

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

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities, hereby asks the Court to enter an Order approving a March 6, 2019, Agreement and Compromise between the Receiver and Greeley Asset Funding, LLC

(the “Greeley Agreement”).¹ The Greeley Agreement also incorporates an agreement to resolve claims between and among Greeley, AFF II, Denver, LLC (“Arden”), and the Estate and will result in the Estate being able to consummate the pending \$24.2 million sale of the Happy Canyon Shoppes to BPI, Inc.

I. Background

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

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

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

¹ A copy of the Greeley Agreement is submitted with this Motion as **Exhibit 1**.

4. On January 16, 2019, the Receiver filed a Motion for Order Authorizing Sale of Happy Canyon Shoppes (“Shoppes Sale Motion”). The Shoppes is owned by HC Shoppes 18 A, LLC and HC Shoppes 18 B, LLC (the “Shoppes Entities”). The sole member of the Shoppes Entities is DBHC Holdings, LLC (“DBHC”), whose sole member is Dragul. The Shoppes is managed by GDA Real Estate Management, Inc., whose president and sole-owner is Dragul.

5. As described in the Shoppes Sale Motion, Greeley provided a \$2,750,000 mezzanine loan to DBHC Holdings, LLC (“DBHC”), which was used to partially fund the acquisition of the Shoppes property. DBHC contemporaneously made an additional promissory note for \$1,375,000 payable to Greeley for “Additional Interest” on Greeley’s \$2.75 million mezzanine loan. DBHC pledged 100% of its interests in the Shoppes Entities to secure Greeley’s notes. Under the Shoppes Entities’ operating agreements, any equity from the Shoppes sale would flow to DHBC.

6. The Shoppes was originally encumbered by a deed of trust in favor of Ardent to secure the \$19.5 million loan that was the primary source of funding for the Shoppes acquisition in July 2018. After Greeley made its \$2.75 mezzanine loan, Dragul took out an additional \$8.9 million loan from Ardent to buy the adjacent Happy Canyon Box property. Ardent and Dragul then agreed to amend the \$19.5 million deed of trust on the Shoppes to include the Box loan amount. So now both the Shoppes and the Box are encumbered by a cross-collateralizing deed of trust in favor of Ardent for up to \$28.4 million.

7. On February 26, 2019, this Court entered its Order Approving Winning and Backup Contracts for Sale of Happy Canyon Shoppes (“Feb. 26th Sale Order”). The winning bidder, BPI, Inc., has offered to pay the Estate \$24.2 million for the Shoppes. Commissions and closing costs will exceed \$300,000. Ardent and Greeley have previously objected to the Shoppes sale unless each is paid in full from the net sales proceeds. Ardent claims it is owed approximately \$25.8 million and has refused to release its deed of trust on the Shoppes unless it is paid in full; Greeley claims it is owed \$4.125 million. The approximate \$23.8 million in net sales proceeds from the Shoppes would not pay both Ardent and Greeley in full.

8. This Court’s Feb. 26th Sale Order, authorizes the Receiver to close the Shoppes sale, pay Ardent \$18,907,140.33 in satisfaction of its Shoppes loan “subject to further accounting and itemization,” and to hold the remaining funds “in escrow until the Ardent cross-collateralization is resolved.”

9. On March 12, 2019, Ardent filed a motion to reconsider the Feb. 26th Sale Order (“Ardent’s Motion for Reconsideration”) because the Order does not reflect the terms of a settlement among the Receiver, Ardent, BPI, and Greeley to resolve the issues concerning the distribution of money from the Shoppes sale. This agreement was reached after the Feb. 26th Sale Order entered; the Greeley Agreement reflects that agreement.

10. Pursuant to paragraph 10 of the Receivership Order, absent timely objection, Court approval this motion is to be given as a matter of course within 10 days after the motion is filed and served.

II. The Greeley Agreement is in the best interest of the Estate and its creditors.

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

12. Considering these factors, the Court should approve the Greeley Agreement. Under the Agreement, Greeley has agreed to accept \$2,750,000 from the sale of the Happy Canyon Shoppes in full satisfaction of its notes (extinguishing

Dragul's guarantee of the notes) and of the claim it has filed against the Estate based on those notes, a \$1.375 million benefit to the Estate.

13. The Greeley Agreement also moots Ardent's Motion for Reconsideration by incorporating the agreement reached among the Receiver, BPI, and Ardent. Under that agreement, Ardent has agreed to accept \$20 million in full satisfaction of its Shoppes loan and BPI has agreed to pay Ardent \$5 million to purchase Ardent's Box loan. Under that agreement, Ardent has agreed to accept approximately \$800,000 less than it claims it is owed on its Happy Canyon loans, and to release its deeds of trust on the Happy Canyon Shoppes and Box.

14. Approval of the Greeley Agreement will allow the Estate to convey marketable title to BPI at closing, consummate the Happy Canyon Shoppes sale, and receive approximately \$1.1 million at closing. The Greeley Agreement also resolves potential litigation among Greeley, Ardent, and the Estate, and provides a net benefit to the Estate of over \$2 million through the release of Greeley's claim to recover \$1.375 million on its Additional Interest note, and Ardent's agreement to accept \$800,000 less than it claims it is owed on its Happy Canyon loans.

WHEREFORE, the Receiver asks the Court to enter an Order approving the Greeley Agreement, and for such other relief as this Court deems just and proper.

Dated: March 15, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.

Rachel A. Sternlieb

By: *s/ Rachel A. Sternlieb*

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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I certify that on March 15, 2019, a true and correct copy of **RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH GREELEY ASSET FUNDING, LLC (HAPPY CANYON SHOPPES)** was filed and served via the Colorado Courts E-Filing system on the following:

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In accordance with this Court's February 1, 2019, Order clarifying notice procedures for this case, I also certify that a copy of the foregoing is being served by electronic mail on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

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

AGREEMENT AND COMPROMISE

THIS AGREEMENT AND COMPROMISE (this "Agreement") is made and entered effective as of March 6, 2019, by and between HARVEY SENDER, as Receiver for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC and related entities (including DBHC Holdings, LLC ("DBHC"), HC Shoppes 18A, LLC ("Shoppes 18 A") and HC Shoppes 18 B, LLC ("Shoppes 18 B") and GREELEY ASSET FUNDING LLC, a Delaware limited liability company ("Greeley").

BACKGROUND

A. Receiver is the court-appointed receiver for the Estate of Gary Dragul pursuant to a Stipulation and Order entered in Civil Action 2018CV33011, Denver District Court (the "Receivership").

B. Greeley, a claimant in the Receivership, is a creditor of DBHC by virtue of two promissory notes (the "Greeley Notes"), identified as follows:

- (i) Promissory Note in the amount of \$2,750,000,000 dated July 27, 2018.
- (ii) Additional Interest Promissory Note dated July 24, 2018 in the amount of \$1,375,000.

C. Dragul provided Greeley with his personal guaranty of the Greeley Notes (the "Dragul Guaranty").

D. As collateral for the Greeley Notes and the Dragul Guaranty, Dragul pledged 100% of the issued and outstanding DBHC limited liability company interests, and DBHC pledged 100% of the issued and outstanding limited liability company interests in Shoppes 18 A and 18 B (the "Pledge Agreements").

E. Shoppes 18A and Shoppes 18 B own real property known as the Happy Canyon Shoppes located at 4820, 4992 and 5011-5068 East Hampden Avenue, Denver, Colorado 80222.

F. Greeley has duly filed its claim in the Receivership for amounts due on the Greeley Notes, the Dragul Guaranty, the Pledge Agreements, and other claims Greeley has against Dragul (the "Greeley Claim").

G. Greeley and the Receiver have been engaged in discussions to resolve the Greeley Claim.

H. The Happy Canyon Shoppes property is encumbered by a Deed of Trust held by for the benefit of AFF II Denver, LLC (the "Shoppes Deed of Trust").

I. Receiver has filed a Motion for Order Authorizing Sale of Happy Canyon Shoppes, and conducted an auction to consummate the sale (the "Happy Canyon Motion"), and has filed a Motion for an Order approving the contract submitted by BPI, Inc. ("BPI"), as the successful auction bidder. On February 26, 2019, the Receivership Court entered an order approving the contract submitted by BPI.

J. The Happy Canyon Shoppes is adjacent to real property described in the Happy Canyon Motion as "Happy Canyon Box" which also is encumbered by a deed of trust for the benefit of AFF II Denver, LLC (the "Box Deed of Trust").

K. BPI has agreed to purchase the Box Deed of Trust.

L. Based upon BPI's agreement to purchase the Box Deed of Trust, AFF II Denver, LLC, has agreed to release the Shoppes Deed of Trust at the Closing of the sale of Happy Canyon Shoppes and receipt of \$20,000,000 of the proceeds from such sale.

M. The parties wish to settle and resolve the Greeley Claim under the terms of this Agreement.

THEREFORE, in consideration of the Background and other good and valuable consideration, the receipt of which the parties hereby acknowledge, the parties agree as follows:

1. Upon the Closing of the sale of Happy Canyon Shoppes, but not later than May 15, 2019 (the "Settlement Due Date") Receiver will direct Escrow Holder (as that term is defined below) to pay to Greeley \$2,750,000 in full satisfaction of the Greeley Notes, the Dragul Guaranty, the Pledge Agreements, and the Greeley Claim (the "Settlement Payment"). Escrow Holder shall mean and refer to an escrow officer in the escrow division of a nationally recognized title company handling the sale of Happy Canyon Shoppes.

2. Upon notice to Greeley that the Receiver has set up an escrow with Escrow Holder for the sale of Happy Canyon Shoppes, Greeley will deliver the originals of the Promissory Notes and the Dragul Guaranty and the Pledge Agreements to Escrow Holder to hold in trust as provided by this Agreement.

3. Upon the Closing of the sale of Happy Canyon Shoppes, the Receiver will direct that Escrow Holder to pay the Settlement Payment to Greeley by wire transfer to Greeley's bank account at First Republic Bank, information for which will be provided by Greeley to Escrow.

4. Upon the Closing of the sale of Happy Canyon Shoppes, when Escrow Holder is then in a position to wire the Settlement Payment to Greeley, Escrow Holder shall be directed to mark the Promissory Notes "Paid," mark the Guaranty and Pledge Agreements "Cancelled," and deliver the original marked documents to the Receiver, and the Greeley Claim shall be deemed to have been withdrawn.

5. Full performance of this Agreement and Compromise shall constitute a full and final accord, satisfaction, release and settlement by Receiver on its behalf and on behalf of the

Dragul Estate, on the one hand, and Greeley on the other, their respective successors, assigns and legal representatives, from and against any and all claims arising in any manner from or related to the Greeley Notes, the Dragul Guaranty, the Pledge Agreements and the Greeley Claim.

6. If the Receiver does not cause the Settlement Payment to be paid to Greeley by May 15, 2019, time being of the essence of this Agreement, this Agreement shall expire, and its provisions will be of no further force and effect, and Escrow Holder shall be irrevocably instructed to return unmarked the Greeley Notes, the Guaranties, and the Pledge Agreements to Greeley, as Greeley so instructs, in which case Greeley shall retain all of its available rights and remedies under the Greeley Notes, the Dragul Guaranty, the Pledge Agreements and otherwise.

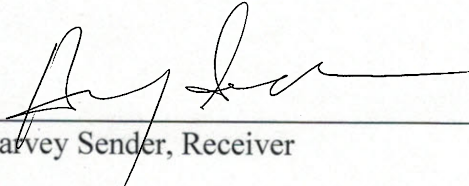
7. The parties agree that Escrow Holder may rely upon the instructions to Escrow Holder herein, and that neither party may unilaterally revoke these instructions without the written consent of the other party. Escrow Holder is authorized to require the parties to execute its form of general instructions for an escrow, including provisions for indemnification of the Escrow Holder and the right of Escrow Holder to interplead any funds in the event of a dispute over their disposition, or to seek court approval of its actions.

8. Entire Agreement. This Agreement embodies the final, complete, and exclusive agreement among the parties with respect to its subject matter; supersedes all prior agreements, understandings and representations written or oral, with respect thereto; and may not be contradicted by evidence of any such prior or contemporaneous agreement, understanding or representation, whether written or oral.

9. Counterparts; Facsimile Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of the party who executed such counterpart but all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile and/or PDF signature.

(Signatures appear on the next page.)

IN WITNESS WHEREOF, the parties have executed this Agreement as of March 6,
2019.



Harvey Sender, Receiver

GREELEY ASSET FUNDING LLC

By: 

Philip Cohen, Manager