Fill in this information to identify your case:	
Debtor	Daymark Realty Advisors, Inc. et al.
United States Bankruptcy Court for the:	SOUTHERN DISTRICT OF FLORIDA
Case number (if known)	18-23750-RBR

RECEIVED
MAR 07 2019
BMC GROUP

Official Form 410
Proof of Claim

4/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. Who is the current creditor?

Cottonwood Capital Management, Inc.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

■ No
☐ Yes. From whom?

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
c/o Gregg Christenson, Esq. Old Mill Corporate Center II 6340 South 3000 East, Suite 500 Salt Lake City, UT 84121	
Name, Number, Street, City, State & Zip Code	Name, Number, Street, City, State & Zip Code
Contact phone	Contact phone
Contact email	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

■ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____

5. Do you know if anyone else has filed a proof of claim for this claim?

■ No
☐ Yes. Who made the earlier filing?

DAYMARK POC
00738

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Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?

■ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim?

$ 27,400,000.00 **Does this amount include interest or other charges?**

☐ No
■ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

See Attached Addendum and Exhibits

9. Is all or part of the claim secured?

■ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:

☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*

☐ Motor vehicle

☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $ _____

Amount of claim that is secured: $ _____

Amount of claim that is unsecured: $ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $ _____

Annual Interest Rate (when case was filed) 0 %

☐ Fixed

☐ Variable

10. Is this claim based on a lease?

■ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition:** $ _____

11. Is this claim subject to a right of setoff?

■ No
☐ Yes. Identify the property: _____

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12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☑ No
☐ Yes. *Check one:*

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). $ _____

☐ Up to $2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). $ _____

☐ Wages, salaries, or commissions (up to $12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier.11 U.S.C. § 507(a)(4). $ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). $ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). $ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)(___) that applies. $ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.
☐ I am the creditor's attorney or authorized agent.
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

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

Executed on date 02/28/2019
MM/ DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name **Gregg T. Christensen**

Title **Chief Legal Officer**

Company **Old Mill Corporate Center II**
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address **6349 South 3000 East, Suite 500**
Salt Lake City, UT 84121
Number, Street, City, State and Zip Code

Contact phone (801) 278-0700 Email gchristensen@cottonwoodres.com

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Addendum to Proof of Claim

This claim arises out of indemnification provisions contained in pre-petition agreements entered into between the Debtors and claimant.[1]

Prior to the Petition Date, in November 2012, the Debtors entered into agreements with claimant pursuant to which Cottonwood Capital Property Management II, LLC would become a sub property manager under the Debtors.

In 2016 and 2017, the Debtors and claimant were named defendants in multiple lawsuits filed in California alleging breach(es) of fiduciary duty, aiding and abetting breach(es) of fiduciary duty, breach of contract, interference with contract, fraud, conversion, negligent misrepresentation and negligence. The lawsuits filed against claimant in California were dismissed for lack of personal jurisdiction and refiled in Utah. Thus, lawsuits are pending against the Debtors in California, and lawsuits are pending against claimant in Utah. Claimant is defending the referenced lawsuits in Utah and vigorously disputes any liability or damages. The following are the lawsuits that are pending against claimant in Utah:

(1) **Plantations at Haywood et al. v. Cottonwood Residential OP LP et al.** pending in the Third Judicial District in and for Salt Lake County, State of Utah, Case 170904220 (Judge Su Chon). A copy of the complaint (without exhibits) is attached as **Exhibit 1.**

(2) **1600 Barberry Lane 8 et al. v. Cottonwood Residential OP LP et al.** pending in the Third Judicial District in and for Salt Lake County, State of Utah, Case 170904221 (Judge Robert Faust). A copy of the complaint (without exhibits) is attached as **Exhibit 2.**

(3) **NNN Capital Fund I, LLC and Tyrone Wynfield v. Cottonwood Residential OP LP et al.** pending in the Third Judicial District in and for Salt Lake County, State of Utah, Case 170904222 (Judge Barry Lawrence). A copy of the complaint (without exhibits) is attached as **Exhibit 3**.

Claimant is entitled to indemnity from Debtors for these lawsuits and attorneys' fees and costs incurred in these and other lawsuits. The claim amounts include:

Description	Amount
Damages (unliquidated, estimated based upon allegations in referenced complaints; actual amounts, if any, could be higher or lower depending on outcome of the lawsuits)	$25,260,000.00
Fees & Costs (amount is approximate as of the Petition Date; actual fees and costs continue to increase as litigation continues)	$2,140,000.00
Total:	$27,400,000.00

Claimant reserves the right to amend the claim, as the actual amount of the claim could be higher or lower depending on the ultimate outcome of the referenced lawsuits, or if other claims are asserted against claimant in the future for which claimant is entitled to indemnity from the Debtors.

[1] The agreement contains a confidentiality provision and therefore is not attached to the proof of claim.

EXHIBIT 1
(Plantations at Haywood et al. v. Cottonwood Residential OP LP et al)

Andrew G. Deiss (USB 7184)
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Salt Lake City, Utah 84101
Tel: (801) 433-0226
adeiss@deisslaw.com

Kenneth J. Catanzarie (CA 117350) *Admitted pro hac vice*
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Anaheim, CA 92801
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Attorneys for Plaintiffs

IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH	
PLANTATIONS AT HAYWOOD 1, LLC, a Delaware limited liability company; PLANTATIONS AT HAYWOOD 2, LLC, a Delaware limited liability company; PLANTATIONS AT HAYWOOD 13, LLC, a Delaware limited liability company; and PLANTATIONS AT HAYWOOD 23, LLC, a Delaware limited liability company. Plaintiffs, v. COTTONWOOD RESIDENTIAL, O.P., LP, a Delaware limited partnership; COTTONWOOD CAPITAL PROPERTY MANAGEMENT II, LLC, a Delaware Limited Liability Company; COTTONWOOD CAPITAL MANAGEMENT, INC., a Delaware corporation; DANIEL SHAEFFER, an individual; JOHN DOE INDIVIDUALS 1–20 and JOHN DOE ENTITIES 1–30, Defendants.	**FIRST AMENDED COMPLAINT** (JURY TRIAL DEMANDED) Case No. 170904220 Judge Su Chon Tier 3

Plaintiffs Plantations At Haywood 1, LLC ("TIC 1"), a Delaware limited liability company; Plantations At Haywood 2, LLC ("TIC 2") a Delaware limited liability company; Plantations At Haywood 13, LLC ("TIC 13"), a Delaware limited liability company; and Plantations At Haywood 23, LLC ("TIC 23") a Delaware limited liability company for its/their claims against defendants, Cottonwood Residential, O.P., LP, ("CROP"), Cottonwood Capital Property Management II, LLC ("CCPM"), Cottonwood Capital Management, Inc. ("CCMI") Daniel Shaeffer ("SHAEFFER") John Doe Individuals 1–20 and John Doe Entities 21–30 allege as follows.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff PLANTATIONS AT HAYWOOD 1, LLC ("TIC 1"), a Delaware limited liability company, acquired a 3.75% TIC Interest. TIC 1's membership interests are owned by 5494 LLC a Colorado limited liability company the membership interests of which are owned by William J. White a resident of the State of Colorado.

2. Plaintiff PLANTATIONS AT HAYWOOD 2, LLC ("TIC 2"), a Delaware limited liability company, acquired a 3.37% TIC Interest. TIC 2's membership interests are owned by 1320 Enterprises, Inc. a Florida corporation the stock of which is owned by William O. Edwards a resident of Florida.

3. Plaintiff PLANTATIONS AT HAYWOOD 13, LLC ("TIC 13"), a Delaware limited liability company, acquired a 2.33% TIC Interest. TIC 13's membership interests are owned by 1746-1750 ½ North Kingsley Dr, LLC a California limited liability company the membership interests of which are owned by Kenneth Robbins a resident of the State of California residing for all times relevant in Los Angeles County.

4. Plaintiff PLANTATIONS AT HAYWOOD 23, LLC ("TIC 23"), a Delaware limited liability company, acquired a 2.93% TIC Interest. TIC 23's membership interests are owned by Christine T. Russman a resident of the State of California residing for all times relevant in Los Angeles County.

5. References herein to "Plaintiffs" shall include the following: TIC 1, TIC 2, TIC 13 and TIC 23 unless otherwise mentioned.

6. Defendant COTTONWOOD RESIDENTIAL, O.P., LP, ("CROP") is a Delaware limited partnership organized September 24, 2009, with its principal place of business in the State of Utah but with offices and employees in California. In November of 2012 CROP and CCPM, described below, acquired the contracts rights to manage the Property for Plaintiffs and continues in that capacity today. Plaintiffs allege that CROP knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

7. Defendant COTTONWOOD CAPITAL PROPERTY MANAGEMENT II, LLC ("CCPM") is a Delaware Limited Liability Company licensed as a real estate broker with License #6681952-CN00, with its principal place of business in Salt Lake City, Utah. In November of 2012 CCPM and CROP, as described above, acquired the contracts rights to manage the Property for Plaintiffs and continues in that capacity today. Plaintiffs allege that CCPM knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

8. Defendant COTTONWOOD CAPITAL MANAGEMENT, INC. ("CCMI") is a Delaware corporation organized February 1, 2008 and admitted to conduct business in Utah on

August 31, 2011, with its principal place of business in the State of Utah but with offices and employees in California. Plaintiffs allege that CCMI knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

9. Defendant DANIEL SHAEFFER ("SHAEFFER") an individual is the Chief Executive Officer of CROP as well as an officer and director of CCPM and CCMI. Plaintiffs allege that SHAEFFER knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates, CROP, CCPM and CCMI as described herein.

10. John Doe Individuals 1–20 and John Doe Entities 21–30 are individuals and entities who are or were employees, officers, agents, alter egos, partners, directors, shareholders and creditors of SHAEFFER, CROP, CCPM and CCMI. John Doe Individuals 1–20 and John Doe Entities 21–30 knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein

11. Plaintiffs are informed and believe and on that basis allege that there is no autonomy between the operation of Defendants CROP, CCPM, CCMI and John Doe Entities 1–20 for all times herein mentioned, and each were and remain an alter-egos of each other; that they did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which the other defendants used and still use to conduct their business affairs; that each such entity was and remains inadequately capitalized; and that an injustice and fraud upon

Plaintiffs will result if the theoretical separateness of the defendant entities is not disregarded and each such defendant held liable for all relief being sought herein. Plaintiffs further allege upon information and belief that CROP, CCPM, CCMI and John Doe Entities 1–20 conduct themselves as one joint enterprise under the name "Cottonwood" as a 'brand' trademarked by CROP and that among other things CCMI while formally employing all of the Cottonwood employees is nothing more than a payroll service such that each of the companies is the agent of the other.

12. Plaintiffs are informed and believe, and on that basis allege, that at all times herein relevant, Defendants CROP, CCPM, CCMI, SHAEFFER John Doe Individuals 1–20 and John Doe Entities 1–20, and each of them, knowingly and willfully conspired, joined and participated with each other in the conduct herein alleged in furtherance of a conspiracy between and among one another to enrich themselves at Plaintiffs' expense, and that each such defendant is therefore liable with each other defendant for the conduct herein alleged, for the damages suffered by Plaintiffs and for the relief being sought herein.

13. Jurisdiction is appropriate in this Court under, inter alia, Utah Code Ann. § 78A-5-102.

14. Venue is appropriate in this Court under, inter alia, Utah Code Ann. § 78B-3-307.

15. Plaintiffs, pursuant to the Utah Rules of Civil Procedure, hereby state that they are "claiming $300,000.00 or more in damages" and as a result is permitted standard discovery as described for Tier 3.

GENERAL ALLEGATIONS

16. The claims asserted in this complaint are on behalf of Plaintiffs who were

fraudulently induced to exchange its/their tenant in common undivided real estate interests ("TIC Interests") in a 562 unit apartment complex located in Greenville South Carolina (the "Property"), as described in detail below, for limited liability company membership interests (the "Common Units") in December 2011. Following the exchange Defendants engaged in a prohibited kick-back scheme in November 2012 and later in March 2013 failed to notify Plaintiffs of their rights of first refusal and alternatively usurped a business opportunity.

17. The 2011 exchange of TIC Interests for the Common Units was recommended and promoted to Plaintiffs as suitable to preserve its/their tax deferral of otherwise taxable capital gains from use of a qualifying tax deferred gain by use of Internal Revenue Code §1031 because the underlying Property was security for a loan then in default which Plaintiffs were advised could not be refinanced other than as a part of the Common Units securities offering. As recommended, by making the exchange, Plaintiffs would be able to continue to defer said capital gain tax obligation rather than risk foreclosure and a forced sale which would result in both a substantial if not complete loss of their investment and a taxable event. The 2011 exchange was recommended as the only viable option to avoid a complete loss of the investment.

18. As a result of Defendants' unlawful material misrepresentations and omissions, Plaintiffs are entitled to damages according to proof at the time of trial.

19. Each of the Plaintiffs named above, in the period June to December 2008, acquired an undivided Tenant in Common ("TIC") Interest in the Property (the "TIC Interest") for a purchase price of $455,400 for each 1% of ownership, paying $213,600 as the cash component and obtaining a loan, the loan component, secured by the Property of $241,800.

20. Plaintiffs purchased combined TIC Interests of 12.38% in 2008. Plaintiffs

commenced an action against CROP in California on May 13, 2016 by initiating that action styled *Plantations at Haywood 1, LLC, et al. vs. Plantations at Haywood M, LLC, et al.* in Los Angeles Superior Court as Case No. BC620508 transferred to Orange County Superior Court as Case No. 30-2017-00901157 (the "California Action"). CROP successfully moved to quash service of summons which order entered on September 16, 2016.

21. Todd A. Mikles ("Mikles") an individual is a California resident who as of August of 2011 was for all times relevant the control person, principal, director and officer of each of the "Mikles Affiliates" described below.

22. Daymark Realty Advisors, Inc. ("DRA") is a Delaware corporation. DRA is the successor by merger in 2007 to Triple Net Properties, LLC and is believed to have been organized by Grubb & Ellis Company ("GEC"), its parent organization in order to spin off the tenant in common business of GEC in a reorganization effort.

23. Daymark Properties Realty, Inc. f.k.a. Triple Net Property Realty, Inc. ("DPR") is a California corporation organized July 6, 1998 and a licensed California real estate broker since March 8, 2001. Mikles for all times relevant was the sole designated officer of DPR and as such responsible for supervision of its operations and personnel.

24. NNN Realty Investors, LLC ("NNNRI") is a Virginia limited liability company. NNNRI was also the guarantor pursuant to written instruments (the "Guaranties") on the purchase money loans for each of the Plantations and Barberry Properties described below, each of which guaranty required that NNNRI have a minimum net worth of not less than $10,000,000 and in some cases $15,000,000.

25. Sovereign Strategic Mortgage Fund, LLC ("SSMF") is a California limited

liability company organized August 5, 2008 as Entity Number: 200822710170.

26. Daymark Realty Management, LLC ("DRM") is a Delaware limited liability company.

27. Daymark Residential Management, Inc. ("DRMI"), by name change as of September 2011, formerly known as NNN Residential Management, Inc. as of July 2007 and then Grubb & Ellis Residential Management, Inc. as of January 2008.

28. DRA, DPR, NNNRI, SSMF, DRM and DRMI shall be referred to herein jointly and severally as the "Mikles Affiliates", which on and after August 2011 for all times relevant to this complaint have been under the common control of Mikles.

29. Plaintiffs are informed and believe and on that basis allege that at all times herein mentioned, Mikles Affiliates, and each of them, knowingly and willfully ratified, conspired, joined and participated with each other and with CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 in the conduct herein alleged in furtherance of a conspiracy between and among Mikles and the Mikles Affiliates and CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 to enrich themselves at Plaintiffs' expense, and that each such CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 defendant is therefore liable with each other CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 defendant for the conduct herein alleged, for the damages suffered by Plaintiffs and for the relief being sought herein.

30. Plantations at Haywood, LLC ("TIC0"), a Delaware limited liability company, acquired the Property and then with its affiliates DRA, DPR and NNNRI syndicated its

membership interests and the TIC Interests in 2008. Based upon information and belief As of December 2011 at the time of the Roll-Up TIC 0, then managed by NNNRI and Mikles owned a 36.70% TIC Interest in the Property. The membership interests of TIC 0 are now purportedly owned and controlled 94.027% by CROP.

31. Plantations at Haywood M, LLC ("M-LLC"), a Delaware limited liability company was organized in 2011 for the purpose of inducing Plaintiffs to exchange their respective TIC Interest for the Common Units in what was described as a "Roll-Up ". M-LLC is upon information and belief, managed by "Manager", as defined in its Operating Agreement and at times including DRM, PHM and CROP. M-LLC and DRM in the time period August 2011 through at least November 2012 were under the control of Mikles.

32. Plantations at Haywood O, LLC ("O-LLC"), a Delaware limited liability company was organized in 2011 for the purpose of holding legal title to the Property transferred from Plaintiffs as a part of the Roll-Up and is believed to be a wholly owned subsidiary of M-LLC.

33. Plantations at Haywood Manager, LLC ("PHM") is a Delaware limited liability company organized in 2011 as a part of the Roll-Up for the purpose managing M-LLC.

34. TIC0, M-LLC, 0-LLC and PHM shall be referred to herein jointly and severally as the "Plantations Affiliates", which on prior to November 2012 were under the common control of Mikles and for that period included as the Mikles Affiliates and thereafter for all times relevant to this complaint have been under the common control of Defendants.

35. Plaintiffs are informed and believe and on that basis allege that at all times herein mentioned, Plantations Affiliates, and each of them after November 2012, knowingly and

willfully conspired, joined and participated with each other and with CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 in the conduct herein alleged in furtherance of a conspiracy between and among Plantations Affiliates and CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 to enrich themselves at Plaintiffs' expense, and that each such CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 defendant is therefore liable with each other CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 defendant for the conduct herein alleged, for the damages suffered by Plaintiffs and for the relief being sought herein.

36. Separately, NNN Capital Fund I, LLC ("Cap Fund") formerly known as Grubb & Ellis Capital Company I, LLC is a Delaware limited company organized by its then affiliate Grubb & Ellis Company ("GEC") on April 23, 2008 which qualified to do business in the State of California as Entity Number 200819210024 on July 9, 2008.

37. Plaintiffs acquired the undivided fractional interests, tenant in common interests (the "TIC Interest(s)"), in what is commonly known as Plantations at Hayward Apartments, an approximately 562 unit garden apartment community located at 135 Haywood Crossing Road, Greenville, South Carolina, and certain self-storage units related thereto (the "Property").

38. In the period June to December 2008 TIC 0 acquired the Property from an unrelated seller and after that closing from TIC 0 sold the TIC Interests to investors including Plaintiffs.

39. The 2008 purchase price of the Property from the unrelated seller was $39,000,000 and the promoters arranged a loan for $24,180,000 (the "2008 Loan") from

Wachovia Securities which lender at closing or shortly thereafter was acquired by Wells Fargo & Company ("Wells Fargo"). The Plaintiffs were applicants for or otherwise became obligated on the 2008 Loan by assignment and assumption for their respective percentage interest in the Property.

40. As a condition of making the 2008 Loan the lender required an Unconditional Guaranty carve out (the "2008 Guaranty") to be provided by an entity with a net worth of not less than $10,000,000 and in this case was, upon information and belief the same was provided and executed by NNNRI.

41. Importantly, the $10,000,000 was for purposes of a "bad boy" carve out such as for failure to use the Property's operating proceeds to pay real estate taxes due and to not contaminate the Property which Plaintiffs allege they could have provided had they been so informed as described below.

42. In June 2011 the 2008 Loan from Wells Fargo matured and DRA, DPR and NNNRI arranged various extensions or forbearance agreements with a final deadline of December 29, 2011. There was no release or exoneration of the 2008 Guaranty.

43. In August 2011 Mikles directly and indirectly took control of the Mikles Affiliates and other related entities from Grubb & Ellis Company ("GEC") thereby gaining control of DRA, DPR and NNNRI, as well as the management of TIC 0 and Cap Fund, described below, along with SSMF which he already controlled.

44. In July of 2011 DRA, DPR and NNNRI, and then as of August 2011 Mikles, as successor, continued to advise Plaintiffs that Wells Fargo would not extend the 2008 Loan beyond December 29, 2011 under terms that were economical for Plaintiffs and that the only

viable alternative would be to refinance the Property with other lenders.

45. On December 2, 2011 following months of communications with the TIC owners, DRM, through its agent Mikles on behalf of and as promoter of M-LLC and O-LLC, authored and sent a seven page memorandum, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Disclosure Memo") to Plaintiffs. See Complaint Exhibits pages 2–8.

46. The Disclosure Memo represented to Plaintiffs as TIC Owners that the 2008 Loan in the amount of $24,180,000 was due and that DRM, DRA, DPR, NNNRI and Mikles had arranged a loan with Prime Finance ("Prime") to be secured by the Property in the amount of $24,800,000 provided that the TIC owners entered into a Roll-Up, as described below. The Prime Loan was for a term of 36 months, payable at an interest rate of 6.3%, interest only for 24 months, and fully amortized thereafter, for which Prime charged a loan fee of 1% or $248,000 and DRM a loan fee of .5% or $124,000 (the "Prime 2011 Loan Terms"), to pay off the outstanding balance due to Wells Fargo.

47. At or about the same time the Disclose Memo was delivered to Plaintiffs, Plaintiffs communicated with DRM, through its agent Mikles acting on behalf of and as promoter of M-LLC and O-LLC, in several conference calls wherein it was orally represented to Plaintiffs that their "Current Equity Value" in the Property was $9,320,000 and that failure to refinance with Prime on or before December 29, 2011 risked a default and loss of all or a substantial amount of the remaining equity to a foreclosure or forced sale at a substantial discount.

48. Additionally, at or about the same time the Disclosure Memo was delivered to

Plaintiffs, Plaintiffs communicated with DRM, through its agent Mikles acting on behalf of and as promoter of M-LLC and O-LLC in several conference calls wherein it was orally represented to the Plaintiffs and other TIC owners that the Prime 2011 Loan Terms were the best that were available in the market given the TIC structure of the Property ownership, the $9,320,000 equity and the imminent default on the 2008 Loan. Mikles Further represented to Plaintiffs and all TIC Interest owners that if they did not accept the Prime 2011 Loan Terms the Property would be at risk of foreclosure and a substantial if not total loss of the Plaintiffs' equity investment.

49. M-LLC, O-LLC, DRM and Mikles did not seek Plaintiffs' acceptance of the Prime Loan, rather, Plaintiffs would contribute their TIC Interests in the Property to O-LLC in exchange for membership units of M-LLC and M-LLC would accept and obtain the Prime 2011 Loan. See Exhibit "A" page 2 and Complaint Exhibits page 2.

50. After delivery of the 2011 Disclosure Memo, Plaintiffs and Mikles communicated through additional conference calls and email communications including those dated December 5 and 9 (See Exhibit "A", Complaint Exhibits pages 11–14) which attached copies of the Rollup Operating Agreement for M-LLC (the "Operating Agreement") a fully executed copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference; and prepared deeds for each of the TIC owners for execution and return to DRM, DRA, DPR, NNNRI and Mikles in order to transfer Plaintiffs' TIC Interest in the Property to O-LLC in return for which it/they would receive membership interests, the Common Units, in M-LLC.

51. The representations by DRM, Mikles, M-LLC and O-LLC were materially false and/or omitted material facts necessary to make the statements made, in the light of the circumstances under which the statements were made, not misleading. DRM, Mikles, M-LLC

and O-LLC knew that their representations were false and deceptive when made each knowing that the true facts were:

(1) The Prime 2011 Loan Terms were not at market rates available to Plaintiffs and the TIC owners. The Plaintiffs and TIC Owners upon information and belief could have obtained a loan at not greater than 5% interest per annum fully amortized over 25 years due in 10 years at .5% points overall.

(2) There were loans available to Plaintiffs without the requirement of a Roll-Up into a single purpose limited liability company.

(3) The requirement of a Roll-up and the adverse non-market 2011 Loan terms were the result of at least two factors undisclosed to the Plaintiffs as follows: (a) First the 2008 Loan guarantor NNNRI did not have the required $10,000,000 net worth such that its guaranty was of no commercial value; (b) Second at the time of the Roll-Up TIC 0 which accounted for $3,420,440 of the represented equity of $9,320,000 (36.7% of the M-LLC and Property ownership (See Complaint Exhibits page 77)) was insolvent and in default on its loan and note payable to Cap Fund, also managed by NNNRI and Mikles in the principal amount of $4,497,675 with unpaid interest, in an amount to be determined at the time of trial (the "TIC 0 Note"), and all of the distributions due to TIC 0 from the management of the Property by another affiliate under the control Mikles was being paid to Cap Fund. TIC 0 as described below, as a result the representations and warranties at Operating Agreement Sections 16, 16.1, 16.5 and 16.8, was also in material breach at the time the Operating Agreement was signed.

(4) As a result of the undisclosed NNNRI guarantor insolvency as well as the TIC 0 insolvency, the Plaintiffs were not able to in fact secure the best loan terms then available at lower rates and without the need for the Roll-Up.

(5) If Plaintiffs had been informed of the true facts they would have been able to secure more favorable market loan terms without need for the Roll-Up by providing the required $10,000,000 guaranty themselves or through a new property manager and compelling TIC 0 to either cure its insolvency or acquire the TIC 0 Loan from Cap Fund and convert/exchange the loan to membership interests in TIC 0.

(8) Further, because there were superior loan rates and terms available in December 2011 and no need for the Roll-Up the Plaintiffs and other TIC owners did not need to relinquish their ability for further Internal Revenue Code Section 1031 like-kind exchange treatment.

52. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's had obtained actual knowledge of the foregoing misrepresentation when on March 28, 2013 it acquired 94.02% of the membership interests in and control over TIC 0 and took over management of M-LLC following the Kick-Back transaction, both as described further below. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's provided substantial assistance to these misrepresentations by continuing to conceal the facts when becoming M-LLC's manager in order to retain the benefits of its acquisition of TIC 0 membership units and its $8,000,000 Kick-Back payment for the acquisition of the property management contracts.

53. As a component part of the Roll-Up transaction Plaintiffs and the other TIC Interest owners received their percentage membership interests in M-LLC as an allocation of their "Current Equity Value" in the Property of $9,320,000 described as their "Initial Capital Contribution" set out in Exhibit "B" at Schedule 2.2 (Complaint Exhibits page 77) of the Operating Agreement converted at a rate of 1 Common Unit for each $100 of equity or therein described as the "Capital Account".

54. DRM, Mikles, M-LLC and O-LLC, with knowledge of the falsity of the represented and concealed facts, intended that Plaintiff rely on the above described misrepresented and concealed facts. Plaintiffs relied on the misrepresented material facts and omissions without knowledge of the true facts and were thereby induced into contributing their TIC Interests in the Property in exchange for membership units in M-LLC believing that this was their best viable option to avoid loss of the Property and their substantial equity therein.

55. The Operating Agreement at Section 2.7 provides "Third Party Beneficiaries. The parties to this Agreement shall be entitled to all of the privileges, benefits and rights contained herein..." See Exhibit "B" page 4, Complaint Exhibits page 19.

56. In the Operating Agreement Plaintiffs and all of the TIC owners including TIC 0 by Mikles made representations and warranties including the following:

> 16. Member Representations and Warranties. Each Member hereby makes the following representations and warranties to the Company as of the date of such Member's execution of a counterpart signature page to this Agreement:
> 16.1 The Member has good and marketable title to the Tenant in Common Interest, free and clear of any security interest, lien, mortgage, pledge, charge, option or rights of any nature, or other encumbrances. The Member has neither partially nor wholly assigned the Tenant in Common Interest nor any rights it has to distributions from in connection with its Tenant in Common Interest.
> ...
> 16.5 Other than as disclosed to the Company, the Member (a) has not entered into

> any written or verbal agreements with respect to the Tenant in Common Interest, and (b) does not have any knowledge that any of the information provided to the Company is inaccurate. The Member does not have any knowledge of any default under any contracts, leases, agreements, easements or any other documents or instruments relating to or affecting the Property.
> ...
> 16.8 The Member has not ... (e) failed to pay, or become unable to pay, the Member's debts as they come due, (t) made an offer of settlement, extension or composition to the Member's creditors generally...

See Exhibit "B" Operating Agreement pages 25–26 and Complaint Exhibits pages 40–41 (emphasis added).

57. The representations and warranties made by Mikles, individually and in his representative capacity, were breached as said representations and warranties were false in light of the true fact that at the time of the Roll-Up, TIC 0 which accounted for $3,420,440 of the represented equity of $9,320,000 (36.7% of the M-LLC and Property ownership (See Complaint Exhibits page 77), was insolvent and in default on its loan and note payable to Cap Fund. Further, all of the TIC 0 distributions from the management of the Property by another affiliate under the control of Mikles were being paid to Cap Fund rather than TIC 0.

58. Plaintiffs read and reviewed the affirmative representations in the Disclosure Memo, emails and as set out orally in the conference calls as above described and relied upon the same, including the NNNRI guarantor and TIC 0 representations and warranties, that the 2011 Loan Terms available to them were their best viable option. Plaintiffs reasonably relied on the affirmative misrepresentations unaware of the true facts in exchanging their TIC Interests for the Common Units in M-LLC. If Plaintiffs had known of the true facts they would not have made the exchange and would have sought advice for superior loan terms that did not require the Roll-Up and would have bought out the TIC 0 interest or loan. Plaintiffs would not have exchanged

their TIC Interests for the Common Units in M-LLC if they had been aware that they could have obtained a conventional loan to pay off the entire Wells Fargo obligation of $14,180,000 without resort to the materially higher and less favorable Prime 2011 Loan Terms and the M-LLC Roll-Up all of which were unnecessary had the Property been refinanced in a manner that was in the best interests of Plaintiffs and the TIC owners.

FIRST CLAIM FOR RELIEF
Breach of Contract — Operating Agreement
(Against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30)

59. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein.

60. Plaintiffs assert this Claim against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30.

61. Plaintiffs are members of M-LLC and parties to its Operating Agreement along with TIC 0 (as a member) and DRM (as the Manager) and CROP, CCPM, CCMI, John Does Individuals 1–20 and John Does Entities (as the current Manager).

62. The Operating Agreement was made for the benefit of the TIC owners, including Plaintiffs' because as members of M-LLC they are entitled to the benefit of performance in accordance with its terms as direct parties as well as third party beneficiaries thereof.

COUNT ONE— BREACH OF REPRESENTATIONS & WARRANTIES BY TIC 0

63. Plaintiffs bring this claim and count against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30, jointly and severally, who each as of April 8, 2013 with full knowledge of all material facts herein alleged, ratified the breach of contract of TIC 0 as described herein.

64. Plaintiffs relied upon the representations and warranties of TIC 0 at the time they agreed to exchange their TIC Interests in the Property as above described to complete the Roll-Up and pursuant thereto entered into the Operating Agreement which provides as follows:

> 16. Member Representations and Warranties. Each Member hereby makes the following representations and warranties to the Company as of the date of such Member's execution of a counterpart signature page to this Agreement:
> 16.1 The Member has good and marketable title to the Tenant in Common Interest, free and clear of any security interest, lien, mortgage, pledge, charge, option or rights of any nature, or other encumbrances. The Member has neither partially or wholly assigned the Tenant in Common Interest nor any rights it has to distributions from in connection with its Tenant in Common Interest.
> ...
> 16.5 Other than as disclosed to the Company, the Member (a) has not entered into any written or verbal agreements with respect to the Tenant in Common Interest, and (b) does not have any knowledge that any of the information provided to the Company is inaccurate. The Member does not have any knowledge of any default under any contracts, leases, agreements, easements or any other documents or instruments relating to or affecting the Property.
> ...
> 16.8 The Member has not ... (e) failed to pay, or become unable to pay, the Member's debts as they come due, (t) made an offer of settlement, extension or composition to the Member's creditors generally...

Underline emphasis added, see Exhibit "B" Operating Agreement pages 25–26 and Complaint Exhibits pages 40–41.

65. Plaintiffs state that the foregoing representations and warranties provisions were material terms of the Operating Agreement upon which they relied.

66. Plaintiffs have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms of the Operating Agreement, except those obligations the performance of which were waived, excused, or rendered impossible as the result of conduct by TIC 0.

67. TIC 0 breached its obligations under the Operating Agreement in failing to disclose to Plaintiffs that TIC 0 was in breach of the representations and warranties at Operating

Agreement Sections 16, 16.1, 16.5 and 16.8 at the time of the Roll-Up and the bank loan negotiations in the period July 2011 through December 2011. Specifically, TIC 0 was at that time insolvent because its TIC Interest in the Property was then valued at $3,420,440 net of the 2008 Loan and it was in default on its loan and note payable, the TIC 0 Note, due to Cap Fund (also managed by NNNRI and Mikles) in the principal amount of $4,497,675 with unpaid interest to be determined at the time of trail and that its distributions from operation of the Property were being directed to Cap Fund.

68. As of March 28, 2013, CROP, CCPM, CCMI John Doe Individuals 1–20 and John Doe Entities 21–30 knew all material facts and circumstances relative to TIC 0's breach of the Operating Agreement. CROP, CCPM and John Doe Individuals 1–20 and John Doe Entities 21–30 assumed management M-LLC and intended ratification of TIC 0's earlier breach of making false representations and warranties at Sections 16, 16.1, 16.5 and 16.8 as it was the above described default which enabled CROP, CCPM, John Doe Individuals 1–20 and John Doe Entities 21–30 to obtain a 94.02% control over TIC 0.

69. Plaintiffs performed all of its/their respective obligations under the Operating Agreement except to the extent excused by the wrongful conduct of TIC 0.

70. TIC 0 breached the Operating Agreement in the foregoing particulars and Plaintiffs have been damaged thereby, having incurred higher loan costs and interest expense, a shorter amortization term, an unnecessary Roll-Up to M-LLC requirement, loss of further IRC Section 1031 tax deferral, loss of managerial control of the Property thereby entitling Plaintiffs to damages against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 for having ratified TIC0's entry into the Operating Agreement and with full knowledge its

breach thereof according to proof at the time of trial.

71. Plaintiffs did not discover this count of this claim until March 2016 after learning that Cap Fund sold TIC 0's defaulted note to SSMF. After learning of TIC 0's default note sale a subsequent investigation ensued which compared the terms of the Prime 2011 Loan to the available market rate loans and learned that superior loan terms were in fact available as described above.

72. Plaintiffs were unable to discover TIC 0's defaulted note liability as at the same was concealed by TIC 0's representation and warranty of there being no default in the terms of the Operating Agreement and the true facts were otherwise concealed by Mikles who owed a fiduciary duty to disclose such facts as a fiduciary and agent of DRM acting as M-LLC's manager and earlier as Plaintiffs' property and asset manager prior to the Roll Up. Plaintiffs were further unable to discover the availability of better loan terms than the Prime 2011 Loan despite reasonable due diligence having reasonably relied on Mikles representations that the Prime 2011 Loan was the best available and the belief that Mikles was acting as an honest fiduciary serving in the capacity of Plaintiffs' asset and property manager for the Property in recommending the Roll-Up as Plaintiffs' means to avoid a total loss of their TIC Interests.

COUNT TWO — KICKBACK PAYMENT AND RECEIPT

73. Plaintiffs bring this claim and count against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30, jointly and severally.

74. The Operating Agreement prohibits the payment of a "Kick-Back" without a majority vote of the members as follows:

> 6. Authority and Responsibilities of the M-LLC Manager.
> ...

> 6.4 Restrictions on Manager's Authority. The [PHM] shall have no authority without a Majority Vote, to:
> ...
> (iii) Receive from the Company or any vendor any rebate, kick-back or give-up or participate in connection with the operation of the Company or Subsidiary any reciprocal business arrangements which would enable it or any Affiliate to do so (excluding the fees and other items set forth in the Property Management Agreement or any leasing or brokerage agreements to which the Company, Subsidiary or an Affiliate is a party);
> ...

See Operating Agreement Exhibit "B" pages 7–8 and Complaint Exhibits pages 22–23.

75. Plaintiffs state that the Kick-Back provisions were material terms of the Operating Agreement upon which they relied.

76. On or about November, 2012, Mikles, individually and on behalf of DRM and PHM, notified Plaintiffs and the other TIC Owners that it/they, had decided to focus their efforts on the management of the Mikles Affiliates' commercial office property portfolio and recommended that the Plaintiffs and other TIC owners allow CROP and CCPM to take over the asset and property management services for the Property as well as M-LLC on the representation that they as managers had concluded that CROP and CCPM were the best managers available to Plaintiffs and the TIC owners for the Property.

77. Based upon the representation and recommendation of DRM and PHM, Plaintiffs agreed to allow CROP and CCPM to assume the role of asset and property manager for the Property as well as Manager of M-LLC.

78. Plaintiffs based upon information and belief allege that DRM, PHM and Mikles materially breached the Operating Agreement by making the foregoing CROP and CCPM representation and recommendation not on the grounds that CROP and CCPM were in fact the best manager available but instead upon the basis that CROP and CCPM had agreed to secretly

pay, and did pay, Mikles Affiliates an $8,000,000 Kick-Back for the recommendation associated with the Property and 25 other multi-family properties that were owned by other tenant in common owners and also managed by Mikles and Mikles Affiliates. The $8,000,000 payment was never disclosed to the Plaintiffs nor any of the TIC owners and was not discovered by them until March 2016.

79. Plaintiffs further allege that approval for the Kick-Back was never disclosed, sought or obtained as required by the terms of the Operating Agreement.

80. Plaintiffs based upon information and belief allege that CROP and CCPM were fully aware of the terms and conditions of the Operating Agreement and in particular Section 6 and 6.4 as well as knew that the $8,000,000 was both not disclosed and was a prohibited Kick-Back at the time they participated with such knowledge and consented to the DRM, PHM and Mikles recommendations of CROP and CCPM as successor manager of the Property and M-LLC.

81. Based upon information and belief, Plaintiffs allege that CROP and CCPM reviewed and approved the announcement to Plaintiffs, the other TIC Owners and the owners of the other 25 properties by Mikles of the above described recommendation.

82. Based upon information and belief, Plaintiffs allege that CROP and CCPM paid the $8,000,000 Kick-Back in order to become a party to the Operating Agreement as manager knowing of its terms and as such is bound thereby.

83. Plaintiffs have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms of the Operating Agreement, except those obligations the performance of which were waived, excused, or rendered impossible as the result

of conduct of CROP and CCPM including the conduct of PHM and DRM with it/they ratified.

84. CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 breached its/their obligations under the Operating Agreement and intentionally ratified known breaches by PHM and DRM, in making the foregoing misrepresentations and omissions including without limitation breaching Operating Agreement Sections 6 and 6.4 at the time Plaintiffs and the TIC Owners adopted the recommendations of Mikles and PHM and DRM and allowed CROP and CCPM to assume the role of asset and property manager of the Property and later as manager of TIC 0 and M-LLC.

85. CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 breached its/their obligations under the Operating Agreement and ratified known breaches by PHM and DRM in the foregoing particulars damaging Plaintiffs, including without limitation, having incurred higher overall management costs, commissions and fees as well as the loss of their share of the $8,000,000 undisclosed Kick-Back payment, thereby entitling Plaintiffs to damages against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 according to proof at the time of trial.

86. Plaintiffs did not discover this count of this claim until March 2016 when documents and information related to Cap Fund and the purported sale of the TIC 0 Note and its alleged disposition along with the $8,000,000 Kick-Back payment first became known. Plaintiffs were unable to discover the failure to obtain approval for the $8,000,000 Kick-Back as CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 continued to conceal the lack of such approval by carrying on as the Manager of M-LLC without disclosure to M-LLC's members, including Plaintiffs. Plaintiffs could not have discovered these facts earlier because

the true facts were known only to the Defendants who concealed and withheld the same.

COUNT THREE — BREACH OF RIGHT OF FIRST REFUSAL

87. Plaintiffs bring this claim and count against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30, jointly and severally.

88. Plaintiffs are members of M-LLC and parties to its Operating Agreement along with TIC 0 (as a member), DRM (as the Manager), PHM as DRM's Agent and CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Does Entities 21–30 (as the current Manager).

89. The Operating Agreement provides that Plaintiffs have a Right of First Refusal ("ROFR") as follows:

> 9. Assignment of Common Units.
>
> 9.1 Permitted Assignments. A Member may only sell, assign, hypothecate, encumber or otherwise transfer all or any portion of his or her interest in the Company if the following requirements are satisfied:
> ...
> 9.9 Right of First Refusal. ... if any Owner desires to transfer their Membership Interest, such Owner shall give the Company written notice of such proposed transfer (the "Transfer Notice") and offer to sell such Membership Interest to the Company and, at the election of the Company, to the other Members, pro-rata based on their Membership Interest, at the price at which such Membership Interest are intended to be transferred by the Owner to a third party in a bona fide transaction. The Transfer Notice shall set forth the intended terms, conditions, price and the name and address of such third party. The Company (and the other Members if the Company so elects) shall have the option for a period often (10) business days from the date of receipt of such written offer (the "Offer Period") to accept such offer, and two (2) months from the date of the receipt of such written offer to purchase the Membership Interest (the "Option Period") on the terms and conditions set forth therein. If the offer has not been accepted in writing prior to the expiration of the Offer Period, or, if so accepted in writing, the closing of the purchase of the Membership Interest by the Company or Members delivering such written acceptance has not occurred within the Option Period, the transferring Owner shall have the right for a period of 180 days following the end of the Offer Period (where no acceptance has been delivered by the Company or the Members) or the Option Period (where acceptance of the offer has been delivered but the applicable Membership Interest has not been purchased on or prior to the expiration of the Option Period), as applicable, to dispose of all (but not less than all) of such Membership Interest in accordance with the terms set forth in the Transfer Notice.

See Operating Agreement Exhibit "B" pages 15–16, 17–19 and Complaint Exhibits pages 30–31, 32–33 (emphasis added).

90. Plaintiffs allege that the intent of the parties in agreeing to and bargaining for the ROFR was to prevent the transfer and potentially control of M–LLC's membership units, the Common Units, directly or indirectly to third parties. Thus, transfer of substantially all of TIC 0's membership interests, thereby transferring control over its (TIC 0's) M-LLC membership units, constitutes a breach of the ROFR.

91. Plaintiffs allege upon information and belief TIC 0, DRM and PHM materially breached the Operating Agreement having, on or about March 28, 2013, initiated a two step transaction to obtain from CROP a payment of $3,100,000 and transfer 94.02% of the membership interests of TIC 0, which Mikles also then managed, from SSMF to CROP (the "TIC 0 Sale"). Particularly due to the conflicted nature of the transaction, TIC 0, DRM and PHM were required to give Plaintiffs notice of the transfer and opportunity to exercise their rights under the ROFR. CROP, CCPM John Doe Individuals 1–20 and John Does Entities 21–30 knew all of the facts and circumstances of TIC 0, DRM and PHM's breach of the ROFR and intentionally ratified the breach having obtained the membership interests to TIC 0 now claiming ownership of 94.02% of TIC 0 and thereby 41.27% of M-LLC and the Property.

92. Mikles in control of DRM, PHM and TIC 0 at the time of the TIC 0 Sale did not notify M-LLC or the Plaintiffs of TIC 0's intention to "... otherwise transfer all or any portion of his or her interest in the Company ..." for $3,100,000 nor did he/it/they provide notice of nor comply with the terms of the ROFR as required by Operating Agreement Section 9.9.

93. Plaintiffs further allege that CROP, fully informed of the conduct of DRM, PHM

and TIC 0 at the time of the TIC 0 Sale, ratified its/their breach of the Operating Agreement by closing the purchase from SSMF as described herein.

94. Further, CROP at the time of the TIC 0 Sale as the manger of M-LLC as well as asset and property manager for the Property from November 2012 and as manager of TIC 0, did not notify M-LLC or the Plaintiffs of TIC 0's intention to "... otherwise transfer all or any portion of his or her interest in the Company ..." for $3,100,000 nor did it/they provide the ROFR as set out at Operating Agreement Section 9.9.

95. Plaintiffs allege upon information and belief that at the time of the December 2011 Roll-Up TIC 0 was reported to have $3,420,440 of the represented total equity of $9,320,000 or 36.7% of the M-LLC and Property ownership.

96. On October 1, 2014 CROP reflected in its Confidential Private Placement Memorandum ("CROP PPM") that its non-public Real Estate Investment Trust had acquired and owned 41.27% of the Property as of as of April 8, 2013. Plaintiffs were unaware of the acquisition until March 2016 when excerpts of the CROP PPM were provided to them.

97. Plaintiffs allege upon information and belief that in order for CROP to acquire 41.27% of the M-LLC and Property ownership through the purchase of the 94.02% membership interest in TIC 0, that TIC 0 somehow then would have owned 43.89% of M-LLC and the Property not the 36.7% as of December 2011 as set out in Operating Agreement Section 2.2 (See Complaint Exhibits page 77). As such Plaintiffs allege upon information and belief that TIC 0's ownership interest in M-LLC and the Property is either overstated by 7.1949% or that it acquired additional Common Units from other TIC owners without further complying with the ROFR. In any event Plaintiffs here assert a right to all of the membership interests of CROP in TIC 0, M-

LLC and the Property according to proof at the time of trial.

98. Plaintiffs state that the ROFR and related provisions were material terms of the Operating Agreement upon which they relied.

99. Plaintiffs state that had they been given the opportunity to purchase the 41.27% of the Common Units of M-LLC and the Property as CROP acquired from SSMF and described as the TIC 0 Sale they would have acquired all of the same for $3,100,000.

100. The Operating Agreement provides that transfers such as here the TIC 0 Sale not in compliance with terms of Section 9 et. seq., are void as follows:

> 9.7 Termination of Membership Interest. Upon the transfer of a Common Unit or Economic Interest in violation of this Agreement ... the Membership Interest of a Member shall be converted into an Economic Interest or purchased by the Company as provided herein.
> 9.8 Transfer in Violation Not Recognized. Any assignment, sale, exchange or other transfer in contravention of the provisions of this Section 9 shall, to the fullest extent permitted by law, be void and ineffectual and shall not bind or be recognized by the Company.

Underline emphasis added, see Operating Agreement Exhibit "B" page 17 and Complaint Exhibits page 32.

101. Plaintiffs have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms of the Operating Agreement, except those obligations the performance of which were waived, excused, or rendered impossible as the result of conduct by CROP, John Doe Individuals 1–20 and John Doe Entities 21–30.

102. Plaintiffs seek a declaration and judgment that CROP's ownership of its claimed 94.02% of the membership interests of TIC 0 and 41.27% of the Common Units of M-LLC and the Property as CROP purports to have acquired from SSMF and described as the TIC 0 Sale is void and a nullity in accordance with Section 9.8 of the Operating Agreement and that those

Common Units and interests in the Property and all benefits following such acquisition including without limitation distributions, are held in constructive or resulting trust by CROP, John Doe Individuals 1–20 and John Doe Entities 21–30 for the benefit of Plaintiffs to be conveyed to Plaintiffs in accordance with the judgment of this court along with the rights to the benefits thereof.

103. CROP, John Doe Individuals 1–20 and John Doe Entities 21–30 breached its/their obligations, or ratified the breach by TIC 0, under the Operating Agreement in transacting and consummating the transactions by which CROP claims ownership of 94.02% of the membership interests of TIC 0 and 41.27% of the Common Units of M-LLC and the Property via the TIC 0 Sale or otherwise without complying with the ROFR provisions as well as breaching Operating Agreement generally and including Sections 9, 9.1, 9.7, 9.8 and 9.9 specifically.

104. CROP, John Doe Individuals 1–20 and John Doe Entities 21–30 breached the Operating Agreement, or ratified the breach by TIC 0, in the foregoing particulars and Plaintiffs have been damaged thereby, having been deprived of the opportunity to acquire 94.02% of the membership interests of TIC 0 and 41.27% of the Common Units of M-LLC and the Property for $3,100,000 in March of 2013 and to benefit from such increased ownership voting control, income and equity appreciation, thereby entitling Plaintiffs to damages against CROP, John Doe Individuals 1–20 and John Doe Entities 21–30 according to proof at the time of trial.

105. Plaintiffs request that the court enter a judgment that CROP transfer all of its right, title and ownership interest in the membership interests of TIC 0 and 41.27% of the Common Units of M-LLC and the Property to Plaintiffs pro-rata in return for a payment of $3,100,000 less offsets for any other damages to which Plaintiffs are entitled. Plaintiffs do

hereby tender the $3,100,000 payment.

106. Plaintiffs did not discover this count of this claim until March 2016 when they were shown excerpts from the CROP PPM. Plaintiffs could not have discovered these facts earlier because the true facts were known only to the Defendants who concealed and withheld the same.

SECOND CLAIM FOR RELIEF
Breach of Covenant Of Good Faith And Fair Dealing — Operating Agreement
(Against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30)

107. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein.

108. Plaintiffs assert this Claim against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30.

109. Plaintiffs are members of M-LLC and parties to its Operating Agreement along with TIC 0 (as a member), DRM (as the prior Manager) and CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 (as the current Manager).

110. The Operating Agreement was made for the benefit of the TIC owners, including Plaintiffs' benefit because as members of M-LLC they are entitled to the benefit of performance in accordance with its terms and as such Plaintiffs were and are entitled to performance thereof as direct parties.

111. Plaintiffs have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms of the Operating Agreement, except those obligations the performance of which was waived, excused, or rendered impossible as the result of conduct of CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30.

112. At all relevant times herein there existed between Plaintiffs and CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 a covenant of good faith and fair dealing implied in fact and in law whereby CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30, for the direct and intended benefit of Plaintiffs, agreed to act in good faith and deal fairly with Plaintiffs with respect to CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30's duties and obligations under the Operating Agreement.

113. CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 materially breached the covenant of good faith and fair dealing by knowing the true facts and failing to disclose TIC 0's breach of representations and warranties made in the Operating Agreement, participating in the $8,000,000 Kick-Back transaction and failing to adhere to the ROFR requirements.

114. In acting and failing to act as alleged herein, CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 have breached, and continue to breach, such implied covenant of good faith and fair dealing, and as a direct and proximate result of which, Plaintiffs have been damaged in an amount in excess of the jurisdictional limit of this Court.

THIRD CLAIM FOR RELIEF
Breach of Fiduciary Duty
and Aiding and Abetting Breach of Fiduciary Duty — Operating Agreement
(Against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20
and John Doe Entities 21–30)

115. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth fully herein.

116. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe

Individuals 1–20 and John Doe Entities 21–30.

117. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 owe fiduciary duties to Plaintiffs as the Manager of M-LLC and Plaintiffs as members of M-LLC. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 ratified, aided and abetted their predecessors DRM and PHM having actual knowledge of their breaches of fiduciary duty and concealment of the same in acting as M-LLC's manager.

118. The Operating Agreement provides "6.5 Responsibilities of the Manager. The Manager shall: (I) Have a fiduciary responsibility similar to that of a corporate director for the safekeeping and use of all the funds and assets of the Company..." See Operating Agreement page 8 and Complaint Exhibits page 23.

119. Plaintiffs bring this claim against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 regarding the ratification of the representations and warranties by TIC 0 concerning its insolvency and the adverse impact described above regarding unfavorable loan terms, the loss of tax deferral and the loss of control from the Roll-Up into M-LLC, all of which were ratified by CROP, CCMI and CCPM as of the closing of the TIC 0 Sale.

120. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 with respect to the matters of the $8,000,000 Kick-Back payment by CROP, CCMI and CCPM to Mikles and his affiliates and the failure to provide Plaintiffs with their ROFR and alternatively usurpation of Plaintiffs' business opportunity rights.

121. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe

Entities 21–30 owed fiduciary duties of care and loyalty to Plaintiffs including, without limitation, the duty to use reasonable care, diligence and skill in performing the services of Manager of M-LLC, the duty to act in the highest good faith to Plaintiffs and not obtain any advantage over them, and to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the Operating Agreement and law or with actual knowledge ratifying or aiding and abetting the same.

122. Plaintiffs reposed trust and confidence in and reliance upon against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 as their fiduciaries to use reasonable care, diligence and skill in performing the services of manger of M-LLC and the Property, to act in the highest good faith towards them and not to obtain any advantage over them, and to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the Operating Agreement and law or with actual knowledge ratifying or aiding and abetting the same.

123. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 breached these duties having participated in and ratifying breaches by DRM and PHM, specifically:

(1) Failing to disclose TIC 0's insolvency in December 2011, the TIC 0 Note which was in default, that TIC 0's share of distributions from operation of the Property were being paid towards said obligation, that NNNRI the guarantor on the 2008 Loan did not have the required $10,000,000 net worth for conventional bank guaranty purposes and that the 2011 Loan Terms, including the Roll-Up requirement causing a loss of further tax deferral were adversely impacted by

these nondisclosures and as such the 2011 Loan Terms from Prime were not the best terms available to Plaintiffs and the other TIC owners.

(2) Failing to disclose the misrepresentation that the recommendation of CROP, CCMI and CCPM as the best manager to replace Mikles and Mikles Affiliates was bought and paid for by a secret $8,000,000 Kick-Back paid by CROP and CCPM to Mikles and his affiliates.

(3) Failing to disclose that CROP was acquiring its TIC 0 membership interests giving it control of TIC 0 becoming its manager, while managing M-LLC and the Property without complying with the ROFR requirements of the Operating Agreement and alternatively usurping a business opportunity of Plaintiffs in purchasing said TIC 0 membership interests without notice of an opportunity to Plaintiffs to make said purchase for their own account.

124. As a result of the conduct described above, against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 with respect to and each of them knowingly participated the misrepresentations and omissions above described to Plaintiffs, concealed material facts from Plaintiffs and thus committed and/or with knowledge of the true facts ratified, or aided and abetted a breach of fiduciary duty.

125. In ratifying or aiding and abetting the above-described acts, omissions and other wrongful conduct in connection with the recommendations that Plaintiffs' purchase by exchange of the TIC Interests for the Common Units in July to December 2011, misrepresenting the basis of the recommendation of the CROP, CCMI and CCPM replacement as asset and property manager of the Property in November 2012 and the failure to provide notice of the ROFR or

usurpation of said business opportunity for the TIC 0 membership interests in March of 2013, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 breached their fiduciary duties to Plaintiffs or with knowledge of the true facts ratified, or aided and abetted others in said breach.

126. As a direct and proximate result of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's breach of their fiduciary duties to Plaintiffs or with knowledge of the true facts having ratified or aided and abetted others in said breach, Plaintiffs have suffered damages as described above, in an amount to be determined at trial, but which is in excess of the jurisdictional limit of this court.

127. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's conduct, as alleged hereinabove, was done with the intent to defraud and deceive Plaintiffs, was done maliciously and oppressively and/or with reckless disregard for Plaintiffs' rights and interests, such that Plaintiffs are entitled to the imposition of exemplary and punitive damages against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 in a sum to be determined at trial.

FOURTH CLAIM FOR RELIEF
Constructive Fraud — Operating Agreement
(Against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30)

128. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth fully herein.

129. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 owe fiduciary duties to Plaintiffs as the Manager

of M-LLC and Plaintiffs as members of M-LLC. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 ratified, aided and abetted their predecessors DRM and PHM having actual knowledge of their breaches of fiduciary duty and concealment of the same in acting as M-LLC's manager.

130. The Operating Agreement provides "6.5 Responsibilities of the Manager. The Manager shall: (I) Have a fiduciary responsibility similar to that of a corporate director for the safekeeping and use of all the funds and assets of the Company..." See Operating Agreement page 8 and Complaint Exhibits page 23.

131. Plaintiffs bring this claim against CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 with respect to the matter of the ratification of representations and warranties by TIC 0 concerning its insolvency and the adverse impact described above regarding unfavorable loan terms, the loss of tax deferral and the loss of control from the 2011 Roll-Up into M-LLC.

132. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 with respect to the matters of the CROP and CCPM $8,000,000 Kick-Back payment to Mikles and his affiliates and the failure to provide Plaintiffs with their ROFR and alternatively their business opportunity rights.

133. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 owed fiduciary duties of care and loyalty to Plaintiffs including, without limitation, the duty to use reasonable care, diligence and skill in performing his/its/their services as the Manager of M-LLC, to act in the highest good faith to Plaintiffs and not obtain any advantage over them, and to refrain from engaging in grossly negligent or reckless conduct,

intentional misconduct, or a knowing violation of the Operating Agreement or law.

134. Plaintiffs reposed trust and confidence in and reliance upon CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 as their fiduciaries to use reasonable care, diligence and skill in performing his/its/their the services of Manger of M-LLC, to act in the highest good faith to them and not to obtain any advantage over them, and to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the Operating Agreement or law.

135. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 breached their fiduciary duties to disclose material facts, specifically, failing to disclose:

(1) The Prime 2011 Loan Terms were not at market rates available to Plaintiffs and the TIC owners. The Plaintiffs and TIC Owners upon information and belief could have obtained a loan at not greater than 5% interest per annum fully amortized over 25 years due in 10 years at .5% points overall.

(2) There were loans available to Plaintiffs without the requirement of a Roll-Up into a single purpose limited liability company.

(3) The requirement of a Roll-up and the adverse non-market 2011 Loan terms were the result of at least two factors undisclosed to the Plaintiffs as follows: (a) First the 2008 Loan guarantor NNNRI did not have the required $10,000,000 net worth such that its guaranty was of no commercial value; and (b) Second at the time of the Roll-Up, TIC 0 which

accounted for $3,420,440 of the represented equity of $9,320,000 (36.7% of the M-LLC and Property ownership (See Complaint Exhibits page 77)), was insolvent and in default on its loan and note payable to Cap Fund, also managed by NNNRI and Mikles in the principal amount of $4,497,675 with unpaid interest, in an amount to be determined at the time of trial (the "TIC 0 Note"), and all of the distributions due to TIC 0 from the management of the Property by another affiliate under the control Mikles was being paid to Cap Fund. TIC 0 as described below, as a result the representations and warranties at Operating Agreement Sections 16, 16.1, 16.5 and 16.8 was also in material breach at the time the Operating Agreement was signed.

(4) As a result of the undisclosed NNNRI guarantor insolvency as well as the TIC 0 insolvency, the Plaintiffs were not able to in fact secure the best loan terms then available at lower rates and without the need for the Roll-Up.

(5) If Plaintiffs had been informed of the true facts they would have been able to secure more favorable market rate loan terms without need for the Roll-Up by providing the required $10,000,000 guaranty themselves or through a new property manager and compelling TIC 0 to either cure its insolvency or acquire the TIC 0 Loan from Cap Fund and convert/exchange the loan to membership interests in TIC 0.

(8) Further, because there were superior loan rates and terms available in

December 2011 and no need for the Roll-Up, the Plaintiffs and other TIC owners did not need to relinquish their ability for further Internal Revenue Code Section 1031 like-kind exchange treatment.

136. Plaintiffs placed reliance on CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 until March 2016 when the conduct of these respective fiduciaries first became known to Plaintiffs and they discovered the true facts concerning the acts and omissions of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 as alleged above.

137. As a direct and proximate result of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's breach of their fiduciary duties, Plaintiffs have suffered damages as described above, in an amount to be determined at the time of trial.

138. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's conduct, as alleged hereinabove, was done with the intent to defraud and deceive Plaintiffs, was done maliciously and oppressively and/or with reckless disregard for Plaintiffs' rights and interests, such that Plaintiffs are entitled to the imposition of exemplary and punitive damages against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 in a sum to be determined at trial.

FIFTH CLAIM FOR RELIEF
Fraud and Deceit
(Against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30)

139. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth fully herein.

140. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe

Individuals 1–20 and John Doe Entities 21–30.

141. Plaintiffs allege that CROP, CCPM, CCMI, John Doe Individuals 1–20 and John Doe Entities 21–30 are liable herein having ratified the affirmative misrepresentations made by DRA, DPR, NNNRI, DRM, DRMI and Mikles in the Disclosure Memo, Operating Agreement and Conference Calls which were false and/or misleading half-truths as above described.

142. Plaintiffs allege that CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 had actual knowledge the terms of the Operating Agreement in particular that the ROFR barred its/his/their participation in the purported purchase and sale of TIC 0's membership interests and/or interests in Common Units and/or the Property as above described.

143. The aforesaid acts, misrepresentations and omissions of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 constituted actionable fraud and deceit under California and Utah common and statutory law.

144. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's actions in engaging in the above-described acts, omissions and other wrongful conduct in connection with the ratification of recommendations that Plaintiffs' purchase by exchange of the TIC Interests for the Common Units in July to December 2011, misrepresenting the basis of the recommendation of the CROP and CCPM serve as replacement asset and property manager for the Property in November 2012 and the failure to provide notice of the ROFR or usurpation of said business opportunity for the TIC 0 membership interests and/or interests in Common Units and/or the Property in March of 2013 while also becoming Manager of both TIC 0 and M-LLC, were recommended and undertaken or ratified in the case of the

Disclosure Memo, in conscious disregard of Plaintiffs' interests. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 knew that their representations or ratification of representations afore described were untrue, and/or had no reasonable ground to believe them to be true, and they made the misrepresentations (and omitted to disclose facts that contradicted their representations) or ratified the same with the intent to induce Plaintiffs' reliance thereon.

145. Plaintiffs' reliance upon CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's representations was reasonable and justifiable in that it/he/they ratified the actions of the Rollup promoters of the Common Units and thereafter became with full knowledge of the true facts managers, or affiliates thereof with obligations to Plaintiffs and had knowledge of the true facts and knew that Plaintiffs had no reason to know of the true facts which were otherwise unavailable to Plaintiffs.

146. Plaintiffs had no reasonable means of ascertaining the truth about the financial condition of NNNRI as guarantor or the insolvency of TIC 0 and the impact of either or both conditions on the available loan terms to pay off the 2008 Loan due in December 2011, nor did they have any knowledge about the $8,000,000 Kick-Back payment for the recommendation that CROP and CCPM become asset and property manager of the Property in November of 2012 nor that their ROFR or otherwise rights to purchase the TIC 0 membership interests and/or interests in Common Units and/or the Property were being ignored by their fiduciaries and those aiding and abetting them in March of 2013, and they reasonably relied, to their detriment, on the aforesaid conduct and representations of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 and have suffered damages as a direct and

proximate result thereof as described above, in an amount to be determined at trial, but which is in excess of the jurisdictional limit of this court.

147. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's conduct, as alleged hereinabove, was done with the intent to defraud and deceive Plaintiffs, or ratified or aided and abetted with actual conduct and was done maliciously and oppressively and/or with reckless disregard for Plaintiffs' rights and interests, such that Plaintiffs are entitled to the imposition of exemplary and punitive damages against it/he/them in a sum to be determined at trial.

SIXTH CLAIM FOR RELIEF
Negligent Misrepresentation
(Against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30)

148. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth fully herein.

149. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30.

150. As an alternative claim, the aforesaid misrepresentations, ratification thereof and/or aiding and abetting such misrepresentations of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 were made negligently and without any reasonable basis for making them and without adequately researching or investigating the same.

151. Plaintiffs reasonably relied, to their detriment, on the aforesaid misrepresentations, ratification thereof and/or aiding and abetting such misrepresentations conduct by CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30. But for CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and

John Doe Entities 21–30's negligent misrepresentations as described above, Plaintiffs would not have exchanged their TIC Interests for the Common Units, would not have agreed to allow CROP and CCPM to serve as asset and property manager of the Property in November of 2012 and later as Manager of both TIC 0 and M-LLC, and would have insisted upon the right to acquire those membership interests subject to the TIC 0 Sale and/or interests in Common Units and/or the Property under their ROFR or rights to a business opportunity.

152. As a direct and proximate result of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's' breach of their duties, Plaintiffs have suffered damages as described above, in an amount to be determined at trial, but which is in excess of the jurisdictional limit of this court.

SEVENTH CLAIM FOR RELIEF
Negligence
(Against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30)

153. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth fully herein.

154. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30.

155. By virtue of the afore described relationships, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 owed Plaintiffs a duty of care to make recommendations to Plaintiffs not based upon misrepresentations and omissions of material facts and not to ratify or aid and abet the same.

156. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 breached their duties of care to Plaintiffs by ratifying the recommended exchange

of Plaintiffs' TIC Interests for the Common Units, to recommend that CROP and CCPM serve as asset and property manager of the Property in November 2012 and later to serve as Manager of both TIC 0 and M-LLC, and omitted notice to Plaintiffs of their ROFR to the TIC 0 membership interests and/or rights to Common Units and/or a business opportunity.

157. Plaintiffs reasonably relied upon the information provided by or ratified by CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30 as alleged above.

158. As a direct and proximate result of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30's breach of their duties, Plaintiffs have suffered damages as described above, in an amount to be determined at trial, but which is in excess of the jurisdictional limit of this court.

JURY DEMAND

Plaintiff demands a trial by jury on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1–20 and John Doe Entities 21–30, and each of them, as follows:

1. For damages on the Plaintiffs exchange of TIC Interests for the Common Units;

2. For compensatory damages;

3. For damages that exceed "$300,000.00 or more in damages" and therefore qualify for Tier 3 discovery pursuant to Rule 26(c)(3) of the Utah Rules of Civil Procedure.

4. For general and special damages;

5. For consequential and incidental damages;

6. For a declaratory judgment that the purported CROP ownership of the membership interests of TIC 0 or the ownership of CROP in M-LLC or the Property are void and that CROP holds said interests as trustee pursuant to a constructive or resulting trust along with all distributions received attributable to such ownership to be paid to Plaintiffs upon tender by Plaintiffs of the sum of $3,100,000 as may reduced by other damages attributable to the conduct of CROP;

7. That the Court order that CROP specifically perform and offer to sell its ownership of the membership interests of TIC 0 or the ownership of CROP in M-LLC or the Property in accordance with the ROFR to Plaintiffs upon tender by Plaintiffs of the sum of $3,100,000 as may reduced by other damages attributable to the conduct of CROP;

8. For prejudgment interest at the highest legal rate;

9. For an award of exemplary and punitive damages against defendants in amounts to be determined at trial;

10. For plaintiffs' reasonable costs and expenses incurred in this action; and

11. For such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 3rd day of November, 2017.

Catanzarite Law Firm

/s/ Kenneth J. Catanzarite
Kenneth J. Catanzarte, admitted pro hac vice
Attorney for Plaintiffs

EXHIBIT 2
(1600 Barberry Lane 8 et al. v. Cottonwood Residential OP LP et al)

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IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH	
1600 BARBERRY LANE 8, LLC, a Delaware limited liability company; 1600 BARBERRY LANE 9, LLC, a Delaware limited liability company; on behalf of itself/themselves and all others similarly situated, Plaintiffs, v. COTTONWOOD RESIDENTIAL, O.P., LP, a Delaware limited partnership; COTTONWOOD CAPITAL PROPERTY MANAGEMENT II, LLC, a Delaware Limited Liability Company; COTTONWOOD CAPITAL MANAGEMENT, INC., a Delaware corporation; DANIEL SHAEFFER, an individual; JOHN DOE INDIVIDUALS 1-20 and JOHN DOE ENTITIES 1-30, Defendants.	**FIRST AMENDED COMPLAINT** (JURY TRIAL DEMANDED) Case No. 170904221 Judge Royal I. Hansen Tier 3

Plaintiffs 1600 BARBERRY LANE 8, LLC ("BARBERRY 8"), a Delaware limited liability company, 1600 BARBERRY LANE 9, LLC ("BARBERRY 9") a Delaware limited liability company, through their undersigned counsel, brings this Class Action Complaint on behalf of themselves and all other persons similarly situated against defendants, Cottonwood Residential, O.P., LP, ("CROP"), Cottonwood Capital Property Management II, LLC ("CCPM"), Cottonwood Capital Management, Inc. ("CCMI") Daniel Shaeffer ("SHAEFFER") John Doe Individuals 1-20 and John Doe Entities 1-30 allege as follows.

NATURE OF ACTION

1. On November 1, 2012, the Defendants made the following public announcement which had been earlier and later repeated in various forms to Plaintiffs and the proposed Class, as defined below, (collectively the "Announcement"):

> Cottonwood Residential Announces Planned Transition with Daymark Realty Advisors to Provide Asset & Property Management for the Daymark Multifamily Portfolio
>
> Salt Lake City, Utah, November 1, 2012
>
> Cottonwood Residential ("Cottonwood") today announced the planned transition with Daymark Realty Advisors ("Daymark") to provide asset and property management services for a twenty-six property multifamily portfolio controlled by Daymark. The planned transition will allow for a shift of the multifamily properties onto Cottonwood's well-established multifamily platform while allowing Daymark to focus its efforts exclusively on managing its commercial property portfolio.
>
> Cottonwood's investor-focused platform will provide multiple tools to help tenant-in-common ("TIC") owners make strategic decisions based on their financial objectives. The planned transition will add nearly one thousand investors under the Cottonwood platform and expand the company's presence to twenty-six states and approximately 35,000 apartment units of both owned and managed properties.
>
> "We believe that we can bring many benefits to the owners of these various properties. Our economies of scale and our sophistication in management of multifamily properties can improve the operations and results at many if not all of these properties," said Chad Christensen, President of Cottonwood. Daniel Shaeffer, CEO of Cottonwood, also adds, "This transition is a continued step in the growth and evolution of the Cottonwood platform and we believe it will provide opportunities for future growth for both Cottonwood and the investors we serve."

2. The claims asserted in this complaint are on behalf of a putative class of the

estimated one thousand persons who owned, as tenants in common ("TIC(S)"), undivided fractional interests in the real property (the "Interests" as described below), in the twenty-six apartment properties (the "Properties") comprising the "twenty-six property multifamily portfolio controlled by Daymark" constituting the "... planned transition..." from Daymark Residential Management, Inc. ("DRMI") to Defendant COTTONWOOD RESIDENTIAL, O.P., LP, ("CROP"), as described in the Announcement and as further explained below.

3. Plaintiffs allege the Announcement's "planned transition" (the "Transition") repeated in various notices to Plaintiffs and the Class was designed to conceal that the critical property manager transfer of the managed Properties from DRMI to CROP was not at favorable terms to Plaintiffs and was further tainted by DRMI's breach of fiduciary duty as property and asset manager to the TICS, as further detailed below, due to CROP's secret "Kickback" payment of $8,000,000 to the controlling owner of DRMI for the unauthorized and undisclosed sale of the twenty-six property management agreements (the "PMAS" and the "PMAS Sale") disadvantaging the TICS by a continued pattern and practice of overcharges.

4. CROP was willing to participate in the Transition and Announcement misrepresentation, and pay the Kickback because it knew the PMAS provided for excessive above-market fees and expenses which would allow it to quickly recoup the $8,000,000 Kickback from Plaintiffs and the Class. In negotiating the Kickback CROP knew that the "planed transition" breached DRMI's fiduciary duty to not charge commissions and fees in excess of the market value of such services and, as such, to negotiate and provide rates and terms favorable to Plaintiffs and Class, and breached the anti-assignment provisions of the PMAS.

5. As a result of defendants' breaches of fiduciary duties and/or the aiding and

abetting thereof, Plaintiffs are entitled to damages according to proof at the time of trial.

PARTIES, JURISDICTION, AND VENUE

A. The Plaintiffs

6. Plaintiff 1600 BARBERRY LANE 8, LLC ("BARBERRY 8") is a Delaware limited liability company that acquired a 1.478% Interest in the Property, as described below, in 2008.

7. Plaintiff 1600 BARBERRY LANE 9, LLC ("BARBERRY 9") is a Delaware limited liability company that acquired a 1.478% Interest in the Property, as described below, in 2008.

8. References herein to "Plaintiffs" shall include BARBERRY 8 and BARBERRY 9 unless otherwise mentioned individually and in a representative capacity on behalf of the proposed Class.

B. Defendants

9. Defendant COTTONWOOD RESIDENTIAL, O.P., LP, ("CROP") is a Delaware limited partnership organized September 24, 2009, with its principal place of business in the State of Utah but with offices and employees in California. Plaintiffs allege that CROP knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

10. Defendant COTTONWOOD CAPITAL PROPERTY MANAGEMENT II, LLC ("CCPM") is a Delaware Limited Liability Company licensed as a real estate broker with License #6681952-CN00, with its principal place of business in Salt Lake City, Utah. Following the Daymark Merger in August of 2011 and prior to the March 2013 Plantations and

Barberry Notes transactions described herein CCPM became co-manager of the Property with DPR and as such asset and property manager to Plaintiffs and continued in that capacity for all times relevant. Plaintiffs allege that CCPM knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

11. Defendant COTTONWOOD CAPITAL MANAGEMENT, INC. ("CCMI") is a Delaware corporation organized February 1, 2008 and admitted to conduct business in Utah on August 31, 2011, with its principal place of business in the State of Utah but with offices and employees in California. Plaintiffs allege that CCMI knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

12. Defendant DANIEL SHAEFFER ("SHAEFFER") an individual is the Chief Executive Officer of CROP as well as an officer and director of CCMI. Plaintiffs allege that SHAEFFER knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein, as well as CROP, CCPM and CCMI as described herein.

13. John Doe Individuals 1-20 and John Doe Entities 1-30 are individuals and entities who are or were employees, officers, agents, alter egos, partners, directors, shareholders and creditors of SHAEFFER, CROP, CCPM and CCMI. John Doe Individuals 1-20 and John Doe Entities 21-30 knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

14. Plaintiffs are informed and believe and on that basis allege that there is no

autonomy between the operation of Defendants CROP, CCPM, CCMI and John Doe Entities 21-30 for all times herein mentioned, and each were and remain the alter-egos of each other; that they did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which the other defendants used and still use to conduct their business affairs; that each such entity was and remains inadequately capitalized; and that an injustice and fraud upon Plaintiffs will result if the theoretical separateness of the defendant entities is not disregarded and each such defendant held liable for all relief being sought herein. Plaintiffs further allege upon information and belief that CROP, CCPM, CCMI and John Doe Entities 21-30 conduct themselves as one joint enterprise under the name "Cottonwood" as a 'brand' trademarked by CROP and that among other things CCMI while formally employing all of the Cottonwood employees is nothing more than a payroll service such that each of the companies is the agent of the other.

15. Plaintiffs are informed and believe, and on that basis allege, that at all times herein relevant, Defendants CROP, CCPM, CCMI, SHAEFFER John Doe Individuals 1-20 and John Doe Entities 21-30, and each of them, knowingly and willfully conspired, joined and participated with each other in the conduct herein alleged in furtherance of a conspiracy between and among one another to enrich themselves at Plaintiffs' expense, and that each such defendant is therefore liable with each other defendant for the conduct herein alleged, for the damages suffered by Plaintiffs and for the relief being sought herein.

16. Jurisdiction is appropriate in this Court under, inter alia, Utah Code Ann. § 78A-

5-102.

17. Venue is appropriate in this Court under, inter alia, Utah Code Ann. § 78B-3-307.

18. Plaintiffs, pursuant to the Utah Rules of Civil Procedure, hereby state that they are "claiming $300,000.00 or more in damages" and as a result is permitted standard discovery as described for Tier 3.

CLASS ACTION ALLEGATIONS

19. This action is brought pursuant to and may be properly maintained and certified as a class action pursuant to, in general, Utah Rule of Civil Procedure, Rule 23 as to the plaintiff class.

20. This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of the foregoing provisions of the Federal Rules of Civil Procedure.

21. Plaintiffs bring this action pursuant to Utah Rule of Civil Procedure 23, on behalf of themselves and a class of similarly situated persons defined as: **All persons who owned Interests in one or more of the Properties the PMAS of which were transferred to CROP, CCPM and its/their affiliates in November of 2012 as part of the "planned transition" reflected in the Announcement (the "Class").**

22. Based upon information and belief, the class members number in excess of One Thousand (1,000) persons who are citizens of the United States, the ownership of which includes persons from the States of California and Utah and, as such, are sufficiently numerous and geographically dispersed throughout the country that joinder of all class members is impracticable.

23. Excluded from the foregoing Class are the officers, directors, partners, members and employees of defendants and its/his/their legal representatives, heirs, successors, and assigns, of such defendants.

24. Also excluded from the foregoing Class are the owners of Interests which were acquired by defendants and in lieu thereof the original owner of the membership interests of the entity which owned the Interest(s), not a defendant, shall be a class member.

25. There are questions of law or fact common to the class, including, but not limited to, the following:

a. Whether the defendants breached fiduciary duties and/or conspired with others to breach such duties;

b. Whether the defendants breached fiduciary duties and/or aided and abetted others to breach such duties;

c. Whether the defendants misrepresented material facts in publishing the Announcement and related communications thereon;

d. Whether the defendants must disgorge and return the $8,000,000 plus interest to the Class;

e. Whether the defendants are liable for fees and commissions charged to Plaintiffs and the Class on and after November 1, 2012;

f. Whether the defendants concealed facts in publishing the Announcement and related communications thereon;

g. Whether CROP and CCPM are entitled to retain property and asset management fees, and commissions in excess of market rates under the PMAS;

h. Whether CROP and CCPM are entitled to retain Interests acquired from members of the Class following the Announcement;

i. Whether excessive property and asset management fees, financing and disposition fees and commissions were charged by defendants to the Class under the PMAS which must be disgorged; and

j. Whether Plaintiffs and members of the class are entitled to punitive and or exemplary damages and the amount thereof.

26. Plaintiffs are members of the Class and their claims are typical of the claims of other class members in that all members of the Class have been damaged by CROP, CCPM, CCMI, and SHAEFER's actions. Plaintiffs have the same interests as the other members of the Class.

27. Plaintiffs will fairly and adequately protect the interests of the Class. There is no conflict of interest between Plaintiffs and other members of the Class. Plaintiffs are represented by counsel experienced in class actions, company governance, fiduciary duties and obligations, real estate and securities law.

28. The questions of law or fact, common to the claims of the Class predominate over any questions affecting only individual class members, so that the certification of this case as a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

29. The prosecution of separate actions by individual members of the Class would be impracticable and inefficient as it creates a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of

conduct for the party opposing the Class.

30. Plaintiffs anticipate that there will be no difficulty in the management of this litigation.

31. For these reasons, the proposed class may be certified under Utah Rule of Civil Procedure 23.

GENERAL ALLEGATIONS

32. Todd A. Mikles ("Mikles") an individual is a California resident who as of August of 2011 was for all times relevant the control person, principal, director and officer of each of the "Mikles Affiliates" described below.

33. Daymark Residential Management, Inc. ("DRMI"), by name change as of September 2011, was formerly known as NNN Residential Management, Inc. as of July 2007 and then Grubb & Ellis Residential Management, Inc. as of January 2008. DRMI is the "Property Manager" as such term is defined in each of the twenty-six PMAS described herein, in the form of the Property Management Agreement ("PMA") and the Tenant in Common Agreement ("TIC Agreement") for the Property, copies of which are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by this reference.

34. Sovereign Capital Management Group, Inc. ("SCMG") is a California corporation organized September 20, 2010, a California licensed real estate broker, the Designated Officer and control person of which is MIKLES, BRE Officer License Identification No.: 01221665.

35. Daymark Realty Advisors, Inc. ("DRA") is a Delaware corporation. DRA is the successor by merger in 2007 to Triple Net Properties, LLC and is believed to have been organized by Grubb & Ellis Company ("GEC"), its parent organization in order to spin off the

tenant in common business of GEC in a reorganization effort.

36. Daymark Properties Realty, Inc. f.k.a. Triple Net Property Realty, Inc. ("DPR") is a California corporation organized July 6, 1998 and a licensed California real estate broker since March 8, 2001. Mikles for all times relevant was the sole designated officer of DPR and as such responsible for supervision of its operations and personnel.

37. NNN Realty Investors, LLC ("NNNRI") is a Virginia limited liability company. NNNRI was also the guarantor pursuant to written instruments (the "Guaranties") on the purchase money loans for each of the Plantations and Barberry Properties described below, each of which guaranty required that NNNRI have a minimum net worth of not less than $10,000,000 and in some cases $15,000,000.

38. Sovereign Strategic Mortgage Fund, LLC ("SSMF") is a California limited liability company organized August 5, 2008 as Entity Number: 200822710170.

39. DRMI, SCMG, DRA, DPR, NNNRI and SSMF shall be referred to herein jointly and severally as the "Mikles Affiliates", which on and after August 2011 for all times relevant to this complaint have been under the common control of Mikles.

40. Plaintiffs are informed and believe and on that basis allege that at all times herein mentioned, Mikles Affiliates, and each of them, knowingly and willfully ratified, conspired, joined and participated with each other and with CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 1-30 in the conduct herein alleged in furtherance of a conspiracy between and among Mikles and the Mikles Affiliates and CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 to enrich themselves at Plaintiffs' expense, and that each such CROP, CCPM, CCMI, SHAEFFER, John Doe

Individuals 1-20 and John Doe Entities 21-30 is/are therefore liable with each other CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 defendant(s)for the conduct herein alleged, for the damages suffered by Plaintiffs and for the relief being sought herein.

41. The instant action may be found timely under the doctrine of equitable tolling. Plaintiffs previously pursued the instant action against CROP, CCPM, CCMI and SHAEFFER together with Mikles and the Mikles Affiliates in California in the matter styled as *1600 Barberry Lane 8, LLC, et al., v. Todd A. Mikles, et al.*, Superior Court of California, County of San Diego, Case No. 37-2016-000190030-CU-BT-CTL (the "California Action"). The California Action was commenced on June 6, 2006. On March 28, 2017 CROP and SHAEFFER obtained an order of dismissal of the California Action for want of personal jurisdiction. Within the time period and the manner provided by California law, Plaintiffs commenced an appeal of the dismissal order in the California Action on May 26, 2017. In lieu of pursuing the appeal Plaintiffs commenced the instant action on June 30, 2017 and sought dismissal of the appeal which was obtained on August 2, 2017. Applying equitable tolling in this case would not cause prejudice to Defendants in this action as the California Action was timely.

FIRST CLAIM FOR RELIEF
Breach of Fiduciary Duty and Aiding and Abetting Breach of Fiduciary
(Against All Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

42. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth fully herein.

43. This claim is asserted by Plaintiffs individually and in their capacity as representative of the Class against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-

20 and John Doe Entities 21-30.

44. Plaintiffs acquired their Interests in a 312 unit garden apartment community known then as AMLI at Peachtree City Apartments, located in Peachtree City, a suburb of Atlanta, Georgia in 2008 (the "Property") pursuant to a private placement memorandum ("PPM") (the "Property Offering") sponsored by Grubb & Ellis Company ("GEC"). The Property was re-branded under the name "Barberry Lane".

45. Incident to the Property Offering the Plaintiffs and TICS were required to execute the Property Management Agreement ("PMA") and the Tenant in Common Agreement ("TIC Agreement") copies of which are attached hereto as Exhibits "A" and "B" respectively and incorporated herein by this reference, with DRMI an affiliate of GEC. At the time Plaintiffs entered into the PMA and agreed annual renewals thereof and TIC Agreement Plaintiffs had no knowledge that the asset and management fees charged were above market nor that the manner in which the fees were charged including charges for allocated off site personnel, insurance and accounting services were such that in total the same constituted above market fees and costs. Plaintiffs did not discover the above market management fee scheme until late 2014.

46. Plaintiffs allege, upon information and belief, that each of the managed apartment properties described in the Announcement regarding the Transition, the twenty-six "Properties", were the subject of a like securities offering pursuant to a PPM promoted by GEC or its predecessor in interest, each involving similar apartment complex properties and each requiring the TICS as respective members of the Class to execute a property management and tenant in common agreement the terms of which are either identical or substantively identical to the PMA and the TIC Agreement, attached hereto as Exhibits "A" and "B" respectively, with the exception

that the property involved will be one of the other 25 Properties. As such, Plaintiffs allege that the use of the term "PMAS" shall mean and refer to the 26 property management agreements in substantial conformance with the PMA and the term "TIC agreements" shall mean and refer to the 26 tenant in common agreements in substantial conformance with the term "TIC Agreement".

47. Plaintiffs further allege that while the PMA and TIC Agreement provide that the state law of the state where each of the respective Properties is located applies, for example the State of Georgia regarding the Property, the differences between applicable state law as concerns this breach of fiduciary duty claim are not material or outcome determinative.

48. For all times relevant herein, pursuant to the PMAS and TIC Agreements, DRMI and Mikles was/were a fiduciary of Plaintiffs and the Class, obligated to perform asset management and real estate property management services for Plaintiffs and the Class' benefit. As Plaintiffs and the Class' fiduciaries, DRMI and Mikles owed Plaintiffs and the Class the highest duties of loyalty, care and good faith and fair dealing.

49. Commencing in 2011 GEC sought to sell off the tenant in common promotion, syndication and property management business, at that time known under the brand name "Daymark" which included DRMI, following the reverse merger it had entered into with the Triple Net Properties' companies.

50. In August of 2011 Mikles and his affiliates purchased the various Daymark entities from GEC (the "Daymark Acquisition") including DRMI for less than $8,000,000. Subsequent to August 2011, and for all time relevant herein, Mikles had complete control over DRMI.

51. The Properties, as a group, were selected by Mikles acting on behalf of DRMI for

a sale of the PMAS to raise money he critically needed to buy out his 50% equity partner in the Daymark Acquisition. Mikles knew that the "up to" property and asset manager fees and commissions being charged under the PMAS were well above market rates for those services, that Plaintiffs and Class were a non-cohesive, non-coordinated and geographically dispersed group of investors who were totally dependent upon DRMI, uninformed of the actual market value cost of such services, and would never realize they had been and were being overcharged on a monthly basis unless informed of the true facts.

52. In or about November 2012 Mikles, on behalf of DRMI, notified Plaintiffs and, upon information and belief, the Class, that he/it/they had decided to focus their efforts on the management of the Daymark commercial office property portfolio and recommended that the Plaintiffs and Class allow CROP and CCPM to take over the asset and property management services for the Property and Properties on the representation that DRMI, as Property Manager, had concluded that CROP was the best manager available to Plaintiffs and the Class for the management of the Property and each of the Properties. Unknown to Plaintiffs at the time, was that the Mikles and DRMI recommendation of CROP and CCPM services was based on CROP and CCPM's inducement of $8,000,000 paid to Mikles, DRMI and/or other Mikles affiliates.

53. Plaintiffs allege the PMA between Plaintiffs and DRMI as the "Property Manager" and upon information and belief all of the PMAS prohibited a sale of the PMAS without full disclosure of the prior and continuing overcharges, the $8,000,000 payment and the required unanimous consent of every one of the TICS, the Plaintiffs and the Class, in their "sole and absolute discretion" as follows:

> 2.2 Management. Property Manager shall be the sole and exclusive manager of the Property to act on behalf of the [TICS] and shall manage, operate and maintain the

> Property in an efficient, economic, and satisfactory manner and shall manage the performance of everything reasonably necessary for the proper operation of the Property ...
>
> 13. MISCELLANEOUS.
>
> 13.1 Assignment. Property Manager may not assign this Agreement without the prior written consent of each of the [TICS], which consent may be withheld in each [TIC]'s sole and absolute discretion.

See PMA §2.2 Complaint Exhibit pages 3 and 15.

54. Further, Plaintiffs allege that Defendants knew that each of the PMAS would be "Deemed Renewed" unless terminated as a matter of right in December of 2012 and again in December of 2013 and concealed from Plaintiffs and Class the true facts described herein in order to secure renewal of the PMAS.

55. The PMA and PMAS provided the same were eligible for "Termination by [Plaintiffs and Class] not "for cause" .. . . within thirty (30) days of the end of each calendar year. ... Property Manager shall inform each of the [Plaintiffs and Class] no later than thirty (30) days before the end of each calendar year of their right to terminate this [PMA]. Each of the [Plaintiffs and Class] shall have the right to terminate this [PMA] by giving written notice to the Property Manager and to each of the other Tenants in Common within fifteen (15) days of receipt. Absent receipt by the Property Manager of a written demand to terminate from any Tenant in Common within such fifteen (15) day period, this [PMA] shall be deemed renewed until the end of the next calendar year." *See* PMA §10 and 10.1 Complaint Exhibit page 13.

56. Mikles, DRMI, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 breached his/its/their obligations under the PMAS §§2.2, 10.1 and 13.1, or with actual knowledge aided and abetted such breach, at the time Plaintiffs and the Class acquiesced to the Transition without disclosure that the Transition was a disguised PMAS Sale, the result of past and to be continued overcharges and a secret conflicted payment of $8,000,000 by CROP and CCPM approved by SHAEFFER to DRMI's owner Mikles which he assigned to

his/its/their affiliate SCMG which he then used for among other things to purchase his partner's 50% interest, not to benefit the Plaintiffs and Class.

57. Based upon the representation and recommendation of Mikles and DRMI affirmed by CROP, CCPM and SHAEFFER, Plaintiffs and the Class, and not informed of or knowing of the PMAS Sale, acquiesced in allowing CROP and CCPM to assume the role of asset and property manager for the Property and Properties under the PMAS on the mistaken belief that such a transfer was in their best interests.

58. DRMI and Mikles breached his/its/their duties of loyalty, care and good faith and fair dealing negotiating with CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 the Transition of the PMAS and TIC Agreements knowing and demonstrating to CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 that the PMAS contained fees and commissions at rates in excess of the fair value of those services charged in the local market for each of the Properties which would allow CROP and CCPM to recoup its/their payment by continuing to overcharge the unsuspecting Plaintiffs and the Class. DRMI, Mikles and Mikles' Affiliate entity SCMG breached his/its/their duties to Plaintiffs in exchange for the $8,000,000 Kickback paid by CROP and CCPM to Mikles and, upon information and belief, paid to SCMG.

59. DRMI and Mikles, as fiduciaries to Plaintiffs and the Class, had a duty to disclose in October 2012 that the transition from DRMI to CROP and CCPM was not in the best interests of Plaintiffs and the Class, that the recommendation was instead based upon the fact Mikles and SCMG would receive an $8,000,000 Kickback in return for selling the PMAS to CROP, that each of the PMAS prohibited the assignment of the PMAS, that because of above market fees

and commissions the Plaintiffs and the Class were being and had been overcharged, without their knowledge, they were paying the Kickback amount and that any one or more of the 1,000 Class members could unilaterally elect in their sole and absolute discretion not to approve the Transition.

60. Instead, DRMI and Mikles concealed, aided and abetted by CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, the true facts of the overcharges, sale of the PMAS, anti-assignment clause and Kickback payment, and recommended that Plaintiffs and the Class allow CROP and CCPM to Transition the DRMI PMAS and TIC Agreements to CROP on the grounds that CROP and CCPM were the best and most suitable manager available and on that basis obtained Plaintiffs' and the Class's acquiesce to the Transition.

61. At all times relevant herein, Mikles and DRMI, and each of them, aided and abetted by CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, failed to disclose that the Transition was not in the best interests of Plaintiffs and the Class, that Plaintiffs and the Class were being overcharged by DRMI which pattern and practice would continue with CROP and CCPM, nor was there any disclosure to Plaintiffs and the Class that the Transition resulted from a secret sale of the PMAS for a payment by CROP and CCPM to DMRI, Mikles and SCMG of $8,000,000 which would be recouped from continued overcharges to the unsuspecting Plaintiffs and the Class.

62. CROP, CCPM and CCMI, having subsumed the fiduciary duties of property manager and asset manager as a result of the Transition, is/are directly liable to Plaintiffs and the Class as the successor fiduciary to DRMI having breached its duties of loyalty and good faith

and fair dealing in failing to disclose to Plaintiffs and the Class that it secretly acquired its position as Plaintiffs' and the Class' fiduciary in a manner directly in breach of the PMAS and harmful to Plaintiffs and the Class because CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 had also agreed not to disclose the historical overcharges by DRMI in order that it/he/they would be able to continue that overcharging practice. Specifically, that it was not the best most suitable manager for the Properties but instead that it had acquired its position by the $8,000,000 payment, that the fees and commissions being paid to DRMI and now CROP were well above market rates which would effectively mean Plaintiffs and Class were being overcharged including the $8,000,000 Kickback amount and much more.

63. Had DRMI, Mikles, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals and John Doe Entities 1-30 exercised proper care and skill in their conduct that concerned and/or affected Plaintiffs and the Class, Plaintiffs and the Class would not have acquiesced to the Transition, would have terminated DRMI and the PMAS and secured a new property and asset manager at fees and costs consistent with actual market rates for the services described in the PMAS, would not have been overcharged and would not have suffered loss, injury and damages incurred including the not less than $8,000,000 in overcharges which funded CROP and CCPM's payment to DRMI nor continue to suffer the continuing and ongoing overcharges by CROP, CCPM, CCMI and SHAEFFER and more, all subject to proof at the time of trial.

64. As a direct and proximate result of DRMI and MIKLES's breach of fiduciary duty, aided and abetted by CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, Plaintiffs and the Class were damaged and continue to be damaged by

past and present payments of the overcharges in property and asset manager fees and commissions in an amount according to proof at trial, well in excess of the jurisdictional minimum of this court.

65. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 are vicariously liable for the breach of Mikles and DRMI having conspired and aiding and abetting in the breach, specifically, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 had actual knowledge that DRMI owed fiduciary duties and that DRMI was in breach of those duties to Plaintiffs and the Class negotiating with CROP and CCPM in exchange for its undisclosed $8,000,000 Kickback payment. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 substantially assisted and/or gave encouragement to DRMI and Mikles by agreeing to participate in the Transition, to conceal the $8,000,000 payment, to conceal that Plaintiffs and the Class had been and would continue to be overcharged asset and property management fees and commissions and other charges pursuant to the PMAS.

66. Plaintiffs learned about the ongoing overcharged fees and the $8,000,000 Kickback for the first time in late 2014. Prior thereto Plaintiffs reposed trust and confidence in the professional asset and property management services provided by Mikles, DRMI, CROP, CCPM, CCMI, and SHAEFFER relying on their recommendations as Plaintiffs' fiduciaries. Plaintiffs were reasonably diligent in reviewing and relying on the accuracy and completeness of the reports provided by their fiduciaries Mikles, DRMI, CROP, CCPM, CCMI and SHAEFFER. Despite reasonable diligence Plaintiffs were unable to discover the ongoing overcharged fees lacking the professional expertise to know what the fair market fees were because those fees

were never disclosed during renewals of the PMAS and the $8,000,000 Kickback payment was concealed by Mikles, DRMI, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

67. As an alternative to being directly liable for breach of its own fiduciary duties, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 are vicariously liable for the breach of DRMI's fiduciary duties having conspired and aiding and abetting in the breach, specifically, CROP, CCPM, CCMI and SHAEFFER knowingly participated with Mikles and the Mikles Affiliates having negotiated and agreed with DRMI and Mikles to purchase of the PMAS which it/he/they concealed as a Transition in order to benefit from the above market rates provided in the PMAS and paid, as compensation for the above market rates constituting overcharges, $8,000,000 to DRMI, Mikles and SCMG which it knew it/he/they would be recovered by continuing to breach fiduciary duties by continuing to overcharge Plaintiffs and the Class. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 substantially assisted and encouraged DRMI's breach having paid DMRI, Mikles and SCMG $8,000,000 to breach his/its/their fiduciary duties to Plaintiffs and the Class. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 had actual knowledge that DMRI's conflicted negotiation with CROP, CCPM and SHAEFFER was in breach of fiduciary duties DMRI owed to Plaintiffs and Class as owners of the Properties.

68. SHAEFFER is either directly liable as alter ego of CROP and CCPM or vicariously liable for CROP and CCPMI's breach in of the PMAS and related fiduciary duties with knowledge that his acts were wrongful in their nature. Further, SHAEFFER aided and

abetted and conspired with DRMI and CROP/CCPM knowing that the Transition failed to disclose the true facts of the $8,000,000 Kickback payment, was at terms unfavorable to Plaintiffs in breach of DRMI and Mikles' fiduciary duties to Plaintiffs and the Class.

69. Because the conduct of the aided and abetted by CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, was oppressive, malicious, and/or fraudulent, Plaintiffs and the Class are also entitled to punitive and exemplary damages from each of such Defendants in an amount to be proved at trial.

SECOND CLAIM FOR RELIEF
Breach of Contract
(Against all Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

70. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth herein.

71. This claim is brought as an alternative to the First Claim for Relief. This claim is asserted by Plaintiffs individually and in their capacity as representative of the Class against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

72. Between 2006 and 2008 Plaintiffs entered into their respective PMAS and TIC Agreements between themselves and GEC and its predecessors and affiliates. On or about November 2012 CROP, CCPM, CCMI and SHAEFFER subsumed from DRMI and Mikles all of their obligations in the PMAS and TIC Agreements.

73. CROP, CCPM, CCMI, SHEAEFFER and Jon Doe Individuals 1-20 and John Doe Entities 21-30 knew that the intent of the parties to the PMAS was that the "up to" property and asset manager fees and commissions charged under the PMAS were capped at the lesser of market value for the actual services provided or the maximum listed fee.

74. At all times since November 2012 to present CROP, CCPM, CCMI, SHAEFFER and John Doe Individuals breached his/its/their obligations under the PMAS §§2.2, 10.1 and 9.1, charging and continuing to overcharges asset and property management fees in excess of fair value.

75. As a result of CROP, CCPM, CCMI, SHAEFFER and Jon Doe Individuals 1-20 and John Doe Entities 21-30's breach, Plaintiffs have been damaged in an amount to be determined at trial, but in an amount of not less than $8,000,000.

76. As a result of CROP, CCPM, CCMI, SHAEFFER and Jon Doe Individuals 1-20 and John Doe Entities 21-30's breach of contract, Plaintiffs are also entitled to its costs and attorneys' fees as provided by law.

THIRD CLAIM FOR RELIEF
Interference with Contract
(Against all Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

77. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint as if set forth herein.

78. This claim is brought as an alternative to the First Claim for Relief and Second Claim for Relief. This claim is asserted by Plaintiffs individually and in their capacity as representative of the Class against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

79. Defendants CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 knew that the PMAS and TIC Agreements constituted written contracts between Plaintiffs and DRMI. Defendants also new that it was the intent of the parties to the PMAS was that the "up to" property and asset manager fees and commissions charged under the

PMAS were capped at the lesser of market value for the services provided or the maximum listed fee.

80. CROP,CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 improperly induced DRMI to breach its obligation under PMAS §§2.2, 9.1, 10.1 and 13.1 by payment to DRMI, Mikles and/or Mikles Affiliates of $8,000,000 exchange for all future property management and asset management fees at rates in excess of fair value.

81. Upon information and belief, CROP, CCPM, CCMI, SHAEFFER and John Doe Individuals 1-20 and John Doe Entities 21-30 paid the $8,000,000 Kickback to induce DRMI's breach of the PMAS and TIC Agreements with the intention of harming Plaintiffs by requiring DRMI to deliver to CROP, CCPM, CCMI and SHAEFFER payment of property management and asset management fees at rates in excess of fair value as otherwise required by the PMAS. This interference by CROP, CCPM, CCMI, SHAEFFER and John Doe Individuals 1-20 and John Doe Entities 21-30 is improper.

82. CROP, CCPM, CCMI, SHAEFFER and John Doe Individuals 1-20 and John Doe Entities 21-30 continue to harm plaintiffs by siphoning Plaintiffs' profits from the Properties characterized as "net operating income" reducing the values of each of the Properties while simultaneously refusing to relinquish control of the Properties back to Plaintiffs, the owners of the Properties.

83. As a result of CROP, CCPM, CCMI, SHAEFFER and John Doe Individuals 1-20 and John Doe Entities 21-30 interference DRMI has breached and continues to breach the PMAS.

84. As a result of Defendants' intentional acts, Plaintiffs had been damaged in an

amount to be proven at trial but, in any event by an amount in excess of $8,000,000.

JURY DEMAND

85. Plaintiffs and the Class demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in his/her/its/their favor as follows:

1. Declaring that this action is a proper class action and certifying Plaintiffs as the representatives of the Class.

2. For compensatory damages, according to proof.

3. For damages that exceed "$300,000.00 or more in damages" and therefore qualify for Tier 3 discovery pursuant to Rule 26(c)(3) of the Utah Rules of Civil Procedure.

4. For general damages, according to proof.

5. For special damages, according to proof.

6. For a constructive and resulting trust over real and personal property interests derivative of Plaintiffs and the Class' interests and funds.

7. For exemplary and punitive damages, according to proof.

8. For costs of suit incurred.

9. For statutory damages, if any.

10. For prejudgment and post judgment interest, according to law.

11. For such other and further relief as the court may deem just and proper.

RESPECTFULLY SUBMITTED this 13th day of October, 2017.

DEISS LAW PC

/s/ Andrew G. Deiss .
Andrew G. Deiss
Attorney for Plaintiffs and proposed class

CATANZARITE LAW CORPORATION

/s/ Kenneth J. Catanzarite
Kenneth J. Catanzarite, *admitted pro hac vice*
Attorney for Plaintiffs and proposed class

EXHIBIT 3
(NNN Capital Fund I, LLC and Tyrone Wynfield v. Cottonwood Residential OP, LP et al.)

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IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH	
NNN CAPITAL FUND I, LLC, a Delaware limited liability company; TYRONE WYNFIELD, an individual, in his capacity as liquidating trustee; Plaintiffs, v. COTTONWOOD RESIDENTIAL, O.P., LP, a Delaware limited partnership; COTTONWOOD CAPITAL PROPERTY MANAGEMENT II, LLC, a Delaware Limited Liability Company; COTTONWOOD CAPITAL MANAGEMENT, INC., a Delaware corporation; DANIEL SHAEFFER, an individual; JOHN DOE INDIVIDUALS 1-20 and JOHN DOE ENTITIES 1-30, Defendants.	**FIRST AMENDED COMPLAINT** (JURY TRIAL DEMANDED) Case No. 170904222 Judge Barry Lawrence Tier 3

Plaintiffs NNN Capital Fund I, LLC, a Delaware limited liability company ("COMPANY") and Tyrone Wynfield ("WYNFIELD") for its/his/their claims against defendants, Cottonwood Residential, O.P., LP, ("CROP"), Cottonwood Capital Property Management II, LLC ("CCPM"), Daniel Shaeffer ("SHAEFFER") John Doe Individuals 1-20 and John Doe Entities allege as follows.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff NNN CAPITAL FUND I, LLC ("COMPANY") formerly known as Grubb & Ellis Capital Company I, LLC is a Delaware limited company organized by its then affiliate Grubb & Ellis Company ("GEC") on April 23, 2008, the "Operating Agreement" of which is attached hereto as Exhibit "A" (See Complaint Exhibit "A" Pages 1-31), and is incorporated herein by this reference.

2. Plaintiff TYRONE WYNFIELD ("WYNFIELD") an individual resides in Los Angeles County California acquired membership interests in COMPANY in 2008. In 2015 WYNFIELD was "selected by the Member Majority to carry out the liquidation [and] shall take full account of the [COMPANY] assets..." by a "Member Majority" and thus was elected liquidating trustee as authorized by the Operating Agreement at Sections 11.1 and 11.3. See Exhibit "A" Operating Agreement and Internal Exhibit "A" thereto Definitions. As liquidating trustee, WYNFIELD is empowered to pursue the instant claims and remedies that are available to COMPANY pursuant to *Delaware Code* § 18-803(b) and appears solely in his capacity as liquidating trustee of COMPANY.

3. As used herein COMPANY and WYNFIELD, shall sometimes be collectively referred to as "Plaintiffs."

4. Defendant COTTONWOOD RESIDENTIAL, O.P., LP, ("CROP") is a Delaware limited partnership organized September 24, 2009, with its principal place of business in the State of Utah. Plaintiffs allege that CROP knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

5. Defendant COTTONWOOD CAPITAL PROPERTY MANAGEMENT II, LLC ("CCPM") is a Delaware Limited Liability Company licensed as a real estate broker with License #6681952-CN00, with its principal place of business in Salt Lake City, Utah. Plaintiffs allege that CCPM knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

6. Defendant COTTONWOOD CAPITAL MANAGEMENT, INC. ("CCMI") is a Delaware corporation organized February 1, 2008 and admitted conducting business in Utah on August 31, 2011, with its principal place of business in the State of Utah. Plaintiffs allege that CCMI knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

7. Defendant DANIEL SHAEFFER ("SHAEFFER") an individual is the Chief Executive Officer of CROP as well as an officer and director of CCPM and CCMI. Plaintiffs allege that SHAEFFER knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein, as well as CROP, CCPM and CCMI as described herein.

8. John Doe Individuals 1-20 and John Doe Entities 21-30 are individuals and entities who are or were employees, officers, agents, alter egos, partners, directors, shareholders

and creditors of SHAEFFER, CROP, CCPM and CCMI. John Doe Individuals 1-20 and John Doe Entities 21-30 knowingly ratified, conspired with and aided and abetted the serial breaches of fiduciary duty of Mikles and the Mikles Affiliates as described herein.

9. Plaintiffs are informed and believe and on that basis allege that there is no autonomy between the operation of Defendants CROP, CCPM, CCMI and John Doe Entities 21-30 for all times herein mentioned, and each were and remain the alter-egos of each other; that they did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which the other defendants used and still use to conduct their business affairs; that each such entity was and remains inadequately capitalized; and that an injustice and fraud upon Plaintiffs will result if the theoretical separateness of the defendant entities is not disregarded and each such defendant held liable for all relief being sought herein. Plaintiffs further allege upon information and belief that CROP, CCPM, CCMI and John Doe Entities 21-30 conduct themselves as one joint enterprise under the name "Cottonwood" as a 'brand' trademarked by CROP and that among other things CCMI while formally employing all of the Cottonwood employees is nothing more than a payroll service such that each of the companies is the alter ego and agent of the other.

10. Plaintiffs are informed and believe, and on that basis allege, that at all times herein relevant, Defendants CROP, CCPM, CCMI, SHAEFFER John Doe Individuals 1-20 and John Doe Entities 21-30, and each of them, knowingly and willfully conspired, joined and participated with each other in the conduct herein alleged in furtherance of a conspiracy between

and among one another to enrich themselves at Plaintiffs' expense, and that each such defendant is therefore liable with each other defendant for the conduct herein alleged, for the damages suffered by Plaintiffs and for the relief being sought herein.

11. Jurisdiction is appropriate in this Court under, inter alia, Utah Code Ann. § 78A-5-102.

12. Venue is appropriate in this Court under, inter alia, Utah Code Ann. § 78B-3-307.

13. Plaintiffs, pursuant to the Utah Rules of Civil Procedure, hereby state that they are "claiming $300,000.00 or more in damages" and as a result is permitted standard discovery as described for Tier 3.

GENERAL ALLEGATIONS

14. Plaintiffs commenced an action against Defendants (excluding CCPM) in California on March 24, 2017 by initiating that action styled NNN Capital Fund I, LLC, et al. v. Todd A. Mikles, et al. in Orange County Superior Court as Case No.: 30-2017-00910991 (the "California Action"). Defendants named here (excluding CCPM) successfully moved to quash service of summons which order entered on June 8, 2017. The initial complaint in this action was filed June 30, 2017.

15. Todd A. Mikles ("Mikles") an individual is a California resident who as of August of 2011 was for all times relevant the control person, principal, director and officer of each of the "Mikles Affiliates" described below.

16. Daymark Realty Advisors, Inc. ("DRA") is a Delaware corporation. DRA is the successor by merger in 2007 to Triple Net Properties, LLC and is believed to have been organized by Grubb & Ellis Company ("GEC"), its parent organization in order to spin off the

tenant in common business of GEC in a reorganization effort.

17. Daymark Properties Realty, Inc. f.k.a. Triple Net Property Realty, Inc. ("DPR") is a California corporation organized July 6, 1998. Mikles for all times relevant was the sole designated officer of DPR and as such responsible for supervision of its operations and personnel.

18. NNN Realty Investors, LLC ("NNNRI") is a Virginia limited liability company as of May 8, 1998. NNNRI was also the guarantor pursuant to written instruments (the "Guaranties") on the purchase money loans for each of the Plantations and Barberry Properties described below, each of which guaranty required that NNNRI have a minimum net worth of not less than $10,000,000 and in some cases $15,000,000.

19. Sovereign Strategic Mortgage Fund, LLC ("SSMF") is a California limited liability company organized on August 5, 2008.

20. Sovereign Capital Management Group, Inc. ("SCMG") is a California corporation organized September 20, 2010. SCMG is purported to be the manager of SSMF.

21. Market Tower Partners, LLC ("MTP") is a Delaware limited liability company organized February 1, 2013 which, based upon information and belief, received loans and/or capital contributions directed by Mikles from money he wrongly took from COMPANY.

22. GCL, LLC ("GCL") is a Delaware limited liability company organized May 13, 2014 which, based upon information and belief, received loans and/or capital contributions directed by Mikles from money he wrongly took from COMPANY.

23. DRA, DPR, NNNRI, SSMF, SCMG, MTP and GCL shall be referred to herein jointly and severally as the "Mikles Affiliates", which on and after August 2011 for all times

relevant to this complaint have been under the common control of Mikles.

24. Plaintiffs are informed and believe and on that basis allege that at all times herein mentioned, Mikles Affiliates, and each of them, knowingly and willfully ratified, conspired, joined and participated with each other and with CROP, CCPM, CCMI, SHAEFFER and John Doe Individuals 1-20 and John Doe Entities 21-30 in the conduct herein alleged and are therefore each of them are jointly and severable liable for the harm alleged herein and the California Action.

25. An unsigned copy of an Amendment to COMPANY'S Operating Agreement is attached hereto as Exhibit "B" and incorporated herein by this reference (See Complaint Exhibits Pages 32-36)(the "Amendment") was purportedly approved by the SuperMajority of those holding membership interests in COMPANY ("Interests") (i.e. two-thirds)).

26. Pursuant to Section 11.15 of the Operating Agreement:

a. If the requisite two-thirds SuperMajority vote Mikles contends was met by the February 2013 Amendment, the COMPANY's term of operation expired not later than October 31, 2015.

b. If the requisite two-thirds SuperMajority vote Mikles contends was met by the February 2013 Amendment, was not met then the COMPANY's term of operation expired not later than June 30, 2014.

27. Mikles has continuously represented that the Amendment had been executed by the requisite two-thirds majority of COMPANY members.

28. There has been no member majority vote to continue COMPANY'S term beyond October 31, 2015.

29. In October 2015, WYNFIELD was elected as the liquidating trustee of COMPANY by a member majority vote. Pursuant to *Delaware Code, Section* 18-803 Subsection (b), as the liquidating trustee WYNFIELD is empowered to bring this action on behalf of the COMPANY:

> (b) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in § 18-203 of this title, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members and remaining assets of the limited liability company, all without affecting the liability of the liability of members and managers and without imposing liability on a liquidating trustee.

DEL. CODE ANN. tit. 6, § 18-803 (West).

30. In the alternative and in the event that the Court determines for any reason that WYNFIELD may not assert claims in COMPANY's name, WYNFIELD brings the instant action in his capacity as COMPANY's liquidating trustee. All statute of limitations periods relevant herein are tolled by the adverse domination doctrine. At all relevant times prior to the election of a liquidating trustee, Mikles and Mikles Affiliates had complete and total control over the operation of the COMPANY such that COMPANY was unable to vindicate harms and injustices perpetrated by Mikles and Miles Affiliates against those persons who have conspired with and given substantial aid to Mikles and the Mikles Affiliates in perpetration of the alleged harms against COMPANY.

31. The COMPANY by the terms of its Operating Agreement and applicable law is in dissolution.

FIRST CLAIM FOR RELIEF
Aiding and Abetting Breach of Fiduciary Duty and Breach of Fiduciary Duty (Against All Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

32. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein.

33. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

34. Governance of the COMPANY is controlled by its Operating Agreement.

35. COMPANY was organized and empowered to make "Investments" by lending real estate-related mezzanine loans, described as follows:

> "Investment" shall refer to any direct or indirect investment by the Company, including but not limited to, **real estate-related mezzanine loans,** whether or not secured, mortgage loans, real estate-related bridge loans and other real estate financing, common stock, preferred stock, **limited liability company interests,** preferred limited liability company interests, convertible securities, notes, debentures, bonds and options, as well as real property and **tenants-in-common, fractional or other interests therein**.

(Exhibit "A" Operating Agreement, Complaint Exhibits at §1.3.1 and Internal Exhibit "A" thereto Definitions.) (emphasis added).

36. As provided in the Operating Agreement all "Investments" and "potential conflicts of interest" were required to be approved by the "Investment Committee", including those persons described herein as the "Committee":

> 6.11.4. The Investment Committee shall: (I) review and approve questions relating to potential conflicts of interest between the Company, on the one hand, and the Manager and its Affiliates, on the other; (ii) consult with the Manager on, and have the sole authority to, approve prospective Investments; (iii) approve other Temporary Investments not specifically listed in the definition in Exhibit A; (iv) determine whether to obtain an appraisal for any real property underlying a potential Investment; and (v) perform such other actions and duties as are expressly provided for elsewhere in this Agreement or requested by the Manager from time to time; provided, however, that the Manager shall not delegate to or impose upon the Investment Committee any duty or obligation imposed upon a manager under

the Act or other applicable law.

6.11.5. All approvals; disapprovals and other actions taken shall be authorized by a majority of the members of the Investment Committee then holding office and at least one of the Independent members. Any action may be evidenced by a unanimous consent in lieu of a meeting.

(Exhibit "A" Operating Agreement, Complaint Exhibits p. 15 at §§6.11.4 and 6.11.5.)

37. COMPANY loaned money to two Delaware limited liability company entities also organized by GEC named Plantations at Haywood, LLC ("Plantations") and 1600 Barberry Lane, LLC ("Barberry") in connection with the securitization of the purchase of certain real property. Plantations and Barberry are each sometimes referred to as a "TIC0" and collectively as "TICS0" because each through GEC, arranged for the acquisition of underlying real property as further described below.

38. Plantations used its COMPANY loan proceeds and combined those funds with proceeds from a loan secured by a mortgage to acquire real property and improvements commonly described as Plantations at Haywood, a 562-unit multifamily apartment community in Greenville, South Carolina located on 38 acres (the "Plantations Property") for syndication by GEC of fractional interests in the Property to tenant in common investors as well as the sale of its membership interests.

39. Barberry used its COMPANY loan proceeds and combined those funds with proceeds from a loan secured by a mortgage to acquire real property and improvements commonly described as 1600 Barberry Lane in Peachtree City, a 312 unit multifamily apartment community in Peachtree City, Georgia (the "Barberry Property") for syndication by GEC of fractional interests in the Property to tenant in common investors as well as the sale of its

membership interests.

40. As used herein the term "Properties" shall mean the collective Plantations Property and Barberry Property owned by the respective TICS0 in conjunction with the other tenants in common who purchased syndicated interests therein.

41. The COMPANY loaned $10,600,000 to Plantations (the "Plantations Note") and $9,700,000 to Barberry (the "Barberry Note").

42. In the February 2011 GEC report on the financial condition of COMPANY, signed by Hanson and approved, adopted and/or ratified upon information and belief by all of the Committee, he/she/they provided: "The [COMPANY] has remaining loans in four programs totaling $12.0 million..." The summary of the $12 million in loan balances therein provided was as follows: Plantations Note $4,590,678, Barberry Note $1,876,805 and others not here relevant for a total of $11,997,146.

43. Plaintiffs allege upon information and belief that as of February of 2011 each of the Plantations and Barberry Notes were all in material default and as such the Committee as well as NNNRI, jointly and severally, as fiduciaries, were obligated to have caused NNNRI to promptly initiate and pursue collection efforts to take a judgment against the respective note makers, Plantations and Barberry Borrowers, to secure a judgment thereon and to lien the assets owned by each such obligor specifically the respective Plantations and Barberry Properties, the interests of which in the underlying properties were owned by the respective note makers or obligors.

44. Plaintiffs allege upon information and belief that Mikles and SSMF acquired NNNRI, DRA, DPR and affiliates in August of 2011 (the "Daymark Acquisition"). Thereafter

Mikles as control person of NNNRI also controlled Plantations and Barberry as its/their manager. Through the Daymark Acquisition, Mikles became the designated licensed officer of DPR was simultaneously the asset and property manager for all of the tenant in common owners of the Plantations and Barberry Properties which, just as his/her/it/they had for the Committee, conflicted with his/its/their role as manager of COMPANY, creating an irreconcilable conflict of interest.

45. For all relevant times herein, the relationship between COMPANY and respectively NNNRI and Mikles was fiduciary in nature. .

46. In addition to the Committees' breach of fiduciary duties described above, Mikles who in due diligence learned in detail of the aforedescribed breaches yet stepped into the role of fiduciary and co-fiduciary upon completion of the Daymark Acquisition, took no action on behalf of COMPANY, nor did he inform any of the members of COMPANY of the prior breaches of fiduciary duty by nor did he take action against the Committee for same, nor did he initiate immediate collection of the Plantations and Barberry Notes.

47. Commencing in March of 2013 Mikles while in control of COMPANY through manager NNNRI on behalf of his controlled Miles Affiliates including SSMF, SCMG and MTP breached its/their fiduciary duties owed to COMPANY by commencing a series of self-serving transactions, thereby breaching fiduciary duties, designed to misappropriate COMPANY'S assets at less than fair value and benefit Mikles, SSMF, SCMG, MTP and GCL with millions in profits as follows:

(1) In March of 2013 Mikles acting on behalf of NNNRI purportedly "sold' the Plantations Note with a principal balance of $4.6 million and accrued interest of

approximately $3.5 million, a combined unpaid balance of $8.1 million, for a mere $3.1 million payable in the form of an unsecured promissory note from SSMF allegedly payable interest only at 8% all due in 36 months. The Investment Committee, as of and effective with a March 2013 Operating Agreement Amendment, comprised of Mikles, WYNFIELD, Weiss and Deighan, were not asked to approve the sale nor the conflict of interest. Moreover, WYNFIELD, Weiss and Deighan were not even informed of the transaction.

(2) In March of 2013 Mikles also purportedly "sold' the Barberry Note with a principal balance of $1.9 million and accrued interest of approximately $1.4 million, a combined unpaid balance of $3.3 million for a mere $1.0 million payable in the form of an unsecured promissory note from SSMF allegedly payable interest only at 8% all due in 36 months. Again, the Investment Committee, as of and effective with a March 2013 Operating Agreement Amendment if effective, comprised of Mikles, WYNFIELD, Weiss and Deighan, were not asked to approve the sale nor the conflict of interest. Again, WYNFIELD, Weiss and Deighan were not even informed of the transaction. Thereby Mikles without Investment Committee approval of said purported transactions concerning the sale of the Plantations and Barberry Notes, purportedly "sold" on behalf of COMPANY the two notes to SSMF with aggregate principal balances of $6.5 million and accrued interest of approximately $4.9 million, a combined $11.4 million, payable for unsecured promissory notes for a deeply discounted and unwarranted $4.1 million.

48. Later in late 2015 Mikles, upon information and belief, after receipt of $20 million of proceeds obtained by use of funds derived from, in combination with other funds, the subsequent SSMF Plantations and Barberry Note sales, caused SSMF to ostensibly repay the two SSMF replacement notes used to purchase the Plantations and Barberry Notes. In other words, Mikles, SSMF, SCMG, MTP and GCL through his/its/their affiliates retained the substantial profits on the difference realized from the use and benefit of the Plantations and Barberry Note sales proceeds for himself/itself/themselves.

49. Plaintiffs allege upon information and belief that had Mikles and NNNRI discharged his/her/its/their respective fiduciary duties to COMPANY each of the Plantations and Barberry Notes would have upon their respective defaults been promptly reduced to judgment, following which COMPANY would have had a judgment lien with accruing interest at the applicable judgment rates against the Properties or foreclosed on such Properties, become a direct owner in the underlying Properties and today COMPANY and/or its members would have had liens with accrued interest against and/or ownership interests its/their shares of which would, upon information and belief, be valued as follows: Plantations Property, $10,000,000 and Barberry Property $4,000,000, for a combined $14 million all subject to proof at the time of trial. Instead because of the breaches of fiduciary duty COMPANY received only $4.1 million and incurred a loss alleged to be $9.9 million, subject to proof at the time of trial.

50. As a direct and proximate result of Mikles Affiliates and NNNRI's breaches of fiduciary duties above described, Plaintiffs were damaged by the loss of the opportunity to collect the full amount of the Plantations and Barberry Notes and/or to hold a direct interest in the Plantations and Barberry Properties, in an amount according to proof at trial.

51. Upon information and belief in August of 2011 Mikles individually and through one or more of the Mikles Affiliates, purchased the Daymark entities including DRA, DPR, NNNRI and affiliates from GEC, described above as the "Daymark Acquisition".

52. Upon information and belief after closing the Daymark Acquisition in late 2011 Mikles sought to raise liquidity which he secretly planned to use to advance his personal interests and contemplated the sale of the Plantations and Barberry Notes then owned by COMPANY to CROP, CCPM and CCMI.

53. Upon information and belief, Mikles entered into an agreement in California to sell DPR's residential property management contracts to CROP for $8,000,000 and during the related due diligence disclosed to CROP, CCPM, CCMI and SHAEFFER that the Plantations and Barberry Notes were in default and that as a result thereof the Plantations and Barberry TICS0's tenant in common share of the net operating income from the Plantations and Barberry properties was being paid by Mikles' through his concurrent control of COMPANY, NNNRI, DPR as well as Plantations and Barberry, directly to COMPANY as the recognized and de facto owner of the Plantations and Barberry TICS0's tenant in common interest, in lieu of interest and principal payments on the defaulted Plantations and Barberry Notes.

54. Upon information and belief in November 2012 incident to the purchase of the Plantations and Barberry Properties property management agreements from DPR, CROP, CCPM and CCMI commenced management for the tenant in common owners having been fully informed the respective TIC0s were in default on its/their Plantations and Barberry Notes, and as above described with COMPANY was receiving all of the distributable income share from DPR's management of the underlying properties in lieu of principal and interest payments. As

a result of said pass through of the Plantations and Barberry TICS0s' share of the Plantations and Barberry Properties' net operating income to COMPANY, CROP, CCPM and CCMI recognized COMPANY as the owner of Plantations and Barberry's TIC0 tenant in common interests and continued to recognize and pay said income share directly to COMPANY.

55. Plaintiffs allege upon information and belief, CROP, CCPM and CCMI on or about November 2012 stepped into the role of asset and property manager of the COMPANY's de facto ownership interest in the Plantations and Barberry Properties given the payment of all of Plantations and Barberry TICS0s' share of net distributable operating income pursuant to thereby owing fiduciary duties directly to COMPANY.

56. Commencing in late 2012 and continuing into the first quarter of 2013 NNNRI by Mikles recommended and promoted the Amendment to the Operating Agreement. The Amendment, if effective, continued the term of the COMPANY as described above and approved the sale of the Plantations and Barberry Notes to SSMF. Mikles on behalf of NNNRI as manager of COMPANY represented to the members that the sale to SSMF was necessary in order to avoid losses and a distribution of what he claimed would be fractional interests in the defaulted unsecured Plantations and Barberry Notes which he claimed would otherwise be difficult if not impossible to collect.

57. Mikles and Mikles Affiliates breached their fiduciary duty to Plaintiffs advancing the Plantations and Barberry Notes sale to SSMF to COMPANY's members that the notes could not be converted to ownership interests in the respective Plantations and Barberry Properties nor to membership interests in Plantations and Barberry (the respective TICS0).

58. Mikles, CROP, CCPM, CCMI and SHAEFFER did not disclose that:

(1) Mikles acting concurrently as manager of Plantations and Barberry, once the COMPANY sale to SSMF was purportedly approved, planned to complete the transfer and would convert the note obligations to membership interests to be owned by SSMF of the respective limited liability company, Plantations and Barberry, which directly owned the Plantations and Barberry Properties contrary to his representation that such ownership was not permitted.

(2) Mikles for SSMF and SHAEFFER for CROP, CCPM and CCMI had agreed that once the conversion to equity was completed by SSMF that CROP, CCPM and CCMI would purchase the membership interests SSMF had converted the notes to in Plantations and Barberry and pay SSMF $4,100,000.

(3) CROP, CCPM and CCMI as manager of the Plantations and Barberry Properties, from November of 2012 was already recognizing COMPANY as the de facto owner of Plantations and Barberry's tenant in common interests in the respective property.

59. At all relevant times Mikles and NNNRI owed COMPANY and its members a fiduciary duty of full disclosure of all material facts about the Amendment and the proposed sale of the COMPANY's Plantations and Barberry Notes to SSMF.

60. Plaintiffs allege that COMPANY and its members if fully informed would have wanted membership interests in the respective Plantations and Barberry Properties or the membership interests or interests in the respective properties to hold long term.

61. Plaintiff WYNFIELD was to become a member of the Investment Committee upon the effective date of the Amendment and completion of the Plantations and Barberry Note sales. While considering signing the Amendment, WYNFIELD asked Mikles for more information on the COMPANY loans in particular the Plantations and Barberry Notes. In response Mikles on and after March 28, 2013 introduced him to SHAEFFER, the control person of CROP, CCPM and CCMI.

62. On and after March 28 to into early April, including after April 8 of 2013 WYNFIELD spoke to SHAEFFER multiple times, during the first such call informing him in the introduction that he, John Cadwell and John Weiss were brokers who together had sold in excess of 50% of the original membership interests in COMPANY and were evaluating options for their client members and the COMPANY. SHAEFFER explained that he was in a unique position to provide the status of the Plantations and Barberry Notes as the officer of CROP, CCPM and CCMI which managed the Plantations and Barberry Properties. WYNFIELD made clear that he believed COMPANY should be entitled to a tenant in common interest in the respective properties and was unsure whether the COMPANY should take the discounted payment of $4,100,000 in the form of an SSMF note or press for ownership interests in the respective properties or the Plantations and Barberry membership interests.

63. During the March to April 2013 time period SHAEFFER individually and on behalf of CROP, CCPM and CCMI in his conversation with WYNFIELD represented the following:

(1) The Plantations and Barberry Notes were not secured by the membership interests of Plantations and Barberry TICS0, with ownership interest in the

Plantations and Barberry Properties.

(2) The Plantations and Barberry Notes were not secured by the respective Plantations or Barberry Properties.

(3) The respective Plantations and Barberry Properties would not be able to pay the Plantations and Barberry Notes off, would need to undergo a very costly refinance in order to pay off all debts including the *unsecured and non-convertible to equity* Plantations and Barberry Notes and that the principal amounts were not collectible because there was insufficient equity.

(4) SHAEFFER recommended that WYNFIELD sign the Amendment and thereby agree to the sale of the Plantation and Barberry Notes to SSMF for $4,100,000 as in the best interest of COMPANY and its members.

64. SHAEFFER's statements to WYNFIELD at Paragraph 63 above, upon information and belief, were known to SHAEFFER as false at the time made misrepresenting and concealing material facts, specifically:

(1) Mikles without approval of the Investment Committee of the obvious conflict of interest, had already sold, transferred and conveyed the COMPANY's Plantations and Barberry Notes to SSMF in return for SSMF unsecured notes payable interest only purportedly due in 36 months at 8% per annum, had secretly caused SSMF to convert the Plantations and Barberry Notes to membership interests in the respective Plantations and Barberry TIC 0 entities (which Mikles also managed), and had entered

into a transaction described as a "Membership Interests Purchase Agreement" as of March 28, 2013 whereby CROP, CCPM and CCMI agreed to pay $3,100,000 for the Plantations Membership Interests and was in negotiations for the payment of $1,000,000 for the Barberry Membership Interests.

(2) SHAEFFER, CROP, CCPM and CCMI were either already in negotiations to purchase or had agreed to purchase the Plantations and Barberry, TICS 0' membership interests then owned by SSMF and by April 8, 2013 had completed the purchase of at least the SSMF held Plantations' membership interests where the valuation was substantially more than the $3,100,000 acquisition price paid by CROP, CCPM and CCMI, in an amount to be determined at the time of trial, but believed to have been in excess of $5,000,000.

(3) SHAEFFER, CROP, CCPM and CCMI knew that the respective Plantations and Barberry Notes converted to membership interests in the respective Plantations and Barberry Properties were worth more than the combined $4,100,000, and believed to be in excess of a combined $7,000,000 because he knew there was in fact more than sufficient net operating income from the Plantations and Barberry Properties to support much higher valuations, in an amount to be determined at the time of trial.

65. Further, CROP, CCPM and CCMI's officer Eric Marlin, named as a defendant in the California Action, in his role of raising money by the sale of CROP limited partnership

interests in California spoke with WYNFIELD on and after April 2013 and in the process confirmed and ratified the statements of SHAEFFER in paragraph 63 as above described while upon information and belief knowing that the true facts in paragraph 64 were contrary.

66. In reliance upon the affirmative representations of SHAEFFER and Marlin, individually and in his/their representative capacities, as above described, WYNFIELD signed the Amendment on or about April 2013 and likewise advised his COMPANY membership interest holder clients to sign the Amendment as well.

67. Following April of 2013 WYNFIELD would from time to time ask about the status of COMPANY, for an accounting and when the Investment Committee would begin to act. Mikles informed WYNFIELD that pursuant to Paragraph 4 of the Amendment (See Exhibit "C" Amendment, Complaint Exhibits p. 34) both the Plantations and the Barberry Notes had to be sold before the Investment Committee described at Paragraph 6 of the Amendment would act. Mikles told WYNFIELD that the Barberry Note had not yet been sold.

68. Commencing in April of 2014 WYNFIELD requested the financial statements of COMPANY for the year 2013 which pursuant to Operating Agreement §10.2 were required to be distributed to Members:

> "Financial Statements. The [COMPANY] will prepare annual financial statements containing a year end balance sheet, income statement and a statement of changes in financial position. Copies of such statements shall be distributed to each Member no later than 90 days after close of each taxable year of the [COMPANY]..." (Exhibit "A" Operating Agreement §10.2, Complaint Exhibits p. 18)

69. Mikles responded that the accountants needed more time and the statements would be provided as soon as available.

70. Mikles did not provide the required financial statements of COMPANY for 2013.

71. In late 2014 WYNFIELD met with Marlin an officer of CROP, whose duties including promoting CROP and its affiliates' securities, in person in Los Angeles County where during the course of discussions about CROP property purchase and sales activities, Marlin disclosed for the first time that CROP had acquired the Plantations and Barberry Notes and was continuing to manage the properties. Marlin asked that WYNFIELD recommend to his broker-dealer that the Cottonwood non-traded Real Estate Investment Trust ("REIT") be considered for his clients. On December 24, 2014 WYNFIELD reviewed the REIT information from the Cottonwood website and found listed as one of the REIT property holdings the Plantations Property with a purchase date of April 8, 2013. Not until the late 2014 meeting did WYNFIELD learn that the statements made by SHAEFFER and affirmed by Marlin on behalf of CROP, CCPM and CCMI in 2013 described above at Paragraphs 63 were false. WYNFIELD and COMPANY were unable to discover these facts earlier because SHAEFFER and Marlin never indicated in the 2013 conversations that they were acquiring interests in the Plantations and Barberry Properties and had no reason to investigate CROP property holdings. Further, Mikles and the Mikles Affiliates had complete and total control over the operation of COMPANY and withheld from COMPANY and its members the fact that the Plantations and Barberry notes, which had been transferred to SSMF, had substantially greater value than what

was and had been represented as they could have been converted to membership interests of the respective TICS0 just as CROP and SSMF had apparently done.

72. COMPANY financial statements were not provided until July 2015 when the 2014 financial statements were provided and therein Mikles first disclosed the SSMF notes for the Plantations and Barberry totaling $4,100,000 payable at 8% interest for 36 months.

73. Not until July 2015 did WYNFIELD learn that the Barberry Note had been sold.

74. Plaintiffs allege that the sale and terms of the Plantations and Barberry Notes to SSMF were not approved by any person acting independently and without conflict of interest on behalf of COMPANY, were not authorized, were ultra vires acts, were at prices and terms adverse to COMPANY, none of which had been approved in form nor had the conflicts been presented to and approved by the Investment Committee.

75. Plaintiffs further allege that CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 deliberately misled WYNFIELD and the members of COMPANY for the purpose of acquiring the Plantations and Barberry Notes and thereby the related membership interests in Plantations and Barberry for $4,100,000 knowing the same was a bargain and below market purchase from SSMF. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 knew that Mikles was at the time desperate to raise money for his own personal use and against the interests of COMPANY by engineering the sale of the notes to SSMF for a note, which goal they aided and abetted, to further its/his/their interests taking advantage of COMPANY and its members with said bargain purchase knowing the same was wrongful.

76. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe

Entities 21-30, acting as asset and property managers were required to act in the "highest good faith" toward their principal, the COMPANY, and may not have obtained any advantage over COMPANY in any transaction arising out of the agency relationship. Each were required to make full and complete disclosure of all material facts that might influence their principal's, the COMPANY's decision, to enter into the Plantations and Barberry note sales transactions with SSMF.

77. CROP, CCPM and CCMI, having assumed the fiduciary duties of property manager and asset manager as of November 1, 2012 as a result of the payment of distributions to COMPANY from its/their asset and property management of the Plantations and Barberry Properties, are directly liable to Plaintiffs as successor and/or concurrent fiduciary to/with DPR having breached its/their duties of loyalty and good faith and fair dealing in failing to disclose to Plaintiffs that it/they secretly intended to acquire the Plantations and Barberry Membership Interests from Mikles and SSMF for itself/themselves and as such its/their position was adverse and directly harmful to Plaintiffs.

78. Plaintiffs allege that CROP/CCPM/CCMI today continue to own the Plantations and Barberry membership interests in the Plantations and Barberry Properties which CROP acquired upon information and belief for $4.1 million and today values those interests in excess of $10 million and received and continues to receive monthly distributions from and capital appreciation from those respective properties.

79. SHAEFFER is either directly liable for his individual statements as above described or as alter ego of CROP, CCPM and/or CCMI, or vicariously liable for CROP, CCPM and/or CCMI's breach acting in the capacity of manager of the Plantations and Barberry

Properties with knowledge that his acts were the product of a conflict of interest, based upon false statements and overall wrongful in their nature.

80. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 are vicariously liable for the breach of fiduciary duties of NNNRI and Mikles having conspired with and aiding and abetting in the breach of fiduciary duties, specifically, by knowing Mikles and the Mikles Affiliates were breaching their fiduciary duties owed to COMPANY through the conflicted transfer of Company's Plantations and Barberry Note in 2013 to SSMF for less than fair value. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 provided substantial assistance to Mikles and the Mikles Affiliates' breach of fiduciary duty to COMPANY by convincing COMPANY's members that the Plantations and Barberry Notes sale to SSMF should be approved as the same were not otherwise collectable. Upon information and belief, and at all times relevant herein on and after August of 2011, NNNRI and Mikles had absolute control over SSMF, Plantations and Barberry, and thereby control of the Plantations and Barberry Notes owned by COMPANY, and converted said notes to equity interests in the Plantations and Barberry Membership Interests and thereby direct ownership in the underlying properties to the detriment and damage of COMPANY in an amount to be proved at the time of trial. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 substantially assisted and/or gave encouragement to NNNRI and Mikles and Marlin by speaking directly to WYNFIELD as described above in order to advance his/its/their interests to acquire the Plantations and Barberry membership interests obtained as a product of the breaches of fiduciary duties against COMPANY as above described.

81. As a direct and proximate result of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' breach of fiduciary duty, Plaintiffs were damaged in an amount according to proof at trial, well in excess of the jurisdictional minimum of this court.

82. Because the conduct of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 was oppressive, malicious, and/or fraudulent, Plaintiffs are also entitled to punitive and exemplary damages from each of such Defendants in an amount to be proved at trial.

SECOND CLAIM FOR RELIEF
Fraud and Deceit
(Against All Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

83. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein.

84. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

85. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 were intent upon hiding its/his/their obligations to disclose the foregoing material facts set out in Paragraph 63 because it/he/they knew that a full disclosure would result in Plaintiffs' rejection of the Amendment which authorized the Plantations and Barberry Notes sale to SSMF on terms, allowing Defendants to purchase the same membership interests as pre-arranged from SSMF, Defendants among other things set forth herein, withheld disclosure of at minimum the foregoing information and also provided materially false and misleading information.

86. When CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 withheld the foregoing facts they were intent upon securing for themselves the Plantations and Barberry converted membership interests in a manner adverse to Plaintiffs and knew that if the true facts were disclosed they would not sign the Amendment, it/he/they knew the facts stated in Paragraph 64 were false and made these representations with the intention to thereby deceive and defraud Plaintiffs and to induce Plaintiffs to act in reliance on these representations in signing the Amendment as alleged herein and with the expectation that Plaintiffs would so act.

87. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 intentionally or recklessly disregarded and/or concealed important facts concerning its/his/their true intent and conduct, creating a false representation.

88. Plaintiffs, at the time these representations were made and at the time Plaintiffs took the actions herein alleged, were ignorant of the falsity of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' representations and believed them to be true. In reliance on these representations, Plaintiffs were induced to sign the Amendment approving the sale of the Plantations and Barberry Notes on terms to SSMF.

89. Plaintiffs' reliance on CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' representations was justified because there was the duty on the part of Defendants to disclose all material facts as above described.

90. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20s and John Doe Entities 21-30s' had either actual knowledge or a reckless disregard as to the true facts complained of herein, that such facts were materially false and misleading as set forth herein and

thereby intended to deceive Plaintiffs. Said acts and omissions of Defendants were committed intentionally and with knowledge of or recklessness, and deliberate disregard for the truth. Defendants knew, and deliberately disregarded their obligations to disclose the true facts to Plaintiffs and/or that material facts were being misrepresented or omitted, as alleged herein. As such Defendants acted with scienter.

91. In failing to disclose the true facts as above alleged herein and/or omitting that their respective true intent CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' intended that Plaintiffs rely thereon in determining whether to sign the Amendment.

92. Had Plaintiffs known the truth, it/he/they would not have taken such action.

93. At all relevant times, the misrepresentations and omissions particularized in this Complaint, directly or proximately caused, or were a substantial contributing cause of the damages sustained by Plaintiffs. The misstatements and omissions complained of herein created an unrealistically positive assessment of the Amendment.

94. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' as above described:

a. Concealed or suppressed material facts.

b. Were under a duty to disclose the true facts to Plaintiffs.

c. Intentionally concealed or suppressed the true facts with the intent to defraud Plaintiffs.

d. Plaintiffs were unaware of the true facts and would not have signed the Amendment had they known of the concealed or suppressed facts.

e. As a result of the concealment or suppression of the true facts, Plaintiffs sustained damages according to proof at the time of trial.

95. As a direct and proximate result of the fraudulent conduct of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, Plaintiffs were damaged in an amount subject to proof at the time of trial.

96. The aforementioned conduct of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, was an intentional misrepresentation, deceit, or concealment of material facts known to Defendants thereby depriving Plaintiffs of property or legal rights or otherwise causing loss, injury and damage, and was despicable conduct that subjected Plaintiffs to a cruel and unjust hardship in conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary and punitive damages.

97. In acting in the manner described above CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 and each of them, acted with oppression, fraud and malice. As such, Plaintiffs are additionally entitled to an award of punitive or exemplary damages in a sum sufficient to punish or set an example of each such Defendants' truly despicable conduct.

THIRD CLAIM FOR RELIEF
Conversion
(Against All Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

98. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein.

99. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

100. After learning of the true facts, Plaintiffs demanded a return of the Plantations and Barberry membership interests derivative of the Plantations and Barberry notes that CROP, CCPM and CCMI had purchased from SSMF.

101. At the time of SHAEFFER's conversations with WYNFIELD described at paragraph 63, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, upon information and belief, had actual knowledge that SSMF had an agreement in place to convert the Plantations and Barberry Notes to membership interests in the respective Plantations and Barberry TICS0 and had agreed to sell those membership interests to CROP for the prices above described. As such SHAEFFER as he spoke to WYNFIELD, knew there was an agreement that the notes had or would shortly be converted to membership interests thereby derivative of the notes themselves which he agreed CROP would purchase.

102. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30's actions in speaking to WYNFILED and others regarding the Amendment was as such a willful interference with COMPANY's property interests in the Plantations and Barberry notes as well as the membership interests derivative thereof.

103. At the time CROP converted the Plantations and Barberry membership interests, COMPANY had an immediate right to possession of those very same membership interests and because CROP knew that Mikles and SSMF's taking of the to-be-converted notes from COMPANY, CROP's actions were unjustified.

104. As a result of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30's misconduct COMPANY has been deprived of its use and possessions of the membership interests in Plantations and Barberry derivative of the respective Plantations

and Barberry Notes.

105. Plaintiffs demanded a return of the Plantations and Barberry membership interests and the income derived therefrom through present which has come under the control of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

106. Notwithstanding the demands, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 failed and refused, and continue to fail and refuse, to return Plaintiffs' property in order to make them whole.

107. Upon information and belief, without notice to Plaintiffs and without authorization or consent, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 aided and abetted Mikles and SSMF having converted Plaintiffs' property as a result of signing the Amendment by which COMPANY members authorized the sale of the Plantation and Barberry Notes to SSMF, by which CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 then acquired the converted membership interests in Plantations and Barberry for its/his/their own use, account and purposes.

108. As a direct and proximate result of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' conversion, Plaintiffs suffered loss, injury and damage in an amount to be proven at trial.

109. In acting in the manner described above, CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30, acted with oppression, fraud and malice. As such, Plaintiffs are additionally entitled to an award of punitive or exemplary damages in a sum sufficient to punish or set an example for this truly despicable conduct.

FOURTH CLAIM FOR RELIEF
Negligent Misrepresentation
(Against All Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

110. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein. Notwithstanding the foregoing, Plaintiffs do not incorporate those statements which would not constitute actionable statements.

111. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

112. Each of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 owed Plaintiffs a duty to act with due care in making the representations of fact related to the Amendment.

113. Each of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 had a duty to ensure that the affirmative representations set forth above at Paragraph 63 and made to Plaintiffs were true, because each of said Defendants knew the representations and disclosures in and related to the Amendment were being provided to Plaintiffs for the specific purpose of evaluating whether or not to sign the Amendment.

114. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 negligently breached its/his/their duty in connection with said misstatements.

115. Each of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 participated in the making and dissemination of the false and misleading statements to Plaintiffs as more fully described above knowing and intending that such misrepresentations would be read and relied on by Plaintiffs in signing the Amendment.

116. Each of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 made these representations with no reasonable grounds for believing them to be true, in that, they were fully aware of the true contrary information about the Amendment yet made the material misrepresentations.

117. Each of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 had full knowledge of the foregoing material misrepresentations.

118. Each of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 made these misrepresentations with the intention to induce Plaintiffs to act in reliance on these representations by signing the Amendment as described above, and with the expectation that Plaintiffs would so act.

119. Plaintiffs, at the time these representations were made by CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 and at the time Plaintiffs took the actions herein alleged, were ignorant of the falsity of the representations and believed them to be true. In reliance on these representations, Plaintiffs were induced to sign the Amendment. Had plaintiffs known the actual facts concerning the Amendment, they would not have signed the Amendment.

120. Plaintiffs' reliance on the CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' representations was justified because they had no contrary information or reason to know of contrary information and Plaintiffs were justifiably entitled to rely on the representations as described above.

121. As a proximate result of the conduct of CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 as herein alleged, Plaintiffs have been

damaged in an amount according to proof at the time of trial.

FIFTH CLAIM FOR RELIEF
Negligence
(Against All Defendants, John Doe Individuals 1-20 and John Doe Entities 21-30)

122. Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein.

123. Plaintiffs bring this claim against CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30.

124. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30 owed Plaintiffs a duty of care to not misrepresent the facts as stated in Paragraph 74 which led Plaintiffs to sign the Amendment as above described.

125. Plaintiffs allege that they did not learn of this claim until on or about late 2014 as above described.

126. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 1-30 breached that duty when it/he/they failed to disclose the material facts concerning the Amendment as above described.

127. Plaintiffs signed the Amendment without knowing the true facts.

128. CROP, CCPM, CCMI, SHAEFFER, John Doe Individuals 1-20 and John Doe Entities 21-30s' representations concerning the true facts was a substantial factor in causing Plaintiffs' losses in an amount to be determined according to proof at the time of trial.

JURY DEMAND

129. Plaintiffs demand a trial by jury for all causes of action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment in his/its/their favor as follows:

1. For compensatory damages, according to proof.

2. For damages that exceed "$300,000.00 or more in damages" and therefore qualify for Tier 3 discovery pursuant to Rule 26(c)(3) of the Utah Rules of Civil Procedure;

3. For general damages, according to proof.

4. For special damages, according to proof.

5. For a constructive and resulting trust over real and personal property interests derivative of Plaintiffs' interests and funds.

6. For exemplary and punitive damages, according to proof.

7. For costs of suit incurred.

8. For prejudgment and post judgment interest, according to law.

9. For such other and further relief as the court may deem just and proper.

RESPECTFULLY SUBMITTED this 21st day of September, 2017.

DEISS LAW PC

/s/ Andrew G. Deiss .
Andrew G. Deiss
Attorney for Plaintiffs

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March 5, 2019

Via FedEx
BMC Group
Attn: Daymark Realty Claims Processing
3732 West 120th Street
Hawthorne, CA 90250

Re: Daymark Realty Advisors Inc. – Case No. 18-23750-RBR

To Whom It May Concern:

Please find enclosed four proofs of claim to be filed in the above referenced case on behalf of the following creditors:

1. Cottonwood Capital Management, Inc.
2. Cottonwood Residential, O.P., L.P.
3. Cottonwood Capital Property Management II, LLC
4. Daniel Shaeffer

Please feel free to contact me if you have any questions.

Regards,

Grace E. Robson

Enc.