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IN THE SUPERIOR COURT OF CALIFORNIA

ORANGE COUNTY

NNN CAPITAL FUND I, LLC, a Delaware limited liability company; TYRONE WYNFIELD, an individual, its liquidating trustee;

Plaintiffs,

v.

TODD A. MIKLES, an individual; NNN REALTY INVESTORS, LLC, a Virginia limited liability company; DAYMARK PROPERTIES REALTY, INC., a California corporation; SOVEREIGN STRATEGIC MORTGAGE FUND, LLC, a California limited liability company; SOVEREIGN CAPITAL MANAGEMENT GROUP, INC., a California corporation; MARKET TOWER PARTNERS, LLC, a Delaware limited liability company; GCL, LLC, a Delaware limited liability company; GCL MANAGER, LLC, a Delaware limited liability company; SCOTT PETERS, an individual; JEFF HANSON, an individual; ANDREA BILLER, an individual; FRANCENE LAPOINT, an individual; and DOES 1-40,

Defendants.

Case No. 30-2017-00910991

Assigned for All Purposes to the
Hon. Thomas A. Delaney
Dept. C24

THIRD AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY AND FRAUDULENT TRANSFER

JURY TRIAL DEMANDED

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THIRD AMENDED COMPLAINT

Plaintiffs for its/his/their complaint against defendants, and each of them, allege as follows.

I.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to California Constitution Article VI, § 5 and personal jurisdiction over defendants in accordance with *Code of Civil Procedure*, § 410.10 on the grounds that defendants do business in and that a substantial portion of the actions and events giving rise to this complaint occurred in Orange County, California and continues to the present.

2. Venue is proper before this Court insofar as a substantial part of the actions giving rise to the claim in that among other things the actions were taken by one or more defendants against the interests of COMPANY occurred in Orange County, California.

II.

THE PARTIES

A. The Plaintiffs

3. Plaintiff NNN CAPITAL FUND I, LLC ("COMPANY") formerly known as Grubb & Ellis Capital Company I, LLC is a Delaware limited liability company organized by NNN REALTY INVESTORS, LLC, described below, on April 23, 2008 which qualified to do business in the State of California as Entity Number 200819210024 on July 9, 2008, the "Operating Agreement" of what is believed to be a signed copy is attached hereto as Exhibit "A" (See Complaint Exhibit "A" Pages 1-31), and is incorporated herein by this reference.

4. 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).

5. At times as the context requires COMPANY and WYNFIELD, may be collectively referred to as "Plaintiffs".

B. Nominal Defendant

6. In the alternative and only in the event that WYNFIELD is unable to for any reason maintain this action as Liquidating Trustee, WYNFIELD brings the Second Cause of Action, derivatively and names COMPANY as a nominal Defendant.

C. Defendants

7. 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 "Entity Defendants" described below.

8. Defendant NNN REALTY INVESTORS, LLC ("NNNRI") formerly known as Grubb & Ellis Realty Investors, LLC, was a Virginia limited liability company organized on April 27, 1998 and authorized to do business in California as of May 8, 1998. The parent of NNNRI at the time of COMPANY formation was Grubb & Ellis Company, a Delaware corporation ("GEC") which also owned DPR as described below. NNNRI was COMPANY's sole "Manager" as defined in the Operating Agreement. NNNRI was also the guarantor pursuant to written instrument on the $1,000,000 "Addison Guaranty" a copy of which is attached hereto as Exhibit "C" (See Complaint Exhibit "C" Pages 37-51), and is incorporated herein by this reference. On and after August 2011 MIKLES was directly, or indirectly through an entity under his control, an agent of NNNRI with full authority to bind it and direct company affairs.

9. Defendant DAYMARK PROPERTIES REALTY, INC. f.k.a. Triple Net Property Realty, Inc. ("DPR") is a California corporation organized July 6, 1998 as Entity Number: C2113477, California Bureau of Real Estate ("BRE") corporate license number 01304179 since March 8, 2001. On and after August 2011, MIKLES was DPR's sole designated officer and agent with full authority to bind it and direct corporate affairs.

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10. Defendant SOVEREIGN STRATEGIC MORTGAGE FUND, LLC ("SSMF") is a California limited liability company organized August 5, 2008 as Entity Number: 200822710170. At all relevant times MIKLES was directly, or indirectly through an entity under his control, an agent of SSMF with full authority to bind it and direct company affairs.

11. Defendant SOVEREIGN CAPITAL MANAGEMENT GROUP, INC. ("SCMG") is a California corporation organized September 20, 2010 as Entity Number C3318067, with a BRE real estate broker Corporate License Identification No.: 01896668, issued April 13, 2011the Designated Officer of which is MIKLES, Officer License Identification No.: 01221665. SCMG is believed to be the manager of SSMF. At all relevant times MIKLES was directly, or indirectly through an entity under his control, an agent of SCMG with full authority to bind it and direct corporate affairs.

12. Defendant MARKET TOWER PARTNERS, LLC ("MTP") is a Delaware limited liability company organized February 1, 2013 which, based upon information and belief, received funds directed by MIKLES from money he wrongly took from COMPANY and hence Plaintiffs. At all relevant times MIKLES was directly, or indirectly through an entity under his control, an agent of MTP with full authority to bind it and direct corporate affairs.

13. Defendant GCL, LLC ("GCL") is a Delaware limited liability company organized May 13, 2014 as File Number 5533084 and registered in the State of California on July 24, 2014 as File Number 201421010021 which, based upon information and belief, received funds directed by MIKLES from money he wrongly took from COMPANY and hence Plaintiffs. At all relevant times MIKLES was directly, or indirectly through an entity under his control, an agent of GCL with full authority to bind it and direct corporate affairs.

14. Defendant GCL MANAGER, LLC ("GCL-M") is a Delaware limited liability company organized June 12, 2014 as File Number 5550686 and which, based upon information and belief, as manager of GCL, received funds directed by MIKLES from money he wrongly took from COMPANY and hence Plaintiffs. At all relevant times MIKLES was directly, or indirectly through an entity under his control, an agent of GCL with full authority to bind it and direct corporate affairs.

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15. Defendants GCL and GCL-M shall be collectively referred to as GCL unless otherwise mentioned.

16. Defendants NNNRI, DPR, SSMF, SCMG, MTP, GCL, GCL-M and Does 1-10 shall be referred to herein jointly and severally as the "Entity Defendants" which, on and after August 2011 for all times relevant to this complaint, have been under the common control of MIKLES. Plaintiffs are informed and believe, and on that basis allege, that at all times herein mentioned MIKLES and the Entity Defendants, and each of them, 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 there 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.

17. Plaintiffs are informed and believe, and on that basis allege, that at all times herein mentioned, Entity Defendants, 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 MIKLES and the Entity Defendants 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.

18. Does 1-10 are individuals and business entities, form unknown, who would be included in the joint and several references to the Entity Defendants, who, at the time of the events described herein, were and are responsible for acts and omissions related to Plaintiffs as alleged herein and, as such, should be included in this complaint as if named and included as such. The true names and capacities, whether individual, corporate, associate, or otherwise, of such defendants are unknown to Plaintiffs who therefore sue said defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of said

defendants when the same are ascertained.

19. Defendant SCOTT PETERS ("PETERS"), an individual, was, from COMPANY's organization through at the earliest March of 2013, one of the five members of the COMPANY "Investment Committee" as described in the Operating Agreement at §§6.11 through 6.11.7. PETERS was also, from September 2004 through July 10, 2008, Executive Vice President and Chief Financial officer and, after December 2007 through at least July 10, 2008, the Chief Executive Officer, President and Director of NNNRI. Thereafter, upon information and belief PETERS, one of the initial members, was and remained one of the mandated five members as an "Independent" member described in §6.11.3 and 6.11.5 because no notice of "...additions to or substitutions for the Investment Committee" were ever served upon the members by Manager pursuant to §6.11.1. Alternatively PETERS knowing that his name was listed as an Initial Member of the Investment Committee knew that the Investment Committee never acted and concealed these facts from COMPANY's members until 2017.

20. Defendant JEFF HANSON ("HANSON"), an individual, was, from COMPANY's organization through at the earliest March of 2013, one of the five members of the COMPANY "Investment Committee" as described in the Operating Agreement at §§6.11 through 6.11.7. HANSON was, from July 2006 until at least November 7, 2011, President and Chief Investment Officer of NNNRI and President and Chief Executive Officer of DPR. Thereafter, upon information and belief HANSON, one of the initial members, was and remained one of the mandated five members as an "Independent" member described in §6.11.3 and 6.11.5 because no notice of "...additions to or substitutions for the Investment Committee" were ever served upon the members by Manager pursuant to §6.11.1. Alternatively HANSON knowing that his name was listed as an Initial Member of the Investment Committee knew that the Investment Committee never acted and concealed these facts from COMPANY's members until 2017.

21. Defendant ANDREA BILLER ("BILLER"), an individual, was, from COMPANY's organization through at the earliest March of 2013, one of the five members of the COMPANY "Investment Committee" as described in the Operating Agreement at §§6.11 through 6.11.7. BILLER was General Counsel and Executive Vice President of NNNRI from

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January 2006 until at least October 22,2010. Thereafter, upon information and belief BILLER, one of the initial members, was and remained one of the mandated five members as an "Independent" member described in §6.11.3 and 6.11.5 because no notice of "...additions to or substitutions for the Investment Committee" were ever served upon the members by Manager pursuant to §6.11.1. Alternatively BILLER knowing that her name was listed as an Initial Member of the Investment Committee knew that the Investment Committee never acted and concealed these facts from COMPANY's members until 2017.

22. Defendant FRANCENE LAPOINT ("LAPOINT"), an individual, was, from COMPANY's organization through at the earliest March of 2013, one of the five members of the COMPANY "Investment Committee" as described in the Operating Agreement at §§6.11 through 6.11.7. LAPOINT was Chief Financial Officer of NNNRI from January 2006 until at least October 3,2008. Thereafter, upon information and belief LAPOINT, one of the initial members, was and remained one of the mandated five members as an "Independent" member described in §6.11.3 and 6.11.5 because no notice of "...additions to or substitutions for the Investment Committee" were ever served upon the members by Manager pursuant to §6.11.1. Alternatively LAPOINT knowing that her name was listed as an Initial Member of the Investment Committee knew that the Investment Committee never acted and concealed these facts from COMPANY's members until 2017.

23. Defendants PETERS, HANSON, BILLER, LAPOINT and Does 11-20 shall be referred to herein as the "Committee Defendants.

24. Does 11-20 are individuals, presently unknown, who would be included in the joint and several references to the Committee Defendants, who, at the time of the events described herein, were and are responsible for acts and omissions related to COMPANY as alleged herein and, as such, should be included in this complaint as if named and included as such. The true names and capacities of such defendants are unknown to Plaintiffs who therefore sue said defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of said defendants when the same are ascertained.

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25. Upon information and belief Committee Defendants, notwithstanding resignations as officers and directors of NNNRI and GEC affiliates, continuously served and were responsible to COMPANY as Investment Committee members until, at the earliest, March of 2013, the precise date to be determined at the time of trial when Amendment No. 1 to Limited Liability Company Agreement of Grubb & Ellis Capital Fund I, LLC, an unsigned copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference (See Complaint Exhibits Pages 32-36) was purportedly approved by the SuperMajority of those holding membership interests in COMPANY ("Interests") (i.e. two-thirds)) and both the Plantations and Barberry Notes were sold believed to have been not later than August 15, 2014.

26. Plaintiffs do not concede the Amendment was, in fact, adopted by a SuperMajority and, alternatively, allege the same was not adopted and as such the COMPANY terminated April 23, 2013 as described in Paragraph 32.b. below.

D. The Doe Defendants

27. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein as Does 1-40, inclusive, are unknown to Plaintiffs , and Plaintiffs therefore sue such Doe Defendants by fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when they have been ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named Doe Defendants was responsible in some manner for the occurrences herein alleged and that Plaintiffs ' damages were proximately caused by each such Doe Defendant's conduct. References to "Doe Defendants" shall mean and include those Doe Defendants sued herein by such fictitious names.

28. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned, Doe Defendants, and each of them, were the partners, members, servants, agents and/or employees of the other Defendants and in doing the things herein alleged were acting within the course and scope of their authority as such partners, members, agents, servants and/or employees and with permission and/or consent of their co-defendants.

29. The Doe Defendants named herein as Does 1-40, inclusive, and each of them, are unknown to Plaintiffs , who therefore sue such defendants by fictitious names pursuant to *Code*

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of Civil Procedure § 474. Plaintiffs are informed and believe, and thereon allege, that each fictitiously named Doe defendant is in some manner, means or degree responsible for the events and happenings herein alleged. Plaintiffs will amend this complaint, as necessary, to set forth the true names and capacities of the fictitiously designated Doe defendants when ascertained.

30. Plaintiffs are informed and believe, and thereon allege, that Does 1-60, inclusive, are individuals, professionals, advisors, law firms and/or other entities who conspired with, and/or materially aided and abetted, defendants in devising, planning, orchestrating and/or carrying out one or more of their joint acts related to and supporting the claims herein, which acts are more particularly described below.

31. In the event future discovery establishes that one or more lawyers or law firms conspired with and/or aided or abetted the defendants and therefore should be named in the place of any of the foregoing Doe Defendants, then to the extent applicable, if at all, Plaintiffs will comply with his/her/its/their obligations under *California Civil Code* § 1714.10 by bringing a motion seeking advance Court approval for any such substitution and will, in the context of such motion, present evidence establishing a reasonable probability that he/she/it/they will prevail on the merits of its claims against such lawyers and/or law firms.

III.

PLAINTIFFS' STANDING

32. 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 April 23, 2013. Operating Agreement Section 11.1.5 provided that the Manager had two six month extensions from the four year termination date of April 23, 2012 following the offering which commenced April 23, 2008.

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33. While MIKLES has continuously represented that the Amendment had been executed by the requisite two-thirds majority of COMPANY members, no proof of such vote has been reviewed by Plaintiffs and as such the alternative allegation is made above.

34. Whether the Amendment was effective or not, there has been no member majority vote to continue COMPANY'S term beyond the latest expiration dissolution date of October 31, 2015.

35. 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.

Delaware Code, § 18-803(b).

IV.

COMMON FACT ALLEGATIONS

A. Applicable Operating Agreement Terms.

36. COMPANY, formerly known as Grubb & Ellis Capital Fund, I, LLC, was organized in Delaware and offered its limited liability company membership interests pursuant to a private placement security offering including in Orange County, California. The membership interests were sold to approximately three hundred thirty (330) persons all of whom became

members of COMPANY. Governance of the COMPANY is controlled by its Operating Agreement and only those amendments thereto adopted by the requisite member vote.

37. COMPANY was organized and empowered to make "Investments" defined 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**.
>
> See Exhibit "A" Operating Agreement, Complaint Exhibits at §1.3.1 and Internal Exhibit "A" thereto Definitions. *Bold emphasis added.*

38. 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 Defendants":

> 6.11. Investment Committee.
> 6.11.1. The Company shall have an Investment Committee which shall consist of **five members** ... All **additions to or substitutions for the Investment Committee membership shall be nominated by the Manager by written notice provided to the Members, and if a Member Majority does not provide written notice of objection to such nomination within 15 days of the date of the Manager's nomination notice, then such nominee shall become a duly appointed member of the Investment Committee.** ...
> 6.11.2. The Investment Committee **shall meet at least four times during each calendar year** and shall meet at such other times and from time to time as the Manager or a new majority of the Investment Committee day determine. ...
> 6.11.3. ... **members of the Investment Committee who are not** ... managers or executives of the Manager or its Affiliates **will be paid a fee of $5,000 per quarter plus $200 per teleconference and $300 per meeting**, subject to the Manager's ability to adjust such fees to a market rate in its sole discretion.
> 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

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> 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.
>
> ....
>
> 6.11. 7. The **members of the Investment Committee shall exercise their duties hereunder in accordance with their good faith business judgment as to the best interests of the Company**.
>
> See Exhibit "A" Operating Agreement, Complaint Exhibits p. 15 at §§6.11 through 6.11.7. *Bold emphasis added.*

39. Plaintiffs allege that one or more "Independent" members of the Committee Defendants was necessary to approve each of the three loans and the Guaranty described herein.

B. The Investment Committee Approved the Loans and Guaranty Prior to August 2011.

40. Plaintiffs understood and relied upon "6.11.4. The **Investment Committee shall**: ... (ii) consult with the Manager on, and **have the sole authority to, approve prospective Investments**;..." for each of the three loans and guaranty that are the subject of this complaint. See Exhibit "A" Operating Agreement, Complaint Exhibits p. 15 at §§6.11 through 6.11.7. *Bold emphasis added.*

41. Plaintiffs allege that COMPANY funds were loaned to three Delaware limited liability company entities organized by NNNRI's affiliates while NNNRI simultaneously acted as Manager of COMPANY and as "Manager" of each of the borrowing entities, namely Plantations at Haywood, LLC ("Plantations"), 1600 Barberry Lane, LLC ("Barberry") and Oak Park Office Center, LLC ("Oak Park"). The COMPANY loans were in connection with the securitization of the purchase of certain real property. The borrowers Plantations, Barberry and Oak Park are each sometimes referred to separately as a "TIC0" and collectively as "TICS0" because each, through NNNRI, advised by DPR acting as real estate broker, arranged for the acquisition of the underlying real property as further described below.

42. 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

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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 NNNRI, DPR and affiliates of fractional tenant in common interests in the Plantations Property to tenant in common investors as well as the sale of its membership interests. DPR became the property and asset manager of the Plantations Property pursuant to written agreement wherein it charged all of the tenant in common owners including, Plantations, management fees and also derived commissions.

43. 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 NNNRI, DPR and affiliates of fractional tenant in common interests in the Barberry Property to tenant in common investors as well as the sale of its membership interests. DPR became the property and asset manager of the Barberry Property pursuant to written agreement wherein it charged all of the tenant in common owners, including Barberry, management fees and also derived commissions.

44. Oak Park 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 Oak Park Office Center III, a Class A office building in Houston, Texas (the "Oak Park Property") for syndication by NNNRI, DPR and affiliates of fractional tenant in common interests in the Oak Park Property to tenant in common investors as well as the sale of its membership interests. DPR became the property and asset manager of the Oak Park Property pursuant to written agreement wherein it charged all of the tenant in common owners, including Oak Park, management fees and also derived commissions.

45. As used herein the term "Properties" shall mean the collective Plantations Property, Barberry Property and the Oak Park Property owned by the respective borrowers Plantations, Barberry and Oak Park, in conjunction with the other tenants in common who purchased syndicated interests therein, all securitized and sold and generating millions in

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commissions, fees and profits while simultaneously COMPANY and each of the TICS0 as well as management of the Properties was controlled by NNNRI and DPR.

46. Plaintiffs further allege, based upon Operating Agreement §6.11.4., that the Committee Defendants "... **approve[d] prospective Investments**" of COMPANY loans to the separate tenant in common owners of another property previously syndicated by GEC, NNNRI, DPR and affiliates, that was simultaneously managed by NNNRI and DPR, for the tenant in common owners and borrowers NNN Addison Com Center 1, LLC, NNN Addison Com Center 2, LLC, NNN Addison Com Center 3, LLC, NNN Addison Com Center 4, LLC, NNN Addison Com Center 5, LLC, NNN Addison Com Center 6, LLC, NNN Addison Com Center 7, LLC, NNN Addison Com Center 9, LLC, NNN Addison Com Center 10, LLC and NNN Addison Com Center 11, LLC (collectively the "Addison Borrowers") for a tenant improvement loan at the underlying "Addison Property" so that DPR could continue to charge property and asset management fees and commissions while NNNRI also charged asset management fees to the Addison Borrowers.

47. NNNRI while Manager of COMPANY, was also the Vice President of Addison Borrowers, for the loan approved by the Committee Defendants, yet the terms of said loan required only that NNNRI provide a guaranty for $1,000,000 of the $3,400,000 Addison Note (the "Addison Guaranty"). The amount of the guaranty as less than the full amount of the loan was a breach of fiduciary duty. DPR was at the time the asset and property manager of the Addison Property.

48. Each of the aforedescribed Plantations, Barberry, Oak Park and Addison loans were memorialized by promissory notes obligating each as borrowers. Specifically, the COMPANY loaned $10,600,000 to Plantations (the "Plantations Note"), $9,700,000 to Barberry (the "Barberry Note"), $9,000,000 to Oak Park (the "Oak Park Note") and $3,400,000 to Addison Borrowers (the "Addison Note").

49. 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 Committee Defendants, 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, Oak Park Note $3,948,364 and Addison Note $1,581,299 for a total of $11,997,146.

C. MIKLES Purchases Daymark in August 2011 Thereafter Rendering NNNRI the Addison Guarantor Insolvent.

50. Plaintiffs allege upon information and belief that MIKLES acquired NNNRI, DPR and affiliates in August of 2011 (the "Daymark Acquisition"). MIKLES thereby became the sole officer, director and control person of NNNRI which also controlled Plantations, Barberry and Oak Park as its/their manager and Addison as both the manager and as the Addison Borrowers' Vice President. Further, MIKLES, as the designated licensed officer of DPR, was simultaneously the asset and property manager for all of the tenant in common owners of each of the Plantations, Barberry, Oak Park and Addison Properties which, conflicted with his/its/their role as officer, director and control person of NNNRI as Manger of COMPANY, creating an irreconcilable conflict of interest.

51. As a matter of background, GEC the promoter of COMPANY was, by the mid-1980s, the third largest commercial real estate firm in the United States. On December 10, 2007 GEC merged with NNN Realty Advisors, Inc. (the parent company of Triple Net Properties, LLC, the predecessor of NNNRI) succeeding to the management rights to its 1031 Tenant in Common ("TIC") DPR managed portfolio of commercial and apartment properties and the NNNRI advisory contracts to various entities including the COMPANY.

52. Three plus years later in 2011, GEC created Daymark Realty Advisors, Inc. ("Daymark") as a wholly owned subsidiary which, in turn, owned the various Triple Net named affiliated companies including DPR, the asset and property manger of the Plantations, Oak Park, Barberry and Addison Properties and, through NNNRI, acted as Manager of COMPANY.

53. Upon information and belief in 2011 as GEC sought a purchaser for Daymark it knew and disclosed to MIKLES that Daymark, as well as NNNRI, was insolvent and that a material capital contribution exceeding $10,000,000 would be required to avoid material defaults in various lending and advisory agreements.

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54. In August, 2011, GEC sold its entire interest in Daymark to MIKLES, and therein he, through affiliates, assumed control of NNNRI and DPR.

55. In February, 2012, GEC filed for bankruptcy and is no longer a going concern.

56. Upon information and belief MIKLES refused to adequately capitalize Daymark and in particular NNNRI and DPR and instead devised a plan and scheme to strip the remaining assets from Daymark, NNNRI and DPR and transfer the same to his various affiliates including SSMF, SCMG and later MTP and GCL. At the time MIKLES undertook this effort he had actual knowledge that NNNRI had guaranteed $1,000,000 to COMPANY yet engaged in transactions adverse to COMPANY including by (1) refusing to infuse not less than $10,000,000 into NNNRI such that it had adequate capital, and (2) transferred valuable contracts and receivables of NNNRI and DPR to SCMG leaving NNNRI even more insolvent than at the time he closed the Daymark purchase.

57. Post closing of the Daymark Acquisition MIKLES was the central member of NNNRI, DPR, SCMG and SSMF and, through NNNRI, Manager of COMPANY and the manager of Plantations, Oak Park, Barberry as well as the Addison borrowing entities, and controlled each of these entities. MIKLES directly or indirectly owned or was the sole shareholder or member of each of NNNRI, DPR, SCMG and SSMF, and as such, directly or indirectly controlled each of those entities.

58. Upon information and belief, MIKLES directed funds from his own account and NNNRI, DPR, SCMG and SSMF to MTP and GCL, also under his control, to shield assets from recovery by his/their creditors such as COMPANY.

59. Upon information and belief, MIKLES effectively controlled all of the corporate/company officers of each of NNNRI, DPR, SCMG, SSMF, MTP and GCL. Plaintiffs are informed and believe, and on that basis allege, that post closing of the Daymark Acquisition MIKLES used NNNRI, DPR, SCMG, SSMF, MTP and GCL as mere alter egos, instrumentalities, agencies, conduits or adjuncts post August of 2011 as follows:

a. MIKLES did not maintain nor recognize corporate formalities for NNNRI, DPR, SCMG and SSMF such that, for example he moved millions in purported

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accounts receivable from NNNRI and DPR, rendering those entities insolvent, to SCMG and SSMF for a payment of only $100,000, and later from SCMG and SSMF to MTP, as well as money between companies as he alone decided without meetings or documentation prior to the actions taken, with the overall plan and scheme to strip NNNRI and DPR of its/their assets sending them to SCMG and SSMF without adequate consideration, and then stripping SCMG and SSMF of its/their assets and sending them to MTP without adequate consideration, and again later to GCL.

b. For all times relevant, post August 2011 NNNRI and DPR were insolvent as their debts exceeded their assets and were unable to pay their debts as those debts came due.

c. To conceal NNNRI's and DPR's insolvency MIKLES funded their cash flow obligations from his own account and/or accounts of other entities under his control, while selectively disregarding some debts including NNNRI and DPR's various contracts and NNNRI's guaranties.

d. MIKLES, NNNRI, DPR, SCMG, SSMF, MTP and GCL shared legal counsel, internal accountants and personnel.

e. MIKLES, NNNRI, DPR, SCMG, SSMF, MTP and GCL shared offices, furniture and equipment.

f. At all relevant times MIKLES controlled the day-to-day activities and affairs of NNNRI, DPR, SCMG, SSMF, MTP and GCL, in reality operating as a single integrated enterprise.

g. MIKLES, NNNRI, DPR, SCMG, SSMF, MTP and GCL failed to maintain arms-length relationships.

h. The records and financials of MIKLES, NNNRI, DPR, SCMG, SSMF, MTP and GCL were not kept segregated, were handled by the very same accounting staff under total control of MIKLES, did not observe any accounting formalities in maintaining or closing books for each separate company, left books open and

prepared books long after the transactions were completed in order to facilitate the overall appearance of separate entities which MIKLES, NNNRI, DPR, SCMG, SSMF, MTP and GCL knew to be false and misleading.

60. In order to avoid injustice or inequity NNNRI, DPR, SCMG, SSMF, MTP and GCL should be treated as alter egos of MIKLES and found liable for each other's acts and omissions as if they were the acts and omissions of each other, and all allegations concerning one should be deemed to include like allegations against the others.

61. NNNRI filed its insolvency petition in Florida in August of 2015 such that, as a direct result of MIKLES' transfers without consideration described above, it is unable to answer for the Addison $1,000,000 guaranty.

D. The Amendment and Note Sales as Self-Serving Transactions.

62. Commencing in late 2012 and continuing into the first quarter of 2013 NNNRI, by MIKLES, recommended and promoted the "Amendment" to the Operating Agreement, an unsigned copy of which is attached hereto as Exhibit "B". The Amendment, if effective, continued the term of the COMPANY as described above, and its members were also asked to approve 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.

63. Commencing in March 2013 MIKLES sought a super-majority vote by the members to extend the term of COMPANY's existence which otherwise would end on April 23, 2013 circulating for vote the Amendment attached as Exhibit "B" and thereafter reported in April of 2013 that the requisite vote had been obtained.

64. As part of the explanation for the need for the Plantations and Barberry Notes sale MIKLES represented to WYNFIELD and other members of COMPANY that the notes could not be converted to ownership interests in the respective Plantations and Barberry Properties nor to membership interests in the borrowers Plantations and Barberry (the respective TICS0), a

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representation MIKLES knew to be false as set forth herein.

65. MIKLES, Cottonwood Residential, O.P., L.P. ("CROP") and its Chief Executive Officer Daniel Shaeffer ("Shaeffer") did not disclose that:

a. MIKLES acting concurrently as the manager of Plantations and Barberry, once the COMPANY sale to SSMF was approved by the Investment Committee, planned to complete the transfer converting the note obligations to membership interests to in the respective limited liability company, Plantations and Barberry, which owned a tenant in common interest in the Plantations and Barberry Properties, contrary to his representation that such ownership was not permitted.

b. MIKLES for SSMF and Shaeffer for CROP had agreed that once SSMF converted the membership interest, that CROP would purchase the membership interests from SSMF.

66. Plaintiff WYNFIELD was to become a member of the Investment Committee upon the effective date of the Amendment when the sale of both the Plantations and Barberry Notes and been completed. While considering signing the Amendment, WYNFIELD asked MIKLES for more information on the COMPANY loans in particular the Plantations and Barberry Notes to SSMF. In response MIKLES on and after March 28, 2013 introduced WYNFIELD to Daniel Shaeffer ("Shaeffer"), the Chief Executive of CROP which then managed the Plantations and Barberry Properties.

67. On and after March 28 to early April of 2013 WYNFIELD spoke to Shaeffer. WYNFIELD made clear to Shaeffer 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.

68. Shaeffer, individually and on behalf of CROP, in his conversations with WYNFIELD represented the following:

a. The Plantations and Barberry Notes were not secured by the *membership interests* of Plantations and Barberry (with ownership interest in the Plantations and

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Barberry Properties) and hence conversion to such equity interests was not possible.

b. The Plantations and Barberry Notes were not secured by the respective *real property* interests in the Plantations or Barberry Properties.

c. 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 payoff 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.

d. Shaeffer recommended as being in the best interests of COMPANY and its members that WYNFIELD sign the Amendment and agree to the sale of the Plantation and Barberry Notes to SSMF in exchange for an SSMF notes of $3,100,000 and $1,000,000 respectively as in the best interest of COMPANY and its members.

69. Shaeffer's statements to WYNFIELD at paragraph 67 above upon information and belief, were false as described below.

70. In reliance upon the affirmative representations of MIKLES, CROP and Shaeffer, individually and in his/its/their representative capacities, as above described, WYNFIELD signed the Amendment on or about April 2013.

71. At the same time as the Amendment was being circulated for vote in March of 2013 MIKLES, while in control of COMPANY through NNNRI as Manager and DPR as asset and property manager of the Properties, and simultaneously in control of SSMF, SCMG and MTP, commenced a series of self-serving transactions, thereby breaching fiduciary duties he and NNNRI owed COMPANY, designed to garner MIKLES, DPR, SSMF, SCMG, MTP and GCL millions in commissions, fees and profits.

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1. The $3,100,000 March 28, 2013 Plantations Note Sale to SSMF, Conversion to Membership Interests and Immediate Sale to Cottonwood Residential, O.P., L.P.

72. Based upon information and belief, on a date just prior to March 28, 2013 (before the Amendment could have been approved) MIKLES, simultaneously in control of SSMF and NNNRI, as Manager of both COMPANY, SSMF and Plantations entered into a pre-arranged multi-step transaction as follows:

a. COMPANY 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, to SSMF for $3.1 million, the internally documented terms of which, discovered in 2015, were 15% interest per annum all due in 24 months, not the later self-described by MIKLES 8% interest per annum all due in 36 months.

b. MIKLES pursuant to a pre-arranged "Membership Interest Purchase and Sale Agreement" ("Membership Interest PSA") caused SSMF to convert the COMPANY's Plantations Note SSMF had just acquired, into Plantations Membership Interests and in a virtually simultaneous transaction, caused SSMF to sell those same interests to CROP for $3,100,000.

c. MIKLES caused SSMF to take the $3,100,000 and combine it with $2,400,000, the source of which is to be determined at the time of trial, for a combined $5,500,000, which on March 29, 2013 SSMF remitted to Coronado Bank, which in turn issued a cashier's check to MTP for $5,500,000 with a notation SSMF or "Sovereign Strategic Mortgage Fund" as the Remitter.

d. The $5,500,000 SSMF transferred to MTP, 56.36% of which is traceable directly to COMPANY, was used to fund the first part of the Beneficial Bank Lease transaction for the Market Tower Property, pursuant to a MIKLES promoted restructuring of the finances related to that property (managed by MIKLES and DPR), to increase its occupancy and lead to the building's sale for $184,750,000 allowing MIKLES to reap $23,100,000 of the proceeds classified as fees, interest

and loan payments (the "Philadelphia Transaction"). The Philadelphia Transaction closed in April 2015 and at closing MIKLES and MTP, SCMG, SSMF and GCL took combined commissions and fees of $23,100,000 as follows:

i. SCMG took a 2% disposition fee of $2,300,000.

ii. SCMG received a Financing fee of $300,000.

iii. SCMG received a Promotion Fee of $1,750,000.

iv. MTP received a principal payment on its loans of $7,400,000.

v. MTP received interest on its loans at 15% per annum of $2,300,000.

vi. MTP received additional principal payments of $3,200,000.

vii. MTP received interest on the additional principal payments of $170,000.

viii. MTP received Accrued Property Management fees of $4,100,000 assigned by MIKLES from DPR for less than $100,000 of consideration.

ix. MTP received interest at 10% on Accrued Property Management fees of $1,600,000, again assigned form DPR as above.

x. GCL received transfers of the above amounts from SCMG and MTP as directed by MIKLES.

73. Prior to the sale of the Plantations Note to SSMF, MIKLES and DPR treated COMPANY as a de facto owner by distributing the Plantations TIC0's share of operating income to COMPANY which amounts were materially less than the accrued interest and principal then past due.

74. Plaintiffs allege upon information and belief that the Committee Defendants also approved the on-or-before March 28, 2013 Plantations Note sale because 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 entitled to approve the sale nor the conflicts of interest related thereto because, per the Amendment terms the new members of the Investment Committee did not become effective until both of the Plantations and Barberry Notes had been sold, and as MIKLES represented to WYNFIELD the Barberry Note had not yet been sold.

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2. The Unauthorized$1,800,000 January 3, 2014 Oak Park Note Sale to SSMF and Sale of the Oak Park Property May 2014 (Not a Part of the Amendment) and May 2014 Oak Park Note Payment of $6,900,000 to SSMF at a $5,100,000 Profit in Four Months.

75. Plaintiffs allege, upon information and belief, that on January 3, 2014 based upon a November 2015 MIKLES report, that MIKLES, while simultaneously in control of NNNRI, as Manager of COMPANY, SSMF and NNNRI as manager of Oak Park, and while the Oak Park Property was managed by DPR, "sold' the Oak Park Note with a principal balance of $3.9 million and accrued interest of approximately $3.0 million, a combined unpaid balance of $6.9 million to SSMF for a mere $1.8 million payable in the form of an unsecured promissory note from SSMF allegedly payable interest only at 8% all due in 36 months.

76. Plaintiffs allege that at no time were the members asked to approve the Oak Park Note sale and only learned of the same in November 2015.

77. Plaintiffs allege they did not and would not have approved the Oak Park Note sale.

78. Plaintiffs allege upon information and belief, that at the time MIKLES caused the Oak Park note sale to SSMF, the Oak Park Property was the subject of substantial buyer interest, which interest was known to MIKLES and DPR acting as real estate broker for the Oak Park Property owners including COMPANY which MIKLES and DPR treated as a de facto owner by distributing the Oak Park TIC0's share of operating income to COMPANY which amounts were materially less than the accrued interest and principal then past due, which culminated in a purchase and sale agreement and closing in early May 2014 for a price of $32,000,000. At the time of the closing the unpaid first mortgage loan balance was $17,000,000 and closing costs and estimated $1,000,000, resulting in $14,000,000 of proceeds which paid the Oak Park Note in full at an estimated $6,900,000 of proceeds, a profit of $5,100,000 in four months, which proceeds MIKLES caused SSMF to transfer to MTP to further fund the Philadelphia Transaction.

79. Plaintiffs allege that COMPANY if fully informed of all material facts, including the buyer interest, would have retained the Oak Park Note and would have realized the

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$6,900,000 payoff for itself.

80. Plaintiffs allege, upon information and belief, that once again the Committee Defendants also approved the on-or-before January 3, 2014 Oak Park Note sale because 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 entitled to approve the sale nor the conflicts of interest related thereto because by the Amendment's terms it did not become effective until both the Plantations and Barberry Notes had sold, and as MIKLES represented to WYNFIELD the Barberry Note had not yet been sold.

3. The Unauthorized $875,000 August 15, 2014 Barberry Note Sale to SSMF, Conversion to Membership Interests and Immediate Sale to Cottonwood Residential, O.P., L.P.

81. Plaintiffs allege, upon information and belief, that on August 15, 2014, based upon the November 2015 MIKLES report, that MIKLES, while simultaneously in control of NNNRI, as Manager of COMPANY, SSMF and NNNRI as manager of Barberry, entered into a pre-arranged multi-step transaction as follows:

a. COMPANY "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 to SSMF for a mere $875,000 million payable in the form of an unsecured promissory note from SSMF allegedly payable interest only at 8% all due in 36 months.

b. MIKLES pursuant to the pre-arranged Membership Interest PSA caused SSMF to convert the COMPANY 's Barberry Note it had just acquired into Barberry Membership Interests and, in a virtually simultaneous transaction, caused SSMF to sell those same interests to CROP for $875,000.

c. MIKLES caused SSMF to transfer the $875,000 to MTP for further funding of the Philadelphia Transaction.

82. Plaintiffs allege that at no time were the COMPANY members asked to approve a modification of the Amendment which had authorized the Barberry Note sale for $1,000,000 to a

reduced amount of $875,000 and did not learn of the purported modification until November 2015.

83. Plaintiffs did not and would not have ever approved the Barberry modification.

84. Plaintiffs allege, upon information and belief, that Committee Defendants approved the August 15, 2014 Barberry Note sale to SSMF because 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 entitled to approve the sale nor the conflicts of interest related thereto because per the Amendment's terms it did not become effective until both the Plantations and Barberry Notes were sold, and as MIKLES represented to WYNFIELD the Barberry Note had not yet been sold.

85. Prior to the sale of the Barberry Note to SSMF, MIKLES and DPR treated COMPANY as a de facto owner by distributing the Barberry TIC0's share of operating income to COMPANY which amounts were materially less than the accrued interest and principal then past due.

86. Not until December 2014 did Plaintiffs discover the Barberry Note had been sold.

87. MIKLES' sale of the Plantations, Barberry and Oak Park Notes to his controlled affiliated SSMF in exchange for the SSMF notes required Investment Committee approval pursuant to:

a. Operating Agreement §6.3 limited NNNRI's authority as manager at §6.3.1 to "... subject to the Investments Committee's authority under Section 6.11 acquire, hold, monitor, mortgage, pledge, **sell, exchange and otherwise dispose of** [the Plantations, Barberry and Oak Park Notes as] **any Investment**." *Bold emphasis added*;

b. §6.11.4(ii) to cause COMPANY to take the SSMF Notes as "prospective investments"; and

c. §6.11.4(v) take other action requiring approval here at §6.3.1.

88. MIKLES' sale, while in control of COMPANY through Manager NNNRI and DPR, of the Plantations, Barberry and Oak Park Notes with aggregate principal balances of $10.4

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million and accrued interest of approximately $7.9 million, a combined $18.3 million, payable in exchange for an unsecured promissory notes from SSMF for a deeply discounted and unwarranted combined $5,775,000 was a breach of fiduciary duty in that COMPANY should have as described below, itself converted the notes to membership interests in at a minimum the Plantations, Oak Park and Barberry.

89. On or about April 21, 2015, after MIKLES received his $23,000,000 from the Philadelphia Transaction and when his efforts to buy out COMPANY's members pursuant to a Tender Offer failed, he caused SSMF to repay the three notes to COMPANY but only at the deeply discounted amounts with interest only at 8% per annum.

90. Plaintiffs further allege the November 10, 2015 financial statements, provided by MIKLES on behalf of COMPANY, include unauthorized expenditures, including without limitation, "Legal Expenses $654,158", "Asset Management Fee $121,059", "Loan Administration $48,098" and "Legal Reserve $500,000" for a combined $1,323,414 which amounts were paid to or for the benefit of MIKLES, SSMF, SCMG, MTP, GCL, GCL-M and Does 1-10 and are subject to recoupment with interest according to proof at the time of trial.

4. The Philadelphia Transaction Funding and Sale on April 21, 2015 Allowing MIKLES to Realize $23,000,000 and the Rollover of $18,000,000 Therefrom to Gregory Canyon (GCL).

91. Plaintiffs allege, upon information and belief, that between March 28, 2013 and August 15, 2014 MIKLES raised cash from the Plantations ($3,100,000), Oak Park ($6,900,000) and Barberry Note ($875,000) sales of a combined $10,875,000 in return for unsecured notes of a combined $5,775,000 due years later which funds MIKLES caused SSMF to transfer to MTP to fund the Philadelphia Transaction.

92. Plaintiffs allege the Philadelphia Transaction building sale closed on April 21, 2015 and as a result MIKLES, , SCMG and MTP, upon information and belief, received $23,000,000 in fees, commissions and profits.

93. Plaintiffs allege upon information and belief that in a virtually simultaneous transaction in April 2015, MIKLES used $18,000,000 of the $23,000,000 he, SSMF, SCMG and

MTP received from the Philadelphia Transaction to fund GCL which MIKLES then as its agent, taking control of 1,700 acres of valuable land from bankrupt developer Gregory Canyon Ltd.

94. A November 2016 news article described MIKLES takeover of GCL and its then activity as follows:

a. "[GCL]... **sold roughly 700 acres of the 1,700 acre site to the Pala tribe for $13 million,** effectively killing the landfill plan. The agreement includes a pledge that the tribe won't oppose residential and commercial development on the rest of the property." describing [MIKLES], as a principal of GCL. *Underline and bold emphasis added.*

b. [This left MIKLES with a net investment of only $5,000,000 for control of the remaining 1,000 acres.]

c. "Work on the landfill permits ground to a halt after MIKLES took over in 2014 when the landfill developer struggled to find financing and fell into bankruptcy. Last year [post April 21, 2015], a new company — **Sovereign Capital — assumed control of the company, paying off its $200 million debt and buying the 1,770-acre property for $18 million at a foreclosure hearing. The company was then renamed GCL LLC.**" *Underline and bold emphasis added.*

d. "Mikles, the company's principal, said the deal with the Pala tribe developed over the past several months (September to November 2016) as he and an archaeologist starting meeting with Gaughen on behalf of the Pala tribe." "I really didn't have all the knowledge," Mikles said. "I could totally see what she was saying with all the historic and cultural stuff."

e. "Meanwhile, GCL also started exploring other development opportunities, recognizing the region is in desperate need of more housing. **We'd like to do a commercial and residential development," on some of the land, Mikles said.** "The tribe would like to see that too. They are excited about that." **Such a housing and commercial development would require rezoning and an amendment to the county's General Plan — "no small feat," Mikles**

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acknowledged." *Underline and bold emphasis added.*

95. Plaintiffs allege, upon information and belief, that the funds of not less than $10,875,000 derived from the acquisition of the three Plantations, Oak Park and Barberry Notes are traceable first into the Philadelphia Transaction via SSMF and its manager SCMG's transfer of funds to MTP which allowed MIKLES, MTP, SCMG and SSMF, as co-investors, fund the Philadelphia Transaction and claim fees, commissions and profits on April 21, 2015 of $23,000,000 and then in a pre-arranged funding of $18,000,000 of that amount was rolled over as another co-investment into GCL. That co-investment within approximately one year resulted in a $13,000,000 payment for 700 of the 1,700 acres, which funds are to be traced subject to proof at the time of trial to other investments to which the COMPANY is entitled on tracing and disgorgement remedies.

96. Plaintiffs allege, upon information and belief that had PETERS, HANSON, BILLER, LAPOINT and Does 1-10 discharged his/her/their respective fiduciary duties to COMPANY, which serial breaches were ratified in August of 2011 by MIKLES, each of the Plantations, Barberry, Oak Park and Addison Notes would have yielded materially better terms including at a minimum a convertability to membership interests in each of the respective borrowers, and upon their respective defaults been promptly converted to equity or otherwise 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, or 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, Barberry Property $4,000,000 and Oak Park Property $6,900,000, for a combined $20.9 million as well as would have collected on the Addison Note $2,000,000, for a combined $22.9 million all subject to proof at the time of trial. Instead, because of the breaches of fiduciary duty to COMPANY, COMPANY received only $6 million and incurred a loss believed to be not less than $14 million, subject to proof at the time of trial.

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E. Delayed Discovery, Concealment and Financial Reporting

97. Plaintiffs brought this action within the applicable statute of limitations. Alternatively, the applicable statute of limitations was tolled during PETERS, HANSON, BILLER, LAPOINT and Does 11-20's adverse domination of COMPANY during the relevant time up to at least August 2011, MIKLES' adverse domination of COMPANY thereafter, and the concealment by Defendants of the wrongful acts as alleged herein. As to WYNFIELD himself:

a. He did not learn that the COMPANY loans to Plantations, Oak Park, Barberry and the Addison Guaranty were transactions that were adverse to COMPANY until December of 2014 when he learned that, in fact, MIKLES had converted the Plantations and Barberry notes into membership interests in the respective Plantations and Barberry membership interests and sold them to CROP. Up until that time WYNFIELD relied upon his fiduciaries, NNNRI as Manager and the Investment Committee, as they were required to do to protect the interests of COMPANY.

b. During that same time WYNFIELD continued to receive his distributions, his tax reporting and periodic reports which, until March of 2013, carried the notes at face value plus accrued interest. When, in March of 2013, incident to the Amendment and the sale to SSMF, WYNFIELD was told the transaction was the best that could be done, that the notes were not convertible to equity and that the respective properties could not be refinanced to pay off the obligations which WYNFIELD confirmed by speaking to the Plantations and Barberry asset and property manager CROP, whose Chief Executive Shaeffer confirmed those facts. In reliance on his fiduciaries WYNFIELD had no reason to further investigate and, as alleged, MIKLES, DPR, CROP and Shaeffer did not disclose that while making those very same representations of non-convertibility, MIKLES via SSMF's receipt of the Plantations and Barberry Notes, had in fact converted them to membership interests in Plantations and Barberry and in a pre-arranged transaction agreed to sell those same interests to CROP.

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c. Not until December 2014 when WYNFIELD net with CROP's sales manager Mr. Marlin who explained that CROP had acquired membership interests in Plantations and Barberry did WYNFIELD learn the statements made about not being able to convert to equity were false and he had no reason to suspect they were so convertible earlier than that date because nothing published to him included any such suggestion and MIKLES, CROP and Shaeffer told him otherwise. Not until that time did WYNFIELD learn that efforts to convert the Plantations and Barberry Notes to equity, the membership interests in Plantations and Barberry, would have been successful which conversion and equity ownership was the preferred option for COMPANY.

d. Up until the December 2014 with Mr. Marlin of CROP, WYNFIELD relied upon his discussions with MIKLES who specifically told him such a conversion could not occur and that the best option for COMPANY was to sell the Plantations and Barberry Notes to SSMF, which statements were confirmed by Shaeffer of CROP. WYNFIELD reasonably relied on MIKLES to act honestly and competently, and WYNFIELD had no reason to suspect that MIKLES, in whom WYNFIELD was entitled to trust and rely upon as a loyal fiduciary vis-a-vis NNNRI and COMPANY, was breaching his fiduciary duties and misrepresenting and omitting material facts concerning the Plantations and Barberry Notes and conversion of same to membership interests in Plantations and Barberry respectively. Moreover, WYNFIELD, at MIKLES' suggestion, called Shaeffer, an authorized officer of CROP, then managing the Plantations and Barberry Properties, who confirmed what MIKLES had told him.

e. Additionally, WYNFIELD, did not learn that the terms of the sales of the Plantations and Barberry Notes to SSMF were at 8% interest due in 36 months until July 2015 when MIKLES caused COMPANY to issue financial statements disclosing the terms of the sales. Prior to that date MIKLES told WYNFIELD the accountants needed more time to prepare the financial statements. Still further,

throughout the term of the COMPANY, NNNRI continued to make cash distributions to the members on their membership interests, continued to provide tax reporting as it had throughout from inception and continued to represent that it was doing all that it could practically do to collect on the notes.

f. WYNFIELD, did not learn of the January 2014 sale of the Oak Park Note until July 2015 when he received an accounting from COMPANY incident to disclosure during a failed tender offer by a MIKLES affiliate to buy out a majority of COMPANY members.

g. WYNFIELD did not become aware of, nor have reason to suspect, prior to July 2015 that the Oak Park Note had been sold because the Investment Committee was not asked to approve the sale nor the conflicts of interest described herein and distributions continued as had been the historical practice. WYNFIELD had no reason to suspect the Oak Park Note had been sold, and was entitled to rely upon the information being provided by COMPANY.

98. Alternatively PETERS, HANSON, BILLER, LAPOINT and Does 11-20 concealed that he/she/they had not acted as members of the Investment Committee with regard to the Plantations, Oak Park, Barberry and Addison Notes and the Addison Guaranty. Plaintiffs did not learn PETERS, HANSON, BILLER, LAPOINT and Does 11-20 had not been acting as members of the Investment Committee until this lawsuit commenced whereupon at least HANSON has maintained that he, PETERS, BILLER and LAPOINT ceased serving on the Investment Committee by not later than November 7, 2011 as each resigned from GEC. During that same time HANSON who remained President of NNNRI until November 7, 2011 as COMPANY'S Manager, yet he/NNNRI never reported to COMPANY's members about removal or substitution of members to the Investment Committee as required by COMPANY'S Operating Agreement. The Operating Agreement mandated that the Investment Committee consist of five members. PETERS, HANSON, BILLER and LAPOINT were among those identified as the initial members of COMPANY's Investment Committee who were to serve until the earlier of such member's removal or resignation and who would have effectively become independent

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members of the Investment Committee upon their resignations from GEC. No such replacements having been ever identified by HANSON/NNNRI and with the provision for compensation to Independent members, Plaintiffs reasonably believed the Investment Committee was both effective and operational until December 2014.

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

100. Commencing in April of 2014 WYNFIELD requested the financial statements of COMPANY for the year 2013 pursuant to Operating Agreement §10.2. MIKLES responded that the accountants needed more time and the statements would be provided as soon as available.

101. MIKLES did not provide the COMPANY financial statements for 2013 by March 31, 2014 because as he explained more time was required but did provide the members K-1 reports for tax purposes.

102. COMPANY financial statements were not provided until July 2015 when the 2014 financial statements were provided and therein MIKLES first disclosed three SSMF notes exchanged for the Plantations, Barberry and Oak Park Notes totaling $5,775,000 payable at 8% interest for 36 months.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

WYNFIELD as Liquidating Trustee for COMPANY

Against Defendants and Does 1-40 Except GCL

103. WYNFIELD, solely in his capacity as Liquidating Trustee of COMPANY repeats and incorporates herein by reference the allegations in the preceding paragraphs of this

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complaint, as if set forth fully herein. References to "Plaintiffs" in this Cause of Action are solely to WYNFIELD in his capacity as Liquidating Trustee for COMPANY and not derivatively on behalf of COMPANY.

104. Plaintiffs bring this cause of action against all Defendants and Does 1-40 except GCL.

105. Upon information and belief, NNNRI did not prior to its resignation:

a. File the Federal tax returns with the Internal Revenue Service.

b. File California income tax returns with California's Franchise Tax Board ("FTB").

c. File Annual Reports with the California Secretary of State.

d. File with California the Secretary of State that COMPANY was no longer doing business in the State of California.

106. Further, the failure to file the California income tax returns has resulted in a massive non-filing FTB penalty based upon the 300+ Schedules K-1 that presently amounts to in excess of $300,000 which is due to reinstate COMPANY with the State of California. This non-filing penalty is notwithstanding that COMPANY returns are those of a partnership for taxation purposes as a passthrough entity with no income tax at the entity level.

107. NNNRI failed to file tax returns and reports despite WYNFIELD's request. NNNRI and its affiliates, also controlled by MIKLES, retain all of the COMPANY's books and records and have refused to turn them over to WYNFIELD despite WYNFIELD's request. WYNFIELD, as liquidating trustee, lacks full and complete information and is thus unable to make the necessary filings, and even if he could make the necessary filings COMPANY is unable to pay the penalty amounts due and owing (no income taxes) because of the misconduct alleged herein.

108. The non-filing of the California tax return and notice that business had been discontinued were part of a deliberate scheme by NNNRI and MIKLES so that such an FTB penalty would be imposed and a suspension triggered so that the position could be taken COMPANY could not file suit against defendants.

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109. As members of the Investment Committee, the Committee Defendants including PETERS, HANSON, BILLER, LAPOINT and Does 11-20, and each of them, owed fiduciary duties of care and loyalty to COMPANY including, without limitation, the duty to act in the highest good faith to COMPANY and not obtain any advantage over COMPANY, and to among other things, refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

110. COMPANY reposed trust and confidence in and reliance upon PETERS, HANSON, BILLER, LAPOINT and Does 11-20 and each of them, as its fiduciaries to act in the highest good faith to it and not to obtain any advantage over it, and to among other things, refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

111. Notwithstanding Operating Agreement §6.11.4, PETERS, HANSON, BILLER, LAPOINT and Does 11-20 approved:

a. Loans of COMPANY funds to Plantations, Oak Park, Barberry and Addison Borrowers evidenced by the Plantations, Oak Park, Barberry and Addison Notes described above.

b. Approved the Addison loan with a limited guaranty from NNNRI, the Addison Guaranty, with a $1,000,000 limitation which was commercially unreasonable, a conflict of interest, inadequate and a breach of duty.

c. The sale of the Plantations, Oak Park and Barberry Notes, as above described, to SSMF including with terms adverse to COMPANY.

112. The Plantations, Oak Park, Barberry and Addison COMPANY loans along with the Addison Guaranty and the later Plantations, Oak Park and Barberry Note sales to SSMF, were made and approved by PETERS, HANSON, BILLER, LAPOINT and Does 11-20 in a manner not justified by the business judgment rule, were not commercially reasonable, were far more favorable than each of the borrowers and SSMF as purchaser/borrower could obtain in the market, were unsecured, made without conflicts of interest being resolved which were unresolvable, were made at rates and terms not justified by the risk undertaken in the

market-place, and adverse to the interests of COMPANY, made in breach of fiduciary duties for the purposes of advancing the hostile and adverse interests of PETERS, HANSON, BILLER, LAPOINT and Does 11-20 in order to continue and support the tenant in common and property management business and thereafter protect MIKLES as purchaser of Daymark by making said loans to advance their conflicted interests in order to generate more tenant in common sales and commissions and management fees, against the interests of COMPANY and as to the later Plantations, Oak Park and Barberry Note sales to SSMF preferred the interests of MIKLES and the Entity Defendants over that of COMPANY in order to aid his purchase of Daymark and its post-closing operations.

113. As detailed herein, the process culminating in PETERS, HANSON, BILLER, LAPOINT and Does 11-20's authorization of the Plantations, Oak Park, Barberry and Addison COMPANY loans, including the Addison Guaranty, and as to the later Plantations, Oak Park and Barberry Note sales to SSMF, were fatally flawed and heavily conflicted, and the loans and the later sales/loans were not the product of a valid exercise of business judgment. Among other problems:

a. The loans and later sales preferred the interests of the borrowers and purchasers against that of the COMPANY, as lender and seller, and were approved with unfair deal terms.

b. At the time the initial loans were made prior to August of 2011 the majority of the Committee Defendants were also agents and officers in control of each of the borrowers such that the loan terms were effectively set by the borrowers with terms that were unfair to COMPANY.

c. Later, at the time the note sales were made to SSMF, the Committee Defendants preferred the interests of MIKLES and SSMF such that the sale terms, including the carry-back notes, were effectively set by the purchaser/borrower with terms that were unfair to COMPANY.

d. Until August of 2011, the Investment Committee, by its reports to members, continued to carry the loans at the original loan amounts with accrued interest

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through March of 2013, attributing the lack of payments thereon to be the result of the economy and not the unfavorable loan terms foisted upon COMPANY.

e. The Investment Committee relied on the guidance and instruction of and preferred the interests of the conflicted mangers of NNNRI, DPR, MIKLES, SSMF and its/their officers and directors which persons also were simultaneously employed by and working for the borrowers and with the later sale of the three notes the purchaser/borrower SSMF.

f. The Investment Committee never sought a fairness opinion of any of the loan terms while making loans to borrowers nor at the time of the sale of the notes to SSMF with the carry-back financing.

g. The original loans should have but did not include, at a minimum, a convertability option to convert a defaulted loan to membership interests in the borrower entity and in turn an ownership interest in the respective borrower.

h. The Investment Committee approved each of the loans despite knowledge that each loan was unfair from the perspective of the COMPANY. The terms of the Plantations, Barberry, Oak Park and Addison COMPANY loans, including the Addison Guaranty, were so unfavorable to COMPANY that each was beyond the bounds of reasonable judgment and inexplicable on any ground other than bad faith.

i. The Investment Committee approved each of the Plantations, Oak Park and Barberry note sales to SSMF with carry-back financing despite knowledge that each sale and loan was unfair from the perspective of the COMPANY, were each and all unfavorable to COMPANY, beyond the bounds of reasonable judgment and inexplicable on any ground other than bad faith.

114. Plaintiffs allege, upon information and belief, that as of February of 2011 each of the Plantations, Barberry, Oak Park and Addison Notes were all in material default, and as of and from January 1, 2009, PETERS, HANSON, BILLER and LAPOINT, jointly and severally, as fiduciaries, were obligated to have caused NNNRI to promptly initiate and pursue, or pursue

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derivatively on behalf of NNNRI, or disclose to the members that they had not done so, collection efforts to take a judgment against the respective note makers, Plantations, Barberry, Oak Park and Addison Borrowers, to secure a judgment thereon and to lien the assets owned by each such obligor specifically the respective Plantations, Barberry, Oak Park and Addison Properties, the interests of which in the underlying properties were owned by the respective note makers or obligors, and to negotiate a conversion of the note to membership interests in the respective borrower.

115. Plaintiffs allege, upon information and belief, that PETERS, HANSON, BILLER and LAPOINT, jointly and severally, breached their fiduciary duty to COMPANY by failing to promptly and timely pursue collection of the Plantations, Barberry, Oak Park and Addison Notes prior to March 28, 2013 and thereby conversion to equity in the form of membership interests in the respective borrower.

116. Alternatively, upon information and belief, PETERS, HANSON, BILLER, LAPOINT and Does 11-20, as designated members of the Investment Committee, never acted at all, never approved any loans, never approved the note sales and carry-back terms to SSMF, never reviewed or resolved conflicts of interest and instead allowed COMPANY funds and assets to be used at the discretion of the Manager NNNRI which, in turn, preferred the interests of the borrowers over that of the COMPANY and as for the note sales to SSMF preferred the interests of MIKLES, SSMF and MTP over the COMPANY. Moreover, PETERS, HANSON, BILLER, LAPOINT and Does 11-20 never disclosed to COMPANY and its members that he/she/they were not in fact acting as members of the Investment Committee, instead concealing such inaction wrongfully from COMPANY and its members.

117. Plaintiffs allege, upon information and belief, that MIKLES, who in due diligence learned in detail of the aforedescribed breaches yet stepped into the role of fiduciary as director, officer and control person of NNNRI as Manager 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 PETERS, HANSON, BILLER, LAPOINT and Does 11-20, nor did he take action against them as members of the Investment Committee, nor did he

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initiate immediate collection of the Plantations, Barberry, Oak Park and/or Addison Notes, nor pursue the Addison Guaranty against NNNRI for the benefit of COMPANY.

118. MIKLES' sale of the Plantations, Barberry and Oak Park Notes to SSMF in exchange for the SSMF notes required Investment Committee approval pursuant to:

a. Operating Agreement §6.3 limited NNNRI's authority as manager at §6.3.1 to "... subject to the Investments Committee's authority under Section 6.11 acquire, hold, monitor, mortgage, pledge, **sell, exchange and otherwise dispose of** [the Plantations, Barberry and Oak Park Notes as] **any Investment**." *Bold emphasis added*;

b. §6.11.4(ii) to cause COMPANY to take the SSMF Notes as "prospective investments"; and

c. §6.11.4(v) take other action requiring approval here at §6.3.1.

119. Upon information and belief MIKLES either obtained approval of the Plantations, Oak Park and Barberry Notes sale to SSMF with carry-back financing from PETERS, HANSON, BILLER, LAPOINT and Does 11-20 as members of the Investment Committee, or with knowledge of the fact he/she/they were not and had not acted as an Investment Committee, simply proceeded with the sale and related terms without such required approval in breach of his concurrent duties as control person of NNNRI, the Manager of COMPANY, and thereby in breach of such duties.

120. MIKLES' sale, while in control of COMPANY through Manager NNNRI and DPR, of the Plantations, Barberry and Oak Park Notes with aggregate principal balances of $10.4 million and accrued interest of approximately $7.9 million, a combined $18.3 million, payable in exchange for an unsecured promissory note from SSMF for a deeply discounted and unwarranted $5,775,000 was a breach of fiduciary duty in that COMPANY should have, as described below, itself converted the notes to membership interests in the respective borrowers.

121. Plaintiffs allege, upon information and belief, that had PETERS, HANSON, BILLER, LAPOINT and Does 11-20 as members of the Investment Committee discharged his/her/their respective fiduciary duties to COMPANY, which serial breaches were ratified in

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August of 2011 by MIKLES on behalf of Manager NNNRI, each of the Plantations, Barberry, Oak Park and Addison Notes would have yielded materially better terms including, at a minimum, a convertability to membership interests in each of the respective borrowers, and upon their respective defaults been promptly converted to equity or otherwise 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, or 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, Barberry Property $4,000,000, the foregoing based upon market rate capitalized net operating income, and Oak Park Property $6,900,000, based upon comparable market sales data, for a combined $20.9 million as well as would have collected on the Addison Note $2,000,000, for a combined $22.9 million all subject to proof at the time of trial. Instead, because of the breaches of fiduciary duty to COMPANY, COMPANY received only $6 million and incurred a loss alleged to be $18.9 million, subject to proof at the time of trial.

122. As a direct and proximate result of PETERS, HANSON, BILLER, LAPOINT and Does 11-20 acting or failing to act as members of the Investment Committee and MIKLES' and NNNRI's breaches of fiduciary duties as Manager of COMPANY as above described, Plaintiffs were damaged by the loss of the corporate opportunity to convert each of the notes to equity and thereby collect the full amount of the Plantations, Barberry, Oak Park and Addison Notes and/or to hold a direct interest in the Plantations, Barberry, Oak Park and Addison Properties or an indirect interest by conversion of the notes to membership interests in the respective borrowers, all in an amount according to proof at trial but well in excess of the jurisdictional minimum of this court.

123. NNNRI, as COMPANY's Manager, and MIKLES, as NNNRI's agent and control person, owed fiduciary duties to COMPANY including, without limitation, the duty to act in the highest good faith toward their principal, COMPANY, and not obtain any advantage over COMPANY, and to refrain from engaging in grossly negligent or reckless conduct, intentional

misconduct, or a knowing violation of the law. Each were required to make full and complete disclosure of all material facts that might influence COMPANY's decision to enter into a transaction.

124. COMPANY reposed trust and confidence in and reliance upon NNNRI and MIKLES, and each of them, as its fiduciaries to act in the highest good faith to it and not to obtain any advantage over it, and to among other things, refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

125. NNNRI and MIKLES, its agent and control person, breached its/his/their duties to COMPANY by, among other things, entering into the self-serving Plantations, Oak Park and Barberry Note sale transactions without full disclosure of all material facts, as well as expending $1,323,414 of COMPANY funds for MIKLES' attorneys fees, management fees, and transferring NNNRI assets (contracts and receivables) to SSMF, SCMG and MTP without adequate consideration, rendering NNNRI unable to pay the $1,000,000 Addison Guaranty, all contrary to "6.4 Restrictions on Manager's Authority. The Manager shall have no authority to: 6.4.1. Use or permit any other person to use Company funds or assets in any manner except for the exclusive benefit of Company..." See Exhibit "A" Operating Agreement Complaint Exhibits page 81. Moreover, the exercise of discretionary authority by NNNRI and its agent MIKLES per §§ 6.1 and 6.3 required as a matter of law that the same be exercised without conflict and not in a self serving manner.

126. MIKLES is either directly liable as alter ego of NNNRI or vicariously liable for NNNRI's breach of duty to COMPANY acting in the capacity of NNNRI's agent in the negotiations with SSMF with knowledge that his acts were wrongful in their nature. MIKLES aided and abetted NNNRI's and the Committee Defendants' breaches of fiduciary duty. MIKLES knowingly gave substantial assistance and encouragement to NNNRI as Manager of COMPANY and the Committee Defendants to commit their breaches of fiduciary duty described herein, and knew that NNNRI's and Committee Defendants' conduct constituted and would constitute breaches of fiduciary duty. MIKLES had actual knowledge that the Plantations, Barberry and Oak Park Note sales to SSMF were irreconcilable conflicts of interest, were ultra

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vires, were not properly approved by the Investment Committee, were based upon false statements and were at terms unfavorable to COMPANY in breach of NNNRI and MIKLES' fiduciary duties to COMPANY. MIKLES had actual knowledge of the foregoing wrongful conduct and that the self-serving transactions were wrongful in their nature. MIKLES substantially assisted and gave encouragement to NNNRI's and Committee Defendants' breach of fiduciary duties owed COMPANY by directly participating in the purchase of the Plantations, Oak Park and Barberry Notes for his own personal gain, specifically, for the Plantations and Barberry conversion to membership interests and sale to CROP, and for Oak Park either collection in full or conversion to membership interests, for the sale four months later, all of which funds MIKLES directed that SSMF transfer to MTP which funded the Philadelphia Transaction, where he, SSMF, SCMG and MTP stood to receive substantial interest payments and a profits participation on the sale of the Philadelphia property, which he would co-invest with SSMF, SCMG and MTP in the to be formed GCL as its promoters. At all relevant times MIKLES knew of the conduct of NNNRI's and Committee Defendants as described herein, knew that it would occur and that it was wrongful.

127. MIKLES is responsible for the harm Plaintiffs suffered as a result of providing substantial assistance to the known breaches of fiduciary duty and because he orchestrated a conspiracy to breach fiduciary duties to COMPANY to usurp COMPANY's corporate opportunities to formally convert the Plantations, Barberry and Oak Park Notes to membership interests in the borrowers and hold the interests for investment, by failing to disclose all material facts, including without limitation the corporate opportunity of collectability and convertibility, and misrepresenting those facts. MIKLES orchestrated this conspiracy in order to fund the Philadelphia Transaction and thereby preferred the interests of DPR, SSMF, SCMG, MTP and GCL (as its promoters) in order to reap millions in profits, fees and commissions for himself/itself/themselves which were not obtainable other than through participation in the conspiracy.

128. DPR owed fiduciary duties to COMPANY as the asset and property manager, under the Properties' property management agreements earning fees and commissions for

disposition of the asset, knowingly treating and accepting COMPANY's demand that it was the de facto owner of the Plantations, Barberry and Oak Park TIC 0s' tenant in common interests. DPR thereby owed fiduciary duties to COMPANY including, without limitation, the duty to act in the highest good faith towards its principal, COMPANY, and not obtain any advantage over COMPANY, and to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of the law. DRP was required to make full and complete disclosure of all material facts that might influence COMPANY's decision to enter into a transaction.

129. COMPANY reposed trust and confidence in and reliance upon DPR, as its fiduciary, to act in the highest good faith to it and not to obtain any advantage over it, and to among other things, refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

130. DPR breached its duties to COMPANY in connection with the sale of the Plantations, Barberry and Oak Park Notes to SSMF by, among other things, failing to notify COMPANY was entering into the self-serving note sale transactions without full disclosure of all material facts including the collectability and convertibility of the Plantations, Barberry and Oak Park Notes as well as the substantial buyer interests in the Plantations and Barberry membership interests, and buyers for the Oak Park Property that would have enabled the Oak Park Note to be paid in full along with the first mortgage loan balance with a profit to the Oak Park Property owners.

131. As a direct and proximate result of DPR's breach of fiduciary duty, as asset and property manager of the Plantation, Barberry and Oak Park Properties under the property management agreements earning fees and commissions for disposition of the assets, due and owing to COMPANY as the recognized and de facto owner of the TIC 0s' tenant in common interests, Plaintiffs were damaged by the loss of the corporate opportunities to formally convert the Plantations, Barberry and Oak Park Notes to membership interests in the borrowers and hold the interests for investment and realize profits, all in an amount according to proof at trial but well in excess of the jurisdictional minimum of this court.

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132. DPR aided and abetted NNNRI and MIKLES' breaches of fiduciary duty. MIKLES, whose knowledge is imputed to DPR as its agent, had actual knowledge that the Plantations, Barberry and Oak Park Note sales to SSMF were an usurpation of COMPANY's corporate opportunities, and irreconcilable conflicts of interest, were not properly approved by the as structured Investment Committee, were based upon concealed material information and false statements and were at terms unfavorable to COMPANY, all in breach of NNNRI and MIKLES' fiduciary duties to COMPANY. MIKLES, as agent of DPR, had actual knowledge of the foregoing wrongful conduct and that the self-serving transactions were wrongful in their nature. As a result of DPR's relationship as the asset and property manager to COMPANY as the recognized and de facto owner of the TIC 0s' tenant in common interests, DPR had a duty to disclose to COMPANY the collectability and convertibility of the Plantations, Barberry and Oak Park Notes as well as the substantial buyer interests in the Plantations and Barberry membership interests and buyers for the Oak Park Property. DPR substantially assisted NNNRI and MIKLES' breaches of fiduciary duty by failing to disclose this material information to COMPANY. Had DPR disclosed this material information to COMPANY, as it was obligated to do, COMPANY would have retained the notes and exercised its own corporate opportunities. At all relevant times DPR knew of the conduct of MIKLES and NNNRI as described herein, knew that it would occur and that it was wrongful.

133. SSMF and SCMG aided and abetted NNNRI and MIKLES' breaches of fiduciary duty. MIKLES whose knowledge is imputed to SSMF and SCMG as their agent, had actual knowledge that the Plantations, Barberry and Oak Park Note sales to SSMF were an usurpation of COMPANY's corporate opportunities, and irreconcilable conflicts of interest, were not properly approved by the as structured Investment Committee, were based upon concealed material information and false statements and were at terms unfavorable to COMPANY, all in breach of NNNRI and MIKLES' fiduciary duties to COMPANY. Mikles usurped the corporate opportunities related to the Plantations, Barberry and Oak Park Note as agent of SSMF, which in turn acted as an agent of SCMG, whose acts were within the scope of MIKLES employment and in performance of services on behalf of SSMF and SCMG by obtaining funds for use in funding

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the Beneficial Bank Lease in March 203 followed y the additional January and August 2014 funding of the recapitalization of the Philadelphia Transaction. Through Mikles, SSMF and SCMG substantially assisted NNNRI and MIKLES' breaches of fiduciary duty by acting as the manager of SSMF at the direction of MIKLES. SSMF substantially assisted and gave encouragement to MIKLES and NNNRI's breach of fiduciary duties owed COMPANY by directly participating in the purchase of the Plantations, Oak Park and Barberry Notes for its own personal gain, specifically, for the Plantations and Barberry conversion to membership interests and sale to CROP, and for Oak Park collection in full on the sale of the property four months later, all of which funds SSMF transferred to MTP to fund the Philadelphia Transaction. At all relevant times SSMF and SCMG knew of the conduct of MIKLES and NNNRI as described herein, knew that it would occur and that it was wrongful.

134. SSMF and SCMG are responsible for the harm Plaintiffs suffered as a result of providing substantial assistance to the known breaches of fiduciary duty because SSMF and SCMG were part of a conspiracy to breach fiduciary duties to COMPANY to usurp COMPANY's corporate opportunities to formally convert the Plantations, Barberry and Oak Park Notes to membership interests in the borrowers and hold the interests for investment, by failing to disclose all material facts, including without limitation the corporate opportunity of collectability and convertibility, and misrepresenting those facts, to make use of COMPANY's assets to fund the Philadelphia Transaction. SSMF and SCMG were aware that MIKLES and NNNRI planned to breach fiduciary duties and that COMPANY would not be informed of the same. SSMF and SCMG agreed with MIKLES and NNNRI and intended that the COMPANY not be informed of the breaches. SSMF and SCMG cooperated in this conspiracy by SCMG, as SSMF's manager, directing SSMF to take possession of the Plantations, Barberry and Oak Park Notes and converting the notes to cash and transferring to MTP to fund the Philadelphia Transaction.

135. MTP aided and abetted NNNRI and MIKLES' breaches of fiduciary duty. MIKLES whose knowledge is imputed to MTP as its agent, had actual knowledge that the Plantations, Barberry and Oak Park Note sales to SSMF were an usurpation of COMPANY's

corporate opportunities, and irreconcilable conflicts of interest, were not properly approved by the as structured Investment Committee, were based upon concealed material information and false statements and were at terms unfavorable to COMPANY, all in breach of NNNRI and MIKLES' fiduciary duties to COMPANY. Mikles as agent of SSMF, SSMF as an agent of SCMG, SCMG as an agent of MTP usurped the corporate opportunities related to the Plantations, Barberry and Oak Park Note which acts were within the scope of MIKLES employment and in performance of services on behalf of SSMF, SCMG and MTP by obtaining funds for use in funding the Beneficial Bank Lease in March 2013 followed by the additional January and August 2014 funding of the recapitalization of the Philadelphia Transaction. Through Mikles, SSMF and SCMG, MTP substantially assisted and gave encouragement to MIKLES and NNNRI's breach of fiduciary duties owed COMPANY by directly participating in the purchase of the Plantations, Oak Park and Barberry Notes for its own personal gain, specifically, as receiving the funds from SSMF and MIKLES, then investing those funds on behalf of itself, SSMF and MIKLES in the Philadelphia Transaction. At all relevant times MTP knew of the conduct of MIKLES and NNNRI as described herein, knew that it would occur and that it was wrongful.

136. MTP is responsible for the harm Plaintiffs suffered as a result of providing substantial assistance to the known breaches of fiduciary duty because MTP was part of a conspiracy to breach fiduciary duties to COMPANY to usurp COMPANY's corporate opportunities to formally convert the Plantations, Barberry and Oak Park Notes to membership interests in the borrowers and hold the interests for investment, by failing to disclose all material facts, including without limitation the corporate opportunity of collectability and convertibility, and misrepresenting those facts, to make use of COMPANY's assets to fund the Philadelphia Transaction. MTP was aware that MIKLES and NNNRI planned to breach fiduciary duties and that COMPANY would not be informed of the same. MTP agreed with MIKLES and NNNRI and intended that the COMPANY not be informed of the breaches. MTP cooperated in this conspiracy because in doing so it received substantial funds from SSMF and MIKLES, then invested those funds on behalf of itself, SSMF and MIKLES in the Philadelphia Transaction

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which were not obtainable other than through participation in the conspiracy.

137. As a direct and proximate result of PETERS, HANSON, BILLER, LAPOINT and Does 11-20's breaches as aided and abetted by MIKLES, as agent of NNNRI , as set forth herein, COMPANY has suffered damages in amount to be determined according to proof at the time of trial.

138. As a direct and proximate result of NNNRI's and MIKLES' breaches as aided and abetted by PETERS, HANSON, BILLER, LAPOINT, MIKLES, SSMF, SCMG, MTP and Does 1-40 as set forth herein, COMPANY has suffered damages in amount to be determined according to proof at the time of trial.

139. Separately, MIKLES further breached fiduciary duties to COMPANY when he:

a. Wrongly used $1,323,414 of COMPANY funds for, as reflected in the November 2015 financial statements, unauthorized management fees and legal fees and reserves which were for his individual legal fees and costs not properly chargeable to COMPANY, and asset management fees to which he was not entitled.

b. Wrongly diverted assets and capitalization from NNNRI such that it would be unable to pay the $1,000,000 Addison Guaranty.

140. Because the conduct of the Defendants and Does 1-40 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 CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY - DERIVATIVE

WYNFIELD derivatively for COMPANY Against Defendants and Does 1-40 Except GCL

141. WYNFIELD, only in the event he somehow lacks capacity as Liquidating Trustee of COMPANY, repeats and incorporates herein by reference the allegations in the preceding paragraphs of this complaint, as if set forth fully herein. References to "Plaintiffs" in this Cause of Action are solely in WYNFIELD derivatively on behalf of COMPANY.

142. Except as otherwise inconsistent with the allegations in this cause of action, Plaintiffs repeat and incorporate herein by reference the allegations in the preceding paragraphs

of this complaint as if set forth fully herein.

143. Plaintiffs bring this cause of action against all Defendants and Does 1-40 except GCL.

144. Demand to COMPANY's Manager NNNRI to bring this action would be futile. COMPANY'S manager, NNNRI, was deemed resigned from its position as manager having filed an insolvency proceeding in Florida in August 2015. Thus NNNRI has no authority to bring the instant action on behalf of the COMPANY.

145. No successor manager has been elected by the members of COMPANY.

146. The COMPANY has been by its terms dissolved as of April 23, 2013 or October 31, 2015 at the latest.

147. Further, the breaches of fiduciary duty were carried out by MIKLES and NNNRI as described in the First Cause of Action usurping COMPANY's business opportunities and using assets for the Defendants without compliance with the Operating Agreement and Amendment if the same was in fact adopted by the requisite two-thirds majority. Demand to bring this suit would be futile as NNNRI, MIKLES and Committee Defendants would not direct COMPANY to assert claims against itself/himself/herself/themselves and the aiders and abettors and coconspirators as described above.

148. Additionally MIKLES, in taking control of NNNRI, and thereby the management of COMPANY in August 2011, had knowledge of the wrongful acts and omissions of the PETERS, HANSON, BILLER, LAPOINT and Does 1-10, and rather than bringing an action against them agreed to continue to conceal the same with their agreement, knowledge and consent.

THIRD CAUSE OF ACTION

FRAUDULENT TRANSFER

WYNFIELD as Liquidating Trustee for COMPANY

Against MIKLES, SSMF, MTP, GCL and Does 1-40

149. WYNFIELD, solely in his capacity as Liquidating Trustee of COMPANY repeats and incorporates herein by reference the allegations in the preceding paragraphs of this

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complaint, as if set forth fully herein. References to "Plaintiffs" in this Cause of Action are solely to WYNFIELD in his capacity as Liquidating Trustee for COMPANY and not derivatively on behalf of COMPANY.

150. Plaintiffs bring this cause of action against MIKLES, SSMF, MTP, GCL and Does 1-40.

151. At all times relevant, Plaintiffs a claim against SSMF and MIKLES arising from their participation in breach of fiduciary duties owed to Plaintiffs as alleged above.

152. Through its agent MIKLES, MTP took the funds of not less than $10,875,000 from SSMF, derived from SSMF's acquisition of the Plantations, Barberry and Oak Park Notes, without consideration of reasonably equivalent value and with the knowledge of Plaintiffs' right to payment from SSMF and MIKLES which arises from SSMF's and MIKLES' breach of fiduciary duties owed to Plaintiffs as alleged in the First Cause of Action. The transfer of not less than $10,875,000 from SSMF to MTP was an indirect transfer by MIKLES done for the benefit of MIKLES to accomplish the purpose of preserving MIKLES' control of the funds and using MTP's bare legal title over the funds to shield MIKLES from his creditors. With said knowledge, MTP's receipt of funds from SSMF was not in good faith. Thus, Plaintiffs have a right of payment against MTP to the extent of funds it received from SSMF.

153. At the direction of MIKLES, MTP transferred $18,000,000 to GCL. The transfer of $18,000,000 was made without return to MTP of anything of reasonably equivalent value and with the knowledge of Plaintiffs' right to payment from SSMF and MIKLES which arises from SSMF's and MIKLES' breach of fiduciary duties owed to Plaintiffs as alleged in the First Cause of Action. The $18,000,000 transfer from MTP to GCL was an indirect transfer by MIKLES done for the benefit of MIKLES to accomplish the purpose of preserving MIKLES' control of the funds and using GCL's bare legal title over the funds to shield MIKLES from his creditors.

154. On information and belief, MTP's transfer of $18,000,000 to GCL was made with the specific intent of hindering, delaying and defrauding creditors of MTP, including Plaintiffs. The circumstances surrounding MTP's transfer of $18,000,000 to GCL that illustrate MTP's intent include, but are not limited to, (1) the transfer was made to an insider as GCL is an affiliate

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entity under the common control of MIKLES; (2) MTP retains control over the transferred funds through its agent MIKLES; (3) in exchange for the transfer, MTP did not receive consideration of reasonably equivalent value; (4) the $18,000,000 transfer from MTP to GCL was made after the above breach of fiduciary occurred; (5) the $18,000,000 transfer was made without disclosure to Plaintiffs; and (6) the $18,000,0000 transfer made MTP insolvent.

155. At the time of the $18,000,000 transfer, Plaintiffs had a claim against MTP and MIKLES.

156. The purpose of MTP's transfer to GCL was to place the monies received from SSMF, which Plaintiffs had right of payment against, beyond the reach of its creditors including Plaintiffs.

157. As a result of the $18,000,000 transfer from MTP to GCL MTP became insolvent.

158. Plaintiffs have been harmed by the $18,000,000 transfer being unable to recover its claim for breach of fiduciary duty against SSMF and MIKLES due to the fraudulent transfer from SSMF to MTP and subsequent fraudulent transfer of $18,000,000 from MTP to GCL.

159. The transfers of not less than $10,875,000 to MTP and $18,000,000 to GCL were each a substantial factor in causing Plaintiffs' harm.

160. As a direct and proximate cause of these defendants' misconduct, Plaintiffs have been damaged in an amount to be determined, according to proof at trial.

FOURTH CAUSE OF ACTION

FRAUDULENT TRANSFER

WYNFIELD derivatively for COMPANY

Against MIKLES, SSMF, MTP, GCL and Does 1-40

161. WYNFIELD, only in the event he somehow lacks capacity as Liquidating Trustee of COMPANY, repeats and incorporates herein by reference the allegations in the preceding paragraphs of this complaint, as if set forth fully herein. References to "Plaintiffs" in this Cause of Action are solely in WYNFIELD derivatively on behalf of COMPANY.

162. Plaintiffs restate the Third Cause of Action as a derivative claim against MIKLES, SSMF, MTP, GCL and Does 1-40.

163. Demand to COMPANY's Manager NNNRI to bring this action would be futile. COMPANY'S manager, NNNRI resigned from its position as manager having filed an insolvency proceeding in Florida in August 2015. Thus NNNRI has no authority to bring the instant action on behalf of the COMPANY.

164. No successor manager has been elected by the members of COMPANY.

165. The COMPANY has been by its terms dissolved as of April 23, 2013 or October 31, 2015 at the latest.

166. Further, the fraudulent transfers were carried out by these defendants as described in the Third Cause of Action. Demand to bring this suit would be futile as NNNRI and MIKLES would not direct COMPANY to assert a fraudulent transfer claim against MIKLES and his affiliates.

V.

JURY TRIAL DEMAND

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

VI.

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 appreciation damages according to proof.

3. For disgorgement of profits according to proof.

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' interests and funds.

7. For exemplary and punitive damages according to proof.

8. For compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures suffered or incurred under the "tort of another" doctrine as required to act in

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the protection of PLAINTIFFS' interests by bringing this action in accordance with *Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Ca1.2d 618; *Electrical Electronic Control, Inc. v. Los Angeles Unified School Dist.* (2005) 126 Cal.App.4th 601.

9. For costs of suit incurred.

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.

DATED: July 16, 2018.

CATANZARITE LAW CORPORATION

By: _____
Kenneth J. Catanzarite
Eric V. Anderton
Attorneys for Plaintiffs

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TABLE OF EXHIBITS

Page

Exhibit "A" - Limited Liability Company Agreement of Grubb & Ellis Capital Fund I, LLC . . . . . 1.

Exhibit "B" - Amendment No. 1 to Limited Liability Company Agreement of Grubb & Ellis Capital Fund I, LLC . . . . . 32.

Exhibit "C" - Guaranty Agreement by Grubb & Ellis Realty Investors, LLC in favor of Grubb & Ellis Capital Fund I, LLC . . . . . 37.

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EXHIBIT "A"

EXHIBIT A

LIMITED LIABILITY COMPANY AGREEMENT
OF
GRUBB & ELLIS CAPITAL FUND I, LLC

This Limited Liability Company Agreement is entered into by and among Grubb & Ellis Realty Investors, LLC, a Virginia limited liability company, as the Manager, Grubb & Ellis Realty Investors, LLC, as the Initial Member, and the other Members of the Company, and shall be valid and binding with respect to such Persons, as well as such other Persons as may be admitted as Members of the Company from time to time hereafter, in accordance with the Act and on the following terms and conditions.

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

1. Organization.

1.1. Formation and Authorized Person. The Certificate of Formation has been filed with the Secretary of State of the State of Delaware in accordance with and pursuant to the Act. Stephanie Joyce is hereby designated an "authorized person," within the meaning of the Act, and has executed, delivered and filed the Certificate of Formation of the Company with the Secretary of State of the State of Delaware, and is hereby authorized to execute, deliver and file any other certificates (and any amendments and/or restatements thereof) necessary or desirable for the Company to qualify to do business in any other jurisdiction in which the Company may wish to conduct business (the "Qualification Papers"). The execution, delivery and filing of the Qualification Papers by Stephanie Joyce, as an "authorized person" within the meaning of the Act, is hereby approved and ratified in all respects. Upon the filing of all of the Qualification Papers, her powers as an authorized person ceased, and the Manager thereupon became the designated "authorized person" of the Company.

1.2. Name and Place of Business. The name of the Company shall be Grubb & Ellis Capital Fund I, LLC, and its principal place of business shall be 1551 N. Tustin Avenue, Suite 300, Santa Ana, California 92705. The Manager may change such name, change such place of business or establish additional places of business of the Company as the Manager may determine to be necessary or desirable.

1.3. Business and Purpose.

1.3.1. In General. The purposes of the Company are to, directly or indirectly, (a) make Investments employing the investment strategies described in the Memorandum, subject to the investment limitations specified in Section 6.5 hereof and (b) engage in activities related or incidental thereof.

1.3.2. Specific Powers. In furtherance of the foregoing, the Company is authorized:

(a) to make purchase, hold, trade, sell and exchange Investments in the form of real estate-related mezzanine loans, whether or not secured, mortgage loans, real estate-related bridge loans and other real estate financing and to make, purchase, hold, trade, sell, exchange and liquidate Investments in the form of 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. The Company is further authorized: (i) to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to loans or securities held by the Company, including, without limitation, voting rights, and (ii) pending the making of Investments or pending the Distribution of any proceeds of an Investment to Members, to make Temporary Investments.

(b) to enter into, make and perform, all contracts and other undertakings, and to engage in all activities and transactions, as the Manager, in its sole discretion, may deem necessary or advisable to the carrying out of the foregoing objectives and purposes and to increase the value of the Company's assets.

1.4. Term. The term of the Company shall commence on the effectiveness of the Certificate of Formation and shall continue until the Company dissolved and liquidated in accordance with Section 12 of this Agreement.

1.5. Required Filings. The Manager shall execute, acknowledge, file, record and/or publish such certificates and documents, as may be required by this Agreement or by law in connection with the formation and operation of the Company.

1.6. Registered Office and Registered Agent. The Company's initial registered office and initial registered agent shall be as provided in the Certificate of Formation. The registered office and registered agent may be changed from time to time by the Manager by filing the address of the new registered office and/or the name of the new registered agent pursuant to the Act.

1.7. Outside Activities.

1.7.1. Personal Investments and Other Activities. Except as otherwise specifically provided in this Agreement, there shall be no restrictions on the personal investment or other activities of the Manager or the Members. The Manager and its Affiliates may receive compensation and fees from lenders, borrowers and investment entities with which the Company does business, and may receive distributions, compensation and fees from entities in which the Company invests, including a co-investment or joint venture arrangement with the Manager or its Affiliates.

1.7.2. Non-Participation. The relationship hereby established among the Company, the Members and the Manager shall not entitle the Company or any Member to participate in or to receive the benefits of any other activity, business or ventures of any other Member, the Manager or any of their respective Affiliates.

1.7.3. Competitive Activities. Except as expressly set forth elsewhere herein, neither the Manager nor any Member shall be prevented from engaging in any activities that are competitive with those of the Company or the Investments.

1.7.4. Board Activity. In no event shall any provision of this Agreement be interpreted as preventing, or limiting in any respect, the Manager or any Affiliate from taking an active role in or receiving compensation for serving on the board of directors, investment committee or other governing or advisory body of any entity.

2. Capitalization and Financing.

2.1. Members' Capital Contributions.

2.1.1. Initial Member. The Initial Member shall contribute the sum of $100 in cash to the Company in exchange for 1 Interest.

2.1.2. Interests. Each Interest in the Company represents a Limited Liability Company Membership Interest in the Company. The Interests will not be evidenced by certificates, unless otherwise determined by the Manager in its discretion. The Company is hereby authorized to sell and issue Interests pursuant to (and subject to the terms and conditions described in) the Memorandum for a Capital Contribution of $1,000 per Interest and to admit the Persons who acquire such Interests as Members. The Manager may offer additional Interests of the Company, in its sole discretion, provided the Maximum Offering has not been exceeded. The Offering shall terminate on the Offering Termination Date.

2.1.3. Subscription Agreement; Payment of Capital Contribution. Any Person desiring to acquire Interests and become a Member shall tender to the Company a Subscription Agreement specifying the number of Interests desired, together with the Subscription Payment. Acceptance of a Subscription Agreement, the accompanying Subscription Payment shall become the subscribing Person's initial Capital Contribution, and such Subscribing Person shall be thereupon admitted as a Member. In no event shall the Company have more than 450 Members at any one time. The Company may accept subscriptions from "benefit plans" (as defined by the Employee Retirement Income Security Act of 1974, as amended, "ERISA"); provided, however, that at all times benefit plans cannot own, in the aggregate, twenty-five percent (25%) or more of the total value of the Interests then outstanding. The Manager may utilize Capital Contributions to fund Investments and to pay Company expenses or reserves therefor, including but not limited to the Asset Management Fee and the Loan Servicing Fee.

2.1.4. Termination of Offering. If the Company has not accepted Subscription Payments for a sufficient number of Interests on or before the Offering Termination Date, the Offering shall be canceled and all Subscription Payments received shall be promptly refunded to the subscribers.

2.1.5. Manager as Member. The Manager and/or Affiliates may purchase Interests for the same price and upon the same terms and conditions, as all other purchasers thereof. As a result, the Manager or Affiliates shall be admitted to the Company as Members with respect to such Interests and shall be entitled to all rights as Members appurtenant thereto, including but not limited to the right to vote on certain Company matters as provided for in this Agreement and to receive Distributions and allocations attributable to the Interests so purchased.

2.1.6. Admission of a Member. To the extent required by law, the Manager shall amend this Agreement and take such other action as the Manager deems necessary or appropriate promptly after receipt of the Members' Capital Contributions to the Company to reflect the admission of those persons to the Company as Members.

2.1.7. Liabilities of Members. Except as specifically provided in this Agreement or as required by law, neither the Manager nor any Member shall be required to make any additional contributions to the Company and no Manager or Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company solely by reason of being a Member or Manager of the Company, nor shall the Manager or the Members be required to lend any funds to the Company or to repay to the Company, any Member, any creditor of the Company or any other person, any portion or all of any deficit balance in a Member's Capital Account.

2.2. Third Party Beneficiaries. The parties to this Agreement shall be entitled to all of the privileges, benefits and rights contained herein; no other party (other than the Lender) shall be a third party beneficiary or have any rights hereunder or be able to enforce any provision contained herein.

3. Allocation of Tax Items.

3.1. Allocation of Net Income and Net Loss. For each fiscal year, after adjusting each Member's Capital Account for all Capital Contributions and Distributions during such fiscal year and all regulatory allocations pursuant to Section 3.2 with respect to such fiscal year, Net Income and Net Loss for a fiscal year shall be allocated to the Members as set forth in this Section 3.1. Net Income and Net Loss shall be allocated to the Members in such manner that the Capital Account balance of each Member shall, to the greatest extent possible, be equal to (1) the amount that would be distributed to such Member, if (a) the Company were to sell the assets of the Company for their Gross Asset Values, (b) all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Values of the assets securing such liability), and (c) the Company were to dissolve pursuant to Section 11, minus (2) such Member's share of Company Minimum Gain or Member Minimum Gain, computed immediately prior to the hypothetical sale of assets.

3.2. Regulatory Allocations. Notwithstanding Section 3.1, the following regulatory allocations shall be made for each fiscal year in the following order of priority:

3.2.1. Company Minimum Gain Chargeback. In the event there is a net decrease in Company Minimum Gain during any fiscal year, the "minimum gain chargeback" described in Treasury Regulations Section 1.704-2(f) and Treasury Regulations Section 1.704-2(g) shall apply.

3.2.2. Member Minimum Gain Chargeback. In the event there is a net decrease in Member Minimum Gain during any fiscal year, the "partner minimum gain chargeback" described in Treasury Regulations Section 1.704-2(i)(4) shall apply.

3.2.3. Qualified Income Offset. This Agreement incorporates the "qualified income offset" set forth in Treasury Regulations Section 1.704-1(b)(2)(ii)(d) as if those provisions were fully set forth in this Agreement.

3.2.4. Gross Income Allocation. Net Loss shall not be allocated to any Member to the extent such allocation would cause any Member to have an Adjusted Capital Account Deficit at the end of a fiscal year. In the event any Member has an Adjusted Capital Account Deficit at the end of any fiscal year, each such Member shall be specially allocated items of Company gross income and gain in the amount of such Adjusted Capital Account Deficit as quickly as possible.

3.2.5. Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period shall be allocated 100% to the Members in proportion to their Interests.

3.2.6. Member Nonrecourse Deductions. Member Nonrecourse Deductions for any fiscal year shall be allocated to the Member who bears the economic risk of loss as set forth in Treasury Regulations Section 1.752-2 with respect to the Member Nonrecourse Debt. If more than one Member bears the economic risk of loss for a Member Nonrecourse Debt, any Member Nonrecourse Deductions attributable to that Member Nonrecourse Debt shall be allocated among the Members according to the ratio in which they bear the economic risk of loss.

3.2.7. Code Section 754 Adjustments. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Treasury Regulations.

3.2.8. Excess Nonrecourse Liabilities. The Company shall allocate "excess nonrecourse liabilities" within the meaning of Treasury Regulations Section 1.752-3(a)(3) to the Members in proportion to their Interests.

3.2.9. Target Final Balance. The allocation provisions of this Agreement are intended to produce final Capital Account balances that are at levels ("Target Final Balance") that permit liquidating Distributions that are made in accordance with such final Capital Account balances to be equal to the Distributions that would occur under Section 11.3 hereof, if such Liquidation proceeds were distributed pursuant to Section 4.2. To the extent the allocation provisions of this Agreement would not produce the Target Final Balance, the Members agree to take such actions as are necessary to amend such allocation provisions to produce such Target Final Balance. In furtherance of the foregoing, the Manager is expressly authorized and directed to make such allocations of income, gain, loss and deduction (including items of gross income, gain, loss and deduction) in the year of Liquidation of the Company so as to cause the Capital Accounts of the Members that determine the amounts that are distributed to the Members under Section 11.3 to be equal to the Target Final Balance.

3.3. Contributed Property. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take

account of any variation between the adjusted basis of such property to the Company for U.S. federal income tax purposes and its initial Gross Asset Value using an allocation method pursuant to the Treasury Regulations under Code Section 704(c) as selected by the Manager. In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value, subsequent allocations of income, gain, loss and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for U.S. federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder.

3.4. Recapture Income. The portion of each Member's distributive share of Company Net Income that is characterized as ordinary income pursuant to Section 1245 or 1250 of the Code shall be proportionate to the amount of Net Income or Net Loss which included the corresponding depreciation deductions that were allocated to such Member as compared with the amount of depreciation deductions allocated to all Members.

3.5. Allocation Among Interests. Except as otherwise provided in this Agreement, all allocations made with respect to the Interests shall be in the ratio of the number of Interests held by each such Member on the date of such allocation (which allocation date shall be deemed to be the last day of each month) to the total outstanding Interests as of such date, and, except as otherwise provided in this Agreement without regard to the number of days during such month that the Interests were held by each Member. For purposes of this Article 3, an Economic Interest Owner shall be treated as a Member. Members who purchase Interests at different times during the Company tax year shall be allocated Net Income and Net Loss using the monthly convention set forth in Section 3.7.1.

3.6. Allocation of Company Items. Except as otherwise provided herein, whenever a proportionate part of Net Income or Net Loss is allocated to a Member, every item of income, gain, loss or deduction entering into the computation of such Net Income or Net Loss, and every item of credit or tax preference related to such allocation and applicable to the period during which such Net Income or Net Loss was realized, shall be allocated to the Owners in the same proportion.

3.7. Assignment.

3.7.1. In the event of the assignment of an Interest, the Net Income and Net Loss shall be apportioned as between the Member and his assignee based upon the number of months of their respective ownership during the year in which the assignment occurs, without regard to the results of the Company's operations during the period before or after such assignment. Distributions shall be made to the holder of record of the Interests as of the date of the Distribution. An assignee who receives Interests during the first fifteen (15) days of a month will receive any allocations relative to such month. An assignee who acquires Interests on or after the sixteenth (16^{th}) day of a month will be treated as acquiring his Interests on the first day of the following month.

3.7.2. In the event of the assignment of the Manager's interest, the allocations of Net Income or Net Loss shall be as agreed between the Manager and its assignee. In the absence of an agreement, the Net Income, Net Loss and Distributions shall be allocated in a manner similar to that provided in Section 3.7.1.

3.8. Power of Manager to Vary Allocations. It is the intent of the Members that each Member's share of Net Income and Net Loss be determined and allocated in accordance with Section 704(b) of the Code, and the provisions of this Agreement shall be so interpreted. Therefore, if the Company is advised by the Company's legal counsel that the allocations provided in this Section 3 are unlikely to be respected for U.S. federal income tax purposes, the Manager may, without limiting the authority of the Manager otherwise under this Article 3, amend the allocation provisions of this Agreement to the minimum extent necessary to comply with Section 704(b) of the Code and effect the plan of allocations and distributions provided for in this Agreement, and each Member hereby consents to any such amendment.

3.9. Fractions Rule. The Members intend that the foregoing allocation provisions of this Article 3 shall be made in such a manner as to have "substantial economic effect" pursuant to Treasury Regulations Section 1.704-1(b), and enable each Member which is a qualified organization under Section 514 of the Code ("Qualified Organization") to meet the requirements of Section 514(c)(9)(E) of the Code.

3.10. Consent of Members. The allocation methods of Net Income and Net Loss are hereby expressly consented to by each Member as a condition of becoming a Member.

3.11. Withholding Obligations.

3.11.1. If the Company is required (as determined in good faith by the Manager) to make a payment ("Tax Payment") with respect to any Member to discharge any legal obligation of the Company or the Manager to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of such Member arising as a result of such Member's interest in the Company, then, notwithstanding any other provision of this Agreement to the contrary, the amount of any such Tax Payment shall be deemed to be a loan by the Company to such Member, which loan shall bear interest at the Prime Rate and be payable upon demand or by offset to any Distribution which otherwise would be made to such Member.

3.11.2. If and to the extent the Company is required to make any Tax Payment with respect to any Member, or elects to make payment on any loan described in Section 3.11.1 by offset to a Distribution to a Member, either (a) such Member's proportionate share of such Distribution shall be reduced by the amount of such Tax Payment, or (b) such Member shall pay to the Company prior to such Distribution an amount of cash equal to such Tax Payment. In the event a portion of a Distribution in kind is retained by the Company pursuant to clause (a) above, such retained property may, in the discretion of the Manager, either (i) be distributed to the other Members, or (ii) be sold by the Company to generate the cash necessary to satisfy such Tax Payment. If interest in the Property is sold, then for purposes of income tax allocations only under this Agreement, any gain or loss from such sale or exchange shall be allocated to the Member to whom the Tax Payment relates. If the interest in the Property is sold at a gain, and the Company is required to make any Tax Payment on such gain, the Member to whom the gain is allocated shall pay the Company prior to the due date of the Tax Payment an amount of cash equal to such Tax Payment.

3.11.3. The Manager shall be entitled to hold back any Distribution to any Member to the extent the Manager believes in good faith that a Tax Payment will be required with respect to such Member in the future and the Manager believes that there will not be sufficient subsequent Distributions to make such Tax Payment.

3.12. No Capital Shift. The parties to this Agreement intend no shift in capital, as determined in accordance with Treasury Regulations Section 1.704-1(b), from or to any Member, shall take place upon the issuance of any interest in the Company. The parties to this Agreement agree that this Agreement shall be amended by the Manager to the extent, if any, necessary or appropriate to prevent such shift in capital, and to the extent, if any, necessary or appropriate to ensure that the issuance of Interests does not result in taxable income to the recipient of such Interests immediately upon issuance. The parties to this Agreement agree to take any action necessary or appropriate to ensure that such amendment is effective for U.S. federal tax purposes.

4. Distributions.

4.1. Temporary Investment Income. Except to the extent reasonably required to pay or establish reserves for Company expenses or other liabilities, Temporary Investment Income shall be distributed to the Members pro rata in accordance with their respective ownership of the Interests, as determined by the Manager. Notwithstanding the foregoing, Distributions on dissolution of the Company shall be governed by Section 11.3.

4.2. Net Investment Income. Net Investment Income with respect to each calendar year shall be distributed as follows:

4.2.1. First, to the Members pro rata in accordance with their respective ownership of Interests until the Members have been distributed an amount equal to their accrued but undistributed Preferred Return; and

4.2.2. Second, 80% to the Members pro rata in accordance with their respective ownership of Interests and 20% to the Manager until the Members have been distributed an accumulative amount under this Section 4.2 equal to a 12% per annum, cumulative, non-compounded return on their Net Capital Contributions; and

4.2.3. Thereafter, 60% to the Members pro rata in accordance with their respective ownership of Interests and 40% to the Manager.

Notwithstanding the foregoing, Distributions on dissolution of the Company shall be governed by Section 11.3.

4.3. Net Capital Proceeds. Net Capital Proceeds shall be distributed to the Members pro rata in accordance with their respective ownership of Interests. ~~Notwithstanding the foregoing, the Manager shall have the right to reinvest Net Capital Proceeds in Investments for up to 36 months from the date of the Offering, and Distributions on dissolution of the Company shall be governed by Section 11.3.~~

4.4. Holder of Record. Distributions shall be made to the holder of record of the Interests as of the date of the Distribution.

4.5. Limitation upon Distributions. No distribution shall be made to Members if the distribution is prohibited by the Act, the Code, any applicable regulation or any court decree.

4.6. Additional Distribution Provisions. The Manager may, in its sole discretion, distribute Investments or any interest therein or other non-cash assets to the Members in kind at such time or times as the Manager determines, including upon the dissolution of the Company. Any such in-kind Distribution shall be made in a manner consistent with Sections 4.1, 4.2 and 4.3. At the request in writing of a Member, the Manager may, in its discretion, distribute Investments or other non-cash assets to such Member in lieu of cash. The Manager shall notify the other Members if any Distribution of non-cash assets is made to a Member in accordance with this Section 4.6. Any non-cash assets distributed shall be valued at their Fair Market Value at the time of distribution and such assets shall be deemed to have been sold at such value and the proceeds of such sale shall be deemed to have been distributed to the Members who receive them for all purposes of this Agreement. Any Distributions of securities shall be in compliance with any applicable securities laws.

4.7. Clawback. Notwithstanding Section 4.2 hereof, if there is a shortfall in the distribution of the Preferred Return to the Members and return of the Members' Capital Contributions upon the dissolution of the Company pursuant to Section 11 hereof and the Manager previously has received distributions pursuant to Section 4.2 (other than distributions that have previously been repaid pursuant to this Section 4.7 and expressly excluding any compensation or reimbursements payable to the manager or its Affiliates under Section 5), the Manager will be required to repay to the Company for the benefit of the Members whatever portion of those prior distributions is necessary to cause the Preferred Return to be met and Capital Contributions to be returned in full, to the extent of such distributions. The Company will distribute any repaid amounts to the Members in accordance with their respective ownership of Interests. In no event will the cumulative amount repaid by the Manager to the Company pursuant to this Section 4.7 exceed the cumulative amount of such distributions that the Manager previously has received pursuant to Section 4.2.

5. Compensation to the Manager and Affiliates.

5.1. Asset Management Fee.

5.1.1. The Manager shall be entitled to receive from the Company an annual asset management fee (the "Asset Management Fee") equal to 1.0% of the Offering Proceeds for the Manager's services to the Company in connection with managing the Company's portfolio of Investments. The Asset Management Fee will be payable in quarterly installments (i.e., one-fourth of the calculated fee) in arrears. The Asset Management Fee shall be payable within ten (10) days after the end of each quarter.

5.1.2. The Manager may in its discretion waive the Asset Management Fee in whole or in part at any time or from time to time with respect to its Affiliates or any other Members. In the event the Manager waives the Asset Management Fee with respect to a particular Member, such Member's Capital Account will not be charged with the Asset Management Fee to the extent waived. Such waiver shall not affect the Asset Management Fee paid with respect to other members and charged to such other Members' Capital Accounts.

5.1.3. The Manager may share all or any portion of the Asset Management Fee with other Persons, whether or not Affiliated with the Manager, including Persons assisting the Company in identifying, making or acquiring Investments or assisting in the sale of Interests (to the extent permitted by federal and state securities laws and regulations).

5.1.4. The Manager shall have the right, in its sole discretion, to subcontract some or all of the asset management services, at the Manager's sole cost.

5.2. Loan Servicing Fee.

5.2.1. The Manager will service Investments that are loans. In connections therewith, the Manager will receive a monthly Loan Servicing Fee based on a rate of 1.0% per annum (or .833 of 1% per month) on the average principal amount of loans outstanding during such month. The Loan Servicing Fee shall be calculated at the end of each month and shall be payable in arrears within five (5) days after the end of each month.

5.2.2. The Manager shall have the right, in its sole discretion, to subcontract some or all of the loan servicing fees, at the Manager's sole cost.

5.3. Company Expenses.

5.3.1. Operating Expenses. Except as provided in Sections 5.1 and 5.2 and subject to the limitations set forth in Section 5.3.2, the Company shall pay directly, or reimburse the Manager or its Affiliates, as the case may be, for all of the costs and expenses of the Company's operations including the following costs and expenses: (a) all securities selling commissions (other than the Additional Selling Commissions, which are the sole responsibility of the Manager), due diligence and marketing allowances and managing broker-dealer fees, including wholesaling expenses in connection with the offer and sale of Interests; (b) all taxes and assessments on the Investments and other taxes applicable to the Company; (c) legal, accounting, audit and other fees; (d) costs of investigating and performing due diligence on potential Investments; (e) any costs related to ownership, monitoring or disposition of Investments; (f) all expenses incurred in connection with the maintenance of Company books and records, the preparation and distribution of reports, tax returns or other information to Members and the making of Distributions to Members; (g) expenses incurred in preparation and filing reports or other information with appropriate regulatory agencies; (h) expenses of insurance as required in connection with business of the Company, (i) costs incurred in connection with any litigation in which the Company may become involved, or any examination, investigation or other proceedings conducted by any regulatory agency, including legal and accounting fees; (j) the actual costs of goods and materials used by or for the Company; (k) the costs of services that could be performed directly for the Company by independent parties such as legal, accounting, secretarial or clerical, reporting, loan origination, transfer agent, data processing and duplicating services

but which are in fact performed by the Manager or its Affiliates, but not in excess of the lesser of : (i) the actual costs to the Manager or its Affiliates of providing such services; or (ii) the amounts which the Company would otherwise be required to pay to independent Persons for comparable services in the same geographic locale; (l) expenses of revising, amending, modifying or terminating this Agreement; (m) any travel costs incurred in connection with acquisition, investigation, funding, ownership, monitoring or disposition of Investments or otherwise in connection with the Company's business; (n) any out-of-pocket costs or expenses incurred by the Manager in exercising its authority as provided for in this Agreement; and (o) all other costs and expenses incurred in connection with the business of the Company.

5.3.2. Manager Overhead. Except as set forth in this Section 5, the Manager and its Affiliates shall not be reimbursed for overhead expenses incurred in connection with its services as Manager of the Company, including but not limited to rent, depreciation, utilities, capital equipment and other administrative items.

5.3.3. Acquisition Expenses. Notwithstanding Section 5.3.2, the Manager and its Affiliates will be reimbursed for all costs expended in the due diligence and acquisition of the Investments, including down payments, closing costs, travel, legal, environmental and other studies, surveys, escrow deposits and costs, plus interest at the Prime Rate. Notwithstanding this provision, the Manager and its Affiliates shall have no obligation to advance funds to or incur liabilities on behalf of the Company.

5.3.4. Organization and Offering Expenses. The Manager will be responsible for paying the Organization and Offering Expenses of the Company. In connection therewith, the Company will pay the Manager 1.0% of the Offering Proceeds to cover the costs associated with the Organization and Offering Expenses. Any costs in excess of this amount shall be borne by the Manager, while the Manager shall retain any amounts not spent.

6. Authority and Responsibilities of the Manager.

6.1. Management. The business and affairs of the Company shall be managed solely by its Manager. Except as otherwise set forth in this Agreement, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs and all property of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business.

6.2. Number, Tenure and Qualifications. The Company shall have one Manager, which shall be Grubb & Ellis Realty Investors, LLC. The Manager shall hold office until it is removed, withdraws or resigns.

6.3. Manager Authority. The Manager shall have all authority, rights and powers conferred by law (subject to Section 6.4) and those required for or appropriate to the management of the Company's business. By way of illustration but not limitation, the Manager's powers shall include the right and authority to do any of the following on behalf of the Company:

6.3.1. Investigate and perform due diligence on Investments, and, subject to the Investments Committee's authority under Section 6.11, acquire, hold, monitor, mortgage, pledge, sell, exchange and otherwise dispose of any Investment.

6.3.2. Exercise all rights, powers and other incidents of ownership or possession, including any voting or other management participation rights of the Company, with respect to any Investment or other real or personal property owned, leased, or otherwise held by the Company.

6.3.3. Borrow money to the extent permitted by this Agreement.

6.3.4. Hold title to any real estate in the name of the Company or any of its nominees to the extent any Investment is structured as a direct ownership of real estate, or for any purpose convenient

or beneficial to the Company, or establish subsidiary entities of the Company for purposes of holding such assets.

6.3.5. Enter into such contracts and agreements as the Manager determines to be reasonably necessary or appropriate in connection with the Company's business and purpose (including contracts with Affiliates of the Manager, to the extent permitted under the Act and this Agreement).

6.3.6. Purchase and maintain any insurance that the Manager deems necessary or appropriate for the protection of the Company, the Manager and members of the Investment Committee, including directors and officers liability insurance, general liability insurance and insurance for any other purpose convenient or beneficial to the Company.

6.3.7. Employ Persons, who may be Affiliates of the Manager, in the operation and management of the business of the Company, at the cost of the Company.

6.3.8. Prepare of cause to be prepared reports, statements and other relevant information for distribution to Members.

6.3.9. Open accounts, make deposits and maintain funds in the name of the Company in banks, savings and loan associations, "money market" mutual funds and other instruments as the Manager may deem, in its discretion, to be necessary or desirable.

6.3.10. In addition to any amendments otherwise authorized herein, amend this Agreement without any action on the part of Members by special or general power of attorney or otherwise:

6.3.10.1. To add to the representations, duties, services or obligations of the Manager or its Affiliates, for the benefit of Members;

6.3.10.2. To cure any ambiguity or mistake, to correct or supplement any provision herein that may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement;

6.3.10.3. To delete or add any provision of this Agreement required to be so deleted or added by any federal or state securities law or regulation;

6.3.10.4. To amend this Agreement to reflect the addition or substitution of Members or the reduction of the Capital Accounts upon the return of capital to Members;

6.3.10.5. To minimize the adverse impact of, or comply with, any final regulation of the United States Department of Labor, or other federal agency having jurisdiction, that defines "plan assets" for ERISA purposes; or

6.3.10.6. To change the name of the Company or the principal place of business of the Company.

6.3.11. Require in any Company contract that the Manager shall not have any personal liability, but that the Person contracting with the Company is to look solely to the Company and its assets for satisfaction.

6.3.12. Maintain for the conduct of the Company's affairs, one or more offices and in connection therewith, rent or acquire office space, engage personnel, whether part-time or full-time, and do such other acts as the Manager may deem necessary or advisable in connection with the maintenance and administration of such office or offices.

6.3.13. Engage attorneys, accountants, advisors and such other Persons as the Manager may deem necessary or advisable.

6.3.14. Enter into loan servicing and securities and real estate brokerage agreements as may be deemed necessary or advisable by the Manager to conduct the Company's business; provided that any loan servicing agreements shall be at the sole expense of the Manager and not of the Company.

6.3.15. Establish reserves in such amounts as the Manager may deem appropriate.

6.3.16. Make or decline to make any elections available to the Company under the Code.

6.3.17. Redeem or repurchase Interests on behalf of the Company.

6.3.18. Hold an election for successor manager before the resignation or removal of the Manager.

6.3.19. Initiate, settle and defend legal actions on behalf of the Company including any such actions with respect to Investments.

6.3.20. Pay commissions and other compensation to Persons assisting in the identification of Investments or (to the extent permitted by federal and state securities laws and regulations) assisting with the sale of Interests.

6.3.21. Make representations and warranties and indemnifications on behalf of the Company in connection with the acquisition, funding, ownership or disposition of Investments, including in connection with any intercreditor or subscription agreement.

6.3.22. Perform any and all other acts which the Manager is obligated or entitled to perform hereunder.

6.3.23. Subcontract with Affiliates and other Persons, in the Manager's sole discretion, to perform some or all management functions set forth herein at the expense of the Manager and not of the Company.

6.3.24. Take any other action required or permitted to be taken by the Manager pursuant to other provisions of this Agreement.

6.3.25. Execute, acknowledge and deliver any and all instruments to effectuate the foregoing and take all such actions in connection therewith as the Manager may deem necessary or appropriate. Any and all documents or instruments may be executed on behalf and in the name of the Company by the Manager.

6.4. Restrictions on Manager's Authority. The Manager shall have no authority to:

6.4.1. Use or permit any other person to use Company funds or assets in any manner except for the exclusive benefit of the Company, or commingle the Company's funds with those of any other Person;

6.4.2. Alter the primary purpose of the Company;

6.4.3. Invest Company funds in any investment other than Investments or Temporary Investments;

6.4.4. Admit another Person as the Manager, except with the consent of the Members as provided in this Agreement;

6.4.5. Receive from the Company a rebate or give-up or participate in any reciprocal business arrangements which would enable it or any Affiliate to do so (excluding the fees and other items set forth in the Memorandum);

6.4.6. Directly or indirectly pay or award any finder's fees, commissions or other compensation to any person other than the Broker-Dealers that have signed selling agreements with the Company as an inducement to such persons to advise the purchaser regarding the purchaser regarding the purchase of Interests.

6.5. Company Borrowings. The Company may borrow funds only when the Manager deems it to be in the best interests of the Company and only upon approval by the Investment Committee. The Manager shall not have the authority to cause the Company to borrow any amounts that would, in the aggregate, exceed 100% of the aggregate Net Capital Contributions of the Members

6.6. Formation of New Fund; Joint Ventures and Co-Investments. The Manager will not organize another investment entity with a similar investment objective or strategy to that of the Company until (i) two-thirds of the total Capital Contributions (as determined at the termination of the Offering) of the Members have been invested or committed for investment or used to pay Company expenses or to establish reserves therefore and the Offering has been completed or terminated or (ii) an event of dissolution has occurred as provided in 11.1, whichever occurs earlier. Notwithstanding the foregoing, nothing in this section 6.6 shall prohibit the Manager or its Affiliates from entering into a co-investment or joint venture arrangement with the Company or on behalf of the Company, receiving compensation and fees from lenders, borrowers and investment entities with which the Company does business, and receiving distributions, compensation and fees from entities in which the Company invests, including through a co-investment or joint venture arrangement with the Manager or its Affiliates. To the extent that the Manager or any of its Affiliates enter into co-investment, joint venture or similar arrangements with the Company, those arrangements will be as near as possible on terms and conditions as would be feasible between the Company and unrelated parties bargaining at arms' length. The Manager shall not receive (or cause any of its Affiliates to receive) any finder's fees or similar compensation from third parties in connection with Investments made on behalf of the Company. Affiliates of the Company may receive fees for title, escrow, exchange or related fees, which will not belong to the Company.

6.7. Tax Matters Partner. The Members hereby appoint the Manager to act as the "Tax Matters Partner."

6.8. Elimination of Liability and Indemnification.

6.8.1. Elimination of Liability. Neither the Manager, nor any partner, member, shareholder, director, officer, manager, employee, agent or Affiliate of the Manager, nor any Person serving as a member of the Investment Committee (each, an "Indemnified Person"), shall be liable, responsible nor accountable in damages or otherwise to the Company or to any Member, or to any successor, assignee or transferee of the Company or of any Member, for: (i) any acts performed, or the omission to perform any acts, except by reason of acts or omissions of such Indemnified Person which constitute a material breach of this Agreement, bad faith, fraud, gross negligence, intentional misconduct or a knowing violation of criminal or securities laws ("Non-Covered Conduct"); (ii) the negligence, dishonesty, bad faith, misconduct or any other acts or omissions of any consultant, advisors, attorneys or agents selected or engaged by an Indemnified Person to perform services for the Company; or (iii) the negligence, dishonesty, bad faith, misconduct or any other acts or omissions of any other Person associated with an Investment.

6.8.2. Indemnification. Except as expressly provided in this Section 6.8.2, the Company shall, out of the assets of the Company, to the fullest and broadest extent permitted by the laws of the State of Delaware, indemnify and hold harmless each Indemnified Person against losses and damages

arising out of liabilities or expenses incurred by such Indemnified Person while acting on behalf of the Company. Without limiting the generality of the foregoing, the Company hereby agrees to indemnify each Indemnified Person, and to save and hold such Indemnified Person harmless, from and in respect of all (i) fees, costs and expenses incurred in connection with or resulting from any demand, claim, action or proceeding against such Indemnified Person or the Company which arises out of or in any way relates to the Company or its assets, business or affairs, and (ii) all such demands, claims, actions and proceedings and any losses or damages resulting therefrom, including judgments, fines and amounts paid in settlement or compromise of any such demand, claim, action or proceeding; provided, however, that this indemnity shall not extend to (a) conduct of an Indemnified Person determined by a court of competent jurisdiction to be Non-Covered Conduct, (b) any Indemnified Person whose conduct the Manager has determined at its sole discretion does not merit the benefits of liability elimination as provided in Section 6.8.1, (c) any liability arising by reason of any act or omission of a Person subsequent to such Person ceasing to serve in the position making him or her an Indemnified Person or subsequent to the Manager requesting in writing that such Person retire or resign from its position making him or her an Indemnified Person. The Company shall advance the expenses incurred by any Indemnified Person in connection with any proceeding prior to the final disposition of such proceeding, upon receipt of a written undertaking by such Indemnified Person to repay such advance if there shall be an adjudication or determination by a court of competent jurisdiction, for which there is no further right of appeal, that such Indemnified Person is not entitled to indemnification as provided herein. In connection with the indemnification benefits provided hereunder, any Indemnified Person seeking indemnification shall cooperate with and, at the expense of the Company, use diligent efforts to assist the Company in seeking from other sources of indemnification available to such Indemnified Person reimbursement for any indemnification payment or expense advancement made by the Company to or on behalf of such Indemnified Person. For the purposes of this Section 6.8.2, "expenses" includes, without limitation, attorneys' fees and any expenses of establishing a right to indemnification under this Section 6.8.2.

6.8.3. Survival. All rights of the Indemnified Persons to elimination of liability and indemnification under this Section 6.8 shall survive the dissolution of the Company and the death, withdrawal, removal, incompetency, dissolution, liquidation or insolvency of such Indemnified Person, and shall inure to the benefit of the Indemnified Person's heirs, personal representatives, successors and assigns. No amendment, restatement or termination of this Agreement shall affect the rights of Indemnified Persons under this Section 6.8 with respect to acts, omissions or states of fact occurring or existing to such amendment, restatement or termination.

6.8.4. Enforceability. In the event that any of the provisions of this Section 6.8 shall be deemed unenforceable to any extent by a court of competent jurisdiction, such unenforceable provision shall be modified or stricken so as to give effect to this Section to provide indemnification to the fullest extent possible.

6.8.5. Non-Exclusive Remedies. The provisions of this Section 6.8 shall be in addition to, and not in lieu of, or limit, any provisions of the Company's Certificate of Formation or the Act mandating or permitting the limitation of liability, and indemnification of, the Manager and certain other Persons.

6.8.6. Insurance. The Manager may maintain directors' and officers' liability insurance on behalf of the Company with such limits, deductions and exclusions as determined by the Manager in its discretion, and the above provisions of this Section 6.8 shall not limit any amounts payable to the Manager, its Affiliates or any member of the Investment Committee under any such insurance.

6.9. No Personal Liability for Return of Capital. The Manager shall not be personally liable or responsible for the return or repayment of all or any portion of the Capital Contribution of any Member or any loan made by any Member to the Company, it being expressly understood that any such return of any Capital Contributions or repayment of any loan shall be made solely from the assets (which shall not include any right of contribution from any Member) of the Company.

6.10. Authority as to Third Persons.

6.10.1. Notwithstanding any other provision of this Agreement, no third party dealing with the Company shall be required to investigate the authority of the Manager or secure the approval or confirmation by any Member of any act of the Manager in connection with the Company's business.

6.10.2. The Manager shall have full authority to execute on behalf of the Company any and all agreements, contracts, conveyances, deeds, mortgages and other instruments, and the execution thereof by one or more officers of the Manager, executing on behalf of the Company, shall be the only execution necessary to bind the Company thereto. No signature of any Member shall be required.

6.11. Investment Committee.

6.11.1. The Company shall have an Investment Committee which shall consist of five members, as determined by the Manager. The initial members of the Investment Committee shall be Scott Peters, Jeff Hanson, Andrea Biller, Francene LaPoint and Jay Leupp, each of whom intends to serve until the earlier of such member's removal or resignation. All additions to or substitutions for the Investment Committee membership shall be nominated by the Manager by written notice provided to the Members, and if a Member Majority does not provide written notice of objection to such nomination within 15 days of the date of the Manager's nomination notice, then such nominee shall become a duly appointed member of the Investment Committee. The Manager may remove any member of the Investment Committee, with or without cause, if the Manager gives notice of the proposed removal and the reasons therefore) to the Members and, within 15 days thereafter, does not receive notice of objection to the removal from a Member Majority.

6.11.2. The Investment Committee shall meet at least four times during each calendar year and shall meet at such other times and from time to time as the Manager or a new majority of the Investment Committee day determine. All meetings may be held by teleconference. The Manager shall give notice of each meeting of the Investment Committee at least 48 hours before the meeting date (unless such notice is waived by a member either in writing or by attendance at the meeting).

6.11.3. Members of the Investment Committee shall be entitled to be reimbursed by the Company for their reasonable out-of-pocket travel expenses incurred in connection with their attendance at meetings of the Investment Committee and in connection with due diligence of prospective Investments and borrowers. In addition, members of the Investment Committee who are not owners, managers or executives of the Manager or its Affiliates will be paid a fee of $5,000 per quarter plus $200 per teleconference and $300 per meeting, subject to the Manager's ability to adjust such fees to a market rate in its sole discretion.

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.

6.11.6. The Investment Committee shall have the authority to adopt rules and procedures, not inconsistent with this Agreement, relating to the conduct of its affairs; provided, however,

that the Manager shall retain full responsibility and authority for all decisions relating to the operation and management of the Company in accordance with this Agreement.

6.11.7. The members of the Investment Committee shall exercise their duties hereunder in accordance with their good faith business judgment as to the best interests of the Company.

7. Rights, Authority and Voting of the Members.

7.1. Members Are Not Agents. Pursuant to Article 6, the management of the Company is vested exclusively in the Manager. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind or execute any instrument on behalf of the Company.

7.2. Voting by a Member. Members (including the Preferred Member) who own Interests or Preferred Interests shall be entitled to cast one vote for each Interest and each Preferred Interest they own. Except as otherwise specifically provided in this Agreement or any mandatory provision of the Act, Members who own Interests (but not Economic Interest Owners) shall have the right to vote only upon the following matters:

7.2.1. Removal of the Manager as provided in this Agreement;

7.2.2. Admission of a substitute Manager and the election to continue the business of the Company after the Manager ceases to be the Manager;

7.2.3. Amendment of this Agreement that materially and adversely affects the rights of the Members (but expressly excluding any amendment reflecting the admission of any new Members in connection with the purchase of Interests);

7.2.4. Any merger of the Company with another Person;

7.2.5. Dissolution and winding up of the Company as set forth in Section 11.1;

7.2.6. Any other matter as to which this Agreement or the Act expressly vests in the Members the right to vote; and

7.2.7. A change in the jurisdiction of organization of the Company.

7.3. Member Vote; Consent of Manager. Except as expressly provided otherwise in this Agreement, the approval of the Member Majority shall be necessary and sufficient to approve any matter on behalf of the Members.

7.4. Meetings of the Members.

7.4.1. The Manager may at any time, upon no less than 10 nor more than 30 days' prior written notice, call for a meeting of the Members, or for a vote without a meeting, on matters on which the Members are entitled to vote. In addition, the Manager shall call for such a meeting following receipt of a written request therefor from the Member Majority.

7.4.2. Except as otherwise provided in this Agreement, any action which may be taken at any meeting of Members may be taken without a meeting if one or more consents in writing, setting forth the action so taken, shall be signed by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting of the Members.

7.5. Rights of Members. No Member shall have the right or power to (i) withdraw, reduce or demand return of such Member's Capital Contribution, except as expressly provided in this Agreement or by law; (ii) bring an action for partition against the Company; or (iii) demand or receive assets other than

cash in return for his Capital Contribution. Except as provided in this Agreement, no Member shall have priority over any other Member either as to the return of Capital Contributions or as to allocations of the Net Income, Net Loss or Distributions of the Company. Other than upon the termination and dissolution of the Company as provided by this Agreement, there is no time agreed upon when the Capital Contributions of any Member are to be returned.

7.6. Return of Capital of Member. In accordance with the Act, an Owner may, under certain circumstances, be required to return to the Company, for the benefit of the Company's creditors, amounts previously distributed to the Owner. If any court of competent jurisdiction holds that any Owner is obligated to make any such payment, such obligation shall be the obligation of such Owner and not of the Company, the Manager or any other Owner.

8. Resignation and Removal of the Manager.

8.1. Resignation or Removal of Manager. The Manager may voluntarily as the Manager upon no less than 90 days prior written notice to the Members. The Manager shall be deemed to resign if the Manager is dissolved and liquidated or an Event of Insolvency occurs to the Manager.

8.2. Removal for Cause. The Member Supermajority shall have the right to remove the Manager at any time solely "for cause." For purposes of this Agreement, removal of the Manager "for cause" shall mean removal due to the (a) gross negligence or fraud of the Manager, (b) willful misconduct or willful breach of this Agreement by the Manager, (c) bankruptcy, insolvency or inability of the Manager to meet its obligations as the same come due, or (d) a conviction of a felony by the Chief Executive Officer or Chairman of the Manager. For purposes of the foregoing, the Member Supermajority will be calculated as if any Interests owned by the Manager or its Affiliates were not outstanding.

8.3. Amounts Owing to Manager. Upon the resignation or removal of the Manager, the Manager shall be paid by the Company all fees that have been earned and all other compensation remaining to be paid under this Agreement through the date of resignation or removal subject to Section 5.1.1.

8.4. Appointment of Successor Manager. If the Manager resigns or is removed, a successor Manager may be appointed and the Company's business continued with the consent of the Member Majority.

9. Transfer of Interests; Withdrawal.

9.1. Permitted Transfers. A Member shall not sell, assign, hypothecate, encumber or otherwise transfer all or any portion of the Interests held by such Member unless all of the following requirements are satisfied:

9.1.1. The Manager consents in writing to the transfer. The Manager may withhold consent to the transfer in its sole discretion, except that no such consent shall be required for a Member's transfer of Interests to one or more "family members" within the meaning of Section 267(c) of the Code, any trust for the sole benefit of the transferring Member and/or one or more such family members or any entity owned solely by the transferring Member and/or one or more such family members and controlled by the transferring Member;

9.1.2. The transferee possesses the financial qualifications in the Offering required of all Persons who become Members;

9.1.3. The transferee has the capacity to contract for himself under applicable law or the transfer is made to a custodian or a trustee for a minor or other Person who lacks such contractual capacity;

9.1.4. The transfer will not, in the reasonable view of the manager, jeopardize he applicability of the exemptions from the registration requirements under the Securities Act and registration

or qualification under state securities laws relied upon by the Company and the Manager in offering and selling the Interests or otherwise violate any federal or state securities laws;

9.1.5. The transfer will not (a) result in the Company being deemed a publicly-traded partnership under the Code, (b) result in the Company being deemed an investment company under the Investment Company Act of 1940, as amended, (c) cause the termination of the Company under the Code, or (d) result in the Manager being deemed an investment advisor under the Investment Advisors Act of 1940. The Manager in its discretion may require that the transferor submit a legal opinion in form and substance acceptable to the Company and its counsel to the effect that the transfer will not result in or cause any of the above to occur;

9.1.6. The transfer is by a written instrument of assignment, the terms of which are not in contravention of any of the provisions of this Agreement, and which has been duly executed by the transferor and accepted by the Manager in writing. Upon such acceptance by the Manager, the transferee shall hold the transferred Interests subject to all terms of this Agreement;

9.1.7. A transfer fee shall be paid to the Company by the transferring Member in such amount as may be required by the Manager to cover all reasonable expenses, including attorneys' fees, incurred by the Company connected with such transfer; and

9.1.8. The minimum number of Interests that may be transferred to any transferee is the lesser of one Interest or the transferring Member's entire interest in the Company.

9.2. Substituted Member.

9.2.1. Conditions to be Satisfied. No transferee of Interests shall have the right to become a Substituted Member unless the Manager shall consent thereto in accordance with Section 9.2.2 and all of the following conditions are satisfied:

(a) A duly executed and acknowledged written instrument of assignment shall have been filed with the Company, which instrument shall specify the number of Interests being transferred and set forth the intention of the transferor that the transferee succeed to the transferred Interests as a Substituted Member;

(b) The transferor and transferee shall have executed, acknowledged and delivered such other instruments as the Manager may deem necessary or desirable to effect such substitution, which may include an opinion of counsel regarding the effect and legality of any such proposed transfer, and which shall include: (i) the written acceptance and adoption by the transferee of the provisions of this Agreement; and (ii) the execution, acknowledgment and delivery to the Manager of a special power of attorney, the form and content of which are more fully described herein; and

(c) A transfer fee sufficient to cover all reasonable expenses connected with such substitution shall have been paid to the Company.

9.2.2. Consent of Manager. The consent of the Manager shall be required to admit a transferee of an Interest or any portion thereof as a Substituted Member. The granting or withholding of such consent shall be within the sole and absolute discretion of the Manager.

9.2.3. Consent of Members. By executing or adopting this Agreement, each Member hereby consents to the admission of additional or Substituted Members, and to any transferee of Interests becoming a Substituted Member upon consent of the Manager and in compliance with this Agreement.

9.3. Rights of Transferee. Unless admitted as a Substituted Member, a transferee of any Interests shall only be entitled to receive Distributions from the Company attributable to the Interests acquired by reason of such transfer from and after the effective date of the transfer; provided, however, that notwithstanding anything herein to the contrary, the Company shall be entitled to treat the transferor of

such Interests as the absolute owner thereof in all respects, and shall incur no liability for allocations of Net Income and Net Loss or Distributions, or for the transmittal of reports or accounting until the written instrument of assignment has been received by the Company and recorded on its books. The effective date of such transfer shall be the date on which all of the requirements of this Section 9 have been complied with, subject to Section 3.7. A transferee of Interests that is not admitted as a Substituted Member shall have no right to inspect the Company's books or records, to vote on Company matters, or to exercise any other right or privilege as a Member.

9.4. Withdrawal. No Member shall be entitled to withdraw from the Company except with the prior written consent of the Manager, which consent may be given or withheld by the Manager in its sole discretion.

9.5. Effect of Prohibited Action. Any transfer in contravention of the provisions of this Article 9 shall, to the fullest extent permitted by law, be void and ineffectual and shall not bind or be recognized by the Company.

10. Books, Records, Accounting and Reports.

10.1. Records, Audits and Reports. The Company shall maintain at its principal office the Company's records and accounts of all operations and expenditures of the Company including the following:

10.1.1. A current list of the full name and last known business or residence address of each Member;

10.1.2. A copy of the Certificate of Formation and all amendments thereto, together with any powers of attorney pursuant to this Agreement;

10.1.3. Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the three (3) most recent taxable years;

10.1.4. Copies of this Agreement and any amendments thereto together with any powers of attorney pursuant to which any written accounting or any amendments thereto were executed;

10.1.5. Copies of any financial statements of the Company, if any, for the three (3) most recent years; and

10.1.6. Any other documents required by the Act to be maintained at the Company's principal office.

Each Member has the right, upon written request, to examine at the Company's principal office during the Company's normal business hours any of the documents specifically identified above, or to obtain copies of any such documents at the requesting Member's expense.

10.2. 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 the close of each taxable year of the Company. Such statements shall be unaudited.

10.3. Tax Information. The Manager shall cause the Company, at the Company's expense, to prepare and timely file federal and state income tax returns for the Company with the appropriate authorities, and shall cause all Company information necessary in the preparation of the Members' individual income tax returns to be distributed to the Members not later than 90 days after the end of the Company's tax year.

11. Dissolution of the Company.

11.1. Events of Dissolution. The Company shall terminate, be dissolved and its assets be disposed of, and its affairs wound up upon the earliest to occur of the following (each a "Dissolution Event"):

11.1.1. A determination by the Manager, with the approval of the Member Supermajority, to dissolve the Company; provided, however, that anytime after the end of the three year period following the Offering date, the Manager may dissolve the Company without the approval of the Members; or

11.1.2. The liquidation or other disposition of all of the Investments without the intention to reinvest the proceeds of such disposition in accordance with this Agreement; or

11.1.3. The liquidation or other disposition of Investments in which the Company has invested at least seventy percent (70%) of the aggregate Capital Contributions that have been invested in all Investments, if approved by the Manager in its sole discretion; or

11.1.4. The resignation or removal of the Manager, unless the business of the Company is continued and a successor Manager is appointed with the approval of the Member Majority within 90 days following the occurrence of such event.

11.1.5. The expiration of the term of the Company, which shall end four (4) years from the Offering date; provided that the Manager may extend such term for up to two (2) additional six-month periods, in its sole discretion.

11.2. Certificate of Cancellation. As soon as possible following the occurrence of any of the events specified in Section 11.1, the Manager (or in the absence of a Manager, one or more Persons selected by the Member Majority) shall execute a Certificate of Cancellation in such form as shall be required by the Act.

11.3. Liquidation of Assets. Upon a dissolution and termination of the Company, the Manager (or in case there is no Manager, one or more Persons selected by the Member Majority to carry out the liquidation) shall take full account of the Company assets and liabilities, shall liquidate the Company's assets to the extent it determines such assets can be liquidated without incurring undue loss or adverse tax consequences, and shall apply and distribute the proceeds therefrom, and any assets to be distributed in kind, in the following order:

11.3.1. To the payment of creditors of the Company, including Members who are creditors to the extent permitted by law, in satisfaction of the liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof);

11.3.2. To the setting up of any reserves as may be required or permitted by law for any contingent liabilities or obligations of the Company, in such amounts and to be held and disbursed over such period of time and on such other terms as determined by the Manager (or the Persons carrying out the liquidation) in its sole discretion; and

11.3.3. The balance to the Members and Manager in accordance with Sections 4.1, 4.2 and 4.3.

11.4. Distributions Upon Dissolution. Each Member shall look solely to the assets of the Company for all Distributions and its Capital Contributions, and shall have no recourse therefor (upon dissolution or otherwise) against any Manager or any Member.

12. Special and Limited Power of Attorney.

12.1. Power of Attorney. Grubb & Ellis Realty Investors, LLC shall at all times during its term as the Manager have a special and limited power of attorney as the attorney-in-fact for each Member, with power and authority to act in the name and on behalf of each such Member to execute, acknowledge, and swear to in the execution, acknowledgment and filing of documents which are not inconsistent with the provisions of this Agreement and which may include, by way of illustration but not by limitation, the following:

12.1.1. This Agreement, as well as any amendments to the foregoing which, under the laws of the State of Delaware or the laws of any other state, are required to be filed or which the Manager shall deem it advisable to file;

12.1.2. Any other instrument or document that may be required to be filed by the Company under the laws of any state or by any governmental agency or which the Manager shall deem it advisable to file;

12.1.3. Any instrument or document that may be required to effect the continuation of the Company, the admission of Substituted Members, or the dissolution and termination of the Company (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement);

12.1.4. Any contract for purchase or sale of real estate, and any deed, deed of trust, mortgage, or other instrument of conveyance or encumbrance, with respect to Property; and

12.1.5. Any and all other instruments as the Manager may deem necessary or desirable to effect the purposes of this Agreement and carry out fully its provisions.

12.2. Provision of Power of Attorney. The special and limited power of attorney granted to Grubb & Ellis Realty Investors, LLC, as Manager:

12.2.1. A special power of attorney coupled with an interest, is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Member, and is limited to those matters herein set forth;

12.2.2. May be exercised by Grubb & Ellis Realty Investors, LLC in its capacity as Manager by and through one or more of the officers of Grubb & Ellis Realty Investors, LLC, for each of the Members by the signature of Grubb & Ellis Realty Investors, LLC acting as attorney-in-fact for all of the Members, together with a list of all Members executing such instrument by their attorney-in-fact or by such other method as may be required or requested in connection with the recording or filing of any instrument or other document so executed; and

12.2.3. Shall survive an assignment by a Member of all or any portion of his Interests except that, where the assignee of the Interests owned by the Member has been approved by the Manager for admission to the Company as a Substituted Member, the special power of attorney shall survive such assignment for the sole purpose of enabling Grubb & Ellis Realty Investors, LLC, as Manager, to execute, acknowledge and file any instrument or document necessary to effect such substitution.

12.3. Notice to Members. The Manager shall promptly furnish to a Member a copy of any amendment to the Agreement executed by Grubb & Ellis Realty Investors, LLC pursuant to a power of attorney from the Member.

13. Confidentiality.

13.1. Acknowledgement. The Members hereby acknowledge that the Company creates and will be in possession of confidential information, the improper use or disclosure of which could have a material effect upon the Company or one or more Members or Investments (each a "Protected Party").

13.2. Restrictions. The Members acknowledge and agree that all information provided to them by or on behalf of the Company or the Manager concerning the business of the Company (including, without limitation, this Agreement and all amendments hereto) or any other Protected Party is deemed by the Manager to be strictly confidential and, without the prior written consent of the Manager, shall not be (i) disclosed to any Person (other than a Member) except as expressly permitted by this Section 14.2, or (ii) used by a Member other than for a Company purpose or a purpose reasonably related to protecting such Member's interest in the Company. The Manager hereby consents to the disclosure by each Member of Company information to such Member's accountants, auditors, attorneys and similar advisors bound by a duty of confidentiality. In addition, the foregoing requirements of this Section 13.2 shall not apply to a Member with regard to any information that is currently or becomes: (i) required to be disclosed pursuant to applicable law, governmental rule or regulation, court order, administrative or arbitral proceeding (to include a tax audit) or by a governmental or regulatory authority having jurisdiction over such Member, (but in each case only to the extent of such requirement), (ii) required to be disclosed in order to protect such Member's interest in the Company (but only to the extent of such requirement and only after consultation with the Manager), (iii) publicly known or available in the absence of any improper or unlawful action on the part of such Member or (iv) know, available to or independently developed by such Member other than through, or derived from, any information provided by the Company or the Manager or through a third-party in receipt of such information in contravention of the confidentiality provisions hereunder.

14. Amendment of Agreement.

14.1. Admission of Members. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

14.2. Amendments. In addition to any amendments otherwise authorized herein, this Agreement may be amended by the Manager with the approval of the Member Supermajority.

14.3. Execution and Recording of Amendments. Any amendment to this Agreement permitted by the provisions hereof may be executed by the Manager, as manager, and by the Manager, as attorney-in-fact for each Member, pursuant to the power of attorney contained in Article 12. After the execution of such amendment, the Manager shall also prepare and record or file any certificate or other document which may be required to be recorded or filed with respect to such amendment, either under the Act or under the laws of any other jurisdiction in which the Company does business.

15. Miscellaneous.

15.1. Governing Law. This Agreement shall be construed, enforced, and interpreted in accordance with the laws of the State of Delaware, without regard to conflicts of law provisions and principles thereof.

15.2. Integrated and Binding Agreement; Amendment. This Agreement contains the entire understanding and agreement among the parties hereto with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties among the parties hereto other than those set forth herein except the Subscription Documents. This Agreement may be amended only as provided in this Agreement. Notwithstanding any other provision of this Agreement, the parties hereto agree that this Agreement constitutes a legal, valid and binding agreement and is enforceable against each of them in accordance with its terms. In addition, the Manager shall be an intended beneficiary of this Agreement.

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

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

15.5. Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

15.6. Legal Counsel. Each Member acknowledges and agrees that counsel representing the Company, the Initial Member, the Preferred Member, the Manager and their Affiliates does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the Members, other than the Manager and the Preferred Member, in any respect. In addition, each Member consents to the Manager hiring counsel for the Company which is also counsel to one or more of the Managers.

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

15.8. Notices. All notices under this Agreement shall be in writing and shall be given to the party entitled thereto, by personal service or by mail, posted to the address maintained by the Company for such person or at such other address as he may specify in writing.

15.9. Rights and Remedies Cumulative, Waivers. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies, and are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation

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

15.11. Manager's Address. The name and address of the Manager are as follows:

Grubb & Ellis Realty Investors, LLC
1551 N. Tustin Avenue, Suite 300
Santa Ana, California 92705
Attn: Chief Executive Officer

15.12. Additional Documents. Each Member, upon the request of the Manager, shall perform any further acts and execute and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement, including, but not limited to, providing acknowledgment before a Notary Public of any signature made by a Member.

15.13. Binding Arbitration. Any controversy arising out of or related to this Agreement or the breach thereof or an investment in the Interests shall be settled by arbitration in Orange County, California, in accordance with the rules of The American Arbitration Association (the "AAA"), and judgment entered upon the award rendered may be enforced by appropriate judicial action. The arbitration panel shall consist

of one (1) member, which shall be the mediator if mediation has occurred or shall be a person agreed to by each party to the dispute within thirty (30) days following notice by one (1) party that he desires that a matter be arbitrated. If there was no mediation and the parties are unable within such thirty (30) day period to agree upon an arbitrator, then the panel shall be one (1) arbitrator selected by the Orange County California office of The American Arbitration Association, which arbitrator shall be experienced in the area of real estate and limited liability companies and who shall be knowledgeable with respect to the subject matter area of the dispute. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorney's fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by him or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within thirty (30) days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within thirty (30) days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event each Member shall be entitled to discovery. This Section 16.13 shall be construed to the maximum extent possible to comply with the laws of the State of Delaware, including the Uniform Arbitration Act (10 Del. C. § 5701 et sue) (the "Delaware Arbitration Act"). If, nevertheless, it shall be determined by a court of competent jurisdiction that any provision or wording of this Section 15.13, including any rules of the AAA shall be invalid or unenforceable under the Delaware Arbitration Act or other applicable law, such invalidity shall not invalidate all of this Section 15.13. In that case, this Section 15.13 shall be construed so as to limit any term or provision so as to make it valid or enforceable within the requirements of the Delaware Arbitration Act or other applicable law, and, in the event such term or provision cannot be so limited, this Section 15.13 shall be construed to omit such invalid or unenforceable provision.

15.14. Venue. Any action relating to or arising out of this Agreement may be brought in a court of competent jurisdiction located in Orange County, California.

15.15. Effective Date. Pursuant to Section 18-201(d) of the Act, this Agreement shall be effective as of the time of the filing of the Certificate of Formation with the Office of the Delaware Secretary of State.

The undersigned hereby agree, acknowledge, and certify that the foregoing constitutes the sole and entire Limited Liability Company Agreement of the Company.

MANAGER:

GRUBB & ELLIS REALTY INVESTORS, LLC,
a Virginia limited liability company

By:_____
Name:_____
Title:_____

INITIAL MEMBER:

GRUBB & ELLIS REALTY INVESTORS, LLC,
a Virginia limited liability company

By:_____
Name:_____
Title:_____

EXHIBIT A
DEFINITIONS

"Act" shall mean the Delaware Limited Liability Company Act, as the same may be amended from time to time.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which Member is obligated to restore and Member's share of member Minimum Gain and Company Minimum Gain and;

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

"Affiliate" shall mean with respect to any Person (i) any Person directly or indirectly controlling, controlled by or under common control with that other Person; (ii) any officer, director, manager or partner of that other Person; and (iv) if that other Person is an officer, director, manager or partner, any entity for which that other Person acts in such capacity.

"Agreement" shall mean this Limited Liability Company Agreement, as amended from time to time.

"Asset Management Fee" shall mean the asset management fee payable to the Manager pursuant to Section 5.1.

"Book Gain" shall mean the excess, if any, of the Fair Market Value of an asset over its aggregate adjusted basis for federal income tax purposes at the time a valuation of such asset is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

"Book Loss" shall mean the excess, if any, of the aggregate adjusted basis of an asset for federal income tax purposes over its Fair Market Value at the time a valuation of the asset is required under this Agreement or Treasury Regulations Section 1.704-1(b) for purposes of making adjustments to the Capital Accounts.

"Book Value" shall mean the adjusted basis of an asset for federal income tax purposes increased or decreased by Book Gain, Book Loss, Built-In Gain and Built-In Loss as reduced by depreciation, amortization or other cost recovery deductions, or otherwise, based on such Book Value.

"Built-In Gain (or Loss)" shall mean the amount, if any, by which the agreed value of a contributed asset exceeds (or is lesser than) the adjusted basis of such asset contributed to the Company by a Member immediately after its contribution by Member to the capital of the Company.

"Capital Account" with respect to any Member shall mean such Member's initial Capital Contribution adjusted as follows:

(i) A Member's Capital Account shall be increased by:

(a) such Member's share of Net Income;

(b) any income or gain specially allocated to a Member and not included in Net Income or Net Loss:

(c) any additional cash Capital Contribution made by such Member to the Company; and

(d) the Fair Market Value of any additional Capital Contribution consisting of an asset contributed by such Member to the capital of the Company reduced by any liabilities assumed by the Company in connection with such contribution or to which the asset is subject.

(ii) A Member's Capital Account shall be reduced by:

(a) such Member's share of Net Loss;

(b) any deduction specially allocated to a Member and not included in Net Income or Net Loss;

(c) any cash Distribution made to such Member; and

(d) the Fair Market Value of any asset (reduced by any liabilities assumed by a Member in connection with the Distribution or to which the distributed asset is subject) distributed to such Member; provided that, upon liquidation and winding up of the Company, unsold assets will be valued for Distribution at their Fair Market Value and the Capital Account of each Member before such Distribution shall be adjusted to reflect the allocation of gain or loss that would have been realized had the Company then sold the assets for their Fair Market Values.

The Capital Account of a transferee of Interests shall be the Capital Account of his transferor to the extent applicable to the Interests transferred. Notwithstanding anything to the contrary in this Agreement, the Capital Accounts shall be maintained in accordance with Treasury Regulations Section 1.704-1(b).

"Capital Contribution" shall mean a contribution by a Member to the capital of the Company in cash, property, services or a binding obligation to contribute any of the foregoing.

"Certificate of Formation" shall mean the Certificate of Formation of the Company as filed with the Secretary of State of Delaware, as the same may be amended or restated from time to time.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

"Company" shall refer to Grubb & Ellis Capital Fund I, LLC.

"Company Minimum Gain" shall mean "partnership minimum gain" as set forth in Treasury Regulation 1.704-2(d).

"Depository Account" shall have the meaning set forth in Section 2.1.4.

"Disposition Expenses" are costs and expenses incurred by the Company in connection with the sale or disposition, whether in whole or in part, of an Investment.

"Distribution" shall refer to any money or other asset transferred without consideration to Members with respect to their Interests in the Company.

"Event of Insolvency" shall occur when (a) an order for relief against the Manager is entered under Chapter 7 of the federal bankruptcy law, (b) the Manager makes a general assignment for the benefit of creditors, (c) the Manager files a voluntary petition under the federal bankruptcy law, (d) the Manager files a petition or answer seeking for the Manager a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, (e) the Manager seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Manager or of

all or a substantial part of the Manager's properties, or (f) the expiration of 90 days after either (I) the commencement of any proceeding against the Manager seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or (II) the appointment without the Manager's consent or acquiescence of a trustee, receiver, or liquidator of the Manager or of all or any substantial part of the Manager's properties, if the appointment has not been vacated or stayed (or if within 90 days after the expiration of any such stay, the appointment is not vacated).

"Fair Market Value" means the fair market value of a particular asset, determined by the Manager, as follows:

(a) Except as otherwise provided below, the price at which that asset would be sold between a willing buyer and a willing seller, each having reasonable knowledge of all relevant facts concerning the asset and neither acting under any compulsion to buy or sell.

(b) Investments in the form of limited partnership and limited liability company membership interests shall be valued on the basis of the value established for such interest by the applicable general partner or manager; provided, however, that in any such instance, the Manager may in good faith choose to use a lower value.

(c) Securities which are listed on one or more United States or foreign securities exchanges or quotation systems shall be valued at their closing price as is customarily ascertained by the respective exchange or system and published in recognized newspapers such as *The Wall Street Journal* or disseminated by quotation services such as Reuters or Bloomberg.

(d) Unlisted securities and listed convertible securities that trade predominantly in the over-the-counter market or the Rule 144A market shall be valued at the mean of their closing bid and ask prices in the applicable market, as determined by the National Quotation Bureau, Inc., or other reputable source selected by the Manager.

(e) If on the date as of which any valuation is being made, the exchange or market herein designated for the valuation of any given asset is not open for business or no sale of such asset occurred, the valuation of such asset shall be determined as of the last preceding date on which such exchange or market was open for business and a sale occurred.

(f) Securities which are not readily marketable, or as to which transferability is restricted by contractual or legal restrictions, shall be valued at the lower of cost or fair market value unless the Manager, in its discretion, believes there is an adequate basis for determining such fair market value of the security, in which case the Manager may value a security at its fair market value.

(g) In determining fair market value of the Company's assets as a whole, no allowance of any kind shall be made for good will or the name of the Company, the Company's office records, files and statistical data, or any other similar intangible assets of the Company.

"Indemnified Person" shall have the meaning set forth in Section 6.8.

"Initial Member" shall refer to Grubb & Ellis Realty Investors, LLC, a Virginia limited liability company, in its capacity as the initial Member of the Company.

"Initial Member Capital Contribution" shall have the meaning set forth in Section 2.1.1.

"Interests" shall represent a Limited Liability Company Membership Interest requiring a Capital Contribution of $1,000 per Interest. A Member's minimum initial Capital Contribution in the Offering is 75 Interests ($75,000), subject to the Manager's sole discretion to accept smaller Capital Contributions. A

Person may acquire a fractional Interest from the Company only if permitted by the Manager in its sole discretion.

"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.

"Investment Committee" shall mean the Investment Committee of the Company established pursuant to Section 6.11.

"Investment Income" means all income derived directly or indirectly from an Investment, including without limitation, distributions of income, fees, interest and dividends paid with respect to the Investment, but expressly excluding any Temporary Investment Income and Net Capital Proceeds.

"Limited Liability Company Membership Interest" shall mean a member's entire interest in the Company including such Member's interest in Distributions and tax allocations and such voting and other rights and privileges that a Member may enjoy by being a Member under the Act, this Agreement or otherwise.

"Loan Servicing Fee" shall mean the loan servicing fee payable to the Manager pursuant to Section 5.2.

"Manager" shall refer to Grubb & Ellis Realty Investors, LLC, a Virginia limited liability company, in its capacity as manager of the Company. The term "Manager" shall also refer to any successor or additional manager who is admitted to the Company as the Manager.

"Maximum Offering" shall mean the offer and sale of up to a maximum of 50,000 Interests ($50,000,000 of aggregate Capital Contributions), subject to the Manager's sole discretion.

"Member" shall mean any holder of an Interest who is admitted to the Company as a member. For purposes solely of Sections 4, 5 and 12.3, the term "Member" shall also include any transferee of one or more Interests not admitted as a Substitute Member.

"Member Majority" shall mean Members holding a majority of the total Interests held by all the Members from time to time.

"Member Minimum Gain" shall mean "partner nonrecourse debt minimum gain" as determined under Treasury Regulations Section 1.704-2(i)(3).

"Member Nonrecourse Debt" shall mean "partner nonrecourse debt" as set forth in Treasury Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" shall mean partner recourse deductions, as set forth in Treasury Regulations Section § 1.704-2(i)(2) and the amount thereof shall be determined as set forth in Treasury Regulations Section 1.704-2(i).

"Member Supermajority" shall mean Members holding two-thirds or more of the total Interests held by all the Members from time to time.

"Memorandum" shall mean the Company's Confidential Private Placement Memorandum, dated April 23, 2008, for the sale of Interests.

"Net Capital Contributions" of any Member shall be equal to the excess, if any, of (a) the aggregate Capital Contributions of such Member over (b) the aggregate Distributions to such Member pursuant to Section 4.3.

"Net Capital Proceeds" means the total proceeds received by the Company, net of Disposition Expenses and any other unpaid Company expenses (to the extent not otherwise paid out of Capital Contributions of the Members, reserves, Investment Income or Temporary Investment Income), derived directly or indirectly from the sale, redemption, curtail or repayment of principal or other disposition of any Investment or collateral therefor, in whole or in part.

"Net Income" or "Net Loss" shall mean, respectively, for each taxable year of the Company the taxable income and taxable loss (exclusive of Built-In Gain or Loss) of the Company as determined for federal income tax purposes in accordance with Section 703(a) or the Code (including all items of income, gain, loss, or deduction required to be separately stated pursuant to Section 703(a)(1) of the Code) (other than any specific item of income, gain (exclusive of Built-In Gain), loss (exclusive of Built-In Loss), deduction or credit subject to special allocation under this Agreement), with the following modifications:

(i) The amount determined above shall be increased by any income exempt from federal income tax;

(ii) The amount determined above shall be reduced by any expenditures described in Section 705(a)(2)(B) of the Code or expenditures treated as such pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i);

(iii) Depreciation, amortization and other cost recovery deductions shall be computed based on Book Value instead of on the amount determined in computing taxable income or loss. Any item of deduction, amortization or cost recovery specially allocated to a Member and not included in Net Income or Net Loss shall be determined for Capital Account purposes in a similar manner; and

(iv) For purposes of this Agreement, Book Gain and Book Loss attributable to a revaluation of an Investment attributable to unrealized gain or loss in such Investment shall be treated as Net Income and Net Loss.

"Net Investment Income" means the Investment Income of the Company, net of any Company expenses, including the Asset Management Fee and the Loan Servicing Fee (to the extent not otherwise paid out of Capital Contributions of the Members, reserves, Net Capital Proceeds or Temporary Investment Income).

"Nonrecourse Debt" shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(3).

"Nonrecourse Deductions" shall have the meaning, and the amount thereof shall be, as set forth in Treasury Regulations Section 1.704-2(c).

"Offering" shall mean the offering and sale of the Interests made in accordance with the provisions of the Memorandum.

"Offering Proceeds" shall mean the gross proceeds of the Offering.

"Offering Termination Date" shall mean the date the Offering of Interests will terminate pursuant to the Memorandum, which is the earliest of (i) the date all Interests are sold, or (ii) March 31, 2010.

"Organization and Offering Expenses" shall mean all expenses incurred in connection with the organization, formation and marketing of the Company and the preparation of the offering materials, and the marketing and sale of the Interests, including but not limited to legal, accounting, tax planning,

promotional fees or expenses, filing and recording fees, printing costs, travel expenses and other costs or expenses incurred in connection therewith.

"Person shall mean any natural person or entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so admits.

"Preferred Return" shall mean an amount equal to a 10% per annum, non-compounded return on a Member's Net Capital Contribution.

"Prime Rate" shall mean an annual interest rate equal to that announced from time-to-time by *The Wall Street Journal* as the prime rate, and changes in the Prime Rate shall be deemed to occur monthly on the first business day of each month to reflect any change in the prime rate on such date as announced in *The Wall Street Journal*.

"Regulatory Allocations" shall mean the allocations set forth in Sections 3.2.1 through 3.2.9.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the corresponding provisions of any superseding federal securities law.

"Subscription Agreement" means the agreement, in the form as may be attached to the Memorandum, by which each Person desiring to become a Member shall evidence (i) the number of Interests which such Person wishes to acquire, (ii) such Person's agreement to pay the Subscription Payment for such Interests, (iii) such Person's agreement to become a party to and be bound by the provisions of this Agreement and (iv) certain representations regarding the Person's finances and investment intent.

"Subscription Payment" shall mean the cash amount required to be paid by a subscribing Person on subscription for Interests as provided in Section 2.1.3.

"Substituted Member" shall mean any Person admitted as a substituted Member pursuant to this Agreement.

"Tax Payment" shall have the meaning set forth in Section 3.11.1.

"Temporary Investment Income" means income derived by the Company from Temporary Investments.

"Temporary Investments" mean (i) any direct obligations of, or obligations which are guaranteed by, the United States of America, or any agency, authority or instrumentality thereof, (ii) certificates of deposit, time deposits, demand deposits, bankers acceptances or interest or non-interest bearing accounts of U.S. banks or trust companies having undivided capital and surplus of not less than $25 million (iii) commercial paper or finance company paper which is rated not less than prime-one or A-1 or their equivalents by Moody's Investors Service, Inc., or Standard & Poor's Corporation or their successors, (iv) mutual funds that invest primarily in one or more of the foregoing, or (v) as otherwise determined by the Investment Committee.

"Treasury Regulations" means the regulations of the United States Treasury Department pertaining to the federal income tax laws, as amended from time to time. Any reference in this Agreement to a specific provision of the Treasury Regulations shall refer to the cited provision, as the same may be subsequently amended from time to time, as well as to any successor provisions.

EXHIBIT "B"

AMENDMENT NO.1 TO
LIMITED LIABILITY COMPANY AGREEMENT
OF
GRUBB & ELLIS CAPITAL FUND I, LLC

This Amendment No.1 ("First Amendment") to the Limited Liability Company Agreement (the "Agreement") of Grubb & Ellis Capital Fund I, LLC (the "Company") dated February 20, 2013 is entered into by and among NNN Realty Investors, LLC (f/k/a Grubb & Ellis Realty Investors, LLC), a Virginia limited liability company (the "Manager") and the Members of the Company.

WHEREAS, the Manager and the Members of the Company desire to amend the Agreement in order to provide for an extension of the Company's term, establish a new investment committee ("Investment Committee"), change the Company's distribution policies and provisions and to make such amendment conditioned upon the purchase of two Capital Fund loans by Sovereign Strategic Mortgage Fund, LLC or its designee/assignee.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereby consent and agree as follows:

1. The following defined term is hereby added to EXHIBIT A DEFINITIONS of the Agreement:

> "Gross Assets Under Management" shall mean the total Investments including all cash, notes (at book value), real estate owned (at book value), accounts receivable, advances made to protect loan security, unamortized organizational expenses and any other Company assets valued at Fair Market Value.

2. Section 4.3 of the Agreement is hereby deleted in its entirety and amended and restated to read as follows:

> 4.3. Net Capital Proceeds. Net Capital Proceeds shall be distributed to the Members pro rata in accordance with their respective ownership of Interests. Notwithstanding the foregoing, the Manager shall have the right to reinvest Net Capital Proceeds in Investments through-out the term of the Company, and Distributions on dissolution of the Company shall be governed by Section 11.3.

3. Section 5.1 is hereby deleted in its entirety and amended and restated as follows:

> 5.1.1. Asset Management Fee. The Manager shall be entitled to receive from the Company an annual asset management fee (the "Asset Management Fee") equal to 1.0% of the Gross Assets Under Management as determined on an

Mar 07 13 03:54p McCormick Assoc. 949 497-3299 p.2

annual basis The Asset Management Fee will be payable in quarterly installments (i.e., one-fourth of the calculated fee) in arrears. The Asset Management Fee shall be payable within ten (10) days after the end of each quarter.

4. Section 11.1.5 of the Agreement is hereby amended and restated to read as follows:

11.1.5. The expiration of the term of the Company, shall be October 31, 2014.

FURTHER, AND CONDITIONED AS FOLLOWS: If, and only if, the Manager is successful in completion of the sale of all rights, title, and interest in those certain existing Company notes, including all amendments and restatements thereof, which specific notes are commonly referred to as the (i) Plantations at Haywood Member, LLC note in the original principal amount of $10,000,000; and (ii) 1600 Barberry Lane, LLC note in the original principal amount of $10,500.000, to Sovereign Strategic Mortgage Fund, LLC ("SSMF") or its designee(s)/assignee(s) for the discounted purchase prices, as determined to reasonable in reliance on the Manager's analysis and recommendations, of three million one hundred thousand dollars ($3,100,000) and one million dollars ($1,000,000), respectively (together the "Note Sales"), this First Amendment shall include the following *additional* terms:

5. As a condition of the Note Sales, the present Manager shall resign, effective simultaneous upon the closing of the Note Sales, which Note Sales shall occur simultaneously, and shall be replaced by Sovereign Capital Management Group, Inc. ("Sovereign"). Manager and Members agree that the resignation notice period set forth at Section 8.1 of the Agreement shall be waived solely in this instance and shall otherwise remain in full force and effect. Sovereign agrees to be bound by all terms and conditions of the Agreement. Following the closing of the Note Sales, any reference to "Manager" under the Agreement shall be a reference to Sovereign.

6. Section 6.11.1 of the Agreement is hereby amended and restated to read as follows:

6.11.1 The Company shall have an Investment Committee which shall consist of no fewer than three (3) and no more than five (5) members, as determined by the Manager. At no time will the Investment Committee consist of more than one (1) member affiliated with the Manager or its affiliates. As of the effective date of this First Amendment, the members of the Investment Committee shall be Todd Mikles, John Weiss, Tye Wynfield and Dan Deighan, each who intends to serve until the earlier of such member's removal or resignation. All additions to or substitutions for Investment Committee membership shall be nominated by the Manager by written notice provided to the Members, and if a Member Majority does not provide written notice of objection to such nomination within fifteen (15) days of receipt of said notice, then such nominee shall become a duly appointed member of the Investment Committee.

Mar 07 13 03:54p McCormick Assoc. 949 497-3299 p.3

Investment Committee members shall only be removed for cause by a Member Majority.

7. Section 6.11.3 of the Agreement is hereby amended and restated to read as follows:

Members of the Investment Committee shall be entitled to be reimbursed by the Company for their reasonable out-of-pocked travel expenses incurred in connection with their attendance at meetings of the Investment Committee and in connection with due diligence of prospective Investments and borrowers. In addition, members of the Investment Committee who are not owners, managers or executives of the manager of its Affiliates will be paid a fee of $1,000 per year, subject to the Manager's ability to adjust such fees to a market rate in its sole discretion.

8. Section 6.11.5 of the Agreement is hereby amended and restated to read as follows:

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. Any action may be evidenced by a unanimous consent in lieu of a meeting.

9. Section 11.1.5 of the Agreement shall be otherwise amended and restated (this Item 9 replacing and superseding Item 4, above) to read as follows:

11.1.5. The expiration of the term of the Company, shall be October 31, 2014; provided that the Manager may extend such term for up to two (2) additional twelve-month (12) periods. The first option to extend the Company's term is within the Manager's sole and absolute discretion. The second option to extend the Company's term shall require approval by a then majority of the Investment Committee.

10. Except as amended herein, the Agreement will remain unchanged and in full force and effect.

11. All capitalized terms used but not defined herein shall have the same meanings ascribed to them in the Agreement.

12. This Amendment may be executed in several counterparts, and all so executed shall constitute one Amendment, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

Mar 07 13 03:54p McCormick Assoc. 949 497-3299 p.4

Executed as of _____, 2013:

MANAGER:

NNN Realty Investors, LLC, a Virginia limited liability company

By: _____
Name: _____
Title: _____

MEMBERS:

_____
Signature

_____
Printed name

ACKNOWLEDGED AND AGREED:

Sovereign Capital Management Group, Inc.
a Delaware corporation

By: _____
Name: _____
Title: _____

EXHIBIT "C"

GUARANTY AGREEMENT

This Guaranty Agreement (this "**Guaranty**") is made as of the 14th day of March, 2009, by GRUBB & ELLIS REALTY INVESTORS, LLC, a Virginia limited liability company ("**Guarantor**"), in favor of GRUBB & ELLIS CAPITAL FUND I, LLC, a Delaware limited liability company (together with its successors and assigns, "**Lender**").

Recitals

A. Lender has agreed to loan the principal amount of Three Million Five Hundred Thousand and 00/100 Dollars ($3,500,000.00) (the "**Loan**") to NNN Addison Com Center 1, LLC, a Texas limited liability company, NNN Addison Com Center 2, LLC, a Texas limited liability company, NNN Addison Com Center 3, LLC, a Texas limited liability company, NNN Addison Com Center 4, LLC, a Texas limited liability company, NNN Addison Com Center 5, LLC, a Texas limited liability company, NNN Addison Com Center 6, LLC, a Texas limited liability company, NNN Addison Com Center 7, LLC, a Texas limited liability company, NNN Addison Com Center 9, LLC, a Texas limited liability company, NNN Addison Com Center 10, LLC, a Texas limited liability company, and NNN Addison Com Center 11, LLC, a Texas limited liability company (collectively, the "**Borrower**").

B. The Loan is evidenced by that certain Promissory Note dated as of March 14, 2009, executed by the Borrower and made payable to the order of the Lender ("**Note**").

C. Guarantor is the Vice President of each of the Borrowers and deriving a direct or indirect benefit from the Loan, has agreed to execute and deliver this Guaranty to the Lender.

D. A condition precedent to Lender's making the Loan to Borrower is Guarantor's execution and delivery to Lender of this Guaranty.

E. Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Note.

Agreements

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to make the Loan and otherwise extend credit to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "**Guaranteed Obligations**"), this Guaranty being upon the following terms and conditions:

Section 1 Guaranty of Payment.

Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after maturity and after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), prepayment premiums, fees, late charges, costs, expenses, indemnification

indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Note as the same may from time to time be amended, supplemented, restated or otherwise modified (collectively, the "**Indebtedness**"). The Indebtedness includes all costs and expenses incurred by Lender in seeking to enforce Lender's rights and remedies with respect to the Indebtedness, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated thereon. This Guaranty covers the Indebtedness presently outstanding and the Indebtedness arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection. Notwithstanding any language of this Guaranty, Guarantor's obligations hereunder with respect to the repayment of principal of the Loan shall not, at any time, exceed the amount of One Million and 00/100 Dollars ($1,000,000.00) (the "**Principal Guaranty Obligations**"), plus the costs and expenses of enforcement as set forth in Section 12 exclusive of the guaranty obligations of Section 2.

Section 2 Intentionally Omitted.

Section 3 Intentionally Omitted.

Section 4 Primary Liability of Guarantor.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship Laws in effect from time to time, including any right or privilege, whether existing under statute, at Law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) If at any time hereunder Guarantor shall become obligated to pay any Guaranteed Obligations, such Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Lender, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Lender in connection with the collection and enforcement of the Note), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or any other Person liable on such indebtedness or for such performance, or to

enforce any rights against any security given to secure such indebtedness or performance, or to join Borrower or any other Person liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from suing on the Note or from exercising any other rights thereunder. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may, in payment of the amount bid therefor, deduct such amount from the balance due it pursuant to the terms of the Note.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

Section 5 Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(i) any limitation on the liability of, or recourse against, any other Person in the Note or arising under any Law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of Guarantor hereunder exceed or are more burdensome than those of Borrower under the Note;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) the operation of any statutes of limitation or other Laws regarding the limitation of actions, all of which are hereby waived as a defense to any action or proceeding brought by Lender against Guarantor, to the fullest extent permitted by Law;

(v) any homestead exemption or any other exemption under applicable Law;

(vi) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve,

impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of Guarantor's recourse against any Person or collateral;

(vii) whether express or by operation of Law, any partial release of the liability of Guarantor hereunder (except to the extent expressly so released) or any complete or partial release of Borrower or any other Person liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(viii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(ix) either with or without notice to or consent of Guarantor, any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Note, including material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance or any other terms thereof, or any waiver, termination, or release of, or consent to departure from the Note or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower or any other Person at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(x) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with the Note, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(xi) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of the Note, or of any release of or change in any security, or of the occurrence or existence of any Default or Event of Default, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and Guarantor shall be responsible for obtaining for itself information regarding Borrower, including any changes in the business or financial

condition of Borrower, and Guarantor acknowledges and agrees that Lender shall have no duty to notify Guarantor of any information which Lender may have concerning Borrower;

(xii) if for any reason Lender is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(xiii) the making of advances by Lender to protect its interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in the Note;

(xiv) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty or the Note;

(xv) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by Law or violate any usury law, or because the Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in the Note, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of Law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(xvi) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender, or any action taken or omitted by Lender in any such proceedings, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender in any such proceedings or the taking and holding by Lender of any security for any such extension of credit;

(xvii) any other condition, event, omission, action or inaction that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement;

(xviii) any early termination of any of the Guaranteed Obligations; or

(xix) Lender's enforcement or forbearance from enforcement of the Guaranteed Obligations on a net or gross basis.

(b) In the event any payment by Borrower or any other Person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar Law, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with any such event.

(c) It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Lender shall be entitled to continue to hold this Guaranty in its possession for a period of one year from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Lender hereunder. Notwithstanding the foregoing, all obligations and liabilities of the Guarantor set forth in this Guaranty shall terminate upon the payment in full of the Loan.

(d) Guarantor's obligations shall not be affected, impaired, lessened or released by loans, credits or other financial accommodations now existing or hereafter advanced by Lender to Borrower in excess of the Guaranteed Obligations. All payments, repayments and prepayments of the Loan, whether voluntary or involuntary, received by Lender from Borrower, any other Person or any other source (other than from Guarantor pursuant to a demand by Lender hereunder), and any amounts realized from any collateral for the Loan, shall be deemed to be applied first to any portion of the Loan which is not covered by this Guaranty, and last to the Guaranteed Obligations, and this Guaranty shall bind Guarantor to the extent of any Guaranteed Obligations that may remain owing to Lender. Lender shall have the right to apply any sums paid by Guarantor to any portion of the Loan in Lender's sole and absolute discretion.

(e) If acceleration of the time for payment of any amount payable by Borrower under the Note is stayed or delayed by any Law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

Section 6 Subordination.

If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness

shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not an Event of Default shall have occurred or be continuing under the Note), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 6, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 6, including, but not limited to, execution and delivery of financial statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

Section 7 Intentionally Omitted.

Section 8 Lender Assigns; Disclosure of Information.

This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations or any part thereof. Lender may sell or offer to sell the Loan or interests therein to one or more assignees or participants. Guarantor shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Note as such Person(s)

would have if such Person(s) were Lender hereunder. Lender may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including information regarding any security for the Guaranteed Obligations or for this Guaranty, and/or credit or other information on Guarantor and/or any other Person liable, directly or indirectly, for any part of the Guaranteed Obligations.

Section 9 Binding Effect; Joint and Several Liability.

This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

Section 10 Governing Law; Consent to Jurisdiction.

This Guaranty is an agreement executed under seal. The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the Laws of the State of California and applicable United States federal Law, and is intended to be performed in accordance with, and only to the extent permitted by, such Laws. If any Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the affixing of such Guarantor's corporate seal physically to this Guaranty. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in Cook County, Illinois, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by Law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section 10 may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Lender receives actual notice from Guarantor in accordance with the notice provisions hereof, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner

permitted by Law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable Law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which Guarantor may otherwise be entitled under the Laws of the United States of America or any State or possession of the United States of America now in force or which may hereinafter be enacted.

Section 11 Invalidity of Certain Provisions.

If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable Law.

Section 12 Attorney's Fees and Costs of Collection.

Guarantor shall pay on demand all reasonable attorneys' fees and all other costs and expenses incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty including, without limitation, all reasonable attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Lender under this Section 12 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 12 shall survive any payment or discharge in full of the Guaranteed Obligations. All such fees, costs and expenses incurred by Lender shall constitute a portion of the Guaranteed Obligations hereunder, shall be subject to the provisions hereof with respect to the Guaranteed Obligations, and shall be payable by Guarantor on demand by Lender.

Section 13 Payments.

All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

Section 14 No Usury.

It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable Law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable Law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable Law. The provisions

of this Section shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

Section 15 Intentionally Omitted.

Section 16 Intentionally Omitted.

Section 17 Notices.

All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under the Note shall be in writing and, unless otherwise specifically provided the Note, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service, or by certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in the Note or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 18 Cumulative Rights.

The exercise by Lender of any right or remedy hereunder or under the Note, or at Law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or the Note or by Law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle

Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right, remedy or recourse of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Lender.

Section 19 Term of Guaranty.

This Guaranty shall continue in effect until all the Guaranteed Obligations and all of the obligations of Guarantor to Lender under this Guaranty are fully and finally paid, performed and discharged and are not subject to any bankruptcy preference period or any other disgorgement.

Section 20 Financial Statements.

Guarantor agrees to provide to Lender, as and when required by the Note, financial statements and other financial information, in the form and detail required by the Note. Guarantor also agrees to provide to Lender such other and further financial information with respect to Guarantor as Lender shall from time to time reasonably request in accordance with the terms of the Note.

Section 21 Right of Set-Off. Upon the occurrence and during the continuance of any Event of Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable Law), to set off and apply any and all deposits (except for security deposits held for tenants), funds, or assets at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not Lender shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lender will promptly notify Guarantor after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section 21 are in addition to the other rights and remedies (including other rights of set-off) that Lender may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

Section 22 Subrogation.

Guarantor shall not have any right of subrogation under any of the Note or any right to participate in any security for the Guaranteed Obligations or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Guaranteed Obligations have been fully and finally paid, performed and discharged in accordance with Section 19 above, and Guarantor hereby waives all of such rights.

Section 23 Further Assurances.

Guarantor at Guarantor's expense will promptly execute and deliver to Lender upon Lender's request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

Section 24 No Fiduciary Relationship.

The relationship between Lender and Guarantor is solely that of lender and guarantor. Lender has no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Lender.

Section 25 Interpretation.

If this Guaranty is signed by more than one Person as "Guarantor", then the term "Guarantor" as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally and Lender may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Note and/or applicable Law with respect to the Property or the Note. The term "Lender" shall be deemed to include any subsequent holder(s) of the Note. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural, words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Note are for convenience only and shall not affect the construction of the Note. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms "herein", "hereof", "hereto", "hereunder" and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms "include" and "including" shall be interpreted as if followed by the words "without limitation". All references in this Guaranty to sums denominated in dollars or with the symbol "$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, "Person" or "Persons" shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

Section 26 Time of Essence.

Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

Section 27 Entire Agreement; Counterparts; Construction.

This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes

all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. As used herein, the words "include" and "including" shall be interpreted as if followed by the words "without limitation."

Section 28 WAIVER OF JURY TRIAL.

GUARANTOR AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND LENDER, AND GUARANTOR AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE NOTE. GUARANTOR AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

Section 29 Credit Verification.

Each legal entity and individual obligated on this Guaranty, whether as a Guarantor, a general partner of a Guarantor or in any other capacity, hereby authorizes Lender to check any credit references, and obtain credit reports from credit reporting agencies of Lender's choice in connection with any monitoring, collection or future transaction concerning the Loan, including any modification, extension or renewal of the Loan. Also in connection with any such monitoring, collection or future transaction, Lender is hereby authorized to check credit references.

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IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty as of the date first written above.

Address of Guarantor:

1551 North Tustin Avenue, Suite 300
Santa Ana, CA 92705
Attn: Chief Investment Officer
Fax No.: (714) 918-9102

GUARANTOR:

Grubb & Ellis Realty Investors, LLC,
a Virginia limited liability company

By: _____
Name: Michael J. Rispoli
Its: Chief Financial Officer

Address of Lender:

Grubb & Ellis Capital Fund I, LLC
1551 North Tustin Avenue, Suite 200
Santa Ana, CA 92705
Attn: General Counsel
Fax No.: (866) 405-6905

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:

The undersigned certifies and declares as follows:

I am over the age of 18 and not a party to this action. My business address is 2331 West Lincoln Avenue, Anaheim, California 92801, which is in the county where the mailing described below took place.

On July 16, 2018 I served the within **THIRD AMENDED COMPLAINT FOR BREACH OF FIDUCIARY DUTY AND FRAUDULENT TRANSFER** by:

[ ] (Facsimile Transmission) I caused the above mentioned document to be served by facsimile transmission to the parties at the fax numbers listed on the attached service list.

[ ] (Mail) I placed a true and correct copy thereof in a sealed envelope addressed as set forth on the attached service list and caused such envelope, with first class postage thereon fully prepaid, to be placed in the U.S. Mail at Anaheim, California, and certify that such envelope was placed for collection and mailing following ordinary business practices.

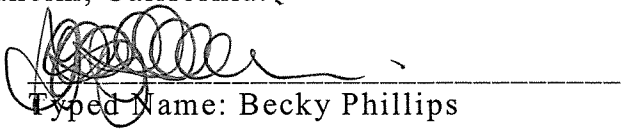
[ ] (Overnight Delivery) I placed a true and correct copy thereof in a sealed envelope addressed as set forth on the attached service list and caused such envelope to be delivered the next day by overnight courier to the addressee(s) listed on the attached service list.

[X] (By OneLegal Electronic Service) I caused the above-entitled document(s) to be served through OneLegal addressed to all parties appearing on the OneLegal electronic service list for the above-entitled case. The "OneLegal Filing Receipt" page(s) will be maintained with the original document(s) in our office.

[ ] (E-mail) I caused the above mentioned document to be served via PDF e-mail attachment to the parties at the e-mail addresses listed on the attached service list.

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

Executed July 16, 2018 at Anaheim, California.



Typed Name: Becky Phillips

SERVICE LIST

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