

<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 9, 2019 10:45 AM FILING ID: C2FD562C2D2F4 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 SECURED CREDITORS</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 Victoria Capital

Trust, f/k/a Toorak Repo Seller I Trust (“VCT”), Patch of Land Lending, LLC (“POL,” and jointly with VCT, “Secured Creditors”), and Normandy Capital Trust (“NCT”). A copy of the “Settlement Agreement” is submitted with this motion 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 and 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 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 December 31, 2018, VCT filed claims against the Estate based on mortgages it holds on the following Estate properties (the “VCT Properties” and the “VCT Claims”):

- i. 891 14th Street #2417, Denver, CO
- ii. 6937 E 6th St, #1002, Scottsdale, AZ
- iii. 6937 E 6th St, #1004, Scottsdale, AZ

- iv. 6937 E 6th St, #1005, Scottsdale, AZ
- v. 1660 N. LaSalle Dr, #3909, Chicago, IL
- vi. 1777 Larimer St, #703, Denver, CO
- vii. 3593 S Hudson St, Denver, CO
- viii. 5455 Landmark Pl, #509, Greenwood Village, CO
- ix. 5788 S Lansing Wy, Englewood, CO
- x. 7517 E Davies Pl, Centennial, CO

5. On February 20, 2019, POL filed claims against the Estate based on mortgages it holds on the following Estate properties (the “POL Properties” and the “POL Claims”):

- i. 1777 Larimer St, #901, Denver, CO
- ii. 1660 N. LaSalle Dr, #4205, Chicago, IL
- iii. 6316 E Fair Ave, Centennial, CO
- iv. 7842 E Briarwood Blvd, Centennial, CO

6. Secured Creditors also hold first mortgage liens on the following “Ash & Bellaire Properties”:

- i. 2166 South Ash Street, Denver, Colorado 80222
- ii. 2176 South Ash Street, Denver, Colorado 80222
- iii. 2186 South Ash Street, Denver, Colorado 80222
- iv. 2196 South Ash Street, Denver, Colorado 80222
- v. 2175 South Bellaire Street, Denver, Colorado 80222
- vi. 2195 South Bellaire Street, Denver, Colorado 80222

7. All of Secured Creditors' mortgages have been in default since before the Receiver was appointed and are accruing default interest of 18% per year. Since the Receiver was appointed, the Estate has been paying to manage, insure, and maintain the properties.

8. On or about July 24, 2019, the Receiver entered into a contract to sell the Ash & Bellaire Properties to Sognare Development, LLC (the "Ash & Bellaire Contract"), and on July 31, 2019, the Receiver filed a motion with the Receivership Court seeking approval of that contract (the "Ash & Bellaire Sale Motion").

9. On August 9, 2019, Secured Creditors filed a Limited Opposition to the Ash & Bellaire Sale Motion ("Secured Creditors' Limited Opposition").

10. The proposed Settlement Agreement resolves ongoing disputes between the Receiver, Secured Creditors, and NCT, resolves Secured Creditors' Limited Opposition to the Ash & Bellaire Sale Motion, and will lead to the withdrawal of a substantial portion (perhaps all) of over \$6 million in claims Secured Creditors have filed against the Estate.

II. The Settlement Agreement is in the best interests 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 Settlement Agreement with Secured Creditors. Under the Agreement, Secured Creditors have already withdrawn their Limited Opposition to the Ash & Bellaire Sale Motion and have agreed to waive late fees and legal fees on the Ash & Bellaire Properties from September 30, 2019, until closing of the Ash & Bellaire Sale. This resolved the sole remaining objection to the Ash & Bellaire Sale Motion, and if the Receiver is able to timely close that transaction will net a positive return for the Estate. The Receiver has agreed to stipulate to Secured Creditors’ motion to lift this Court’s stay to pursue foreclosure of the Ash & Bellaire Properties if the Ash & Bellaire Contract is terminated or fails to close within nine months.

13. Under the Settlement Agreement, the Receiver will seek Court authority to abandon both the VCT and the POL Properties, in which there is no equity, in order to allow Secured Creditors to foreclose. Upon approval of that motion, the Estate will no longer have to bear the expense of managing, insuring, or

maintaining those properties, and VCT and POL will reduce their Claims against the Estate by the amounts received or bid at foreclosure sales, which will substantially reduce or eliminate more than \$6 million in claims.

14. The Settlement Agreement is in the best interest of the Estate and its creditors. It resolves ongoing disputes with respect to properties that have become burdensome to the Estate, facilitates the closing of the Ash & Bellaire Sale, which the Receiver hopes will result in a positive return to the Estate, and will result in the withdrawal of substantial claims against the Estate.

15. 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 9, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.



By: /s/ Michael T. Gilbert

Patrick D. Vellone

Michael T. Gilbert

Rachel A. Sternlieb

1600 Stout Street, Suite 1100

Denver, Colorado 80202

(303) 534-4499

E-mail: pvellone@allen-vellone.com

E-mail: mgilbert@allen-vellone.com

E-mail: rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2019, I served a true and correct copy of the foregoing **MOTION TO APPROVE SETTLEMENT AGREEMENT WITH SECURED CREDITORS** via CCE to the following:

Robert W. Finke
Sueanna P. Johnson
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203
Sueanna.Johnson@coag.gov
Robert.Finke@coag.gov

***Counsel for David S. Cheval, Acting
Securities Commissioner for the State of
Colorado***

Holly R. Shilliday, Esq.
McCarthy Holthus, LLP
7700 E. Arapahoe Road, Suite 230
Centennial, CO 80120
hshilliday@mccarthyholthus.com

***Counsel for Victoria Capital
Trust, Normandy Capital Trust, and Cohen
Financial***

Joseph A. Murr
Kimberly L. Martinez
Murr Siler & Accomazzo, P.C.
410 Seventeenth Street, Suite 2400
Denver, CO 80202
jmurr@MSA.legal
kmartinez@msa.legal

***Counsel for Velocity
Commercial Capital***

Jeffery A. Springer, Esq.
Springer and Steinberg P.C.
1600 Broadway, Suite 1200
Denver, Colorado 80202
jspringer@springersteinberg.com

***Counsel for Defendants, Gary Dragul, GDA
Real Estate Services, LLC and GDA Real
Estate Management, LLC***

Duncan Barber
Shapiro Biegling Barber Otteson LLP
7979 E Tufts Ave. Suite 1600
Denver, CO 80237
dbarber@sbbolaw.com

***Counsel for WBF CT Associates, LLC,
Chad Hurst, and Tom Jordan***

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/ Salowa Khan
Salowa Khan

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into on October 1, 2019, between on one hand, 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, and on the other hand, Victoria Capital Trust, f/k/a Toorak Repo Seller I Trust (“VCT”), Patch of Land Lending, LLC (“POL,” and jointly with VCT, “Secured Creditors”), and Normandy Capital Trust (“NCT”). Each is individually a “Party,” and collectively are 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 Receiver (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 December 31, 2018, VCT filed claims against the Estate based on mortgages it holds on the following Estate properties (the “VCT Properties” and the “VCT Claims”):

1. 891 14th Street #2417, Denver, CO
2. 6937 E 6th St, #1002, Scottsdale, AZ
3. 6937 E 6th St, #1004, Scottsdale, AZ
4. 6937 E 6th St, #1005, Scottsdale, AZ
5. 1660 N. LaSalle Dr, #3909, Chicago, IL

6. 1777 Larimer St, #703, Denver, CO
7. 3593 S Hudson St, Denver, CO
8. 5455 Landmark Pl, #509, Greenwood Village, CO
9. 5788 S Lansing Wy, Englewood, CO
10. 7517 E Davies Pl, Centennial, CO

E. On February 20, 2019, POL filed claims against the Estate based on mortgages it holds on the following Estate properties (the “POL Properties” and the “POL Claims”):

1. 1777 Larimer St, #901, Denver, CO
2. 1660 N. LaSalle Dr, #4205, Chicago, IL
3. 6316 E Fair Ave, Centennial, CO
4. 7842 E Briarwood Blvd, Centennial, CO

F. On or about July 24, 2019, the Receiver entered into a contract to sell the following six properties (the “Ash & Bellaire Properties”) to Sognare Development, LLC (the “Ash & Bellaire Contract”), and on July 31, 2019, the Receiver filed a motion with the Receivership Court seeking approval of that sale (the “Ash & Bellaire Motion”):

1. 2166 South Ash Street, Denver, CO
2. 2176 South Ash Street, Denver, CO 80222
3. 2186 South Ash Street, Denver, CO 80222
4. 2196 South Ash Street, Denver, CO 80222
5. 2175 South Bellaire Street, Denver, CO 80222
6. 2195 South Bellaire Street, Denver, CO 80222

G. Secured Creditors also hold first mortgages on the Ash & Bellaire Properties and have filed claims against the Estate based on those mortgages (the “Ash & Bellaire Claims”).

H. On August 09, 2019, Secured Creditors filed a Limited Opposition to the Ash & Bellaire Motion (“Secured Creditors’ Limited Opposition”).

I. 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 Secured Creditors' Limited Opposition, VCT and POL's Claims, and to facilitate the sale of the Ash & Bellaire Properties.

II. Agreements

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Court Approval. This Agreement is subject to approval by the Receivership Court. Following the execution of this Agreement by all 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 Secured Creditors' Limited Opposition. Upon execution of this Agreement by the Receiver, Secured Creditors shall withdraw Secured Creditors' Limited Opposition so that the Receiver can proceed to consummate the Ash & Bellaire Sale.

4. Motion to Abandon. Upon mutual execution of this Agreement, the Receiver shall file a motion to abandon both the VCT and the POL Properties. Upon entry of the Court's Order authorizing the Receiver to abandon the VCT and the POL Properties, Secured Creditors shall release and withdraw the VCT and POL Claims once the claims have been paid in full. Secured Creditors reserve the right to amend their claims to reflect any deficiency balance owing on the claims following foreclosure.

5. Foreclosure of Ash & Bellaire Properties. Secured Creditors agree not to seek relief from the stay imposed under paragraph 26 of the Receivership Order to initiate any foreclosure action on the Ash & Bellaire Properties for four months after the Effective Date in order to facilitate the sale of those Properties. Upon the earlier of expiration of that four-month period or termination of the Ash & Bellaire Contract, the Receiver will stipulate to a motion by Secured Creditors to obtain relief from the Receivership stay so they can initiate public trustee foreclosure proceedings on the Ash & Bellaire Properties, but Secured Creditors agree they shall not

consummate any foreclosure of any of the Ash & Bellaire Properties until the earlier of termination of the Ash & Bellaire Contract, or nine months after the Effective Date.

6. Payoff of Ash & Bellaire Loans. Secured Creditors agree that payoffs of the Ash & Bellaire loans shall be limited to the categories contained on the September 30, 2019, payoff statements Secured Creditors provided to the Receiver for the Ash & Bellaire Properties. Secured Creditors shall be entitled to interest and default interest accrued through the closing date of the Ash & Bellaire Contract, but shall not be entitled to recover any additional late fees or attorneys' fees after September 30, 2019. If the Ash & Bellaire Sale is canceled or not consummated within nine months of the Effective Date, Secured Creditors may include attorneys' fees, costs, and late charges in any foreclosure bid. Upon payment of the Ash & Bellaire loans in full in accordance with the terms of this Agreement, Secured Creditors shall release their Ash & Bellaire Claims. Upon a breach of this Agreement, Secured Creditors may include attorneys' fees, costs, late charges and any other amount provided for in their promissory notes, deeds of trust, or other loan documents. Secured Creditors reserve the right to amend their claims to reflect any deficiency balance owing on the claims following the foreclosure(s) if one or more foreclosures were to take place.

7. 41 South Fairway, Beaver Creek, CO. NCT holds the first mortgage on the property located at 41 South Fairway, Beaver Creek, CO. The property is now under contract for \$2,346,350. NCT hereby agrees not to object to the Receiver's motion seeking approval of that sale so long as NCT's loan will be paid in full and closes within three (3) months from the date of this Agreement.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

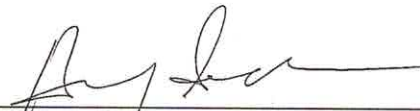
16. No Waiver of Breaches of Agreement. The failure by a Party to insist upon strict compliance with any of the covenants or restrictions contained in this Agreement shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this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

17. 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.

18. 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.

19. 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

10/04/2019


Date

**Victoria Capital Trust, f/k/a
Toorak Repo Seller I Trust**

Name: _____
Title: _____

Date

Patch of Land Lending, LLC



Name: _____
Title: _____

Gina D'Amico
C.O.O.

10/8/19

Date

Normandy Capital Trust

Name: _____
Title: _____

Date

17. 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.

18. 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.

19. 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

Date

**Victoria Capital Trust, f/k/a
Toorak Repo Seller I Trust**

Name: Darren Weaver
Title: Principal, Authorized Signer

10/14/2019
Date

Patch of Land Lending, LLC

Name: _____
Title: _____

Date

Normandy Capital Trust

Name: Darren Weaver
Title: Principal, Authorized Signer

10/14/2019
Date