

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

| | | |
|--|---|--------------------------------|
| SECURITIES AND EXCHANGE COMMISSION, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 15-CV-00191-S-LDA |
| |) | |
| PATRICK CHURCHVILLE, |) | |
| CLEARPATH WEALTH MANAGEMENT, LLC, |) | <u>PETITION TO SELL</u> |
| |) | REAL PROPERTY LOCATED |
| |) | AT 121 NAYATT ROAD VIA |
| Defendants, |) | PRIVATE SALE FREE AND |
| |) | CLEAR OF LIENS, CLAIMS |
| |) | AND ENCUMBRANCES |
| and |) | |
| |) | |
| CLEARPATH MULTI-STRATEGY FUND I, L.P., |) | |
| CLEARPATH MULTI-STRATEGY FUND II, L.P., |) | |
| CLEARPATH MULTI-STRATEGY FUND III, L.P., |) | |
| HCR VALUE FUND, L.P., |) | |
| |) | |
| Relief Defendants. |) | |
| |) | |

Stephen F. Del Sesto, Esq., the Court-appointed Receiver for and over the Estates of Patrick Churchville (“Churchville”), ClearPath Wealth Management, LLC (“ClearPath”), ClearPath Multi-Strategy Fund I, L.P. (“CPMSF I”), ClearPath Multi-Strategy Fund II, L.P. (“CPMSF II”), ClearPath Multi-Strategy Fund III, L.P. (“CPMSF III”) and HCR Value Fund, L.P. (“HCR”) (collectively the “Receivership Entities”), submits this **Petition to Sell the Real Property Located at 121 Nayatt Road via Private Sale Free and Clear of Liens, Mortgages, Claims and Encumbrances** (the “Petition to Sell”) in accordance with the Order of this Court which directs the Receiver to “coordinate the sale of the Churchville residence at 121 Nayatt Road”. See “Order Appointing Receiver” (the “Appointing Order”) at Paragraph 19. The purposes of this Petition to Sell are to (1) advise the Court and all interested parties of the terms of sale for the real property located at 121 Nayatt Road, Barrington, Rhode Island (the

“Property”); and, (2) seek this Court’s authorization to accept and consummate the sale transaction in accordance with the terms of sale as set forth in the submitted Purchase and Sale Agreement (“P&S”) and Addendum to the Purchase and Sale Agreement (“Addendum”) (the P&S and the Addendum shall be collectively referred to herein as the “Final P&S”). A copy of the fully executed Final P&S is attached hereto as **Exhibit “A”**.

I. INTRODUCTION

At the time of the Receiver’s appointment, Defendant Churchville was the record owner of the Property and used the Property as his primary residence since 2011. Records show that Defendant Churchville purchased the Property for \$2.4 million in August 2011. The Commission’s initial investigation revealed, and the Receiver’s investigation confirmed, that the funds used for the purchase were obtained from a \$2.5 million margin loan that Defendant Churchville took against \$4.9 million in funds raised in the summer of 2011. Defendant Churchville raised the \$4.9 million to invest in ClearPath Multi-Strategy Fund I’s (“MSF I”) Oppenheimer Public Market Series. Defendant Churchville then opened three brokerage accounts with Oppenheimer & Company and the funds were placed into government agency bonds and short-term treasury bonds. Almost immediately thereafter, Defendant Churchville took a \$2.5 million margin loan against these investments, transferred the funds to ClearPath’s main account and used \$2.3 million of that money to purchase his personal residence – the Property.

Following the August 2011 purchase of the Property, in December 2011, Defendant Churchville obtained a loan from ING Bank (“ING”) in the amount of \$1.5 million which was secured by a first mortgage on the Property.¹ Approximately nine months later, in September 2012, Defendant Churchville obtained a second loan from RBS Citizens, NA (“RBS”) in the amount of \$468,000 which was secured by a second mortgage on the Property. As of the date of this Petition, the current principal and interest owed on the ING and RBS loans totals approximately \$1.8 million.²

¹ Capital One, NA, (“Capital One”) as successor of ING is the current holder of the mortgage.

² Based on documents produced by Capital One, \$804,862.00 of the ING mortgage proceeds were used to pay off another mortgage on a property owned by Defendant Churchville at 32 Arnold Street in Providence, Rhode Island. Further, Defendant Churchville’s personal banking records showed a deposit of \$672,118.95 on December 22, 2011, representing the net proceeds from the \$1.5 million mortgage after paying off the 32 Arnold Street mortgage and other closing costs. Public records also show that Defendant Churchville later sold the now-unencumbered Arnold

II. COURT ORDERED REQUIREMENTS FOR SALE OF REAL ESTATE

Pursuant to Paragraph 37 of the Appointing Order the Court must approve the Receiver's liquidation of real property held by the Receiver and Receivership Estate. Prior to seeking this Court's approval, the Receiver may "take all necessary and reasonable actions to cause the sale...of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property." See Appointing Order at Paragraph 38. Further, the Receiver must take those actions "pursuant to such procedures as may be required by this Court and additional authority such as 28 U.S.C. §§ 2001^[3] and 2004^[4]." See Appointing Order at Paragraph 39. Assuming that the Receiver has complied with the requirements of the Appointing Order, including, paragraphs 38 and 39 contained therein, the Court may enter an Order authorizing the Receiver "to sell, and transfer clear title, to all real property in the Receivership Estates." Id.

Street property for \$635,000 on or about January 17, 2012, indicating that the property was "underwater" given the prior mortgage obligation. Churchville's personal bank account statement showed the net proceeds from this sale, totaling \$593,961.63, were also deposited into his account on January 20, 2012.

³ 28 U.S.C. § 2001 – Sale of Realty Generally. (a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs. Property in the possession of a receiver or receivers appointed by one or more district courts shall be sold at public sale in the district wherein any such receiver was first appointed, at the courthouse of the county, parish, or city situated therein in which the greater part of the property in such district is located, or on the premises or some parcel thereof located in such county, parish, or city, as such court directs, unless the court orders the sale of the property or one or more parcels thereof in one or more ancillary districts.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

(c) This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

⁴ 28 U.S.C. § 2004 – Sale of Personalty Generally. Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with section 2001 of this title, unless the court orders otherwise. This section shall not apply to sales and proceedings under Title 11 or by receivers or conservators of banks appointed by the Comptroller of the Currency.

This Court has not established any requirements on the Receiver's sale of the Property beyond the requirements that the Receiver coordinate the sale of the Property with the currently engaged broker for a period of not less than ninety (90) days and Court approval of the Receiver's sale of the Property. See Appointing Order at Paragraphs 19 and 37, respectively.

With regard to the proposed sale of the Property, the Receiver did coordinate the sale of the Property with the broker engaged at the time of the entry of the Appointing Order and the purpose of this Petition is to formally seek this honorable Court's approval of the proposed sale as required pursuant to Paragraph 37 of the Appointing Order. Further and in addition to being consistent with the express terms of the Appointing Order, the Receiver believes that the appraisal, marketing and advertising efforts taken relative to the Property sufficiently satisfy the requirements of 28 U.S.C. §2001.

III. SUMMARY OF RECEIVER'S SALE EFFORTS

At the time of the Receiver's appointment the Property had already been listed for sale and a real estate broker had been engaged. Paragraph 19 of the Appointing Order directed the Receiver to coordinate the sale of the Property with the currently engaged broker, Teri Degnan Real Estate & Consulting, LTD., for a period of not less than ninety (90) days. In accordance with the terms of the Appointing Order, the Receiver and the broker coordinated the preparation of a listing advertisement and other marketing materials and the placement of the listing advertisement on the multiple listing service ("MLS"), on the internet and in various paper and digital publications. The Receiver and the broker also communicated regularly relative to potential buyer interest and showings. The Receiver also obtained a restricted appraisal report for the Property from Sweeney Real Estate & Appraisal, a Rhode Island licensed real estate appraiser. Since August 2015 the Property was shown nine times to various interested parties and, including the offer presented via this Petition to Sell, the Receiver received 3 offers.⁵

In or about the middle of January 2016, the Receiver received the P&S from Ziya L. Gokaslan and Ayse G. Gokaslan (the "Buyers") for the Property with an indicated purchase price of \$2.4 million. The P&S was contingent upon the Buyers conducting the typical structural,

⁵ The following are the general reasons for the Receiver's rejection of the two offers received prior to the offer presented via this Petition to Sell: (a) one included an offer price substantially below all comparative properties and the Receiver's appraised value of the Property; and (b) one contained conditions and time frames that were either not attainable or reasonable.

mechanical and other inspections, the Buyers obtaining a mortgage commitment for an amount equal to 65% of the purchase price, certain appliances and furnishings remaining, tender of a \$120,000.00 deposit and this Court's approval of the P&S. Subject to this Court's approval, the Receiver instructed the broker to communicate acceptance of the P&S. The P&S also allows a broker commission equal to 5% of the purchase price. Shortly thereafter, Buyers' counsel presented the Receiver with the Addendum which primarily addresses certain title policy concerns. After some negotiation of the terms of the Addendum, the Receiver and the Buyers executed the Final P&S on or about February 5, 2016.

Shortly after February 5, 2016, the Buyers commenced their inspections. Following completion of the inspections, Buyers forwarded the inspection results to the broker and the Receiver along with a request that, based upon the inspection results, they receive a closing credit of \$100,000.00. After reviewing the inspection reports, the Receiver contacted the Buyers' broker directly to discuss the issues raised in the inspection reports and the requested closing credit. At the conclusion of that discussion, the Receiver indicated that he would agree to a closing credit in the amount of \$5,000.00 and the Buyers subsequently agreed to that closing credit amount. On or about March 2, 2016, the Receiver received a copy of the mortgage commitment letter obtained by Buyers. Subject to this Court's approval of this Petition, the closing is scheduled to take place on or about April 1, 2016.

IV. RECEIVER'S RECOMMENDATION REGARDING SALE

The Receiver and the broker have actively marketed the Property for approximately six (6) months.⁶ During that period of time the Property was aggressively marketed and advertised utilizing the MLS, the broker's website and other web-based property web-sites and paper-based newspaper and magazine media. The Receiver's and broker's combined efforts and marketing resulted in at least nine (9) property showings and the receipt of three (3) offers.

As stated above, the P&S contained a purchase price and was upon terms much more favorable than either of the other two offers received. The P&S purchase price is \$2.4 million⁷ and it is subject to: (a) this Court's approval; (b) physical and mechanical inspections

⁶ It is the Receiver's understanding that, prior to his appointment, the Property had been listed for at least several months with another broker prior to being re-listed with the current broker in July 2015.

⁷ This purchase price amount is well within the not "less than two-thirds of the appraised value" required by 28 U.S.C. §2001. Even more, the P&S purchase price falls within ten percent (10%) of the appraised value obtained by the Receiver.

(completed); (c) Buyers' receipt of a 65% mortgage commitment (completed); (d) a broker commission of five percent (5%); and, (e) appliances, light fixtures and certain household furnishings (i.e. three (3) televisions) included as part of the sale. In connection with the P&S, the Buyers provided a deposit in the amount of One Hundred and Twenty Thousand and 00/100 dollars (\$120,000.00). It has also been communicated to the Buyers and is understood that the Receiver's sale of the Property is "as is" and "where is" with no representations or warranties, expressed or implied, and is subject to any and all validly existing easements, rights of way or other legal rights of record, if any.

Based upon the information available to and obtained by your Receiver and the sale efforts undertaken with regard to the Property, it is your Receiver's opinion that the sale of the Property upon the terms and conditions of the P&S is consistent with the terms of the Appointing Order, is commercially reasonable, that the sales price and the terms set forth therein are fair and reasonable, that the sale is made in good faith, that the Buyers are a bona fide, good faith purchaser and that such sale is in the best interest of all investors, creditors and other interested parties of the Defendants, wherever located.

The Receiver recommends approval of the Final P&S and respectfully requests that the Court enter an order:

- (a) approving this Petition and the sale contemplated by the Final P&S;
- (b) authorizing the Receiver to finalize and close the sale transaction and transfer the Property to Buyers free and clear of any and all liens, claims, mortgages and encumbrances;
- (c) directing all parties who claim any interest, lien, claim, mortgage or encumbrance against the Property to execute and deliver to the Receiver within fourteen (14) days of the entry of this Order any and all lien or claim releases, mortgage discharges, UCC financing termination statements, in the usual and customary form, and any and all other documents that the Receiver deems, in his sole discretion, reasonably necessary to effectuate the release and discharge of such interest, claims, liens, mortgages or encumbrances, with the execution and delivery of the same to be without prejudice to or waiver of any such interests, claims, liens or encumbrances against the sale proceeds;

(d) declaring that all interests, claims, liens, mortgages and encumbrances asserted by those parties with recorded liens or mortgages against the Property in the Land Evidence Records for the Town of Barrington or in the Uniform Commercial Code Division of the Office of the Secretary of the State for the State of Rhode Island be declared to be released and discharged upon consummation of the sale of the Property to Buyers; and, that the recording of such Order with the Land Evidence Records for the Town of Barrington or the Uniform Commercial Code Division of the Office of the Secretary of the State for the State of Rhode Island shall constitute evidence of such release and discharge.

Lastly, in accordance with Paragraph 19, Defendant Churchville and his immediate family have been permitted to and continue to occupy the Property until further order of this Court. In connection therewith and addition to the above, your Receiver also requests that this honorable Court direct Defendant Churchville and his immediate family to vacate the Property on or before March 31, 2016, leaving behind all furnishings and valuables held by the Receiver and Receivership Estate and leaving the Property in a broom clean condition.

V. CONCLUSION

WHEREFORE, the Receiver prays: (a) that the within Petition be immediately set down for Hearing before this Honorable Court; (b) that the Receiver be permitted to sell the Property as described, free and clear of interests, claims, liens, mortgages and encumbrances, to the Buyers; (c) that all interests, claims, mortgages, liens, and encumbrances against the Property be transferred to the sale proceeds in the same priority as prior to such transfer; (d) that all persons or entities who claim an interest, lien, mortgage or encumbrance against the Property, be directed to execute and deliver to the Receiver, within fourteen (14) days of the entry of the Court's order, lien releases, mortgage discharges and/or UCC Financing Termination Statements, in the usual and customary form, and all other documents that the Receiver deems, in his sole discretion, to be reasonably necessary to effectuate the release and discharge of such interests, claims, liens, mortgages and encumbrances, with the execution and delivery of the same to be without prejudice to or waiver of any such interest, claims, liens, mortgages or encumbrances against the sales proceeds; (e) that all interests, claims, liens, mortgages and encumbrances asserted by those parties alleging such an interest be declared to be released and discharged upon

consummation of the sale of the Property, and that the recording of such Order with the Land Evidence Records for the Town of Barrington and Uniform Commercial Code Division of the Office of the Secretary of the State for the State of Rhode Island shall constitute evidence of such release and discharge; (f) Defendant Churchville and his immediate family be directed to fully and finally vacate the Property on or before March 31, 2016; and, (g) that the Receiver be granted such other and further relief as this Court shall deem proper.

Respectfully submitted,

/s/ Stephen F. Del Sesto, Receiver
Stephen F. Del Sesto, Esq. (Bar #6336)
*Receiver for Patrick Churchville, ClearPath
Wealth Management, LLC, ClearPath Multi-
Strategy Fund I, L.P., ClearPath Multi-
Strategy Fund II, L.P., and ClearPath Multi-
Strategy Fund III, L.P. and not individually*
Donoghue Barrett & Singal, P.C.
One Cedar Street, Suite 300
Providence, RI 02903
401-454-0400
401-454-0404
sdelsesto@dbslawfirm.com
Dated: March 10, 2016

CERTIFICATE OF SERVICE

I, Stephen F. Del Sesto, hereby certify that I filed the within document on the 10th day of March, 2016, and that notice will be sent electronically to all counsel who are registered participants identified on the Mailing Information for Case No. 15-cv-00191-S-LDA.

/s/ Stephen F. Del Sesto

EXHIBIT A



SINGLE FAMILY PURCHASE AND SALES AGREEMENT
Rhode Island Association of REALTORS®



1. SALES AGREEMENT

This ("Agreement") made between ("Seller"): Stephen P Delsanto Esq, Receiver

Mailing Address: One Cedar St, Suite 300 Providence RI 02903
and ("Buyer"): Ziya L Gokasian
Ayaa G Gokasian

Mailing Address: 1421 Wine Spring Lane Towson MD 21204

Seller agrees to SELL and Buyer to BUY, upon the price and terms below, the following property (the "Property"):
Property Address 121 HAYATT Road Assessor's Plat 03 Lot 042
Block _____ in the City/Town of Barrington State of Rhode Island, Zip code 02806

2. DATE OF THIS AGREEMENT

The Date of this Agreement shall be the later of: (a) the date on which Buyer signs this Agreement, or (b) the date on which Seller signs this Agreement.

3. PURCHASE PRICE

Buyer agrees to pay Seller a Purchase Price for the Property in the amount of:
Two Million Four Hundred Thousand Dollars (\$ 2,400,000.00) ("Purchase Price") of which
\$ 1,000.00 has been paid as a deposit.
\$ 119,000.00 Additional deposit to be paid on or before upon acceptance
\$ 2,280,000.00 Balance due at closing by cash, certified check, wire transfer and/or bank check.
\$ 2,400,000.00 TOTAL PURCHASE PRICE.

4. CLOSING DATE/PLACE

Closing is to be held on April 1, 2016 at 10:00 A.M. at the office of the Registry of Deeds or at such other time and place as may be agreed to by Buyer and Seller. Delivery of deed shall occur at the closing. Buyer and Seller authorize the closing agent to release to Broker(s) signed copies of the closing statement(s).

5. DEPOSITS

All deposits shall be held in an escrow account by the Listing Brokerage Firm named in Section 18, unless mutually agreed otherwise in writing by Buyer and Seller, and applied to the Purchase Price, except as otherwise provided.

- (a) The release of all deposits shall be upon execution of a written release by Buyer and Seller or as otherwise provided in Commercial Licensing Regulation 11.
- (b) In the event of a dispute between Seller and Buyer as to the performance of any provision of this Agreement, the holder of the deposits shall transfer the deposits to the General Treasurer of Rhode Island after 180 calendar days from the date of the original deposit, in accordance with the above regulation.

6. WAIVER OF MORTGAGE CONTINGENCY

If initiated by Buyer, this Agreement is not contingent upon financing and Section 7 of this Agreement shall not apply. _____ (initials of Buyer)

7. MORTGAGE CONTINGENCY

This Agreement is subject to Buyer obtaining a commitment letter issued by an institutional mortgage lender or mortgage broker ("Lender") on or before 3/3/2016 ("Mortgage Contingency Deadline") under the following terms: an amount not to exceed \$ 1,560,000.00 at an initial rate of interest not to exceed 4.5 % per year, for a term of at least 15 years, with a maximum of 0 points. Buyer authorizes Seller and/or Listing Licensee to contact any such Lender(s) to confirm the status of Buyer's application.

- (a) **Satisfaction of Contingency:** Once Buyer delivers a commitment letter to Seller or Listing Licensee in accordance with Section 18, this Contingency is deemed satisfied, regardless of whether the stipulations and conditions in the commitment letter are met. Buyer assumes all obligations in fulfilling any and all conditions of the commitment letter.
- (b) **Denial of Mortgage:** If Buyer applies for a mortgage as described above and receives a written denial for such mortgage, then, upon delivering a copy of the denial to Seller or Listing Licensee in accordance with Section 18 on or before the Mortgage Contingency Deadline or extensions, this Agreement shall be declared null and void and Buyer shall have the right to the Deposits in accordance with Section 5 unless Buyer waives the mortgage contingency in writing.
- (c) **Extension:** If Buyer has received neither a commitment letter nor a denial for such mortgage on or before the Mortgage Contingency Deadline, Buyer may request, on or before the Mortgage Contingency Deadline, and by written notice to Seller or Listing Licensee in accordance with Section 18, to extend the time by which a copy of the commitment letter or denial must be delivered, or waive the Mortgage Contingency by written notice in accordance with Section 18. In response to Buyer's request, Seller may, on or before the Mortgage Contingency Deadline, and by written agreement with Buyer, extend the time by which a copy of the written denial must be delivered. If Seller does not extend the Mortgage Contingency Deadline, this Agreement shall be null and void and Buyer shall have the right to the Deposits in accordance with Section 5 unless Buyer waives the Mortgage Contingency in writing.
- (d) **Buyer's Breach of Contingency:** If, on or before the Mortgage Contingency Deadline, Buyer fails to deliver a copy of the commitment letter, or fails to deliver a written denial for such mortgage to Seller or Listing Licensee in accordance with Section 18, or fails to request an extension as stated in (c) above, the Mortgage Contingency shall be deemed waived. If Buyer fails to purchase Property on Closing Date, Buyer shall be in default of this Agreement; Seller shall have the right to the Deposits and other remedies provided in Section 19.
- (e) **Insurance Notice:** A mortgage is usually contingent on an insurance binder; therefore, Buyer is highly advised to seek a quote or binder for insurance including, but not limited to, flood, dwelling, and wind, on or before the Mortgage Contingency Deadline. Insurance availability and cost may vary based upon factors, including but not limited to, location, age, condition, and past history of the property.

BUYER'S INITIALS [Signature] SELLER'S INITIALS [Signature]

8. PERSONAL PROPERTY AND FIXTURES

All fixtures and other improvements that are permanently attached to the building, structures, or land as of the date Buyer signed this Agreement are included in this sale as part of the Property, including, but not limited to, landscaping, lighting fixtures, screen doors, storm windows, garage door openers and controls, flagpoles, fences, and any other items that are built in, including, but not limited to air conditioning equipment, garbage disposals, and dishwashers. Any and all items associated with the use, control, or operation of the fixtures or additional items stated below are also included. Additional items included in the sale:

Refrigerator, oven, dishwasher, garbage disposal, washer, dryer, light fixtures, and three(3) televisions mounted on the wall in the master bedroom, living room and basement.

The following items, including leased or tenant-owned items, are excluded from the sale:

n/a

9. TITLE AND DEED

- (a) Seller shall convey Property by a Receiver's deed conveying a good, clear, insurable, and marketable title to the Property, free from all encumbrances, except easements and restrictions of record, and governmental regulations, provided they do not affect the marketability of the title and are satisfactory to Buyer, and Buyer's Lender, if any. Seller warrants that Seller has no notice of any outstanding violation order from a governmental entity relating to the Property.
- (b) Buyer may conduct a title examination of the Property at Buyer's expense.
- (c) If Seller cannot convey marketable title as described above, Buyer may (1) elect to accept such title as Seller can convey, or (2) reject the unmarketable title, by notifying Seller in accordance with Section 18, then this Agreement shall be deemed null and void and Buyer shall have the right to the Deposits in accordance with Section 5.

10. TAXES, ADJUSTMENTS, OTHER ASSESSMENTS

- (a) **Taxes:** Real estate taxes and fire district taxes shall be prorated on a calendar year basis, except in those towns in which taxes are prorated on a municipal fiscal year basis, with Seller paying for the period prior to the date of delivery of the deed and Buyer paying the balance of taxes due. All other taxes which are a lien upon the Property shall be paid by Seller at the time of the delivery of the deed.
- (b) **Adjustments:** Rents, fuels, water charges, association fees and sewer usage charges shall be apportioned as of the date of the delivery of the deed at the current price as calculated by the Seller's supplier.
- (c) **Assessments:** All assessments, including sewer, which are payable over a period of more than one year and constitute a lien on the Property shall be paid as follows: At closing, Seller shall pay installments due during the municipal years prior to the year in which the deed is delivered; the installments due in that year shall be prorated in the same manner as above provided for taxes, and (check one)
 - the Seller shall pay the balance of the assessment in full or acknowledge that there is no assessment, or
 - the Buyer shall pay the balance of the assessment in full, if any, or assume the balance of the assessment where permitted by law.

BUYER'S INITIALS

SELLER'S INITIALS

11. ADDITIONAL OBLIGATIONS

- (a) **Smoke/Carbon Monoxide Detectors:** Seller shall deliver the Property at the closing with a smoke detector and carbon monoxide detector certificate dated no earlier than 120 calendar days before the closing.
- (b) **Non-Resident Withholding Requirement:** If Seller is not a resident of the State of Rhode Island or will not be a resident at the time of the closing, Buyer must withhold six (6%) percent of Seller's net proceeds (9% if Seller is a corporation), in accordance with R.I.G.L. § 44-30-71.3, and pay such amount to the Division of Taxation as a non-resident withholding requirement. In order to have such withholding based on gain rather than net proceeds of sale, Seller must submit an election form to the Division of Taxation at least twenty (20) calendar days prior to closing. Seller agrees to pay to Buyer the entire amount of such withholding found to be due at or after the closing. Buyer's responsibility shall survive the transfer of title to the Property and shall be a lien against the Property. Seller and Buyer are advised to consult with the appropriate legal, tax, or financial professionals and/or the Rhode Island Division of Taxation.
- (c) **Non-Resident Landlord:** R.I.G.L. § 34-18-22.3 requires a residential landlord who is not a resident of the state of Rhode Island to designate an agent for "service of process" who is a resident of Rhode Island or corporation authorized to do business in Rhode Island. This designation must be filed with the Secretary of State and the clerk of the municipality where the property is located.

12. POSSESSION AND CONDITION OF PROPERTY

Seller shall deliver to Buyer at closing full occupancy and possession of the Property, in "broom clean" condition, free and clear of personal possessions (except those that are listed in Section 8 as included with the sale), tenants, and occupants except as agreed below. At closing, Seller shall convey the Property in the same condition in which it is on the Date of this Agreement, except for reasonable use and wear and/or any improvements or repairs required by this Agreement. Buyer shall be entitled to a final walkthrough of the Property prior to the delivery of the deed in order to determine whether the condition of the Property complies with the terms of this section.

EXCEPTIONS: (subject to assumption of leases)

n/a

13. RECEIPT AND ACKNOWLEDGMENT OF RI DISCLOSURE FORMS

Buyer acknowledges that Buyer has received the following forms (unless exempted by law): (initial all that apply)

- Rhode Island Real Estate Sales Disclosure Form prepared by Seller
- Mandatory Real Estate Relationship Disclosure
- Seller's Lead Disclosure which is incorporated in this Agreement by reference
- Pamphlet "Protect Your Family from Lead in Your Home" that includes R.I. section "What You Should Know About the RI Lead Law"

BUYER'S INITIALS

SELLER'S INITIALS

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14. BUYER'S RIGHTS

- (a) **Inspections:** R.I.G.L. § 5-20.8-4 states, "Every contract for the purchase and sale of real estate shall provide that a potential purchaser or potential purchasers shall be permitted a ten (10) day period, *exclusive of Saturdays, Sundays and holidays* to conduct inspections of the property and any structures thereon before the purchaser(s) becomes obligated under the contract to purchase. The parties have the right to mutually agree upon a different period of time; provided, a potential purchaser may waive this right to inspection in writing."
- (b) **Notice of State Inspections:** In addition to the rights stated in subsection (a) above, a potential purchaser(s) shall be permitted a period of ten (10) days to conduct the following:
 - (1) **Lead Inspection:** R.I.G.L. § 5-20.8-11 gives a potential purchaser the right to conduct a lead inspection. "Every Purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced Intelligence Quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase."
 - (2) **Private Well Water Inspection:** R.I.G.L. § 5-20.8-12 provides the right to test the water quality of a private well in accordance with RI Department of Health regulations.
 - (3) **Cesspool Inspection:** R.I.G.L. § 5-20.8-13 provides the right to inspect the property's on-site sewage system to determine if a cesspool exists and whether it is subject to the phase-out requirements as stated in R.I.G.L. § 23-19.15.

15. WAIVER OF INSPECTIONS CONTINGENCY

- BUYER'S INITIALS _____ (a) If Initialed by Buyer, Buyer waives all rights to inspections, including the 10-day period, *exclusive of Saturdays, Sundays and holidays*, in R.I.G.L. § 5-20.8-4, § 5-20.8-12 and § 5-20.8-13; this Agreement is not contingent on inspections, and Section 16 of this Agreement shall not apply.
- BUYER'S INITIALS _____ (b) **Lead:** If Initialed by Buyer, this Agreement is not contingent on a lead inspection, and Buyer waives Buyer's 10-day right to test/inspect for the presence of lead.

16. INSPECTIONS CONTINGENCY: Time is of the essence as it applies to Section 16.

- (a) Buyer shall have a ten (10) day period, *exclusive of Saturdays, Sundays and holidays* ("Inspections Contingency Deadline"), from the date of this Agreement to conduct and complete inspections, obtain inspection reports, deliver to Seller or Listing Licensee any and all requests relating to inspections, obtain Seller's response, and resolve all such requests with Seller in writing or this contingency shall be deemed waived.
- (b) The inspections shall be conducted at Buyer's expense by a recognized inspector(s) or inspection company of Buyer's choice. Inspections may include, but are not limited to, pest, cesspool/septic/sewer, radon, well water, lead, physical/mechanical, hazardous substances, wetlands and flood plain.
- (c) If Buyer wishes to terminate this Agreement because of the following:
 - (1) Buyer is not satisfied with the results of the inspections; or
 - (2) Buyer and Seller have not resolved any and all issues relating to inspections to Buyer's satisfaction; or
 - (3) Seller has not responded to Buyer's requests on or before the Inspections Contingency Deadline, then Buyer shall deliver a written notice of termination to Seller or Listing Licensee on or before the Inspections Contingency Deadline or any mutually agreed extensions of such Deadline. If Buyer fails to deliver such notice, this Contingency shall be deemed waived and Buyer will forfeit Buyer's right to terminate this Agreement based on the Inspections Contingency.

Additional Provisions:

n/a

17. CORRECTION OF ERRORS

Buyer and Seller agree to execute and deliver such other documents, instruments, and affidavits as may reasonably be required to complete the transaction including, but not limited to, any affidavits and agreements which may be required by the Lender(s) or the title insurance company.

18. NOTICES

All notices as required in specific Sections of this Agreement shall be in writing. All notices are to be conveyed by mail, personal delivery, electronic transmission, or fax. Notices shall be effective when postmarked, upon personal delivery, upon electronic transmittal date, or upon fax transmittal date. Notices to Seller, Buyer, Listing Licensee and Cooperating Licensee shall be sent or delivered to the address(es) below.

SELLERS:

Name(s): Stephan F Delsanto Esq., Receiver

Mailing Address One Cedar St, Suite 300 Providence RI 02903

Fax: _____ Email: _____

Listing Brokerage

Firm Name Teri Degnan RE & Consulting Mailing Address 38B Mann Avenue Newport

Name of Licensee Teri Degnan License # REC.0015615 RI 02840

Status: Designated Seller Representative Transaction Facilitator Dual Facilitator

Fax 800-8349344 Email teri@teridegnan.com Phone 401-474-9191

BUYER'S INITIALS _____

SELLER'S INITIALS SD

BUYERS:

Name(s): Ziya L Gokaslan
Ayse G Gokaslan

Mailing Address: 1421 Mine Spring Lane Town: _____ MD 21204
Fax: _____ Email: _____

Cooperating Brokerage:

Firm Name: _____ Mailing Address: _____
Name of Licensee: _____ License #: _____
Status: Designated Buyer Representative Transaction Facilitator
Fax: _____ Email: _____ Phone: _____

19. DEFAULT

Upon default by Buyer, Seller shall have the right to the Deposits in accordance with Section 5, such right to be without prejudice to the right of Seller to require specific performance and payment of other damages, or to pursue any remedy, legal or equitable, which shall accrue by reason of such default. If Seller defaults in the performance of this Agreement, Buyer shall have the right to the Deposits in accordance with Section 5, and Buyer may pursue any and all remedies available at law or equity, including but not limited to specific performance. All disputes between Buyer and Seller over the disposition of the Deposits shall be governed by Section 5.

20. ASSIGNMENT

This Agreement may be assigned by either party without written consent of the other, and shall be binding upon the assigns of Buyer and Seller. However, this Agreement may not be assigned without the express written consent of Seller, if it contains a provision for Seller financing.

21. ACCURATE DISCLOSURE OF SELLING PRICE

Buyer and Seller certify that this Agreement and all Addenda accurately reflect the gross sales price as indicated in Section 3 of this Agreement. Buyer and Seller understand and agree that this information shall be disclosed to the Internal Revenue Service as required by law.

22. ADDENDUM/ADDENDA

The following addendum/addenda are made a part of this Agreement:
Flood Addendum, Addendum A

23. ADDITIONAL PROVISIONS

Deposit to be held by the Receiver in a segregated account

24. PREPARATION OF DOCUMENT CONFIRMATION CLAUSE

This Agreement was prepared by (check one): Listing Licensee Cooperating Licensee Other (please complete below)
Name: _____ Address: _____

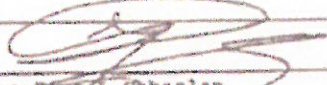
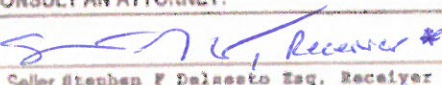
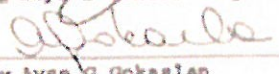
25. CONSTRUCTION OF AGREEMENT

If two or more persons are named as Seller or Buyer, their obligations shall be joint and several. Dates and deadlines are important. The Buyer and Seller are advised to act within the time required.

26. ENTIRE AGREEMENT

Buyer and Seller agree that this Agreement contains the entire agreement between us, subject to no understandings, conditions, or representations other than those expressly stated. Buyer represents that Buyer has not relied on the oral representations of Seller, or Broker(s) or their affiliated licensees as to the character or quality of the Property. This Agreement may not be changed, modified, or amended in whole or in part except in writing, signed by all parties.

NOTICE: THIS IS A LEGAL DOCUMENT THAT CREATES BINDING OBLIGATIONS.
IF NOT UNDERSTOOD, CONSULT AN ATTORNEY.

| | | | |
|---|-----------------|--|-----------------|
|  | <u>2/5/2016</u> |  | <u>2/4/2016</u> |
| Buyer <u>Ziya L Gokaslan</u> | Date | Seller <u>Stephen F Delaceto Esq. Receiver</u> | Date |
|  | <u>2/5/16</u> | <i>*subject to Court approval</i> | |
| Buyer <u>Ayse G Gokaslan</u> | Date | Seller | Date |
| Buyer | Date | Seller | Date |

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AMENDMENT A TO PURCHASE AND SALES AGREEMENT
Rhode Island Association of REALTORS®



SELLER(S): _____ **STEPHEN F DELSESTO, ESQ RECEIVER** _____

BUYER(S): _____ **ZIYA GOKASLAN** _____
_____ **AYSE GOKASLAN** _____
_____ **GOKASLAN** _____

PROPERTY ADDRESS: 121 NAYATT ROAD _____ BARRINGTON RI 02806
SALE PRICE: \$ 2,400,000.00 _____ Two Million Four Hundred Thousand

In reference to the above Purchase and Sales Agreement ("Agreement"), the undersigned Seller(s) and Buyer(s) agree to amend the following sections as described below: *(Check all that apply)*

Purchase Price Section _____:
Seller and Buyer agree to a new purchase price in the amount of: _____ Dollars (\$ _____)

Personal Property and Fixtures Section _____:
Seller and Buyer agree to amend this Section as follows:

Other: (please specify) _____ **Section** _____:
Seller and Buyer agree to amend this Section as follows:

Other: (please specify) _____ **Section** _____:
Seller and Buyer agree to amend this Section as follows:

Additional Provisions:
Seller agrees to give Buyer \$5000.00 as a closing cost credit

All other terms and conditions of the Agreement shall remain in full force. This Amendment, upon its execution by all parties to the Agreement, is made an integral part of the Agreement.

**NOTICE: THIS IS A LEGAL DOCUMENT THAT CREATES BINDING OBLIGATIONS.
IF NOT UNDERSTOOD, CONSULT AN ATTORNEY.**

| | | |
|-----------------|---|----------------------------|
| _____ Seller | STEPHEN F DELSESTO, ESQ RECEIVER Printed Name | <u> 2/24/16 </u> Date |
| _____ Seller | <u> Ziya Gokaslan </u> Printed Name | <u> 2/24/16 </u> Date |
| _____ Seller | <u> AYSE GOKASLAN </u> Printed Name | <u> 2/24/16 </u> Date |
| _____ Buyer | <u> ZIYA GOKASLAN </u> Printed Name | _____ Date |
| _____ Buyer | <u> AYSE GOKASLAN </u> Printed Name | _____ Date |
| _____ Buyer | <u> GOKASLAN </u> Printed Name | _____ Date |

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ADDENDUM A TO PURCHASE AND SALE AGREEMENT

This Addendum A to Purchase and Sale Agreement (the "Addendum A") made and entered into as of this ___ day of February, 2016, by and between Stephen F. DelSesto, Esq. Receiver for Patrick E. Churchville (the "Seller") and Ziya L. Gokaslan and Ayse G. Gokaslan (collectively, the "Buyer"), modifies the terms and provisions of that certain Purchase and Sale Agreement by and between Buyer and Seller of even date herewith, regarding property located at 121 Nayatt Road, Barrington, Rhode Island (the "Agreement").

The terms and provisions of the Agreement are hereby supplemented as follows:

1.) Section 23 Additional Provisions:

- a.) TITLE AND COURT APPROVAL: Conveyance of the Property shall be made by a Receiver's Deed of the Seller in customary form, conveying to the Buyer all of the Seller's right, title and interest as said Receiver in and to the Property, which must consist of good and marketable fee simple title, free and clear of all liens, mortgages, security interests, claims, encumbrances and interests, specifically including, but not limited to, any and all statutory liens and claims for municipal real estate or tangible property taxes or other claims of the Town of Barrington or any other governmental agencies that constitute a lien against the Property by operation of Rhode Island law and which would not be subject to the filing of a proof of claim in the Receivership proceeding (collectively the "Municipal Authorities"). However, the conveyance of the Property shall be subject to all restrictions, easements and conditions of record, and subject to all applicable zoning and other federal, state and municipal laws and regulations. The conveyance and transfer of the Property is expressly made subject to approval of the United States District Court for the District of Rhode Island (the "Court") in the receivership proceeding of the Defendant Patrick Churchville, pending before that Court, docketed as Case No. 15-CV-000191-S-LDA, after hearing with notice to interested parties as may be required by the Court, authorizing and ordering the sale of the Property free and clear of all liens, mortgages, security interests, claims, encumbrances and interests, including the claims of the Municipal Authorities. Said Order shall be subject to the satisfaction of Buyer's title insurance company and all appeal periods relating to the Order to convey shall run prior to the conveyance of the Property.

In the event that Court approval of this Agreement is not obtained by the Seller on or before the 30th day after the Date of this Agreement, or the Seller is unable to convey good and marketable fee simple title to the Property in accordance with the terms of this Agreement on the Closing Date, or such additional reasonable period of time as may be agreed upon by Buyer and Seller and as may be necessary to cure any defect in title in accordance with this Agreement, for a reason other than breach by the Buyer, then either of the parties hereto may, upon notice to the other party, terminate this Agreement, and if so terminated, then the Seller shall return the Deposit, to the

Buyer, and all obligations of the parties hereto shall cease and this Agreement shall be null and void, without recourse to either party hereto.

The Seller may, in his sole discretion, use the sale proceeds, or any portion thereof, from the sale of the Property to pay indebtedness secured by the Property that the Receiver is required to satisfy in order to convey good and marketable fee simple title.

- b.) NOTICES: A copy of any notices to Buyer shall also be given by personal delivery, certified mail, facsimile or email to:

James J. Belliveau, Esq.
Belliveau & St. Sauveur, LLP
450 Veterans Memorial Parkway, Building 7A
East Providence, RI 02914
Fax (401) 274-9102
Email: jjb@bandslegal.com

- c.) DEFAULT: In the event of any uncured default by Buyer in the performance of the Buyer's obligations under this Agreement, the Seller shall have the right to terminate this Agreement and retain the Deposit as liquidated damages, and not as a penalty, as Seller's sole remedy at law and in equity.

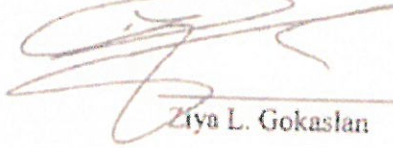
- d.) PAYMENT OF DEPOSIT: The total Deposit to be paid under this Agreement shall be \$120,000.00. The full Deposit shall be paid upon execution of this Agreement.

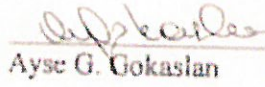
- 2) Except as specifically set forth herein, all other terms and provisions of the Agreement remain in full force and effect.

- 3) Counterparts. For the purpose of facilitating the execution of this Addendum A, this Addendum A may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

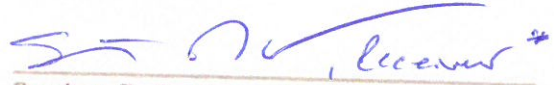
Witness our hands on the dates set forth below.

BUYER:


Ziya L. Gokaslan 2/5/2016
Date


Ayse G. Gokaslan 2/5/16
Date

SELLER:


Stephen F. DelSesto, Esq. Receiver for the
assets of Patrick E. Churchville
Date 2/9/2016
* subject to court approval