

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO</p> <p>Denver District Court 1437 Bannock St. Denver, CO 80202 303.606.2433</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</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>Attorneys for Receiver:</p> <p>Patrick D. Vellone, #15284 Michael T. Gilbert, #15009 Averil K. Andrews, # 56148 ALLEN VELLONE WOLF HELFRICH & FACTOR P.C. 1600 Stout St., Suite 1900 Denver, Colorado 80202 Phone Number: (303) 534-4499 pvellone@allen-vellone.com mgilbert@allen-vellone.com aandrews@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH CLEARWATER BANKRUPTCY ESTATES</p>	

Harvey Sender, the duly-appointed receiver (“Receiver”) for Gary Dragul (“Dragul”), GDA Real Estate Services, LLC (“GDARES”), GDA Real Estate Management, Inc. (“GDAREM”), and related entities (collectively, “Dragul and the GDA Entities”), moves this Court to enter an order approving a settlement agreement the Receivership Estate has entered into with the Liquidating Trustee for the estates of Clearwater Collection 15, LLC (“Collection”) and Clearwater Plainfield 15, LLC

(“Plainfield”) (jointly, the “Clearwater Entities”). 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 (the “Receivership Case”).

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 ¶ 5.

3. The Receivership Order expressly includes Dragul, GDARES, and GDAREM, and all of their assets, within the Receivership Estate. Receivership Order ¶ 9. The Estate also includes all of the interests of Dragul, GDARES, and GDAREM in any of their subsidiaries or related companies “including without limitation the ‘LLC Entities’ identified in the Commissioner’s Motion and Complaint for Injunctive and Other Relief.” Receivership Order ¶ 9. The Clearwater Entities are both “LLC Entities” identified in the Commissioner’s Complaint and therefore included within the Receivership Estate. *See* Aug. 15, 2018, Compl. ¶ 21 (table).

4. Collection and Plainfield are tenants-in-common and formerly owned the Clearwater Collection Shopping Center, a retail shopping center at 21688-21800 US Highway 19N, Clearwater, Florida 33765 (the “Property”). Under their Tenancy-

in-Common Agreement, Collection held a 82.52% interest in the Property and Plainfield held a 17.48% interest.

5. Collection is a single purpose entity (“SPE”) that is owned by two other SPEs, GDA Clearwater 15, LLC (34.82%) and GDA Clearwater Investors, LLC (65.18%). The members of GDA Clearwater 15, LLC were Dragul, who purportedly held a 5.38% interest, and 15 other individuals who purportedly owned the remaining 94.62%.

6. GDA Clearwater Investors, LLC is owned by Hagshama Florida 13, LLC (71.43%) and CoFund V, LLC (28.57%) (the “Hagshama Entities”). The Property’s other tenant-in-common, Plainfield, was owned by yet another SPE, Plainfield 09 A, LLC, which was purportedly owned by Dragul (36.94%) and approximately 33 other individuals, most of whom originally invested in a prior Dragul-promoted project. Their interests were then “rolled over” or exchanged for ownership interests in Plainfield. The Hagshama Entities purportedly owned a majority of the membership interests in the entities that ultimately owned the Property.

7. On August 16, 2018, a predecessor entity to RSS WFCM 2015-LC22-FL CC15, LLC (“Lender”) commenced a foreclosure action on the Property, Case No. 1805459-CI, in the 6th Judicial Circuit in and for Pinellas County, Florida (the “Foreclosure Action”). The Foreclosure Action was stayed by the Receivership Order.

8. Despite his efforts to market and sell the Property and entering into a contract and letter of intent with two separate potential buyers to do so, after the buyers backed out of the sales contracts, as set forth in the Receiver’s

February 19, 2020, Motion to Abandon Clearwater Collection, the Receiver moved to abandon the Estate's equity interest in Collection and Plainfield. On March 3, 2020, the Court entered an order authorizing the Receiver to abandon those interests.

9. After the March 3, 2020, Abandonment Order, on or about March 10, 2020, the Lender in the Foreclosure Action appointed Michal Vullis as receiver for the Property (the "Florida Receiver").

10. On April 19, 2022 (the "Petition Date"), Collection and Plainfield (jointly, "Debtors") each filed voluntary petitions under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Colorado commencing their bankruptcy cases, Case Nos. 22-11320-JGR, and 11321-JGR, respectively. These "Bankruptcy Cases" are jointly administered.

11. After the Petition Date, the Florida Receiver sold the Property to the Philadelphia Phillies for \$22,500,000. The sale, after paying the Lender, the Florida Receiver and his counsel, and other costs of sale, resulted approximately \$5 million being paid to the Clearwater Bankruptcy Estates.

12. On April 11, 2023, the Bankruptcy Court entered an Order confirming the Debtors' First Amended Joint Plan of Liquidation (the "Plan"). The Plan incorporated a Liquidating Trust Agreement pursuant to which Thomas Kim was appointed as the Liquidating Trustee.

13. On June 6, 2023, the Liquidating Trustee settled a litigation claim with a former tenant at the Property, LA Fitness, bringing an additional \$1,000,000 into the Bankruptcy Estates.

14. On August 22, 2022, the Receiver filed a Proof of Claim in the Collection case for \$2,806,545.25 based on claims filed in the Receivership Case by defrauded investors in Collection. On July 7, 2023, the Receiver filed an amended Proof of Claim for \$8,453,171.24, which included claims filed in the Receivership Case by defrauded investors and transfers that had been made to Collection by other GDA Entities.

15. On August 22, 2022, the Receiver filed a Proof of Claim in the Plainfield case for \$941,091.44 based on claims filed in the Receivership Case by defrauded investors in Plainfield. On July 7, 2023, the Receiver filed an amended Proof of Claim in the amount of \$2,527,656.16, which included claims filed in the Receivership Case by defrauded investors and transfers that had been made to Plainfield by other GDA Entities.

16. On May 26, 2023, the Liquidating Trustee filed Objections to the Receiver's Claims in the Bankruptcy Cases (the "Sender Claim Objections").

17. On June 14, 2023, the Hagshama Entities – two of the largest claimants in Debtors' Bankruptcy Estates – joined in the Sender Claim Objections. The objections to the Receiver's Claims were based in large part on the Receiver's alleged lack of standing due to the Receiver's 2020 abandonment of his equity interests in Collection and Plainfield.

18. On July 18, 2023, the Receiver filed ten claim objections in the Collection case: (a) two omnibus objections to claims (ECF Nos. 372, 375); (b) the two claims filed by Hagshama Florida 13 Clearwater LLC and Cofund V, LLC (ECF No. 378); (c) the claim filed by Robert and Jodi Eisen (ECF No. 381); (d) the claim filed by Scott

Friedman (ECF No. 384); (e) the claim filed by David and Darcea Haar (ECF No. 387); (f) the claim filed by Hilltoppers Capital Growth, LLC (ECF No. 390); (f) the claims of Chad Hurst (ECF No. 393); (g) the claim of 3G2B Partners, LLC (ECF No. 396); and (h) the claim of Martin Rosenbaum (ECF No. 399). The claims objections were based in part on the fact that these claimants submitted claims as equity investors rather than creditors, because the claims were not filed on a cash-in, cash-out basis to reflect the near universal rule in Ponzi scheme cases, and that these investors had filed claims in the Receivership Case and that any recovery should be paid from the Receivership Estate.

19. On August 7, 2023, the Receiver also filed an objection to Chad Hurst's Motion for Allowance of Administrative Expense Claim in the Collection case in which Hurst seeks to recover \$380,171.31 based on purported payments to professionals in violation of the Bankruptcy Code, and a \$225,000 Disposition Fee for the sale of the Property. (ECF No. 419).

20. On July 20, 2023, the Receiver filed a total of eight claim objections in the Plainfield case: (a) an omnibus objections to claims (ECF No. 152); (b) the claims filed by Benzmiller Family Trust and Ken Benzmiller (ECF No. 155); (c) the claim of Charles Jerome Eisen (ECF No. 158); (d) the claim filed by David and Darcea Haar (ECF No. 161); (e) the claim of Chad Hurst (ECF No. 164); (f) the claim of Thomas McCaffery (ECF No. 167); (g) the claim of Scott Ruckerfeller-Pensco (ECF No. 170); (h) the claim of Martin Rosenbaum (ECF No. 173); and (i) the claim of Southern Performance Group (ECF No. 176). These claims objections were similar to the claims

objections filed in the Collection case. Collectively, the Receivers' claims objections are referred to as the "Sender Commenced Claim Objections."

21. On August 1, 2023, the Liquidating Trustee filed Motions to Strike the Sender Commenced Claim Objections (other than the Receiver's objection to Hurst's administrative expense claim). (ECF No. 410 in the Collection case and ECF No. 202 in the Plainfield case). The motions to strike were based in part on the Receiver's alleged lack of standing.

22. In August and September 2023, the Receiver participated in a mediation with Dragul and the Liquidating Trustee's counsel in which a settlement was reached with Dragul with respect to the Receiver's claims in the Insider Case as detailed in the Receiver's Eighth Report (filed December 20, 2023, in the Receivership Case). Following the mediation, negotiations continued with the Liquidating Trustee which resulted in the present Settlement Agreement in which the Liquidating Trustee has agreed to pay the Receivership Estate \$500,000, in exchange for which the Receiver has, among other things, agreed to withdraw his Claims in the Bankruptcy Cases, and assign the Sender Commenced Claims Objections to the Liquidating Trustee to pursue or dispose of in the Bankruptcy Cases.

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

23. 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).

24. Considering these factors, the Court should approve the Settlement Agreement. While the Receiver believes his Claims in the Bankruptcy Cases are valid, the threshold legal challenge to the Receiver’s standing remains pending before the Bankruptcy Court; if determined adversely to the Receiver, this would eliminate *any* claim of the Receiver in the Bankruptcy Cases. There are also factual issues that could affect the amount of the Receiver’s Claims. The outcome of litigation is always uncertain. Here, there are significant legal and factual issues that could invalidate the Receiver’s Claims in whole or in part.

25. Prosecuting the Receiver’s Claims and litigating the objections to them would be fact-intensive and costly to both the Receivership Estate and the Bankruptcy Estates and would require expert testimony from the Receiver’s forensic accountants and the Receiver. These administrative expenses would deplete resources of both the Receivership and the Bankruptcy Estates. The litigation would

further delay distributions in and closing of the Receivership Estate. Risk of collection is not a factor because the funds are held in the Bankruptcy Estates.

26. As to the interests of creditors, in the Settlement Agreement, the Liquidating Trustee has agreed to make distributions from the Bankruptcy Estates to all interest holders in Collection and Plainfield based on their capital accounts as provided in the Bankruptcy Court-approved Distribution Plan and the Clearwater Operating Agreements. The Receiver specifically negotiated for the Liquidating Trustee to make payments to *all* purported equity holders in Collection and Plainfield regardless of whether they filed claims in the Bankruptcy Cases. These payments will reduce investor claims in the Receivership case based on Clearwater investments, and thereby increase the percentage of Receivership funds to be distributed to other claimants in the Receivership Case. Schedules showing the anticipated distributions to Clearwater interest holders are attached to the Settlement Agreement as Exhibits 1(C) and 1(D). This will result in payments to Clearwater claimants in the Receivership that will exceed distributions they would obtain solely from the Receivership Estate with respect to their Clearwater claims.

27. Although the Receiver has not yet submitted his proposed Plan of Distribution in this case, based on existing known facts and circumstances, it is probable the Plan will recommend distributions based on a rising tide methodology. Assuming the proposed Settlement is approved, and Dragul pays his \$850,000 settlement amount, the proposed Settlement will reduce claims in the Receivership Estate by \$4.4 million attributed to 34 claimants who invested in Clearwater, and

will increase distributions to other Allowed Claimants by \$500,000, which under the anticipated rising tide Plan, would allow additional non-Clearwater investors to recover a larger portion of their losses.

28. Balancing the likelihood of success of prevailing on the Receiver's Claims in the Bankruptcy Cases against the risk and expense involved in litigating those claims through trial, including expert witness testimony, the Receiver believes the proposed settlement is in the best interest of the Estate and its creditors. Upon approval of the Clearwater Settlement Agreement and payment of the \$500,000 to the Receivership Estate, the Receiver will be in a position to file his proposed distribution plan.

III. Notice and deadline to object: April 8, 2024

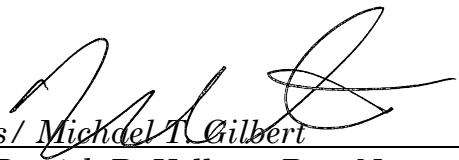
29. The Settlement Agreement is not effective unless and until it is approved by both this Court and the Bankruptcy Court. The Liquidating Trustee filed a motion seeking Bankruptcy Court approval of the Settlement Agreement on March 26, 2024; objections in the Bankruptcy Court are due by April 16, 2024.

30. Pursuant to paragraph 34 of the Receivership Order, Receivership 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, on all currently known creditors of the Estate, and on the Liquidating Trustee.

WHEREFORE, the Receiver asks the Court to enter an Order approving the Settlement Agreement.

Dated: March 29, 2024.

ALLEN VELLONE WOLF HELFRICH & FACTOR
P.C.

By: 
s/ Michael T. Gilbert
Patrick D. Vellone, Reg. No. 15284
Michael T. Gilbert, Reg. No. 15009
Averil K. Andrews, Reg. No. 56148

ATTORNEYS FOR THE RECEIVER, HARVEY
SENDER

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2024, I served a true and correct copy of the foregoing **RECEIVER'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH CLEARWATER BANKRUPTCY ESTATES** via CCE to:

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Janna K. Fischer
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**Counsel for Tung Chan, Securities
Commissioner**

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Counsel for Gary Dragul

Aaron A. Garber
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P.C.
2580 West Main Street, Suite 200
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**Counsel for the Liquidating
Trustee**

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.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
)	Case No. 22-11320-JGR
CLEARWATER COLLECTION 15, LLC)	
EIN: 47-4082355)	Chapter 11
)	
Debtor.)	
<hr/>		
IN RE:)	
)	Case No. 22-11321-JGR
CLEARWATER PLAINFIELD 15, LLC)	Chapter 11
EIN: 47-4097826)	
)	JOINTLY ADMINISTERED
Debtor.)	

**SETTLEMENT AGREEMENT BETWEEN LIQUIDATING TRUST
AND HARVEY SENDER, RECEIVER**

Thomas Kim, the Liquidating Trustee (the “Liquidating Trustee”) for the estates of Clearwater Collection 15, LLC and Clearwater Plainfield 15, LLC and Harvey Sender, as state court appointed receiver for Gary Dragul and related entities GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and their respective properties and assets, for their Settlement Agreement (the “Stipulation”) state as follows:

RECITALS

A. Clearwater Collection 15, LLC (the “Debtor”) was an 82.52% owner of a shopping center located at 21688 Highway 19 N, Clearwater, FL 33765 (the “Shopping Center”). The other owner was Clearwater Plainfield 15, LLC (together with the Debtor, the “Debtors”), who filed a companion Chapter 11 case.¹

B. On April 12, 2018, Gary Dragul was indicted on nine counts of securities fraud for, among other things, soliciting and mismanaging funds from investors related to the GDA entities. On March 1, 2019, Gary Dragul was indicted on five counts of securities fraud for, among other things, soliciting and mismanaging funds from investors related to the GDA entities.

¹ The Clearwater Collection 15, LLC Chapter 11 case and the Clearwater Plainfield 15 LLC Chapter 11 case are jointly administered.

C. On August 30, 2018, Harvey Sender (the “Receiver”) was appointed as the Receiver for Gary Dragul and entities related to Mr. Dragul, including GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the “Sender Receivership”).

D. On June 3, 2023, Dragul pled guilty to one count of securities fraud on his first criminal indictment, and one count of securities fraud on his second indictment and admitted all of the factual allegations in both indictments.

E. The Debtors each filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code on April 19, 2022 (the “Petition Date”).

F. After the Petition Date, the Shopping Center was sold for approximately \$22,500,000 (the “Sale”).

G. On April 11, 2023, the Court entered an Order confirming the Debtors’ First Amended Joint Plan of Liquidation (the “Plan”) (ECF No. 271).

H. The sale has proceeded to a closing and the Debtors’ bankruptcy estates received over \$5,000,000.

I. On June 6, 2023, the Liquidating Trustee also settled a litigation claim with a tenant at the Shopping Center, LA Fitness, bringing an additional \$1,000,000 into the estates (ECF No. 298). On June 28, 2023, the Court approved this settlement (ECF No. 342).

J. On August 22, 2022, the Sender Receivership filed a Proof of Claim in the Collection case in the amount of \$2,806,545.25. On July 7, 2023, the Sender Receivership filed an amended Proof of Claim in the amount of \$8,453,171.24.

K. On August 22, 2022, the Sender Receivership filed a Proof of Claim in the Plainfield case in the amount of \$941,091.44. On July 7, 2023, the Sender Receivership filed an amended Proof of Claim in the amount of \$2,527,656.16.

L. On May 26, 2023, the Liquidating Trustee filed his Objection to the claims filed by the Sender Receivership (the “Sender Claim Objections”) (ECF No. 296 in the Collection Case).

M. On June 14, 2023, two of the largest claimants in Debtor’s estate, Cofund V, LLC and Hagshama Florida 13, LLC filed a joinder in the Sender Claim Objections (ECF No. 331 in the Collection Case).

N. On July 7, 2023, in addition to filing its amended Proofs of Claim, the Sender Receivership filed its responses to the Sender Claim Objections and the Joinder (ECF No. 361 and 362 in the Collection Case).

O. The Sender Receivership claims are the largest asserted unsecured claims in the bankruptcy cases. If the Receiver claims are allowed substantially all proceeds of the estates, net of administrative expenses and administrative, priority, and other unsecured claims, will be paid to the Sender Receivership.

P. On July 18, 2023, the Sender Receivership filed a total of ten claim objections in the Clearwater case comprised of: (a) two omnibus objections to claims (ECF No. 372 and 375); (b) the two claims filed by Hagshama Florida 13Clearwater LLC and Cofund V, LLC (ECF No. 378); (c) the claim filed by Robert and Jodi Eisen (ECF No. 381); (d) the claim filed by Scott Friedman (ECF No. 384); (e) the claim filed by David and Darcea Haar (ECF No. 387); (f) the claim filed by Hilltoppers Capital Growth, LLC (ECF No. 390); (g) the claims of Chad Hurst (ECF No. 393); (h) the claim of 3G2B Partners, LLC (ECF No. 396); and (i) the claim of Martin Rosenbaum (ECF No. 399). On August 7, 2023, the Sender Receivership filed an objection to Chad Hurst's Motion for Allowance of Administrative Expense Claim (ECF No. 419).

Q. On July 20, 2023, the Sender Receivership filed a total of eight claim objections in the Plainfield case comprised of: (a) an omnibus objections to claims (ECF No. 152); (b) the claims filed by Benzmilller Family Trust and Ken Benzmilller (ECF No. 155); (c) the claim of Charles Jerome Eisen (ECF No. 158); (d) he claim filed by David and Darcea Haar (ECF No. 161); (e) the claim of Chad Hurst (ECF No. 164); (f) the claim of Thomas McCaffery (ECF No. 167); (g) the claim of Scott Rockerfeller-Penso (ECF No. 170); (h) the claim of Martin Rosenbaum (ECF No. 173); and (i) the claim of Southern Performance Group (ECF No. 176). The claim objections filed by the Sender Receivership in the Collection and Plainfield cases are collectively referred to as the "Sender Commenced Claim Objections".

R. On August 1, 2023, the Liquidating Trustee filed Motions to Strike the Sender Commenced Claim Objections (other than the Sender Receivership's objection to Hurst's administrative expense claim) in both the Clearwater and Plainfield cases (ECF No. 410 in the Collection case and ECF No. 202 in the Plainfield case). On September 15, 2023, the Sender

Receivership filed responses to the Motions to Strike (ECF No. 468 in the Collection case and ECF No. 206 in the Plainfield case).

S. In addition, certain of the parties subject to the Sender Commenced Claim Objections have filed responses.

T. The Liquidating Trustee and the Receiver (together, the “Parties”) desire to resolve their disputes on the terms and conditions contained herein.

STIPULATION

NOW THEREFORE for good and valuable consideration, the Parties do hereby stipulate and agree as follows:

1. **Effective Date/Court Approval.** The terms, rights and obligations under this Stipulation are conditioned upon approval of the Bankruptcy Court and the Sender Receivership court (the “Receivership Court”). The “Effective Date” of this Stipulation shall mean the date that orders from both the Bankruptcy Court and the Receivership Court (or any subsequent appellate court) approving this Stipulation have become final. If either the Bankruptcy Court or the Receivership Court (or any subsequent appellate court) does not approve this Stipulation, then this Stipulation shall be null and void.

2. **Settlement Payment.** Within fourteen (14) days of the Effective Date the Liquidating Trustee shall pay the Sender Receivership \$500,000 (the “Settlement Payment”) from the combined estates of each Debtor. The Settlement Payment shall be made payable to Harvey Sender, Receiver and delivered to Harvey Sender, Sender & Smiley LLC, 600 17th Street, Suite 2800 S, Denver, CO 80202.

3. **Withdrawal of Claims.** Within seven (7) days after receiving the Settlement Payment, the Sender Receivership shall withdraw the Proofs of Claim, as amended, it filed in the Debtors’ bankruptcy cases. The Sender Receivership shall not be entitled to any further distribution or have any other claim in the Debtors’ bankruptcy cases. Upon withdrawal of the Proofs of Claim, the Sender Claim Objections shall be deemed moot.

4. **Assignment of Sender Commenced Claim Objections.** Within seven (7) days of payment of the Settlement Payment, the Sender Receivership shall assign to the Liquidating Trustee the Sender Commenced Claim Objections. The Motions to Strike the Sender Commenced Claim Objections shall be deemed moot.

5. **No Further Standing.** After receiving the Settlement Payment, the Sender Receivership shall have no further standing in Debtors' bankruptcy cases.

6. **Distribution to Investors.** The Liquidating Trustee shall make a distribution (the "Distribution") to each of the investors of Clearwater Collection 15, LLC and Clearwater Plainfield 15, LLC (the "Investors") in accordance with the distributions procedures attached hereto as Exhibit A. Upon making the contemplated Distribution, the Liquidating Trustee shall provide a schedule of the Distribution to the Receiver. The Receiver will treat all payments to Investors as a recovery from a collateral source under his plan of distribution and reflect such payments in his treatment of any non-Clearwater/Plainfield claims filed by any Investors in the Sender Receivership.

7. **Release of Investors.** The Receiver, acting on behalf of the Sender Receivership, hereby releases any and all claims and causes of action of any nature against the Investors arising out of or related to their interest in the Debtors or the Liquidating Trust or any distributions made on account of those interests, and any claim of those Investors against the Sender Receivership Estate arising from their investments in the Debtors are hereby released.

8. **Cooperation.** The Sender Receivership shall cooperate in assisting the Liquidating Trustee in obtaining Bankruptcy Court approval of this Stipulation, including appearing as witnesses at any hearings as requested by the Liquidating Trustee (including the Receiver's accountants and other professionals) and providing documentation to support the procedures attached hereto as the Exhibits indexed below.

Exhibit A – Distribution Procedures

Exhibit B – Clearwater Collection 15, LLC and Clearwater Plainfield 15, LLC
Combined Classes 1, A, 2, and B Waterfall

Exhibit C – Clearwater Collection 15, LLC Class 3 Waterfall

Exhibit D – Clearwater Plainfield 15, LLC Class C Waterfall

9. **Applicable Law.** This Stipulation shall be governed by and construed in accordance with the laws of the State of Colorado and, where applicable, the United States Bankruptcy Code.

10. **Further Assurances.** In connection with this Stipulation and all transactions contemplated by this Stipulation, each Party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be reasonable necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Stipulation.

11. **Jurisdiction.** The Bankruptcy Court shall have jurisdiction to resolve any dispute over the meaning, intent, or enforcement of this Stipulation. To the extent any dispute arises with respect to allowance or treatment of Investors' claims against the Sender Receivership, those disputes shall be subject to the jurisdiction of the Receivership Court.

12. **Successors and Assigns.** This Stipulation is binding on the Parties and their successors and assigns, including any successors in title to either of the Parties' property.

13. **Entire Agreement.** This Stipulation contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior written and oral agreements concerning the subject matter hereof. This Agreement may be supplemented, altered, amended, modified, or revoked by writing only, signed by both Parties or their successors in existence at the time of such action.

14. **Authority.** Each entity or individual executing this Stipulation on behalf of a Party represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party and that this Stipulation is binding on such Party in accordance with its terms, subject to Bankruptcy Court approval with respect to the Liquidating Trustee and the Receivership Court with respect to the Receiver.

15. **Voluntary and Knowing.** The Parties acknowledge they have read this Stipulation and understand all of its terms, and that this Stipulation is executed voluntarily, without duress, and with full knowledge of its legal significance with the advice of counsel. The Parties do not rely upon each other in any fashion in making their independent decision to enter into this Stipulation.

16. **Costs and Attorneys' Fees.** Each Party shall bear its own costs and attorneys' fees in connection with the disputes as detailed in the recitals and this Stipulation.

17. **Severability.** If any provision of this Stipulation or the application thereof is held to be invalid or unenforceable, its invalidity or unenforceability shall not affect any other provision

or application of this Stipulation to the extent that such other provision or application can be given effect without the invalid or unenforceable provision or application. The provisions of this Agreement are declared to be severable.

18. **Captions.** The captions or headings in this Stipulation are for convenience only and in no way do they define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

19. **Counterparts.** This Stipulation may be executed in counterparts and each such counterpart shall be an original, but all of which together shall constitute one and the same agreement. Electronic transmission of pdfs of signatures of the Parties or their designated representatives to this Stipulation shall be deemed original signatures.

20. **Notice.** Any notice, request, demand or other demand or other communication required or permitted hereunder will be given in writing by first class mail, postage prepaid, to the Party to be notified and via email. All communications will be deemed given when sent. The addresses of the Parties for the purposes of such communication are:

If to the Liquidating Trustee

Aaron A. Garber
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If to the Receiver:

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Patrick D. Vellone
Allen Vellone Wolf Helfrich & Factor, P.C.
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pvellone@allen-vellone.com

Harvey Sender
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600 17th Street
Suite 2800 S
Denver, CO 80202
hsender@sendersmiley.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of March 22, 2024.

LIQUIDATING TRUST

By: 
Thomas Kim

SENDER RECEIVERSHIP

By: _____
Harvey Sender, Receiver

If to the Receiver:

Michael T. Gilbert
Patrick D. Vellone
Allen Vellone Wolf Helfrich & Factor, P.C.
1600 Stout Street, Suite 1900
Denver, CO 80202
mgilbert@allen-vellone.com
pvellone@allen-vellone.com

Harvey Sender
Sender & Smiley LLC
600 17th Street
Suite 2800 S
Denver, CO 80202
hsender@sendersmiley.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of
March 21, 2024.

LIQUIDATING TRUST

By: _____
Thomas Kim

~~SENDER RECEIVERSHIP~~

By: _____
Harvey Sender, Receiver

EXHIBIT 1(A)

EXHIBIT A

DISTRIBUTION PROCEDURES

Distribution to Administrative Claimants

1. In accordance with paragraphs 4.1, 7.01, 7.2, 8.1 and 8.2 of the Debtors' First Amended Joint Plan of Liquidation, as corrected (the "Plan"), the allowed administrative claims shall be paid from the entirety of the funds being held by the Liquidating Trust before the funds are divided or distributed 82.52% to Collection and 17.48% to Plainfield.

Distribution to Investors

1. The Debtors each filed a Voluntary Petition pursuant to Chapter 11 of the Bankruptcy Code on April 19, 2022.
2. On May 9, 2022, the Debtors each filed their respective Schedules and Statement of Financial Affairs .
3. Each Debtor's Schedule F includes all known investors of each Debtor (the "Investors," and each an "Investor"). The Investors were listed on the Schedule F causing each Investor to receive notice of the bankruptcy cases and have an opportunity to participate and file a Proof of Claim/Interest. The Investors were scheduled at \$0.00 because they do not hold unsecured claims against the Debtors, but instead may hold equity claims or interests. No Investor filed a claim asserting an unsecured claim based upon their equity interest. Several but not all Investors filed Proofs of Interest/Claim based upon their interests or investment in the Debtors.
4. On April 11, 2023 the Court entered an Order confirming the Debtors' First Amended Joint Plan of Liquidation, as corrected (the "Plan") (ECF No. 271).
5. The Plan provides for the following distributions to unsecured creditors and investors:

Unsecured Creditors

Collection

7.1 – Class 2 consists of those general unsecured creditors of Collection who hold Allowed Claims. Class 2 shall receive payment of their Allowed Claims as set forth below:

a. Holders of Class 2 Allowed Claims shall share on a Pro Rata basis in 82.52% of the monies deposited [sic] the Creditor Account after the satisfaction of Administrative Claims, Tax Claims and Classes 1 and A Allowed Claims, as detailed in Section 9.3 of this Plan and the Liquidating Trust Agreement.

Plainfield

7.2 – Class B consists of those general unsecured creditors of Plainfield who hold Allowed Claims. Class B shall receive payment of their Allowed Claims as set forth below:

a. Holders of Class B Allowed Claims shall share on a Pro Rata basis in 17.48% of the monies deposited [sic] the Creditor Account after the satisfaction of Administrative Claims, Tax Claims and Class 1 and A Allowed Claims, as detailed in Section 9.3 of this Plan and the Liquidating Trust Agreement.

Interests

Collection

8.2 - Class 3 consists of the interest holders of Collection. Class C shall receive payment of their Allowed Claims as set forth below:

a. Members of Class 3 shall share in 82.52% of the monies deposited [sic] the Creditor Account after the satisfaction of Administrative Claims, Tax Claims and Classes 1, 2, A and B Allowed Claims, which amount shall be divided as follows: 65.18% to GDA Clearwater Investors, LLC and 34.82% to GDA Clearwater 15, LLC, according to their respective membership interests as set forth in Collection's Operating Agreement.

Plainfield

8.3 - Class C consists of the interest holders of Plainfield. Class C shall receive payment of their Allowed Claims as set forth below:

a. Members of Class C shall share on a Pro Rata basis in 17.48% of the monies deposited [sic] the Creditor Account after the satisfaction of Administrative Claims, Tax Claims and Classes 1, 2, A and B Allowed Claims.

6. Attached hereto as Exhibit B is a schedule reflecting the waterfall of Clearwater Collection 15, LLC and Clearwater Plainfield 15, LLC representing the combined starting account balance and the satisfaction of Administrative Claims, Tax Claims, and Classes 1, 2, A and B as defined in Plan Section 8.2(a).

7. Attached hereto as Exhibit C is a schedule reflecting, among other information: (a) the capital account balance for each investor of Clearwater Collection 15, LLC and (b) pro

rata distribution to each investor of Clearwater Collection 15, LLC. Attached hereto as Exhibit D is a schedule reflecting, among other information: (a) the capital account balance for each investor of Clearwater Plainfield 15, LLC and (b) pro rata distribution to each investor of Clearwater Plainfield 15, LLC.

8. With respect to the Classes 3 and C under the Plan, the Liquidating Trustee will, when authorized to make distributions under the Plan, make distributions on a pro rata basis to the Investors based upon each Investor's ownership interest and capital account balance as shown on Exhibits C and D hereof notwithstanding any Proof of Claim/Interest filed by an Investor, and regardless as to whether an Investor did or did not file a Proof of Claim/Interest (in other words, the failure to file a Proof of Claim will not bar such Investor from receiving a distribution under the Plan in accordance with the attached Exhibits C and D). The Liquidating Trustee may set such reserves as he believes reasonable and necessary.

EXHIBIT 1(B)

EXHIBIT 1(B)

Clearwater Collection 15, LLC and Clearwater Plainfield 15, LLC

Combined per Section 8.2(a) of the Amended Joint Plan of Liquidation

Starting Balance \$ 5,629,937

Creditor Claims	Allowed Claim		
	Amount	Disbursement	Recovery %
Administrative Claims			
Administrative Reserve	\$ 400,000	\$ 400,000	100.00%
Chad Hurst Administrative Claim ¹	\$ 380,171	\$ 8,244	2.17%
Total	\$ 780,171	\$ 408,244	

Remaining for 1/A, 2/B, and 3/C \$ 5,221,693

Class 1/A Claims			
IRS	\$ 900	\$ 900	100.00%
Total	\$ 900	\$ 900	
Remaining for 2/B and 3/C		\$ 5,220,793	

Class 2/B Claims			
Chad Hurst	\$ 150,996	\$ 150,996	100.00%
Freeman Lovell PLLC (Douglas J. Shumway)	\$ 7,155	\$ 7,155	100.00%
Harvey Sender, Receiver	\$ 500,000	\$ 500,000	100.00%
Total	\$ 658,124	\$ 658,151	

Remaining Available Cash for 3/C	\$ 4,562,642	
Remaining Available Cash for Collection	\$ 3,765,092	82.52%
Remaining Available Cash for Plainfield	\$ 797,550	17.48%

Footnotes

1) On August 14, 2023, the Liquidating Trustee filed an Objection (ECF No. 426) to Chad Hurst's Administrative Expense Claim (ECF No.363). The Liquidating Trustee acknowledges \$8,244 of the claim is valid, while the remaining balance is subject to litigation.

EXHIBIT 1(C)

EXHIBIT 1(C)

Clearwater Collection 15, LLC

Class 3 - Investors

82.52% of Available Cash

Available for Distribution \$ 3,765,092

Class 3 - Investors	Capital Account Balance	Estimated Disbursement	Estimated Pro Rata Distribution	Estimated Total Recovery %
GDA Clearwater 15, LLC				
Ahrendt, Audrey ¹	\$ (9,234)	-	-	-
Diamant, Marc	\$ 34,496	\$ 34,496	4.12%	100.00%
Dicky, Bill (Hilltoppers Capital Growth, LLC)	\$ 68,062	\$ 68,062	8.12%	100.00%
Dragul, Charli ¹	-	-	-	-
Dragul, Samuel ¹	-	-	-	-
Dragul, Spencer ¹	-	-	-	-
Eisen, Charles	\$ 68,992	\$ 68,992	8.23%	100.00%
Eisen, Robert & Jodi	\$ 68,992	\$ 68,992	8.23%	100.00%
Friedman, Scott	\$ 4,496	\$ 4,496	0.54%	100.00%
Haar, David and Darcea	\$ 98,761	\$ 98,761	11.78%	100.00%
Hughes, Carol	\$ 37,107	\$ 37,107	4.43%	100.00%
Hurst, Chad (Personal Claim & Assigned Gary Dragul) ²	\$ (214,254)	-	-	-
Leftin, Sol (Leftin Investment Co.)	\$ 34,341	\$ 34,341	4.10%	100.00%
Lone Pine Resources, LP	\$ 171,705	\$ 171,705	20.49%	100.00%
Metz, Aaron J	\$ 68,992	\$ 68,992	8.23%	100.00%
Raabe, Andrew (3G2B Partners, LLC)	\$ 68,682	\$ 68,682	8.19%	100.00%
Rosenbaum, Martin	\$ 113,532	\$ 113,532	13.55%	100.00%
Total	\$ 838,158	\$ 838,158		
GDA Clearwater Investors, LLC				
Cofund V, LLC	\$ 1,200,000	\$ 836,225	28.57%	69.69%
Hagshama Florida 13 Clearwater, LLC	\$ 3,000,000	\$ 2,090,709	71.43%	69.69%
Total	\$ 4,200,000	\$ 2,926,934		

Footnotes

1) Audrey Arendt, Charli Dragul, Samuel Dragul, and Spencer Dragul are profit interest only recipients. No cash investments were made to qualify for a distribution.

2) Chad Hurst has two interests in GDA Clearwater 15, LLC and one interest in Clearwater Plainfield 15, LLC. The aggregate capital account balance of \$(214,254.18) in GDA Clearwater 15, LLC is comprised of an individual capital account balance of \$59,769.22 and a Gary Dragul assigned capital account balance of \$(274,023.40). Hurst has a negative capital account balance of \$(955,102.06) in Clearwater Plainfield 15, LLC. Investors with negative capital account balances are not eligible for disbursements until all Class 3/C investors have recovered the entirety of their capital account balances.

EXHIBIT 1(D)

EXHIBIT 1(D)

Clearwater Plainfield 15, LLC

Class C - Investors

17.48% of Available Cash

Available for Distribution \$ 797,550

Class C - Investors	Capital Account Balance	Estimated Disbursement	Estimated Pro Rata Distribution	Estimated Total Recovery %
GDA Plainfield 09 A, LLC				
Aafedt, Eric	\$ 14,972	\$ 9,246	1.16%	88.55%
Anderson, Dennis (1st Anderson Properties)	\$ 12,872	\$ 7,949	1.00%	90.15%
Benzmiller, Ken	\$ 75,861	\$ 46,845	5.87%	85.49%
Bomberger, David (HBT Partners)	\$ 39,263	\$ 24,246	3.04%	84.98%
Buckwalter, Reba	\$ 19,299	\$ 11,917	1.49%	85.24%
Chapman, Bret	\$ 16,886	\$ 10,427	1.31%	87.08%
Daswani, Nash (Consolidated CG of TX)	\$ 48,984	\$ 30,248	3.79%	81.26%
Deardorff, Gerald	\$ 86,184	\$ 53,219	6.67%	78.02%
Detterer, William	\$ 125,398	\$ 77,435	9.71%	76.02%
Dragul, Charli ¹	-	-	-	-
Dragul, Samuel ¹	-	-	-	-
Dragul, Spencer ¹	-	-	-	-
Evans, Craig	\$ 18,118	\$ 11,188	1.40%	86.14%
Evans, Laura	\$ 21,650	\$ 13,369	1.68%	83.44%
Ewell, Calvin	\$ 18,965	\$ 11,711	1.47%	85.49%
Haar, David and Darcea	\$ 7,853	\$ 4,849	0.61%	84.98%
Heffley, John	\$ 65,135	\$ 40,222	5.04%	75.09%
Hershey, Wendy ¹	-	-	-	-
Hoe, David & Lori	\$ 1,178	\$ 727	0.09%	84.98%
Hoe, David IRA	\$ 10,601	\$ 6,546	0.82%	84.98%
Hoe, Lori IRA	\$ 7,853	\$ 4,849	0.61%	84.98%
Hurst, Chad (Assigned Gary Dragul) ²	\$ (955,102)	-	-	-
Lapp, Gideon & Rhonda	\$ 59,295	\$ 36,615	4.59%	77.32%
McCaffrey, Thomas	\$ 29,984	\$ 18,516	2.32%	77.06%
McMahon, James	\$ 9,781	\$ 6,040	0.76%	90.65%
Miller, Steve	\$ 54,639	\$ 33,740	4.23%	79.10%
Naylor, Craig	\$ 39,263	\$ 24,246	3.04%	84.98%
Nutt, Raymond	\$ 18,665	\$ 11,526	1.45%	85.72%
Risser, Eugene	\$ 62,467	\$ 38,574	4.84%	76.11%
Rockefeller IRA, Scott	\$ 11,379	\$ 7,027	0.88%	85.49%
Rosenbaum, Martin	\$ 68,748	\$ 42,453	5.32%	73.70%
Southern Performance Group, Inc. formerly MSHR	\$ 72,298	\$ 44,645	5.60%	76.96%
Tennis, Jeffrey	\$ 37,486	\$ 23,148	2.90%	85.66%
Vineyard Trust, Sarah	\$ 53,983	\$ 33,335	4.18%	79.35%
Vineyard, Philip	\$ 182,494	\$ 112,692	14.13%	76.73%
Total	\$ 1,291,554	\$ 797,550		

Footnotes

- 1) Charli Dragul, Samuel Dragul, Spencer Dragul, and Wendy Hershey are profit interest only recipients. No cash investments were made to qualify for a distribution.
- 2) Chad Hurst has two interests in GDA Clearwater 15, LLC and one interest in Clearwater Plainfield 15, LLC. The aggregate capital account balance of \$(214,254.18) in GDA Clearwater 15, LLC is comprised of an individual capital account balance of \$59,769.22 and a Gary Dragul assigned capital account balance of \$(274,023.40). Hurst has a negative capital account balance of \$(955,102.06) in Clearwater Plainfield 15, LLC. Investors with negative capital account balances are not eligible for disbursements until all Class 3/C investors have recovered the entirety of their capital account balances.

<p>DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver District Court 1437 Bannock St. Denver, CO 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiff: TUNG CHAN, Securities Exchange 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 Averil K. Andrews, # 56148 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: aandrews@allen-vellone.com</p>	<p>Case Number: 2018CV33011</p> <p>Division/Courtroom: 424</p>
<p style="text-align: center;">ORDER GRANTING RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH CLEARWATER BANKRUPTCY ESTATES</p>	

THIS MATTER is before the Court on the Receiver’s Motion to Approve Settlement Agreement with Clearwater Bankruptcy Estates (“the Motion”). The Court has reviewed the Motion and being fully advised,

HEREBY ORDERS that the Motion is GRANTED, the Settlement Agreement between the Receiver and the Clearwater Bankruptcy Estates is approved, and the Receiver is authorized to take all actions necessary to consummate the settlement agreement.

Dated: _____, 2024.

BY THE COURT:

District Court Judge