

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 (720) 865-8612</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: Gerald Rome, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	
<p>Attorneys for Receiver: Michael T. Gilbert, #15009 Patrick D. Vellone, #15284 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 pvellone@allen-vellone.com mgilbert@allen-vellone.com rsternlieb@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION TO APPROVE FORBEARANCE AGREEMENT WITH AFF II DENVER, LLC</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), hereby asks the Court

to approve a Forbearance Agreement (the “Forbearance Agreement”), effective as of October 1, 2018 (the “Effective Date”), by and between (i) the Receiver; (ii)(a) Happy Canyon Box 17 A, LLC, a Delaware limited liability company; (b) Happy Canyon Box 17 B, LLC, a Delaware limited liability company; (c) Happy Canyon Box 17 C, LLC, a Delaware limited liability company ((ii)(a)-(c), collectively, the “Marketplace Borrowers”); (d) HC Shoppes 18 A, LLC, a Delaware limited liability company; and (e) HC Shoppes 18 B, LLC, a Delaware limited liability company ((ii)(d) and (e), collectively, the “Shoppes Borrowers” and together with the Marketplace Borrowers, the “Borrowers”), and (iii) AFF II Denver, LLC (“Ardent” or the “Lender”).

THE UNDERLYING LOAN AND SECURITY DOCUMENTS

1. On or around July 27, 2018, the Shoppes Borrowers and Ardent entered into, among other agreements, the Loan and Security Agreement by and among the Shoppes Borrowers and Lender, as amended by First Amendment dated August 7, 2018, as evidenced by a Promissory Note in the original principal amount of \$19,500,000.00 (collectively, the “Shoppes Loan”). Dragul provided a guaranty with respect to the Shoppes Borrowers’ obligations under the Shoppes Loan.

2. The Shoppes Loan is secured by those security documents (the “Shoppes Security Documents” and together with the Shoppes Loan, the “Shoppes Loan Documents”) also entered into by and among the Shoppes Borrowers and Ardent on or around July 27, 2018, including, but not limited to: (i) the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, for the

benefit of Lender, as amended by First Amendment to Deed of Trust dated August 7, 2018 and (ii) related UCC-1 Financing Statements. The Shoppes Security Documents encumber three (3) parcels of real property located in Colorado (the “Shoppes Real Property”)¹ and other collateral.

3. On or around August 7, 2018, the Marketplace Borrowers and Ardent entered into, among other agreements, the Loan and Security Agreement by and among the Marketplace Borrowers and Lender, as evidenced by that Promissory Note in the original principal amount of \$8,900,000.00 (collectively, the “Marketplace Loan” and together with the Shoppes Loan, the “Loans”). Dragul provided a guaranty with respect to the Marketplace Borrowers’ obligations under the Marketplace Loan.

4. The Marketplace Loan is secured by those security documents (the “Marketplace Security Documents” and together with the Marketplace Loan, the “Marketplace Loan Documents” and collectively with the Shoppes Loan Documents, the Forbearance Agreement and any amendments, modifications or supplements to the same, the “Loan Documents”)² also entered into by and among the Marketplace Borrowers and Ardent on or around August 7, 2018, including, but not limited to: (i) the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, for the benefit of Lender; and (ii) related UCC-1 Financing

¹ A description of the Shoppes Real Property is included in Exhibit A of the Forbearance Agreement, identified as “The Shoppes.”

² A complete list of the Loan Documents, except for the Forbearance Agreement, can be found in Schedule 2 of the Forbearance Agreement.

Statements. The Marketplace Security Documents encumber two (2) parcels of real property located in Colorado (the “Marketplace Real Property” and together with the Shoppes Real Property, the “Real Properties”)³ and other collateral (the collateral secured by (a) the Shoppes Security Documents and (b) the Marketplace Security Documents, together with the Real Properties, the “Property”).

5. The Loan Documents were executed to provide the Borrowers with sufficient funding to cover the costs and expenses related to the construction of shopping centers at and the addition of certain fixtures upon the Real Properties.

BACKGROUND

6. On August 15, 2018, Gerald Rome, Securities Commissioner for the State of Colorado (the “Commissioner”), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

7. On August 29, 2018, the Commissioner, Dragul and the GDA Entities filed the Stipulated Motion for Appointment of Receiver, seeking the appointment of a receiver over Dragul and the GDA Entities pursuant to § 11-51-602(1), C.R.S, and C.R.C.P. 66.

8. On August 30, 2018, the Court entered the Stipulated Order Appointing Receiver (the “Receivership Order”), which appointed Harvey Sender of Sender & Smiley LLC as receiver for Dragul and the GDA Entities, as well as for their

³ A description of the Marketplace Real Property is included in Exhibit A of the Forbearance Agreement, identified as “Marketplace.”

respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses, including, but not limited to, the Borrowers, (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

9. The Receivership Order grants the Receiver the authority to, among other things:

- a. pay obligations incurred by Dragul and the GDA Entities prior to the appointment of the Receiver which are deemed necessary or advisable for the preservation or protection of the Receivership Property (Receivership Order at 8, ¶ 13(h); Receivership Order at 11, ¶ 13(q));
- b. borrow funds from third parties to meet the needs of the Receivership Estate and, in exchange for funds advanced during the term of the receivership, issue Receiver’s Certificates, which shall be a first and prior lien and preference claim on all or a portion of the Receivership Property (Receivership Order at 9, ¶ 13(i));
- c. sell or otherwise dispose of property of Dragul and the GDA Entities or the Receivership Estate, and obtain Court approval for any sale or disposition of property for greater than \$10,000 (Receivership Order at 12, ¶ 13(t)); and
- d. establish procedures for (x) the assertion of claims against Dragul, the GDA Entities, or the Receivership Property, (y) the resolution of any disputes regarding such claims, and (z) the distribution of proceeds of the Receivership Property (Receivership Order at 12, ¶ 13(u)).

10. Under the Receivership Order, parties with claims against Dragul, the GDA Entities or the Receivership Estate are prohibited from receiving a distribution from the Receiver’s administration of the Receivership Estate, unless such parties agree not to file or prosecute such claims. Receivership Order at 14, ¶ 16.

11. The Receivership Order enjoins all actions in equity or at law against the Receiver, Dragul, the GDA Entities or the Receivership Estate, pending relief from the Court to proceed with any such action. Receivership Order at 18, ¶ 26.

12. On or about September 15, 2018, due to, among other alleged defaults under the Loan Documents, the Receiver's appointment (the "Existing Defaults"), Ardent sent written notices of default of the Loans to the Receiver, the Borrowers and Dragul.

13. As noted in paragraph 5 above, the Loans were executed to provide necessary funding for the construction of shopping centers at and the addition of certain fixtures upon the Real Properties. The contractors on those projects have walked off the job because they have not been paid for work performed at the Property since the appointment of the Receiver and funds for tenant improvements at the shopping centers are not being advanced, leaving tenants and proposed tenants at the shopping centers at risk of incurring obligations with respect to premises for which the construction may never be completed and the tenants or proposed tenants may never be able to occupy.

14. To ensure continued funding and build out of the shopping centers and any fit-out and capital improvements work at the Property that the Borrowers and Dragul committed to complete under the Loan Documents and/or certain binding leases executed prior to the entry of the Receivership Order (the "Work"), the Receiver

has entered into the Forbearance Agreement with Ardent, a copy of which is submitted with this Motion as **Exhibit 1**.

KEY TERMS AND CONDITIONS OF THE FORBEARANCE AGREEMENT

15. The parties entered into the Forbearance Agreement to memorialize the terms and conditions attendant to Lender's agreement to refrain from exercising certain rights and remedies under the Loan Documents for a limited time in response to the Existing Defaults.

16. The following are key terms and conditions of the Forbearance Agreement to which the parties have agreed:⁴

- a. As of September 15, 2018, the Borrowers and Dragul are indebted to the Lender (i) under the Marketplace Loan, in an aggregate amount not less than \$4,085,461.25 and (ii) under the Shoppes Loan, in an aggregate amount not less than \$18,684,403.60, plus (iii) any fees, expenses, costs and other charges of the Lender as permitted under the Loan Documents ((i)-(iii), collectively, the "Debt"), and such Debt is currently due and payable without offset, defense, or counterclaim of any kind. Forbearance Agreement at 2, ¶ 2.1.
- b. Because of the Existing Defaults, subject to the forbearance provided under the Forbearance Agreement, Lender is entitled to exercise and enforce any and all rights and remedies available to Lender under the Loan Documents and/or applicable law. Forbearance Agreement at 2, ¶ 2.2.
- c. Provided no Forbearance Termination Event (defined below) has occurred, and subject to the satisfaction of the Funding

⁴ Notwithstanding the summary of specific provisions of the Forbearance Agreement in this Motion, if there are any inconsistencies between the of the Agreement in this Motion and the Forbearance Agreement itself, the terms of the Forbearance Agreement control.

Conditions⁵ set forth in paragraph 2.16 of the Forbearance Agreement, the Lender, in accordance with paragraph 2.13 of the Forbearance Agreement, will release funds deposited into the Development Reserves, in accordance with the then-applicable Budget, for the Receiver and/or the Borrowers and Dragul, as applicable, to pay for all or a portion of the Work. Forbearance Agreement at 2, ¶ 2.4.

- d. As security for the Debt, the Lender holds a valid, perfected, first-priority security interest, lien, and mortgage against the Property. Forbearance Agreement at 2, ¶ 2.5.
- e. The Receiver may not issue any Receiver's Certificates secured by the Property. Forbearance Agreement at 2, ¶ 2.6.
- f. The Receiver will obtain entry of an order by the Court approving the Forbearance Agreement. Forbearance Agreement at 3, ¶ 2.7.
- g. Written notices of default of the Loans were properly delivered to the Receiver, the Borrowers, and Dragul. Forbearance Agreement at 3, ¶ 2.8.
- h. Since August 31, 2018, the Loans have been accruing, and continue to accrue, Default Interest at a rate of fifteen percent (15%) per annum. Forbearance Agreement at 3, ¶ 2.9.
- i. Default Interest will accrue on any additional advances made under the Loan Documents, including, without limitation, advances made with respect to the Work. Forbearance Agreement at 3, ¶ 2.9.
- j. Unless and until the occurrence of (i) a breach or default by the Receiver, the Borrowers or Dragul under any provision of the Forbearance Agreement that is not cured within any applicable grace or cure period, (ii) any of the Borrowers or Dragul becomes the subject of a Bankruptcy Action, (iii) a breach or default, other than the Existing Defaults, by the Receiver, the Borrowers or Dragul under any term or condition of the Loan Documents, or (iv) the Funding Conditions have not been fulfilled by

⁵ Capitalized terms used in paragraph 16 of this Motion but not otherwise defined herein shall have the meanings ascribed to them in the Forbearance Agreement or the Loan Documents, as applicable.

January 15, 2019 (each of (i), (ii), (iii) and (iv), a “Forbearance Termination Event”), Default Interest shall be payable to the Lender as follows: (i) eight percent (8%) per annum (the “Current Pay Default Interest”) shall be due and payable on each monthly Payment Date and (ii) seven percent (7%) per annum (the “Deferred Default Interest”) shall accrue and be added to the Debt and payable upon repayment of the Debt when the Transaction (defined below) is closed. Forbearance Agreement at 3, ¶ 2.9.

- k. To the extent the Lender does not receive the Current Pay Default Interest each month, the Lender may withdraw funds from the Interest Reserve to pay itself the amounts due and owing under the Loan Documents, and such amounts shall be added to the outstanding balance of the Loans and accrue interest. Forbearance Agreement at 3, ¶ 2.10.
- l. From October 1, 2018 through and including November 30, 2018 (the “Receiver Rent Collection Period”), the Receiver may collect and receive all rent payments from Tenants. During the Receiver Rent Collection Period, (i) to the extent funds are available after payment of (a) operating expenses and (b) a four percent (4%) management fee to the Receiver, the Receiver shall pay the Lender the then-due debt service with the Current Pay Default Interest, and (ii) the Receiver shall provide the Lender with monthly written reconciliation reports regarding rent collections and operating expenses of the Property. Forbearance Agreement at 3, ¶ 2.11.
- m. From and after December 1, 2018 (the “Lender Rent Collection Period”), the Lender may collect all rent payments from Tenants. During the Lender Rent Collection Period, the Receiver shall provide the Lender with monthly written reconciliation reports regarding rent collections and operating expenses of the Property along with draw requests to pay operating expenses and the Receiver’s management fee. After paying itself the then-due debt service with the Current Pay Default Interest, the Lender shall provide the Receiver with funds to pay operating expenses and the Receiver’s management fee. Forbearance Agreement at 3, ¶ 2.11.
- n. Funds in the Development Reserve shall bear interest at a fixed rate of three percent (3%) per annum. Forbearance Agreement at 4, ¶ 2.12.

- o. The Lender will waive the collection of the Minimum Interest Amount, but the unpaid portion of the Exit Fee will continue to be due and owing and be part of the Debt. Forbearance Agreement at 4, ¶ 2.14.
- p. Paragraph 16 of the Receivership Order will not be binding on the Lender. Forbearance Agreement at 4, ¶ 2.15.
- q. Lender's obligation to fund any future Advances is subject to the satisfaction of the Funding Conditions. Forbearance Agreement at 4, ¶ 2.16.
- r. All advances, when made, shall be deemed part of the Debt and fully secured under the Loan Documents. Forbearance Agreement at 5, ¶ 3.
- s. By no later than April 15, 2019, the Receiver and/or the Borrowers and Dragul, as applicable, must enter into a binding listing agreement with an institutional sales or financing broker to sell and/or refinance the Property, with the broker and the terms of any listing agreement subject to the Lender's written approval. Forbearance Agreement at 5, ¶ 4.
- t. By no later than August 30, 2019, the Receiver and/or the Borrowers and Dragul, as applicable, must (i) enter into a binding agreement with a buyer or lender (the buyer or lender and form of agreement must be acceptable to the Lender) to sell and/or refinance the Property that yields net proceeds or net refinance proceeds, as applicable, sufficient to repay the debt in full (the "Transaction"); (ii) obtain an order from the Court approving the Transaction; and (iii) close the Transaction. Forbearance Agreement at 5, ¶ 4.
- u. In the event of any future Bankruptcy Action, the Lender is entitled to (i) relief from the automatic stay of section 362 of the title 11 of the United States Code and (ii) exercise its available rights and remedies under the Loan Documents. Forbearance Agreement at 7, ¶ 8.1.1.
- v. None of the Receiver, the Borrowers or Dragul shall, under any circumstances, resist, hinder, or delay the Lender's enforcement of any rights and remedies the Lender may have under the

Forbearance Agreement and/or the other Loan Documents. Forbearance Agreement at 8, ¶ 9.2.

- w. Upon the earlier of (i) August 30, 2019 and (ii) the occurrence of a Forbearance Termination Event, without the need for further order of the Court, the Lender (A) shall be entitled to immediate relief from (x) any stay or injunction under the Receivership Order (including Paragraph 26 of the Receivership Order), (y) any other orders entered by the Court in connection with the Receivership Action or (z) applicable law and (B) may immediately enforce any and all rights or remedies under the Loan Documents or applicable law. Forbearance Agreement at 8, ¶ 9.3.

BASIS FOR APPROVAL

17. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver's settlement. In analogous bankruptcy contexts, courts must determine generally whether "the settlement is fair and equitable and in the best interests of the estate." When considering whether to approve a settlement, bankruptcy courts consider four primary factors: "the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views." *Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.)*, 213 B.R. 1020, 1022 (B.A.P. 10th Cir. 1997); *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 105 B.R. 971, 977 (D. Colo. 1989). Courts also recognize that some deference should be given to the business judgment of the Receiver. *See, e.g., In re OptInRealBig.com, LLC*, 345 B.R. 277, 291 (Bankr. D. Colo. 2006) (deferring to the business judgment of the bankruptcy trustee).

18. Considering these factors, the Court should approve the Forbearance Agreement. The Estate is in critical need of the funds and advances provided under the Loan Documents to complete the construction of and tenant build-out specifications at the Property. The Receiver believes the value of the Property will be maximized by entering into the Forbearance Agreement to allow for an orderly completion of the Property and orderly sale of the completed Property.

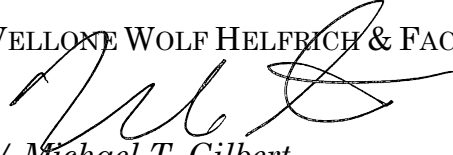
19. Funding under the Forbearance Agreement is necessary to preserve and protect the assets of the Receivership Estate. If the Forbearance Agreement were not approved, the Lender may seek relief of the Court to exercise its rights and remedies under the Loan Documents and/or applicable law to recover the funds and advances remitted pursuant to the Loans. If such relief were to be granted, the Receiver would not be able to conduct an orderly sale of the completed project and potentially recover monies for the Receivership Estate.

20. Under paragraph 34 of the Receivership Order, as a matter of course, the Court shall approve any motion filed by the Receiver unless an objection is received within ten (10) days after service or other written notice of the Receiver's motion.

WHEREFORE, the Receiver asks the Court to enter an order approving the Forbearance Agreement and for other relief as deemed appropriate.

Dated: December 6, 2018.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.



By: s/ Michael T. Gilbert

Michael T. Gilbert, #15009

Patrick D. Vellone, #15284

Rachel A. Sternlieb, #51404

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on December 6, 2018, a true and correct copy of the **Receiver's Motion to Approve Forbearance Agreement with AFF II Denver, LLC** was filed and served via the Colorado Courts E-Filing system to the following:

Robert W. Finke
Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203

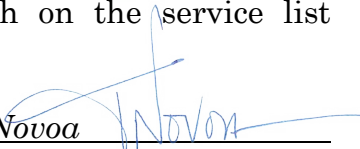
*Counsel for Gerald Rome, Securities
Commissioner*

Jeffery A. Springer, Esq.
Springer and Steinberg P.C.
1600 Broadway, Suite 1200
Denver, Colorado 80202

*Counsel for Defendants, Gary Dragul,
GDA Real Estate Services, LLC and
GDA Real Estate Management, LLC*

CERTIFICATE OF SERVICE ON KNOWN CREDITORS

A copy of the **Receiver's Motion to Approve Forbearance Agreement with AFF II Denver, LLC** will also be served by email (where the Receiver has email addresses), and/or by U.S. mail first-class, postage-prepaid (for those whose email addresses are unknown), to all currently known creditors of, and all investors in, the Receivership Estate. These addresses are set forth on the service list maintained in the Receiver's records.

By: /s/ Terri M. Novoa 

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this “**Agreement**”) is made and entered into effective as of October 1, 2018 (the “**Effective Date**”), by and between **HARVEY SENDER** having an address at Sender & Smiley, LLC, 600 17th Street, Suite 2800, Denver, Colorado 80202 (the “**Receiver**”), as receiver for Gary Dragul and all entities formerly under the control of Gary Dragul, **EACH OF THE ENTITIES LISTED ON SCHEDULE 1** (collectively, the “**Borrowers**”), **GARY DRAGUL** (the “**Guarantor**”) and **AFF II DENVER, LLC**, a Delaware limited liability company (the “**Lender**”).

R E C I T A L S:

WHEREAS, the Borrowers are the makers of and borrowers under, and the Guarantor is the guarantor under, certain loans and loan documents set forth on **Schedules 2 and 3** attached hereto (collectively, the “**Loan**” and such loan documents, together with this Agreement and any other amendments, modifications or supplements of this Agreement or to the Loan Documents hereafter entered into being collectively hereinafter referred to as the “**Loan Documents**”). Capitalized terms used but not defined herein have the meaning ascribed in the Loan Documents listed on **Schedule 2**;

WHEREAS, the Borrowers and the Guarantor are sometimes referred to in this Agreement collectively as the “**Borrower Parties**”.

WHEREAS, the Loan is secured by the deed(s) of trust, pledges, security agreements, financing statements and other security documents described on **Schedule 2**, as the same have been affected by any recorded amendments or modifications (collectively, the “**Security Documents**”; the Security Documents form a part of the Loan Documents for all purposes hereunder), encumbering real property located in Colorado and described on **Exhibit A** attached hereto (collectively, the “**Real Properties**”, each a Real Property) and other collateral (all such collateral, with the Real Properties, collectively, the “**Property**”).

WHEREAS, in response to certain defaults under the Loan Documents, including the judicial appointment of the Receiver for Guarantor and all entities formerly under the control of Guarantor, including, without limitation, the Borrowers, pursuant to that Stipulated Order Appointing Receiver (the “**Appointment Order**”) also filed on behalf of Defendants Gary Dragul and GDA Real Estate Service, and GDA Real Estate Management LLC, Case Number 2018CV33011 (the “**Receivership Action**”) filed August 30, 2018 at 8:27 AM in the District Court of Denver County, Colorado (“**State Court**”) (collectively, the “**Existing Defaults**”), the Loan is currently in default, and Lender has the right to foreclose on the Property;

WHEREAS, Lender delivered written notices of default of the Loan to Receiver and the Borrower Parties (the “**Default Notices**”), and the Loan has been accruing interest at the default rate under the Loan Documents (“**Default Interest**”) since August 31, 2018;

WHEREAS, Lender has agreed to forbear from exercising certain rights and remedies under the Loan Documents for a limited period of time subject to the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and the mutual covenants, conditions, and undertakings hereinafter set forth, and the incorporation of the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Receiver, the Borrower Parties and the Lender, intending to be legally bound, do hereby agree as follows:

A G R E E M E N T S:

1. **Recitals.** The foregoing Recitals are true and correct and are hereby adopted by the parties and incorporated herein and made a part of this Agreement.

2. **Acknowledgments.** The Receiver and the Borrower Parties acknowledge and agree with the Lender that:

2.1 The Borrower Parties are indebted to the Lender in the amount set forth in **Schedule 3** of this Agreement, plus any additional expenses, including legal fees and costs, incurred by the Lender (the “**Debt**”), and the Debt is now due and payable without offset, defense or counterclaim of any kind;

2.2 The existence of the Existing Defaults entitles the Lender to exercise and enforce any and all rights and remedies that the Lender may have under the Loan Documents, in respect of the Enforcement Action and/or under applicable law;

2.3 Partial releases of portions of the Property granted by the Lender from time to time during the existence of any default, among other things, do not constitute a waiver of any such default;

2.4 The Borrower Parties have entered into certain binding leases at the Property, as described on **Schedule 4-A**, pursuant to which Borrower Parties have committed to the tenants thereunder, and to Lender, to complete certain tenant fit-out and capital improvements work required by such Leases and the Loan Agreements (the “**Work**”). Borrower Parties and the Receiver have requested that Lender, and Lender hereby agrees, provided that no Forbearance Termination Event has occurred, and the Funding Conditions (defined below) have been satisfied, to release funds deposited into the Development Reserves for all or a portion of the Work. The current budget for the Work (the “**Budget**”) is attached to this Agreement as **Schedule 4-B**;

2.5 Lender holds a valid, perfected, first priority security interest, lien and mortgage against the Property;

2.6 Receiver shall not issue any Receiver’s Certificates secured by the Property;

2.7 Receiver shall seek approval by the State Court of this Agreement within five (5) days after the Effective Date and shall obtain entry of an order by the State Court approving this Agreement, in a form acceptable to Lender, within fifteen (15) days after the Effective Date;

2.8 The Default Notices were properly delivered to Receiver and Borrower Parties;

2.9 As of August 31, 2018, the Loan has been accruing Default Interest and such Default Interest of fifteen (15%) per annum continues to accrue. In addition, Default Interest of fifteen (15%) per annum will accrue on any additional Advances under the Loan Documents, including with respect to the Work and the Budget. Notwithstanding the foregoing to the contrary, unless and until a Forbearance Termination Event occurs, such Default Interest shall be payable to Lender as follows: (i) Default Rate Interest at the rate of eight percent (8%) per annum (the “**Current Pay Default Interest**”) shall be currently due and payable on each monthly Payment Date, and (ii) an additional Default Rate Interest at the rate of seven percent (7%) per annum (the “**Deferred Default Interest**”) shall accrue and be added to the Debt and payable upon repayment of the Debt as and when the Transaction (as defined below) is closed;

2.10 To the extent that net cash flow from the Properties is insufficient to pay (or Lender does not receive) monthly interest at the Current Pay Default Rate to Lender, Lender shall continue to have the right to withdraw funds from the Interest Reserve to pay itself amounts due and owing under the Loan Documents pursuant to the terms and conditions in the Loan Documents, which amounts shall be added to the outstanding balance of the Loan and accrue interest in accordance with the Loan Documents and this Forbearance Agreement;

2.11 Receiver shall be entitled to collect and receive all rent payments from Tenants from the period relating to October 1, 2018 through and including November 30, 2018 relating to time periods prior to November 30, 2018 (the “**Receiver Rent Collection Period**”). From and after December 1, 2018 (the “**Lender Rent Collection Period**”), Lender shall be entitled to collect and apply such rents as set forth in Section 3.1 below. During the Receiver Rent Collection Period, (i) interest at the Default Rate (i.e. the current pay 8%) shall be paid to Lender by Receiver, to the extent of available cash flow the Properties after payment of operating expenses and the Receiver’s Management Fee of four (4%), and (ii) Receiver shall send to Lender monthly written reconciliation reports with respect to rent collections and operating expenses relating to the Properties. During the Lender Rent Collection Period, Receiver shall deliver monthly written reconciliation reports to Lender, together with written draw requests to pay operating expenses (including the Receiver’s Management Fee of four (4%)) and Lender shall remit funds to Receiver to pay such amounts after payment to Lender of then-due debt service at the Current Pay Default Rate;

2.12 So long as funds remain in the Development Reserve, such funds shall bear interest at a fixed rate of interest equal to three percent (3%), as set forth in the Loan Agreement;

2.13 Lender shall disburse funds from the Development Reserve to Receiver to pay for the Work, provided, that as a condition precedent to such funding (which funding will be made as soon as the Work commences), Receiver shall provide Lender executed amendments (which are in form and substance reasonably acceptable to Lender) to each of the Leases extending the completion/termination dates for completion of the Work by the landlord thereunder;

2.14 Lender will waive the collection of the Minimum Interest Amount. The unpaid portion of the Exit Fee, however, will continue to be due and owing as set forth in the Loan Agreement and will be part of the Debt; and

2.15 Paragraph 16 of the Appointment Order shall not be binding on Lender.

2.16 It shall be a material condition precedent to Lender's obligation to fund any future Advances as provided in Section 2.4 above, or otherwise, that the following requirements have been satisfied and remain in full force and effect without further modification unless consented to by Lender in writing (collectively, "**Funding Conditions**"):

(i) Borrowers (or the Receiver on its behalf) shall have entered into an amendment or modification to the Lease by and among Borrowers as Landlord and Tony's Meats Inc., a Colorado corporation, dated November 15, 2017 (the "**Tony's Meats Lease**") to confirm that the Tony's Meats Lease remains in full force and effect and which lease contain such terms and conditions acceptable to Lender, in its sole discretion, or in the alternative, Borrowers (or the Receiver on its behalf) shall have enter into a binding lease with replacement tenant(s) at the Property for the space currently encumbered by the Tony's Meats Lease on such terms and conditions acceptable to Lender, in its sole discretion;

(ii) the general contractor providing services to complete the Landlord Work has agreed in writing to re-mobilize at the Property and is otherwise ready to commence work at the Property pursuant to the general construction contract, to Lender's satisfaction in its sole discretion; and

(iii) all required permits and licenses necessary for construction of the Landlord Work shall not have lapsed, terminated, or been withdrawn, as determined in Lender's sole discretion.

3. **Agreements Concerning Lender's Actions.** The Receiver and the Borrower Parties agree that the Lender may take the following actions:

3.1 Notify all tenants of the Property to send their rent payments and other obligations relating to periods from and after December 1, 2018, directly to an account designated by, and controlled by, the Lender pursuant to the Tenant Direction Lender attached hereto as **Schedule 5** and to collect such rents and payments, and to collect and apply such funds as set forth in Section 2.11 above;

3.2 Fund Advances (as defined in the Loan Documents) directly to contractors performing the Work; and

3.3 Hire and employ a construction consultant of Lender's choosing to monitor the progress of the Work.

The Receiver and the Borrower Parties further agree that so long as there are no material changes to the plans and/or construction contracts and/or Budget, neither the Receiver's nor any of the Borrower Parties' approval of any Advance shall be required, and neither the Receiver nor any of the Borrower Parties will prevent or otherwise adversely impact the pursuit of timely completion of the Work pursuant to the Budget, and/or Lender's continued funding of the Work. All Advances when made shall be deemed to be part of the Debt and continue to be secured by the Loan Documents.

4. **Agreements Concerning Receiver's and Borrower Parties' Actions.** The Receiver and the Borrower Parties agree that the Receiver and/or the Borrower Parties, as applicable, shall, no later than April 15, 2019, enter into a binding listing agreement for the Property for sale and/or refinance with an institutional sale or financing broker, the identity of whom, and the terms of such engagement being subject to the written approval of Lender. The Receiver and the Borrower Parties agree that the Receiver and/or the Borrower Parties, as applicable, shall, no later than August 30, 2019, (a) enter into a binding agreement to sell and/or refinance the Property, in a form acceptable to Lender, and with a buyer or lender who is acceptable to Lender which will yield net sale proceeds or net refinance proceeds, as the case may be, sufficient to repay the Debt in full (the "**Transaction**"), (b) obtain an order from the State Court approving such Transaction and (c) close such Transaction.

5. **Forbearances by the Lender.** Subject to the Receiver's and the Borrower Parties' compliance with the terms and conditions of this Agreement, the Lender agrees with the Receiver and the Borrower Parties as follows:

5.1 During the Forbearance Period, the Lender shall forbear from taking any action to consummate the exercise any remedies available to the Lender (each, an "**Enforcement Action**") based on the Existing Defaults. As used herein, the term "**Forbearance Period**" means the period commencing on the Effective Date and expiring on the earlier of (i) August 30, 2019 (the "**Forbearance Outside Date**") or (ii) the occurrence of any Forbearance Termination Event (hereinafter defined). Upon expiration or earlier termination of the Forbearance Period, the Lender shall have no further obligation to forbear from taking any Enforcement Action to collect the entire unpaid balance of the Debt and any unpaid interest, default interest, Deferred Default Interest, fees, charges, advances and expenses owing under the Loan Documents accruing from and after the

original date of the Existing Defaults or to otherwise pursue its rights and remedies under the Loan Documents. For the avoidance of doubt and without limitation, an Enforcement Action shall include a foreclosure sale.

5.2 The foregoing forbearances by the Lender shall not (i) apply to any other default by the Borrower Parties of any of their respective obligations under the Loan Documents other than the Existing Defaults, or (ii) prohibit the Lender from taking any necessary or appropriate actions, as determined by the Lender in its sole and absolute discretion, to preserve its rights or maintain its ability to exercise any available remedies in connection with the Existing Defaults under the Loan Documents, in respect of the Enforcement Action and/or under applicable law, including, without limitation, filing motions, pleadings or other documents to maintain the pending status of the Enforcement Action.

6. **Forbearance Termination Events.** The occurrence of any of the following events shall constitute a “**Forbearance Termination Event**” hereunder:

6.1 A breach or default by the Receiver or the Borrower Parties under any provision of this Agreement that is not cured within the applicable grace or cure period therefor, if any, including without limitation, the agreements and acknowledgements set forth in Sections 2,3, 4, 7, 8 and 9 of this Agreement;

6.2 Any of the Borrower Parties becomes the subject of a Bankruptcy Action (as defined below) other than the Receivership Action; and

6.3 Any of the Receiver or the Borrower Parties breach or default under any term or condition set forth in the Loan Documents (other than the express Existing Defaults for which this forbearance agreement relates).

6.4 The Funding Conditions, defined below, have not been fulfilled by January 15, 2019.

For purposes of this Agreement, the term “**Bankruptcy Action**” shall mean with respect to any Person (as hereinafter defined): (i) the commencement of any case, proceeding or other action on behalf of a Person under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors; (ii) the institution of proceedings to have a Person adjudicated as bankrupt or insolvent; (iii) consenting to the institution of bankruptcy or insolvency proceedings against a Person; (iv) the filing of a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of a Person of its debts under any federal or state law relating to bankruptcy or reorganization; (v) the seeking of or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or similar official for a Person or a substantial portion of its properties; or (vi) the making of any assignment for the benefit of a Person’s creditors; or (vii) admitting in writing such Person’s inability to pay its debts generally as they become due. The term “**Person**” shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Federal, state, county or municipal

government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

7. **Ongoing Property Obligations.** From and after the date of this Agreement, the Receiver or the Borrower Parties, as applicable, shall promptly and diligently operate the Property, maintain all insurance coverages required under the Loan Documents, and pay, or shall cause to be paid, the ad valorem property taxes due in respect of its Real Property for the 2018 calendar year and subsequent calendar years as and when due and shall promptly furnish the Lender with evidence of such payments, and shall otherwise comply with all of the terms and conditions of the Loan Documents. In order to facilitate payment of such operating expenses, insurance premiums and/or ad valorem property taxes for the Property, upon request from Receiver, together with evidence satisfactory to Lender of the applicable invoices to be paid, Lender shall agree to release such required funds to Receiver to the extent available from rents or other income received by Lender from tenants at the Property.

8. **Assurance of Future Non-Impairment and Protections in the Event of Any Future Bankruptcy Action.** The Receiver and Borrower Parties hereby further acknowledges, stipulates and agrees that in the event of any future Bankruptcy Action:

8.1.1 The Lender is under no obligation to consent to the use of cash collateral or to provide any additional credit support to the Borrower Parties or the Property, including with respect to advances for Work. Furthermore, the Lender shall be entitled to relief from the automatic stay of Section 362 of the Bankruptcy Code, which will not be opposed by the Receiver or Borrower Parties, and shall be entitled to exercise all of its available rights and remedies under the Loan Documents, including, without limitation, foreclosing on the Property; and

8.1.2 The Lender has no obligation to, and does not intend to agree to, accept any subsequent restructuring proposal or make any subsequent loans or other financial accommodations to any of the Borrower Parties. Each of the Borrower Parties acknowledges and agrees that the Lender's present objectives and goals may include, without limitation, insistence upon the full, timely and strict compliance with all terms and conditions of this Agreement and other Loan Documents, and a refusal to consider or accept any subsequent proposals for restructuring or further modifications of this Agreement or any of the other Loan Documents.

9. **Additional Agreements.**

9.1 Neither Receiver nor Borrower Parties shall contest any claim or assertion by the Lender that (a) the Loan Documents are enforceable, (b) the Loan is binding on the Borrower Parties and the Receiver, (c) valuable consideration has been received by the Borrower Parties and the Receiver for the Loan and the matters contemplated by the Loan Documents or (d) the Lender has enforceable, valid, first priority security interests, liens or mortgages against the Property.

9.2 Neither Receiver nor Borrower Parties shall, under any circumstances, resist, hinder or delay the Lender's enforcement of any rights and remedies the Lender may have under this Agreement and/or the other Loan Documents, including, without limitation, seeking in any state or federal court or any foreign tribunal an injunction or order that may stay or limit the Lender's enforcement of such rights and remedies.

9.3 Upon the Forbearance Outside Date, or early occurrence of a Forbearance Termination Event, the Lender, in consideration of its forbearance hereunder, shall be entitled to immediate relief from any stay or injunction under the Appointment Order, including Paragraph 26 of the Appointment Order, any other orders entered in connection with the Receivership Action or applicable law without the need for further order of the State Court and shall be entitled to immediately enforce any and all rights or remedies under the Loan Documents or applicable law without the need for further order of the State Court. Neither Receiver nor Borrower Parties shall contest any such automatic relief from any such stays or injunctions, neither Receiver nor Borrower Parties shall contest the Lender's exercise of such rights or remedies under the Loan Documents or applicable law, and neither Receiver nor Borrower Parties shall contest the extent, validity or priority of the Lender's security interests, liens or mortgages against the Property.

10. **Changes in Writing.** Neither this Agreement nor any of the provisions of this Agreement can be changed, waived, discharged, or terminated, except by an instrument in writing and signed by the parties.

11. **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be hand-delivered or mailed by certified or registered mail, postage prepaid, to the addresses set forth below. Any party may notify the other parties of a change of address by written notice thereof given in conformity with the provisions of this Section 19, at least ten (10) days prior to the effective date of such change. Any notice by certified or registered mail shall be deemed to have been given on the date of certification or registration thereof.

If to the Receiver:

Harvey Sender
Sender & Smiley, LLC
600 17th Street, Suite 2800 South
Denver, CO 80202
hsender@sendersmiley.com
303-454-0525

With a copy to:

Michael T. Gilbert
Attorney At Law
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202
mgilbert@allen-vellone.com
(720) 245-2406 | Direct
(303) 893-8332 | Fax

If to Lender:

AFF II Denver, LLC
2100 Powers Ferry Road, Suite 350
Atlanta, Georgia 30339
Attention: Dror Bezalel
Telephone: (770) 319-7408
Email: dbezalel@theardentcompanies.com

With a copy to:

Greenberg Traurig, LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
Attention: Michael Baum
Telephone: (312) 456-8400
Email: baumm@gtlaw.com

If to the Borrower Parties:

Gary Dragul
c/o GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111
Attention: Gary Dragul
Telephone: (303) 221-5500
Email: gary@gdare.com

12. Miscellaneous.

12.1 Applicable Law. This Agreement shall be governed and interpreted under and construed according to the laws of the State of Colorado.

12.2 Legal Fees and Costs. In the event that it becomes necessary for the Lender to enforce any terms of this Agreement or in the event of any Enforcement Action with respect to the Loan, the Lender shall be entitled to reasonable attorneys' fees, costs, and any other reasonable costs incurred in connection therewith.

12.3 No Third Party Beneficiary. The provisions of this Agreement are intended to be solely for the benefit of the parties hereto, and are not intended to be, nor shall they be construed to be, for the benefit of any third party, except for the Lender's successors and assigns.

12.4 Entire Agreement. Along with the Loan Documents, this Agreement constitutes the entire agreement and understanding of the parties and their representatives, if any, with respect to the transactions contemplated hereby.

12.5 Schedules and Exhibits Incorporated. The Schedules and Exhibits attached hereto are hereby incorporated herein as a part of this Agreement with the same effect as if set forth in the body of this Agreement.

12.6 Successors and Assigns. All the terms, provisions, conditions, covenants, warranties, recitals, and statements of intention in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Lender's and the Borrower Parties' successors and assigns as their interests may appear, and to the Receiver and his legally appointed successors and assigns.

12.7 Severability and Construction. If any one or more of the provisions of this Agreement, or the application of any such provision to any person, entity, or set of circumstances, shall be determined to be invalid, unlawful, or unenforceable to any extent at any time, the remainder of this Agreement, and the application of such provision to persons, entities, or circumstances other than those as to which it is determined to be invalid, unlawful, or unenforceable, shall not be affected, and shall continue to be enforceable to the fullest extent permitted by law. Any invalid, unlawful, or unenforceable provision of this Agreement shall be reformed to the extent necessary to render it valid, lawful, and enforceable in a manner consistent with the intentions of the parties hereto regarding such provision. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party drafting or causing any instrument to be drafted. As used herein, the singular shall include the plural, unless the context otherwise requires.

12.8 Counterparts. This Agreement may be executed in counterparts and provided that each and every counterpart required to be joined to make a complete original is combined with all applicable counterparts, the combined counterparts shall constitute the original and, taken together, shall constitute one agreement of the parties.

12.9 No Waiver of Rights. No delay or omission by the Lender in exercising any right or power arising as a result of any default shall impair or restrict the Lender from subsequently proceeding, or be considered a waiver of any such right or remedy.

12.10 No Novation. This Agreement is not a novation or new extension of credit.

12.11 Statutes of Limitation. All applicable statutes of limitation or laches shall be tolled and shall not begin running until expiration or termination of the Forbearance Period.

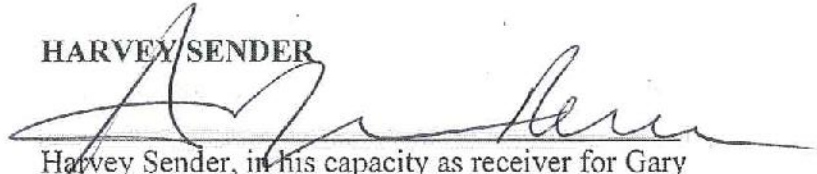
12.12 Capitalized Terms. Any reference to any capitalized terms to the extent not defined herein will have the meaning as set forth in the Loan Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the dates set forth below.

[COUNTERPART SIGNATURE PAGES FOLLOW]

RECEIVER:

HARVEY SENDER



Harvey Sender, in his capacity as receiver for Gary Dragul and all entities formerly under the control of Gary Dragul, including the Borrowers

ACKNOWLEDGMENT
STATE OF Colorado

) ss.

County of Denver)

The foregoing instrument was acknowledged before me this 19 day of November, 2018, by Harvey Sender, in his capacity as receiver for Gary Dragul and all entities formerly under the control of Gary Dragul, including the Borrowers.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: 

Printed name: Terri Novoa

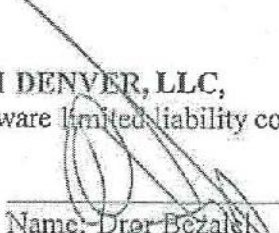
My commission expires: 10.01.2022

TERRI NOVOA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024031878
MY COMMISSION EXPIRES 10/01/2022

LENDER:

AFF II DENVER, LLC,
a Delaware limited liability company

By:


Name: Dror Bezalet
Title: Authorized Signatory

ACKNOWLEDGMENT

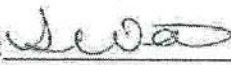
STATE OF Georgia)

) ss.

County of Cobb)

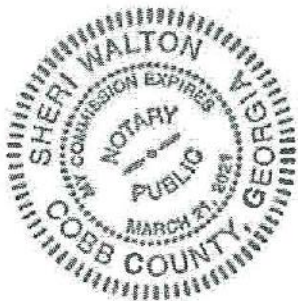
The foregoing instrument was acknowledged before me this 10th day of November, 2018, by Dror Bezalet, the Authorized Signatory of AFF II DENVER, LLC., a Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: 

Printed name: Sheri Walton

My commission expires: 3-21-21



Signature pages to Forbearance Agreement and Reaffirmation of Loan and Security Interests

BORROWER:

HAPPY CANYON BOX 17A, LLC,
a Delaware limited liability company

By: _____

Name: Harvey Sandoz

Title: Receiver

ACKNOWLEDGMENT

STATE OF Colorado

) ss.

County of Denver)

The foregoing instrument was acknowledged before me this 19 day of November, 2018,
by Harvey Sandoz Receiver of HAPPY CANYON BOX 17A, LLC, a
Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: _____

Printed name: Terri Novoa

My commission expires: 10.01.2022

TERRI NOVOA NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20024031878 MY COMMISSION EXPIRES 10/01/2022
--

Signature pages to Forbearance Agreement and Reaffirmation of Loan and Security Interests

BORROWER:

HAPPY CANYON BOX 17B, LLC,
a Delaware limited liability company

By:

Name: Harvey Sender
Title: Receiver

ACKNOWLEDGMENT

STATE OF Colorado)

) ss.

County of Denver)

The foregoing instrument was acknowledged before me this 19 day of November, 2018,
by Harvey Sender, the Receiver of HAPPY CANYON BOX 17B, LLC., a
Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: TERRI NOVOA

Printed name: Terri Novoa

My commission expires: 10.01.2022

TERRI NOVOA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024031878
MY COMMISSION EXPIRES 10/01/2022

BORROWER:

HAPPY CANYON BOX 17C, LLC,
a Delaware limited liability company

By: 

Name: HARVEY SENDER

Title: RECEIVER

ACKNOWLEDGMENT

STATE OF Colorado

) ss.

County of Denver)

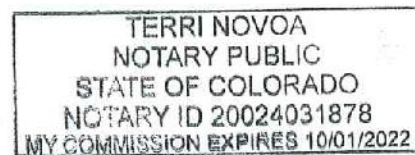
The foregoing instrument was acknowledged before me this 19 day of November, 2018, by Harvey Sender, the Receiver of HAPPY CANYON BOX 17C, LLC., a Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: 

Printed name: Terri Novoa

My commission expires: 10.01.2022



Signature pages to Forbearance Agreement and Reaffirmation of Loan and Security Interests

BORROWER:

HC SHOPPES 18A, LLC,
a Delaware limited liability company

By: [Signature]
Name: HARVEY SENDER
Title: RECEIVER

ACKNOWLEDGMENT

STATE OF Colorado)

) ss.

County of Denver)

The foregoing instrument was acknowledged before me this 19 day of November, 2018, by Harvey Sender the Receiver of HC SHOPPES 18A, LLC., a Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: [Signature]

Printed name: Terri Novoa

My commission expires: 10-01-2022

TERRI NOVOA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024031878
MY COMMISSION EXPIRES 10/01/2022

BORROWER:

HC SHOPPES 18B, LLC,
a Delaware limited liability company

By: _____

Name: HARVEY SENDA

Title: RECEIVER

ACKNOWLEDGMENT

STATE OF Colorado)

) ss.

County of Denver)

The foregoing instrument was acknowledged before me this 19 day of November, 2018, by Harvey Senda the Receiver of HC SHOPPES 18B, LLC., a Delaware limited liability company.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public: _____

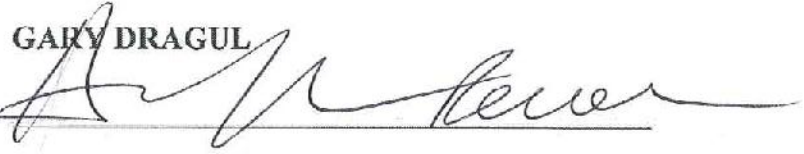
Printed name: Terri Novoa

My commission expires: 10.01.2022

TERRI NOVOA NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20024031878 MY COMMISSION EXPIRES 10/01/2022
--

Signature pages to Forbearance Agreement and Reaffirmation of Loan and Security Interests

GUARANTOR:

GARY DRAGUL


ACKNOWLEDGMENT

STATE OF Colorado)

) ss.

County of Denver)

The foregoing instrument was acknowledged before me this 19 day of November, 2018,
by ~~GARY DRAGUL~~ Harvey Sender as Receiver.

WITNESS MY HAND AND OFFICIAL SEAL..

Notary Public: 

Printed name: Terri Novoa

My commission expires: 10.01.2022

TERRI NOVOA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20024031878
MY COMMISSION EXPIRES 10/01/2022

EXHIBIT A
REAL PROPERTY

MARKETPLACE

PARCEL 1:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;
THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;
THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING,
CITY AND COUNTY OF DENVER,

STATE OF COLORADO.

PARCEL 2:

THOSE CERTAIN EASEMENTS AS SET FORTH IN “HAPPY CANYON SHOPPING CENTER AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS” RECORDED MARCH 3, 2017, AS RECEPTION NO. 2017029949 IN THE PUBLIC RECORDS OF DENVER COUNTY, COLORADO.

THE SHOPPES

PARCEL ONE:

A TRACT OF LAND IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 264.79 FEET;
THENCE SOUTH A DISTANCE OF 64.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1984 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, COLORADO, BEING THE TRUE POINT OF BEGINNING;

THENCE EAST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 346.18 FEET TO A POINT ON THE WEST LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET;
THENCE EAST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 104.00 FEET;
THENCE NORTH ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 200.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 419.17 FEET TO THE NORTHWEST CORNER OF TRACT "A", BELMONT HEIGHTS SUBDIVISION FILING NO. 2, AS RECORDED IN BOOK 23 AT PAGE 18, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH ALONG THE WEST LINE OF SAID TRACT "A" A DISTANCE OF 350.00 FEET TO AN ANGLE POINT IN THE WESTERLY LINE OF SAID SUBDIVISION;
THENCE SOUTH 44 DEGREES 31 MINUTES 32 SECONDS WEST ALONG THE NORTHWESTERLY LINE OF SAID SUBDIVISION, A DISTANCE OF 495.81 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET, AS MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1 IN BOOK 23 AT PAGE 10 IN THE OFFICES OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 742.06 FEET;
THENCE NORTH 00 DEGREES 03 MINUTES 55 SECONDS WEST ALONG THE EAST LINE OF STANDARD SERVICE STATION TRACT AS RECORDED IN BOOK 9476 AT PAGE 276 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, A DISTANCE OF 161.56 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING PROPERTY:

A TRACT OF LAND LOCATED IN THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 6;
THENCE EAST ALONG THE NORTH LINE OF SAID SECTION 6, A DISTANCE OF 475.99 FEET;
THENCE SOUTH A DISTANCE OF 50.00 FEET;
THENCE SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 19.80 FEET TO A

POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE, AS DESCRIBED IN THE DOCUMENT RECORDED OCTOBER 24, 1982 AT RECEPTION NO. 34090 IN THE GENERAL RECORDS IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 45 DEGREES 00 MINUTES 47 SECONDS WEST A DISTANCE OF 253.70 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF HAPPY CANYON ROAD, SAID POINT BEING 30.00 FEET MEASURED PERPENDICULARLY FROM THE CENTERLINE OF HAPPY CANYON ROAD AS PLATTED IN BELMONT HEIGHTS, FILING NO. 1, IN BOOK 23 AT PAGE 10, IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE SOUTH 44 DEGREES 39 MINUTES 00 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 454.00 FEET;
THENCE NORTH 45 DEGREES 21 MINUTES 00 SECONDS EAST A DISTANCE OF 250.00 FEET;
THENCE NORTH 44 DEGREES 39 MINUTES 00 SECONDS WEST AND PARALLEL WITH SAID NORTHEASTERLY RIGHT-OF-WAY LINE A DISTANCE OF 197.69 FEET TO A POINT ON THE SOUTH LINE OF THAT PARCEL DESCRIBED IN THE LEASE RECORDED AT RECEPTION NO. 41809 IN BOOK 289 AT PAGE 115 IN THE OFFICE OF THE CLERK AND RECORDER OF THE CITY AND COUNTY OF DENVER;
THENCE WEST ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 29.54 FEET;
THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, A DISTANCE OF 186.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF HAMPDEN AVENUE;
THENCE WEST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 149.01 FEET TO THE TRUE POINT OF BEGINNING.

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL TWO:

A PARCEL OF LAND SITUATED IN THE NORTHEAST 1/4 OF SECTION 6, TOWNSHIP 5 SOUTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 6;
THENCE EASTERLY ALONG THE NORTH LINE OF SAID SECTION 6 A DISTANCE OF 265.00 FEET;
THENCE SOUTH TO A POINT ON THE CENTERLINE OF HAPPY CANYON ROAD;
THENCE NORTHWESTERLY ALONG THE CENTERLINE OF HAPPY CANYON ROAD TO THE POINT OF BEGINNING.
EXCEPT EXISTING RIGHTS OF WAY FOR PUBLIC ROADS,
EXCEPT THAT PORTION AS CONVEYED TO THE CITY AND COUNTY OF DENVER IN WARRANTY DEED RECORDED JUNE 22, 2015 AT RECEPTION NO. 2015082302.

CITY AND COUNTY OF DENVER,
STATE OF COLORADO.

PARCEL THREE:

NON-EXCLUSIVE EASEMENT FOR ACCESS, PARKING, UTILITIES AND DRAINAGE CONTAINED IN THAT CERTAIN AGREEMENT OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED MARCH 3, 2017 AT RECEPTION NO. 2017029949.

SCHEDULE 1

BORROWERS

BORROWERS (MARKETPLACE LOAN):

Happy Canyon Box 17 A, LLC, a Delaware limited liability company

Happy Canyon Box 17 B, LLC, a Delaware limited liability company

Happy Canyon Box 17 C, LLC, a Delaware limited liability company

BORROWERS (SHOPPES LOAN):

HC Shoppes 18 A, LLC, a Delaware limited liability company

HC Shoppes 18 B, LLC, a Delaware limited liability company

SCHEDULE 2

LOAN DOCUMENTS (INCLUDING SECURITY DOCUMENTS)

(NOTE: The inadvertent omission of any Loan Document from this Schedule is not intended as a release, discharge or satisfaction of such Loan Document. Loan Documents are released, discharged or satisfied ONLY by written instruments executed by the Lender, or by the predecessor holder thereof, identifying the particular Loan Document that is subject to the written instrument.)

MARKETPLACE LOAN Each are dated as of August 7, 2018, unless otherwise indicated:

1. Loan and Security Agreement by and among Borrowers and Lender
2. Promissory Note in the original principal amount of \$8,900,000.00
3. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, for the benefit of Lender
4. Guaranty of Payment from Gary Dragul for the benefit of Lender
5. Collateral Assignment of Project Documents
6. Subordination of Property Management Agreement
7. Hazardous Material Indemnity Agreement from Borrowers and Guarantor for the benefit of Lender
8. Post-Closing Letter
9. UCC-1 Financing Statements

Schedule 1 – Loan Documents

SHOPPES LOAN: *Each are dated as of July 27, 2018, unless otherwise indicated*

1. Loan and Security Agreement by and among Borrowers and Lender, as amended by First Amendment dated August 7, 2018
2. Promissory Note in the original principal amount of \$19,500,000.00
3. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, for the benefit of Lender, as amended by First Amendment to Deed of Trust dated August 7, 2018
4. Guaranty of Payment from Gary Dragul for the benefit of Lender
5. Collateral Assignment of Project Documents
6. Subordination of Property Management Agreement
7. Hazardous Material Indemnity Agreement from Borrowers and Guarantor for the benefit of Lender
8. Post-Closing Letter
9. UCC-1 Financing Statements

SCHEDULE 3

THE DEBT

As of September 15, 2018, the following is the outstanding debt owed by the Borrower Parties under the Marketplace Loan:

I. MARKETPLACE LOAN:

HAPPY CANYON BOX 17 A, LLC, a Delaware limited liability company
HAPPY CANYON BOX 17 B, LLC, a Delaware limited liability company
HAPPY CANYON BOX 17 C, LLC, a Delaware limited liability company

Marketplace:

Principal: \$4,031,331.00

Regular Interest: \$ 27,254.71

Default Interest: \$26,875.54

Plus Lender's Fees, expenses, enforcements costs and other charges and costs of Lender as permitted under the Loan Documents

II. SHOPPES LOAN:

As of September 15, 2018, the following is the outstanding debt owed by the Borrower Parties under the Shoppes Loan:

HC SHOPPES 18 A, LLC, a Delaware limited liability company
HC SHOPPES 18 B, LLC, a Delaware limited liability company

Principal - \$18,370,000

Interest - \$191,936.90

Default Interest \$122,466,67

Plus Lender's Fees, expenses, enforcements costs and other charges and costs of Lender as permitted under the Loan Documents

SCHEDULE 4-A

Pending/Executed Leases; Budget

1. Lease dated November ___, 2017 by and between Happy Canyon Box 17A, LLC, Happy Canyon Box 17B, LLC and Happy Canyon Box 17C, LLC, as landlord, and DNVR Collective, as tenant with respect to a portion of the building located at 4960 East Hamden Avenue, Denver, CO;
2. Lease dated November ___, 2017 by and between Happy Canyon Box 17A, LLC, Happy Canyon Box 17B, LLC and Happy Canyon Box 17C, LLC, as landlord, and Tony's Meats, Inc., as tenant with respect to a portion of the building located at 4960 East Hamden Avenue, Denver, CO, as amended by First Amendment to Lease dated May 1, 2018; and
3. Lease dated November ___, 2017 by and between Happy Canyon Box 17A, LLC, Happy Canyon Box 17B, LLC and Happy Canyon Box 17C, LLC, as landlord, and A Jackson Enterprises, Inc. as tenant with respect to a portion of the building located at 4960 East Hamden Avenue, Denver, CO

SCHEDULE 4-B
Construction Budget

HAPPY CANYON MARKET - CONSTRUCTION BUDGET 10.15.18

	BUDGET	PAID BEFORE CLOSING	PAID AT CLOSING	BALANCE DUE
Surveying	\$ 12,937.80	\$ 12,937.80		\$
Asphalt Paving	\$ 7,880.00			\$ 7,880.00
Signage and Striping	\$ 3,734.00			\$ 3,734.00
Landscaping	\$ 35,685.00			\$ 35,685.00
Artificial Turf Allowance	\$ 11,150.00			\$ 11,150.00
Exterior Epoxy Sealing	\$ 23,675.00			\$ 23,675.00
Fire Feature Allowance	\$ 25,000.00			\$ 25,000.00
TOTAL SITE WORK	\$ 120,061.80	\$ 12,937.80	\$	\$ 107,124.00
Demolition	\$ 253,705.89	\$ 83,075.00	\$ 157,945.60	\$ 12,685.29
Earthwork	\$ 61,561.08		\$ 30,780.54	\$ 30,780.54
Concrete	\$ 262,808.11		\$ 131,404.06	\$ 131,404.05
Masonry	\$ 79,835.00			\$ 79,835.00
Structural Steel	\$ 366,759.00		\$ 84,425.00	\$ 282,334.00
Rough Carpentry	\$ 16,480.00		\$ 1,000.00	\$ 15,480.00
Fillwork	\$ 18,693.00	\$ 2,768.00		\$ 15,925.00
Damp/Proofing	\$ 513.00			\$ 513.00
Flooring	\$ 152,026.00			\$ 152,026.00
Sheet Metal	\$ 44,025.00			\$ 44,025.00
Problems/Protes Allowance	\$ 37,280.00			\$ 37,280.00
Joint Sealants	\$ 6,280.00			\$ 6,280.00
Doors, Frames & Hardware	\$ 16,723.00			\$ 16,723.00
Overhead Door Allowance	\$ 54,225.00			\$ 54,225.00
Storefront	\$ 95,467.00			\$ 95,467.00
Stucco	\$ 13,070.00			\$ 13,070.00
Gypsum Board System	\$ 62,031.00			\$ 62,031.00
Painting	\$ 71,930.00			\$ 71,930.00
Flooring Allowance	\$ 13,675.00			\$ 13,675.00
Awning	\$ 15,485.00			\$ 15,485.00
Specialties	\$ 3,613.00			\$ 3,613.00
Fire Sprinkler System	\$ 90,000.00		\$ 10,000.00	\$ 80,000.00
Plumbing Systems	\$ 120,242.00		\$ 114,229.90	\$ 6,012.10
HVAC Systems	\$ 210,841.00		\$ 8,000.00	\$ 202,841.00
Electrical System	\$ 402,746.00	\$ 6,525.00	\$ 81,800.00	\$ 314,421.00
Radio Frequency Booster Allowance	\$ 31,178.00			\$ 31,178.00
Static Exterior Monument Signage (Bare Fee)	\$ 95,748.00			\$ 95,748.00
Digital Monument Sign Addition	\$ 58,199.00			\$ 58,199.00
Xcel Elevation Relocation	\$ 14,283.76	\$ 14,283.76		\$
Century Link Relocation	\$ 10,215.76	\$ 10,215.76		\$
Loading Dock Door Replacement (Allowance)	\$ 5,000.00			\$ 5,000.00
TOTAL CORE/SHELL CONSTRUCTION	\$ 2,684,638.60	\$ 114,099.52	\$ 622,359.10	\$ 1,948,185.98
General Conditions	\$ 113,975.00	\$ 24,516.30	\$ 40,562.42	\$ 48,896.28
Winter Protection Allowance	\$ 10,000.00			\$ 10,000.00
Business Liability Insurance	\$ 19,855.60	\$ 16,304.75	\$ 3,550.85	\$
Contractor's Fee (Overhead & Fee)	\$ 144,904.00	\$ 6,021.82	\$ 58,820.53	\$ 80,061.65
TOTAL INDIRECT CONSTRUCTION COSTS	\$ 288,734.60	\$ 46,842.87	\$ 102,939.80	\$ 138,957.93
CONTINGENCY	\$ 100,000.00	\$	\$	\$ 100,000.00
GRAND TOTAL CORE & SHELL	\$ 3,189,488.00	\$ 179,880.19	\$ 725,298.90	\$ 2,284,267.91
Hazardous Material Testing	\$ 4,000.00			\$ 4,000.00
Asbestos Testing	\$ 3,155.00			\$ 3,155.00
Soil Testing	\$ 3,000.00	\$ 3,000.00		\$
Architect	\$ 390,510.00	\$ 195,401.00	\$ 100,000.00	\$ 95,109.00
Topographic Survey, Entitlement, Civil/Structural Engineering	\$ 59,300.00	\$ 23,951.95		\$ 35,348.05
Zoning and Permits	\$ 20,391.45	\$ 20,091.45	\$ 300.00	\$
TOTAL SOFT COSTS	\$ 480,896.48	\$ 242,446.40	\$ 100,000.00	\$ 137,812.08
Tony's Meats	\$ 342,000.00	\$ 51,000.00	\$ 42,000.00	\$ 249,000.00
Pizza Garage	\$ 28,000.00			\$ 28,000.00
Bunches Flower Market	\$ 5,000.00			\$ 5,000.00
Eric's Quarter Cup	\$ 71,200.00			\$ 71,200.00
Silver Dollar Bar	\$ 84,900.00			\$ 84,900.00
Vendor #2 - (Sushi Sasa LOI)	\$ 121,050.00			\$ 121,050.00
Vendor #8 - (Gelato Boy LOI)	\$ 82,450.00			\$ 82,450.00
Vendor #9 - Not Yet Leased	\$ 45,100.00			\$ 45,100.00
Retail Space - Not Yet Leased	\$ 154,200.00			\$ 154,200.00
TOTAL TENANT IMPROVEMENT (TI)	\$ 888,000.00	\$ 81,000.00	\$ 42,000.00	\$ 804,000.00
Tony's Meats	\$ 43,639.00		\$ 31,983.67	\$ 11,655.33
Pizza Garage	\$ 11,455.00			\$ 11,455.00
Bunches Flower Market	\$ 10,831.00			\$ 10,831.00
Eric's Quarter Cup	\$ 11,704.00			\$ 11,704.00
Silver Dollar Bar	\$ 13,527.00			\$ 13,527.00
Vendor #2 - (Sushi Sasa LOI)	\$ 38,560.00			\$ 38,560.00
Vendor #8 - (Gelato Boy LOI)	\$ 26,264.00			\$ 26,264.00
Vendor #9 - Not Yet Leased	\$ 14,367.00			\$ 14,367.00
Retail Space - Not Yet Leased	\$ 37,008.00			\$ 37,008.00
TOTAL LEASING COMMISSION (L/C)	\$ 297,388.00	\$	\$ 81,983.67	\$ 179,871.88
Market Common Area Construction	\$ 793,218.00			\$ 793,218.00
Common Area Security (Allowance)	\$ 5,000.00			\$ 5,000.00
Signage Taxes & Permits	\$ 16,854.00			\$ 16,854.00
Restriction Signs	\$ 3,752.00			\$ 3,752.00
Id Signs	\$ 25,192.00			\$ 25,192.00
Mural (1)	\$ 22,000.00			\$ 22,000.00
Furniture/Milwork	\$ 37,869.00			\$ 37,869.00
East Patio Furniture	\$ 53,898.00			\$ 53,898.00
South Patio Furniture at Market Entry	\$ 16,537.00			\$ 16,537.00
Furniture Procurement, Tax & Shipping	\$ 32,112.00			\$ 32,112.00
Permits	\$ 1,919.50			\$ 1,919.50
Market Projector (Allowance)	\$ 1,500.00			\$ 1,500.00
AD Box (1)	\$ 3,600.00			\$ 3,600.00
Cabinet Unit Heaters	\$ 6,250.00			\$ 6,250.00
Tony's Security	\$ 23,000.00			\$ 23,000.00
Ball Up Windows at Market	\$ 12,000.00			\$ 12,000.00
TOTAL MARKET AREA	\$ 1,084,701.80	\$	\$	\$ 1,084,701.80
GRAND TOTAL BUDGET	\$ 5,969,747.86	\$ 467,324.89	\$ 899,670.57	\$ 4,802,822.79

HAPPY CANYON MARKET - CONSTRUCTION BUDGET 10.15.18

	BUDGET	PAID BEFORE CLOSING	PAID AT CLOSING	BALANCE DUE
Surveying	\$ 12,937.80	\$ 12,937.80	\$ -	\$ -
Asphalt Paving	\$ 7,880.00	\$ -	\$ -	\$ 7,880.00
Signage and Striping	\$ 3,734.00	\$ -	\$ -	\$ 3,734.00
Landscaping	\$ 35,685.00	\$ -	\$ -	\$ 35,685.00
Artificial Turf Allowance	\$ 11,150.00	\$ -	\$ -	\$ 11,150.00
Exterior Epoxy Sealing	\$ 23,675.00	\$ -	\$ -	\$ 23,675.00
Fire Feature Allowance	\$ 25,000.00	\$ -	\$ -	\$ 25,000.00
TOTAL SITE WORK	\$ 120,061.80	\$ 12,937.80	\$ -	\$ 107,124.00
Demolition	\$ 253,705.89	\$ 83,075.00	\$ 157,945.60	\$ 12,685.29
Earthwork	\$ 61,561.08	\$ -	\$ 30,780.54	\$ 30,780.54
Concrete	\$ 262,808.11	\$ -	\$ 131,404.06	\$ 131,404.05
Masonry	\$ 79,835.00	\$ -	\$ -	\$ 79,835.00
Structural Steel	\$ 366,759.00	\$ -	\$ 84,425.00	\$ 282,334.00
Rough Carpentry	\$ 16,480.00	\$ -	\$ 1,000.00	\$ 15,480.00
Millwork	\$ 18,693.00	\$ -	\$ 2,768.00	\$ 15,925.00
Damp/Proofing	\$ 513.00	\$ -	\$ -	\$ 513.00
Roofing	\$ 152,026.00	\$ -	\$ -	\$ 152,026.00
Sheet Metal	\$ 44,025.00	\$ -	\$ -	\$ 44,025.00
Proforma/Prodex Allowance	\$ 37,280.00	\$ -	\$ -	\$ 37,280.00
Joint Sealants	\$ 6,280.00	\$ -	\$ -	\$ 6,280.00
Doors, Frames & Hardware	\$ 16,723.00	\$ -	\$ -	\$ 16,723.00
Overhead Door Allowance	\$ 54,225.00	\$ -	\$ -	\$ 54,225.00
Storefront	\$ 95,467.00	\$ -	\$ -	\$ 95,467.00
Stucco	\$ 13,070.00	\$ -	\$ -	\$ 13,070.00
Gypsum Board System	\$ 62,031.00	\$ -	\$ -	\$ 62,031.00
Painting	\$ 71,930.00	\$ -	\$ -	\$ 71,930.00
Flooring Allowance	\$ 13,675.00	\$ -	\$ -	\$ 13,675.00
Awnings	\$ 15,485.00	\$ -	\$ -	\$ 15,485.00
Specialties	\$ 3,613.00	\$ -	\$ -	\$ 3,613.00
Fire Sprinkler System	\$ 90,000.00	\$ -	\$ 10,000.00	\$ 80,000.00
Plumbing System	\$ 120,242.00	\$ -	\$ 114,229.90	\$ 6,012.10
HVAC Systems	\$ 210,841.00	\$ -	\$ 6,000.00	\$ 202,841.00
Electrical System	\$ 402,745.00	\$ 6,525.00	\$ 81,800.00	\$ 314,421.00
Radio Frequency Booster Allowance	\$ 31,178.00	\$ -	\$ -	\$ 31,178.00
Static Exterior Monument Signage (Base Fee)	\$ 95,748.00	\$ -	\$ -	\$ 95,748.00
Digital Monument Sign Addition	\$ 58,199.00	\$ -	\$ -	\$ 58,199.00
Kcal Easement Relocation	\$ 14,283.76	\$ 14,283.76	\$ -	\$ -
Century Link Relocation	\$ 10,215.76	\$ 10,215.76	\$ -	\$ -
Loading Dock Door Replacement (Allowance)	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00
TOTAL CORE/SHELL CONSTRUCTION	\$ 2,684,638.60	\$ 114,099.52	\$ 622,953.10	\$ 1,948,185.98
General Conditions	\$ 113,975.00	\$ 24,516.30	\$ 40,562.42	\$ 48,896.28
Winter Protection Allowance	\$ 10,000.00	\$ -	\$ -	\$ 10,000.00
Business Liability Insurance	\$ 19,855.60	\$ 16,304.75	\$ 3,550.85	\$ -
Contractor's Fee (Overhead & Fee)	\$ 144,904.00	\$ 6,021.82	\$ 58,820.53	\$ 80,061.65
TOTAL INDIRECT CONSTRUCTION COSTS	\$ 288,734.60	\$ 46,842.87	\$ 102,933.80	\$ 138,957.93
CONTINGENCY	\$ 100,000.00	\$ -	\$ -	\$ 100,000.00
GRAND TOTAL CORE & SHELL	\$ 3,073,373.20	\$ 160,942.39	\$ 725,286.90	\$ 2,287,133.91
Hazardous Material Testing	\$ 4,000.00	\$ -	\$ -	\$ 4,000.00
Asbestos Testing	\$ 3,155.00	\$ -	\$ -	\$ 3,155.00
Soil Testing	\$ 3,000.00	\$ 3,000.00	\$ -	\$ -
Architect	\$ 390,510.00	\$ 195,401.00	\$ 100,000.00	\$ 95,109.00
Topographic Survey, Entitlement, Civil/Structural Engineering	\$ 59,300.00	\$ 23,951.95	\$ -	\$ 35,348.05
Zoning and Permits	\$ 20,391.45	\$ 20,091.45	\$ 300.00	\$ -
TOTAL SOFT COSTS	\$ 480,856.45	\$ 242,444.40	\$ 100,300.00	\$ 137,612.05
Tony's Meats	\$ 342,000.00	\$ 51,000.00	\$ 42,000.00	\$ 249,000.00
Pizza Garage	\$ 28,000.00	\$ -	\$ -	\$ 28,000.00
Bunches Flower Market	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00
Eric's Quarter Cup	\$ 71,200.00	\$ -	\$ -	\$ 71,200.00
Silver Dollar Bar	\$ 84,900.00	\$ -	\$ -	\$ 84,900.00
Vendor #2 - (Sushi Sasa LOI)	\$ 121,050.00	\$ -	\$ -	\$ 121,050.00
Vendor #8 - (Gelato Boy LOI)	\$ 82,450.00	\$ -	\$ -	\$ 82,450.00
Vendor #9 - Not Yet Leased	\$ 45,100.00	\$ -	\$ -	\$ 45,100.00
Retail Space - Not Yet Leased	\$ 154,200.00	\$ -	\$ -	\$ 154,200.00
TOTAL TENANT IMPROVEMENT (TI)	\$ 938,800.00	\$ 51,000.00	\$ 42,000.00	\$ 845,800.00
Tony's Meats	\$ 43,639.00	\$ -	\$ 31,983.67	\$ 11,655.33
Pizza Garage	\$ 11,455.00	\$ -	\$ -	\$ 11,455.00
Bunches Flower Market	\$ 10,831.00	\$ -	\$ -	\$ 10,831.00
Eric's Quarter Cup	\$ 11,704.00	\$ -	\$ -	\$ 11,704.00
Silver Dollar Bar	\$ 13,527.00	\$ -	\$ -	\$ 13,527.00
Vendor #2 - (Sushi Sasa LOI)	\$ 38,560.00	\$ -	\$ -	\$ 38,560.00
Vendor #8 - (Gelato Boy LOI)	\$ 26,264.00	\$ -	\$ -	\$ 26,264.00
Vendor #9 - Not Yet Leased	\$ 14,367.00	\$ -	\$ -	\$ 14,367.00
Retail Space - Not Yet Leased	\$ 37,008.00	\$ -	\$ -	\$ 37,008.00
TOTAL LEASING COMMISSION (L/C)	\$ 207,899.00	\$ -	\$ 31,983.67	\$ 175,915.33
Market Common Area Construction	\$ 793,218.00	\$ -	\$ -	\$ 793,218.00
Common Area Security (Allowance)	\$ 5,000.00	\$ -	\$ -	\$ 5,000.00
Signage Taxes & Permits	\$ 16,854.00	\$ -	\$ -	\$ 16,854.00
Restroom Signs	\$ 3,752.00	\$ -	\$ -	\$ 3,752.00
ID Signs	\$ 25,192.00	\$ -	\$ -	\$ 25,192.00
Mural (1)	\$ 22,000.00	\$ -	\$ -	\$ 22,000.00
Furniture/Millwork	\$ 37,869.00	\$ -	\$ -	\$ 37,869.00
East Patio Furniture	\$ 53,898.00	\$ -	\$ -	\$ 53,898.00
South Patio Furniture at Market Entry	\$ 16,537.00	\$ -	\$ -	\$ 16,537.00
Furniture Procurement, Tax & Shipping	\$ 32,112.00	\$ -	\$ -	\$ 32,112.00
Permits	\$ 1,919.50	\$ -	\$ -	\$ 1,919.50
Market Projector (Allowance)	\$ 1,500.00	\$ -	\$ -	\$ 1,500.00
AD Box (1)	\$ 3,600.00	\$ -	\$ -	\$ 3,600.00
Cabinet Unit Heaters	\$ 6,250.00	\$ -	\$ -	\$ 6,250.00
Tony's Security	\$ 23,000.00	\$ -	\$ -	\$ 23,000.00
Roll Up Windows at Market	\$ 12,000.00	\$ -	\$ -	\$ 12,000.00
TOTAL MARKET AREA	\$ 1,084,701.90	\$ -	\$ -	\$ 1,084,701.90
GRAND TOTAL BUDGET	\$ 6,889,747.96	\$ 467,324.59	\$ 859,670.67	\$ 4,602,862.79

Happy Canyon Spirits (Gary Rabatell)	
Tenant Improvements	\$ 911,200.00
Leasing Commissions	\$ 62,761.00
Misc. Construction	\$ 245,140.25
Total Remaining	\$ 1,319,101.25

Schedule 5
FORM OF TENANT DIRECTION LETTER

[RECEIVER'S LETTERHEAD]

Notice to Tenants

_____, 2018

[Tenants under Leases]

Re: Lease dated _____ between Happy Canyon Box 17 A, LLC, Happy Canyon Box 17 B, LLC and Happy Canyon Box 17 C, LLC, as Landlord, and _____, as Tenant, concerning premises known as _____, Denver, Colorado.

Ladies and Gentlemen:

This letter shall constitute notice to you that the Landlord has granted a security interest in the captioned lease and all rents, additional rent and all other monetary obligations to landlord thereunder (collectively, "Rent") to **AFF II Denver, LLC**, a Delaware limited liability company, as lender ("Lender"), to secure certain of the undersigned's obligations to Lender.

The undersigned has been appointed Receiver for the Landlord pursuant to a that Stipulated Order Appointing Receiver filed on behalf of Defendants Gary Dragul and GDA Real Estate Service and GDA Real Estate Management LLC, Case Number 2018CV33011 filed August 30, 2018 in the District Court of Denver County, Colorado.

The undersigned hereby irrevocably instructs and authorizes you to disregard any and all previous notices sent to you in connection with Rent and hereafter to deliver all Rent to the following address:

AFF II Denver, LLC-Rent
2100 Powers Ferry Road
Suite 350
Atlanta, GA 30339

Account #: 1000258846
Routing #: 061104123

Bank:
State Bank & Trust Company
415 East Paces Ferry Road
Atlanta, GA 30305

The instructions set forth herein are irrevocable and are not subject to modification in any manner, except that Lender, or any successor lender so identified by Lender, may by written notice to you rescind the instructions contained herein.

Should you have any questions or concerns regarding this direction letter, or the appointment of the undersigned as Receiver for the Properties, please do not hesitate to contact the undersigned, c/o Sender & Smiley, Attn.: Harvey Sender @ 303-454-0525.

Sincerely,

[RECEIVER]

By: _____

The undersigned hereby acknowledges and consents to the foregoing tenant direction letters:

[NTD: insert proper borrower]

BORROWER: HAPPY CANYON BOX 17A, LLC,
a Delaware limited liability company

By:

Name:

Title:

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 (720) 865-8612	
Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado v. Defendants: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 2018CV33011 Division/Courtroom: 424
ORDER APPROVING RECEIVER'S MOTION TO APPROVE FORBEARANCE AGREEMENT WITH AFF II DENVER, LLC	

THIS MATTER is before the Court on the Receiver's Motion to Approve Forbearance Agreement¹ with AFF II, Denver, LLC (the "Motion"), filed by Harvey Sender, the duly-appointed receiver ("Receiver") for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC ("GDARES"), GDA Real Estate Management, LLC ("GDAREM" and together with GDARES, the "GDA Entities"), and their respective properties, assets, interests and management rights in related entities (collectively, the "Receivership Estate" or the "Estate") pursuant to the Stipulated Order Appointing Receiver entered by the Court on August 30, 2018 (the "Receivership

¹ Unless otherwise noted, capitalized terms used but not otherwise defined in this Order have the meanings ascribed to them in the Forbearance Agreement or the Loan Documents, as applicable.

Order”). The Court has reviewed the Motion and the Forbearance Agreement submitted as Exhibit 1 with the Motion and being fully advised,

HEREBY FINDS THAT:

A. The Court has jurisdiction over this matter and venue is proper pursuant to C.R.C.P. 98(a).

B. Good cause is shown for the entry of this Order Approving Receiver’s Motion to Approve Forbearance Agreement with AFF II Denver, LLC (“Order”).

C. Delaware limited liability companies Happy Canyon Box 17 A, LLC; Happy Canyon Box 17 B, LLC; and Happy Canyon Box 17 C, LLC (collectively, the “Marketplace Borrowers”) and Delaware limited liability companies HC Shoppes 18 A, LLC and HC Shoppes 18 B, LLC (the “Shoppes Borrowers” and together with the Marketplace Borrowers, the “Borrowers”) entered into separate loans in the aggregate principal amount of not less than \$28,400,000.00 (the “Loans” and all documents entered into with respect to the Loans, including, without limitation, security documents and the Forbearance Agreement, and any amendments, modifications or supplements to the same, collectively, the “Loan Documents”) with AFF II Denver, LLC (the “Lender”) to finance the construction of shopping centers. Construction of the shopping centers is underway.

D. Dragul provided guarantees with respect to the Borrowers’ obligations under the Loans.

E. The Loans are secured by parcels of real property located in Colorado and certain other collateral (collectively, the “Property”).

F. Certain defaults, including the judicial appointment of the Receiver, exist under the Loan Documents (collectively, the “Existing Defaults”).

G. The Lender properly delivered written notices of default of the Loans to the Receiver, the Borrowers and Dragul.

H. The Loans and the Property are part of the Receivership Estate and are subject to the control of the Receiver.

I. As set forth in paragraph 25 of the Receivership Order, the Receivership Order shall not be construed as interfering with or invalidating any lawful lien or claim of a person or entity.

J. As set forth in paragraph 34 of the Receivership Order, as a matter of course, the Court shall approve any motion filed by the Receiver unless an objection is received within ten (10) days after service or other written notice of the Receiver’s motion.

ACCORDINGLY, THE COURT HEREBY FINDS AND ORDERS THAT:

1. No objection to the Motion has been received, or having been received, has been resolved or overruled;

2. The Motion is GRANTED and each and every term of the Forbearance Agreement is APPROVED. The Receiver, the Borrowers, Dragul, and the Lender, as applicable, are authorized to take all actions necessary to implement the terms of the

Forbearance Agreement, and any stay or injunction in place under the Receivership Order or any other order entered in connection with the appointment of the Receiver shall be lifted as to any such action.

3. The Lender's continued funding of the Loans and agreement to refrain from exercising available remedies due to the Existing Defaults, under the terms and conditions of the Forbearance Agreement, is necessary to preserve and protect the assets of the Receivership Estate.

4. The Lender holds a valid, perfected, first-priority security interest, lien, and mortgage against the Property.

5. Notwithstanding paragraph 13(i) of the Receivership Order, during the term of the receivership, the Receiver shall not issue any Receiver Certificates secured by the Property nor shall any Receiver Certificates issued provide a lien on or security interest in the Property that is superior to or that ranks *pari passu* with the Lender's interest in the Property.

6. Paragraph 16 of the Receivership Order shall not apply to the Lender with respect to any claims arising out of or related to the Loans, the Loan Documents, the Debt or the Forbearance Agreement.

7. Notwithstanding paragraph 26 of the Receivership Order, pursuant to paragraph 25 of the Receivership Order and in accordance with paragraphs 5.1, 5.2, 9.2 and 9.3 of the Forbearance Agreement, upon the earlier of (i) August 30, 2019, and (ii) the occurrence of a Forbearance Termination Event (including the failure to

comply with paragraph 5 of this Order), without the need for further order of the Court, the Lender (A) shall be entitled to immediate relief from (x) any stay or injunction under the Receivership Order, (y) any other orders entered by the Court in connection with the Receivership Action or (z) applicable law, and (B) may immediately enforce any and all rights or remedies under the Loan Documents or applicable law to collect the entire unpaid balance of the Debt and any unpaid interest, default interest, Deferred Default Interest, fees, charges, advances and expenses owing under the Loan Documents. Furthermore, the Lender shall not be subject to any procedures established by the Receiver pursuant to paragraph 13(u) of the Receivership Order. Additionally, none of the Receiver, the Borrowers or Dragul shall, under any circumstances, resist, hinder or delay the Lender's enforcement of any rights and remedies the Lender may have under the Forbearance Agreement and/or the other Loan Documents.

Dated: _____, 2018.

BY THE COURT:
