

<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><b>Plaintiff:</b> David S. Cheval, Acting Securities Commissioner for the State of Colorado</p> <p>v.</p> <p><b>Defendants:</b> 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 &amp; FACTOR P.C.  1600 Stout St., Suite 1900  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 style="text-align: center;"><b>RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH RUSSELL BECKER</b></p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), 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 with Russell

Becker (“Beker”). A Copy of the settlement agreement is submitted as **Exhibit 1** (the “Settlement Agreement”).

## **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 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.

3. Under the Receivership Order, the Receiver has the authority to prosecute causes of action against third-parties, including claims held by creditors. Receivership Order ¶¶ 13(o) & (s).

4. The Receiver identified claims, including claims under COLO. REV. STAT. § 38-8-101-113, against Becker. On August 30, 2019, the Receiver filed a complaint in Denver District Court against Becker and others seeking to recover what the Receiver alleged were fraudulent transfers Becker received from Dragul and the GDA entities, Case No. 2019CV33374.

5. The proposed Settlement Agreement resolves the dispute between the Receiver and Becker regarding certain transfers he received from Dragul and the GDA entities before the Receiver was appointed.

## **II. The Settlement Agreement is in the best interest of the Estate and its creditors.**

6. 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).

7. Considering these factors, the Court should approve the Settlement Agreement. Originally the Receiver identified \$86,941.67 in potentially fraudulent transfers Becker received and sued to recover them. Although the Receiver believes his claims to recover the full amount of the transfers to Becker are strong, Becker has raised various defenses to those claims. A number of the transfers date back to 2004 raising potential statute of limitations issues, and Becker has provided information to the Receiver giving rise to concerns about the collectability of any judgment that

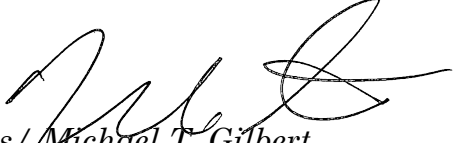
might enter against him. Balancing the amount at issue against the expense that would be involved in litigating the claims through trial, including expert witness testimony, and the potential difficulty of collection, the Receiver believes the proposed settlement is in the best interest of the Estate. The proposed agreement resolves the potential litigation claims against Becker without further expense or litigation risk, will result in the dismissal of the pending action against Becker, eliminate potentially significant litigation costs for the Estate, and result in the prompt payment of funds to the Estate.

8. 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 asks the Court to enter an Order approving the Settlement Agreement.

Dated: April 13, 2020.

ALLEN VELLONE WOLF HELFRICH & FACTOR  
P.C.

By:   
/s/ Michael T. Gilbert

Patrick D. Vellone

Michael T. Gilbert

Rachel A. Sternlieb

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E-mail: rsternlieb@allen-vellone.com

ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I hereby certify that on April 13, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH RUSSELL BECKER** via CCE to:

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

Paul Vorndran  
Chris Mills  
Jones & Keller, P.C.  
1999 Broadway, Suite 3150  
Denver, Colorado 80202  
pvorndran@joneskeller.com  
cmills@joneskeller.com

*Counsel for David S. Cheval, Acting Securities Commissioner*      *Counsel for Defendant Gary Dragul*

A copy was also served by electronic mail to:

Jason Wesoky, Esq. jwesoky@darlingmilligan.com <i>Counsel for Russell Becker</i>
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**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/ Lisa A. Vos*  
Allen Vellone Wolf Helfrich & Factor P.C.

## Settlement Agreement and Mutual Release

### I. Parties

This Settlement Agreement and Mutual Release (“Agreement”) is entered into as of the date last signed by a party below, by and between Russell Becker (“Becker”) and Harvey Sender (the “Receiver”), as Receiver for Gary J. Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, LLC (“GDAREM”), and a number of related entities (the “Estate”). Dragul, GDARES, GDAREM, and all related entities are referred to as “Dragul and the GDA Entities”; Becker and the Receiver are each a “Party,” and jointly the “Parties.”

### II. Recitals

A. On August 30, 2018, the Court in *Rome v. Gary Dragul, et al.*, Case No. 2018CV33011 Denver County District Court (the “Receivership Action”), entered a Stipulated Order Appointing Receiver (“Receivership Order”) which appointed the Receiver.

B. Under the Receivership Order, the Receiver is authorized, among other things, to take immediate possession and control of all of the assets of the Estate, to investigate any pursue all claims and causes of action on behalf of the Estate, including claims on behalf of creditors premised on fraudulent transfer or similar theories.

C. The Receiver alleges numerous investors lost some or all of their principal investments with Dragul and the GDA Entities, and the Receiver has identified claims the Estate claims to have against Becker to recover transfers Becker allegedly received from Dragul and the GDA Entities.

D. The Receiver sued Becker in the District Court of Denver County for the State of Colorado under Case No. 19-CV-33374 asserting claims for turnover, actual fraud, constructive fraud, and unjust enrichment (the “Lawsuit”).

E. The Parties, after having conferred with counsel and made such inquiries as they deem reasonably necessary and having had the opportunity to review such documents as they deem necessary and appropriate, now desire to settle all claims, including without limitation the claims asserted in the Lawsuit, that the Estate may have against Becker and that Becker may have against the Estate.

### III. Covenants

For good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals Incorporated. The representations and recitals set forth above are true and correct and are made a part of this Agreement.

2. Receivership Court Approval. This Agreement is subject to approval by the Receivership Court and the Receiver shall file a motion requesting approval of the Agreement by the Receivership Court. If this Agreement is challenged by anyone as not being fair, adequate, or reasonable, the Receiver shall take reasonable steps to defend this Agreement and to affirm the Receiver's view that the terms of the Agreement are fair and equitable to the Estate and all parties in interest. The Agreement shall be deemed null and void if not approved by an order entered by the Receivership Court.

3. Effective Date. The Effective Date of this Agreement shall be the first business day after an order is entered by the Receivership Court approving it.

4. Settlement Payment. Within 10 days after the Effective Date, Becker shall pay the Estate \$15,000.00 (the "Settlement Payment"). The Settlement Payment shall be made payable to "Harvey Sender, Receiver" and delivered to counsel for the Receiver.

5. Dismissal of Lawsuit. Within five days of the Settlement Payment, the Parties shall file a stipulation in the Lawsuit dismissing all the Receiver's claims against Becker with prejudice, each Party to bear their own attorneys' fees and costs.

6. Mutual Releases.

a) Except for the obligations under this Agreement, upon the Receiver's receipt of the Settlement Payment, the Receiver on behalf of the Estate releases and forever discharges Becker and his representatives and agents from any and all claims, causes of action, manner of actions, debts, suits, rights, notes, covenants, liabilities, accounts, contracts, agreements, promises, damages, losses, attorneys' fees, costs and expenses, and demands whether known or unknown, matured or unmatured, accrued or unaccrued, direct or indirect, suspected or unsuspected, fixed or contingent, in law or equity, including without limitation claims for fraudulent transfer or fraud arising out of or relating in any manner to the Estate, Dragul, the GDA Entities and their principals, subsidiaries, affiliates, successors, predecessors, agents, assigns, attorneys, and employees which were or could have been asserted in the Lawsuit.

b) Upon the Effective Date, Becker, for himself, his predecessors, heirs, successors, assigns, agents, representatives, attorneys and all persons acting through and under him, releases and forever discharges the Receiver and the Estate, all creditors of the Estate, all persons who received transfers from Dragul and/or the GDA Entities (including, but not limited to, immediate and subsequent



transferees) and their respective predecessors, successors, heirs, assigns, agents, representatives, attorneys, and all persons acting by, through or under them, whether or not the identity of such persons is known to Becker, from any and all claims which were or could have been asserted in the Lawsuit, except for the obligations under this Agreement.

7. Compromise of Disputed Claims. It is expressly understood and agreed that the terms of this Agreement are contractual and not mere recitals and that the agreements contained herein, and the consideration transferred hereunder, are to compromise doubtful and disputed claims and that no releases or other consideration given shall be construed or considered an admission of liability. To the contrary, this Agreement is entered into to avoid litigation and any further dispute or claims and to buy peace to the extent described herein.

8. Specific Performance. The Receivership Court shall, upon application of any Party, require specific performance by any other Party of any obligation hereunder. The Parties consent to the jurisdiction and venue of the Receivership Court.

9. Waiver of Jury Trial. The Parties irrevocably and unconditionally waive to the fullest extent permitted by applicable law any right they may have to trial by jury of any claim or cause of action, or in any legal proceeding, based upon or arising out of 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 and their legal representatives, successors and assigns, whether by operation of law or otherwise.

12. Controlling Law. This Agreement is 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, such provision shall be fully severable.

14. Fair Interpretation. This Agreement is the product of negotiations between the Parties and shall be given fair interpretation. The Parties acknowledge

this Agreement shall be deemed to have been mutually prepared so that the rule of construction that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this Agreement.

15. Parties Advised by Counsel. The Parties acknowledge they have been represented by counsel or have had the opportunity to consult with 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 on strict compliance with any of the covenants or restrictions 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 between the Parties with regard to 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. Costs and Attorneys' Fees. Each Party shall bear its own costs and attorneys' fees incurred prior to the Effective Date. In connection with any litigation, mediation, arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding.

19. 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 document. Signatures delivered by facsimile and email as electronic files shall be deemed effective as originals.

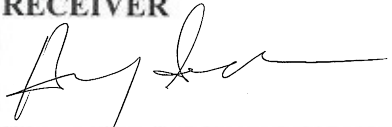

20. Headings and Titles. The headings and titles in this Agreement are for convenience only and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision herein.

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20. 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.

**IN WITNESS WHEREOF**, the Parties hereto hereby execute this Agreement and as of the date first above written.

<b>RECEIVER</b>  _____ Harvey Sender Dated: <u>4/8/2020</u>	<b>RUSSELL BECKER</b>  _____ Dated: <u>4/8/2020</u>
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