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IN THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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

EXHIBIT
T-144

CW005803

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

PARTIES, JURISDICTION, AND VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT ONE— BREACH OF REPRESENTATIONS & WARRANTIES BY TIC 0

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

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

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

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

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

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

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

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

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

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

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

breach thereof according to proof at the time of trial.

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

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

COUNT TWO — KICKBACK PAYMENT AND RECEIPT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT THREE — BREACH OF RIGHT OF FIRST REFUSAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hereby tender the $3,100,000 payment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JURY DEMAND

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

PRAYER FOR RELIEF

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

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

2. For compensatory damages;

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

4. For general and special damages;

5. For consequential and incidental damages;

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

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

8. For prejudgment interest at the highest legal rate;

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

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

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

RESPECTFULLY SUBMITTED this 3rd day of November, 2017.

Catanzarite Law Firm

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

CW005848

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of November, 2017, I caused a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** to be served by e-file notification to the following:

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Deiss Law PC

/s/ Megan Murri
Megan Murri