IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

SHOMA CORAL GABLES, LLC,
a Delaware limited liability company,
derivatively on behalf of CORAL GABLES
LUXURY HOLDINGS, LLC, a Delaware
limited liability company,

Plaintiff,

vs.

GABLES INVESTMENT HOLDINGS, LLC
a Delaware limited liability company,
UGO COLOMBO, Individually, and
THE COLLECTION, LLC,
a Florida limited liability company,

Defendants.
_____/

CASE NUMBER: 17-17658 CA 40

CORRECTED AMENDED COMPLAINT [1]

Plaintiff, SHOMA CORAL GABLES, LLC, a Delaware limited liability company, by and through its undersigned counsel, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, a Delaware limited liability company, files this Amended Complaint against the Defendants, GABLES INVESTMENT HOLDINGS, LLC, a Delaware limited liability company, UGO COLOMBO, individually, and THE COLLECTION, LLC, a Florida limited liability company, stating as follows:

Parties

1. Plaintiff, SHOMA CORAL GABLES, LLC (hereinafter "**SHOMA**"), is a Delaware

[1] The prior version of the Amended Complaint was inadvertently filed and did not contain all of Shoma's amended allegations.

limited liability company, which at all times material hereto had its principal place of business at 3470 NW 82nd Avenue, Suite 988, Doral, Florida 33122. SHOMA owns a 50% interest in and is a member of CORAL GABLES LUXURY HOLDINGS, LLC (the "**Company**").

2. Defendant, GABLES INVESTMENT HOLDINGS, LLC (hereinafter "**CMC**"), is a Delaware limited liability company which was at all times material hereto conducting business in Miami-Dade County, Florida, and is otherwise *sui juris*. CMC owns a 50% interest in and is a member of the Company.

3. Defendant, UGO COLOMBO (hereinafter "**COLOMBO**"), is an individual who was at all times material hereto a resident of Miami-Dade County, Florida, and is otherwise *sui juris*.

4. Defendant, THE COLLECTION, LLC (hereinafter "**THE COLLECTION**"), is a Florida limited liability company which was at all times material hereto conducting business in Miami-Dade County, Florida, and is otherwise *sui juris*

Jurisdiction and Venue

5. The amount in controversy exceeds $15,000.00, exclusive of attorney's fees and costs.

6. The Court has *in personam* jurisdiction over CMC because CMC was at all times material hereto conducting business in Miami-Dade County and a written agreement between SHOMA and CMC regarding the business and operation of the Company was entered into in Miami-Dade County, Florida.

7. The Court has *in personam* jurisdiction of COLOMBO because COLOMBO was at all times material hereto a resident of Miami-Dade County, Florida and was conducting business in Miami-Dade County by, *inter alia*, acting as a Manager of the subject Company in this action. At all

times material hereto, COLOMBO was also acting as Chairman and Manager of THE COLLECTION.

8. The Court has *in personam* jurisdiction of THE COLLECTION because THE COLLECTION is a Florida limited liability company and was at all times material hereto conducting business in Miami-Dade County, Florida.

9. Venue is proper in Miami-Dade County because the events giving rise to the causes of action asserted herein occurred in Miami-Dade County, Florida; the causes of action asserted herein accrued in Miami-Dade County, Florida; and the property at issue in this case is located in Miami-Dade County, Florida.

10. All conditions precedent, if any, to the bringing of this lawsuit have been complied with, excused, or waived, and all administrative remedies, if any, have been exhausted or waived. To the extent Defendants contend that an initial determination of the existence of a "Bad Act" (as defined in the Operating Agreement), through non-binding arbitration, is required as a condition precedent to the claims asserted in this lawsuit, such position has been waived. Specifically, Defendants have acted inconsistently with their purported arbitration rights by filing Counterclaims against Shoma and its Manager, Masoud Shojaee, in a collateral Circuit Court action which remains pending before this Court. *See* Exhibit "A." In their Counterclaims, Defendants have taken the position that both Shoma and Shojaee can be held liable for damages for conduct which, if proven at trial, meets the definition of a Bad Act. Defendants filed these Counterclaims prior to the completion of any non-binding arbitration proceeding. Moreover, Defendants have engaged in substantial non-merits motion practice, sought a substantial amount of discovery, all of which seek final resolution of the subject disputes in this Court, rather than through non-binding arbitration. As

a result of the considerable effort by the parties in connection with the Circuit Court actions, requiring the instant claims to be submitted to non-binding arbitration at this late stage would prejudice Shoma.

11. Further, pre-suit demand on the Company's Management Committee is excused as futile because, under Section 4.3(a)(vii) of the Operating Agreement, the Management Committee, which is only comprised of one representative from Shoma and one representative from CMC, must unanimously agree to institute litigation when the claim exceeds $50,000.00. However, CMC is itself a Defendant in this action along with its previously designated Manager, COLOMBO. COLOMBO is also Chairman and owner of Defendant, The Collection, LLC. Based upon the Defendants' relationships to claims asserted herein, the Management Committee is not comprised of a *majority* of members who are capable of making an independent and disinterested decision to institute and vigorously prosecute an action against those same Defendants in connection with the factual allegations set forth herein. The lawsuits also seek damages against a Member, CMC, wherein COLOMBO is the 100% owner.

General Allegations

12. In 1994, COLOMBO acquired an ownership interest in THE COLLECTION, a seven-franchise luxury automotive dealership (Jaguar, Porsche, Ferrari, Maserati, Aston Martin, Audi and McLaren), after owner Armando Fernandez – a former racing partner on the powerboat circuit – was arrested on drug charges.

13. When COLOMBO acquired his ownership interest in THE COLLECTION, the auto dealership generated approximately Fifty Million Dollars ($50,000,000.00) in sales.

14. By 2014, THE COLLECTION generated more than Five Hundred Million Dollars

($500,000,000.00) in sales.

15. The tenfold increase in the business of THE COLLECTION made the existing physical plant inadequate. THE COLLECTION needed to expand its physical facilities to obtain additional retail (showroom) and parking space for its cars in order to meet the needs of its expansion. The property that is subject of this dispute is the ideal property for that expansion.

16. As described in greater detail below, SHOMA and CMC thereafter entered into a business relationship with the express purpose of purchasing real property in Coral Gables, Florida to develop residential condominium units and commercial retail space.

17. At all times material hereto, CMC has been managed and operated by COLOMBO, who at all times material hereto, has also been and continues to be Chairman, Manager, and principal of THE COLLECTION.

Shoma and CMC Agree to Develop the Collection Residences

18. On or about May 1, 2013, Shoma Investment Company, an affiliate of SHOMA, entered into a Purchase and Sale Agreement ("**Purchase Agreement**") with Yeung Property Holdings, LLC and Yeung Property Corp. (collectively "**Seller**") for the purchase of that certain real property (the "**Property**") which is located in Miami-Dade County and legally described as follows:

> Lots 1 – 21 and 27 – 38 in Block 3, REVISED PLAT OF CORAL GABLES INDUSTRIAL SECTION, according to the Plat thereof, as recorded in Plat Book 28, at Page 22, of the Public Records of Miami-Dade County, Florida Folio number 03-4120-017-0571 for Lots 1 – 4 (parking lot); Folio number 03-4120-017-0580 for lots 5 – 21 (4112 Aurora Street); Folio number 03-4120-017-0720 for Lots 27 – 38 (4101 Salzedo Street);
>
> and
>
> Lots 22 – 26 and 39 – 42 in Block 3, REVISED PLAT OF CORAL

GABLES INDUSTRIAL SECTION, according to the Plat thereof, as recorded in Plat Book 28, at Page 22, of the Public Records of Miami-Dade County, Florida Folio number 03-4120-017-0700 for Lots 22 – 24 (245 Altara Avenue); Folio number 03-4120-017-0710 for Lots 25 and 26 (4111 Salzedo Street); Folio number 03-4120-017-0790 for Lots 39 – 42 (250 Bird Road)

19. The Purchase Price for the Property was $27 Million Dollars *plus* a contingent $1 Million Dollar "bonus," which would be paid if the purchaser or an affiliate of the purchaser sold or leased underground parking spaces to THE COLLECTION. In addition, the Seller retained a contingent bonus of 10% of the Gross Rental Income from any such lease or the sales price for the purchase of any such underground parking.

20. The above-described "bonus" was included in the Purchase Agreement because Seller had prior knowledge that THE COLLECTION had an interest in acquiring the Property.

21. SHOMA and CMC thereafter discussed SHOMA's pending acquisition of the Property and they eventually agreed to purchase and develop the Property together.

22. On or about October 8, 2013, SHOMA and CMC agreed to form CORAL GABLES LUXURY HOLDINGS, LLC (the "**Company**"), which was to be owned by them on a 50/50 basis.

23. The formal date of Formation of the Company, as reflected in the public records of the Delaware Department of State, was October 8, 2013.

24. On October 8, 2013, SHOMA and CMC executed the written Operating Agreement of Coral Gables Luxury Holdings, LLC (the "**Operating Agreement**"), a true and correct copy of which is attached hereto as Exhibit "B".

25. Section 2.5 of the Operating Agreement describes the "Purpose" of the Company as follows:

> **2.5 Purpose.** The Company is organized for the purpose of acquiring, owning, developing, leasing, operating and disposing of the Property and the Intended Improvements and any other properties acquired by the Company, to borrow money and issue evidence of indebtedness or guaranties thereof in furtherance of any or all of the objectives of the Company's business and to secure the same by mortgage, pledge or other liens; and do any and all lawful business for which a limited liability company may be formed under the Act that is incident and necessary to the foregoing (the "**Business**").

26. Section 4.1 of the Operating Agreement provides that a Manager is to be selected by each Member in order to carry out of the business of the Company. Accordingly, each Manager is an agent of and binds the appointing Member for all acts and omissions by the Manager relative to his or her conduct in carrying out the business of the Company.

27. In accordance with the Operating Agreement, SHOMA appointed Masoud Shojaee ("**SHOJAEE**") as its Manager of the Company and CMC appointed Ugo Colombo **("COLOMBO")** as its Manager of the Company; SHOJAEE and COLOMBO thereby became the "Management Committee" of the Company.

28. On December 5, 2013, the Company completed its purchase of the Property pursuant to the Purchase Agreement.

29. Promptly after closing on the Company's purchase of the Property, business operations were commenced, with SHOJAEE and COLOMBO acting as Co-Managers of the Company.

30. On December 12, 2013, CMC delivered to SHOMA an article that had been published in *The Real Deal* describing the Company's foregoing purchase of the Property and stating that the Company had filed development plans with the city of Coral Gables for "The Collection

Residences".

31. As of December 12, 2013, the Managers and Members of the Company were on actual notice regarding the Company's use of "The Collection Residences" as the name for the Project (as described below).

32. The Collection Residences project (the "**Project**") consisted of a 10-story luxury condominium building with ground level retail space ("**Retail Space**") and related parking that was to be constructed on approximately 2.82 acres of land (the "**Property**")

33. The Retail Space made up only about 8-10% of the overall Project.

34. During the initial 18 months after the Company acquired the Property, it obtained various approvals and entitlements that were necessary for construction of the Project. Further, several prospective buyers provided deposits to the Company toward the purchase of residential condominium units at the Project.

35. In May 2014, a broker for Robb & Stuckey, a high-end furniture retailer, contacted SHOJAEE regarding the purchase of 30,000 square feet of retail space at the Property.

36. On July 8, 2014, during the Company's negotiations with Robb & Stuckey, COLOMBO sent an email to SHOJAEE. Recognizing the unique value of the Property, COLOMBO wrote: **"Let's discuss what price to quote them, *I think we should stay on the high side* considering the latest sale"** (Emphasis provided.).

37. COLOMBO'S reference to "the latest sale" in his foregoing email to SHOJAEE was a reference to a comparable retail sale on Ponce de Leon Boulevard.

38. Although the foregoing negotiations with Robb & Stuckey did not result in a lease with that furniture retailer, the Project was not cancelled by COLOMBO or CMC.

39. Around March 2015, the Company began working on efforts to fund a portion of the construction costs for the Project via international investments under the Federal Employment Based Fifth Preference Program, which is also known as EB5 financing (hereinafter "**Mezzanine Loan**").

40. On March 12, 2015, CMC emailed to SHOMA a proposed commitment letter ("**Commitment Letter**") related to a potential Mezzanine Loan from QueensFort Capital in the amount of Forty-Eight Million Five Hundred Thousand Dollars ($48,500,000.00).

41. The Commitment Letter from QueensFort Capital made **no mention of any sale or lease of any property to THE COLLECTION**.

42. On May 6, 2015, as part of the Company's efforts to obtain the Mezzanine Loan, CMC prepared a Cash Flow Projection which reflected the projected revenue for the Project as follows:

• Gross Condo Sales Proceeds	$775 PSF	$244,199,400
• Gross Retail Sales Proceeds	$700 PSF	$ 28,000,000
• Basement Garage Proceeds		$ 9,000,000
Total Proceeds		$281,199,400

43. An Appraisal Report (Market Study) obtained by the Company on or about June 21, 2015 related to the Mezzanine Loan confirmed that $700 PSF was the appropriate selling price for this property based on comparable sales for retail space in the area where the Property is located.

44. The foregoing Appraisal Report (Market Study) also concluded that the immediate area surrounding the Property was projected to experience moderate, positive growth.

45. In late June 2015, the Company opened a Sales Office to promote sales at the Project.

46. The Company's Business Plan, dated June 30, 2015, reflected the following projected revenue for the Project:

- Gross Condo Sales Proceeds $775 PSF $244,199,400
- Gross Retail Sales Proceeds $700 PSF $ 37,000,000
  (Note: The $37,000,000 is inclusive of Basement Garage Proceeds)

Total Proceeds $281,199,400

CMC and COLOMBO engage in Bad Faith Scheme to Convey Space to The Collection for Improper Price not in the Best Interests of the Company

47. Instead of conducting themselves in good faith and to the standard required by the parties' agreement and applicable law, CMC and COLOMBO engaged in a pattern of bad faith designed to unfairly enrich COLOMBO and THE COLLECTION at the Company's expense by, among other things, acquiring underground garage space at the Property upon terms and conditions that were not in the best interests of the Company, *to wit*: for only the cost of construction and without consideration of the $1,000,000 contingent fee to the original seller, the 10% reserved shares in profits, compensation for the value of the involved real property (land) where the parking garage was to be constructed or any profit for the effort related thereto.

48. On or about June 29, 2015, CMC prepared a ***revised*** self-serving Cash Flow Projection which contained a much lower price per square foot for that portion of Retail Space and basement garage spaces ("**Basement Garage Area**") which CMC manipulated for a sale of said space to THE COLLECTION and which now reflected the following projected revenue for the Project:

- Gross Condo Sales Proceeds $825 PSF $255,403,500
- Gross Retail Sales Proceeds $500 PSF $ 17,000,000
  (Note: The $17,000,000 is inclusive of Basement Garage Proceeds)

Total Proceeds $272,403,500

49. On August 8, 2015, CMC delivered a proposed ***revised*** Commitment Letter to

SHOMA. This commitment letter added a **new condition precedent** for the Mezzanine Loan from QueensFort Capital. CMC's new condition required that in order for the Company to obtain the Mezzanine Loan, the Company would first have to execute a contract with THE COLLECTION for the sale or lease of certain parking and retail areas (the subject Retail Space and Basement Garage Area) of the Project (the "**Collection Agreement**").

50. On or about August 18, 2015, Shoma objected to any requirement which would impose the foregoing condition precedent to obtaining the Mezzanine Loan because:

A. Pricing on the cost of construction for the Basement Garage Area was uncertain, which made pricing on the sale or lease of the subject space to THE COLLECTION premature;

B. Adding the Basement Garage Area to the Project would require a greater time to complete the Project;

C. Adding the Basement Garage Area to the Project would require that the Company incur several million dollars in expenses and additional debt to construct that Basement Garage Area and expense of several million dollars of contingent bonuses and contingent sales proceeds because the Collection would own the garage;

D. Adding the Basement Garage Area to the Project would involve additional completion risks to the Company, such as a potential breach of the water table during excavation requiring consequent dewatering efforts, an identifiable risk causing an insurmountable increase in the cost of construction, as well as potential breaches of the Company's purchase agreements with buyers arising from delays in completion of the Project, and ultimately bankrupting the Project;

E. It was in the Company's best interests to wait until construction was imminent, costs were certain, and financing was in place before entering into any such contract with THE COLLECTION; and

F. The condition requiring a contract with THE COLLECTION for the sale or lease of any space as part of the Project had not been included in the prior commitment letters for such financing and was not an essential requirement for the Company to obtain a Mezzanine Loan.

51. SHOMA had also concluded that but for THE COLLECTION's unique need for extra parking, a basement parking garage for a project of this size would not be required. Because CMC and COLOMBO insisted on constructing an underground parking area to service the needs of THE COLLECTION, they insisted on constructing greater than 16,000 square feet of Retail Space.

52. The prices imposed by COLOMBO and CMC for the Retail Space and Basement Garage Area, as described hereinabove, were not in the best interests of the Company.

CMC and COLOMBO Sabotage the Project

53. On or about September 8, 2015, SHOJAEE and COLOMBO had a meeting to discuss the price for the Company's potential sale of the subject Retail Space and Basement Garage Area to THE COLLECTION.

54. During that September 8th meeting, COLOMBO imposed an arbitrary and unreasonable ultimatum upon SHOMA. CMC and Colombo demanded that the price for the sale of Retail Space and the Basement Garage Area to THE COLLECTION must be at the cost of construction without sufficient provision for sums due to the original owner, contingencies, land costs, or profit. CMC and COLOMBO made it clear to SHOMA that if SHOMA refused, they would withdraw from the Project.

55. For the reasons stated hereinabove, SHOJAEE did not agree to COLOMBO's foregoing take it or leave it price.

56. As of September 15, 2015, CMC and COLOMBO refused to consider any alterations or counteroffers other than the above-described improper price for THE COLLECTION which was not in good faith and was not in the best interests of the Company.

57. On September 18, 2015, Vanessa J. Grout, President of CMC Real Estate, LLC, informed SHOJAEE that she was unable to finish the floor plans, website, etc., because she was being instructed that the Project was not moving forward.

58. On September 19, 2015, CMC and COLOMBO delivered to SHOMA a Unanimous Written Consent of the Managers of the Company, which it executed, whereby CMC asked SHOMA to agree to the following prices for the Company's sale of the subject Retail Space and Basement Garage Area to THE COLLECTION:

• Retail Space (26,5000 sf)	$500 PSF	$14,250,000
• Basement Garage Area		$ 3,160,000
• **Total Price for THE COLLECTION**		**$17,410,000**

59. CMC's foregoing Written Consent also required that the Company approve the (revised) Commitment Letter which required that the Company first execute a contract with THE COLLECTION for the sale or lease of certain of the parking and retail areas (the subject Retail Space and Basement Garage Area) of the Project (the "**Collection Agreement**"), as a condition precedent for the Company to moving forward in obtaining the Mezzanine Loan from QueensFort Capital.

60. SHOMA declined to execute CMC's above-described written consent and responded with a revised consent which proposed the following price for the Company's sale of the subject Retail Space and Basement Garage Area to THE COLLECTION:

• Retail Space (26,500 sf)	$700 PSF	$18,550,000
• Basement Garage Area		$ 5,480,000
• **Total Price for THE COLLECTION**		**$24,030,000**

61. COLOMBO and CMC rejected SHOMA's proposed written consent and once again refused to budge from their above-described improper price for THE COLLECTION.

62. COLOMBO and CMC were relentless in their efforts to obtain the subject Retail Space and Basement Garage Area for THE COLLECTION at the above-described improper price, knowing that such conveyance was not in the best interests of the Company, *to wit*: a price that was based on unverified costs for the construction of a large Basement Garage Area that exposed the Company to huge financial risks, with insufficient payment for the real property (land) where that basement garage would be built.

63. When SHOMA refused to capitulate to the improper demands of CMC and COLOMBO, CMC and COLOMBO cancelled and sabotage the project despite Shoma's having invested millions of dollars and substantial time in the anticipated project. The Company suffered substantial damage as a proximate result thereof, including lost profits.

64. On or about September 24, 2015, SHOMA discovered that COLOMBO had the website for the Project taken down with no prior notice to SHOMA.

65. On September 25, 2015, Alicia McCormack, a real estate agent for the Project, informed SHOJAEE that she had been told not to continue scheduling broker presentations related to the Project.

66. On September 28, 2015, SHOMA was informed that several Buyers who had signed reservation agreements for the purchase of residential units at the Project and were still waiting for their respective copy of the fully executed reservation agreement which COLOMBO had failed or refused to counter-sign.

67. On September 30, 2015, COLOMBO failed to appear for a scheduled meeting at the Project's Sales Office which had been scheduled in order to address various Project related concerns that had been raised by the Sales Office staff.

68. On October 27, 2015, COLOMBO *unilaterally* closed down the Sales Office and dismissed all of the sales representatives with no prior notice to SHOMA.

69. Later, on October 27, 2015, one of the Sales Representatives at the Sales Office for the Project texted a SHOMA representative and stated as follows: "Sales Center has closed down today… very sad… Let me know if you hear of any projects needing sales people…"

70. COLOMBO's foregoing actions improperly published to vendors, prospective purchasers, lenders, and others in the community the fact that the Project had been terminated.

71. Defendants, CMC and COLOMBO, acted in bad faith, intending to profit from this premeditated scheme which they designed to sabotage the Project after SHOMA refused to accept the above-described improper price for the Basement Garage Area by attempting to seize control of the Company's assets including, but not limited to, the Property for Defendants' own use.

72. On October 30, 2015, in response to a Miami Magazine reporter's questions, COLOMBO stated that THE COLLECTION "is a natural expansion of the building I have next door…"

73. At or about the time that COLOMBO made the foregoing statements to a reporter, which were included in an article written about the project. COLOMBO had already (A) told SHOJAEE that the Project was not going forward, (B) *unilaterally* closed down the Sales Office, (C) discharged realtors that had been hired to market and sell residential and retail units at the Project, and (D) canceled marketing events for the Project.

74. These acts were all in retaliation for SHOMA's refusal to capitulate to CMC and COLOMBO's improper demands.

75. As a result of the Defendants' actions, as described herein, SHOMA has been forced

to engage undersigned counsel to whom it is obligated for legal fees and expenses to bring this Derivative Action.

Count I
BREACH OF EXPRESS CONTRACTUAL DUTY OF GOOD FAITH
(Against CMC)

76. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

77. This is an action against Defendant CMC for such Defendant's breach of the Operating Agreement.

78. On October 8, 2013, SHOMA and CMC executed the written Operating Agreement of Coral Gables Luxury Holdings, LLC (the "**Operating Agreement**"), a true and correct copy of which is attached hereto as Exhibit "B".

79. Section 2.5 of the Operating Agreement describes the "Purpose" of the Company as follows:

> **2.5 Purpose.** The Company is organized for the purpose of acquiring, owning, developing, leasing, operating and disposing of the Property and the Intended Improvements and any other properties acquired by the Company, to borrow money and issue evidence of indebtedness or guaranties thereof in furtherance of any or all of the objectives of the Company's business and to secure the same by mortgage, pledge or other liens; and do any and all lawful business for which a limited liability company may be formed under the Act that is incident and necessary to the foregoing (the "**Business**").

80. Section 4.1 of the Operating Agreement provides that a Manager is to be selected by each Member in order to carry out of the business of the Company. Accordingly, each Manager is an agent of and binds the appointing Member for all acts and omissions by the Manager relative to his or her conduct in carrying out the business of the Company. Section 4.1 states in relevant part as

follows:

> **4.1 Management/Managers.**
>
> (a) The business and affairs of the Company shall be carried out by the Management Committee, which shall be comprised of two (2) Persons, one (1) of whom shall be appointed by CMC and one (1) of whom shall be appointed by Shoma. The initial Managers designated by the Members to the Management Committee are as follows:
>
> CMC: Ugo Colombo
>
> Shoma: Masoud Shojaee

81. Section 4.5 of the Operating Agreement states in relevant part as follows:

> **No Liability**
> Unless specifically assumed in writing, no Member or Manager will have any personal liability for any obligations of the Company.... Except as otherwise provide herein, **the Managers and the Members will not have any liability to the Company or to any Member** resulting either from any act or omission made within the scope of authority expressly granted to such Person under this Agreement . . . , ***provided*** **such Member or Manager shall have discharged his or its duties in *good faith*, with the *care a corporate officer of like position would exercise* under similar circumstances, in a manner reasonably believed to be *in the best interests of the Company***. (Emphasis provided.)

82. Upon execution of the Operating Agreement, CMC made the Capital Contribution that was necessary in order to obtain 50% of the Percentage Interests in the Company. SHOMA and CMC thereby each became 50% members of the Company.

83. Upon execution of the Operating Agreement, CMC agreed to be bound by all of its terms and conditions, including but not limited to the duty to discharge its duty in good faith, with the care a corporate officer of like position would exercise under similar circumstances, in a manner

reasonably believed to be in the best interests of the Company. *See*: Operating Agreement, at § 4.5.

84. CMC's foregoing duties include, but are not limited to, the obligation to exercise good faith and due care of a corporate officer of like position in conducting the business affairs of the Company, and the obligation to act in the best interest of the Company and not to put self-interest, personal or similar considerations ahead of the best interests of the Company, and thus to refrain from doing anything that would harm the Company.

85. Notwithstanding this above described express duty, CMC directed or otherwise authorized its appointed Manager, COLOMBO, to knowingly and deliberately cancel and sabotage the Project, as more particularly set forth below.

86. CMC acted in contravention of Section 4.5 of the Operating Agreement and breached the standard of care required specified therein by, among other things:

A. Directing or otherwise authorizing its Manager, COLOMBO, to cancel and sabotage the Project when SHOJAEE and SHOMA refused to condition the Company's ability to obtain the Mezzanine Loan for the Project on the Company first executing a contract with THE COLLECTION for the sale or lease of the Retail Space and Basement Garage Area at the above-described price which was not in good faith and substantially less than the amount that the Company could obtain from a *bona fide* purchaser as the result of arms' length negotiations;

B. Directing or otherwise authorizing its Manager, COLOMBO, to cancel and sabotage the Project when SHOMA refused to agree to sell the subject Retail Space and Basement Garage Area to COLOMBO's car dealership, THE COLLECTION, for the above-described price which was not in in good faith and not in the best interests of the Company because, among other things, it was substantially less than the amount which the Company could obtain from a *bona fide* purchaser as the result of any arms' length negotiations with unrelated parties;

C. Failing or refusing to direct its appointed Manager, COLOMBO, to sign reservation agreements which had already been signed by several Buyers and

SHOMA related to such Buyers' purchase of residential condominium units at the Project;

D. Secretly allowing THE COLLECTION to use spacious and secured warehouse space on the Property as THE COLLECTION's personal storage area for well over a dozen cars owned by THE COLLECTION, free of charge and without SHOMA's authorization; and/or

E. Upon SHOMA's refusal to go along with CMC's above-described improper price for THE COLLECTION, insisting that the Company execute a license agreement with THE COLLECTION in order for the Company to use "The Collection Residences" for the Project, even though the Company had already been using that name for over 1.5 years and the Company had never received any formal request from THE COLLECTION requesting or requiring any such license agreement.

all of which were harmful to the Company and in contravention of the Operating Agreement.

87. CMC willfully and wrongfully sabotaged the Project by, among other things:

A. Directing or otherwise authorizing its appointed Manager, COLOMBO, to *unilaterally* close down the Sales Office for the Project and dismiss the Sales Representatives;

B. Directing or otherwise authorizing its appointed Manager, COLOMBO, to *unilaterally* cancel regularly scheduled marketing events for the Project including, but not limited to, business meetings with real estate brokers and Project related presentations for the general public;

C. Directing or otherwise authorizing its appointed Manager, COLOMBO, to *unilaterally* take down the Project's website; and/or

D. Failing or refusing to direct its appointed Manager, COLOMBO, to attend critical meetings with SHOJAEE and Sales Representatives related to the Project.

88. Pursuant to the Operating Agreement, upon completion of the Project and the sale of substantially all of the Company's assets, the Company was to gain a substantial profit.

89. CMC refused to lease or sell the subject Retail Space and Basement Garage Area for an amount that was the result of an arms' length negotiations with unrelated parties in the same

business in the same general area. This conduct was in bad faith and was not in the best interests of the Company.

90. CMC's above-described actions establish the existence of a Bad Act, as defined by the Operating Agreement, in that they constitute gross negligence, willful or intentional misconduct and/or were contrary to the express duty of care owed to SHOMA under Section 4.5 of the Operating Agreement.

91. As a direct and proximate result of CMC's above-described breaches of the Operating Agreement, the Company has sustained and continues to sustain damages in an amount to be established at trial, including, but not limited to, the loss of opportunity, loss of profits and fair value of SHOMA's interest in the Company, and the distributions to which SHOMA was entitled.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, requests judgment against Defendant, GABLES INVESTMENT HOLDINGS, LLC, for damages to be established at trial, including, but not limited to, lost profits, lost value of the project, incidental and consequential damages, interest, plus attorneys' fees pursuant to Section 11.15 of the Operating Agreement, costs and such further relief as the Court may deem just and proper.

Count II
BREACH OF CONTRACTUAL DUTY OF GOOD FAITH
(Against COLOMBO)

92. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

93. This is an action for COLOMBO'S breach of his contractual duty of good faith to the Company.

94. Section 4.5 of the Operating Agreement provides in relevant part as follows:

> **No Liability** Unless specifically assumed in writing, no Member or Manager will have any personal liability for any obligations of the Company.... Except as otherwise provide herein, **the Managers and the Members will not have any liability to the Company or to any Member** resulting either from any act or omission made within the scope of authority expressly granted to such Person under this Agreement . . . , ***provided*** **such Member or Manager shall have discharged his or its duties in *good faith*, with the *care* *a corporate officer of like position would exercise* under similar circumstances, in a manner reasonably believed to be *in the best interests of the Company***. (Emphasis provided.)

95. At all times material hereto, by virtue of his position as Manager of the Company, COLOMBO was required to discharge his duties in good faith, with the care a corporate officer of like position would exercise itself under similar circumstances in a manner believed to be in the best interests of the Company.

96. COLOMBO's foregoing duty of includes, but is not limited to, the obligation to exercise due care in conducting the business affairs of the Company and in the best interests of the Company. and the obligation not to put self-interest, personal or similar considerations ahead of the best interests of the Company, and to refrain from doing anything that would harm the Company for COLOMBO's own advantage.

97. Upon information and belief, at all times material hereto, COLOMBO, either individually or through a legal entity controlled by COLOMBO, owned a majority stake (75%) in THE COLLECTION, ***and*** a 50% stake in the Company, which thereby created divided loyalties for COLOMBO.

98. More specifically, COLOMBO – based on his ownership stake in the Company and his simultaneous ownership stake in THE COLLECTION - was on both sides of the above-described sale of Retail Space and Basement Garage Area to THE COLLECTION.

99. COLOMBO willfully and wrongfully breached his foregoing contractual duty of good faith by, among other things:

A. Providing THE COLLECTION with confidential Company information, including, but not limited to, internal communications of the Company's Management Committee related to the Project and the Company's confidential financial information;

B. Imposing an improper ultimatum on the Company whereby the subject Retail Space and Basement Garage Area would be conveyed to COLOMBO's car dealership, THE COLLECTION, for an improper price that was not in good faith and not in the best interests of the Company because, among other things, it was substantially less than the amount which the Company could obtain from a *bona fide* purchaser as the result of any arms' length negotiations with unrelated parties;

C. Requiring that the Company's ability to obtain the Mezzanine Loan for the Project be conditioned on the Company first executing a contract with THE COLLECTION for the lease or sale of Retail Space and Basement Garage Area at an improper price which was substantially less than the amount which the Company could obtain from a *bona fide* purchaser as the result of arms' length negotiations;

D. Cancelling and sabotaging the Project when SHOMA would not agree to sell the subject Retail Space and Basement Garage Area to COLOMBO's car dealership, THE COLLECTION, for the above-described improper price that was not in good faith and was substantially less than the amount which the Company could obtain from a *bona fide* purchaser as the result of arms' length negotiations;

E. Failing or refusing to sign reservation agreements which had already been signed by several Buyers and SHOMA related to such Buyers' purchase of residential units at the Project;

F. *Unilaterally* closing down the Sales Office for the Project and dismissing the Sales Representatives without prior notice to SHOMA;

G. *Unilaterally* cancelling regularly scheduled marketing events for the Project including, but not limited to, business meetings with various real estate brokers and Project related presentations for the general public;

H. *Unilaterally* pulling down the Project's website with no prior notice to SHOMA;

I. Failing to attend critical meetings with SHOJAEE and Sales Representatives for the Project;

J. Secretly allowing THE COLLECTION to use spacious and secured warehouse space on the Property as THE COLLECTION's personal storage area for cars owned by THE COLLECTION, free of charge and without SHOMA's authorization; and/or

K. Upon SHOMA's refusal to go along with CMC's improper price for THE COLLECTION, insisting that the Company execute a license agreement with THE COLLECTION in order for the Company to use "The Collection Residences" for the Project, even though the Company had already been using that name for over 1.5 years and the Company had never received a formal from THE COLLECTION requesting any such license agreement.

100. COLOMBO's above-described actions were a breach of his above-described duty to SHOMA, and were for the unjust enrichment of COLOMBO's own financial gain at the expense of SHOMA, and the Company.

101. COLOMBO has wrongfully deprived SHOMA of opportunity and profits which SHOMA had the right to possess and used said funds for COLOMBO's financial gain to SHOMA's detriment.

102. COLOMBO's above-described actions establish the existence of a Bad Act, as defined by the Operating Agreement, in that they constitute gross negligence, willful or intentional misconduct and/or were contrary to the express duty of care owed to SHOMA under Section 4.5 of the Operating Agreement.

103. COLOMBO's above-described breaches caused SHOMA to sustain damages in an amount to be established at trial, including, but not limited to, loss of opportunity and lost profits.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, requests judgment against Defendant, COLOMBO, for damages to be established at trial, including, but not limited to, lost profits, lost value of the project, incidental and consequential damages, interest, plus attorneys' fees pursuant to Section 11.15 of the Operating Agreement, costs and such further relief as the Court may deem just and proper.

Count III
BREACH OF CONTRACTUAL DUTY OF CARE
(Against COLOMBO)

104. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

105. This is an action for COLOMBO's breach of his contractual duty of due care to the Company and to SHOMA.

106. Section 4.5 of the Operating Agreement provides in relevant part as follows:

> **No Liability** Unless specifically assumed in writing, no Member or Manager will have any personal liability for any obligations of the Company.... Except as otherwise provide herein, **the Managers and the Members will not have any liability to the Company or to any Member** resulting either from any act or omission made within the scope of authority expressly granted to such Person under this Agreement . . . , ***provided*** **such Member or Manager shall have discharged his or its duties in *good faith*, with the *care* *a corporate officer of like position would exercise* under similar circumstances, in a manner reasonably believed to be *in the best interests of the Company***. (Emphasis provided.)

107. At all times material hereto, by virtue of his position as Manager of the Company, COLOMBO owed a duty of care to the Company and its members, including SHOMA.

108. COLOMBO's foregoing duty includes, but is not limited to, the obligation to exercise due care in conducting the business affairs of the Company, and the obligation not to put self-interest, personal or similar considerations ahead of the best interests of the Company, and to refrain from doing anything that would harm the Company for COLOMBO's own advantage.

109. Upon information and belief, at all times material hereto, COLOMBO, either individually or through a legal entity controlled by COLOMBO, owned a majority stake (75%) in THE COLLECTION ***and*** a 50% stake in the Company, which thereby created divided loyalties for COLOMBO.

110. More specifically, COLOMBO was on both sides of the above-described sale of Retail Space and Basement Garage Area to THE COLLECTION.

111. COLOMBO willfully and wrongfully breached his foregoing duty of care by, among other things:

A. Engaging in a scheme designed to obtain an improper economic advantage for THE COLLECTION at the expense of the Company, and SHOMA;

B. Providing THE COLLECTION with confidential Company information, including, but not limited to, internal communications of the Management Committee related to the Project and the Company's confidential financial information;

C. Imposing an improper ultimatum on the Company whereby the subject Retail Space and Basement Garage Area would be conveyed to COLOMBO's car dealership, THE COLLECTION, for a the above-described improper price that was not in good faith and was not in the best interests of the Company because, among other things, it was substantially less than the amount which the Company could obtain from a *bona fide* purchaser as the result of any arms' length negotiations with unrelated parties;

D. Requiring that the Company's ability to obtain the Mezzanine Loan for the Project be conditioned on the Company first executing a contract with THE COLLECTION for the lease or sale of Retail Space and Basement Garage Area at an improper price that was substantially less than the amount which the Company could obtain from a *bona fide* purchaser as the result of arms' length negotiations;

E. Cancelling and sabotaging the Project when SHOMA would not agree to sell the subject Retail Space and Basement Garage Area to COLOMBO's car dealership, THE COLLECTION, for an improper price that was substantially less than the amount which the Company could obtain from a *bona fide* purchaser as the result of arms' length negotiations;

F. Failing or refusing to sign reservation agreements which had already been signed by several Buyers and SHOMA related to such Buyers' purchase of residential units at the Project;

G. *Unilaterally* closing down the Sales Office for the Project and dismissing the Sales Representatives without prior notice to SHOMA;

H. *Unilaterally* cancelling regularly scheduled marketing events for the Project including, but not limited to, business meetings with various real estate brokers and Project related presentations for the general public at the Sales Office for the Project;

I. *Unilaterally* pulling down the Project's website with no prior notice to SHOMA;

J. Failing to attend critical meetings with SHOJAEE and Sales Representatives for the Project;

K. Secretly allowing THE COLLECTION to use spacious and secured warehouse space on the Property as THE COLLECTION's personal storage area for cars owned by THE COLLECTION, free of charge and without SHOMA's authorization; and/or

L. Upon SHOMA's refusal to go along with CMC's improper price for THE COLLECTION, insisting that the Company execute a license agreement with THE COLLECTION in order for the Company to use "The Collection Residences" for the Project, even though the Company had already been using that name for over 1.5 years and the Company had never received a formal from THE COLLECTION requesting any such license agreement.

112. COLOMBO's above-described actions establish the existence of a Bad Act, as defined by the Operating Agreement, in that they constitute gross negligence, willful or intentional misconduct and/or were contrary to the express duty of care owed to SHOMA under Section 4.5 of the Operating Agreement.

113. COLOMBO has wrongfully deprived SHOMA of opportunity and profits which SHOMA had the right to possess and used said funds for COLOMBO's financial gain to SHOMA's detriment.

114. COLOMBO's above-described breaches of his duty of care caused SHOMA to sustain damages in an amount to be established at trial, including, but not limited to, loss of opportunity and lost profits.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, requests judgment against Defendant, UGO COLOMBO, for damages to be established at trial, including, but not limited to, lost profits, lost value of the project, incidental and consequential damages, interest, plus attorneys' fees pursuant to Section 11.15 of the Operating Agreement, costs and such further relief as the Court may deem just and proper.

Count IV
TORTIOUS INTERFERENCE WITH CONTRACT
(Against The Collection, LLC)

115. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

116. This is an action by Plaintiff against THE COLLECTION for tortious interference with the Operating Agreement.

117. THE COLLECTION knew that SHOMA and CMC had entered into the Operating Agreement.

118. THE COLLECTION is not a party to the Operating Agreement.

119. THE COLLECTION intentionally utilized COLOMBO's dual role as Manager of THE COLLECTION and Manager of the Company, to obtain confidential Company information, including but not limited to, internal communications of the Management Committee related to the Project and the Company's confidential financial information, which THE COLLECTION then used to its financial benefit in order to impose an improper price on the Company for Retail Space and Basement Garage Area which THE COLLECTION was seeking to acquire at the Property.

120. On September 8, 2015, COLOMBO acted on behalf of THE COLLECTION when he imposed the above-described ultimatum on the Company, for the Company's sale of Retail Space and Basement Garage Area to THE COLLECTION.

121. When SHOJAEE refused to capitulate to THE COLLECTION'S foregoing ultimatum, THE COLLECTION intentionally collaborated with CMC to cause injury to the Project and to SHOMA by, among other things, directing or otherwise authorizing COLOMBO to:

a. *Unilaterally* close down the Sales Office for the Project and dismiss the Sales Representatives without prior notice to SHOMA;

b. *Unilaterally* cancel regularly scheduled marketing events for the Project including, but not limited to, business meetings with various real estate

brokers and Project related presentations for the general public at the Sales Office for the Project;

c. *Unilaterally* pull down the Project's website with no prior notice to SHOMA;

d. Insist that the Company execute a license agreement with THE COLLECTION in order for the Company to use "The Collection Residences" for the Project, even though the Company had already been using that name for over 1.5 years and the Company had never received a formal from THE COLLECTION requesting any such license agreement; and

e. Fail to attend critical meetings with SHOJAEE and Sales Representatives related to the Project.

122. CMC breached the Operating Agreement by cancelling critical Project related activities and sabotaging the Project when SHOMA would not agree to sell the subject Retail Space and Basement Garage Area to THE COLLECTION for an improper price that was well below that which the Company could have obtained from a *bona fide* purchaser as the result of arm's length negotiations.

123. THE COLLECTION's above-described ultimatum and subsequent actions when SHOMA refused to capitulate to that improper demand, were significant factors in causing CMC to breach of the Operating Agreement.

124. THE COLLECTION's above-described actions were unjustified, intentional and improperly motivated by malicious or other bad faith purposes that were designed to injure SHOMA by, among other things, depriving SHOMA of opportunity and profits which SHOMA had a right to receive related to the Project.

125. As a direct and proximate result of THE COLLECTION's above-described tortious interference, the Company has suffered damages which have accrued and are continuing to accrue.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, requests judgment against Defendant, THE COLLECTION, LLC, for damages to be established at trial, including, but not limited to, lost profits, incidental and consequential damages, interest, plus costs and such further relief as the Court may deem just and proper.

Count V
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONSHIP
(Against The Collection, LLC)

126. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

127. This is an action by SHOMA against THE COLLECTION for tortious interference with SHOMA's prospective economic relationship with CMC and the Company.

128. On October 8, 2015, SHOMA and CMC established a valid business relationship as the sole Members of the Company.

129. Once the Company closed on its purchase of the Property and obtained all of the approvals necessary for construction of the Project, there was a reasonable probability that SHOMA'S business relationship with CMC would mature into a future economic benefit to SHOMA, including, but not limited to, completion of the Project and distribution of the profits which SHOMA had the right to possess as the result of that Project.

130. THE COLLECTION had actual knowledge of the business relationship established between SHOMA and CMC.

131. THE COLLECTION intentionally and unjustifiably interfered with that prospective economic relationship by, among other things, (i) improperly obtaining the Company's confidential

financial information, via its Manager Colombo, which THE COLLECTION then used to its financial benefit in order to impose an improper price on the Company for Retail Space and Basement Garage Area which THE COLLECTION was attempting to acquire from the Company, and (ii) conspiring with COLOMBO and CMC to cause injury to the Project and to SHOMA when SHOJAEE and SHOMA refused to sell the subject Retail Space and Basement Garage Area to THE COLLECTION for an improper price that was well below that which the Company could have obtained from a *bona fide* purchaser as the result of arms' length negotiations.

132. There is a reasonable probability that the Company would have completed the Project if THE COLLECTION had not interfered in the above-described manner.

133. As a direct and proximate result of THE COLLECTION's above-described tortious interference, SHOMA has suffered damages which have accrued and are continuing to accrue.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, requests judgment against Defendant THE COLLECTION, LLC, for damages to be established at trial, including, but not limited to, loss of opportunity, lost profits, incidental and consequential damages, interest, plus costs and such further relief as the Court may deem just and proper.

Count VI
TRESPASS
(Against The Collection, LLC)

134. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

135. THE COLLECTION has trespassed onto the Company's property for the purpose of storing vehicles for sale at its dealership and for housing its employee parking lot.

136. THE COLLECTION has not been authorized by the Company to utilize this space and should be enjoined from doing so in the future.

137. Indeed, because THE COLLECTION is an affiliate of CMC and owned by COLOMBO, Section 4.3 (iii) of the Operating Agreement requires written consent of both managers of the Company to approve or modify any agreements between the Company and THE COLLECTION. No such consent exists relating to the use of the Property owned by the Company by The COLLECTION to store or house vehicles belonging to THE COLLECTION.

138. On December 9, 2015, THE COLLECTION was placed on notice that it was utilizing the space without any authority and was directed to remove its vehicles. THE COLLECTION ignored the demand and continued to utilize the space without any authority.

139. On December 22, 2015, THE COLLECTION was once again placed on notice that it was utilizing the space without the Company's authority and was once again directed to remove of its vehicles. Nonetheless, THE COLLECTION has ignored the foregoing demands and continues to utilize the space without proper authority.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, requests judgment against Defendant, THE COLLECTION, for damages to be established at trial, including, but not limited to lost rental value, incidental and consequential damages, interest, plus attorneys' fees, costs and such further relief as the Court may deem just and proper.

Count VII
PRELIMINARY AND PERMANENT INJUNCTION
(Against The Collection, LLC)

140. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

141. Beginning in or about December 2015, THE COLLECTION has continually stored vehicles and allows its employees to park on the Property without proper authorization or payment of rent.

142. Despite repeated requests, THE COLLECTION has refused to move the unauthorized vehicles from the Property.

143. The Company will suffer irreparable harm if THE COLLECTION is permitted to trespass and interfere with the Company's property rights. Since the Company's exclusive property is indeed unique, any injury regarding its use is by its very nature irreparable, since no amount of money damages can replace that restriction.

144. The Company has a substantial likelihood of success on the merits because THE COLLECTION has never been authorized by the Company to utilize the Property.

145. Section 4.1 of the Operating Agreement recognizes the formation of a Management Committee that was created to make certain Company related decisions.

146. As it relates to the entering of contracts with affiliated entities, which THE COLLECTION indisputably is based upon COLOMBO's ownership interest in the dealership, the Operating Agreement requires written consent by ***both*** Managers. *See* Section 4.2(k) and Section 4.3(b).

147. Here, there is no written approval by the Management Committee to allow THE COLLECTION to utilize the Company property for any purpose whatsoever.

148. The threatened harm to the Company, which includes potential liability associated with the storage of the vehicles, outweighs and possible harm to THE COLLECTION. For example, a maintenance issue at the property could potentially cause damage to the very expensive Maseratis or Ferraris which THE COLLECTION has parked within the warehouse space. Those vehicles are worth in excess of $100,000.00 each. The Company should not be placed at risk of liability for damage to such vehicles when they should not be there in the first place. On the other hand, THE COLLECTION owns other property where it can park its vehicles.

149. Public policy will not be disserved by issuing an injunction as Plaintiff only seeks to protect its legitimate property rights from wrongful interference.

150. Therefore, the totality of the circumstances mandates entry of a temporary injunction enjoining THE COLLECTION requiring it to immediately remove its vehicles from the Property.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively on behalf of CORAL GABLES LUXURY HOLDINGS, LLC demands entry of the foregoing injunction against THE COLLECTION, costs, and all other relief which the Court deems just and proper.

COUNT VIII
SPECIFIC PERFORMANCE
(Against CMC)

151. Plaintiff realleges and incorporates by reference Paragraphs 1 through 75 above, as if fully set forth herein.

152. Pursuant to the Operating Agreement, if the Managers cannot agree on a Major Decision within thirty days, this results in an "Unresolved Major Dispute" under the Operating Agreement. *See* Exhibit "B," at § 4.3(c).

153. In the event of an Unresolved Major Dispute, the Operating Agreement provides a dispute-resolution mechanism ("**Dispute Resolution Procedure**"). *See* Exhibit "B," §§ 4.3(c)-4.3(e). This procedure includes three steps: (i) negotiation between the Managers or their representatives; (ii) non-binding mediation; and (iii) a third-party sale of the Property or, if that process fails to result in a sale, a Member-to-Member buyout. *Id.*

154. The first step in the Dispute Resolution Procedure is negotiation between the Managers or their representatives under Section 4.3(c). *Id. at* § 4.3(c).

155. Specifically, upon the occurrence of an Unresolved Major Dispute, either Manager may give notice to the other Manager that an Unresolved Major Dispute exists. *Id.* The Operating Agreement directs the Managers or their representatives to meet within five business days after such notice is delivered. *Id.* If the Managers are unable to resolve the issue within ten days or representatives of the Managers fail to meet within five days of the notice, either Manager may initiate the next step of the Dispute Resolution Procedure. *Id.*

156. The second step in the Dispute Resolution Procedure is non-binding mediation under Section 4.3(d). *Id. at* § 4.3(d). Either Manager may initiate the mediation process by written request. *Id.* The procedures of JAMS, The Resolution Experts ("**JAMS**") govern the mediation. *Id.* From the date of the mediator's appointment, the mediation continues for twenty days or until one of the following occurs, whichever is first:

a. The parties enter into a written settlement agreement;

b. The mediator determines the parties are at an impasse; or

c. The Managers agree that they have reached an impasse.

Id. § 4.3(d).

157. The third and final step in the Dispute Resolution Procedure is either a sale of the Property or a Member-to-Member buyout under Section 4.3(e). *Id. at* § 4.3(e). Once the mediation fails or the twenty-day period lapses, running from the date of the appointment of the mediator, either Member may initiate a third-party sale of the Property at any time. *Id.* § 4.3(e). The Member who initiates the third-party sale is authorized to engage an "independent institutional real estate brokerage firm with at least ten (10) years of experience in the commercial real estate market" to solicit offers from third parties. *Id. at* § 4.3(e).

158. Absent a contrary agreement among the Members, "the Property shall be sold at the highest-priced all cash offer." *Id.* § 4.3(e).

159. Major disputes among the Members began around September 2015 in connection with certain improvements and related financing for the Project.

160. Each Member submitted competing unanimous written consents of the Managers regarding, among other things, financing.

161. As explained hereinabove, neither Manager agreed to the other's proposal, the Sales Office for the Project was *unilaterally* closed down, marketing events were cancelled, and the Project's website was taken down.

162. Disputes also arose in connection with the Company's accounts payable and the funding obligations of the Members with respect to the same.

163. As a result of the foregoing, the Managers were unable to resolve certain Major Decisions, resulting in Unresolved Major Disputes.

164. The parties then initiated the Dispute Resolution Procedure.

165. The Managers were unable to negotiate a resolution of the Unresolved Major Disputes, resulting in the failure of the first step of the Dispute Resolution Procedure.

166. The Managers proceeded to the second step of the Dispute Resolution Procedure — mediation. An initial mediation hearing took place before Ret. Judge Stettin on November 9, 2015. While the Managers were able to resolve some of their disputes through the mediation, they failed to resolve all of the Unresolved Major Disputes.

167. Based upon this impasse, the Operating Agreement vested either party with the right to invoke the third-party sale procedure. *Id. at* § 4.3(e).

168. Accordingly, and in conformance with the Operating Agreement, on February 22, 2017, Shoma elected to initiate the third-step of the Dispute Resolution Procedure — a third party sale of the Property.

169. CMC, acting in bad faith, has refused to approve Blanca Commercial Real Estate, Inc. as an Independent Real Estate Broker and it has further refused to comply with the requirements of Section 4.3 of the Operating Agreement regarding the sale of the Property to a third party.

170. CMC's refusal of consent is designed to obtain an improper collateral purpose or benefit which is not available to CMC under the Operating Agreement or applicable law.

171. As a result, SHOMA has filed a separate action seeking specific performance of the Third-Party Sale Procedure, as it relates to CMC's contractual obligations. *See Shoma Coral Gables, LLC v. Gables Investment Holdings, et. al,* Case No.: 2016-2012 CA 40.

172. In the event the specific performance of an actual sale is required by this Court, SHOMA, derivatively and on behalf of the Company, seeks specific performance regarding CMC's execution of any required documents incident to the sale of the Property.

173. SHOMA, derivatively and on behalf of the Company, does not have an adequate remedy at law with regard to CMC's breach and will suffer additional harm if the Property is not sold as contemplated by the Operating Agreement.

WHEREFORE, by reason of the above and foregoing, the Plaintiff, SHOMA CORAL GABLES, LLC, derivatively and on behalf of CORAL GABLES LUXURY HOLDINGS, LLC, demands judgment for specific performance against GABLES INVESTMENT HOLDINGS, LLC ("**CMC**"):

a. Declaring that consent to appointment of an independent institutional real estate brokerage firm ("Broker") has been unreasonably withheld by CMC and authorizing Shoma to engage the services of a Broker to solicit offers from third parties unaffiliated with any Member or such brokerage firm to purchase the Property.

b. Requiring CMC to execute any and all documents necessary to effectuate the disposition and sale of the Property to a third party.

c. Awarding SHOMA its attorneys' fees and costs;

d. Awarding SHOMA any such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues so triable as a matter of right.

Respectfully submitted,

HALL, LAMB HALL & LETO, P.A.
2665 South Bayshore Drive
Penthouse One
Miami, FL 33133
Telephone: (305) 374-5030
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By:/s/ Matthew P. Leto
Andrew C. Hall, Esquire
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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts e-filing portal on this 26th day of September, 2017 to: Jason B. Giller, 701 Brickell Avenue, 24th Floor, Miami, FL 33131 - (Jason@gillerpa.com); (file@gillerpa.com); (iren@gillerpa.com) Joseph Cicero, CHIPMAN BROWN CICERO & COLE, LLP, 1313 N. Market Street, Suite 5400, Wilmington, DE 19801 (cicero@chapmanbrown.com); Gonzalo Dorta and Matias Dorta, Dorta Law, 334 Minorca Ave., Coral Gables, FL 33134 (grd@dortalaw.com); (mrd@dortalaw.com); (file@dortalaw.com); (jdiamond@dortalaw.com); (bcabera@dortalaw.com); Robert Burlington and Kevin Kaplan, Coffey Burlington, P.L., 2601 S. Biscayne Drive, PH 1, Miami, FL 33133 (rkb@coffeyburlington.com); (mpalermo@coffeyburlington.com);(service@coffeyburlington) (kkaplan@coffeyburlington.com)

/s/ Matthew P. Leto
MATTHEW P. LETO

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

COMPLEX BUSINESS DIVISION

SHOMA CORAL GABLES, LLC,
a Delaware limited liability company,

Plaintiff,

vs. Case No. 16-2102 CA 40

GABLES INVESTMENT HOLDINGS, LLC,
a Delaware limited liability company,
UGO COLOMBO, Individually, and
THE COLLECTION, LLC,
a Florida limited liability company,

Defendants.
_____/

DEFENDANT GABLES INVESTMENT HOLDINGS, LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO SHOMA CORAL GABLES, LLC'S SUPPLEMENTAL COMPLAINT FOR SPECIFIC PERFORMANCE; AND SUPPLEMENTAL COUNTERCLAIM

GABLES INVESTMENT HO LDINGS, LLC ("Defendant" o r " Gables Investment"), through undersigned counsel, hereby answers, and sets forth its affirmative defenses to SHOMA CORAL G ABLES, LLC's (" Plaintiff" o r "Shoma") Supplemental Complaint for S pecific Performance and Incidental Damages ("Supplemental Complaint"). It denies every allegation of Shoma's Supplemental Complaint e xcept as ex pressly admitted b elow. W ith r espect t o each numbered allegation in the Complaint, Gables Investment states as follows:

ANSWER

1. Admitted upon information and belief.

2. Admitted.

3. Denied, except to admit this Court has jurisdiction.

EXHIBIT
A

4. Denied, except to admit this Court has personal jurisdiction of Gables Investment, which is a party to the Operating Agreement ("Agreement") of Coral Gables Luxury Holdings LLC. (the "Company").

5. Denied, except to admit that venue is proper in this County.

6. Denied. Among other issues set forth in more detail below, Shoma has failed to provide the required notice and demand to pursue these claims, which are derivative in nature; Shoma has failed to bring this action within the required time period; and Shoma previously breached applicable provisions of the Agreement.

7. Denied, except to admit on information and belief that Shoma entered into a Purchase Agreement.

8. Denied, except to admit that Shoma and Gables Investment agreed to form the Company for the purposes set forth in the Operating Agreement, and that Gables Investment had discussions with Shoma concerning the acquisition of the Property.

9. Denied, except to admit that Shoma and Gables Investment entered into the Operating Agreement.

10. Admitted.

11. Denied, except to admit that on or about October 8, 2013 Gables Investment executed the Operating Agreement.

12. Denied, except to admit that in or around the time of the execution of the Operating Agreement, Shoma appointed Shojaee as one of the managers of the Company, and Gables Investment appointed Colombo as one of the managers of the Company. Therefore, at that time, Shojaee and Colombo were the members of the management committee of the Company.

13. Admitted.

14. Denied, except to admit that at the time of the Company's purchase of the Property, business operations were commenced and Shojaee and Colombo were each managers of the Company.

15. Denied, except to admit that the parameters of the Company are set forth in the Operating Agreement, and Gables Investment refers to that document for its true and correct contents.

16. Denied.

17. Denied, except to admit that there was a meeting on or about September 8, 2015.

18. Denied.

19. Denied.

20. Denied.

21. Denied, except to admit that on or about September 19, 2015, Gables Investment delivered a proposed Unanimous Written Consent of the Managers of the Company. Gables Investment refers to that document for its true and correct contents.

22. Denied, except to admit that on or about September 19, 2015, Gables Investment delivered a proposed Unanimous Written Consent of the Managers of the Company. Gables Investment refers to that document for its true and correct contents.

23. Denied, except to admit that Shoma declined to execute the written consent and refers to Shoma's response for its true and accurate content.

24. Denied, except to admit that Gables Investment rejected Shoma's form of consent.

25. Denied.

26. Denied.

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27. Denied, except to admit that these transactions and occurrences were already addressed in the Second Amended Complaint. .

28. Gables Investment admits that the Operating Agreement includes Section 4.3 and refers to the Agreement and its provisions.

29. Gables Investment admits that the Operating Agreement includes Section 4.3 and refers to the Agreement and its provisions.

30. Gables Investment admits that the Operating Agreement includes Sections 4.3 and refers to the Agreement and its provisions.

31. Gables Investment admits that the Operating Agreement includes Sections 4.3 and refers to the Agreement and its provisions.

32. Gables Investment admits that the Operating Agreement includes Sections 4.3 and refers to the Agreement and its provisions.

33. Gables Investment admits that the Operating Agreement includes Sections 4.3 and refers to the Agreement and its provisions.

34. Gables Investment admits that the Operating Agreement includes Sections 4.3 and refers to the Agreement and its provisions.

35. Denied, except to admit that disputes began in the Fall of 2015 about certain account payable and funding issues ("Account Payable Issues").

36. Denied, except to admit that Shoma rejected Gables' consent and sent a revised form of consent, which Gables rejected.

37. Admitted.

38. Admitted that disputes had arisen about the Account Payable Issues.

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39. Denied, except to admit that the Unresolved Major Disputes concerned the Account Payable Issues.

40. Admitted.

41. Admitted.

42. Denied, except to admit that the managers participated in mediation before Ret. Judge Stettin on or about November 9, 2015.

43. Admitted that the parties indicated their intention to place the Property on the market, as set forth in Section 4.3(e) of the Operating Agreement, no later than November of 2015.

44. Denied.

45. Denied, except to admit that both parties indicated their intention to place the Property on the market, as set forth in Section 4.3(e) of the Operating Agreement, no later than November of 2015.

46. Denied.

47. Denied.

48. Denied, except to admit that an action was filed in Delaware.

49. Denied.

50. Denied, along with all allegations in the Wherefore clause.

51. All allegations not expressly admitted are denied, and strict proof is required thereof.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses, Gables Investment alleges as follows:

1. Each cause of action, claim, and item of damages did not accrue within the time prescribed by law for them before this action was brought. Shoma's supplemental claim is specifically barred by the statute of limitation on a claim for specific performance. *See* Fla. Stat. § 95.11(5)(a).

2. Shoma's supplemental complaint fails to state a claim for relief, since it violates the requirements of Fla. R. Civ. P. 1.190 by purporting to assert new claims based on matters that existed at the time of the filing of the original and amended complaints.

3. Shoma has engaged in fraudulent misconduct, including by deliberately concealing its true financial condition, both to Gables Investment and to others, including but not limited to the Company's lender, and using collateral and guarantees securing the Company's loans to collateralize other, unrelated loans for the benefit of Shoma and its principal, improperly, secretly and without authorization by the Company, Gables Investment or the guarantors. Shoma has engaged in a strategy of self-dealing, pursuing and promoting its own financial interests, and its own unjust enrichment, at the expense of and to the detriment of the interests of the Company and Gables Investment. Shoma's fraudulent conduct bars it from pursuing its claims.

4. For the reasons set forth in paragraph 3 above, Shoma has unclean hands and is barred and estopped from pursuing its claims, and availing itself of its own wrongdoing.

5. Shoma waited several years before bringing its claims without any justifiable reason for doing so, which delay is inequitable to Gables Investment. Accordingly, Shoma's claims are barred by the doctrine of laches.

6. Shoma's claims fail to state a cause of action because Gables Investment's alleged conduct was a legitimate exercise of its business judgment, and is not a legally sufficient ground for an alleged lack of good faith or breach of the Operating Agreement.

7. Shoma's claims fail to state a cause of action because, under well established principles of contract construction, no fiduciary duties exist between the members of the Company pursuant to the Operating Agreement.

8. Shoma intentionally relinquished any right to claim the existence of a fiduciary obligation on the part of Gables Investment by entering into the Operating Agreement, which expressly states in Section 4.9 that

> TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, the duties of a Member and a Manager are expressly limited to those set forth in this Agreement, and such Member and Manager shall not be obligated or liable to the Company or to the other Members as a fiduciary or in any other capacity. Each Member and Manager is hereby authorized to (and the Members agree and acknowledge that the Members will) rely on the limitations set forth in this Section 4.9, and to the fullest extent permitted by applicable law, each Member HEREBY WAIVES AND RELEASES any rights of claims of any standard of care or duty owed by the other Member or the Managers.

Section 4.5, moreover, supports the waiver, confirming "no Member or Manager will have personal liability for any obligations of the Company," including for the disallowance or adjustment of any deduction or credit claimed – "in good faith" – in any income tax return of the Company or of the Members.

9. Shoma's claims are barred, in whole or in part, because it does not have standing to assert claims on behalf of the Company.

10. Shoma's claims are barred, in whole or in part, because it failed to join the Company, which is an indispensable party.

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11. Shoma's claims are barred, in whole or in part, because Gables Investment has substantially performed all duties owed under the Operating Agreement other than any duties which were prevented or excused, and therefore the judgment sought is unwarranted.

12. Shoma's claims are barred, in whole or in part, due to its breaches of the Operating Agreement. More specifically, Shoma has not complied with its own obligations to Gables Investment, or its obligations to the Company or to the members of the Management Committee of the Company, and has acted to the detriment of Gables Investment and its own misperceived best interests, or those of its managing member. Shoma also improperly engaged a broker and filed offers for the Property without consent of the Management Committee.

13. Shoma's claims are barred in whole or in part, because there exists no obligation of good faith and fair dealing under the Operating Agreement. In the alternative, and to the extent that there exists ambiguity which gives rise to a duty of good faith and fair dealing under the Operating Agreement, Shoma's claims are barred, in whole or in part, due to its own lack of good faith. More specifically, Shoma has not complied with its own obligations to Gables Investment, or its obligations to the Company or to the members of the Management Committee of the Company, and has acted to the detriment of Gables Investment and its own misperceived best interests, or those of its managing member.

14. Shoma's claims are barred, in whole or in part, by the doctrine of unclean hands. More specifically, Shoma has not complied with its own obligations to Gables Investment, or its obligations to the Company or to the members of the Management Committee of the Company, and has acted to the detriment of Gables Investment and its own misperceived best interests, or those of its managing member.

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15. Shoma's claims are barred, in whole or in part, by the doctrine of estoppel due to Shoma's own acts and omissions. More specifically, because Shoma has not complied with its own obligations to Gables Investment, or its obligations to the Company or to the members of the Management Committee of the Company, and has acted to the detriment of Gables Investment and its own misperceived best interests, or those of its managing member, it should be estopped from seeking relief, including but not limited to specific performance.

16. Shoma's claims are barred, in whole or in part, by the doctrine of waiver, due to Shoma's own acts and omissions. As an unlimited example, Shoma waived its rights to seek a third-party sale because, after the parties indicated their intention to place the Property on the market, as set forth in Section 4.3(e) of the Operating Agreement, no later than November of 2015, Shoma waited nearly two years from the allegations giving rise to the Supplemental Complaint, and more than a year and a half after the commencement of this lawsuit, to seek to pursue specific performance.

17. Shoma's claims are barred, in whole or in part, because Shoma failed to satisfy all requisite conditions precedent, including, but not limited to, making demand on the Company prior to bringing an action, or, alternatively, for failing to properly assert the supplemental claim on behalf of the Company, subject to all conditions set forth in the Operating Agreement, such as requesting a meeting, holding the meeting, and attending mediation in good faith.

WHEREFORE, Gables Investment respectfully requests that the Court dismiss Shoma's claims including its Supplemental Complaint for Specific Performance and Incidental Damages with prejudice, deny Gables Investment its requested relief, and award Gables Investment its attorney's fees and costs, and provide for such other relief as is appropriate.

SUPPLEMENTAL COUNTERCLAIM

Counterclaim Plaintiff Gables Investment Holdings, LLC ("Gables Investment") asserts the following supplemental counterclaim against Counterclaim Defendants Shoma Coral Gables, LLC ("Shoma") and Masoud Shojaee:

1. Gables Investment is a Delaware limited liability company doing business in Miami-Dade County, Florida.

2. Shoma is a Delaware limited liability company doing business in Miami-Dade County, Florida.

3. Shojaee is an individual who resides and maintains an office in Miami-Dade County, Florida.

4. This Court has jurisdiction over the Counterclaim Defendants, who conduct business in Miami-Dade County, Florida.

5. Venue is proper in this County, where the causes of action accrued.

6. All conditions precedent to the bringing of this supplemental counterclaim have occurred, been excused or waived.

7. Shoma and Gables Investment are members of the Company, which is governed by the Operating Agreement.

8. Shojaee, the principal of Shoma, was appointed by Shoma as a Co-Manager of the Company. Shojaee is on notice of his removal as a Manager pursuant to Section 4.4 of the Operating Agreement.

9. The Company has an outstanding loan from Florida Community Bank, N.A. ("FCB"), which is secured by various collateral of the Company and individual guarantees.

10. Shoma and Shojaee, however, have deliberately concealed their true financial condition from the Company, Gables Investment and others, including but not limited to FCB.

11. Shoma and Shojaee, from the initial formation of the Company until the commencement of this litigation, repeatedly represented and assured Gables Investment that their financial condition was stable and secure, and that Shojaee owned and controlled Shoma.

12. In fact, Shojaee does not even own and control Shoma, but instead his wife, Maria Lamas Shojaee ("Ms. Shojaee"), is the Company's majority owner. Shojaee and Shoma, however, failed to disclose and concealed that Shojaee and his wife are estranged, and in the midst of an acrimonious divorce.

13. Shojaee's and Shoma's failures to disclose, and concealment of, material facts and information from the Company and Gables Investment include but are not limited to the following:

a. failing to disclose his divorce, which has and will materially and detrimentally impact the Company;

b. failing to disclose that he was unable to perform material obligations under the Agreement without his wife's approval and financial support;

c. failing to disclose that he is restrained from "dispos[ing]of [or]. . . dissipat[ing] the value of any asset" without order of court, which includes the extension of any loans or mortgages;

f. failing to disclose that he is restrained from "incur[ing] any . . . additional personal debt ...[and/or] further encumbering any assets" except as permitted by the Court;

g. failing to disclose his actual and direct conflict of interest in connection with applying for extensions of credit for the Company in light of the aforementioned restraints and his failure to provide his spouse with complete financial disclosures in his divorce proceedings;

h. failing to disclose the fact that his wife, the super majority owner of Shoma Coral Gables, desired to liquidate marital assets and limit Shojaee's "temporary" control over same, and her litigation efforts regarding same;

14. Shojaee's misconduct, moreover, has directly involved the Company, including but not limited to, his investment of funds in the Company that appear to have been embezzled from various marital companies and trusts, including but not limited to, Aneli Artworks, LLC.

15. In this manner, Shojaee is engaged in a campaign to harm investments to reduce the value of the marital estate and create self-interested development opportunities for him post-dissolution.

16. Shojaee has also improperly used collateral and guarantees securing the Company's loan with FCB to collateralize other, unrelated loans for the benefit of Shoma and himself. He has done so improperly, secretly, and without authorization by the Company, Gables or the guarantors.

17. In short, Shoma and Shojaee have fraudulently engaged in a strategy of self-dealing, pursuing and promoting their own financial interests, and their own unjust enrichment, at the expense of and to the detriment of the interests of the Company and Gables Investment. Shoma's fraudulent conduct bars it from pursuing its claims in this action.

18. Shoma and Shojaee have knowingly misrepresented and omitted to disclose material facts, with the intention to induce Gables Investment's reliance.

19. Gables Investment detrimentally relied on the misrepresentations and omissions, and suffered damage as a direct and proximate result.

WHEREFORE, Gables Investment demands judgment against Shoma and Shojaee, jointly and severally, for damages, and such other and further relief this Court deems appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been filed and furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this 20th day of July, 2017, on all counsel or parties of record on the Service List below.

SERVICE LIST	
Andrew C. Hall, Esq. **Matthew P. Leto, Esq.** HALL, LAMB AND HALL, P.A. Offices at Grand Bay Plaza 2665 South Bayshore Drive, Penthouse One Miami, FL 33133 Telephone: (305) 374-5030 Facsimile: (305) 374-5033 andyhall@hlhlawfirm.com jpoli@hlhlawfirm.com mleto@hlhlawfirm.com yalonso@hlhlawfirm.com pleadings@hlhlawfirm.com *Counsel for Plaintiff*	**Frank Silva, Esq.** 3470 N.W. 82nd Avenue, Suite 988 Doral, FL 33122 Telephone: (786) 437-8658 Direct: (786) 437-8674 Facsimile: (786) 437-8606 fsilva@shomagroup.com mfernandez@shomagroup.com *Counsel for Plaintiff*
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Gonzalo R. Dorta, Esq. **Matias R. Dorta, Esq.** 334 Minorca Avenue Coral Gables, FL 33134 Telephone: (305) 441-2299 Facsimile: (305) 441-8849 grd@dortalaw.com mrd@dortalaw.com file@dortalaw.com jdiamond@dortalaw.com bcabrera@dortalaw.com *Counsel for Defendant, The Collection, LLC*	

By: */s/ Kevin C. Kaplan*
Kevin C. Kaplan

OPERATING AGREEMENT

OF

CORAL GABLES LUXURY HOLDINGS LLC

EXHIBIT
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EXHIBITS

OPERATING AGREEMENT OF CORAL GABLES LUXURY HOLDINGS LLC

This Operating Agreement (this "**Agreement**") of **CORAL GABLES LUXURY HOLDINGS LLC**, a Delaware limited liability company, is made as of October 8, 2013 (the "**Effective Date**") by and between **GABLES INVESTMENT HOLDINGS LLC**, a Delaware limited liability company ("**CMC**"), and **SHOMA CORAL GABLES LLC**, a Delaware limited liability company ("**Shoma**").

W I T N E S S E T H:

WHEREAS, Shoma organized CORAL GABLES LUXURY HOLDINGS LLC, a Delaware limited liability company (the "**Company**") under Delaware law on October 8, 2013; and

WHEREAS, Buyer (hereinafter defined) and the Sellers (hereinafter defined) entered into the Purchase Agreement (hereinafter defined) providing for, among other things, the conveyance of the Property (hereinafter defined) by the Sellers to Buyer; and

WHEREAS, Shoma and CMC desire to acquire, develop, manage and operate the Property upon the terms, covenants and conditions contemplated herein; and

WHEREAS, in order to provide for the foregoing, Shoma and CMC desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE 1.

DEFINITIONS

1.1 Definitions.

(a) The definitions below govern this Agreement unless the context unambiguously requires otherwise.

"**Act**" means the Delaware Limited Liability Company Act, in its present form and as amended from time to time, provided that, for purposes of this Agreement, no provision thereof adopted after the Effective Date that would be applicable to the Company absent a provision in this Agreement to the contrary will be applicable to the Company unless such provision is adopted by the Members.

"**Additional Capital Contribution**" means any Capital Contributions made by a Member to the Company in accordance with the provisions of Section 3.2.

"**Additional Capital Threshold**" means the Additional Capital Contributions of the Members funded pursuant to the provisions of Section 3.2, not to exceed Twelve Million Five Hundred Thousand Dollars ($12,500,000) in the aggregate, (i.e. $6,250,000 by each Member) unless such amount is increased in accordance with the last sentence of Section 3.2(a).

"**Adjusted Capital Account**" shall mean, with respect to either Member at any time, such Member's Capital Account at such time (i) increased by the sum of (A) the amount of such Member's share of partnership minimum gain (as defined in Regulations Section 1.704-2(g)(1)), (B) the amount of such Member's share of the minimum gain attributable to a partner nonrecourse debt determined in accordance with Regulations Section 1.704-2(i)(3) and (C) the amount of the deficit balance in such Member's Capital Account which such Member is obligated to restore, if any; and (ii) decreased by reasonably expected adjustments, allocations and distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

"**Adjusted Capital Account Deficit**" means with respect to either Member any negative balance in such Member's Capital Account. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Regulations and shall be interpreted consistently therewith.

"**Affiliate**" means, with respect to a Person, (i) any Person directly or indirectly controlling, controlled by or under common control with such Person; (ii) any Person owning or controlling directly or indirectly more than twenty-five percent (25%) of the outstanding voting securities of such Person; (iii) any officer, director, manager or partner of such Person; or (iv) any officer, director, manager, partner, or member of the immediate family (i.e., the spouse, children, parents or siblings) of a Person described in the foregoing clauses (i) or (ii).

"**Agreement**" means this Operating Agreement, as amended from time to time.

"**Approval Rights**" means the rights of the Managers to vote, approve, or consent to the matters described in Section 4.3(a).

"**Assignee**" means a Transferee of a Membership Interest (or any portion thereof) who has not become a Member.

"**Assignment**" means the assignment of the Purchase Agreement by Buyer to the Company and the assumption by the Company of the obligations of Buyer as purchaser thereunder being executed contemporaneously herewith in the form annexed hereto as Exhibit "H".

"**Bad Act**" means any action or omission by a Member or a Manager that constitutes (i) (A) fraud, gross negligence, willful or intentional misconduct, a material intentional violation of law, or (B) an intentional material misrepresentation; or (ii) a Material Default; or (iii) a Transfer in violation of Article 5 of this Agreement. In the event of a dispute as to the occurrence of a Bad Act, the determination of any Bad Act shall be submitted to the non-binding arbitration procedure set forth in Section 4.4(a), provided, however, that if determination of such Bad Act is not resolved by arbitration pursuant to Section 4.4(a), then such Bad Act must be determined by a Judicial Decision.

"**Bankruptcy Action**" means (i) with respect to any Person the entry of an order for relief by the court in a proceeding under the United States Bankruptcy Code, Title 11, U.S.C., as amended, or its equivalent under a state insolvency act or a similar law of other jurisdictions; or (ii) with respect to the Company (A) commencing any case, proceeding or other action on behalf of the Company under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (B) instituting proceedings to have the Company adjudicated as bankrupt or insolvent; (C) consenting to the institution of bankruptcy or insolvency proceedings against the Company; (D) filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Company of its debts under any federal or state law relating to bankruptcy; (E) seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or similar official for the Company or all or any substantial portion of its properties; (F) making any assignment for the benefit of the Company's creditors; or (G) taking any action in furtherance of the foregoing.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which national banks are required or authorized by law to be closed in Miami, Florida.

"**Buyer**" means Shoma Investments Company, a Florida corporation, in its capacity as purchaser under the Purchase Agreement.

"**Capital Account**" means an account maintained for each Member in accordance with Regulations Section 1.704-1(b)(2)(iv) and this Agreement. Without limiting the generality of the foregoing, the Members' Capital Accounts will be adjusted in accordance with Regulations Section 1.704-1(b)(2)(iv)(g) for allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to contributed property and revalued Company assets.

"**Capital Call**" means a notice issued by a Manager or the Managers to the Members for a Capital Contribution pursuant to the express provisions of this Agreement.

"**Capital Contribution**" means a Contribution made (or deemed made) to the Company by either Member in accordance with the provisions of this Agreement. All Capital Contributions shall be reflected in Exhibit "A" annexed hereto and made a part hereof, as the same may be amended from time to time in accordance with the applicable provisions of this Agreement, provided, however, that the failure to amend Exhibit "A" to reflect the funding of a Capital Contribution shall not affect the fact that such Capital Contribution has been made, provided, however, that the funding of such Capital Contribution has been made in accordance with the express provisions of this Agreement.

"**Capital Event**" means any transaction which generates the receipt of Cash by the Company (other than Cash from Operations), including, without limitation, (i) sales of real or personal property (other than sales of townhomes and condominium units in the Project pursuant to offering documents filed with the appropriate governmental authorities and sales of personal property in the ordinary course of business); (ii) condemnations (and conveyances in lieu thereof); (iii) damage recoveries; (iv) receipts of insurance proceeds (other than rent insurance proceeds); (v) borrowings; and (vi) Transfers of all or a significant part of any asset of the

Company or the aggregate assets of the Company (other than sales of townhomes and condominium units in the Project pursuant to offering documents filed with the appropriate governmental authorities and sales of personal property in the ordinary course of business).

"**Cash**" means lawful currency of the United States of America and equivalents, such as checks, but only when collected, and bank transfers.

"**Cash Available for Distribution**" means an amount equal to the sum of (i) Cash from Operations less Expenses; and (ii) Cash from Sales or Refinancings.

"**Cash from Operations**" means all Receipts provided by the operations of the Company and either received in Cash or converted to Cash by the Company during any fiscal period, including sums released from Reserves, but excluding Contributions, Cash from Sales or Refinancings and loans or advances made by Members to the Company.

"**Cash from Sales or Refinancings**" means the net Cash realized by the Company from (i) a Capital Event (including principal and interest payments on any note or other obligation received by the Company in connection with a Capital Event); (ii) any financing, or refinancing of Company obligations; and (iii) insurance proceeds in connection with casualty, in each case, after (A) retirement of refinanced debt or other debt as determined by the Management Committee, (B) subtracting all expenses related to the transaction, and (C) making an allowance for Reserves for repairs, replacements, contingencies and anticipated obligations (including debt service, lost receipts, and costs of improvements).

"**Certificate of Formation**" means the Certificate of Formation filed with the Delaware Secretary of State on October 8, 2013, in accordance with the Act, for the purpose of forming the Company, as the same may be amended or restated from time to time in accordance with the provisions of the Act and this Agreement.

"**Closing**" means the closing of the Company's acquisition of the Property pursuant to the Purchase Agreement.

"**CMC Affiliate**" means an Affiliate of CMC, so long as Ugo Colombo maintains (whether direct or indirect) at least a twenty-five percent (25%) beneficial ownership interest in such Affiliate and the ability to Control such Affiliate.

"**CMC Overhead Payment**" means the sum of One Hundred Thousand Dollars ($100,000) per month to be paid by the Company to CMC in respect of its overhead allocated to the Project commencing thirty (30) days following the Closing. The aggregate CMC Overhead Payment shall be as set forth in the Project Budget.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time (including any successor statute or statutes), as applicable to the Company and the Members.

"**Company**" means Coral Gables Luxury Holdings LLC, the Delaware limited liability company governed by the provisions of the Act and this Agreement.

"**Company Minimum Gain**" means an amount computed as described in Regulations Sections 1.704-2(b)(2) and 1.704-2(d).

"**Contract**" shall mean, with respect to any Person, any agreement, commitment, contract, indenture, loan, note, mortgage, instrument, lease or undertaking of any kind or character, oral or written, to which such Person is a party or that is binding on such Person or its capital stock, interests, assets, properties or business.

"**Construction Financing**" means the financing provided to the Company by a Lender to be used for the construction, development, operation and maintenance of the Intended Improvements, the form, terms and conditions of which shall be approved by the Management Committee.

"**Contribution**" means Cash, the gross Fair Market Value of other property (net of each liability assumed by the Company in connection with the Contribution and net of each liability subject to which the Company received the Contribution), or any other valuable consideration Transferred by a Person to the Company as a condition of becoming a Member and any subsequent transfer of Cash or property to the Company by a Person in such Person's capacity as a Member, provided that the gross Fair Market Value of such property (other than Cash) shall be determined by the Management Committee.

"**Control**" (including its correlative meanings "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of securities or partnership or other interests, by contract or otherwise.

"**Cure Period**" means the earlier to occur of (i) thirty (30) days after written notice of any breach or violation is received by a Member which specifies the breach or violation by such Member or the Manager designated by such Member (a "Defaulting Person") and the steps necessary to cure said breach or violation, or such longer period as is reasonably necessary to cure such breach or violation if such Defaulting Person promptly commences the cure and thereafter diligently prosecutes the cure to completion, but in no event longer than ninety (90) days; and (ii) with respect to the receipt by the Company of written notice from a Lender alleging the occurrence of a default under the applicable Loan Documents as a consequence of the acts or failure to act of the Defaulting Person, any shorter cure period provided for under any Loan Document prior to the breach ripening into an event of default under such Loan Document (taking into account any cure periods provided in the applicable Loan Documents).

"**Development Plan**" means the plan for the construction, marketing, sale, maintenance and operation for the Project in the form annexed hereto as Exhibit "G", as the same may be amended in accordance with the express provisions of this Agreement.

"**Effective Date**" means the date set forth in the preamble of this Agreement and being the date that this Agreement has been signed by CMC and by Shoma.

"**EFR Loan**" means any loan made by a Member to the Company pursuant to Section 3.4, once the Additional Capital Threshold and the Supplemental Capital Threshold have

been satisfied, which loan shall bear interest at a rate and contain such terms as provided in Section 3.4.

"**Encumbrance**" means any lien (statutory or otherwise), mortgage, deed of trust, pledge, hypothecation, assignment, charge, security interest, option to purchase, easement, restrictive covenant, right of first refusal, deposit arrangement, preemptive right, conversion, put, call or other adverse claim or right, restriction on transfer, encroachment, conditional sale or other title retention agreement, or any other encumbrance, whether voluntarily incurred or arising by operation of law.

"**Event of Withdrawal**" means any of the following:

(a) if a Member: (i) makes an assignment for the benefit of creditors; (ii) is the subject of a Bankruptcy judgment or a Bankruptcy proceeding not in good faith defended; (iii) files a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, winding-up, dissolution or similar relief under any statute, law or regulation or files an answer or other pleading admitting or failing to contest the material allegations of a petition filed in such a proceeding; or (iv) seeks, approves of or acquiesces in the appointment of a trustee, receiver, liquidator, assignee, sequestrator, custodian or similar official of the Member or of all or any substantial part of the Member's assets;

(b) if one hundred twenty (120) days after the start of any proceeding against a Member seeking reorganization, arrangement, composition, readjustment, liquidation, winding-up, dissolution or similar relief under any statute, law or regulation, such proceeding has not been dismissed, or if within ninety (90) days after the appointment of a trustee, receiver, liquidator, assignee, sequestrator, custodian or similar official of the Member or of all or any substantial part of the Member's property, without the Member's approval, the appointment is not vacated or stayed, or within ninety (90) days after the expiration of any such stay, the appointment is not vacated;

(c) if a Member is a natural person, the Member's death or the entry by a court of competent jurisdiction of an order adjudicating the Member incompetent to manage such Member's person or estate;

(d) if a Member is a trust, the termination of the trust or a distribution of all of its Membership Interest but not merely the substitution of a new trustee;

(e) if a Member is a general or limited partnership, the dissolution and commencement of winding up of the partnership or a distribution of all, or substantially all, of its assets;

(f) if a Member is a corporation, the filing of articles of dissolution, or their equivalent, for the corporation or revocation of its charter or a liquidation and/or distribution of all, or substantially all, of its assets;

(g) if a Member is an estate, the distribution by the fiduciary of all, or substantially all, of the estate's assets; or

(h) if a Member is a limited liability company, the filing of articles of dissolution or termination, or their equivalent, for the limited liability company or a distribution of all, or substantially all, of its assets.

Notwithstanding the foregoing, the administrative dissolution of a Member that is an Organization for failure to file an annual report with the Secretary of State (or the equivalent of such delinquency under the law of its jurisdiction of organization) shall not be deemed an Event of Withdrawal, provided that such delinquency is cured not later than thirty (30) days after written notice thereof is sent by either Member to the other Member.

"**Excess Capital Contribution**" means any Capital Contributions made by a Member to the Company in accordance with the provisions of Section 3.4(a).

"**Excess Funding Obligation**" shall have the meaning set forth in Section 3.4(b).

"**Expenses**" means for any fiscal period of the Company, (i) the amount of Cash disbursed during such period in order to operate the Company (including capital expenditures and debt service) and to pay expenses of the Company (excluding expenditures in connection with Capital Events and financing); and (ii) amounts set aside for such fiscal period for working capital and to pay debt service, taxes, insurance and other costs and expenses incident to the operation of the Company, including Reserves.

"**Extension Fee**" means the sum of One Hundred Thousand Dollars ($100,000) paid by Buyer to Sellers as consideration of the extension of the closing date under the Purchase Agreement to December 5, 2013.

"**Fair Market Value**" means the price at which a willing seller would sell and a willing purchaser would buy any of the assets of the Company, in an arm's length transaction, which price shall be determined, in the event of a dispute, pursuant to the provisions of Section 5.9.

"**Fiscal Year**" means the fiscal year of the Company for accounting and tax purposes as set forth in Section 8.10.

"**Governmental Entity**" shall mean any court, tribunal, department, body, board, bureau, administrative agency or commission or other governmental authority or instrumentality, whether federal, state, local or foreign.

"**Gross Asset Value**" means, with respect to any Company asset, such asset's adjusted basis for U.S. federal income tax purposes, except that the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the Fair Market Value of such asset, and the Gross Asset Values of all Company assets shall be adjusted to equal their respective Fair Market Values, in accordance with the rules set forth in Section 1.704-1(b)(2)(iv)(f) of the Regulations, except as otherwise provided herein, as of: (i) the date of the acquisition of any additional Membership Interests by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the date of the distribution of more than a de minimis amount of Company property to a Member; (iii) the date the Membership Interests are relinquished to the Company; and (iv) at such other times as the Management Committee shall reasonably

determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2; provided, however, that adjustments pursuant to clauses (i), (ii), (iii) and (iv) above shall be made only if such adjustments are deemed necessary or appropriate by the Management Committee to reflect the relative economic interests of the Members. The Gross Asset Value of any Company asset distributed to any Member shall be adjusted immediately prior to such distribution to equal its Fair Market Value. The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that Gross Asset Values shall not be so adjusted to the extent that the Management Committee determines that an adjustment pursuant to the preceding two sentences is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this sentence. Depreciation shall be calculated by reference to Gross Asset Value instead of tax basis once Gross Asset Value differs from tax basis.

"**Guaranty**" means a guarantee of any of the obligations of the Company by a Member, or the Affiliate of a Member, in accordance with the provisions of Section 3.5, the terms of which Guaranty shall be in a form required by the beneficiary of the Guaranty and shall contain usual and customary terms based on the nature of the guarantee being provided.

"**Indemnified Person**" shall have the meaning set forth in Section 4.6.

"**Initial Capital Contribution**" means the Capital Contributions made by the Members pursuant to Section 3.1(a).

"**Intended Improvements**" means the mixed use condominium intended to be constructed on the Property including residential, office and retail space as mixed-use buildings to include approximately eighty thousand (80,000) square feet of ground floor retail space, street-level townhomes, approximately two hundred fifty-five (255) condominium units and associated parking, including any underground parking.

"**Judicial Decision**" means a final determination by a court of competent jurisdiction which cannot be further appealed, provided, however, that either Member shall have the right to petition any court before which a determination is being made for any equitable relief available under applicable law.

"**Lender**" shall mean any independent recognized institutional Person holding a mortgage lien or deed of trust affecting the Property, or any portion thereof, including, without limitation, any lender providing the Construction Financing.

"**Loan Documents**" means the instruments, agreements, documents and certificates delivered by the Company, the Members and the Guarantors in connection with any Construction Financing or any other financing obtained by the Company in accordance with the terms of this Agreement.

"**Major Decision**" means a decision to be made by the Management Committee with respect to any of the matters set forth in Section 4.3(a).

"**Management Committee**" means a committee comprised of the Managers acting in accordance with the provisions of Article 4.

"**Manager**" or "**Managers**" means the individual natural person(s) appointed as such as provided in Section 4.1 and the respective successors of such persons duly appointed in accordance with the provisions of this Agreement, provided the appointing Member has not lost its designation rights pursuant to the applicable provisions of this Agreement.

"**Material Default**" means (i) the intentional breach by a Member of any of such Member's representations or warranties or such Member's material obligations or material covenants under this Agreement beyond any applicable Cure Period; or (ii) the intentional breach by any Affiliate of a Member of any of its material representations or warranties or material obligations or material covenants under or with respect to an Affiliate Transaction and/or any agreements entered into in connection therewith, subject in either such case to the Cure Period and with respect to an Affiliate Transaction any cure period set forth in the agreements entered into by the Company and such Affiliate in connection with such Affiliate Transaction, provided, however, such breach results in a material adverse effect on the Company, any Subsidiary, either Member or any material assets of the Company, it being understood and agreed that a failure to fund Capital Contributions shall not constitute a Material Default, other than failure to fund an Additional Capital Contribution pursuant to the provisions of Section 3.2(a).

"**Member**" means CMC and Shoma and any other Person who is subsequently admitted as a Member in accordance with the express provisions hereof until such Person ceases to be a Member.

"**Member Nonrecourse Debt Minimum Gain**" means an amount equal to partner nonrecourse debt minimum gain determined in accordance with Regulations Section 1.704-2(i)(3).

"**Membership Interest**" means all right, title and interest of a Member in the Company as described in this Agreement, including, but not limited to, such Member's approval, voting and designation rights provided for herein and share of (and right to receive, as applicable) capital, profits, losses and distributions, and subject to such duties and obligations as may apply to such Member under this Agreement and the Act, to the extent applicable.

"**Net Profits**" or "**Net Losses**" means for each Fiscal Year of the Company, without duplication, an amount equal to the Company's taxable income or loss for such Fiscal Year of the Company or other period, as applicable, determined in accordance with the Company's accounting method for U.S. federal income tax purposes and Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition of Net Profits or Net Losses shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i) and not capitalized or otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition of Net Profits or Net Losses shall be subtracted from such taxable income or loss;

(iii) in the event the Gross Asset Value of any Company asset is adjusted pursuant to clauses (i), (ii), (iii) or (iv) of the definition of Gross Asset Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Profits or Net Losses;

(iv) gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(v) depreciation, amortization, and other cost recovery deductions shall be computed by reference to the Gross Asset Value of the property if the Gross Asset Value differs from its adjusted tax basis;

(vi) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(vii) any items that are specially allocated pursuant to Section 9.5 shall be excluded from the computation of Net Profits and Net Losses.

"**Organization**" means any Person other than an individual.

"**Percentage Interest**" shall mean each Member's proportionate ownership interest in the Company, including but not limited to, this Agreement and the share of profits, losses, distributions, rights and obligations granted herein. The Percentage Interests may be adjusted from time to time as expressly provided herein and set forth in an amendment to Schedule "A" annexed hereto. The initial Percentage Interests of the Members shall be (i) fifty percent (50%) Shoma; and (ii) fifty percent (50%) CMC.

"**Permitted Transferee**" shall mean, with respect to a Person, (i) the spouse, lineal descendants and spouses of the lineal descendants of the Person; (ii) the estate or legal representative of the Person and each other Person identified in clause (i) above; (iii) each trust, custodianship or other fiduciary arrangement in respect of which the Person making the Transfer (and/or the Person and/or one or more of the other Persons described in clause (i) above) are the sole beneficiaries; (iv) each corporation of which more than fifty percent (50%) (by number of votes) of the voting stock and beneficial interests of which is owned by or held for the benefit of

the Person and/or one or more of the other Persons described in clause (i), (ii) or (iii) hereof; (v) each partnership, limited liability company or other association, of which more than fifty percent (50%) of the capital or voting rights and beneficial interests of which is owned by or held for the benefit of the Person and/or one or more of the other Persons described in clause (i), (ii) or (iii) above, and such Person or Persons shall have Control of such corporation, partnership, limited liability company, or other association; and (vi) any transferee to whom a Membership Interest may be transferred in connection with a Permitted Transfer under Section 5.3.

"**Person**" includes individuals, partnerships, domestic or foreign limited partnerships, domestic or foreign limited liability companies, domestic or foreign corporations, trusts, business trusts, real estate investment trusts, estates and other associations or business entities.

"**Previously Incurred Expenses**" shall mean the costs and expenses incurred by Shoma and/or its Affiliates prior to the Effective Date, including, but not limited to, attorneys' fees incurred in the negotiation of the Purchase Agreement, as more particularly set forth in Exhibit "D" attached hereto.

"**Project**" shall mean the development of the Property, including the construction, marketing, operation and sale of the Intended Improvements.

"**Project Budget**" means the budget for the development, construction, maintenance, operation and sale of the Project which shall be attached hereto as Exhibit "F" upon agreement of the Managers, as same may be amended from time to time in accordance with the provisions hereof.

"**Property**" means the approximately 107,000 square feet of land (constituting a block) bounded by Bird Road on the North, Aurora Avenue on the East, Altara Street on the South and Salzedo Street on the West located in Coral Gables, Florida as more particularly set forth in the legal description of the Property attached hereto as Exhibit "B".

"**Purchase Agreement**" means that certain Purchase and Sale Agreement, dated as of May 1, 2013, by and between Sellers, as seller, and Buyer, as purchaser, as amended by that certain Amendment to Purchase and Sale Agreement, dated as of September 19, 2013, by and between Sellers and Buyer, in each case including all exhibits and schedules thereto and documents referred to therein, true and complete copies of which have been delivered by Shoma to CMC.

"**Receipts**" means, for any period, a sum equal to the aggregate of all amounts actually received by or unconditionally made available to the Company received from the use or ownership of the assets of the Company during such period, except from a Capital Event.

"**Regulations**" means the Income Tax Regulations promulgated under the Code, as amended from time to time, including corresponding provisions of succeeding regulations.

"**Reserves**" means any sums which the Management Committee sets aside for the payment of taxes, future expenses (including capital expenditures and debt service) or any other purposes as the Management Committee, in its sole discretion, deems desirable for the Company.

The amount by which Reserves at the end of any fiscal period exceeds the amount of Reserves established by the Management Committee for the beginning of the next fiscal period shall be an addition to Cash Available for Distribution, when and to the extent the Management Committee no longer regards such portion of previously established Reserves as necessary for the efficient conduct of the business and affairs of the Company.

"**Securities Laws**" means all applicable federal and state securities laws, including the Securities Act of 1933, as amended, and any regulations promulgated thereunder.

"**Sellers**" means Yeung Property Holdings, Inc. and Yeung Property Corp. in their respective capacities as sellers under the Purchase Agreement.

"**Shoma Affiliate**" means an Affiliate of the Shoma, so long as Masoud Shojaee maintains (whether direct or indirect), at least a twenty-five percent (25%) beneficial ownership in such Affiliate and the ability to Control such Affiliate.

"**Shoma Overhead Payment**" means the sum of Fifty Thousand Dollars ($50,000) per month to be paid by the Company to Shoma in respect of its overhead allocated to the Project commencing thirty (30) days following the Closing. The aggregate Shoma Overhead Payment shall be as set forth in the Project Budget.

"**Subsidiary**" means, with respect to any Person, a corporation or other entity of which fifty percent (50%) or more of the voting power of the equity securities or equity interests is owned, directly or indirectly, by such Person.

"**Supplemental Capital Contributions**" means Capital Contributions of the Members pursuant to Section 3.3(a), after the Additional Capital Threshold has been satisfied.

"**Supplemental Capital Threshold**" means the amount of up to Ten Million Dollars ($10,000,000) representing the aggregate Capital Contributions to be made by Members (i.e. up to $5,000,000 each) pursuant to the provisions of Section 3.3(a).

"**Tax**" or "**Taxes**" means any federal, state, local or foreign net or gross income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax, governmental fee or like assessment or charge of any kind whatsoever, including any interest, penalty or additions thereto and any amount imposed by any Governmental Authority or arising under any Tax law or agreement, including, without limitation, any joint venture or partnership agreement.

"**Tax Matters Partner**" has the meaning specified in Code Section 6231(a)(7).

"**Tax Regulation Allocations**" means the allocations described in Section 9.5.

"**Taxing Authority**" means any United States federal, state or local or any foreign governmental, regulatory or administrative authority, agency or commission exercising Tax regulatory authority.

"**Total Capital Contributions**" means the aggregate amount of Capital Contributions to the Company made or deemed made by the Members in accordance with the provisions of this Agreement, including the Initial Capital Contributions, Additional Capital Contributions, Supplemental Capital Contributions, Shortfall Capital Contributions and Excess Capital Contributions, if any, made by the Members in accordance with the provisions of this Agreement.

"**Transfer**", when used as a noun, means any sale, exchange, gift, assignment, transfer, pledge, hypothecation, or any other type of disposition or encumbrance, whether with or without consideration, whether voluntary or involuntary, and in the case of an individual, whether during lifetime or at death; and, when used as a verb, means the corresponding verb, or any word derived therefrom (such as Transferred, Transferring, Transferor and Transferee) shall have a meaning corresponding to such action or event).

"**Unresolved Major Dispute**" means the inability of the Managers to agree on a Major Decision within the time frame set forth in Section 4.3(c).

"**Unreturned Capital Balance**" means, for each Member, the cumulative Capital Contributions of that Member less the cumulative distributions by the Company to that Member in return thereof pursuant to Section 9.1(a)(ii) (in repayment of an Excess Capital Contribution), 9.1(a)(iv), 9.1(a)(v), 9.1(a)(vi), and 9.1(a)(vii).

1.2 **Other Definitions**.

(a) Each of the following terms is defined in the Section of this Agreement set forth opposite to such term:

Term	Section
Affiliate Member	4.8
Affiliate Transaction	4.8
Business	2.5
Carve-out Guaranty	3.5(a)
Completion Guaranty	3.5(a)
CPR	4.3(d)
Defaulting Purchaser	5.7(d)
Defaulting Seller	5.7(e)
Deficiency	3.2(b)
Deficiency Capital Contribution	3.2(d)
Deficiency Loan	3.2(b)
Deficiency Return	3.2(b)
Electing Member	5.7(d)
Excess Funding Requirement	3.4

Term	Section
Excess Member	3.5(c)
Equalization Deficiency	3.5(c)
EFR Loan	3.4
Final Appraiser	5.9
Funded Amount	3.3(a)
Funding Member	3.3(a)
Guaranty Payment	3.5(b)
Guaranty Payment Member	3.5(c)
Guaranty Shortfall Member	3.5
Indemnified Person	4.6
JAMS	4.3(d)
Liabilities	4.6
Masoud	3.5(a)
Mediation Request	4.3(d)
Mediation Termination Date	4.3(d)(ii)
Membership Interest Certificate	7.1
Mezzanine Loan	3.4
New Member	3.2(b)
Non-Indemnifiable Matters	4.6
Non-Affiliated Member	4.8
Non-Funding Member	3.3(a)
Non-Selling Member	5.5
Non-Transferring Member	5.3
Offering Notice	5.5
Offeree	5.6
Permitted Transfers	5.3
Post-Transfer Retained Liabilities	5.8(b)
Profits	9.3
Purchase Offer	10.2
Removal Event	4.4
Removed Manager	4.4(b)
Restricted Transfer Period	5.3
Sale of Membership Interests Closing	5.8(a)
Selling Party Guarantor	5.8(b)
Shortfall	3.3(a)
Shortfall Capital Contribution	3.3(c)
Selling Party Guarantor	5.8(b)
Shortfall Loan	3.3(a)
Selling Member	5.5
Special Purpose Provisions	4.7
Supplemental Capital Threshold	3.3(a)
Supplemental Capital Contributions	3.3(a)
Supplemental Deficiency Return	3.3(c)

Term	Section
Taxing Authority	8.7
Transferring Member	5.3
UCC	7.1
Ugo	3.5(a)
Unanimous Actions	4.4(b)

(b) Any capitalized term not defined in this Agreement shall have the meaning ascribed to such term in the Formation Agreement unless the context clearly indicates otherwise.

1.3 Certain Interpretation Matters. Definitions contained in this Agreement apply to singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires. The terms "**hereof**," "**herein**", "**hereby**" and "**herewith**" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement. The terms "**includes**" and the word "**including**" and words of similar import shall be deemed to be followed by the words "**without limitation**."

ARTICLE 2.

ORGANIZATION

2.1 Organization of the Company.

(a) The Company was organized and shall be maintained as a Delaware limited liability company under the Act. The Management Committee shall file, publish and record, or cause to be filed, published and recorded all such documents and instruments and perform such acts as are necessary to comply with all requirements for the maintenance and operation of a limited liability company in the State of Delaware.

(b) Whenever it is necessary or appropriate to amend or restate the Certificate of Formation, the Managers may timely file an amended and/or restated Certificate of Formation.

2.2 Name. The name of the Company is "CORAL GABLES LUXURY HOLDINGS LLC" and such name shall be used at all times in connection with the Company's business affairs, except to the extent the Management Committee agrees to the use by the Company of assumed names or other trade or fictitious names.

2.3 Principal Place of Business. The Company will locate its temporary office at 701 Brickell Avenue, Suite 2410, Miami, Florida 33131 and its permanent office at such other place as the Management Committee may select from time to time. For so long as the Company is located at an office of CMC, CMC shall deliver to Shoma copies of any material notice or correspondence delivered to the temporary office related to the Company promptly after receipt thereof.

2.4 **Term**. The existence of the Company began upon the filing of the Certificate of Formation and will continue in perpetuity unless sooner terminated in accordance with the applicable provisions of this Agreement and the Act.

2.5 **Purpose**. The Company is organized for the purpose of acquiring, owning, developing, leasing, operating and disposing of the Property and the Intended Improvements and any other properties acquired by the Company, to borrow money and issue evidence of indebtedness or guaranties thereof in furtherance of any or all of the objectives of the Company's business and to secure the same by mortgage, pledge or other liens; and do any and all lawful business for which a limited liability company may be formed under the Act that is incident and necessary to the foregoing (the "**Business**").

2.6 **Title to Company Assets**. The Company will hold title to its assets in the name of the Company. The credit and assets of the Company shall be used solely for the benefit of the Company and shall not be used to further the personal gain of either Member or its Affiliates unless specifically provided for under the terms of this Agreement. No asset of the Company shall be Transferred or encumbered for, or in payment of, any individual obligation of a Member or its Affiliates unless expressly provided for under the terms of this Agreement. In the event the Company or Member is made a party to any obligation, or otherwise incurs any losses and/or expenses as a result of, or in connection with, personal obligations or liabilities of a Member or its Affiliates unconnected with the Company's business, or if a Member or the Manager designated by such Member commits a Bad Act, such Member shall indemnify and hold the Company and the other Member harmless from all Liabilities incurred by the Company and such other Member as a direct consequence of such personal obligation or liability of the indemnifying Member or the Bad Act of such Member or the Manager designated by such Member, and, if not paid directly by the indemnifying Member, the Cash Available for Distribution of such indemnifying Member pursuant to Sections 9.1 and 9.2 shall be charged therefor.

2.7 **Registered Agent and Registered Office**. The registered agent and the registered office for the Company will be as reflected in the Certificate of Formation as amended from time to time.

2.8 **Members' Business Dealings**. Each Member understands and acknowledges that the conduct of the business of the Company may involve business dealings with other businesses or undertakings of a Member or its Affiliates, including the entering into of contracts or other agreements with such businesses or undertakings. The creation of the Company and the assumption by each of the Members of their respective duties hereunder shall be without prejudice to their respective rights (or the rights of their respective Affiliates) to maintain such other interests and activities and to receive and enjoy profits or compensation therefrom, and of the Company to enter into contracts or agreements with such businesses or undertakings. Each Member waives any rights it might otherwise have to share or participate in such other interests or activities of the other Member or their respective Affiliates; provided, however, that each Member shall give notice to the other Member of its interest, or of the interest of any of its Affiliates, in any other business or undertaking which it proposes to enter into with the Company. For purposes of this Section 2.8, any contract or undertaking with a Member or an Affiliate of a Member must not result in expenditures or concessions in excess of the amount or

terms, as the case may be, that would be paid or agreed to by the Company in an arms' length transaction with unrelated parties in the same business in the same general area as the Member or Affiliate entering into the contract or undertaking. The entering into of all such agreements with a Member or an Affiliate of a Member shall require consent of the Management Committee and the enforcement of such agreements shall be exercised in the sole discretion of the Manager which is not an Affiliate of the service provider, provided such rights are exercised in a commercially reasonable manner and in accordance with the terms and conditions of (and not in violation of) the agreement for the Affiliate Transaction pertaining thereto.

ARTICLE 3.

CONTRIBUTIONS

3.1 Initial Capital Contributions/Membership Interests.

(a) Contemporaneously with the execution of this Agreement, (i) as its Initial Capital Contribution, Shoma shall cause Buyer to assign to the Company the Purchase Agreement (including the deposit and the Extension Fee made thereunder) together with all due diligence reports with respect to the Property under the care, custody or control of Buyer and in consideration thereof, after accounting for the Initial Capital Contribution being made by CMC further to the provisions of Section 3.1(a)(ii) and the payment to Buyer described in the immediately following sentence, Shoma shall receive a Capital Account equal to the sum of (A) One Million Three Hundred Thousand Dollars ($1,300,000) plus (B) an amount equal to one half of the Previously Incurred Expenses; and (ii) CMC shall make an Initial Capital Contribution, in Cash, to the Company equal to the sum of (A) One Million Three Hundred Thousand Dollars ($1,300,000) and (B) fifty percent (50%) of the Previously Incurred Expenses. Upon receipt by the Company of the Initial Capital Contribution of CMC, the entire amount thereof shall be paid by the Company to the Buyer in order to reimburse the Buyer for one half of the deposit and the Extension Fee under the Purchase Agreement and one-half of the Previously Incurred Expenses.

(b) Upon completion of the transactions contemplated in Section 3.1(a), (i) Shoma shall be deemed to have an initial Capital Account balance of One Million Three Hundred Thousand Dollars ($1,300,000) plus fifty percent (50%) of the Previously Incurred Expenses; (ii) CMC shall be deemed to have an initial Capital Account balance of One Million Three Hundred Thousand Dollars ($1,300,000) plus fifty percent (50%) of the Previously Incurred Expenses; (iii) CMC shall have a Percentage Interest of fifty percent (50%); and (iv) Shoma shall have a Percentage Interest of fifty percent (50%), which Percentage Interests shall be subject to adjustment in accordance with the express provisions of this Agreement.

3.2 Additional Capital Contributions.

(a) At least fifteen (15) Business Days prior to the scheduled closing date of the Company's acquisition of the Property, the Members will be obligated to contribute Additional Capital Contributions in an aggregate amount of Twelve Million Five Hundred Thousand Dollars ($12,500,000) (the "**Additional Capital Threshold**") in accordance with their respective Percentage Interests (i.e. $6,250,000 each), or such lesser or greater amount as is determined by the Management Committee or the Members. Such Additional Capital

Contributions, when funded, shall increase the respective Unreturned Capital Balances of the Members in like amount. In the event the Company has been unable to obtain financing for the acquisition of the Property by December 5, 2013, the Company will use commercially reasonable efforts to obtain an extension of the Closing, in which event, if necessary, the Additional Capital Threshold shall be increased in a commercially reasonable amount, as agreed by both Members, in connection with any extension of the Closing.

(b) In the event of the failure of either Member to fund all or any portion of an Additional Capital Contribution required pursuant to Section 3.2(a) above (a "**Defaulting Member**") within five (5) calendar days of the date such Additional Capital Contribution was due, the non-defaulting Member shall have the right, but not the obligation, until the date of the closing of the Company's acquisition of the Property to fund the entire amount of the Additional Capital Contributions and in such event, the Defaulting Member shall forfeit its Membership Interest and its Initial Capital Contribution and shall have no interest of any kind or nature with respect to the Company or the Property. The Members agree that the forfeiture of their Membership Interest and Initial Capital Contribution as the result of the failure to fund an Additional Capital Contribution is a fair and adequate remedy.

3.3 **Supplemental Capital Contributions.**

(a) After Additional Capital Contributions have been funded by the Members in the aggregate amount of the Additional Capital Threshold, CMC and Shoma will be required to fund any further Capital Contributions which are either (i) provided for in the Development Plan and the Project Budget; or (ii) otherwise agreed to in writing by the Managers as a Major Decision (the amounts referred to in clauses (i) and (ii), are hereinafter referred to as "**Supplemental Capital Contributions**") in accordance with their respective Percentage Interests up to an aggregate amount of Ten Million Dollars ($10,000,000) (the "**Supplemental Capital Threshold**") and such Supplemental Capital Contributions, when funded, will increase their respective Unreturned Capital Balances in like amount, it being understood and agreed that the aggregate Supplemental Capital Contributions of each Member shall not exceed Five Million Dollars ($5,000,000), subject to adjustment if the Percentage Interests are adjusted as expressly provided herein. In the case of Section 3.3(a)(i) either Manager shall, or in case of Section 3.3(a)(ii) both Managers shall, make a Capital Call for a Supplemental Capital Contribution by notifying each Member in writing of the need for additional funds, the amount needed and the due date for such funding (which shall be no earlier than seven (7) Business Days after the notice is received by the Members). In the event either Member fails to fund all or any portion of a Supplemental Capital Contribution (such Member is hereinafter referred to as the **"Non-Funding Member"** and the portion of such Supplemental Capital Contribution that such Non-Funding Member fails to fund is hereinafter referred to as the "**Shortfall**") within ten (10) calendar days after such Supplemental Capital Contribution was due, the non-defaulting Member ("**Funding Member**") shall have the right, but not the obligation, for a period of thirty (30) days after the Shortfall arises to either (x) fund the Shortfall (which such funded amount shall be referred to as the "**Funded Amount**") which shall be credited to the Capital Account of the Non-Funding Member and the Funded Amount shall be treated as a shortfall loan to the Non-Funding Member pursuant to the terms below (a "**Shortfall Loan**"); or (y) admit a New Member to the Company without the approval of the Non-Funding Member, anything

contained in Article 5 or Section 4.3 to the contrary notwithstanding, provided, however, such New Member makes a Capital Contribution to the Company in an amount equal to the Shortfall and agrees to be bound by the terms and conditions contained in this Agreement (it being understood and agreed that this Agreement shall be amended or deemed amended and restated solely to the extent necessary to reflect the admission of the New Member). In the event the Funding Member makes a Shortfall Loan to the Non-Funding Member, the interest rate on such Shortfall Loan shall be equal to twelve percent (12%) per annum, compounded annually (but in no event in excess of the maximum rate permitted by applicable law). Until a Shortfall Loan shall be repaid in full, including accrued interest, all distributions of Cash Available for Distribution further to Section 9.1(a) and Section 9.2 to which the Non-Funding Member shall be entitled, shall be paid to the Funding Member, prior to any distributions being made to the Non-Funding Member. If, at any time, both Members have outstanding Shortfall Loan(s), and the amount of then Cash Available for Distribution is not then sufficient to pay in full all amounts payable on account of all such outstanding Shortfall Loans, then such Cash Available for Distributions shall be allocated among all the outstanding Shortfall Loans on a pari passu basis (in proportion to the relative outstanding amounts of the accrued interest and outstanding principal balance of each such Shortfall Loan).

(b) In the event that the Funding Member elects to admit a New Member to the Company pursuant to the provisions of Section 3.3(a), such New Member shall receive a Capital Account equal to the amount of the Shortfall and that portion of the Percentage Interest of the Non-Funding Member equal to the quotient obtained by dividing the amount of the Shortfall by the sum of (i) the Unreturned Capital Balances of the Members; and (ii) the amount of the Shortfall. The Percentage Interest of the Non-Funding Member shall be reduced in an amount equal to the Percentage Interest of the New Member.

(c) In the event the Funding Member elects to make a Shortfall Loan and after one hundred twenty (120) days from the date such Shortfall Loan was made, the Shortfall Loan, including the accrued but unpaid interest thereon, has not been repaid in full, the Funding Member shall have the option, to be exercised within thirty (30) days thereafter, to either (i) continue to treat such Shortfall Loan as outstanding until such Shortfall Loan plus all accrued but unpaid interest thereon is fully paid in accordance with Section 3.3(a); or (ii) convert the outstanding principal amount of the Shortfall Loan and all accrued but unpaid interest thereon into a Capital Contribution (a "**Shortfall Capital Contribution**") which shall adjust the Unreturned Capital Balances and Percentage Interests of the Members as hereinafter provided. If the Funding Member fails to make an election within such 30 day period, the Funding Member shall be deemed to have make the election described in clause (i) above. In the event the Funding Member elects to treat the Shortfall Loan as a Shortfall Capital Contribution, the outstanding principal amount and all accrued but unpaid interest thereon shall be credited as a Capital Contribution to the Capital Account of the Funding Member (notwithstanding the fact that such Capital Contribution may have been initially credited to the Non-Funding Member) and a debit equal thereto shall be made to the Capital Account of the Non-Funding Member to reverse the Supplemental Capital Contribution of the Non-Funding Member funded by the Shortfall Loan. Thereafter, the Percentage Interest of the Non-Funding Member shall be reduced in accordance with the following formula:

$$A - [B \times 110\%/C] = D$$

where A is the Non-Funding Member's Percentage Interest prior to adjustment, B is the then balance of the Shortfall Loan (including the accrued, but unpaid interest thereon), C is the sum of the Total Capital Contributions (including the Shortfall Capital Contribution in question) to the Company and D is the revised Percentage Interest of the Non-Funding Member. The Percentage Interest of the Funding Member shall be increased by an amount equal to the amount by which the Non-Funding Member's Percentage Interest was reduced. Any Shortfall Capital Contribution will accrue a preferred return ("**Supplemental Deficiency Return**") at the rate of twelve percent (12%) per annum.

3.4 Excess Funding Requirements.

(a) Without creating any rights in favor of third parties, if funds in excess of the sum of the Members' Additional Capital Contributions, Supplemental Capital Contributions and other available funds, including any excess financing proceeds, are required by the Company, as determined by the Management Committee, both Managers shall notify each Member in writing of the need for additional funds, the amount needed and the due date for such funding (an "**Excess Funding Requirement**"), and each Member shall determine whether to fund its Percentage Interest of such Excess Funding Requirement as a Capital Contribution (an "**Excess Capital Contribution**") or as a loan (an "**EFR Loan**") to the Company. Each Excess Capital Contribution or EFR Loan will accrue interest at a rate of twelve percent (12%) per annum, or such other rate as determined by the Management Committee (the "**Excess Capital Preferred Return**") from the date of funding until repayment in full. Each EFR Loan and all accrued unpaid interest thereon shall be due and payable ninety (90) days after written demand of the Member making such EFR Loan, or if no such demand is made, twenty-four (24) months after the date such EFR Loan is made.

(b) If a Member decides not to make an Excess Capital Contribution or an EFR Loan, then the Company shall seek to fund any balance of the Excess Funding Requirement by means of a loan from a third party (a "**Mezzanine Loan**"). In the event the Company is required to procure a Mezzanine Loan because one Member fails to make an EFR Loan or an Excess Capital Contribution (either being an "**Excess Funding Obligation**"), the Manager designated by the Member who satisfies the required Excess Funding Obligation shall have the right of final approval of the terms of such Mezzanine Loan, provided same are on market terms and conditions. If both Members fail to meet their Excess Funding Obligations, then the terms and conditions of the Mezzanine Loan shall be a Major Decision.

3.5 Guarantee of Project Financing.

(a) If the Construction Financing can only be obtained on the basis of personal carve out, bad boy, or environmental guaranties required by the Lender (collectively, the "**Carveout Guaranties**"), then and only in that event, CMC shall deliver the Carveout Guaranties of Ugo Colombo ("**Ugo**") and Shoma shall deliver the Carve-Out Guaranties of Masoud Shojaee ("**Masoud**"). In the event that non-recourse financing is not available for the Project, any decision to pursue construction or other financing with additional guaranties (i.e., other than the Carveout Guaranties) shall be a Major Decision. In addition to the foregoing, if

the Lender providing the Construction Financing requires delivery of a completion guarantee ("**Completion Guaranty**") in addition to Carveout Guaranties as a condition to providing the Construction Financing to the Company, the Managers shall use their best efforts to limit said guaranties to severable guaranties, and CMC will deliver the Completion Guaranty of Ugo and Shoma shall deliver the Completion Guaranty of Masoud. In the event that CMC fails to deliver the Carve-Out Guaranties or Completion Guaranty of Ugo or Shoma fails to deliver the Carve-Out Guaranties or Completion Guaranty of Masoud, the Member who delivers the required guaranties may, at its election, deliver any additional guaranty required by the Lender, from a Person or Persons acceptable to the Lender, in which event the Percentage Interest of the Member who failed to deliver the required guaranties shall be decreased by ten percent (10%)(e.g., from 50% to 40%) and the Percentage Interest of the other Member shall be increased in like amount. In all events, the substantive terms of all Carve-Out Guarantees and all Completion Guarantees provided by Ugo and Masoud shall be identical and shall be acceptable to both Ugo and Masoud.

(b) If either Member, or any one of their respective Affiliates, actually makes a payment pursuant to a Guaranty delivered to a Lender providing the Construction Financing (a "**Guaranty Payment**"), the Guaranty Payment shall be treated in the same manner as a Supplemental Capital Contribution for purposes of this Agreement and shall be entitled to the Supplemental Deficiency Return. The Member which did not make the Guaranty Payment (the "**Guaranty Shortfall Member**"), within thirty (30) days of demand by the Member who (or whose Affiliate) (the "**Guaranty Payment Member**") has made the Guaranty Payment, shall make a Supplemental Capital Contribution to the Company (an "**Equalization Payment**") in an amount equal to the product obtained by multiplying (i) the sum of (A) the amount of the Guaranty Payment and (B) the Supplemental Deficiency Return earned thereon; by (ii) the Percentage Interest of the Guaranty Shortfall Member. The Company shall then reimburse the Member who, or whose Affiliate, made the Guaranty Payment using the Equalization Payment of the Guaranty Shortfall Member pursuant to this Section 3.5(b).

(c) If a Guaranty Shortfall Member fails to make an Equalization Payment (an "**Equalization Deficiency**") within sixty (60) days of the date the Equalization Payment was due (i) all payments of Cash Available for Distribution allocable to the Guaranty Shortfall Member shall be paid to the Guaranty Payment Member until such time as the Equalization Payment and all accrued but unpaid interest thereon are paid in full; and (ii) the Guaranty Payment Member shall have the option to either (A) treat the funds constituting the then balance of the Equalization Payment together with all accrued but unpaid interest thereon as a Shortfall Loan, or (B) treat such funds as a Shortfall Capital Contribution by the Guaranty Payment Member and reflected in an amendment to Exhibit A. In the event the Guaranty Payment Member elects to treat the funds constituting the then balance of the Equalization Payment together with all accrued but unpaid interest thereon as a Shortfall Capital Contribution by the Guaranty Payment Member, the then balance of the Equalization Payment together with all accrued but unpaid interest thereon shall be credited as a Shortfall Capital Contribution of the Guaranty Payment Member. Thereafter, the Percentage Interest of the Guaranty Shortfall Member shall be reduced in accordance with the formula set forth in Section 3.3(c) and the Percentage Interest of the Guaranty Payment Member shall be increased by an amount equal to the amount by which the Percentage Interest of the Guaranty Shortfall Member was reduced. Nothing contained herein

shall be deemed to provide that any Guaranty Payment or Equalization Payment which is converted into a Supplemental Capital Contribution pursuant to this Section 3.5(c) shall be credited against the Supplemental Capital Threshold.

(d) Anything in this Section 3.5 to the contrary notwithstanding, the Management Committee shall use reasonable efforts to cause any Guaranty required to be delivered hereunder to limit the liability of the Guarantor under such Guaranty to an amount not exceeding the liability of the Company to the beneficiary of such Guaranty, provided that the provisions of this Section 3.5(d) shall not be deemed to release a Member from its obligation to deliver any Guaranty contemplated herein, if such beneficiary refuses to limit the liability of the Guarantors under such Guaranty.

(e) In furtherance of the foregoing, the Members agree to execute an Indemnity Agreement in the form annexed hereto as Exhibit "E" contemporaneously with the closing of the Construction Financing.

3.6 Overhead Reimbursements. The Company shall pay the CMC Overhead Payment and the Shoma Overhead Payment monthly, which payments shall commence thirty (30) days following the Closing.

3.7 Maintenance of Capital Accounts. The Company shall maintain a Capital Account for each Member in accordance with the provisions of Section 8.2 and the rules applicable to partnerships specified in the Regulations.

3.8 No Priority. Except as specifically provided in this Agreement, a Member may not demand a distribution from the Company, have the right to withdraw from the Company, demand the return of any Contribution, or have priority over the other Member either as to the return of any Contribution or as to distributions.

3.9 No Third Party Beneficiaries. The obligation or right of either Member to make a Contribution or loan under this Article 3 is not intended to create any obligation to third party beneficiaries. No creditor may rely on that obligation unless the Member against whom the obligation is asserted and the Company have expressly agreed in writing that the creditor may do so. The Members have not agreed to make any Contributions or loans to the Company, except as expressly described in this Article 3.

ARTICLE 4.

MANAGEMENT

4.1 Management/Managers.

(a) The business and affairs of the Company shall be carried out by the Management Committee, which shall be comprised of two (2) Persons, one (1) of whom shall be appointed by CMC and one (1) of whom shall be appointed by Shoma. The initial Managers designated by the Members to the Management Committee are as follows:

CMC: Ugo Colombo

Shoma: Masoud Shojaee

(b) Except as provided below, a Manager may hold office indefinitely. A Manager may resign at any time. The resignation of a Manager is not an Event of Withdrawal and shall have no effect on status of the Member that appointed such Manager. The Managers will not be liable or accountable, in damages or otherwise, to the Company or to the Members for anything the Managers may do or refrain from doing within the scope and authorization of this Agreement, except in the case of a Bad Act in connection with the business and affairs of the Company. The Managers shall not be entitled to receive compensation for their services as Managers. Except as authorized by the Management Committee pursuant to this Article 4 or any other express provision of this Agreement, no Member or Manager shall have any right or authority to take any action on behalf of the Company with respect to third parties. The Management Committee is hereby authorized to delegate any or all of its duties and responsibilities to any Manager or to any other Person, by a writing executed by both Managers setting forth such delegation, which delegation may be rescinded at any time, and from time to time, by the Management Committee in a writing executed by both Managers. Upon the Transfer of more than one half (1/2) of its Percentage Interest existing as of the Effective Date by a Member to a party(ies) which becomes a substituted Member(s) in accordance with this Agreement, the Transferring Member shall cause its designee on the Management Committee to resign immediately, and the substituted Member(s) may succeed to the Transferring Member's appointment rights with respect to the Management Committee. In the event a New Member is admitted to the Company in accordance with the terms of Section 3.3(a), such New Member shall have no right to participate in the management of the Company, including, without limitation, any appointment rights with respect to the Management Committee.

(c) Subject to the provisions of Sections 4.1(a), 4.1(b) and 4.4, if a vacancy occurs on the Management Committee for any reason, the Member who appointed the departing Manager shall appoint such Manager's successor within ten (10) calendar days of such vacancy.

(d) Meetings of the Management Committee shall be held at the request of either Manager upon reasonable prior notice. Any meeting of the Management Committee may be held by conference telephone call or through similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a telephonic meeting held pursuant to this Section 4.1(d) shall constitute presence in person at such meeting.

(e) Consent or approval of the Management Committee shall mean the unanimous affirmative vote of the Managers. Any action required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if each Manager consents thereto in writing.

4.2 **Management of Company Business**. Only to the extent authorized by this Agreement and subject to the provisions of Section 4.3, each Manager will have the power, on behalf of the Company, to do all things appropriate to carry out the business and affairs of the Company, including without limitation the following:

(a) to accept the assignment of the Purchase Agreement and to sell, assign, convey or otherwise transfer title to all or any portion of the Property and any other assets acquired by Company, and to take all actions on behalf of the Company which is necessary or appropriate in connection with the Company's acquisition of the Property and procurement and closing of the Construction Financing, and to execute all documents required in connection with such acquisition or financing necessary or appropriate in connection with the foregoing;

(b) to borrow monies on behalf of the Company pursuant to such terms as the Management Committee shall determine and, as security for the repayment thereof, to encumber all or any part of the Company's properties and assets, whether held directly or indirectly (including the property) and, in conjunction therewith, to execute all necessary papers and documents, including (but not limited to) bonds, notes, mortgages, pledges, security agreement, financing statements, indemnification agreement, warrants of attorney and confessions of judgment and any other loan documents required by the applicable lender;

(c) to prepay, in whole or in part, notes, mortgages or other encumbrances now or hereafter affecting the Property or the assets of the Company;

(d) to pay all costs and expenses incurred in owning and operating Company assets using Company funds, and to take all reasonable steps to insure that such amounts are timely paid or provision for payment thereof is timely undertaken from such Company funds;

(e) enter into and cause the Company to perform its obligations under any contracts approved by the Management Committee in accordance the provisions of this Agreement;

(f) sell, exchange or otherwise transfer any property owned by the Company and to execute any and all instruments in connection therewith when such action is required or permitted under this Agreement;

(g) to open bank accounts in the name of the Company for the deposit of monies received on behalf of the Company (without commingling with any non-Company) and to designate the number and identity of the individuals authorized pursuant to the applicable provisions of this Agreement to write checks and to disburse all funds on deposit on behalf of the Company in amounts and at times as may be required in connection with the business of the Company and established by the Management Committee;

(h) to engage consultants, accountants, attorneys, brokers, engineers, architects, contractors, escrow agents, and other agents or employees at the expense of the Company, and terminate such employment;

(i) to purchase casualty, liability and other insurance to protect the Company's property and business;

(j) to make investments in interest-bearing and non-interest bearing bank deposits, money market funds, and other prudent short-term investments, pending expenditure or

distribution of the Company's funds, or make such investments in order to provide a source from which to meet contingencies of the Company;

(k) to sell, lease, trade, exchange, or otherwise dispose of all or any portion of the assets of the Company, including the sale of any improvements constructed on the Property, at the amounts set forth in the Development Plan, including any amendments, as have previously been approved in writing by the Management Committee or in such other amounts as are agreed to by the Management Committee;

(l) to make distributions of Cash Available for Distribution as provided in Section 9.1 and Section 9.2 (subject to any contractual or other restrictions applicable to the Company);

(m) to prepare or cause to be prepared in conformity with good business practice all reports and returns that are to be furnished to the Members or that are required by Taxing Authorities or other governmental agencies, including financial statements and reports (but not the tax returns or reports of the Members);

(n) to possess, without limitation, all of the rights and powers of a manager in a limited liability company formed under the laws of the State of Delaware to an extent which is not inconsistent with the terms of this Agreement; and

(o) to do or cause to be done any other act which the Manager reasonably considers to be appropriate to carry out any of its powers or in furtherance of the purposes and character of the Company.

4.3 Major Decisions.

(a) Subject to Section 4.4(b) and in addition to the express provisions set forth elsewhere in this Agreement, the written consent of the Management Committee shall be required in order for a Manager, Member, or the Company to undertake any of the following actions:

(i) a Capital Event with respect to the Company;

(ii) approval or modification of the Construction Financing;

(iii) approval or modification of any Contract between (A) the Company and any Affiliate of any Member or Manager, (B) the general contractor, construction manager, architect and engineers for the Project, (C) any broker or sales agency for the sale of the units in the Project and (D) auditors and individual sales agents;

(iv) the adoption of any significant modification to the scope of the plan for the development, operation, marketing and sale of the Property and/or the Project;

(v) adoption of, or any modification to (if the modification provides for a reduction in projected revenues of more than three percent (3%)), the Project Budget;

(vi) expending, or become obligated or indebted for, amounts in excess of one hundred ten percent (110%) of any line item in the Project Budget, or amounts which in the aggregate exceed one hundred three percent (103%) of the Project Budget;

(vii) filing a lawsuit with respect to which the aggregate amount in controversy exceeds Fifty Thousand Dollars ($50,000);

(viii) effecting the merger or consolidation of the Company with any other Organization;

(ix) material modifications to the zoning approvals or related governmental and utility permits, licenses and consents required for construction of a Project, except to the extent contemplated in the Development Plan;

(x) authorizing any transaction, agreement or action unrelated to the Company's Business as set forth in Section 2.5;

(xi) making an election for the Company to be classified for income tax purposes as an association taxable as a corporation;

(xii) appointing any additional Manager (for the avoidance of doubt, except as contemplated in Section 4.1(c));

(xiii) assuming, guaranteeing, endorsing or otherwise becoming liable for the obligations of any Person;

(xiv) amending, modifying or waiving any material provision of any contract, agreement or arrangement of the Company required to be approved by the Management Committee pursuant to this Section 4.3;

(xv) entering into on behalf of the Company any material agreement with a Member or the Affiliate of a Member and approval of any amendment or modification to, or waiver of any such agreement;

(xvi) hiring or replacing the Company accountants, Company auditors, Company lead real estate brokerage company, Company tax counsel;

(xvii) confessing a judgment against the Company or taking any Bankruptcy Action;

(xviii) possessing, assigning or using funds or other property of the Company for other than a Company purpose;

(xix) determining Cash Available for Distribution;

(xx) admitting a new Member (other than a New Member admitted pursuant to Section 3.3 (b));

(xxi) taking any action which would make it impossible to carry on the ordinary business of the Company;

(xxii) making any amendment or modification to this Agreement, amending in any material respect, or waiving any material rights in, any agreement, the entering into of which was a Major Decision, or except as expressly permitted by this Agreement, admitting a Person as a Member of the Company;

(xxiii) creating, incurring, refinancing, increasing, extending, substituting, guarantying, modifying, restructuring, supplementing, replacing, assuming, renewing, or otherwise causing the Company, any Member or any Affiliate of any Member to enter into or approve the terms of (A) any loan document pursuant to which the Company or any Subsidiary of the Company would incur any indebtedness or other obligation, or (B) any loan terms pursuant to which the Company or any Subsidiary of the Company would incur any indebtedness or other obligation, including the identity of the lender, release or modification of the obligations or liabilities of any obligor under any loan document (including the modification of the principal amount owed, the interest rate, any prepayment fee, the maturity date or the amount or timing of payment) and the release or modification of the liens or security interests granted under any loan document;

(xxiv) making a pledge, mortgage, hypothecation or encumbrance of the Property, Project, or any interest therein or any beneficial interest in the Company including encumbering the Property with covenants, conditions, restrictions and/or easements (other than the granting of utility easements or public right of way easements);

(xxv) making any Tax Matters Partner (as such term is defined in the Code) decision, including entering into any settlement with the Internal Revenue Service, agree to extend any statute of limitations, or pursue any other "determination" as such term is defined in Code Section 1313(a); approve the determination (if different from that stated herein) of the accounting methods and conventions to be used in the preparation of tax returns of the Company, the making of any elections under the tax laws of the United States or any other state as to the treatment of income, gain, loss, deduction and credit of the Company, or any other method or procedure relating to the preparation of tax returns of the Company; and/or take such other action as may affect or alter the federal income tax treatment of the Company or its Members, including, without limitation, any action by the Company, that could reasonably be expected to cause the Company, or any part of the Company to be taxable as a "taxable mortgage pool" (as defined in section 7701(i) of the Code), or approve and file any income tax returns;

(xxvi) adopting or modifying interest rate hedging policies, agreements and costs;

(xxvii) using Company funds to extend credit or make loans;

(xxviii) knowingly taking any action or causing the Company to take any action, that would subject any direct or indirect owner of any Member to liability beyond those expressly provided in this Agreement or the Act;

(xxix) subject to Section 5.9, making a determination of Fair Market Value in excess of Fifty Thousand Dollars ($50,000) for any asset for any purpose under this Agreement;

(xxx) commencing, settling or making of any other material decision regarding the course of defense or prosecution of any claim, action, arbitration, mediation, suit or proceeding on behalf of the Company;

(xxxi) Transferring or settling or resolution of claims in respect of, any loan held by the Company;

(xxxii) with respect to each loan made by the Company, the declaring of a default or the exercise of any material rights or remedies under any of the loan documents or in any proceedings, including suing or otherwise bringing any cause of action under any of the loan documents, foreclosing under any of the loan documents, accepting a deed in lieu thereof, or taking possession of any real property;

(xxxiii) Except as set forth in the Project Budget or in this Agreement (i.e. the CMC Overhead Payment and the Shoma Overhead Payment), deciding to employ executive, administrative and/or support personnel in connection with the Company, to pay salaries, employee benefits, fringe benefits, bonuses and/or any other form of compensation or employee benefit to such Persons, and/or to reimburse any Member or their Affiliates for expenses incurred thereby (directly or indirectly) in order to provide or receive executive, administrative and/or support services in connection with the business of the Company;

(xxxiv) authorizing or entering into any agreement, payment, commitment or other transaction with any Person which would dilute the Percentage Interest owned by any Member in a manner which is disproportionate to the dilution which would occur to any other Member;

(xxxv) organizing or forming any Subsidiary;

(xxxvi) authorizing or entering into of any purchase agreement or other plan or agreement to acquire material Company assets in addition to the Property;

(xxxvii) submitting for approval by any governmental body, or amend, modify, change or revise, in any material fashion, any plans or specifications for the development of the Property previously submitted to any governmental body or any entitlements, permits, variances, zoning or any other developmental approvals with respect to the Property;

(xxxviii) to the extent not expressly provided for in the Project Budget and/or Development Plan, any material modification of the design, service or construction plans or contracts, for the Project;

(xxxix) except as contemplated by the then current Project Budget, approving any sales, "pre-sales" or marketing plan with respect to the Property or any portion thereof, or causing or permitting the Company to materially amend or modify, or to take any

material actions in violation of, any sales, "pre-sales" or marketing plan or offering materials previously approved as a Major Decision with respect to the Property or any portion thereof;

(xl) approving, modifying or terminating the any offering circular for the sale of condominium units in the Project;

(xli) entering into and any amendment to, or modification or termination of, any condominium declaration, restrictive covenant or easement agreement encumbering or for the benefit of the Property (other than the granting of utility or right of way easements or other easements required by governmental agencies for the approval or permitting of the Project), together with any election under such condominium declaration or easement agreement which the Company may exercise other than elections pertaining to day-to-day management of the Property or as approved in the Project Budget and/or Development Plan;

(xlii) distributing any assets in kind or accepting any Contribution by any Member of property other than Cash;

(xliii) causing the voluntary dissolution and winding up, termination or liquidation of the Company;

(xliv) commingling the funds of the Company with those of any other Person; and

(xlv) opening any bank, brokerage or other depository or investment account.

(b) The affirmative vote, approval or consent of each Manager shall be required in order to authorize, as contemplated in this Agreement, any other matter, which pursuant to the Act or an express provision of this Agreement must be approved by the Management Committee.

(c) In the event that the Managers are unable to agree on a Major Decision within thirty (30) days after a Manager requests the other Manager to approve such Major Decision, an Unresolved Major Dispute shall be deemed to have occurred, and either Manager may give the other Manager written notice of the existence of an Unresolved Major Dispute. A representative of each Manager shall meet at a mutually acceptable time and place within five (5) Business Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Unresolved Major Dispute. If the Unresolved Major Dispute has not been resolved by the Managers within ten (10) Business Days of the disputing Manager's notice of the existence of an Unresolved Major Dispute, or if the Managers fail to meet within such five (5) Business Days after delivery of such notice, either Manager may initiate mediation as provided in Section 4.3(d).

(d) If the Unresolved Major Dispute is not resolved by negotiations pursuant to Section 4.3(c), the Managers shall attempt in good faith to resolve any such Unresolved Major Dispute by nonbinding mediation. Either Manager may initiate a nonbinding mediation proceeding by a request in writing to the other Manager (the "**Mediation Request**"). The

proceeding will be conducted in accordance with the then current procedures regularly followed by JAMS, The Resolution Experts ("**JAMS**"), with the following exceptions;

(i) if the Managers have not agreed within ten (10) Business Days of the Mediation Request on the selection of a mediator willing to serve, the mediator shall be selected by such procedures as JAMS regularly follows and shall be a retired judge or other mediator who is a member of JAMS; and

(ii) efforts to reach a settlement will continue until the conclusion of the proceedings, which shall be deemed to occur upon the earliest of the date that: (A) a written settlement is reached, or (B) the mediator concludes and informs the parties in writing that further efforts would not be useful, or (C) the Managers agree in writing that an impasse has been reached, or (D) a period of twenty (20) Business Days has passed since the appointment of the mediator and none of the events specified in the foregoing clauses (A), (B) or (C) has occurred (the earliest of such dates, the "**Mediation Termination Date**"). No Manager may withdraw before the conclusion of the mediation proceeding.

(e) If an Unresolved Major Dispute is not resolved by negotiation pursuant to Section 4.3(c) or by mediation pursuant to Section 4.3(d) within the time periods set forth above, then (i) the Members shall be entitled to initiate the buy-sell procedure pursuant to Section 5.7, or, alternatively, (ii) either Member may require the sale of the Property to a third party in accordance with this Section 4.3(e), provided, however, the right to force a sale cannot be exercised after closing of the Construction Financing unless all amounts due thereunder have been or are being paid in full at the Closing in connection with such sale, paid in full and all Guarantees have been released or all amounts due thereunder have been (or are being in connection with such sale) assumed by the buyer in such sale and all Guarantees have been released or replaced (or, in the case of initiation of the buy-sell procedure pursuant to Section 5.7, all Guarantees of the selling Member have been released or replaced). The Member initiating a third party sale shall have the right on behalf of the Company to engage the services of an independent institutional real estate brokerage firm with at least ten (10) years of experience in the commercial real estate market in the general area where the Property is located with the written consent of both Members (which consent shall not be unreasonably withheld, conditioned or delayed) to solicit offers from third parties unaffiliated with any Member or such brokerage firm to purchase the Property. Unless otherwise determined by the mutual consent of the Members, the Property shall be sold at the highest-priced all cash offer which includes a full and unconditional release of all Guarantees with respect to any Company indebtedness. The Company shall execute, acknowledge and deliver such conveyance and other documents and make such payments as shall be required to effectuate the sale in accordance with any accepted third party offer to purchase. No Member or any Affiliate thereof may purchase the Property under a sale conducted in accordance with this Section 4.3(e). If a sale of the Property has not been consummated within twelve (12) months after the Member initiating a third party sale first indicated its intention to place the Property on the market, either Member may exercise its rights under Section 4.3(e)(i) with respect to the buy-sell procedure.

4.4 **Removal of Managers**.

(a) Notwithstanding any other provision of this Agreement, each Member shall have the right to remove the Manager appointed by the other Member, on the occurrence of any of the following events (each, "**a Removal Event**"):

(i) If the Manager:

(A) Committed a Bad Act; or

(B) committed an act constituting a felony in connection with the management of the Company; or

(ii) committed an act or action that would constitute an Event of Withdrawal (other than clause (c) of the definition thereof); or

(iii) violated any provision of any material federal, state, or local law relating to the operations of the Company and fails to cure (or diligently pursue the cure of) the violation within the Cure Period or such shorter period as required to cure under the notice received from the applicable Governmental Entity; or

(iv) engaged in reckless misconduct or was grossly negligent in performing such Manager's services and responsibilities under this Agreement after ten (10) days' prior written notice and opportunity to cure.

The determination of any Removal Event shall be submitted to non-binding arbitration in Miami, Florida before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules. Either Member may initiate the arbitration proceeding. If the Members have not agreed within ten (10) Business Days of the commencement of the arbitration proceeding on the selection of an arbitrator willing to serve, the arbitrator shall be selected by such procedures as JAMS regularly follows and shall be a retired judge or other arbitrator who is a member of JAMS.

(b) In the event of the removal of a Manager pursuant to the provisions hereof (a "**Removed Manager**"), the Member who, or whose Affiliate, is not the Removed Manager shall appoint a new Manager. From and after the date of the removal of the Removed Manager (and continuing through and until the closing of the sale of the Offeror's Membership Interest pursuant to Section 5.6, if applicable), the consent of the Member who appointed the Removed Manager shall be required only with respect to the following acts or actions ("**Unanimous Actions**"):

(i) except as provided in Section 3.3(b) and Section 5.2, admitting a new Member to the Company;

(ii) amending this Agreement;

(iii) except for agreements existing as of the date of such a Removal Event, any Affiliate Transactions;

(iv) the Major Decisions set forth in Sections 4.3(a) (xi), (xvii), (xxiii) and (xxiv);

(v) entering into any agreement which would cause any Member or any Affiliate of a Member to become personally liable on, or in respect of, or to guarantee any indebtedness for borrowed money issued in connection with (A) any borrowing of the Company, or (B) any third party;

(vi) knowingly taking any action or causing the Company to take any action that would subject any direct or indirect owner of any Member to personal liability beyond any personal liability that such direct or indirect owner has expressly agreed to provide in this Agreement or in a guaranty provided pursuant to this Agreement;

(vii) entering into any purchase agreement or other plan or agreement to acquire additional material Company assets;

(viii) changing the purposes of the Company from the purpose set forth in Section 2.5;

(ix) approving a merger, consolidation or other business combination of or affecting the Company;

(x) entering into any transaction which would cause a dilution in the Percentage Interest of a Member which is disproportionate to the dilution which would occur to any other Member or otherwise impact a Member in a manner which is disproportionate to the impact of any other Member;

(xi) sale of the Property to any Person in which the Member who, or whose Affiliate, is not the Removed Manager has any direct or indirect interest or right of any kind or nature;

(xii) determination of the Fair Market Value for any purpose under this Agreement (provided that, if such Member does not consent to the determination of Fair Market Value within fifteen (15) days from the date such Member is first requested to do so, then Fair Market Value shall be determined by a real estate appraiser in accordance with Section 5.9, except that such appraiser shall be selected by the Management Committee and such Member or, if they fail to agree upon the appraiser within ten (10) days from the expiration of the 15-day period described above, then the Management Committee and such Member shall each select one appraiser within ten (10) days thereafter and each shall notify the other of the appraiser selected by it and, if either the Management Committee or such Member fails to notify the other of its selected appraiser, the one appraiser shall act alone); and

(xiii) performing any act or entering into any transaction or agreement which will cause a default under the Construction Financing or any other obligation of the

Company or which is reasonably likely to trigger personal liability to a Guarantor under a Guaranty.

4.5 No Liability. Unless specifically assumed in writing, no Member or Manager will have any personal liability for any obligations of the Company. The failure of the Company to observe any formality or requirement relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act will not result in the imposition of personal liability on any Member or Manager. Except as otherwise provide herein, the Managers and the Members will not have any liability to the Company or to any Member resulting either from any act or omission made within the scope of authority expressly granted to such Person under this Agreement, or from the disallowance or adjustment of any deduction or credit claimed in any income tax return of the Company or of the Members, provided such Member or Manager shall have discharged his or its duties in good faith, with the care a corporate officer of like position would exercise under similar circumstances, in a manner reasonably believed to be in the best interests of the Company.

4.6 Indemnification. The Company shall indemnify, defend and hold harmless the Members, Managers, and the respective Affiliates, officers, directors, employees and agents of each of the foregoing (each an "**Indemnified Person**") acting on behalf of the Company in accordance with this Agreement, from and against, any and all liabilities, obligations, losses, actual and direct damages (but not speculative damages or claims for lost profits), penalties, actions, judgments, suits, proceedings, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, all reasonable costs and expenses of attorneys, defense, appeal and settlement of any and all suits, actions or proceedings instituted or threatened against the Indemnified Person or the Company) and all reasonable costs of investigation in connection therewith in excess of any insurance or other recoveries received by the Indemnified Person in respect of the actions in question (collectively, the "**Liabilities**") by any of them by reason of any and every act, error in judgment, omission, or alleged act or omission related to the business of the Company, to the fullest extent allowed by law, arising from any actions or decisions performed or made by the Indemnified Person in connection with the business of the Company; provided, however, such actions or decisions are within the scope of the purposes of the Company and the authority expressly granted to the Indemnified Person, and such actions or decisions do not constitute a Bad Act in connection with the business and affairs of the Company (collectively, the "**Non-Indemnifiable Matters**"). Each Member shall indemnify, defend and hold harmless all Indemnified Persons which are not Affiliates of the indemnifying Member from all Liabilities arising from the Non-Indemnifiable Matters caused by such Member or any Affiliate thereof. The Company's duty to indemnify will include any judgment, award, settlement, reasonable legal fees, and other costs and expenses related to the defense of any actual or threatened action, proceeding, or claim, including any payments made by such Person, or by reason of the disallowance by any taxing authority of any deduction claimed on any Company tax return. Notwithstanding anything to the contrary set forth in this Agreement, the Company's obligation to indemnify an Indemnified Person shall be fully subordinate to any loans made by a Lender and shall not constitute a claim against the Company in the event that Cash from Sales or Refinancings and Cash from Operations (less Expenses) is insufficient to pay such obligations. Notwithstanding anything to the contrary in this Agreement, Liabilities indemnifiable hereunder shall expressly exclude consequential damages, special or incidental

damages, lost profits, punitive damages, exemplary damages, indirect damages or penalty damages, except for such damages the Indemnified Person is or becomes obligated to pay to an unaffiliated Person.

4.7 **Special Purpose Entity Provisions.**

(a) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, for so long as any Construction Financing is outstanding, neither the Members nor the Company shall amend, alter, change any provision of this Section 4.7(a) (the "**Special Purpose Provisions**"), or any other provision of this or any other document governing the formation, management or operation of the Company in a manner that is inconsistent with any of the Special Purpose Provisions, unless the Lender consents to such amendment, alteration or change in writing. Subject to this Section 4.7(a), the Members, acting by unanimous consent, reserve the right to amend, alter, change or repeal any provisions contained in this Agreement. In the event of any conflict between any of the Special Purpose Provisions and any other provision of this Agreement or any other document governing the formation, management or operation of the Company, the Special Purpose Provisions shall control.

(b) The Members shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the Company also shall cause the Company to and the Company shall:

(i) maintain its books, records and bank accounts separate from those of any other Person;

(ii) at all times hold itself out to the public and all other Persons as a legal entity separate from the Members and from any other Person;

(iii) file its own tax returns separate from those of any other Person, except to the extent that the other Person is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law;

(iv) pay any taxes required to be paid under applicable law;

(v) not commingle its assets with assets of any other Person;

(vi) conduct its business only in its own name and comply with all organizational formalities necessary to maintain its separate existence;

(vii) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person;

(viii) pay its own liabilities and expenses only out of its own funds;

(ix) except for Capital Contributions or distributions permitted under the Sections 9.1 and 9.2 and properly reflected on the books and records of the Company, not enter into any transaction with a Subsidiary except on commercially reasonable terms similar to those available to unaffiliated parties in an arm's-length transaction;

(x) not hold out its credit or assets as being available to satisfy the obligations of any other Person;

(xi) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including for shared office space and for services performed by an employee of an Affiliate;

(xii) use separate stationery, invoices and checks bearing its own name;

(xiii) except as contemplated by the Loan Documents, not pledge its assets to secure the obligations of any other Person;

(xiv) correct any known misunderstanding regarding its separate identity and not identify itself as a department or division of any other Person;

(xv) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities, provided, however, that the foregoing provision shall not in and of itself require the Members to make Capital Contributions to the Company;

(xvi) cause the Members to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Delaware limited liability company formalities;

(xvii) not acquire any obligation or securities of the Members or of any Affiliate of the Members; and

(xviii) cause all agents and other independent contractors of the Members to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company.

Failure of the Company, or the Managers or Members on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Members.

(c) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the Members shall not cause or permit the Company to and the Company shall not:

(i) except as contemplated by the Loan Documents, guarantee any obligation of any Person, including any Subsidiary or become obligated for the debts of any other Person or hold out its credit as being available to pay the obligations of any other Person;

(ii) engage, directly or indirectly, in any business other than as required or permitted to be performed under Section 2.5, the Loan Documents or this Section 4.7;

(iii) incur, create or assume any indebtedness or liabilities other than indebtedness and liabilities incurred in the ordinary course of its business that are related to the ownership and operation of the Property and are expressly permitted under the Loan Documents;

(iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Loan Documents;

(v) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or transfer of substantially all of its assets (other than the sale of townhome units and condominiums in the ordinary course of business);

(vi) buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities);

(vii) form, acquire or hold any Subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity; or

(viii) own any asset or property other than the Property and incidental personal property necessary for the development, maintenance or operation of the Property and the sale of the Project.

4.8 Affiliate Transactions. Except as contemplated by an express provision of this Agreement, the Company shall not enter into any contract, obligation or other commitment to which an Affiliate of any Member is, or is to be, a party (an "**Affiliate Transaction**") without compliance with this Section 4.8. Each Member shall promptly notify the Management Committee of any proposed Affiliate Transaction involving an Affiliate of the notifying party (the "**Affiliated Member**"). The Member whose Affiliate is not a party or proposed party to the Affiliate Transaction in question (the "**Non-Affiliated Member**") shall, notwithstanding anything to the contrary in this Agreement be entitled (i) to reasonably determine whether the Company enters into such proposed Affiliate Transaction; and (ii) if the Company enters into such Affiliate Transaction to act exclusively for the Company in connection with enforcing, waiving, pursuing, exercising, litigating or settling any right, remedy or claim of the Company thereunder, or modifying, amending or terminating such Affiliate Transaction, provided such actions are taken pursuant to and not in contravention of, the terms of the agreement applicable to such Affiliate Transaction. Such right of the Non-Affiliated Member to act exclusively for the Company with respect to any such Affiliate Transaction is generally intended to permit the Non-Affiliated Member to exercise any rights or remedies, including without limitation any right of termination of the Affiliate, without being prevented from doing so by the Affiliated Member and/or its designated Manager, provided (i) that such right does not include the right to act exclusively for the Company with respect to any other decisions to be made by the Company with respect to such Affiliate Transaction; and (ii) such action is taken in accordance with the terms of said agreements and not in violation thereof. To the extent any Member (or an Affiliate

of a Member) is providing design, development, property management, leasing or marketing services to or on behalf of the Company, such Member (or Affiliate) may enter into subcontracts with others for the performance of such services provided such subcontracts reflect market terms and conditions and are no less favorable to the Company than would be obtained if a Member (or an Affiliate of a Member) had no involvement with respect to such subcontract.

4.9 Other Activities. Both of the Members and their respective Affiliates shall be free to engage in any other businesses or activities and to receive the income and benefits thereof (and no other party shall have any interest therein by reason of this Agreement), and neither Member shall have any duty or obligation to present to the Company or the other Member any such other business opportunities that are outside the scope or the purposes of the Business. It is specifically understood and agreed that (i) the Members and Managers shall devote only such time to the business of the Company as they in their discretion deem necessary for the efficient operation of the Company's business and shall at all times be free to engage for their own account in all aspects of any business or investment in which the Company is involved, (ii) in no event shall any doctrine similar to the doctrine of corporate opportunity apply with regard to the actions or activities of any Member or Manager, (iii) in no event shall any doctrine or duty similar to the duty of loyalty owed by corporate directors be owed by any Manager or Member, (iv) each Manager or Member shall be free to conduct any business or activity whatsoever, without obligation to the Company or any other Member, even if such business or activity competes directly with the Company, and (v) no Member or Manager shall be required to loan any funds to the Company except as agreed by separate written contract. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, the duties of a Member and a Manager are expressly limited to those set forth herein and in this Agreement, and such Member and Manager shall not be obligated or liable to the Company or to the other Members as a fiduciary or in any other capacity. Each Member and Manager is hereby authorized to (and the Members agree and acknowledge that the Members will) rely on the limitations set forth in this Section 4.9, and to the fullest extent permitted by applicable law, each Member HEREBY WAIVES AND RELEASES any rights of claims of any standard of care or duty owed by the other Member or the Managers that is higher than is set forth herein as being owed by the Members to each other.

ARTICLE 5.

REPRESENTATIONS OF MEMBERS/TRANSFERS OF INTERESTS/BUY SELL PROCEDURES

5.1 Representations and Warranties of Members. Each Member represents and warrants to the Company and to the other Member as follows:

(a) The Member is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization and that it has full power to execute this Agreement and to perform its obligations hereunder.

(b) The Member has such knowledge of business and financial affairs as is necessary to enable such Member to understand the risks associated with the Company's business and an investment in the Company and to understand the particular financial, legal and tax implications of the Company's business and the ownership of a Membership Interest, and has

had the opportunity to consult with the Member's own legal, tax and other advisors to determine whether the purchase of a Membership Interest is consistent with the Member's objectives, and has had access to any and all information concerning the Company which the Member and the Member's legal, tax and other advisors have requested and consider necessary to make appropriate evaluation of an investment in the Company.

(c) The Member is an accredited investor within the meaning of Rule 501 under the Securities Act of 1933, as amended. The Member understands that the Company has not registered the Membership Interests under the Securities Laws in reliance on exemptions from registration under various provisions of applicable statutes, rules and regulations. The Member understands that its Membership Interest may not be resold unless registered or unless an exemption from registration is available. The Member represents that the Membership Interest is being acquired for investment for the Member's own account with no present intention of reselling or otherwise disposing of the same and understands that the reliance of the Members and the Company upon such exemptions is predicated upon the lack of such intention. The Member further acknowledges that, in the opinion of the Securities and Exchange Commission, the statutory basis for one such exemption would not be present, if, notwithstanding this representation, the Member contemplates its acquiring the Membership Interest for resale upon the occurrence or non-occurrence of some event.

(d) The Member acknowledges that no trading market for Membership Interests in the Company does or will exist at any time and that any Transfer of such Membership Interests may result in adverse tax consequences.

(e) The Member acknowledges that other provisions of this Agreement restrict the Transfer of such Membership Interests.

5.2 Admission of Members. An Assignee may be admitted or another Person may be admitted as a Member upon compliance with the terms of this Agreement. If the Person to be admitted as a Member is an Assignee, such admission shall also be subject to the provisions of Section 5.3 pertaining to substituted Members. The Assignee or other Person to be admitted will become a substitute or new Member, as the case may be, only after complying with the provisions of Section 5.3, and if a new Member, after making any required Contribution. Notwithstanding the provisions of Section 4.3(a) hereof, upon the admission of a new or substitute Member, the Management Committee may cause this Agreement to be amended or amended and restated or supplemented as reasonably necessary to reflect such admission although such amendments shall not affect the rights, privileges, duties and obligations of CMC and Shoma hereunder (other than those necessarily attendant to a reduction to their Percentage Interests).

5.3 Transfers. Until issuance of a temporary certificate of occupancy for all or any portion of the Project (the "**Restricted Transfer Period**"), except for Permitted Transfers, no Member (a "**Transferring Member**") or Assignee, without the prior written consent of the other Member (the "**Non-Transferring Member**") and compliance with (i) any then applicable restrictions set forth in the Loan Documents, and (ii) the provisions of Section 5.2 and this Section 5.3, may directly or indirectly Transfer (x) any Membership Interest (or partial Membership Interest) to any Person (other than a Permitted Transferee); or (y) more than

seventy-five percent (75%) of the beneficial ownership interest (direct or indirect) in a Member (provided that any Transfer of less than seventy-five percent (75%) shall not be permitted if it results in Ugo or Masoud failing to Control CMC or Shoma, as the case may be) or any Controlling beneficial ownership interest (direct or indirect) in a Member. Upon expiration of the Restricted Transfer Period, either Member may Transfer its Membership Interest upon compliance with the further provisions of this Section 5.3, Section 5.2 and Section 5.5. A Transferring Member shall deliver written notice (including the name and address of the proposed purchaser, transferee, or assignee and the date of such transfer) thereof to the Company and the Non-Transferring Member. As a condition to any Transfer, the Transferring Member and Assignee shall have complied with the provisions of Section 5.2, this Section 5.3 and, if applicable, Section 5.5 and the Assignee or the Transferee (including a Permitted Transferee) shall have delivered to the Company such information and agreements that the Non-Transferring Member reasonably may require, including any taxpayer identification number and any agreement that federal, state or local tax laws may require and the proposed Transferee's or Assignee's written agreement to be bound by all of the terms of this Agreement as an Assignee or, as a Member, as the case may be. During the Restricted Transfer Period, except in the event of a Permitted Transfer, if the Non-Transferring Member does not consent in writing to the proposed sale or assignment of a Transferring Member's Membership Interest (whether direct or indirect) during the Restricted Transfer Period, which consent may be withheld in the Non-Transferring Member's sole discretion, such Membership Interest (or any rights therein or associated therewith) may not be Transferred and any such purported Transfer shall be null and void. Notwithstanding the foregoing, the following Transfers of a Member's Membership Interest or of the equity interests in a Member shall be permitted at any time or from time to time insofar as the transferee agrees in writing to assume and be bound by all of the terms of this Agreement with respect to the Member's Membership Interest transferred (the "**Permitted Transfers**"):

(a) a Transfer by CMC of all (but not part) of its Membership Interest to a CMC Affiliate;

(b) a Transfer of all or any part of the beneficial ownership interest (direct or indirect) in CMC to any Person so long as, after such transfers, such Person is and continues during the term to this Agreement to be a CMC Affiliate;

(c) a Transfer by Shoma of all (but not part) of its Membership Interest to a Shoma Affiliate; or

(d) a Transfer of all or any part of the beneficial ownership interest (direct or indirect) in Shoma to any Person so long as, after such transfers, such Person is and continues during the term to this Agreement to be a Shoma Affiliate.

No Member or Assignee will Transfer any Membership Interest (or partial Membership Interest) to an Assignee until, if requested by the Non-Transferring Member, the Company receives an opinion of counsel to the Company that any such Transfer, alone or when combined with related transactions, would not result in (i) a termination of the Company within the meaning of Code Section 708 (or, if so, that no material adverse tax consequences would result to the Company or the Members by reason of such termination); (ii) loss of the Company's status

as a partnership for income tax purposes; (iii) the taxation of the Company as a publicly-traded partnership for income tax purposes; or (iv) an event of default under any material Contract or Loan Document. The Assignee shall pay all reasonable expenses incurred by the Company in connection with such Transfer, including, but not limited, to any necessary amendments to this Agreement and the Certificate of Formation and all fees incurred by the Company. Any Transfer or attempted Transfer of all or part of a Membership Interest in violation of this Article 5 is void. Upon the Transfer by a Member of all of that Member's Interest to an Assignee, such Member will cease to be a Member, even if the Transfer does not constitute an Event of Withdrawal.

5.4 Rights of an Assignee. Any adjustments of a Member's Percentage Interest and Capital Account in accordance with Article 3 shall not be deemed a "Transfer." An Assignee (including a Permitted Transferee) shall not have, with respect to the Transferred Membership Interest, any appointment or any voting or approval rights, including any right or power to vote on any matter, appoint a Manager, to inspect the books and records of the Company, or to otherwise inquire into the management and affairs of Company business, unless and until the Assignee (including a Permitted Transferee) becomes a Member pursuant to this Article 5 (and then only to the extent as may otherwise be permitted to the Transferor of such Membership Interest in this Agreement). An Assignee (including a Permitted Transferee) that has not become a Member will only receive, to the extent Transferred and to the extent such Assignee (including a Permitted Transferee) has the right to receive same, the share of allocations and distributions (including the allocations and distributions as provided in Article 9) to which the Member Transferring the Membership Interest otherwise would be entitled with respect to the Transferred Interest, subject to set-off and similar payment rights of the other Member expressly set forth in this Agreement. Except as provided in this Section 5.4, an Assignee (including a Permitted Transferee) shall not be entitled to exercise any right of a Member or receive any benefit conferred upon a Member by this Agreement except the right to receive any distributions otherwise allocated to the Transferred Membership Interest.

5.5 Right of First Refusal. To the extent expressly permitted in and subject to Section 5.3, if a Member desires to Transfer all or any portion of its Membership Interest to any Person other than a Permitted Transferee, then the Member (the "**Selling Member**") desiring to Transfer, shall notify the other Member (the "**Non-Selling Member**") in writing ("**Offering Notice**") of its intention to do so. The Offering Notice shall specify the nature of the Transfer, the proposed purchaser, the terms upon which the Selling Member intends to undertake such Transfer, and shall include a photocopy of the agreement relating to the Transfer. The Non-Selling Member shall have the right to elect to purchase from the Selling Member, the Membership Interest proposed to be Transferred for a period of thirty (30) calendar days (the "**Election Period**") after the delivery of the Offering Notice by delivering to the Selling Member notice in writing electing to make such purchase (the "**Election Notice**"). Within forty-five (45) calendar days after delivery of the Election Notice, the purchase by the Non-Selling Member of said Membership Interest shall be consummated on the terms and conditions set forth in the Offering Notice of the Selling Member. If the Non-Selling Member does not make such an election within the Election Period, then the Selling Member, within sixty (60) calendar days after the expiration of the Election Period, may undertake and complete the Transfer to any Person the identity of which was disclosed in the Offering Notice but only on the terms disclosed in the Offering Notice. If the Selling Member does not then consummate the original proposed

Transfer within said sixty (60) day period, then all restrictions of this Section 5.5 shall apply as though no Offering Notice had been given.

5.6 Mandatory Sale Procedure.

(a) Upon the occurrence of a Mandatory Sale Event as to a Member (the "**Offeror**"), such Member shall be deemed to have made an offer in writing (the "**Offer**") to the other Member (the "**Offeree**") to sell all of the Membership Interest of the Offeror to the Offeree at a price equal to ninety-five percent (95%) of the total amount that the Offering Member would receive as distributions under Section 9.2 upon a hypothetical liquidation of the Company following the sale of all of the Company's assets (using the Fair Market Value of the assets as the selling price for such purpose), and assuming the payment and discharge of all then outstanding debts, obligations and other Encumbrances, but no reserve for contingent or unknown liabilities or claims, immediately prior to such distribution (the "**MSP Purchase Price**"). In the event that the Fair Market Value of the assets of the Company is insufficient to satisfy all then outstanding debts, obligations and other Encumbrances on the Property and assets of the Company (an "**Encumbrance Shortfall**"), the Offeror shall pay to the Offeree an amount equal to the product obtained by multiplying the amount of such Encumbrance Shortfall by the Percentage Interest of the Offeror.

(b) The Offeree shall give written notice of its election to the Offeror within fifteen (15) Business Days after the date of the occurrence of the Mandatory Sale Event. Failure of the Offeree to give the Offeror notice within such fifteen (15) Business Day period that the Offeree has elected to purchase shall be conclusively deemed to be waiver of such right by the Offeree relating to such Mandatory Sale Event. The closing of such sale shall occur no later then ninety (90) days following the deliver of the Offeree's election to purchase.

(c) The occurrence of a Removal Event or the occurrence of an act or omission on the part of a Member which would constitute a Removal Event if the term "Member" was substituted for "Manager" under the definition of Removal Event shall constitute a "Mandatory Sale Event" invoking the provisions of this Section 5.6. When a Mandatory Sale Event occurs with respect to a Member, that Member shall be obligated to make, and shall be deemed to have made, an Offer pursuant to the provisions of Section 5.6(a) as of the date the other Member receives notice of the occurrence of the Mandatory Sale Event.

5.7 Optional Buy/Sell Procedure.

(a) For a period of thirty (30) days following a Mediation Termination Date, each Member shall have the right, but not the obligation, to initiate the buy-sell procedure provided for in this Section 5.7; provided, however that if either Member has initiated a sale of the Property pursuant to Section 4.3(e), the provisions of this Section 5.7 shall not apply unless and until a sale is not consummated pursuant to and in accordance with the provisions of Section 4.3(e). The Member initiating the buy-sell procedure (the "**IM**") shall first call for a determination of the Fair Market Value of the assets of the Company in accordance with Section 5.9. Once the Fair Market Value of the assets of the Company is determined, the IM shall deliver to other Member (the "**Counter-Option Member**" or "**COM**") a written offer and commitment to purchase ("**Buy-Sell Notice**") the entire Membership Interests of the COM and

the entire Membership Interests, and any interest therein, held by each Person who earlier acquired such interest from the COM (including from all Permitted Transferees and Assignees, collectively, the "**Subject Interests**") other than a third party purchaser acquiring said interest pursuant to Section 5.5. The Buy-Sell Notice shall state the Fair Market Value of the assets of the Company to be used for computing the price the IM would be obligated to pay for all of the Subject Interests. The parties acknowledge and stipulate that for purposes of this Section 5.7 (i) the Manager designated by the COM (the "**COM Manager**")shall be deemed the exclusive agent of the COM, as well as the exclusive agent of all holders of Subject Interests (collectively, the "**COM Group**"), and that all Membership Interests, or interests therein, held by the Persons in the COM Group shall be governed by the actions, inaction and other decisions (which must be the same for all Persons in the COM Group) taken (or not taken, as the case may be) by the COM Manager, and (ii) the Manager designated by the IM (the "**IM Manager**") shall be deemed the exclusive agent of the IM, as well as the exclusive agent of all Assignees and other Persons that earlier acquired a Membership Interest, or any interest therein, from the IM (collectively, the "**IM Group**"), and that all Membership Interests, or interests therein, held by the Persons in the IM Group shall be governed by the actions, inaction and other decisions (which must be the same for all Persons in the IM Group) taken (or not taken, as the case may be) by the IM Manager.

(b) Within thirty (30) days after receipt of the Buy-Sell Notice by the COM Manager, the COM shall notify the IM Manager, in writing whether the COM has elected to either (i) accept the IM's offer to purchase the entire Membership Interest of the COM as set forth in the Buy-Sell Notice and thereby become a selling party on those terms (a "**Counter Option Seller**"); or (ii) to instead to be a purchaser (a "**Counter-Option Buyer**") and commit to purchase all Membership Interests owned by Persons in the IM Group (also referred to as "**Subject Interests**" with respect to the IM Group), on the same terms specified in the Buy-Sell Notice. If the COM does not provide a timely written notice of its election within such 30-day time period, then the COM and the COM Group shall be deemed to have conclusively elected for itself and all other Persons in the COM Group to be a "**Counter-Option Seller**" of all of Subject Interests in the COM Group for purposes of this Section 5.7.

(c) If the COM elects to become a Counter-Option Buyer, then the COM shall buy and the IM shall cause to be sold all of the Subject Interests held by each Person in the IM Group in accordance with the terms hereof. If the COM elects, or is deemed to have elected, to be a Counter Option Seller, then the IM shall buy and each Person in the COM Group shall sell all Subject Interests. The closing of a sale pursuant to this Section 5.7 shall occur no later than sixty (60) days after the date it is determined which of IM or COM is the purchaser hereunder.

(d) If the IM or COM, as the case may be ("**a Defaulting Purchaser**"), makes an election (or is deemed to have made an election) under this Section 5.7 to be a "purchasing party" and fails to close prior to the expiration of the sixty (60) day period set forth in Section 5.7 (c) (the "**Outside Date**") through no fault of a selling party, the election (or deemed election) of the Defaulting Purchaser to be a "purchasing party" under this Section 5.7 may, at the election of the other Member (i.e., the Member who would have otherwise been the selling party (the "**Electing Member**")), be declared null and void and of no further force and effect and the Electing Member shall have the right, but not the obligation, to acquire the Subject Interests

of the Defaulting Purchaser and all other Persons in the Defaulting Purchaser's group (the IM Group or COM Group, as the case may be), except that the purchase price for the Subject Interests of the Defaulting Purchaser's group shall be reduced by the sum of ten percent (10%) plus an amount equal to the reasonable legal fees incurred by the Electing Member in procuring the court order referred to below, if any. The Electing Member shall give written notice of such election within fifteen (15) days of the Outside Date. Closing of the purchase by the Electing Member of the Subject Interests of the Defaulting Purchaser's group pursuant to such an election pursuant to this subsection shall take place at the offices of Company within sixty (60) days of the Electing Member's election (the "**Renewed Closing Date**"). If the Defaulting Purchaser fails to close by the Renewed Closing Date through no fault of the Electing Member, the Electing Member shall be entitled to obtain a court order, without the necessity of posting any bond or other security, directing the Defaulting Purchaser to convey the Subject Interests of the Defaulting Purchaser and all other Persons in the Defaulting Purchaser's group to the Electing Member for the reduced purchase price described above.

(e) If IM or COM, as the case may be ("**a Defaulting Seller**"), makes an election (or is deemed to have made an election) under this Section 5.7 to be a "selling party" and fails to close prior to the expiration of the "Outside Date" through no fault of a purchasing party, then (i) the purchase price for the Subject Interests of the Defaulting Seller's group shall be reduced by the sum of ten percent (10%) plus an amount equal to the reasonable legal fees incurred by the purchasing party(ies) in procuring any court order referred to below, if any, and (ii) the purchasing party(ies) shall be entitled to obtain a court order, without the necessity of posting any bond or other security, directing the Defaulting Seller to convey the Subject Interests of the Defaulting Seller and all other Persons in the Defaulting Seller's group to the purchasing party in accordance with this Section.

(f) The price payable to each of the selling parties pursuant to this Section 5.7 shall be the total amount that the selling party would receive as distributions under Section 9.2 upon a hypothetical liquidation of the Company following the sale of all of the Company's assets (using the Fair Market Value of the assets, as set forth in the Buy-Sell Notice, as the purchase price for such purpose), and assuming the payment and discharge of all then outstanding debts, obligations and other liabilities, but no reserve for contingent or unknown liabilities or claims, immediately prior to such distribution; provided that such amount shall be subject to the discount and reduction provisions contained elsewhere in this Section 5.7.

(g) The obligations imposed and the rights granted by Section 5.6 and this Section 5.7 constitute a material part of the agreement between the Members as expressed in this Agreement. The failure of a Member to adhere to such obligations or to permit the other Member to exercise its rights under Sections 5.6 and this Section 5.7 shall constitute a material breach of this Agreement for which money damages cannot fully compensate. The aggrieved Member shall be entitled to preliminary and permanent equitable relief, including, without limitation, injunctive relief, which remedies shall be cumulative and in addition to any and all other rights and remedies to which the aggrieved Member may be entitled.

(h) Notwithstanding anything in this Agreement to the contrary, the "optional buy/sell procedure" set forth in this Section 5.7 may not be initiated by either Member except in

connection with the occurrence of an Unresolved Major Dispute and then only subsequent to the Mediation Termination Date.

5.8 Closing of Sale of Membership Interests.

(a) Except as otherwise set forth in this Agreement, the closing of a purchase of a Membership Interest pursuant to Section 5.6 or Section 5.7 (a "**Sale of Membership Interests Closing**") shall be held at the principal office of the Company not more than sixty (60) days after receipt of the purchase election under Section 5.6(b), or the purchase/sale election (or deemed election in the event of the failure to give timely notice) under Section 5.7(b) (or the election under Section 5.7(d), if applicable) and subject to any extension necessary to determine Fair Market Value pursuant to Section 5.9, or any extension resulting from application of the Renewed Closing Date provisions in Section 5.7(d). In the case of any closing, the selling party shall assign to the purchasing party or as the purchasing party may direct, the Membership Interest (or portion thereof) of the selling party which is subject to the purchase, free and clear of all liens, security interests and competing claims, and shall deliver to the purchasing party the Membership Interest Certificate of the selling party, duly endorsed in blank and such other instruments of assignment (with any required transfer stamps annexed thereto) and releases, together with evidence of due authorization, execution and delivery and of the absence of any liens, security interests or competing claims as the purchasing party shall reasonably request, and shall make such representations and warranties with respect to its Membership Interest and the Company as are reasonably requested by the purchasing party.

(b) The purchasing party shall pay the required consideration by wire transfer of immediately available funds or by delivery at the closing of a certified or bank cashier's check payable to the order of the selling party in the amount of such consideration. Anything herein to the contrary notwithstanding, the purchasing party shall have the right to take title to the Membership Interest of the selling party which is subject to the sale in an Organization which is an Affiliate of the purchasing party. In addition, if Affiliates or other Persons acting on behalf of the selling party have provided or are parties to any Guarantees or other credit enhancement arrangements with respect to any Company indebtedness (a "**Selling Party Guarantor**"), then the purchasing party shall use commercially reasonable efforts, including the proffering of a substitute guarantor, to cause the applicable lender to deliver a release or covenant not to sue the Selling Party Guarantor with respect to any and all potential liability under all Guarantees to which the Selling Party Guarantor is a guarantor other than with respect to liabilities arising solely under the applicable "bad boy" provisions of any then outstanding Guaranty which is a non-recourse carve-out guaranty (the foregoing liabilities are hereby referred to collectively as the "**Post-Transfer Retained Liabilities**") and to the extent such a release or covenant not to sue is not delivered promptly upon the Sale of Membership Interests Closing (it being agreed among the Members that in no event shall the delivery of any such release or covenant not to sue be a condition precedent to the Sale of Membership Interests Closing so long as this Section 5.8(b) is complied with), then either (i) the purchasing party or one or more of its Affiliates or another Person acceptable to the applicable lender shall agree, in each case, to assume the liabilities of the Selling Party Guarantor under such outstanding Guarantees to the extent the same do not constitute Post-Transfer Retained Liabilities; or (ii) the purchasing party shall cause a newly formed special purpose entity Affiliated with the purchasing party or such other Person

to maintain a net worth not less than the net worth required by the applicable lender under the applicable Guarantees to indemnify and hold harmless the Selling Party Guarantor for liabilities arising under such Guarantees, but only to the extent such liabilities that accrue after the Sale of Membership Interest Closing do not constitute Post-Transfer Retained Liabilities.

5.9 **Determination of Fair Market Value**. In the event a determination of "**Fair Market Value**" is required for any purpose under this Agreement, the Managers shall in good faith attempt to make such determination between themselves. If they are unable to do so within fifteen (15) days from the date that such determination is required by the applicable provision of this Agreement, the Fair Market Value of the assets or assets in question shall be determined by a real estate appraiser selected by the Managers, which appraiser shall be a member of the American Institute of Real Estate Appraisers having no less than twenty (20) years experience appraising mixed-use projects similar to the Project and who has not performed any services for either of CMC or Shoma of any of their respective Affiliates within five (5) years of the date on which appointed hereunder. The term "assets" for purposes of the preceding sentence shall mean all tangible and intangible assets of the Company, including, but not limited to, cash, prepaid expenses, leases, contract deposits, and similar items. If the Managers fail to agree upon the appraiser within ten (10) days from the expiration of the 15 day period described above, then each of the Managers shall select one appraiser within ten (10) days thereafter and each shall notify the others of the appraiser selected by it. If either Manager fails to notify the other Manager of its selected appraiser, the one appraiser shall act alone.

The appraiser or appraisers shall value the assets of the Company within thirty (30) days of their selection. If one appraiser acts, the Fair Market Value shall be the amount determined by such appraiser. If two appraisers act, the Fair Market Value shall be the average of the amounts so determined, so long as no appraisal exceeds any other by ten percent (10%) or more. If, however, the appraisals vary by ten percent (10%) or more, then the two appraisers shall appoint another appraiser who shall satisfy the above experience and lack of relationship requirements ("**Final Appraiser**") within fifteen (15) days after delivery of their respective appraisals. If they fail to do so, then any Manager may request JAMS or any successor organization thereto to appoint a Final Appraiser. If the Final Appraiser has not been appointed by JAMS within thirty (30) days of a Manager's request for it to do so, then a Manager may apply to any court having jurisdiction to appoint the Final Appraiser.

The determination of the Final Appraiser shall be limited solely to the issue of which of the submitted Fair Market Value of the first two appraisers is the closest to the Fair Market Value determined by the Final Appraiser, taking into account the requirements of this Section 5.9. The decision of the Final Appraiser shall be binding upon the Members, the Managers and the Company.

This provision for determination of Fair Market Value by appraisal shall be specifically enforceable to the extent such remedy is available under applicable law, and the determination of Fair Market Value hereunder shall be final and binding upon all parties.

When determining the Fair Market Value, each appraiser shall consider the fairest price estimated in terms of money which the Company could obtain if its assets were exposed for sale in the open market allowing a reasonable time to find a purchaser who buys with knowledge of

the uses which such assets in their then condition are adapted and for which such assets are capable of being used. The appraiser shall also take into consideration any debt to which the assets of the Company are subject and whether or not such debt is prepayable or callable. The fees and expenses of the Final Appraiser and other appraisers shall be paid by the Members pro rata in accordance with their respective Percentage Interests.

5.10 Permitted Transferees. Notwithstanding any provision in this Agreement to the contrary and for the avoidance of any doubt about the rights of any Assignee, including any Assignee that is a Permitted Transferee (each a "**Non-Substituted Transferee**" for purposes of the following provisions): (i) no Non-Substituted Transferee shall have any voting, approval or other management rights, or any right to inspect or cause inspections of Company books and records; (ii) each Non-Substituted Transferee shall be represented for all purposes under this Agreement and the Act by the Manager of the Transferring Member from whom such Non-Substituted Member (or its predecessor(s) in interest) acquired the Membership Interest (and interest therein) held by the Non-Substituted Transferee; (iii) if the Transferring Member referred to in the preceding clause shall no longer have a Manager, or otherwise no longer possess its appointment and/or other voting or approval rights as provided elsewhere in this Agreement, such Non-Substituted Member shall likewise have no such rights; and (iv) any approval right of the Transferring Member under this Agreement shall be retained by and may be exercised solely by the Transferring Member. Prior to a Non-Substituted Transferee being substituted as a Member by the Management Committee in accordance with this Agreement, such Non-Substituted Transferee and the Management Committee shall determine which Manager shall represent such Member under this Agreement, provided that if such Non-Substituted Transferee is a Permitted Transferee, and the Management Committee has otherwise consented to such Permitted Transferee's admission as a substitute Member in accordance with this Agreement, then the Permitted Transferee shall be represented by the same Manager representing the Transferring Member from whom the Membership Interest in question was acquired (as such Manager may change by the Transferring Member at any time); and provided further, that if the Transferring Member no longer shall have any appointment and/or other voting or approval rights, the provisions in clauses (iii) and (iv) shall likewise apply to such Permitted Transferee, unless the Management Committee otherwise agrees at such time, which agreement may be withheld in its sole discretion.

ARTICLE 6.

MEETINGS; APPROVALS WITHOUT A MEETING

6.1 Place. The Company will hold meetings of the Members at any location that the Management Committee may determine.

6.2 Meetings of the Members. The Members intend to be in frequent communication regarding the business and affairs of the Company. Regular bi-monthly meetings of the Members shall be held at the principal office of the Company or at such other place as the Management Committee may determine.

6.3 Special Meetings. Subject to the decisions expressly reserved to the Managers, and subject to the provisions of Section 4.4 relating to the loss of management and voting rights,

special meetings of the Members for any purpose or purposes may be called by either Manager. The request must state the purpose for the special meeting.

6.4 **Notices**. Not less than five (5) days nor more than thirty (30) days before any meeting of the Members, the Company will send written notice of the time and place thereof and, if a special meeting, the purpose of the meeting.

6.5 **Quorum and Voting**. At least seventy-five percent (75%) of the Percentage Interests, whether present in person or by proxy, shall constitute a quorum. Subject to the decisions expressly reserved to the Management Committee or specific Members set forth in Article 4 and elsewhere in this Agreement, and subject to the provisions of Section 4.4. relating to the loss of management and voting rights, when a quorum is present, at least fifty-one percent (51%) of the Percentage Interests entitled to vote, in person or by proxy, will decide any election or question brought before the meeting.

6.6 **Proxies**. At any meeting of the Members, a Member may vote by proxy executed in writing by such Member or by the Member's duly authorized attorney-in-fact. Such proxy will be filed with the Management Committee before or at the time of the meeting. Unless otherwise provided therein, a proxy will not be valid more than three (3) months after the date of its execution.

6.7 **Waiver of Notice**. A Member may waive prior written notice of a meeting by signing a written waiver or by attending the meeting (unless the Member attends the meeting for the sole purpose of objecting to the transaction of any business at the meeting).

6.8 **Consent of Members in Lieu of Meeting**. Unless otherwise required by law, the Members may take any action or vote without a meeting. Any action or vote which must be taken at a meeting may be taken without a meeting if a consent, in writing, setting forth the action so taken, is signed by all of the Members entitled to act or vote with respect to such matter. Such consent will have the same effect as an act or vote of such Members.

6.9 **Participation by Means of Telecommunication Equipment**. Each Member may participate in any meeting of the Members by means of conference telephone or similar communications equipment that enables all Persons participating in the meeting to hear and speak to each other. Such participation will constitute presence in Person at such meeting.

ARTICLE 7.

MEMBER INTEREST CERTIFICATES

7.1 **Certification**. Each Membership Interest constitutes a "security" within the meaning of, and shall be (i) governed by (A) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware and (B) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995; and (ii) represented by a

membership interest certificate in the form annexed hereto as Exhibit "C" ("**Membership Interest Certificate**"). The Company shall maintain books for the purpose of registering the Transfer of Membership Interests. Notwithstanding any provision of this Agreement to the contrary, to the extent that any provision of this Agreement is inconsistent with any non-waivable provision of Article 8 of the Uniform Commercial Code as in effect in the State of Delaware (the "**UCC**"), such provision of Article 8 of the UCC shall control.

7.2 **Issuance of Certificates**. Upon the procurement of a Membership Interest by any Member in accordance with the provisions of this Agreement, the Company shall issue one or more Membership Interest Certificates in the name of such Member. Each Membership Interest Certificate shall be denominated in terms of the Percentage Interest evidenced by such Membership Interest Certificate and shall be signed by both Managers on behalf of the Company. Each Membership Interest Certificate shall contain the following legend: "The Membership Interest in the Company represented by this certificate evidences an interest in the Company and shall constitute a "security" within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware; and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and each limited liability company interest in the Company shall be treated as such a "security" for all purposes, including, without limitation perfection of the security interest therein under Article 8 of each applicable Uniform Commercial Code as the Company has "opted-in" to such provisions)." This Section 7.2 shall not be amended and no such purported amendment to this Section 7.2 shall be effective until all outstanding Membership Interest Certificates have been surrendered to the Company for cancellation.

7.3 **Lost Certificates**. The Company shall issue a new Membership Interest Certificate in place of any Membership Interest Certificate previously issued if the holder of the Membership Interest represented by such Membership Interest Certificate, as reflected on the books and records of the Company:

(a) makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Membership Interest Certificate has been lost, stolen or destroyed;

(b) requests the issuance of a new Membership Interest Certificate before the Company has notice that such previously issued Membership Interest Certificate has been Transferred for value in good faith and without notice of an adverse claim;

(c) if requested by either Manager, delivers to the Company a bond, in form and substance satisfactory to the Company, with such surety or sureties as the Company may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Membership Interest Certificate; and

(d) satisfies any other reasonable requirements imposed by the Company.

For purposes of this Article 7, all acts required or permitted by the Company hereunder shall be taken by the Manager which is not an Affiliate of the Member seeking the replacement of the Membership Interest Certificate.

7.4 **Transfer**. Upon a Transfer of a Membership Interest in accordance with the provisions of this Agreement of any portion or all of the Membership Interest represented by an Membership Interest Certificate, the Transferee of such Membership Interest shall deliver such endorsed Membership Interest Certificate to the Company for cancellation, and the Company shall thereupon issue a new Membership Interest Certificate to such Transferee for the Membership Interest being Transferred and, if applicable, cause to be issued to the Transferring Member a new Membership Interest Certificate for the Membership Interest that was represented by the canceled Membership Interest Certificate and that is not being Transferred.

ARTICLE 8.

ACCOUNTING, RECORDS, TAX MATTERS

8.1 **Accounting**. Shoma will keep, or cause to be kept, proper and complete records and books of account in which Shoma will record all transactions and other matters relative to the Company's business in accordance with generally accepted accounting principles, consistently applied, or in accordance with such other accounting method customarily used by entities engaged in activities similar to those of the Company, provided, however, the Members' Capital Accounts and their respective shares of profit and loss (and items thereof) shall be determined in accordance with Section 8.2.

8.2 **Capital Accounts**.

(a) A separate Capital Account shall be maintained for each Member in accordance with the provisions of this Agreement and the principles of Regulations Section 1.704-1(b)(2)(iv). There shall be credited to each Member's Capital Account the amount of any Cash (which shall not include imputed or actual interest on any deferred contributions) actually contributed by such Member to the capital of the Company (or deemed contributed pursuant to Regulations Section 1.704-1(b)(2)(iv)(c)), the initial Gross Asset Value of any property contributed by such Member to the capital of the Company (net of any liabilities secured by such property that the Company is considered to assume or to take subject to under Code Section 752), such Member's distributive share of the Net Profit (and all items thereof) of the Company, the amount of any Company liabilities assumed by the Member or secured by distributed assets that such Member takes subject to, any other items in the nature of income or gain that are allocated to such Member pursuant to Article 9 and such Member's share of any adjustment pursuant to Code Section 48(q)(2). There shall be charged against each Member's Capital Account the amount of all Cash distributions to such Member (or deemed distributed pursuant to Regulations Section 1.704-1(b)(2)(iv)(c)), the Gross Asset Value of any property distributed to such Member (net of any liability secured by such property that the Member is considered to assume or take subject to under Code Section 752), such Member's distributive share of the Net Losses (and all items thereof) of the Company.

(b) If a Membership Interest, or any portion thereof, is Transferred in accordance with this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Membership Interest.

(c) If the Company at any time distributes any of its assets in-kind to a Member (which may only occur with the mutual consent of the Members), the Capital Account of each Member shall be adjusted to account for that Member's allocable share (as determined under Article 9) of the profit or loss that would have been realized by the Company had it sold the assets that were distributed at their respective Gross Asset Value immediately prior to their distribution. The adjustments to Capital Accounts shall reflect the manner in which the unrealized profit or loss inherent in the asset would be allocated if there were a disposition of such asset at its Gross Asset Value on the date of adjustment.

(d) It is the intention of the Members that the Capital Accounts of the Company be maintained strictly in accordance with the capital account maintenance requirements of Regulations Section 1.704-1(b). The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulation Section 1.704-1(b) and shall be interpreted and applied in a manner consistent with such Regulations and any amendment or successor provision thereto. If the Management Committee determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed in order to comply with such Regulations, the Management Committee may make such modification, provided that it is not likely to have a material effect on the amounts distributable to a Member pursuant to Sections 9.1 and 9.2.

8.3 Books and Records. As required by the Act, the Company will keep at its principal place of business the following:

(a) a copy of the Certificate of Formation and all articles of amendment thereto, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(b) copies of the Company's federal, state and local income tax returns and reports, if any, for the three (3) most recent years or, if such returns and reports were not prepared for any reason, copies of the information and records provided to, or which should have been provided to, the Members to enable them to prepare their federal, state and local tax returns for such period;

(c) copies of this Agreement, and all amendments thereto, and copies of any written operating agreements no longer in effect;

(d) copies of any financial statements of the Company for the three (3) most recent years;

(e) copies of any written promise by a Member to make a Contribution to the Company;

(f) copies of any written approvals by the Members to the admission of any Person as a Member;

(g) copies of any other instruments or documents reflecting matters required to be in writing pursuant to this Agreement; and

(h) any other records required by Section 18-305 of the Act.

8.4 Accounts and Investments. The Company will deposit its funds in such bank account or accounts, or invested in such interest-bearing investments established and maintained in the name of the Company as shall be designated by the Management Committee. Only Persons designated by the Management Committee may make a withdrawal from any Company bank or investment account.

8.5 Data Storage. The Company may compile the data for any books, accounts, or records required by this Agreement in any form (including in electronic media) from which a Person may retrieve such information into a readily usable form.

8.6 Tax Reports. The Management Committee will cause the Company to submit to the official or agency administering the tax laws of any applicable jurisdiction any information, reports or other documents required or requested to be filed, as and when due. The Management Committee will cause the Company to pay all taxes, interest and additions to tax, including penalties, due from the Company to any such jurisdiction. The Company will bear the cost of preparing and submitting such information, reports or other documents. Within seventy-five (75) days after the close of each taxable year of the Company (except as extended by pursuant to a timely filed extension with the IRS), the Company's accountants will prepare and deliver to each Member a report containing all Company information necessary to prepare the Member's federal income tax returns. Except for the election described in Section 8.8, the Managers will make such tax elections and determinations on behalf of the Company as the Management Committee deems appropriate.

8.7 Tax Matters Partner.

(a) Shoma will be the initial Tax Matters Partner and may not be removed as Tax Matters Partner without the Management Committee's consent. Subject to the provisions of Section 8.7(b), the Tax Matters Partner will represent the Company and its Members before federal, state and local taxing authorities (each a "**Taxing Authority**"), and before courts of competent jurisdiction, in tax matters affecting the Company, the Members in their capacity as Members, or both, and execute agreements or other documents relating to or affecting such tax matters including (i) agreements or consents to extend the statute of limitations on assessment of deficiencies with respect to "partnership items" or "affected items," as such terms are defined in Code Section 6231; and (ii) other agreements or documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company, the Members, or both. The Members will cooperate and do or refrain from doing anything reasonably requested by the Tax Matters Partner to conduct such proceedings. The Tax Matters Partner may retain accountants, attorneys, and other professionals to assist in such matters. The Tax Matter Partner will not be separately compensated for acting as Tax Matters Partner. The Company will pay for or

reimburse the Tax Matters Partner for all out-of-pocket expenses reasonably incurred in performing the duties described in this Section 8.7.

(b) The Tax Matters Partner shall take such action as may be necessary to cause each other Member to become a "notice partner" within the meaning of Section 6223 of the Code. The Tax Matters Partner shall promptly (and in any event within five (5) Business Days after receipt) deliver or cause to be delivered to each Member a copy of all notices, communications, reports or writings of any kind (including, without limitation, any notice of the commencement of administrative proceedings or any report explaining the reasons for a proposed adjustment) received from any Taxing Authority relating to or potentially resulting in an adjustment of "partnership items". The Tax Matters Partner shall, unless the Management Committee directs to the contrary, diligently and in good faith contest any proposed adjustment of a Company item which principally affects the Members at the administrative and judicial levels, including, if appropriate or if requested by Member appealing any adverse judicial decision, and shall consider in good faith any suggestions made by Member or its counsel regarding the conduct of such administrative or judicial proceedings. The Tax Matters Partner shall keep each Member advised of all material developments with respect to any proposed adjustment which come to its attention, including, without limitation, the scheduling of all conferences and substantive telephone calls with the Taxing Authority. Each Member shall be entitled, at its own expense, to participate in all meetings with the Taxing Authority and to review in advance any material written information (including, without limitation, any pleadings, memoranda or similar items) to be submitted to the Taxing Authority. Notwithstanding anything to the contrary in this Agreement, without first obtaining the written consent of the Management Committee, the Tax Matters Partner shall not, with respect to any proposed adjustment of a Company item which materially and adversely affects any Member, (i) enter into a settlement agreement which purports to bind any Member other than the Tax Matters Partner (including, without limitation, any stipulation consenting to an entry of decision by the Tax Court); or (ii) enter into an agreement or stipulation extending the statute of limitations.

(c) Each Member shall continue to have the rights described in this Section 8.7 with respect to tax matters relating to any period during which it was a Member, whether or not it is a Member at the time of the tax audit or contest.

(d) Notwithstanding anything to the contrary in this Agreement:

(i) At least thirty (30) days prior to the due date of each tax return, the Tax Matters Partner shall cause the Company's Accountants to provide the Members with a draft copy of each of the Company's state, local and federal tax returns so that the Members may review and comment upon the return prior to filing. Where the Members comments upon a matter in the tax return, the Tax Matters Partner must either accept the comment or refer the matter for a specific determination by the Management Committee.

(ii) The Tax Matters Partner and the Company shall make available to the Members, the Company's accountants, other tax advisors, officers, employees, agents and members of the Management Committee at any reasonable time to discuss any and all inquiries that either Member may have with respect to any state, local or federal tax issues including, without limitation, issues that relate to draft tax returns. Upon the Member's request, the Tax

Matters Partner shall cause the Company to furnish such Member with any additional information reasonably required to prepare its federal income tax return or any other tax report or return required by foreign, federal, state or local law;

(iii) The Company's initial tax accountants and other tax advisors shall be selected by the Management Committee no later than November 1, 2013 and may not be changed or replaced without the written consent of the Management Committee; and

(iv) Any successor Tax Matters Partner must be approved by the Management Committee.

8.8 Election of Basis Adjustment. Effective for the tax year that includes the date hereof, the Company shall elect under Code Section 754 to adjust the basis of the Company's assets for federal income tax purposes pursuant to Code Sections 734 and 743. Any change to the foregoing election under Code Section 754 shall require the Members' written consent, which may be withheld in their respective sole and absolute discretion.

8.9 Organizational Expenses. The Company will elect to amortize, over the sixty (60)-month period beginning with the month in which the Company begins business, the ratable expenses incurred in organizing the Company as provided in Code Section 709.

8.10 Fiscal and Taxable Year. The fiscal and taxable year of the Company will end on the 31st day of December.

8.11 Tax Status. Unless the Management Committee approves an election by the Company to be classified for income tax purposes as an association taxable as a corporation, the Company will not be taxable as a corporation for U.S. Federal income tax purposes. The Members intend this Agreement to be construed as appropriate to classify the Company for U.S. Federal income tax purposes as a partnership. The Members do not intend to form a partnership under the Uniform Partnership Law or the Delaware Revised Uniform Limited Partnership Act, or any similar partnership or limited partnership law of any other jurisdiction. The filing of partnership tax returns with any jurisdiction should not be construed to expand the non-tax obligations or liabilities of the Company or its Members.

8.12 Reporting Requirements.

(a) As soon as practicable after the end of each fiscal year of the Company, beginning with the fiscal year ending December 31, 2013, and in any event within sixty (60) days after the end of such fiscal year, the Company shall provide to each Member balance sheets of the Company and its Subsidiaries, if any, as of the end of such fiscal year and consolidated statements of income and cash flow and Members' equity of the Company and its Subsidiaries, if any, for such fiscal year, each prepared in accordance with GAAP and by qualified accounting firm selected by the Management Committee.

(b) As soon as practicable after the end of each fiscal quarter of the Company, beginning with the quarter ending December 31, 2013, and in any event within thirty (30) days after the end of each fiscal quarter, the Company shall provide to each Member quarterly

unaudited consolidated balance sheets of the Company and its Subsidiaries, if any, as of the end of every such fiscal quarter, and consolidated statements of operations and consolidated statements of cash flows and shareholders' equity of the Company and its Subsidiaries, if any, for every such fiscal quarter, prepared in accordance with GAAP consistently applied (other than accompanying notes), all in reasonable detail and signed and certified by the principal financial or accounting officer of the Company.

(c) The Company shall permit each Member (i) to visit and inspect any of the properties, books and records of the Company and to discuss its affairs, finances and accounts with the officers, legal counsel and accountants of the Company, and Managers, all at such reasonable times upon reasonable prior notice and as often as may be reasonably requested; and (ii) to discuss the affairs, finances and accounts of the Company with its Managers and consult with and advise the officers of the Company as to the management of the Company at all reasonable times upon reasonable prior notice and as often as reasonably requested; provided that each Manager shall maintain the confidentiality of any proprietary information of the Company thereby obtained and, provided further, that each Manager shall conduct all such inspections in a manner that is not disruptive to the operations of the Company.

(d) No later than ten (10) days after a Reportable Event (as defined below) the Company shall provide each Member written notice of such event. "**Reportable Event**" means any (i) offer to acquire substantially all of the Membership Interests or assets of the Company; (ii) resignation or serious illness of a Manager; (iii) material litigation involving the Company; (iv) receipt of a default notice from a Lender; or (v) known default by the Company of the terms of this Agreement or any material contract to which the Company is a party.

ARTICLE 9.

DISTRIBUTION AND ALLOCATION RULES

9.1 Cash Distributions.

(a) Subject to the provisions of Section 2.6, 3.3(a), 3.5(b) and Section 3.5(c), at the times set forth in Section 9.1(b) or at such other times as the Management Committee determines, the Company will distribute the Cash Available for Distribution in the following order of priority:

(i) First, in the event a Member has made an Excess Capital Contribution or EFR Loan, to such Members to the extent of and in proportion to the respective balances of their accrued but unpaid Excess Capital Preferred Return until such balances have been reduced to zero.

(ii) Second, in the event a Member has made an Excess Capital Contribution or EFR Loan, to such Members to the extent of, and in proportion to, the respective balances of their Excess Capital Contributions or EFR Loans until such balances have been reduced to zero.

(iii) Third, in the event a Member has made a Shortfall Capital Contribution, to such Members to the extent of and in proportion to the respective balances of their accrued but unpaid Supplemental Deficiency Return until such balances have been reduced to zero.

(iv) Fourth, in the event a Member has made a Shortfall Capital Contribution, to such Members to the extent of, and in proportion to the respective balances of their Shortfall Capital Contributions until such balances are reduced to zero.

(v) Fifth, in the event a Member has made Supplemental Capital Contribution, to such Members to the extent of and in proportion to the respective balances of their Supplemental Capital Contributions until such balances have been reduced to zero.

(vi) Sixth, in the event either Member has made an Additional Capital Contribution, to such Members to the extent of, and in proportion to the undistributed balances of their respective Additional Capital Contributions, until such balances have been reduced to zero.

(vii) Seventh, to the Members to the extent of and in proportion to the balances of their respective Unreturned Capital Balances, until such balances are reduced to zero.

(viii) Lastly, to the Members in accordance with their respective Percentage Interests.

(b) To the extent of Cash Available for Distribution and subject to those provisions of the Act pertaining to improper distributions, the Company shall make distributions to the Members on a quarterly basis by the fifteenth (15^{th}) calendar day following each calendar quarter in accordance with Section 9.1(a). Any Member who has received, in respect of any Fiscal Year, an aggregate amount pursuant to Section 9.1(a) in excess of the amount to which it is entitled shall forthwith return such excess to the Company. If the Company has, in respect of such Fiscal Year, paid to any Member pursuant to Section 9.1(a) an aggregate amount which is less than the amount distributable to such Member pursuant to such annual accounting, the Company shall forthwith pay the amount of such shortfall to such Member.

9.2 Distributions in Liquidation.

(a) Distributions in connection with the liquidation and winding up of the Company shall be made in the following order of priority:

(i) First, to the reasonable expenses incurred in dissolution and termination;

(ii) Second, to the payment of creditors of the Company but excluding secured creditors whose obligations will be assumed or otherwise Transferred on a liquidation of the Company property or assets; and

(iii) Lastly, the balance shall be distributed in the same manner and priority as provided in Section 9.1(a).

(b) Except as otherwise provided herein, assets of the Company (other than Cash) shall not be distributed in kind to the Members unless approved by all of the Members. If any assets of the Company are distributed to the Members in kind, such assets shall be valued on the basis of the Fair Market Value thereof on the date of distribution, and each Member entitled to any interest in such assets shall receive such interest as a tenant-in-common with the other Member. The Fair Market Value of such assets shall be determined in accordance with the provisions of Section 5.9.

9.3 Allocations of Net Profits and Net Losses. After giving effect to the Tax Regulation Allocations referred to in Section 9.5, at the end of each taxable year or other period for which allocation is required, the Net Profits or Net Losses of the Company and, to the extent necessary, individual items thereof, shall be allocated among the Members in a manner such that the Capital Account of each Member, immediately after making such allocation, is, as nearly as possible, equal proportionately to (i) the distributions that would be made to such Member pursuant to Section 9.2 if the Company were dissolved, its affairs wound up and its assets sold for cash equal to their Gross Asset Value, all Company liabilities were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability) and the net assets of the Company were distributed in accordance with Section 9.2 to the Members immediately after making such allocation, minus (ii) such Member's share of partnership minimum gain (as defined in Regulations Section 1.704-2(g)(1)) and the minimum gain attributable to a partner nonrecourse debt determined in accordance with Regulations Section 1.704-2(i)(3), computed immediately prior to the hypothetical sale of assets.

9.4 Section 704(c) and Reverse Section 704(c) Tax Allocations. Except as otherwise provided in this Section 9.4, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of Net Profits or Net Losses is allocated pursuant to Sections 9.3 and 9.5; provided, however, that in accordance with Section 704(c) of the Code and with the Regulations, items of taxable income, gain, loss and deduction with respect to any Company asset, other than money, that has been contributed to the Company by a Member or that has been revalued on the books of the Company shall, solely for income tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of such property to the Company for federal income tax purposes and the Gross Asset Value of such property in the manner prescribed under Code Sections 704(b) and 704(c) and the Regulations thereunder. Such allocations shall be made utilizing any reasonable method selected by the Management Committee.

9.5 Tax Regulation Allocations. The Company will make the following allocations in the following order:

(a) No losses shall be allocated to a Member which would cause such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. Any such losses not allocated to a Member due to the foregoing limitation shall be specially allocated to the Members with positive Capital Account balances in proportion to such Capital Account

balances until all such Capital Account balances have been reduced to zero and any remainder shall be allocated to the Members in accordance with their Percentage Interests.

(b) If Company Minimum Gain has a net decrease during any Company taxable year, the Company will allocate items of income and gain for such year (and, if necessary, for subsequent years) to each Member in the amounts required by Regulations Sections 1.704-2(f) and 1.704-2(g)(2).

(c) If Member Nonrecourse Debt Minimum Gain has a net decrease during any Company taxable year, the Company will allocate to each Member who has a share of the Member Nonrecourse Debt Minimum Gain items of income and gain for such year (and, if necessary, for subsequent years) in the amounts required by Regulations Section 1.704-2(i).

(d) If a Member unexpectedly receives an adjustment, allocation, or distribution described in Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), the Company will allocate to the Member items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year) in an amount and manner sufficient to eliminate the Adjusted Capital Account Deficit, if any, caused by such adjustment, allocation, or distribution, as quickly as possible as required by Regulations Section 1.704-1(b)(2)(ii)(d).

(e) The Company will allocate each nonrecourse deduction, as defined in Regulations Section 1.704-2(b)(1) and determined in accordance with Regulations Section 1.704-2(c), in accordance with the Members' respective Percentage Interests. In connection therewith, excess nonrecourse liabilities of the Company (as defined in Regulations Section 1.752-3(a)(3)) will be allocated in accordance with the Members' respective Percentage Interests.

(f) The Company will allocate each member nonrecourse deduction, as defined in Regulations Section 1.704-2(i)(2), to the Members who bear the economic risk of loss with respect to the liability to which such member nonrecourse deductions are attributable as provided in Regulations Section 1.704-2(i)(1).

(g) The Company will allocate any cancellation of debt income realized by the Company between the Members in proportion to the allocation between the Members (as provided in Code Section 752) of the debt to which such income is attributable.

(h) To the extent permitted by Regulations Section 1.704-2(h)(3), the Company may treat distributions of Cash as having been made from the proceeds of a nonrecourse liability or a Member's nonrecourse liability only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for such Member.

9.6 Curative Allocations. The Tax Regulation Allocations are intended to comply with Regulation Sections 1.704-1(b) and 1.704-2. The Tax Regulation Allocations may not be consistent with the manner in which the Members intend to divide Company distributions. Accordingly, the Management Committee, to the extent not inconsistent with Code Section 704(b), shall allocate items of Company income or loss between the Members so as to

offset any distortion resulting from the Tax Regulation Allocations in the amounts that would have been allocable to the Members if the Tax Regulation Allocations were not part of this Agreement.

9.7 Changes of Percentage Interests. Upon the issuance, increase, decrease or Transfer (pursuant to the terms of this Agreement) of an Membership Interest during any Fiscal Year, the Company will allocate income, loss, each item thereof and all other items attributable to such Membership Interest in proportion to the number of calendar days in the year that the holder was recognized as the owner for federal income tax purposes of that Membership Interest, without regard for the results of Company operations during the portion of the year in which the holder was recognized as the owner for federal income tax purposes of that Membership Interest, and without regard for the date, amount, or recipient of any distributions made with respect to that Membership Interest. The foregoing allocation rule will not apply if (i) the Transferor and Transferee agree to an allocation based on the results as of the date of the Transfer (and such method is otherwise permissible under Code Section 706(d)) and agree to reimburse the Company for the cost of making and reporting their agreed allocation; (ii) the Transfer of the Membership Interest causes a termination of the Company within the meaning of Code Section 708; or (iii) Code Section 706(d) requires different allocations of certain cash basis items.

9.8 Amounts Withheld. Amounts withheld pursuant to the Code or any provision of any state, local or foreign tax law with respect to any payment or distribution by the Company to a Member shall be treated as an amount distributed to such Member pursuant to this Article 9 for all purposes of this Agreement.

ARTICLE 10.

DISSOLUTION, LIQUIDATION AND WINDING UP

10.1 Dissolution. The Company shall be dissolved only upon the occurrence of any of the following:

(a) the written consent of the Members;

(b) an Event of Withdrawal of the sole remaining Member;

(c) entry of a decree of judicial dissolution under the Act; or

(d) The sale of all or substantially all of the assets of the Company unless such sale or other disposition involves any deferred payment of the consideration for such sale or disposition, in which case the Company shall not dissolve until the last calendar day of the Fiscal Year during which the Company shall receive the balance of such deferred payment. For purposes of this clause (d) of Section 10.1, the Company shall not be deemed to have sold or otherwise disposed of "substantially" all of its assets so long as the Company continues to own any of the Intended Improvements.

Upon dissolution of the Company, which will take effect as of the date of the event giving rise to the dissolution, the Company shall not terminate but shall continue solely for the purposes of liquidating all of the assets owned by the Company (until all such assets have been sold or liquidated), collecting the proceeds from such sales and all receivables of the Company until the same have been written off as uncollectible and distributing such proceeds pursuant to Section 10.2. Upon dissolution, the Company shall engage in no further business thereafter other than that necessary to cause the Property to be operated on an interim basis and for the Company to collect its receivables, liquidate its assets and pay or discharge its liabilities.

10.2 Liquidation and Termination. In a dissolution and winding up of the Company, a liquidating trustee (the "**Liquidator**") approved by the Management Committee will proceed diligently to wind up the affairs of the Company and distribute its assets pursuant to Section 9.2. During the interim, the Managers will continue to exercise the rights of and operate the Company consistently with the liquidation thereof, exercising all the power and authority vested by the Act, this Agreement and the Management Committee. As expeditiously as possible after the dissolution of the Company:

(a) The Liquidator will make or cause to be made a complete accounting of the assets, liabilities and operations of the Company as of the last day of the month in which the dissolution occurs.

(b) The Liquidator will use Company assets to pay all liabilities of the Company (including loans from Members but excluding the Capital Contributions and Capital Accounts of the Members) and establish a Reserve, if the Liquidator deems a Reserve necessary, for payment of future or contingent obligations of the Company.

(c) If any asset of the Company is distributed to the Members in kind (which may only occur with the mutual consent of the Members) for purposes of reflecting the allocation of gain or loss from liquidation in the Members' Capital Accounts, the Company will make a book adjustment with respect to the property distributed in kind as provided in the Code Section 704(b) and the applicable provisions of the Regulations.

(d) Promptly after dissolution, the Liquidator shall obtain an appraisal of the assets of the Company by a member of the American Institute of Real Estate Appraisers selected by the Liquidator and satisfying the requirements of Section 5.9. All of the assets of the Company, if any, other than Cash, shall be offered (either as an entirety or on an asset-by-asset basis) promptly for sale, upon such terms as the Liquidator shall determine using the above appraisal as a guide. Each of the Members and their respective Affiliates shall have the right to negotiate or bid for any or all of the assets being offered for sale from and after a date which is ninety (90) calendar days after the Company dissolves, but not before such date. Subject only to the Members' rights to match offers set forth below, the decision to accept or reject an offer to purchase assets of the Company (a "**Purchase Offer**") shall be made solely by the Liquidator.

Each Member shall have the right to match each Purchase Offer and upon so matching, shall have the right to purchase in accordance with all of the terms of the Purchase Offer, provided, however:

(i) The right to match shall be exercised and shall be effective only if exercised by written notice of exercise delivered by the exerciser to the Liquidator and the other Member within thirty (30) calendar days of receipt by the Members of the Purchase Offer; and

(ii) If both Members timely exercise their right to match, neither exercise shall be effective but instead, on the thirty-fifth (35th) calendar day after receipt by the Members of the Purchase Offer, each Member shall by sealed bid deliver to the other Member and the Liquidator (the bids to be simultaneously exchanged) an offer to purchase the asset to which the Purchase Offer relates. On such date, the sealed bids shall be opened and the Member who shall have made the highest all cash offer shall have the right to purchase the assets in accordance with such Purchase Offer.

ARTICLE 11.

GENERAL

11.1 Amendment. The Members may amend this Agreement in whole or in part only upon their mutual agreement to do so as evidenced in writing; provided, however, that the Management Committee shall have the power to amend Exhibit "A" from time to time in order to reflect any changes in factual information to be set forth therein.

11.2 Benefit. This Agreement binds and benefits the parties, their heirs, legal representatives, successors and assigns.

11.3 Computation of Time. In computing any period of time, the day of the act, event or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday, and, if so, the period will run until the end of the next day not a Saturday, Sunday, or legal holiday.

11.4 Confidentiality. By executing this Agreement, each Member (on behalf of itself and its Affiliates) expressly agrees, at all times during the term of the Company and thereafter and whether or not at the time a Member of the Company (a) not to issue any press release or advertisement or take any similar action concerning the Company's or any Subsidiary's business or affairs without first obtaining the consent of the Management Committee other than pursuant to general marketing initiative with respect to the Project (which in all events shall not include any of the details of this Agreement), (b) not to publicize detailed financial information concerning the Company or any Subsidiary and/or (c) not to disclose the Company's or any Subsidiary's affairs generally; provided that the foregoing shall not restrict any Member (nor its Affiliates) from disclosing information concerning such Member's investment in the Company to its' (or its Affiliates') officers, directors, employees, agents, legal counsel, accountants, other professional advisors, lenders, limited partners, investors, members and Affiliates, or to prospective investors and/or lenders of such Member or its Affiliates (in each case such disclosure is to be governed by a non-disclosure agreement, confidentiality agreement or other analogous document or arrangement if so requested by the non-disclosing Member). Nothing herein shall restrict any Member from disclosing information that: (A) is in the public domain (except where such information entered the public domain without the Company's

authorization); (B) was made available or becomes available to a Member (or its Affiliates) on a non-confidential basis prior to its disclosure by the Company; (C) was available or becomes available to a Member (or its Affiliates) on a non-confidential basis from a Person other than the Company who is not otherwise bound by a confidentiality agreement with the Company or its representatives, or is not otherwise prohibited from transmitting the information to the Member (or such Affiliate); (D) is developed independently by the Member (or its Affiliates); (E) is required to be disclosed by applicable law or is requested by, or deemed necessary to be disclosed to, regulators at a Governmental Entity (including the U.S. Securities and Exchange Commission) (provided that prior to any such disclosure, the disclosing party shall, to the extent possible, consult with the other party and use best efforts to incorporate any reasonable comments of the other party prior to such disclosure); (F) is expressly approved in writing by the Company; or (G) is customarily disclosed to industry reporting services on a non-attributed basis, i.e. Smith Travel Reports, Dealogic, CMBS reporting services, etc. The provisions of this Section 11.4 shall survive the termination of the Company and any Subsidiary thereof.

11.5 Construction. Unless the context otherwise requires, when used in the Agreement, the singular includes the plural and vice versa, the whole includes the part and vice versa, and the masculine includes the feminine (and neuter) and vice versa. The words "**include**", "**includes**", and "**including**" will be deemed to be followed by the phrase "**without limitation**". Captions are inserted for convenience only and will have no legal effect. Each reference to a statute will be deemed to be followed by the words "**and the regulations thereunder.**" "**Will**" and "**Shall**" are mandatory words denoting an obligation to pay or perform. "**May**" is a permissive word denoting an option. The parties jointly prepared this Agreement. Any uncertainty or ambiguity will not be interpreted against any party but will be interpreted according to the application of the rules of interpretation for arm's length agreements.

11.6 Entire Agreement. This instrument constitutes the entire agreement between the Members concerning the Company. The Members have made no representations, warranties, understandings or agreements concerning the Company other than those expressly included in this Agreement.

11.7 Equitable Relief. The Company and each Member will have the right to seek and obtain equitable relief to enforce this Agreement.

11.8 Execution. The parties may execute this Agreement in any number of counterparts, and each counterpart will, for all purposes, be deemed an original instrument. All such counterparts together will constitute one and the same Agreement. Facsimile, telecopy or "pdf" transmission of any original signed counterpart and retransmission of any signed facsimile, telecopy or "pdf" transmission will be the same as transmission of an original counterpart. At the request of any party, the parties will confirm facsimile transmitted signatures by signing an original Agreement.

11.9 Exhibits. All exhibits referred to and attached to this Agreement are incorporated into the Agreement by this reference.

11.10 Further Assurances. Each of the parties to this Agreement will execute, acknowledge, deliver, file, record and publish such further certificates, instruments, agreements

and other documents, and will take all such further action required by law or necessary in furtherance of the Company's purposes and the intent of this Agreement.

11.11 Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, excluding those laws relating to the resolution of conflicts between laws of different jurisdictions. In particular, the Company is formed pursuant to the Act, and the rights and liabilities of the Members shall be as provided therein, except as herein otherwise expressly provided. In any action or proceeding in connection with or to enforce this Agreement, the parties hereto irrevocably consent to and confer personal jurisdiction on the courts of the State of Florida, or the United States courts located within the State of Florida, in the County of Miami-Dade, expressly waive any objections as to venue in any of such courts, and agree that service of process may be made on it by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to its address set forth herein (or otherwise expressly provided in writing). Each party hereto hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

11.12 Invalidity of Provisions. The invalidity, illegality, or unenforceability of any term of the Agreement will not affect the validity, legality or enforceability of the remaining terms of the Agreement; provided that if permitted by applicable law, any invalid, illegal, or unenforceable provision may be considered in determining the intent of the parties with respect to other provisions of this Agreement.

11.13 No Waiver. The failure or delay of any party to this Agreement in requiring strict performance by any other party of any term of this Agreement will not constitute a waiver of the term or of the right to require strict performance of the term or any other term.

11.14 Notices. A party may only effect a notice, approval or other communication required or permitted under this Agreement by giving such notice in writing by registered or certified mail, by reputable overnight delivery service, by facsimile transmission or email to the last known mailing address, facsimile number or email address, as applicable, of the intended recipient of such notice. A Member may change the Member's contact information for the purpose of this Section by notice to the Company at its principal office in the manner provided in this Section. Notices sent by hand delivery or overnight courier shall be deemed delivered on the date of delivery or refusal of acceptance. Notices sent by registered or certified mail shall be deemed delivered on the delivery or refusal date shown on the return receipt. Notices sent by telecopier shall be deemed delivered on the date of transmission. Any notice sent via email shall include, in the subject line of such email: "NOTICE SENT PURSUANT TO OPERATING AGREEMENT OF CORAL GABLES LUXURY HOLDINGS LLC."

11.15 Attorneys' Fees/Waiver of Lis Pendens. The prevailing party in any action or proceeding between the Members and/or the Company shall be entitled to recover its attorneys' fees and expenses incurred in connection with such action or proceeding. Anything herein to the contrary notwithstanding, each Member, Manager, Assignee and all Affiliates of each of the foregoing shall be deemed to waive any right to file a lis pendens or mechanics lien against the Property for any reason whatsoever.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement as of October 8, 2013

Gables Investments Holdings LLC, a Delaware limited liability company

By:_____
Name: _____
Title: _____

Shoma Coral Gables LLC
a Delaware limited liability company

By:_____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement as of October 8, 2013

Gables Investments Holdings LLC, a Delaware limited liability company

By: _____
Name: Ugo Colombo
Title: Manager

Shoma Coral Gables LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Member	Amount/ Description
INITIAL CAPITAL CONTRIBUTIONS	
CMC	$1,300,000 *
Shoma	$1,300,000 *
*To be increased by 50% of Previously Incurred Expenses	
ADDITIONAL CAPITAL CONTRIBUTIONS	
CMC	0
Shoma	0
PERCENTAGE INTERESTS	
CMC	50%
Shoma	50%
SUPPLEMENTAL CAPITAL CONTRIBUTIONS	
CMC	0
Shoma	0
EXCESS CAPITAL CONTRIBUTIONS	
CMC	0
Shoma	0
SHORTFALL CAPITAL CONTRIBUTIONS	
CMC	0
Shoma	0

ADDRESSES
c/o CMC Group Inc.
701 Brickell Avenue, Suite 2410
Miami, Florida 33131
Attn: Arthur J. Murphy

Shoma:
Shoma Coral Gables LLC
Attn: Masoud Shojaee
3470 NW 82nd Avenue, Suite 988
Doral, Florida 33127

EXHIBIT "B"

LEGAL DESCRIPTION

Yeung Property Corp.

Lots 1 - 21 and 27 - 38 in Block 3, REVISED PLAT OF CORAL GABLES INDUSTRIAL PARK SECTION, according to the Plat thereof, as recorded in Plat Book 28, at Page 22, of the Public Records of Miami-Dade County, Florida Folio number 03-4120-017-0571 for Lots 1 - 4 (parking lot); Folio number 03-4120-017-0580 for Lots 5 - 21 (4112 Aurora Street); Folio number 03-4120-017-0720 for Lots 27 - 38 (4101 Salzedo Street).

Yeung Property Holdings, Inc.

Lots 22 - 26 and 39 - 42 in Block 3, REVISED PLAT OF CORAL GABLES INDUSTRIAL PARK SECTION, according to the Plat thereof, as recorded in Plat Book 28, at Page 22, of the Public Records of Miami-Dade County, Florida Folio number 03-4120-017-0700 for Lots 22 - 24 (245 Altara Avenue); Folio number 03-4120-017-0710 for Lots 25 and 26 (4111 Salzedo Street); Folio number 03-4120-017-0790 for Lots 39 - 42 (250 Bird Road).

EXHIBIT "C"

MEMBERSHIP INTEREST CERTIFICATE

CERTIFICATE FOR MEMBERSHIP INTERESTS IN CORAL GABLES LUXURY HOLDINGS LLC

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES OR BLUE SKY LAWS OF ANY STATE, AND SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT (1) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT AND THE SECURITIES LAWS OF ANY APPLICABLE STATE OF THE UNITED STATES AND/OR OTHER APPLICABLE JURISDICTION OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND IN ACCORDANCE WITH THE SECURITIES LAWS OF ANY APPLICABLE STATE OF THE UNITED STATES AND/OR OTHER APPLICABLE JURISDICTION. ANY TRANSFER OF THIS CERTIFICATE OR ANY MEMBERSHIP INTEREST REPRESENTED HEREBY IS ALSO SUBJECT TO THE TERMS AND CONDITIONS OF THE OPERATING AGREEMENT (AS DEFINED BELOW). THE HOLDER OF THIS CERTIFICATE, BY ITS ACCEPTANCE HEREOF, REPRESENTS THAT IT IS ACQUIRING THIS SECURITY FOR INVESTMENT AND NOT WITH A VIEW TO ANY SALE OR DISTRIBUTION HEREOF.

Certificate Number ____ ____% Percentage Interest

CORAL GABLES LUXURY HOLDINGS LLC, a Delaware limited liability company (the "**Company**"), hereby certifies that _____ (together with any assignee of this Certificate, the "**Holder**") is the registered owner of _____ percent of the Membership Interests (as defined in the Operating Agreement) in the Company. The rights, powers, preferences, restrictions and limitations on the Membership Interests in the Company are set forth in, and this Certificate and the Membership Interests in the Company represented hereby are issued and shall in all respects be subject to the terms and provisions of, the Operating Agreement of the Company dated as of October ___, 2013, as the same may be amended or restated from time to time (the "**Operating Agreement**"). By acceptance of this Certificate, and as a condition to being entitled to any rights and/or benefits with respect to the Membership Interests evidenced hereby, the Holder is deemed to have agreed to comply with and be bound by all the terms and conditions of the Operating Agreement. The Company will furnish a copy of the Operating Agreement to the Holder without charge upon written request to the Company at its principal place of business. Transfer of any or all of the Membership Interests in the Company evidenced by this Certificate is subject to certain restrictions in the Operating Agreement and can be effected only after compliance with all of those restrictions and the presentation to the Company of this Certificate duly endorsed and accompanied by the completed Application for Transfer of Interests, which is on the reverse side of this Certificate.

The Membership Interest in the Company represented by this Certificate evidences an interest in the Company and shall constitute a "security" within the meaning of, and governed by, (i) Article 8 of the Uniform Commercial Code (including Section 8-102(a)(15) thereof) as in effect from time to time in the State of Delaware and (ii) Article 8 of the Uniform Commercial Code of any other applicable jurisdiction that now or hereafter substantially includes the 1994 revisions to Article 8 thereof as adopted by the American Law Institute and the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association on February 14, 1995 (and each Membership Interest in the Company shall be treated as such a "security" for all purposes, including, without limitation perfection of the security interest therein under Article 8 of each applicable Uniform Commercial Code as the Company has "opted-in" to such provisions).

This Certificate and the Membership Interests evidenced hereby shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of laws.

IN WITNESS WHEREOF, the Company has caused this Certificate to be executed as of the date set forth below.

Dated: _____ CORAL GABLES LUXURY HOLDINGS LLC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

(REVERSE SIDE OF CERTIFICATE)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto _____ (print or typewrite name of transferee), _____ (insert Social Security or other taxpayer identification number of transferee), the following specified percentage of Membership Interests in the Company: _____ (identify the percentage interest being transferred) effective as of the date specified in the Application for Transfer of Interests below, and irrevocably constitutes and appoints _____ and its authorized officers, as attorney-in-fact, to transfer the same on the books and records of the Company, with full power of substitution in the premises.

Dated: _____ Signature: _____
(Transferor)

Address: _____

APPLICATION FOR TRANSFER OF INTERESTS

The undersigned applicant (the "**Applicant**") hereby (a) applies for a transfer of the percentage of Membership Interests in the Company described above (the "**Transfer**") and, if applicable applies to be admitted to the Company as an additional or substitute member of the Company, (b) agrees to comply with and be bound by all of the terms and provisions of the Operating Agreement, (c) represents that the Transfer complies with the terms and conditions of the Operating Agreement, (d) represents that the Transfer does not violate any applicable laws and regulations, and (e) agrees to execute and acknowledge such instruments (including, without limitation, a counterpart of the Operating Agreement) or any amendment or restatement thereof, in form and substance satisfactory to the Company, as the Company reasonably deems necessary or desirable to effect the Applicant's admission to the Company as a substitute member of the Company and to confirm the agreement of the Applicant to be bound by all the terms and provisions of the Operating Agreement with respect to the limited liability company interests in the Company described above. Initially capitalized terms used herein and not otherwise defined herein are used as defined in the Operating Agreement.

The Applicant directs that the foregoing Transfer and the Applicant's admission to the Company as an additional or substitute member shall be effective as of the registration of the Transfer in the books and records of the Company on _____.

Name of Transferee (Print)

_____

Dated: _____ Signature: _____
(Transferor)

Address: _____

_____

The Company has determined (a) that the Transfer described above is permitted by the Operating Agreement, (b) hereby agrees to effect such Transfer and the admission of the

Applicant as a substitute member of the Company effective as of the date and time directed above, and (c) agrees to record in the books and records of the Company the admission of the Applicant as a substitute member.

CORAL GABLES LUXURY HOLDINGS LLC

_____

Manager

_____

Manager

EXHIBIT "D"

PREVIOUSLY INCURRED EXPENSES*

Expense Item	Amount
Architectonica Corp (Architecture Expenses)	$95,100
US South Engineering & Testing Lab, Inc. (soil testing)	1,500
TOTAL	$96,600

* Excludes initial deposit under Purchase Agreement of $2,500,000 and Extension Fee of $100,000.

EXHIBIT "E"

FORM OF INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "**Agreement**") is entered into as of the ____ day of [_____] ___, 20[___], by and among Gables Investment Holdings LLC, a Delaware limited liability company ("**CMC**"), **Ugo Colombo**, an individual (Ugo Columbo, together with CMC, the "**CMC Parties**"), **Shoma Coral Gables LLC**, a Delaware limited liability company ("**Shoma**"), and **Masoud Shojaee**, an individual (Masoud Shojaee, together with Shoma, the "**Shoma Parties**").

RECITALS:

WHEREAS, each of CMC and Shoma owns a 50% Percentage Interest in Coral Gables Luxury Holdings LLC, a Delaware limited liability company (the "**Company**");

WHEREAS, the Company has obtained a [$_____] loan (the "**Loan**") from [_____] ("**Lender**") as evidenced by that certain Promissory Note dated [_____] (the "**Note**"), executed by the Company in favor of Lender, which is further evidenced and secured by that certain Loan and Security Agreement dated of even date with the Note (the "**Loan Agreement**") executed by the Company and Lender, which covers the financing of certain real property located in Miami-Dade County, Florida as more particularly described therein (the Note, the Loan Agreement and the other loan documents evidencing and securing the Loan are herein referred to as the "**Loan Documents**");

WHEREAS, as a condition to making the Loan, Lender has required the CMC Parties and the Shoma Parties, to execute certain guarantees (collectively, the "**Recourse Guarantees**") with respect to recourse obligations (the "**Recourse Obligations**"); and

WHEREAS, the parties hereto desire to set forth certain agreements concerning the Recourse Obligations.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the parties hereto agree as follows:

1. Notwithstanding anything to the contrary in the Loan Documents, and except as provided in Section 4 of this Agreement, the parties hereto agree that the CMC Parties and the Shoma Parties will be severally liable for the Recourse Obligations, as follows: the CMC Parties shall be liable and responsible for fifty percent (50%) of such Recourse Obligations (the "**CMC Percentage**") and the Shoma Parties shall be liable and responsible for fifty percent (50%) of such Recourse Obligations (the "**Shoma Percentage**"). Each of the CMC Parties shall be jointly and severally liable for the CMC Percentage. Each of the Shoma Parties shall be jointly and severally liable for the Shoma Percentage.

2. Except as provided in Section 4 of this Agreement, in the event that any of the Recourse Obligations are enforced against any of the CMC Parties such that the CMC Parties' liability for the Recourse Obligations exceeds the CMC Percentage, the Shoma Parties hereby

indemnify and agree to hold harmless the CMC Parties from and against all liability, claims and causes of action whatsoever that the CMC Parties have for the Recourse Obligations, but only to the extent that the CMC Parties' liability for the Recourse Obligations exceeds the CMC Percentage and is actually paid by the CMC Parties to Lender, provided, however, that, subject to Section 4, in no event shall the Shoma Parties' liability to the CMC Parties on any date on a cumulative basis pursuant to this Agreement exceed the Shoma Percentage of all Recourse Obligations.

3. Except as provided in Section 4 of this Agreement, in the event that any of the Recourse Obligations are enforced against any of the Shoma Parties such that the Shoma Parties' liability for the Recourse Obligations exceeds the Shoma Percentage, the CMC Parties hereby indemnify and agree to hold harmless the Shoma Parties from and against all liability, claims and causes of action whatsoever that the Shoma Parties have for the Recourse Obligations, but only to the extent that the Shoma Parties' liability for the Recourse Obligations exceeds the Shoma Percentage and is actually paid by the Shoma Parties to Lender, provided, however, that, subject to Section 4, in no event shall the CMC Parties' liability to the Shoma Parties on any date on a cumulative basis pursuant to this Agreement exceed the CMC Percentage of all Recourse Obligations.

4. Notwithstanding anything to the contrary in this Agreement or in the Recourse Obligations, the parties hereto agree as follows respecting the Recourse Obligations described below:

(a) The CMC Parties shall be liable and responsible for one hundred percent (100%) of any claims, causes of action, liabilities, costs or damages resulting from any actual or alleged breach of any representation, warranty or covenant set forth in any of the Loan Documents that is solely with respect to, or matters that are under the exclusive control of, one or more of the CMC Parties or any of their affiliates, agents, employees, representatives, successors and assigns (collectively, the "**CMC Group**"), including in their capacity as a "Guarantor" (as defined in the Loan Agreement) (collectively, the "**CMC Representations**").

(b) The Shoma Parties shall be liable and responsible for one hundred percent (100%) of any claims, causes of action, liabilities, costs or damages resulting from any actual or alleged breach of any representation, warranty or covenant set forth in any of the Loan Documents that is solely with respect to, or matters that are under the exclusive control of, one or more of the Shoma Parties or any of their affiliates, agents, employees, representatives, successors and assigns (collectively, the "**Shoma Group**"), including in their capacity as a "Guarantor" (as defined in the Loan Agreement) (collectively, the "**CMC Representations**").

(c) The CMC Parties shall be liable and responsible for one hundred percent (100%) of any claims, causes of action, liabilities, costs or damages resulting from the enforcement by Lender of its rights under the CMC Parties' Recourse Guarantees, where the event giving rise to such enforcement results from the acts or omissions of one or more members of the CMC Group, including without limitation the commencement by any member of the CMC Group or any third party solicited by any member of the CMC Group of an involuntary bankruptcy or insolvency proceeding against the Company (collectively, the "**CMC Recourse Defaults**").

(d) The Shoma Parties shall be liable and responsible for one hundred percent (100%) of any claims, causes of action, liabilities, costs or damages resulting from the enforcement by Lender of its rights under the Shoma Parties' Recourse Guarantees, where the event giving rise to such enforcement results from the acts or omissions of one or more members of the Shoma Group, including without limitation the commencement by any member of the Shoma Group or any third party solicited by any member of the Shoma Group of an involuntary bankruptcy or insolvency proceeding against the Company (collectively, the "**Shoma Recourse Defaults**").

(e) The CMC Parties indemnify and agree to hold harmless the Shoma Parties from against all liability, claims and causes of action whatsoever that any of the Shoma Parties have as a result of a breach of any of the CMC Representations or any CMC Recourse Default and the Shoma Parties indemnify and agree to hold harmless the CMC Parties from and against all liability, claims and causes of action whatsoever that any of the CMC Parties have as a result of any breach of any of the Shoma Representations or any Shoma Recourse Default.

5. The mutual indemnities set forth herein are intended to include claims hereunder resulting from any party's negligence.

6. In the event any sum owed or required to be paid pursuant to this Agreement is not paid within ten (10) business days after written request is made therefor, the party owing but not paying such amount (the "**Defaulting Party**") shall pay to the indemnified party who paid the indemnifiable Recourse Obligations (the "**Advancing Party**"), in addition to the sum so owed, interest on such sums owed, from time to time, at the rate of eighteen percent (18%) per annum. If any sum owed is not so paid when due, as set forth above, interest shall be computed from the time the amount so owed was paid by the Advancing Party to whom such sum is owed.

7. If and to the extent any sum owed or required to be paid pursuant to this Agreement is not paid within ten (10) business days after written request is made therefor, the Advancing Party shall be entitled to receive such amount directly from any distribution, fee, reimbursement or other compensation or payment due from the Company to the Defaulting Party or any affiliate thereof, including without limitation distributions payable pursuant to the Operating Agreement of the Company dated October 8, 2013, as it may be amended and/or restated from time to time (the "**Operating Agreement**"), if and when the same shall be due or, if such amount otherwise would not have been actually paid by the Company at such time, when the same otherwise would have been actually paid by the Company. The rights of the parties set forth in this Section 7 shall not excuse the prompt and full payment of any amount owed or required to be paid pursuant to this Agreement, but shall be among, but are not the exclusive, remedies available to the parties in the event of the failure of timely payment of any sum owed or required to be paid pursuant to this Agreement. In addition to the rights of the parties set forth in this Section 7, the parties hereto shall have available to them all rights and remedies available at law or in equity to enforce the provisions of this Agreement.

8. The mutual indemnities set forth herein are intended to include indemnification against costs and expenses in connection with the indemnified liability, claims and causes of action, including, without limitation, costs of collecting any amount which may be due hereunder and reasonable attorney's fees. The obligations of the CMC Parties under this Agreement shall

be joint and several. The obligations of the Shoma Parties under this Agreement shall be joint and several.

9. This Agreement shall be continuing, irrevocable and binding upon the undersigned and their heirs, successors and assigns, and shall run for the benefit of the indemnified parties and their respective heirs, successor and assigns.

10. No failure or delay on the part of any party indemnified hereunder to the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any power, right or privilege preclude any other or further exercise of any power, right or privilege hereunder. All powers, rights and privileges hereunder are cumulative to, and not exclusive of, any powers, rights or privileges otherwise available.

11. All parties hereto waive presentment, demand, protest, notice of protest, notice of dishonor and notice of nonpayment, nonperformance or non-observance, and notice of acceptance of this instrument; the benefit of or right to assert any statute of limitations affecting the liability of any of the parties hereunder or the enforcement thereof to the extent permitted by law; and any other suretyship defenses.

12. Nothing in this Agreement shall create any third party benefits or rights in any party not a signatory hereto and the rights and obligations of any of the parties may not be reached or applied by any party not a signatory hereto.

13. This Agreement shall be governed by the laws of the State of Florida and shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

14. The parties may execute this Agreement in any number of counterparts, and each counterpart will, for all purposes, be deemed an original instrument. All such counterparts together will constitute one and the same Agreement. Facsimile, telecopy or "pdf" transmission of any original signed counterpart and retransmission of any signed facsimile, telecopy or "pdf" transmission will be the same as transmission of an original counterpart. This Agreement may be amended only by a written instrument signed by all of the parties hereto.

15. Unless the context otherwise requires, when used in the Agreement, the singular includes the plural and vice versa, the whole includes the part and vice versa, and the masculine includes the feminine (and neuter) and vice versa. The words "include", "includes", and "including" will be deemed to be followed by the phrase "without limitation". Captions are inserted for convenience only and will have no legal effect.

[No further text this page.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Indemnification Agreement as of the date first above written.

CMC PARTIES:

Gables Investment Holdings LLC

By: _____
Name: _____
Title: _____

_____
Ugo Colombo

SHOMA PARTIES:

Shoma Coral Gables LLC

By: _____
Name: _____
Title: _____

_____
Masoud Shojaee

EXHIBIT "F"

PROJECT BUDGET

[To be attached upon agreement of the Managers.]

EXHIBIT "G"

DEVELOPMENT PLAN

The mixed use condominium intended to be constructed on the Property including residential, office and retail space as mixed-use buildings to include approximately eighty thousand (80,000) square feet of ground floor retail space, street-level townhomes, approximately two hundred fifty-five (255) condominium units and associated parking, including any underground parking.

EXHIBIT "H"

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT OF CONTRACT

This Assignment of Contract (this "**Assignment**") is made and entered into as of October ____, 2013, by and between SHOMA INVESTMENTS COMPANY, a Florida corporation ("**Assignor**") and CORAL GABLES LUXURY HOLDINGS LLC, a Delaware limited liability company ("**Assignee**").

WHEREAS, Assignor is a party to that certain Purchase and Sale Agreement dated May 1, 2013, as amended by the Amendment to Purchase and Sale Agreement dated September 19, 2013 (collectively, the "**Contract**"), between Assignor and YEUNG PROPERTY CORP., a Florida corporation and YEUNG PROPERTY HOLDINGS, INC., a Florida corporation (collectively, "**Seller**") covering improved property in Coral Gables, Miami-Dade County, Florida; and

WHEREAS, Assignor desires to assign the Contract to Assignee, and Assignee desires to accept and assume the Contract;

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

1. Capitalized terms used in this Assignment have the same meaning as used in the Contract unless otherwise defined in this Assignment.

2. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in, to and under the Contract including, but not limited to, (i) the $2,500,000 Deposit; and (ii) the $100,000 paid in order to extend the Closing (collectively, the "**Contract Deposits**").

3. Assignor represents, warrants and covenants that as of the date of this Assignment, the Contract is valid and in full force and effect against Assignor, Assignor has not violated the terms of the Contract, Assignor has not previously assigned or encumbered its interest in the Contract, Assignor holds all of the rights of the "Buyer" under the Contract, and Assignor has the power to assign and transfer the Contract to Assignee.

4. Assignee hereby accepts the foregoing assignment and, from and after the date hereof, will, to the extent necessary to protect Assignor from liability or loss caused by Assignee under the Contract, perform all obligations and agreements required to be performed by the "Buyer" under the Contract at the times and in the manner set forth by the terms of the Contract, all with the same force and effect as if Assignee were originally named as the "Buyer" in the Contract. Assignor agrees to indemnify and hold Assignee harmless from any and all loss or liability under the Contract accruing prior to the date of this Assignment.

5. Upon execution of this Assignment, Assignee will reimburse Assignor for (i) one-half of the Contract Deposits; and (ii) one-half of the Previously Incurred Expenses (as defined in the Operating Agreement of Assignee).

6. Assignor and Assignee hereby agree to reasonably cooperate with each other, from and after the date hereof, upon the request of Assignee, in order to permit Assignee to obtain full benefit of this Assignment and Assignor's obligations hereunder.

7. This Assignment shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Florida, without giving effect to the principles of conflicts of laws thereof.

[Signature page to follow]

IN WITNESS WHEREOF, the undersigned have executed this Assignment effective as of the date first set forth above.

ASSIGNOR:

SHOMA INVESTMENTS COMPANY, a Florida corporation

By:_____
Masoud Shojaee, President

ASSIGNEE:

CORAL GABLES LUXURY HOLDINGS LLC, a Delaware limited liability company

By: _____
Name:
Title: