

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)
)
 Plaintiff,)
)
 vs.)
)
 PATRICK CHURCHVILLE,)
 CLEARPATH WEALTH MANAGEMENT, LLC,)
)
 Defendants,)
)
 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.)

Case No. 15-CV-00191-S-LDA

PETITION TO SELL
CONDOMINIUM LOCATED
AT 6 WHITNEY COURT, UNIT
10 AT “THE POLO CLUB” VIA
PRIVATE SALE FREE AND
CLEAR OF LIENS, CLAIMS
MORTGAGES AND
ENCUMBRANCES

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 6 Whitney Court, Unit 10 at “The Polo Club” 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 “list for sale...engage a broker for sale..., cause the sale..., and 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 “Order Appointing Receiver” (the “Appointing Order”) at Paragraph 38. 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 10 Whitney Court, Unit 10 at “The Polo Club”, Narragansett, 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”). A copy of the fully executed 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 a secondary residence since September 2005.¹ Records show that Defendant Churchville purchased the Property for \$470,000.00 in September 2005. Contemporaneously with the September 2005 purchase of the Property, Defendant Churchville obtained a loan from Wells Fargo Bank, N.A. (“Wells Fargo”) (assigned to Bank of America, N.A. (“BOA”) in July 2015) in the amount of \$376,000.00 which was secured by a first mortgage on the Property. Later, in October 2005, Defendant Churchville obtained a Home Equity Line of Credit Mortgage from Citibank Federal Savings Bank (“Citibank”) in the amount of \$104,000.00 which was secured by a second mortgage on the Property. As of the date of this Petition, the Receiver has requested, and is awaiting receipt of, payoff statements containing the current principal and interest owed on the Wells Fargo/BOA and Citibank loans. It is believed that the combined outstanding mortgage debt totals approximately \$430,000.00.

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

¹ Defendant Churchville acquired the Property on September 12, 2005 via Trustees’ Deed. On the same date, Defendant Churchville transferred the Property to himself, Mr. Robert B. Churchville (father) and Mrs. Margaret B. Churchville (mother) as joint tenants via Quit-Claim Deed. In June 2015, Robert B. Churchville and Margaret B. Churchville transferred their interest in the Property to Defendant Churchville via Quit-Claim Deed.

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^[2] and 2004^[3].” 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.

This Court has not established any requirements on the Receiver’s sale of the Property beyond the requirements that the Receiver: (i) list the real property for sale; (ii) engage a broker for that sale; (iii) take all necessary and reasonable actions to cause the sale, either at public or private sale; (iv) on terms and in the manner the Receiver deems most beneficial to the Receivership Estate; and, (v) with due regard to the realization of the true and proper value of such real property. See Appointing Order at Paragraph 38.

With regard to the proposed sale of the Property, the Receiver did coordinate the sale of the Property with a licensed Rhode Island real estate broker, Michael Saccoccio of Coldwell Banker Residential Brokerage, and the purpose of this Petition is to formally seek this honorable

² 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.

³ 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.

Court's approval of the proposed sale as required pursuant to Paragraph 38 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 not been listed for sale and was occupied by Defendant Churchville's parents. As stated above, Paragraph 38 of the Appointing Order authorized the Receiver to engage a broker to list the Property for sale and to take all necessary and reasonable actions to cause the sale of the Property on terms and in the manner that the Receiver deemed most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property. In furtherance of that authorization, the Receiver engaged the services of Thomas Sweeney, SIOR of Sweeney Real Estate & Appraisal to prepare and provide a Restricted Appraisal Report and Michael Saccoccio of Coldwell Banker Residential Brokerage (the "Broker") to prepare and provide a market analysis and a listing for the Property. As required by 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. Since August 2015 the Property was shown several times to various interested parties and the offer presented via this Petition to Sell was the only formal offer presented to the Receiver.

In or about the middle of March 2016, the Receiver received an initial offer from Ms. Shelia Felice (the "Buyer") for the Property with an indicated offer price of \$280,000.00. The initial offer was contingent upon: (a) the Buyer conducting the typical structural, mechanical and other inspections; (b) the Buyer obtaining a mortgage commitment for an amount equal to 80% of the offer price; (c) the Receiver conveying clear and marketable title; (d) all appliances remaining; (e) Buyer's lender obtaining an appraisal at or above the offer price; and (f) the Buyer's tender of a \$1,000.00 deposit. Based upon that initial offer, the Receiver and the Buyer engaged in several rounds of negotiation. Ultimately, the Receiver and Buyer agreed to a purchase price in the amount of \$295,000.00 and the terms of the P&S. In addition to the

original contingencies, the P&S also required an increased deposit in the amount of \$14,750.00 and acknowledged the need to obtain this Court's approval to finalize the transaction. 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. The Receiver and the Buyer executed the Final P&S on or about March 24, 2016.

Shortly after March 24, 2016, the Buyer commenced the inspections. Following completion of the inspections, Buyer forwarded the inspection results to the Broker and the Receiver along with a request that, based upon the inspection results, she receive a closing credit of \$15,000.00. After reviewing the inspection reports, the Receiver indicated that he would agree to a closing credit in the amount of \$250.00 and the Buyer subsequently agreed to that closing credit amount. On or about April 19, 2016, the Receiver received a copy of the mortgage commitment letter obtained by Buyer. Subject to this Court's approval of this Petition, the closing is scheduled to take place on or about May 23, 2016⁴.

IV. RECEIVER'S RECOMMENDATION REGARDING SALE

The Receiver and the Broker have aggressively marketed and advertised the Property 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 several property showings and the receipt of the P&S.

It is important to note that the purchase price identified in the P&S will not fully satisfy the first or second mortgages recorded against the Property.⁵⁶ The Receiver has specifically provided notice to both Wells Fargo/BOA and Citibank of this proposed sale and, as of the filing date of this Petition, Citibank has not contacted the Receiver.

Notwithstanding the mortgage deficiencies that will remain after the conclusion of this sale, as stated above, the P&S identifies a purchase price and is upon terms that the Receiver deems beneficial to the Receivership Estate and represents the true and proper value of the

⁴ The closing date identified in the P&S is May 13, 2016; however, parties have agreed to extend the closing date to May 23, 2016. Parties will execute an Amendment to the P&S reflecting the new closing date.

⁵ It is important to note that the appraisal obtained for the Property also identifies a current market value that is substantially less than the balance of the Wells Fargo/BOA and Citibank mortgage liens.

⁶ In connection with this Petition, the Receiver respectfully requests that he be permitted to withhold from the NET sale proceeds such amount that he deems reasonable to satisfy the fees, costs and expenses incurred by the Receiver and Receivership Estate in connection with the protection, marketing and sale of the Property as such actions have clearly and substantially benefitted the mortgagees for the Property.

Property. The P&S purchase price is \$295,000.00⁷ and it is subject to: (a) this Court's approval; (b) physical and mechanical inspections (completed); (c) Buyer's receipt of an 80% mortgage commitment (completed); (d) a broker commission of five percent (5%); and, (e) all appliances included as part of the sale. In connection with the P&S, the Buyer provided a deposit in the amount of Fourteen Thousand Seven Hundred Fifty and 00/100 Dollars (\$14,750.00). It has also been communicated to the Buyer 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 Buyer is 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 P&S;
- (b) authorizing the Receiver to finalize and close the sale transaction and transfer the Property to Buyer 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

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 six percent (6%) of the appraised value obtained by the Receiver.

without prejudice to or waiver of any such interests, claims, liens or encumbrances against the sale proceeds; and

- (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 Narragansett 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 Buyer; and, that the recording of such Order with the Land Evidence Records for the Town of Narragansett 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, the Receiver has permitted Defendant Churchville's parents to occupy the Property. Although it is the Receiver's understanding that they have already vacated the Property, in connection with this Petition and to the extent that they have not vacated, your Receiver also requests that this honorable Court direct Defendant Churchville's parents to vacate the Property no less than one (1) week prior to the closing date, 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 Buyer; (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 Narragansett 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's parents be directed to fully and finally vacate the Property no less than one (1) week prior to the closing date; (g) that the Receiver be permitted to withhold from the NET sale proceeds such amount that he deems reasonable to satisfy the fees, costs and expenses incurred by the Receiver and Receivership Estate in connection with the protection, marketing and sale of the Property; and, (h) 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: May 4, 2016

CERTIFICATE OF SERVICE

I, Stephen F. Del Sesto, hereby certify that I filed the within document on the 4th day of May, 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



CONDOMINIUM RESALE PURCHASE AND SALES AGREEMENT
Rhode Island Association of REALTORS®



1. SALES AGREEMENT

This ("Agreement") made between ("Seller"): Stephan DelSesto, solely in his capacity as a court appointed Receiver for the estate of Patrick Churchville

Mailing Address: 1 Cedar Street Providence RI 02903
and ("Buyer"): Sheila Felice

Mailing Address: 10 Grande Ville Court Apt. 922 Wakefield RI 02879

Seller agrees to SELL and Buyer to BUY, upon the price and terms below, the following property (the "Property"):
Unit No. 10 (the "Unit") of Phase Polo Club Building
of Polo Club Condominium (the "Condominium"), together with an undivided percentage interest in the common areas and facilities of the Condominium.

Address of Condominium: 6 Whitney Court in the City/Town of Narragansett
State of Rhode Island, Zip code 02882 Assessor's Plat 2 Lot 1 Block _____
Mailing Address of Condominium: 6 Whitney Court
in the City/Town of Narragansett, State of Rhode Island, Zip code 02882

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 Hundred Ninety-Five Thousand Dollars (\$ 295,000.00) ("Purchase Price") of which:
\$ 14,750.00 has been paid as a deposit.
\$ _____ Additional deposit to be paid on or before _____
\$ 280,250.00 Balance due at closing by cash, certified check, wire transfer and/or bank check.
\$ 295,000.00 TOTAL PURCHASE PRICE.

4. CLOSING DATE, PLACE

Closing is to be held on May 13, 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 21, 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 4/18/2016, ("Mortgage Contingency Deadline") under the following terms: an amount not to exceed \$ 236000 at an initial rate of interest not to exceed 5 % per year, for a term of at least 30 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 21, 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 21 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 21, 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 21. 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.

BUYER'S INITIALS SL

SELLER'S INITIALS SD

Copyright © 2014 Rhode Island Association of REALTORS®

InstantForms

Rev. 12/14 Page 1 of 5

This copyright protected form was produced using Instant Solutions' Instant Forms service.

- (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 21, 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 22.
- (e) **Insurance Notice:** A mortgage is usually contingent on Lender's review of (a) the Condominium master insurance policy and (b) an insurance binder that is necessary to cover any improvements or other fixtures not otherwise covered by the Condominium's insurer; 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, past history of the property, and the requirements of individual lenders.

8. PERSONAL PROPERTY AND FIXTURES:

All fixtures and other improvements owned by Seller and that are permanently attached to the interior of the Unit as of the date Buyer signed this Agreement are included in this sale as part of the Property, including, but not limited to lighting fixtures, and any other items that are built in, including, but not limited to air conditioners, 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:

All Appliances to Remain.
Garage Door Opener and Remote(s) to Convey.

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 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 21, 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.

[Signature]
BUYER'S INITIALS

[Signature]
SELLER'S INITIALS

(d) **Other:** If applicable, Buyer and Seller agree to pay as follows:

- (1) Working capital deposit in the amount of: \$ 752.00 to be paid to: (check one) Condominium Association Seller Buyer by: (check one) Buyer or Seller
- (2) Outstanding Condominium Assessments in the amount of: \$ 0.00 to be paid to Condominium Association by: (check one) Buyer or Seller

11. RIGHT OF FIRST REFUSAL

If required, this Agreement is subject to Seller obtaining a release of the Right of First Refusal from the Condominium Association and/or declarant, as applicable.

12. CONDOMINIUM DOCUMENTS

Seller shall deliver the following documents to Buyer or Cooperating Licensee in accordance with Section 21:

- (a) A copy of the Condominium Declaration, including all amendments.
- (b) A copy of the Condominium Bylaws, including all amendments.
- (c) A copy of the Rules and Regulations of the Condominium Association, including all amendments.
- (d) An insurance certificate for the Condominium master insurance policy.
- (e) Other: _____

Buyer agrees to acknowledge receipt of the following documents in writing. Buyer shall have ten (10) calendar days from the receipt of the documents to review these documents or refer them to an attorney for review. If within such ten (10) calendar day period Buyer gives Seller written notice that Buyer does not accept the above documents, the agreement shall be null and void, and Buyer shall have the right to the Deposits in accordance with Section 5. If Seller does not receive written notice within such period, these documents shall be deemed accepted by Buyer and this contingency shall be deemed to be waived.

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

13. CONDOMINIUM RESALE CERTIFICATE

Seller shall deliver the Resale Certificate pursuant to R.I.G.L. 34-36.1-4.09 to Buyer or Cooperating Licensee in accordance with Section 21. This Agreement is voidable by Buyer until the Resale Certificate has been provided and for five (5) calendar days thereafter, or until closing, whichever occurs first. The law states that Buyer "is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association." Buyer shall have five (5) calendar days from the receipt of the documents to review these documents or refer them to an attorney for review. If within such five (5) calendar day period Buyer gives Seller written notice that Buyer does not accept the above documents, the agreement shall be null and void, and Buyer shall have the right to the Deposits in accordance with Section 5. If Seller does not receive written notice within such period, these documents shall be deemed accepted by Buyer and this contingency shall be deemed to be waived.

14. ADDITIONAL OBLIGATIONS

- (a) **Fire Safety Systems Requirement:** Rhode Island law requires condominium units/complexes to be equipped with a fire safety system. Requirements vary based upon the number and design of the units, and may include, but not be limited to, battery operated or hard wired smoke and carbon monoxide detector systems, local fire alarm systems, or municipally connected fire alarm systems. Seller shall deliver the Property at closing in compliance with all fire safety regulations as determined by the local fire marshal or the authority having jurisdiction. Seller shall provide a certificate or other documentation of compliance as required by state law and Buyer's Lender at closing. **Buyer and Seller are encouraged to contact the State Fire Marshal's Office or the local authority having jurisdiction over Property before signing this Agreement because local interpretations may vary.**
- (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.

15. 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:

All appliance to remain
Garage Door Opener and Remote(s) to Convey.

16. RECEIPT AND ACKNOWLEDGMENT OF R.I. 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"

17. 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.

18. WAIVER OF INSPECTIONS CONTINGENCY

(a) If initiated 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 19 of this Agreement shall not apply.

BUYER'S INITIALS

[Handwritten initials]

SELLER'S INITIALS

[Handwritten initials]

BUYER'S INITIALS

(b) Lead: If initiated 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.

19. INSPECTIONS CONTINGENCY: This is of the essence as it applies to Section 19.

- (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.

20. 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.

21. 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): Stephen DeSesto, solely in his capacity as a court appointed Receiver for the estate of Patrick Churchville

Mailing Address: 1 Cedar Street Providence RI 02903

Fax: Email:

Listing Brokerage

Firm Name: Coldwell Banker Res Brokerage Mailing Address: 831 Bald Hill Rd Warwick RI

Name of Licensee: Michael Saccoccio License #: B11364

Status: Designated Seller Representative Transaction Facilitator Dual Facilitator

Fax: Email: msaccoccio@namoves.com Phone: 401 739 9500

BUYERS:

Name(s): Sheila Felice

Mailing Address: 10 Grande Ville Court Apt. 922 Wakefield RI 02879

Fax: Email: dolcevita129@yahoo.com

Cooperating Brokerage:

Firm Name: RI Real Estate Services Mailing Address: 110 KING STREET EAST GREENWICH

Name of Licensee: Gregory Dantas License #: REB.0017424 RI 02818-3917

Status: Designated Buyer Representative Transaction Facilitator

Fax: 401-885-0197 Email: greg@401sold.com Phone: 401-885-5400

22. 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.

23. 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.

BUYER'S INITIALS

Handwritten initials

SELLER'S INITIALS

Handwritten initials

24. 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.

25. ADDENDUM/ADDENDA

The following addendum/addenda are made a part of this Agreement:

N/A

26. ADDITIONAL PROVISIONS

Subject to Lenders Appraisal at or above purchase price. Subject to Clear Title.
Buyer is Aware and Recognizes that the sale is subject to approval of the RI Federal Court for the District Court of Rhode Island. Subject to Property being Free and Clear of All Tenants and Their Possessions at Time of Closing.
Section 5 : All Deposits held by Receiver in a segregated escrow account and not by listing brokerage firm named in Section 21. Section 9 (c): Should read, "If Seller cannot convey clear title..."
Section 10 (d): Should read, "If applicable Buyer agrees to pay as follows..."
Section 23: Should read, "This agreement may NOT be assigned by either party without written consent of the other"
*** Each of the above amendments contains the new and controlling language for the sections referenced in this agreement. "

27. PREPARATION OF DOCUMENT CONFIRMATION CLAUSE

This Agreement was prepared by (check one): Listing Licensee Cooperating Licensee Other (please complete below)
Name: Gregory M. Dantas Address: 110 King Street, East Greenwich, RI 02819

28. 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.

29. 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>Sheila Felice</u> Buyer | <u>3/21/16</u> Date | <u>Stephen F. DelSesto, Esq., Receiver</u> Seller | <u>3/24/16</u> Date |
| | | <u>Stephen F. DelSesto, Esq., solely in his capacity as Court-appointed Receiver</u> | |
| Buyer | Date | Seller over subject to | Date |
| | | <u>for the assets of Patrick Churchville</u> | |
| Buyer | Date | Seller | Date |

This form is protected by the federal copyright laws and is for exclusive use by Rhode Island REALTORS®.



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



SELLER(S): _____ Stephen DelSesto, soley in his capacity as a court appointed
_____ receiver for the assets of

_____ Patrick Churchville
BUYER(S): _____ Sheila Felice

PROPERTY ADDRESS: 6 Whitney Court, Unit 10 _____ Narragansett _____ RI _____ 02882
SALE PRICE: \$ 295,000.00 _____ Two Hundred Ninety-Five 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 provide a \$250 credit for extermination and pest treatment.

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.**

| | | |
|--------|---|----------------------|
| _____ | <u>Stephen DelSesto, soley in his capacity as a court</u> | _____ <u>4/22/16</u> |
| Seller | Printed Name | Date |
| _____ | <u>appointed receiver for the assets of</u> | _____ |
| Seller | Printed Name | Date |
| _____ | <u>Patrick Churchville</u> | _____ |
| Seller | Printed Name | Date |
| _____ | <u>Sheila Felice</u> | _____ |
| Buyer | Printed Name | Date |
| _____ | _____ | _____ |
| Buyer | Printed Name | Date |
| _____ | _____ | _____ |
| Buyer | Printed Name | Date |

This form is protected by the federal copyright laws and is for exclusive use by Rhode Island REALTORS®.