

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p>DATE FILED: December 3, 2020 2:04 PM FILING ID: 3BDC1F55261E7 CASE NUMBER: 2018CV33011</p>
<p>Plaintiff: Tung Chan, 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 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 Division/Courtroom: 424</p>
<p>RECEIVER’S MOTION TO APPROVE AGREEMENT WITH ALAN C. FOX, THE ALAN C. FOX REVOCABLE TRUST DATED DECEMBER 2, 1999, AND ACF PROPERTY MANAGEMENT, INC.</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 his Agreement for Purchase, Assignment

and Assumption of Membership Interests, Settlement of Claims, and Mutual Release (“Agreement”) with Alan C. Fox (“Fox”), the Alan C. Fox Revocable Trust Dated December 2, 1999 (“Fox Trust”), and ACF Management, Inc. (“ACF”). A copy of the 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 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the “Receivership Order”), appointing Harvey Sender 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 ¶ 5.

3. 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 exercise control over all subsidiaries and related companies owned or managed by Dragul, GDARES or GDAREM, and to investigate and pursue all claims and causes of action on behalf of the Estate. Receivership Order ¶¶ 13(a), (b), (k), & (o).

4. Under the Receivership Order, the Estate owns and/or controls Fort Collins WF 02 LLC (“Fort Collins”), PR Investments, Inc. (“PR”), GDA Village Crossroads LLC (“Village Crossroads”), and GDA Market at Southpark LLC (“Market at Southpark”).

5. Dragul, Fort Collins, PR, Village Crossroads, and Market at Southpark (collectively, the “Members”) own and hold of record minority membership interests (“Membership Interests”) in certain ACF affiliated entities (“ACF Affiliated Entities”). Each of the ACF Affiliated Entities is governed by an operating agreement that contains significant restrictions on the transfer of the Membership Interests, including Fox’s right of first refusal with respect to the transfer, assignment or sale of any Membership Interest.

6. The Receiver, on behalf of the Members, wishes to sell the Membership Interests to the Fox Trust and the Fox Trust wishes to purchase those Membership Interests from the Estate, subject to the terms of the Agreement.

7. On or about January 30, 2019, the ACF Parties filed certain claims against the Receivership Estate, totaling \$6,916,304.43 (“ACF Claims”).

8. On January 21, 2020, the Receiver filed a complaint in the Denver County District Court, Colorado against Fox and ACF, among other defendants, captioned *Sender v. Dragul, et al.*, Case No. 2020CV30255, (the “Insider Case”). In the Insider Case, the Receiver asserted, among other things, that Fox and ACF received approximately \$10.2 million in what the Receiver alleged were illegal commissions, paid from 2002 to 2016, in connection with real estate transactions involving the GDA Entities.

9. Fox and ACF deny all claims asserted in the Insider Case, as well as the Receiver’s standing to assert such claims, and further deny any liability or wrongdoing in connection with the transactions alleged in the Insider Case.

10. In order to settle their disputes and in furtherance of the Receiver's task of liquidating the assets of the Estate, the Receiver and the ACF Parties have entered into the Agreement, which, subject to this Court's approval, provides that the ACF Parties will pay the Estate \$650,000 and will withdraw the ACF Claims against the Estate in exchange for the transfer of the Membership Interests to the Fox Trust or its assignee and the dismissal of the Action against Fox and ACF.

II. The 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 Agreement. First, although the Receiver believes his claims against Fox and ACF are meritorious,

Fox and ACF have raised various defenses to those claims, including that the statutes of limitations bar some or all of the Receiver's claims and that the Receiver lacks standing to bring them. Second, based on the allegations and defenses asserted thus far, it is expected that litigating the claims in the Insider Case against Fox and ACF will be complex, lengthy, and costly. Third, as part of the Agreement, the ACF Parties will withdraw more than \$6.9 million in claims against the Receivership Estate, which will leave more funds available for distribution to other creditors. Fourth, the contemplated sale of the Membership Interests to the Fox Trust is in the best interest of the Estate. Because of the restrictions on the transferability of the Membership Interests and the fact that the Estate holds minority, non-controlling interests in the ACF Affiliated Entities, a sale to the ACF Parties is the only realistic option for obtaining value for the Estate for those Interests. In addition, the real properties owned by the ACF Affiliated Entities are retail shopping centers that have seen significant decreases in value over the past few months as a result of the COVID-19 pandemic. Given these facts, the Fox offer to purchase the Membership Interests is likely the only reasonable opportunity to liquidate those Interests for the benefit of the Estate.

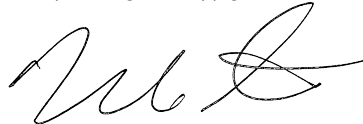
13. Given the potential costs of litigation, the uncertainty of prevailing, the likely unmarketability of the Membership Interests, and the resolution of more than \$6.9 million in claims against the Estate, in the Receiver's business judgment the proposed Agreement is in the best interest of the Estate and its creditors and will result in the prompt payment of funds to the Estate.

14. 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 its Order approving the proposed Settlement.

Dated: December 3, 2020.

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 1900

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 December 3, 2020, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE AGREEMENT WITH ALAN C. FOX, THE ALAN C. FOX REVOCABLE TRUST DATED DECEMBER 2, 1999, AND ACF PROPERTY MANAGEMENT, INC.** 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 Counsel for Defendant Gary Dragul
Securities Commissioner***

/s/Salowa Khan

Allen Vellone Wolf Helfrich & Factor P.C.

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.

**Agreement for Purchase, Assignment And
Assumption of Membership Interests, Settlement of Claims and Mutual Release**

("Agreement") DATE FILED: December 3, 2020 2:04 PM
FILING ID: 3BDC1F55261E7
CASE NUMBER: 2018CV33011

This Agreement is entered into as of November 30, 2020, by and between Alan C. Fox, as an individual ("Fox") and as trustee of the Alan C. Fox Revocable Trust, Dated December 2, 1999 (the "Fox Trust") and ACF Property Management, Inc. ("ACF") on the one hand, and Harvey Sender (the "Receiver"), as Receiver for Gary J. Dragul ("Dragul"), GDA Real Estate Services, LLC ("GDARES"), GDA Real Estate Management, Inc. ("GDAREM") and a number of related entities, including Fort Collins WF 02 LLC ("Fort Collins"), PR Investments, Inc. ("PR"), GDA Village Crossroads LLC ("Village Crossroads"), and GDA Market at Southpark LLC ("Market at Southpark"), on the other hand. Dragul, GDARES and GDAREM are collectively referred to as the "Debtors." Fort Collins, PR, Village Crossroads, Market at Southpark and Dragul are collectively referred to as the "Members." Fox, the Fox Trust and ACF are collectively referred to as the "ACF Parties." The ACF Parties, the Receiver, and the Members are each referred to as a "Party," and collectively as the "Parties."

I. Recitals

A. On August 30, 2018, the Court in *Rome v. Gary Dragul, et al.*, Denver County District Court Case No. 2018CV33011 (the "Receivership Action"), entered a Stipulated Order Appointing Receiver (the "Receivership Order"), which appointed the Receiver for the Debtors and their respective properties, entities and assets, as well as their interests and management rights in related, affiliated and subsidiary entities (the "Receivership" or the "Estate").

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, and, subject to the court's approval, to sell the assets of the Estate and to investigate and pursue all claims and causes of action on behalf of the Estate.

C. Pursuant to the Receivership Order, the Estate either stands in the shoes of and/or owns and/or controls the Members who hold of record and own membership interests ("Membership Interests") in certain ACF affiliated entities ("ACF Affiliated Entities"), as follows:

Member	ACF Affiliated Entity	% of Member's Interest in ACF Affiliated Entity
Gary Dragul	10 Quivira Plaza 14 A, LLC	0.818%
Gary Dragul	Shoppes at Bedford 15 A, LLC	3.658%
Fort Collins WF 02 LLC	Meadows Shopping Center 05 A, LLC	8.264%
Fort Collins WF 02 LLC	Southwest Commons 05 A, LLC	5.5%
Fort Collins WF 02 LLC	Crystal Falls Town Center, LLC	1.959%
Fort Collins WF 02 LLC	Trophy Club 12, LLC	9.375%
PR Investments, Inc.	Scottsdale Retail Center 02, LLC	1.620%
PR Investments, Inc.	Paradise Valley Festival 04 A, LLC	0.533%
PR Investments, Inc.	Greentree Plaza 06 A, LLC	0.153%
PR Investments, Inc.	Arapahoe Village, LLC	1.5%

Member	ACF Affiliated Entity	% of Member's Interest in ACF Affiliated Entity
GDA Village Crossroads LLC	ACF Lakewood 11, LLC	12.332%
GDA Market at Southpark LLC	Tower Plaza 12, LLC	2.927%

D. Each of the ACF Affiliated Entities is governed by an operating agreement that contains significant restrictions on the transfer of the Membership Interests, including by granting Fox the right of first refusal with respect to the transfer, assignment or sale of any Membership Interest.

E. The manager of each of the ACF Affiliated Entities is ACF.

F. As part of settling their disputes, the Receiver, on behalf of the Estate and the Members, wishes to sell, assign, transfer and convey the Membership Interests to the Fox Trust or its assignee, and the Fox Trust wishes to purchase those Membership Interests from the Estate and the Members, subject to the terms of this Agreement.

G. On or about January 30, 2019, the ACF Parties filed the following claims against the Receivership Estate ("ACF Claims"):

Claimant	Debtor	Amount
Alan C. Fox	Gary Dragul	\$298,093.53
Alan C. Fox	Gary Dragul	\$257,479.57
*Alan C. Fox	DU Student Housing	\$307,803.23
*Alan C. Fox	DU Student Housing	\$604,645.16
Alan C. Fox	Clearwater	\$669,472.04
Alan C. Fox	Plaza Mall	\$353,935.48
Alan C. Fox	Hickory	\$1,108,064.52
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Gary Dragul	\$396,025.81
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Cornerstar	\$68,500.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Cornerstar	\$345,000.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Cornerstar	\$201,250.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Cornerstar	\$172,500.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	MC Liquor	\$97,250.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Cornerstar	\$143,750.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	MC Liquor	\$143,750.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Cornerstar	\$189,750.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	Cornerstar	\$195,500.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	MC Liquor	\$195,500.00
Alan C. Fox, Trustee of the Alan C. Fox Revocable Trust	SSC Aviation	\$78,424.19
Edward Delava, Trustee of the 2002 Fox Irrevocable Trust	Gary Dragul	\$155,000.00
Edward Delava, Trustee of the 2002 Fox Irrevocable Trust	Windsor	\$250,000.00
Edward Delava, Trustee of the 2002 Fox Irrevocable Trust	Plaza Mall	\$300,000.00
Alan C. Fox and ACF Property Management, Inc.	Gary Dragul	\$384,610.90
TOTAL		\$6,916,304.43

The ACF Parties' claims concerning DU Student Housing marked with an asterisk ("*") above shall be referred to as the "DU Student Housing Claims."

H. In the course of the Receivership Action, the Receiver made certain document demands on the ACF Parties and the ACF Parties produced to the Receiver confidential documents ("Confidential Materials") subject to the provisions of a Stipulated Protective Order, entered by the Receivership Court on September 8, 2020. The Stipulated Protective Order contemplates the return and/or destruction of Confidential Materials after the sale of the Membership Interests.

I. On January 21, 2020, the Receiver filed a complaint in the Colorado District Court, Denver County, captioned *Harvey Sender, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc. v. Gary J. Dragul, et al.*, Case No. 2020CV30255, naming Fox and ACF as defendants, among others (the “Action”).

J. Fox and ACF deny all claims asserted in the Action, as well as the Receiver’s standing to assert such claims, and further deny any liability or wrongdoing in connection with, arising from or relating to the actions, events and occurrences alleged in the Action.

K. The ACF Parties and the Receiver, after having conferred with counsel and having 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 arising out of or relating in any way to the Debtors, including without limitation the claims asserted in the Action, and to avoid the burden and expense of further litigation.

II. 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. The Receiver shall file a motion requesting approval of the Agreement by the Receivership Court and a proposed order approving the Agreement, each in a form to be agreed upon by the ACF Parties. Such a proposed order will include, without limitation, a specific confirmation that the Estate owns or controls the Membership Interests and authorization of the Receiver to consummate the Transaction as defined below. If this Agreement is challenged by anyone, 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 and will not oppose any attempt by the ACF Parties to file a brief or to be heard in support of the motion to approve the Agreement without the need for formal intervention in the Receivership Action. The Receiver shall deliver the order of the Receivership Court approving the settlement to the ACF Parties immediately upon receipt. 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 day the Receivership Court enters an order approving it and the Receiver serves that order on counsel for the ACF Parties.

4. Sale and Assignment of Interest. On and subject to the terms and conditions of this Agreement, the Receiver, on behalf of the Estate and the Members, hereby sells, transfers, conveys and assigns to the Fox Trust, and the Fox Trust hereby purchases from the Estate and the Members, the Membership Interests for valuable consideration under this Agreement. The purchase and sale of the Membership Interests shall be effective as of the Payment Date defined in the following paragraph.

5. Payment. Within fourteen (14) days of the Effective Date, the ACF Parties shall pay to the Estate \$650,000.00 (the “Payment”). The Payment shall be made payable to “Harvey Sender, Receiver” and delivered by overnight mail to counsel for the Receiver at the following address: 1600 Stout St., Suite 1900, Denver, Colorado 80202. The “Payment Date” shall be the day on which payment was delivered to the Receiver’s counsel.

6. Effect of Transfer. As of the Payment Date, the capital accounts of the Members in respect of the Membership Interests shall be transferred to the Fox Trust. The portions of the profits and losses of the Members and portions of all other items of income, gain, loss, deduction and credit allocable to the Membership Interests shall be credited or charged, as the case may be, to the Fox Trust and not to the Members. The Fox Trust shall be entitled to all distributions or payments in respect of the Membership Interests made on or after November 30, 2020, regardless of the source of those distributions or payments or when the same was earned by the Members. The Fox Trust shall be responsible for all liabilities and obligations (including all capital contributions) in respect of the Membership Interests after the Payment Date.

7. Continuation of the ACF Affiliated Entities. The Receiver, to the best of his knowledge on behalf of the Members, and the ACF Parties for themselves, agree that: (a) neither the sale, transfer, conveyance or assignment of the Membership Interests, nor the Members’ dissociation from the ACF Affiliated Entities in respect of the Membership Interests as provided in this Agreement, will cause the dissolution of any of the ACF Affiliated Entities; and (b) the ACF Affiliated Entities shall continue to exist as limited liability companies under the laws of the State of their organization.

8. ACF’s Consent. ACF hereby provides its written consent to the sale of the Membership Interests to the Fox Trust, as provided in this Agreement.

9. Withdrawal of ACF Claims. Upon the Payment Date, the ACF Parties shall provide the Receiver with a document formally withdrawing the ACF Claims. Notwithstanding the foregoing, the ACF Parties shall retain all rights, entitlements, claims and causes of action concerning the DU Student Housing Claims that they may have against GDA-DU Student Housing 18 A, LLC and GDA-DU Student Housing 18 B, LLC.

10. Representations and Warranties of Receiver. The Receiver represents and warrants to the ACF Parties on behalf of the Estate and the Members that, to the best of the Receiver’s knowledge, the statements contained in this Section are correct and complete as of the Effective Date.

(a) Authority, Capacity and Enforceability. The Members hold of record and own the Membership Interests free and clear from any lien, claim or encumbrance. The Receiver was appointed under the Receivership Order to take immediate possession and control of all of the assets of the Estate, including the Membership Interests. The Receiver, subject to the court’s approval, has the relevant power, authority and capacity necessary to execute and deliver this Agreement and to perform and consummate all obligations contemplated hereby including, without limitation, to sell the Membership Interests to the Fox Trust (“Transaction”). The Receiver has taken and will continue to take all action necessary to execute and deliver this Agreement, to perform his obligations hereunder, and to consummate the Transaction. The Receiver and the Members are not a party to any other contract with respect to the Membership Interests. The terms of this Agreement and the Receiver’s performance hereunder do not and

will not constitute a breach, default, or violation of any operative contract, or of any controlling court order or law. This Agreement has been duly executed and delivered by the Receiver.

11. Representations and Warranties of the ACF Parties. The ACF Parties represent and warrant to the Receiver and the Members that the statements contained in this Section are correct and complete as of the Effective Date.

(a) Authority, Capacity and Enforceability. The ACF Parties have the relevant power, authority and capacity necessary to execute and deliver this Agreement and to perform and consummate all obligations contemplated hereby including, without limitation, to consummate the Transaction. The ACF Parties have taken and will continue to take all action necessary to execute and deliver this Agreement, to perform their obligations hereunder, and to consummate the Transaction. The terms of this Agreement and the ACF Parties' performance hereunder do not and will not constitute a breach, default, or violation of any operative contract, or of any controlling court order or law. This Agreement has been duly executed and delivered by the ACF Parties.

12. Mutual Releases.

(a) Except for the obligations under this Agreement, upon the Payment Date, the Receiver on behalf of the Estate, Debtors and Members, including but not limited to their representatives, agents, principals, managers, directors, affiliates, parents, subsidiaries, successors, predecessors, heirs, current and former shareholders or members, assigns and employees, releases and forever discharges the ACF Parties and their representatives, agents, principals, managers, directors, affiliates, parents, subsidiaries, successors, predecessors, heirs, current and former shareholders or members, assigns, and employees 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, which were or could have been asserted as of the date of this Agreement, including but not limited to those which are based upon, arise under or are related to: (1) the allegations, events and occurrences asserted in the Action; (2) the Estate or the Debtors, including but not limited to all claims that were or could have been asserted in the Action or in the Receivership Action; (3) the ownership and/or control of the Membership Interests by the Estate; and (4) any distributions in respect of the Membership Interests.

(b) Except for the obligations under this Agreement, upon the Payment Date, the ACF Parties including their representatives, agents, principals, affiliates, parents, subsidiaries, successors, predecessors, heirs, assigns and employees and all persons acting through and under them, release and forever discharge the Receiver, the Members and the Estate, and their representatives, agents, principals, managers, directors, affiliates, parents, subsidiaries, successors, predecessors, assigns, and employees 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 which were or could have been asserted as of the date of this Agreement, including but not limited to those which are based upon, arise under or are related to: (1) the Estate or the Receivership; and (2) the ACF Claims.

Notwithstanding anything to the contrary in this Agreement, any 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 that the ACF Parties may have against GDA-DU Student Housing 18 A, LLC and GDA-DU Student Housing 18 B, LLC are expressly excluded from this release.

(c) It is the intention of the Parties in executing this Agreement that the releases under this Section shall be effective as a bar as to any and all claims, demands, causes of action and liabilities hereinabove released, except those specifically excluded in Subsection (b). The Parties acknowledge that they may hereafter discover claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this settlement. Nevertheless, the Parties hereby affirm the validity and enforceability of this Agreement notwithstanding their subsequent discovery of such different or additional claims or facts.

13. Dismissal of the Action Against the ACF Parties. Within three (3) days of the Payment Date, the Receiver shall file with the Court in the Action (Case No. 2020CV30255) a Notice of Voluntary Dismissal with Prejudice, dismissing the Action with prejudice as to the ACF Parties along with a proposed order, both of which are attached as Exhibit A, and shall promptly provide a conformed copy of the same to counsel for the ACF Parties. The Receiver shall take any further action necessary to ensure the dismissal of the Action with prejudice as to the ACF Parties.

14. Compromise of Disputed Claims and Limitation on Discovery Demands.

(a) The Parties' entry into this Agreement was not proceeded by any findings, formal or otherwise, of any wrongdoing or liability on the part of the ACF Parties. Rather, it is expressly understood and agreed that the agreements contained herein, and the consideration transferred hereunder, are, in part, to compromise doubtful and disputed claims and that the releases and other consideration given shall not be construed or considered as an admission of any wrongdoing or liability, or an admission of merit regarding any claims or allegations made against the ACF Parties. The ACF Parties expressly deny all liability and enter into this Agreement to avoid litigation and any further dispute or claims and to buy peace to the extent described herein. This Agreement shall not be used as evidence or afforded any evidentiary value in any action, proceeding, or investigation to establish the wrongdoing or liability of the ACF Parties or any of them.

(b) To limit potential further litigation costs for the ACF Parties, the Receiver agrees, as of the date of the last signature on this Agreement, not to seek, directly or indirectly, further documents from or serve discovery requests on the ACF Parties in connection with the Action and/or the Receivership Action and not to take the ACF Parties' depositions in the Action or in the Receivership Action. Nothing herein shall limit the Receiver's rights if the ACF Parties are called to testify at deposition or trial by another party.

15. Return and/or Destruction of Confidential Materials. Within thirty (30) days of the Effective Date, the Receiver shall return to counsel for the ACF Parties all Confidential Materials produced to the Receiver by the ACF Parties or by Leonard Dicker and Schreiber LLP, and all copies thereof, and will confirm the deletion and/or destruction of all electronic copies

thereof. This provision constitutes the ACF Parties' written request to exercise their right under Section 15 of the Stipulated Protective Order entered by the Receivership Court. The Receiver hereby confirms that no further written request is required under that provision.

16. Press Release. No press release or statement to the press will be made by either Party concerning this Agreement or the matters covered thereby without first obtaining the other Party's written approval for its issuance, content, and language.

17. Specific Performance. The Receivership Court shall, upon application of any Party, require specific performance by any other Party of any obligations hereunder.

18. 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.

19. 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.

20. 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 law on conflicts of law.

21. Severability. If, after the Receivership Court's approval of this Agreement, 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. Costs and Attorneys' Fees. Each Party shall bear his/its own costs and attorneys' fees incurred prior to the Effective Date. In connection with any litigation, mediation,

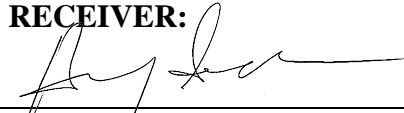
arbitration, or other proceeding brought to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party its costs and reasonable attorneys' fees, through and including any appeal or post-judgment proceeding.

27. 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.

28. 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 an as of the date first above written.

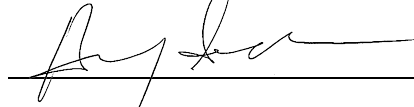
RECEIVER:



Harvey Sender

Dated: 12/02/2020

FORT COLLINS WF 02 LLC:

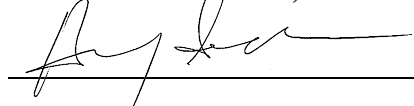


By: Harvey Sender

Its: Receiver

Dated: 12/02/2020

PR INVESTMENTS, INC.:



By: Harvey Sender

Its: Receiver

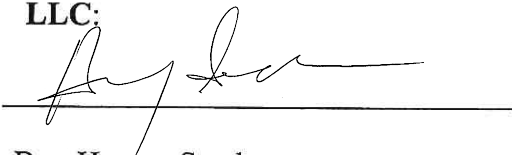
Dated: 12/02/2020

**GDA VILLAGE CROSSROADS
LLC:**




By: Harvey Sender
Its: Receiver
Dated: 12/02/2020

**GDA MARKET AT SOUTHPARK
LLC:**



By: Harvey Sender
Its: Receiver
Dated: 12/02/2020

ALAN C. FOX:



Alan C. Fox

Dated: 12/2/20

**THE ALAN C. FOX REVOCABLE
TRUST, DATED DECEMBER 2, 1999:**



By: Alan C. Fox
Its: Trustee
Dated: 12/2/20

ACF PROPERTY MANAGEMENT, INC.:



By: Alan C. Fox
Its: President
Dated: 12/2/20

EXHIBIT A

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Telephone: 303-606-2429	
Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC, v. Defendants: GARY J. DRAGUL, BENJAMIN KAHN, THE CONUNDRUM GROUP, LLP, SUSAN MARKUSCH, ALAN C. FOX, ACF PROPERTY MANAGEMENT, INC., MARLIN S. HERSHEY, PERFORMANCE HOLDINGS, INC., OLSON REAL ESTATE SERVICES, LLC, JUNIPER CONSULTING GROUP, LLC, and JANE DOES 1-10, and XYZ CORPORATIONS 1-10.	▲ COURT USE ONLY ▲
ATTORNEYS FOR RECEIVER HARVEY SENDER 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 Tel: (303) 534-4499 E-mail: pvellone@allen-vellone.com E-mail: mgilbert@allen-vellone.com E-mail: rsternlieb@allen-vellone.com	Case Number: 2020CV30255 Courtroom 414
PLAINTIFF’S NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE AS TO DEFENDANTS ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul, GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities, through counsel, hereby gives notice, pursuant to C.R.C.P. 41(a)(1)(A), of his voluntary dismissal of this action with prejudice as to Defendants Alan C. Fox and ACF Property Management, Inc. (jointly, the “ACF Defendants”), each party to pay his/its own fees and costs. Receiver confirms that all costs

have been paid and that the ACF Defendants have not yet filed or served an answer or a motion for summary judgment. For the Court's convenience, a proposed order is submitted herewith.

DATED: November __, 2020

Respectfully submitted,

ALLEN VELLONE WOLF HERLFRICH & FACTOR P.C.

s/ Michael T. Gilbert

Patrick D. Vellone

Michael T. Gilbert

Rachel A. Sternlieb

ATTORNEYS FOR THE RECEIVER

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Telephone: 303-606-2429	 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: HARVEY SENDER, AS RECEIVER FOR GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC, v. Defendants: GARY J. DRAGUL, BENJAMIN KAHN, THE CONUNDRUM GROUP, LLP, SUSAN MARKUSCH, ALAN C. FOX, ACF PROPERTY MANAGEMENT, INC., MARLIN S. HERSHEY, PERFORMANCE HOLDINGS, INC., OLSON REAL ESTATE SERVICES, LLC, JUNIPER CONSULTING GROUP, LLC, and JANE DOES 1-10, and XYZ CORPORATIONS 1-10.	
	Case Number: 2020CV30255 Courtroom 414
ORDER RE: DISMISSAL WITH PREJUDICE AS TO DEFENDANTS ALAN C. FOX AND ACF PROPERTY MANAGEMENT, INC.	

THIS MATTER comes before the Court on Plaintiff’s Notice of Voluntary Dismissal with Prejudice as to Defendants Alan C. Fox and ACF Property Management, Inc. (jointly, the “ACF Defendants”). Having reviewed said Notice, the Court finds and orders as follows:

The Plaintiff’s Notice of Voluntary Dismissal with Prejudice as to the ACF Defendants is accepted and this action is thus dismissed with prejudice as to the ACF Defendants, each party to pay his/its own fees and costs.

DATED: _____

BY THE COURT:

 Michael Anthony Martinez
 Chief District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on November __, 2020 a true and correct copy of the foregoing was electronically filed via CCEF and served on the following:

Lucas T. Ritchie, Esq.
Eric B. Liebman, Esq.
Joyce C. Williams, Esq.
MOYE WHITE, LP
1400 Sixteenth St, 6th Floor
Denver, CO 80202
*Attorneys for Defendants Alan C. Fox and
ACF Property Management, Inc.*

Thomas E. Goodreid
Paul M. Grant
Goodreid & Grant LLC
7761 Shaffer Parkway, Suite 105
Littleton, CO 80127
*Attorneys for Defendants Performance
Holdings, Inc. and Marlin Hershey*

Susan Markusch and
Olson Real Estate Services, LLC
6321 South Geneva Circle
Englewood, CO 80111
Pro Se Defendants

Paul L. Vorndran, Esq.
Christopher S. Mills, Esq.
JONES & KELLER, P.C.
1675 Broadway, 26th Floor
Denver, CO 80202
Attorneys for Defendant Gary J. Dragul

John M. Palmeri, Esq.
Edward J. Hafer, Esq.
Margaret L. Boehmer, Esq.
GORDON & REES LLP
555 Seventeenth Street, Ste. 3400
Denver, CO 80202
*Attorneys for Defendants Benjamin Kahn
and The Conundrum Group, LLP*

s/ _____

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433	DATE FILED: December 3, 2020 2:04 PM FILING ID: 3BDC1F55261E7 CASE NUMBER: 2018CV33011
Plaintiff: Tung Chan, Securities Commissioner for the State of Colorado v. Defendants: Gary Dragul; GDA Real Estate Services, LLC; and GDA Real Estate Management, LLC	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	Case Number: 2018CV33011 Division/Courtroom: 424
<p style="text-align: center;">[PROPOSED] ORDER GRANTING RECEIVER’S MOTION TO APPROVE AGREEMENT WITH ALAN C. FOX, THE ALAN C. FOX REVOCABLE TRUST DATED DECEMBER 2, 1999, AND ACF PROPERTY MANAGEMENT, INC.</p>	

The Court, having reviewed Harvey Sender, the duly-appointed Receiver’s Motion to Approve the Agreement with Alan C. Fox , The Alan C. Fox Revocable Trust Dated December 2, 1999, and ACF Property Management, Inc. (the “Motion”), any responses or replies thereto, and being fully advised in the premises, hereby ORDERS that:

The Motion is GRANTED. The Agreement for Purchase, Assignment And Assumption of Membership Interests, Settlement of Claims and Mutual Release (“Agreement”) dated November 30, 2020 with Alan C. Fox, the Alan C. Fox Revocable Trust Dated December 2, 1999 (“Fox Trust”) and ACF Management, Inc. is approved.

The Estate duly owns or controls the Membership Interests, as this term is defined in the Agreement, and the Receiver is authorized to sell the Membership Interests to the Fox Trust or its assignee under the terms of the Agreement. The Receiver is further authorized to take all other actions necessary to consummate the Agreement.

Dated: _____, 2020

BY THE COURT:

DISTRICT COURT JUDGE