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| DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO<br>Denver District Court<br>1437 Bannock St.<br>Denver, CO 80202 | DATE FILED<br>July 25, 2025 10:55 AM<br>FILING ID: 5069084E234C1<br>CASE NUMBER: 2018CV33011 |
| **Plaintiff:** TUNG CHAN, Securities Exchange Commissioner for the State of Colorado<br><br>v.<br><br>**Defendants:** GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC | ▲COURT USE ONLY▲ |
| Attorneys for Receiver:<br>Patrick D. Vellone, #15284<br>Michael T. Gilbert, #15009<br>Averil K. Andrews, # 56148<br>ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.<br>1600 Stout St., Suite 1900<br>Denver, Colorado 80202<br>Phone Number: (303) 534-4499<br>E-mail: pvellone@allen-vellone.com<br>E-mail: mgilbert@allen-vellone.com<br>E-mail: aandrews@allen-vellone.com | Case Number: 2018CV33011<br><br>Division/Courtroom: 424 |

**RECEIVER'S REPLY IN SUPPORT OF MOTION TO APPROVE PROPOSED PLAN OF DISTRIBUTION**

Harvey Sender, the duly-appointed receiver ("Receiver") for the assets of Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, "Dragul and the GDA Entities"), submits this reply in support of his Motion ("Motion") to Approve Proposed Plan of Distribution (the "Plan").

## I. Background

1. The Receiver filed his Motion seeking Court approval of his proposed distribution Plan on June 18, 2025. The Plan does not provide for distributions to Hagshama or its related entities. On July 11, 2025, the Hagshama-Related Claimants filed the only objection to the Plan. Adopting the arguments Hagshama makes in its objection would result in it receiving over 90% of the remaining assets of the Receivership estate, a result the Receiver strongly opposes.

2. Hagshama[1] invested in nine properties managed by Dragul.

| | Property | Hagshama investment | Location | Date of Hagshama investment | Hagshama equity |
|---|---|---|---|---|---|
| 1. | Windsor Square | $5,603,715 | Knoxville, TN | 9/18/2015 | 90% |
| 2. | Prospect Square | $4,335,078 | Cincinnati, OH | 1/22/2016 | 90% |
| 3. | Plaza Mall | $4,631,579[2] | Buford, GA | 4/1/2016 | |
| 4. | Cassinelli Square | $2,880,000 | Cincinnati, OH | 11/10/2016 | 90% |
| 5. | Clearwater | $4,200,000[3] | Clearwater, FL | 12/14/2016 | Approx. 54% |

[1] The Receiver understands that Hagshama related entities filed separate claims and those entities are comprised largely of separate investors. Unless the context otherwise require, "Hagshama" refers to all Hagshama related entities that filed claims against the Receivership estate.

[2] Hagshama purchased its interest in Plaza Mall directly from Alan Fox. Fox previously wired $3,710,765 directly to the title company to purchase a direct interest in the property. Hagshama contributed no funds to Dragul or the Receivership estate for this purchase. Hagshama received a profit of approximately $1.5 million from Plaza Mall while Dragul failed to pay similar profits to the small investors in the project. *See* Attachment A to the Declaration of Hanan Shemesh (Exhibit 1 to Hagshama's Objection, hereafter "**Attach. A**"),

[3] As with Plaza Mall, Hagshama purchased its interest in the Clearwater property directly from Alan Fox, who had paid $3 million to the title company at closing to purchase his ownership interest. Again, Hagshama contributed

| | Property | Hagshama investment | Location | Date of Hagshama investment | Hagshama equity |
|---|---|---|---|---|---|
| 6. | Hickory Corners (Box and Shoppes) | $4,280,850 | Hickory, NC | 1/12/2017 | 64.59% |
| 7. | Happy Canyon Marketplace (Box) | $3,595,299 | Denver, CO | 2/28/2017 | 83.71% |
| 8. | Delta Marketplace | $6,903,141 | Lansing, MI | 5/28/2017 | 90% |
| 9. | DU Student Housing | $2,872,345 | Denver, CO | 1/11/2018 | 80% |

3. All but one (DU Student Housing) were retail shopping malls. Dragul managed the properties and held a small equity interest in separate LLC co-tenant owners. DU Student Housing was a proposed multi-unit housing development near the University of Denver. Hagshama provided funds for the purchase of a residence on the DU property but the development never got off the ground due to Dragul's April 2018 indictment for securities fraud and the August 30, 2018, appointment of the Receiver.

4. Hagshama argues it has been singled out for disparate treatment and that all Dragul's victims should be treated equally. Obj. at 1, 8. But Hagshama is fundamentally different than Dragul's other investors, who were primarily small investors fraudulently induced to purchase interests in LLCs to co-own the shopping centers as a tenant-in-common. These investors sent their funds directly to Dragul/GDA for their LLC interests. Hagshama on the other hand is a large

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no funds to Dragul or the Receivership estate for this purchase, nevertheless it seeks an allowed claim of $835,172.00 against the Receivership estate based on its Clearwater investment. This despite the fact that is has already recovered $3,364,828 from Clearwater, which represents 80% of its net cash loss. its principal investment. Other Dragul investors received as little as 5%, and under the Receiver's proposed Plan would recover 40.4%.

institutional investment firm that managed investments for hundreds of Israeli individuals. As is evidenced by Attach. A, **Hagshama did not invest with Dragul and it did not provide funds to the entities in the Receivership estate**. Instead, Hagshama formed separate LLCs which co-owned its nine properties with Dragul-formed LLCs, comprised of small investors who often invested $50,000-$100,000. As opposed to those small investors who provided funds to Dragul and GDA, Hagshama always wired its funds directly to the title company for its co-tenancy ownership interest. In two instances (Clearwater and Plaza Mall of Georgia), Hagshama provided no funds at all to Dragul or the properties; instead it purchased its equity interests directly from another individual, Alan Fox, not from the Receivership estate and the estate obtained no benefit from either transaction.

5. Hagshama objects to the Plan for three primary reasons. *First*, the Plan does not account for its investments in five properties that were sold to Isabel Marina in 2019. *Second*, Hagshama complains the Receiver aggregated the contributions and distributions made to separate Hagshama entities to determine eligibility for distributions. *Third*, with respect to the Clearwater property, Hagshama objects the Plan accounts for distributions it received but not contributions it made which inappropriately inflates its percentage recovery.

6. Under the Plan, the Receiver proposes an interim distribution of $1.3 million, which would return 40.4% of claimant losses. Adopting Hagshama's analysis would require the Receiver to reformulate and resubmit the Plan and would result in Hagshama receiving approximately 88% of estate assets ($1.14 million of the $1.3

million interim distribution), which would reduce claimants' recovery to approximately 21% under the rising tide methodology. But redoing the Plan is unwarranted because Hagshama co-owned and controlled the disposition of all its properties. Hagshama was not defrauded into investing with Dragul, and Dragul routinely made preferred distributions to Hagshama to the detriment of other small investors. At the end of the day, Hagshama received what it bargained for: co-ownership of nine real properties. It directed and controlled their disposition. Any losses it incurred are not compensable from the Receivership estate.

## II. Hagshama is not entitled to distributions from the Receivership estate.

7. Hagshama has filed claims with respect to eight of the properties in which it invested, all but Plaza Mall. It did not file a claim for Plaza Mall because it received a profit of about $1.4 million from that investment. Attach. A. As alleged in Count 5 of Dragul's Second Indictment, the Plaza Mall property was sold in April 2017, and Hagshama was paid its $1.4 million profit. Exhibit 1, at 14-22. On the other hand, Dragul failed to disclose to smaller investors that the property had been sold and he misrepresented to others the property had been sold for a loss. *Id.* at 20, ¶¶ 45, 46, 49. Dragul pleaded guilty to this Indictment and stipulated to its factual basis. Exhibit 2, at 13 & passim. This is consistent with Dragul's continued preferential treatment of Hagshama to induce additional large investments.

### A. Prospect Square

8. Hagshama argues it is entitled to an allowed claim of $3,773,324.08 for the Prospect Square property. Attach. A. This is the amount it paid in January 2016

to purchase its 90% interest in the property, minus the distributions it received. *Id.; see also* Exhibit 3. Hagshama's Prospect claims do not allege it was defrauded into purchasing its interest in the property. *See* Exhibits 4, 5. Instead, they are based on allegations concerning Dragul's indictment and the subsequent appointment of the Receiver.

9. Prospect Square was placed into a separate state court receivership in Ohio in November 2018. Exhibits 6, 7. This removed the property from the Colorado Receivership.

10. Evidencing its unique position and control, on March 29, 2019, Hagshama, terminated the Receiver as manager of the Prospect property. Exhibit 8. Thereafter, on October 11, 2019, the Ohio receiver sold the property to the lender for its credit bid. Exhibit 9. Hagshama did not object to the sale.

11. Hagshama's Prospect Square claims contend, among other things, that Dragul failed to timely pay it distributions required by the governing operating agreement. *E.g.,* Exhibit 4, at 2, bullet 5.[4] However, before the Colorado and Ohio receivers were appointed, Hagshama received $561,753.92 as its pro-rata share of operating profit from Prospect Square, $61,675.30 more than it was entitled to under the governing documents. Exhibit 10.

[4] Attachments to some of the exhibits submitted with this reply have been deleted for brevity. Most were submitted by Hagshama so it has all attachments it filed. Complete documents can be submitted upon request.

12. Hagshama received what it bargained for with respect to Prospect Square, a 90% ownership interest in the real property. It was never guaranteed or entitled to recoup its entire investment. Unfortunately, the shopping center proved unsuccessful and was ultimately foreclosed by the lender. The loss it suffered is the risk any property owner takes when it purchases property. But that does not entitle Hagshama to recover its entire loss from the Receivership estate at the expense of Dragul's defrauded creditors.

**B. Hickory Corners and Clearwater**

13. Hagshama purchased its 64.59% ownership interest in the Hickory Corners shopping center directly from the former owner on January 12, 2016, for approximately $4.2 million. It wired the funds for the purchase directly to the title company. Exhibit 11.

14. Hagshama purchased its ownership interest in the Clearwater shopping center from a former owner, Alan Fox, on or about December 14, 2016. As shown by the Clearwater closing statement, Fox had wired the funds for his equity purchase directly to the title company for the closing on August 12, 2015. Exhibit 12.

15. Hagshama did not purchase its equity interests in Clearwater or Hickory Corners from Dragul or GDA and never invested funds with entities in the Receivership estate to acquire those interests.

16. On February 8, 2019, the Receiver filed a motion seeking Court authority to sell Hickory Corners to a third-party buyer for $13.6 million. On February 19, 2019, Hagshama objected to the sale. It argued that Hagshama related

entities that had purchased the real property directly as tenants-in-common were not part of the Receivership estate, that the Receiver did not control the property, and could not force its sale. Exhibit 13, at 2. As Hagshama described it, its ownership as a co-tenant "highlights a critical fact about the Receivership," which distinguishes this case from "a typical investment fraud scheme, like a Ponzi scheme," where "all victims invest in a common investment, like a fund." *Id.* In its sur-reply opposing the Hickory Corners sale filed March 14, 2019, Hagshama reiterated its position that the "Receiver [cannot] confiscate property owned by third-parties [i.e., Hagshama] and convey it as if it were part of the receivership estate." Exhibit 14, at 1.

17. On February 21, 2019, the Receiver filed a motion seeking Court authority to sell the Clearwater shopping center to a third-party for $17.1 million. Again, Hagshama objected on March 1, 2019, making the same arguments it raised opposing the Hickory Corners sale.

18. The dispute with Hagshama was resolved through an agreement approved by the Court on March 29, 2019, in which the Receiver and Hagshama agreed as to how the sale proceeds from Hickory Corners and Clearwater would be distributed. Exhibit 15. Hickory Corners was sold and Hagshama received the proceeds it was entitled to under the Court-approved agreement.

19. As to Clearwater, the buyer backed out purportedly because of deferred maintenance issues at the property. The Receiver was unable to obtain concessions from the lender or locate a buyer willing to purchase the property for more than its secured debt. On March 3, 2020, the Receiver abandoned Clearwater. Dragul

resumed management of the property and as manager caused the co-tenant owners to file for bankruptcy in Colorado under chapter 11. Eventually, the property was sold and Hagshama paid its proportionate sale of the net proceeds, over $2.5 million. Attach. A.

20. Like Prospect Square, as a co-owner of Clearwater and Hickory Corners, Hagshama got what it bargained for, a majority ownership interest in the properties and its entire share of the sales proceeds. Unfortunately, the shopping centers were not as successful as Hagshama hoped, again that is a risk every property owner assumes, and it does not entitle Hagshama to recover its entire investment from the Receivership estate at the expense of other not similarly situated claimants.

### C. Isabel Marina properties

21. After Dragul and the GDA Entities were placed into receivership in August 2018, Hagshama brokered a transaction with respect to the five properties listed below:

| | Receivership property | Hagshama investment | Total investment dollars | Hagshama equity % | Other investment equity | Dragul equity percentage[5] |
|---|---|---|---|---|---|---|
| 1 | Cassinelli Square (Cincinnati, OH) | $2,880,000 | $3,180,000 | 90% | 10% | 4.00% |
| 2 | Delta Marketplace (Lansing, MI) | $6,903,141 | $7,353,141 | 90% | 10% | 7.07% |
| 3 | DU Student Housing (Denver, CO) | $2,800,000 | $3,650,000 | 80% | 20% | 20% |

[5] In some cases, the companies' records were not consistent with respect to Mr. Dragul's equity percentage in the Five Hagshama Projects; the percentages in the table were based on the Receiver's best estimates.

| | Receivership property | Hagshama investment | Total investment dollars | Hagshama equity % | Other investment equity | Dragul equity percentage[5] |
|---|---|---|---|---|---|---|
| 4 | Happy Canyon Marketplace (Denver, CO) | $3,595,298 | $4,035,298 | 83.71% | 16.29% | 9.41% |
| 5 | Windsor Square (Knoxville, TN) | $5,603,705 | $6,478,705 | 90% | 10% | 3.793% |

22. Hagshama represented to the Receiver that it was prohibited by Israeli law from directly managing real estate in the United States so it arranged to remove these properties from the Receivership estate entirely to be managed by an entity formed for that purpose, Isabel Marina, LLC.

23. Isabel Marina, LLC is a Texas limited liability company affiliated with Tarantino Properties, Inc., a Texas corporation, a full-service real estate company operating in many states, which in early 2019 was managing over $2 billion in real estate assets. Hagshama brokered the transaction because it did not want to recognize losses associated with its Dragul related properties and therefore thwarted the Receiver's ability to sell them.

24. In the Isabel transaction, the estate sold only Dragul's small equity interest in the projects. A copy of the Receiver's Motion to sell the Estate's Interest in the Five Hagshama Projects is submitted as Exhibit 16. The Master Sale Agreement is attached as Exhibit 1 to that Motion.

25. The "Other Investment Equity" identified in the above table was held by smaller investors who invested directly with Dragul as opposed to purchasing a direct interest in the property ala Hagshama. As part of the Isabel transaction, Hagshama required each of these smaller investors to elect their remedy. They could either

(1) retain their equity interest and release any claims against the Receivership estate based on the investment, or (2) relinquish their equity interest and retain claims against the Receivership estate. An example election form is attached as Exhibit 17. Every one of the small investors elected to retain their equity interest and waived any claim against the Receivership estate based on that investment.

26. Hagshama argues it, unlike these smaller investors, did not release claims against the estate. While Hagshama did not execute a specific release, that was the underlying premise and effect of the Isabel transaction. Instead of recognizing its losses and allowing the Receivership estate to sell the underlying properties and distribute any net proceeds, Hagshama elected to retain ownership of the properties and to accept their future income and the proceeds of any future sale. After the Isabel sale was approved, the Receiver had no input into the further operation or sale of these properties, and the Receivership derived no benefit from them.

27. Hagshama should be treated identically with the other equity investors in these projects. Hagshama required them to elect their remedy, and their claims against the estate based on their investment in the Isabel properties are disallowed in the Plan. There is nothing unfair or discriminatory about similarly disallowing Hagshama's claims based on its demand that the Isabel properties be removed from the estate, the Receiver ousted as manager, and the estate deprived of any further economic benefit from their continued operation or sale.

## III. Conclusion

28. The authorities supporting approval are contained in the Plan. Generally, "[i]n supervising an equitable receivership, the primary job of the district court is to ensure that the proposed plan of distribution is fair and reasonable." *S.E.C. v. Wealth Mgmt. LLC*, 628 F.3d 323, 332 (7th Cir. 2010) (citing *Official Comm. of Unsecured Creditors of WorldCom, Inc. v. S.E.C*, 467 F.3d 73, 84 (2d Cir. 2006)). The Plan meets these requirements. Adopting Hagshama's position would require the Receiver to reformulate, resubmit, and re-notice the Plan to afford all claimants the opportunity to object. This would further delay this already far-too protracted Receivership. And, if the Court were to agree with Hagshama's proposed amendments, Hagshama would receive 88% of the distributions and the number of claimants entitled to distributions under the Plan would be reduced from 56 to 16 and the recovery percentage of all claimants would be reduced from 40.4% to 21.2%. This result is not equitable; the Receiver asks the Court to approve the Plan as submitted.

Dated: July 25, 2025.

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

The undersigned hereby certifies that on July 25, 2025, a true and correct copy of the foregoing was filed and served via the Colorado Courts E-Filing system to the following:

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*/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.

**Exhibits to Reply**

1. Second Indictment
2. Plea Agreement
3. Prospect Square Closing Statement
4. Hagshama Prospect Square, LLC Claim (without attachments)
5. CoFund 2, LLC Prospect Square Claim (without attachments)
6. Motion for Appointment of Prospect Square Receiver in Ohio (without attachments)
7. Order Appointing Ohio Receiver for Prospect Square
8. Hagshama letter terminating Receiver as manager for Prospect Square
9. Order Authorizing Sale of Prospect Square property by Ohio Receiver
10. Declaration of Stephanie Drew
11. Hickory Corners Closing Statement
12. Clearwater Closing Statement
13. Hagshama Objection to Hickory Corners Sale
14. Hagshama Sur-reply re Hickory Corners Sale
15. Motion and Order Approving Stipulation re Hickory Corners and Clearwater Sales
16. Isabel Marina Sale Motion
17. Rosenbaum Consent Form to Isabel Transaction

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| DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO<br><br>7325 S. Potomac Street<br>Centennial, CO 80112 | DATE FILED: March 1, 2019 12:11 PM<br>FILING ID: 7A97383BB119<br>CASE NUMBER: 2018CV33011 |
| PEOPLE OF THE STATE OF COLORADO,<br>Plaintiff,<br><br>v.<br><br>GARY JULE DRAGUL, DOB 05/07/1962,<br>Defendant. | ▲ **COURT USE ONLY** ▲ |
| PHILIP J. WEISER, Attorney General<br>DANIEL A. PIETRAGALLO, 41794 *<br>Senior Assistant Attorney General<br>MICHAEL J. BELLIPANNI #24421 *<br>Senior Assistant Attorney General<br>1300 Broadway, 9th Floor<br>Denver, CO 80203<br>(720) 508-6698; (720) 508-6699<br>*Counsel of Record | Case No.: 19CR610<br><br>Div.: 407 |
| **COLORADO STATE GRAND JURY INDICTMENT** | |

COUNT ONE: SECURITIES FRAUD, §§ 11-51-501(1)(c) and 11-51-603(1), C.R.S. (Class 3 Felony) {50053} {as to Plainfield}

COUNT TWO: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to Scott Rockefeller}

COUNT THREE: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to Philip Vineyard}

COUNT FOUR: SECURITIES FRAUD, §§ 11-51-501(1)(b) and 11-51-603(1), C.R.S. (Class 3 Felony) {50052} {as to William Detterer}

COUNT FIVE: SECURITIES FRAUD, §§ 11-51-501(1)(c) and 11-51-603(1), C.R.S. (Class 3 Felony) {50053} {as to Plaza Mall of Georgia North}

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| DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO<br><br>1437 Bannock Street<br>Denver, CO 80202 | |
| PEOPLE OF THE STATE OF COLORADO,<br><br>Plaintiff,<br><br>v.<br><br>**GARY JULE DRAGUL,**<br>**DOB: 05/07/1962**<br><br>Defendant. | ▲ **COURT USE ONLY** ▲ |
| PHILIP J. WEISER, Attorney General<br>DANIEL A. PIETRAGALLO #41794 *<br>Senior Assistant Attorney General<br>MICHAEL J. BELLIPANNI #24421 *<br>Senior Assistant Attorney General<br>1300 Broadway, 9th Floor<br>Denver, CO 80203<br>(720) 508-6000<br>* Counsel Of Record | Case No.: 2018CR001<br><br>Ct. Rm. 259 |
| **COLORADO STATE GRAND JURY INDICTMENT** | |

Of the 2018-2019 term of the City and County of Denver Court in the year 2019, the 2018-2019 Colorado State Grand Jurors, chosen, selected and sworn in the name and by the authority of the People of the State of Colorado, upon their oaths, present the following:

## ESSENTIAL FACTS

Gary Jule Dragul (hereafter DRAGUL) is the president of and registered agent for GDA Real Estate Services, LLC, a Colorado company located in Arapahoe County, Colorado. At all times relevant herein, DRAGUL managed GDA Real Estate Services, LLC (hereafter referred to as GDA). GDA's primary business is to take investor money and derive profit from organizing and establishing limited liability companies (LLC's) that purchase and manage commercial shopping centers and other commercial real estate ventures. DRAGUL and GDA would offer investors membership interests in these LLC's, with the expectation that the investors would profit from the future stream of income, as well as the potential future appreciation of the property. Many of these investment opportunities resulted in significant losses to the investors.

Despite being considered securities, which required registration with the Securities Exchange Commission and the Colorado Division of Securities, DRAGUL failed to register any of the LLC's and was never licensed to sell securities.

As part of the investigation by the Colorado Division of Securities, DRAGUL and GDA provided copies of business records, including but not limited to: general ledgers, balance sheets, income statements, offering documents, purchase agreements, emails, and copies of promissory notes. Based on a review of the GDA general ledger and other GDA business documents, it appears that GDA accrued millions of dollars in unsecured debt related to promissory notes in 2008 and 2013. Despite carrying substantial amounts of unsecured debt and struggling to meet operating costs, DRAGUL and GDA failed to disclose this material fact when soliciting subsequent investments.

On or about June 16, 2016, in response to an administrative subpoena issued by the Colorado Division of Securities as part of their investigation, DRAGUL and GDA began producing documents related to GDA's business operations, including Plainfield 09A, LLC. It was on or after June 16, 2016 that the State became aware that DRAGUL was engaging in a course of business which acted as a fraud upon investors.

The LLC's established by DRAGUL and GDA constitute joint ventures, which are considered "securities" pursuant to § 11-51-201 (17) C.R.S. Accordingly, such investments are subject to the provisions of the Colorado Securities Act.

In soliciting the investment contracts, DRAGUL made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose that they would sell/assign over 100% of the total membership interests in Plainfield 09A, LLC and the Plainfield Commons Shopping Center.
- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.

- DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL's personal bank account or other unrelated GDA investment accounts.
- DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
- DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of membership interests.

The criminal charges alleged herein involve two specific LLC offerings, both commercial shopping center joint ventures.

Between 2009 and 2014, DRAGUL and GDA solicited and received investment funds in Plainfield 09A, LLC and the Plainfield Commons Shopping Center (hereafter PLAINFIELD), which is located at 2663 E. Main Street, Plainfield, Indiana 46168. DRAGUL and GDA engaged in a course of business that operated as a fraud upon investors, by failing to disclose that they would sell over 194% of the membership interest in PLAINFIELD.

Between 2008 and 2016, DRAGUL and GDA solicited and received investor funds related to Plaza Mall North 08A Junior, LLC; a commercial shopping center located at 3410 & 3420 Buford Drive, Buford, GA 30519, and commonly known as Plaza Mall of Georgia North (hereafter PGN). DRAGUL and GDA engaged in a course of business that operated as a fraud upon investors, by failing to disclose the sale of the underlying PGN property to investors and failing to repay investor principal or appreciation, despite selling the property for a profit of $6 million. DRAGUL and GDA also failed to disclose that they would pay themselves and business associates substantial commissions related to the sale of PGN.

In order to solicit investments in Plainfield and PGN, DRAGUL used an unregistered promoter from North Carolina named Marlin Hershey to recruit investors. He represented that DRAGUL and GDA were very successful and that DRAGUL was worth millions of dollars. Hershey was paid a commission for finding investors for GDA joint ventures. Hershey recruited a number of investors from Pennsylvania, North Carolina, Florida, and Texas. DRAGUL and GDA failed to repay many out-of-state investors that were recruited by Marlin Hershey.

Additionally, DRAGUL and GDA engaged in a course of business that involved comingling funds from numerous LLC accounts in order to make payments related to GDA's operating costs. Specifically, a review of the general ledger, balance sheets, bank account statements, and emails indicates that DRAGUL was transferring money from various LLC's and listing the debt as notes payable to those entities in the GDA general ledger. This appears to be a regular business practice.

DRAGUL also misappropriated investor funds for personal use by diverting substantial amounts of money to personal accounts.

DRAGUL and GDA continued the acts, practices and course of business designed to defraud investors through, and during 2017-2018. After obtaining investor funds, DRAGUL and GDA continued to solicit, accept, and hold investor funds, knowing that they could not generate the promised returns. DRAGUL used investor funds to pay personal expenses and continued to make material misstatements and omissions to the investors after their initial investments. DRAGUL thereby induced investors to maintain their investments with him, and to make subsequent investments. These resulting business practices operated as a fraud or deceit upon GDA's investors.

**COUNT ONE**
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1) {as to Plainfield}

On or about and between March 9, 2009 and January 1, 2014, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer or sale of any security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any course of business which operated or would have operated as fraud or deceit upon investors, including Reba Buckwalter, MSHR, Inc., Scott Rockefeller, Jeffrey Tennis, Raymond Nutt, Calvin Ewell, David Hoe, Lori Hoe, Craig Naylor, David and Darcea Haar, HBT Partners, Benzmiller Family Trust (Kenneth Benzmiller), Eric Aafedt, Craig Evans, Laura Evans, James and Barbara McMahon, Consolidated GC of Texas (Naresh Daswani), Dennis Anderson, Steven Miller, Bret Chapman, Gideon and Rhonda Lapp, MSHR, Inc., Eugene Risser, Gerald Deardorff, Philip Vineyard, Sarah Vineyard Irrevocable Trust, John Heffley, William Detterer, Thomas McCaffrey, Martin Rosenbaum, and additional persons both known and unknown to the Grand Jury, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1), and against the peace and dignity of the People of the State of Colorado.

**The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count One are as follows:**

1. On or about and between March 1, 2009 and January 1, 2014, DRAGUL and GDA solicited and received investor funds related to Plainfield 09A, LLC and the Plainfield Commons Shopping Center (PLAINFIELD), located at 2663 E. Main Street, Plainfield, Indiana 46168.

2. In connection with the fraudulent sale of these securities, DRAGUL and GDA conducted business in Colorado.

3. In total, DRAGUL and GDA solicited and received approximately thirty separate investments in PLAINFIELD, totaling over $2.5 million. That amount includes new cash investments of over $1.5 million.

4. Each investment was evidenced by a Membership Purchase Agreement, which established that the investor was buying a membership interest in the LLC and a corresponding "beneficial interest in and to the Property". In most cases, the percentage of membership interest and interest in the property were identical.

5. GDA provided investors a short "executive summary", which indicated that the property would be purchased for $5,057,000.00.

6. In fact, GDA purchased PLAINFIELD on July 10, 2009, for $4,653.167.25, approximately $400,000 less than previously disclosed to investors in the executive summary.

7. By November 2012, DRAGUL and GDA had already sold or assigned 99.24% of the membership interests in PLAINFIELD (and interest in and to the Property) to approximately twenty investors.

8. DRAGUL and GDA would go on to sell/assign additional membership interests in PLAINFIELD to approximately ten other investors. In so doing, DRAGUL and GDA failed to disclose that they had already sold membership interests in PLAINFIELD totaling over 100%.

9. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

    - DRAGUL and GDA failed to disclose that they would sell/assign over 100% of the total membership interests in PLAINFIELD.
    - DRAGUL and GDA failed to disclose the actual risk associated with investments.
    - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
    - DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL's personal bank account or other unrelated GDA investment accounts.
    - DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
    - DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

10. The investments DRAGUL and GDA solicited directly or indirectly, in connection with this count, on or about and between March 9, 2009 and January 1, 2014, include one or more of the following:

a) Reba Buckwalter, a resident of Lancaster, Pennsylvania, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about March 9, 2009, in exchange for a 3.766% interest in and to the property.

b) MSHR, Inc., a company based in Huntersville, North Carolina, invested approximately twenty thousand dollars ($20,000.00) in Plainfield 09A, LLC on or about April 3, 2009, in exchange for a 1.507% interest in and to the property.

c) Scott Rockefeller, a resident of Huntersville, North Carolina, invested approximately thirty thousand dollars ($30,000.00) in Plainfield 09A, LLC on or about April 3, 2009, in exchange for a 2.26% interest in and to the property.

d) Jeffrey Tennis, a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about April 3, 2009, in exchange for a 7.533% interest in and to the property.

e) Raymond Nutt, a resident of Littleton, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about April 17, 2009, in exchange for a 3.766% interest in and to the property.

f) Calvin Ewell, a resident of East Earl, Pennsylvania, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about April 23, 2009, in exchange for a 3.766% interest in and to the property.

g) David Hoe, a resident of Huntersville, North Carolina, invested approximately thirty thousand dollars ($30,000.00) in Plainfield 09A, LLC on or about June 5, 2009, in exchange for a 2.185% interest in and to the property.

h) Lori Hoe, a resident of Huntersville, North Carolina, invested approximately thirty thousand dollars ($20,000.00) in Plainfield 09A, LLC on or about June 5, 2009, in exchange for a 1.507% interest in and to the property.

k) Craig Naylor, a resident of Chadds Ford, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about June 5, 2009, in exchange for a 7.533% interest in and to the property.

l) David and Darcea Haar, residents of Centennial, Colorado, invested approximately twenty thousand dollars ($20,000.00) in Plainfield 09A, LLC on or about June 11, 2009, in exchange for a 1.507% interest in and to the property.

m) HBT Partners, a company based in Lancaster, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about June 11, 2009, in exchange for a 7.533% interest in and to the property.

n) The Benzmiller Family Trust (Kenneth Benzmiller), a company based in Charlotte, North Carolina, invested approximately two hundred thousand dollars ($200,000.00) in Plainfield 09B, LLC on or about July 9, 2009, in exchange for a 15.07% interest in and to the property.

o) Eric Aafedt, a resident of Evergreen, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about November 1, 2009, in exchange for a 3.766% interest in and to the property.

p) Craig Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about November 15, 2009, in exchange for a 3.766% interest in and to the property.

q) Laura Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about November 15, 2009, in exchange for a 3.766% interest in and to the property.

r) James and Barbara McMahon, residents of Englewood, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about February 16, 2010, in exchange for a 3.766% interest in and to the property.

s) Consolidated GC of Texas (Naresh Daswani), a company based in Houston, Texas, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about April 1, 2012, in exchange for an 8.648% interest in and to the property.

t) Dennis Anderson, a resident of Wilmington, North Carolina, invested approximately sixty-eight thousand seven hundred and fifty dollars ($68,750.00) in Plainfield 09A, LLC on or about July 10, 2012, in exchange for a 5.288% interest in and to the property.

u) Steven Miller, a resident of Mooresville, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about July 10, 2012, in exchange for a 7.692% interest in and to the property.

v) Bret Chapman, a resident of Concord, NC, invested approximately sixty thousand dollars ($60,000.00) in Plainfield 09A, LLC on or about November 5, 2012, in exchange for a 4.615% interest in and to the property.

w) Gideon and Rhonda Lapp, residents of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about June 26, 2013, in exchange for a 7.553% interest in and to the property.

x) MSHR, Inc., a company based in Huntersville, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about June 26, 2013, in exchange for a 7.553% interest in and to the property.

y) Eugene Risser, a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about June 26, 2013, in exchange for a 7.553% interest in and to the property.

z) Gerald Deardorff, a resident of York, Pennsylvania, invested approximately one hundred and fifty thousand dollars ($150,000.00) in Plainfield 09A, LLC on or about July 1, 2013, in exchange for an 11.299% interest in and to the property.

aa) Philip Vineyard, a resident of Charleston, South Carolina, invested approximately three hundred thousand dollars ($300,000.00) in Plainfield 09A, LLC on or about July 11, 2013, in exchange for a 22.599% interest in and to the property.

bb) The Sarah Vineyard Irrevocable Trust, based in Charlotte, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about July 12, 2013, in exchange for a 7.533% interest in and to the property.

cc) John Heffley, a resident of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about August 28, 2013, in exchange for a 7.553% interest in and to the property.

dd) William Detterer, a resident of Wyomissing, Pennsylvania, invested approximately two hundred thousand dollars ($200,000.00) in Plainfield 09A, LLC on or about August 30, 2013, in exchange for a 15.066% interest in and to the property.

ee) Thomas McCaffrey, a resident of Parker, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plainfield 09A, LLC on or about October 1, 2013, in exchange for a 3.766% interest in and to the property.

ff) Martin Rosenbaum, a resident of Lone Tree, Colorado, invested approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC on or about January 1, 2014, in exchange for a 4.736% interest in and to the property.

11. In total, DRAGUL and GDA sold over 194% of the interest in PLAINFIELD. Of the $1.5 million in new money raised for PLAINFIELD, $645,150 was directed to DRAGUL personally.

12. On or about March 12, 2015, DRAGUL and GDA sold PLAINFIELD for $5,563,500.00, a profit of approximately $1 million.

13. None of the investors in PLAINFIELD were repaid their principal investment. Investors were forced to roll their investments from PLAINFIELD into another LLC, known as Clearwater.

14. The circumstances surrounding the sales, acts, practices and course of business engaged in by DRAGUL and GDA, including the untrue statements of material fact and omissions of material fact as described herein, operated as a fraud upon investors.

**COUNT TWO:**
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Scott Rockefeller}

On or about and between June 26, 2013 and August 2, 2013, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to MSHR, Inc. and/or Scott Rockefeller, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

**The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Two are as follows:**

15. On or about June 26, 2013, after selling/assigning over 100% of the total membership interests in PLAINFIELD, DRAGUL and GDA solicited MSHR, Inc. and/or Scott Rockefeller to invest approximately one hundred thousand dollars ($100,000.00) in Plainfield 09A, LLC., in exchange for a 7.553% interest in and to the property.

16. On or about July 29, 2013, DRAGUL and GDA sent a letter to MSHR, Inc. – Attn: Scott Rockefeller. The letter evidenced that the investment in PLAINFIELD was funded by rolling over a previous $50,000 investment in Crosspointe 08A, LLC and a $25,000 investment in CP Loan, in addition to a cash investment of $25,000.

17. That letter failed to advise MSHR and/or Scott Rockefeller that DRAGUL and GDA already sold/assigned over 100% of the membership interests in the property.

18. On or about July 30, 2013, MSHR sent check #100 in the amount of $25,000 to GDA for the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was deposited into GDA's bank account on or about August 2, 2013.

19. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

- DRAGUL and GDA failed to disclose that they already sold/assigned over 100% of the total membership interests in PLAINFIELD.
- DRAGUL and GDA failed to disclose the actual risk associated with investments.
- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
- DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

**COUNT THREE**
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to Philip Vineyard}

On or about and between July 11, 2013 and August 16, 2013, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to Philip Vineyard., directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

**The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Three are as follows:**

20. On or about July 11, 2013, after selling/assigning over 130% of the total membership interests in PLAINFIELD, DRAGUL and GDA solicited Philip Vineyard, to invest approximately three hundred thousand dollars ($300,000.00) in Plainfield 09A, LLC., in exchange for a 22.599% interest in and to the property.

21. On or about July 11, 2013, DRAGUL and GDA sent a letter to Philip Vineyard. The letter evidenced that the investment in PLAINFIELD was funded by rolling over a previous $150,000 investment in Syracuse Property 06, LLC, in addition to a cash investment of $150,000.

22. That letter failed to advise Philip Vineyard that DRAGUL and GDA already sold/assigned well over 100% of the membership interests in the property.

23. On or about July 15, 2013, Philip Vineyard sent check #601 in the amount of $100,000 to GDA as part of the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was endorsed by DRAGUL personally and deposited on or about July 15, 2013.

24. On or about August 15, 2013, Philip Vineyard sent check #619 in the amount of $50,000 to GDA as part of the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was endorsed by DRAGUL personally and deposited into his personal bank account on or about August 16, 2013.

25. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

    - DRAGUL and GDA failed to disclose that they already sold/assigned over 100% of the total membership interests in PLAINFIELD.
    - DRAGUL and GDA failed to disclose the actual risk associated with investments.
    - DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
    - DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL's personal bank account or other unrelated GDA investment accounts.
    - DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
    - DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

**COUNT FOUR**
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) {as to William Detterer}

On or about and between August 30, 2013 and September 12, 2013, with a date of discovery on or after June 16, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer, sale, or purchase of any security to William Detterer, directly or indirectly, unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(b) and 11-51-603(1) (Securities Fraud – Class 3 Felony), against the peace and dignity of the People of the State of Colorado.

**The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Four are as follows:**

26. On or about August 30, 2013, after selling/assigning over 170% of the total membership interests in PLAINFIELD, DRAGUL and GDA solicited William Detterer, to invest approximately two hundred thousand dollars ($200,000.00) in Plainfield 09A, LLC., in exchange for a 15.066% interest in and to the property.

27. On or about August 30, 2013, DRAGUL and GDA sent a letter to William Detterer. The letter evidenced that the investment in PLAINFIELD was funded by rolling over a previous $100,000 investment in Crosspointe 08A, LLC and a $36,567 investment in CP Loan, in addition to a cash investment of $63,433.

28. That letter failed to advise William Detterer that DRAGUL and GDA already sold/assigned well over 100% of the membership interests in the property.

29. On or about September 10, 2013, William Detterer sent check #203 in the amount of $63,433 to GDA for the additional cash investment required to purchase the diluted membership interests in PLAINFIELD. That check was endorsed by DRAGUL personally and deposited into his personal bank account on or about September 12, 2013.

30. In soliciting these investments, DRAGUL and GDA made material, untrue statements and omissions of material facts, including but not limited to the following:

    - DRAGUL and GDA failed to disclose that they already sold/assigned over 100% of the total membership interests in PLAINFIELD.
    - DRAGUL and GDA failed to disclose the actual risk associated with investments.

- DRAGUL and GDA failed to disclose the actual financial condition and substantial debt of GDA.
- DRAGUL and GDA failed to disclose that investor funds would be deposited into DRAGUL's personal bank account or other unrelated GDA investment accounts.
- DRAGUL and GDA failed to disclose that investor funds would be comingled with other investment accounts.
- DRAGUL and GDA failed to disclose that they would engage in a course of business which diluted the value of each membership interest.

**COUNT FIVE:**
(Securities Fraud – F3)
C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1) {as to Plaza Mall of Georgia North}

On or about and between December 31, 2008 and April 1, 2016, in and triable in the State of Colorado, GARY JULE DRAGUL, in connection with the offer or sale of any security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any course of business which operated or would have operated as fraud or deceit upon investors, including Barbara Burroughs, W. Slater Burroughs, Calvin Ewell, Elizabeth Maurer, OM&K, LLC, Marshall Parker, Ray Webb Parker, William Parker, Jr., Scott Rockefeller, Keith Snyder, Jeffrey Tennis, Kristina Kapur-Mauleon and Luis Mauleon, Dublin Realty Company, David and Barbara Landis, Gideon and Rhonda Lapp, Eric Aafedt, Harper Beall, Craig Evans, Laura Evans, Marvin Weaver, Douglas and Michelle Shuff, Meeting Street Properties, LLC, Coleen Hurst, Scott Chatham, Leftin Investment Company (Soloman Leftin), Raymond Nutt, Sarah Vineyard Irrevocable Trust, Philip Vineyard, James and Susan Hess, Gerald and Miriam Weaver, Eagle Group V (Eric Blow), Daniel Brittain, Kurtz Hersch, Martin Rosenbaum, Jerry and Susan Horst, Horst Irrevocable Trust, James McMahon, Howard Anderson, Rex and Kimberly Stump, Eisen Steele Family Trust, LLC, 3855 Forest, LLC (David Kaufmann), Stoltzfus Properties, LLC (Al Stoltzfus), Aaron Steinberg, Leora Rosenbaum, Martin, Rosenbaum, Edward Delava – Trustee of the Fox 2002 Irrevocable Trust, Melissa Rosenbaum, Alan C. Fox Irrevocable Trust, and additional persons both known and unknown to the Grand Jury, contrary to the form of the statutes in such case made and provided, C.R.S. §§ 11-51-501(1)(c) and 11-51-603(1), and against the peace and dignity of the People of the State of Colorado.

**The Essential Facts and all other facts in support of the charges alleged herein are incorporated by reference. Additional facts in support of the offenses as set forth in Count Five are as follows:**

31. On or about and between December 31, 2008 and April 1, 2016, DRAGUL and GDA solicited and received investor funds related to Plaza Mall North 08A Junior, LLC; a commercial shopping center located at 3410 & 3420 Buford Drive, Buford, GA 30519, and commonly known as Plaza Mall of Georgia North (hereafter PGN).

32. In connection with the fraudulent sale of these securities, DRAGUL and GDA conducted business in Colorado.

33. In total, DRAGUL and GDA solicited and received approximately forty-seven separate investments in PGN, totaling over $9 million. That amount includes new cash investments of over $3 million.

34. Each investment was evidenced by a Membership Purchase Agreement, which established that the investor was buying a membership interest in the LLC.

35. GDA provided investors with a short "executive summary", which indicated that the property would be purchased for $28,470,000.00.

36. In fact, GDA purchased PGN on December 24, 2008 for $25,920,000.00, approximately $2.55 million less than previously disclosed to investors in the executive summary.

37. As part of this closing, GDA paid themselves a $200,000 consulting fee, paid SSC a $75,000 consulting fee, and paid ACF a $500,000 consulting fee. None of these fees were disclosed to investors prior to the closing.

38. The investments DRAGUL and GDA solicited directly or indirectly, in connection with this count, on or about and between December 31, 2008 and April 1, 2016, include one or more of the following:

    a) Barbara Burroughs, a resident of Charlotte, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

    b) W. Slater Burroughs, a resident of Cornelius, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

    c) Calvin Ewell, a resident of East Earl, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

    d) Elizabeth Maurer, a resident of Landisville, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

e) OM&K, LLC, a company based in Wadmalaw Island, South Carolina, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

f) Marshall Parker, a resident of Shelby, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

g) Ray Webb Parker, a resident of Shelby, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

h) William Parker, Jr., a resident of Shelby, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

k) Scott Rockefeller, a resident of Huntersville, North Carolina, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

l) Keith Snyder, a resident of Landisville, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

m) Jeffrey Tennis, a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about December 31, 2008.

n) Kristina Kapur-Mauleon and Luis Mauleon, residents of Ithica, New York, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about January 15, 2009.

o) Dublin Realty Company, Inc., a company based in Charlotte, North Carolina, invested approximately five hundred and seventy-thousand dollars ($570,000.00) in Plaza Mall North 08A Junior, LLC on or about January 20, 2009.

p) David and Barbara Landis, residents of Lititz, Pennsylvania, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about January 30, 2009.

q) Gideon & Rhonda Lapp, a resident of Lancaster, Pennsylvania, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about January 30, 2009.

r) Eric Aafedt, a resident of Evergreen, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.

s) Harper Beall, a resident of Lenoir, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.

t) Craig Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.

u) Laura Evans, a resident of Denver, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.

v) Marvin Weaver, a resident of Blue Ball, PA, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.

w) Douglas & Michelle Shuff, residents of Lebanon, Pennsylvania, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about February 5, 2009.

x) Meeting Street Properties, LLC (John Beall), a company based in Blowing Rock, North Carolina, invested approximately one hundred sixty-three thousand dollars ($163,000.00) in Plaza Mall North 08A Junior, LLC on or about February 1, 2009.

y) Coleen Hurst, a resident of Lancaster, Pennsylvania, invested approximately three hundred thousand dollars ($300,000.00) in Plaza Mall North 08A Junior, LLC on or about April 10, 2012.

z) Scott Chatham, a resident of Conover, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about May 13, 2013.

aa) Leftin Investment Company (Solomon Leftin), a company based in Denver, Colorado, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 1, 2013.

bb) Raymond Nutt, a resident of Littleton, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about September 1, 2013.

cc) The Sarah Vineyard Irrevocable Trust, based in Charlotte, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 5, 2013.

dd) Philip Vineyard, a resident of Charleston, South Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 5, 2013.

ee) James and Susan Hess, residents of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 6, 2013.

gg) Gerald and Miriam Weaver, residents of Lancaster, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 9, 2013.

hh) Eagle Group V (Eric Blow), a resident of Lititz, Pennsylvania, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 11, 2013.

ii) Daniel Brittain, a resident of Hickory, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 13, 2013.

jj) Kurtz Hersch, a resident of Monee, Illinois, invested approximately one hundred and fifty thousand dollars ($150,000.00) in Plaza Mall North 08A Junior, LLC on or about September 13, 2013.

kk) Martin Rosenbaum, a resident of Lone Tree, Colorado, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about September 16, 2013.

ll) Jerry and Susan Horst, residents of Lititz, Pennsylvania, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about September 30, 2013.

mm) The Horst Irrevocable Trust, a company based in Lititz, Pennsylvania, invested approximately one hundred and fifty thousand dollars ($150,000.00) in Plaza Mall North 08A Junior, LLC on or about September 30, 2013.

nn) James McMahon, a resident of Aurora, Colorado, invested approximately fifty thousand dollars ($50,000.00) in Plaza Mall North 08A Junior, LLC on or about October 1, 2013.

oo) Howard Anderson, a resident of Taylorsville, North Carolina, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about October 7, 2013.

pp) Rex and Kimberly Stump, residents of Mooresville, North Carolina, invested approximately two hundred thousand dollars ($200,000.00) in Plaza Mall North 08A Junior, LLC on or about November 11, 2013.

qq) The Eisen Steele Family Trust, LLC, a company based in Englewood, Colorado, invested approximately one hundred and thirty-two thousand dollars ($132,000.00) in Plaza Mall North 08A Junior, LLC on or about December 1, 2013.

rr) 3855 Forest, LLC (Donald Kaufmann), a company based in Englewood, Colorado, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about May 1, 2014.

ss) Stoltzfus Properties, LLC (Al Stoltzfus), a company based in Washington, Utah, invested approximately one hundred and twenty-five thousand dollars ($125,000.00) in Plaza Mall North 08A Junior, LLC on or about July 1, 2014.

tt) Aaron Steinberg, a resident of Denver, Colorado, invested approximately one hundred and twenty-five thousand dollars ($125,000.00) in Plaza Mall North 08A Junior, LLC on or about May 5, 2015.

uu) Leora Rosenbaum, a resident of Denver, Colorado, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about May 15, 2015.

vv) Martin Rosenbaum, a resident of Lone Tree, Colorado, invested approximately three hundred thousand dollars ($300,000.00) in Plaza Mall North 08A Junior, LLC on or about July 1, 2015.

ww) Edward Delava – Trustee of the Fox 2002 Irrevocable Trust, based in California, invested approximately three hundred thousand dollars ($300,000.00) in Plaza Mall North 08A Junior, LLC on or about October 27, 2015.

xx) Melissa Rosenbaum, a resident of Lone Tree, Colorado, invested approximately one hundred thousand dollars ($100,000.00) in Plaza Mall North 08A Junior, LLC on or about April 1, 2016.

yy) The Alan C. Fox Irrevocable Trust, invested approximately three million, seven hundred and ten thousand, seven hundred and sixty-five dollars ($3,710,765.00) in Plaza Mall North 08A Junior, LLC.

39. On or about April 1, 2016, DRAGUL and GDA brokered an agreement to sell Alan Fox's shares of PGN to an institutional investor from Israel, known as Hagshama Funds (hereafter HAGSHAMA). HAGSHAMA invested approximately $4.6 million for the purchase of Fox's interest in PGN.

40. As part of the fees paid related to that transaction, GDA also received an "Acquisition Fee" of $100,000 and HAGSHAMA received an "Equity Arrangement Fee" of $231,579.

41. GDA also received a "Post Closing Note Loan" form HAGSHAMA in the amount of $300,000, upon transfer of the shares.

42. On or about April 27, 2017, DRAGUL and GDA sold PGN for $32,000,000.00; a profit of over $6 million. DRAGUL and GDA failed to disclose to investors that the property had sold.

43. As part of that closing, GDA was paid a 2% commission totaling $560,000 and The Shopping Center Group was paid a 1% commission totaling $320,000. None of the $880,000 in commissions or fees was disclosed to investors.

44. On or about April 27, 2017, DRAGUL and GDA received a wire transfer for seller proceeds from the sale of PGN, totaling over $9.8 million.

45. On or about and between May 2, 2017 and May 5, 2017, HAGSHAMA controlled entities received wire transfers in the amount of $5,668,100; a profit of over $1 million.

46. Other than HAGSHAMA and two other investors (Leftin and Hurst), none of the remaining forty-four investors in PGN were told of the sale or repaid their principal investment, despite the $6 million profit.

47. DRAGUL and GDA engaged in a course of business which acted as a fraud upon investors by failing to disclose the sale/profits from PGN, by continuing to send monthly distributions to investors, and by failing to repay principal investments or appreciation on the sale. This led investors to believe that they still owned PGN for over one year after the sale.

48. DRAGUL and GDA also deliberately provided materially false information to investors about the status of PGN after the sale.

49. By way of example, on or about October 17, 2017, DRAGUL spoke with investor Gerald Horst and advised him that he lost money in his PGN investment and that the sale of the property was not yet complete. Horst invested approximately $200,000 in PGN in September of 2013. His contemporaneous notes about the conversation on or about October 17, 2017, are as follows:

> I just got off the phone with Gary Dragul, he says Georgia Plaza North will be sold and settled in about 30 days and expects to issue to us a check for 75-82% of our initial investment. When I asked how it could be so low in a time of high real estate prices he said 45% is a bog [sic] box tenant which are very difficult to find....

50. Investor Philip Vineyard was also directly misled by DRAGUL. In December of 2017, DRAGUL spoke with Vineyard and told him that PGN was doing well. DRAGUL failed to disclose that PGN had sold approximately eight months earlier.

51. On or about May 18, 2018, over one year after the closing on the sale of PGN, DRAGUL and GDA sent an email to investors finally disclosing the sale and indicating that the joint venture was not as successful as they had hoped, because of failed negotiations with a big box tenant.

52. In that email, DRAGUL and GDA failed to disclose that they received over $9.8 million in proceeds from the sale of PGN, over one earlier.

53. The circumstances surrounding the sales, acts, practices and course of business engaged in by DRAGUL and GDA, including the untrue statements of material fact and omissions of material fact as described herein, as well as the failure to repay investor principal or appreciation, operated as a fraud upon investors.

PHILIP J. WEISER,
ATTORNEY GENERAL

By:

Michael Bellipanni, Reg. No. 24421
Senior Assistant Attorney General
Criminal Justice Section

The 2018 - 2019 State Grand Jury presents the within Indictment, and the same is hereby ORDERED FILED this 28th day of February, 2019.

Pursuant to C.R.S. 13-73-107, the Court hereby designates the **County of Arapahoe**, Colorado, as the county of venue for the purposes of trial.

MICHAEL A. MARTINEZ
Chief Judge, Second Judicial District

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| DISTRICT COURT,<br>ARAPAHOE COUNTY, COLORADO<br><br>7325 S. Potomac St.<br>Centennial, CO 80112 | APPROVED BY COURT<br>06/05/2023<br>DATE FILED: June 5, 2023 4:56 PM<br>CASE NUMBER: 2019CR610<br>July 25, 2025 10:55 AM<br>FILING ID: 5069064E234C1<br>CASE NUMBER: 2018CV33011<br>JOSEPH RILEY WHITFIELD<br>District Court Judge |
| PEOPLE OF THE STATE OF COLORADO,<br><br>Plaintiff,<br><br>v.<br><br>**GARY JULE DRAGUL,**<br>**DOB: 05/07/1962**<br><br>Defendant. | ▲ **COURT USE ONLY** ▲ |
| PHILIP J. WEISER, Attorney General<br>DANIEL A. PIETRAGALLO, 41794<br>Senior Assistant Attorney General*<br>1300 Broadway<br>Denver, CO 80203<br>(720) 508-6000<br>Registration Number: 41794<br>*Counsel of Record | Case No.: 2019CR610<br><br>Div.: 407 |
| **DEFENDANT'S CRIM. P. RULE 11 GUILTY PLEA ADVISEMENT** | |

Defendant **GARY JULE DRAGUL** requests the Court accept his guilty plea to **Count Five, Securities Fraud, in violation of §§ 11-51-501(1)(c) and 11-51-603(1) C.R.S. (Class 3 Felony).** This document represents my desire to plead guilty.

I know that I have the right to remain silent, that I do not have to make this request, and anything I write or say may be used against me. Knowing that, I swear or affirm that I have read and understand everything in this and all of the documents I have submitted in this case. I understand all of the rights that I am giving up by pleading guilty.

Initial:

_____ 1. I am 61 years old. I have completed 16 years of school. At this time my mental and physical health is satisfactory. I am thinking clearly. My decision to plead guilty is not being affected in any way by alcohol, drugs, or medication.

_____ 2. I understand what is happening in this Courtroom today. I read, speak, and understand the English language, or all of the documents and proceedings in this matter have been fully explained to me in a language that I understand.

_____ 3. I understand that if I am not a citizen of the United Sates, this guilty plea may cause deportation, exclusion from admission to the United States, or denial of naturalization, or other immigration

consequences.

_____ 4. I understand the nature of the charge(s) against me and the elements of the charge(s) which the prosecution would have to prove beyond a reasonable doubt to a unanimous jury before I could be found guilty at trial. The essential elements of the crime to which I am pleading guilty are attached to this document. With my lawyer, I have reviewed the attached document(s) explaining the elements of the charge(s) I am pleading guilty to. I have signed the attached document(s) because I thoroughly understand them.

_____ 5. I understand that I have each of the following rights:

_____ (a) I know that I have the right to plead "not guilty" to all charges against me and to have a speedy and public trial to a jury of 12 persons or to a judge on all charges against me.

_____ (b) I know that I have the right to be represented by a lawyer at all stages of these proceedings, and if I cannot afford a lawyer, the Court will appoint a lawyer for me, free of charge.

_____ (c) I know that I have the right to be presumed innocent at trial and to require the prosecution to prove at trial each element of each charge beyond a reasonable doubt before I could be found guilty.

_____ (d) At that trial, I understand my right to see and cross-examine all witness who might testify against me.

_____ (e) I know that I have the right to present any defense I might have, and to call any witnesses in my own defense. If those witnesses were unwilling to appear, I understand that the Court would issue subpoenas at my request and would order those witnesses to appear and testify. I understand that I would have no burden to present any evidence or witnesses at trial. I would not have to prove myself not guilty. I would be presumed innocent at trial and the burden to prove my guilt would rest solely with the prosecution.

_____ (f) I know that I have the right to remain silent, and not say anything or make any statement whatsoever about this case. I know that if I do choose to make any statement, that statement could be used against me in Court.

_____ (g) I also know that I have the right to either testify at trial or to remain silent, and that if I chose not to testify, the Judge would instruct the jury that they could not consider my decision to not testify for any purpose. I understand that whether I testified or not at trial would be purely my decision.

_____ (h) I know that if I were convicted of any charge at trial I would have the right to appeal that conviction to a higher Court.

_____ (i) I know that I may have a right to a Preliminary Hearing, and I understand that right.

_____ (j) I am aware that I may have the right to bail, and I am aware of the amount of that bail.

_____ (k) **I know that when I plead guilty, except for the right to counsel, I give up all of these rights and all possible defense(s) to the charge(s).**

_____ 6. The decision to plead guilty is my decision and it has been made freely and voluntarily. There has been no threat, coercion, undue influence, or force used to make me plead guilty. I know that I do not have to follow my lawyer's advice and that I do not have to plead guilty. This is my decision to plead guilty.

_____ 7. I know that a plea of guilty admits the charge, and a plea of not guilty denies the charge. I admit that there are sufficient facts in this case which could be presented at trial by the prosecution which would result in a strong likelihood of my conviction.

_____ 8. To the charge(s) of **Count Five, Securities Fraud, in violation of §§ 11-51-501(1)(c) and 11-51-603(1) C.R.S. (Class 3 Felony),** I plead **GUILTY**.

_____ 9. The elements of the charge(s) to which I am pleading guilty, which are attached to this document, have been explained to me. I understand fully everything the prosecutor would have had to prove beyond a reasonable doubt to each and every member of a 12-person jury before I could have been convicted.

_____ 10. I understand that one of the elements which the prosecutor would have had to prove is my mental state at the time of commission of the crime. In addition to understanding the elements, I understand the applicable definition(s) below, and I understand what the prosecutor would have had to prove in that regard:

_____ INTENTIONALLY: A person acts "intentionally" or "with intent" when his/her conscious objective is to cause the specific result proscribed by the statute defining the offense. It is immaterial whether or not the result actually occurred.

_____ KNOWINGLY: A person acts "knowingly" or "willfully" with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of such nature or that such circumstance exists. A person acts "knowingly" or "willfully" with respect to a result of his/her conduct when he/she is aware that his/her conduct is practically certain to cause the result.

_____ RECKLESSLY: A person acts "recklessly" when he/she consciously disregards a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

_____ NEGLIGENTLY: A person acts with "criminal negligence" when, through a gross deviation from the standard of care that a reasonable person would exercise, he/she fails to perceive a substantial and unjustifiable risk that a result will occur or that a circumstance exists.

_____ 11. I understand that the Court is not bound by and does not have to follow anyone's recommendations concerning the entry of a guilty plea, the penalty to be imposed, and the granting or denial of probation. Any proposed plea agreement and any concession(s) are fully and accurately set forth in this written document.

_____ 12. I have had a full opportunity to discuss with my lawyer everything I know about this case and all defenses that may be available to me. My lawyer has also discussed the elements of the charges which the prosecutor would have to prove, all lesser included charges, and all possible defenses. I understand my lawyer, I am satisfied with the advice and representation I have received from my lawyer.

_____ 13. I understand that if the Court accepts my guilty plea to a felony I will stand convicted of a felony. I understand that this felony conviction may be used against me in any future proceeding under the habitual criminal laws. I also understand that my felony conviction may be used against me in any future proceeding concerning my credibility. If I have entered into a Stipulation of a Deferred Judgment and Sentence, and I have not yet completed the terms of that agreement, my guilty plea may be used against me in any future proceeding. I understand if I have entered into a Stipulation of a Deferred Judgment and Sentence and I violate the terms of that agreement, I may stand convicted of a felony and then I will be re-sentenced by the Court. I also understand that my being allowed to enter into a Stipulation of a Deferred Judgment and Sentence is specifically contingent on my having no prior felony convictions or outstanding warrants at the time the plea is entered.

_____ 14. I understand the full range of potential penalties for my offense(s) as set forth below on this document in the chart of applicable sentencing ranges.

_____ (a) I know that if I plead guilty to a felony, I may be sentenced to the custody of the Department of Corrections (prison), as shown in the below chart for my applicable sentencing range. I understand that the Department of Corrections will determine my place of incarceration. I know that if the Judge were to conclude that extraordinary mitigating or aggravating circumstances are present in my case, I could be sentenced to any term of imprisonment from the minimum to the maximum sentence allowed by law as set out in the "extraordinary circumstances" section in the chart below. I understand and agree that by pleading guilty, I agree to allow the Judge to determine whether extraordinary mitigating or aggravating circumstances are present in my case, and I agree to give up any right I might have to a jury make that determination.

_____ (a.1) I know that if I plead guilty to a misdemeanor, I may be sentenced to the custody of the Department of Corrections (prison), as shown in the below chart for my applicable sentencing range. I understand that the Department of Corrections will determine my place of incarceration. I know that if the Judge were to conclude that my misdemeanor offense presented an "extraordinary risk" or harm to society, I could be sentenced to any term of imprisonment from the minimum to the maximum sentence allowed by law as set out in the "extraordinary risk" section in the chart below. I understand and agree that by pleading guilty, I agree to allow the Judge to determine whether my misdemeanor offense presented an "extraordinary risk" or harm to society, and I agree to give up any right I might have to a jury make that determination.

_____ (b) I know that if I receive a sentence to the Department of Corrections, I must serve a mandatory period of parole as indicted in the chart below. Parole is after, in addition to and distinct from any other sentence imposed. Additionally, if my parole is revoked I may be required to serve the time remaining on parole in the Department of Corrections. The period of parole I must serve is as indicated in the box marked in the following sentencing range chart:

| **MARKED BOX BELOW INDICATES APPLICABLE SENTENCING RANGE** | **FELONIES** COMMITTED ON OR AFTER JULY 1, 1993 | | | | | |
|---|---|---|---|---|---|---|
| | | **PRESUMPTIVE RANGE** | | **EXTRAORDINARY CIRCUMSTANCES** | | **MANDATORY PERIOD of PAROLE** |
| | CLASS | MINIMUM | MAXIMUM | MINIMUM | MAXIMUM | MANDATORY PAROLE |
| | **1** | Life Imprisonment | Death | Life Imprisonment | Death | |
| | **2** | 8 years $5,000 fine | 24 years $1,000,000 fine | 4 years | 48 years | 5 years |
| **X** | **3** Extra-ordinary Risk Crime | 4 years $3000 fine | 12 years $750,000 fine | 2 years | 24 years | 5 years |
| | | 4 years $3000 fine | 16 years $750,000 fine | 2 years | 32 years | 5 years |
| | **4** Extra-ordinary Risk Crime | 2 years $2000 fine | 6 years $500,000 fine | 1 year | 12 years | 3 years |
| | | 2 years $2000 fine | 8 years $500,000 fine | 1 year | 16 years | 3 years |
| | **5** Extra-ordinary Risk Crime | 1 year $1000 fine | 3 years $100,000 fine | 6 months | 6 years | 2 years |
| | | 1 year $1000 fine | 4 years $100,000 fine | 6 months | 8 years | 2 years |
| | **6** Extra-ordinary Risk Crime | 1 year $1000 fine | 18 months $100,000 fine | 6 months | 3 years | 1 year |
| | | 1 year $1000 fine | 2 years $100,000 fine | 6 months | 4 years | 1 year |

Crimes that present an extraordinary risk of harm to society shall include the following:
1. Aggravated robbery, section 18-4-302
2. Child abuse, section 18-6-401
3. Unlawful distribution, manufacturing, dispensing, sale, or possession of a controlled substance with the intent to sell, distribute, manufacture, or dispense, section 18-18-405 (Note-not simple possession)
4. Any crime of violence as defined in section 18-1.3-406
5. Stalking, section 18-3-602, or section 18-9-111(4) as it existed prior to August 11, 2010
6. Sale of materials to manufacture controlled substances, section 18-18-412.7

| **MARKED BOX BELOW INDICATES APPLICABLE SENTENCING RANGE** | **MISDEMEANORS** COMMITTED ON OR AFTER JULY 1, 1993 | | |
|---|---|---|---|
| | TYPE | MISDEMEANORS | |
| | CLASS | MINIMUM | MAXIMUM |
| | **1** | **6 MONTHS $500 FINE** | **18 MONTHS $5,000 FINE** |
| | EXTRAORDINARY RISK CRIME | 6 MONTHS $500 FINE | 24 MONTHS $5,000 FINE |
| | 2 | 3 MONTHS $250 FINE | 12 MONTHS $1,000 FINE |
| | 3 | $50 FINE | 6 MONTHS $750 FINE |

Misdemeanors which present an extraordinary risk or harm to society shall include the following:
1) Child abuse;
2) Third degree assault;
3) Third degree sex assault prior to July 1, 2000;
4) Unlawful sexual contact, on and after July 1, 2000;
5) Second degree sexual assault, prior to July 1, 2000;
6) Sexual assault, on and after July 1, 2000;
7) Violation of restraining order – 2nd and subsequent offenses;
8) Failure to register as a sex offender.

_____ Based on the above, I understand the sentencing ranges that are applicable for my crime(s).

_____ (c) I know that if the Court sentences me to incarceration for a felony, that sentence must be to at least the midpoint, but not more than twice the maximum in the presumptive range, if, at the time of committing the crime(s) in this case I was:

- _____ On probation or parole for another felony, or
- _____ Confined or had escaped while completing a felony sentence, or
- _____ On a felony appeal bond, or
- _____ If I am pleading guilty in this case to a crime of violence.

I understand and agree that by pleading guilty, I agree to allow the Judge to determine whether any of these circumstances are present in my case, and I agree to give up any right I might have to have a jury make that determination. Further, I admit that circumstances that I have initialed above are present in my case.

_____ (d) I know that if the Court sentences me to incarceration for a felony, the Court must sentence me to at least the minimum, but not more than twice the maximum in the presumptive range, if, at the time of committing the crime(s) in this case I was:

- _____ Charged with or on bond for another felony in another case for which I have now been convicted, or
- _____ Under a Deferred Judgment and Sentence for a felony, or
- _____ On a juvenile parole for an offense that would be considered an adult felony, or
- _____ On bond after pleading guilty to a lesser offense when the original offense charged was a felony.

I understand and agree that by pleading guilty, I agree to allow the Judge to determine whether any of these circumstances are present in my case, and I agree to give up any right I might have to have a jury make that determination. Further, I admit that circumstances that I have initialed above are present in my case.

_____ (e) I know that the sentence is imposed by the Court. The Court is not bound by any promises made by anyone concerning sentencing. Any promises or agreements made to me with respect to the sentence that are not set forth in this document are invalid.

_____ (f) I know that by pleading guilty to a felony offense, from this point forward I may not and it will be illegal for me to own, possess, or use any firearms.

_____ (g) I understand and agree that by pleading guilty to any criminal offense in this case, if I have a history of any sex offenses or if I have been previously convicted on or after January 1, 1994, of any type of sex-related criminal offense, including attempt, solicitation, and conspiracy to commit a sex-related criminal offense, or if I have been previously convicted on or after July 1, 2000, of any criminal offense, the underlying factual basis of which involved a sex-related criminal offense, I will be required, as part of the pre-sentence investigation by the Probation Department, to submit to a mental health sex-offense specific evaluation, and that I may be required to undergo sex offender treatment to the extent appropriate. I further understand that such sex offender supervision may include treatment, therapy, monitoring, and intensive supervision, which includes specific conditions that have been explained to me.

_____ (h) I know that I could be fined for my crime(s) in any amount from the minimum to the maximum. I also know that I will be charged with additional costs and fees. I know that the Court may impose both a sentence and a fine.

_____ (i) I know that if I am granted the privilege of probation, I could be required to serve up to 90 days in the Arapahoe County Detention Center for each felony (60 days for each misdemeanor) as a condition of probation. I also understand that as a condition of my probation I could be required to serve up to two years in the Arapahoe Detention Center on work or education release. I know that as a condition of my probation, I must pay restitution, all fines, fees, and court ordered costs.

_____ (j) I know that my conviction can result in adverse collateral consequences including but not limited to adverse consequences for my employment, any licenses I hold, my housing, and/or my immigration status. I waive the right to request or receive any order for relief from those collateral consequences pursuant to § 18-1.3-107 C.R.S. and related laws.

 _____ (k) I have been advised, understand, and specifically waive my right to request any reduction or reconsideration of sentence pursuant to C.R.C.P. 35(b).

 _____ (m) Regardless of what sentence is imposed by the Court I know that I must pay restitution or any other costs, if ordered by the Court.

**I swear or affirm that I have read and understand this entire document as well as any attachments, and every representation I have made is true**.

Defendant: _____ Date: 06/03/2023

**As defense counsel, I affirm that the above-named defendant has executed the foregoing DEFENDANT'S CRIM. P. RULE 11 GUILTY PLEA ADVISEMENT. As defense counsel I have thoroughly reviewed this document and any attachments with the defendant in regard to the entry of this guilty plea.**

Defense Counsel: _____

Reg. No.: 41529

Date: 06/03/2023

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| DISTRICT COURT,<br>ARAPAHOE COUNTY, COLORADO<br><br>7325 S. Potomac St.<br>Centennial, CO 80112<br>**THE PEOPLE OF THE STATE OF COLORADO**<br><br>**vs.**<br><br>**GARY JULE DRAGUL,**<br>**DOB: 05/07/1962**<br><br>Defendant. | ▲ **COURT USE ONLY** ▲ |
| | Case No.: 2019CR610<br><br>Div.: 407 |
| **PLEA AGREEMENT** | |

Below is the complete and accurate agreement between the People of the State of Colorado, as represented by the People, and the above-named defendant. All concessions and stipulations are fully set forth herein.

**1.** The Defendant will enter a plea of GUILTY to the charge(s) of: **Count Five, Securities Fraud, in violation of §§ 11-51-501(1)(c) and 11-51-603(1) C.R.S. (Class 3 Felony).**

**2.** In exchange for the above guilty plea(s), at sentencing the People will move to dismiss any remaining counts in the Grand Jury Indictment.

**3.** The People and the Defendant have agreed to the following (**subject to the approval of the Court**):

- The parties stipulate that the Defendant shall be sentenced to ten (10) years of Economic Crime Probation at Count Five. The Defendant shall comply strictly with all terms and conditions as set forth by the Economic Crime Probation Officer. Probation shall run concurrent with 2018CR1092.

- As a punitive sanction, the Defendant agrees to serve sixty (60) days in the Arapahoe County Jail, which will run consecutive to 2018CR1092 (120 days total), followed by a period of eight (8) months of in-home detention, which will run concurrent to 2018CR1092.

- As a material condition of the plea agreement, the Defendant stipulates to restitution in the amount of one million dollars ($1,000,000.00) at 2018CR1092. The Defendant shall forthwith initiate a transfer of $700,000 to his attorney's COLTAF account. That money shall be paid within 10 days of the Defendant's plea of guilty. If the Defendant fails to pay restitution consistent with the terms of the agreement at 2018CR1092, then he is subject to open sentencing on all counts.

- The Defendant stipulates to a factual basis for restitution at 2019CR610, as enumerated in the Grand Jury Indictment and agrees to pay restitution for any counts dismissed as part of this plea agreement. Restitution shall be determined later by stipulation or at a contested restitution hearing.

- As a material condition of the plea agreement, the Defendant agrees to actively cooperate with Receiver Harvey Sender to facilitate an amicable resolution to any remaining litigation in the Dragul Receivership.

- The Defendant shall complete 100 hours of useful public service.

- If the Defendant pays all restitution, the People agree not to object to a petition for early termination of probation supervision.

**3.** I have reviewed the foregoing Plea Agreement, and the terms are fully set forth in this document. No amendments will be made to the plea agreement unless the terms are set forth in writing and agreed to by signature of all parties. Any amendment to the foregoing plea agreement is subject to the Court's approval.

Dated this 3rd day of June, 2023.

By: */s/ Daniel A. Pietragallo*
Daniel A. Pietragallo
Senior Assistant Attorney General

By: _____
Josh Amos, Esq.
Counsel for GARY JULE DRAGUL

By: _____
Tyrone Glover, Esq.
Counsel for GARY JULE DRAGUL

By: _____
GARY JULE DRAGUL,
Defendant

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|---|---|
| DISTRICT COURT,<br>ARAPAHOE COUNTY, COLORADO<br><br>7325 S. Potomac St.<br>Centennial, CO 80112<br>**THE PEOPLE OF THE STATE OF COLORADO**<br><br>**vs.**<br><br>**GARY JULE DRAGUL,**<br>**DOB: 05/07/1962**<br><br>Defendant. | ▲ **COURT USE ONLY** ▲ |
| | Case No.: 2019CR610<br><br>Div.: 407 |
| **ADVISEMENT OF ELEMENTS OF THE CRIME** | |

I understand that at a trial the prosecutor would have to prove each and every element of the offense(s) to which I am pleading beyond a reasonable doubt, the highest burden of proof under the law.

The following are the ESSENTIAL elements of the charges, **Count Five, Securities Fraud, in violation of §§ 11-51-501(1)(c) and 11-51-603(1) C.R.S. (Class 3 Felony),** for which I am entering a plea of guilty. At a trial the prosecution would have to prove each of these elements beyond a reasonable doubt.

1. That the crime occurred on or about and between January 1, 2013 and August 30, 2013.

2. That the crime(s) occurred in, or are triable in, Arapahoe County, State of Colorado.

3. That the crime(s) were committed willfully. A person acts "knowingly" or "willfully" with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of such nature or that such circumstance exists. A person acts "knowingly" or "willfully" with respect to a result of his/her conduct when he/she is aware that his/her conduct is practically certain to cause the result.

4. The elements of Securities Fraud, in violation of §§ 11-51-501(1)(c) and 11-51-603(1) C.R.S. (Class 3 Felony), are as follows:

    a. The defendant,

    b. in the State of Colorado, on or between the dates stated,

    c. in connection with the offer or sale of any security,

    d. directly or indirectly,

    e. willfully

    f. engaged in any act, practice or course of business which operated or would operate as a fraud or deceit upon any person.

5. I have read and understand the above elements of the charges.

| | | | |
|---|---|---|---|
| | 06/03/2023 | | 06/03/2023 |
| Defendant | Date | Attorney for Defendant | Date |

| | |
|---|---|
| DISTRICT COURT,<br>ARAPAHOE COUNTY, COLORADO<br><br>7325 S. Potomac St.<br>Centennial, CO 80112<br>**THE PEOPLE OF THE STATE OF COLORADO**<br><br>**vs.**<br><br>**GARY JULE DRAGUL,**<br>**DOB: 05/07/1962**<br><br>Defendant. | ▲ **COURT USE ONLY** ▲ |
| | Case No.: 2019CR610<br><br>Div.: 407 |

**STATEMENT REGARDING**
**DEFENDANT'S STIPULATION TO FACTUAL BASIS FOR PLEA**

Defendant agrees that there are sufficient facts, including but not limited to those as set forth in the discovery provided to me, that if believed by a jury beyond a reasonable doubt, shall serve as an adequate factual basis for the guilty plea. As a result, he stipulates to the factual basis, as enumerated in the Grand Jury Indictment.

Dated this 3rd day of June, 2023.

By: _____
GARY JULE DRAGUL

# FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237
Phone: (720) 200-1200 Fax: (303) 889-1959

**Buyers/Borrowers Closing Statement**

**FINAL**

**Escrow No:** F0531869 - 017 LM6 **Close Date:** 01/22/2016 **Proration Date:** 01/22/2016 **Disbursement Date:** 01/22/2016



**Buyer(s)/Borrower(s):** PS 16, LLC, a Delaware limited liability company
**Seller(s):** Prospect Square 15, LLC, and Ohio limited liability company
**Lender:** CALMWATER CAPITAL 3, LLC
**Property:** 9654-9722 Colerain Ave-Prospect Square
Cincinnati, OH
**Brief Legal:**

| Description | Debit | Credit |
|---|---|---|
| **TOTAL CONSIDERATION:** | | |
| Total Consideration | 13,800,000.00 | |
| Earnest Money Deposit | | 100,000.00 |
| Membership Interest Deposit for Hagshama Prospect Square | | 2,335,079.00 |
| Membership Interest Deposit for CoFund 2, LLC | | 2,000,000.00 |
| Membership Interest Deposit for GDA PS 16 LLC | | 481,675.00 |
| **NEW AND EXISTING ENCUMBRANCES:** | | |
| New Loan from CALMWATER CAPITAL 3, LLC | | 12,970,000.00 |
| **NEW LOAN CHARGES: - CALMWATER CAPITAL 3, LLC** | | |
| TI Holdback to CALMWATER CAPITAL 3, LLC | 2,500,000.00 | |
| Interest Holdback to CALMWATER CAPITAL 3, LLC | 400,000.00 | |
| Interest to CALMWATER CAPITAL 3, LLC | 26,853.33 | |
| Original Issue Discount to CALMWATER CAPITAL 3, LLC | 209,400.00 | |
| Due Diligence Deposit | | 30,000.00 |
| Due Diligence Expenses to CALMWATER CAPITAL 3, LLC | 27,660.45 | |
| **ESCROW CHARGES** | | |
| Escrow Closing Charge to Fidelity National Title Insurance Company | 550.00 | |
| Escrow Loan Closing Charge to Fidelity National Title Insurance Company | 550.00 | |
| **TITLE CHARGES:** | | |
| Owners Policy for $13,800,000.00 to Fidelity National Title Insurance Company One-Half | 26,634.00 | |
| Search/Exam Fees to Fidelity National Title Insurance Company | 500.00 | |
| Lenders Policy for $12,570,000.00 to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 9.1 Comprehensive Endorsement OP to Fidelity National Title Insurance Company | 1,104.00 | |
| ALTA 17 Access Endorsement OP to Fidelity National Title Insurance Company | 150.00 | |
| ALTA 17.2 Utility Access Endorsement OP to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 18 Tax Parcel Endorsement OP to Fidelity National Title Insurance Company | 50.00 | |
| ALTA 19 Contiguity Endorsement OP to Fidelity National Title Insurance Company | 50.00 | |
| ALTA 25 Survey Endorsement OP to Fidelity National Title Insurance Company | 150.00 | |
| ALTA 28 Forced Removal Endorsement OP to Fidelity National Title Insurance Company | 1,500.00 | |
| OH 101.1 Survey Deletion OP to Fidelity National Title Insurance Company | 100.00 | |
| Arbitration OP & LN to Fidelity National Title Insurance Company | | |
| ALTA 3.1 Zoning Endorsement LN to Fidelity National Title Insurance Company | 7,216.25 | |
| ALTA 8.2 Environmental LN to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 9 Comprehensive Endorsement LN to Fidelity National Title Insurance Company | 648.50 | |
| ALTA 17 Access Endorsement LN to Fidelity National Title Insurance Company | 150.00 | |
| ALTA 17.2 Utility Access Endorsement LN to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 19 Contiguity Endorsement LN to Fidelity National Title Insurance Company | 50.00 | |
| ALTA 22 Location Endorsement LN to Fidelity National Title Insurance Company | 150.00 | |
| ALTA 24 Doing Business Endorsement LN to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 25 Survey Endorsement LN to Fidelity National Title Insurance Company | 150.00 | |
| ALTA 26 Subdivision Endorsement LN to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 27 Usury Endorsement LN to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 28 Forced Removal Endorsement LN to Fidelity National Title Insurance Company | 1,500.00 | |
| Assignment of Leases and Rents Endorsement LN to Fidelity National Title Insurance Company | 250.00 | |
| OH 112 Mechanics Lien Endorsement LN to Fidelity National Title Insurance Company | | |
| OH 101 Survey Deletion LN to Fidelity National Title Insurance Company | | |

# FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237

Phone: (720) 200-1200 Fax: (303) 889-1959

**Buyers/Borrowers Closing Statement**

**FINAL**

**Escrow No:** F0531869 - 017 LM6 **Close Date:** 01/22/2016 **Proration Date:** 01/22/2016 **Disbursement Date:** 01/22/2016

| Description | Debit | Credit |
|---|---|---|
| Policy Authentication LN to Fidelity National Title Insurance Company | | |
| ALTA 18.1 Multiple Tax Parcel Endorsement LN to Fidelity National Title Insurance Company | 50.00 | |
| ALTA 17.1 Access & Entry Endorsement LN to Fidelity National Title Insurance Company | 250.00 | |
| **RECORDING FEES:** | | |
| Recording Fee Escrow to Fidelity National Title Insurance Company | 450.00 | |
| **ADDITIONAL CHARGES:** | | |
| Survey Invoice to Thomas Graham Associates Inc | 2,400.00 | |
| Invoice to H.C. Nutting Company | 1,235.43 | |
| Acquisition Fee to GDA Real Estate Service | 207,000.00 | |
| Legal Fees to Brownstein Hyatt Farber Schreck, LLP | 51,480.00 | |
| Expenses to Mansfield Equities | 103,750.00 | |
| Legal Fees to The Conundrum Group | 31,727.00 | |
| Equity Arrangement to Hagshama | 216,754.00 | |
| Reimbursement of EM Deposit to GDA Real Estate Service | 100,000.00 | |
| Reimbursement of Due Diligence Deposit to GDA Real Estate Service | 30,000.00 | |
| Accounting Fee to Reinhart & Associates | 10,000.00 | |
| Overstated Equity Arrangment Refund to PS 16, LLC, a Delaware limited liability company | 999.95 | |
| **PRORATIONS AND ADJUSTMENTS:** | | |
| 2015 Real Estate Taxes | | 157,848.70 |
| January Rent | | 29,315.51 |
| January NNN | | 4,989.03 |
| Security Deposits | | 2,231.83 |
| January Service Contracts | | 738.72 |
| Prepaid Rent | | 1,900.67 |
| Golden Dragon Building Repair | 3,432.00 | |
| **PROPERTY TAXES** | | |
| First Half 2015 Real Estate Taxes Due to Hamilton County Treasurer | 165,561.33 | |
| Sub Totals | 17,932,066.24 | 18,113,778.46 |
| Refund Due Buyer | 181,712.22 | |
| Totals | 18,113,778.46 | 18,113,778.46 |

APPROVED AND ACCEPTED

Sales or use taxes on personal property not included. Fidelity National Title Company assumes no responsibility for the adjustment of special taxes or assessments unless they are shown on the Treasurer's Certificate of Taxes Due. The condition of title to the property is to be determined by reference to the title evidence provided by Seller or by personal investigation. The above statement of settlement is approved as of the settlement date shown above and Escrow Holder is hereby authorized to disburse as Trustee funds as indicated.

**Buyer(s)/Borrower(s):**

PS 16, LLC, a Delaware limited liability company

By: GDA PS Management, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado corporation, its Manager

SEE ATTACHED SINGATURE PAGE

By: Gary J. Dragul, President

**Closing Agent:**

FIDELITY NATIONAL TITLE INSURANCE COMPANY

by Lindsey Mann

**PS 16, LLC,**
a Delaware limited liability company

By: GDA PS Management, LLC,
a Colorado limited liability company,
its Manager

By: GDA Real Estate Management, Inc.,
a Colorado corporation,
its Manager

By: _____
Gary J. Dragul, President

| | |
|---|---|
| **DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO**<br>1437 Bannock Street<br>Denver, CO 80202 | DATE FILED<br>July 25, 2025 10:55 AM<br>FILING ID: 5069084E234C1<br>CASE NUMBER: 2018CV33011 |
| **Plaintiff:** CHRIS MYKLEBUST SECURITIES COMMISSIONER FOR THE STATE OF COLORADO,<br>v.<br>**Defendants:** GARY DRAGUL, et al. | **▲ COURT USE ONLY ▲** |
| *Attorney for Non-Party Hagshama:*<br>Kenneth F. Rossman, IV, No. 29249<br>LEWIS ROCA ROTHGERBER CHRISTIE LLP<br>1200 17th Street, Suite 3000<br>Denver, CO 80202-5835<br>303.623.9000<br>krossman@lrrc.com | Case No: 2018CV033011<br><br>Courtroom: 424 |

**HAGSHAMA PROSPECT SQUARE, LLC CLAIM FORM**

The undersigned Claimant hereby asserts a claim against the Receivership Estate of Gary J. Dragul ("Dragul"); GDA Real Estate Services, LLC; GDA Real Estate Management, LLC; and related entities (collectively, "Dragul and the GDA Entities" or the "Estate").

1. Amount of Claim as it existed on August 30, 2018.

| | |
|---|---|
| Claim is asserted against: | Receivership Estate;<br>GDA PS Member, LLC and<br>GDA Real Estate Management, LLC ("Manager");<br>Gary J. Dragul |
| Actual damages: | $ 2,335,079 (minus anything recovered and paid from property) |
| Consequential and other damages, if any: | $ 2,041,247 (guarantee profit not paid; subject to adjustment as described below)<br>$ 143,796 (Claimant share of loan breach default rate through 3/18/19)<br>Other amounts still being incurred and identified. Claimant reserves the right to amend as facts develop. |
| Interest, if any: | 8% prejudgment interest to be calculated |

| | |
|---|---|
| Attorneys' fees and costs, if any: | Fees have been and will continue to be incurred across Hagshama-related entities. Total fees exceed $100,000 and will be provided upon request. |
| Other: | $ |
| **TOTAL:** | $ TBD |

2. The foregoing claim arose on following events:

Claimant has claims against the Receivership Estate, Manager, and Gary J. Dragul for breach of contract, breach of fiduciary duty, and fraud arising from the following:

- Manager failed to timely notify Claimant of the material fact of institution of criminal proceedings against Gary J. Dragul by the State of Colorado and made material misstatements about the significance and potential impact of on-going proceedings in violation of Articles 8.5 and 6.14.D of the governing Operating Agreement;
- Manager conceded to appointment of a receiver without prior approval by Claimant in violation of Article 6.14.B of the governing Operating Agreement;
- Manager co-mingled investment funds with the Managers' or other persons' funds in violation of Article 6.14.F of the governing Operating Agreement;
- Manager provided for compensation to be paid to the Mangers or affiliated persons other than as expressly provided for in the Operating Agreement in violation of Article 6.14.O of the governing Operating Agreement;
- Manager failed to timely pay required distributions as required under Article 5.4 of the governing Operating Agreement;
- Manager failed to satisfy terms required to be performed on or by Promoter's Target Date;
    - Under Article 5.4.B.(iii), the Claimant's distribution percentage shall be increased by 1% for each month following the Promoter's Target Date.
    - Under Article 5.4.B.(iv), the GDA Manager shall pay Claimant an amount equal to its percentage interest of the Appraised Value.
- Manager failed to manage in accordance with the Business Plan as required under Article 7.1.B.i of the governing Operating Agreement;
- Manager breached representations and warranties in Article 15.2 of the governing Operating Agreement;
- Manager failed to provide complete books and records upon demand in violation of Articles 8, 7.5 and 6.14.D of the governing Operating Agreement;
- Manager and Gary J. Dragul engaging in fraud, willful misconduct, and gross negligence as described in the criminal indictment against Gary J. Dragul, in the complaint filed in the above-captioned Securities Commissioner's action; and as will be further described

following complete review of the books and records, in violation of Articles 16, 15.2, 7.3.A, and 6.14.D of the governing Operating Agreement and the Guarantee and Undertaking.
    - Under Article 5.4.B.(i), the Manager's percentage shall be reduced to 0% and Claimant's interest increased accordingly.
- Manager's actions have resulted in material harm to the investment in the form of default interest and other fees charged by lender, in addition to additional administrative costs and expenses.
- Under Article 16 of the governing Operating Agreement, Manager owes Claimant indemnification from all losses, damages, and costs (including attorneys' fees).
- Under the Guarantee and Undertaking, Gary J. Dragul owes Claimant protection against all losses, damages, and failed payments.

The governing Operating Agreement and executed Guaranty and Undertaking are submitted with this claim. Other documents identified or necessary will be provided as requested.

3. This claim is (select one):

[x ] unsecured; OR,
[ ] secured by the following collateral or security: N/A

4. If the claim is secured, please identify the location of all collateral: N/A

5. If the claim includes interest, please specify each of the reasons for such interest and the rate thereof (e.g. contract, statute, etc.): 8% prejudgment interest under Colorado Revised Stat.§ 5-12-102.

6. The nature and value of any offset or counterclaim *(i.e.,* money or property that you owe Dragul, the GDA Entities, or the Estate, or any claims that Dragul, the GDA Entities, or the Estate may have against you): N/A

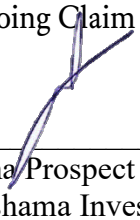
7. If you are currently represented by an attorney, please complete the following:

Kenneth F. Rossman, IV, No. 29249
LEWIS ROCA ROTHGERBER CHRISTIE LLP
1200 17th Street, Suite 3000
Denver, CO 80202-5835
303.623.9000
303.623.9222 (fax)
krossman@lrrc.com

**Claimant hereby certifies that it has dismissed any other pending suits or proceedings it has commenced against Dragul, the Dragul entities, or the Receivership Estate and that it will**

**not file (or re-file) any suit or proceeding in another forum without the Receiver's permission or leave of this Court.**

8. I hereby certify and attest, under the penalty of perjury, that the information contained in the foregoing Claim Form is true and correct:



_____

Hagshama Prospect Square, LLC
By: Hagshama Investments, LLC, Manager, by: Hanania Shemesh, Manager
Dated: March 18, 2019

DATE FILED
July 25, 2025 10:55 AM
FILING ID: 5069084E234C1
CASE NUMBER: 2018CV33011

| | |
|---|---|
| **DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO**<br>1437 Bannock Street<br>Denver, CO 80202 | |
| **Plaintiff:** CHRIS MYKLEBUST SECURITIES COMMISSIONER FOR THE STATE OF COLORADO,<br>v.<br>**Defendants:** GARY DRAGUL, et al. | **▲ COURT USE ONLY ▲** |
| *Attorney for Non-Party Hagshama:*<br>Kenneth F. Rossman, IV, No. 29249<br>LEWIS ROCA ROTHGERBER CHRISTIE LLP<br>1200 17th Street, Suite 3000<br>Denver, CO 80202-5835<br>303.623.9000<br>krossman@lrrc.com | Case No: 2018CV033011<br><br>Courtroom: 424 |

**COFUND 2, LLC CLAIM FORM**

The undersigned Claimant hereby asserts a claim against the Receivership Estate of Gary J. Dragul ("Dragul"); GDA Real Estate Services, LLC; GDA Real Estate Management, LLC; and related entities (collectively, "Dragul and the GDA Entities" or the "Estate").

1. Amount of Claim as it existed on August 30, 2018.

| | |
|---|---|
| Claim is asserted against: | Receivership Estate;<br>GDA PS Member, LLC and<br>GDA Real Estate Management, LLC<br>("Manager");<br>Gary J. Dragul |
| Actual damages: | $ 2,000,000 (minus anything recovered and paid from property) |
| Consequential and other damages, if any: | $ 1,902,582 (guaranteed profit not paid; subject to adjustment as described below)<br>$ 123,152 (Claimant share of loan breach default rate through 3/18/19)<br>Other amounts still being incurred and identified. Claimant reserves the right to amend as facts develop. |
| Interest, if any: | 8% prejudgment interest to be calculated |

| | |
|---|---|
| Attorneys' fees and costs, if any: | Fees have been and will continue to be incurred across Hagshama-related entities. Total fees exceed $100,000 and will be provided upon request. |
| Other: | $ |
| **TOTAL:** | $ TBD |

2. The foregoing claim arose on following events:

Claimant has claims against the Receivership Estate, Manager, and Gary J. Dragul for breach of contract, breach of fiduciary duty, and fraud arising from the following:

- Manager failed to timely notify Claimant of the material fact of institution of criminal proceedings against Gary J. Dragul by the State of Colorado and made material misstatements about the significance and potential impact of on-going proceedings in violation of Articles 8.5 and 6.14.D of the governing Operating Agreement;
- Manager conceded to appointment of a receiver without prior approval by Claimant in violation of Article 6.14.B of the governing Operating Agreement;
- Manager co-mingled investment funds with the Managers' or other persons' funds in violation of Article 6.14.F of the governing Operating Agreement;
- Manager provided for compensation to be paid to the Mangers or affiliated persons other than as expressly provided for in the Operating Agreement in violation of Article 6.14.O of the governing Operating Agreement;
- Manager failed to timely pay required distributions as required under Article 5.4 of the governing Operating Agreement;
- Manager failed to satisfy terms required to be performed on or by Promoter's Target Date;
    - Under Article 5.4.B.(iii), the Claimant's distribution percentage shall be increased by 1% for each month following the Promoter's Target Date.
    - Under Article 5.4.B.(iv), the GDA Manager shall pay Claimant an amount equal to its percentage interest of the Appraised Value.
- Manager failed to manage in accordance with the Business Plan as required under Article 7.1.B.i of the governing Operating Agreement;
- Manager breached representations and warranties in Article 15.2 of the governing Operating Agreement;
- Manager failed to provide complete books and records upon demand in violation of Articles 8, 7.5 and 6.14.D of the governing Operating Agreement;
- Manager and Gary J. Dragul engaging in fraud, willful misconduct, and gross negligence as described in the criminal indictment against Gary J. Dragul, in the complaint filed in the above-captioned Securities Commissioner's action; and as will be further described

following complete review of the books and records, in violation of Articles 16, 15.2, 7.3.A, and 6.14.D of the governing Operating Agreement and the Guarantee and Undertaking.
    - Under Article 5.4.B.(i), the Manager's percentage shall be reduced to 0% and Claimant's interest increased accordingly.
- Manager's actions have resulted in material harm to the investment in the form of default interest and other fees charged by lender, in addition to additional administrative costs and expenses.
- Under Article 16 of the governing Operating Agreement, Manager owes Claimant indemnification from all losses, damages, and costs (including attorneys' fees).
- Under the Guarantee and Undertaking, Gary J. Dragul owes Claimant protection against all losses, damages, and failed payments.

The governing Operating Agreement and executed Guaranty and Undertaking are submitted with this claim. Other documents identified or necessary will be provided as requested.

3. This claim is (select one):

[x ] unsecured; OR,
[ ] secured by the following collateral or security: N/A

4. If the claim is secured, please identify the location of all collateral: N/A

5. If the claim includes interest, please specify each of the reasons for such interest and the rate thereof (e.g. contract, statute, etc.): 8% prejudgment interest under Colorado Revised Stat.§ 5-12-102.

6. The nature and value of any offset or counterclaim *(i.e.,* money or property that you owe Dragul, the GDA Entities, or the Estate, or any claims that Dragul, the GDA Entities, or the Estate may have against you): N/A

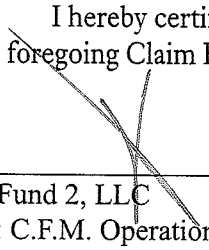
7. If you are currently represented by an attorney, please complete the following:

Kenneth F. Rossman, IV, No. 29249
LEWIS ROCA ROTHGERBER CHRISTIE LLP
1200 17th Street, Suite 3000
Denver, CO 80202-5835
303.623.9000
303.623.9222 (fax)
krossman@lrrc.com

**Claimant hereby certifies that it has dismissed any other pending suits or proceedings it has commenced against Dragul, the Dragul entities, or the Receivership Estate and that it will**

**not file (or re-file) any suit or proceeding in another forum without the Receiver's permission or leave of this Court.**

8. I hereby certify and attest, under the penalty of perjury, that the information contained in the foregoing Claim Form is true and correct:



CoFund 2, LLC
By: C.F.M. Operations LTD, Maneger, by: Shlomo Aharony, Manager
Dated: March 18, 2019

**COMMON PLEAS COURT**
**HAMILTON COUNTY, OHIO**



| | | |
|---|---|---|
| **U.S. REAL ESTATE CREDIT HOLDINGS III, LP** | : | CASE NO. A 1 8 0 6 7 7 6 |
| | : | JUDGE _____ |
| Plaintiff, | : | |
| | : | |
| v. | : | ***EX PARTE* MOTION FOR EMERGENCY APPOINTMENT OF A RECEIVER PURSUANT TO O.R.C. § 2735 *et seq.*** |
| **PS 16, LLC, *et al.*** | : | |
| Defendants. | : | |

## INTRODUCTION

In addition to the filing of the *Complaint for Money, Foreclosure and Judicial Sale of Real Estate Pursuant to O.R.C. § 2735 et seq. and Related Relief* (the "Complaint"), Plaintiff U.S. Real Estate Credit Holdings III, LP ("U.S. Real Estate"), concurrently files this *Ex Parte* Motion Seeking the **Emergency** Appointment of a Receiver to take possession of the Property (the "Motion"). U.S. Real Estate incorporates herein the facts set forth in the Complaint and in the Affidavit of Simond Lavian filed in further support hereof (the "Affidavit").[1] Based on these facts and applicable law discussed herein, U.S. Real Estate is entitled to the appointment of a receiver on an emergency, *ex parte* basis. U.S. Real estate respectfully requests this Court enter an order granting the Motion and appoint John Rothschild (the "Proposed Receiver").

## BACKGROUND

Defendant, PS 16, LLC ("PS 16"), is the owner of certain commercial real estate located at 9690 Colerain Avenue, Hamilton County, Ohio (the "Property"). The Property is a shopping center with commercial tenants providing goods and services to the public. PS 16 is a Delaware limited liability company whose members and manager are directly or indirectly controlled by

[1] All capitalized terms not herein defined shall have the definition established in the Complaint.

Gary J. Dragul. *See* **Exhibit A** (Written Consent of PS 16, LLC dated December 22, 2015, identifying Dragul as (1) president of GDA Real Estate Management, Inc., the manager of GDA PS Management, LLC, which, in turn is the manager of PS 16 and (2) the president of GDA Real Estate Management, Inc.)

PS 16, acting through Dragul, is party to certain loan documents as set forth in the Complaint, including a Note in the principal amount of $12,970,000, a Mortgage, which is a first-priority lien on the Property and secures, *inter alia*, the Note, an Assignment of Leases and Rents, and a Forbearance Agreement (executed by Dragul in the capacities described above following the Maturity Date of the Note) (collectively, with other ancillary and related instruments, extensions, modifications, amendments and renewals, the "Loan Documents"). Dragul is also obligated on a limited-recourse guarantee for sums due under the Loan Documents.

In April 2018, unbeknownst to U.S. Real Estate, Dragul was indicted by the Colorado Attorney General on nine counts of securities fraud related to an alleged scheme involving his company, GDA Real Estate Services, LLC (an affiliate of PS 16 and its managers and members), to defraud investors in various shopping center ventures. The indictment alleges Dragul hid or failed to disclose substantial liabilities in soliciting investments and misappropriated investor capital for personal use or to repay unrelated liabilities in violation of various anti-fraud provisions of the Colorado Securities Act. *See* **Exhibit B** (press release from the Colorado Department of Regulatory Agencies).[2] Dragul's criminal proceeding remains pending; following initial motion practice, Dragul is presently scheduled for an arraignment hearing to take place on

[2] *Available at:* https://www.colorado.gov/pacific/dora/gary-jule-dragul-indicted-securities-fraud-colorado (last retrieved 11/29/2018).

December 7, 2018. *See* **Exhibit C** (copy of the case docket for the District Court, Arapahoe County, Colorado, *State v. Dragul*, No. 2018CR1092).[3]

Following Dragul's indictment, again, unbeknownst to U.S. Real Estate, on or about August 19, 2018, Dragul's assets were frozen and placed into the hands of a receiver appointed in a corollary civil proceeding, *Gerald Rome, Securities Commissioner for the State of Colorado v. Dragul, et al.*, Denver District Court Case No. 2018-CV-33011. *See* **Exhibit D** ("Assets of Gary Jule Dragul Frozen During Ongoing Securities Fraud Case," *Targeted News Service*, Aug. 20, 2018); **Exhibit E** (press release of Colorado Department of Regulatory Agencies, Sept. 4, 2018);[4] and **Exhibit F** (copy of order appointing receiver of Dragul's assets, assets of GDA Real Estate Management, Inc., "including tangible and intangible assets, their interests in any subsidiaries or related companies, management and control rights…"). Despite the Colorado court's injunction, as late as October 17, 2018, Dragul continued to interact with U.S. Real Estate representatives with respect to the possible work-out of defaults that had arisen under the Loan Documents and new tenant negotiations as though nothing were amiss. *See* **Exhibit G** (redacted October 2018 exchanges of e-mail from Dragul to, among others, the undersigned counsel for U.S. Real Estate). In the course of this correspondence, Dragul did not disclose that his assets were frozen, did not disclose that he was under pending criminal indictment for his real estate investment management practices, and did not disclose that a receiver had been appointed to manage the affairs of the various investment vehicles on whose behalf he was purporting to act.

Dragul's use of his apparent authority to manage the Property, despite the injunction from the Colorado state court and pending criminal proceedings creates an untenable situation for U.S. Real Estate that poses an immediate threat to the economic value of the Property, which acts as

[3] *Also available at:* https://www.courts.state.co.us/dockets/ (last retrieved 11/28/2018).
[4] *Available at:* https://www.colorado.gov/pacific/dora/gary-dragul-receiver-appointed (last retrieved 11/29/2018).

the sole, non-recourse collateral for the Note. As the e-mail exchanges in **Exhibit G** show, Dragul actively engaged with a prospective tenant (to replace the premises recently vacated by Kroger) despite injunctive prohibitions from the Colorado state court that expressly rescinded all of Dragul's and GDA Real Estate Management, Inc.'s "management and control rights." Moreover, Dragul's potential criminal liability for allegedly improper real estate transactions puts any efforts to secure replacement tenants or address current tenant matters at extreme and immediate risk.

Fortunately, the consents contained within the Loan Documents provide a ready solution. Article II, Section 3.1(d) of the Mortgage provides:

> Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and **without notice to Borrower** and **without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Borrower** or any person or person liable for the payment of the indebtedness secured hereby, and **Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender**, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that, the appointment of such receiver, trustee, or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Lender, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Security Instrument or deed in lieu of foreclosure.

(emphasis added). Upon the institution of this action, by virtue of PS 16's consent, U.S. Real Estate immediately became entitled to obtain, without notice and without regard to the value of the Property, the appointment of a receiver.

Furthermore, under the Forbearance Agreement, PS 16 reaffirmed U.S. Real Estate's entitlement to the appointment of a receiver, agreeing to such an appointment on an *ex parte* basis, waived all rights to contest such appointment, all without regard to the sufficiency of the value of the Property to satisfy the Indebtedness. Specifically, the Forbearance Agreement provides:

> 8. Right to Receiver Upon Ex Parte Motion. In further recognition of the risks associated with Lender's execution and performance of this Agreement, and in consideration of the recitals and mutual covenants contained herein and for other good and valuable consideration, including, without limitation, the agreement of Lender to temporarily forbear from the exercise of certain of Lender's rights and remedies, the receipt and sufficiency of all of which are hereby acknowledged, Borrower hereby agrees that upon the occurrence of any Default Event, Lender shall be entitled to the appointment of a receiver for all or any part of the Property upon the ex parte filing of an affidavit by Lender with a court of competent jurisdiction that such Default Event under this Agreement has occurred, and that Lender shall be entitled to such appointment of a receiver without any further showing required of Lender other than the filing of such affidavit. Borrower hereby expressly acknowledges and agrees that Lender shall be entitled to such appointment of a receiver for all or any part of the Property on an ex parte basis as a matter of strict right and without notice to Borrower and/or Guarantor and without regard to the adequacy of the Property for the repayment of the indebtedness secured by the Security Instrument or the solvency of Borrower or Guarantor. Borrower hereby irrevocably consents to such appointment of a receiver for all or any part of the Property on such filing of an affidavit by Lender on an ex parte basis and without further showing and waives any and all notices of and defenses to such appointment. Borrower expressly acknowledges and agrees that Lender is presently entitled to the appointment of a receiver for the Property, and that in entering into this Agreement and agreeing to forbear from the exercise of Lender's rights and remedies, Lender is postponing Lender's exercise of the right to have a receiver appointed at this time. Borrower and is aware of the showing which would be necessary for Lender to obtain the appointment of a receiver for the Property and it is in contemplation of the fact that Lender would be able to make the necessary showing at this time that Borrower is hereby consenting to the appointment of a receiver for the Property on an ex parte basis and without further showing other than the filing of an affidavit by Lender with a court of competent jurisdiction that such Default Event under this Agreement has occurred.

## LAW AND ANALYSIS

### A. Standard for Appointment of Receiver

Ohio Revised Code § 2735.01 provides:

> (A) A receiver may be appointed by...the court of common pleas...in the following cases:
>
> ***
>
> (2) In an action by a mortgagee, for the foreclosure of the mortgagee's mortgage and sale of the mortgaged property, when it appears that the mortgage property is in danger of being lost, removed, materially injured, diminished in value, or squandered, or that the condition of the mortgage has not been performed, and ... The mortgagor has consented in writing to the appointment of a receiver.
>
> (3) To enforce a contractual assignment of rents and leases.

The Hamilton County Court of Common Pleas Local Rule 45(B)(1) provides the party seeking the appointment of a receiver in a foreclosure case shall schedule a hearing *unless* the mortgage provides for appointment of a receiver without notice. Further, Local Rule 45(B(2)(a) states that the movant must demonstrate:

> (1) That legal or equitable grounds exist necessitating the appointment of a receiver, and (2) That the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgaged debt, or on grounds other than those prescribed herein.

However, as noted above, in 2015, the Ohio General Assembly amended the statute authorizing the appointment of a receiver such that where (1) the mortgage has not been performed and the mortgage contains the mortgagor's consent to such appointment; or (2) the mortgagor has assigned the rents and leases to the mortgagor. O.R.C. § 2735.01(A)(2)-(3).

Additionally, Ohio courts have held that a borrower may, in the mortgage, like PS 16 has here, waive a requirement that the mortgagee establish danger to the property or the mortgagee's insecurity. For example, in *City National Bank v. WBP Investments, LLC*, 10th Dist. Franklin

No. 10AP-1134, 2011-Ohio-6129, a mortgage assignee sought appointment of a receivership after the appellant-mortgagors failed to make payments under the mortgage. In upholding the trial court's appointment of a receiver, the appellate court found the underlying mortgage contained a clause "providing that [the mortgagors] consented to the appointment of a receiver" and that appellant-mortgagors "waived the right to object to the appointment of a receiver." *Id.* at ¶ 11. The court also determined, through the appellee-mortgagee's affidavit, that units on the property were vacant and abandoned, the property's management company terminated its services, and there was a leak in the roof.

The appellant-mortgagors asserted that, as a matter of law, they could not consent to the receivership clauses in the mortgage. *Id.* at ¶ 12. The court rejected this argument and found that "appellate courts in Ohio…have concluded that the requirements of R.C. 2735.01 may be waived by contract." *Id.*, *citing Huntington Nat'l Bank v. Prospect Park, LLC*, 8th Dist. Cuyahoga No. 96218, 2011-Ohio-5391, *Harajli Mgmt. & Inv., Inc. v. A&M Invest. Strategies, Inc.*, 167 Ohio App. 3d 546 (6th Dist. 2006), *Metro. Sav. Bank v. Papadelis*, 9th Dist. Medina No. 2380-M, 1995 Ohio App. LEXIS 4038; *Columbia Sav. v. Mentor Inn Prop. Co., Ltd.*, 11th Dist. Lake No. 93-L-007, 1993 Ohio App. LEXIS 4769; *Cypress Sav. Assn. v. Richfield Assoc.*, 9th Dist. Summit No. 13679, 1989 Ohio App. LEXIS 785.

Thus, the appellate court upheld the receivership clauses in the mortgage and held that the appellant-mortgagors waived their right to object to the appointment of a receiver, and found that Ohio courts do not require a movant to establish all of the elements under § 2735.01(B) if the mortgage contains receivership clauses. In *Metropolitan Savings Bank v. Papadelis*, 1995 Ohio App. LEXIS 4038 (9th Dist. Ct. App. 1995), the appellate court considered the lower court's ruling that the mortgagor waived its right to challenge the appointment of a receiver

based on O.R.C. § 2735.01(B) (i.e., whether the property was worth more than the outstanding amount owed). Finding the mortgage contained receivership language to that effect, the court held "that if the parties to a mortgage contracted to allow the mortgagee to foreclose upon the occasion of the mortgagor's default without regard to the ability of the property to discharge the mortgage debt, then such contractual agreement [is] enforceable." *Id.* at *8. Therefore, the court affirmed the lower court's decision to appoint a receiver without even determining whether the value of the property was greater than the outstanding amounts owed.

**B. *Ex Parte* Appointment of a Receiver**

As with other requirements previously found in O.R.C. § 2735.01, the right to notice and a hearing before the appointment of a receiver may also be waived by a mortgagor. *Cypress Sav. Assn., supra*; *Noel v. Fannie Mae*, 8th Dist. No. 99CA00036, 1999 Ohio App. LEXIS 3537. The holdings of such authorities conform to this Court's Local Rule 45(B)(1)(b).

## APPLICATION OF LAW AND FACTS

In accordance with the foregoing legal principles and case law, U.S. Real Estate is entitled to the appointment of a receiver on an *ex parte*, emergency basis. The Mortgage and Forbearance Agreement each expressly provide that PS 16 consents to such appointment, without notice, and waives all grounds for objection. Therefore, Local Rule 45(B)(1)(b) does not require notice of this motion to PS 16. The language of these instruments unambiguously establishes that PS 16 consents to a receivership in the event of foreclosure. Further, just as in *Papadelis*, Borrower waived its right to object based on § 2735.01(B) because the Mortgage clearly states such waiver is "without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Borrower." PS 16 reaffirmed these commitments in the Forbearance Agreement, and expressly waived all defenses and right to

notice and consented to a receiver's appointment on an *ex parte* basis. PS 16 is bound by these terms and U.S. Real Estate is consequently entitled to the appointment of a receiver based upon the Mortgage.

Further, emergency relief is justified in this case. The civil and criminal proceedings involving PS 16's sole principal, Dragul, make property management during the course of this action an impossibility and, more troubling, may create irreparable harm to efforts to negotiate with prospective tenants or current tenants up for lease renewal. Without immediate relief, Dragul may continue to solicit new tenants or negotiate with current tenants that, upon learning of his questionable authority to act or his allegedly illegal schemes, may simply seek different lease opportunities, all to the determinant of U.S. Real Estate (who may be unable to look to PS 16 or Dragul for any deficiency in the final sale price).

## THE PROPOSED RECEIVER IS QUALIFIED TO ACT AS RECEIVER

The Proposed Receiver is qualified to act as receiver in this matter. As set forth on **Exhibit H** attached hereto, the Proposed Receiver is an Ohio resident with requisite experience to manage the Property, collect the revenues thereof, and prepare it for a sale in a manner consistent with law and the orders of this Court. Upon approval of this motion, the Proposed Receiver shall (1) post an appropriate bond, which, based on the experience of the Proposed Receiver, U.S. Real Estate submits should be no more than $10,000.00; (2) execute or swear an oath in accordance with law; and (3) promptly take possession and control of the Property.

## CONCLUSION

Based on the above statutes and case law, U.S. Real Estate is entitled to the **emergency** appointment of a receiver and respectfully requests the Court appoint the Proposed Receiver with the powers and duties set forth on the proposed order tendered herewith.

Dated: November 29, 2018

Respectfully submitted,

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**COMMON PLEAS COURT**
**HAMILTON COUNTY, OHIO**

| | |
|---|---|
| **U.S. REAL ESTATE CREDIT HOLDINGS III, LP** | CASE NO. A 1 8 0 6 3 7 6 |
| Plaintiff, | JUDGE _____ |
| v. | **ORDER APPOINTING A RECEIVER PURSUANT TO O.R.C. § 2735 *et seq.*** |
| **PS 16, LLC, *et al.*** | |
| Defendants. | |

This matter came on to be heard upon the motion ("Motion") of Plaintiff, U.S. Real Estate Credit Holdings III, LP ("Plaintiff"), for entry of an order appointing a receiver to take exclusive and complete possession, custody and control of the property commonly known as and associated with Prospect Square, located at 9690 Colerain Avenue, Hamilton County, Ohio (the "Property") owned and/or titled in the name of Defendant, PS 16, LLC ("Borrower").

Having reviewed the pleadings, the Motion, the applicable loan documents, the qualifications of John A. Rothschild, Jr. ("Mr. Rothschild") and the affidavit of Simond Lavian in support of the Motion, and otherwise having been duly advised, the Court finds as follows:

A. The Mortgage referenced in and incorporated into Motion and attached to Plaintiff's Complaint (the "Complaint"), together with the provisions of Ohio Revised Code Chapter 2735 and other applicable Ohio law, authorize the appointment of a receiver.

B. The appointment of a receiver is necessary to preserve and protect the Property and Plaintiff's rights in connection therewith.

C. The Borrower has expressly consented to the appointment of a receiver on an *ex parte* basis and waived all rights to notice and to contest the Motion or entry of this Order.

D. Adequate and sufficient grounds exist for the appointment of a receiver.

E. Mr. Rothschild is qualified and is willing to act as such receiver.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

1. Mr. Rothschild is hereby appointed receiver (together with the receiver's designees and representatives, the "Receiver") for the Property, in existence or hereafter coming into existence consisting of (a) the real estate described in the Mortgage attached to the Complaint; together with (b) all improvements thereon including[1] buildings, fixtures and otherwise; (c) all tangible and intangible personal property located therein, including equipment, furnishings, inventory and supplies of Borrower; (d) all permits, licenses and contracts pertaining thereto; (e) all books records and contracts and other documents in connection therewith; and (f) all money, income, earnings and revenues, whether in the form of rents, issues, profits, proceeds, deposits (including, without limitation, tenant security deposits), receivables, accounts or otherwise, arising from operation of the Property such as from leases, concessions, services, sales, accounts, accounts receivable, licenses and otherwise (collectively, the "Revenues").

2. Upon filing of this Order, the Receiver shall file with the Clerk of this Court a receiver's oath (the "Oath") and a receiver's bond (the "Bond") in the amount of $10,000 conditioned upon the Receiver's pledge that it will discharge duties of a Receiver in this action and obey the orders of this Court. The filing of the Bond shall occur within five (5) business

[1] In this Order, the term "including" shall be interpreted to mean "including, without limitation".

days after the entry of this Order, but in the interim, the Receiver shall take and keep possession, custody and control of the Property to prevent waste thereto and shall have the power to collect the rents, issues, income and profits thereof; to apply the same consistently with this Order; to retain the remainder for eventual disposition as further set forth in this Order or as otherwise directed by the Court; to arrange for the preservation of the Property and its operation and maintenance; and is granted all powers necessary and usual in such cases for the protection, possession, control, management and operation of the Property during the pendency of this receivership, including the power to collect the accounts, income and profits of and from the operation of the Property. The cost of the Bond shall be an administrative expense of this action, and the Receiver shall be entitled to reimburse himself for the costs associated with obtaining the Bond (including the premium for the Bond) from proceeds from the Property. The Bond shall be maintained in full force and effect during the course of the receivership.

3. Subject to (a) the provisions of this Order and any subsequent orders; (b) the supervision of this Court; and (c) applicable law, including Ohio Revised Code Chapter 2735, effective upon the Receiver's signing the Oath and posting the Bond and thereafter until further order of this Court, to the fullest extent permitted by law, the Receiver shall be and is hereby authorized to enter forthwith, take and have complete, immediate and exclusive control, physical possession and custody of the Property, whether then managed by Borrower or its agents, to the exclusion of Borrower and Borrower's Representatives (hereinafter defined) so as (a) to be able to take all reasonable steps which, in the Receiver's sole judgment, are appropriate, reasonable, advisable or reasonably necessary to manage, control, operate, maintain, supervise, care for, protect, insure, secure, safeguard, prevent waste of and preserve the Property on a day-to-day basis (collectively, "manage the Property"); and (b) to incur such expenses and make such

disbursements out of the Revenues as may, in the Receiver's business judgment, be necessary and proper to manage the Property, including, without limitation, the actions described in **Exhibit 1** attached hereto.

4. Borrower, together with all persons acting on its behalf and actively participating and in concert with Borrower, including, without limitation, any management company, managers, officers, employees, agents, assignees, successors, representatives, attorneys, accountants, and Borrower's Members and all persons who claim under, in concert with or for them (collectively, "Borrower's Representatives"), shall fully cooperate with the Receiver, once the appointment becomes effective, including, without limitation, immediately taking the following actions:

(a). Relinquish, surrender and turn over possession and control of the Property to the Receiver;

(b). Immediately and continuously in the future deliver to the Receiver the following in their possession, custody and control and wherever located:

(i). All past and current Revenues in and coming into the possession, custody and control of Borrower and all Borrower's Representatives;

(ii). All Property office keys;

(iii). All computer equipment owned by Borrower together with software, computer databases, management files, furniture, accessories, peripherals and supplies in connection therewith, wherever located, and all passwords to enable the Receiver to access and use such computers and software;

(iv). Federal and state taxpayer identification numbers;

(v) All contracts for the construction or improvement of the Property and related documents, including lien waivers/releases, general and subcontracts, current or previously-asserted mechanics' or materialmans' liens;

(vi). All documents pertaining to the Property (either in the form of originals or copies certified to be true, correct and complete provided the Receiver may also inspect the originals), including, without limitation, all documents constituting or pertaining to the following:

(A). All financial books and records in whatever form (such as hard copy records, computer files, computer discs and otherwise) including, without limitation, financial statements, balance sheets, cash flow statements, operating statements, current aged account receivables report, current aged payable report, and current operating budgets;

(B). All bank and account records, including bank statements, check registers and cancelled checks with respect to bank accounts, trust accounts, deposit accounts (including accounts holding security deposits) savings accounts, money market accounts and otherwise (collectively, "Bank Accounts") at banks, depositaries, brokerages and otherwise (collectively, "Banks");

(C). All records pertaining to tenants, guests, lessees, licensees, customers, occupants or other persons using the Property or obtaining services therein (collectively, the "Users") including, without limitation, rent rolls, tenant application lists and leases;

(D). All site plans, floor plans, drawings, plans, specifications, schematics, measurements and surveys pertaining to the Property;

(E). All contracts including, without limitation, contracts with vendors, service providers, management companies, leasing or sales agents, any franchisor and otherwise;

(F). All business records and documents pertaining to tangible personal property including, without limitation, records and documents pertaining to equipment, furniture, supplies, vehicles, inventory and utilities;

(G). All insurance policies relating to the Property, declaration pages and certificates;

(H). All leases and documents pertaining to leases including, without limitation, equipment leases, concession agreements and otherwise;

(I). All licenses, permits or governmental approvals;

(J). All governmental inspections and complaints;

(K). All tax returns;

(L). Syndication reports;

(M). All documents and information necessary for the Receiver to file tax returns (to the extent that the Receiver determines to do so in his sole discretion) or for the Receiver to furnish to Borrower to file its own tax returns arising from the Receiver's management of the Property, including any records regarding previous tax appeals. For the avoidance of doubt, the Receiver, and the Receiver's employees, agents, and attorneys shall not be responsible for the preparation and filing of any tax returns for the Borrower or any affiliate(s) of the Borrower, including income, personal property, commercial activity, gross receipts, sales and use, or other tax returns. Upon reasonable request, the Receiver shall provide the Borrower

with information in the Receiver's possession that may be necessary for the Borrower or its affiliate(s) to prepare and file their own tax returns;

(N). All employee records pertaining to identification of employees, payroll records and employee files;

(O). All sale and marketing documents including brochures; and

(P). All other documents, records and information pertaining to the Property reasonably requested by the Receiver;

(c). Immediately provide access to the Receiver to all safes, vaults, locked drawers and offices and otherwise;

(d). Upon Receiver's request, explain to the Receiver the operation of the Property; and

(e). Otherwise promptly take other actions the Receiver reasonably requests and fully cooperate with the Receiver.

5. Borrower and the Borrower's Representatives are hereby enjoined from directly or indirectly doing the following with respect to the Property:

(a). Remaining in the Property;

(b). Interfering with, disrupting, disturbing or impairing the Receiver's possession and management of the Property;

(c). Removing, destroying or depleting personal property from or relating to the real property or concealing such personal property;

(d). Removing, destroying or deleting any documents or records;

(e). Cancelling or modifying any insurance pertaining to the Property;

(f). Taking any actions to commit or permit waste or to damage or decrease the value of the Property;

(g). Permitting any acts as to the Property in violation of law;

(h). Transferring, encumbering or otherwise disposing of the Property;

(i). Terminating licenses, permits, leases or contracts;

(j). Withdrawing, using and diverting monies in any Bank Accounts at any Banks; and

(k). Demanding, collecting, receiving, using, transferring, disbursing, assigning, encumbering and diverting Revenues.

6. To enable the Receiver to take possession, custody and control of and receive from all Banks all money on deposit in Bank Accounts at such institutions arising out of the Property in connection therewith, whether such funds be in an account in the name of Borrower or in the name of Borrower's Representatives, all Banks are hereby directed to cooperate with the Receiver to enable the Receiver to withdraw the funds from all Bank Accounts at the Banks.

7. The Receiver is authorized to use all improvements at the real property and to use all personal property located therein including, without limitation, fixtures, equipment, machinery, supplies and otherwise, to enable Receiver to carry out Receiver responsibilities.

8. The Receiver, by motion, may seek further or other instructions or further powers necessary to enable the Receiver to operate the Property. Without limiting the foregoing, the Receiver has the specific authority (but shall not be obligated) to file and prosecute to conclusion property tax appeal(s).

9. The Receiver shall not incur expenditures to make repairs or replacements or to renovate the Property without first obtaining a court order for that purpose, except for

(i) necessary expenditures under $5,000; and (ii) emergency repairs, including repairs immediately necessary for the preservation or safety of the Property or for the safety of the tenants and other users or required to avoid the suspension of any necessary service in and to the Property, any of which remains subject to final approval of the Court; provided, however, if the Receiver determines that any such expenditure will exceed Revenues, the Receiver shall not incur the obligation unless Plaintiff, in its sole discretion, first agrees to advance funds to pay for such expenditures and approves in writing such obligation and payment therefor prior to the Receiver incurring such obligation. Any such advances from Plaintiff for such purposes shall be secured by Plaintiff's mortgage lien interest and repaid in accordance with such terms as Plaintiff and the Receiver shall agree.

10. All advances from Plaintiff to the Receiver for the benefit of the Property shall be deemed protective advances under the Mortgage and shall be fully secured by such Mortgage.

11. All Users shall henceforth timely pay to the Receiver (and not Borrower or any Borrower's Representatives) all monies now or hereafter due or past due in connection with the occupancy or use of the Property.

12. At such times as are advisable and upon notice deemed acceptable, the Receiver shall allow Plaintiff and its representatives (including, without limitation, appraisers, real estate brokers, attorneys, environmental and other consultants and otherwise) to inspect and review the Property and its operations.

13. The Receiver (a) shall forthwith open in his name as Receiver a receiver's operating account at a federally-insured bank which is not a party herein; and (b) shall deposit therein all Revenues collected and received arising out of the Property and to withdraw therefrom all sums to make payments as authorized herein. The Receiver shall not commingle

such funds with his own funds or the funds of others. Upon receipt thereof, the Receiver shall furnish to Plaintiff monthly bank statements for all receiver accounts.

14. Each utility company providing services to the Property, including gas, electricity, water, sewer, trash collection, telephone, cable, communications or similar services (a) shall be prohibited from discontinuing service to the Property based upon any unpaid bills which Borrower incurred prior to the onset of the receivership; (b) shall forthwith transfer any deposits which it holds to the exclusive control of the Receiver and shall be prohibited from demanding that Receiver deposit additional funds in advance to maintain or secure such services; and (c) at the Receiver's request, shall promptly open new accounts under the name of the receivership and shall be prohibited from discontinuing services while the new receivership account is in process of being established.

15. Upon the Receiver's request, the U.S. Postal Service shall enable the Receiver to gain exclusive possession, custody and control of postal boxes which Borrower may have used prior to receivership and shall direct that mail related to the Property be re-directed to the Receiver.

16. The Receiver shall be compensated as follows: an hourly fee of $150/hour not to exceed $3,250 in the first and last months of the receivership and $2,500 per month for all intervening months. All travel, courier, express mail, legal fees (and the Receiver's counsel's expenses) and extraordinary expenses, subject to the other limitations set forth herein, will be considered a receivership administrative expense, invoiced to Plaintiff monthly, and paid, subject to Court approval as provided in Paragraph 17 below, from available Revenues (or, to the extent Revenues are insufficient, paid by Plaintiff and taxed as "Advances" as that term is used in the Complaint, with such Advances being secured by Plaintiff's mortgage lien); provided, however,

that the following framework shall apply with respect to the Receiver's payment of invoices from his counsel: (a) upon receipt, the Receiver shall transmit a copy of the invoice to counsel for the Plaintiff; (b) within fourteen days of such transmission, counsel for Plaintiff shall advise the Receiver and the Receiver's counsel of any disputes with respect to such invoice; (c) after the fourteenth day from the transmission of the invoice to Plaintiff's counsel, the Receiver may pay all undisputed portions of such invoice to his counsel; and (d) the Receiver, Plaintiff, and their respective counsel shall engage in good faith to resolve any disputes, and either the Receiver or the Plaintiff may, failing voluntary resolution, request that this Court resolve the matter. The disclosure to Plaintiff or its counsel of invoices of the Receiver's counsel (and/or other communications from the Receiver or his counsel to Plaintiff or its counsel regarding legal services provided by the Receiver's counsel) shall not constitute a waiver of the attorney-client privilege or any applicable attorney work product protections.

17. Within 30 days after the conclusion of each of the first three months of the receivership (beginning with the full or partial month during which the receivership begins) and quarterly thereafter, the Receiver shall prepare and file with the Clerk and serve upon all parties a report as to the operations of the prior month or quarter, as applicable, that shall (a) itemize all receipts and all disbursements (including for the Receiver's counsel); (b) itemize receivership actions taken and to be taken; and (c) itemize the condition of the Property. Unless a party herein files an objection to a report within 10 days of the filing of a report, such report shall be deemed approved on an interim basis by all parties and by this Court, subject to the Court's final approval at the time that the Court approves the Receiver's final report.

18. To the extent the Revenues exceed expenses, from time to time as Receiver deems appropriate after forecasting potential needs for reserves, the Receiver shall disburse funds to

Plaintiff to apply against the amounts which Borrower owes Plaintiff, and may do so without further order of the Court.

19. In carrying out duties as set forth in this Order, the Receiver shall be entitled to act in the exercise of sound business judgment as the Receiver deems appropriate within the Receiver's sole discretion and shall not be liable for any action taken or not taken in good faith, for any mistake of fact or error of judgment, or for any acts or omissions of any kind unless caused by Receiver's willful misconduct or gross negligence.

20. The Receiver may resign at the end of any quarterly reporting period provided that such Receiver furnishes all attorneys of record in this case at least 30 days' written notice of the Receiver's intent to resign, the Receiver has made all accounts as required in this Order, and the Receiver's resignation is accepted and approved by the Court. The Receiver may be removed upon 30 days' notice following written demand for such removal filed jointly by all attorneys of record in this action. Otherwise, removal of the Receiver shall be within the equitable discretion of the Court. Following removal, a successor receiver may be appointed with the consent of all attorneys of record in this action or upon motion by any party in order of this Court following notice and opportunity for hearing.

21. The Court shall retain jurisdiction and supervision of all matters concerning the Receiver, the receivership created hereby and the Property. Any and all actions which affect the Receiver or the Property shall be brought in this Court.

This is a final appealable order and there is no just reason for delay.

Judge 11/29/18

## EXHIBIT 1

**RECEIVER AUTHORITY**

Subject to the provisions of this Order, to manage the Property, the Receiver is granted the fullest powers and duties of a receiver permitted under applicable law and in equity. Without limiting the generality of the foregoing, the Receiver is authorized (but not obligated) to take any or all of the following actions as such Receiver may deem appropriate, necessary, advisable and desirable:

(a) To invoice, collect and receive from tenants and other persons all Revenues in the form of cash, checks (which the Receiver may endorse), wired funds, credit card receipts and otherwise, now or hereafter due.

(b) To resolve and collect accounts, accounts receivable and claims.

(c) To open and review mail directed to Borrower and Borrower's Representatives so as to collect Revenues and otherwise.

(d) To immediately seize and assume exclusive possession, custody and control of and receive from all Banks all money on deposit in Bank Accounts at Banks arising out of the Property, in the name of Borrower, Borrower's Representatives or in the name of any other person or entity acting on behalf of Borrower.

(e) To hire, retain, supervise and discharge employees.

(f) To contract with independent contractors, such as management companies, consultants, attorneys, accountants, appraisers, real estate brokers (including Newmark Knight Frank, with whom the Receiver is associated), leasing agents, and otherwise, who shall be paid compensation consistent with reasonable and customary charges for similar services.

(g) To apply for, obtain, renew and keep in full force and effect all required licenses, permits, consents and approvals.

(h) To negotiate, enter into, amend, enforce and cancel agreements and enter into, contracts, including, without limitation, with vendors, service providers, any franchisor, and others but for a term not to extend beyond the receivership without first obtaining a court order; subject to court approval, to reject contracts and leases that are unexpired as of the onset of the receivership and that are burdensome to the receivership.

(i) To exercise all rights and powers that Borrower previously had exercised.

(j) To maintain, improve, repair, restore, renovate, or replace the Property.

(k) To obtain, renew and analyze past records for the Property.

(l) To use the Revenues to pay all ordinary, reasonable and necessary operating expenses incurred during the course of the receivership, to pay fees and expenses of the Receiver and professionals and to pay excess Revenues to Plaintiff.

(m) To prepare and file all necessary forms required by any federal, state, county or municipal authority having jurisdiction.

(n) To comply with all orders or notice of violations affecting the Property placed thereon by any federal, state, county or municipal authority having jurisdiction.

(o) To determine, obtain, modify, maintain and renew the proper insurance coverage in connection with the Property and management thereof; to cause the Receiver to be named as an additional insured and loss payee as his interest may appear; to notify insurers of the Property that the within proceedings are pending and that, subject to lienholder rights, the Receiver is entitled to receive insurance proceeds; and to name a property manager as an additional insured to the extent consistent with the Receiver's sound discretion.

(p) To prepare and file required tax returns arising from the Receiver's management of the Property.

(q) To set up and maintain orderly files containing documents and records.

(r) To prepare and maintain in the manner customary consistent with generally accepted accounting principles a system of accounting and complete books, records and reports in connection therewith.

(s) To provide to Plaintiff requested documents and information with respect to financial status, physical condition and operation of the Property and otherwise.

(t) To consider complaints and concerns of the Users of the Property.

(u) To initiate, prosecute, defend, settle, compromise and release, on behalf of the Receivership, all claims of or against Borrower relating to the Users of the Property.

(v) To commence and take all other lawful actions in the name of the Receiver including actions to enforce this order, to eject or evict Users, file and prosecute tax appeals, and otherwise.

(w) To change any and all locks and otherwise limit access to the Property.

(x) To seek assistance of law enforcement officials as necessary to preserve the peace and to protect assets.

(y) To market and enter into a contract for the sale of the Property, in whole or in part as the Receiver deems best suited to maximize sale proceeds, and take other actions ancillary thereto, including, without limitation, hiring a broker (including Newmark Knight Frank, with whom the Receiver is associated), soliciting prospects, providing to prospects access to the Property and Property information, negotiating sale terms, executing a contract with a prospect which the Receiver decides to be the highest and best offer, executing and delivering deeds and

other documents; provided, however any sale of the Property shall be subject to the following conditions:

(1) The sale and sale conditions, including any broker's commission, shall be subject to prior approval of this Court and Plaintiff;

(2) The purchaser shall pay the full amount of the sale proceeds in good funds no later than the closing;

(3) All liens of record which the Court determines to be valid and enforceable shall attach to the sale proceeds in the order of their respective priority; and

(4) Within 10 days after the closing of the sale of the Property, the Receiver shall file an affidavit as part of this court action and, therein, shall set forth the name of the Purchaser, the sale price and the sale date; and shall indicate that the Receiver sold the Property for the best price obtainable and in compliance with this Order; and shall further indicate the allocation of proceeds intended pursuant to subsections (A) through (F) of the immediately following paragraph;

(5) This Court shall file an order that, *inter alia*, approves and confirms the sale of the Property free and clear of all liens; authorizes the Receiver to execute and deliver a deed conveying the Property to the purchaser; directs the release of all liens of record; and authorizes the Receiver to disburse the sale proceeds in the following order:

(A) Customary closing costs;

(B) Any brokers' sale commission and expenses as agreed-upon by Receiver and Plaintiff prior to the sale and any other fees and expenses owed to broker;

(C) Court costs and other administrative expenses of this receivership, including all fees and expenses (including legal fees and expenses) due to the Receiver;

(D) Real estate taxes, assessments, interest and penalties paid to the Treasurer of Hamilton County on account of the Property at closing;

(E) In the order of their priority, amounts owed to (i) Plaintiff and (ii) other lienholders of record who have appeared in this action, answered the Complaint, and hold valid and enforceable liens; and

(F) Remaining proceeds to Borrower.

To the extent any dispute concerning the validity or priority of any lien is at issue after Receiver's receipt of sale proceeds from the sale of the Property, the Receiver shall hold such funds until further order of the Court.

(z) To generally do all other things consistent with this Order reasonably necessary or desirable to operate the Property.

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLPm
1200 17th St
Suite 3000,
Denver, CO 80202-5855

303.623.9000 main
303.623.9222 fax
lrrc.com

**Kenneth F. Rossman IV**
**303-628-9684 - Direct**
krossman@lrrc.com

DATE FILED
July 25, 2025 10:55 AM
FILING ID: 5069084E234C1
CASE NUMBER: 2018CV33011

**By Email: mgilbert@allen-vellone.com**

March 29, 2019

GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, CO 80111
Attn: Gary Dragul

Harvey Sender, Esq.
c/o Michael T. Gilbert, Esq.
Allen Vellone Wolf Helfrich & Factor P.C.
1600 Stout Street, Suite 1100
Denver, CO 80202

RE: Notices of breaches/defaults by managing entities in Prospect Square investment and termination of manager

Dear Mr. Sender:

We represent the entities related to Hagshama regarding Prospect Square, Cofund 2, LLC and Hagshama Prospect Square, LLC (jointly "Hagshama"). We are writing to notify you of material breaches by GDA PS Management, LLC ("Manager"), currently under your control as Receiver, and to terminate it as manager of PS 16, LLC.

As evident by the existence of the Receivership and the allegations in the criminal and civil complaints against Mr. Dragul, the Manager has materially breached the Amended and Restated Operating Agreement of PS 16, LLC in at least these ways:

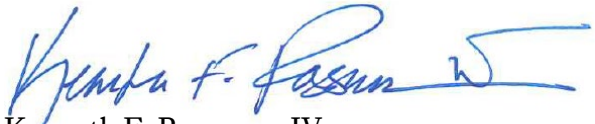
- Failure to timely notify Hagshama of the material fact of institution of criminal proceedings against Gary Dragul by the State of Colorado;
- Agreeing to appointment of a receiver without prior Hagshama approval;
- Co-mingling of Investment funds with the Managers' or other persons' funds;
- Providing for compensation to be paid to the Mangers or affiliated persons other than as provided for in the Operating Agreements;
- Failing to manage the Investments under their respective Business Plans;
- Breaching representations and warranties in the respective Operating Agreements;
- Failing to provide complete books and records upon demand; and
- Engaging in fraud, willful misconduct, and gross negligence.

These breaches are not curable. Effective immediately, Hagshama terminates the Manager as provided for in Section 7.2(B)(i) of the Amended and Restated Operating Agreement of PS 16, LLC. Under Section 7.2(B)(i) and (ii) Hagshama appoints QLP, LLC as the new manager of PS 16, LLC to replace Manager.

Hagshama agrees that it will not reference the Receiver's response to this termination as precedent supporting any claimed legal rights involving any other investment associated the with Receivership Estate.

Best regards,

Lewis Roca Rothgerber Christie LLP



Kenneth F. Rossman, IV

ENTERED
OCT 1 1 2019

**COMMON PLEAS COURT**
**HAMILTON COUNTY, OHIO**

DATE FILED
July 25, 2025 10:55 AM
CASE NUMBER: 2018CV33011

| | | |
|---|---|---|
| **U.S. REAL ESTATE CREDIT HOLDINGS III, LP** | : | Case No. A1806376 |
| | : | Judge Luebbers |
| Plaintiff, | : | |
| | : | **ORDER AUTHORIZING RECEIVER TO CLOSE SALE TRANSACTION FOR PROPERTY FREE AND CLEAR OF LIENS AND ENCUMBRANCES** |
| v. | : | |
| **PS 16, LLC, *et al.*** | : | |
| | : | |
| Defendants. | : | **FINAL APPEALABLE ORDER** |
| | : | |

This matter comes before the Court upon the motion ("**Motion**") of John A. Rothschild, Jr., in his capacity as receiver ("**Receiver**") pursuant to this Court's November 30, 2018 order appointing the Receiver (as amended, the "**Order of Appointment**"), whereby the Receiver seeks entry of an order (1) approving and authorizing the Receiver to perform and close a certain agreement (the "**Sale Agreement**") with Plaintiff, U.S. Real Estate Credit Holdings III, L.P. (the "**Lender**"), or Lender's designee (the Lender or the designee, as buyer under the Sale Agreement, shall be referenced as the "**Buyer**") for the sale of that certain commercial real estate located at 9690 Colerain Avenue, Hamilton County, Ohio and commonly known as "Prospect Square," which is the subject of these proceedings (together with appurtenant rights, and other property as set forth in the Sale Agreement, the "**Property**"); and (2) approving and authorizing the Receiver to execute and perform all ancillary obligations and agreements contemplated by the Sale Agreement, including, without limitation, a certain Assignment of Leases.

D126912648



VERIFY RECORD

Unless otherwise defined herein, all capitalized terms used in this Order shall have the respective meanings given to such terms by the Sale Agreement.

Based upon the representations of the Receiver in the Motion, the affidavit of John A. Rothschild, Jr., the affidavit of Simond Lavian, the concurrence of the Lender, through counsel, as evidenced below, the records of the Hamilton County Recorder, this Court's judgment entry of July 9, 2019 (the "**Judgment**"), the provisions of the Order of Appointment, and other facts and circumstances of which this Court may take judicial notice, including this Court's docket, the Motion is **GRANTED** as set forth herein. In granting the Motion, the Court makes the findings of facts and conclusions of law as set forth herein, and it is, therefore, ORDERED, ADJUDGED and DECREED that:

1. In compliance with O.R.C. § 2735.04(D)(2)(b), the Receiver's Motion has been served on (a) all parties to this action and (b) all persons having a recorded or filed lien in the Property, and all such parties and persons were given an opportunity to object. No objections were timely filed, or if timely filed, have been withdrawn or are hereby overruled. The matter is now decisional.

2. The Court finds that the Lender is owed in excess of $10.5 million, which figure, although periodically offset by revenues from leases on the Property, continues to grow with the incurrence of professional fees and expenses (of both the Lender and the Receiver), default rate interest at the Interest Rate, and payment of other protective advances for tenant improvements, real estate taxes, and the like, and that such sums are a first and best lien on the Property, subject only to the lien of the Treasurer of Hamilton County for taxes, assessments, penalties and interest.

3. The Court further finds that the Lender has expressed a desire to acquire the Property, via a full (if so required) credit bid. The Lender would have an absolute right to credit bid at any auction of the Property, whether conducted by or on behalf of the Receiver or the Hamilton County Sheriff.

4. In addition to the sums Lender may credit bid, pursuant to the Sale Agreement, Buyer is assuming certain liabilities. For example, pursuant to Section 2.8 of the Sale Agreement and in connection with the Big Lots Lease (a) Seller is responsible for funding certain tenant improvements that may (or may not) be funded in full or in part by the time of Closing; and (b) funding for such tenant improvements shall be financed by cash advanced by Buyer to Seller, or cash collateral in which Buyer holds an interest, and which, on a dollar-for-dollar basis, plus interest at the Interest Rate, when so advanced or used, shall be additional indebtedness due Buyer as contemplated by the Judgment and as previously authorized by this Court. To the extent any tenant improvement is financed prior to Closing, the liability for the amount so financed, plus applicable interest, shall be deemed added to the Purchase Price for the Property, and, to the extent any tenant improvement is not financed prior to Closing, liability for the amount remaining to be financed shall be assumed by Buyer and deemed additional consideration for Seller's performance of the Sale Agreement. To the extent that Buyer did not assume such liability, the Lender would be obligated to finance such sum thereto, increasing the total amount by which it may credit bid for the Property.

5. In addition, were the Receiver to sell the Property through other available means, such as an auction or a commercial brokerage listing, the Receiver would incur costs that the Receiver will not incur through a sale pursuant to the Sale Agreement. For example, the

Receiver will not be required to pay auctioneer's or broker's commissions or other expenses in connection with a sale pursuant to the Sale Agreement.

6. The Court finds that the Receiver has rightfully concluded that the sum due the Lender, together with the liabilities the Buyer is willing to assume pursuant to the Sale Agreement, is in excess of the fair market value of the Property and that the Lender's intention to acquire the Property through a full credit bid and assume the liabilities as set forth in the Sale Agreement renders any auction or other marketing of the Property an uneconomical use of the Receiver's resources. The Receiver's execution and performance of the Sale Agreement is therefore a prudent exercise of the Receiver's business judgment. Moreover, the private sale memorialized by the Sale Agreement is fair to Defendant PS 16, LLC, the owner of the Property ("**Owner**"), and all other parties with an interest in the Property, if any, is reasonable under the circumstances, and will maximize the return from the Property to the receivership estate, taking into account the potential cost of holding and operating the Property, all as contemplated by O.R.C. § 2735.04(D)(1)(a).

7. Although the Receiver, for the reasons set forth above, exercising sound business judgment concluded not to incur the expense and delay of openly marketing the Property, the Receiver has otherwise received no other offers for the Property competitive with the Sale Agreement.

8. Consequently, the Court concludes that the Receiver shall transfer, via the Deed and pursuant to Section 2.4 of the Sale Agreement, a fee simple interest in the Property to the Buyer on account of such credit bid without any additional consideration, other than the obligations set forth in the Sale Agreement or that are expressly set forth herein, to which the

Buyer and the Receiver have consented and which the Court finds constitutes evidence of the best value for the Property. Furthermore, in accordance with Section 9 of the Sale Agreement, the Court authorizes the party designated as "Buyer" to assign the rights and obligations under the Sale Agreement to an affiliate prior to Closing without further court approval upon notice to the Receiver as contemplated by such provision.

9. The conveyance of the Property by the Receiver to Buyer shall be free and clear of all liens, claims, and encumbrances of any nature whatsoever, subject to the Permitted Exceptions. For the avoidance of doubt, and without limiting the generality of the foregoing, the conveyance of the Property by the Receiver shall be free and clear of (a) that certain Open-End Mortgage, Security Agreement and Financing Statement from Borrower to Calmwater Capital 3, LLC ("**Calmwater**"), assignor of the loan and loan documents that are the subject of this action, with Lender as assignee, of record at OR 13091, pg. 1534 of the Hamilton County Records (the "**Records**"), as assigned by Calmwater to Lender pursuant to that certain Assignment of Open-End Mortgage, Security Agreement and Financing Statement of record at OR 13179, pg. 1942 of the Records; (b) that certain Assignment of Leases and Rents from Borrower to Calmwater of record at OR 13091, pg. 1575 of the Records, as assigned by Calmwater to Lender pursuant to that certain Assignment of Assignment of Leases and Rents, of record at OR 13179, pg. 1935 of the Records; and (c) that certain financing statement from Borrower to Calmwater of record at OR 13091, pg. 1589 of the Records, as assigned by Calmwater to Lender pursuant to that certain financing statement amendment, of record at OR 13179, pg. 1949 of the Records, all of which are hereby released, satisfied and terminated; provided, however, that such liens shall attach to the proceeds of the Sale Agreement, after

payment of the costs of Closing in the order of their priority. For the avoidance of doubt and notwithstanding anything to the contrary in the Lender's Complaint, the Property (as described in the Sale Agreement) includes, without limitation, Tax Parcel No. 510-0103-0185.

10. Because the Court finds that (a) the lien of the Lender is a first priority lien on the Property; (b) the conveyance by the Receiver pursuant to the Sale Agreement shall be subject to any lien for taxes, assessments, penalties and interest due the Hamilton County Treasurer, if any; and (c) the proceeds of the Sale Agreement (exclusive of costs, which the Buyer shall bear pursuant to the Sale Agreement) shall be sufficient only to satisfy the amount due the Lender, the Buyer shall be entitled, pursuant to Section 2.6 of the Sale Agreement, to receive all proceeds of the receivership estate (including all Revenues, as that term is defined in the Order of Appointment) in the hands of the Receiver, after payment of the estate's outstanding costs of administration through the date of the Receiver's discharge, and such sale is hereby confirmed.

11. The Receiver is authorized to sign any documents that may be necessary to effectuate the Closing, including, without limitation, executing closing documents, assignments, bills of sale, and the Deed in accordance with the Sale Agreement and this Order.

12. Upon conveyance of the Property, the Receiver shall deliver to the Buyer (a) all non-privileged documents associated with the Property in the Receiver's possession, including without limitation all insurance policies, insurance claims, maintenance records, bank records, tenant rental receipts, environmental reports, receivable aging reports, appraisals, surveys, and the like (irrespective of whether such documents were authored or originated by Receiver, Borrower, or some other third party); provided, however, that the Receiver and his counsel may

retain any and all copies of such documents as they may deem necessary; and (b) such other instruments of transfer as may be necessary and appropriate to effectuate the applicable conveyance of the Property contemplated hereby.

13. The Receiver and Buyer shall cooperate to do all things necessary to carry out the terms of this Order to effectuate an orderly transition of responsibilities to the Buyer, including, for example, the proration of expenses in the month of the conveyance, the transfer of any utility services or other similar items.

14. As soon as reasonably possible after the Conveyance Date, the Receiver shall file and serve upon all parties a certificate and report which shall include all of the information required by O.R.C. § 2735.04(D)(10) and certify that the conveyance contemplated by the Sale Agreement has been completed to the satisfaction of the Receiver and the Lender (the "**Sale Report**").

15. Effective as of the date of the recording of the Deed (the "**Conveyance Date**"), the Receiver shall not thereafter be responsible for payment of any expenses incurred or services provided for the operation of the Property, or any other expenses in connection with the Property, after such conveyance. Following such conveyance, the Receiver shall remain in place for the sole purpose of winding up the affairs of the receivership, including payment of any and all expenses incurred by the Receiver in the performance of his duties, using funds in his possession to do so, the preparation and filing of the Sale Report and the final report with respect to the receivership and, if so agreed between the Receiver and the Buyer, the prosecution of the Tax Appeal.

16. In the Judgment, this Court ordered that unless the amount of $10,132,604.01 set forth in Paragraph A therein, as such sum may increase with interest, late charges, and other expenses and amounts payable by the Owner thereunder (the "**Judgment Amount**") was paid to the Lender within three days of the Judgement, the equity of redemption of the Owner and all other persons claiming through it would be forever cut off and barred.

17. The Judgment Amount has not been paid to the Lender. Accordingly, the equity of redemption of the Owner and all other persons claiming through it is, and has been, forever cut off and barred.

18. Due to the extraordinary relief requested by the Receiver, the Court finds there is no just cause for delay and that this Order is made FINAL AND APPEALABLE in accordance with Civ. R. 54(B).

IT IS SO ORDERED.

COURT OF COMMON PLEAS
ENTER
HON. JODY M. LUEBBERS
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.

10/10/19

DATE: _____

_____
JUDGE

4825-4839-0301.6

**MAGISTRATE**

OCT 04 2019

**HAS SEEN**

FOR COURT JOURNAL
S. C.
Line # : 10

| | |
|---|---|
| 4DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO<br>Denver District Court<br>1437 Bannock St.<br>Denver, CO 80202 | DATE FILED<br>July 25, 2025 10:55 AM<br>FILING ID: 5069084E234C1<br>CASE NUMBER: 2018CV33011 |
| **Plaintiff:** TUNG CHAN, Securities Exchange Commissioner for the State of Colorado<br><br>v.<br><br>**Defendants:** GARY DRAGUL, GDA REAL ESTATE SERVICES, LLC, and GDA REAL ESTATE MANAGEMENT, LLC | ▲COURT USE ONLY▲ |
| Attorneys for Receiver:<br>Patrick D. Vellone, #15284<br>Michael T. Gilbert, #15009<br>Averil K. Andrews, # 56148<br>ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.<br>1600 Stout St., Suite 1100<br>Denver, Colorado 80202<br>Phone Number: (303) 534-4499<br>E-mail: pvellone@allen-vellone.com<br>E-mail: mgilbert@allen-vellone.com<br>E-mail: aandrews@allen-vellone.com | Case Number: 2018CV33011<br><br>Division/Courtroom: 424 |

**DECLARATION OF STEPHANIE J. DREW**

I, Stephanie J. Drew, pursuant to 28 U.S.C. §1746, declare under penalty of perjury that the foregoing is true and correct.

1. I am a partner in RubinBrown's Corporate Finance and Forensic Services Group, an accounting firm with its Denver office located at 1900 16th Street, Suite 1700, Denver, Colorado 80202.

2. RubinBrown was retained by Harvey Sender as Receiver in *Chan v. Dragul et al.*, Case No. 2018CV33011 (the "Receivership Case") on September 7, 2018, to assist him in administering the Receivership Estate, including providing forensic accounting and expert witness services, as well as tax preparation services.

3. I am the supervising partner on this engagement and have been primarily responsible for the work performed in this case to date.

4. RubinBrown and I have extensive experience in providing expert witness and forensic accounting services in connection with litigation support and with respect to the matters for which it has been employed in this case.

5. In connection with our work, we reviewed a number of financial records of Gary J. Dragul ("Dragul"), GDA Real Estate Services, LLC ("GDA RES"), and the Special Purpose Entities ("SPEs") established by Dragul ("Dragul Estate"); including bank statements, accounting files, investor records, property records and marketing materials.

6. Using the contemporaneous accounting of GDA RES and the SPEs, we created databases which we relied upon, in part, for our analysis. The primary database, the "Cash Database," includes cash receipts and cash disbursements for the Dragul Estate

**Background**

7. GDA RES was formed in 1997 by Dragul and his wife Shelly Dragul. Originally, most of GDA RES's activity consisted of buying and selling properties with business partner Alan Fox ("Fox") and his company ACF Property Management, LLC ("ACF"), as well as managing Fox/ACF properties. A typical business dealing consisted of GDA RES purchasing a property from a third party and selling the same property, often on the same day, to ACF at a profit. GDA RES would then manage the property for ACF. GDA RES and ACF also received commissions and fees at the closing of each property, for both the purchase and sale of the property. In addition, proceeds were also distributed to GDA RES upon refinancing of the debt obligations for various properties.

8. Investors would routinely loan money to GDA RES in exchange for promissory notes. Prior to 2006, almost all of the notes issued by GDA RES were with

Dragul's family members and business partners. Beginning in 2006, GDA RES began issuing promissory notes to outside investors ("Note Investors"), receiving approximately $1,000,000 in funding in 2006, $1,400,000 in 2007, and $4,600,000 in 2008. Over time, the amount of GDA RES promissory notes outstanding increased significantly with GDA RES receiving proceeds from promissory notes of almost $15,000,000 in 2016, and over $26,000,000 in 2017.

9. Beginning primarily in 2006, GDA RES began identifying its own real properties for investment which were held through SPEs with GDA RES acting as the manager. In many instances, the real property, which consisted of various commercial shopping centers throughout the United States, was owned by an LLC named for the property and the year in which the property was acquired.

10. The property acquisitions were financed in part through bank debt as well as capital raised by the SPEs from outside investors ("SPE Investors"). The SPE Investors consisted primarily of individuals and LLC's with individual investments averaging approximately $65,000. Between 2000 and 2018, Dragul created over 95 SPEs funded in part with new SPE Investors' funds, which total over $49 million.

11. Over time a pattern emerged within the Dragul Estate. SPE Investors would initially purchase an interest in an SPE. The original investment amounts provided by SPE Investors would be commingled with GDA RES and Dragul for Dragul's personal use and used to provide returns to earlier SPE Investors and Note Investors and to pay various operational expenses for GDA RES and the other SPEs.

12. When it came time to purchase the property, comingled funds would be diverted to the purchase of the SPE real estate, usually in an amount less than the amount raised from SPE Investors for a specific property.

13. For example, Dragul raised $1,260,000 from new SPE Investors related to GDA Clearwater 15, LLC, which were deposited into the GDA Clearwater 15, LLC bank account between June 26, 2015, and August 6, 2015. All but $100,000 of these funds were transferred out of GDA Clearwater 15, LLC into GDA RES and commingled within the Dragul Estate. When Dragul actually purchased the Clearwater shopping center property, only $494,118 of comingled funds were used to purchase the property, $665,882 less than what was raised from the GDA Clearwater 15, LLC SPE investors.

14. The underlying real estate held in the various SPEs was used to provide cash flow for GDA RES, Dragul personally, and other previously established SPEs.

15. In most instances, SPE Investors never recovered their initial investments. As a result, Dragul induced Note Investors and SPE Investors to invest new dollars into SPEs by offering to "roll over" or match their new investment in the SPE. This served to further dilute SPE cash investors.

16. As part of our work, we analyzed the contemporaneous accounting and related bank statements transactions including operational cash flow and distributions made to investors before the Receiver was appointed in August 2018. Attached as Exhibit A is a reconciliation of distributions made to Hagshama related entities that invested in the Prospect Square shopping center. Based on our analysis, Hagshama received $61,675.30 more in distributions than it was entitled to, from operating cash flows, based on its ownership percentages. The operating cash flows do not include funds swept for the benefit of the lender or any payments to Dragul for management fees.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 25, 2025, in the United States of America.

Stephanie J. Drew, CPA, MST, CIRA, CFE

## Exhibit A
## Prospect Square - Cash from Operations

| Description | | 2016 | 2017 | 2018 | 2019 | Total | Actual Distributions | Excess Distributions |
|---|---|---|---|---|---|---|---|---|
| Refund at Close | | $181,712.22 | | | | $181,712.22 | | |
| Cash from Operations | | $146,474.01 | $84,060.78 | 143,395.90 | | $373,930.69 | | |
| Transactions Post Receiver | | | | Lender Sweep (6/29/2018) | | $0.00 | | |
| **Total Cash from Operations** | | **$328,186.23** | **$84,060.78** | **$143,395.90** | **$0.00** | **$555,642.91** | | |
| Hagshama Prospect Square LLC | 48.48% | | | | | $269,375.68 | ($302,548.89) | ($33,173.21) |
| COFUND 2 LLC | 41.52% | | | | | $230,702.94 | ($259,205.03) | ($28,502.09) |
| | | | | | | $500,078.62 | ($561,753.92) | ($61,675.30) |

Swept funds have not been included in the analysis since funds were remitted to the lender.

# FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237
Phone: (720) 200-1200 Fax: (303) 889-1959

**Buyers/Borrowers Closing Statement**

**FINAL**

**Escrow No:** F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

**Buyer(s)/Borrower(s):** Hickory Corners 16 A, LLC, a Delaware limited liability company
Hickory Corners 16 B, LLC, a Delaware limited liability company



**Seller(s):** HD Hickory, LLC, a North Carolina limited liability company

**Lender:** Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. **Loan #:**

**Property:** Hickory Corners South Shopping Center | 1718 HWY 70 SE
Hickory, NC 28602

**Brief Legal:**

| Description | Debit | Credit |
|---|---|---|
| **TOTAL CONSIDERATION:** | | |
| Total Consideration | 12,740,000.00 | |
| Earnest Money Deposit | | 140,000.00 |
| Hagshama Closing Deposit | | 2,964,403.00 |
| CoFund Closing Deposit | | 1,236,447.00 |
| **NEW AND EXISTING ENCUMBRANCES:** | | |
| New Loan from Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | | 9,300,000.00 |
| **NEW LOAN CHARGES: - Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successo** | | |
| Good Faith Deposit | | 30,000.00 |
| Application Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | 7,500.00 | |
| Servicer Set Up Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | 350.00 | |
| Site Inspection Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | 1,450.00 | |
| Issuer Reg AB II Review to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | 2,400.00 | |
| Research & Report Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | 375.00 | |
| Stub Interest Payment to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | 21,410.67 | |
| Servicer Tax Escrow to Wells Fargo | 19,134.05 | |
| Servicer Insurance Escrow to Wells Fargo | 22,332.66 | |
| Servicer TI/LC Escrow to Wells Fargo | 150,000.00 | |
| Servicer Immediate Repair Escrow to Wells Fargo | 72,988.75 | |
| Servicer Roof Reserve Escrow to Wells Fargo | 644,000.00 | |
| Servicer Toys R Us Facade Reserve Escrow to Wells Fargo | 20,000.00 | |
| Origination Fee to Rialto Mortgage Finance, LLC, a Delaware limited liability company, its successors and/or assigns, as their interests may appear. | 93,000.00 | |
| **ESCROW CHARGES** | | |
| Escrow Closing Charge to Fidelity National Title Insurance Company | 387.50 | |
| Escrow Loan Closing Charge to Fidelity National Title Insurance Company | 550.00 | |
| **TITLE CHARGES:** | | |
| Title Search/Exam to Fidelity National Title Insurance Company | 3,025.00 | |
| Owners Policy for $12,740,000.00 to Fidelity National Title Insurance Company | 11,472.40 | |
| Lenders Policy for $9,300,000.00 to Fidelity National Title Insurance Company | 25.00 | |
| ALTA 9.2 CCRs OP to Fidelity National Title Insurance Company | 1,274.00 | |
| ALTA 17 Access OP & LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 18 Tax Parcel OP & LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 22 Location OP & LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 25 Survey OP & LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 26 Subdivision OP & LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 1 Street Assessments LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 3.1 Zoning LN to Fidelity National Title Insurance Company | 2,325.00 | |
| ALTA 8.2 Environmental LN to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 9 Comprehensive LN to Fidelity National Title Insurance Company | 930.00 | |
| ALTA 17.2 Utility Access LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 19 Contiguity LN to Fidelity National Title Insurance Company | 100.00 | |
| ALTA 24 Doing Business to Fidelity National Title Insurance Company | 930.00 | |
| ALTA 27 Usury LN to Fidelity National Title Insurance Company | 250.00 | |
| ALTA 28 Forced Removal LN to Fidelity National Title Insurance Company | 930.00 | |
| Waiver of Arbitration LN to Fidelity National Title Insurance Company | 100.00 | |

# FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237

Phone: (720) 200-1200 Fax: (303) 889-1959

**Buyers/Borrowers Closing Statement**

**FINAL**

**Escrow No:** F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

| Description | Debit | Credit |
|---|---|---|
| Lack of Signature LN to Fidelity National Title Insurance Company | 100.00 | |
| Estimated Easement Search to Fidelity National Title Insurance Company | 1,500.00 | |
| **RECORDING FEES:** | | |
| Recording Fee Escrow to Fidelity National Title Insurance Company | 500.00 | |
| **ADDITIONAL CHARGES:** | | |
| Lender Legal Fee to Cassin & Cassin | 35,000.00 | |
| Insurance Premium to Moody Insurance Agency | 8,338.00 | |
| Fees to Reinhart & Associates | 20,000.00 | |
| ESA/PCA Report to CBRE dba IVI Assessment Services | 4,700.00 | |
| Appraisal to CBRE Inc Appraisal & Valuation | 6,500.00 | |
| Zoning Report to Howard Zoning Associates | 675.00 | |
| Insurance Review to Harbor Group Consulting | 2,575.00 | |
| Lien Searches to LexisNexis Risk Assets | 5,465.22 | |
| UW & Lease Abstracts to Situs Real NY | 19,520.00 | |
| Lender Environmental Consultant to The Driscoll Company dba TDC Consulting Groupl | 125.00 | |
| Engineering & Appraisal Review to Grindstone Management | 1,120.00 | |
| Invoices to CSC | 3,617.88 | |
| Survey Reimbursement to GDA Real Estate | 3,400.00 | |
| Survey Invoice to McNeill Surveying | 5,207.71 | |
| Clearing Account Acceptance Fee to REAM - Wells Fargo | 2,500.00 | |
| Fee to Park City Commercial Properties | 50,000.00 | |
| Lender Depsoit Reimbursement to GDA Real Estate Service | 30,000.00 | |
| Broker Fee to Vista Point Partners | 25,000.00 | |
| Funds to Close Office Max FA556414 to Fidelity National Title Insurance Company | 484,370.25 | |
| **PRORATIONS AND ADJUSTMENTS:** | | |
| 2017 Real Estate Taxes from 1/1/2017 to 1/27/2017 based on the Annual amount of $96,066.14 | | 6,843.07 |
| January Rents | | 15,820.84 |
| Security Depostis | | 15,819.65 |
| Service Contracts | | 215.32 |
| Prepaid Rents | | 7,770.30 |
| Earnest Money Release to Seller | | 100,000.00 |
| Conns Free Rent | | 124,783.36 |
| Allstate Insurance Free Rent | | 221.77 |
| Lease Renewal Commissions Whipkey & Cochrane | 6,000.00 | |
| 2nd PSA Amend 5.c credit | | 814,000.00 |
| January NNN | | 2,054.59 |
| YTD Cam Reconcilliation | | 5,806.71 |
| Miracle Ear 2 months Free Rent | 2,684.52 | |
| **COMMISSIONS:** | | |
| Fee to GDA Real Estate | 19,998.00 | |
| Fee to Hagshama | 207,099.00 | |
| Sub Totals | 14,764,185.61 | 14,764,185.61 |
| Balance Due From Buyer/Borrower | | |
| Totals | 14,764,185.61 | 14,764,185.61 |

APPROVED AND ACCEPTED

Sales or use taxes on personal property not included. Fidelity National Title Company assumes no responsibility for the adjustment of special taxes or assessments unless they are shown on the Treasurer's Certificate of Taxes Due. The condition of title to the property is to be determined by reference to the title evidence provided by Seller or by personal investigation. The above statement of settlement is approved as of the settlement date shown above and Escrow Holder is hereby authorized to disburse as Trustee funds as indicated.

# FIDELITY NATIONAL TITLE INSURANCE COMPANY

4643 S. Ulster St. #500, Denver, CO 80237

Phone: (720) 200-1200 Fax: (303) 889-1959

**Buyers/Borrowers Closing Statement**

**FINAL**

**Escrow No:** F0556414 - 017 LM6 **Close Date:** 01/27/2017 **Proration Date:** 01/27/2017 **Disbursement Date:** 01/27/2017

**Buyer(s)/Borrower(s):**

Hickory Corners 16 A, LLC, a Delaware limited liability company

By: Hickory Management, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado Corporation, its Manager

SEE ATTACHED SIGANTURE PAGE

By: Gary J. Dragul, President
Hickory Corners 16 B, LLC, a Delaware limited liability company

By: Hickory Management, LLC, a Colorado limited liability company, its Manager

By: GDA Real Estate Management, Inc., a Colorado Corporation, its Manager

SEE ATTACHED SIGANTURE PAGE

By: Gary J. Dragul, President

**Closing Agent:**

FIDELITY NATIONAL TITLE INSURANCE COMPANY

by Lindsey Mann

**HICKORY CORNERS 16 A, LLC,**
a Delaware limited liability company

**HICKORY CORNERS 16 B, LLC,**
a Delaware limited liability company

By: Hickory Management, LLC,
a Colorado limited liability company,
Manager of each of the above entities

By: GDA Real Estate Management, Inc.,
a Colorado corporation, Manager

By: _____
Gary J. Dragul, President

[Signature Page to Settlement Statement]

*First American Title Company*
*National Commercial Services*
Skylight Tower, 1660 West 2nd Street, Suite 700 •Cleveland, OH 44113

*Office Phone:(800)424-6446Office Fax:(216)241-8504*

# *Buyer's Final Settlement Statement*



**Property:** 21800 US Highway 19 North, Clearwater, FL

**File No:** NCS-712021-CLE
**Officer:** LeAnn Davis/LD
**Settlement Date:** 08/12/2015
**Disbursement Date:** 08/12/2015
**Print Date:** 09/28/2015, 12:50 PM

**Buyer:** IPX Investment Property Exchange as Qualified Intermediary for Clearwater Plainfield 15, LLC; IPX Investment Property Exchange as Qualified Intermediary for Clearwater Collection 15, LLC
**Address:**
**Seller:** DDR Southeast Clearwater Development, L.L.C.
**Address:**

| Charge Description | Buyer Charge | Buyer Credit |
|---|---|---|
| **Consideration:** | | |
| Total Consideration | 17,801,000.00 | |
| | | |
| **Deposits in Escrow:** | | |
| Receipt No. 1744117441 on 08/12/2015 by ACF Property Management | | 3,000,000.00 |
| Receipt No. 1744117442 on 08/12/2015 by The Alan C Fox Revocable Trust | | 650,000.00 |
| Receipt No. 1744116457 on 03/12/2015 by Investment Property Exchange | | 250,000.00 |
| Receipt No. 1744117373 on 07/30/2015 by GDA Clearwater 15 LLC | | 100,000.00 |
| Receipt No. 1744117425 on 08/11/2015 by Investment Property Exchange | | 654,932.03 |
| Receipt No. 1744117433 on 08/12/2015 by GDA Clearwater 15 LLC | | 494,118.55 |
| | | |
| **Adjustments:** | | |
| Security Deposit- Floor and Decor | | 48,992.30 |
| Security Deposit- 21st Century High School | | 12,062.50 |
| Closing Credit to Buyer per 21st Amendment | | 25,000.00 |
| Settlement Credit to Buyer per 21st Amendment | | 642,200.00 |
| August Rent Proration | | 80,828.64 |
| August NNN Rent Proration | | 15,267.57 |
| Real Estate Tax Proration | | 126,302.24 |
| 21st Century High School Reserve Proration | | 4,181.84 |
| August Licensing Agreement Proration | | 146.19 |
| Prepaid Rent | | 155.29 |
| | | |
| **Attorney:** | | |
| Attorney Fee to Brownstein Hyatt Farber Schreck, LLP | 75,000.00 | |
| | | |
| **New Loan(s):** | | |
| Lender: Rialto Mortgage Finance, LLC | | |
| New Loan Amount - Rialto Mortgage Finance, LLC | | 13,350,000.00 |
| Interest on new loan - Rialto Mortgage Finance, LLC | 55,291.25 | |
| Application Fee - Rialto Mortgage Finance, LLC | 7,500.00 | |
| Borrower Good Faith Deposit - Rialto Mortgage Finance, LLC | | 30,000.00 |
| Servicer Set-up Fee - Rialto Mortgage Finance, LLC | 350.00 | |
| Site Inspection Fee - Rialto Mortgage Finance, LLC | 1,750.00 | |
| Research and Report Fee - Rialto Mortgage Finance, LLC | 357.00 | |
| | | |
| **Title/Escrow Charges to:** | | |
| Closing-Escrow Fee to First American Title Company National Commercial Services | 500.00 | |
| Overnight Delivery Service to First American Title Company National Commercial Services | 15.00 | |
| Miscellaneous Charge (Recording Service Fee) to First American Title Company National Commercial Services | 75.00 | |
| Policy-Standard ALTA 2006 Lender's ($13,350,000) to First American Title Company National Co | 250.00 | |
| Endorsement-Survey (L) to First American Title Company National Co | 100.00 | |
| Endorsement-Improved-ALTA 9.2 (L) to First American Title Company National Co | 1,583.83 | |
| Endorsement-ALTA 6-06 (Variable Rate Mortgage) to First American Title Company National Co | 100.00 | |
| Endorsement-8.1 (L) to First American Title Company National Co | 100.00 | |
| Endorsement (O) ALTA 9.5 to First American Title Company National Co | 1,583.83 | |
| Tax-Intangible Tax to First American Title Company National Commercial Services | 26,700.00 | |
| Tax-Documentary Stamps on Mortgage to First American Title Company National Commercial Services | 46,725.00 | |
| | | |
| **Disbursements Paid:** | | |
| Invoice 832198U to Abramowitz Tax & Lien Services, Inc. | 435.00 | |
| Inv. No. 15-137277-2 to Partner Engineering & Science, Inc. | 4,200.00 | |

Continued From Page 1

# *Buyer's Final Settlement Statement*

**Settlement Date:** 08/12/2015
**Print Date:** 09/28/2015

**File No:** NCS-712021-CLE
**Officer:** LeAnn Davis/LD

| Charge Description | Buyer Charge | Buyer Credit |
|---|---|---|
| Inv. No. 15-137277-1 to Partner Engineering & Science, Inc. | 3,950.00 | |
| Property, GL, Flood, Excess Prop Insurance to Moody Insurance Agency | 111,751.00 | |
| Inv. No. 8446 to CBRE, Inc. d/b/a IVI Environmental | 19,850.00 | |
| Inv. No. 33493 to CBRE, Inc. d/b/a IVI Environmental | 6,300.00 | |
| Inv. No. 34307 to CBRE, Inc. d/b/a IVI Environmental | 2,000.00 | |
| Inv. No. 34786 to CBRE, Inc. d/b/a IVI Environmental | 4,800.00 | |
| Inv. No. 34839 to CBRE, Inc. d/b/a IVI Environmental | 400.00 | |
| Invoice 0000048184 to Ampro | 2,000.00 | |
| LAF Construction Consultant to IPA, LLC | 59,500.00 | |
| Engineering Work Invoice #1022 to Northside Engineering, Inc. | 3,875.00 | |
| Invoice 2015-2189 to Cuhaci & Peterson | 5,750.00 | |
| Invoice 2015-2658 to Cuhaci & Peterson | 1,959.90 | |
| Lender Counsel Attorneys Fees to Cassin & Cassin LLP | 65,000.00 | |
| Tax Reserve - 11 months to Wells Fargo Bank, NA | 197,396.43 | |
| Insurance Reserve - 4 months to Wells Fargo Bank, NA | 37,250.32 | |
| Immediate Repair Reserves to Wells Fargo Bank, NA | 540,540.00 | |
| 21st Century High School TI/LC Reserve to Wells Fargo Bank, NA | 180,570.00 | |
| Appraisal Fee to CBRE, Inc. Appraisal and Valuation | 6,500.00 | |
| Engineering & Environmental Fees to EnviroBusiness Inc. | 3,260.00 | |
| Zoning Report to Howard Zoning Associates, LLC | 700.00 | |
| Insurance Review to Harbor Group Consulting Inc. | 3,075.00 | |
| Lien Searches to LexisNexis Risk Assets Inc | 5,234.58 | |
| UW and Lease Abstracts to Situs Real NY LLC | 18,110.00 | |
| Lender Legal Fees to Alston & Bird LLP | 975.00 | |
| Lender Legal Fees to Troutman Sanders, LLP | 65,719.13 | |
| Environmental Insurance Policy Premium to Apple Benefits Company | 93,384.88 | |
| Lender Environmental Legal to TDC Consulting Group | 125.00 | |
| Third Party Review Fees (Eng. & Appr.) to Grindstone Management LLC | 1,120.00 | |
| Delaware Counsel Attorneys Fees to Connolly Gallagher LLP | 7,225.00 | |
| Florida Counsel Attorneys Fees-Invoice 784489 to Lowndes Drosdick, Doster, Kantor & Reed, P.A. | 5,000.00 | |
| Recording Fee Hold to Temp- FATIC | 750.00 | |
| Survey to Cumbey & Fair, Inc. | 6,500.00 | |
| | | |
| | | |
| **Totals** | 19,484,187.15 | 19,484,187.15 |

**Initials:** _____ _____

Continued From Page 2

*Buyer's Estimated Settlement Statement*

**Settlement Date:**
**Print Date:** 08/12/2015

**File No:** NCS-712021-CLE
**Officer:** Rebecca S. Groetsch/LD

**BUYER(S):**

IPX Investment Property Exchange as Qualified Intermediary for Clearwater Plainfield 15, LLC, a Delaware limited liability company

Exchange Officer

Read and Approved by the Following Exchangers:

Clearwater Plainfield 15, LLC, a Delaware limited liability company

By: GDA Clearwater Management, LLC, a Colorado limited liability company, its Manager

By: Gregory J. Dragul
Its: President

IPX Investment Property Exchange as Qualified Intermediary for Clearwater Collection 15, LLC, a Delaware limited liability company

Exchange Officer

Read and Approved by the Following Exchangers:

Clearwater Collection 15, LLC, a Delaware limited liability company

By: GDA Clearwater Management, LLC, a Colorado limited liability company, its Manager

By: Gregory J. Dragul
Its: President

| | |
|---|---|
| **DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO**<br>1437 Bannock Street<br>Denver, CO 80202 | |
| **Plaintiff:** CHRIS MYKLEBUST SECURITIES COMMISSIONER FOR THE STATE OF COLORADO,<br>v.<br>**Defendants:** GARY DRAGUL, et al. | **▲ COURT USE ONLY ▲** |
| *Attorney for Non-Party Hagshama:*<br>Kenneth F. Rossman, IV, No. 29249<br>LEWIS ROCA ROTHGERBER CHRISTIE LLP<br>1200 17th Street, Suite 3000<br>Denver, CO 80202-5835<br>303.623.9000<br>krossman@lrrc.com | Case No: 2018CV033011<br><br>Courtroom: 424 |

**HAGSHAMA'S OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HICKORY CORNERS**

Hagshama Hickory NC, LLC and CoFund 6, LLC (jointly "Hagshama") object to the proposed sale because the Receiver has no authority to sell the real property at issue ("Hickory Corners") under the governing tenancy-in-common and operating agreements. The property is not part of the Receivership Estate. This proposed sale, which is being made at an artificially low price because of the circumstances, will create substantial losses for the majority owners—the innocent investor victims.

## Background

Hagshama is a private investment firm in Israel. It allows small investors to join in large-scale investments. It has been in operation since 2009 and has around 32,000 investors participating in roughly 3,000 projects around the world. Critically, each Hagshama-related investment is funded by a unique set of individual small investors. So, the individual Israeli

citizens who invested in Hickory—and who stand to lose much of their money if the proposed transaction goes through—differ from those who invested in the seven other Gary Dragul-related projects affected by the Receivership.

Individual Israeli investors, organized as Hagshama Hickory NC, LLC and CoFund 6, LLC, own 100% of Hickory Corners 16A, LLC and Hickory Corners Box 16A, LLC, which own 64.59% of the real property at issue (and hold title to the property). The individuals associated with Hagshama paid $4,200,852 for this interest. None of these Hagshama entities are part of the Receivership Estate. Mr. Dragul and investors related to him own the remaining 35.41% of Hickory Corners through other entities. The Dragul-related and Hagshama-related entities own the real property as tenants-in-common, subject to a Tenancy-in-Common Agreement. (Attached as Ex. A.)

This ownership structure highlights a critical fact about the Receivership—it comprises individual, discrete investments. In a typical investment fraud scheme, like a Ponzi scheme, the victims invest in a common investment, like a fund. The funds from later investors are then used to pay the earlier investors. Here, by contrast, there are a series of separate investments made by different individuals. Mr. Dragul is involved in each, but otherwise the investors are different for each project (although some individuals are involved in more than one investment). Therefore, just as it would have been improper for Mr. Dragul to have used funds from one investment to benefit another—if he did that —it is wrong for the Receiver to manage, or dispose of, one project to benefit others. Each investment stands alone.

In its rush to obtain cash for its operations and to move toward closure, the Receiver seeks approval of a transaction that would cause the Hagshama investors to lose more than half of their investment—on a property that had no problems until the appointment of the Receiver. The appointment of the Receiver, by itself, has adversely affected the potential of the assets, thus affecting the present value. Allowing a sale now heighten the negative impact on the Hagshama investors, who are very individuals who need protection.

**Basis for Objection**

This Court appointed Mr. Sender as Receiver for Mr. Dragul, 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." (Receivership Order ¶¶ 5, 9.) Hickory Corners 16A and Hickory Corners Box 16A are wholly owned by Hagshama and are not properties, assets, or interests of Mr. Dragul, GDA Real Estate Services, LLC, or GDA Real Estate Management, LLC, and so are not part of the Receivership Estate.

Similarly, the property, Hickory Corners, which is majority owned by Hickory Corners 16A and Hickory Corners Box 16A is not part of the Receivership Estate. At most, the minority portion of the property held as a tenant-in-common by the Dragul-related entities may be part of the Estate. The Tenancy-in-Common Agreement, however, has provisions limiting the right of the tenants to transfer their interest in the underlying real estate (Ex. A, TIC § 6.9), including if bankruptcy occurs (Ex. A, TIC § 6.10). The Receiver has followed none of these provisions. And, critically, the Tenancy-in-Common Agreement does not give the minority owner any right to sell the entire property without the authorization of the majority owner. (Ex. A.)

Hagshama's approval right over any sale of the property is reinforced in the applicable operating agreements.[1] The manager of the Hagshama entities is Hickory Management, LLC, which is part of the Receivership Estate. The Receivership Order is clear that the Receiver's actions must be "consistent with the governance documents or operating agreements applicable to [them]." (Receivership Order ¶ 13(b).) Under the operating agreements, Hickory Management's authority and discretion is limited. In particular, it may not sell the underlying property without Hagshama's consent. (Hickory Corners 16A, LLC Operating Agreement § 6.1(K), attached as Ex. B, and Hickory Corners Box 16A, LLC Operating Agreement § 6.1(K), attached as Ex. C.)

Hagshama has not consented to this sale. With the Receivership Order, the Receiver stepped into the shoes of Mr. Dragul and his entities. The Order gives the Receiver special rights vis-à-vis the Receivership Estate. It does not, however, give the Receiver special authority to breach Mr. Dragul's contracts with others or control over property not within the Estate. Indeed, the Order specifically notes that the Receiver is bound by these things. (Receivership Order ¶ 13(b).) And, C.R.C.P. 66 does not give receivers authority to ignore contracts. The Tenancy-in-Common Agreement and the Operating Agreements are contracts between Hagshama and the

[1] The entities were created under Delaware law, where LLCs are "creatures of contract." *Huatuco v. Satellite Healthcare*, 2013 WL 6460898, at *1 (Del. Ch. Dec. 9, 2013), aff'd, 93 A.3d 654 (Del. 2014). *See also TravelCenters of Am., LLC v. Brog*, 2008 WL 1746987, at *1 (Del. Ch. Apr. 3, 2008) (observing that "limited liability companies are creatures of contract"); 6 Del. C. § 18-1101(b).

entities now controlled by the Receiver. The Receiver has not more right to ignore these contracts than it would a loan.

The Receiver cites no authority for the proposition it, as an owner of a minority equity interest, may force the sale of property it does not control in violation of the operative contracts. The Receiver may suggest this Court has authority in equity to permit this action, but it is inequitable for the Receiver to impose substantial losses on the majority owners of Hickory Corners to benefit investors in other investments or the Receivership.

This is an important issue that may arise in seven additional projects. For this reason, Hagshama requests a hearing to address it with the Court.

**Conclusion**

The Receiver may sell Mr. Dragul's equity interest, which is part of the Receivership Estate, in Hickory Corners. The Receiver may also cause Hickory Manager to resign so it has no on-going expenses. He has no authority, however, to sell Hickory Corners itself without Hagshama's consent. Doing so would breach the Tenancy-in-Common Agreement and the governing Operating Agreements (and the basic law governing tenants in common). In his Motion, the Receiver does not acknowledge or address these issues because he cannot explain as a legal matter why they can be ignored. This Court should deny the Motion.

Respectfully submitted this 17th day of February, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP
*s/Kenneth F. Rossman, IV*
Kenneth F. Rossman, IV, No. 29249

*Attorney for Hagshama*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of February, 2019, the foregoing was served via first class, U.S. mail, postage prepaid on the following:

Robert W. Finke, Esq.
Matthew J. Bouillon, Esq.
Sueanna P. Johnson, Esq.
Ralph L. Carr Judicial Building
1300 Broadway, 8th Floor
Denver, Colorado 80203
***Counsel for Chris Myklebust, Securities Commissioner for the State of Colorado***

Jeffery A. Springer, Esq.
Springer and Steinberg P.C.
1600 Broadway, Suite 1200
Denver, Colorado 80202
***Counsel for Defendants, Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC***

Michael T. Gilbert, Esq.
Patrick D. Vellone, Esq.
Rachel A. Sternlieb, Esq.
Allen Vellone Wolf Helfrich and Factor PC
1600 Stout St., Suite 1100
Denver, CO 80202
***Counsel for Receiver Harvey Sender***

Geoffrey D. Fasel, Esq.
900 W. 48th Place, Suite 900
Kansas City, MO 64112
gfasel@polsinelli.com
***Counsel for Odyssey Real Estate Partners***

Richard Bolton, Esq.
Ragsdale Liggett PLLC
2840 Plaza Place, Suite 400
Raleigh, NC 27612
robolton@rl-law.com
***Counsel for Nova Capital Partners, LLC***

*s/Kenneth F. Rossman, IV*
Lewis Roca Rothgerber Christie LLP

**TENANCY-IN-COMMON AGREEMENT**
**(Hickory Corners Shopping Center)**

THIS TENANCY-IN-COMMON AGREEMENT (this "**Agreement**"), dated as of January 26, 2017 (the "**Effective Date**"), is made by and between HICKORY CORNERS 16 A, LLC, a Delaware limited liability company ("**Hickory A**"), and HICKORY CORNERS 16 B, LLC, a Delaware limited liability company ("**Hickory B**") each hereinafter referred to individually as a "**Tenant**" or collectively as the "**Tenants**."

A. Tenants are, or will become, the owner of the fee simple title to the real property known as Hickory Corners Shopping Center located at 1718 US Highway 70 Southeast Hickory, North Carolina, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**"), as tenants-in-common, subject to the terms and conditions of this Agreement.

B. The Tenants now desire to create a tenancy-in-common (the "**Tenancy-in-Common**") in order to coordinate all actions taken with respect to the Property upon and following the vesting of fee simple title to the Property in the Tenants.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE I
Declaration of Intention

1.1 The relationship of the parties in the Property will be as tenants-in-common, each as to the following separate and undivided percentage interests (the "**Percentage Interests**"):

| | |
|---|---|
| Hickory A | 64.59% |
| Hickory B | 35.41% |

The parties shall have all the rights and privileges of such relationship in accordance with the laws of the State of North Carolina, subject, however, to the terms and conditions of this Agreement.

1.2 No Tenant shall have the right to bind any other Tenant, except as expressly set forth herein.

1.3 Nothing contained herein shall be deemed to create the relationship of partner or partnership or any relationship other than that of tenants-in-common.

1.4 The term of this Agreement shall commence on the Effective Date and shall continue until the later to occur of (i) the sale of all co-tenancy interests (each, an "**Interest**" and collectively, the "**Interests**"), (ii) the time when there is only one Tenant, or (iii) the sale of the Property and the distribution of all proceeds of sale to the Tenants.

## ARTICLE II
## Cash Proceeds and Expenses of the Property; Additional Contributions of Capital; Indemnification

2.1 Except as otherwise provided in any other agreements among the Tenants, all cash proceeds from operation, leasing, refinancing or sale of the Property shall be shared by each Tenant pro rata in accordance with its Percentage Interest.

2.2 Except as otherwise provided in any other agreements among the Tenants, all ownership and operation costs associated with the Property, including but not limited to costs and expenses incurred in connection with payment of taxes, insurance premiums, utilities, maintenance services, management services, repair services, improvement services, debt service, if any, and all other costs and expenses that may be reasonably necessary in connection with the ownership, operation, sale or leasing of the Property, shall be paid by each Tenant pro rata in accordance with its Percentage Interest within Ten (10) days after written request from the Manager appointed pursuant to **Section 4.1** below.

2.3 In the event that any Tenant shall not make such payment required by **Section 2.2**, the remaining Tenants shall have the following options:

(a) to advance in any proportion the amounts necessary to make the payment due from the Tenant who has failed to make the required payment. Such advances with interest thereon at such rates as may be allowed by law, but no more than 18% per annum, shall be repaid to the advancing Tenants from the first available funds produced from the Property prior to the distribution of any funds to any of the Tenants. The advances shall have a maturity date of no greater than thirty-one (31) days and shall be recourse to the non-paying Tenant. Such repayment shall be in the proportion that each of the advancing Tenant's Percentage Interests bear to each other; or

(b) to not make such advance, but to reduce from the first available funds produced from the Property that would have otherwise been distributable to the non-paying Tenant such amount of funds as to pay all interest, penalties, costs, expenses and damages related to or resulting from such non-paying Tenant's actions.

2.4 Notwithstanding anything to the contrary contained in this **Article 2**, but subject to **Article 7** hereof, each Tenant agrees to protect, defend, indemnify and hold harmless the other Tenants: (a) against all debts, liens, judgments or charges of any nature accruing against the Property or a Tenant by reason of any act of the indemnifying party; and (b) to the extent that any Tenant incurs liability for repayment of any loan obtained by the Tenants, or any other obligation relating to the Property, in excess of its respective Percentage Interest. This indemnity shall include, without limitation, all costs and reasonable attorneys' fees incurred in connection with such excess obligation or with the enforcement of this indemnity.

## ARTICLE III
## Time Devoted to the Business

Subject to the provisions of Article IV below, each Tenant shall devote such time and attention to the business of the Property as it may desire, and no Tenant shall be entitled to draw a salary for such services.

## ARTICLE IV
## Management and Operation of the Property

4.1 Upon the unanimous consent of the Tenants, the Tenants may elect a "Manager" of the Property and enter into a separate Property Management Agreement. The Manager, if so elected, subject to the following provisions of this **Section 4.1**, shall be responsible for the day-to-day business operations in connection with the leasing and operation of the Property. In addition, the Manager shall have the power to sign on behalf of the Tenants all documents necessary in connection with the leasing and operation of the Property, provided that the following shall require the prior unanimous written approval of the Tenants: (a) all sales of all or substantially all of the Property; (b) all loans or encumbrances secured by a mortgage or deed of trust encumbering the Property; (c) all liens to be recorded against the Property; and (d) other disposition(s) of all or substantially all of the Property. The Manager shall, at the cost and expense of the Tenants, conduct or cause to be conducted the day-to-day ordinary and usual business affairs relating to the leasing and ownership of the Property as the Manager deems necessary or desirable in its sole discretion, in accordance with and as limited by this Agreement, including without limitation performance of the following:

(a) to actively seek sound tenants for, and supervise and negotiate leasing of, all space available for lease in the Property;

(b) to supervise all accounting services, including the payment of payroll, suppliers, contractors and subtrades, and maintain all books of account and financial records relating to the leasing and ownership of the Property, and to provide all such other accounting and bookkeeping services as may be necessary or appropriate in fully documenting and recording matters relating to the leasing and ownership of the Property. Bank accounts shall be in the name of one or more Tenants and not the Manager. Excess cash flow after reserves will be distributed on no less frequent basis than quarterly;

(c) to the extent that funds are available therefore, to pay before delinquency and before the addition thereto of interest or penalties all taxes, assessments, rents and impositions applicable to the Property;

(d) to negotiate, enter into and supervise the performance of contracts covering the making of any repairs or alterations to or other construction upon the Property;

(e) to supply to the Tenants all information required by the Tenants for the preparation of their annual tax returns;

(f) to prepare and deliver to the Tenants reports from time to time of the state of the Property, which reports shall include factors of significance with respect to the leasing or operation of the Property;

(g) to coordinate the services of all employees, independent contractors, architects, engineers, accountants, lawyers, leasing agents, property managers and other persons and entities necessary or appropriate to carry out the leasing and operation of the Property;

(h) to maintain all funds relating to the leasing or ownership of the Property in an account or accounts in a bank or banks selected by the Manager;

(i) to comply promptly with all present and future laws, ordinances, rules, regulations and requirements of all federal, state, county, city or other governmental or quasi-governmental agencies which may be applicable to the Property or the leasing or ownership thereof;

(j) to supervise all matters coming within the terms of this Agreement and make final inspections of all completed work and approved bills for payment;

(k) to maintain, manage and operate the Property in an efficient manner and ensure the effective and expeditious fulfillment of all duties, obligations and functions of the Manager to the best interest and benefit of the Tenants; and

(l) to subject the Property or any portion or portions thereof to easements, rights of way or other similar rights, with or without compensation, as the Manager, in its reasonable discretion, may determine, subject to the unanimous approval of the Tenants.

4.2 Except as otherwise specifically provided in this Agreement or in any property management agreement regarding the Property, all decisions of the Tenants shall be made by Tenants holding a majority of the Percentage Interests.

4.3 The Tenants hereby initially appoint GDA Management Services, LLC as the Manager for a period of one (1) year. Said appointment shall automatically renew for one (1) year periods, unless any of the Tenants elect to remove the Manager. In such event, a new manager shall be elected to replace GDA Management Services, LLC upon the unanimous consent of the Tenants.

4.4 The Manager shall receive a fee for its services under this Agreement to be set forth in the Property Management Agreement.

4.5. The Tenants agree that they shall not amend the Property Management Agreement without the prior consent of Rialto Mortgage Finance, LLC and/or its successors and/or assigns ("**Lender**") for so long as that certain loan (the "**Loan**") from Lender to the Tenants encumbering the Property is outstanding (or until the Tenants defease the Loan).

## ARTICLE V
## Arbitration; Attorneys' Fee and Costs

5.1 It is the intention of the Tenants to first mediate any dispute that may arise amongst them based on this Agreement, by a mediator chosen through the collaborative efforts of their respective counsel. The cost of the mediator shall be shared equally by the Tenants and each Tenant shall bear the cost of their own attorney's fees. If such mediation is not successful, and in the event that any Tenant hereto shall commence any arbitration (if arbitration is consent to by the Tenants), legal action or proceeding, including, not by way of limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of this Agreement to be performed or kept, the Tenant prevailing in said action or proceeding shall recover, in addition to its court costs, its reasonable attorney's fees to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if any.

## ARTICLE VI
## Miscellaneous

6.1 Notices. All notices provided for under this agreement shall be in writing addressed and sent by registered or certified mail to the parties at their respective addresses below, or such addresses as last requested thereby in writing. Unless otherwise specifically provided for herein, all notices, payments, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (i) upon personal delivery, or (ii) when sent, if by email or facsimile transmission (provided sender receives printed confirmation of the successful delivery of such facsimile transmission), or (iii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iv) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

To Hickory A:

GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, Colorado 80111
Attn: Gary Dragul, President
E-mail: AcquisitionsGarvDragul@gdare.com
Telephone: (303) 221-5500

with a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Robert Kaufmann
Telephone: (303) 223-1176
E-mail: rkaufmann@bhfs.com

To Hickory B:

GDA Real Estate Services, LLC
5690 DTC Boulevard, Suite 515
Greenwood Village, Colorado 80111
Attn: Gary Dragul, President
E-mail: AcquisitionsGarvDragul@gdare.com
Telephone: (303) 221-5500

with a copy to:

Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, CO 80202
Attn: Robert Kaufmann
Telephone: (303) 223-1176
E-mail: rkaufmann@bhfs.com

Any Tenant shall promptly notify the other Tenant of any change in its principal address or telephone number by giving written notice in the manner set forth above.

6.2 Benefit. This Agreement shall be binding upon and shall inure to the benefit of each of the Tenants, and their respective beneficiaries, heirs, executors, administrators, legal representatives, successors and assigns.

6.3 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. This Agreement may be delivered by facsimile or email and upon receipt shall be deemed originals and binding upon the parties hereto.

6.4 Amendments. This Agreement may not be amended unless such the amendment is in writing and approved unanimously by the Tenants. Notwithstanding anything herein to the contrary, this Agreement may not be terminated, canceled, modified, changed, supplemented, altered, amended or assigned without the prior written consent of Lender for so long as the Loan is outstanding (or the Tenants defease the Loan). Any such termination, cancellation, modification, change, supplement, alteration, amendment or assignment without the prior written consent of Lender in each case shall be void and of no force and effect

6.5 Gender. Whenever the singular is used in this Agreement and when required by the context, the same shall include the plural, and vice versa, and the masculine gender shall include the feminine and neuter genders, and vice versa.

6.6 Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

6.7 Time of the Essence. Time is of the essence of this Agreement.

6.8 No Third Party Beneficiaries. Except as otherwise provided in **Section 7.10** below, the provisions of this Agreement are not intended to be for the benefit of and shall not confer any rights on any creditor or other person or entity whom any debts, liabilities or obligations are owed by any of the Tenants.

6.9 Right of First Offer.

(a) If a Tenant ("**Selling Tenant**") desires to sell, transfer or assign (each, a "**Transfer**") all or any part of its Interest (the ("**Offered Interest**"), the Selling Tenant shall give written notice (the "**Offer Notice**") to the Manager and to the other Tenants (the "**Non-Selling Tenants**") of the Selling Tenant's intention to Transfer the Offered Interest upon the following terms and conditions:

(i) For a period ending five (5) business days after the Offer Notice is given (the "**Offer Period**"), any Non-Selling Tenant may advise the Selling Tenant in writing, with a copy to all other Non-Selling Tenants, of the price (which price shall include the assumption of the Selling Tenant's share of any debt on the Property) at which such Non-Selling Tenant (a "**Non-Selling Tenant Offeror**") would be willing to purchase all, but not less than all, of the Offered Interest.

(ii) Within five (5) days after the end of the Offer Period, the Selling Tenant shall accept or reject, by written notice given to the Non-Selling Tenant Offerors, the highest offer for the Offered Interest timely given to the Selling Tenant from such offerors. If the Selling Tenant fails to give a notice of acceptance or rejection to the Non-Selling Tenant Offeror within such five (5) day period, the highest offer shall be deemed rejected. If the Selling Tenant timely accepts, in writing, the highest offer, then the Selling Tenant and the Non-Selling Tenant Offeror whose offer has been accepted shall close the sale of the Offered Interest pursuant to **Section 6.9(a)(iv)**. If two or more Non-Selling Tenant Offerors timely offer the same price, and such offer is timely accepted, then such Non-Selling Tenant Offerors shall divide the right to purchase the Offered Interest in proportion to their respective Percentage Interests, or as they might otherwise agree. If the Selling Tenant rejects or is deemed to have rejected the highest offer, then the Selling Tenant shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price (which price shall include the assumption of the Selling Tenant's share of any debt on the Property) that is greater than the highest offer, which transaction shall be completed, if at all, within 90 days after the end of the Offer Period.

(iii) If the Non-Selling Tenants do not respond to the Selling Tenant's Offer Notice within the Offer Period, then the Selling Tenant shall be entitled to sell the Offered Interest to a third party in an all- cash transaction for a purchase price acceptable to the Selling Tenant, which transaction shall be completed, if at all, within 90 days after the end of the Offer Period.

(iv) The closing of a sale and purchase of the Offered Interest pursuant to this **Section 6.9(a)** shall occur at a time, place and date mutually agreeable to the selling and purchasing parties, but not more than 90 days after the end of the Offer Period.

(v) If any proposed transfer of the Offered Interest is not consummated within the time period set forth herein through no fault of the Non-Selling Tenant Offerors, then the Selling Tenant must once again comply with the terms and conditions of this **Section 6.9(a)** before selling all or any part of its Interest. If the proposed transfer of the Offered Interest is not consummated within the time period set forth herein as a result of the fault of the Non-Selling Tenant Offerors, the Selling Tenant shall be entitled to sell the Offered Interest to a third party in an all-cash transaction for a purchase price acceptable to the Selling Tenant, which transaction shall be completed at any time within 150 days after the end of the Offer Period.

(b) Notwithstanding anything else to the contrary herein, the terms of this **Section 6.9** shall not apply to, and no consent of any other Transfer shall be required in connection with: (i) a Transfer of an Interest to an Affiliate; (ii) the Transfer of an Interest upon the occurrence of a Bankrupcty pursuant to **Section 6.10** below; or (iii) sales of all or substantially all of the Property approved by the Tenants pursuant to **Section 4.1** above. For purposes of this Agreement: (I) "**Entity**" means any general partnership, limited partnership, limited liability company, corporation, joint venture, trust (including any beneficiary thereof), business trust, joint stock company, unincorporated organization, cooperative, association or government or any agency or political subdivision thereof; and (II) "**Affiliate**" means any Person controlling or controlled by or under common control with the Tenant. For purposes of this definition, "control" when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing; and (III) "**Person**" means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such "Person" where the context so admits.

(c) Notwithstanding anything else to the contrary herein, no Tenant shall have the right to Transfer an Interest, or any ownership interest in a Tenant.

(d) Notwithstanding anything else to the contrary herein, no Tenant may sell or transfer its co-tenancy interest unless the transferee enters into this Agreement on or prior to such transfer.

6.10 Bankruptcy.

(a) Upon the first to occur of (i) written notice from a Tenant to the Manager of the occurrence of a Bankruptcy by such Tenant (the "**Bankrupt Tenant**") or (ii) the Manager becoming aware of a Bankruptcy with respect to a Bankrupt Tenant, the Manager shall provide written notice of such Bankruptcy to the remaining Tenants (the "**Non-Bankrupt Tenants**"), and the Manager and the Non-Bankrupt Tenants shall have the option (the "**Bankruptcy Option**") to purchase the entire Interest of the Bankrupt Tenant for a 30-day period (the "**Bankruptcy Period**") after the date of such written notice of the Bankruptcy.

(b) The Manager and any Non-Bankrupt Tenant may exercise their Bankruptcy Option by delivering to the Bankrupt Tenant, with a copy to the Non-Bankrupt Tenants and the Manager, as applicable, a written offer to purchase some or all of the Interest of the Bankrupt Tenant within the Bankruptcy Period (a "**Bankruptcy Election**"). If the Manager does not elect to purchase all of the Interest, then the Non-Bankrupt Tenants who delivered a written offer to purchase as described above (the "**Bankruptcy Purchase Tenants**") may purchase that portion of such Interest not elected by the Manager, allocated as between the Bankruptcy Purchase Tenants as follows: (1) first, the lesser of (x) the amount of such Interest not purchased by the Manager that is specified by such Bankruptcy Purchase Tenant in the Bankruptcy Election or (y) such Bankruptcy Purchase Tenant's Percentage Interest; (2) second, the balance, if any, not allocated under clause (1), above, shall be allocated to those Bankruptcy Purchase Tenants who indicated in their Bankruptcy Election the desire to purchase greater than their Percentage Interest (measured as of the first day of the Bankruptcy Period), up to the amount of such excess. The Manager and the Bankruptcy Purchase Tenants may elect to purchase all or less than all of the Bankrupt Tenant's Interest.

(c) Unless otherwise agreed, upon the occurrence of a Bankruptcy, the purchase price for the Bankrupt Tenant's Interest shall be equal to 85% of the Bankrupt Tenant's Net Equity (as defined below). "**Net Equity**" means the Percentage Interest of the Bankrupt Tenant multiplied by the sum of: (A) the Asset Value (as defined below) of the Property, as reasonably determined pursuant to **Section 1.1(d)(ii)**; less (B) all accrued, but unpaid, liabilities of the Property, including, without limitation, normal brokerage fees for the sale of Property.

(d) Payment of the purchase price shall be made in cash or certified funds at time of closing if the purchase price is less than $50,000. If the purchase price is $50,000 or more, payment of the purchase price shall be made by: (i) the cash payment of the greater of $50,000 or 25% of the purchase price at closing; and (ii) delivery of the purchaser's promissory note for the balance of the purchase price, payable in equal quarterly installments, including principal and interest on unpaid balances at the rate hereinafter specified over three years from date of closing. Such note shall contain customary provisions, including but not limited to, acceleration on default and payment of collection costs (including reasonable attorney's fees) on default and shall provide prepayment may be made at any time without penalty. The promissory note shall be secured by a pledge of the Bankrupt Tenant's Interest, pursuant to a commercially reasonable security agreement and related documents. The interest rate for such note shall be 1% above the Prime Rate. However, if the interest rate exceeds the maximum legal rate of interest then interest shall accrue at the maximum legal rate.

(e) For purposes of this Agreement, the following definitions shall apply:

(i) "**Bankruptcy**" shall mean, with respect to any Person, if such Person (A) makes an assignment for the benefit of creditors, (B) files a voluntary petition in bankruptcy, (C) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (D) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (E) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (F) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Person or of all or any substantial part of its properties, or (G) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

(ii) "**Asset Value**" shall mean the fair market value of the Property, as determined based on a valuation as of the last day of the month immediately prior to the Bankruptcy. For purposes of this Agreement, Asset Value shall be established in good faith by the Manager.

## ARTICLE VII
## Miscellaneous Provisions

7.1 Co-tenancy

(a) Each Tenant acknowledges and confirms that it owns or will own its interest in the Property as a tenant in common with the other Tenants, and that each Tenant's interest in the Property is its Percentage Interest. Each Tenant acknowledges that, no partnership exists between the Tenants with respect to the Property or any other matter.

(b) The Tenants hereby waive any right they may have to partition the Property or to file a partition action relating to the Property and specifically covenant not to undertake any such action.

7.2 Successor. Any successor to any portion of the interest of any Tenant in the Property, other than a single grantee or assignee of the interests of the Tenants, shall be deemed to accept the interest so conveyed upon and subject to the terms and provisions of this Agreement and to have assumed all obligations of the grantor or assignor accruing from and after the effective date of such conveyance, subject to the limitations on personal liability contained herein, which limitations shall be deemed applicable to the grantee to the extent that they were applicable to the grantor.

7.3 Waiver. Each Tenant hereby waives any and all rights of subrogation, reimbursement, contribution, indemnity or otherwise arising by contract or operation of law

(including, without limitation, any lien rights) from or against any other Tenant.

7.4 Governing Law/Venue. The laws of the State of North Carolina govern the enforcement and interpretation of this Agreement. The venue for any action related to this Agreement shall be in the County of Catawba, North Carolina.

7.5 Severability. If for any reason any provision of this Agreement, or the applicability of any such provision to a specific situation, is determined by a tribunal of competent jurisdiction to be legally invalid or unenforceable, the validity of the remainder of the Agreement will not be affected and such provision will be modified or deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision will then be enforceable and enforced.

7.6 Representative Tenant. It is agreed by each Tenant that (i) Hickory B is authorized to be the sole contact and notice party and shall act as each such Tenant's attorney-in-fact to receive all notices, including, without limitation, service of process for each such Tenant, and (ii) Hickory B shall keep all books and records pertaining to the Property separate from any other property of Hickory B. Hickory B hereby agrees to provide such notices received to Hickory A, but failure to do so will not alter the effect of such notice. Hickory B is hereby authorized to correspond with, and receive correspondence from, Lender for so long as that certain loan from Lender to Tenants is outstanding (or the Tenants defease the Loan). If requested by Lender, each Tenant will sign an investor certificate, which certificate shall provide the guarantor of the Loan with a limited power of attorney to correspond with the Lender on behalf of each Tenant.

7.7 Notice to Hickory A from Other Tenants. Hickory B agrees that should such entity give notice to Hickory A, such notice shall also be sent to Hickory A at the following address: 11 Granit St., Petach Tikva, Israel, Attn: Naor Cohen.

7.8 Subordination. It is agreed by each Tenant that (i) any purchase rights or rights of first refusal in favor of any Tenant shall be subject and subordinate to the Loan and the loan documents, (ii) all indemnities and other rights and remedies of each Tenant shall be subject and subordinate to the Loan and the loan documents; (iii) all payments under the Loan and the loan documents have priority over distributions to the Tenants and distributions shall in all ways be subordinate and subject to the terms and conditions of the Loan and the loan documents; and (iv) this Agreement shall be subordinate to the Loan and shall be subject to the terms and conditions of any loan documents entered into in connection with the Loan.

7.9 Single Asset Real Estate. Each of the Tenants hereby acknowledge that the Property is "single asset real estate" as defined in 11 U.S.C. §101(51B) and pursuant to 11 U.S.C. §362(d)(3).

7.10 Third Party Beneficiary. Each of the Tenants hereby acknowledge that Lender is a third-party beneficiary this Agreement.

**[Signature Page Immediately Follows]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

HICKORY CORNERS 16 A, LLC,
a Delaware limited liability company

By: Hickory Management, LLC,
a Colorado limited liability company,
its Manager

By: GDA Real Estate Management, Inc.,
a Colorado corporation,
its Manager

By: _____
Gary J. Dragul, President

HICKORY CORNERS 16 B, LLC,
a Delaware limited liability company

By: Hickory Management, LLC,
a Colorado limited liability company,
its Manager

By: GDA Real Estate Management, Inc.,
a Colorado corporation,
its Manager

By: _____
Gary J. Dragul, President

# EXHIBIT A

## LEGAL DESCRIPTION

**EXHIBIT A**

**LEGAL DESCRIPTION**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE STATE OF NORTH CAROLINA, COUNTY OF CATAWBA AND DESCRIBED AS FOLLOWS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN CATAWBA COUNTY, HICKORY TOWNSHIP, NORTH CAROLINA AND BEING ALL OF TRACT NUMBER 1, HICKORY CORNERS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY JDN ENTERPRISES, INC. BY CRAIG S. MCNEILL (NORTH CAROLINA REGISTERED LAND SURVEYOR NO. 2563) ON DECEMBER 21, 1994, OF RECORD IN PLAT BOOK 21, PAGE 151, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

**SAVE AND EXCEPT** THAT PARCEL CONVEYED BY DEED RECORDED IN BOOK 2249, PAGE 1724, CATAWBA COUNTY REGISTRY.

**FURTHER SAVE AND EXCEPT** THAT PARCEL OF LAND CONTAINING 1.733 ACRES, MORE OR LESS, AS SHOWN ON THAT CERTAIN PLAT PREPARED BY MCNEILL SURVEYING & LAND PLANNING, PLLC, BY CRAIG S. MCNEILL (PROFESSIONAL LAND SURVEYOR # L-2563) OF RECORD IN PLAT BOOK _____, PAGE _____, IN THE OFFICE OF THE REGISTER OF DEEDS FOR CATAWBA COUNTY, NORTH CAROLINA.

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| **DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO**<br>1437 Bannock Street<br>Denver, CO 80202 | DATE FILED<br>July 25, 2025 10:55 AM<br>FILING ID: 5069084E234C1<br>CASE NUMBER: 2018CV33011 |
| **Plaintiff:** CHRIS MYKLEBUST SECURITIES COMMISSIONER FOR THE STATE OF COLORADO,<br>v.<br>**Defendants:** GARY DRAGUL, et al. | **▲ COURT USE ONLY ▲** |
| *Attorney for Non-Party Hagshama:*<br>Kenneth F. Rossman, IV, No. 29249<br>LEWIS ROCA ROTHGERBER CHRISTIE LLP<br>1200 17th Street, Suite 3000<br>Denver, CO 80202-5835<br>303.623.9000<br>krossman@lrrc.com | Case No: 2018CV033011<br><br>Courtroom: 424 |

**HAGSHAMA'S SURREPLY IN SUPPORT OF OBJECTION TO RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF HICKORY CORNERS**

In the Receiver's Reply in Support of Hickory Corners Sale Motion and In Response to Hagshama's Objection ("Reply"), the Receiver argues for the first time that the proposed sale of Hickory Corners must be approved based on "economic realities" and vague notions of "fairness and equity." According to the Receiver, the Court should ignore the explicit language of the controlling documents, along with controlling law, to reach this result. To support this proposition, the Receiver cites decisions generated by various federal courts based on factual situations that have no bearing on the proposed sale of Hickory Corners. (Reply at 9-14.) None of these cases suggest a Receiver may confiscate property owned by third parties and convey it as if it were part of the receivership estate. The proposed transaction is contrary to established Colorado receivership law and North Carolina property law.

Further, the Tenancy-In-Common Agreement, which states North Carolina law governs, prohibits the proposed sale.[1] (*See* Hagshama's Objection to Receiver's Motion for Order Authorizing Sale of Hickory Corners, Ex. A, TIC §§ 1.1 and 7.1(a).) Section 4.1 requires unanimous consent of all tenants for any sale of the property.

## ARGUMENT

**Under Colorado law a receiver's rights in property cannot be summarily expanded.**

In his Reply, the Receiver admits that "case law addressing the administration of equity in receiverships is sparse and typically limited to a case's particular facts." (Reply at 9.) The Receiver neglects, however, to note the controlling decision by the Colorado Supreme Court. *People v. District Court of First Judicial Dist*., 218 P. 742 (Co. 1923), is directly on point. There, a receiver for the National Beet Harvester Company appointed by the district court filed a petition against an individual seeking possession of certain beet harvester equipment. The individual, who claimed titled to the equipment as a purchaser at a sheriff's sale, insisted "his rights to the property could not be thus summarily determined." A few months later, the receiver reported to the district court that the individual had not complies with its order and obtained an attachment, under which the individual was arrested. After posting bond, the individual filed a writ of prohibition with the Colorado Supreme Court. In granting the writ, the Court held the receiver had no rights in disputed property beyond that originally held by the subject corporation:

[1] The Receiver argues that there is a conflict in the controlling documents. (Reply at 12.) No such conflict exists. Hagshama's relationship with the other equity owners, is governed exclusively by the Tenancy-In-Common Agreement. Hagshama is not a party to the "B"-side operating agreement referred to in the Reply and cannot be bound by its terms.

> [The individual's] title to the harvesters, and of course his right to possession, depended upon the validity of the sale under which he claimed. That was a question to be judicially determined. The district court . . . assumed that it belonged to the receiver and ordered its delivery to him. Manifestly, the Court had no authority to make the order, and Pomeranz was under no obligation to obey it. **The receiver had no greater right with respect to the property of the Harvester Company than the company itself possessed, and in all matters of litigation he represents the corporation, and can exercise, as to property claimed by third persons, no powers which the corporation itself could not exercise.**

218 P. 742 at 743 (emphasis added). *See also, Seckler v. J.I. Case Co*., 348 P.2d 368 (Co. 1960) (receiver stands in the shoes of entity over which he was appointed and can assert no greater rights).

Here, the Receiver's claimed authority to convey title to Hickory Corners goes far beyond the powers granted under the Tenancy-In-Common Agreement. There have been no evidentiary proceedings before this Court by which Hagshama's interests in Hickory Corners have been adjudicated. Regardless of the breadth of authority granted under the Receivership Order, Hagshama's proprietary rights and interests cannot be summarily denied without due process. In other words, as reflected in *People v. District Court*, a motion to sell is no substitute for an adjudication of title.

In the Reply, the Receiver suggests that Hagshama has somehow failed to perform its obligations under the Tenancy-In-Common Agreement. This is new. Up to this point, the Receiver has made no demand for performance upon Hagshama or accounted for "costs, expenses, taxes, insurance premiums, and debt service" allegedly advanced on Hagshama's behalf. (Reply at 5.) Hagshama cannot be in breach for the failure to pay amounts that have never been disclosed or requested.

**Equity does not permit a result that is contrary to law.**

The Receiver argues that Hagshama's rights under the Tenancy-In-Common Agreement and applicable state law can somehow be overcome by applying undefined principals of equity. This is a fallacy. The maxim that equity must follow the law dates to the earliest years of Colorado jurisprudence, *see Learned v. Tritch*, 6 Colo. 432 (1882), and is regularly and consistently applied in modern times, *see Preferred Professional Ins. Co. v. The Doctors Co.*, 419 P.3d 1020, 1027 (Colo. App. 2018) ("Absent a showing that a contractual provision violates public policy, equity should not be employed to defeat a party's bargained-for contractual rights."); *see also, Yates v. Hartman*, 2016 WL 1247615 (Colo. App. March 8, 2018); *Smith v. Hickenlooper*, 164 F.Supp.3d 1286, 1292 (D. Colo. 2016).

Hickory Corners is in North Carolina. Importantly, the Tenancy-In-Common Agreement specifies that North Carolina law applies. Under North Carolina law, property held in a tenancy in common cannot be conveyed without the consent of **all** co-tenants. It is long been the rule in North Carolina that a conveyance by a single tenant in common is of no effect. For instance, *Southern Inv. Co. v. Postal Telegraph-Cable Co.*, 72 S.E. 361 (N.C. 1911), involved a single cotenant's grant to a third party of the right to place telephone wires between poles owned by two corporations as tenants in common. The North Carolina Supreme Court found the transaction to be a nullity:

> The general rule seems to be well settled that one tenant in common cannot, as against his co-tenant, convey any part of the common property by metes and bounds, or even an undivided portion of such part. The reason is obvious. His title is to an undivided share of the whole, and he is not authorized to carve out his own part, nor to convey in such a manner as

> to compel his co-tenants to take their share in several distinct parcels, such as he may please.

72 S.E. 361 at 363 (citations omitted). *See also, LDDC, Inc. v. Pressley*, 322 S.E. 2d 416 (N.C. 1984).

As a single tenant in common, the Receiver has no authority to convey Hagshama's interest in Hickory Corners. The Tenancy-In-Common Agreement explicitly prohibits the very transaction that the Receiver proposes. Aside from the language of the Tenancy-In-Common Agreement, the Receiver has no authority to convey marketable title under North Carolina law without the consent of the other tenant in common. Even with this Court's approval, the proposed conveyance would not be enforceable under North Carolina law. *See Kirstein v. Kirstein*, 306 S.E.2d 552 (N.C. 1983). As a practical matter, the purchaser will only acquire a lawsuit over the legitimacy of the transaction.

**CONCLUSION**

The Receiver is attempting to run roughshod over the proprietary rights of Hagshama under the Tenancy-In-Common Agreement. This is in direct violation of Colorado and North Carolina law. Vague notions of equity cannot enlarge the Receiver's authority beyond the limits of the law. The Hickory Corners Sale Motion must be denied.

WHEREFORE, Hagshama respectfully requests that the Court enter its Order denying the Hickory Corners Sale Motion, and for such other and further relief as is appropriate.

Respectfully submitted this 14th day of March, 2019.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

*s/Kenneth F. Rossman, IV*
Kenneth F. Rossman, IV, No. 29249

*Attorney for Hagshama*

**Certificate of Service**

I certify that on March 14, 2019, the foregoing was served electronically by the Colorado Court's E-filing service, which caused electronic notice to be served on:

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Sueanna P. Johnson, Esq.
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***Counsel for Defendants, Gary Dragul, GDA Real Estate Services, LLC and GDA Real Estate Management, LLC***

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*s/Kenneth F. Rossman, IV*
Lewis Roca Rothgerber Christie LLP

| | |
|---|---|
| **DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO**<br>1437 Bannock Street<br>Denver, CO 80202 | |
| **Plaintiff:** CHRIS MYKLEBUST SECURITIES COMMISSIONER FOR THE STATE OF COLORADO,<br>v.<br>**Defendants:** GARY DRAGUL, et al. | **▲ COURT USE ONLY ▲** |
| | Case No: 2018CV033011<br><br>Courtroom: 424 |

**ORDER AUTHORIZING HAGSHAMA'S SURREPLY IN SUPPORT OF OBJECTION TO HICKORY CORNERS SALE MOTION**

The above-entitled matter having come before the Court on a Motion to File Surreply in Support of Objection to Hickory Corners Sale Motion filed on behalf of Hagshama Hickory NC, LLC and CoFund 6, LLC (the "Motion"); The Court, having reviewed the pleadings filed herein:

IT IS HEREBY ORDERED that the Motion shall be, and hereby is, granted;

Dated this ___ day of March, 2019.

By the Court,

_____

District Court Judge

| | |
|---|---|
| DISTRICT COURT, DENVER COUNTY, COLORADO<br>Court Address:<br>1437 Bannock Street, Rm 256, Denver, CO, 80202 | |
| **Plaintiff(s)** GERALD ROME SECURITIES COM FOR THE ST OF et al.<br>v.<br>**Defendant(s)** GARY DRAGUL et al. | DATE FILED: March 29, 2019 8:45 AM<br>CASE NUMBER: 2018CV33011<br>July 25, 2025 10:55 AM<br>FILING ID: 5069084E234C1<br>CASE NUMBER: 2018CV33011<br><br>⚠ **COURT USE ONLY** ⚠ |
| | Case Number: 2018CV33011<br>Division: 424 Courtroom: |

**Order: RECEIVERS MOTION FOR ORDER APPROVING AGREEMENT WITH HAGSHAMA CONCERNING SALE OF CLEARWATER COLLECTION AND HICKORY CORNERS (w/ attach)**

The motion/proposed order attached hereto: GRANTED.

Issue Date: 3/29/2019

MARTIN FOSTER EGELHOFF
District Court Judge

| | |
|---|---|
| DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO<br>Denver District Court<br>1437 Bannock St.<br>Denver, CO 80202 | |
| **Plaintiff:** Chris Myklebust, Securities Commissioner for the State of Colorado<br><br>v.<br><br>**Defendant:** Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC | ▲COURT USE ONLY▲ |
| Attorneys for Receiver:<br>Patrick D. Vellone, #15284<br>Michael T. Gilbert, #15009<br>Rachel A. Sternlieb, #51404<br>ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.<br>1600 Stout St., Suite 1100<br>Denver, Colorado 80202<br>Phone Number: (303) 534-4499<br>E-mail: pvellone@allen-vellone.com<br>E-mail: mgilbert@allen-vellone.com<br>E-mail: rsternlieb@allen-vellone.com | Case Number: 2018CV33011<br><br>Division/Courtroom: 424 |

**RECEIVER'S MOTION FOR ORDER APPROVING AGREEMENT WITH HAGSHAMA CONCERNING SALE OF CLEARWATER COLLECTION AND HICKORY CORNERS**

Harvey Sender, the duly-appointed receiver ("Receiver") for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, "Dragul and the GDA Entities"), asks the Court to enter

an order approving the "Agreement" submitted with this Motion as **Exhibit 1**[1] thereby authorizing the agreement reached between the Receiver and Hagshama about the sale of, and distribution of proceeds from, Clearwater Collection and Hickory Corners.

## I. Background

1. On August 15, 2018, Gerald Rome, the former Securities Commissioner for the State of Colorado (the "Commissioner"), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner and Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver consenting to the appointment of a receiver over Dragul and the GDA Entities under COLO. REV. STAT. § 11-51-602(1), C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the "Receivership Order"), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the "Receivership Estate" or the "Estate"). Receivership Order at 2, ¶ 5.

4. The Receivership Order grants the Receiver the authority to sell or otherwise dispose of Estate property and obtain Court approval for any sale for

[1] To the extent any terms of this Motion are inconsistent with the Agreement, the Agreement controls.

greater than $10,000 (Receivership Order at 12, ¶ 13(t)). The Receivership Order provides that "Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects . . . within ten (10) days after service by the Receiver or written notice of such request." Receivership Order at 21, ¶ 34.

5. The Receiver asks the Court to approve the Agreement it has reached with Hagshama, which resolves the parties' disputes over the sales of Clearwater Collection and Hickory Corners. Upon Court approval, Hagshama will withdraw its objections to both the Clearwater Collection and Hickory Corners sale motions, which will resolve the only objection filed to the Clearwater sale, and remove the major impediment to the Hickory sale.[2]

## II. Clearwater Collection and Hickory Corners

6. Clearwater Collection and Hickory Corners are retail shopping centers owned as tenants-in-common by at least one Hagshama entity and at least one entity in which Dragul owns an interest.[3] Equity in some of the Dragul entities that own

[2] One other creditor, National Commercial Builders, Inc., has objected to the Receiver's motion to sell Hickory Corners. NCB's objection is addressed in the Receiver's Response to: (1) National Commercial Builders, Inc.'s Objection to Receiver's Motion for Order Authorizing Sale of Hickory Corners; and (2) its Motion for Relief from Stay (filed March 18, 2019). As set forth in that Response, NCB does object to the Hickory Corners sale itself, but rather to distributed the sales proceeds without paying its mechanics' lien on the Hickory Corners property.

[3] Hagshama is an Israeli private investment firm that solicits investments from individuals. Those investor funds are then pooled and invested in real estate ventures throughout the world, including the United States. Hagshama is

interests in the Hagshama Projects is also held by other investors. The following table shows the respective ownership percentages in Clearwater Collection and Hickory Corners:

| Receivership property | Hagshama equity % | Other investment equity | Dragul equity percentage[4] |
|---|---|---|---|
| Clearwater Collection (Clearwater, FL) | Approx. 54% | Approx. 46% | 6.76% |
| Hickory Corners (Hickory, NC) | 64.59% | 35.41% | 25.875% |

7. Mortgages on both Clearwater Collection and Hickory Corners are in default and lenders on both properties have commenced foreclosures. Before the Receiver was appointed, the Clearwater Collection lender declared loan defaults and began to sweep the rental income from the property and to apply it to its loan.

8. **Hickory Corners**. On February 8, 2019, the Receiver filed a motion seeking Court approval to sell Hickory Corners to Nova Capital Partners, LLC for $13,600,000. Hagshama objected on February 19, 2019, arguing that applicable operating agreements, the tenant-in-common common agreement, and State law all require its consent to the sale, and it did not consent.



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responsible for the investments of about 28,000 investors. Globally, it has invested over $5 billion in various projects, including those with the Receivership Estate.

[4] In some cases, the companies' records do not appear consistent with respect to these equity percentages. The above estimates are based on the best estimates presently available. The Receiver and Hagshama have agreed to agree to the accurate ownership percentages before distributing Clearwater Collection and Hickory Corners sales proceeds.

9. On March 8, 2019, the Receiver filed a reply in support of the sale motion, and on March 14, 2019, Hagshama filed a sur-reply. A hearing on the Hickory Corners sale motion is set for March 21, 2019, at 3:00 pm MDT.

10. **Clearwater Collection**. On February 21, 2019, the Receiver filed his motion seeking Court approval to sell Clearwater Collection to Fortune Capital Partners, Inc. for $17,100,000.

11. On March 1, 2019, Hagshama objected to the sale raising arguments similar to those it made to the Hickory Corners sale. On March 14, 2019, the Receiver filed a reply in support of his Clearwater Corners sale motion.

## III. The proposed Agreement is in the best interests of the Estate and its creditors.

12. There exists little Colorado authority regarding factors the Court should consider whether to approve a Receiver's proposed sale. In analogous bankruptcy contexts, approval of a sale of property under Section 363 of the Bankruptcy Code is warranted where there exists a "sound business reason." *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). "In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a 'business judgment test.'" *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

13. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property in the bankruptcy context include (where applicable): (1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed soon; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which alternative of use, sale or lease the proposal envisions; and (7) most important perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071) (emphasis omitted). Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; *see Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that "[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion").

14. In the Receiver's judgment, the proposed Agreement is in the best interest of the Estate and its creditors. Hagshama contends the Clearwater Collection and Hickory Corners governing documents require its consent to the pending sale motions, and has indicated it will not consent to the Receiver selling the properties now. Litigating these control and liquidation issues will be expensive and time-consuming for the Estate, during which time the properties may be lost to foreclosure

or otherwise depreciate. The Agreement resolves these issues without litigation with its attendant costs and uncertainties.

15. Upon approval of the Agreement, Hagshama will withdraw its objections to the Clearwater Collection and Hickory Corners sales motions, which will allow the properties to be sold without further delay, expense, or uncertainty. The potential economic benefits to the Estate include avoiding potential costly litigation with Hagshama and the payment of much needed cash to the Estate.

16. In addition, the Agreement resolves potential future disputes about distribution to the equity shareholders of the entities that own Clearwater Collection and Hickory Corners. By agreeing in advance on how the net sales proceeds from these sales will be distributed, the Parties will each avoid significant potential attorneys' fees and costs.

17. Finally, avoiding a time-consuming dispute is critical because foreclosure proceedings have been commenced against both Clearwater Collection and Hickory Corners. Absent timely sales, the properties may be lost to foreclosure and the Estate may receive nothing.

WHEREFORE, the Receiver asks the Court to approve the Agreement submitted as **Exhibit 1** and authorize the Receiver to take all actions and execute all further documents necessary to consummate the transaction.

Dated: March 18, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: */s/ Michael T. Gilbert*

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I certify that on March 18, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER APPROVING AGREEMENT WITH HAGSHAMA CONCERNING SALE OF CLEARWATER COLLECTION AND HICKORY CORNERS** via CCE to the following:

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Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
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***Counsel for National Commercial Builders, Inc.***



**CERTIFICATE OF 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.

*By: /s/ Victoria Ray*
Allen Vellone Wolf Helfrich & Factor P.C.

| | |
|---|---|
| DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO<br>Denver District Court<br>1437 Bannock St.<br>Denver, CO 80202 | DATE FILED: March 19, 2019 5:05 PM<br>FILING ID: C30A228D69DA8<br>CASE NUMBER: 2018CV33011<br>DATE FILED: July 25, 2025 10:58 AM<br>FILING ID: 5069084E234C1<br>CASE NUMBER: 2018CV33011 |
| **Plaintiff:** Chris Myklebust, Securities Commissioner for the State of Colorado<br><br>v.<br><br>**Defendant:** Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC | ▲COURT USE ONLY▲ |
| Attorneys for Receiver:<br><br>Patrick D. Vellone, #15284<br>Michael T. Gilbert, #15009<br>Rachel A. Sternlieb, #51404<br>ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.<br>1600 Stout St., Suite 1100<br>Denver, Colorado 80202<br>Phone Number: (303) 534-4499<br>E-mail: pvellone@allen-vellone.com<br>E-mail: mgilbert@allen-vellone.com<br>E-mail: rsternlieb@allen-vellone.com | Case Number: 2018CV33011<br><br>Division/Courtroom: 424 |

**RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN FIVE HAGSHAMA PROJECTS TO ISABEL MARINA, LLC**

Harvey Sender, the duly-appointed receiver ("Receiver") for Gary Dragul ("Dragul"), GDA Real Estate Services, LLC, GDA Real Estate Management, LLC, and related entities (collectively, "Dragul and the GDA Entities"), asks the Court to enter an order approving the "Master Agreement" and the First Amendment to Master

Agreement submitted with this Motion as **Exhibit 1** (together, the "Master Agreement")[1] thereby authorizing the sale of the Estate's interest in the "Five Hagshama Projects" described below.

## I. Background

1. On August 15, 2018, Gerald Rome, the former Securities Commissioner for the State of Colorado (the "Commissioner"), filed his Complaint for Injunctive and Other Relief against Dragul and the GDA Entities.

2. On August 29, 2018, the Commissioner and Dragul and the GDA Entities filed a Stipulated Motion for Appointment of Receiver consenting to the appointment of a receiver over Dragul and the GDA Entities pursuant to COLO. REV. STAT. § 11-51-602(1), C.R.C.P. 66.

3. On August 30, 2018, the Court entered a Stipulated Order Appointing Receiver (the "Receivership Order"), appointing Harvey Sender of Sender & Smiley, LLC as receiver for Dragul and the GDA Entities, their respective properties and assets, and interests and management rights in related affiliated and subsidiary businesses (the "Receivership Estate" or the "Estate"). Receivership Order at 2, ¶ 5.

4. The Receivership Order grants the Receiver the authority to sell or otherwise dispose of Estate property and obtain Court approval for any sale for greater than $10,000 (Receivership Order at 12, ¶ 13(t)). The Receivership Order

[1] To the extent any terms of this Motion are inconsistent with the Master Agreement, the Master Agreement controls.

provides that "Court approval of any motion filed by the Receiver shall be given as a matter of course, unless any party objects . . . within ten (10) days after service by the Receiver or written notice of such request." Receivership Order at 21, ¶ 34.

5. The Receiver seeks Court authority to sell the Estate's interest in the Five Hagshama Projects for $710,000 to Isabel Marina, LLC ("Isabel" or "Buyer") pursuant to the Master Agreement. Upon Court approval of the Master Agreement, the parties will negotiate and prepare documents necessary to transfer the Estate's interest in each of the Five Hagshama Projects to Buyer and any other documents necessary to consummate the transaction.

## II. The Five Hagshama Projects

6. Each of the Five Hagshama Projects is owned as tenants-in-common by at least one Hagshama entity and at least one entity in which Dragul owns an interest. Equity in some of the Dragul entities which own interests in the Five Hagshama Projects is also held by other investors. The following table lists the Five Hagshama Projects and, based on the Receiver's information and belief, summarizes the equity invested and equity percentages held in each project.

| | Receivership property | Hagshama investment | Total investment dollars | Hagshama equity % | Other investment equity | Dragul equity percentage[2] |
|---|---|---|---|---|---|---|
| 1 | Cassinelli Square (Cincinnati, OH) | $2,880,000 | $3,180,000 | 90% | 10% | 4.00% |

[2] In some cases, the companies' records do not appear consistent with respect to Mr. Dragul's equity percentage in the Five Hagshama Projects and the above estimates are based on the best estimates currently available.

| | Receivership property | Hagshama investment | Total investment dollars | Hagshama equity % | Other investment equity | Dragul equity percentage[2] |
|---|---|---|---|---|---|---|
| 2 | Delta Marketplace (Lansing, MI) | $6,903,141 | $7,353,141 | 90% | 10% | 7.07% |
| 3 | DU Student Housing (Denver, CO) | $2,800,000 | $3,650,000 | 80% | 20% | 20% |
| 4 | Happy Canyon Marketplace (Denver, CO) | $3,595,298 | $4,035,298 | 83.71% | 16.29% | 9.41% |
| 5 | Windsor Square (Knoxville, TN) | $5,603,705 | $6,478,705 | 90% | 10% | 3.793% |
| | **Totals** | **$21,782,144** | **$24,697,144** | | | |

7. Hagshama is an Israeli private investment firm that solicits investments from individuals. Those investor funds are then pooled and invested in real estate ventures throughout the world, including the United States. Hagshama is presently responsible for the investments of about 28,000 investors. Globally, it has invested over $5 billion in various projects, including those with the Receivership Estate.

8. Isabel is independent of Dragul. Isabel Marina, LLC is a Texas limited liability company that is affiliated with Tarantino Properties, Inc., a Texas corporation, which is a full-service real estate company operating in many states, and currently managing over $2 billion in real estate assets, with over 38 years of experience. Tarantino Properties, Inc. is recognized for its property management expertise by the Institute of Real Estate Management's prestigious designation as an Accredited Management Organization®. Tarantino Properties Inc. and its related companies are led by Anthony Tarantino of Houston. Anthony's real estate experience

includes management, leasing, investment sales, consulting and real estate syndications of all property types including multifamily, retail, office, industrial and hotels. Furthermore, Anthony has represented a variety of clients that include private investors, banks, and national institutional investors such as GE Capital, Lehman Brothers, and Midland Loan Service. More information about Tarantino may be found at: https://www.tarantino.com. Under the Master Agreement, Buyer agrees that, to its knowledge, Gary Dragul shall not have an ownership interest in any of the Five Hagshama Projects or the Buyer and will not be employed in any capacity by Buyer, or any successor of Buyer, in any activity related to the Projects. Master Agreement ¶ 7(b).

9. Four of the Five Hagshama Projects are retail shopping centers: (1) Cassinelli Square, (2) Delta Marketplace, (3) Happy Canyon Marketplace, and (4) Windsor Square. These four Projects have other non-Hagshama investors Dragul solicited to invest in those Projects.

10. The fifth Hagshama Project is DU Student Housing. It is a development owned as tenants-in-common by GDA-DU A, LLC (95%), and GDA-DU B, LLC (5%) (the "DU tenants-in-common"). Gary Dragul owns 100% of GDA DU Student Housing Member, LLC, which owns 15.79% of GDA-DU A, LLC. Dragul is also purportedly the sole owner of GDA-DU B, LLC. The DU tenants-in-common acquired three single-family-homes across from the University of Denver intending to develop a 0.43-acre site with a 5-story 60,000 sq. ft. student housing development. Before the Receiver

was appointed, a site development plan for the project had been approved and architectural plans and construction drawings had been prepared but not submitted for approval. No construction has started nor has construction financing been obtained for the project. Although Dragul is listed as owning 20% of the DU project, the Receiver has not discovered any evidence he contributed any cash into the project.[3]

11. The mortgages on the Five Hagshama Projects are in default. Before the Receiver was appointed, the lenders on Delta Marketplace and Windsor Square declared loan defaults. Other than the Delta lender, the lenders on these properties began to sweep the rental income from those properties and to apply them to their loans. The Delta rents have until recently been held in a suspense account, and other than the lender's recent agreement to pay the essential operating expenses for the property, have not been available to the Estate.

12. As indicated above, Hagshama provided approximately 88% of the equity financing for the Five Hagshama Projects. Most of the other equity financing for the Five Hagshama Projects appears to have been obtained from approximately 11 other third-party investors.

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[3] Although a number of investors appear to have invested in the High Street Condo Project, LLC, which previously owned a portion of the DU Student Housing Project real property, which is now owned by GDA-DU A, LLC and GDA-DU B, LLC, the Receiver is not aware that any of the High Street investors hold membership interests in the GDA-DU entities.

## III. The proposed sale is in the best interests of the Estate and its creditors.

13. There exists little Colorado authority with respect to factors the Court should consider regarding whether to approve a Receiver's proposed sale. In analogous bankruptcy contexts, approval of a sale of property pursuant to Section 363 of the Bankruptcy Code is warranted where there exists a "sound business reason." *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). "In evaluating whether a sound business purpose justifies the use, sale or lease of property under Section 363(b), courts consider a variety of factors, which essentially represent a 'business judgment test.'" *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999).

14. Factors bearing on whether a sound business reason or purpose supports a proposed sale of estate property in the bankruptcy context include (where applicable): (1) the proportionate value of the asset to the estate as a whole; (2) the amount of elapsed time since the filing; (3) the likelihood that a plan of reorganization will be proposed and confirmed in the near future; (4) the effect of the proposed disposition on the future plans of reorganization; (5) the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property; (6) which of the alternatives of use, sale or lease the proposal envisions; and (7) most importantly perhaps, whether the asset is increasing or decreasing in value. *In re Medical Software Solutions*, 286 B.R. 431, 441 (Bankr. D. Utah 2002) (quoting *Lionel*, 722 F.2d at 1071)

(emphasis omitted). Bankruptcy courts are granted considerable discretion in evaluating proposed sales. *Montgomery Ward*, 242 B.R. at 153; *see Moldo v. Clark (In re Clark)*, 266 B.R. 163, 168 (B.A.P. 9th Cir. 2001) (recognizing that "[r]ulings on motions to sell property of the estate other than in the ordinary course of business pursuant to section 363 are reviewed for abuse of discretion").

15. In the Receiver's judgment, the proposed sale is in the best interest of the Estate and its creditors. The economics concerning the proposed sale are in part summarized in the following table:

| **Receivership property** | **Estimated sale price if property were sold separately**[4] | **Debt encumbering Five Hagshama Projects**[5] | **Potential equity claims satisfied** | **Estimated value of Dragul interest**[6] |
|---|---|---|---|---|
| Cassinelli Square (Cincinnati, OH) | $2.9 million | $800,000 | $300,000 | $11,000 |
| Delta Marketplace (Lansing, MI) | $19 million | $12.4 million | $450,000 | $420,000 |
| DU Student Housing (Denver, CO) | $3 million | $1.84 million | 0 | $150,000 |
| Happy Canyon Box (Denver, CO) | $6.5 million | 6.28 million | $345,000 | $7,0000 |
| Windsor Square (Knoxville, TN) | $16.25 million | $12.1 million | $625,000 | $143,000 |
| **Total** | **$47.65 million** | **$33.4 million** | **$1,720,000** | **$731,000** |

4 The estimated sale price for the properties (except for Delta) is based on offers the Receiver has obtained for those properties. The Delta price is based on a market evaluation by Marcus & Millichap, commercial real estate brokers hired by the Estate.

5 The listed debt is based on the best estimates presently available.

6 The value of Dragul's equity interest is estimated based on known, applicable operating agreements.

16. **Purchase price**. Under the proposed transaction, the Estate would sell Dragul's minority, non-controlling interest in the Five Hagshama Projects for $710,000 to Isabel. The estimated value of those interests is approximately $731,000. In the Receiver's opinion, it is unlikely that marketing and selling those interests on the open market would yield a better monetary result for the Estate. The proposed transaction also resolves potentially expensive and time-consuming litigation with Hagshama over control of, and the Estate's ability to sell, the underlying Project properties.

17. **Closing and potential exclusions.** Under the Master Agreement, Isabel is required to deposit the $710,000 purchase price into an escrow account by the close of business on March 19, 2019. Buyer has no due diligence period. The only contingency to the sale is obtaining Court approval within 30 days. Master Agreement ¶ 2. Closing on the transaction is to occur within five business days of Court approval. At that time, the $710,000 will be released to the Estate. *Id.* ¶ 5.

18. **Assumed liabilities.** For any acquired Hagshama Project, Buyer will take subject to all debts associated with that Project, including all mortgages, mechanics' liens, unpaid taxes, etc., and undertake commercially reasonable efforts to pay those obligations. The proposed transaction may eliminate over $33 million in claims against the Estate (most of which are secured).

19. **Investor consents**. Four of the Five Hagshama Projects have a limited number of non-Dragul related investors. Under the terms of the proposed transaction,

informed written consent is to be obtained from each of those investors, who will be required to either: (a) elect to retain their membership interest in the Project in which they hold a membership interest, admit Buyer as a member and manager, and release any claim they may have against the Estate and as to the Buyer prior to the date of closing relating to that investment, or (b) relinquish their membership interest in exchange for filing a claim against the Estate. A copy of the Disclosure and Information Statement, and the Consent and Release form being provided to these investors is attached as Exhibit 1 to the Master Agreement. Obtaining investor consents is a material part of the Master Agreement.

20. To the extent a member in any of the Five Hagshama Projects does not timely object to this Motion or return a Consent and Release Form, the member should be deemed to have consented to the relief sought in this Motion and the terms of the Master Agreement. Notice of this Motion is being provided to all investors and interested parties as provided in this Court's February 1, 2019, Order Granting the Receiver's Motion to, among other things, Clarify Ongoing Notice Procedure, and upon acceptance by the Court will be posted on the Receiver's website, http://dragulreceivership.com. Should members in any of the Five Hagshama Project properties elect to retain their membership interests, claims against the Estate could potentially be reduced by $1,720,000 as set forth in the table in paragraph 15.

21. Critically, absent the proposed sale, the Estate is at risk of losing any interest in the Five Hagshama Projects. Each of the loans on the Projects is in default;

one is in foreclosure. Virtually all of the rental income being generated from the underlying properties is being swept by the lenders. Meanwhile, the Estate is unable to pay critical expenses for the Five Hagshama Projects and lacks funds to pay debt service on any of them. Due to the cash position of the Estate, there is a risk the properties may be lost to foreclosure eliminating any return to the Estate.

22. The proposed sale transaction also avoids potential costly litigation with Hagshama concerning the Receiver's authority to sell the Five Hagshama Projects without Hagshama's consent. Hagshama contends the operating agreements for the Projects require its consent to any sale of the underlying property and has indicated it will not consent to the Receiver selling the properties now. The Five Hagshama properties are, however, held in tenancies-in-common with Dragul entities now controlled by the Receiver, arguably affording the Receiver equal rights to control the disposition of the property. Litigating these control and liquidation issues will be expensive and time consuming for the Estate, during which time the properties may ultimately be lost to foreclosure or otherwise depreciate. The Master Agreement resolves these issues without litigation with its attendant costs and uncertainties; Hagshama has consented to and approves the Master Agreement.

23. In addition, the Master Agreement has been executed in connection with an agreement the Receiver has reached with Hagshama that resolves Hagshama's objections to the Receiver's pending motions to sell the Clearwater Collection and Hickory Corners properties. *See* Receiver's Motion for Order Approving Agreement

with Hagshama Concerning Sale of Clearwater Collection and Hickory Corners (filed March 18, 2019). Closing these sales and the Master Agreement sale will eliminate substantial Estate expenses and result in the payment of substantial funds to the Estate.

WHEREFORE, the Receiver asks the Court to approve the Master Agreement submitted as **Exhibit 1**, authorize the sale of the Estate's interest in the Five Hagshama Projects to Isabel, and authorize the Receiver to take all actions and execute all further documents without further Court approval that are necessary to consummate the transaction.

Dated: March 19, 2019.

ALLEN VELLONE WOLF HELFRICH & FACTOR P.C.

By: */s/ Michael T. Gilbert*

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF SERVICE**

I certify that on March 19, 2019, I served a true and correct copy of the foregoing **RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN FIVE HAGSHAMA PROJECTS TO ISABEL MARINA, LLC** via CCE to the following:

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Sueanna P. Johnson
Matthew J. Bouillon Mascareñas
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***Counsel for Fortune Capital Partners, Inc.***

**CERTIFICATION REGARDING ON CREDITORS**

A copy of the Motion will also be served by electronic mail in accordance with the Court's Order regarding same on all currently known creditors of the Receivership Estate for whom the Receiver has email addresses and who have asked to receive email notice as set forth on the service list maintained in the Receiver's records.

*By: /s/ Victoria Ray*
Allen Vellone Wolf Helfrich & Factor P.C.

## Master Agreement



This Master Agreement (the "Agreement") is entered into as of March 18, 2019, by ISABEL MARINA, LLC, a Texas limited liability company and any affiliates or assigns ("Buyer"), and HARVEY SENDER, as Receiver ("Receiver"). Collectively Buyer and the Receiver are the "Parties," and individually each is a "Party."

## Recitals

WHEREAS, the Denver District Court has appointed Harvey Sender as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc. and all their respective properties and assets, interests, and management rights in related affiliated and subsidiary businesses (the "Receivership Estate"). *See* August 30, 2018 Stipulated Order Appointing Receiver, *Rome v. Dragul, el al.*, Denver District Court (the "Receivership Court"), Case No 2018CV33011 (the "Receivership Action").

WHEREAS, the investment properties in which certain entities and individuals are invested, and which are now part of the Receivership Estate are, for purposes of this Agreement, listed below (the "Projects"):

Marketplace at Delta Township, Lansing, MI
Prospect Square, Cincinnati, OH
Windsor Square Shopping Center, Knoxville, TN
Cassinelli Square Shopping Center, Cincinnati, OH
Happy Canyon, Denver, CO (Marketplace, not the Shoppes)
DU Student Housing, Denver, CO

To be clear, for purposes of this Agreement, the Receivership Estate does not include any interests in Clearwater Collection or Hickory Corners properties.

WHEREAS, Buyer wants to purchase, and the Receiver wants to sell, all of the Receivership Estate's interests in the Projects and the right to manage the Projects.

## Covenants

1. **Purchase Price for Acquired Interests**. Buyer shall pay the Receivership Estate Seven Hundred and Ten Thousand U.S. dollars ($710,000.00) (the "Purchase Price") for the Receivership Estate's management rights, and for its equity and debt interests in the Investment Entities listed below in the Projects (collectively, the "Acquired Interests"), including, but not limited to the Receivership Estate's direct or indirect interests in the following Investment Entities:



AT

| Project | Investment Entities |
|---|---|
| Cassinelli Square Shopping Center | GDA Cassinelli Square A, LLC<br>Cassinelli Square 16 B, LLC |
| Delta (Marketplace Delta Township) | Delta 17 A, LLC<br>GDA Delta Member, LLC |
| DU Student Housing | GDA-DU 8, LLC<br>GDA-Student Housing 18 B, LLC<br>GDA DU Student Housing Member, LLC<br>GDA-DU Student Housing 18 A, LLC |
| Happy Canyon | Happy Canyon Box 17 B, LLC<br>GOA Happy Canyon Box Member, LLC<br>Happy Canyon Box 17 A LLC |
| Prospect Square | PS 16LLC<br>GDA PS Member, LLC |
| Windsor Square Shopping Center | GDA Windsor Member, LLC<br>Windsor 15, LLC |

2. **Court Approval**. Within three business days after this Agreement is executed by all Parties, the Receiver will submit the Agreement to the Receivership Court for approval. This Agreement is contingent on approval by the Receivership Court. If within thirty (30) days after this Agreement has been submitted to the Receiver Court, the Receivership Court does not enter an order approving this Agreement, this Agreement will expire and be void and of no effect, and any amount paid by Buyer hereof shall be immediately returned to Buyer.

3. **Effective** Date. The "Effective Date" of this Agreement shall be the day the Receivership Court enters an order approving it.

4. **Pending Effective Date**. During the period of time between when this document is executed and when the Receivership Court enters an order approving it, Receiver shall use reasonable efforts to facilitate the Buyer's examination of any documents or information regarding the Projects and shall direct the agents, attorneys, and officers of the entities owning each Project to cooperate with the Buyer and to provide Buyer with copies of all documents and information regarding the Projects in their possession as Buyer may reasonably request. Receiver also shall authorize Buyer to enter into negotiations with lenders concerning the Projects. The Parties agree to exercise reasonable efforts to coordinate management and operations of the Properties during the period between execution of this Agreement, the Effective Date and the Closing Date.

5. **Closing Date and Deposit**. Within one business day of execution of this Agreement by Buyer and Receiver, the Buyer shall deposit $710,000.00 (the "Deposit) in escrow (in a form agreed upon by the Parties) with the title company that the Receiver has chosen to close the sale and purchase of the Acquired Interests. The Deposit shall be immediately refunded

to Buyer if the Receivership Court does not enter an order approving this Agreement as described in Paragraph 2 above, thereby rejecting the sale transaction to Buyer. If the Receivership Court enters an order approving of this Agreement as described in Paragraph 2 above within the time period stated, then the Closing of the sale of the Acquired Interests from the Receiver to the Buyer shall be on the fifth business day after the Receivership Court approves of this Agreement, and the Deposit shall be released to the Receiver at the Closing.

6. **Estate Right to Lender Reimbursements**. Before this Agreement was executed, the first mortgage lenders on the Delta and Windsor projects subject to this Agreement agreed to reimburse the Receivership Estate for the out-of-pocket expenses the Receivership Estate has incurred to date on those properties (Delta – $119,548.99; Windsor – $114,107.85). Notwithstanding anything to the contrary in this Agreement, the Receivership Estate will remain entitled to receive those reimbursements.

7. **Definitive Agreements**. During the period between execution of this Agreement and Receivership Court approval, the Receiver and Buyer will cooperate in good faith to prepare to enter into one or more definitive agreements (the "Definitive Agreements") to effectuate the transfer of the Acquired Interests from the Receivership Estate to the Buyer. The Definitive Agreements will include terms and conditions customary in a transaction of this nature and will also include the following terms:

a. As of the Effective Date of this Agreement, the Receiver shall (i) cause any Dragul related Manager or Managing Member, of each LLC entity with an ownership interest in any of the Projects, to resign as a Manager or Managing Member, and withdraw as a Member as necessary, and (ii) cause each of the entities that served as a property manager of the Projects, to resign as property manager of the Projects. Immediately upon such resignations, Buyer shall name and appoint persons or entities identified by Buyer to serve as the Manager or Managing Member of each LLC that is listed in Paragraph 1 as an Investment Entity. To the extent required by the Operating Agreements for each Investment Entity, Buyer shall obtain the consent of the members of each Investment Entity to approve of the appointment of the entity that shall serve as the Manager of each Investment Entity.

b. Buyer agrees that, to its knowledge, Gary Dragul shall not have an ownership interest in any of the Acquired Interests, in the Buyer or in any entity that is a property manager for Buyer and will not be employed in any capacity by Buyer, or any successor of Buyer, in any activity related to the Projects. The Colorado Securities Commissioner shall have the right to obtain written assurances from Buyer or any successor entity to ensure Gary Dragnl's continued compliance with the Receivership Court's August 30, 2018, Order of Preliminary Injunction entered in the Receivership Action and Buyer's agreement concerning Dragul's non-involvement.

c. Buyer may, in its sole discretion, without any obligation, hire employees of either GDA Real Estate Services, LLC or GDA Real Estate Management, Inc., but Buyer shall not hire Gary Dragul in any capacity or for any reason.

d. The Parties will pay their own costs and fees related to the Definitive Agreements.

e. To the extent Buyer and the Receiver mutually agree, such Definitive Agreements may be subject to further approval by separate order entered by the Receivership Court.

f. Buyer shall name Tarantino Properties, Inc., a Texas corporation, as the property manager for all of the Projects. The Parties agree this appointment shall be effective immediately upon the Closing Date.

8. **Investor Notice**. Buyer will provide the Disclosure and Information Statement (the "Disclosure Statement") and the Consent and Release (the "Consent") forms attached as **Exhibit 1** to this Agreement, to the non-Hagshama, non-Receivership Estate investors *(i.e.,* "Third-Party Investors") in the Projects. Buyer further agrees to provide to the Receiver copies of the Disclosure Statements and Consent forms sent to the Third-Party Investors and verifying the transmissions of same within three business days after the Effective Date. Within 30 days after the Effective Date, Buyer will provide to the Receiver copies of all Consent forms which have been signed by Third-Party Investors which Buyer has obtained. Pursuant to the terms of the Disclosure Statements and the Consent forms, the Third-Party Investors will be permitted to consent to the transaction in which case they shall release the Receivership Estate from any and all claims arising from their investment in any of the Acquired Interests that exist as of the Effective Date, or to rescind and return their membership interests to the Receivership Estate and make a claim against the Receivership Estate.

9. **Release of Project Related Claims**. Buyer shall use commercially reasonable efforts to obtain releases of the Receivership Estate from any liability for loans, guarantees, encumbrances, liens, or other claims that may exist against the Receivership Estate arising from or related to the Projects.

10. **Release of Buyer**. The Receiver, on behalf of himself and the Receivership Estate, hereby waives and releases Buyer and its principals, affiliates, employees, officers, agents, and professionals from any and all claims, demands, actions, suits, losses, damages and expenses that the Receiver or the Receivership Estate may suffer as a result of actions taken by the Buyer in connection with this Agreement prior to the Effective Date, including without limitation: (i) any discussions Buyer may conduct with lenders or lienholders of Project properties; (ii) any discussions or actions Buyer may have with investors in the Projects, including Third-Party Investors; and (iii) any claims the Receivership Estate may have for losses and damages sustained by investors associated with the Projects, including Third-Party Investors, prior to the Effective Date, including, without limitation, claims for their original equity investment, investment returns, management fees and/or promote under the various Operating Agreements related to each Investment Entity for the Projects; except to the extent that such actions, suits, losses, damages, and expenses sustained by Buyer were caused by the fraud or willful misconduct of Buyer in violation of this Agreement. Notwithstanding anything to the contrary herein, the Receiver is not releasing any claims held by non-Receivership Estate individual investors or creditors.

It is further agreed that the Receiver, on behalf of any Manager or Managing Member that is part of the Receivership Estate of any LLC entity that holds an ownership interest in any of the Projects, and on behalf of each property management company that is part of the Receivership Estate and that managed a Project as defined herein, hereby waives and releases all claims, demands, actions, suits, losses, damages and expenses that such Managers and Managing Members and property management companies may have as of the Effective Date against the Projects, the LLC entities that continue to own the Projects, and against any new Manager or Managing Member of an LLC entity with an ownership interest in any of the Projects or new property manager of the Projects.

**Release of Estate.** The Buyer, on behalf of itself its principals, affiliates, employees, officers, agents, and professionals, hereby waives and releases the Receiver and the Receivership Estate and any of their principals, affiliates, employees, officers, agents, and professionals from any and all claims, demands, actions, suits, losses, damages and expenses that Buyer may suffer as a result of actions taken by the Receiver or the Receivership Estate in connection with this Agreement prior to the Effective Date, except to the extent that such actions, suits, losses, damages, and expenses sustained by the Receiver or the Estate were caused by the fraud or willful misconduct of the Receiver or the Receivership Estate in violation of this Agreement.

11. **No Third-Party Beneficiaries.** The terms and provisions of this Agreement are for the sole and exclusive benefit of the Parties hereto and shall not be deemed to create any rights for the benefit of any creditor of the Receivership Estate.

12. **Notices.** Any and all notices, elections, consents, or demands permitted or required to be made or given under this Agreement shall be in writing, signed or transmitted by the Party or its counsel giving such notice, election, consent, or demand and shall be delivered personally, made by email transmission, sent by overnight courier or by registered or certified mail, return receipt requested to the addresses set forth below:

| | |
|---|---|
| Receiver:<br>Harvey Sender<br>Sender & Smiley, LLC<br>600 17th Street, Suite 2800<br>Denver, CO 80202<br>hsender@sendersmiley.com | Buyer:<br><br>ISABEL MARINA, LLC<br>Attn: Anthony Tarantino, CPM,Manager<br>c/o Tarantino Properties, Inc.<br>7887 San Felipe, Suite 237<br>Houston, TX 77063<br>anthony@tarantino.com |
| with a copy to:<br><br>Michael T. Gilbert<br>Rachel A. Sternlieb<br>Allen Vellone Wolf Helfrich & Factor P.C.<br>1600 Stout Street, Suite 11 00<br>Denver, CO 80202<br>mgilbert@allen-vellone.com<br>rsternlieb@allen-vellone.com | with a copy to:<br><br>Harvey J. Heller<br>COATS\|ROSE, P.C.<br>9 Greenway Plaza, Suite 1000<br>Houston, Texas 77046-0905<br>HHeller@coatsrose.com |

**13. Miscellaneous.**

a. This Agreement shall be governed by and construed and enforced under the laws of the State of Colorado, without giving effect to conflict of law principles. Any dispute arising from this Agreement will be submitted to the Receivership Court, which the Parties agree shall have exclusive jurisdiction over any dispute related to or arising from this Agreement.

b. If any provision of this Agreement is held to be invalid, illegal, or unenforceable under any law, the validity, legality, and enforceability of the remaining provisions shall remain effective and binding and shall not be affected or impaired.

c. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together constitute the same instrument. Electronic signatures shall be as effective as original signatures.

d. Time is of the essence regarding the performance under this Agreement.

e. This Agreement may only be amended by written instrument signed by the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date indicated above, to be effective on the Effective Date.

ISABEL MARINA, LLC,
a Texas limited liability company

ANTHONY TARANTINO, Manager

Dated: Marchi 8, 2019.

HARVEY SENDER, Receiver

HARVEY SENDER, Receiver

Dated: March 18, 2019.

## FIRST AMENDMENT TO MASTER AGREEMENT

This First Amendment (the "Amendment") to Master Agreement (the "Agreement") is entered into on March 19, 2019, by ISABEL MARINA, LLC, a Texas limited liability company and any affiliates or assigns ("Buyer"), and HARVEY SENDER, as Receiver ("Receiver"). Collectively, Buyer and the Receiver are the "Parties," and individually each is a "Party."

### Recitals

WHEREAS, the Denver District Court has appointed Harvey Sender as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc. and all their respective properties and assets, interests, and management rights in related affiliated and subsidiary businesses (the "Receivership Estate"). *See* August 30, 2018 Stipulated Order Appointing Receiver, *Rome v. Dragul, el al.,* Denver District Court (the "Receivership Court"), Case No 2018CV33011 (the "Receivership Action").

WHEREAS, the Parties entered into the Agreement on March 18, 2019, reference to which is here made for all purposes, including all definitions in the Agreement, which Agreement provided that Buyer wanted to purchase, and Receiver wanted to sell, all of the Receivership Estate's interests in six Projects and the right to manage the six Projects.

WHEREAS, Buyer no longer desires to purchase or manage the Prospect Square real estate project located in Cincinnati, Ohio, and Receiver has agreed that the Prospect Square project shall no longer be part of the Projects as defined in the Agreement;

WHEREAS, the Acquired Interests under the Agreement, as amended herein, shall include only the five projects listed below (the "Five Projects"):

Marketplace at Delta Township, Lansing, MI
Windsor Square Shopping Center, Knoxville, TN
Cassinelli Square Shopping Center, Cincinnati, OH
Happy Canyon, Denver, CO (Marketplace, not the Shoppes)
DU Student Housing, Denver, CO

WHEREAS, Buyer wants to purchase, and the Receiver wants to sell, all of the Receivership Estate's interests in the Five Projects, and the right to manage them.

Now, therefore, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Amendment**

1. All references in the Agreement to the Prospect Square property in Cincinnati, Ohio, are hereby deleted from the Agreement and from Acquired Interests defined in the Agreement. Prospect Square shall no longer be referred to or subject to the terms of the Agreement. All other terms and provisions of the Agreement shall remain the same.

2. This Amendment shall be governed by and construed and enforced under the laws of the State of Colorado, without giving effect to conflict of law principles. Any dispute arising from this Amendment will be submitted to the Receivership Court, which the Parties agree shall have exclusive jurisdiction over any dispute related to or arising from this Amendment.

3. If any provision of this Amendment is held to be invalid, illegal, or unenforceable under any law, the validity, legality, and enforceability of the remaining provisions shall remain effective and binding and shall not be affected or impaired.

4. This Amendment may be executed in counterparts, each of which shall be deemed an original and which together constitute the same instrument. Electronic signatures shall be as effective as original signatures.

5. Time is of the essence regarding the performance under this Amendment.

6. This Amendment may only be amended by written instrument signed by the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date indicated above, to be effective on the Effective Date.

ISABEL MARINA, LLC,
a Texas limited liability company

ANTHONY TARANTINO, Manager

Dated: March19, 2019.

HARVEY SENDER, Receiver

HARVEY SENDER, Receiver

Dated: March 19, 2019.

**DISCLOSURE AND INFORMATION STATEMENT**
**March 19, 2019**

## Background

As you may know, in August 2018 the Denver District Court ("Court") appointed Harvey Sender as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, Inc., and all of their respective properties and assets, interests, and management rights in related affiliated and subsidiary businesses (the "Receivership Estate"). The Receivership Estate includes ownership interests and management rights in the following real estate projects (collectively, the "Projects"), among other things:

1. Cassinelli Square Shopping Center, Cincinnati, OH
2. Happy Canyon Marketplace, Denver, CO (not the Shoppes)
3. Marketplace at Delta Township, Lansing, MI
4. Windsor Square Shopping Center, Knoxville, TN
5. DU Student Housing, Denver, CO

## Your Membership Interests

Based on information obtained from the Receiver, we understand that you may hold a membership interest in one or more of the following entities (the "Project LLCs") which relate to the Projects:

1. Cassinelli Square 16 B, LLC, relating to the Cassinelli Square Shopping Center, Cincinnati, OH
2. Happy Canyon Box 17 B, LLC, relating to the Happy Canyon Marketplace, Denver, CO
3. GDA Delta Member, LLC, relating to the Marketplace at Delta Township, Lansing, MI
4. GDA Windsor Member, LLC, relating to the Windsor Square Shopping Center, Knoxville, TN

Please provide the percentage membership interest(s) you claim to hold in each of the applicable Projects on Schedule 1, which is attached to the enclosed Consent and Release.

## Proposed Transaction

Isabel Marina, LLC, a Texas limited liability company, an entity affiliated with Tarantino Properties, Inc., a Texas corporation, which is described in more detail below (herein called "Tarantino") wants to purchase, and the Receiver wants to sell, all of the Receivership Estate's interests in the Projects as described in the Master Agreement, a copy of which is attached hereto as **Exhibit A** (the "Transaction"). The Receiver will submit the Master Agreement to the Court for approval. As described in the Master Agreement, Tarantino will purchase all of the Receivership

Estate's ownership interests in the Projects and will assume the Receivership Estate's management of the Projects. The largest membership interest holders in the Projects, which are entities affiliated with Hagshama Ltd., support the Transaction.

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Isabel Marina, LLC is a Texas limited liability company that is affiliated with Tarantino Properties, Inc., a Texas corporation, which is a full-service real estate company operating in many states, and currently managing over $2 billion in real estate assets, with over 38 years of experience. Tarantino Properties, Inc. is recognized for its property management expertise by the Institute of Real Estate Management's prestigious designation as an Accredited Management Organization®. Tarantino Properties Inc. and its related companies are led by Anthony Tarantino of Houston.

After completing his education and obtaining his Real Estate Broker's license, Anthony chartered Tarantino Properties, Inc. as his own corporation in 1980. In the decades that followed, Tarantino Properties, Inc. has grown into a multi-million dollar real estate management and brokerage company.

By recognizing the value of establishing and maintaining long-term relationships with clients, Anthony has been able to build on existing business. As the company has grown in size, Anthony has held steadfast in his commitment to deliver a high level of personalized service to each owner and property. He surrounds himself with talented, highly capable, and experienced people who carry on his tradition of service, earning the trust and respect of investors, tenants and residents.

Anthony's real estate experience includes management, leasing, investment sales, consulting and real estate syndications of all property types including multifamily, retail, office, industrial and hotels. Furthermore, Anthony has represented a variety of clients that include private investors, banks, and national institutional investors such as GE Capital, Lehman Brothers, and Midland Loan Service.

Anthony holds a Bachelor of Business Administration in Accounting from the University of Texas at Austin. Along with being a licensed Real Estate Broker since 1980, Anthony earned the distinction of being a Certified Property Manager (CPM) in 1985.

More information about Tarantino may be found at: https://www.tarantino.com

Tarantino (or its designee) will manage the Projects subject to the applicable operating agreements governing the Project LLCs, as may be amended from time to time. Gary Dragul will not have an ownership interest in any of the Project LLCs or in Tarantino, and will not be employed in any capacity by Tarantino, or any successor of Tarantino, in any activity related to the Project LLCs. Tarantino (or its designee) will act with all of the authority, and have all of the rights, provided to the manager in the operating agreements for the Project LLCs.

**Project LLC Operating Agreements**

The operating agreements applicable to the Project LLCs may include conditions, restrictions, or limitations related to the transfer or assignment of membership or management rights that are inconsistent with the Transaction and that restrict the transferability of membership interests. Once the Court approves the Transaction and the Project LLCs are released from the Receivership Estate, the operating agreements applicable to the Project LLCs will govern any membership or management considerations. Tarantino presently has no plans to issue capital calls to Project LLC investors in order to punitively dilute them, but Tarantino reserves any and all rights under the applicable operating agreements, as they may be amended to effect the Transaction. The parties acknowledge and agree that the Project LLCs are currently in default of all applicable loans, resulting in some cases in penalties against the Project LLCs, and will require new funds, new sponsor guarantees, and other financial and contractual protections and revisions in order to pursue project stabilization, and Tarantino may structure such as loans, equity infusions, or as otherwise prudent or necessary. Any attempt to raise additional funds for the Projects from investors will comply with applicable state and federal securities laws.

**Current Status of the Projects**

Because the Projects are currently being managed by the Receiver, Tarantino has limited information regarding the status of any Project or Project LLCs. Member rights to information are governed by the operating agreements for the Project LLCs.

However, the Receiver has informed Tarantino that the loans in place for all of the Projects are currently in default. With this Transaction, Tarantino hopes to manage and stabilize the Projects' current financial situation.

**Options Regarding Your Membership Interests**

As someone claiming to be an owner of a membership interest in one or more of the Project LLCs, you have one of the following two options:

1. You may (a) consent to the Transaction and Tarantino's (or a Tarantino designee's) appointment as a new manager to a Project LLC in which you own a membership interest, and (b) reaffirm your ownership of membership interests in the Project LLC. This will require you to release any claims against the Receivership Estate, and release Tarantino or its designee from any claims relating to your membership interest in the Project LLC for which you are providing your consent arising from or based on events that occurred before the Receiver was appointed. If you wish to consent, you must complete, execute, and return the enclosed Consent and Release so that it is received by Tarantino, no later than April 3, 2019. If you do this, you will retain your membership interest(s) in the Project LLCs to which you indicate your consent, subject,

however, to all of the rights and limitations set forth in the operating agreement for such Project LLC.

OR

2. If you decide to withhold your consent for a Project LLC in which you own a membership interest, or Tarantino has not received your properly completed and executed Consent and Release by April 3, 2019, it will automatically constitute a relinquishment and rescission all of your membership interests in such Project LLCs and you may file a claim against the Receivership Estate based upon your investment in such Project LLCs. The Receiver will review and determine whether to allow any claims in connection with proposing a plan of distribution for the Court's approval. The Receiver is presently not able to state whether any claim you might file would be allowed or disallowed and, if allowed, the Receiver cannot presently determine the percentage that will be paid on any allowed claim. BASED ON INFORMATION PRESENTLY AVAILABLE TO THE RECEIVER, THE RECEIVER CURRENTLY ANTICIPATES THAT (A) CLAIMS WILL BE ALLOWED ON A NET CASH-IN, CASH-OUT BASIS (AMOUNT INVESTED MINUS PAYMENTS OR DISTRIBUTIONS), (B) ALLOWED CLAIMS WILL NOT RECEIVE INTEREST OR A RETURN ON NET INVESTED DOLLARS, AND (C) ANY ALLOWED CLAIMS WILL NOT BE PAID IN FULL. *THE DEADLINE FOR AN EQUITABLE CLAIMS SUBMISSION WAS* ***MONDAY, MARCH 18, 2019***.

**Additional Considerations and Disclosures**

TARANTINO MAKES NO REPRESENTATIONS OR WARRANTIES TO YOU IN CONNECTION WITH THE PROJECTS, THE PROJECT LLCS, THE TRANSACTION, OR THE EFFECTS OF EITHER PROVIDING AN EXECUTED CONSENT AND RELEASE FOR THE TRANSACTION, OR WITHHOLDING YOUR CONSENT AND RESCINDING YOUR INVESTMENT IN A PROJECT LLC. IN ADDITION:

A. Tarantino does not and cannot guarantee that it will be successful in managing the Project LLCs and may elect not to acquire certain Project LLCs.
B. Tarantino does not and cannot guarantee that it will be able to create any return for the members of the Project LLCs who timely provide their executed Consents and Releases.
C. In distributing available funds, the manager of the Project LLCs may misapprehend future anticipated income and/or profits and face a reduction or even depletion of available Project LLC funds for operating, liability and/or finance obligations.
D. The commercial real estate business, including the Projects, is highly competitive, interest rate sensitive and location specific and there is no guarantee that the Projects or the Project LLCs will be profitable in the future.

E. Investments in the Project LLCs are speculative and involve a high degree of risk.
F. Except as may be provided in an operating agreement for a Project LLC or as required by applicable law, members of a Project LLC have limited or no voting rights with respect to the operation or management of a Project LLC.
G. There is no known market for any membership interests in the Project LLCs and transfers of all membership interests in the Project LLCs are non-transferable and subject to restrictions under the operating agreements of the Project LLCs and applicable laws.
H. Owners of membership interests in the Project LLCs risk losing their entire investment in the Project LLCs.
I. In making a decision to either provide an executed Consent and Release for each Project LLC of which you are a member, or withhold consent for one or more Project LLCs, you must rely on your own examination of the Project LLCs and are strongly advised to consult with your own tax, accounting, investment, and legal advisors to make an informed decision.

**By sending this consent and seeking this information, Tarantino does not agree or concede to the accuracy or viability of any claimed ownership interest.**

**Contact Information**

If you decide to complete and return your executed Consent and Release, please mail it for receipt no later than April 3, 2019, using the enclosed postage-paid addressed envelope to:

ISABEL MARINA, LLC
Attn.: Anthony Tarantino, CPM, Manager
c/o Tarantino Properties, Inc.
7887 San Felipe, Suite 237
Houston, TX 77063
anthony@tarantino.com

If you have questions regarding any of the above information or attachments, as well as questions concerning where or how to return your Consent and Release, please contact Tarantino contact person and info by telephone at (713) 974-4292, or by email at Anthony@tarantino.com, with a copy to Jill@tarantino.com.

**CONSENT AND RELEASE**

The undersigned states that he, she or it is the owner of the membership interests described in Schedule 1 hereto and incorporated herein (the "Interests"). The undersigned has received and carefully reviewed the Disclosure and Information Statement dated March 18, 2019, and all exhibits and materials delivered therewith (the "Disclosure Statement"), and has discussed such materials with such legal, accounting, tax, investment, and other advisors to the extent the undersigned has deemed advisable in his, her, or its sole discretion.



The undersigned hereby notifies Isabel Marina, LLC ("Tarantino") that the undersigned consents to or withholds consent to the Transaction (as defined in the Disclosure Statement) and Tarantino's (or Tarantino's designee's) appointment as a new Manager of a Project LLC (as defined in the Disclosure Statement) in which the undersigned owns an Interest as set forth below (PLEASE CHECK ONE BOX FOR EACH PROJECT LCC IN REFERENCE TO YOUR OWNERSHIP AS REFLECTED ON **SCHEDULE 1** HERETO). The undersigned hereby:

**Cassinelli Square 16 B, LLC**, relating to the Cassinelli Square Shopping Center, Cincinnati, OH:

☐ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

**Happy Canyon Box 17 B, LLC**, relating to the Happy Canyon Marketplace, Denver, CO:

☐ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

**GDA Delta Member, LLC**, relating to the Marketplace at Delta Township, Lansing, MI:

☐ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

**GDA Windsor Member, LLC**, relating to the Windsor Square Shopping Center, Knoxville, TN:

- ☐ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.
- ☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.
- ☐ The undersigned does not own Interests in this Project LLC.

For any Project LLC for which consent is provided above, after having had the opportunity to consult with legal counsel, the undersigned hereby releases any and all claims, whether known or unknown, matured or contingent, that the undersigned or any successors or assigns of the undersigned may have against the Receivership Estate (as defined in the Disclosure Statement); and the undersigned also hereby releases any and all claims, whether known or unknown, matured or contingent, that the undersigned or any successors or assigns of the undersigned may have against Tarantino or its designee relating in any way to the undersigned's membership interest in that Project LLC arising from or based on events that occurred before the Transaction closes.

The undersigned represents and warrants that he or she has all requisite power and authority to execute this Consent and Release and is duly authorized to enter into this Consent and Release. This Consent and Release is binding on the undersigned's successors, assigns, heirs and legal representatives.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF,** the undersigned has executed this Consent and Release this _____ day _____, 2019.

| **SIGNATURE FOR INDIVIDUAL(S):** | **SIGNATURE FOR ENTITY:** |
|---|---|
| _____ | _____ |
| Signature of Member | Printed Name of Member |
| _____ | _____ |
| Printed Name of Member | Signature and Title of Officer, Partner or Other Representative |
| _____ | _____ |
| Signature of Joint Member (if any) | Printed Name of Officer, Partner or Other Representative |

_____
Printed Name of Joint Member (if any)

When signing as attorney, executor, administrator, trustee, or guardian, please give full title. All joint owners should sign. If a corporation, please sign in full corporate name by an authorized officer. If a partnership, please sign in partnership name by authorized person. The signatories hereto agree to deliver, if requested, a copy of any documentation necessary to establish the authority of the person signing this Consent and Release (*e.g.*, corporate articles of incorporation, bylaws, authorizing resolutions, operating agreement, or declaration of trust).

PLEASE COMPLETE, SIGN, DATE AND RETURN THIS CONSENT AND RELEASE AS SOON AS POSSIBLE FOR RECEIPT NO LATER THAN **APRIL 3, 2019**, BY USING THE ENCLOSED POSTAGE-PAID ADDRESSED ENVELOPE, WHICH IS ADDRESSED TO:

ISABEL MARINA, LLC
Attn.: Anthony Tarantino, CPM, Manager
c/o Tarantino Properties, Inc.
7887 San Felipe, Suite 237
Houston, TX 77063

IF TARANTINO HAS NOT RECEIVED YOUR COMPLETED AND EXECUTED RELEASE BY WEDNESDAY**, APRIL 3, 2019**, YOU WILL BE DEEMED TO HAVE RESCINDED AND RELINQUISHED ALL OF YOUR INTERESTS FOR ALL PROJECT LLCs AND YOU MAY FILE A CLAIM AGAINST THE RECEIVERSHIP ESTATE BASED UPON YOUR INVESTMENT IN SUCH PROJECT LLCs, AS DESCRIBED IN THE DISCLOSURE STATEMENT.

SCHEDULE 1

**Name of Member**: _____

| **Name of Project LLC** | **% Ownership of Membership Interests Claimed** |
|---|---|
| Cassinelli Square 16 B, LLC | |
| Happy Canyon Box 17 B, LLC | |
| GDA Delta Member, LLC | |
| GDA Windsor Member, LLC | |

DATE FILED: March 19, 2019 5:05 PM
FILING ID: C80A228D69DA8
CASE NUMBER: 2018CV33011

| | |
|---|---|
| DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO<br>Denver District Court<br>1437 Bannock St.<br>Denver, CO 80202 | |
| **Plaintiff:** Chris Myklebust, Securities Commissioner for the State of Colorado<br><br>v.<br><br>**Defendants:** Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC | ▲COURT USE ONLY▲ |
| | Case Number: 2018CV33011<br><br>Division/Courtroom: 424 |

**ORDER GRANTING RECEIVER'S MOTION FOR ORDER AUTHORIZING SALE OF ESTATE'S INTEREST IN FIVE HAGSHAMA PROJECTS TO ISABEL MARINA, LLC**

THIS MATTER is before the Court on the Receiver's Motion for Order Authorizing Sale of Estate's Interest in Five Hagshama Projects to Isabel Marina, LLC (the "Motion"), filed by Harvey Sender, the duly-appointed receiver in this case. The Court has reviewed the Motion and the file and is otherwise advised.

THE COURT HEREBY ORDERS that the Motion is GRANTED, the Agreement between the Receiver and Isabel submitted with the Motion as Exhibit 1 is approved, and the Receiver is authorized to take all actions and execute all

documents without further Court approval that are necessary to consummate the Agreement.

Dated: March ___, 2019.

BY THE COURT:

_____
Hon. District Court Judge

Martin Rosenbaum

**CONSENT AND RELEASE**

The undersigned states that he, she or it is the owner of the membership interests described in Schedule 1 hereto and incorporated herein (the "Interests"). The undersigned has received and carefully reviewed the Disclosure and Information Statement dated March 19, 2019, and all exhibits and materials delivered therewith (the "Disclosure Statement"), and has discussed such materials with such legal, accounting, tax, investment, and other advisors to the extent the undersigned has deemed advisable in his, her, or its sole discretion.



The undersigned hereby notifies Isabel Marina, LLC ("Tarantino") that the undersigned consents to or withholds consent to the Transaction (as defined in the Disclosure Statement) and Tarantino's (or Tarantino's designee's) appointment as a new Manager of a Project LLC (as defined in the Disclosure Statement) in which the undersigned owns an Interest as set forth below (PLEASE CHECK ONE BOX FOR EACH PROJECT LCC IN REFERENCE TO YOUR OWNERSHIP AS REFLECTED ON **SCHEDULE 1** HERETO). The undersigned hereby:

**Cassinelli Square 16 B, LLC**, relating to the Cassinelli Square Shopping Center, Cincinnati, OH:

☒ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

**Happy Canyon Box 17 B, LLC**, relating to the Happy Canyon Marketplace, Denver, CO:

☒ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ ***Withholds consent*** *to the Transaction for this Project LLC and* **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

**GDA Delta Member, LLC**, relating to the Marketplace at Delta Township, Lansing, MI:

☒ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

**GDA Windsor Member, LLC**, relating to the Windsor Square Shopping Center, Knoxville, TN:

☒ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

**High Street Condo Project, LLC**, relating to DU Student Housing, Denver, CO:

☒ **Consents** to the Transaction for this Project LLC, admission of Tarantino as a member of this Project LLC, Tarantino's (or an Tarantino's designee's) appointment as a new manager to this Project LLC, and **confirms** the undersigned's ownership of the Interests in this Project LLC as set forth in Schedule 1.

☐ **Withholds consent** to the Transaction for this Project LLC and **rescinds** and relinquishes the undersigned's ownership of the Interests in this Project LLC.

☐ The undersigned does not own Interests in this Project LLC.

For any Project LLC for which consent is provided above, after having had the opportunity to consult with legal counsel, the undersigned hereby releases any and all claims, whether known or unknown, matured or contingent, that the undersigned or any successors or assigns of the undersigned may have against the Receivership Estate (as defined in the Disclosure Statement); and the undersigned also hereby releases any and all claims, whether known or unknown, matured or contingent, that the undersigned or any successors or assigns of the undersigned may have against Tarantino or its designee relating in any way to the undersigned's membership interest in that Project LLC arising from or based on events that occurred before the Transaction closes.

The undersigned represents and warrants that he or she has all requisite power and authority to execute this Consent and Release and is duly authorized to enter into this Consent and Release. This Consent and Release is binding on the undersigned's successors, assigns, heirs and legal representatives.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF,** the undersigned has executed this Consent and Release this 27th day March, 2019.

**SIGNATURE FOR INDIVIDUAL(S):**

Martin Rosenbaum
Signature of Member

MARTIN ROSENBAUM
Printed Name of Member

Signature of Joint Member (if any)

Printed Name of Joint Member (if any)

**SIGNATURE FOR ENTITY:**

Printed Name of Member

Signature and Title of Officer, Partner or Other Representative

Printed Name of Officer, Partner or Other Representative

When signing as attorney, executor, administrator, trustee, or guardian, please give full title. All joint owners should sign. If a corporation, please sign in full corporate name by an authorized officer. If a partnership, please sign in partnership name by authorized person. The signatories hereto agree to deliver, if requested, a copy of any documentation necessary to establish the authority of the person signing this Consent and Release (*e.g.*, corporate articles of incorporation, bylaws, authorizing resolutions, operating agreement, or declaration of trust).

PLEASE COMPLETE, SIGN, DATE AND RETURN THIS CONSENT AND RELEASE AS SOON AS POSSIBLE FOR RECEIPT NO LATER THAN **APRIL 3, 2019**, BY USING THE ENCLOSED POSTAGE-PAID ADDRESSED ENVELOPE, WHICH IS ADDRESSED TO:

ISABEL MARINA, LLC
Attn.: Anthony Tarantino, CPM, Manager
c/o Tarantino Properties, Inc.
7887 San Felipe, Suite 237
Houston, TX 77063

IF TARANTINO HAS NOT RECEIVED YOUR COMPLETED AND EXECUTED RELEASE BY WEDNESDAY, **APRIL 3, 2019**, YOU WILL BE DEEMED TO HAVE RESCINDED AND RELINQUISHED ALL OF YOUR INTERESTS FOR ALL PROJECT LLCs AND YOU MAY FILE A CLAIM AGAINST THE RECEIVERSHIP ESTATE BASED UPON YOUR INVESTMENT IN SUCH PROJECT LLCs, AS DESCRIBED IN THE DISCLOSURE STATEMENT.

SCHEDULE 1

**Name of Member:** Martin Rosenbaum

| Name of Project LLC | % Ownership of Membership Interests Claimed |
|---|---|
| Cassinelli Square 16 B, LLC | 23.44% |
| Happy Canyon Box 17 B, LLC | 23.29% |
| GDA Delta Member, LLC | 16.30% |
| GDA Windsor Member, LLC | 6.01 % |
| High Street Condo Project, LLC | 15.00% |