

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</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>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 pvellone@allen-vellone.com mgilbert@allen-vellone.com rsternlieb@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION TO ABANDON ASH & BELLAIRE PROPERTIES</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”), hereby requests Court approval to abandon the Estate’s interest in 2166, 2176, 2186, and 2196 South Ash

Street, and 2175 and 2195 South Bellaire Street, Denver, Colorado 80222 (the “Ash & Bellaire Properties” or sometimes the “Property”).

I. Summary of the Ash & Bellaire Properties

1. The Ash & Bellaire Properties are six single-family homes owned by special purpose entities that are 100% owned and formerly controlled by Dragul. Dragul acquired the Ash & Bellaire Properties intending to demolish the homes and construct a 27-townhome development. Plans for the development were prepared before the Receiver was appointed.

2. Dragul originally purchased the Property in 2016 and 2017 for approximately \$2.7 million. Four of the homes (2166, 2176, and 2186 S. Ash, and 2175 S. Bellaire) are encumbered by first mortgages in favor of Victoria Capital Trust, which as of March 4, 2020, will have a collective payoff balance of \$1,840,635, accruing interest of approximately \$21,700 per month. The other two (2195 South Bellaire and 2196 South Ash) are encumbered by first mortgages in favor of Patch of Land Lending, LLC with a joint payoff balance as of March 4th of approximately \$888,000, accruing interest of approximately \$10,300 per month (Victoria and Patch of Land are the “Secured Creditors”). Patch of Land commenced a foreclosure against 2195 South Bellaire in December 2018; that foreclosure is stayed pursuant to paragraph 26 of this Court’s Receivership Order.

3. All six of the homes are purportedly encumbered by second deeds of trust that secure a \$500,000 loan made to Dragul by WBF/CT Associates, LLC. A

\$141,988.94 mechanic's lien has also been recorded against all six of the Ash & Bellaire homes by Galloway & Company, Inc.

4. Three of the Ash & Bellaire houses are vacant. The three that are occupied have month-to-month tenants whose total rent payments are approximately \$4,900 per month. One tenant, however, has not paid rent since October 2019. Previously, the Receiver evicted another tenant for non-payment of rent. Taxes have not been paid on any of the houses for the last three years and all are in ill-repair with substantial deferred maintenance. On July 5, 2019, the Denver Police came to the Property and removed squatters from the 2166, 2176, and 2186 S. Ash Street houses, and two of those houses (2166 and 2176 S. Ash) are contaminated with methamphetamine.

II. On February 17, 2020, Sognare terminated its agreement to buy the Ash & Bellaire Properties.

5. Since his appointment, the Receiver has attempted to sell the Ash & Bellaire houses as a package to a developer to be redeveloped as originally contemplated believing this would provide the best return to the Estate. Notwithstanding the known problems with the Property, on July 31, 2019, the Receiver filed a Motion for Order Authorizing Sale of the Ash & Bellaire Properties to Sognare Development, LLC for \$3.1 million. Consummation of the sale would have provided an estimated \$40,000-50,000 to the Estate.

6. Several objections to the sale motion were filed; the Receiver resolved the objections through settlement agreements and the Court approved the sale on

October 7, 2019. The Sognare contract provided a 120-day due diligence period which was twice extended through February 28, 2020.

7. During due diligence, Sognare discovered that the sewer main serving the Property will be at full capacity with the construction of the next major development in the University Hills neighborhood in which the Property is located. There is a 350-unit development to the east of the Ash & Bellaire site that is expected to break ground this year, which will consume all existing sewer capacity. Unless the sewer line capacity is increased under East Evans Avenue from approximately Ash Street west to Monroe Street, Sognare's proposed development could not be approved. The City of Denver informed Sognare that the City has no plans or funds to increase the sewer capacity and that the \$1.5+ million cost of doing so would have to be paid by the next project needing increased capacity. This additional cost caused Sognare to terminate its purchase contract on February 17, 2020.

III. Abandoning the Property is in the best interest of the Estate.

8. The Receivership Order authorizes the Receiver to sell or otherwise dispose of the assets of the Estate, including the personal property of the Receivership Estate. *Receivership Order* ¶ 13(t), at 12. Upon obtaining a court order, a receiver may generally abandon property that is of inconsequential value to an estate. *E.g.* 65 AM. JUR. 2D Receivers § 156. Under the Bankruptcy Code, property may be abandoned that is burdensome or of inconsequential value or benefit to a bankruptcy estate. 11 U.S.C. § 554(a).

9. There is no equity in the Property nor does the Estate have any ability to further stay its foreclosure. **Exhibit 1** is the Receiver's analysis of the economic status of the Ash & Bellaire Properties. As shown, there is no equity in four of the houses: 2166 and 2186 S. Ash, and 2175 and 2195 South Bellaire.¹ And the estimated Zillow value that shows \$13,385 of equity in 2176 S. Ash does not account for the methamphetamine contamination of the property. Nor do the Zillow values consider the substantial deferred maintenance on all of the homes.

10. The only property with potential equity is 2196 S. Ash. But the analysis on Exhibit 1 assumes that Galloway's mechanic's lien could be apportioned equally among all six of the Ash & Bellaire Properties, which is not correct. The full \$141,000 lien arguably encumbers all six houses and would wipe out any projected equity in 2196 S. Ash.

11. Meanwhile the Estate continues to incur management fees of \$250/month per house and to pay insurance, utilities, and maintenance for all of the houses.

12. Even if there were any equity in any of the Ash & Bellaire Properties, pursuant to the Court-approved settlement agreement between the Receiver and the Secured Creditors, once Sognare terminated its purchase contract Secured Creditors

¹ The Zillow website indicated it didn't have enough information to provide an estimated market value for 2195 S. Bellaire. The estimate on Exhibit 1 is based on the last sale price for the property; the property's assessed value in 2019 was \$461,000.

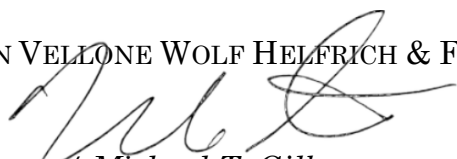
are free to obtain relief from the Court's litigation stay and foreclose. *See Exhibit 2.* The Estate lacks the funds, and given the lack of equity, there is no reason to cure the loan defaults and continue to hold the Property.

13. Given these circumstances, the Property is of no value to, and is burdensome to the Estate and its creditors.

WHEREFORE, the Receiver asks the Court to enter the proposed Order submitted with this Motion authorizing the Receiver to abandon the Property.

Dated: February 21, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.


By: s/ Michael T. Gilbert
Patrick D. Vellone, #15284
Michael T. Gilbert, #15009
Rachel A. Sternlieb, #51404

ATTORNEYS FOR THE RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO ABANDON ASH & BELLAIRE PROPERTIES** via CCE or first-class mail, postage prepaid, to the following:

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

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of Colorado***

Counsel for Gary J. Dragul

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***Counsel for Victoria Capital
Trust, Cohen Financial, and Patch of
Land Lending***

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

Debra Piazza
Montgomery Little & Soran, P.C.
5445 DTC Parkway, Suite 800
Greenwood Village, CO 80111
dpiazza@montgomerylittle.com

Counsel for Galloway & Company, Inc.

CERTIFICATION OF E-SERVICE ON KNOWN CREDITORS

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.

/s/ Salowa Khan
Allen Vellone Wolf Helfrich & Factor P.C.

**Equity Analysis
Ash - Bellaire**

#	PROPERTY	Zillow	1st DOT as of 3/4/2020	Per Diem	RE Comm'n 5.5%	Clsng Costs (1.5%)	Est. Taxes 2017-2020	Galoway Lien \$141,988.94	Equity	2nd DOT (20% of Sales Proceeds up to \$100,000)	Estate Net	Default Rate	Holder of 1st DOT	Rent	Notes
1	2166 South Ash Street, Denver, CO	\$ 488,495	\$424,685.45	\$161.53	26,867	7,327	7,361	23,665	(1,411)	-\$282.26	(1,129)	18.00%	VCT	Vacant	Meth contamination
2	2175 South Bellaire Street, Denver, CO	\$ 456,196	\$590,303.96	\$221.11	25,091	6,843	6,739	23,665	(172,781)	-\$34,556.20	(138,225)	18.00%	VCT	MTM \$1,600	Last rent paid 10/21/19
3	2176 South Ash Street, Denver, CO	\$ 492,994	\$438,388.79	\$176.45	27,115	7,395	7,226	23,665	12,870	\$2,573.96	10,296	18.00%	VCT	Vacant	Meth contamination
4	2186 South Ash Street, Denver, CO	\$ 390,840	\$387,256.88	\$154.39	21,496	5,863	8,289	23,665	(32,065)	-\$6,412.91	(25,652)	18.00%	VCT	Vacant	
5	2195 South Bellaire Street, Denver, CO	\$ 550,000	\$551,119.34	\$210.71	30,250	8,250	9,075	23,665	(48,694)	-\$9,738.87	(38,955)	18.00%	Patch of Land	Leased \$1,795	
6	2196 South Ash Street, Denver, CO	\$ 385,909	\$337,699.20	\$130.00	21,225	5,789	6,383	23,665	14,813	\$2,962.60	11,850	18.00%	Patch of Land	MTM \$1,550	
		2,636,820	2,729,454												

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.

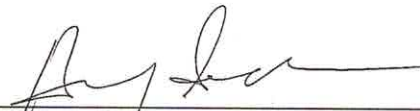
16. No Waiver of Breaches of Agreement. The failure by a Party to insist upon strict compliance with any of the covenants or restrictions contained in this Agreement shall not be construed as a waiver, nor shall any course of action deprive a Party of the right to require strict compliance with this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

10/8/19

Date

Normandy Capital Trust

Name: _____
Title: _____

Date

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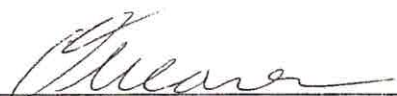
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Receiver

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

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 720.865.8612	
Plaintiff: David S. Cheval, Acting Securities Commissioner for the State of Colorado v. Defendants: Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC	▲ COURT USE ONLY ▲
	Case Number: 2018CV33011 Division/Courtroom: 424
[PROPOSED] ORDER GRANTING RECEIVER'S MOTION TO ABANDON ASH & BELLAIRE PROPERTIES	

THIS MATTER is before the Court on the Receiver's Motion to Abandon Ash & Bellaire Properties (the "Motion"). The Court has reviewed the Motion, and being fully advised,

HEREBY ORDERS that the Motion is GRANTED. As of the date of this Order, any interest the Estate formerly held in the properties located at 2166, 2176, 2186, and 2196 South Ash Street, and 2175 and 2195 South Bellaire Street, Denver, Colorado 80222 (the "Ash & Bellaire Properties" is abandoned and no longer property of the Receivership Estate, and the Receiver is hereby authorized to stop managing the Ash & Bellaire Properties and to stop paying insurance, ongoing maintenance, or any other expenses related to those properties. As of the date of this Order, the stay imposed by paragraph 26 of this Court's Receivership Order no longer applies to the Ash & Bellaire Properties.

Dated: _____, 2020.

BY THE COURT:
