

FILED IN DENVER
DISTRICT COURT
DENVER, COLORADO

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	2019 MAR -4 PM 12: 38 DATE FILED: March 4, 2019 CASE NUMBER: 2018CV33011
Plaintiff: CHRIS MYKLEBUST, SECURITIES COMMISSIONER FOR THE STATE OF COLORADO v. Defendants: GARY DRAGUL, et al.	▲ COURT USE ONLY ▲
Attorneys for Non-Party National Commercial Builders, Inc.: Joshua R. Proctor, #33835 PROCTOR BRANT, P.C. 4B Inverness Court East, Suite 110 Englewood, Colorado 80112 Telephone: (303) 768-8240 jproctor@proctorbrant.com	Case Number: 2018CV033011 Division: 424
NATIONAL COMMERCIAL BUILDERS, INC.'S MOTION FOR RELIEF FROM STAY	

National Commercial Builders, Inc. ("NCB"), through its attorneys, PROCTOR BRANT, P.C., submits its Motion for Relief from Stay and states as follows:

Certificate of Conferral Pursuant to C.R.C.P. 121, § 1-15(8)

NCB, through its other retained out-of-state counsel, previously conferred with Receiver's counsel about the relief sought by this motion and is informed and believes that the Receiver opposes the relief sought by this motion. Out-of-state counsel attempted to confer with the Receiver's counsel more recently by phone and email on February 27, 2019, but as of the filing of this motion, has not had an updated response.

INTRODUCTION

1. NCB has a valid mechanics' lien on the Hickory Corners property under North Carolina law. North Carolina statutory law imposes a 180-day deadline to file an action to enforce a mechanics' lien. *See* N.G.S.A. § 44A-13(a). The deadline for NCB to file an action to enforce its mechanics' lien regarding Hickory Corners expires March 12, 2019.¹ NCB seeks relief from the stay imposed by the Court's Stipulated Order Appointing Receiver (¶ 26) so that NCB may file its claim of lien action in North Carolina state court before March 12, 2019.

2. NCB does not concede the Receiver has title to the Hickory Corners property or that this Court has jurisdiction over the property or NCB's mechanics' lien.

3. The purchase and sale agreement submitted by the Receiver for the Hickory Corners transaction reflects a proposed closing date of March 22, 2019. Because this transaction is scheduled to close *after* NCB's statutory deadline of March 12, 2019 to file its claim of lien action in North Carolina, NCB files this motion out of an abundance of caution in order to protect and preserve its right to file and prosecute its valid claim of mechanics' lien on the Hickory Corners property.²

FACTUAL BACKGROUND

4. NCB performed construction services on retail property at Hickory Corners pursuant to a contract dated May 3, 2018, between NCB and the "Owner," Hickory Corners 16 A, LLC and Hickory Corners 16 B, LLC. *See* Exhibit 1, Contract. The Contract provides that it

¹ NCB last furnished labor or materials on the Hickory Corners project on September 13, 2018.

² Previously, the Court approved the Receiver's proposed sale of all the Receivership Estate's interest in the Hagshama entities (which included the Receivership Estate's interest in Hickory Corners) to Odyssey. That transaction was scheduled to close on or about March 15, 2019. If this transaction would have closed, all of the Receiver's interest in Hickory Corners and, by extension, the Court's jurisdiction, if any, over the Hickory Corners property, would have been divested. However, on February 28, 2019, the Receiver gave notice that the transaction would not go forward because Odyssey terminated the Master Agreement with the Receiver. *See* Receiver's Notice of Termination of Odyssey Sale Contracts and Withdrawal of Motion for Sale of Estate's Interest in Residential Properties, filed February 28, 2019.

shall be “governed by the law of the place where the Project is located.” Exhibit 1, excerpt from AIA Document A201-2017, p. 33, Article 13.1. The Hickory Corners property is located at 1718 US Highway 70 SE, Hickory, Catawba County, North Carolina, 28602. *See* Exhibit 1, p. 1.

5. NCB’s construction work at Hickory Corners commenced on May 7, 2018 and was completed on September 13, 2018. Within the time for doing so under North Carolina law, NCB recorded a mechanics’ lien on the property on September 21, 2018 for \$586,054.67.³ *See* Exhibit 3, Claim of Lien on Real Property; *see also*, N.C.G.S. § 44A-7, *et al.* Notice of Lis Pendens was filed on November 27, 2018. *See* Exhibit 4, Notice of Lis Pendens. Pursuant to the claim procedure set forth in this matter, NCB submitted a Claim Form on February 1, 2019. *See* Exhibit 5, Claim Form.

6. According to the purchase and sale agreement submitted by the Receiver for the Hickory Corners transaction, the proposed closing date for the Receiver’s sale of the Hickory Corners property (which is objected to by Hagshama) appears to be March 22, 2019. *See* Exhibit 1 to Receiver’s Motion for Order Authorizing Sale of Hickory Corners, Purchase and Sale Agreement, p. 5, ¶ 2.4.

ARGUMENT AND AUTHORITIES

7. Pursuant to North Carolina Gen. Stat. Ann. § 44A-13:

An action to enforce a claim of lien on real property may be commenced in any county where venue is otherwise proper. No such action may be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement by the person claiming the claim of lien on real property. **If the title to the real property against which the claim of lien on real property is asserted is by law vested in a receiver or is subject to the control of the bankruptcy court, the claim of lien on real property shall be enforced in accordance with the orders of the court having jurisdiction over said real property.** The filing of a proof of claim with a receiver or in bankruptcy and the filing of a notice of lis pendens in each county where the real property subject to the claim of lien on real property is located within the time required by this section satisfies the requirement for the commencement of a civil action.

(emphasis added).

³ On September 5, 2018, NCB, through counsel, submitted a demand for payment. *See* Exhibit 2.

8. Based on the above language, it is unclear whether this Court or North Carolina state court has jurisdiction over the Hickory Corners property or NCB's mechanics' lien, because it is disputed as to whether title to the property is vested in the Receiver. If title to Hickory Corners is not vested in the Receiver, then this Court does not have jurisdiction over the Hickory Corners property or NCB's North Carolina mechanics' lien, and NCB is subject to the 180-day filing deadline for its claim of lien under North Carolina law.

9. In Hagshama's Objection to Receiver's Motion for Order Authorizing Sale of Hickory Corners filed February 19, 2019 ("Hagshama Objection"), Hagshama contends that the Hickory Corners property is not part of the Receivership Estate because it is majority owned by two entities (Hickory Corners 16A, LLC, and Hickory Corners Box 16A, LLC) that are wholly owned by Hagshama. Hagshama Objection, p. 3. If Hagshama's position is correct, then this Court lacks jurisdiction over the Hickory Corners property and lacks jurisdiction to determine the validity of NCB's mechanics' lien on North Carolina property under North Carolina law, and NCB is subject to the 180-day filing deadline referenced above.

10. Colorado receiverships are authorized by C.R.C.P. 66. However, the rule is silent on how receiverships are to be managed, and undersigned counsel found no controlling Colorado case law regarding how a Court should determine a motion for relief from a receivership stay. While not controlling, the Tenth Circuit Court of Appeals has adopted a three-factor test for considering whether to lift a receivership stay, which may provide some guidance. The three factors adopted by the Tenth Circuit are as follows:

1. whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed;
2. the time in the course of the receivership at which the motion for relief from the stay is made; and
3. the merits of the moving party's underlying claim.

SEC v. Vescor Capital Corp., 599 F.3d 1189, 1196 (10th Cir. (Nev.) 2010). NCB submits that an evaluation of these factors supports its requested relief from stay.

11. Lifting the stay order to permit NCB to file an action on its claim of mechanics' lien in North Carolina state court will preserve the status quo. NCB has taken the necessary steps to preserve its mechanics' lien in North Carolina (by recording the lien and giving notice of *lis pendens*) and in this action (by submitting a Claim Form). However, if this Court does not lift the receivership stay order, NCB risks compromising its mechanics' lien claim if it does not file its claim of lien action in North Carolina state court by March 12, 2019. *See* N.G.S.A. § 44A-13. Thus, preservation of the status quo in relation to NCB's mechanics' lien may require relief from the receivership stay to permit NCB to file an action on its claim of lien in North Carolina.

12. Since the Receiver's appointment on August 30, 2018, the Receiver has had the opportunity to sort through and untangle the property interests of the Receivership Estate and has asked for the Court's authorization to sell several of the Estate's interests in property. According to the purchase and sale agreement submitted by the Receiver for the Hickory Corners transaction, the proposed closing date for the Receiver's sale of the Hickory Corners property (which is objected to by Hagshama) appears to be March 22, 2019.

13. Because this transaction is currently scheduled to close *after* NCB's statutory deadline to file its claim of lien action in North Carolina, the factor of timing favors lifting the stay to permit NCB to timely file a lien action in North Carolina state court prior to expiration of the 180-day statutory deadline of March 12, 2019.

14. As established herein, NCB's underlying claim is meritorious. NCB has a valid, enforceable mechanics' lien on the Hickory Corners property for \$586,054.67.

15. The Court's Order Appointing Receiver provides, "Nothing herein contained shall be construed as interfering with or invalidating any lawful lien or claim by any person or entity." Stipulated Order Appointing Receiver, p. 18, ¶ 25.

16. Finally, this Court may lack jurisdiction over NCB's mechanics' lien because NCB was not named as a Defendant in this action pursuant to C.R.C.P. 66(d)(2).

17. NCB reserves and does not waive any and all other legal and equitable rights and defenses in this action under North Carolina and Colorado law.

CONCLUSION

WHEREFORE, for the foregoing reasons, National Commercial Builders, Inc. respectfully requests the Court grant its Motion for Relief from Stay and lift the stay imposed by the Court's Stipulated Order Appointing Receiver for the purpose allowing NCB to file a claim of lien action related to the Hickory Corners property in North Carolina state court.

Dated: March 4, 2019.

Respectfully submitted,

PROCTOR BRANT, P.C.

By: _____

Joshua R. Proctor, #33835

Attorneys for National Commercial Builders, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2019, a true and correct copy of the foregoing **NATIONAL COMMERCIAL BUILDERS, INC.'S MOTION FOR RELIEF FROM STAY** was served upon the following via U.S. Mail:

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

Jeffrey A. Springer
Springer and Steinberg, P.C.
1600 Broadway Street, Suite 1200
Denver, CO 80202

Patrick Vellone
Michael Thomas Gilbert
Rachel A. Sternlieb
Allen Vellone Wolf Helfrich & Factor, P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202

By: _____

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right, crossing the line of the signature line.

 **AIA**® Document A101™ – 2017

DATE FILED: March 4, 2019
CASE NUMBER: 2018CV33011

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 3rd day of May in the year 2018
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Hickory Corners 16 A, LLC, a Delaware Limited Liability Company
Hickory Corners 16 B, LLC, a Delaware Limited Liability Company
5690 DTC Blvd.
Suite 515
Greenwood Village, CO 80111

and the Contractor:
(Name, legal status, address and other information)

National Commercial Builders, Inc.
41951 Remington Avenue
Suite 230
Temecula, CA 92590

for the following Project:
(Name, location and detailed description)

GDA Hickory
1718 US Highway 70 SE
Hickory, NC 28602

The Architect:
(Name, legal status, address and other information)

505Design, Inc.
508 West 5th Street
Suite 250
Charlotte, NC 28202

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
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- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

Demolition only will commence on May 7, 2018; the remaining construction will begin when permit is in hand

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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Not later than (60) calendar days from the date of commencement of the Work.

By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Seven Hundred Seventy-Three Thousand One Hundred Forty-Four Dollars (\$ 773,144), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
------	-------

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

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ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 10th day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (10) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

10%

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§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Gary J. Dragul, President
GDA Real Estate Services, LLC, a Colorado Corporation
Manager of the following entities: Hickory Corners 16 A, LLC, Hickory Corners 16 B, LLC
5690 DTC Blvd., Suite 515
Greenwood Village, CO 80111

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Stephen F. Carter, Estimator
National Commercial Builders, Inc.
41951 Remington Avenue, Suite 230
Temecula, CA 92590
sc@ncbuilders.net
951-302-8200

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§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

Number	Title	Date
SEE EXHIBIT A		

.6 Specifications

Section	Title	Date	Pages
SEE EXHIBIT B			

.7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

Init.

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7

[] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

[] The Sustainability Plan:

Title	Date	Pages
-------	------	-------

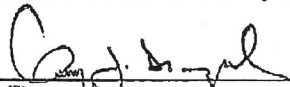
[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.


OWNER (Signature)


CONTRACTOR (Signature)

Hickory Corners 16 A, LLC, a Delaware Limited Liability Company
Hickory Corners 16 B, LLC, a Delaware Limited Liability Company
By: Hickory Management, LLC, a Colorado Limited Liability Company
Its: Manager of the above entities
By: GDA Real Estate Management, Inc., a Colorado Corporation
Its: Manager
Gary J. Dragul, President
(Printed name and title)

William J. Robison President
(Printed name and title)

init.

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User Notes:

8

(1331785843)



EXHIBIT A: Plan Pages

General

- G000: Cover
- G001: General Information and Drawing Index
- G002: Building Code Summary
- G101: Life Safety Plan
- G102: Existing Conditions
- G103: Existing / New Work Comparison

Civil

- C1-00: Site Plan
- C1-01: Site Details
- C2-00: Utility Plan
- C2-01: Utility Design
- G1-01: General Notes

Demolition

- D101: Demolition Plan and Notes

Architectural

- A001: Construction Types
- A101: Floor Plan
- A102: Roof Plan
- A201: Overall Reflected Ceiling Plans
- A301: Overall Exterior Elevations
- A302: Enlarged Elevations and Guitar Center Façade
- A303: Wall Sections at Guitar Center Façade
- A304: Enlarged Elevations at Tenant Wing
- A401: Details
- A402: Details
- A403: Details and Door Schedule

41951 Remington Ave | Suite 230 | Temecula, CA 92590 | P 951.302.8200 | F 951.302.8201



Structural

DS101: Level 1 Demo Plan
DS102: Roof Framing Demo Plan
S001: Structural General Notes
S101: Level 1 New Work Plan
S102: Roof Framing New Work Plan
S200: Elevations and Sections
S300: Sections & Details
S301: Sections & Details

Plumbing

P001: General Notes & Legends
P101: Plumbing Plan
P102: Roof Plumbing Plan

Fire Protection

FP101: Fire Protection Plan

Mechanical

M001: General Notes & Legends
M103: Roof New Construction – Mechanical

Electrical

E001: Elec Legend & Notes
E002: Elec Power Riser & Details
E101: Electrical Plan
E102: Roof Power Plan

41951 Remington Ave | Suite 230 | Temecula, CA 92590 | P 951.302.8200 | F 951.302.8201



EXHIBIT B: Exclusions

Exclusions:

- Any relocating of the existing Primary/Secondary electrical lines and feeders
- Signage or any related items
- Structural engineering
- Soils engineering
- Monitoring and shut down fees for fire sprinklers
- Stocking, saving of existing fixtures, and materials
- Graphics
- Camera of existing plumbing lines
- Transformer existing
- Grease interceptors
- Gas lines by Gas Company
- Hot tap and meter by city water department
- Removal of existing substrate from façade
- Asphalt slurry and striping at parking areas
- Permit fees, encroachment fees, any fees to be reimbursed by the Landlord
- Gas line and meter by others
- 6" interior perimeter walls in Guitar Center space
- All future tenant spaces (other than demising wall)
- Any special back fill for trenches other than natural soil that is removed
- If the fire alarm system requires modification the cost will be \$5,000.00

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect



Request for Information # 01

DATE: 4/23/2018 PROJECT: Hickory N.C. Guitar Center
TO: 505 Design Inc. FROM: Stephen Carter
PH #: 951-302-8200
ATTN: Kevin Roberts FAX #: (951) 302-8201
PH #: 704-348-7000 X 126 EMAIL: sc@ncbuilders.net
FAX #: _____

RESPONSE NEEDED ASAP

REFERENCE DATA

Subcontractor: _____	Date Generated: <u>4/23/2018</u>
Specification _____	Page: _____
Section: _____	Plan Sheet/Detail: _____
Paragraph: _____	

INFORMATION NEEDED:

Location of fire riser area / room, bell, FDC

RESPONSE:

Please see sheet G102 for the existing fire riser location (plan NW)
Additionally, see C1-00 for the existing FDC location (plan NW)

Should you have any additional questions, please advise.

Response By: Kevin Roberts Date: 04.23.18



Request for Information # 02

DATE: 5/3/2018 PROJECT: Hickory N.C. Guitar Center
 TO: 505 Design Inc. FROM: Stephen Carter
 PH #: _____ PH #: 951-302-8200
 ATTN: Kevin Roberts FAX #: (951) 302-8201
 PH #: 704-348-7000 X 126 EMAIL: sc@ncbuilders.net
 FAX #: _____

RESPONSE NEEDED ASAP

REFERENCE DATA

Subcontractor: <u>Interior framing</u>	Date Generated: <u>5/3/2018</u>
Specification _____	Page: <u>A001</u>
Section: _____	Plan Sheet/Detail: <u>Tenant Perimeter Wall</u>
Paragraph: _____	

INFORMATION NEEDED:

Existing perimeter walls are 1" hat channel w/ 5/8" drywall, per A001 OGXA
perimeter wall calls for 6" wall as existing, please clarify.

RESPONSE:

The wall shown was an assumption based off information obtained by a third-party as-built consultant. The method used to provide the as-builts was non-invasive (non-destructive) therefore, the wall assembly shown, OGXA, on A001 is based on the wall thickness provided by the as-built consultant.

With that said, the LL work letter only requires a 3-5/8" metal stud at the perimeter walls with the sheathing and insulation indicated. Therefore, a 6" stud is not required. The 1" hat channels may be able to remain in place.

Response By: [Signature] Date: 05.03.18

 **DUNCAN PETERSON** LLP

John D. Duncan
Christopher L. Peterson
Cuong M. Nguyen
Michael M. Baker

Sender's Email & Direct Line:
Chris@DuncanPeterson.com
(619) 483-3200

September 5, 2018

Hickory Corners 16 A, LLC
Hickory Corners 16 B, LLC
5690 DTC Blvd., Suite 515
Greenwood Village, CO 80111

505Design, Inc.
508 West 5th Street, Suite 250
Charlotte, NC 28202

Re: Claim for Payment
GDA Hickory
1718 US Highway 70 SE
Hickory, NC 28602

To Whom It May Concern:

I write this letter on behalf of National Commercial Builders, Inc. ("NCB"), regarding the amount due and owing under the Agreement dated May 3, 2018 (the "Agreement"), between Hickory Corners 16 A, LLL and Hickory Corners 16 B, LLC (collectively, "Hickory Corners") as owners, and NCB as contractor, pertaining to the GDA Hickory project. Pursuant to the Agreement, Hickory Corners was to make total payments of \$773,144.00 to NCB. As of the date of this letter, Hickory Corners has made a single payment of \$243,540.34. The unpaid balance of \$529,603.66 is due and owing, and Hickory Corners is in breach of the Agreement.

Demand is hereby made that Hickory Corners immediately remit payment for the full claim amount of \$529,603.66. NCB will credit any payments it receives directly from third parties for work it agrees to perform for any third parties in connection with the GDA Hickory project, including, but not limited to, Guitar Center, Inc. Thus far, no payments have been received by third parties in connection with the GDA Hickory project.

Failure to make that payment will result in legal action including, but not limited to, a mechanics lien and civil action for breach of contract. Please contact me at your earliest convenience to discuss this demand.

Respectfully,



Christopher L. Peterson

9665 Chesapeake Dr., Suite 305
San Diego, California 92123
Tel: (619) 483-3200
Fax: (858) 549-3700

Exhibit 2, p. 001

STATE OF NORTH CAROLINA

In The General Court Of Justice

CATAWBA County

**CERTIFICATE OF
TRUE COPY**

Office of the Clerk of the Superior Court

As Clerk of the Superior Court of this County, State of North Carolina, I certify that the attached copies of the documents described below are true and accurate copies of the originals now on file in this office.

Number And Description Of Attached Documents:

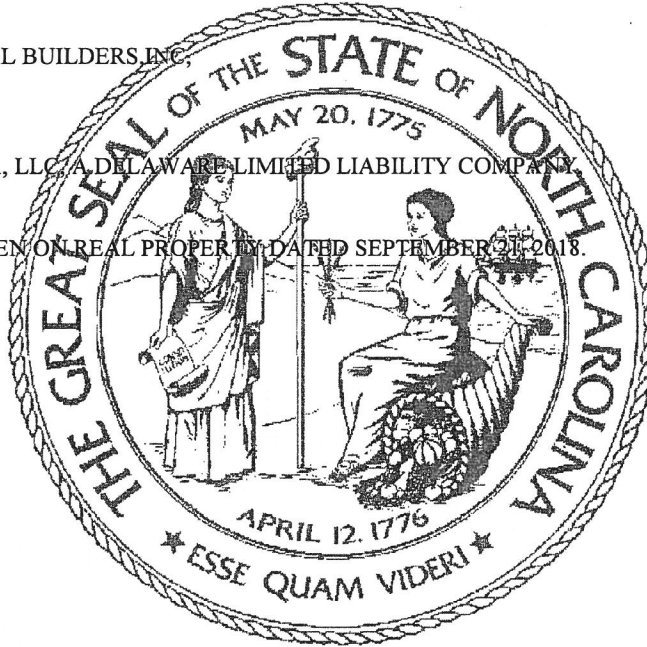
STATE OF NORTH CAROLINA
CATAWBA COUNTY

FILE #18 M 346

NATIONAL COMMERCIAL BUILDERS INC,
PLAINTIFF

VS
HICKORY CORNERS 16 A, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
DEFENDANT

TWO PAGE CLAIM OF LIEN ON REAL PROPERTY DATED SEPTEMBER 21, 2018.



Witness my hand and the seal of the Superior Court

SEAL

Date	09-21-2018
Clerk Of Superior Court	KIM R SIGMON
Signature	<i>Kim R Sigmon</i>
<input checked="" type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
<input type="checkbox"/> Clerk Of Superior Court	

18 M 346

CLAIM OF LIEN ON REAL PROPERTY

FILED

(1) Name and address of the person claiming the claim of lien on real property:

2018 SEP 21
National Commercial Builders, Inc.
41931 Kensington Avenue, Suite 230
Temecula, CA 92590
CATAWBA CO., C.S.C.

(2) Name and address of the record owner of the real property claimed to be subject to the claim of lien on real property:

Hickory Corners 16 A, LLC, a Delaware Limited Liability Company
Hickory Corners 16 B, LLC, a Delaware Limited Liability Company
5690 DTC Blvd., Suite 515
Greenwood Village, CO 80111

(3) Description of the real property upon which the claim of lien on real property is claimed:

1718 US Highway 70 SE
Hickory, NC 28602

(4) Name and address of the person with whom the claimant contracted for the furnishing of labor or materials:

Gary J. Dragul, President
GDA Real Estate Services, LLC, a Colorado Corporation
Manager of the following entities: Hickory Corners 16 A, LLC, a Delaware Limited Liability Company, Hickory Corners 16 B, LLC, a Delaware Limited Liability Company
5690 DTC Blvd., Suite 515
Greenwood Village, CO 80111

(5) Date upon which labor or materials were first furnished upon said property by the claimant:

May 7, 2018

(5a) Date upon which labor or materials were last furnished upon said property by the claimant:

September 13, 2018

(6) **General description of the labor performed or materials furnished and the amount claimed therefor:**

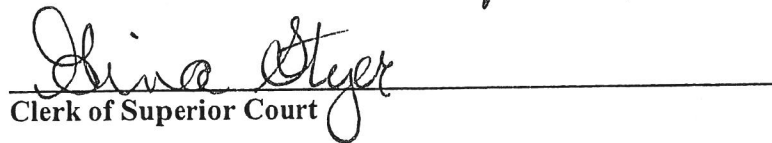
The Claimant completed labor and provided materials pursuant to a contract dated May 3, 2018. The labor provided generally consisted of construction of a commercial retail location. The total amount claimed is \$586,054.67, plus pre-judgment interest at the legal rate of 8% per annum from September 20, 2018.

I hereby certify that I have served the parties listed in (2) above in accordance with the requirements of G.S. 44A-11.



William Robison
National Commercial Builders, Inc.

Filed this 21st date of September, 2018.



Clerk of Superior Court

NORTH CAROLINA
CATAWBA COUNTY

NATIONAL COMMERCIAL BUILDERS,
INC.

Plaintiff,

v.

HICKORY CORNERS 16 A, LLC;
HICKORY CORNERS 16 B, LLC;
HICKORY MANAGEMENT, LLC;
GDA REAL ESTATE SERVICES, LLC;
GARY J. DRAGUL,
Defendants.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

File: 18 CVD

NOTICE OF LIS PENDENS

NOW COMES the Plaintiff, NATIONAL COMMERCIAL BUILDERS, INC., and file this NOTICE OF LIS PENDENS with the Clerk of Superior Court of CATAWBA County, NC pursuant to North Carolina Statutes §§ 1-116 et. seq. and 44A-13, and gives notice of pending litigation the above-captioned action and shows as follows:

1. That a criminal action has been commenced against Defendant Gary J. Dragul in the District Court for Denver County, State of Colorado, and as a result of that action a Receivership Estate has been established. The Receivership Estate has been duly granted the control of Defendant Dragul's companies, including the named Defendant companies, as well as the real property described below located in Catawba County, North Carolina. The Colorado action is identified as GERALD ROME SECURITIES COM. FOR THE ST. OF COLORADO v. GARY DRAGUL et al, file no. 2018CV33011. A copy of the Order appointing the Receiver is attached hereto as Exhibit A.
2. The names of the parties to the action are:
 - a. Gary Dragul,
 - b. GDA Real Estate Services, LLC
 - c. GDA Real Estate Management, LLC
3. That the nature and purpose of the above referenced action is an action for the appointment of a receiver to handle the property and assets of the above listed named parties during the pendency of criminal securities fraud charges against Defendant Dragul.
4. A description of a lot that contains 1718 US Highway 70 SE in Catawba County (see attached DEED- EXHIBIT B) to be affected by the pending case is as follows:

This parcel of land is located in Hickory, Catawba County, North Carolina and more particularly described as follows:

All that tract or parcel of land containing 1.733 acres, more or less, as shown on that certain plat prepared by McNeill Surveying & Land Planning, PLLC, by Craig S. McNeill (Professional Land Surveyor # L-2563) of record in Plat Book 76, Page 175, in the Office of the Register of Deeds for Catawba County, North Carolina.

5. The undersigned certified that a copy of this Notice of *Lis Pendens* was served upon the record owners and parties in interest in the subject property in accordance with provisions of Chapter 1, Article 11 of the North Carolina General Statutes N.C.G.S. §1-116, §1-116(b)(1)-(4) and §1-116.1 and N.C.G.S Chapter 39, Article 3A, et seq., and all persons shall take notice of the same.

This is the 27th day of November, 2018.

KING LAW OFFICES, PLLC



Thomas P. Morris
NC Bar Number: 53563
Attorney for Plaintiff
King Law Offices
215 North Main Street
Rutherfordton, NC 28139
(828) 286-3332
(828) 286-1110 (fax)
TMorris@kinglawoffices.com

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing **Notice of Lis Pendens** upon all other parties to this cause of action in the following manner:

By depositing copy thereof in a postpaid wrapper in a post official depository under the exclusive care and custody of the United States Post Office Department properly addressed and with proper postage to the party or parties.

Hickory Corners 16 A, LLC
5690 DTC Blvd
Suite 515
Greenwood Village, CO 80111

Hickory Corners 16 B, LLC
5690 DTC Blvd
Suite 515
Greenwood Village, CO 80111

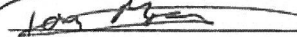
GDA Real Estate Services, LLC
5690 DTC Blvd
Suite 515
Greenwood Village, CO 80111

Gary J. Dragul
5690 DTC Blvd
Suite 515
Greenwood Village, CO 80111

Harvey Sender
Receiver for Dragul, et al.
600 17th Street
Suite 2800
Denver, CO 80202

This is the 27th Day of November, 2018.

KING LAW OFFICES, PLLC

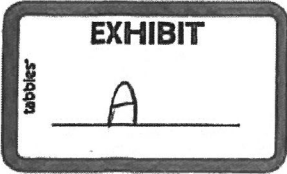

Thomas P. Morris
NC Bar Number: 53563

Attorney for Plaintiff
King Law Offices

215 North Main Street
Rutherfordton, NC 28139

(828) 286-3332
(828) 286-1110 (fax)

TMorris@kinglawoffices.com



DISTRICT COURT, DENVER COUNTY, COLORADO	
Court Address: 1437 Bannock Street, Rm 256, Denver, CO, 80202	
Plaintiff(s) GERALD ROME SECURITIES COM FOR THE ST OF	DATE FILED: August 30, 2018 8:27 AM
v.	CASE NUMBER: 2018CV33011
Defendant(s) GARY DRAGUL et al.	
△ COURT USE ONLY △	
Case Number: 2018CV33011	
Division: 424 Courtroom:	
Order: (Proposed) Stipulated Order Appointing Receiver also filed on behalf of Defendants Gary Dragul and GDA Real Estate Service, and GDA Real Estate Management LLC)	

The motion/proposed order attached hereto: SO ORDERED.

Issue Date: 8/30/2018

Handwritten signature of Martin Foster Egelhoff in cursive.

MARTIN FOSTER EGELHOFF
District Court Judge

<p>DISTRICT COURT, DENVER COUNTY, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>GERALD ROME, Securities Commissioner for the State of Colorado,</p> <p>Plaintiff,</p> <p>v.</p> <p>GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC</p> <p>Defendants.</p>	<p style="text-align: center;">^ COURT USE ONLY ^</p>
<p>BY THE COURT</p>	<p>Case No.: 2018 CV 33011</p> <p>Courtroom: 424</p>
<p>STIPULATED ORDER APPOINTING RECEIVER</p>	

THIS MATTER having come before this Court on the Stipulated Motion to Appoint Receiver (the "Motion") filed by the Plaintiff Gerald Rome, Securities Commissioner for the State of Colorado and Defendants Gary Dragul ("Dragul"), GDA Real Estate Services, LLC ("GDARES"), and GDA Real Estate Management, Inc. ("GDAREM"), and the Court, being otherwise fully advised in the premises,

HEREBY FINDS:

1. The Court has jurisdiction and venue is proper pursuant to C.R.C.P. 98(a).
2. Dragul is an individual and a resident of Colorado, and the manager of

GDARES and GDAREM, among other businesses.

3. GDARES is a Colorado limited liability company with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

4. GDAREM is a Colorado corporation with its principal place of business at 5690 DTC Blvd., Suite 515, Greenwood Village, Colorado 80111.

5. The Parties have stipulated to the appointment of a Receiver without bond or other security for Dragul, GDARES, and GDAREM, as well as for their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses as set forth herein.

6. The appointment of a receiver is reasonable and necessary for the protection of the assets and the rights of the parties in this case. Based on the standards set forth in C.R.C.P. 66 and case law thereunder, the Parties have stipulated that the Commissioner is entitled to entry of this Order.

7. Nothing in this stipulated Order shall be deemed an admission by Dragul to any allegations or as a waiver of any defenses thereto or limit Dragul's 4th, 5th, or 6th Amendment rights or other Constitutional and statutory protections and privileges afforded to any criminal defendant, or prevent him from invoking such rights in his personal capacity. Nothing in this Order operates as a waiver or an abrogation of the attorney-client privilege held by Dragul in his personal capacity.

8. Harvey Sender of Sender & Smiley LLC, has been determined to be suitable to serve as Receiver for Dragul (as such term is defined below in this

Order), GDARES and GDAREM, as set forth in this Order. Mr. Sender's business address is 600 17th Street, Suite 2800, Denver, Colorado 80202.

IT IS THEREFORE ORDERED THAT:

9. Harvey Sender ("the Receiver") is hereby appointed as Receiver for Dragul (limited to the definition of the "Receivership Property" or "Receivership Estate" as defined herein), GDARES, GDAREM, and all of their assets, including, but not limited to, all real and personal property, including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights, claims, and causes of action, wherever located, including without limitation the "LLC Entities" identified in the Commissioner's Motion and Complaint for Injunctive and Other Relief, or assets (including those of Dragul) of any kind or of any nature whatsoever related in any manner, or directly or indirectly derived, from investor funds from the solicitation or sale of securities as described in the Complaint, or derived indirectly or indirectly from investor funds (the "Receivership Property," and altogether this "Receivership Estate"). Except that the personal residence of Dragul, located at 10 Cherry Vale Drive, Englewood, Colorado 80113, shall not be considered "Receivership Property" or part of the "Receivership Estate," unless the Receiver determines that an improvement to or increase in equity in such residence is directly related to the proceeds from the sale of the securities or matters referenced in the Complaint, in which case the improvements or equity shall be considered "Receivership Property" or part of the "Receivership Estate." Consistent with

Colorado's dissolution statutes and applicable law, and as set forth in greater detail below, the Receiver may, in the exercise of his reasonable judgment, investigate any claims and causes of action which may be pursued for the benefit of Dragul, GDARES, GDAREM, their creditors, members, and equity holders, and make recommendations to interested parties and this Court regarding the prosecution of any such claims and causes of action; establish a process for the assertion of claims against the Receivership Estate; make recommendations to this Court for the allowance and payment of such claims; and investigate and make recommendations to this Court for the ongoing operation, sale or distribution of any remaining Receivership Property, or the proceeds thereof, pursuant to the terms hereof.

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

ownership of any subsidiaries or related companies, and any and all reasonably requested documents, records, bank accounts, trust accounts, deposit accounts, savings accounts, money market accounts, and all other demand deposit accounts, inventory, supplies, contracts, accounts receivable, computer databases, sales and marketing materials, related to the operation of any subsidiaries or related companies. Dragul, GDARES, and GDAREM and their Representatives, when necessary or when requested (subject to Dragul's Constitutional protections, including the Fifth Amendment), shall explain the operation, maintenance and management of the Receivership Property, including any subsidiaries or related entities or companies, to the Receiver or his agents, without compensation therefor. Any claim for nonpayment for services shall not be used as a defense to turning over Receivership Property. All privileges in connection with professional representation of GDARES and GDAREM shall accrue to the sole benefit of the Receiver and the Receivership Estate and may only be waived by the Receiver, except that Dragul maintains all such privileges in his personal capacity. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of any Representatives or any other foregoing persons acting on behalf of or for Dragul, GDARES and GDAREM, to comply fully and completely with this Order.

11. Any creditors of Dragul, GDARES or GDAREM that are in the possession of, or have taken any action to seize any books, records, or assets of the Receivership Estate (hereinafter called "Creditors") and all persons in active

participation with such Creditors, including without limitation, such Creditors' officers, managers, members, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under them (hereafter called "Creditors' Representatives") are hereby ordered to deliver immediately to the Receiver all of the Receivership Property in such Creditors' or Creditors' Representatives' possession, and to fully cooperate with the Receiver in connection with such turnover. Any claims against Dragul, CTAANES or GDAREM shall not be used as a defense to turning over as set forth in this paragraph. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of Creditors or Creditors' Representatives or any other foregoing persons acting on behalf of or for the Creditors to comply fully and completely with this Order.

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

13. The Receiver shall have all the powers and authority usually held by equity receivers and reasonably necessary to accomplish the purposes stated

herein, including, but not limited to, the following powers which the Receiver may execute without further order of this Court, except as expressly provided herein:

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

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

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

(d) As appropriate, to take possession of offices of Dragul, GDARES

and GDAREM and to change any and all locks on such offices and to limit access to such offices to the Receiver and his agents, subject to any privileges maintained by Dragul in his personal capacity;

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

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

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

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

(i) To borrow from third parties on such reasonable terms as may be acceptable to the Receiver, such funds that may be required for the fulfillment of the Receiver's obligations hereunder, and to meet the needs of the Receivership Estate in excess of the income from the Receivership Estate. The Receiver may issue Receiver's Certificates secured by all assets of the Receivership Estate, including, but not limited to, all claims on insurance policies, surety bonds, and similar assets of the Receivership Estate, in exchange for funds advanced during the term of this receivership, and such Receiver Certificates shall be a first and prior lien and preference claim upon the Receivership Property or a portion of it at the Receiver's election;

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

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

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

(m) In the Receiver's discretion as appropriate, to hire and pay employees with the necessary skills and experience to operate GDARES and GDAREM efficiently and with least amount of cost or expense, and to preserve the assets of GDARES and GDAREM and the Receivership Estate.

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

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

(p) To notify any and all insurers under insurance policies and issuers of surety bonds affecting the Receivership Property of the pendency of these proceedings, and that any proceeds paid under any such insurance policy or surety

bond shall be paid to the Receiver to be administered for the benefit of all creditors of Dragul, GDARES and GDAREM;

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

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

(s) To prosecute claims and causes of actions held by Creditors of Dragul, GDARES and GDAREM, and any subsidiary entities for the benefit of

Creditors, in order to assure the equal treatment of all similarly situated Creditors:

(t) In the Receiver's discretion as appropriate, to consider the potential sale of assets of Dragul, GARDES, and GARDEM to a third-party or to sell or otherwise dispose of any personal property of the Receivership Estate, provided that Court approval shall not be required of any sale or disposition of any property being sold for a sales price of less than \$10,000;

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

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

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

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

14. The Receiver is further directed to review the books and records of Dragul, GDARES and GDAREM, to account for receipts and disbursements of their funds, and to provide a report and accounting of their operations, for a period of time determined by the Receiver to be reasonable under the circumstances, to this Court and to the Commissioner, and any parties that have filed an entry of appearance herein. An initial report shall be filed with the Court within ninety (90) days of entry of this Order. In such report, the Receiver shall identify any claims and causes of action of Dragul, GDARES and GDAREM, identified as of the date of such report, including under insurance policies, on surety bonds, against any of their representatives or third parties, or arising under the Uniform Fraudulent Transfer Act, or any similar statute; and the Receiver's recommendations related thereto. The Receiver shall be authorized to act on his recommendations upon agreement with the Commissioner regarding budgets related to the prosecution thereof, and funding of such litigation, as set forth in this Order.

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

deliver immediately to the Receiver any such property received at any time in the future.

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

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

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

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

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

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

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

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

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

21. Should the Receiver determine that tax returns were not filed for periods prior to the entry of this Order for which tax returns were required of

Dragul, GDARES and GDAREM, as funds are available in the Receivership Estate, the Receiver shall use reasonable efforts to have prepared and filed tax returns for any missing periods prior to the entry of this Order. To the extent it is determined that any outstanding tax obligations are due to the Internal Revenue Service, the Colorado Department of Revenue, or any other taxing authorities for any period of time prior to the entry of this Order, such taxes shall be paid, as funds are available in the Receivership Estate. The Receiver shall not be considered a responsible person, or otherwise have any personal liability, for any unpaid tax obligations of Dragul, GDARES and GDAREM (including for any trust fund taxes, such as payroll or sales tax) withheld but not paid to the proper taxing authority for any period prior to the entry of this Order. The Receiver shall file tax returns for periods commencing on the date of the entry of this Order through completion of the dissolution of Dragul, GDARES and GDAREM and discharge of the Receiver, as required by applicable federal, state, or local law.

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

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

GDARES or GDAREM;

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

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

(d) Fourth, to the payment of any unsecured tax obligations
determined to be due for periods prior to the entry of this Order, pursuant to the
tax filing obligations imposed on the Receiver;

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

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

23. The debts or liabilities incurred by the Receiver in the course of his
operation and management of the Receivership Property, whether in the Receiver's
name or in the name of the Receivership Property, shall be the debts and

obligations of the Receivership Estate only, and not of the Receiver in a personal capacity.

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

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

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

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

28. Dragul, GDARES and GDAREM, and their Representatives, or anyone else in possession of records related to the Receivership Property, shall respond in a timely fashion to requests and inquiries from the Receiver concerning

such records, record keeping protocols, filing systems, information sources, algorithms and processes used to store, compile, organize, or manipulate data, and similar matters. With respect to any information or records stored in computer-readable form or located on computers Dragul, GDARES and GDAREM, and their Representatives, the person in possession of such information or records shall provide the Receiver full access to all media on which such records are located and all computers and the necessary application, system, and other software necessary to review, understand, print, and otherwise deal with such computerized records and all passwords and security codes necessary to access such computerized records, regardless of whether such records are separate or commingled with other information, except that information subject to the attorney-client privilege held by Dragul in his personal capacity shall remain privileged. Any such claimed privileged information, or information that may reasonably be considered to be privileged information, obtained by Receiver or commingled with other information shall be disgorged by the Receiver and notice given to Dragul regarding the privileged information and its disposition by the Receiver. In the event that the Receiver questions or disputes that any such information is privileged, the dispute shall be submitted to the Court, together with the disputed information for in camera review.

29. The Receiver may at any time, on proper and sufficient notice to all parties who have appeared in this action, apply to this Court for further

instructions whenever such instructions shall be deemed to be necessary to enable the Receiver to perform the duties of his office properly.

30. Notwithstanding anything to the contrary contained in this Order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of (a) any substance deemed a "hazardous substance", "pollutant," "contaminant", or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction thereof (all collectively referred to herein as "Hazardous Substances") without first applying for and obtaining an Order of this Court specifically setting forth the action or actions proposed to be taken and to be taken by the Receiver. Without first applying for and obtaining such an Order of this Court, the Receiver shall have no ownership, control, authority or power (neither shall receiver have any obligation to exercise ownership, control, authorize or power) over the operation, storage, generation or disposal of any Hazardous Substance. All decisions relating to the ownership, operation, control, storage, generation and disposal of any Hazardous Substances shall be resolved by this Court.

31. The Receiver shall take appropriate action as necessary with respect to the January 20, 2015 "CDPHE Stipulation and Order," as defined and with background provided in the Motion Appointing Receiver.

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

33. After the initial report required pursuant to this Order, the Receiver shall make periodic reports of the condition of the Receivership Estate on intervals to be agreed to by the Receiver and the Commissioner as is reasonably necessary to provide timely reporting of the operations of the Receivership Estate to all interested parties, without imposing undue burden and expense on the Receivership Estate. The Receiver shall not be required to, but as reasonably necessary, may follow generally accepted accounting principles or use auditors or accountants in the preparation of his reports to the Court.

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

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this action for all purposes. The Receiver is hereby authorized, empowered and

directed to apply to this Court, with notice to the Commissioner for issuance of such other Orders as may be necessary and appropriate in order to carry out the mandate of this Court.

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

DATED this _____ day of August, 2018.

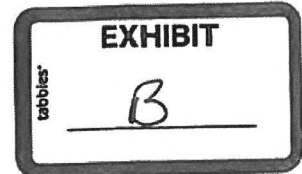
BY THE COURT:

MARTIN F. EGELHOFF
Denver District Court Judge

3404-0557

FILED ELECTRONICALLY
CATAWBA COUNTY NC
DONNA HICKS SPENCER

FILED Jun 19, 2017
AT 12:46:00 PM
BOOK 03404
START PAGE 0557
END PAGE 0562
INSTRUMENT # 10333
EXCISE TAX \$0.00



CORRECTIVE NORTH CAROLINA SPECIAL WARRANTY DEED

Excise Tax \$0.00

Tax Lot No. _____ Parcel Identifier No. _____

Verified by _____ County on the _____ day of _____

By _____

Mail after recording to: Brockmann Law, 17250 Lancaster Hwy, Suite 608, Charlotte, NC 28277

This instrument was prepared by: Brownstein Hyatt Farber Schreck, LLP, 410 17th Street, Ste 2200, Denver, CO 80202

Brief description for the Index

1718-1842 Hwy 70 SE, Hickory, NC

THIS DEED made this 15th day of JUNE, 2017, by and between

GRANTOR

GRANTEE

HD HICKORY, LLC, a North Carolina limited liability company

5310 South Alston Ave., Suite 210
Durham, NC 27713

HICKORY CORNERS BOX 16 A, LLC, a Delaware limited liability company, as to an undivided 64.59% ownership interest, and **HICKORY CORNERS BOX 16 B, LLC**, a Delaware limited liability company, as to an undivided 35.41% ownership interest, as tenants-in-common

5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

Submitted electronically by "The Brockmann Law Firm" in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the Catawba County Register of Deeds.

Exhibit 4, p. 027

WITNESSETH, that this Deed is being recorded as a corrective deed only to correct the ownership percentages of Grantee as stated on that certain Special Warranty Deed between Grantor and Grantee, recorded on February 8, 2017 at Book 03384, at Pages 1608-1613 (the "Original Deed"). The Original Deed incorrectly stated the ownership percentages of Grantee as follows: Hickory Corners Box 16 A, LLC, as to an undivided 46.00% ownership interest, and Hickory Corners Box 16 B, LLC, as to an undivided 54.00% ownership interest, as tenants-in-common. The correct ownership percentages for Grantee are as follows: Hickory Corners Box 16 A, LLC, as to an undivided 64.59% ownership interest, and Hickory Corners Box 16 B, LLC, as to an undivided 35.41% ownership interest, as tenants-in-common.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, that certain lot or parcel of land situated in the City of Hickory, Catawba County, North Carolina and more particularly described as follows (the "Property"):

See attached Exhibit A.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 2354, Page 478
A map showing the above-described property is recorded in Plat Book 21, Page 151.

All or a portion of the property herein conveyed includes or does not include the primary residence of a Grantor.


TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, except for the exceptions hereinafter stated. This Deed and the warranty of title contained herein are made expressly subject to the exceptions attached hereto as EXHIBIT B.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has duly signed the foregoing as of the day and year first above written.

HD HICKORY, LLC,
a North Carolina limited liability company


By: 
Jeffrey A. Benson, Authorized Signatory

STATE OF NORTH CAROLINA

COUNTY OF DURHAM

I, Nicole Matthews, a Notary Public for Wake County, State of North Carolina, certify that Jeffrey A. Benson, Authorized Signatory of HD Hickory, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

This the 15th day of June, 2017.


Nicole Matthews, Notary Public

My Commission Expires: 12-6-19



3404-0560

EXHIBIT A
Property

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE STATE OF NORTH CAROLINA, COUNTY OF CATAWBA AND DESCRIBED AS FOLLOWS:

ALL THAT TRACT OR PARCEL OF LAND CONTAINING 1.733 ACRES, MORE OR LESS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY MCNEILL SURVEYING & LAND PLANNING, PLLC, BY CRAIG S. MCNEILL (PROFESSIONAL LAND SURVEYOR # L-2563) OF RECORD IN PLAT BOOK 76, PAGE 175, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

WEB

EXHIBIT B
Permitted Exceptions

1. All taxes for the year 2017 and subsequent years, not yet due and payable.
2. Rights of tenants, as tenants only in possession of subject property.
3. General Permit to Southern Bell Telephone and Telegraph Company, recorded March 20, 1942 in Book 264, Page 89.
4. Easement to Central Telephone Company, recorded in Book 973, Page 275.
5. Terms and conditions of the Easement Agreement by and between JDN Enterprises, Inc., a Georgia corporation and Augustana Evangelical Lutheran Congregation of Catawba County, recorded August 25, 1985 in Book 1462, Page 92.
6. Declaration of Easements and Restrictive Covenants by JDN Enterprises, Inc., a Georgia corporation, recorded in Book 1462, Page 113, aforesaid records, as amended by First Amendment to Declaration of Easements and Restrictive Covenants, recorded in Book 1519, Page 820, as amended by Second Amendment to Declaration of Easements and Restrictive Covenants, recorded in Book 1573, Page 810, as amended by Third Amendment to Declaration of Easements and Restrictive Covenants, recorded in Book 2735, Page 952.
7. Declaration of Restrictive Covenants by JDM Enterprises, Inc., a Georgia corporation, recorded August 25, 1986 in Book 1462, Page 144.
8. Easement to Duke Power Company, recorded July 9, 1987 in Book 1513, Page 858.
9. Drainage Easement between JDN Associates, limited partnership, Hickory, a Georgia limited partnership whose sole general partner is JDM Equities, Inc., a Georgia corporation, recorded September 9, 1987 in Book 1525, Page 945.
10. Declaration of Restrictive Covenants, recorded in Book 1645, Page 650.
11. Terms and conditions of the unrecorded Lease Agreement by evidenced of the Memorandum of Lease by and between Walmart Stores, Inc., a Delaware corporation (Sublessor), DRM Twenty Five Realty Corporation, a Delaware corporation and The Musicland Group, Inc., a Delaware corporation (Tenant), dated May 28, 1986 and recorded in Book 1993, Page 412.
12. Terms and conditions of the unrecorded Lease Agreement by evidenced of the Memorandum of Lease by and between DRM Twenty Five Realty Corp., a Delaware corporation (Landlord) and Officemax, Inc., an Ohio corporation (Tenant), recorded August 14, 1997 in Book 2043, Page 860.
13. Easement to Duke Power Company, recorded October 13, 1997 in Book 2051, Page 1483.
14. Terms and conditions of the Ground Lease by and between Ramco-Gershenson Properties, L.P., a Delaware limited partnership (Landlord) and Valley Hills Mall L.L.C, a Delaware limited liability company (Tenant), dated November 29, 2000, recorded February 21, 2001 in Book 2249, Page 1726 and re-recorded April 10, 2001 in Book 2262, Page 1503.
15. Terms and conditions of the unrecorded Lease Agreement by evidenced of the Memorandum of Lease by and between HD Hickory, LLC, a North Carolina limited liability company (Landlord) and Conn Appliances, Inc., a Texas corporation (Tenant), dated November 2, 2015, recorded July 19, 2016 in Book 3351, Page 1998.

16. Terms and conditions of the Sublease Recognition Agreement by and between HD Hickory, LLC, a North Carolina limited liability company (the Prime Landlord) and Toys R US-Delaware, Inc., a Delaware corporation (Sublessee), dated February 1, 2016, recorded February 5, 2016 in Book 3327, Page 1728.
17. Easements, right-of-ways, boundary lines and improvements as shown on Plat recorded at Plat Book 21, Page 151 and Plat Book 76, Page 175.
18. All matters shown by a current and accurate survey.

WEB

Article 11.

Lis Pendens.

§ 1-116. Filing of notice of suit.

(a) Any person desiring the benefit of constructive notice of pending litigation must file a separate, independent notice thereof, which notice shall be cross-indexed in accordance with G.S. 1-117, in all of the following cases:

- (1) Actions affecting title to real property.
 - (2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property.
 - (3) Actions in which any order of attachment is issued and real property is attached.
 - (4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes.
 - (5) Actions for asset freezing or seizure under G.S. 14-112.3.
- (b) Notice of pending litigation shall contain:
- (1) The name of the court in which the action has been commenced or is pending;
 - (2) The names of the parties to the action;
 - (3) The nature and purpose of the action; and
 - (4) A description of the property to be affected thereby.
- (c) Notice of pending litigation may be filed:
- (1) At or any time after the commencement of an action pursuant to Rule 3 of the Rules of Civil Procedure; or
 - (2) At or any time after real property has been attached; or
 - (3) At or any time after the filing of an answer or other pleading in which the pleading party states an affirmative claim for relief falling within the provisions of subsection (a) of this section.

(d) Notice of pending litigation must be filed with the clerk of the superior court of each county in which any part of the real estate is located, not excepting the county in which the action is pending, in order to be effective against bona fide purchasers or lien creditors with respect to the real property located in such county. (C.C.P., s. 90; Code, s. 229; Rev., s. 460; 1917, c. 106; C.S., s. 500; 1949, c. 260; 1959, c. 1163, s. 1; 1967, c. 954, s. 3; 2009-269, s. 1; 2015-182, s. 2.)

§ 1-116.1. Service of notice.

In all actions as defined in G.S. 1-116 in which notice of pendency of the action is filed, a copy of such notice shall be served on the other party or parties as follows:

- (1) If filed by the plaintiff at or after service of summons but before the filing of the complaint, service shall be in the manner provided in Rule 4 of the Rules of Civil Procedure for service of summons.
- (2) If filed by the plaintiff at or after the filing of the complaint, service shall be in the same manner as the complaint.
- (3) All other such notices shall be served in the manner provided in Rule 5 of the Rules of Civil Procedure. (1949, c. 260; 1967, c. 954, s. 3.)

§ 1-117. Cross-index of lis pendens.

Every notice of pending litigation filed under this Article shall be cross-indexed by the clerk of the superior court in a record, called the "Record of Lis Pendens," to be kept by the clerk under G.S. 7A-109. (1903, c. 472; Rev., s. 464; 1919, c. 31; C.S., s. 501; 1959, c. 1163, s. 2; 2017-102, s. 1.)

§ 1-118. Effect on subsequent purchasers.

From the cross-indexing of the notice of lis pendens only is the pendency of the action constructive notice to a purchaser or incumbrancer of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed or subsequently registered is a subsequent purchaser or incumbrancer, and is bound by all proceedings taken after the cross-indexing of the notice to the same extent as if he were made a party to the action. For the purposes of this section an action is pending from the time of cross-indexing the notice. (C.C.P., s. 90; Code, s. 229; Rev., s. 462; 1919, c. 31; C.S., s. 502.)

§ 1-119. Notice void unless action prosecuted.

(a) The notice of lis pendens is of no avail unless it is followed by the first publication of notice of the summons or by an affidavit therefor pursuant to Rule 4 (j)(1)c of the Rules of Civil Procedure or by personal service on the defendant within 60 days after the cross-indexing.

(b) When an action is commenced by the issuance of summons and permission is granted to file the complaint within 20 days, pursuant to Rule 3 of the Rules of Civil Procedure, if the complaint is not filed within the time fixed by the order of the clerk, the notice of lis pendens shall become inoperative and of no effect. The clerk may on his own motion and shall on the ex parte application of any interested party cancel such notice of lis pendens by appropriate entry on the records, which entry shall recite the failure of the plaintiff to file his complaint within the time allowed. Such applications for cancellation, when made in a county other than that in which the action was instituted, shall include a certificate over the hand and seal of the clerk of the county in which the action was instituted that the plaintiff did not file his complaint within the time allowed. The fees of the clerk may be recovered against the plaintiff and his surety.

(c) Notwithstanding subsections (a) and (b) of this section, a notice of lis pendens filed pursuant to G.S. 1-116(a)(5) shall remain effective until the order to freeze or seize assets under G.S. 14-112.3(b1)(3) is terminated or an order directing the sale of real property under G.S. 14-112.3(e1)(1)c. is entered. Notice of lis pendens filed pursuant to G.S. 1-116(5) shall be exempt from filing fees. (C.C.P., s. 90; Code, s. 229; Rev., s. 461; 1919, c. 31; C.S., s. 503; 1967, c. 954, s. 3; 2015-182, s. 3.)

§ 1-120. Cancellation of notice.

The court in which the said action was commenced may, at any time after it is settled, discontinued or abated, on application of any person aggrieved, on good cause shown, and on such notice as is directed or approved by the court, order the notice authorized by this Article to be cancelled of record, by the clerk of any county in whose office the same has been filed or recorded; and this cancellation must be made by an endorsement to that effect on the margin of the record, which shall refer to the order. (C.C.P., s. 90; Code, s. 229; Rev., s. 463; C.S., s. 504.)

§ 1-120.1. Article applicable to suits in federal courts.

The provisions of this Article shall apply to suits affecting the title to real property in the federal courts. (1945, c. 857.)

§ 1-120.2. Filing of notice by cities and counties in certain cases.

The governing body of a city or county may, by ordinance under Part 5 of Article 19 of Chapter 160A of the General Statutes relating to building inspection, or Part 6 of Article 19 of Chapter 160A relating to minimum housing standards, or Part 4 of Article 18 of Chapter 153A relating to building inspection, provide that upon the issuance of a complaint and notice of hearing or order pursuant thereto, a notice of lis pendens, with a copy of the complaint and notice of hearing or order attached thereto, may be filed in the office of the clerk of superior court of the county where the property is located. When a notice of lis pendens and a copy of the complaint and notice of hearing or order is filed with the clerk of superior court, it shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice of hearing or order shall be binding upon the successors and assigns of the owners of and parties in interest in the building or dwelling. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the building or dwelling at the time of filing in accordance with G.S. 160A-428, 160A-445, or 153A-368 as applicable. The notice of lis pendens shall remain in full force and effect until cancelled. The ordinance may authorize the cancellation of the notice of lis pendens under certain circumstances. Upon receipt of notice from the city, the clerk of superior court shall cancel the notice of lis pendens. (1995, c. 158, s. 1.)

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202	<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>	
CLAIM FORM	

The undersigned Claimant hereby asserts a claim against the Receivership Estate of Gary J. Dragul ("Dragul"); GDA Real Estate Services, LLC; GDA Real Estate Management, LLC; and related entities (collectively, "Dragul and the GDA Entities" or the "Estate").

1. Amount of Claim as it existed on August 30, 2018.

Claim is asserted against:	Hickory Corners 16A; Hickory Corners 16B; GDA
Actual damages:	\$584,250.76
Consequential and other damages, if any:	
Interest, if any:	
Attorneys' fees and costs, if any:	1,182.50
Other:	
TOTAL:	585,433.26

2. The foregoing claim arose on **05/03/2018**, and is based upon the following events:

Claimant National Commercial Builders, Inc. entered into a contract with Hickory Corners, 16A, and Hickory Corners 16B, as managed by Gary Dragul and GDA, to construct a Guitar center on the Hickory Corners property in Hickory, NC. The contract was signed by both parties on May 3, 2018 by William Robison, President of Claimant, and Gary Dragul, as President of GDA Real Estate Management, manager of Hickory Management, LLC, manager of Hickory Corners 16 A and 16 B.

In addition to the base contract price, change orders and other miscellaneous expenses were incurred, bringing the construction costs to \$827,901.10. Of that amount, two payments were made via wire. The first payment was on July 20, 2018 in the amount of \$135,000, and the second was on August 8, 2018 in the amount of \$108,650.34. On July 19, 2018, Claimant also received a check in the amount of \$200,000. That check was returned on July 23, 2018 as unpaid due to the account having insufficient funds.

Claimant completed its contractual obligations to GDA by finishing construction of the project despite GDA's breach. As a result, Claimant is owed \$584,25.76 in construction costs, plus \$1,182.50 in attorney's fees through August 30, 2019.

DOCUMENTS SUPPORTING THE CLAIM MUST BE ATTACHED TO THIS CLAIM FORM.

3. This claim is:

Secured by the following collateral or security:

A lien on real property in the amount owed to Claimant has been recorded in accordance with North Carolina law against the Hickory Corners property.

4. If the claim is secured, please identify the location of all collateral:

Hickory, NC.

5. If the claim includes interest, please specify each of the reasons for such interest and the rate thereof (e.g. contract, statute, etc.):

6. The nature and value of any offset or counterclaim (i.e., money or property that you owe Dragul, the GDA Entities, or the Estate, or any claims that Dragul, the GDA Entities, or the Estate may have against you):

Following GDA's breach of the contract, Claimant was contacted by GDA's tenant Guitar Center. Guitar Center offered to pay Claimant to finish construction so that tenant could move into the facility.

Payment was made by Guitar Center in the amount of \$94,857 after August 30, 2018.

7. If you are represented by an attorney, please provide details:

Name of Attorney: Thomas P. Morris of King Law Offices

Attorney's Address:

Street Address: 215 N. Main St.

City: Rutherfordton State: North Carolina

Zip Code: 28139

Attorney's Phone Number: (828) 286-3332

Attorney's Facsimile Number: 828-286-1110

Attorney's Email: TMorris@kinglawoffices.com

CLAIMANT HEREBY CERTIFIES THAT IT HAS DISMISSED ANY OTHER PENDING SUITS OR PROCEEDINGS IT HAS COMMENCED AGAINST DRAGUL, THE DRAGUL ENTITIES, OR THE RECEIVERSHIP ESTATE AND THAT IT WILL NOT FILE (OR RE-FILE) ANY SUIT OR PROCEEDING IN ANOTHER FORUM WITHOUT THE RECEIVER'S PERMISSION OR LEAVE OF THIS COURT.

8. I hereby certify and attest, under the penalty of perjury, that the information contained in the foregoing Claim Form is true and correct:

Claimant Name: National Commercial Builders, Inc.

Claimant Address:

Street Address: 41951 Remington Ave.

City: Temecula State: CA

Zip Code: 92590

Claimant Phone Number: (951) 302-8200

Claimant Facsimile Number:

Claimant Email: jr@ncbuilders.net

National Commercial Builders, Inc.

Dated: 2/1/2019

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: CHRIS MYKLEBUST, SECURITIES COMMISSIONER FOR THE STATE OF COLORADO v. Defendants: GARY DRAGUL, et al.	
	Case Number: 2018CV033011 Division: 424
ORDER RE: NATIONAL COMMERCIAL BUILDERS, INC.'S MOTION FOR RELIEF FROM STAY	

THIS MATTER comes before the Court on National Commercial Builders, Inc.'s Motion for Relief from Stay filed March 4, 2019. Having reviewed the Motion and any responses and replies thereto, and otherwise being fully informed, the Court enters the following order:

1. National Commercial Builders, Inc.'s Motion for Relief from Stay is GRANTED.
2. The stay imposed by the Court's Stipulated Order Appointing Receiver is lifted with respect to National Commercial Builders, Inc.'s filing of a claim of lien action related to the Hickory Corners property in North Carolina state court.

SO ORDERED this _____, day of _____, 2019.

BY THE COURT

 District Court Judge