accounting.

Fourth, we demand an accounting of all income received by GDA and payments that it may have made since the Receiver was appointed concerning Rose, LLC. We have

been asking for this – and Gary has been promising to provide it – since last October. As you will see from the attached email Gary sent on October 13, it appears Rose was entitled to receive more than \$50K/month in net payments from Senor Frogs. Despite repeated demands and assurances, no accounting has ever been provided.

Fifth, we demand an accounting of all rental income GDA/Dragul have received from the Estate’s residential properties since August 30, 2018. We know that since the Receiver was appointed, Gary received rental income from at least the Beaver Creek, Scottsdale, and some of the local residential properties, which has not been reported to the Receiver. Also, Gary has no right to use the Beaver Creek property for any purpose absent consent from the Receiver. And to do so, he will need to pay rent like any other user.

Sixth and finally, we know Gary’s Cherry Hills house is listed for sale. We know that more than \$2 million in funds were paid from GDA accounts for mortgage payments and improvements on the house. Under the Receivership Order, any equity in the house traceable to investor funds is Estate property. We therefore request that you agree that any net proceeds from the sale of Dragul’s Personal Residence be placed into an escrow account pending the Receiver’s complete accounting for the source of those funds.

Unless we receive access to Dragul’s Personal Residence, delivery of the “party bus,” the requested accountings, and an agreement regarding the house sale proceeds, we will file a motion for an order to show cause and ask for an expedited hearing. This is our conferral under Rule 121 and the Receivership Order. Unless we receive a meaningful response by the close of business tomorrow, we will seek appropriate orders from the Court.

Thanks, Michael

***Michael T. Gilbert***

Attorney At Law

Allen Vellone Wolf Helfrich & Factor P.C.



1600 Stout Street, Suite 1100

Denver, CO 80202

[mgilbert@allen-vellone.com](mailto:mgilbert@allen-vellone.com)

(720) 245-2406 | Direct

(303) 893-8332 | Fax

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**From:** Beth Freestone<beth@rtgpartners.com>  
**Sent:** Friday, November 9, 2018 8:20 AM  
**To:** Susan Markusch; Gary Dragul  
**Subject:** Bedford Docs  
**Attachments:** Rosenbaum - Shoppes at Bedford.pdf; Letter from ACF 03.31.15 Cornerstone Bedford Exchange.pdf; Pages from 10-31-17.pdf

Gary:

You own 7.317% in Bedford which was worth \$654,871.50 upon closing. The distribution was \$2,729/month which was suspended 11/1/17. You gifted 50% of your ownership to Marty on 11/1/2015. All back up docs are attached.

Thanks,  
Beth

Beth Freestone  
RTG Partners  
303-929-2595  
beth@rtgpartners.com

**AGREEMENT FOR ASSIGNMENT  
OF PARTNERSHIP INTEREST**

THE UNDERSIGNED, Gary J. Dragul is the owner of an LLC Membership Interest in the ownership of the Property commonly known as Shoppes at Bedford located in Bedford, New Hampshire.


Gary J. Dragul, hereinafter referred to as "Grantor" hereby grants [gifts] to Martin Rosenbaum (hereinafter, "Grantee") a portion of said Grantor's interest in the above Property.

1. Grantor hereby assigns [gifts] to Grantee 50% of the 7.317% Membership Interest he owns in the Property.
2. This Assignment shall be effective as of November 1, 2015.
3. Grantor hereby represents and warrants that there are no impediments to assignment of said LLC Interest, nor any liens thereon except loans that may have been entered into by the LLC.
4. Grantee shall succeed to Grantor's interest in the operating account of said LLC as of November 1, 2015, in full satisfaction of all prorations.
5. It is the intent of the parties that upon transfer, Grantee is entitled to all economic rights and obligations for the holder of a 3.6585% Interest in the company, including a share of the profits and the right to receive distributions made by the company. Grantor shall retain the obligation of any losses.
6. The parties agree to execute such other and further documents as may be necessary or convenient to place in effect the terms of this agreement.

IN WITNESS HEREOF, the grantor has hereunto set his hand and seal as of November 1, 2015.

  
\_\_\_\_\_  
Gary J. Dragul

  
\_\_\_\_\_  
Martin Rosenbaum

  
\_\_\_\_\_  
Social Security/Tax I.D. Number of Grantee



**ACF  
Property  
Management, Inc.**

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

March 31, 2015

Mr. Gary Dragul  
GDA Real Estate Services, LLC  
5690 DTC Blvd, Suite 515  
Greenwood Village, CO 80111

Re: Completed Exchange for Cornerstone Center  
Shoppes at Bedford, Bedford (Manchester), New Hampshire

Dear Gary:

I am delighted to report that on March 26, 2015 we closed escrow on Shoppes at Bedford located in Bedford (Manchester), New Hampshire which is our exchange property for Cornerstone shopping center that was sold on December 2, 2014. Enclosed are the Executive Summary, Financial Projections, and Photos for our new center.

Shoppes at Bedford is a 97% leased, fully redeveloped shopping center (277,289 SF) located near Manchester (Greater Boston), and anchored by Kohl's Department Store, Marshalls, and The Fresh Market. We have obtained outstanding financing on this property—a 10 year loan at 3.89% interest, and ten year other financing at 5.00% interest.

You will own 7.317% of Bedford, which will have an initial cash flow of 5.00% (total projected return including payment on principal averages 8.60% in the first five years of ownership). Your regular monthly cash distribution beginning April 30, 2015 will be \$2,729.00, which is outstanding considering that we have not had regular monthly cash distributions from Cornerstone since December, 2008.

Please contact either me or Yana ([yana@acfpm.com](mailto:yana@acfpm.com)) if you have any questions.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.

Alan C. Fox  
President

ACF/yv  
Enclosures

## EXECUTIVE SUMMARY

### SHOPPES AT BEDFORD MALL BEDFORD (BOSTON MSA), HEW HAMPSHIRE

#### EXCHANGE FOR CORNERSTONE

- Location:** 73 South River Road, Bedford, New Hampshire 03110
- Price:** \$48,500,000.00.
- Property Description:** Shoppes at Bedford Mall is a 97% occupied, fully redeveloped grocery anchored shopping center located in Bedford, New Hampshire (277,289 SF). The property had undergone a major renovation in 2011-2012 to create new retail space. The center houses such prominent retailers as Kohl's, Marshalls, The Fresh Market, Bob's Stores, Staples, Outback Restaurant, Chipotle and Starbucks. The property enjoys ample parking, stable tenants with long term leases and strong customer base.
- Area Description** Bedford, New Hampshire is located 50 miles from Boston and is adjacent to the state's largest city of Manchester which is an upscale residential town. Shoppes at Bedford Mall enjoys convenient access and close proximity to Interstate 93, Interstate 293, US Route 3 and Route 101 as well as Manchester-Boston Regional Airport that allows convenient air travel to a multitude of locations throughout the US and Canada. Bedford attracts shoppers from surrounding areas with its no sales tax and no income tax policy.
- Demographics:** Bedford is a growing town with population of 77,806 and 137,767 in a 3 and 5 mile radius respectively. Median household incomes are \$70,329 and \$53,163 in 1 and 3 mile radius.
- Year Built/Renovated:** 1967/Renovated in 2011-2012
- Projected Annual Net Operating Income:** \$2,608,800.00.
- Cash Required:** \$8,950,000.00.
- Projected Return:** Projected cash flow starts at 5.00% increasing to 5.59%% in Year 5. Projected cash flow and payment on loan principal averages 8.60% in the first five years of ownership.

FOR ADDITIONAL INFORMATION PLEASE CONTACT ALAN C. FOX OR YANA VITERI AT 818/505-6777 (alan@acfp.com; yana@acfp.com).

**FINANCIAL PROJECTIONS  
THE SHOPPES AT BEDFORD MALL  
BEDFORD, NEW HAMPSHIRE**

**CORNERSTONE EXCHANGE**

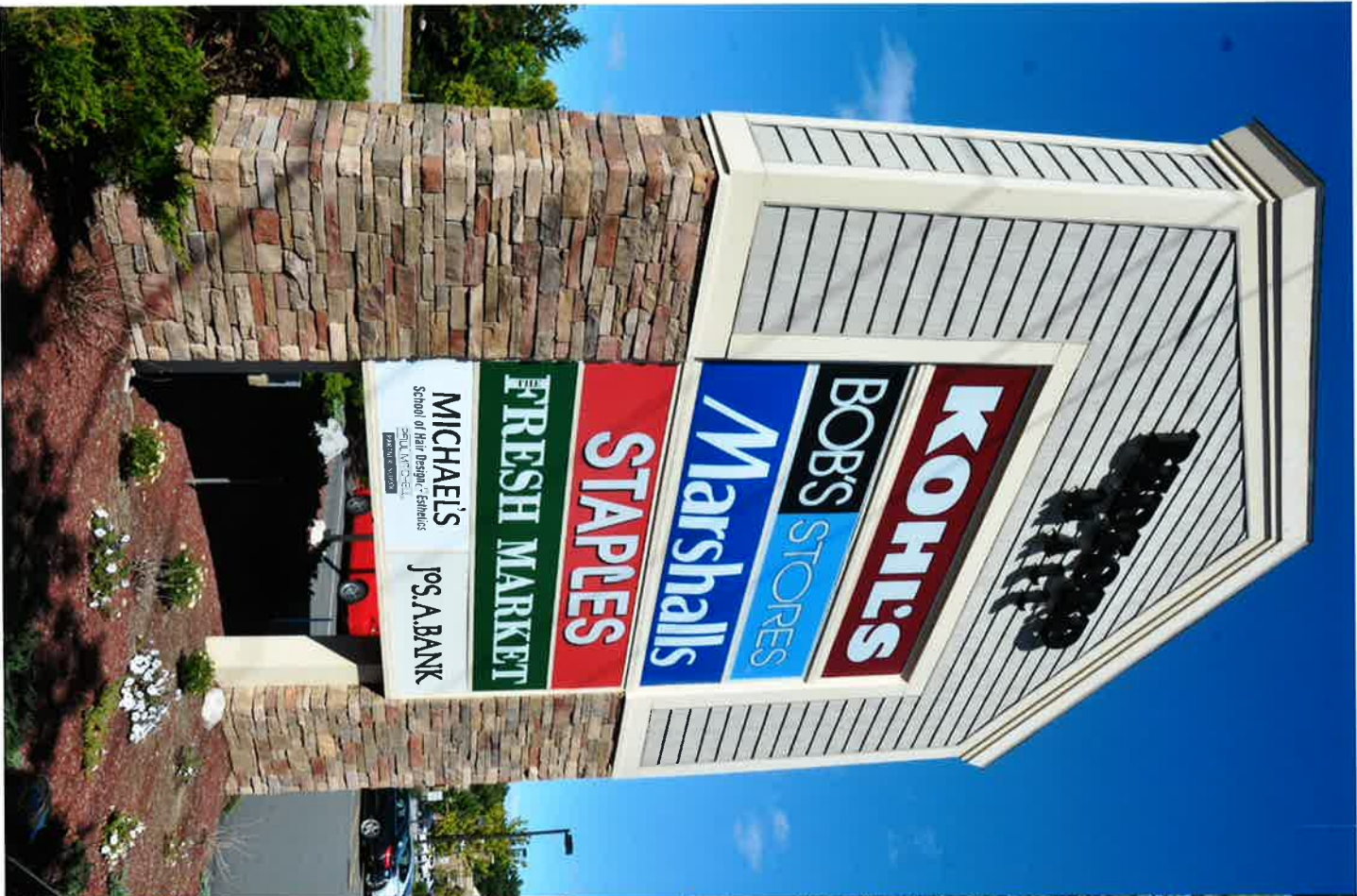
FINAL

PROJECTIONS	ENTIRE BUILDING				
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
MONTHLY SCHED. GROSS INCOME	\$242,430	\$247,465	\$257,153	\$260,458	\$263,115
VACANCY	(6,379)	(6,843)	(7,289)	(7,455)	(7,587)
SLIPPAGE	(18,651)	(17,659)	(17,568)	(17,670)	(18,411)
NET OPERATING INCOME	\$217,400	\$222,963	\$232,295	\$235,333	\$237,117
INTEREST INCOME ON RESERVE	1,500	1,200	900	600	300
DEBT SERVICE	(98,601)	(98,601)	(141,329)	(141,329)	(141,329)
SECONDARY FINANCING	(83,000)	(83,000)	(53,000)	(53,000)	(53,000)
NOI TAX	0	(3,842)	(1,003)	(1,261)	(1,413)
PROJECTED MONTHLY CASH FLOW	\$37,299	\$38,721	\$37,864	\$40,343	\$41,675
PROJ. ANNUAL CASH FLOW	\$447,586	\$464,649	\$454,362	\$484,120	\$500,097
PROJ. ANNUAL PRINCIPAL PAID	456,364	479,713	658,291	686,864	716,688
TOTAL PROJ. ANNUAL RETURN	\$903,950	\$944,362	\$1,112,653	\$1,170,984	\$1,216,785
	\$				

PROJECTED PERCENTAGE RETURN ON INVESTMENT					
CASH	5.00%	5.19%	5.08%	5.41%	5.59%
PRINCIPAL PAID	2.55%	2.68%	3.68%	3.84%	4.00%
TOTAL	7.55%	7.87%	8.76%	9.25%	9.59%

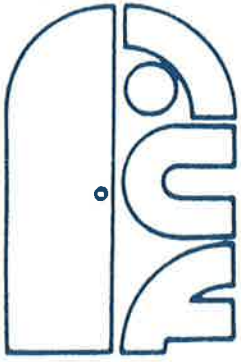
ASSUMPTIONS	
1. PURCHASE PRICE	\$48,500,000
2. LOAN AND CLOSING COSTS	450,000
3. OPERATING RESERVE	1,000,000
4. LOANS PAYABLE - 1ST TD	(30,000,000) 10 YEAR LOAN, 3.89% INT.; 2 YEARS I/O, 30 YEAR AMORT.
5. LOAN PAYABLE - 2ND TD	(11,000,000) 10 YEAR 2ND TD; 5% INTEREST, AMORTIZING
NET INVESTMENT	\$8,950,000
6. PROJECTED CASH FLOW AND PAYMENT ON LOAN PRINCIPAL AVERAGES 8.60% FOR THE FIRST 5 YEARS OF OWNERSHIP.	
7. THIS IS ONE OF THE HIGHEST QUALITY PROPERTIES THAT ACF HAS EVER PURCHASED. MAJOR TENANTS INCLUDE KOHL'S, MARSHALLS, THE FRESH MAKRET, STAPLES, OUTBACK RESTURANT, CHIPOTLE, AND STARBUCKS.	
NOTE: EACH OWNER WILL RECEIVE A MONTHLY CASH DISTRIBUTION CHECK.	





SHOPPES AT BEDFORD, BEDFORD (MANCHESTER), NEW HAMPSHIRE





ACF  
Property  
Management, Inc.

12411 VENTURA BOULEVARD  
STUDIO CITY, CALIFORNIA 91604 • (818) 505-6777  
FAX (818) 505-6778

October 31, 2017

Mr. Gary Dragul  
GDA Real Estate Services, LLC  
5690 DTC Blvd, Suite 515  
Greenwood Village, CO 80111

Re: *"Most of the change we think we see in life  
is due to truths being in and out of favor."  
Robert Frost*

Dear Gary:

I have heard it said that commercial real estate is an industry with ten year cycles and five year memories. I think this is true, and I also believe that the more things change the more nothing changes.

The real estate market was hot from 2005 through September 15, 2008 when Lehman Brothers filed for bankruptcy. The prices of commercial real estate rose substantially, and lenders in 2007 were offering ten year loans payable interest only. In other words, if you borrowed one dollar of principal you paid back that same dollar in 2017. Fortunately, at ACF we have now paid off all mortgage loans due this year and have few loan maturities until 2019 and 2020.

The U. S. economy is thriving, the stock market continues to close at all-time highs, and lenders are now offering seven year loans payable interest only. How wonderful. It seems like the good old days. Which were followed by the bad old days.

Of course, when Amazon recently acquired Whole Foods the entire retail grocery sector began to quiver. How could Kroger compete with the internet? How could they compete with Aldi's, a grocer backed by a huge amount of foreign money, which offers limited selection, limited service, and very low prices?

How, indeed? By offering greater value. This has always been the key to success in business. The best competitor wins.

To take advantage of the continuing sellers' market, we plan to list for sale as many properties as we reasonably can, and exchange where we must (for income tax purposes) into the highest



Mr. Gary Dragul  
October 31, 2017

Page 2

quality shopping centers available at a reasonable price. We have already acquired two such properties (Storrs in Hartford, Connecticut, and Lake Mary Village in Orlando, Florida) within the past several months. These centers are both internet resistant and have tenants which should survive the financial storm which may come.

Some of our big box tenants have filed for bankruptcy, and those that are expanding demand the moon and the sun. We try to only give them the moon. But we are tough competitors, have been through changing market conditions for the past forty-nine years, and have confidence in the future.

As expected, Bob's Stores, having filed for bankruptcy earlier this year, vacated its 44,822 SF (16.99%) at Shoppes at Bedford Mall on June 2. We have been aggressively marketing this space and have one prospect for a large part of the space which will pay a higher rent than the amount we received from Bob's. Also, our debt service payments increased slightly as we began amortizing the first trust deed loan on April 1, 2017. The cash loss so far this year was about \$170,000—entirely explained by the cost of vacancy. However, the cost to retenant the 44,822 SF will be more than \$1,500,000 which is considerably higher than our present cash reserve. For this reason we have to temporarily suspend the monthly cash distribution until we have actually rented this large vacancy.

We are working with two prospective tenants at 10 Quivira Plaza to lease 6,137 SF (3.38%) of our 5.65% of space available. Cash flow for the first three quarters fell about \$360,000 short of covering owner distribution—all due to the high cost of vacancy and \$153,171 spent on leasing commissions and tenant improvements. I am hopeful that once we lease some or all of our vacant space the cash flow will improve. In the meantime we may need to adjust monthly cash distribution on January 31, 2018 to replenish the cash reserve.

After extremely difficult negotiations with the servicer to allow the buyer to assume the loan on Shafer Plaza (Shoppes at Stonebriar), we believe escrow will close by mid-November. We previously mailed a separate letter to you with the details of the sale and will send an update once the escrow has closed.

We will mail your next client summary report on January 31, 2018, and your complete 2017 income tax information on February 20, 2018. Meanwhile if you have any questions, or are interested in a new investment yielding a 7.00% cash flow or better, please contact either me or Yana in my office (Yana@acfpm.com).

Best personal regards.

Very truly yours,

ACF PROPERTY MANAGEMENT, INC.



Alan C. Fox  
President

ACF/yv  
Enclosures

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**From:** Marty Rosenbaum <marty.rosenbaum@hotmail.com>  
**Sent:** Friday, November 9, 2018 12:45 PM  
**To:** Gary Dragul  
**Cc:** Alan Fox  
**Subject:** Re: Bedford Docs

Yes, I am agreeing that Gary Dragul can use the entire 7.317% interest in Bedford as collateral for a \$200,000 loan from Alan Fox to Gary Dragul. I would neither be a party to this loan nor in any way responsible for its repayment.

Marty

On Nov 9, 2018, at 10:46 AM, Gary Dragul <gary@rtgpartners.com  
<mailto:gary@rtgpartners.com> > wrote:

Marty,

I have copied Alan on this email. Please confirm your agreement by writing back to this email.

Thanks,

Gary J. Dragul  
RTG Partners  
Cell: (303) 929-3500  
gary@RTGPartners.com <mailto:gary@RTGPartners.com>

---

**From:** Gary Dragul  
**Sent:** Friday, November 9, 2018 9:34:23 AM  
**To:** Marty Rosenbaum  
**Subject:** Fwd: Bedford Docs

Marty,

Please confirm your agreement that I can proceed to either borrow against or sell the Bedford share we own 50/50. Also, if I borrow against this you will not be liable for this loan. I will personally indemnify you for this.

Please email me your agreement with these actions.

Gary J. Dragul  
RTG Partners  
Cell: (303) 929-3500  
gary@RTGPartners.com <mailto:gary@RTGPartners.com>

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From: Beth Freestone <beth@rtgpartners.com <mailto:beth@rtgpartners.com> >  
Sent: Friday, November 9, 2018 7:19 AM  
To: Gary Dragul; Susan Markusch  
Subject: Bedford Docs

Gary:

You own 7.317% in Bedford which was worth \$654,871.50 upon closing. The distribution was \$2,729/month which was suspended 11/1/17. You gifted 50% of your ownership to Marty on 11/1/2015. All back up docs are attached.

Thanks,  
Beth

Beth Freestone

RTG Partners

303-929-2595

beth@rtgpartners.com <mailto:beth@rtgpartners.com>



PROMISSORY NOTE

For value received, Martin Rosenbaum promises to pay Alan C. Fox, or, order, at Los Angeles, California the sum of One Hundred Thousand Dollars (\$100,0000) plus interest at the rate of 4% per annum from November 16, 2018 until January 2, 2019 when this note is payable in full.

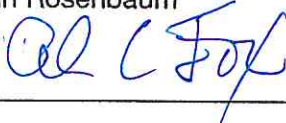
As additional consideration for this loan, Martin Rosenbaum hereby grants to Alan C. Fox the right to purchase his 3.6585% beneficial interest in the The Shoppes at Bedford for \$100,000 on January 2, 2019 under the terms of Membership Interest Purchase, Assignment dated January 2, 2019 provided that Alan C. Fox provides notice by no later than November 17, 2019 that he plans to exercise his option. In that event Martin Rosenbaum will not have any personal liability under this note (including interest), which Alan C. Fox will cancel as payment in full in return for the 3.6585% beneficial interest.

Should suit be instituted on this note, the undersigned promise to pay reasonable attorney's fees in addition to court costs.

DATED November 15, 2018

  
\_\_\_\_\_

Martin Rosenbaum

  
\_\_\_\_\_

Alan C. Fox

## MEMBERSHIP INTEREST PURCHASE, ASSIGNMENT AND ASSUMPTION AGREEMENT

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

### RECITALS

A. Assignor previously purchased membership interests (the "Interest") in Cornerstone Center 99, LLC commonly known as Cornerstone Center (the "Company"),

B. The Company owns a one hundred percent (100.000%) beneficial interest in and to that certain company named **Shoppes at Bedford 15 A, LLC**, a Delaware limited liability company that owns 50.000% undivided tenancy-in-common interest in and to certain commercial real property located at 73 South River Road, Bedford, New Hampshire 03110, and commonly known as the "**Shoppes at Bedford**" (the "Property"). *The ultimate manager (the "Manager") of the Company is ACF Property Management, Inc.*

C. The Company is governed pursuant to that certain Operating Agreement of Shoppes at Bedford 15 A, LLC, a Delaware limited liability company, dated February 10, 2015 (the "Operating Agreement").

D. The Operating Agreement contain significant restrictions on transfer with respect to the Interest and Assignor wishes to sell, assign, transfer and convey the Interest to Assignee, and Assignee wishes to purchase the Interest and assume the obligations associated with the Interest, 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:

#### ARTICLE 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 hereby purchases from Assignor, the Interest for the consideration specified in Section 1.2.

**1.2 Purchase Price.** The purchase price for the 3.6585% beneficial Interest in **Shoppes at Bedford** (the "Purchase Price") to be tendered by Assignee upon the execution and delivery of this Agreement by the parties is One Hundred Thousand and no/100 dollars (**\$100,000.00**) payable as follows: **Payable on January 1, 2019**. This payment may be made by Assignee canceling the \$100,000.00 promissory note in his favor dated November 15, 2018.

**1.3 Closing.** Subject to Article 2, the purchase and sale of the Interest (the "Closing") will take place at 10:00 a.m. local time at the offices of ACF Property Management, Inc., 12411 Ventura Blvd., Studio City, CA 91604 on the Effective Date or such other time as the parties hereto otherwise agree.

**ARTICLE 2**  
**ASSIGNMENT AND ASSUMPTION**

**2.1 Effect of Transfer and Withdrawal.** As of the Effective Date, the capital account 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, 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 Company agree that: (a) neither the sale, transfer, conveyance or assignment of the Interest, nor Assignor's dissociation as a member of the Company in respect of the Interest, as provided in this Agreement will dissolve the Company; and (b) the Company shall continue to exist as a limited liability company under the Laws (as defined below) of the State of its organization.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES**

**3.1 Representations and Warranties of Assignor.** Assignor represents and warrants to Assignee that the statements contained in this Section 3.1 are correct and complete as of the Effective Date.

(a) **The Interests.** Assignor holds of record and owns beneficially the Interests, free and clear of any lien, claim or encumbrance (an "Encumbrance") (other than restrictions on transfer under the Operating Agreement or under the Securities Act of 1933, as amended), 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.

(b) **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.

(c) **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.

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

(e) **Operating Agreement.** Assignor is not in breach of any of the terms of the Operating Agreement.

(f) **No Reliance.** Assignor has not been induced by or relied upon any representations, warranties or statements, whether express or implied, made by the Company or its affiliates, officers, directors, 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.

**3.2 Representation and Warranties of Assignee.** Assignee represents and warrants to Assignor that the statements contained in this Section 3.2 are correct and complete as of the Effective Date.

(a) **Capacity and Enforceability.** Assignee has the relevant capacity necessary to execute and deliver this Agreement and to perform and consummate the Transaction. Assignee 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 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.

#### **ARTICLE 4 INDEMNIFICATION**

**4.1 Indemnification.** Assignor agrees to indemnify and hold Assignee and its members, managers, officers, agents, employees, representatives, affiliates and controlling persons harmless from and against any and all loss, damage, liability or expense (including, without limitation, attorneys' fees and disbursements) 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.

#### **ARTICLE 5 RELEASE AND COVENANT NOT TO SUE**

##### **5.1 Assignor Release.**

(a) Assignor agrees that upon receipt of the Purchase Price to release and forever discharge Assignee and its respective affiliates, officers, directors, employees, shareholders, members, managers, agents, consultants, brokers, advisors and representatives, as well as their respective successors



and assigns from any and all claims, obligations, rights, causes of action, and liabilities, of whatever kind or nature, whether known or unknown, whether foreseen or unforeseen, arising on or before the date hereof, which Assignor ever had, now has or hereafter can, shall or may have for, upon or by reason of any matter, cause, or thing whatsoever, which are based upon, arise under or are related to (i) the purchase and ownership of the Interest by Assignor, (ii) this Agreement, (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.

(b) The foregoing release provision shall survive the Closing or any termination of this Agreement. In connection with this release, Assignor 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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

(c) The Parties agree that they will not institute, cause to be instituted or participate or cooperate in the institution of any action, arbitration or litigation against the Parties in which liability is sought in any way to be predicated on the investment or claims released in this Agreement. In the event that an action is commenced in violation of the covenant not to sue set forth, the release and covenant not to sue set forth in this Agreement can be asserted by the Parties by way of defense, counterclaim, cross claim or third-party claim.

## ARTICLE 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 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.

**6.5 Governing Law.** This Agreement shall be governed by the Laws of the State of California, without giving effect to the principles of conflict of Laws of that State.

**6.6 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:

Martin Rosenbaum  
Martin Rosenbaum

ASSIGNEE:

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

By:

Alan C. Fox  
Alan C. Fox, Trustee

By signing below, ACF Property Management, Inc., as the Manager of the Company, 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:

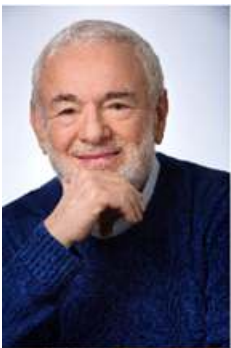
Alan C. Fox  
Alan C. Fox, President

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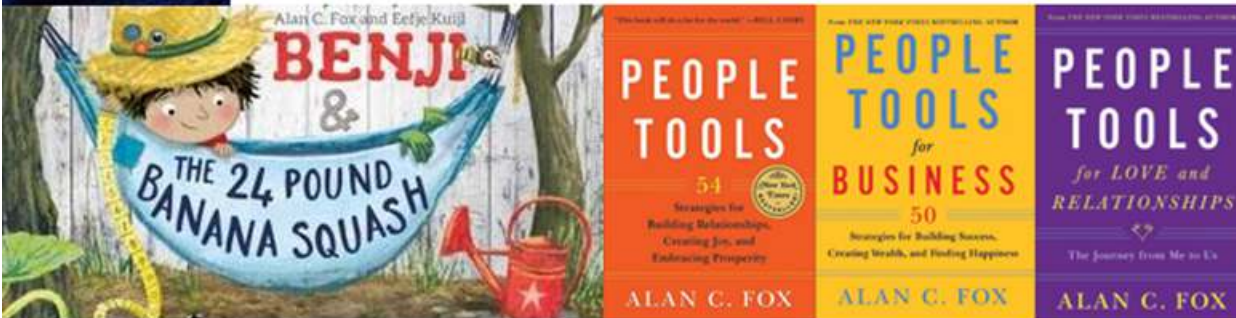
**From:** Alan C. Fox <Alan@acfpm.com>  
**Sent:** Friday, November 9, 2018 3:56 PM  
**To:** Lauren Hunsaker; Susan Markusch  
**Cc:** Stacie Soto; Cathy Reynolds  
**Subject:** RE: Wire instructions

Please wire \$25,000 as a deposit re Bedford LLC Member Interest.

Alan



**ALAN C. FOX**  
*President*  
*ACF Property Management, Inc.*  
12411 Ventura Blvd.  
Studio City, CA 91604  
818-505-6777  
Fax: 818-505-6778



*New York Times* Bestselling Author of the *People Tools* Series  
*Benji & The 24 Pound Banana Squash* Available October 16<sup>th</sup>, 2017!  
[alanfox.com](http://alanfox.com)

---

**From:** Susan Markusch [mailto:susan@rtgpartners.com]  
**Sent:** Friday, November 09, 2018 1:55 PM  
**To:** Alan C. Fox <Alan@acfpm.com>; Lauren Hunsaker <Lauren@acfpm.com>  
**Subject:** Wire instructions

Dear Alan and Lauren:

Please see below wire instructions:

Chase Bank  
4968 South Yosemite Street

Greenwood Village, CO 80111

ABA – [REDACTED]

Name on account: Shelly R. Dragul

Address: 10 Cherry Lane Drive, Cherry Hills Village, CO 80113

Account #: [REDACTED]3921

Thank you,

Susan Markusch

RTG Partners, LLC

Phone: 303-929-4321



**CHECKING SUMMARY** Chase Private Client Checking

	AMOUNT
<b>Beginning Balance</b>	<b>\$2,137.79</b>
Deposits and Additions	349,756.75
Checks Paid	-112,500.00
Electronic Withdrawals	-236,348.85
<b>Ending Balance</b>	<b>\$3,045.69</b>
Annual Percentage Yield Earned This Period	0.01%
Interest Paid This Period	\$0.12
Interest Paid Year-to-Date	\$0.52

**CHECKS PAID**

CHECK NUMBER	DATE PAID	AMOUNT	CHECK NUMBER	DATE PAID	AMOUNT
706 ^	11/27	\$10,000.00	7063 * ^	11/08	4,000.00
7056 * ^	11/07	5,000.00	7064 ^	11/13	4,000.00
7057 ^	11/07	10,000.00	7065 ^	11/13	11,000.00
7058 ^	11/07	10,000.00	7066 ^	11/13	2,500.00
7059 ^	11/08	1,000.00	7067 ^	11/14	8,000.00
7060 ^	11/07	22,000.00	7068 ^	11/14	12,000.00
7061 ^	11/08	8,000.00	7069 ^	11/20	5,000.00
<b>Total Checks Paid</b>					<b>\$112,500.00</b>

If you see a check description in the Transaction Detail section, it means your check has already been converted for electronic payment. Because of this, we're not able to return the check to you or show you an image on Chase.com.

\* All of your recent checks may not be on this statement, either because they haven't cleared yet or they were listed on one of your previous statements.

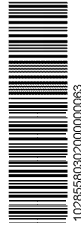
^ An image of this check may be available for you to view on Chase.com.

**TRANSACTION DETAIL**

DATE	DESCRIPTION	AMOUNT	BALANCE
	<b>Beginning Balance</b>		<b>\$2,137.79</b>
11/02	Deposit 1619525383	384.25	2,522.04
11/02	Client Distribut Payroll PPD ID: 9000871224	697.38	3,219.42
11/02	11/02 Payment To Chase Card Ending IN 0658	-1,800.00	1,419.42
11/05	Bk of Am Crd ACH Paybyphone PPD ID: 4001190310	-200.00	1,219.42
11/06	Fedwire Credit Via: Inter Audi Bank/026006237 B/O: Reali Capital, LLC New York, NY 10065 Ref: Chase Nyc/Ctr/Bnf=Shelly Ross Dragul Cherry Hills Village, CO 80113423 4/Ac-000000002828 Rfb=O/B Inter Audi Ba Bbi=/Bnf/Our Ps0009698157 Purpo Se: Paym Ent Per Consultant Agreeeme Nt Imad: 1106Qmgft013001679 Trn: 5787509310Ff	160,000.00	161,219.42
11/06	Quickpay With Zelle Payment To Steve Janowiak 7643651727	-5,000.00	156,219.42
11/06	11/06 Online Transfer To Chk ...0217 Transaction#: 7643685217	-10,000.00	146,219.42
11/06	11/06 Payment To Chase Card Ending IN 0658	-10,000.00	136,219.42
11/06	11/06 Payment To Chase Card Ending IN 5163	-5,000.00	131,219.42
11/07	11/07 Online Domestic Wire Transfer Via: Wells Fargo NA/121000248 A/C: Bre Ddr Br San Tan Il AZ LLC Beachwood OH 44122 US Ref: Cornelsta Wine & Liquor, LLC/Time/07:53 Imad: 1107B1Qgc01C000741 Trn: 3109000311Es	-25,000.00	106,219.42

**TRANSACTION DETAIL** (continued)

DATE	DESCRIPTION	AMOUNT	BALANCE
11/07	11/07 Online Domestic Wire Transfer Via: Wells Fargo NA/121000248 A/C: Bre Ddr Br San Tan II AZ LLC Beachwood OH 44122 US Ref: Cornerstar Wine & Liquor, LLC/Time/07:53 Imad: 1107B1Qgc03C000679 Trn: 310280031Es	-25,000.00	81,219.42
11/07	11/07 Online Transfer To Chk ...0217 Transaction#: 7645946134	-20,000.00	61,219.42
11/07	11/07 Online Transfer To Chk ...0217 Transaction#: 7646111385	-6,000.00	55,219.42
11/07	11/07 Check # 7060	-22,000.00	33,219.42
11/07	11/07 Online Transfer To Chk ...0217 Transaction#: 7646663866	-2,000.00	31,219.42
11/07	Check # 7058	-10,000.00	21,219.42
11/07	Check # 7057	-10,000.00	11,219.42
11/07	Check # 7056	-5,000.00	6,219.42
11/08	Online Transfer From Sav ...6709 Transaction#: 7649586350	3,800.00	10,019.42
11/08	Online Transfer From Sav ...7690 Transaction#: 7649571349	3,000.00	13,019.42
11/08	Check # 7061	-8,000.00	5,019.42
11/08	Check # 7063	-4,000.00	1,019.42
11/08	Check # 7059	-1,000.00	19.42
11/09	Fedwire Credit Via: City National Bank/122016066 B/O: The Alan C Fox Revocable Trust Studio City CA 91604 Ref: Chase Nyc/Ctr/Bnf=Shelly Ross Dragul Cherry Hills Village, CO 80113423 4/Ac-000000002828 Rfb=Deposit Re Be Dfo Imad: 1109L2LfcK1C004334 Trn: 6650809313F1	25,000.00	25,019.42
11/09	11/09 Online Transfer To Chk ...0217 Transaction#: 7653660574	-3,000.00	22,019.42
11/13	Online Transfer From Chk ...0217 Transaction#: 7662259999	1,700.00	23,719.42
11/13	11/10 Payment To Chase Card Ending IN 5556	-374.25	23,345.17
11/13	11/13 Consumer Online International Wire A/C: Bank Hapoalim B M Tel-Aviv Israel Ref:/Cct/Jofzcyf00J4 Invoice Payment Trn: 6201000317Es	-5,000.00	18,345.17
11/13	Check # 7066	-2,500.00	15,845.17
11/13	Check # 7065	-11,000.00	4,845.17
11/13	Check # 7064	-4,000.00	845.17
11/13	Toyota Financial Lease_Pay 61919277101118 Web ID: 2953775816	-251.22	593.95
11/14	Deposit 1824048447	21,000.00	21,593.95
11/14	Check # 7068	-12,000.00	9,593.95
11/14	Check # 7067	-8,000.00	1,593.95
11/15	Deposit 1810382310	4,200.00	5,793.95
11/16	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Martin Rosenbaum 8528 Colonial DR Lone Tree CO 80124 Ref: Chase Nyc/Ctr/Bnf=Shelly Ross Dragul Cherry Hills Village, CO 80113423 4/Ac-000000002828 Rfb=Deposit Rfb=38738 Obi=Sch Ref(N 5025706 000176641288 0) Bbi=/Chgs/USD0.00/Ocm/USD100000.00/ Imad: 11161B7033R015710 Trn: 5229209320F1	100,000.00	105,793.95
11/16	11/16 Online Domestic Wire Transfer Via: Bk West Wal Crk/121100782 A/C: The Conundrum Group Lip Salida CO 81201 US Imad: 1116B1Qgc01C017447 Trn: 5817700320Es	-15,000.00	90,793.95
11/16	11/16 Online Transfer To Chk ...0217 Transaction#: 7672654100	-13,000.00	77,793.95
11/16	11/16 Online Transfer To Sav ...7690 Transaction#: 767266447	-3,800.00	73,993.95
11/16	11/16 Online Transfer To Sav ...6709 Transaction#: 7672669257	-3,800.00	70,193.95
11/16	11/16 Online Domestic Wire Transfer Via: Canvas CU/302075830 A/C: Shely Dragul Cherry Hills Village CO 80111 US Imad: 1116B1Qgc04C008790 Trn: 5969400320Es	-20,000.00	50,193.95
11/19	11/19 Payment To Chase Card Ending IN 0658	-5,000.00	45,193.95
11/19	11/19 Payment To Chase Card Ending IN 5163	-3,000.00	42,193.95
11/19	11/19 Consumer Online International Wire A/C: Bank Leumi Le Israel B M Tel-Aviv 65136 Israel Ref:/Cct/Joom0Bvs00Hf Invoice Payment Trn: 5139800323Es	-4,000.00	38,193.95



10285580302000000083

**TRANSACTION DETAIL** (continued)

DATE	DESCRIPTION	AMOUNT	BALANCE
11/19	11/19 Online Domestic Wire Transfer Via Canvas CU/302075830 A/C: Shely Dragul Cherry Hills Village CO 80111 US Imad: 1119B1Qgc03C006526 Trn: 5949700323Es	-10,000.00	28,193.95
11/19	11/19 Online Transfer To Chk ...0217 Transaction#: 7679658951	-2,000.00	26,193.95
11/19	11/19 Online Transfer To Chk ...0217 Transaction#: 7680209785	-3,000.00	23,193.95
11/19	Chubb & Son Payment PPD ID: 1131963496	-557.36	22,636.59
11/20	11/20 Online Domestic Wire Transfer Via Canvas CU/302075830 A/C: Shely Dragul Cherry Hills Village CO 80111 US Imad: 1120B1Qgc01C015132 Trn: 5835100324Es	-8,000.00	14,636.59
11/20	11/20 Online Transfer To Chk ...0217 Transaction#: 7683145292	-4,000.00	10,636.59
11/20	Check # 7069	-5,000.00	5,636.59
11/21	11/21 Online Transfer To Chk ...0217 Transaction#: 7686317500	-1,500.00	4,136.59
11/23	11/23 Online Transfer To Chk ...0217 Transaction#: 7690645956	-3,500.00	636.59
11/26	Online Transfer From Chk ...0217 Transaction#: 7698446771	10,000.00	10,636.59
11/26	Online Transfer From Sav ...6709 Transaction#: 7693542427	3,000.00	13,636.59
11/26	Online Transfer From Sav ...7690 Transaction#: 7695951218	3,000.00	16,636.59
11/26	11/24 Payment To Chase Card Ending IN 0658	-3,000.00	13,636.59
11/26	11/25 Payment To Chase Card Ending IN 0658	-3,000.00	10,636.59
11/27	Online Transfer From Chk ...0217 Transaction#: 7701343132	9,000.00	19,636.59
11/27	Quickpay With Zelle Payment To Samuel Dragul 7701350995	-5,000.00	14,636.59
11/27	Check # 706	-10,000.00	4,636.59
11/28	Wire Reversal B/O: Bank Hapoalim B M Tel-Aviv Israel Org: DDA/0011434727 Bank Hapoalim B M Ref:/Bnf/Our Ref Jpm181128-003919 Rtn Dtd10/29/2018 Trn4789800302Esfors A M T5000.00 As As Per Bene Request Les Sfees Trn: 2713000332Hh	4,975.00	9,611.59
11/28	11/28 Payment To Chase Card Ending IN 0658	-2,000.00	7,611.59
11/30	11/30 Online Domestic Wire Transfer Via Wells Fargo NA/121000248 A/C: Direct Capital San Francisco CA 94104 US Ref:/Time/16:57 Imad: 1130B1Qgc08C017793 Trn: 7735500334Es	-1,266.02	6,345.57
11/30	11/30 Online Transfer To Chk ...0217 Transaction#: 7712774134	-3,300.00	3,045.57
11/30	Interest Payment	0.12	3,045.69
	<b>Ending Balance</b>		<b>\$3,045.69</b>

**IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS:** Call us at 1-866-564-2262 or write us at the address on the front of this statement (non-personal accounts contact Customer Service) immediately if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt.

For personal accounts only: We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

**IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TRANSACTIONS:** Contact the bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing no later than 30 days after the statement was made available to you. For more complete details, see the Account Rules and Regulations or other applicable account agreement that governs your account. Deposit products and services are offered by JPMorgan Chase Bank, N.A. Member FDIC.



JPMorgan Chase Bank, N.A. Member FDIC



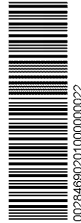
**CHASE PRIVATE CLIENT**  
 JPMorgan Chase Bank, N.A.  
 P O Box 182051  
 Columbus, OH 43218-2051

December 01, 2018 through December 31, 2018  
 Account Number: [REDACTED] **3921**

**CUSTOMER SERVICE INFORMATION**

Web site: **Chase.com**  
 Service Center: **1-888-994-5626**  
 Deaf and Hard of Hearing: **1-800-242-7383**  
 International Calls: **1-713-262-1679**

00028469 DRE 501 211 00119 NNNNNNNNNN 1 00000000 61 0000  
 SHELLY ROSS DRAGUL  
 10 CHERRY LANE DR  
 CHERRY HILLS VILLAGE CO 80113-4234



00284690201000000022

**We are clarifying the fee for incoming wires**

On March 17, 2019, we're updating the document explaining our Additional Banking Services and Fees to clarify that the fee for an incoming wire is \$0 if it is sent from another Chase account with the help of a Chase banker or through chase.com or the Chase Mobile® app.

As a reminder, our standard fee to receive a wire is \$15, however, some of our products do not charge this fee.

Please call the number on this statement if you have any questions.

**We're updating our Wire Transfer Agreement**

On March 17, 2019, we're updating our Wire Transfer Agreement, which applies to wire transfers requested through your Chase Private Client Service team. This update explains that we will notify you in advance of any changes to this agreement if they adversely affect you, or if the change is necessary to comply with a legal requirement.

To get a copy of this agreement, you can visit a branch or contact your Private Client Banker.

Please call us at the number at the top of this statement if you have any questions.

**CHECKING SUMMARY**

Chase Private Client Checking

	AMOUNT
<b>Beginning Balance</b>	<b>\$3,045.69</b>
Deposits and Additions	305,216.79
Checks Paid	-29,425.35
Electronic Withdrawals	-179,951.59
Other Withdrawals	-40,000.00
<b>Ending Balance</b>	<b>\$58,885.54</b>
Annual Percentage Yield Earned This Period	0.01%
Interest Paid This Period	\$0.12
Interest Paid Year-to-Date	\$0.64



**CHECKS PAID**

CHECK NUMBER	DATE PAID	AMOUNT	CHECK NUMBER	DATE PAID	AMOUNT
7077 ^	12/05	\$4,200.00	7099 * ^	12/28	1,355.39
7084 * ^	12/19	2,520.00	7100 ^	12/26	971.94
7085 ^	12/19	1,366.01	7106 * ^	12/26	2,884.61
7086 ^	12/27	977.82	7108 * ^	12/31	2,607.00
7090 * ^	12/27	1,223.71	7113 * ^	12/24	393.65
7092 * ^	12/31	90.74	7126 * ^	12/31	10,000.00
7095 * ^	12/26	834.48			
				<b>Total Checks Paid</b>	<b>\$29,425.35</b>

If you see a check description in the Transaction Detail section, it means your check has already been converted for electronic payment. Because of this, we're not able to return the check to you or show you an image on Chase.com.

\* All of your recent checks may not be on this statement, either because they haven't cleared yet or they were listed on one of your previous statements.

^An image of this check may be available for you to view on Chase.com.

**TRANSACTION DETAIL**

DATE	DESCRIPTION	AMOUNT	BALANCE
	<b>Beginning Balance</b>		<b>\$3,045.69</b>
12/03	Fedwire Credit Via: Alpine Bank/102103407 B/O: Keith Brant Durango CO 81301-8821 Ref: Chase Nyc/Ctr/Bnf=Shelly Ross Dragul Cherry Hills Village, CO 80113423 4/Ac-00000002828 Rfb=O/B Alpine Gl Enw Obi=Purpose of Payment: Rental Payment Imad: 1203Mmqmpj3000165 Trn: 7708109337F1	<b>7,209.35</b>	10,255.04
12/03	Online Transfer From Chk ...0217 Transaction#: 7715670271	<b>3,500.00</b>	13,755.04
12/03	Quickpay With Zelle Payment To Steve Janowiak 7715673106	-5,000.00	8,755.04
12/03	12/03 Payment To Chase Card Ending IN 0658	-1,000.00	7,755.04
12/04	Client Distribut Payroll PPD ID: 9000871224	<b>697.38</b>	8,452.42
12/04	12/04 Payment To Chase Card Ending IN 0658	-4,000.00	4,452.42
12/04	Quickpay With Zelle Payment To Steve Janowiak 7725916868	-3,000.00	1,452.42
12/05	Online Transfer From Sav ...7690 Transaction#: 7729089910	<b>3,000.00</b>	4,452.42
12/05	Online Transfer From Sav ...6709 Transaction#: 7729088883	<b>1,000.00</b>	5,452.42
12/05	Check # 7077	-4,200.00	1,252.42
12/06	12/05 Payment To Chase Card Ending IN 0658	-1,000.00	252.42
12/10	Toyota Financial Lease_Pay 6397430811218 Web ID: 2953775816	-251.22	1.20
12/12	Online Transfer From Chk ...1016 Transaction#: 7748669945	<b>1,000.00</b>	1,001.20
12/12	12/12 Payment To Chase Card Ending IN 0658	-1,000.00	1.20
12/17	Fedwire Credit Via: Citywide Banks/107005953 B/O: William S Dickey Denver CO 80209 Ref: Chase Nyc/Ctr/Bnf=Shelly Ross Dragul Cherry Hills Village, CO 80113423 4/Ac-00000002828 Rfb=O/B Citywide Aur Imad: 1217LiLfb83C000311 Trn: 5672109351F1	<b>40,000.00</b>	40,001.20
12/17	12/17 Payment To Chase Card Ending IN 5163	-400.00	39,601.20
12/17	Quickpay With Zelle Payment To Steve Janowiak 7764177889	-5,000.00	34,601.20
12/17	12/17 Online Transfer To Sav ...6709 Transaction#: 7764736224	-34,000.00	601.20
12/17	Chubb & Son Payment PPD ID: 1131963496	-585.51	15.69
12/18	Online Transfer From Sav ...6709 Transaction#: 7766042726	<b>33,000.00</b>	33,015.69
12/18	Online Transfer From Chk ...1016 Transaction#: 7767457129	<b>4,500.00</b>	37,515.69
12/18	12/18 Online Domestic Wire Transfer Via: Wells Fargo NA/121000248 A/C: Xin Nick Liu Las Vegas NV 89113 US Ref:/Time/11.26 Imad: 1218B1Qgc02C003633 Trn: 6414800351Es	-25,000.00	12,515.69



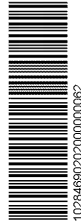
CHASE PRIVATE CLIENT

December 01, 2018 through December 31, 2018

Account Number: [REDACTED] 3921

TRANSACTION DETAIL (continued)

DATE	DESCRIPTION	AMOUNT	BALANCE
12/18	12/18 Online Domestic Wire Transfer Via Key Bank CO/307070267 A/C: Olson Real Estate Englewood CO 80111 US Imad: 1218B1Qgc04C005571 Trn: 5651000352Es	-2,500.00	10,015.69
12/18	Quickpay With Zelle Payment To Steve Janowiak 7767276483	-5,000.00	5,015.69
12/19	Online Transfer From Chk ...1016 Transaction#: 7769476609	3,000.00	8,015.69
12/19	Quickpay With Zelle Payment To Miranda Cherry [REDACTED]	-2,500.00	5,515.69
12/19	Check # 7084	-2,520.00	2,995.69
12/19	Check # 7085	-1,366.01	1,629.68
12/20	Online Transfer From Chk ...1016 Transaction#: 7772914455	5,000.00	6,629.68
12/20	12/20 Online Domestic Wire Transfer Via Key Bank CO/307070267 A/C: Olson Real Estate Englewood CO 80111 US Imad: 1220B1Qgc07C017091 Trn: 5730400354Es	-3,000.00	3,629.68
12/20	Bk of Am Crd ACH Paybyphone PPD ID: 4001190310	-1,000.00	2,629.68
12/20	Toyota Financial Lease_Pay 66477633121918 Web ID: 2953775816	-25.38	2,604.30
12/21	Fedwire Credit Via City National Bank/122016066 B/O: The Alan C Fox Revocable Trust Studio City CA 91604 Ref: Chase Nyc/Ctr/Bnf=Shelly Ross Dragul Cherry Hills Village, CO 80113423 4/Ac-000000002828 Rfb=Sale of Beech Jet Imad: 1221L2Lck1C006029 Trn: 7885309355Ff	30,000.00	32,604.30
12/21	Online Transfer From Chk ...1016 Transaction#: 7778135543	5,000.00	37,604.30
12/21	Online Transfer From Chk ...5371 Transaction#: 7778136585	3,000.00	40,604.30
12/21	12/21 Withdrawal	-40,000.00	604.30
12/24	Deposit 1004339495	22,575.00	23,179.30
12/24	Check # 7113	-393.65	22,785.65
12/24	12/24 Payment To Chase Card Ending IN 5163	-1,000.00	21,785.65
12/24	12/24 Online Transfer To Chk ...5371 Transaction#: 7784848273	-500.00	21,285.65
12/24	12/24 Online Transfer To Chk ...5371 Transaction#: 7784972426	-3,000.00	18,285.65
12/24	12/24 Online Transfer To Chk ...1016 Transaction#: 7784973280	-5,000.00	13,285.65
12/24	Quickpay With Zelle Payment To Jessica Roe [REDACTED]	-4,000.00	9,285.65
12/24	Liberty Mutual 602123190 [REDACTED] CCD ID: 0000061050	-4,980.53	4,305.12
12/26	Deposit 1004639296	32,500.00	36,805.12
12/26	Deposit 1823032179	2,040.82	38,845.94
12/26	Online Transfer From Chk ...1016 Transaction#: 7788098417	2,500.00	41,345.94
12/26	Online Transfer From Chk ...5371 Transaction#: 7788105083	2,500.00	43,845.94
12/26	12/25 Payment To Chase Card Ending IN 0658	-2,000.00	41,845.94
12/26	12/26 Check # 7095	-834.48	41,011.46
12/26	Quickpay With Zelle Payment To Steve Janowiak 7788123629	-5,000.00	36,011.46
12/26	Check # 7100	-971.94	35,039.52
12/26	Check # 7106	-2,884.61	32,154.91
12/27	12/27 Consumer Online International Wire A/C: Bank Hapoalim BM Tel-Aviv Israel Ref:/Cct/Jq6Xlkwn00Kp Invoice Payment Trn: 4880300361Es	-5,000.00	27,154.91
12/27	12/27 Check # 7090	-1,223.71	25,931.20
12/27	12/27 Online Domestic Wire Transfer A/C: Ace Funding Source LLC Jericho, NY 117532000 Ref: Cornerstar Wine & Liquor, LLC Trn: 5117600361Es	-4,000.00	21,931.20
12/27	Check # 7086	-977.82	20,953.38
12/28	Deposit 1823032245	103,194.12	124,147.50
12/28	12/28 Check # 7099	-1,355.39	122,792.11
12/28	12/28 Online Domestic Wire Transfer Via Key Bank CO/307070267 A/C: Olson Real Estate Englewood CO 80111 US Imad: 1228B1Qgc08C007392 Trn: 5289100362Es	-6,000.00	116,792.11
12/28	12/28 Online Domestic Wire Transfer Via Key Bank CO/307070267 A/C: Olson Real Estate Englewood CO 80111 US Imad: 1228B1Qgc06C010580 Trn: 6135600362Es	-2,600.00	114,192.11
12/28	12/28 Payment To Chase Card Ending IN 0658	-4,000.00	110,192.11
12/28	Bk of Amer VI/Mc Online Pmt Ck076379901POS Web ID: 9500000000	-300.00	109,892.11



10284680202000000082



**TRANSACTION DETAIL** (continued)

DATE	DESCRIPTION	AMOUNT	BALANCE
12/31	12/31 Online Domestic Wire Transfer Via Canvas CU/302075830 A/C: Shelly Dragul Cherry Hills Village CO 80111 US Imad: 1231B1Qgc05C019115 Trn: 6462000365Es	-23,000.00	86,892.11
12/31	Quickpay With Zelle Payment To Samuel Dragul 7803578910	-5,000.00	81,892.11
12/31	12/31 Payment To Chase Card Ending IN 0658	-4,000.00	77,892.11
12/31	12/31 Payment To Chase Card Ending IN 5163	-1,500.00	76,392.11
12/31	12/31 Online Domestic Wire Transfer A/C: Irene V Rodriguez Las Vegas, NV 891413015 Trn: 7618900365Es	-3,500.00	72,892.11
12/31	Check # 7126	-10,000.00	62,892.11
12/31	Check # 7108	-2,607.00	60,285.11
12/31	Xcel Energy-Psco Xcelenergy 00039999803 Tel ID: 5840296600	-1,308.95	58,976.16
12/31	Check # 7092	-90.74	58,885.42
12/31	Interest Payment	0.12	58,885.54
<b>Ending Balance</b>			<b>\$58,885.54</b>

**IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC FUNDS TRANSFERS:** Call us at 1-866-564-2262 or write us at the address on the front of this statement (non-personal accounts contact Customer Service) immediately if you think your statement or receipt is incorrect or if you need more information about a transfer listed on the statement or receipt.

For personal accounts only: We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared. Be prepared to give us the following information:

- Your name and account number
- The dollar amount of the suspected error
- A description of the error or transfer you are unsure of, why you believe it is an error, or why you need more information.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days (or 20 business days for new accounts) to do this, we will credit your account for the amount you think is in error so that you will have use of the money during the time it takes us to complete our investigation.

**IN CASE OF ERRORS OR QUESTIONS ABOUT NON-ELECTRONIC TRANSACTIONS:** Contact the bank immediately if your statement is incorrect or if you need more information about any non-electronic transactions (checks or deposits) on this statement. If any such error appears, you must notify the bank in writing no later than 30 days after the statement was made available to you. For more complete details, see the Account Rules and Regulations or other applicable account agreement that governs your account. Deposit products and services are offered by JPMorgan Chase Bank, N.A. Member FDIC



JPMorgan Chase Bank, N.A. Member FDIC

---

**From:** Marty Rosenbaum <marty.rosenbaum@hotmail.com>  
**Sent:** Thursday, November 15, 2018 8:19 PM  
**To:** Gary Dragul; Alan C. Fox  
**Subject:** Re: Loan and Sale of 3.6585% Beneficial Interest in Shoppes at Bedford  
**Attachments:** Promissory Note and Shoppes of Bedford assignment for Alan Fox.pdf

Alan, here is the executed Promissory note and signed assignment. No changes to the assignment, even though there are small inconsistencies between January 1 and 2 but I don't think it is material.

The wire instructions are as follows:

**BANK:** Citibank N.A. New York  
**Routing Number:** [REDACTED]  
**Account Name:** Charles Schwab & CO. Inc  
**Account Number:** [REDACTED]  
**Bank Address:** 111 Wall Street, New York, NY 10005  
**For Further Credit to:** Martin Rosenbaum Account [REDACTED]

If you are OK with the note please sign and return, wire the funds and then the option exercise document.  
Thanks.

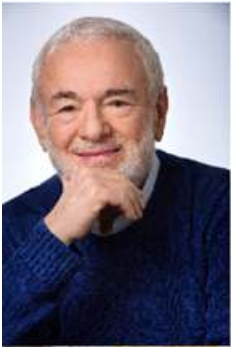
Marty

---

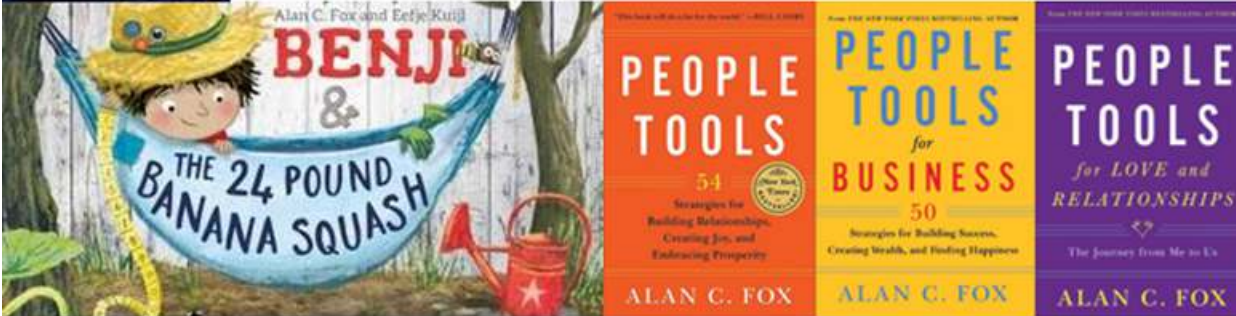
**From:** Alan C. Fox <Alan@acfpm.com>  
**Sent:** Thursday, November 15, 2018 4:05 PM  
**To:** Marty Rosenbaum; Gary Dragul  
**Subject:** RE: Loan and Sale of 3.6585% Beneficial Interest in Shoppes at Bedford

Correct.

Alan



**ALAN C. FOX**  
*President*  
ACF Property Management, Inc.  
12411 Ventura Blvd.  
Studio City, CA 91604  
818-505-6777  
Fax: 818-505-6778



*New York Times* Bestselling Author of the *People Tools Series*  
*Benji & The 24 Pound Banana Squash* Available October 16<sup>th</sup>, 2017!  
[alanfox.com](http://alanfox.com)

---

**From:** Marty Rosenbaum [mailto:marty.rosenbaum@hotmail.com]  
**Sent:** Thursday, November 15, 2018 3:04 PM  
**To:** Alan C. Fox <Alan@acfpm.com>; Gary Dragul <gary@rtgpartners.com>  
**Subject:** Re: Loan and Sale of 3.6585% Beneficial Interest in Shoppes at Bedford

Also, I assume the option exercise that you will execute tomorrow will just be a couple of lines saying you are exercising the option to purchase pursuant to document XYZ effective 1/2/19--right?

Marty

---

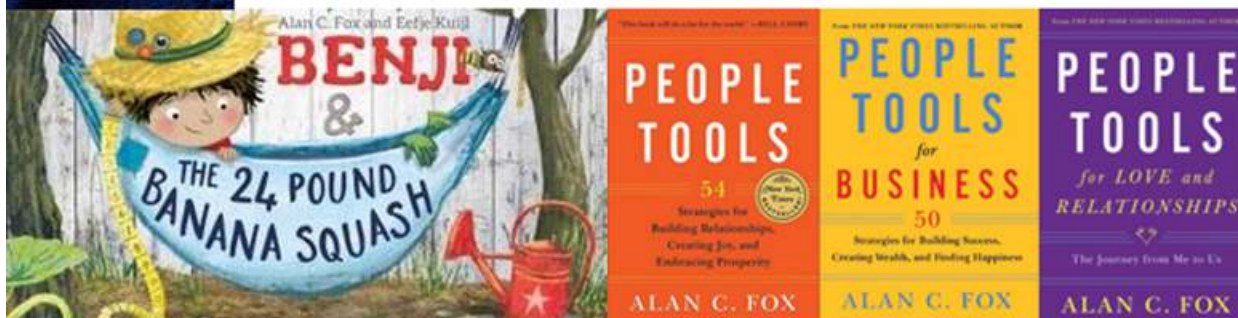
**From:** Alan C. Fox <[Alan@acfpm.com](mailto:Alan@acfpm.com)>  
**Sent:** Thursday, November 15, 2018 3:56 PM  
**To:** Marty Rosenbaum; Gary Dragul  
**Subject:** RE: Loan and Sale of 3.6585% Beneficial Interest in Shoppes at Bedford

Thanks Marty. Sounds like a good plan.

Alan



**ALAN C. FOX**  
*President*  
*ACF Property Management, Inc.*  
12411 Ventura Blvd.  
Studio City, CA 91604  
818-505-6777  
Fax: 818-505-6778



*New York Times* Bestselling Author of the *People Tools* Series  
*Benji & The 24 Pound Banana Squash* Available October 16<sup>th</sup>, 2017!  
[alanfox.com](http://alanfox.com)

---

**From:** Marty Rosenbaum [<mailto:marty.rosenbaum@hotmail.com>]  
**Sent:** Thursday, November 15, 2018 2:55 PM  
**To:** Alan C. Fox <[Alan@acfpm.com](mailto:Alan@acfpm.com)>; Gary Dragul <[gary@rtgpartners.com](mailto:gary@rtgpartners.com)>  
**Subject:** Re: Loan and Sale of 3.6585% Beneficial Interest in Shoppes at Bedford

Alan, the email ended up in my Junk file so delayed response. Here's my plan:

1. By this evening I will send back to you a revised and signed promissory note. Revisions are for typos, clarity and changing a random date of April to current.
2. At the same time will send back the signed membership purchase agreements . I suspect any changes will be minor and I can just change by hand and initial.
3. Along with these documents I will send wiring instructions.
4. Once I receive the wire--let me know once you initiate so I can be on the look out--I will turn around and wire to Shelly's account--I already have the wiring instructions.
5. Lastly return the countersigned documents to me.

Thanks,  
Marty

---

**From:** Alan C. Fox <[Alan@acfpm.com](mailto:Alan@acfpm.com)>  
**Sent:** Thursday, November 15, 2018 1:08 PM

To: Marty Rosenbaum; Gary Dragul

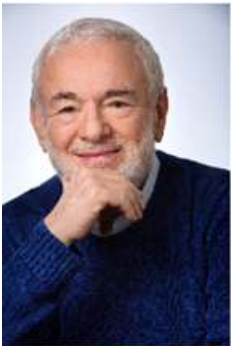
Subject: Loan and Sale of 3.6585% Beneficial Interest in Shoppes at Bedford

Please review the two attached documents. If approved, please sign. I will exercise my option to purchase as soon as I sign.

If you need any changes, please let me know as soon as you can.

Many thanks.

Alan



**ALAN C. FOX**

*President*

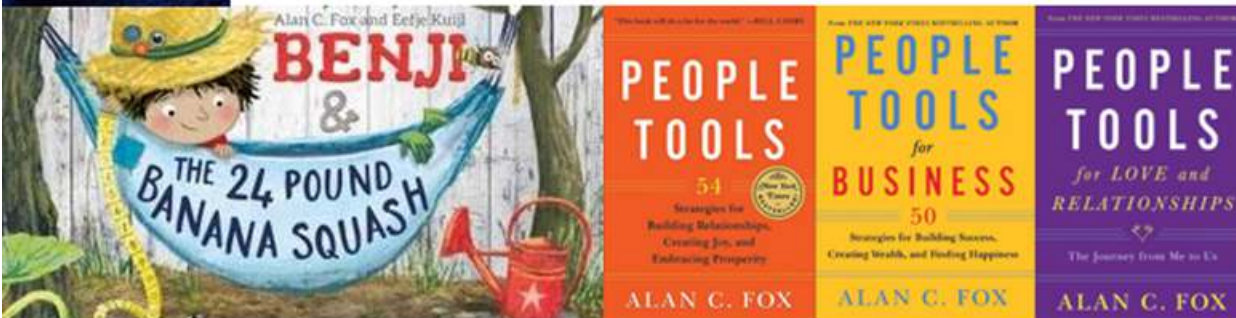
*ACF Property Management, Inc.*

12411 Ventura Blvd.

Studio City, CA 91604

818-505-6777

Fax: 818-505-6778



*New York Times* Bestselling Author of the *People Tools* Series

*Benji & The 24 Pound Banana Squash* Available October 16<sup>th</sup>, 2017!

[alanfox.com](http://alanfox.com)

---

# Attorney-Client Privileged

**From:** Miranda Cherry <miranda@gdare.com>  
**Sent:** Wednesday, February 13, 2019 4:46 PM  
**To:** Harvey Sender <HSender@SenderSmiley.com>  
**Cc:** Gary Dragul <gary@gdare.com>  
**Subject:** Shoppes at Bedford

Harvey,

This is the property we discussed with Gary yesterday. The shopping center is located in Bedford, NH, is anchored by Kohls and has five (5) vacancies, totaling 77,232 sf. The leasing brochure is attached. As a result of these vacancies, there has been no cash flow since Jan of 2017 and there isn't expected to be cash flow for the foreseeable future. Alan is contemplating a capital call to fund the \$2,000,000 build out for Home Sense and Sierra Trading Post of which 3.65%, or \$53,000 would be Gary's responsibility. Also, attached is the operating agreement, income statement, rent roll and a portion of the client summary report for Bedford that shows the NOI less debt service payments for 2018. Alan said that the property lost \$358,190 in calendar 2018 and will probably lose more than that in 2019.

In order to get this out of the receivership estate, Alan is willing to purchase Gary's beneficial interest for \$20,000, payable immediately to the estate.

Please let us know if you're ok with this.

Thank you,

Miranda Cherry  
Leasing  
GDA Real Estate Services, LLC  
8480 E Orchard Rd, Suite 3000  
Greenwood Village, CO 80111  
Phone: 303-221-5500 x 305  
Fax: 303-221-5501  
Cell: 303-981-9097



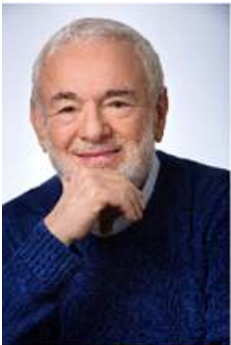
---

**From:** Alan C. Fox <Alan@acfpm.com>  
**Sent:** Tuesday, March 12, 2019 7:20 PM  
**To:** hsender@sendersmiley.com  
**Subject:** Bedford LLC

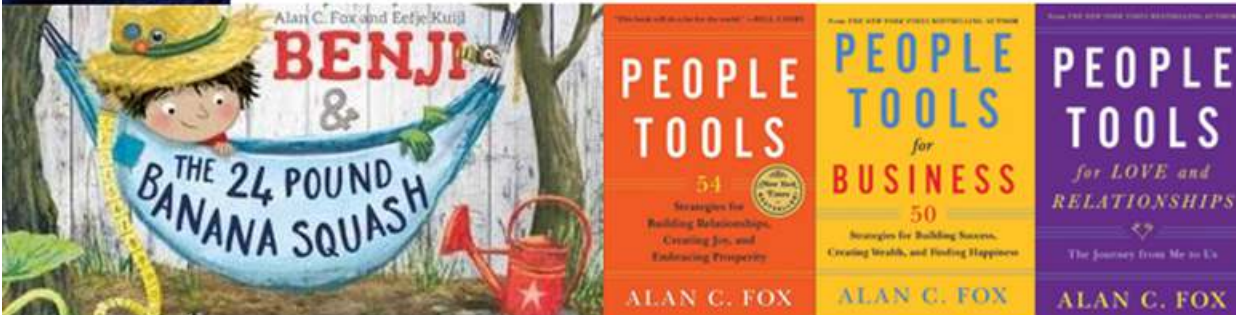
I am willing to purchase Gary's LLC Member Interest in the Bedford shopping center for \$20,000. Please let me know if this is acceptable.

Thanks.

Alan



**ALAN C. FOX**  
*President*  
*ACF Property Management, Inc.*  
12411 Ventura Blvd.  
Studio City, CA 91604  
818-505-6777  
Fax: 818-505-6778



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*Benji & The 24 Pound Banana Squash* Available October 16<sup>th</sup>, 2017!  
[alanfox.com](http://alanfox.com)

---

**From:** Beth Freestone <beth@rtgcapitalpartners.com>  
**Sent:** Thursday, April 4, 2019 2:58 PM  
**To:** Alan C. Fox; Harvey Sender; Gary Dragul  
**Cc:** Susan Markusch  
**Subject:** Re: Bedford  
**Attachments:** 03\_31\_15 Cornerstone\_Bedford Exchg Ltr-1.PDF

Dear Harvey:

Attached please find a letter from ACF explaining the exchange of Cornerstone into Bedford.

Thanks,  
Beth

Beth Freestone  
RTG Capital Partners  
303-929-2595  
beth@rtgcapitalpartners.com

---

**From:** Gary Dragul <garyjdragul@gmail.com>  
**Sent:** Thursday, April 4, 2019 9:32 AM  
**To:** Harvey Sender; Alan C. Fox  
**Cc:** Susan Markusch; Beth Freestone  
**Subject:** Re: Bedford  
Harvey,

My ownership share of Bedford resulted from the sale of Cornerstone Shopping Center which was 1031 exchanged into Bedford. My investment came from the fee I received from the acquisition of Cornerstone in 1999. I acted as a finder and had nothing to do with investors in this property. Please let me know if you need any further information.

Gary J. Dragul  
303-929-3500

---

**From:** Harvey Sender <hsender@sendersmiley.com>  
**Sent:** Monday, March 25, 2019 7:57 AM  
**To:** Gary Dragul; Alan C. Fox  
**Subject:** RE: Bedford

After I review the materials on my desk, I will need to get information on how much money you invested, where it came from, and whether there are any other investors you brought into the project. Then I have to have Stephanie Drew confirm the numbers since I have to file a motion with the Court to approve the sale. Clearly a lot of work for very little return.

Harvey Sender  
Sender & Smiley, LLC  
600 17th Street. Suite 2800 South  
Denver, CO 80202  
hsender@sendersmiley.com

303-454-0525

---

**From:** Gary Dragul <garyjdragul@gmail.com>

**Sent:** Sunday, March 24, 2019 11:47 PM

**To:** Harvey Sender <HSender@SenderSmiley.com>; Alan C. Fox <alan@acfpm.com>

**Subject:** Re: Bedford

Harvey,

I am not sure with this means. Do you need more information?

Gary J. Dragul

303-929-3500

---

**From:** Harvey Sender <[hsender@sendersmiley.com](mailto:hsender@sendersmiley.com)>

**Sent:** Friday, March 22, 2019 2:23 PM

**To:** Gary Dragul; Alan C. Fox

**Subject:** RE: Bedford

Have gotten to it

Harvey Sender

Sender & Smiley, LLC

600 17th Street. Suite 2800 South

Denver, CO 80202

[hsender@sendersmiley.com](mailto:hsender@sendersmiley.com)

303-454-0525

---

**From:** Gary Dragul <garyjdragul@gmail.com>

**Sent:** Friday, March 22, 2019 8:37 AM

**To:** Harvey Sender <[HSender@SenderSmiley.com](mailto:HSender@SenderSmiley.com)>; Alan C. Fox <[alan@acfpm.com](mailto:alan@acfpm.com)>

**Subject:** Bedford

Harvey,

Just checking in on the Bedford decision. Have a good day.

Gary J. Dragul

303-929-3500

---

**From:** Alan C. Fox<Alan@acfpm.com>  
**Sent:** Thursday, April 4, 2019 9:49 PM  
**To:** Harvey Sender  
**Cc:** Susan Markusch; Michael T. Gilbert; Gary Dragul; Beth Freestone  
**Subject:** Re: Bedford

Cornerstone had substantial losses over a number of years. That is why Cornerstone was exchanged for Bedford. In an exchange the negative capital account carries forward. You can check this out with an accountant who is familiar with IRC Section 1031 exchanges.

The potential capital call is due to the fact that a 46,000 SF tenant filed for bankruptcy several years ago. The replacement tenant required that the landlord deliver the space fully built out. We have already completed demolition, and will begin construction as soon as we obtain a building permit.

In addition another tenant moved out recently from about 22,000 SF. Replacing that tenant will also be costly. Probably \$1,000,000.

The numbers are real and are entirely consistent.

I am in a rehab facility at the moment, recovering from complex back surgery which took place on Wednesday of last week. I may not be back in my office until May, but can provide additional information if necessary.

Thanks.

Alan

Sent from my iPhone

On Apr 4, 2019, at 4:24 PM, Harvey Sender <[HSender@sendersmile.com](mailto:HSender@sendersmile.com)> wrote:

Given that his capital account is a negative \$2 million is not consistent with the other data provided. Regardless, the sale cant be accomplished by the estate since a \$20K sale will result in over \$2 million in capital gains.

Harvey Sender  
Sender & Smiley, LLC  
600 17th Street. Suite 2800 South  
Denver, CO 80202  
[hsender@sendersmile.com](mailto:hsender@sendersmile.com)  
303-454-0525

---

**From:** Beth Freestone <[beth@rtgcapitalpartners.com](mailto:beth@rtgcapitalpartners.com)>  
**Sent:** Thursday, April 04, 2019 5:19 PM  
**To:** Gary Dragul <[garyjdragul@gmail.com](mailto:garyjdragul@gmail.com)>; Harvey Sender <[HSender@SenderSmiley.com](mailto:HSender@SenderSmiley.com)>; Alan C. Fox <[Alan@acfpm.com](mailto:Alan@acfpm.com)>  
**Cc:** Susan Markusch <[susan@rtgcapitalpartners.com](mailto:susan@rtgcapitalpartners.com)>  
**Subject:** Re: Bedford

Harvey:

Here are past K1s; 2006-2017. Please note that we are unable to locate 2009 and 2013. Also,

although the exchange from Cornerstone to Bedford occurred in 2015, the entity remained the same until it was rolled up into a Bedford entity in 2017.

Thanks,  
Beth

Beth Freestone

RTG Capital Partners

303-929-2595

[beth@rtgcapitalpartners.com](mailto:beth@rtgcapitalpartners.com)

---

**From:** Beth Freestone  
**Sent:** Thursday, April 4, 2019 4:19 PM  
**To:** Gary Dragul; Harvey Sender; Alan C. Fox  
**Cc:** Susan Markusch  
**Subject:** Re: Bedford

Dear Harvey:

Attached please find an affidavit signed by Gary in regard to Cornerstone/Bedford. We are pulling K1s as well and will send once we have them compiled.

Thanks,  
Beth

Beth Freestone

RTG Capital Partners

303-929-2595

[beth@rtgcapitalpartners.com](mailto:beth@rtgcapitalpartners.com)

---

**From:** Beth Freestone  
**Sent:** Thursday, April 4, 2019 2:57 PM  
**To:** Gary Dragul; Harvey Sender; Alan C. Fox  
**Cc:** Susan Markusch  
**Subject:** Re: Bedford

Dear Harvey:

Attached please find a letter from ACF explaining the exchange of Cornerstone into Bedford.

Thanks,  
Beth

Beth Freestone

RTG Capital Partners

303-929-2595

[beth@rtgcapitalpartners.com](mailto:beth@rtgcapitalpartners.com)

---

**From:** Gary Dragul <[garyjdragul@gmail.com](mailto:garyjdragul@gmail.com)>  
**Sent:** Thursday, April 4, 2019 9:32 AM  
**To:** Harvey Sender; Alan C. Fox  
**Cc:** Susan Markusch; Beth Freestone  
**Subject:** Re: Bedford

Harvey,

My ownership share of Bedford resulted from the sale of Cornerstone Shopping Center which was 1031 exchanged into Bedford. My investment came from the fee I received from the acquisition of Cornerstone in 1999. I acted as a finder and had nothing to do with investors in this property. Please let me know if you need any further information.

Gary J. Dragul  
303-929-3500

---

**From:** Harvey Sender <[hsender@sendersmile.com](mailto:hsender@sendersmile.com)>  
**Sent:** Monday, March 25, 2019 7:57 AM  
**To:** Gary Dragul; Alan C. Fox  
**Subject:** RE: Bedford

After I review the materials on my desk, I will need to get information on how much money you invested, where it came from, and whether there are any other investors you brought into the project. Then I have to have Stephanie Drew confirm the numbers since I have to file a motion with the Court to approve the sale. Clearly a lot of work for very little return.

Harvey Sender  
Sender & Smiley, LLC  
600 17th Street. Suite 2800 South  
Denver, CO 80202  
[hsender@sendersmile.com](mailto:hsender@sendersmile.com)  
303-454-0525

---

**From:** Gary Dragul <[garyjdragul@gmail.com](mailto:garyjdragul@gmail.com)>  
**Sent:** Sunday, March 24, 2019 11:47 PM  
**To:** Harvey Sender <[HSender@SenderSmiley.com](mailto:HSender@SenderSmiley.com)>; Alan C. Fox <[alan@acfpm.com](mailto:alan@acfpm.com)>  
**Subject:** Re: Bedford

Harvey,

I am not sure with this means. Do you need more information?

Gary J. Dragul  
303-929-3500

---

**From:** Harvey Sender <[hsender@sendersmiley.com](mailto:hsender@sendersmiley.com)>  
**Sent:** Friday, March 22, 2019 2:23 PM  
**To:** Gary Dragul; Alan C. Fox  
**Subject:** RE: Bedford

Have gotten to it

Harvey Sender  
Sender & Smiley, LLC  
600 17th Street. Suite 2800 South  
Denver, CO 80202  
[hsender@sendersmiley.com](mailto:hsender@sendersmiley.com)  
303-454-0525

---

**From:** Gary Dragul <[garyjdragul@gmail.com](mailto:garyjdragul@gmail.com)>  
**Sent:** Friday, March 22, 2019 8:37 AM  
**To:** Harvey Sender <[HSender@SenderSmiley.com](mailto:HSender@SenderSmiley.com)>; Alan C. Fox <[alan@acfpm.com](mailto:alan@acfpm.com)>  
**Subject:** Bedford

Harvey,

Just checking in on the Bedford decision. Have a good day.

Gary J. Dragul  
303-929-3500

---

**From:** Gary Dragul <gdprivileged@gmail.com>  
**Sent:** Tuesday, April 9, 2019 3:26 PM  
**To:** Alan C. Fox  
**Subject:** Fwd: Dragul -- Request for Turnover and Accounting  
**Attachments:** ATT00004.htm; 20190204 SSC Em from Dickey\_redacted.pdf; ATT00003.htm; 2018 Fortis Statements SSC 02, LLC.pdf; ATT00002.htm; 20180731 ACF Check to SSC 02, LLC.pdf; ATT00001.htm

Alan,

See below. Can we discuss.

Gary J. Dragul

303-929-3500

---

**From:** Jeffrey Springer <jspringer@springersteinberg.com>  
**Sent:** Tuesday, April 9, 2019 3:14 PM  
**To:** gdprivileged@gmail.com  
**Cc:** Michaela Lloyd  
**Subject:** Fwd: Dragul -- Request for Turnover and Accounting

I'll call you re this.

Begin forwarded message:

**From:** "Michael T. Gilbert" <[mgilbert@allen-vellone.com](mailto:mgilbert@allen-vellone.com)>  
**Date:** April 9, 2019 at 12:02:21 PM PDT  
**To:** "Jeffrey Springer ([jspringer@springersteinberg.com](mailto:jspringer@springersteinberg.com))" <[jspringer@springersteinberg.com](mailto:jspringer@springersteinberg.com)>



**Cc:** Sueanna Johnson <[Sueanna.Johnson@coag.gov](mailto:Sueanna.Johnson@coag.gov)>, "Harvey Sender ([hsender@sendersmiley.com](mailto:hsender@sendersmiley.com))" <[hsender@sendersmiley.com](mailto:hsender@sendersmiley.com)>, Rachel Sternlieb <[rsternlieb@allen-vellone.com](mailto:rsternlieb@allen-vellone.com)>, Pat Vellone <[PVellone@allen-vellone.com](mailto:PVellone@allen-vellone.com)>, "Matthew J. Roth" <[MRoth@allen-vellone.com](mailto:MRoth@allen-vellone.com)>

**Subject: Dragul -- Request for Turnover and Accounting**

Jeff:

This email addresses a number of pressing Receivership issues we need to deal with promptly.

First, I have consulted with the Commissioner's counsel who informs me that consistent with the terms of the Receivership Order, there was never an agreement to exclude the personal property located at Dragul's Personal Residence from the scope of the Estate. Accordingly, I once again request that access to the house be provided so we can conduct a video inventory and liquidation valuation.

Second, it has come to our attention that Gary owns a "party bus" that was used for GDA recreational purposes and which has never been disclosed to the Receiver. Please let us know where the vehicle is so that we can make arrangements to pick it up and sell it.

Third, we understand from Tyler Dickey's February 4, 2019, email (attached) that Gary had a buyer lined up to purchase a storage unit allegedly owned by SSC 02, LLC. Since Harvey's emails with Mr. Dickey, we have determined that SSC 02, LLC was funded with money from various accounts in which investor funds were deposited and comingled. Attached are a few representative bank statements. Considering this information, the Receiver retracts any authority previously provided to sell the storage unit or any other asset owned by SSC 02, LLC. Further, we need a full accounting of all items in the storage facility as well as the assets held by SSC 02, LLC, including membership interests in any ACF owned entity as reflected by the attached check. If the storage unit or any of its contents have been sold, transferred, or disposed of in any way, we need a complete accounting.

Fourth, we demand an accounting of all income received by GDA and payments that it may have made since the Receiver was appointed concerning Rose, LLC. We have

been asking for this – and Gary has been promising to provide it – since last October. As you will see from the attached email Gary sent on October 13, it appears Rose was entitled to receive more than \$50K/month in net payments from Senor Frogs. Despite repeated demands and assurances, no accounting has ever been provided.

Fifth, we demand an accounting of all rental income GDA/Dragul have received from the Estate’s residential properties since August 30, 2018. We know that since the Receiver was appointed, Gary received rental income from at least the Beaver Creek, Scottsdale, and some of the local residential properties, which has not been reported to the Receiver. Also, Gary has no right to use the Beaver Creek property for any purpose absent consent from the Receiver. And to do so, he will need to pay rent like any other user.

Sixth and finally, we know Gary’s Cherry Hills house is listed for sale. We know that more than \$2 million in funds were paid from GDA accounts for mortgage payments and improvements on the house. Under the Receivership Order, any equity in the house traceable to investor funds is Estate property. We therefore request that you agree that any net proceeds from the sale of Dragul’s Personal Residence be placed into an escrow account pending the Receiver’s complete accounting for the source of those funds.

Unless we receive access to Dragul’s Personal Residence, delivery of the “party bus,” the requested accountings, and an agreement regarding the house sale proceeds, we will file a motion for an order to show cause and ask for an expedited hearing. This is our conferral under Rule 121 and the Receivership Order. Unless we receive a meaningful response by the close of business tomorrow, we will seek appropriate orders from the Court.

Thanks, Michael

***Michael T. Gilbert***

Attorney At Law

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**From:** Lauren Hunsaker<Lauren@acfpm.com>  
**Sent:** Tuesday, February 5, 2019 11:39 AM  
**To:** Gary Dragul; Alan C. Fox  
**Subject:** RE: Bedford  
**Attachments:** Tab 46-Certificate of Shoppes at Bedford.pdf

The Operating Agreement is attached.

Thanks,

**Lauren Hunsaker**

**Executive Assistant**

**ACF PROPERTY MANAGEMENT, INC.**

12411 Ventura Boulevard

Studio City, CA 91604

818-505-6777 x384

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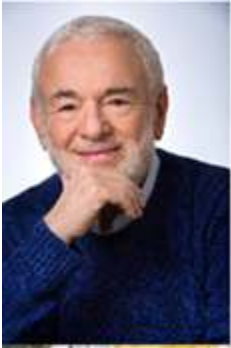
**From:** Alan C. Fox  
**Sent:** Tuesday, February 05, 2019 9:32 AM  
**To:** Gary Dragul <gary@rtgpartners.com>  
**Cc:** Lauren Hunsaker <Lauren@acfpm.com>  
**Subject:** Bedford

Lauren – Please send Gary the Operating Agreement for the Bedford investment in which he owns about 3.5% -- probably Cornerstar.

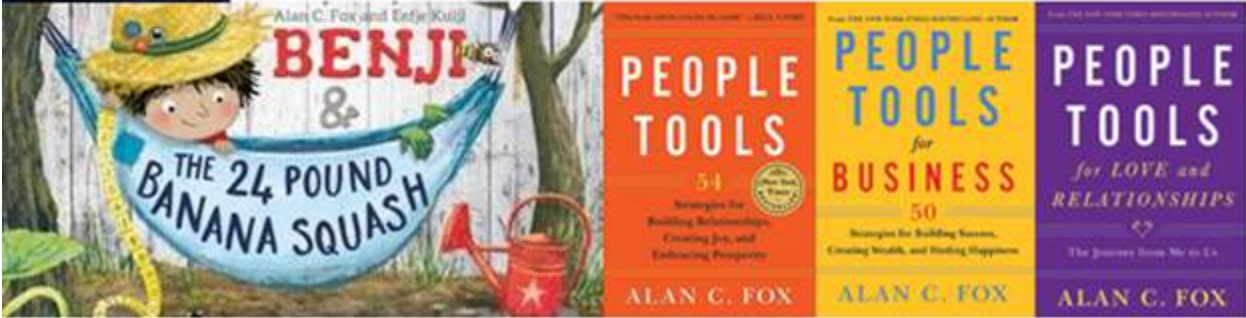
Gary – You own an LLC Member interest in one of the LLC's – probably Cornerstar. Please note that I personally have the right of first refusal on a sale of any Member Interest. So the interest cannot be sold to a third party without giving me the right of first refusal. Perhaps that would change the Receiver's mind.

Thanks.

Alan



**ALAN C. FOX**  
*President*  
*ACF Property Management, Inc.*  
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Fax: 818-505-6778



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