

IN THE DISTRICT COURT OF OKLAHOMA COUNTY      NOV 12 2009  
STATE OF OKLAHOMA

PATRICIA PRESLEY, COURT CLERK  
by \_\_\_\_\_  
DEPUTY

OKLAHOMA DEPARTMENT OF	)
SECURITIES EX REL. IRVING	)
FAUGHT, ADMINISTRATOR,	)
	)
Plaintiff,	)
	)
v.	)
	)
	)
STORYBOOK PROPERTIES, LLC,	)
a California limited liability company;	)
STORYBOOK INVESTMENTS WA,	)
LLC, a Washington limited liability	)
company; MATTHEW G. STORY	)
an individual; JOE DON JOHNSON,	)
an individual; and JAMES FARNHAM,	)
an individual,	)
	)
Defendants.	)

Case No. CJ-2009-7957  
Judge: Gurich, Noma D.

**RECEIVER’S MOTION FOR AN ORDER (I) APPROVING CONTRACT FOR THE  
SALE OF 12133 EAST 36TH STREET, TULSA, OKLAHOMA, SUBJECT TO HIGHER  
BID; AND (II) AUTHORIZING RECEIVER TO CLOSE SALE OF  
12133 EAST 36TH STREET, TULSA, OKLAHOMA**

Stephen J. Moriarty ("Receiver") the Court appointed Receiver for Storybook Properties LLC, Storybook Investments WA, LLC, and Matthew G. Story (all collectively referred to as "Companies") moves the Court for the entry of an Order (i) approving the Real Estate Purchase Contract submitted by Marlynn Moss and Jacob Mitchell for 12133 East 36th Street, Tulsa, Oklahoma, subject to receipt by Receiver of a higher offer and (ii) authorizing Receiver to take all actions necessary to close such sale. In support of the Motion, Receiver represents as follows:

**Factual Background**

1. On October 7, 2009, this Court entered its Order Appointing Receiver. Pursuant to the Order, the Receiver was given full authority to "operate and manage all assets" of the

Companies. Further, Receiver was given the authority to “take immediate custody, possession, and control of any and all assets” of the Companies.

2. The major assets of the Companies consist of (a) numerous residential properties located in Tulsa County, Oklahoma (the “Residential Properties”) and (b) a 5 unit apartment building located at 2436 East Sixth Street, Tulsa, Oklahoma and an 8 unit apartment building located at 2440 East Sixth Street, Tulsa, Oklahoma (the “Apartment Properties”).

#### **Assets to Be Sold**

3. Through this Motion, the Receiver proposes to sell 12133 East 36th Street, Tulsa, Oklahoma (the “Property”). The Receiver has determined that a sale of the Property is in the best interests of the Companies and their creditors.

#### **Relief Requested**

4. By this Motion, the Receiver requests entry of an Order (a) authorizing Receiver to accept the Real Estate Purchase Contract submitted by Marlynn Moss and Jacob Mitchell, dated October 31, 2009 (the "Purchase Contract"), subject to receipt by Receiver of a higher offer and (b) authorizing Receiver to take all actions necessary to close such sale. A copy of the Purchase Contract is attached hereto as Exhibit “A”.

#### **Marketing Efforts**

5. Prior to the appointment of receiver, the Companies had listed the Property for sale for \$85,000.00 through Green Country Real Estate, Rusty Goodman, Listing Broker (the “Broker”)<sup>1</sup>. Through the efforts of the Broker, the Purchase Contract was prepared and delivered to Broker. Broker believes the offer to purchase the Property for \$82,000.00 is reasonable.

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<sup>1</sup> Receiver seeks permission to pay broker a reasonable commission upon the Closing of the Purchase Contract.

**Approval of Purchase Agreement and Authority to Close**

7. The Purchase Agreement is the product of arms length negotiations and approval of the Purchase agreement is in the best interest of the Companies and their creditors.

8. Receiver seeks authority to solicit and receive higher bids for the Property. Receiver seeks authority to close on any bid, deemed to be a higher bid in the sole discretion of Receiver, upon receipt of such higher bid.

9. Receiver seeks authority to take all necessary steps to close on the Purchase Agreement, or any higher bid, including but not limited to delivery of a Receiver's deed to the Apartment Properties and payment a reasonable broker's commission and all associated costs of the sale at closing.

10. The Property is subject to a first mortgage held by Tulsa National Bank. The proceeds of the sale are to be disbursed first to closing costs, second to Tulsa National Bank with any excess proceeds paid to Receiver.

WHEREFORE, the Receiver respectfully requests that the Court enter an order (i) Approving the Purchase Contract for 12133 East 36th Street, Tulsa, Oklahoma, subject to receipt by Receiver of a higher offer; (ii) authorizing Receiver to take all actions necessary to close such sale, and (iii) granting Receiver such other and further relief as this court deems just and proper.



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STEPHEN J. MORIARTY (OBA #6410)  
FELLERS, SNIDER, BLANKENSHIP,  
BAILEY & TIPPENS, P.C.  
100 North Broadway, Suite 1700  
Oklahoma City, OK 73102  
Phone: 405-232-0621  
Fax: 405-232-9659  
E-mail: [smoriarty@fellerssnider.com](mailto:smoriarty@fellerssnider.com)  
RECEIVER

**NOTICE OF HEARING**

Please be advised that a hearing on the foregoing Motion has been set for 11:00  
A.m. on the 3<sup>rd</sup> day of December, 2009 before the Honorable Noma D. Gurich.

**CERTIFICATE OF MAILING**

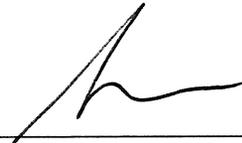
This is to certify that on the 12th day of November, 2009, the foregoing was sent by U.S. Mail, first class, postage prepaid to:

Patricia A. Labarthe, Esq.  
Jennifer Shaw, Esq.  
Oklahoma Department of Securities  
120 N. Robinson, Suite 860  
Oklahoma City, OK 73102

Matthew G. Story  
27943 Seco Canyon Road  
Suite 201  
Santa Clarita, CA 91350

R. Scott Adams, Esq.  
204 N. Robinson, 25<sup>th</sup> Floor  
Oklahoma City, OK 73102

James Farnham  
6308 N. Harvard Avenue  
Oklahoma City, OK 73122



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Stephen J. Moriarty

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**OKLAHOMA REAL ESTATE COMMISSION**  
This is a legally binding Contract;  
if not understood seek advice from an attorney  
**OKLAHOMA UNIFORM CONTRACT OF  
SALE OF REAL ESTATE**

This form was created by  
the Oklahoma Real Estate  
Contract Form Committee and  
approved by the Oklahoma  
Real Estate Commission.

**CONTRACT DOCUMENTS.** The Contract is defined as this document with the following attachment(s):  
(check as applicable)

- Conventional Supplemental
- FHA Supplemental
- VA Supplemental
- Seller Carry
- Assumption/Other
- Supplemental Agreement
- Condominium or Homeowner's Association Supplemental

**PARTIES.** THE CONTRACT is entered into between:

Owner of Record

"Seller"

and

Marlynn Moss, Jacob Mitchell

"Buyer"

The Parties' signatures at the end of the Contract, which includes any attachments or documents incorporated by reference, with delivery to their respective Brokers, if applicable, will create a valid and binding Contract, which sets forth their complete understanding of the terms of the Contract. The Contract shall be executed by original signatures of the parties or by signatures as reflected on separate identical Contract counterparts (carbon, photo or fax copies). All prior verbal or written negotiations, representations and agreements are superceded by the Contract, which may only be modified or assigned by a further written agreement of Buyer and Seller.

Seller agrees to sell and convey by General Warranty Deed, and Buyer agrees to accept such deed and buy the Property described herein, on the following terms and conditions:

The Property shall consist of the following described real estate located in Tulsa County, Oklahoma.

1. **LEGAL DESCRIPTION:** Lt 10 Blk 1 Park Plaza East

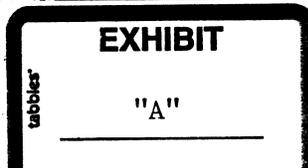
<u>12133 E 36th St</u>	<u>Tulsa</u>	<u>74146</u>
Property Address	City	Zip

together with all fixtures and improvements, and all appurtenances, subject to existing zoning ordinances, plat or deed restrictions, utility easements serving the Property, including all sub-surface/mineral/water rights owned by Seller unless reserved by Seller in the Contract and excluding mineral rights previously reserved or conveyed of record (collectively referred to as "the Property").

2. **PURCHASE PRICE, EARNEST MONEY AND SOURCE OF FUNDS:** This is a CASH TRANSACTION unless a Financing Supplement Agreement is attached. The Purchase Price is \$ 82,000.00 payable by Buyer as follows: Buyer has paid \$ 500.00 as Earnest Money on execution of the Contract, and Buyer shall pay the balance of the purchase price and Buyer's Closing costs at Closing. Upon execution of the Contract, the Earnest Money shall be deposited in the trust account of Greater Green Country or if left blank, the Listing Broker's trust account, as part payment of the purchase price and/or closing costs. Once established, if interest accrues on Earnest Money Deposit in Listing Broker's trust account, said interest shall be paid to "Oklahoma Housing Foundation".

3. **CLOSING, FUNDING AND POSSESSION:** The Closing process includes execution of documents, delivery of deed, and receipt of funds by Seller and shall be completed on or before November 30, 2009, ("Closing Date") or not later than five (5) days thereafter caused by a delay of the Closing process, or such later date as may be necessary in the Title Evidence Provision (reference Provision 10 D and E). Possession shall be transferred upon conclusion of Closing process unless otherwise provided below:

In addition to costs and expenses otherwise required to be paid in accordance with terms of the Contract, Buyer shall pay Buyer's Closing fee, Buyer's recording fees, and all other funds required from Buyer. Seller shall pay documentary stamps required, Seller's Closing fee, Seller's recording fees, if any, and all other expenses required from Seller. Funds required from Buyer and Seller at Closing shall be either cash, cashier's check or wire transfer.



PROPERTY ADDRESS 12133 E 36th St, Tulsa, OK 74146

**4. ACCESSORIES, EQUIPMENT AND SYSTEMS:** The following items, if existing on the Property, unless otherwise excluded, shall remain with the Property at no additional cost to Buyer:

- Attic and ceiling fan(s)
- Bathroom mirror(s)
- Other mirrors, if attached
- Central vacuum & attachments
- Floor coverings, if attached
- Key(s) to the property
- Built-in and under cabinet/counter appliance(s)
- Free standing slide-in/drop-in kitchen stove
- Built-in sound system(s)/speaker(s)
- Lighting & light fixtures
- Fire, smoke and security system(s), if owned
- Shelving, if attached
- Fireplace inserts, logs, grates, doors and screens
- Free standing heating unit(s)
- Humidifier(s), if attached
- Water conditioning systems, if owned
- Window treatments & coverings, interior & exterior
- Storm windows, screens & storm doors
- Garage door opener(s) & remote transmitting unit(s)
- Fences (includes sub-surface electric & components)
- Mailboxes/Flag poles
- Outside cooking unit(s), if attached
- Propane tank(s) if owned
- TV antennas/satellite dish system(s) and control(s), if owned
- Sprinkler systems & control(s)
- Swimming Pool/Spa equipment/accessories
- Attached recreational equipment
- Exterior landscaping and lighting
- Entry gate control(s)
- Water meter, sewer/trash membership, if owned
- All remote controls, if applicable
- Transferable Service Agreements and Product Warranties

A. **Additional Inclusions.** The following items shall also remain with the Property at no additional cost to Buyer:

B. **Exclusions.** The following items shall not remain with the Property:

**5. TIME PERIODS SPECIFIED IN CONTRACT:** Time periods for Investigations, Inspections and Reviews and Financing Supplement Agreement shall commence on November 2, 2009 (Time Reference Date) regardless of the date the Contract is signed by Buyer and Seller. The day after the Time Reference Date shall be counted as day one (1) If left blank, the Time Reference Date shall be the third day after the last date of signatures of the parties.

**6. RESIDENTIAL PROPERTY CONDITION DISCLOSURE:** No representations by Seller regarding the condition of Property or environmental hazards are expressed or implied, other than as specified in the Oklahoma Residential Property Condition Disclosure Statement ("Disclosure Statement") or the Oklahoma Property Condition Disclaimer Statement ("Disclaimer Statement"), if applicable. A real estate licensee has no duty to Seller or Buyer to conduct an independent inspection of the Property and has no duty to independently verify accuracy or completeness of any statement made by Seller in the Disclosure Statement and any amendment or the Disclaimer Statement.

**7. INVESTIGATIONS, INSPECTIONS AND REVIEWS:**

A. Buyer shall have 10 days (10 days if left blank) after the Time Reference Date to complete any investigations, inspections, and reviews. Seller shall have water, gas, and electricity turned on and serving the Property for Buyer's inspections, and through the date of possession or Closing, whichever occurs first. If required by ordinance, Seller shall deliver to Buyer within five days after the Reference Date any written notices affecting the Property.

B. Buyer, at Buyer's expense, shall have the right to enter upon the Property, together with an Oklahoma licensed Home Inspector, registered professional engineer, licensed architect, professional craftsman, and/or any other person Buyer deems qualified, to conduct any and all investigations, inspections, and reviews. Buyer's investigations, inspections, and reviews may include, but not be limited to, the following:

- 1) **Disclosure Statement or Disclaimer Statement unless exempt**
- 2) **Flood, Storm Run off Water, Storm Sewer Backup or Water History**
- 3) **Psychologically Impacted Property and Megan's Law**
- 4) **Hazard Insurance (Property insurability)**
- 5) **Environmental Risks**, including, but not limited to soil, air, water, hydrocarbon, chemical, carbon, asbestos, mold, radon gas, lead-based paint
- 6) **Roof**, structural members, roof decking, coverings and related components
- 7) **Structural Inspection**
- 8) **Fixtures, Equipment and Systems inspection.** All fixtures, equipment and systems relating to plumbing (including sewer/septic system and water supply), heating, cooling, electrical, built-in appliances, swimming pool, spa, sprinkler systems, and security systems
- 9) **Termites and other Wood Destroying Insects Inspection**
- 10) **Use of Property.** Property use restrictions, building restrictions, easements, restrictive covenants, zoning ordinances and regulations, mandatory Homeowner Associations and dues
- 11) **Square Footage.** Buyer shall not rely on any quoted square footage and shall have the right to measure the Property.
- 12)

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**C. TREATMENTS, REPAIRS AND REPLACEMENTS (TRR).**

1) **TERMITE TREATMENTS AND OTHER WOOD DESTROYING INSECTS.** Seller's obligation to pay treatment and repair cost in relation to termites and other wood destroying insects shall be limited to the residential structure, garage(s) and other structures as designated in Provision 13 and as provided in Paragraph C2b below.

2) **TREATMENTS, REPAIRS, REPLACEMENTS AND REVIEWS.** Buyer, within 24-hours after expiration of the time period referenced in 7A, shall deliver to Seller, in care of the Listing Broker, a copy of all written reports obtained by Buyer, if any, pertaining to the Property and Buyer shall select one of the following:

a. If, in the sole opinion of the Buyer, results of Investigations, Inspections or Reviews are unsatisfactory, the Buyer may cancel the Contract by delivering written notice of cancellation to Seller and receive refund of Earnest Money.

OR

b. Buyer, upon completion of all Investigations, Inspections and Reviews, may deliver to Seller, in care of the Listing Broker (if applicable), a written list on a "Notice of Treatments, Repairs, and Replacements" form (TRR form) of those items to be treated, repaired or replaced (including repairs caused by termites and other wood destroying insects) that are not in normal working order (defined as the system or component functions without defect for the primary purpose and manner for which it was installed. Defect means a condition, malfunction or problem, which is not decorative, that will have a materially adverse effect on the value of a system or component).

i. Seller shall have 5 days (5 days if blank) after receipt of the completed TRR form from Listing Broker (if applicable) to obtain costs estimates. Seller agrees to pay up to \$ \_\_\_\_\_ ("Repair Cap") of costs of TRR's. If Seller obtains cost estimates which exceed Repair Cap, Seller shall notify Buyer, in writing, within two days after receipt of cost estimates.

If the amount of TRR's exceed the amount of the Repair Cap, Buyer and Seller shall have na days (3 days if blank) thereafter to negotiate the payment of costs in excess of Repair Cap. If a written agreement is reached, Seller shall complete all agreed TRR's prior to the Closing Date. If an agreement is not reached within the time specified in this provision, the Contract shall become null and void and Earnest Money returned to Buyer.

ii. If Seller fails to obtain cost estimates within the stated time, Buyer shall then have 5 days (5 days if blank) to:

a) Enter upon the Property to obtain costs estimates and require Seller to be responsible for all TRR's as noted on Buyer's TRR form, up to the Repair Cap; and,

b) If the amount of TRR's exceed the amount of the Repair Cap, Buyer and Seller shall have 3 days (3 days if blank) thereafter to negotiate the payment of costs in excess of Repair Cap. If a written agreement is reached, Seller shall complete all agreed TRR's prior to the Closing Date. If an agreement is not reached within the time specified in this provision, the Contract shall become null and void and Earnest Money returned to Buyer.

**D. EXPIRATION OF BUYER'S RIGHT TO CANCEL CONTRACT.**

1) Failure of Buyer to complete one of the following shall constitute acceptance of the Property regardless of its condition:

- a. Perform any Investigations, Inspections or Reviews;
- b. Deliver a written list on a TRR form of items to be treated, repaired and replaced; or
- c. Cancel the Contract within the time periods in Investigations, Inspections or Reviews Provision.

2) After expiration of the time periods in Investigations, inspections and Reviews Provision, Buyer's inability to obtain a loan based on unavailability of hazard insurance coverage shall not relieve the Buyer of the obligation to close transaction.

3) After expiration of the time periods in Investigations, inspections and Reviews Provision, any square footage calculation of the dwelling, including but not limited to appraisal or survey, indicating more or less than quoted, shall not relieve the Buyer of the obligation to close this transaction.

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**E. INSPECTION OF TREATMENTS, REPAIRS AND REPLACEMENTS and FINAL WALK-THROUGH.**

- 1) Buyer, or other persons Buyer deems qualified, may perform re-inspections of Property pertaining to Treatments, Repairs and Replacements.
- 2) Buyer may perform a final walk-through inspection, which Seller may attend. Seller shall deliver Property in the same condition as it was on the date upon which Contract was signed by Buyer (ordinary wear and tear excepted) subject to Treatments, Repairs and Replacements.
- 3) All inspections and re-inspections shall be paid by Buyer, unless prohibited by mortgage lender.

**8. RISK OF LOSS:** Until transfer of Title or transfer of possession, risk of loss to the Property, ordinary wear and tear excepted, shall be upon Seller; after transfer of Title or transfer of possession, risk of loss shall be upon Buyer. (Parties are advised to address insurance coverage regarding transfer of possession prior to Closing.)

**9. ACCEPTANCE OF PROPERTY:** Buyer, upon accepting Title or transfer of possession of the Property, shall be deemed to have accepted the Property in its then condition. No warranties, expressed or implied, by Sellers, Brokers and/or their affiliated licensees, with reference to the condition of the Property, shall be deemed to survive the Closing.

**10. TITLE EVIDENCE:**

**A. BUYER'S EXPENSE.** Buyer, at Buyer's expense, shall obtain:

(Check one)

**Attorney's Title Opinion**, which is not rendered for Title Insurance purposes.

OR

**Commitment for Issuance of a Title Insurance Policy** based on an Attorney's Title Opinion which is rendered for Title Insurance purposes for the Owner's and Lender's Title Insurance Policy.

**B. SELLER'S EXPENSE.** Seller, at Seller's expense, within thirty (30) days prior to Closing Date, agrees to make available to Buyer the following (collectively referred to as "the Title Evidence"):

1) A complete surface-rights-only Abstract of Title, last certified to a date subsequent to the Time Reference Date, by an Oklahoma licensed and bonded abstract company;

OR

A copy of Seller's existing owner's title insurance policy issued by a title insurer licensed in the State of Oklahoma together with a supplemental surface-rights-only abstract last certified to a date subsequent to the Time Reference Date, by an Oklahoma licensed and bonded abstract company;

2) A current Uniform Commercial Code Search Certificate, and

3) An inspection certificate (commonly referred to as a "Mortgage Inspection Certificate") prepared subsequent to the Time Reference Date a licensed surveyor, which shall include a representation of the boundaries of the Property (without pin stakes) and the improvements thereon.

**C. LAND OR BOUNDARY SURVEY.** By initialing this space \_\_\_\_\_, Buyer agrees to waive Seller's obligation to provide a Mortgage Inspection Certificate. Seller agrees that Buyer, at Buyer's expense, may have a licensed surveyor enter upon the Property to perform a Land or Boundary (Pin Stake) Survey, in lieu of a Mortgage Inspection Certificate, that shall then be considered as part of the Title Evidence.

**D. BUYER TO EXAMINE TITLE EVIDENCE.** Buyer shall have ten (10) days after receipt to examine the Title Evidence and to deliver Buyer's objections to Title. In the event the Title Evidence is not made available to Buyer within ten (10) days prior to Closing Date, said Closing Date shall be extended to allow Buyer the ten (10) days from receipt to examine the Title Evidence.

**E. SELLER TO CORRECT ISSUES WITH TITLE (IF APPLICABLE), POSSIBLE CLOSING DELAY.** Upon receipt by Seller, or in care of Seller's Broker, if applicable, of any title requirements reflected in an Attorney's Title Opinion or Title Insurance Commitment, based upon the standard of marketable title set out in the Title Examination Standards of the Oklahoma Bar Association, the parties agree to the following:

1) Seller, at Seller's expense, shall make reasonable efforts to obtain and/or execute all documents necessary to cure title requirements identified by Buyer;

2) Delay Closing Date for 30 days [thirty (30) days if blank], or a longer period as may be agreed upon in writing, to allow Seller to cure Buyer's title requirements. In the event Seller cures Buyer's objection prior to the delayed Closing Date, Buyer and Seller agree to close within five (5) days of notice of such cure. In the event that title requirements are not cured within the time specified in this Paragraph, the Buyer may cancel the Contract and receive a refund of Earnest Money, and

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3) Buyer agrees to accept title subject to: (i) utility easements serving the Property, (ii) building and use restrictions of record, (iii) set back and building lines, (iv) zoning regulations, and (v) reserved and severed mineral rights, which shall not be considered objections for requirements of Title.

F. Upon Closing, any existing Abstract(s) of Title, owned by Seller, shall become the property of Buyer.

**11. TAXES, ASSESSMENTS AND PRORATIONS:**

A. The following items shall be prorated to include the date of Closing: (i) General ad valorem taxes for the current calendar year, if certified. However, if the amount of such taxes has not been fixed, the proration shall be based upon the rate of levy for the previous calendar year and the most current assessed value available at the time of Closing; and (ii) Homeowner's Association assessments and dues, if any, based on most recent assessments.

B. The following items shall be paid by Seller at Closing: (i) All special assessments against the Property (matured or not matured), whether or not payable in installments; (ii) Documentary Stamps; (iii) all taxes other than general ad valorem taxes which are or may become a lien against the Property; (iv) any labor, materials, or other expenses related to the Property, incurred prior to Closing which is or may become a lien against the Property.

C. At Closing all leases, if any, shall be assigned to Buyer and security deposits, if any, shall be transferred to Buyer. Prepaid rent and lease payments shall be prorated through the date of Closing.

D. If applicable, membership and meters in utility districts to include, but not limited to, water, sewer, ambulance, fire, garbage, shall be transferred at no cost to Buyer at Closing.

**12. RESIDENTIAL SERVICE AGREEMENT:**

**(CHECK ONE)**

A.  The Property shall not be covered by a Residential Service Agreement.

B.  Seller currently has a Residential Service Agreement in effect on the Property. Seller, at Seller's expense, shall transfer the agreement with one (1) year coverage to the Buyer at Closing.

C.  The Property shall be covered by a Residential Service Agreement selected by the Buyer at an approximate cost of \$ \_\_\_\_\_ . Seller agrees to pay \$ \_\_\_\_\_ and Buyer agrees to pay the balance.

The Seller and Buyer acknowledge that the real estate broker(s) may receive a service/administration fee for the referral and processing of the Residential Service Agreement.

Buyer acknowledges that a Residential Service Agreement does not replace/substitute Property inspection rights

**13. ADDITIONAL PROVISIONS:**

Seller to contribute \$2800.00 toward buyer's closing costs.

14. **MEDIATION:** Any dispute arising with respect to the Contract shall first be submitted to a dispute resolution mediation system servicing the area in which the Property is located. Any settlement agreement shall be binding. In the event an agreement is not reached, the parties may pursue legal remedies as provided by the Contract.

**15. BREACH AND FAILURE TO CLOSE:**

A. **UPON BREACH BY SELLER.** If the Buyer performs all of the obligations of Buyer, and if, within five (5) days after the date specified for Closing under Provision 3, Seller fails to convey the Title or fails to perform any other obligations of the Seller under this Contract, then Buyer shall be entitled to either cancel and terminate this Contract, return the abstract to Seller and receive a refund of the Earnest Money, or pursue any other remedy available at law or in equity, including specific performance.

B. **UPON BREACH BY BUYER.** If, after the Seller has performed Seller's obligation under this Contract, and if, within five (5) days after the date specified for Closing under Provision 3, the Buyer fails to provide funding, or to perform any other obligations of the Buyer under this Contract, then the Seller may, at Seller's option, cancel and terminate this Contract and retain all sums paid by the Buyer, but not to exceed 5% of the purchase price, as liquidated damages, or pursue any other remedy available at law or in equity, including specific performance.

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PROPERTY ADDRESS 12133 E 36th Street Tulsa, OK 74144

**16. INCURRED EXPENSES AND RELEASE OF EARNEST MONEY:**

**A. INCURRED EXPENSES.** Buyer and Seller agree that any expenses, incurred on their behalf, shall be paid by the party incurring such expenses and shall not be paid from Earnest Money.

**B. RELEASE OF EARNEST MONEY.** In the event a dispute arises prior to the release of Earnest Money held in escrow the escrow holder shall retain said Earnest Money until one of the following occur:

- 1) A written release is executed by Buyer and Seller agreeing to its disbursement;
- 2) Agreement of disbursement is reached through Mediation;
- 3) Interpleader or legal action is filed, at which time the Earnest Money shall be deposited with the Court Clerk; or
- 4) The passage of thirty (30) days from the date of final termination of the Contract has occurred and options 1), 2) or 3) above have not been exercised; Broker escrow holder, at Broker's discretion, may disburse Earnest Money. Such disbursement may be made only after fifteen (15) days written notice to Buyer and Seller at their last known address stating the escrow holder's proposed disbursement.

**17. DELIVERY OF ACCEPTANCE OF OFFER OR COUNTEROFFER:** The Buyer and Seller authorize their respective Brokers, if applicable, to receive delivery of accepted offer or counteroffer.

**18. EXECUTION BY PARTIES:**

**AGREED TO BY BUYER:**

On This Date 10-31-09

Marlynn Moss  
Buyer's Printed Name

Marlynn Moss  
Buyer's Signature

Jacob Mitchell  
Buyer's Printed Name

[Signature]  
Buyer's Signature

**AGREED TO BY SELLER:**

On This Date \_\_\_\_\_

\_\_\_\_\_  
Seller's Printed Name

\_\_\_\_\_  
Seller's Signature

\_\_\_\_\_  
Seller's Printed Name

\_\_\_\_\_  
Seller's Signature

**TERMINATION OF OFFER.** The above Offer shall automatically terminate on \_\_\_\_\_ at 5.00 p.m., unless withdrawn prior to acceptance or termination.

**EARNEST MONEY RECEIPT AND INSTRUCTIONS**

Receipt of \$ 500.00  Check  Cash as Earnest Money Deposit, to be deposited in accordance with the terms and conditions of **PURCHASE PRICE, EARNEST MONEY, AND SOURCE OF FUNDS** Provision. Broker(s) acknowledges receipt of Earnest Money and Listing Broker, if applicable, shall deposit said funds in accordance with Provision 2 of this Contract. If deposited in an escrow account other than the Listing Broker, the Listing Broker, if applicable, shall provide a copy of receipt to the Selling Broker.

10/30/09 [Signature]  
Date Selling Broker/Associate Signature

Jane Hail  
(Print Name) Selling Broker/Associate

CB Select  
Company Name

501 S Cooper St 251-4142  
Address Phone

[Signature]  
Date Listing Broker/Associate Signature

Denise Donaldson  
(Print Name) Listing Broker/Associate

Greater Green Country Real Estate  
Company Name

5505 S. Munge Rd 918-436-7771  
Address Phone

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**OKLAHOMA REAL ESTATE COMMISSION**  
**Financing Supplemental Agreement to the Contract of Sale of Real Estate**  
**FHA INSURED LOAN**

This financing agreement attached to a certain Sale of Real Estate Contract (the "Contract") relating to the following described real estate, which street address is:

12133 E 36th St, Tulsa, OK 74146

Buyer acknowledges that all explanations, representations and disclosures relating to the terms and conditions of the loan(s) below are the responsibility of the Lender and not the Seller or Listing and Selling Brokers and its affiliated licensees. This financing agreement is made an integral part of the Contract. All provisions of the Contract shall remain in full force and effect.

1. **LOAN:** The Contract is contingent upon Buyer qualifying for an FHA Insured Loan in the amount of \$ 81,000.00 plus Mortgage Insurance Premium (MIP). If the Buyer is unable to secure financing, the Earnest Money shall be refunding to Buyer subject to appropriate written authorization from all parties to the Contract.

Within five (5) days from Time Reference Date, Buyer shall either:

- A. Make application for the described loan, or any other such loan Buyer deems acceptable, and proceed diligently to obtain such loan, or
- B. Give notice to the Seller that the loan terms are unacceptable, cancel the Contract by delivering written notice of cancellation to Seller and receive refund of Earnest Money.

C. **Buyer Instructions to Lender:** Buyer shall instruct lender to issue a written statement of loan approval (not final loan commitment) to Seller within 10 days (**10 days if left blank**) of the Time Reference Date regarding the following:

- 1) Review and Approval of Buyer's credit worthiness, income plus funds necessary to Close.
- 2) Confirmation that Buyer has paid initial processing fees.
- 3) Property appraisal, credit report and any other lender or FHA required inspections and/or tests have been ordered.
- 4) Loan approval is not subject to sale or closing of Buyer's current property unless stated elsewhere in this Contract.

If within the time specified above, a written statement of loan approval is not delivered to Seller, Seller may provide Buyer written notice of intent to cancel and terminate the Contract. Upon Seller delivering notice to Buyer of Seller's intent to cancel, the Contract shall become null and void upon the fourth day following delivery of notice. However, if Buyer delivers to Seller written statement of loan approval before the end of the fourth day, the Contract shall remain in full force and effect.

2. **FHA AMENDATORY CLAUSE:** It is expressly agreed that, notwithstanding any other provisions of the Contract and this Agreement, the Buyer shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of Earnest Money deposits or otherwise unless Lender has delivered to the Buyer a written statement issued by the Federal Housing Commission or Direct Endorsement Lender, setting forth the appraised value of the Property (excluding closing costs) of not less than \$ 82,000.00 which statement the Lender hereby agrees to deliver to the Buyer promptly after such appraised value statement is made available to the Lender. The Buyer shall, however, have the privilege and option of proceeding with the consummation of the Contract without mortgage the Department of Housing and Urban Development (HUD) will insure. HUD does not warrant the value or the condition of the Property. The Buyer should satisfy himself/herself that the price or condition of the Property is acceptable.

3. **FEES AT TIME OF LOAN APPLICATION AND CONFIRMATION:** In the event the loan terms are acceptable, Buyer shall pay initial loan fees including property appraisal, credit report and any other lender or FHA required inspection and/or test fees at the time of application. Buyer shall also instruct lender to immediately begin the loan approval process but may defer ordering property appraisal until Buyer completes Buyer's inspection process per Paragraph 7 of the Contract. If requested by Seller, Buyer shall provide Seller, or Seller's Broker, written confirmation(s) from Buyer's Lender that the property appraisal, credit report and any other lender or FHA required inspections and/or tests have been ordered.

This form was created by the Oklahoma Real Estate Contract Form Committee and approved by the Oklahoma Real Estate Commission.

UNEC FHA LOAN (1/2008)

Midwest Banker Select 62 Cedar Ridge Rd. Broken Arrow, OK 74011

Phone: (918) 361-6573

Fax:

Janie Hail

Produced with ZipForm™ by RE FormsNet, LLC 15070 Fifteen Mile Road, Fraser, Michigan 48026

www.zipform.com

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**4. BUYER'S FHA DOWN PAYMENT AND LOAN COSTS:**

- A. In addition to any other costs required by the Contract, except as provided in Paragraph 4B, Buyer shall pay at the time of Closing:
  - 1) Down payment (per FHA minimum investment requirements).
  - 2) FHA "allowable" closing costs in connection with the loan.
  - 3) Origination fee, if applicable.
  - 4) Prepaid first year's hazard insurance premium and flood insurance premium, if required.
  - 5) Prepaid tax and insurance escrow deposits as required by Lender.
  - 6) Prepaid interest beginning the day of Closing through the end of the month.

B. Regarding the Specific Loan Costs Referenced above, Seller agrees to pay at time of Closing, on behalf of the Buyer an amount not to exceed \$ 2800.00 which must be applied in the following order: prepaids, escrows, origination fee, and "allowable" closing costs.

C. In the event that Seller agrees to pay the Buyer's prepaid expenses and/or escrows, and Seller's current year's portion of the real estate ad valorem taxes are included in the total prepaid expenses on the settlement statement, then such taxes shall not also be paid by Seller as prorated in provision 11 of the Contract.

**5. COSTS FHA PROHIBITS BUYER PAYING ("NON-ALLOWABLES"):** In addition to any other charges or expenses required by the Contract, or this supplemental, Seller shall pay at time of Closing, an amount up to \$ \_\_\_\_\_ to be applied in the following order:

- A. Those costs in which FHA prohibits the Buyer from paying on an FHA loan (non-allowables) or as required by Lender or Title Company.
- B. Those FHA Lender Appraisal Requirements which FHA prohibits the Buyer from paying.
- C. If the total estimated cost to the Seller of such FHA costs exceeds the amount stated in this paragraph, Buyer and Seller shall have 5 days (5 days if blank) to agree on an arrangement, acceptable to FHA, regarding those costs in excess of the stated amount. If a written agreement is not reached within the time specified in this provision, this Contract is null and void and earnest money returned to Buyer.

6. **LOAN DISCOUNT POINTS:** Discount points, if applicable, not to exceed \_\_\_\_\_ % of the total loan amount, shall be paid \_\_\_\_\_ % by Seller and \_\_\_\_\_ % by Buyer.

7. **ADDITIONAL PROVISIONS:** none

Buyer's Initials MM

Seller's Initials \_\_\_\_\_

**FHA REAL ESTATE CERTIFICATION**

(To be signed by Buyer and Seller even if counteroffer is attached)

We, the undersigned Seller(s), Buyer(s) and Listing and Selling Real Estate Sales Associate(s) or Broker(s) involved in the sales transaction, each certify that the terms and conditions of the Sale of Real Estate Contract are, to the best of our knowledge, the entire agreement between the parties and that any other agreement(s), Counteroffers or addendum(s) entered into by any of these parties in connection with this real estate transaction is a part of, or attached to, the Contract of Sale of Real Estate

Buyer: Marlynn Moss Date 10/28/09 Seller: \_\_\_\_\_ Date \_\_\_\_\_  
 Buyer: Jacob Mitchell Date 10/28/09 Seller: \_\_\_\_\_ Date \_\_\_\_\_  
 Selling Broker: Jane Hill Date 10/28/09 Listing Broker: Barbara Firey-Pendleton Date \_\_\_\_\_

Note: Buyer is encouraged to obtain a home inspection and, if applicable, a Lead-Based Paint/Hazard Disclosure.

WELLS FARGO BANK, N.A.

02/03/2009

JACOB MITCHELL  
KARLYN D MOSS  
5020 S 67TH E AVE AZ  
TULSA, OK 74145

Re: You've Become a *PriorityBuyer*<sup>SM</sup>

**CONGRATULATIONS!**

I'm pleased to tell you that you've achieved *PriorityBuyer* status and have obtained a full preapproval instead of a simple prequalification.

With this *PriorityBuyer* letter, you can fine tune your home search with confidence and demonstrate your purchasing power. Real estate agents and builders often give "priority" to *PriorityBuyers* as they help them select a home - and your purchase offer is more likely to take priority position with a seller. Before you know it, you'll be closing, packing, and moving!

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Here are the details of your *PriorityBuyer* preapproval:

Loan Amount: \$ 83,460.00

Credit Approved On: 07/23/2009

Credit Approval Expires On: 11/20/2009

- Floating Election option  
 Price Range Protection

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As a reminder: the market rate, or market rate range, for the product and terms you selected were what we used to preapprove you for this loan amount. Some people choose our *Floating Election* option when they apply. This means that if interest rates go down, they can sometimes be approved for a larger loan amount. But the opposite is also true - their preapproved loan amount might need to be modified to a lower amount if rates rise. Also, their loan program may be modified or terminated without notice while they are floating. Other people select *Price Range Protection*. This means that, as long as they satisfy all loan requirements and close within the protected time period, their preapproved loan amount and loan program are secure. I have indicated above which option you chose. There are a few things that could change the loan amount we preapproved you for. If, for example, something in your current financial status or application information changes, or material facts appear that weren't previously known, or if you decide to change your loan terms, we might need to modify the loan amount or withdraw the preapproval.

**WHAT'S NEXT?**

You need to find a home or move ahead with the one you've got your eye on. A preapproval is different from a final loan commitment so please take note of your *PriorityBuyer* Next Steps on the second page. These items - plus an acceptable property, appraisal and title report - will turn your preapproval into a final commitment and move your loan to closing. Remember, your *PriorityBuyer* preapproval is good until **11/20/2009**. We will be able to complete the processing of your application when we receive all the requested information, so please provide it as soon as possible.

**GET MOVING!**

I enjoy the peace of mind knowing the loan amount available to you while you choose your new home. I am privileged to be assisting you with your home purchase. I'll be in touch with you soon to review the next steps. Please feel free to contact me at any time with questions.

Sincerely,

KAROL CROWLEY  
918-278-1220

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