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| DISTRICT COURT, DENVER COUNTY, STATE<br>OF COLORADO<br>Denver District Court<br>1437 Bannock St.<br>Denver, CO 80202   | DATE FILED: January 25, 2019 4:26 PM<br>FILING ID: B6C982A29A79A<br>CASE NUMBER: 2018CV33011 |
| <b>Plaintiff:</b> CHRIS MYKLEBUST, SECURITIES<br>COMMISSIONER FOR THE STATE OF<br>COLORADO<br><br>v.<br><br><b>Defendants:</b> GARY DRAGUL, GDA REAL<br>ESTATE SERVICES, LLC, AND GDA REAL<br>ESTATE MANAGEMENT, LLC   | <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>                                 |
| Attorneys for Receiver:<br>Patrick D. Vellone, #15284<br>Michael T. Gilbert, #15009<br>Rachel A. Sternlieb, #51404<br>ALLEN VELLONE WOLF HELFRICH &<br>FACTOR P.C.<br>1600 Stout St., Suite 1100<br>Denver, Colorado 80202<br>Phone Number: (303) 534-4499<br>E-mail: pvellone@allen-vellone.com<br>E-mail: mgilbert@allen-vellone.com<br>E-mail: rsternlieb@allen-vellone.com | Case Number: 2018CV33011<br><br>Division/Courtroom: 424                                      |
| <p style="text-align: center;"><b>RECEIVER'S WITHDRAWAL OF MOTION FOR ORDER TO SHOW<br/>         CAUSE RE PROSPECT SQUARE, AND MOTION TO VACATE HEARING<br/>         AND APPROVE STIPULATION</b></p>   |  |

Harvey Sender, the duly-appointed receiver (“Colorado 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

requests that the Court enter an Order that will resolve the dispute concerning the Receiver's Expedited Motion for Order to Show Cause and Request for Forthwith Hearing against U.S. Real Estate Credit Holdings III, L.P. ("Lender") and its retained counsel in Ohio, Jonathan S. Hawkins, Louis F. Solimine, and Anthony Hornbach (collectively "Lender's Ohio Counsel") filed December 20, 2018 the ("Show Cause Motion"), and the Court's January 3, 2019, "Show Cause Order."

### **I. Background**

1. On August 30, 2018, this Court entered a Stipulated Order Appointing Receiver ("Receivership Order") over Dragul, the GDA Entities, and affiliated assets.

2. A Notice of Property Subject to Receivership was recorded with the Hamilton County, Ohio Recorder's Office on October 29, 2018.

3. One Dragul-related entity, PS 16, LLC ("Borrower"), executed a \$12.97 million promissory note to Lender's predecessor-in-interest on January 22, 2016, which promissory note was personally guaranteed by Dragul.

4. The loan is secured by a first mortgage lien on real property, namely a shopping center known as Prospect Square, located at 9690 Colerain Avenue, Cincinnati, Ohio 45229, and referenced as Tax Parcel Nos. 510-0103-0117; 510-0103-0124; 510-0103-0125; 510-0103-0126; 510-0103-0127; 510-0103-0301; and 510-0103-0302 by the Hamilton County, Ohio Recorder (the "Ohio Property"). As additional security for the Note, Borrower also executed an Assignment of Leases and Rents, effective January 22, 2016.

5. There are two structures on the Ohio Property, consisting of 118,000 square feet of partially-leased commercial real estate. At present, the Ohio Property is no more than 27% leased.

6. The Ohio Property is wholly-owned by Borrower, which in-turn is owned by: GDA PS Member, LLC (10%), Hagshama Prospect Square, LLC (48.84%) and CoFund 2, LLC (41.52%). Borrower is managed by GDA PS Management, LLC, a Dragul wholly-owned entity.

7. On November 29, 2018, the Lender filed an action in Ohio against Dragul and Borrower, *U.S. Real Estate Credit Holdings III, LP v. PS 16, LLC*, et al., Case No. A1806376, Common Pleas Court, Hamilton County, Ohio (the “Ohio Action”). On the same day, the Lender obtained the *ex parte* appointment of a receiver over the Ohio Property (the “Ohio Receivership Order”) from the Hamilton County, Ohio Court of Common Pleas (the “Hamilton County Court”). In addition to the appointment of a receiver (the “Ohio Receiver”), in the Ohio Action the Lender seeks to foreclose the Ohio Property.

8. On December 18, 2018, the Lender filed in the Ohio Action an amended complaint and motion seeking a temporary restraining order and preliminary injunction (the “Lender’s Ohio Motion”) against the Colorado Receiver, the Borrower, Dragul, the GDA Entities, and other entities involved with the Ohio Property.

9. On December 20, 2018, the Colorado Receiver filed his Show Cause Motion against Lender and Lender's Ohio Counsel, and on January 3, 2019, this Court entered its Show Cause Order.

10. At a hearing in the Ohio Action, and before the Hamilton County Court, on January 24, 2019, the Colorado Receiver appeared, though counsel, in opposition to the Lender's Ohio Motion. At this hearing, a certain stipulation was made and read into the record, which the Hamilton County Court ordered be reduced to writing in the form of an agreed order (the "Ohio Stipulation"). The terms of this Ohio Stipulation require (and the agreed order adopting such stipulation shall require) the Colorado Receiver to seek to vacate the Order to Show Cause and the hearing currently scheduled for January 29, 2019.

**II. Agreement among the Colorado Receiver, the Lender, and the Lender's Ohio Counsel**

11. Pursuant to the Ohio Stipulation, the Colorado Receiver, the Lender, and the Lender's Ohio Counsel reached an agreement to resolve the issues raised in the Show Cause Motion pursuant to the following terms. Accordingly, the Colorado Receiver asks the Court to vacate the Order to Show Cause hearing and approve the following agreement:

- A. The Colorado Receiver will withdraw the Show Cause Motion;
- B. The Ohio Receiver shall have the authority to manage, possess, and control the Property as of January 24, 2019;

- C. In accordance with the Ohio Stipulation, the Colorado Receiver shall cooperate with the Ohio Receiver to turn over documents and other materials reasonably requested by the Ohio Receiver that are necessary for the Ohio Receiver to manage the Property;
- D. The Colorado Receiver shall have until February 14, 2019, to either (1) disclaim the Estate's interest in the management, control, and right to sell the Property; or (2) file a motion to sell the Estate's equity interest in the Borrower. If a motion to sell the Estate's equity interest in the Borrower is filed on or before February 14, 2019, the Colorado Receiver shall have 30 days from the date such motion to sell is filed to close that sale, unless otherwise extended by agreement between the Colorado Receiver and the Lender; and
- E. Pending the expiration of the time periods in the preceding paragraph, Lender agrees not to seek an order of sale for the Property. If the time periods expire, the Colorado Receiver will not object to Lender's foreclosure of the Property.
- F. Nothing in any order approving this stipulation shall be construed to limit, abridge, or modify the Lender's rights under the governing loan documents or Ohio law, except as expressly set forth in such order.

WHEREFORE, the Colorado Receiver asks the Court to enter the proposed Order submitted with this motion approving the terms of the above agreement.

Dated: January 25, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR  
P.C.

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on January 25, 2019, I served a true and correct copy of the foregoing **RECEIVER'S WITHDRAWAL OF MOTION FOR ORDER TO SHOW CAUSE RE PROSPECT SQUARE, AND MOTION TO VACATE HEARING AND APPROVE STIPULATION** via CCE and/or *via* electronic mail to the following:

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