

**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
REAL PROPERTY LOCATED ON NORTH JEFFERSON AVENUE
IN SARASOTA COUNTY, FLORIDA**

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 real property located at 774 North Jefferson Avenue in Sarasota County, Florida.

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.)

THE PROPERTY

The real property which is the subject of this Motion is a condominium located at 774 North Jefferson Avenue in Sarasota, Florida (the "Property"). The Property was built in 1983, is 865 square feet, and has two bedrooms and two bathrooms. The Sarasota County Property Appraiser assessed the fair market value of the Property at \$51,700.00 in 2010. The Receiver also obtained an appraisal in October 2010 which estimated the market value of the Property to be \$50,000.00.

PROCEDURAL HISTORY

The Property was previously owned and occupied by Mr. Michael Nitzsche. (*See* Doc. 115). Mrs. Marguerite Nadel had loaned Mr. Nitzsche the funds to purchase the Property and in exchange Mr. Nitzsche executed a promissory note payable to Mrs. Nadel which was secured by a mortgage entered into by Mr. Nitzsche and held by Mrs. Nadel. The Receiver learned that the money loaned for purchasing the Property was proceeds of the scheme underlying this case, and consequently filed a Motion for Possession of Note and Mortgage for Jefferson Pines Condominium (*See* Doc. 115), which was granted (*See* Doc. 116). Mr. Nitzsche was in default of the promissory note and mortgage, attempts to collect on the note

without initiating litigation failed, and the Receiver initiated a foreclosure proceeding in 2009. (See Wiand v. Nitzsche, 2009 CA 014873 NC, Sarasota County, Florida). An order of foreclosure was entered in June 2010. A judicial sale of the Property was held on October 12, 2010 and the Receiver took ownership of the Property for \$1.00.

RECEIVER'S MARKETING EFFORTS

The Receiver marketed the Property to potential purchasers through his website, www.nadelreceivership.com, in a specific "Assets for Sale" section and subsequently engaged the services of Sotheby's International Realty of Sarasota, Florida. The Property was listed for \$65,000.00.

In April 2011, the Receiver was presented with an offer from Chris Wilson and Karen Wilson (collectively, "Purchasers") for \$55,000.00. On April 14, 2011, the Receiver and the Purchasers entered into an "As Is" Residential Contract for Sale and Purchase (the "Agreement") for the purchase price of \$55,000.00, 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 \$5,000.00 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 May 31, 2011, contingent upon this Court's approval.

The Receivership Estate will net approximately \$51,000.00 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.

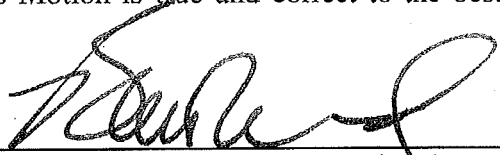
WHEREFORE, the Receiver moves the Court for entry of an order in substantially the form of the proposed Order attached as Exhibit 1 approving the sale of the Property to Purchasers in accordance with the terms set forth in the Agreement attached hereto as Exhibit 2 and authorizing the Receiver to transfer title to the Property to the Purchasers via Receiver's Deed free and clear of all claims, 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 May 18, 2011, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on May 18, 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: 813-347-5198

Attorney for the Receiver, Burton W. Wiand

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE
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ARTHUR NADEL,
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SCOOP REAL ESTATE, 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 Real Property Located on North Jefferson Avenue in Sarasota County, Florida (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

EXHIBIT 1

Motion for Approval of Sale of Real Property Located on North Jefferson Avenue in Sarasota County, Florida (Dkt. ____) is **GRANTED**.

The Receiver is hereby authorized to transfer to Chris Wilson and Karen Wilson by way of Receiver's Deed free and clear of all claims, liens, and encumbrances, pursuant to the "As Is" Residential Contract for Sale and Purchase title to real property located in Sarasota County, Florida, which bears the following legal description:

UNIT 774, PHASE IV, JEFFERSON PINES II, A CONDOMINIUM, ACCORDING TO THE DECLARATION OF CONDOMINIUM RECORDED IN OR BOOK 1753, PAGE 1695 THROUGH 1756, INCLUSIVE, AND SUBSEQUENT AMENDMENTS THERETO, AND AS PER PLAT THEREOF RECORDED IN CONDOMINIUMS BOOK 24, PAGE 4 AND 4A, AND AS PER PLAT THEREOF RECORDED IN CONDOMINIUM BOOK 28, PAGE 49 AND 49A, PUBLIC RECORDS OF SARASOTA COUNTY, FLORIDA.

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

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record

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"AS IS" Residential Contract for Sale and Purchase
 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1 * PARTIES: Burton W. Wiand, As Receiver over Scoop Capital, LLC, et al. ("Seller")
 2 * and Chris & Karen Wilson ("Buyer")
 3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal
 4 Property (collectively "Property") pursuant to the terms and conditions of this Residential Contract for Sale
 5 And Purchase and any addenda and addenda ("Contract");

6 1. PROPERTY DESCRIPTION:
 7 * (a) Street address, city, zip: 774 N Jefferson Ave #774 Sarasota 34237
 8 * (b) Property is located in: Sarasota County, Florida, Real Property Tax ID No: 2028 07 3037
 9 * (c) Legal description of the Real Property: Unit 774 Jefferson Phase 2 Phase 4

10 * together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
 11 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded below.
 12 (d) Personal Property: The following items owned by Seller and existing on the Property as of the date
 13 of the initial offer are included in the purchase ("Personal Property"): (i) range(s)/oven(s), dishwasher(s),
 14 disposal, ceiling fan(s), interior, light fixtures, rods, draperies and other window treatments, garage door
 15 openers, and security gate and other access devices; and (ii) those additional items checked below. If
 16 additional details are necessary, specify below. If left blank, the item below is not included:
 17 * Refrigerator(s) Smoke detector(s) Pool barrier/fence Storage shed
 Microwave oven Security system Pool equipment TV antenna/satellite dish
 Washer Window/wall a/c Pool heater Water softener/purifier
 Dryer Generator Spa or hot tub with heater Storm shutters and panels
 Stand-alone ice maker
 The only other items of Personal Property included in this purchase, and any additional details regarding
 Personal Property, if necessary, are:

18 * Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.
 19 * (a) The following items are excluded from the purchase:
 20 *
 21 *
 22 *
 23 * PURCHASE PRICE (U.S. currency): \$ 65,000.00
 24 * 2. (a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION) \$ 1,000.00

25 * The initial deposit made payable and delivered to "Escrow Agent" named below
 26 * (CHECK ONE): accompanies offer or is to be made upon acceptance (Effective Date)
 27 * or is to be made within _____ (if blank, then 3) days after Effective Date
 28 * Escrow Agent Information: Name: Coldwell Banker Phone: _____
 29 * Address: _____ Fax: _____
 30 * E-mail: _____
 31 * (b) Additional deposit to be delivered to Escrow Agent within 30 (if blank, then 3) days after Effective Date. \$ 4,000.00
 32 * (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")
 33 * (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 6. \$ _____
 34 * (d) Other: \$ 50,000.00
 35 * (e) Balance to close (not including Buyer's closing costs, prepaid and prorations) by wire transfer or other COLLECTED funds \$ _____
 36 * NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD 9.
 37 * 3. TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:
 38 * (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before April 15, 2011
 39 * at 5:00 P.M., this offer shall be deemed withdrawn and the Deposit, if any, will be returned to Buyer.
 40 * Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the
 41 * counter-offer is delivered.
 42 * (b) The effective date of this Contract will be the date when the last one of the Buyer and Seller has signed or
 43 * initialed this offer or final counter-offer ("Effective Date").

44 * 4. CLOSING DATE: Unless modified by other provisions of this Contract, the closing of this transaction shall occur
 45 * and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered
 46 * ("Closing") on May 31, 2011 ("Closing Date"), at the time established by the Closing Agent.
 47 *
 48 *
 49 * Buyer's Initials: AW KW Seller's Initials: [Signature]

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- 60 9. **EXTENSION OF CLOSING DATE:**
 61 (a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth in Lending Act (TILA)
 62 notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements,
 63 not to exceed 7 days.
 64 (b) If extreme weather or other condition or event constituting "Force Majeure" (see STANDARD G) causes;
 65 (i) disruption of utilities or other services essential for Closing, or (ii) Hazard, Wind, Flood or Homeowners'
 66 insurance, to become unavailable prior to Closing, Closing will be extended a reasonable time up to 3 days
 67 after restoration of utilities and other services essential to Closing, and availability of applicable Hazard, Wind,
 68 Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance has not
 69 occurred within _____ (if left blank, 14) days after Closing Date, then either party may terminate this
 70 Contract by delivering written notice to the other party, and Buyer shall be refunded the Deposit, thereby
 71 releasing Buyer and Seller from all further obligations under this Contract.
- 62 10. **OCCUPANCY AND POSSESSION:** Unless otherwise stated herein, Seller shall, at Closing, have removed all
 63 personal items and trash from the Property and shall deliver occupancy and possession, along with all keys,
 64 garage door openers, access devices and codes, as applicable, to Buyer. If Property is intended to be rented or
 65 occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant
 66 to STANDARD D. If occupancy is to be delivered before Closing, Buyer assumes all risk of loss to Property from
 67 date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have
 68 accepted Property in its existing condition as of time of taking occupancy.
- 69 * 7. **ASSIGNABILITY: (CHECK ONE)** Buyer may assign and thereby be released from any further liability
 70 under this Contract; may assign but not be released from liability under this Contract; or may not assign
 71 this Contract.

FINANCING

- 72 8. **FINANCING:**
 73 (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing
 74 contingency to Buyer's obligation to close.
 75 (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a conventional FHA
 76 VA loan on the following terms within _____ (if blank, then 30) days after Effective Date ("Loan
 77 Commitment Date") for: (CHECK ONE): fixed, adjustable, fixed or adjustable rate loan in
 78 the principal amount of \$ _____ or _____ % of the Purchase Price, at an initial interest rate
 79 not to exceed _____ % (if blank, then prevailing rate based upon Buyer's creditworthiness), and for a
 80 term of _____ years ("Financing").
 81 Buyer will make mortgage loan application for the Financing within _____ (if blank, then 6) days after
 82 Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing
 83 ("Loan Commitment") and close this Contract. Buyer shall keep Seller and Broker fully informed about
 84 the status of mortgage loan application and Loan Commitment and authorize Buyer's mortgage broker and
 85 Buyer's lender to disclose such status and progress to Seller and Broker.
 86 If Buyer does not receive Loan Commitment, then Buyer may terminate this Contract by delivering written
 87 notice to Seller, and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all
 88 further obligations under this Contract.
 89 If Buyer does not deliver written notice to Seller of receipt of Loan Commitment or Buyer's written waiver of
 90 this financing contingency, then after Loan Commitment Date Seller may terminate this Contract by
 91 delivering written notice to Buyer and the Deposit shall be refunded to Buyer, thereby releasing Buyer and
 92 Seller from all further obligations under this Contract.
 93 If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not
 94 thereafter close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default;
 95 (2) Property related conditions of the Loan Commitment have not been met (except when such conditions
 96 are waived by other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is
 97 insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of
 98 Buyer's lender, in which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller
 99 from all further obligations under this Contract.
 100 (c) Assumption of existing mortgage (see rider for terms).
 101 (d) Purchase money note and mortgage to Seller (see riders, addenda, or special clauses for terms).
 102

Buyer's Initials: Seller's Initials:
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CLOSING COSTS, FEES AND CHARGES

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0. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:
(a) COSTS TO BE PAID BY SELLER:
Documentary stamp tax on and under on deed, if any
Owner's Policy and Charges (if Paragraph 9(f)(1) is checked)
Title search charges (if Paragraph 9(f)(b) is checked)
HOA/Condominium Association estoppel fees
Recording and other fees needed to cure title
Seller's attorneys' fees

Other:
If, prior to Closing, Seller is unable to meet the AS IS Maintenance Requirement as required by Paragraph 11 a sum equal to 125% of estimated cost to meet the AS IS Maintenance Requirement shall be escrowed at Closing. If actual costs to meet the AS IS Maintenance Requirement exceed escrowed amount, Seller shall pay such actual costs. Any unused portion of escrowed amount shall be returned to Seller.

(b) COSTS TO BE PAID BY BUYER:
Taxes and recording fees on notes and mortgages
Recording fees for deed and financing statements
Owner's Policy and Charges (if Paragraph 9(f)(1) is checked)
Survey (and elevation certification, if required)
Lender's title policy and endorsements
HOA/Condominium Association application/transfer fees
Loan expenses
Appraisal fees
Buyer's inspections
Buyer's attorneys' fees
All property related insurance

(c) TITLE EVIDENCE AND INSURANCE: At least _____ (if blank, then 5) days prior to Closing Date, a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date. The owner's title policy premium and charges for owner's policy endorsements, title search, and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth below

(CHECK ONE):
 (i) Seller will designate Closing Agent and pay for Owner's Policy and Charges (but not including charges for closing services related to Buyer's lender's policy and endorsements and loan closing, which amounts shall be paid by Buyer to Closing Agent or such other provider(s) as Buyer may select); or
 (ii) Buyer will designate Closing Agent and pay for Owner's Policy and Charges and charges for closing services related to Buyer's lender's policy, endorsements, and loan closing; or
 (iii) MIAMI-DADE/BROWARD REGIONAL PROVISION: Seller will furnish a copy of a prior owner's policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence, which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than \$ _____ (if blank, \$200.00) for abstract continuation or title search ordered or performed by Closing Agent.

(d) SURVEY: At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

(e) HOME WARRANTY: At Closing, Buyer Seller N/A will pay for a home warranty plan issued by _____ A home warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

(f) SPECIAL ASSESSMENTS: At Closing, Seller will pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer will pay all other assessments. If special assessments may be paid in installments (CHECK ONE):

(a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

(b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.
IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190 F.S. which lien shall be treated as an ad valorem tax and prorated pursuant to STANDARD K.

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CW
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CW
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DISCLOSURES

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10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal High Hazard Area" and finished floor elevation is below minimum flood elevation, Buyer may terminate this Contract by delivering written notice to Seller within 20 days after Effective Date, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy Efficiency Rating Information Brochure required by Section 563.096, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint rider is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE:** BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **TAX WITHHOLDING:** If Seller is a Foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"), Buyer and Seller will comply with FIRPTA, which may require Seller to provide additional cash at Closing.
- (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer, Except as stated in the preceding sentence or otherwise disclosed in writing: (1) Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation; and (2) Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property.

PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS

11. **PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("AS IS Maintenance Requirement").

12. **PROPERTY INSPECTION; RIGHT TO CANCEL:**

(a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** Buyer shall have _____ (if blank, 15) days from Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Deposit paid shall be immediately returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate printed herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement, and Buyer shall be responsible for any and all repairs and improvements required by Buyer's lender.

Buyer's Initials Seller's Initials
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- 209 (b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior
- 210 to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and
- 211 follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal
- 212 Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS
- 213 Maintenance Requirement and has met all other contractual obligations.
- 214 (c) **SELLER ASSISTANCE AND COOPERATION IN CLOSE-OUT OF BUILDING PERMITS:** If Buyer's
- 215 inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to
- 216 Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control
- 217 relating to improvements to the Property which are the subject of such open or needed permits, and shall
- 218 promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to
- 219 resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary
- 220 authorizations, consents, or other documents necessary for Buyer to conduct inspections and have estimates
- 221 of such repairs or work prepared, but in fulfilling such obligation, Seller shall not be required to expand, or
- 222 become obligated to expand, any money.
- 223 (d) **ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** At Buyer's option and
- 224 cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties
- 225 to Buyer.

ESCROW AGENT AND BROKER

226 13. **ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds

227 and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow

228 within the State of Florida and, subject to COLLECTION, disburse them in accordance with terms and conditions

229 of this Contract. Failure of funds to become COLLECTED shall not excuse Buyer's performance. When confining

230 demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent

231 may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties

232 or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow

233 until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall

234 determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction

235 of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such

236 action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate,

237 except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate

238 broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve

239 escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

240 Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder,

241 or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable

242 attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent.

243 Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is

244 due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing

245 or termination of this Contract.

246 14. **PROFESSIONAL ADVICE; BROKER LIABILITY:** Broker advises Buyer and Seller to verify Property condition,

247 square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate

248 professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property

249 and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the

250 Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or

251 public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND**

252 **GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL,**

253 **WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each

254 individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and

255 employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees

256 at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection

257 with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of

258 information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or

259 failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task

260 beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral,

261 recommendation or retention of any vendor for, or on behalf of Indemnifying Party; (iv) products or services

262 provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such

263 vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors

264 and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not

265 relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14,

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Buyer's Initials *[Signature]* Page 5 of 10 Seller's Initials *[Signature]*

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Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

DEFAULT AND DISPUTE RESOLUTION

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance. This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation. This Paragraph 17 shall survive Closing or termination of this Contract.

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")

18. STANDARDS:

A. TITLE:
(i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that none prevent use of the Property for RESIDENTIAL PURPOSES. If there exists at Closing any violation of items identified in (b) - (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will

See Exhibit "A"
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See Exhibit "A"

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STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)

327 deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will
 328 close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's
 329 notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of
 330 Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days
 331 within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure
 332 Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date
 333 has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or
 334 (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from
 335 all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects,
 336 and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,
 337 thereby releasing Buyer and Seller from all further obligations under this Contract.

338 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that Improvements located thereon
 339 encroach on setback lines, easements, or lands of others; or violate any restrictions, covenants, or applicable
 340 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such
 341 matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than
 342 Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey
 343 shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior
 344 survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the
 345 preparation of such prior survey, to the extent the affirmations therein are true and correct.

346 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to
 347 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

348 **D. LEASES:** Seller shall, within 5 days after Inspection Period, furnish to Buyer copies of all written leases and
 349 and security deposits paid by tenant, and income and expense statements for preceding 12 months ("Lease
 350 information"). If Seller is unable to obtain stoppage letters from tenant(s), the same information shall be furnished by
 351 Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant(s)
 352 to confirm such information. If terms of the lease(s) differ materially from Seller's representations, Buyer may deliver
 353 written notice to Seller within 5 days after receipt of Lease Information, but no later than 5 days prior to Closing
 354 Date, terminating this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from all
 355 further obligations under this Contract. Seller shall, at Closing, deliver and assign all original leases to Buyer who
 356 shall assume Seller's obligation thereunder.

357 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting: (i) to the absence of any financing
 358 statement, claims of lien or potential liens known to Seller, and (ii) that there have been no improvements or repairs
 359 to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or
 360 repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general
 361 contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all
 362 such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for
 363 improvements or repairs which could serve as a basis for a construction lien or a claim for damage have been paid
 364 or will be paid at Closing.

365 **F. TIME:** Calendar days shall be used in computing time periods. Any time periods provided for in this Contract
 366 which shall end on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 5503) shall extend to 5:00 p.m.
 367 (where the Property is located) of the next business day. Time is of the essence in this Contract.

368 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract, caused or
 369 prevented by Force Majeure, "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual
 370 transportation delays, wars, insurrections, acts of terrorism, and any other cause not reasonably within control of
 371 Buyer or Seller, and which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in
 372 part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force
 373 Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent
 374 performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this
 375 Contract by delivering written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer
 376 and Seller from all further obligations under this Contract.

377 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty instrument,
 378 personal representatives, or guardian's deed, as appropriate to the status of Seller, subject only to matters described
 379 in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by
 380 absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

381 **I. CLOSING LOCATION, DOCUMENTS, AND PROCEDURE:**

382 (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the
 383 attorney or other closing agent ("Closing Agent") designated by the party paying for the writer's policy of title
 384 Seller's initials _____

RECEIVERS DEED CW
 SEE Exhibit A

