

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In Re:

Case No: 17-40376

Boyle Jr., Eugene H.

Chapter 11

Debtor.

Hon. Mark A. Randon

**DEBTOR’S MOTION TO APPROVE SALE, FREE AND CLEAR OF ANY INTERESTS,
OF 737 LAKE SHORE ROAD, GROSSE POINTE SHORES, MICHIGAN**

Debtor Eugene H. Boyle Jr., the chapter 11 debtor-in-possession (the “Debtor”), in the above-captioned bankruptcy case, by and through his counsel, files this motion (the “Motion”) pursuant to sections 105(a), 1107(a), and 363(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules of Bankruptcy Procedure for the Eastern District of Michigan (“Local Rules”) 6004-1 and 9014-1, for the entry of an order attached hereto as **Exhibit 1** (the “Order”):

Jurisdiction

1. This Court has jurisdiction of the matter pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are 11 U.S.C. § 105(a) and 363, Federal Rules of Bankruptcy Procedure 2002 and 6004, and Local Rule of Bankruptcy Procedure for the Eastern District of Michigan (“Local Rules”) 6004-1.

Background

4. The above matter was commenced by the voluntary Chapter 11 petition filed by Eugene H. Boyle Jr. (the “Debtor”) on January 12, 2017, (the “Petition Date”).

5. On January 26, 2017, the Debtor filed his *Statement of Financial Affairs and Schedules A through J* [Docket No. 16].

6. In Schedule A, the Debtor listed his interests in real property. Included in Schedule A is a property located at 737 Lake Shore Rd., Grosse Pointe Shores, Michigan (the “Real Property”).

7. The Schedules indicate that the Real Property is valued at \$975,000.00. Upon information and belief, First State Bank (the “Bank”) holds a secured claim of \$490,000.00 on the Real Property.

8. Additionally, Babak and Sara Seidarabi (the “Seidarabis”) hold a secured claim of \$125,000.00 on the Real Property.

9. The Village of Grosse Pointe Shores (“GPS”) holds a tax lien on the Real Property amounting to approximately \$65,000.00. However, the Debtor is only liable for half of the lien, amounting to approximately \$32,500.00. In addition to unpaid taxes, the Debtor and Mrs. Boyle owe \$3,600 in unpaid water bills.

10. The Real Property is held in joint tenancy by the Debtor and his ex-wife, Catherine Metry Boyle (“Mrs. Boyle”). The Debtor holds equity in the Real Property of approximately \$97,500.00.

11. On August 11, 2016, a “Judgment of Divorce,” attached hereto as **Exhibit 5**, was entered in *Eugene H. Boyle, Jr. v. Catherine Metry Boyle*, Case No. 14-109836-DM, pending in Wayne County Circuit Court, Judge Martha M. Snow presiding (the “Divorce Matter”).

12. Pursuant to the Judgment of Divorce, upon the sale of the Real Property, First State Bank and the Seidarabis are to be paid first from the sale of the Real Property. Judgment of Divorce, p. 8. Thereafter, the proceeds are to be divided equally between the Debtor and Mrs. Boyle. *Id.* According to the Judgment of Divorce, the Debtor is required to pay certain unpaid property taxes and the water bill.

13. However, the Debtor is appealing the Judgment of Divorce. *Eugene H. Boyle Jr., v. Catherine Metry Boyle*, Docket No. 33456, pending in the State of Michigan Court of Appeals (the “Appeal”).

14. Further, consistent with the Appeal, the Debtor plans to file an objection to any and all claims of Mrs. Boyle as set forth in Schedule E/F (the “Objection to Claims”). *See* Claim Nos. 4.7-4.9.

15. On January 25, 2017, Jeffery P. Torrice (the “Buyer”) offered to purchase the Real Property for \$975,000.00, and the Debtor has agreed to sell the Real Property (the “Sale”), subject to this Court’s approval. The Debtor has signed a purchase agreement, which was made contingent on court approval. (A copy of the Purchase Agreement is attached as **Exhibit 2** (the “Purchase Agreement”).

16. In the event the Debtor is able to obtain a higher offer or an offer that is more beneficial to the estate after the filing of this Motion, the Debtor will execute a purchase agreement with the higher offeror. There will not be a “break-up fee” paid to the purchaser identified on the Purchase Agreement.

17. The sale will result in payment in full of all liens against the Debtor on the Real Property. Specifically the Bank, the Seidarabis, and GPS (the “Lienholders”) will be paid in full.

18. The Real Property will be sold “as is” by warranty deed as set forth in the Purchase Agreement. Purchase Agreement, ¶ 3.

Relief Requested

19. The Debtor respectfully requests that this Court enter an order, substantially in the form attached as **Exhibit 1**, authorizing the sale of the Real Property, pursuant to the terms stated in the Purchase Agreement, and allow for the sale to be free and clear of all liens, claims, and encumbrances pursuant to section 363 of the Bankruptcy Code.

20. The Debtor also requests that the Court authorize him to pay for, at closing, any of the following: transfer taxes, title work, unpaid property taxes, unpaid special assessments, unpaid water bills, normal closing costs, and any costs associated with maintaining the property, including, without limitation, lawn-cutting, property insurance, landscaping, repairs, re-keying, and clean-up.

21. The Debtor requests that the Court order that the net proceeds from the Sale be held in escrow pending resolution of the disputes between the Debtor and Mrs. Boyle.

22. Finally, the Debtor requests that the Court grant him the authority to execute any and all documents and agreements, and to do anything necessary or appropriate to implement and effectuate the sale.

Basis for Relief

A. The Sale of the Real Property Satisfies the Requirements of Section 363(f) of the Bankruptcy Code and Should be Sold Free and Clear of any Interests.

23. Section 1107(a) of the Bankruptcy Code provides that a debtor in possession shall have all the rights and powers, and shall perform all the function and duties, of a trustee serving in a case under this chapter. Thus, section 363 applies to debtors in possession.

24. Section 363 of the Bankruptcy Code provides that after notice and a hearing, a Debtor may sell property of the estate.

25. Under section 363(f), the Debtor may sell property of the estate free and clear of any interest if any of the following requirements are met:

- i. Such a sale is permitted under applicable nonbankruptcy law;
- ii. The party that is asserting the interest consents to the sale;
- iii. The interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- iv. The property interest is subject to a bona-fide dispute; or
- v. The party asserting the property interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest.

26. Again, the Court may approve a sale free and clear of all property interests, so long as one of the requirements of section 363(f) is satisfied. *See e.g., In re Elliot*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988).

27. The Debtor believes that the proposed sale meets the requirements for approval under section 363(f). In particular, as required by section 363(f)(3), the Lienholders will be paid in full from the sale proceeds.

28. While it is true that the Bankruptcy Code limits the conditions under which an interest can be extinguished by a bankruptcy sale, one of those conditions, as just indicated, is the consent of the interest holder under section 363(f)(2). The Lienholders have not objected to the Sale.

29. While affirmative consent obviously represents consent, lack of objection also counts as consent if notice has been given. *See Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002). In compliance with Federal Rule of Bankruptcy Procedure 9014(b) and 7004(b)(3), the Debtor will serve the Motion on all potential secured creditors. Further, all other known creditors, of any kind, will receive notice of the Motion, attached as **Exhibit 3**. If no

creditor objects, then the Real Property may be sold free and clear of all interests, with all interests, unless otherwise provided, treated as unsecured creditors.

B. Sale of the Property is Proposed in “Good Faith” Under Section 363(m) of the Bankruptcy Code.

30. The Debtor additionally requests that the Court find that the purchaser identified in the Purchase Agreement is entitled to the protections provided by section 363(m) of the Bankruptcy Code in connection with the sale of the Real Property. Section 363(m) of the Bankruptcy Code provides, in pertinent part: “The reversal or modification on appeal of an authorization under subsection (b) ... of this section of a sale... of property does not affect the validity of a sale ... under such authorization to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.” 11 U.S.C. § 363(m).

31. Section 363(m) thus protects the purchaser of assets sold pursuant to section 363 from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal.

32. As required by section 363(m) of the Bankruptcy Code, both the Debtor and the purchaser will have acted in good faith in purchasing the Real Property. There is no evidence of fraud or collusion in the terms of the Purchase Agreement. All negotiations were conducted at arm’s length, and in good faith. The Purchase Agreement is designed to ensure that no party is able to exert undue influence over the process. Furthermore, the Purchase Agreement is designed to prevent the Debtor or the purchaser from engaging in any conduct that would cause or permit the sale to be avoided, or costs or damages to be imposed under section 363(n) of the Bankruptcy Code.

33. Under the circumstances, the purchaser should be afforded the benefits and protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser.

C. Relief from the Fourteen Day Waiting Period Under Bankruptcy Rule 6004(h) is Appropriate.

34. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property ... is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” The Debtor requests that the Order be effective immediately by providing that the fourteen (14) day stay under Bankruptcy Rule 6004(h) is waived.

35. The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rule 6004(h) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen (14) day stay period, the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” *In re Borders Group, Inc.*, 453 B.R. 477, 486 (Bankr. S.D.N.Y. 2011) (citing 10 COLLIER ON BANKRUPTCY ¶ 6004.11). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

36. The Debtor hereby requests that the Court waive the fourteen (14) day stay period under Bankruptcy Rules 6004(h).

37. All creditors and parties in interest will receive notice of the Motion and will be provided with an opportunity to be heard. The Debtor submits that such notice is adequate for entry of the order approving this Motion and waiving the fourteen (14) day waiting period under Bankruptcy Rule 6004(h).

CONCLUSION

WHEREFORE, the Debtor believes that a sale of the Real Property on the terms outlined in this Motion is in the best interest of the bankruptcy estate. Therefore, the Debtor requests that this Court enter the attached order, which approves the proposed sale on the terms outlined in this Motion.

Dated: February 10, 2017

Respectfully Submitted,

THE DRAGICH LAW FIRM PLLC

By: /s/ David G. Dragich

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Counsel to the Debtor in Possession, Eugene H. Boyle Jr.

Exhibit 2

9. **POSSESSION:** Seller shall deliver possession to Buyer at closing or by 12 noon within 0 days after closing. From day of closing through date of vacating property as agreed, SELLER SHALL PAY the sum of \$ 0.00 per day beginning on the day of closing and ending on the date the property is vacated. If keys are delivered after noon, the Seller will be charged for that day. The Broker shall retain from amount due Seller the sum of \$ 0.00 (1½ times total days, times daily charge) as security for said occupancy. The Broker shall disburse to Buyer(s) amount due to them and Seller shall be entitled any unused portion of occupancy charged as determined by date property is vacated and keys surrendered to Broker. Buyer acknowledges that the total occupancy time is not guaranteed, unless otherwise mutually agreed. Seller is legally obligated to deliver possession no later than time limits specified herein. If Seller FAILS to deliver possession as specified herein, Seller shall be liable for TWICE the daily occupancy fee per day and may be liable for cost of eviction, attorney fees, damages and other costs incurred by Buyer in obtaining possession and collecting any amount due. Broker has no obligation, implied or otherwise, for seeing that premises are vacated on date specified nor for condition of premises.
10. **INSPECTION OF PROPERTY:** This Agreement is contingent upon the Buyer examining the property for physical condition including, but not limited to, remaining appliances, heating, ventilation and A/C systems, plumbing, sewer/septic, water/well/pool, electrical systems, roof, structural components, foundation, fireplace(s), chimney(s), drainage conditions or evidence of excessive moisture, insect infestation, excess levels of radon, toxic wastes, hazardous or undesirable substances, the "environmental condition" of the property and the location of the property within a flood zone area, or any other condition or circumstance which may adversely affect the property. This inspection may be conducted by a contractor of the Buyer's own choice and expense, and shall occur within SEVEN calendar days after Buyer's receipt of an accepted copy of this Agreement. If the Buyer is satisfied with the results of all said inspections, this contingency shall be considered waived at the end of the time period stated above and all terms and conditions of the agreement shall be binding. If the Buyer is dissatisfied with the results of any of the inspections, he shall do one or a combination of the following within the contingency time period stated above:
1. Present to the Seller an addendum for mutual agreement that cites a list of repairs and/or conditions to be remedied prior to closing.
 2. Present to the Seller an addendum for mutual agreement with a credit to be applied against the purchase price, and/or a price reduction, in full satisfaction of the inspection contingency.
 3. In the event Seller and Buyer are unable to reach an agreement to Buyer's proposals made under #1 or #2 above, Buyer shall either elect to proceed with the transaction by waiving this contingency in writing, or declare this agreement null and void, by election of #4 below, failing either of which this agreement shall automatically become null and void at the end of the contingency period and all earnest money shall be returned to Buyer.
 4. Present the Seller with a Notice of Dissatisfaction with the home inspection which shall render this agreement null and void, in which case the Seller agrees to authorize the Broker to return all earnest money to the Buyer.

BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS THEREON IS APPROXIMATE. IF SQUARE FOOTAGE IS A MATERIAL MATTER TO THE BUYER, IT MUST BE VERIFIED BY BUYER DURING THE INSPECTION PERIOD.

11. **TRANSACTION MANAGEMENT FEE:** Buyer agrees to pay Sine & Monaghan Realtors, Real Living \$245 at the closing for retaining all records pertaining to the sale of the property for a period of seven (7) years as required by applicable federal and state laws and regulation.
12. **BUYER ACCEPTANCE OF CONDITION:** Subject to Buyer's right to first inspect the property and make inquiry concerning the condition of the premises, the Buyer is fully aware he/she will be purchasing the same "AS IS". If Buyer elects to close, notwithstanding reported conditions of any inspection report, Buyer shall be deemed to have accepted property in its "AS IS" condition as of the date of closing and holds Broker(s) involved in this transaction harmless for any future problems. Buyer hereby knowingly waives, releases and relinquishes any and all claims or causes of action against Brokers, their officers, directors, employees and/or it's agents for the condition of property.
13. **LIABILITY OF BUYER FOR DAMAGE:** Buyer shall be solely responsible for any and all damage to property as a result of any and all inspection(s) of property authorized by or conducted by Buyer. Buyer shall pay for any and all necessary repairs to restore property to its condition prior to inspection(s) or shall reimburse Seller for actual cost of such restoration.
14. **WELL AND SEPTIC SYSTEM INSPECTION:** If property is serviced by well or septic system, Seller shall provide, at Seller's expense, and deliver to the Buyer prior to closing, an inspection report by the county health department or other qualified inspector. Seller represents that the well water is potable and that the well and septic system, if any, are in good working order or as disclosed.
15. **ENCUMBRANCE:** Any existing encumbrance upon the premises which Seller is required to remove under this Agreement may be paid and discharged with the purchase money at the time of consummation of sale.
16. **OTHER MUNICIPALITY INSPECTIONS:** If a municipal inspection and/or certification of premises are required by local ordinance, Seller agrees to pay for said inspections. Seller agrees to complete any and all repairs required by municipality.
17. **HOME WARRANTY:** At closing, Seller agrees to purchase a Home Warranty for Buyer at a cost not to exceed \$ 0.00.
18. **SEWER AND WATER CHARGES:** Seller agrees to pay all sewer and water use charges to date of possession. Broker shall retain from amount due Seller at closing a minimum of \$ 200.00 for water and/or sewer charges. When final water bill is received and verified as paid, then any unused portion shall be returned to Seller. No water and/or sewer charges will be held on condominiums unless charges are individually paid.
19. **TITLE EVIDENCE AND SURVEY:** Seller agrees to order and deliver to Buyer, at Seller's expense, as soon as same may be prepared, a Commitment of Title Insurance Without Standard Exceptions issued by any title company licensed by the State of Michigan bearing date subsequent to final acceptance to this Agreement, in an amount not less than the purchase price herein, offering to insure the marketability of the title required to be conveyed by Seller. If a Commitment for a Policy of Title Insurance Without Standard Exceptions shall be delivered to and acceptable to Buyer, Seller shall pay for and deliver a Policy of Title Insurance Without Standard Exceptions provided hereof by such commitment guaranteeing title in condition required for performance of this Agreement. The Title Commitment shall be "MARKED UP" at closing and the final policy shall be issued to the insured with an effective date inclusive of the recording date of the deed. Buyer and Seller agree that Brokers shall receive copies of all checks and signed documents at closing. **SURVEY:** Buyer agrees to obtain and pay for a survey by a registered land surveyor, as required by lender or title company. If for any reason Buyer does not obtain a survey, the policy of Title insurance will be issued with standard exceptions and Buyer agrees to hold Broker and Sellers Harmless.

[A]

Buyer's Initials

*CLB [EHL]

Seller's Initials

This contract is for use by Realtor.com Subscribers. Use by any other party is illegal and voids this contract.

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Instant Forms

- 20. **TITLE OBJECTIONS:** Upon Commitment of Title Insurance being delivered to Buyer, as described above, any objection by Buyer to Seller's Title shall be: (a) based upon written opinion of Buyer's attorney that title is not in condition required for performance hereunder, and (b) made in writing identifying defects forming basis of the objection, which written opinion shall be delivered to Broker within (5) calendar days following Buyer's receipt of such commitment. Seller shall have 30 calendar days from date notified in writing of particular defects claimed, either (1) to remedy title, or (2) to obtain title insurance as required above. The consummation of sale as specified elsewhere herein shall be extended by the number of days necessary for Seller to have an acceptable title commitment revised and delivered to Buyer(s) from date Seller receives written notification of Title objections. If Seller in good faith is unable to render such title marketable, or unable to remedy title or obtain title insurance within time specified or any extensions thereof agreed in writing, at Buyer's option this Agreement may be either (1) consummated and Buyer will accept such title as Seller may convey in full satisfaction and accord, or, (2) declare in writing that the Agreement is null and void. Thereby all monies deposited hereunder, in the latter event, shall be returned to the Buyer, and Buyer and Seller are relieved from further obligations under this Agreement.
- 21. **PROPERTY TAXES:** Seller shall discharge all City, County, Township, Village and School taxes upon the premises which, at the date of closing as provided elsewhere herein, shall have become due and payable. At consummation of sale, any such taxes covering the current taxing period (i.e. the period in which the date of the closing shall fall) shall be adjusted between Seller and Buyer from the date upon which each of said taxes becomes due and payable and not the fiscal year of the taxing authority, and Buyer shall reimburse the Seller for such proportion thereof as the number of days from the date of closing to next date upon which said tax becomes due. Condominium and/or association dues/fees that can be a lien shall be adjusted in like manner. Parties hereto have agreed that the lien date for the purposes of the Purchase Agreement shall be the date said taxes are billed, due and payable. Buyer shall assume responsibility for taxes not yet due and payable. Buyer also acknowledges that the property taxes currently assessed on the property are subject to change and may increase significantly upon the sale of the property.
- 22. **PRINCIPAL RESIDENCE EXEMPTION:** Buyer and Seller are aware that they must rescind their Principal Residence Exemption on their present home (when applicable) and file for the exemption on their new home. Seller has not and will not rescind their exemption prior to closing. When purchasing a non-exempted or new construction home, Buyer must own, occupy and file necessary forms with the local assessor's office prior to June 1st and/or November 1st in order to claim the exemption for the following year. Buyer understands that taxes without the Principal Residence Exemption are significantly higher. Broker recommends buyer and Seller obtain specific information from the Municipality's Assessor. Buyer and Seller assume all responsibility and liability for filing of affidavits as to Principal Residence Exemptions and agree to release and hold Broker harmless from all such liability.
- 23. **SPECIAL ASSESSMENTS:** At the time of consummation, Seller shall pay in full and discharge all assessments confirmed by proper authority upon the land. Seller shall also pay in full capital equalization charges, voluntary liens, water/sewer charges, lateral fees, and any other charges confirmed by proper authority upon the land whether recorded or unrecorded. All assessments or other charges confirmed by proper authority after the date of consummation shall be the responsibility of the Buyer.
- 24. **ASSOCIATION ASSESSMENTS:** Assessments by condominium or homeowner associations shall be discharged in the same manner as special assessments. Association dues that can become a lien shall be paid by Seller (current dues shall be prorated). Any and all dues or assessments coming due after closing shall be paid by Buyer (see Condominium Addendum, if applicable).
- 25. **PRIVATE ROADS:** Seller represents that property IS NOT on a private road. If property is located on a private road, Seller shall provide Buyer with a separate document providing notice that private road is not required to be maintained by County Board of Road Commissioners (per M.C.L.A. 560.261 [P. A. 1967 No. 2887]).
- 26. **LOT SPLITS:** Seller confirms ALL available lot splits will be conveyed with the property and shall indicate such on deed.
- 27. **MAINTENANCE OF THE PROPERTY: BEFORE CLOSING:** Seller is responsible to keep property in like condition as of date of this Agreement, maintaining grounds and providing routine maintenance of heating/air conditioning, sewer, septic, wells, plumbing, electrical systems and any included appliances and equipment until property is vacated and keys are surrendered by Seller. Seller is responsible to keep all systems in working order until vacating, except for any conditions that may have been disclosed in Seller's Disclosure Statement or conditions discovered by Buyer as part of any inspections made by or on behalf of Buyer where Buyer accepted such conditions. In the event property herein has been winterized, it shall be the obligation and expense of Seller to de-winterize property prior to closing. Seller agrees to leave property broom-clean, free of debris and any personal property, at exchange of possession.
AFTER CLOSING: Buyer Seller is responsible to repair or replace any breakdown of the above mentioned systems, roof leaks or foundation leaks during the possession period. However, Seller is responsible for notifying the Buyer of any defects with these systems immediately upon discovery and the responsible party agrees to remedy the defect in a timely manner.
- 28. **UTILITIES:** Seller shall order final billings on all utilities (gas, electricity, etc.) as of the day of possession and Seller shall pay final billings. Seller shall not direct any utilities to be disconnected. Buyer agrees to inform all involved utility companies of ownership and to assume and pay all billings from day of taking possession.
- 29. **RISK OF LOSS:** If loss or damage to property occurs before closing for any reason including but not limited to fire, vandalism, flood, earthquake, or act of God, risk of loss shall be on Seller. If property is destroyed or substantially damaged before closing, at Buyer's option, this Agreement may become null and void.
- 30. **DEFAULT:** If the Buyer shall fail or refuse to perform the conditions of this Agreement after final acceptance, the earnest money deposit paid to date shall be forfeited as liquidated damages for non-performance, and this shall be Seller's sole remedy. In the event of default by Seller hereunder, the Buyer may, at Buyer's option, elect to specifically enforce the terms herein or demand, and be entitled to, a refund of the entire earnest money deposit in full termination of this Agreement, and this shall be Buyer's sole remedy.
- 31. **ADDENDUM OR ADDENDA:** Addendum or addenda (if any) attached hereto and made a part hereof. In the case of a conflict between the terms and provisions of an addendum and the form agreement to which the addendum is attached, then the provisions of the addendum shall control.
- 32. **FEES:** Buyer and Seller acknowledge that Broker may, if permitted by law, accept a fee or other consideration with regard to the placement of a loan or mortgage, title insurance, homeowner's and home warranty insurance, arising from this transaction and expressly consent as required by the provisions of Rules 321(1) and 321(2) promulgated under the Michigan Real Estate License Law and any applicable FHA, VA and RESPA guidelines.

[a]
Buyer's Initials

[SMB]
Seller's Initials

- 33. **FACSIMILE/ELECTRONIC AUTHORITY:** The parties agree that offers, acceptances and notices may be delivered by Facsimile (Fax)/electronic authority and shall be deemed valid and binding upon the parties provided, printed form, signatures and initials are legible. All dates and contingency periods shall begin on the date and time of the original fax/electronically delivered offer and/or acceptance, as the case may be.
- 34. **TIME IS OF THE ESSENCE:** Buyer and Seller understand that TIME IS OF THE ESSENCE and no extensions of said time limits are expected unless specifically mutually agreed to in writing.
- 35. **DISCLAIMER OF BROKER(S):** Brokers & Salespersons specifically disclaim any responsibility for condition of property or for performance of this Agreement by the parties. It is further understood and agreed neither Broker for Buyer nor Broker for Seller warrant the subject property's condition, nor do they assume responsibility for any representations made by Seller pertaining to condition of said property.
- 36. **FINAL WALK THROUGH PRIOR TO CLOSING:** Buyer reserves right to walk through property within 48 hours prior to closing to confirm all terms of Agreement have been met.
- 37. **RECOMMENDATION FOR LEGAL COUNSEL:** BROKER(S) RECOMMEND(S) THAT ALL PARTIES TO AGREEMENT RETAIN AN ATTORNEY TO PROTECT THEIR INTERESTS.
- 38. **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA):** If sales price exceeds \$300,000, parties to this Agreement shall be bound by (FIRPTA) requirements, and must complete addendum for (FIRPTA) by or at closing.
- 39. **ENTIRE AGREEMENT:** This agreement constitutes the entire agreement between Buyer and Seller and shall inure to the benefit of and bind the parties hereto jointly and severally and their respective heirs, legal representatives, successors, assigns, and third parties claiming under the contract between Buyer and Seller, or by virtue of contract between Buyer and Seller. All discussions, correspondence, proposals, negotiations and representations prior to the execution of Agreement shall be considered merged herein and of no further effect. Buyers and Seller acknowledge that they are not relying on any other written or verbal representations by each other or by Listing or Selling Brokers that are not explicitly set forth in the agreement or attached hereto.
- 40. **OTHER TERMS AND CONDITIONS:**
 - 1. There is no Certificate of Occupancy requirement in the Village of Grosse Pointe Shores.
 - 2. ~~As per paragraph 10, the purchaser will have a seven (7) day due diligence period to conduct a thorough inspection of the property at his expense which will begin upon his receipt of complete seller(s) signed purchase documents.~~ N/A
 - 3. Washer, dryer and all kitchen appliances will be included in the transaction with a value of zero (0\$) dollars.
 - 4. The (\$50,000.00) Fifty Thousand Dollar Earnest Money Deposit will be given to the selling broker to be deposited in their escrow account within 24 hours of an acceptance of offer by the seller(s).

BUYER SIGNATURE: Buyer hereby makes offer with terms and conditions contained herein. Buyer acknowledges receipt of a copy of this Agreement also acknowledges receipt of the Michigan Seller's Disclosure statement, the Lead-Based Paint Disclosure, and the booklet "Protect Your Family From Lead in Your Home."

WITNESS J. Mark Orr BUYER Jeffery P. Torrice
J. Mark Orr 1/25/2017 4:19:49 PM EST Jeffery P. Torrice 1/25/2017 4:16:36 PM EST
 DATE 1/25/2017 BUYER

SELLER ACCEPTANCE: Seller hereby agrees to the terms and conditions contained herein. Seller acknowledges receipt of a copy of Agreement. Seller further agrees that Listing Broker and Selling Broker listed on this page have procured this Agreement and have brought about this sale. The foregoing offer is accepted and the undersigned agree to sell the described premises on the terms stated. The earnest money deposit recited above and paid to Selling Broker shall be considered and used as earnest money and shall be held by the Selling Broker under the terms of this Agreement and according to regulation of the Department of Consumer and Industry Services. The undersigned agree on consummation of the sale, or if the sale is not consummated by reason of the failure, inability or refusal of the undersigned to perform the conditions of this Agreement, to pay Selling Broker and/or Listing Broker for services rendered, a total commission as set forth in the listing agreement for the sale of the property. If the deposit money is forfeited for non-performance by Buyer, one-half of such deposit, but not more than the amount specified as "commission" shall be paid to Selling and/or Listing Broker for such services rendered to be shared between them and the remainder paid to the Seller.

WITNESS Eugene H. Boyle SELLER Catherine M. Boyle
Eugene H. Boyle 1/25/2017 10:59:11 AM EST Catherine M. Boyle 1/25/2017 10:59:11 AM EST
 DATE 1/25/17 SELLER

BUYER ACKNOWLEDGMENT OF ACCEPTANCE: Buyer hereby acknowledges receipt of Seller's signed acceptance of to the terms and conditions contained herein Agreement.

WITNESS J. Mark Orr BUYER Jeffery P. Torrice
J. Mark Orr 1-26-17 Jeffery P. Torrice
 DATE 1-26-17 BUYER