

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC,</p> <p>Defendants.</p>	<p>DATE FILED: August 15, 2018 1:55 PM FILING ID: 45E3BDA686E4D CASE NUMBER: 2018CV33011</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>CYNTHIA H. COFFMAN, Attorney General ROBERT W. FINKE, 40756* First Assistant Attorney General MATTHEW J. BOUILLON MASCARENAS, 46684* Ralph L. Carr Judicial Building 1300 Broadway, 8<sup>th</sup> Floor Denver, CO 80203 Tel: (720) 508- 6376 Fax: (720) 508-6037 Robert.Finke@coag.gov *Counsel of Record</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p><b>EX PARTE MOTION FOR APPOINTMENT OF RECEIVER WITH SUPPORTING LEGAL AUTHORITY</b></p>	

Plaintiff Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), by and through his counsel, the Colorado Attorney General, hereby moves this Court for an Order Appointing Randel Lewis as Receiver over the assets of Gary Dragul, GDA Real Estate Services, LLC (“GDARES”) and GDA Real Estate Management, Inc. (“GDAREM”), and as grounds for this Motion, states as follows:

## INTRODUCTION

1. This Motion is made pursuant to § 11-51-602, C.R.S., which authorizes the Commissioner to bring this action to temporarily, preliminarily and permanently restrain and enjoin violations of the Colorado Securities Act (the “Act”) by the Defendants and to enforce compliance with the Act, the purpose of which is “to protect investors.” § 11-51-101(2), C.R.S.

2. The Commissioner filed his Complaint for Injunctive Relief and an *Ex Parte* Verified Combined Motion for Temporary Restraining Order, Preliminary Injunction, and Order Freezing Assets with Supporting Legal Authority (the “Motion for TRO”) contemporaneous with this Motion. Both the Complaint and the Motion for TRO are incorporated by reference herein.

3. The Commissioner seeks, on an expedited basis, an Order Appointing Randel Lewis as Receiver over the assets of Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), and GDA Real Estate Management, Inc. (“GDAREM”) (collectively “GDA”). Given the circumstances described in the Complaint, the Commissioner is seeking the appointment of a receiver to prevent the threat of dissipation of assets and irreparable damage to Colorado investors and to marshal, and distribute, in an equitable and orderly manner, any remaining assets. Because of the immediate issues raised in the Motion, the Commissioner also seeks a forthwith ruling to address the same.

## FACTUAL BACKGROUND

4. Defendant Dragul, as the President of GDARES and GDAREM, solicited investors to purchase membership interests in various limited liability companies which he controlled that were engaged in the business of acquiring and operating commercial real estate. From January 2008 until December 2015, Dragul, through GDA, sold more than \$52 million worth of interests in 14 different LLCs to approximately 175 investors.

5. Amongst other projects ongoing during this period, Dragul raised \$9.7 million from the sale of membership interests in the Plaza Mall Project in Buford, Georgia to 47 investors. In December 2008, Dragul acquired the property known as the Plaza at the Mall of Georgia for \$25.9 million; and in April 2017, Dragul sold this interest for \$32 million, resulting in net proceeds of \$9.8 million. However, Dragul did not inform all investors that the sale had taken place. Instead, Dragul continued making payments to individual

investors as though the property were still under GDA's management and control.

6. In violation of the anti-fraud provision of the Act, Dragul represented to investors that they would profit from their investment while failing to disclose conflicts of interest and other material information. For example, not only did Dragul fail to disclose the sale of the Plaza Mall property, but he also did not distribute the proceeds of the sale to any individual investors. Rather, Dragul paid out approximately \$5.6 million to a large investor—Israel-based real estate firm, Hagshama—and \$4.2 million to his own company.

7. In further violation of the anti-fraud provision of the Act, Dragul commingled funds amongst the various LLCs that he controlled, treating investment funds given for specific projects as though they were fungible. Each LLC Entity was a separate legal entity in which the investors were promised profits from the operation, leasing, and eventual sale of the commercial property. However, rather than treat each LLC Entity as a separate legal entity, Dragul diverted the funds from the various LLC Entities and commingled the funds with other LLC Entities, his own personal funds and funds of family members. Contrary to the representations made by Dragul to investors that the funds would be used only for the specific purpose of purchasing the commercial real estate, the funds were diverted for undisclosed and unrelated purposes.

8. The commingling is to such an extent that it is now impossible to know the true ownership of the commingled funds.

9. As of the date of this filing, no Dragul investor has received their latest dividend payment or a full return of their principal. Furthermore, Dragul has indicated to at least one investor that: (1) he has no money, and (2) he does not intend to make payments to any remaining investors.

### **LEGAL STANDARD APPLICABLE TO MOTION FOR APPOINTMENT OF RECEIVER**

10. Section 11-51-602, C.R.S. of the Act outlines the statutory authority and procedure that governs the Commissioner's request to obtain appointment of a receiver in this matter. Section 11-51-602(1) provides, in relevant part:

Whenever it appears to the securities commissioner upon sufficient evidence satisfactory to the securities commissioner that any person has engaged in or is about to engage in any act or practice

constituting a violation of this article or of any rule or order under this article, the securities commissioner may apply to the district court of the city and county of Denver to temporarily restrain or preliminarily or permanently enjoin the act or practice in question and to enforce compliance with this article or any rule or order under this article. . . . In any such action, the securities commissioner shall not be required to plead or prove irreparable injury or the inadequacy of the remedy at law. Under no circumstances shall the court require the securities commissioner to post a bond.

11. Section 602(1) of the Act works in conjunction with C.R.C.P. 66, which authorizes the appointment of a receiver upon demonstration to the satisfaction of the Court that there is a need for the same.

12. Among the factors that a court should consider are:

- the existence of a valid claim by the moving party;
- the probability that fraudulent conduct has occurred or will occur to frustrate the claim;
- the imminent danger that property will be lost, concealed or diminished in value; and
- the likelihood that a receiver will do more harm than good.

*See Waag v. Hamm*, 10 F. Supp. 2d 1191, 1193 (D. Colo. 1998).<sup>1</sup>

13. The appointment of a receiver is a well-established equitable remedy available when necessary to protect property or rights. *Eureka Coal Co. v. McGowan*, 212 P. 521 (Colo. 1922). Upon appointment, a receiver serves neither the Plaintiff nor the Defendants, but is instead an officer of the court charged with the impartial exercise of the duties thus prescribed by the Order appointing the receiver. *Hart v. Ed-Ley*, 482 P.2d 421 (Colo. App. 1971). While the appointment of a receiver is available via C.R.C.P. 66, a receiver is also available by statute to the Commissioner in civil enforcement proceedings for injunctive relief. *See* § 11-51-602(1), C.R.S. (providing that the Commissioner may invoke such equitable remedies as necessary to enforce compliance with the Act).

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<sup>1</sup> In addition, *Waag v. Hamm* calls for the court to consider inadequacy of available legal remedies and lack of a less drastic equitable remedy. § 11-51-602(1), C.R.S., obviates the need for the Commissioner to establish these elements. *See Kourlis v. District Court*, 930 P.2d 1329, 1335 (Colo. 1997).

14. The appointment of a receiver is critical to preserve corporate assets. *Waag*, 10 F. Supp. 2d at 1193 (recognizing the necessity of receivers to protect property that may be in jeopardy). Without the appointment of a receiver, the corporate assets will be subject to diversion and waste to the detriment of those who were induced to invest in the corporate scheme. *Eureka Coal Co. v. McGowan*, 212 P. 521 (Colo. 1922).

15. Public policy considerations underlying the Act further support the appointment of a receiver because the Act is intended to “protect investors and maintain public confidence in securities markets . . . .” § 11-51-101(2), C.R.S. “[A] receiver is permissible and appropriate where necessary to protect the public interest and where it is obvious, as here, that those who have inflicted serious detriment in the past must be ousted.” *SEC v. Bowler*, 427 F.2d 190, 198 (4th Cir. 1970).

## ANALYSIS

### **I. The Commissioner has a valid claim with a strong likelihood of success against the Defendants.**

16. In this matter, the Commissioner has alleged valid claims with a strong likelihood of success against the Defendants. In the Motion for TRO, the Complaint, and in this motion, it is shown that there is a strong likelihood that the Defendants have violated the antifraud provisions of the Act.

17. Materials gathered by the Division of Securities from Defendants, investors, and financial institutions provide compelling evidence that Dragul (A) commingled investor funds with those of other investors and (B) commingled investor funds with his personal funds.

18. As demonstrated herein, the Commissioner has raised sufficient claims, as stated in the Complaint, with a strong likelihood of success on the merits.

### **II. There is a strong probability that fraudulent conduct has occurred to frustrate the claim.**

19. The evidence strongly supports the contention that Dragul has misappropriated monies entrusted to him for investment.

20. A receivership is appropriate where “active fraud and deceit appear, where the corporation is insolvent, or for some reason or other it has ceased to

carry on its authorized function, and because thereof its property and assets are in danger of being dissipated or lost....” *Diaz v. Fernandez*, 910 P.2d 96, 97 (Colo. App. 1995) (citing *Savageau v. Savageau*, 285 P.2d 810, 813 (Colo. 1955)).

21. Here, the facts strongly support the Commissioner’s request for a receiver. Ample evidence exists that Dragul deceived investors, funneling their money into investment vehicles controlled by Dragul and then dissipating the funds at his sole discretion. Evidence also demonstrates that Dragul used the prospect of reviving less successful (or failed) investments to induce earlier investors to invest additional funds, which Dragul would then move around amongst various other company accounts as he saw fit. This pattern calls into question all investments related to Dragul. This uncertainty frustrates the Commissioner’s claims by obscuring the scope and extent of the fraud perpetrated by Dragul.

**III. There is an imminent danger that property will be diminished in value.**

22. As demonstrated herein and in the Complaint, Dragul has deceived investors by taking their money given for a particular purpose and then using it for some other purpose unknown to investors. It is imperative that a receiver be appointed so that investors are able to obtain accurate and truthful information regarding the status of their investments and any eventual return of those investments. Without a Receiver, there is a threat that Dragul will continue to dissipate any remaining assets.

23. Likewise, in the very real possibility of private litigation brought by investors against Dragul and their fellow investors, the absence of a receiver will result in a potentially unfair distribution of remaining assets to some investors and not to others. This is particularly likely if private litigation proceeds without any oversight. This case involves fraud and misrepresentation made to numerous investors over the course of at least seven years. A receiver will evaluate all the facts regarding Dragul, GDARES, GDAREM, and any related entities, as well as the validity of any distributions to investors made by Dragul and GDA. Private litigants, however, have no duty to other investors and have every incentive to collect as much money as possible without regard to the impact on the other victims, each of whom has a valid claim on a part of any assets recovered.

**IV. An appointed receiver will not do more harm than good.**

24. A receivership is an appropriate equitable remedy under § 11-51-602(1), C.R.S., where the Commissioner is able to show that there are violations

of the act and those violations threaten the Commissioner's ability to protect investors and maintain public confidence in securities markets. There can be no doubt that the conduct of the Defendants shakes the confidence of investors and the investing public in securities markets. Whenever securities issuers omit material information to obtain investor funds and relay false statements to investors, confidence in the securities markets is undermined.

25. A receiver will step in as an officer of the court, and act as a neutral party to protect the assets of GDA and all related entities, as well as protect the investors during the pendency of this matter. A receiver will also ensure that the interests of all investors are fairly represented and that any recovered assets are not returned to investors in an arbitrary fashion.

## CONCLUSION

26. A receiver is appropriate and necessary in this case for the following reasons. First, a receiver is necessary to take over the corporate books and assets of GDA and to preserve those assets during the pendency of this action. A receiver is also necessary to reconstruct Dragul's fraudulent conduct to determine accurately and equitably how to marshal and distribute the remaining assets to injured investors.

WHEREFORE, the Commissioner respectfully requests that this Court enter orders as follows:

A. Issue an Order Appointing Receiver, in the form submitted, naming Randel Lewis as receiver over Defendants Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc.

B. Enter and issue such further and other relief as the Court deems just and equitable.

DATED this 15<sup>th</sup> day of August, 2018.

CYNTHIA H. COFFMAN  
Attorney General

*/s/ Matthew J. Bouillon Mascareñas*

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Commissioner

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<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC</p> <p>Defendants.</p>	<p>DATE FILED: August 15, 2018 1:55 PM FILING ID: 45E3BDA686E4D CASE NUMBER: 2018CV33011</p> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>BY THE COURT</p>	<p>Case No.:</p> <p>Courtroom:</p>
<p><b>ORDER APPOINTING RECEIVER</b></p>	

THIS MATTER having come before this Court on the *Ex Parte* Verified Combined Motion for Temporary Restraining Order, Order Freezing Assets, Order of Non-Destruction of Records, and Preliminary Injunction with Supporting Legal Authority (the “Motion”) against Defendants Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), and GDA Real Estate Management, Inc. (“GDAREM”), filed by Plaintiff Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), and the Court, being otherwise fully advised in the premises,

HEREBY FINDS:

1. The Court has jurisdiction and venue is proper pursuant to C.R.C.P. 98(a).
2. Dragul is an individual and a resident of Colorado, and the manager of GDARES and GDAREM, among other businesses.
3. GDARES is Colorado limited liability company with its principal place of business at 8301 East Prentice Avenue, Suite 210, Greenwood Village, Colorado 80111. GDARES invests, owns, and operates commercial real estate properties.
4. GDAREM is a Colorado limited liability company with its principal place of business at 8301 East Prentice Avenue, Suite 210, Greenwood Village, Colorado 80111. GDAREM invests and manages commercial real estate properties.
5. The allegations in the Verified Motion and Complaint establish grounds for the appointment of a Receiver *ex parte* without bond or other security for each of Dragul, GDARES, GDAREM, as well as for their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses as set forth herein.
6. The appointment of a receiver is reasonable and necessary for the protection of the assets and the rights of the parties in this case. Based on the standards set forth in C.R.C.P. 66 and case law thereunder, and based on legal and factual arguments of the Plaintiffs, as set forth in the Verified Complaint and Motion, the Commissioner is entitled to entry of this Order.

7. C. Randel Lewis, of Foundation Ltd. has been determined by the Plaintiffs and the Court suitable to serve as Receiver for Dragul, GDARES and GDAREM, as set forth in this Order. His business address is 1600 Wynkoop Street, Suite 200, Denver, CO 80202.

IT IS THEREFORE ORDERED THAT:

8. C. Randel Lewis (“the Receiver”) is hereby appointed as Receiver for Dragul, GDARES, GDAREM, and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights, claims, and causes of action, wherever located, including without limitation the “LLC Entities” identified in the Commissioner’s Motion and Complaint for Injunctive and Other Relief (the “Receivership Property,” and altogether this “Receivership Estate”). Consistent with Colorado’s dissolution statutes and applicable law, and as set forth in greater detail below, the Receiver may, in the exercise of his reasonable judgment, investigate any claims and causes of action which may be pursued for the benefit of Dragul, GDARES, GDAREM, their creditors, members, and equity holders, and make recommendations to interested parties and this Court regarding the prosecution of any such claims and causes of action; establish a process for the assertion of claims against the Receivership Estate; make recommendations to this Court for the allowance and payment of such claims; and investigate and make

recommendations to this Court for the sale or distribution of any remaining Receivership Property, or the proceeds thereof, pursuant to the terms hereof.

9. Dragul, GDARES, GDAREM, and all persons in active participation with them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (collectively, the “Representatives”), are hereby ordered to deliver immediately to the Receiver or his agents all of the Receivership Property and to fully cooperate with the Receiver including, but not limited to, providing the Receiver all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials; together with stock certificates or other indicia of ownership of any subsidiaries or related companies, and any and all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials, related to the operation of any subsidiaries or related companies. Dragul, GDARES, GDAREM and their Representatives, when necessary or when requested, shall explain the operation, maintenance and management of the Receivership Property, including any subsidiaries or related

entities or companies, to the Receiver or his agents, without compensation therefor. Any claims for nonpayment for services shall not be used as a defense to turning over Receivership Property. All privileges in connection with professional representation of GDARES and GDAREM shall accrue to the sole benefit of the Receiver and the Receivership Estate and may only be waived by the Receiver. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of any Representatives or any other foregoing persons acting on behalf of or for Dragul, GDARES and GDAREM, to comply fully and completely with this Order.

10. Any creditors of Dragul, GDARES or GDAREM that are in the possession of, or have taken any action to seize any books, records, or assets of the Receivership Estate (hereinafter called "Creditors") and all persons in active participation with such Creditors, including without limitation, such Creditors' officers, managers, members, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (hereafter called "Creditors' Representatives") are hereby ordered to deliver immediately to the Receiver all of the Receivership Property in such Creditors' or Creditors' Representatives' possession, and to fully cooperate with the Receiver in connection with such turnover. Any claims against Dragul, GDARES or GDAREM shall not be used as a defense to turning over as set forth in this paragraph. The Receiver may request supplemental authority from this Court

upon proper motion, if necessary, to obtain the cooperation of Creditors or Creditors' Representatives or any other foregoing persons acting on behalf of or for the Creditors to comply fully and completely with this Order.

11. If the Receiver determines, after reasonable inquiry that a person or entity is in violation of the turnover provisions set forth in Paragraphs 9 and 10 of this Order, the Receiver is instructed to give written notice thereof to the person or entity violating such provisions, with a copy of this Order attached, demanding turnover of such Receivership Property. If the person or entity in possession fails or refuses to turn over the Receivership Property after receiving notice, the Receiver shall file a Request for an Order to Show Cause with this Court.

12. The Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court, except as expressly provided herein:

(a) To take from Dragul's, GDARES' and GDAREM's Representatives, and all persons acting in participation with Dragul, GDARES and GDAREM, and from Creditors and Creditors' Representatives, immediate possession and control of all of the assets of Dragul, GDARES and GDAREM, including the Receivership Property, to the exclusion of Dragul, GDARES and GDAREM, and their Representatives or all persons acting in participation with

Dragul, GDARES and GDAREM, and Creditors and Creditors' Representatives;

(b) To exercise such control over all subsidiaries and related companies owned or managed by Dragul, GDARES and GDAREM, consistent with the governance documents or operating agreements applicable to the subsidiaries and related companies, including to exercise all rights of Dragul, GDARES and GDAREM to elect new officers, directors, or management of the subsidiaries and related companies, in their respective capacities and not as an assignee;

(c) To take charge of the subject Receivership Property, regardless of where such property is located, including, but not limited to, bank accounts, cash, checks, drafts, notes, security deposits, bonds, books, records, contracts, claims, leases, files, furniture, certificates, licenses, fixtures and equipment, property located in any real property either owned or leased by Dragul, GDARES and GDAREM and any personal property located in storage facilities;

(d) As appropriate, to take possession of offices of Dragul, GDARES and GDAREM and to change any and all locks on such offices and to limit access to such offices to the Receiver and his agents;

(e) To collect in a timely fashion all accounts receivable and other obligations due to Dragul, GDARES and GDAREM, including, as necessary to negotiate and deposit checks made payable to them into accounts maintained by the Receiver and as necessary to review mail directed to Dragul, GDARES and GDAREM and their Representatives in order to collect incoming accounts

receivable and other obligations due and owing to Dragul, GDARES and GDAREM;

(f) To contract for and obtain such services as utilities, supplies, equipment and goods as is reasonably necessary to manage, preserve, and protect the Receivership Property as the Receiver may reasonably deem necessary; however, no contract shall extend beyond the termination of the Receivership without the permission of the Court;

(g) To obtain, review and analyze Dragul, GDARES and GDAREM books and records relating to the Receivership Property, including without limitation accounting records, banking records, tax records, and any other books or documents necessary to perform the duties of the Receiver;

(h) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(i) To borrow from third parties on such reasonable terms as may be acceptable to the Receiver, such funds that may be required for the fulfillment of the Receiver's obligations hereunder, and to meet the needs of the Receivership Estate in excess of the income from the Receivership Estate. The Receiver may issue Receiver's Certificates secured by all assets of the Receivership Estate, including, but not limited to, all claims on insurance policies, surety bonds, and similar assets of the Receivership Estate, in exchange for funds advanced during the term of this



receivership, and such Receiver Certificates shall be a first and prior lien and preference claim upon the Receivership Property or a portion of it at the Receiver's election;

(j) To open and maintain accounts at a financial institution insured by the federal government in the name of the Receiver and to deposit all sums received by the Receiver into such account and to make such withdrawals as are necessary to pay the reasonable costs and expenses incurred by the Receiver;

(k) To exercise all rights of an owner incidental to the ownership of the Receivership Property;

(l) To hire and pay general counsel, accounting, and other professionals as may be reasonably necessary to the proper discharge of the Receiver's duties, and to hire, pay and discharge the personnel necessary to fulfill the obligations of the Receiver hereunder, including the retention of companies affiliated with the Receiver, or other third parties to assist the Receiver in the performance of its duties hereunder, all within the Receiver's discretion;

(m) After consultation with the Commissioner and agreement on the amount and funding of a budget related thereto, to institute such legal actions as the Receiver deems reasonably necessary, including actions necessary to enforce this Order to protect the Receivership Property, and to prosecute causes of action of Dragul, GDARES and GDAREM against third parties in this or any other jurisdictions, including foreign countries;

(n) After consultation with the Commissioner and agreement on the amount and funding of a budget related to anticipated out of pocket expenses related thereto, to retain special counsel, and other professionals as needed, on a contingency fee basis containing commercially reasonable terms, as determined by the Receiver in the exercise of his reasonable business judgment, to recover possession of the Receivership Property from any persons who may now or in the future be wrongfully possessing Receivership Property or any part thereof, including claims premised on fraudulent transfer or similar theories, in this or any other jurisdictions, including foreign countries;

(o) To notify any and all insurers under insurance policies and issuers of surety bonds affecting the Receivership Property of the pendency of these proceedings, and that any proceeds paid under any such insurance policy or surety bond shall be paid to the Receiver to be administered for the benefit of all creditors of Dragul, GDARES and GDAREM;

(p) To pay, at the Receiver's discretion, any obligations incurred by Dragul, GDARES and GDAREM prior to the appointment of the Receiver that are deemed by the Receiver to be necessary or advisable for the preservation or protection of the Receivership Property;

(q) To notify and make demands on any insurers under insurance policies and issuers of any such policies or surety bonds affecting Receivership Property for the turnover and payment of proceeds to the Receiver for the benefit of

Creditors, and as necessary, and after consultation with Plaintiffs and agreement on the amount and funding of a budget related thereto, commence litigation against such insurers and/or sureties in order to recover the proceeds of such insurance policies and surety bonds for the benefit of Dragul, GDARES and GDAREM and their creditors; and further provided that, in connection with any such claims or causes of action, the Receiver shall not be deemed to be asserting claims of Dragul, GDARES and GDAREM pursuant to any "insured vs. insured" exclusions that may be set forth in such insurance policies or surety bonds, but rather shall, in accordance with subparagraph (p) below, be deemed to be prosecuting claims of creditors of Dragul, GDARES and GDAREM in connection therewith;

(r) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of Creditors, in order to assure the equal treatment of all similarly situated Creditors;

(s) To sell or otherwise dispose of any personal property of the Receivership Estate, provided that Court approval shall not be required of any sale or disposition of any property being sold for a sales prices of less than \$10,000;

(t) To establish a procedure for the assertion of claims against Dragul, GDARES and GDAREM or the Receivership Property, for the resolution of any disputes regarding such claims, and for the distribution of the proceeds of the Receivership Property;

(u) To issue subpoenas, institute, prosecute, defend, compromise, or adjust such actions or proceedings in state or federal courts now pending and hereafter instituted, as may in his discretion be advisable or proper for the protection, preservation and maintenance of the Receivership Assets or proceeds therefrom;

(v) To do such other and further lawful acts as the Receiver reasonably deems necessary for the effective recovery of the Receivership Property, and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado, or the laws of the United States; and

(w) To do any and all acts necessary, convenient or incidental to the foregoing provisions of this Order and this equity receivership.

13. The Receiver is further directed to review the books and records of Dragul, GDARES and GDAREM, to account for receipts and disbursements of their funds, and to provide a report and accounting of their operations, for a period of time determined by the Receiver to be reasonable under the circumstances, to this Court and to the Commissioner, and any parties that have filed an entry of appearance herein. An initial report shall be filed with the Court within ninety (90) days of entry of this Order. In such report, the Receiver shall identify any claims and causes of action of Dragul, GDARES and GDAREM, identified as of the date of such report, including under insurance policies, on surety bonds, against any of

their representatives or third parties, or arising under the Uniform Fraudulent Transfer Act, or any similar statute; and the Receiver's recommendations related thereto. The Receiver shall be authorized to act on his recommendations upon agreement with the Commissioner regarding budgets related to the prosecution thereof, and funding of such litigation, as set forth in this Order.

14. To the extent they have not already done so, Dragul, GDARES and GDAREM and their representatives, Creditors, and Creditors' Representatives, and their agents, are ordered to deliver over immediately to the Receiver, or his agents, all Receivership Property, including, but not limited to, unpaid bills, bank accounts, cash, checks, drafts, notes, security deposits, books, records, contracts, claims, leases, deeds, files, furniture, certificates, licenses, fixtures, escrow, sales contracts, equipment, and stock certificates or other evidence of ownership related to the Subsidiaries, relating to the Receivership Property and shall continue to deliver immediately to the Receiver any such property received at any time in the future.

15. Any parties holding claims against Dragul, GDARES and GDAREM or the Receivership Estate shall not be entitled to participate as creditors in the distribution of recoveries from the Receiver's administration of the Receivership Estate and collection and liquidation of the assets thereof, unless such parties: (I) agree not to file or prosecute independent claims such parties may have (a) on insurance policies and surety bonds issued in connection with Dragul, GDARES and

GDAREM operations, or (b) against Dragul, GDARES and GDAREM or any of their Representatives, and (II) promptly dismiss any lawsuits currently pending in connection therewith.

16. If necessary, the Receiver may request of this Court letters rogatory or commissions or supplemental orders as necessary to require out-of-state directors, officers, employees, agents, representatives, managers, attorneys, accountants, banks, contractors, or any other person acting in t participation with Dragul, GDARES and GDAREM and their Representatives, through the appropriate court of appropriate jurisdiction, to comply with any of the Orders of this Court.

17. The Receiver shall be compensated for his services at the rate of \$400 per hour, together with reimbursement for all reasonable costs and expenses incurred in connection with his duties, which compensation and reimbursement shall be paid from the assets of the Receivership Estate, proceeds of the disposition of Receivership Property, or the proceeds of loans secured by the Receiver.

18. Except as may be expressly authorized by the Court, Dragul, GDARES and GDAREM and all persons in active participation them, including without limitation, their officers and directors, partners, managers, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them, are enjoined from:

(a) Collecting any revenues from the Receivership Property, or withdrawing funds from any bank or other depository account relating to the

Receivership Property;

(b) Binding, or purporting to bind, Dragul, GDARES and GDAREM or the Receivership Estate, to any contract or other obligation;

(c) Holding themselves out as, or acting or attempting to take any and all actions of any kind or nature as Representatives of Dragul, GDARES and GDAREM, or subsidiary entities they own or control, or in any other purported capacity, except with the permission of the Receiver or by further order of this Court; and

(d) Otherwise interfering with the operation of the Receivership Property, or the Receiver's discharge of his duties hereunder.

(e) Upon receipt of a copy of this Order, or upon actual knowledge of the entry of this Order, any other person or business entity shall also be bound by this Order.

19. Should the Receiver determine that tax returns were not filed for periods prior to the entry of this Order for which tax returns were required of Dragul, GDARES and GDAREM, as funds are available in the Receivership Estate, the Receiver shall use reasonable efforts to have prepared and filed tax returns for any missing periods prior to the entry of this Order. To the extent it is determined that any outstanding tax obligations are due to the Internal Revenue Service, the Colorado Department of Revenue, or any other taxing authorities for any period of time prior to the entry of this Order, such taxes shall be paid, as funds are available

in the Receivership Estate. The Receiver shall not be considered a responsible person, or otherwise have any personal liability, for any unpaid tax obligations of Dragul, GDARES and GDAREM (including for any trust fund taxes, such as payroll or sales tax) withheld but not paid to the proper taxing authority for any period prior to the entry of this Order. The Receiver shall file tax returns for periods commencing on the date of the entry of this Order through completion of the dissolution of Dragul, GDARES and GDAREM and discharge of the Receiver, as required by applicable federal, state, or local law.

20. The Receiver is directed and empowered to apply revenues, incomes and sales proceeds collected by the Receiver:

(a) first, to payment of costs and expenses of the Receivership Estate, and including the costs and expenses of preserving and liquidating the Receivership Property, taxes incurred from the appointment of the Receiver through the conclusion of the Receivership Proceeding and discharge of the Receiver, and to compensation due the Receiver and any employees, consultants, or professionals retained by the Receiver;

(b) second, to the payment of any outstanding Receiver's Certificates;

(c) third, to creditors holding obligations secured by the Receivership Property, in the order of their priority of record;

(d) fourth, to the payment of any unsecured tax obligations



determined to be due for periods prior to the entry of this Order, pursuant to the tax filing obligations imposed on the Receiver;

(e) fifth, to the payment of unsecured creditors determined to hold legitimate claims against Dragul, GDARES and GDAREM pursuant to the claims administration procedure adopted by the Receiver, in their legal order of priority; and

(f) sixth, to the preferred and common partners, members, or other equity interest holders of Dragul, GDARES and GDAREM, as their rights are defined in their governing documents, with the exception of any rights or interests held or owned by or for the benefit of Dragul, GDARES or GDAREM, or any insiders or related parties, with all such rights or interests to be determined by the Court.

21. The debts or liabilities incurred by the Receiver in the course of his operation and management of the Receivership Property, whether in the Receiver's name or in the name of the Receivership Property, shall be the debts and obligations of the Receivership Estate only, and not of the Receiver in a personal capacity.

22. The Receiver shall enjoy and have the judicial immunity usually applicable to receivers in law and equity. All who are acting, or have acted, on behalf of the Receiver at the request of the Receiver are protected and privileged with the same judicial immunity as the Receiver has under this Order.

23. Nothing herein contained shall be construed as interfering with or invalidating any lawful lien or claim by any person or entity.

24. It is further Ordered that all actions in equity or at law against the Receiver, Dragul, GDARES and GDAREM, or the Receivership Estate are hereby enjoined (and any actions already pending are hereby stayed), pending further action by this Court. The Receiver is instructed to file a request for an Order to Show Cause if any business, entity, or person commences or continues the prosecution of any action in any other court seeking relief in equity or at law against the Receiver, Dragul, GDARES and GDAREM or the Receivership Estate without first seeking relief from this stay of proceedings.

25. The Receiver shall continue in possession of the Receivership Property until the completion of the disposition of this litigation which may anticipate the wind-up of the affairs of Dragul, GDARES and GDAREM.

26. Dragul, GDARES and GDAREM, and their Representatives, or anyone else in possession of records related to the Receivership Property, shall respond in a timely fashion to requests and inquiries from the Receiver concerning such records, record keeping protocols, filing systems, information sources, algorithms and processes used to store, compile, organize, or manipulate data, and similar matters. With respect to any information or records stored in computer-readable for or located on computers Dragul, GDARES and GDAREM, and their Representatives, the person in possession of such information or records shall

provide the Receiver full access to all media on which such records are located and all computers and the necessary application, system, and other software necessary to review, understand, print, and otherwise deal with such computerized records and all passwords and security codes necessary to access such computerized records, regardless of whether such records are separate or commingled with other information.

27. The Receiver may at any time, on proper and sufficient notice to all parties who have appeared in this action, apply to this Court for further instructions whenever such instructions shall be deemed to be necessary to enable the Receiver to perform the duties of his office properly.

28. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of (a) any substance deemed a "hazardous substance", "pollutant," "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as

"Hazardous Substances"), without first applying for an obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken and to be taken by the Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

29. Pursuant to C.R.C.P. 66(d)(3), the Receiver shall provide written notice of this action and entry of this Order to any persons in possession of Receivership Property or otherwise affected by this Order, including all known Creditors of Dragul, GDARES and GDAREM, subsidiaries and any their respective Representatives.

30. After the initial report required pursuant to this Order, the Receiver shall make periodic reports of the condition of the Receivership Estate on intervals to be agreed to by the Receiver and the Commissioner as is reasonably necessary to provide timely reporting of the operations of the Receivership Estate to all interested parties, without imposing undue burden and expense on the Receivership Estate. The Receiver shall not be required to, but as reasonably necessary, may

follow generally accepted accounting principles or use auditors or accountants in the preparation of his reports to the Court.

31. Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects to the request for Court approval within ten (10) days after service by the Receiver or written notice of such request. Service of motions by facsimile and electronic transmission is acceptable.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver is hereby authorized, empowered and directed to apply to this Court, with notice to the Commissioner for issuance of such other Orders as may be necessary and appropriate in order to carry out the mandate of this Court.

IT IS FURTHER ORDERED that this Order shall be effective immediately and will remain in effect until terminated or modified by further Order of this Court.

DATED this \_\_\_\_\_ day of August, 2018.

BY THE COURT:

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Hon. District Court Judge