

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	
<p>Plaintiff: Chris Myklebust, Securities Commissioner for the State of Colorado</p> <p>v.</p> <p>Defendant: Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC</p>	
<p>Attorneys for Receiver: Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Rachel A. Sternlieb, #51404 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1100 Denver, Colorado 80202 Phone Number: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p>RECEIVER’S MOTION FOR ORDER AUTHORIZING SALE OF CASSINELLI SQUARE</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”), asks the Court to enter an order approving the sale of real property known as the Cassinelli Square shopping

center (the “Property”) to Daniel Johnson (“Buyer”) for \$2,870,000 million¹ pursuant to the Purchase and Sale Agreement submitted as **Exhibit 1** with this motion (the “Cassinelli PSA”).

I. The Receivership Order gives the Receiver the authority to sell Cassinelli Square.

1. 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.

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

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Receivership Estate” or the “Estate”). Receivership Order at 2, ¶ 5.

4. The Receivership Order grants the Receiver the authority to sell or otherwise dispose of Estate property and obtain Court approval for any sale for greater than \$10,000 (Receivership Order at 12, ¶ 13(t)).

¹ \$2.9 million minus a \$30,000 acquisition fee credited to Buyer at closing.

5. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared in this case and on all interested parties.

II. Cassinelli Square: ownership, management, debt

6. The Property is a retail shopping center located at 11360-11500 Princeton Pike, Cincinnati, Ohio 45246. The Property has approximately 158,000 leasable square feet and is approximately 50% leased.

7. The Property was purchased for \$2.5 million in November 2016, by two single purpose entities (“SPEs”), Cassinelli Square 16 A, LLC (“Cassinelli 16A”) and Cassinelli Square 16 B, LLC (“Cassinelli 16B”), that hold the property as tenants-in-common, 90% and 10%, respectively. Cassinelli 16A is wholly-owned by Hagshama Ohio Cassinelli, LLC. Documents provided by GDA reflect that Cassinelli 16B is owned by Dragul (53.12%) together with two individual investors, each of whom hold 23.44% interest in the SPE. Both Cassinelli 16A and 16B are managed by GDA Cassinelli Management, LLC, a wholly-owned Dragul SPE that is, in turn, managed by GDA Real Estate Management, Inc. Dragul is the sole shareholder and president of GDA Real Estate Management, Inc. The Property is therefore property of the Estate the Receiver is authorized to sell.

8. The Property is encumbered by a deed of trust securing an \$800,000 loan made by Chad Hurst to Cassinelli 16A and 16B on May 25, 2018, nearly two years after the property was purchased. The loan matured September 25, 2018.

III. Sale of Cassinelli Square is in the best interests of the Estate and its creditors.

9. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver's proposed sale. In analogous bankruptcy contexts, approval of a sale of property pursuant to Section 363 of the Bankruptcy Code is warranted where there exists a "sound business reason." *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). "In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a 'business judgment test.'" *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

10. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property include (where applicable): (1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or

lease the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted). Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; see *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that “[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion”).

11. In the Receiver’s judgment, the proposed sale of the Property is in the best interest of the Estate and its creditors. The Receiver has hired the nationally-recognized firm of Marcus & Millichap to market the Property, has negotiated the price and terms with the Buyer, and believes both are reasonable. Under the Cassinelli PSA, Buyer has 30 days from February 15, 2019 to conduct due diligence – *i.e.*, until March 18, 2019. Buyer’s earnest money deposit of \$100,000 is refundable if during the due diligence period Buyer cancels the PSA for any reason. Closing is scheduled to occur on or before March 28, 2019.

12. On February 5, 2019, the Receiver entered into a master agreement with Hagshama, an Israeli investment company with affiliate entities operating in the United States, and Odyssey Acquisitions III, LLC, a Nevada limited liability company, and a subsidiary of Odyssey Real Estate Partners (“Odyssey”) (the “Master

Agreement”). On February 14, 2019, the Receiver filed a motion to obtain Court approval of the Master Agreement.

13. Under to the Master Agreement, Odyssey has agreed to purchase all of the Estate’s interests in certain real estate properties and/or interests in entities which own certain real estate properties, including the Estate’s interest in Cassinelli Square. The Master Agreement authorizes the Receiver to enter into the Cassinelli PSA and seek Court approval of the Agreement; the Cassinelli PSA acknowledges the Master Agreement and Odyssey’s rights under it.

14. Pursuant to notice provisions of the Master Agreement, on February 15th the Receiver provided to a copy of the executed Cassinelli PSA to both Hagshama and Odyssey. Odyssey has since elected to include Cassinelli Square in its purchase under the Master Agreement. By its current terms, the Cassinelli PSA would automatically terminate upon Odyssey’s election. Buyer and the Receiver have, however, agreed to execute an extension/amendment to the Cassinelli PSA to recognize that it will be a backup Agreement if the Master Agreement does not close by March 16, 2019, and that will extend various deadlines under the PSA to accommodate that contingency. The Receiver seeks Court of the Cassinelli PSA in the event the Master Agreement does not timely close.

15. At closing of the Cassinelli PSA, a broker’s fee of 4% (\$116,000) would be due. There will be additional closing costs, unpaid taxes, potentially other liens, and likely other expenses to pay at closing. Net proceeds from the proposed Cassinelli

Square sale are presently estimated to be around \$1.85 million. If the net sales proceeds are distributed in accordance with applicable tenants-in-common and operating agreements, Hagshama Ohio Cassinelli, LLC would receive approximately \$1.67 million, and Cassinelli Square 16 B would receive approximately \$180,000. Of the amount paid to Cassinelli Square 16 B, the husband and wife investors would receive approximately \$170,000, and the Estate would receive approximately \$10,000 for Dragul's interest in the Property. The Receiver has not yet determined whether the tenants-in-common and operating agreements are valid and enforceable or whether the net proceeds should be distributed in accordance with their terms. Alternatively, equity may best be served by disregarding these agreements and retaining the net proceeds in the Estate for distribution to all creditors.

16. Regardless of how the net proceeds from the proposed sale are distributed, the proposed sale is in the best interest of the Estate because absent a timely sale the Cassinelli Property may be lost to foreclosure and the Estate may receive nothing.

WHEREFORE, the Receiver asks the Court to grant this Motion, approve the proposed sale of the Property in accordance with the terms of the Cassinelli PSA, and authorize the Receiver to take any and all further actions necessary to consummate the sale.

Dated: February 21, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.

By: */s/ Michael T. Gilbert* _____

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on February 21, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF CASSINELLI SQUARE** Via CCE and/or electronic mail to the following:

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Sueanna P. Johnson
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Brookwood Capital Advisors
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Cassinelli Square Buyer

By: /s/ Victoria Ray _____

CERTIFICATION OF E-SERVICE ON CLAIMANTS

A copy of the Motion will be sent out by electronic mail in accordance with the Court's Order regarding same, on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

By: /s/ Victoria Ray
Allen Vellone Wolf Helfrich & Factor P.C.

PURCHASE AND SALE AGREEMENT

2/15/2019 | 14:37:17 PST THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the _____ day of February, 2019 ("Effective Date"), by and between Harvey Sender, in his capacity as RECEIVER of the Gary Dragul RECEIVERSHIP ESTATE, ("Seller"), and _____, ("Buyer") or its permitted assigns pursuant to Section 11(o) ("Buyer").

RECITALS

A. Gary Dragul owned and managed various companies (collectively "Dragul") for which he solicited investors to acquire residential and commercial real estate.

B. Harvey Sender, the Seller, was appointed Receiver by a Court Order dated August 30, 2018 entered in Rome v. Dragul, et al., Case Number 2018 CV 33011, District Court, Denver, Colorado (the "Receivership Court" and the "Receivership Order") to take control of all Dragul assets (referred to as "Receivership Property" or "Receivership Estate"). See Receivership Order attached as **Exhibit A**. The Receivership Property includes all the assets of GDA Real Estate Services, LLC ("GDA RES"), a Colorado limited liability company; GDA Real Estate Management, LLC ("GDA REM"), a Colorado limited liability company; CASSINELLI SQUARE 16 A, LLC, a Delaware limited liability company, as to an undivided 82.52% ownership interest and CASSINELLI SQUARE 16 B, LLC, a Delaware limited liability company, as to an undivided 17.48% ownership interest, collectively. The Receivership Order authorizes the Receiver to sell assets of the Receivership Estate subject to Court approval.

C. The Property, commonly known as 11372 Princeton Pike, Cincinnati OH 45246, is a commercial property which is the subject matter of this Agreement (and more fully described below). The Property is an asset of the Receivership Estate.

D. The Receiver, as Seller, desires to sell and convey, and Buyer desires to purchase and acquire the Property, pursuant to the terms set forth below.

AGREEMENT

In consideration of the mutual covenants and promises herein set forth, the parties agree as follows:

1. **Definitions.** The following terms shall have the following meanings for all purposes of this Agreement:

- (a) "Business Day" is defined in Section 11(n) of this Purchase Agreement;
- (b) "Closing" means the closing of the transaction contemplated by this Agreement;
- (c) "Closing Date" means the date on which Closing occurs, which shall be on or before the date that is ten (10) days after the expiration of the Inspection Period;

(d) “Earnest Money” means the earnest money deposit of One Hundred Thousand and No /100 Dollars (\$100,000.00) to be deposited in accordance with Section below. The earnest money is fully refundable during the initial due diligence period;

(e) “Effective Date” means the date on which both Parties have delivered to the other a fully executed original of the Agreement. The Effective Date shall be filled in above upon establishment of the Effective Date. For purposes of delivery, a signed facsimile or pdf transmission shall be deemed acceptable delivery;

(f) “Inspection Period” means the period from the Effective Date through 5:00 PM Eastern Time on the date that is thirty (30) days from and after the Effective Date with an option to extend for an additional fifteen (15) days with an additional refundable deposit of fifty thousand and No /100 Dollars (\$50,000.00);

(g) “Property” means that parcel of real estate located at 11372 Princeton Pike, Cincinnati, OH 45246, and more particularly described in **Exhibit B** attached hereto;

(h) “Purchase Price” means \$2,900,000 with a \$30,000 acquisition fee credit to Buyer at closing;

(i) “Title Company” means First Advantage Title (or a title company mutually agreed upon by Buyer and Seller);

(j) “Title Commitment” means an owner’s title insurance policy commitment from the Title Company reflecting the current status of title to the Property;

2. Court Approval. Within three (3) business days of the Effective Date, Seller shall file a motion seeking approval of this Agreement. The Receiver will use his reasonably diligent efforts to obtain approval of and will support this Agreement over the objection of any creditors or other interested parties; provided, however, that the Receiver, consistent with his fiduciary duties in the Receivership Case, shall, until the Receivership Court enters an order approving this Agreement, be free to entertain and to accept any competing offer that he deems in his sole and absolute discretion to be a higher or better offer. If the Receiver accepts and obtains Receivership Court approval of a higher and better offer, Buyer may seek reimbursement of its reasonable expenses incurred pursuant to this Agreement through the date Buyer is notified that the Receiver has accepted another offer. The Receiver’s foregoing right to entertain and/or accept competing offers shall immediately and automatically terminate upon the Receivership Court’s entry of an order approving this Agreement and after the Receivership Court’s entry of the order approving this Agreement, the Receiver shall not accept or present to the Receivership Court any offers, backup offers to purchase the Property, whether solicited or unsolicited.

3. Exclusive Jurisdiction. This Agreement shall be null and void if it is not approved by an order of the Receivership Court on or before February 15, 2019. The Parties agree that the Receivership Court shall have exclusive jurisdiction to hear and determine all disputes, claims, or other actions arising from or relating to the Agreement. Each Party consents to the Court entering final orders, judgements and/or decrees.

4. 3rd Party Master Agreement Contingency.

(a) Master Agreement. On February 5, 2019, the Receiver entered into a Master Agreement with Hagshama, an Israeli investment company, and Odyssey Acquisitions III, LLC, a Nevada limited liability company (“Odyssey”). Pursuant to this Master Agreement, Odyssey has agreed to purchase some or all of the Receivership Estate’s interests in certain real estate properties and/or interests in entities which own certain real estate properties. A copy of the Master Agreement is attached hereto as **Exhibit C**. The Subject Property is one of the properties that may be purchased by Odyssey under the Master Agreement. Hagshama is a major investor in the entity that owns the Subject Property.

(b) Sale Contingency. Pursuant to the terms of the Master Agreement, the Receiver is free to market and solicit offers of the Subject Property, to execute letters of intent and to enter into a purchase and sale agreement of the Subject Property, including this Agreement. The Receiver is obligated to provide Hagshama and Odyssey a copy of this Agreement upon its execution. Under the Master Agreement, Odyssey has 14 days from the date it receives notice of this Agreement to elect whether to exclude the Subject Property from the Master Agreement bulk purchase. Failure to elect within 14 days shall be deemed an election by Odyssey to include the Subject Property in its bulk purchase. Upon the affirmative election or deemed election by Odyssey to include the Subject Property in its bulk purchase, this Agreement shall automatically terminate, and all deposits made by Buyer shall be returned to Buyer and the Parties hereto shall be released of all obligations hereunder

5. Closing. At Closing the Property shall be conveyed to Buyer, leases assigned, and Buyer shall pay to Seller the Purchase Price via wire transfer. At Closing, the Earnest Money shall be paid to Seller and credited against the Purchase Price, and Buyer shall deliver to Seller immediately available and collectible funds equal to the balance of the Purchase Price, plus or minus Buyer’s share of closing costs, prorations, credits and charges payable pursuant to this Agreement.

6. Proration of Rents and Taxes: The parties agree Buyer shall receive a credit for a prorated portion of the 2019 calendar year real estate taxes from January 1, 2019 to the Closing Date based on applicable assessment values. Buyer shall also receive a credit for: (i) any security deposit paid by a tenant; (ii) prorated rent for the month of closing; and (iii) a prorated credit for common area maintenance and insurance charges paid in advance by a tenant.

7. Payment of Delinquent Taxes. Seller will pay and provide proof of payment for the delinquent taxes and any other liens on the property to ensure property is free and clear of encumbrances upon date of closing.

8. Title.

(a) At Closing, title to the Property shall be conveyed to Buyer, free and clear of all liens, encumbrances, encroachments, covenants, conditions, restrictions, easements,

delinquent taxes, limitations and violation notices from any governmental authority other than the Permitted Exceptions, which Buyer shall determine and identify in writing during the Inspection Period in accordance with this Section 3.

(b) The Title Company shall provide the ALTA Title insurance policy & Title Commitment to Buyer. Buyer shall have until the expiration of the Inspection Period to examine the Title Commitment, and satisfy itself as to the marketability and status of Seller's title. In the event Buyer determines that there are any title defects of record, in Buyer's sole and absolute discretion, Buyer shall notify Seller in writing thereof (the "Title Notice"). If Buyer fails to deliver such notice to Seller within the Inspection Period, then, subject to the remaining title requirements set forth below, Buyer shall be deemed to have found title acceptable in all respects.

(c) Seller shall provide written notice to Buyer within five (5) days of receipt of the Title Notice of any matters objected to by Buyer which Seller does not intend to cure (Seller's Response"). If Seller does not elect to cure all such matters then Buyer may (i) waive such matters and close on the Property subject to the Permitted Exceptions; or (ii) terminate this Agreement by delivering written notice of such termination to Seller within three (3) days after receipt of Seller's Response. If Buyer properly terminates this Agreement, neither party shall have any further obligations hereunder and Buyer shall be entitled to a refund of the Earnest Money. Notwithstanding anything contained herein to the contrary, Seller hereby covenants and agrees to cause to be released, satisfied, cured or removed from Buyer's title policy, prior to or simultaneously with the Closing, all "Mandatory Cure Objections," as hereinafter defined. For the purposes hereof, "Mandatory Cure Objections" shall mean any mortgage, monetary judgment, past due tax or assessment, mechanics or materialmen's liens, or other similar liquidated amount created on the Property by or on behalf of Seller either by act or omission, or otherwise cause the same to be removed from the Title Commitment with the consent of the Title Company (by bonding or otherwise), which amount, at the option of Seller, may be paid from the proceeds of the Purchase Price at Closing. Buyer may update the Title Commitment at any time prior to Closing. Buyer will have three (3) Business Days from its receipt of any title update report within which to notify Seller of any title defects first disclosed therein, and the foregoing procedures and timeframes will apply with respect to such newly-disclosed defects (with the Closing Date similarly extended).

9. Seller's Delivery of Information; Buyer's Investigation; Buyer's Right to Terminate.

(a) On or before the date that is five (5) days after the date hereof, Seller shall provide Buyer with copies of the leases, and Seller's owner's policy of title insurance for the Property or proforma or "marked up" title commitment if such policy has not yet been issued (the "Existing Diligence Material"). Additionally, following the date of this Agreement and through the Closing Date or until other termination of this Agreement, upon reasonable advance notice, Buyer and its representatives shall be afforded reasonable access (accompanied by a representative of Seller if such access is for purposes of performing any invasive testing) to the Property. As a condition of such right of entry, Buyer and its employees, agents, contractors and invitees shall (a) insure that all such

inspection are non-invasive; (b) respect the rights of the existing tenants of the Property, and shall conduct the inspections in a manner that will not unreasonably disturb such tenants' utilization or enjoyment of the Property, (c) obtain Seller's prior written consent, not to be unreasonably withheld, conditioned or delayed, prior to making any test borings or installing or testing any wells on the Property, (d) obtain Seller's prior written consent, not to be unreasonably withheld, conditioned or delayed, prior to interviewing or otherwise communicating to Property tenants, and (e) provide Seller with a reasonably satisfactory certificate of insurance evidencing that Buyer has commercial general liability insurance and automobile liability insurance, on an occurrence basis, with limits of at least \$2,000,000 and \$1,000,000, respectively, each issued by an insurance company licensed to do business in the State of Colorado and with an A. M. Best Company rating of at least A-/IX and a reasonably satisfactory form of endorsement evidencing the fact that Seller and Seller's property management company, are named as additional insureds under Buyer's liability insurance policies. Buyer's insurance policies must be primary with respect to any liability insurance carried by Seller. Buyer will leave the Property in substantially the same condition as existed at the time of entry upon the Property by Buyer or its agents or permittees and will indemnify and hold Seller harmless from any claims, causes of action, or other assertions arising out of the entry upon the Property by Buyer or its agents, employees or permittees and the activities of such persons upon the Property, including, but not limited to, reasonable attorneys' fees incurred by Seller in connection therewith, unless such damages are caused by the negligence or willful misconduct of Seller or its agents or employees. This indemnity shall survive expiration or termination of this Contract.

(b) Buyer shall be entitled to obtain a new survey, property condition report or survey re-certified to Buyer, if any, or any other studies, tests, analyses or reports as to the Property or its operation as Buyer may elect (collectively, the "Additional Diligence Material") for the Property. Buyer shall obtain such items at Buyer's sole cost and expense.

(c) At any time prior to 5:00 PM Eastern Time on the last day of the Inspection Period, Buyer shall have the right to terminate this Agreement by delivering written notice to Seller. Buyer reserves the right to cancel the Agreement during the Inspection Period for any reason. Upon cancellation, full earnest money deposit shall be returned to buyer by title company and each party shall have no further obligations to the other except with respect to those matters that expressly survive termination of this Contract. If Buyer does not so notify Seller, Buyer shall lose its opportunity to elect not to purchase the Property and the parties shall proceed to Closing.

10. Closing. At Closing, documents and other items shall be delivered as follows:

(a) Seller's Deliverables. Contemporaneously with Buyer's deliveries and payments under Section 6(b) hereof, Seller shall deliver to Title Company or Buyer, as may be appropriate:

- (i) Special Warranty Deed ("Deed");
- (ii) Assignment of Leases, said form attached hereto as **Exhibit D**;

(iii) Estoppel Certificates executed by the Tenants; and

(iv) Such other documents as Buyer or the Title Company may reasonably require or as may be required by the terms of the Title Commitment or this Agreement.

(b) Buyer's Deliverables.

(i) Deposit of Funds. Buyer shall pay Seller or deposit the Purchase Price in escrow with Title Company, as reduced by the Earnest Money, together with any other amounts required to be paid by Buyer pursuant to the terms of this Agreement.

(ii) Buyer's Closing Documents. Buyer shall deliver to Title Company or Seller, as may be appropriate:

(1) Such other documents as Seller or the Title Company may reasonably require or as may be required by the terms of the Title Commitment or this Agreement.

All closing documents shall be dated as of the Closing Date.

11. Costs and Expenses and Income of the Property.

(a) Buyer shall pay: (a) its attorneys' fees; (b) the costs of any Additional Diligence Material and any other cost associated with Buyer's inspection of the Property which includes the ALTA Survey, third party reports, (c) any intangibles costs related to Buyer's acquisition of the Property.

(b) Both Parties shall pay one half the closing service fee.

(c) Both Parties shall pay one half of the recording fee.

(d) Seller shall pay: any transfer tax or documentary stamp tax applicable to the sale of the Property; Seller's attorneys' fees; ALTA title report, title insurance premiums, title search/title policy/title insurance; recording fees for the deed, and the brokerage commission to Broker.

12. Escrow Agent and Earnest Money.

(a) Seller and Buyer hereby appoint Title Company to act as escrow agent in connection with this transaction upon the terms and conditions of this Agreement.

(b) Within three (3) business days after the Effective Date, Buyer will deposit the Earnest Money with Title Company as Escrow Agent. All interest earned thereon shall belong to Buyer.

(c) The Earnest Money may, upon Buyer's request and expense, be deposited by Escrow Agent in an interest-bearing money market account in a federally insured institution. A Form W-9 must be completed and executed by Buyer concurrently with the execution of this Agreement. The failure to submit to Escrow Agent an executed, completed Form W-9 shall stay Escrow Agent's obligation to deposit the escrow in either a segregated account or an interest-bearing account until such time that said form has been provided to Escrow Agent. Buyer shall receive a 1099 for the interest on the Earnest Money. Seller and Buyer agree that the Escrow Agent shall not be responsible for any penalties, loss of principal or interest, or the consequences of a delay in withdrawal of the Earnest Money and interest accrued thereon. Seller and Buyer also agree that Escrow Agent shall not be liable for any loss or impairment of the Escrow which results from the failure, insolvency or suspension of the financial institution in which the Earnest Money is deposited, unless such loss or impairment is due to the negligence or willful misconduct of Escrow Agent.

(d) The Earnest Money shall be applied to the Purchase Price at Closing or shall be disbursed as otherwise provided herein. Escrow Agent's obligation to return the Earnest Money to Buyer, as and when provided herein, shall survive the termination of this Agreement.

(e) If Buyer timely terminates the purchase and sale agreement during the inspection period for any reason, then upon such termination neither party shall have any further obligations hereunder except for those which expressly survive any such termination, and the Earnest Money and all interest earned thereon shall be returned to Buyer.

(h) It is agreed that if a dispute should arise between Buyer and Seller as to the final disposition of the Earnest Money, then Escrow Agent may institute a suit to determine who is entitled to the Earnest Money, and the cost of such action, including reasonable attorneys' fees incurred by Escrow Agent, shall be borne by the party not entitled to the Earnest Money as determined by such final disposition.

(i) Seller and Buyer acknowledge that Escrow Agent is serving solely as an accommodation to the parties hereto, and except for the gross negligence or willful misconduct of the Escrow Agent, Escrow Agent shall have no liability of any kind whatsoever arising out of or in connection with its activity as Escrow Agent. Seller and Buyer jointly and severally agree to and do hereby indemnify and hold harmless Escrow Agent from all suits, actions, loss, costs, claims, damages, liabilities, and expenses

(including, without limitation, attorneys' fees and disbursements) which may be incurred by reason of its acting as Escrow Agent and such indemnity shall survive the termination of this Agreement. In no event shall the Escrow Agent be liable for any lost profits or for any incidental, special, consequential or punitive damages whether or not the Escrow Agent knew of the possibility or likelihood of such damages.

(j) If for any reason the Closing does not occur and either party makes a written demand upon Escrow Agent for payment or refund, as the case may be, of the Earnest Money or any portion thereof, Escrow Agent shall give written notice to the other party of such demand. If Escrow Agent does not receive a written objection from the other party to the proposed payment or refund, as the case may be, within ten (10) days after the giving of the notice described in the preceding sentence, Escrow Agent is hereby authorized to make such payment or refund; provided, however, if for any reason Escrow Agent in good faith shall elect not to make such payment, Escrow Agent shall continue to hold such amount until otherwise directed by written instructions from both parties to this Agreement or a final judgment of a court of competent jurisdiction. Notwithstanding the foregoing, Escrow Agent shall have the right at any time to deposit the Earnest Money with a court of competent jurisdiction. Escrow Agent shall give written notice of such deposit to Seller and Buyer. Upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

13. Default by Buyer. IF THE SALE IS NOT CONSUMMATED DUE TO ANY DEFAULT BY BUYER HEREUNDER, THEN SELLER'S SOLE REMEDY SHALL BE THE RIGHT TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES. THE PARTIES HAVE AGREED THAT SELLER'S ACTUAL DAMAGES, IN THE EVENT OF A FAILURE TO CONSUMMATE THIS SALE DUE TO BUYER'S DEFAULT, WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT SELLER WOULD INCUR IN SUCH EVENT. THE FOREGOING IN NO WAY LIMITS SELLER FROM SEEKING INDEMNIFICATION FROM BUYER UNDER THE TERMS OF THE AGREEMENT.

14. Default by Seller. IN THE EVENT THAT SELLER DEFAULTS OR FAILS TO CONSUMMATE THIS AGREEMENT FOR ANY REASON, BUYER'S SOLE REMEDY SHALL BE THE RIGHT TO THE RETURN OF THE DEPOSIT, WHICH RETURN SHALL OPERATE TO TERMINATE THIS AGREEMENT.

15. Brokers; Consultants. Seller is represented by Marcus and Millichap and commission shall be paid at closing per the separate agreement. Buyer will receive thirty thousand dollar (\$30,000) acquisition fee credit towards the purchase price at closing. Both parties hereby indemnify and agree to hold the other harmless from and against any and all other costs, expense, loss, and damage, including but not limited to attorneys' fees and court costs, arising or resulting directly or indirectly out of any claim by any other broker not listed in this agreement, real estate broker or agent in connection with this transaction, which obligation shall survive the Closing or the termination of this Agreement.

16. 1031 Exchange. Seller acknowledges that Buyer may intend to participate in a 1031 exchange. If requested, Seller shall fully cooperate and shall take all actions requested to qualify the other party’s purchase or sale of replacement property within the meaning of Treasury Regulation Section 1.1031(k)-1(a) as like-kind property under Code Section 1031(a)(1). Buyer shall pay all costs and expenses relating to actions taken under this Section. Each party further agrees to execute any and all documents (subject to reasonable approval of legal counsel) as are reasonably necessary in connection with such exchange provided that neither party shall be required to undertake any material liability or obligation in so doing and provided that such exchange does not extend the applicable Closing Date.

17. Miscellaneous Provisions.

(a) Notices. Any notice or other communication permitted or required to be given hereunder by one party to the other shall be in writing and shall be either (i) hand delivered, (ii) sent by Federal Express or other overnight delivery service, or (iii) transmitted by email or facsimile, addressed as follows:

If to Seller: Harvey Sender, Esq. (Receiver)
Sender & Smiley, LLC
600 17th Street, Suite 2800
Denver, CO 80202
Telephone: (303) 454-0540
Email: hsender@sendersmiley.com

With copy to: Matthew J. Roth, Esq.
Allen Vellone Wolf Helfrich & Factor, P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202
Telephone: (303) 534-4499
Email: mroth@allen-vellone.com

If to Buyer: Daniel Johnson
6125 Zero Road
Meridian, MS 39301
Telephone: _____
Email: _____

With copy to: _____

or to such other address as any party may from time to time designate by notice in writing to the other parties. Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing. The refusal to accept delivery by any party or

the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

(b) Governing Law. This Agreement shall be governed by the laws of the state in which the Property is located.

(c) Other Documents. Each of the parties agrees to sign such other and further documents as may be appropriate to carry out the intentions expressed in this Agreement.

(d) Attorneys' Fees. In the event of any judicial or other adversarial proceeding between the parties concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees in addition to any other relief to which it may be entitled.

(e) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one instrument. Further, a facsimile signature or pdf email of either party on any counterpart may be relied upon as an original signature.

(f) Time of the Essence. It is expressly agreed by the parties hereto that time is of the essence of this Agreement and in the performance of all conditions, covenants, requirements, obligations and warranties to be performed or satisfied by either party hereto. Waiver of performance or satisfaction of timely performance or satisfaction of any condition, covenant, requirement, obligation or warranty by one party shall not be deemed to be a waiver of the performance or satisfaction of any other condition, covenant, requirement, obligation or warranty unless specifically consented to in writing. Whenever a date specified herein shall fall on a Saturday, Sunday or legal holiday, the date shall be extended to the next Business Day.

(g) Risk of Loss. The Property shall be held at the risk of Seller until Closing thereon. In the event of any fire or other casualty causing damage to the Property, Seller shall promptly notify Buyer thereof and , if the cost of the repair of such damage is in excess of Ten Thousand and No/100 Dollars (\$10,000), Buyer shall have the option, exercisable within fifteen (15) days after receipt of such Seller notice, to (a) close on the Property in accordance with the terms hereof notwithstanding such casualty, or (b) terminate this Agreement in which event the Earnest Money and all accrued interest thereon shall be returned and the Buyer and the parties shall have no further obligation to the other except with respect to obligations expressly set forth herein to survive the termination hereof. If Buyer elects to close hereunder notwithstanding such fire or other casualty, then Seller shall credit the Purchase Price by the amount of the applicable insurance deductible, and Buyer shall accept an assignment, without recourse, of Seller's rights to any payments to be made under any applicable hazard insurance policies together with any proceeds paid out under such policies to Seller prior to the Closing and not expended to repair or replace such damage.

(h) Condemnation. If after the date hereof and prior to Closing all or any material part of the Property is taken or threatened to be taken by eminent domain or

condemnation (including, without limitation, any taking which has any effect on the terms of the Lease), Buyer may elect either to (a) close on the Property in accordance with the terms hereof notwithstanding such taking or threatened taking, or (b) terminate this Agreement in which event the Earnest Money and all accrued interest thereon shall be returned to the Buyer and the parties shall have no further obligation to the other except with respect to obligations expressly set forth herein to survive the termination hereof. If Buyer elects to close hereunder notwithstanding such taking or threatened taking in accordance with option (a) above, then Seller shall pay or assign all condemnation awards or payments in respect of the Property to Buyer at Closing.

(i) Mutual Drafting. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof, and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

(j) Severability. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

(k) Prevailing Party. In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels. The parties stipulate and agree that venue in any such litigation shall be laid in Pawnee County, Kansas.

(l) Singular. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.

(m) Exhibits. All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.

(n) Days. All references to a number of days shall mean calendar days unless Business Days are expressly referred to. A "Business Day" is any Monday, Tuesday, Wednesday, Thursday or Friday other than any legal holiday.

(o) Assignment. Buyer shall have the right to assign this Agreement to any Affiliate of Buyer. The term "Affiliate" as used herein shall mean any parent, subsidiary or affiliated entity which controls, is controlled by, or is under common control with Buyer, or any entity in which Buyer is a managing member, general partner or holds a controlling voting or financial interest.

17. Authority by Seller. Seller was appointed Receiver under the Receivership Order, to exercise ownership rights over the property of the Receivership Estate, including the Property. Seller, as Court appointed Receiver, has the right, power, and authority to enter into this Agreement and to transfer the Property, subject to Court approval, to Seller. The person signing this Agreement on behalf of Seller is authorized to do so. This Agreement and all agreements,

instruments and documents herein provided to be executed by Seller are duly authorized, executed and delivered by and binding upon Seller in accordance with their terms.

18. Receiver (Seller) Disclaimer. NOTWITHSTANDING ANY LANGUAGE IN THIS AGREEMENT TO THE CONTRARY, THE RECEIVER MAKES NO REPRESENTATION OR WARRANTY TO THE BUYER CONCERNING THE PROPERTY, EXPRESS OR IMPLIED, AND ANY SUCH OTHER OR ADDITIONAL REPRESENTATIONS OR WARRANTIES ARE HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE PREVIOUS SENTENCE, THE RECEIVER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY RELATED OR WITH RESPECT TO THE VALUE OF THE PROPERTY.

19. Authority by Buyer. Buyer represents and warrants that it is duly authorized and empowered to enter into this Agreement and to perform fully its obligations hereunder, and (ii) such obligations constitute the valid and binding obligations of Buyer, enforceable in accordance with their terms,.

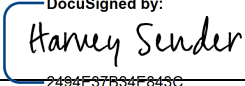
20. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations or warranties other than as set forth herein. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Agreement shall be binding upon the parties hereto and their respective successors and assigns.

[Remainder of Page Intentionally Left Blank; Signatures Begin on Next Page]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement to be effective as of the date shown hereinabove.

“SELLER”:

HARVEY SENDER, in his capacity as
RECEIVER of the Gary Dragul
RECEIVERSHIP ESTATE

By:  _____
Harvey Sender
2/15/2019 | 14:32:47 PST
Dated: _____

[Signatures Continue on Next Page]

“BUYER”:

By: 

Name: W.P. JOHNSON

Title: TRUSTEE

Date: 2/13/19

ACKNOWLEDGMENT BY ESCROW AGENT

Escrow Agent hereby agrees to perform its obligations under this Agreement, including but not limited to Article 7 hereof.

“ESCROW AGENT”:

First Advantage Title

Name: _____

Title: _____

Date: _____

- Exhibit A: Receivership Order
- Exhibit B: Legal Description
- Exhibit C: 3rd Party Master Agreement
- Exhibit D: Assignment of Leases form

EXHIBIT A
RECEIVERSHIP ORDER

EXHIBIT B

LEGAL DESCRIPTION

(Insert Metes and Bounds Legal description)

EXHIBIT C

3rd PARTY MASTER AGREEMENT

EXHIBIT D

ASSIGNMENT OF LEASES AGREEMENT

Date:

Purchaser: Daniel Johnson
6125 Zero Road
Meridian, MS 39301

Seller: HARVEY SENDER, in his capacity as RECEIVER of the Gary Dragul
RECEIVERSHIP ESTATE

Recitals

A. Pursuant to that certain Purchase and Sale agreement between (INSERT PURCHASER & SELLER HERE) dated on February 1st 2019 known as 11732 Princeton Pike, Cincinnati OH 45246 In Purchase Agreement, Seller agrees to sell to purchaser, and purchaser agreed to purchase from seller, certain real property described in attached Exhibit “A” of the contract. As a condition to closing the sale, Seller and purchaser are obligated to execute this assignment of leases.

Assignment

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Seller does hereby convey and assign to purchaser all of Seller’s right, title and interest in and to all leases associated with the sale of the property including but not limited to:

- Big Lots Lease
- Haverty’s Furniture Lease
- Radiant Nails Lease

Seller does hereby agree to defend, indemnify, and hold harmless purchaser from any liability, damages, causes of action, expenses, and attorneys’ fees incurred by purchaser by reason of the failure of seller to fulfill, perform, and discharge the commitments obligations and liabilities of seller under and by virtue of the leases assigned hereunder, which arose prior to the closing date (as defined in the agreement).

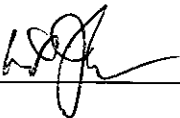
Purchaser does hereby accept the foregoing assignment subject to the terms and conditions herein contained and the aforesaid agreement, and does hereby assume as of the closing date and agree to perform, discharge, fulfill and observe all obligations, covenants, conditions and provisions under the leases to be performed by purchaser which arise on and after the closing date, and does

hereby agree to defend, indemnify and hold harmless seller from any liability, damages, causes of actions, expenses and attorneys' fees incurred by seller by reason of the failure of purchaser on and after the closing date to fulfill, perform, discharge and observe such obligations, covenants, conditions, and provisions.

IN WITNESS WHEREOF, the parties have entered into this assignment of leases as of the date first above written.

[Signature Page Follows]

Purchaser:

By:  *W.P. Johnson*
Name: _____

Date: 2-13-19

Seller

By: 
Name: _____

Date: 2/15/2019 | 14:32:47 PST

STATE OF Mississippi)
) SS.
COUNTY OF Lauderdale)

On this 13th day of Feb., before me, a Notary Public in and for said County, personally appeared W. P. Johnson, to me personally known, who being by me duly sworn, did say that he/she is _____ acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Sherilyn M. Godfrey

Notary Public

My Commission Expires: 3/21/20



STATE OF I)
) SS.
COUNTY OF)

On this _____ day of _____, before me, a Notary Public in and for said County, personally appeared _____, to me personally known, who being by me duly sworn, , a _____ limited liability company, and acknowledged the execution of the foregoing instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

Notary Public

My Commission Expires: