

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 720.865.8612</p>	<p>DATE FILED: October 1, 2019 12:07 PM FILING ID: A6EA77E297E59 CASE NUMBER: 2018CV33011</p>
<p>Plaintiff: David S. Cheval, Acting 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>▲ COURT USE ONLY ▲</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 Division/Courtroom: 424</p>
<p>MOTION TO APPROVE SETTLEMENT AGREEMENT WITH GALLOWAY & COMPANY, INC.</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, “Dragul and the GDA Entities”), asks the Court to enter an order approving a settlement agreement he has reached with Galloway &

Company, Inc. (“Galloway”). A copy of the “Settlement Agreement” is submitted as **Exhibit 1**.

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.

4. On or about October 24, 2017, Dragul entered into a professional services agreement with Galloway pursuant to which Galloway agreed to prepare a geotechnical report and environmental site for certain properties owned by Dragul and the GDA Entities.

5. The properties for which Galloway prepared the geotechnical report and environmental site are located in the City and County of Denver, Colorado at the following addresses:

- a. 2166 South Ash Street, Denver, Colorado 80222;
- b. 2176 South Ash Street, Denver, Colorado 80222;
- c. 2186 South Ash Street, Denver, Colorado 80222;
- d. 2196 South Ash Street, Denver, Colorado 80222;
- e. 2175 South Bellaire Street, Denver, Colorado 80222; and
- f. 2195 South Bellaire Street, Denver, Colorado 80222.

(collectively, the “Properties”)

6. On October 2, 2018, Galloway recorded a mechanics’ lien on the Properties for \$141,988.94 in the City and County of Denver at Reception No. 2018124753 (the “Galloway Lien”). Subsequently, on January 15, 2019, Galloway filed a claim against the Estate based on the Galloway Lien.

7. Accordingly, when the Receiver entered into a contract to sell the Properties and filed a motion on July 31, 2019, asking the Court to approve the sale (“Ash & Bellaire Sale Motion”), Galloway filed a Response on August 14, 2019, providing that Galloway didn’t object to the sale and was willing to release its Lien at closing upon payment in full of the amount of the Lien.

8. In the Receiver’s August 30, 2019, Reply in support of the Ash & Bellaire Sale Motion, he asked the Court to order that the Galloway Lien was invalid because Galloway had not timely commenced an action to foreclose it. On

September 6, 2019, Galloway filed a Sur-Reply arguing that notwithstanding the Receiver's position, its Lien was valid.

9. The proposed Settlement Agreement resolves the dispute between the Receiver and Galloway as to the Galloway Lien, Galloway's claim against the Estate, and Galloway's objection to the Ash & Bellaire Sale Motion.

II. The Settlement Agreement is in the best interests of the Estate and its creditors.

10. 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).

11. Considering these factors, the Court should approve the Settlement Agreement with Galloway. Under the Settlement Agreement, Galloway will be paid

\$63,895 on its Lien paid at the closing of the Ash & Bellaire sale, and in exchange will withdraw its objection to the Ash & Bellaire Sale Motion and release its Lien at closing of the Ash & Bellaire sale.

12. The Settlement Agreement is in the best interest of the Estate and its creditors. It resolves the dispute as to the Galloway Lien and its Claim against the Estate and will facilitate the Estate's sale of the Ash & Bellaire Properties.

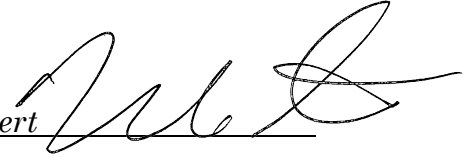
13. Pursuant to paragraph 10 of the Receivership Order, Court approval of any motion filed by the Receiver shall be given as a matter of course within 10 days after the motion is filed and served. As reflected by the certificate of service below, this Motion is being served on all parties who have appeared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

WHEREFORE, the Receiver respectfully requests the entry of an Order approving the Settlement Agreement.

Dated: October 1, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.

By: /s/ Michael T. Gilbert



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ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2019, I served a true and correct copy of the foregoing **MOTION TO APPROVE SETTLEMENT AGREEMENT WITH GALLOWAY & COMPANY, INC.** via CCE to the following:

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***Counsel for Patch of Land Lending,
LLC***

A copy of the Motion was also served by electronic mail and/or U.S. Mail first-class, postage-prepaid on all currently known creditors of the Receivership Estate to the addresses set forth on the service list maintained in the Receiver's records.

/s/ Teresa L. Silcox
Teresa L. Silcox

Exhibit 1

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CASE NUMBER: 2018CV33011

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered as of September 25, 2019, between Harvey Sender (the “**Receiver**”) in his capacity as receiver for the assets of Gary J. Dragul (“**Dragul**”), GDA Real Estate Management, LLC (“**GDA REM**”), GDA Real Estate Services, LLC (“**GDA RES**”), and related entities (collectively, “**Dragul and the GDA Entities**”), and Galloway & Company, Inc. (“**Galloway**”). Each is individually a “**Party**,” and collectively the “**Parties**.”

I. Recitals

A. 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 in the District Court in and for Denver County, Colorado, Case No. 2018CV33011 (the “**Receivership Court**”).

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

C. On August 30, 2018, the Court entered the Stipulated Order Appointing Receiver (the “**Receivership Order**”), which appointed Harvey Sender receiver for Dragul and the GDA Entities, and their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “**Receivership Estate**” or the “**Estate**”). Receivership Order ¶ 5.

D. On or about October 24, 2017, GDA RES and Galloway entered into a Professional Services Agreement pursuant to which Galloway was to prepare a geotechnical report and environmental site for a proposed development to be located at Ash & Bellaire streets in Denver, State of Colorado.

E. On October 2, 2018, Galloway recorded a mechanics’ lien for \$141,988.94 against the following six “**Ash & Bellaire Properties**”: (1) 2166 South Ash, (2) 2176 South Ash, (3) 2186 South Ash, and (4) 2196 South Ash, and (5) 2175 South Bellaire, and (6) 2195 South Bellaire, all located in Denver County. The lien is recorded at Reception No. 2018124753 in the records of the Clerk and Recorder in Denver County (the “**Galloway Lien**”).

F. On January 15, 2019, Galloway filed a claim against the Estate based on its Lien (the “**Galloway Claim**”).

G. On or about July 24, 2019, the Receiver entered into a contract to sell the Ash & Bellaire Properties to Sognare Development, LLC, and on July 31, 2019,

the Receiver filed a motion with the Receivership Court seeking approval of that contract (the “**Ash & Bellaire Motion**”).

H. On August 14, 2019, Galloway filed a Response to the Ash & Bellaire Motion arguing it had a valid and enforceable lien on the Ash & Bellaire Properties that must be paid at closing of the proposed sale of those Properties.

I. On August 30, 2019, the Receiver his Reply in Support of the Ash & Bellaire Motion and sought an order from the Receivership Court declaring the Galloway Lien invalid because Galloway had not commenced a foreclosure action or recorded a *lis pendens* against the Ash & Bellaire Properties within six months of performing its last work on the Ash & Bellaire Properties as required by COLO. REV. STAT. § 38-22-110.

J. The Parties have conferred with counsel and have made the inquiries they deem necessary and appropriate, and now desire to enter into this Agreement to resolve their differences, claims, and potential claims against each other as of the date of this Agreement arising from or related to the Ash & Bellaire Motion, the Galloway Lien, and the Galloway Claim.

II. Covenants

1. Court Approval. This Agreement is subject to approval by the Receivership Court. Following the execution of this Agreement by the Parties, the Receiver shall promptly seek Court approval and the Parties shall cooperate to obtain that approval. The Agreement shall be null and void if not approved by the Receivership Court.

2. Effective Date. The Effective Date of this Agreement shall be the day it is approved by the Receivership Court.

3. Withdrawal of Objection. Upon execution of this Agreement by both Parties, Galloway shall file with the Receivership Court a pleading consenting to the Ash & Bellaire Motion. Until the Receivership Court approves this Agreement, Galloway reserves all rights concerning its Lien.

4. Release of Galloway Lien. Within 10 days of the Effective Date, Galloway shall tender to counsel for the Receiver a release of the Galloway Lien in recordable form, which the Receiver shall deliver to the title company handling the sale of the Ash and Bellaire Properties to be recorded upon delivery of the Release Payment (defined below) to Galloway.

5. Release Payment to Galloway. At the closing of any sale of the Ash & Bellaire Properties by the Receiver, Galloway shall be paid \$63,895 (the “**Release Payment**”). The Galloway Claim shall be reduced by the amount of the Release Payment; the remainder of the Galloway Claim will be an allowed unsecured claim against the Receivership Estate. Nothing in this Agreement prohibits or restricts the Receiver’s right, in the exercise of his reasonable business judgment, to abandon or otherwise dispose of the Ash & Bellaire Properties. If the Receiver fails to sell the Ash & Bellaire Properties and make the Release Payment, Galloway shall retain all rights concerning its Lien that exist as of the date this Agreement is executed.

6. Compromise of Disputed Claims. It is expressly understood and agreed that the terms of this Agreement are contractual in nature and not mere recitals and that the agreements contained herein, and the consideration transferred, are to compromise doubtful and disputed claims and that nothing in this Agreement shall be construed or considered an admission of liability. To the contrary, this Agreement is entered to avoid further litigation and any further dispute or claims and to buy peace to the extent described herein.

7. Specific Performance. The Receivership Court shall be the exclusive forum for any disputes arising under this Agreement, and upon application by either Party, the Receivership Court may require specific performance by either Party of its obligations hereunder. Each Party hereby consents to the exclusive jurisdiction and venue of the Receivership Court for any disputes relating to or arising under this Agreement.

8. Authorization. The Parties represent and warrant that no promise or inducement has been offered except as expressly set forth herein; that the person signing this Agreement on behalf of each Party is both authorized and legally competent to execute this Agreement and accepts full responsibility therefor; and, that it has not assigned, transferred, or hypothecated any claim or interest identified herein.

9. Successors. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties, their respective estates, and their legal representatives, successors, and assigns, whether by operation of law or otherwise.

10. Controlling Law. This Agreement shall be deemed made and entered into in the State of Colorado, and shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Colorado, without reference to Colorado’s law on conflicts of law.

11. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable.

12. Fair Interpretation. This Agreement is the product of negotiations among the Parties and shall be given fair interpretation. Each of the Parties expressly acknowledges that this Agreement shall be deemed to have been mutually prepared so that the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

13. Parties Advised by Counsel. The Parties acknowledge that they have been represented by counsel with respect to this Agreement and all matters covered by and relating to it.

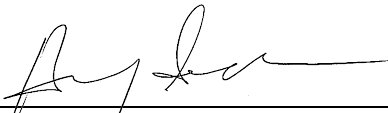
14. No Waiver of Breaches of Agreement. The failure by a Party to insist upon strict compliance with any of the covenants or restrictions contained in this Agreement shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this Agreement.

15. Entire Agreement. This Agreement constitutes the entire agreement among the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous representations, contracts, or agreements of any nature. Any modification of any provision of this Agreement shall not be valid unless in writing and executed by the Parties.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Signatures delivered by facsimile and email as electronic files shall be deemed effective as originals.

17. Headings and Titles. The headings and titles in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

RECEIVER



Harvey Sender

9/27/2019

Date

**GALLOWAY AND COMPANY,
INC.**

Name: _____
Title: _____

Date

RECEIVER

Harvey Sender

Date

GALLOWAY AND COMPANY,
INC.



Name: KRISTOFFER KENTON

Date

9/30/19

Title: PRINCIPAL - DIRECTOR OF ARCHITECTURE