

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SECURITIES AND EXCHANGE §  
COMMISSION, §  
§  
PLAINTIFF, §  
§  
vs. §  
§  
BRIAN A. BJORK, THE ESTATE OF JOEL §  
DAVID SALINAS, J. DAVID GROUP OF §  
COMPANIES, INC., J. DAVID §  
FINANCIAL GROUP LP, SELECT ASSET §  
MANAGEMENT LLC, SELECT ASSET §  
CAPITAL MANAGEMENT LLC, SELECT §  
ASSET FUND I, LLC, AND SELECT §  
ASSET PRIME INDEX FUND, LLC. §  
§  
DEFENDANTS. §

CIVIL ACTION NO. 4:11 CV - 02830

**RECEIVER’S UNOPPOSED MOTION TO  
APPROVE RELEASE OF LOAN OBLIGATIONS**

TO THE HONORABLE KEITH P. ELLISON, UNITED STATES DISTRICT COURT:

Receiver Steven A. Harr (“Receiver”) moves the Court to approve a Release of Loan Obligations respectfully stating:

**I.**

**BACKGROUND**

1. On August 1, 2011, the Securities and Exchange Commission (“SEC”) filed its Complaint against Defendants. In conjunction therewith, the SEC sought, and by Order Appointing Receiver (the “Order”), the Court appointed, Steven A. Harr as the Receiver for Brian A. Bjork, The Estate of Joel David Salinas, J. David Group of Companies, Inc., J. David Financial Group LP, Select Asset Management LLC, Select Capital Management, LLC, Select Asset Fund I, LLC and Select Asset Prime Index Fund, LLC (collectively the “Receivership Entities”).

2. Mr. Harr was authorized to have complete and exclusive control, possession and custody of all Receivership assets and Receivership records of Defendants. Receivership Assets and Receivership Records were defined in the Order as “assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the [Receivership Entities] and all entities they own or control . . . , and the books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers telephones, personal digital devices and other informational resources of or in possession of the [Receivership Entities] or issued by [Receivership Entities] and in possession of any agent or employee of the [Receivership Entities].”<sup>1</sup>

3. The Receiver has been acting and fulfilling his duties as Receiver since his appointment and has conducted various investigations of the Receivership Entities with the intent to marshal the Receivership assets for the benefit of the Receivership Entities’ investors and creditors. These efforts have included interactions with existing and former employees, reviews of corporate records and discussions with involved third-parties.

## **II.**

### **INTRODUCTION**

4. The Receiver’s duties include responsibilities for the collection of numerous loans made by the Receivership Entities. One of these loans was made by Select Asset Management, LLC (“Select”), a Receivership Entity, to Chris Peden. Mr. Peden has partially repaid this loan, and the Receiver has reached an agreement regarding satisfaction of the remaining balance which the Receiver now presents to the Court for approval.

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<sup>1</sup> Order Appointing Receiver, ¶1.

### III.

#### AUTHORITIES

5. In receiverships, federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief. *SEC v. Blatt*, 583 F.2d 1325 (5th Cir. 1978); *SEC v. Manor Nursing Centers*, 458 F.2d 1082, 1103-04 (2d Cir. 1972).

### IV.

#### FACTS

6. **The Loan** - Select loaned Mr. Peden \$54,570.45 (the "Loan"). The Loan called for interest to accrue on the principal balance at 8.25% per year. Mr. Peden partially repaid the Loan, but a balance of principal and accrued interest in the amount of \$33,600.56 remains.

7. Pursuant to his duties to marshal Receivership Assets, the Receiver has been negotiating with Mr. Peden to collect on the Loan. As a result of these negotiations, Mr. Peden has agreed to pay Twenty-Eight Thousand and No/100 Dollars (\$28,000.00) to Select, care of the Receiver, and the Receiver, on behalf of Select, has agreed to release Mr. Peden's liability under the Loan only. A copy of the proposed Release Agreement ("Release") is attached as Exhibit "A".

8. **The Release of Loan Obligations** – The amount payable by Mr. Peden under the Release does not constitute full satisfaction of the Loan. Taking into account accrued interest, the amount due and owing under the Loan is Thirty-Three Thousand, Six Hundred and 56/100 Dollars (\$33,600.56). The difference between the payoff amount and the amount payable under the Release is Five Thousand, Six Hundred and 56/100 Dollars (\$5,600.56). While the Receiver could pursue remedies against Mr. Peden, the expense of such litigation outweighs the potential payment. A compromise which amounts to payment of 83 cents on the dollar and saving all the time and costs of the litigation on the Loan is in the best interest of the estate.

9. Therefore, the Receiver requests that the Court approve the Release as stated in this motion and order that the Receiver is permitted to proceed with the transaction as stated in the attached Exhibit "A" or terms substantially similar thereto.

10. Pursuant to Local Rule LR 7.2, the Receiver advises the Court that the Plaintiff SEC does not oppose this Motion. The Defendant entities are all controlled by the Receiver.

**IV.**

**CONCLUSION**

WHEREFORE, the Receiver prays that the Court enter an Order in the form submitted with this Motion, or for substantially the same relief in such form as the Court may find just and proper.

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

/s/ Steven A. Harr

Steven A. Harr, #09035600

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ATTORNEYS FOR THE RECEIVER

**CERTIFICATE OF CONFERENCE**

On November 21, 2011, I conferred with Tim McCole and he stated that the Securities and Exchange Commission is not opposed to the relief sought in this motion.

/s/ Christopher D. DeMeo

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed electronically with the Clerk via the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Houston, Texas, this 22<sup>nd</sup> day of November 2011.

*/s/ Steven A. Harr* \_\_\_\_\_

Steven A. Harr

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## RELEASE AGREEMENT

Steven A. Harr, Receiver for Select Asset Management, LLC (“SELECT”), a Texas Limited Liability Company, and Chris Peden (the “BORROWER”) (hereinafter collectively referred to as “The Parties”) enter into the following Release Agreement (the “Agreement”) as follows:

1. **RECITALS.** The following recitals are substantive provisions of this Agreement and are incorporated into the Agreement for all purposes.

1.01. WHEREAS, SELECT and BORROWER entered into an agreement whereby SELECT agreed to loan and BORROWER agreed to repay a principal amount of \$54,570.45 and accrued interest at a rate of 8.25% (the “Loan”); and

1.02. WHEREAS, BORROWER has partially repaid the loan; and

1.03. WHEREAS, there remains a balance due on the loan of approximately \$33,600.56; and

1.04. WHEREAS, SELECT was placed into receivership by order of the United States District Court for the Southern District of Texas, Houston Division on August 1, 2011 and Steven A. Harr was appointed as Receiver; and

1.05. WHEREAS, the BORROWER and the Receiver have reached an agreement on satisfaction of the Loan balance in exchange for a release of BORROWER for liability under the Loan only.

Now THEREFORE, in consideration of the payments and promises exchanged between the Parties, they seek to enter into this Agreement as follows.

2. **CONSIDERATION.** In consideration for the Receiver’s release of BORROWER’S liability under the Loan, BORROWER will pay Receiver TWENTY-EIGHT THOUSAND DOLLARS AND NO CENTS, \$28,000.00.

3. **RELEASE.** In exchange for the consideration set out above, the Receiver hereby releases BORROWER from any and all further liability under the Loan. This is a specific release which is limited to the Loan. Receiver reserves any and all other rights, claims, causes of action of any kind whatsoever against Borrower.

4. **REPRESENTATIONS AND WARRANTIES.** In addition to other representations and warranties set out herein, if any, the Parties represent and warrant that they are legally competent and authorized to execute this Agreement. No promise or representation has been exchanged between the Parties except as is expressly stated in this Agreement.

### 5. **GENERAL TERMS**

5.01. **Interpretation.** The terms and provisions of this Agreement were arrived at by mutual negotiation among the Receiver and BORROWER. No ambiguity in this Agreement





shall be interpreted against or adversely to any party based upon who may have drafted the language of any particular term or provision. All PARTIES have had an equal opportunity to participate in the drafting of this Agreement.

5.02. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of Texas.

5.03. Complete Agreement. This Agreement contains the entire agreement between the Receiver and BORROWER regarding the matters set forth in it and shall be binding upon and inure to the benefit of the successors and assigns of each. This Agreement supersedes all prior written or oral agreements, relationships, or understandings. There are no contemporaneous oral or written agreements or representations between the Receiver and BORROWER other than this Agreement.

5.04. Severability. In the event that any one or more of the provisions of this Agreement is determined to be invalid, illegal, or unenforceable in any respect, such invalidity shall not affect any other provision.

5.05. Modification. This Agreement may not be amended, altered, modified, or changed in any way except in writing signed by all parties to the Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_ 2011.

STEVEN A. HARR, Receiver Select Asset Management, LLC

By: \_\_\_\_\_

THE STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS           §

BEFORE ME, the undersigned authority, on this day personally appeared STEVEN A. HARR known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has read the foregoing RELEASE AGREEMENT and executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF Texas

\*\*\*\*

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_ 2011.

CHRIS PEDEN

By: \_\_\_\_\_

**Chris Peden**

THE STATE OF TEXAS           §  
  §  
COUNTY OF HARRIS           §

BEFORE ME, the undersigned authority, on this day personally appeared Chris Peden known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he has read the foregoing RELEASE AGREEMENT and executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS



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**ORDER GRANTING RECEIVER’S UNOPPOSED  
MOTION TO APPROVE RELEASE OF LOAN OBLIGATIONS**

On this \_\_\_\_ day of \_\_\_\_\_ 2011, the Court considered Receiver’s Unopposed  
Motion to Approve Release of Loan Obligations. The Motion is GRANTED.

Signed this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
JUDGE PRESIDING