

RETURN DATE: APRIL 18, 2023	:	SUPERIOR COURT
	:	
DXR FINANCE PARENT, LLC	:	J.D. OF WATERBURY
	:	
VS.	:	AT WATERBURY
	:	
THERAPLANT, LLC	:	MARCH 29, 2023

FORECLOSURE COMPLAINT

1. Plaintiff, DXR FINANCE PARENT, LLC ("Plaintiff"), is a Delaware limited liability company with an address care of Cogency Global, Inc., 850 New Burton Road, Suite 201, Dover DE 19904. Plaintiff is the assignee of the subject mortgage.

2. Defendant THERAPLANT, LLC ("Theraplant"), is a Connecticut limited liability company with a principal office located at 856 Echo Lake Road, Watertown, Connecticut 06795. On November 26, 2021, Theraplant merged with GNRS CT MERGER SUB, LLC ("GNRS"), a Connecticut limited liability company, with Theraplant being the surviving entity.

3. At all times material to the allegations contained herein, Theraplant was and is the owner of a certain parcel of real estate and the improvements and fixtures thereon known as 856 Echo Lake Road, Watertown, Connecticut 06795 and more particular described in Exhibit A (the "Property").

4. On November 26, 2021, DXR-GL Holdings I, LLC, DXR-GL Holdings II, LLC, DXR-GL Holdings III, LLC (collectively, the "Lenders"), DXR Finance, LLC, as agent for the Lenders, The Greenrose Holding Company Inc. (f/k/a Greenrose Acquisition Corp.) as Borrower ("Borrower"), Theraplant, and GNRS as guarantors and other Loan Parties (as defined therein) entered into that certain Credit Agreement dated November 26, 2021. The Credit Agreement was subsequently amended by that certain Amendment No. 1, dated as of December 31, 2021, and by that certain Amendment No. 2, dated as

of November 10, 2022 (collectively, the "Credit Agreement"). Copies of the Credit Agreement, Amendment No. 1, and Amendment No. 2 are identified as Exhibits B, C and D and will be sent to all appearing parties and the Court pursuant to Practice Book § 10-29.

5. The Credit Agreement provided that the Lenders would make certain financial accommodations available to Borrower, up to One Hundred Five Million (\$105,000,000.00) pursuant to its terms and conditions (the "Loan"). This included an Initial Term Loan¹ in the amount of Eighty-Eight Million Dollars (\$88,000,000.00) to Borrower on the Closing Date. Credit Agreement, Ex. B, §2.1(a). The remaining portion of the Loan was comprised of a Delayed Draw Term Loan (collectively with the Initial Term Loan, the "Term Loans") in the amount of Seventeen Million Dollars (\$17,000,000.00) to Borrower on the Delayed Draw Funding Date. *Id.*, §2.1(b).

6. The Credit Agreement provided that the Outstanding Amount of the Term Loans and all accrued and unpaid interest would be due, inter alia upon the earlier of the Maturity Date or the date of the acceleration of the Term Loan pursuant to the terms of the Credit Agreement. *Id.*, §2.1(c).

7. Under the Credit Agreement, Borrower promised to pay all Obligations (including principal, interest, premiums, if any), fees, costs, and expenses (including Lender Group Expenses) in full on the Maturity Date or, if earlier, on the date on which the Obligations become due and payable pursuant to the terms of this Agreement. *Id.*, §2.3.

¹ Terms not defined herein shall have the meaning ascribed to them in the Credit Agreement, unless otherwise noted.

8. The Credit Agreement defined Maturity Date as the earlier of (i) November 26, 2024 and (ii) the date on which all Loans shall become due and payable in full hereunder, whether by acceleration or otherwise. *Id.*, Definitions.

9. The Loans bear interest at the Adjusted LIBO Rate plus the Applicable Margin. *Id.*, § 2.4(a). The Credit Agreement required payments of interest, in arrears, on the Interest Payment Date, which means the last Business Day of March, June, September and December of each year. *Id.*, §2.4(c)(i), Definitions.

10. The Credit Agreement limited the amount of broker's fees that could be paid in relation to the Loans and limited the amount payable to Imperial Capital to Two Million Dollars (\$2,000,000.00). *Id.*, §4.13, Schedule 4.13.

11. The Credit Agreement obligated Borrower and the other Loan Parties to deliver to DXR Finance, LLC and each of the Lenders various financial statements, reports and other items as set forth in Schedule 5.1 no later than the time specified in Schedule 5.1. *Id.*, §5.1, Schedule 5.1.

12. The Credit Agreement also obligated Borrower and the other Loan Parties, upon the request of DXR Finance, LLC with respect to any Material Real Estate Asset, to take such action and execute and deliver such documents with respect to Real Property owned by the Borrower and the other Loan Parties within thirty days of DXR Finance, LLC's request. *Id.*, §5.12(a).

13. The Credit Agreement obligated Borrower and the other Loan Parties to attend certain Lender Meetings throughout the year in order to review the Borrower and the other Loan Parties' financial results and conditions as well as the current year projections. *Id.*, §5.14.

14. The Credit Agreement also contained certain negative covenants, which barred Borrower and their subsidiaries from creating, incurring, assuming, suffering to exist, guaranteeing, or otherwise becoming or remaining, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness. *Id.*, §6.1.

15. The Credit Agreement also contained certain financial covenants, obligating Borrower and the other Loan Parties to maintain specified Minimum Adjusted EBITDA amounts, specified Total Net Leverage Ratios, and specified Secured Net Leverage Ratios. *Id.*, § 7.1, 7.2, 7.3.

16. Section 8.1 of the Credit Agreement identified the Events of Default. This includes:

(a) The failure to may any payment when due, including any portion of the Obligations consisting of (i) principal or (ii) interest, fees or charges due to Lenders if not paid within five (5) Business Days of its due date. *Id.*, §8.1(a);

(b) The failure to perform or observe any covenant or agreement in any of Section 3.5 (Conditions Subsequent), Section 5.1 (Financial Statements, Reports, Certificates), Section 6, or Section 7. *Id.*, §8.1(b)(i);

(c) The failure to perform or observe any covenant or other agreement contained in any of Section 5.2 (Collateral Reporting), Section 5.4 (Inspection; Appraisals), Section 5.7 (Insurance), Section 5.10 (Disclosure Updates), Section 5.11 (Formation or Acquisition of Subsidiaries), or Section 5.14 (Lender Meetings), and, in each case, such failure continues for a period of ten (10) calendar days after the earlier of (A) the date on which such failure shall first become known to any officer of any

Borrower or the other Loan Parties and (B) the date on which notice thereof is given to Borrower by DXR Finance, LLC or any Lender; *Id.*, §8.1(b)(ii)

(d) The failure to perform or observe any covenant or other agreement contained in any of Section 5.3 (Existence), Section 5.5 (Maintenance of Properties), Section 5.6 (Taxes), Section 5.8 (Compliance with Laws), Section 5.9 (Environmental), Section 5.12 (Additional Real Property), Section 5.13 (Further Assurances), or Section 5.15 (Material Contracts), and, in each case, such failure continues for a period of ten (10) Business Days after the earlier of (A) the date on which such failure shall first become known to any officer of any Borrower or the other Loan Parties and (B) the date on which notice thereof is given to Borrower by DXR Finance, LLC or any Lender. *Id.*, §8.1(b)(iii); and

(e) The failure to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8.1 (in which event such other provision of this Section 8.1 shall govern), and such failure continues for a period of fifteen (15) calendar days after the earlier of (A) the date on which such failure shall first become known to any officer of the Borrower or the other Loan Parties and (B) the date on which notice thereof is given to Borrower by DXR Finance, LLC. *Id.*, §8.1(b)(iv).

17. Upon an Event of Default, the Credit Agreement provides that DXR Finance, LLC may declare the principal and all accrued and unpaid interest and fees in respect of, the Term Loan and all other Obligations, whether under the Credit Agreement or the other Loan Documents and declare them immediately due and payable. *Id.*, §9.1(a). In

addition, DXR Finance, LLC may exercise all other rights and remedies available to it or the Lenders under the Loan Documents, under Applicable Law, or in Equity. *Id.*, §9.1(d).

18. The Credit Agreement provides that Borrower and the other Loan Parties are liable for any and all Lender Group Expenses, including DXR Finance, LLC's and Lenders attorney's fees and expenses in terminating, enforcing, or defending the Loan Documents. *Id.*, Definitions ("Lender Group Expenses", "Obligations"); §2.3.

19. In order to induce the Lenders to enter into the Credit Agreement and the other Loan Documents and to induce the Lenders to make financial accommodations to Borrower as provided for in the Credit Agreement and the other Loan Documents, Borrower, Theraplant and GNRS, on the one hand, and DXR Finance, LLC, as agent for the Lenders, on the other, entered into that Security Agreement dated November 26, 2021 (the "Security Agreement"). Borrower, Theraplant, and GNRS agreed under the Security Agreement to grant a continuing security interest in and lien on the Collateral (as defined therein) in order to secure the prompt and complete payment, observance and performance of, among other things, the Secured Obligations (as defined therein). A copy of the Security Agreement is identified as Exhibit E and will be sent to all appearing parties and the Court pursuant to Practice Book § 10-29.

20. In order to further induce the Lenders to enter into the Credit Agreement and the other Loan Documents and to induce the Lenders to make financial accommodations to Borrower as provided for in the Credit Agreement and the other Loan Documents, and as a condition precedent to the funding of the Loan, Theraplant and GNRS entered into a Guaranty dated November 26, 2021 (the "Guaranty"). A copy of the Guaranty is identified as Exhibit F and will be sent to all appearing parties and the Court

pursuant to Practice Book § 10-29. The receipt of the duly executed Guaranty was a condition precedent to funding of the Term Loan. Credit Agreement, Ex. B, §3.1(a)(iii).

21. Pursuant to the Guaranty, the Guarantors, (as defined therein), which included Theraplant, jointly and severally, unconditionally and irrevocably guaranteed the due and punctual Payment in Full (as defined in the Security Agreement) of the Obligations under the Credit Agreement and other Loan Documents. Guaranty, Ex F.

22. Pursuant to the Guaranty, the liability of the Guarantors for the entire Guaranteed Obligations (as defined therein) matures and becomes immediately due and payable upon the failure of Borrower to pay any of the Guaranteed Obligations. *Id.*, §2(a).

23. On or about January 21, 2022, Theraplant granted and executed that certain Open-End Mortgage Deed, Assignment of Rents, Security Agreement and Fixture Filing with respect to the Property on the Property to DXR Finance, LLC as agent for the Lenders (the "Mortgage"). A copy of the Mortgage is identified as Exhibit G and will be sent to all appearing parties and the Court pursuant to Practice Book § 10-29.

24. The Mortgage secured obligations under Credit Agreement, Security Agreement and Guaranty, as well as the performance and payment of the covenants, agreements and obligations contained in the Credit Agreement and the other Loan Documents and all other monies secured thereby. The Mortgage expressly provided that it was an Open-End Mortgage securing the guaranty of a commercial obligation under Conn. Gen. Stat. § 49-4b. Mortgage, Ex. G, §6.04. Executing and delivering the Mortgage of the Property was a Condition Subsequent to the Credit Agreement. Credit Agreement, Ex. B, §3.5, Schedule 3.5.

25. The Mortgage was recorded on January 27, 2022 in Volume 2233 at Page 126 of the Watertown Land Records.

26. The Mortgage included the Property as well as the Easements and Rights of Ways, the Adjacent Rights, the Improvements, the Fixtures, the Mineral and Related Rights, the Rents, the Damage Rights, the Parking Rights, the Air and Development Rights (all as defined in the Mortgage and collectively referred to as the "Ancillary Rights and Properties", and collectively with the Property, the "Mortgage Estate"). Mortgage, Ex. G.

27. Under the Mortgage, Theraplant was obligated to pay when due all Obligations in respect of its guarantee under the Guaranty and the other Loan Documents. *Id.*, §1.01.

28. The Mortgage provided that it would be a default under the Mortgage if there was any Event of Default under the Credit Agreement, and if the principal of and accrued interest on the extensions of credit and all other Obligations under the Credit Agreement shall be declared, or become, due and payable, then the obligations of Theraplant in respect of its guarantee under the Guaranty shall become due and payable, without presentment, demand, protest or other formalities of any kind, all of which have been waived pursuant to the Credit Agreement. *Id.*, §4.01.

29. The Mortgage also provided DXR Finance, LLC, or its agents, "to proceed to protect and enforce its rights under [the] Mortgage, ... in aid of the execution of any power granted herein or in the Loan Documents, or for the foreclosure of this Mortgage (as a mortgage or otherwise)... . *Id.*, §4.02(a)(ii)(y).

30. On or about October 2, 2022, DXR Finance, LLC as agent on behalf of the Lenders, issued a Notice of Default (the "October 2, 2022 Notice") to Borrower specifying the following Events of Default under the Credit Agreement (the "October 2, 2022 Defaults"):

(a) an Event of Default pursuant to Section 4.13, Schedule 4.13, and Section 8.1(b)(iv) of the Credit Agreement as a result of Borrower' issuance of a non-interest-bearing promissory note to Imperial Capital, LLC on April 13, 2022, in the face amount of \$10,500,000 and maturing October 15, 2023;

(b) an Event of Default pursuant to Section 5.1, Schedule 5.1, and Section 8.1(b)(i) of the Credit Agreement, as a result of Borrower' failure to deliver its annual financial statements for the fiscal year ending December 31, 2021, within ninety (90) days after the end of the fiscal year;

(c) an Event of Default pursuant to Section 5.1, Schedule 5.1, and Section 8.1(b)(i) of the Credit Agreement, as a result of the failure to provide the financial statements for the quarter ended June 30, 2022, within the required time period;

(d) an Event of Default pursuant to Section 5.1, Schedule 5.1, and Section 8.1(b)(i) of the Credit Agreement, as a result of the failure to provide a compliance certificate for the quarter ended June 30, 2022;

(e) an Event of Default pursuant to Section 5.1, Schedule 5.1, and Section 8.1(b)(i) of the Credit Agreement, as a result of the qualified opinion of auditors as to Borrower's ability to continue as a going concern;

(f) Events of Default pursuant to Sections 7.1, 7.2, 7.3, and 8.1(b)(i) of the Credit Agreement, as a result of Borrower's failure to maintain requisite adjusted EBITDA, net leverage ratio and secured net leverage ratio, as of June 30, 2022;

(g) an Event of Default pursuant to Sections 5.14 and 8.1(b)(ii) of the Credit Agreement as a result of the failure to hold a meeting to review the financial results of the company after the close of the fiscal year ending December 31, 2021, and the fiscal quarter ending March 30, 2022;

(h) an Event of Default pursuant to Sections 6.1 and 8.1(b)(i) of the Credit Agreement as a result of the issuance by Borrower of indebtedness in favor of Imperial Capital LLC; and

(i) an Event of Default pursuant to Section 5.1, Schedule 5.1, and Section 8.1(b)(i) of the Credit Agreement, as a result of the failure to deliver a certificate or other notice to the Agent of the above events of default.

31. The October 2, 2022 Notice also notified Borrower that Borrower failed to make the interest payment due September 30, 2022, which would constitute an Event of Default pursuant to Sections 2.4 and 8.1(a) of the Credit Agreement if such payment was not made within five Business Days of the due date.

32. On or about October 10, 2022, DXR Finance, LLC as agent on behalf of the Lenders, issued a Second Notice of Default (the "October 10, 2022 Notice") to Borrower specifying the following additional Event of Default under the Credit Agreement (the "October 10, 2022 Default"):

(a) Borrower failed to make the interest payment that was due September 30, 2022, and failed to make the interest payment within five business days

of such due date. Specifically, pursuant to Sections 2.4 and 8.1(a) of the Credit Agreement, Borrower's failure to make the interest payment by the specified date is an Event of Default.

33. On or about October 14, 2022, DXR Finance, LLC, as agent on behalf of the Lenders, issued a Third Notice of Default (the "October 14, 2022 Notice") to Borrower specifying the following additional Event of Default under the Credit Agreement (the "October 14, 2022 Defaults"):

(a) Borrower failed to deliver a title policy over the Property. Specifically, pursuant to Sections 5.12 and 8.1(b)(iii) of the Credit Agreement, Borrower failed to obtain a boundary agreement, as requested by DXR Finance, LLC, as Agent, upon learning of an encroachment on the property.

34. The October 2, 2022 Defaults, the October 10, 2022 Default and the October 14, 2022 Default all remain outstanding, have not been cured and were admitted to by the Loan Parties in the Forbearance Agreement dated November 10, 2022.

35. Any forbearance agreement or forbearance period has expired.

36. On or about March 22, 2023, pursuant to Section 9.1 of the Credit Agreement and the Loan Documents, DXR Finance, LLC, on behalf of the Lenders, accelerated the Obligations under the Credit Agreement and the Loan Documents and declared all principal, and any and all accrued and unpaid interest and fees in respect of, the Term Loan and all other Obligations, whether evidenced by the Credit Agreement or by any of the other Loan Documents to be immediately due and payable.

37. On or about March 22, 2023, DXR Finance, LLC made demand upon Theraplant pursuant to the Guaranty.

38. On February 28, 2023, the Lenders assigned to Plaintiff their rights and obligations under the Credit Agreement and any other documents or instruments delivered pursuant thereto and all of Lenders' claims, suits, causes of action and any other right of the Lenders against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing.

39. On March 22, 2023, DXR Finance, LLC assigned the Mortgage to Plaintiff pursuant to an Assignment of Mortgage. The Assignment of Mortgage was recorded on March 27, 2023 in Volume 2281 at Page 244 of the Watertown Land Records. A copy of the Assignment of Mortgage is identified as Exhibit H and will be sent to all appearing parties and the Court pursuant to Practice Book § 10-29.

40. On March 22, 2023, DXR Finance, LLC assigned its rights and duties under the Guaranty, including the right to foreclose on said Mortgage, to Plaintiff pursuant to an Assignment of Guaranty. A copy of the Assignment of Guaranty is identified as Exhibit I and will be sent to all appearing parties and the Court pursuant to Practice Book § 10-29.

41. Plaintiff is the present holder of the Guaranty and Mortgage and any other loan documents, Plaintiff is entitled to enforce the Guaranty and Mortgage, and Theraplant is duly indebted to Plaintiff.

42. The following encumbrances of record upon the Property sought to be foreclosed are prior in right to the Mortgage and/or are not affected by this action:

- (a) Real estate taxes to the Town of Watertown; and

(b) Water and sewer use charges to the Watertown Water and Sewer Authority.

43. There are no known encumbrances subsequent to the Mortgage that is being foreclosed.

44. Plaintiff has further caused a Lis Pendens to be recorded on the Watertown Land Records.

45. Plaintiff prays for a judgment of foreclosure upon the Property in accordance with Connecticut General Statutes §§ 49-1, *et seq.*

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

1. A Judgment of Foreclosure of the Property;
2. Possession of the Property;
3. Money damages, interest and a Deficiency Judgment against the Defendants;
4. An order enjoining the Defendant from interfering with Plaintiff's collection of rents from tenants and/or occupants of the Property and any other profits thereof, or appointing a receiver therefor;
5. The appointment of a receiver to take possession of the Property and to collect all rents and profits accruing from the Property to be foreclosed;
6. Immediate possession of the Property to be foreclosed and a writ of ejectment;
7. An award of attorney's fees and costs as provided in the Guaranty and the Loan Documents, or as otherwise provided by agreement or by law;
8. Costs of suit;
9. Pre- and post-judgment interest; and
10. Such further relief in law or equity as the Court may deem just or proper.

THE PLAINTIFF
DXR FINANCE PARENT, LLC

By: /s/ James T. Shearin

James T. Shearin
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EXHIBIT A

All that certain piece or parcel of land, with all improvements thereon, located on the southerly side of Echo Lake Road in the Town of Watertown, County of Litchfield and State of Connecticut, and shown on a map entitled, "MAP OF LAND To be conveyed to KEELER & LONG, INC. ECHO LAKE ROAD WATERTOWN, CONNECTICUT Scale 1" = 50' October 1973 REVISED DEC. 3, 1997 certified substantially correct Edward L. Rueben, Surveyor HODGE SURVEYING ASSOCIATES, P.C.", which map is to be filed in the Watertown Town Clerk's Office, said parcel being more particularly bounded and described as follows:

Beginning at a point on the southerly highway line of Echo Lake Road, said point marking the northeasterly corner of land herein conveyed and northwesterly corner of land now or formerly of Algrdas Vlsockis; thence running S 09° 40' 33" E a distance of two hundred one and fourteen hundredths (201.14) feet to a point; thence N 79° 35' 41" E a distance of twenty-six and eighty-two hundredths (26.82) feet to a point; thence S 89° 09' 49" E, a distance of three hundred ninety-three and ninety hundredths (393.90) feet to a point on the westerly highway line of Park Road; thence S 09° 19' 26" W a distance of four hundred seventeen and eighty-six hundredths (417.86) feet to a point; thence continuing in a southerly direction on a curve to the right having a radius of one thousand one hundred fifteen and eighty-eight hundredths (1115.88) feet for a distance of one hundred ninety and eighty-one hundredths (190.81) feet to a point; thence N 70° 48' 00" W a distance of seven hundred fifty-two and five hundredths (752.05) feet more or less to a point; thence running N 26° 04' 23" E a distance of ninety-seven and fifty hundredths (97.50) feet to a point; thence N 09° 28' 04" W a distance of four hundred one and fifty hundredths (401.50) feet to a point on said southerly highway line of Echo Lake Road; thence N 80° 27' 35" E along said southerly line of Echo Lake Road a distance of three hundred fifty-eight and ninety six hundredths (358.96) feet to a highway monument; thence continuing in a general easterly direction on a curve to the right having radius of nine hundred thirty-five and no hundredths (935.00) feet for a distance of forty and thirty-three hundredths (40.33) feet to the point of beginning.

Containing 10.00 acres, more or less, of land and being bounded:

Northerly: by Echo Lake Road, land of Algrdas Vlsockis, and land now or formerly of Donato and Lupangela Orsini;

Easterly: by Park Road;

Southerly: by land now or formerly of Braxton Manufacturing Company, Inc.; and

Westerly: by land now or formerly of Echo Lake Enterprises, Inc.

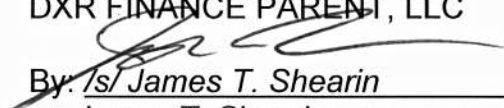
RETURN DATE: APRIL 18, 2023 : SUPERIOR COURT
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VS. : AT WATERBURY
THERAPLANT, LLC : MARCH 29, 2023

STATEMENT OF AMOUNT IN DEMAND

The monetary demand of the Plaintiff in this action exceeds \$15,000.00,
exclusive of interest and costs, in addition to other relief.

Dated at Hartford, Connecticut on March 29, 2023.

THE PLAINTIFF
DXR FINANCE PARENT, LLC

By:  James T. Shearin

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