

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

ARTHUR NADEL,
SCOOP CAPITAL, LLC,
SCOOP MANAGEMENT, INC.,

Defendants.

CASE NO.: 8:09-cv-0087-T-26TBM

SCOOP REAL ESTATE, L.P.,
VALHALLA INVESTMENT PARTNERS, L.P.,
VALHALLA MANAGEMENT, INC.,
VICTORY IRA FUND, LTD,
VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants.

**RECEIVER'S UNOPPOSED VERIFIED MOTION FOR APPROVAL OF SALE OF
UNDEVELOPED LAND LOCATED IN GRADY COUNTY, GEORGIA**

Pursuant to 28 U.S.C. § 754, Fed. R. Civ. P. 66, and Rule 3.01 of the Local Rules of the Middle District of Florida, Burton W. Wiand, as Receiver (the "Receiver"), respectfully moves the Court for entry of an order in substantially the form attached as

Exhibit 1, approving the sale of Receivership undeveloped land located Grady County, Georgia.

BACKGROUND

On January 21, 2009, the Securities and Exchange Commission (“Commission”) initiated this action to prevent the defendants from further defrauding investors of hedge funds operated by them. That same day, the Court entered an order appointing Burton W. Wiand as Receiver for Defendants Scoop Capital, LLC (“Scoop Capital”) and Scoop Management, Inc. (“Scoop Management”) and Relief Defendants Scoop Real Estate, L.P.; Valhalla Investment Partners, L.P.; Valhalla Management, Inc.; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; Viking IRA Fund, LLC; Viking Fund, LLC; and Viking Management, LLC (the “Order Appointing Receiver”). (*See generally* Order Appointing Receiver (Doc. 8).)

The Court subsequently granted several motions to expand the scope of the Receivership to include other entities owned or controlled by Arthur Nadel (“Nadel”). (*See generally* Docs. 17, 44, 68, 81, 153, 172, 454.) All of the entities and the trust in receivership are hereinafter collectively referred to as the “Receivership Entities.”

Pursuant to the Order Appointing Receiver, the Receiver has the duty and authority to: “administer and manage the business affairs, funds, assets, choses in action and any other property of the Defendants and Relief Defendants; marshal and safeguard all of the assets of the Defendants and Relief Defendants; and take whatever actions are necessary for the protection of the investors.” (Order Appointing Receiver at 1-2.) In particular, the Receiver was directed to:

[t]ake immediate possession of all property, assets and estates of every kind of the [Receivership Entities], whatsoever and wheresoever located belonging to

or in the possession of the [Receivership Entities], including but not limited to all offices maintained by the [Receivership Entities], rights of action, books, papers, data processing records, evidences of debt, bank accounts, savings accounts, certificates of deposit, stocks, bonds, debentures and other securities, mortgages, furniture, fixtures, office supplies and equipment, and all real property of the [Receivership Entities] wherever situated, and to administer such assets as is required in order to comply with the directions contained in this Order, and to hold all other assets pending further order of this Court

(*Id.* at 2.) In accordance with that Order, the Receiver took possession of undeveloped land located in Grady County, Georgia (the “Property”).

THE PROPERTY

The Property was purchased by Receivership Entity Scoop Capital on or about June 2, 2006, for \$223,406.98 with proceeds from Nadel’s Ponzi scheme. The Property consists of approximately 33.296 acres of undeveloped land located near the town of Beachton, approximately ten miles south of Thomasville, Georgia. The Property is not subject to any liens or encumbrances.

The Grady County Georgia Tax Commissioner assessed the fair market value of the Property at \$151,125.00 in 2009 and 2010. The Receiver also obtained a land appraisal in June 2009 which estimated the market value of the Property to be \$153,000.00.

RECEIVER’S MARKETING EFFORTS

The Receiver initially marketed the Property to potential purchasers through his website, www.nadelreceivership.com, in a specific “Assets for Sale” section, but there was little interest in the Property. In September 2009, the Receiver engaged the services of Tallahassee Land Company, Inc. and the property was listed for \$200,000.00. Tallahassee Land Company, Inc.’s listing agreement expired in March 2010 and was not renewed.

Between January 2009 and March 2010, the Receiver was presented with several offers to purchase the property but those offers were declined as he did not believe that they fairly represented the fair market value of the Property.

Then, in February 2011, the Receiver was presented with an offer from Timothy B. Collins and Donna M. Collins (collectively, "Purchasers") for \$135,000.00. On March 22, 2011, the Receiver and the Purchasers entered into a Purchase and Sale Agreement (the "Agreement") for the purchase price of \$135,000.00, contingent on this Court's approval. *See* Exhibit 2. The Receiver believes that the offer by Purchasers fairly represents the current value of the Property. Furthermore, Purchasers are in position to complete the sale and purchase of the Property contingent upon this Court's approval. As part of the Agreement, Purchasers have deposited \$1,000.00 of earnest money into an escrow account, which amount is to be credited towards the purchase price at closing should the Court approve the sale. Purchasers have agreed to pay the balance of the purchase price in full at closing, which is scheduled to take place on or before April 30, 2011, contingent upon this Court's approval.

The Receivership Estate will net approximately \$124,200.00 in connection with the sale of the Property, after the payment of commissions and other expenses associated with the sale of the Property. The Receiver believes that the Agreement with Purchasers is in the best interests of the Receivership, and accordingly, the Receiver respectfully requests that this Court enter an order in substantially the form attached as Exhibit 1, approving the sale of the Property.

MEMORANDUM OF LAW

The Court's power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). The relief sought by the Receiver falls squarely within those powers. Furthermore, the relief sought is in furtherance of the duties and authorities bestowed upon the Receiver by the Order Appointing Receiver.

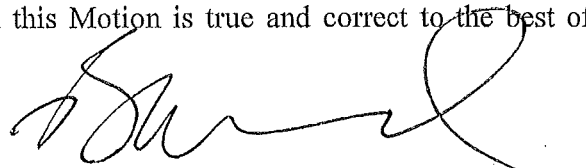
WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 approving the sale of the Property to Purchasers in accordance with the terms set forth in the Agreement attached hereto as Exhibit 2 and authorizing the Receiver to transfer title to the Property to the Purchasers via Receiver's Deed free and clear of all liens and encumbrances.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

VERIFICATION OF RECEIVER

I, Burton W. Wiand, Court-Appointed Receiver in the above-styled matter hereby certify that the information contained in this Motion is true and correct to the best of my knowledge and belief.



Burton W. Wiand, Court-Appointed Receiver

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 25, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on April 25, 2011, I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participants.

Arthur Nadel
Register No. 50690-018
FCI BUTNER LOW
Federal Correctional Institution
P.O. Box 999
Butner, NC 27509

s/Gianluca Morello

Gianluca Morello, FBN 034997

gmorello@wiandlaw.com

WIAND GUERRA KING P.L.

3000 Bayport Drive

Suite 600

Tampa, FL 33607

Tel: 813-347-5100

Fax: 813-347-5199

*Attorney for the Receiver, Burton W. Wiand
W. Wiand*

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SECURITIES AND EXCHANGE
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VALHALLA INVESTMENT PARTNERS, L.P.,
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VICTORY FUND, LTD,
VIKING IRA FUND, LLC,
VIKING FUND, LLC, AND
VIKING MANAGEMENT, LLC.

Relief Defendants. /

ORDER

Before the Court is the Receiver's Unopposed Verified Motion for Approval of Sale of Undeveloped Land Located in Grady County, Georgia (the "Motion") (Dkt. ____). Upon due consideration of the Receiver's powers as set forth in the Order Appointing Receiver (Dkt. 8), the Orders Reappointing Receiver (Dkts. 140, 316 and 493), and applicable law, it is **ORDERED AND ADJUDGED** that the Receiver's Unopposed Verified Motion for

EXHIBIT 1

Approval of Sale of Undeveloped Land Located in Grady County, Georgia (Dkt. ____) is **GRANTED**.

The Receiver is hereby authorized to transfer to Timothy B. Collins and Donna M. Collins by way of Receiver's Deed free and clear of all claims, liens, and encumbrances, pursuant to the Purchase and Sale Agreement title to real property located in Grady County, Georgia, which bears the following legal description:

All that tract or parcel of land situate, lying and being in Land Lot 11 of the 23rd Land District of Grady County, Georgia, containing 33.296 acres and more particularly shown on a plat of survey prepared for Melissa Robinson by Ernest C. Johns, Jr., Georgia Registered Surveyor No. 2774, dated August 16, 2004, and more particularly described as follows:

Commence at a concrete monument located at the land lot corner common to Land Lots 11, 10, 30 and 31 in the 23rd Land District and run thence north 00 degrees 47 minutes 55 seconds west a distance of 487.10 feet to a half inch iron pin and the POINT OF BEGINNING. From said point of beginning run thence south 89 degrees 15 minutes 00 seconds west a distance of 3169.45 feet to a one and a quarter inch pipe located on the eastern margin of the right-of-way of Holton Lane; run thence north 02 degrees 11 minutes 43 seconds west along the eastern margin of the right-of-way of Holton Lane a distance of 486.34 feet to a concrete marker; run thence south 89 degrees 46 minutes 20 seconds east a distance of 3149.19 feet to a half inch iron pin; run thence south 05 degrees 06 minutes 49 seconds east a distance of 433.69 feet to a half inch iron pin and the point of beginning.

DONE and ORDERED in chambers in Tampa, Florida this ____ day of April, 2011.

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record



COUNTEROFFER # 3

1:45 o'clock p.m. on the date of February 25, 2011

2011 Printing

This is a Counteroffer from: [Select A or B below. The one not selected is not a part of this Agreement.]

A. Seller to Buyer OR B. Buyer to Seller

The following is a counteroffer ("Counteroffer") to that certain offer to purchase or sell real property set forth in the Purchase and Sale Agreement dated February 15, 2011 ("Offer") located at: 33,296 acres MOL, Holton Lane, Calro, Georgia 39828.

The provisions set forth in this Counteroffer shall control over any conflicting or inconsistent provisions set forth in the Offer and shall supersede all previous counteroffers. By signing below, all parties acknowledge and agree that the Offer: (1) is incorporated herein by reference; (2) is accepted subject to the terms and conditions of this Counteroffer; and (3) as modified by this Counteroffer, is the entire agreement of the parties. No prior representation, inducement or agreement of the parties that is not contained in the Offer, as modified by this Counteroffer, shall be binding upon the parties. The Binding Agreement Date shall be the date when the party who made this Counteroffer receives notice that it has been accepted. At any time between the Binding Agreement Date and the closing, either party if so requested by the other party, shall sign a conformed copy of the Agreement incorporating therein the terms and conditions of the Offer as modified by this Counteroffer. All terms and conditions of the Offer are agreed to and accepted by the undersigned with the express exceptions of the following:

1. Purchase Price shall be \$135,000.
2. Closing shall take place on or before April 30, 2011.
3. All other conditions of original Purchase & Sale Agreement shall remain the same.
4. All parties acknowledge Exhibit "B" is hereby attached and made a part of this agreement. DC/TC 3-2-11

Additional Special Stipulations are or are not attached.

COUNTEROFFER # 3 (CONTINUED)

Time Limit of the Offer: The terms of this Agreement shall constitute an offer ("Offer") which shall expire at 5:00 o'clock p.m. on the date of 5/3 ~~5/27/2011~~ 2011 unless prior to that time the Offer is accepted in writing and notice of the acceptance is delivered to the party who made the Offer.

Donna M. Collins
Buyer's Signature

Donna M. Collins
Print or Type Name

Print or Type Name

Timothy B. Collins
Buyer's Signature

Timothy B. Collins
Print or Type Name

Print or Type Name

Selling Broker

By: Kay W. Davis
Broker or Broker's Affiliated Licensee

Rose City Realty, Inc.
Print or Type Name

Print or Type Name

ROSEC H-30906
MLS Office Code Brokerage Firm License Number

Multiple Listing Number _____

Selling Broker/Licensee Contact Information:

Phone# 229-225-9225

Fax# 229-225-9991

E-Mail kaydavis@rose.net

173188
Selling Agent's Georgia Real Estate License Number

Selling Agent's Georgia Real Estate License Number

Member of: tab of REALTORS®

Matt Bennematt
Seller's Signature

Matt Bennematt
Print or Type Name

Print or Type Name

Seller's Signature

Print or Type Name

Listing Broker

By: _____
Broker or Broker's Affiliated Licensee

Rose City Realty, Inc.
Print or Type Name

Print or Type Name

ROSEC H-30906
MLS Office Code Brokerage Firm License Number

Listing Broker/Licensee Contact Information:

Phone# 229-225-9991

Fax# 229-225-9991

E-Mail bennematt@rose.net

Listing Agent's Georgia Real Estate License Number

Member of: tab of REALTORS®

Binding Agreement Date: The Binding Agreement Date in this transaction is the date of _____ and has been filled in by _____.

EXHIBIT "B"

Purchase Price: \$135,000.00

Earnest Money: Paid by Buyer to Rose City Realty within 24 hours of binding agreement in the amount of \$1,000.00 and held pursuant to the terms of the Offer;

Inspection: Property to be sold "As Is"; Buyer has the right to inspect. Inspection period shall last 30 days. All costs associated with inspection shall be the responsibility of the Buyer. If Buyer decides not to go forward at the end of the inspection period for whatever reason earnest money will be refunded. After the 30th day the earnest money is non-refundable.

Court Approval/Closing: Sale is subject to approval by the United States District Court, Middle District of Florida. Closing on or before April 30, 2011; Seller will transfer title to the property free and clear of all liens and encumbrances via Receiver's Deed. All costs associated with the purchase (recording costs, docs stamps, title insurance, environmental, survey, attorneys fees, etc.) shall be the responsibility of the Buyer. Seller to net \$124,200.00 at closing.

Special Stipulations: Brokers split an 8% commission on total sales price. If no closing takes place, no commission is due.

Financing Contingency: Buyer shall have 30 days from the date of agreement to obtain financing. Should Buyer be unable to obtain financing, the earnest deposit will be refunded.



PURCHASE AND SALE AGREEMENT



Offer Date: February 15, 2011

2010 Printing

1. **Purchase and Sale.** The undersigned buyer ("Buyer") agrees to buy and the undersigned seller ("Seller") agrees to sell the Property with the following address: 33.296 acres MOL, Holton Lane, City Calro, County Grady, Georgia, Zip Code 39828, TAXID/PIN # _____ together with all fixtures, landscaping, improvements, and appurtenances (except those identified in any Seller's Property Disclosure Statement attached hereto as not remaining with the Property) and as more particularly described in the Legal Description Paragraph below (all of which is hereinafter collectively referred to as "Property").

2. **Legal Description.** The full legal description of the Property is: [Select A, B, or C below. The sections not marked shall not be a part of this Agreement].
 A. attached as an exhibit hereto;
 B. identical to the legal description for the property contained in the deed recorded in Deed Book 634, Page 399, et. seq., Grady County, Georgia records;
 C. described below:
Land Lot(s) 11 of the 23rd District, _____ Section/ GMD, Lot _____, Block _____, Unit _____, Phase/Section _____ of _____ Subdivision/Development, _____ County, Georgia according to the plat recorded in Plat Book _____, Page _____, et. seq.; _____ County, Georgia records.

3. **Purchase Price and Method of Payment.** At closing, Buyer agrees to pay Seller the purchase price of the Property of \$ 120,000.00, One Hundred Twenty Thousand and no/100 U.S. Dollars: cash, wire transfer of immediately available funds, or a cashier's check issued for the closing by a federally insured bank, savings bank, savings and loan association or credit union where the funds are immediately available. The above forms of payment shall be deemed to be the equivalent of Buyer paying all cash at closing which shall be the method of payment.

4. **Amount and Deposit of Earnest Money.** Buyer has paid to Rose City Realty, Inc. (See Spec. Stlps.) ("Holder") earnest money of \$ _____ check, OR \$ _____ cash, which has been received by Holder. The earnest money shall be deposited in Holder's escrow/trust account (with Holder retaining the interest if the account is interest bearing) within five (5) banking days from the Binding Agreement Date. If Buyer writes a check for earnest money and the same is deposited into Holder's escrow/trust account, Holder shall not be required to return the earnest money until the check has cleared the account on which the check was written. In the event any earnest money check is dishonored by the bank upon which it is drawn, Holder shall promptly give notice of the same to Buyer and Seller. Buyer shall have three (3) banking days after receiving such notice to deliver good funds to Holder. In the event Buyer does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon notice to Buyer.

5. **Closing Costs and Other Settlement Expenses.**
A. **Items Paid By Buyer at Closing.** At closing, Buyer shall pay the following:
1. Georgia property transfer tax;
2. All costs, fees and charges to have the closing attorney search title and prepare: (a) the warranty deed; (b) owner's affidavit; (c) Buyer's powers of attorney; and (d) all promissory notes, deeds to secure debt and other loan documents required by any lender providing financing in the transaction;
3. All closing costs, tax service charges, recording costs, courier fees, overnight delivery fees, document preparation fees, underwriting fees, delivery, copying and handling charges, and all other costs, fees, charges and amounts to close this transaction otherwise, except as they relate to the clearance of title encumbrances and/or defects necessary for Seller to be able to convey good and marketable title to the Property.
B. **Items Paid By Seller at Closing.** At closing, Seller shall pay the following:
1. The sum of \$ -0- to be used by Buyer as a contribution for the items in the paragraph above. In addition, Buyer may use the Seller's contribution to pay for, including but not limited to, survey costs, appraisals, insurance (including flood insurance, if applicable), inspections, termite treatment and/or repair guarantee and, if Buyer is obtaining mortgage financing, escrow establishment charges, loan discount points, costs to buy down a loan, and other similar costs (unless any of the same are prohibited by Buyer's mortgage lender). Unspent sums, if any, shall remain with the Seller.
2. Except as provided above, all sums, costs, charges and fees necessary to clear title encumbrances and/or defects to allow Seller to be able to convey good and marketable title to the Property.
3. Any extra costs, fees and charges resulting from Seller not being able to attend the closing in person.
C. **Prorated Amounts:** Seller and Buyer agree to prorate the following: (1) real estate taxes and community association assessments, if any, for the calendar year in which the sale is closed, as of the date of closing; and (2) all utility bills, solid waste and other fees, as of the date of closing (or the day of possession of Property by Buyer, whichever is later) that are issued after closing and include service for any period of time Property was owned/occupied by Seller or Seller's invitees. In the event real estate taxes are paid at closing based upon an estimated tax bill or tax bill under appeal, Buyer and Seller upon the issuance of the actual tax bill or the appeal being resolved shall promptly make any financial adjustments between themselves as are necessary to prorate the tax bill correctly. This subparagraph shall survive the closing.

6. Closing and Transfer of Possession.

- A. **Closing:** This transaction shall be closed on March 30, 2011 or on such other date as may be agreed to in writing by the parties. No later than at the conclusion of the closing, Seller shall provide the Buyer with all keys in Seller's possession or under Seller's control, to all locks that shall remain with the Property.
- B. **Right to Extend Unilaterally the Closing Date:** Buyer or Seller may unilaterally extend the closing date for seven (7) days upon notice to the other party given prior to or on the date of closing if: (1) Seller cannot satisfy valid title objections (except for liens, judgments, and deeds to secure debt that can be satisfied through the payment of money or by bonding off the same); or (2) Buyer's mortgage lender, if any, (including in "all cash" transactions) or the closing attorney cannot fulfill their respective obligations by the date of closing due to no fault of Buyer. In such event, Buyer and Seller consent to the closing attorney and/or any such mortgage lender disclosing to the parties and their Brokers the basis for the delay. The exercise of the right to extend unilaterally the closing date by either party shall cause the right to extend unilaterally the closing date to terminate and no longer be a part of this Agreement.
- C. **Possession:** Buyer agrees to allow Seller to retain possession of Property until and through: *[Select one. The sections not marked shall not be a part of this Agreement.]*
 1. the closing; OR 2. ____ hours after the closing; OR 3. ____ days after the closing at ____ o'clock ____m.

7. **Closing Attorney.** This transaction shall be closed by the law firm of To be determined. If Buyer is given the right to select a law firm from a mortgage lender's approved list of closing attorneys, Buyer agrees to select said law firm. If the law firm named above is not on the mortgage lender's approved list, and cannot be added in time to close this transaction, Buyer may select another law firm from lender's approved list to close this transaction. The closing attorney shall represent the mortgage lender in any transaction in which the Buyer obtains mortgage financing (including transactions where the method of payment referenced herein is "all cash"). In transactions where the Buyer does not obtain mortgage financing, the closing attorney shall represent the: Buyer OR Seller. If the closing attorney declines to represent the party selected, the party may select a different closing attorney.

8. Title.

- A. **Warranty:** Seller warrants that at the closing Seller will convey good and marketable title to said Property by general warranty deed subject only to: (1) zoning; (2) general utility, sewer, and drainage easements of record as of the Binding Agreement Date and upon which the improvements do not encroach; (3) declarations of condominium and declarations of covenants, conditions and restrictions of record on the Binding Agreement Date; and (4) leases and other encumbrances specified in this Agreement. Buyer agrees to assume Seller's responsibilities in any leases specified in this Agreement.
- B. **Examination:** Buyer may examine title and furnish Seller with a written statement of title objections at or prior to the closing. If Seller fails or is unable to satisfy valid title objections at or prior to the closing or any unilateral extension thereof, which would prevent the Seller from conveying good and marketable title to the Property, then Buyer, among its other remedies, may terminate the Agreement upon written notice to Seller. Good and marketable title as used herein shall mean title which a title insurance company licensed to do business in Georgia will insure at its regular rates, subject only to standard exceptions.
- C. **Survey:** A survey of Property is OR is not attached to this Agreement as an exhibit. Notwithstanding any other provision to the contrary contained herein, Buyer shall have the right to terminate this Agreement upon notice to Seller if a new survey performed by a surveyor licensed in Georgia is obtained which is materially different from any survey attached hereto as an exhibit with respect to Property. The term "materially different" shall not apply to any improvements constructed by Seller in their agreed-upon locations subsequent to Binding Date Agreement. Matters revealed in said survey shall not relieve the warranty of title obligations of Seller referenced above.

9. **Risk of Damage to Property.** Seller warrants that at the time of closing or upon the granting of possession, if at a time other than at closing, Property will be in substantially the same condition (including conditions disclosed in the Seller's Property Disclosure Statement) as on the Binding Agreement Date, except for normal wear and tear, and changes made to the condition of Property pursuant to the written agreement of Buyer and Seller. Seller shall deliver Property clean and free of trash and debris at time of possession. Notwithstanding the above, if the Property is destroyed or substantially damaged prior to closing, Seller shall promptly give notice to Buyer of the same and provide Buyer with whatever information Seller has regarding the availability of insurance and the disposition of any insurance claim. Buyer or Seller may terminate this Agreement not later than fourteen (14) days from receipt of the above notice, except that any party who causes the Property to be destroyed or substantially damaged as the result of that party's criminal conduct shall forfeit the right to terminate this Agreement and shall be in default hereunder. If Buyer or Seller does not terminate this Agreement, Seller shall cause Property to be restored to substantially the same condition as on the Binding Agreement Date. The date of closing shall be extended until the earlier of one year from the original date of closing, or seven (7) days from the date that Property has been restored to substantially the same condition as on the Binding Agreement Date and a new certificate of occupancy (if required) is issued.

10. Inspection.

- A. **Right of Buyer to Inspect Property:** Buyer and/or Buyer's representatives shall have the right to enter Property at Buyer's expense and at reasonable times (including immediately prior to closing) to inspect, examine, test and survey Property. Seller shall cause all utility services and any pool, hot tub and similar items to be operational so that Buyer may complete all inspections under this agreement. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries, and damages arising out of or related to the exercise of these rights.
- B. **Duty of Buyer to Inspect Neighborhood:** Buyer acknowledges that: (1) In every neighborhood there are conditions which different buyers may find objectionable and (2) Buyer has had the full opportunity to become acquainted with all existing neighborhood conditions (and proposed changes thereto) which could affect the Property including without limitation land-fills, quarries, high-voltage power lines, cemeteries, airports, prisons, stadiums, odor and/or noise producing land uses, crime, schools serving the Property, political jurisdictional maps and land use and transportation maps and plans. It shall be Buyer's sole duty to become familiar with neighborhood conditions of concern to Buyer. If Buyer is concerned about the possibility of a registered sex offender residing in a neighborhood in which Buyer is interested, Buyer should review the Georgia Violent Sex Offender Registry available on the Georgia Bureau of Investigation Website at www.gbi.georgia.gov.

11. Property Sold Subject to Due Diligence Period or "As-Is".

[Select Section A. or B. below. The sections not marked shall not be a part of this Agreement.]

A. Property Sold Subject to Due Diligence Period.

1. **Contract Is Option Contract.** For and in consideration of the additional payment of Ten Dollars (\$10) by the Buyer to the Seller, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby grant Buyer the option of terminating this Agreement, for any reason, for a 30 day period from the Binding Agreement Date ("Due Diligence Period"). This Agreement shall be an option contract until the Due Diligence Period has ended without Buyer terminating the same.
2. **Purpose of Due Diligence Period.** During the Due Diligence Period, Buyer may, but shall not be required to: (a) arrange any loans Buyer needs to complete the purchase of the Property; and (b) conduct at Buyer's sole expense whatever evaluations, inspections, appraisals, examinations, surveys, and testing, if any, Buyer deems appropriate to determine whether Buyer's option to terminate this Agreement should be exercised. This shall include but not be limited to testing for lead-based paint and/or leadbased paint hazards, inspecting for active infestation of and/or damage from termites and other wood destroying organisms and determining if the Property or the improvements thereon are in a flood plain. During the Due Diligence Period, Buyer may also propose an amendment(s) to this Agreement to address any concerns of Buyer with the Property.
3. **Right to Terminate.** If Buyer decides to exercise Buyer's option to terminate this Agreement, Buyer must give notice of the same to Seller prior to the end of the Due Diligence Period. If Buyer fails to give such notice in a timely manner, the Due Diligence Period shall terminate and Buyer shall be deemed to have accepted the Property "as-is." The expiration of the Due Diligence Period shall not terminate any other contingencies to which this Agreement may be subject.
4. **Warranties of Buyer.** Buyer warrants that Buyer is OR is not currently under contract (including option contracts) to purchase other real property. Buyer warrants that during the Due Diligence Period Buyer shall have the right to enter into other such contracts OR not enter into any other such contracts. Buyer shall be in default of the Agreement if Buyer breaches Buyer's warranties in this subparagraph.

B. Property Sold "As Is." All parties agree that Property is being sold "as is," with all faults including but not limited to damage from termites and other wood destroying organisms and lead-based paint and lead-based paint hazards. Seller shall have no obligation to make any repairs or replacements to Property.

12. Return and Disbursement of Earnest Money.

- A. **Return of Earnest Money to Buyer:** Subject to the Disbursement of Earnest Money paragraph below, Buyer shall be entitled to the earnest money upon the: (1) failure of the parties to enter into a binding agreement; (2) failure of any contingency or condition to which this Agreement is subject; (3) termination of this Agreement due to the default of Seller; or (4) termination of this Agreement in accordance with a specific right to terminate set forth in the Agreement. Otherwise, the earnest money shall be applied towards the purchase price of the Property at closing or if other funds are used to pay the purchase price then the earnest money shall be returned to Buyer.
- B. **Disbursement of Earnest Money:** Holder shall disburse the earnest money upon: (1) the closing of Property; (2) a subsequent written agreement of Buyer and Seller; (3) an order of a court or arbitrator having jurisdiction over any dispute involving the earnest money; or (4) the failure of the parties to enter into a binding agreement (where there is no dispute over the formation or enforceability of the Agreement). In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties fifteen (15) days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the fifteen (15) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new fifteen (15) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made.
- C. **Interpleader:** If there is a dispute over the earnest money which the parties cannot resolve after a reasonable period of time, and where Holder has a bona fide question as to who is entitled to the earnest money, Broker may interplead the earnest money into a court of competent jurisdiction. Holder shall be reimbursed for and may deduct from any funds interpleaded, its costs and expenses, including reasonable attorney's fees actually incurred. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees and court costs and the amount deducted by Holder from the non-prevailing defendant.
- D. **Hold Harmless:** All parties hereby agree to indemnify and hold Holder harmless from and against all claims, causes of action, suits and damages arising out of or related to the performance by Holder of its duties hereunder. All parties further covenant and agree not to sue Holder for damages relating to any decision of Holder to disburse earnest money made in accordance with the requirements of this Agreement.

13. Agency and Brokerage.

- A. **Agency Disclosure:** In this Agreement, the term "Broker" shall mean a licensed Georgia real estate broker or brokerage firm and, where the context would indicate, the broker's affiliated licensees. No Broker in this transaction shall owe any duty to Buyer or Seller greater than what is set forth in their brokerage engagements and the Brokerage Relationships in Real Estate Transactions Act, O.C.G.A. § 10-6A-1 et. seq.;
 1. **No Agency Relationship.** Buyer and Seller acknowledge that, if they are not represented by a Broker, they are each solely responsible for protecting their own interests, and that Broker's role is limited to performing ministerial acts for that party.
 2. **Listing Broker.** Broker working with the Seller is identified on the signature page as the "Listing Broker"; and said Broker is OR, is not representing Seller;
 3. **Selling Broker.** Broker working with Buyer (including in transactions where Broker is representing Seller) is identified on the signature page as "Selling Broker;" and said Broker is OR, is not representing Buyer; and
 4. **Dual Agency or Designated Agency.** If Buyer and Seller are both being represented by the same Broker, a relationship of either designated agency OR, dual agency shall exist.

