

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: GUARDIANSHIP OF:

GUARDIANSHIP DIVISION

OLIVER BIVINS,

FILE NO: 502011GA000006XXXXSB

Incapacitated.

**ORDER ON MOTION FOR COURT APPROVAL OF SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

THIS CAUSE coming before the Court on the Motion for Court Approval of Settlement Agreement and Mutual Release, the Court having heard argument of counsel, and being otherwise fully advised, it is thereupon

ORDERED AND ADJUDGED as follows:


1. The Motion for Court Approval of Settlement Agreement and Mutual Release is

Granted

2.

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DONE AND ORDERED in Delray Beach, Palm Beach County, Florida on the 17 day of SEPT, 2013.

  
MARTIN H. COLIN  
Circuit Judge

Copies returned:

- Brian M. O'Connell, Esq., 515 N. Flagler Dr., 20th Floor, West Palm Beach, FL 33401
- Ronald Denman, Esq., 1000 Brickell Ave., Suite 600, Miami, FL 33131
- Ronda D. Gluck, Esq., 980 N. Federal Highway, #402, Boca Raton, FL 33432
- Donna P. Levine, Esq., 324 Datura St., #145, West Palm Beach, FL 33401
- Keith Stein, Esq., 405 Lexington Ave., 7th Floor, New York, NY 10174
- Mark N. Axinn, Esq., 845 Third Ave., New York, NY 10022
- Edward Kuhnel, 49 West Lake Stable Rd., Tuxedo Park, NY 10987
- Peter G. Goodman, Esq., 250 Park Avenue, Suite 1900, New York, NY 10177



## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (this "Agreement") is made this \_\_\_ day of July, 2013, by and among Curtis C. Rogers (the "Guardian"), as Guardian of the person and property of Oliver Bivins, Sr. ("Oliver Sr."), Oliver Bivins, in his individual capacity ("Oliver Jr."), Oliver Jr., as the Personal Representative of the Estate of Lorna Bivins (the "Estate"), and Beachton Tuxedo LLC ("BTLIC") (collectively, the "Parties").

WHEREAS, various disputes and litigations exist and are pending in the States of Florida and New York, by and among the Parties, including each of the cases described in Exhibit A annexed hereto (collectively, the "Cases"), which disputes and cases pertain to, *inter alia*, matters related to the guardianship of Oliver Sr. and certain of its properties, and matters related to the property of the Estate and the probate thereof, including without limitation, certain real estate owned by and/or asserted to be owned by Oliver, Sr. and the Estate in the States of Florida and New York, and in London, England;

WHEREAS, the Parties, without acknowledging the existence of any liability or wrongdoing, believe it is in their mutual interests to enter into this Agreement to resolve, settle and compromise the claims and counterclaims filed in the Cases and the certain other matters of dispute (the "Settlement"), in order to avoid the further expense and inconvenience of litigation pursuant to the terms set forth herein;

NOW THEREFORE, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. Each of the foregoing recitals is incorporated herein as if fully set forth below.
2. Court Approvals and Closing. The Guardian, Oliver Jr., and the Estate (collectively, the "Petitioners") hereby agree that, no later than ten (10) business days following the execution by all Parties of this Agreement, they will collectively and acting in good faith petition the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, Guardianship Division and Probate Division (the "Florida Court"), and within ten (10) business days of any Parties' written notice of any other court whose approval may be needed, the Petitioners will collectively and acting in good faith petition each other court whose approval of this Settlement may be required, for approval of this Settlement and the terms and conditions contained in this Agreement. Each of the actions and transactions set forth in this Agreement, with the exception of the payment of the Mortgage Debt as required by Section 3(F), shall be closed within ten (10) business days of the date upon which all such approvals have been received from the Florida Court and each such other court (the "Closing Date").
3. Property Transfers/Obligations Related to Transfers/Releases.
  - (A) 808 Lexington Avenue. The Estate, acting by and through Oliver Jr., as personal representative, or acting through his successor or agent or its other appropriate representative,

shall transfer to the Guardian, for the benefit of Oliver Sr., any and all of its right, title and interest in and to that certain parcel of real estate known as 808 Lexington Avenue, New York, New York, also known as Block 1397, Lot 16 on the Tax Map of New York County ("**808 Lexington**"), such that the Guardian shall, as a result of such transfer (the "**808 Conveyance**"), own 100% fee simple title to 808 Lexington. The 808 Conveyance shall be accomplished by a bargain and sale without covenants deed in substantially the form annexed hereto as **Exhibit B**. The Estate and Oliver Jr. hereby agree that neither the Estate nor Oliver Jr. will further encumber, or cause to be encumbered, 808 Lexington prior to the Closing Date with any lien or encumbrance unless such lien or encumbrance is permitted by the Guardian in writing, it being understood that (i) the lien of any unpaid real estate taxes and related charges and (ii) the mortgage described in subparagraph 3(F) below are hereby deemed to be permitted by the Guardian. The Estate shall immediately remedy any failure on its part to comply with the foregoing obligation. With respect to the 808 Conveyance, except as provided below: (i) the Guardian shall pay all New York State and New York City real estate transfer taxes associated with such transfer, (ii) there shall be no adjustment of real estate or related taxes, and (iii) the Guardian shall pay all recording and/or title insurance charges relating thereto. The Estate shall be responsible for satisfying the real estate taxes and related charges through May 8, 2013. The Estate and the Guardian shall each be responsible for half of the real estate taxes and related charges from May 9, 2013 through 11:59PM of the date immediately prior to the Closing Date. As of the Closing Date the Guardian shall be responsible for the real estate taxes and related charges. Any property tax payments for 808 Lexington that are past-due on the Closing Date shall be immediately paid in full (including any interest and/or penalties) to the New York City Department of Finance by the Guardian and the Estate, as apportioned. The Estate shall within ten (10) days of the Closing Date, (x) provide to the Guardian any and all documents relating to 808 Lexington, including but not limited to documents relating to the day to day management of 808 Lexington and documents related to any tenancy or leasehold interest, and (y) transfer to the Guardian any security deposit or other monies held with regard to, or on behalf of, any 808 Lexington tenant and any utility deposits.

(B) 330 Ocean Boulevard. The Estate, acting by and through Oliver Jr., as personal representative, or acting through his successor or agent or its other appropriate representative, shall transfer to the Guardian, for the benefit of Oliver Sr. (the "**330 OB Conveyance**"), any and all right, title and interest in and to that certain real estate known as Unit 5A, 330 Ocean Boulevard, Palm Beach, Florida ("**330 OB**"). Such transfer shall be evidenced by deed in such form as may be reasonably required by the Guardian in order to convey to the Guardian 100% of the Estate's interest in 330 OB. As a result of the 330 OB Conveyance, the Guardian shall own 100% fee simple title to 330 OB. The Estate and Oliver Jr. hereby agree that neither the Estate nor Oliver Jr. will further encumber, or cause to be encumbered, 330 OB prior to the Closing Date with any lien or encumbrance unless such lien or encumbrance is permitted by the Guardian in writing, it being understood that (i) the lien of any unpaid real estate taxes and related charges and (ii) any mortgage affecting 330 OB as of the date hereof are hereby deemed to be permitted by the Guardian. The Estate shall immediately remedy any failure on its part to comply with the foregoing obligation. With respect to the 330 OB Conveyance, except as provided below: (i) the Guardian shall pay all real estate transfer taxes associated with such transfer, (ii) there shall be no adjustment of real estate or related taxes, and (iii) the Guardian shall pay all recording and/or

title insurance charges relating thereto. The Guardian shall be responsible for satisfying the real estate taxes and related charges on 330 OB from and after the date hereof.

(C) 39 East 67th Street. The Guardian, acting on behalf of Oliver Sr., shall waive and/or relinquish, and hereby waives and relinquishes, in favor of the Estate, any and all right, title and interest in and to that certain real estate known as 39 E. 67th Street, New York, New York, also known as Block 1382, Lot 28 on the Tax Map of New York County ("**39E67**"). If deemed necessary by the Estate, and upon prior written request from the Estate to the Guardian, the Guardian shall evidence such transfer of Oliver Sr.'s interest, if any, in 39E67 to the Estate by delivery of a deed in such form as may be reasonably required by the Estate and/or by delivery of such other documents as requested by the Estate in order to convey marketable fee simple title to 39E67 to the Estate. The Guardian shall execute and deliver such deed to the Estate within five (5) business days following the giving of such written request. The Guardian and Oliver Sr. hereby agree that neither Guardian nor Oliver Sr. will further encumber, or cause to be encumbered, 39E67 prior to the Closing Date with any lien or encumbrance unless such lien or encumbrance is permitted by the Estate in writing, it being understood that (i) the lien of any unpaid real estate taxes and related charges and (ii) the mortgage affecting 39E67 as of the date hereof are hereby deemed to be permitted by the Estate. The Guardian shall immediately remedy any failure on its part to comply with the foregoing obligation. The Estate shall pay all transfer taxes, title charges and recording fees associated with such transfer. The Estate shall be liable for all expenses, maintenance costs and any other liabilities associated with 39E67.

(D) 82 Portland Place. The Guardian, acting on behalf of Oliver Sr., shall transfer and/or relinquish, and hereby waives and relinquishes, to the Estate, any and all right, title and interest in and to the leasehold interest in that certain residential apartment known as Flat V, 82 Portland Place, London, England ("**82 Portland**"). If deemed necessary by the Estate, and upon prior written request from the Estate to the Guardian, the Guardian shall evidence such transfer of Oliver Sr.'s interest, if any, in 82 Portland to the Estate by delivery of such instruments in such forms as may be reasonably required by the Estate. The Guardian shall execute and deliver such instruments to the Estate within five (5) business days following the giving of such written request. The Guardian and Oliver Sr. hereby agree that neither the Guardian nor Oliver Sr. will encumber 82 Portland prior to the Closing Date with any lien or encumbrance unless such lien or encumbrance is permitted by the Estate in writing, it being understood that (i) the lien of any unpaid real estate taxes and related charges, (ii) the existing ground lease, and (iii) any mortgage affecting 82 Portland as of the date hereof are hereby deemed to be permitted by the Estate. The Guardian shall immediately remedy any failure on its part to comply with the foregoing obligation. The Estate shall pay all taxes associated with such transfer. The Estate shall be liable for all expenses, maintenance costs and any other liabilities associated with 82 Portland.

(E) Cash Payment. The Guardian, acting on behalf of Oliver Sr., will pay to the Estate the amount of \$150,000 in cash, which payment shall be made to the IOLTA account of Levine & Susaneck, P.A. Such payment will be made by the Guardian within thirty (30) days of the Closing Date or upon the sale of 808 Lexington, whichever is first in time.

(F) Mortgage on 808 Lexington. As of the Closing Date, the Guardian on behalf of Oliver Sr., shall become the sole obligor of those certain mortgage notes (the “808 Notes”) and all amounts due and owing thereunder (including but not limited to all principal, accrued interest, fees and expenses, including legal fees and disbursements (the “Mortgage Debt”) that are secured by, among other things, a consolidation, extension, and modification agreement dated November 19, 2001, and those certain mortgages in the aggregate principal sum of \$850,000 that create a lien on 808 Lexington (the “808 Mortgages”). The 808 Notes and 808 Mortgages are held by BTLLC pursuant to those certain assignment documents dated October 5, 2012 made by Sovereign Bank, N.A. f/k/a Sovereign Bank, successor-by-merger to Independence Community Bank, as Assignor, to Beachton Tuxedo LLC, as Assignee, including that certain Assignment of Mortgage (the “Assignment”) recorded in the Office of the City Register of New York County on October 31, 2012 as CRFN 2012000429258 (the 808 Notes, the 808 Mortgages, and the Assignment are collectively referred to herein as, the “Mortgage Loan”). The Guardian shall pay the Mortgage Debt in full, on or before August 31, 2013 (the “Forbearance Expiration Date”), it being understood, agreed, and acknowledged by the Parties that BTLLC or its predecessor(s) previously accelerated the entire principal amount of the Mortgage Loan; provided, however, that to the extent the amount of such total payment owing on the Mortgage Debt exceeds \$465,000 as of June 30, 2013, such excess amount shall be subtracted from the \$150,000 due and payable under (E) above (but shall not be deducted from the Mortgage Debt payable by the Guardian to BTLLC). All interest on the Mortgage Debt accruing after June 30, 2013, and on or before the date the Mortgage Debt is paid in full, shall be payable 50% by the Estate and 50% by the Guardian. Except in the event of a default hereunder by the Guardian, the Estate, or Oliver Jr., BTLLC hereby agrees to continue to forebear from taking action based on the failure to make payments as required under the Mortgage Loan, including foreclosure (the “Forbearance”), until the Forbearance Expiration Date. Notwithstanding anything contained in this Agreement to the contrary (other than the Forbearance), the terms of the 808 Note and the 808 Mortgage shall remain in full-force and effect, and BTLLC shall have all the rights and remedies contained in the documents evidencing the Mortgage Loan, until such time as the Mortgage Debt is paid in full. The Parties agree to execute a stand-alone mortgage assumption agreement (and accompanying affidavits) for recording with the New York County Clerk, in a form reasonably acceptable to the parties, to memorialize the Guardian’s assumption of mortgagor’s obligations under the Mortgage Loan.

(G) Attorneys Fees and Costs. The Parties acknowledge and agree that there are attorneys fees and costs due Ciklin Lubitz Martens & O’Connell (“Ciklin Lubitz”) and Bill T. Smith, P.A. pursuant to the fee agreement approved by the Florida Court on November 30, 2012 and the positive result or recovery attained by this Agreement. The Parties further acknowledge and agree that such attorneys’ fees and costs shall be satisfied from 808 Lexington and 330 OB in accordance with the Compromised Settlement Agreement approved by the Texas Court on March 13, 2013 and the Florida Court on April 1, 2013.

(H) Guardianship of Lorna Bivins. Ciklin Lubitz is holding \$41,973.03 in its Trust account. The Parties agree that the funds shall be utilized to partially satisfy compensation obligations incurred in the Guardianship of Lorna Bivins, Case No. 502011GA000007XXXXSB. From such funds the following payments shall be made: Steve Kelly, Legal Management Services, Inc. in the amount of \$6,500; Ciklin Lubitz Marten’s & O’Connell in the amount

\$11,000.00; Hark Yon et al in the amount of \$22,473.03; Lavalley, Brown & Ronan in the amount of \$2,000. The Parties acknowledge the above payments are being made as "partial" payments.

(I) Stipulation and Dismissal. On the Closing Date, the Parties will collectively (i) execute all stipulations of dismissal and other pleadings necessary and appropriate to voluntarily dismiss, with prejudice, all of the Cases (described on Exhibit A attached hereto) and any other claims by or among any of the Parties against one another, including without limitation all appeals, and as otherwise related to the foregoing described properties and ownership matters, excepting only the excluded claims as described on Exhibit A; (ii) file with the appropriate courts all such stipulations of dismissal and other documents and pleadings required to effectuate such dismissals, and (iii) take all steps reasonably necessary to effectuate all of the foregoing as soon as reasonably practicable.

(J) Releases.

(i) Subject to the performance in full by each of (a) Oliver Jr., acting individually and as personal representative on behalf of the Estate, and (b) BTLLC, of their respective promises and covenants herein, the failure of which shall void this paragraph (J)(i), the Guardian, acting on behalf of Oliver Sr. and each and all of Oliver, Sr.'s past, present and future heirs, successors, predecessors, assigns, advisors, attorneys, representatives and agents (collectively including the Guardian, the "Oliver Sr. Persons"), hereby release, acquit, and forever discharge Oliver Jr., individually, and each and all of his respective past and present heirs, successors, predecessors, assigns, advisors, attorneys, representatives and agents (collectively including Oliver Jr., the "Oliver Jr. Persons"), the Estate and each and all of its respective past, present and future heirs, successors, predecessors, assigns, advisors, attorneys, representatives and agents (collectively including the Estate, the "Estate Persons"), and BTLLC and each and all of its respective past, present and future heirs, successors, predecessors, assigns, advisors, attorneys, representatives and agents (collectively including BTLLC, the "BTLLC Persons"), from any and all claims, counterclaims, demands, causes of actions, liabilities, contracts, agreements, promises, obligations or defenses of any kind whatsoever, whether known or unknown, related to or arising out of the matters described herein and in the Cases, which any of the Oliver Sr. Persons have or may have against any or all of the Oliver Jr. Persons, the Estate Persons, the BTLLC Persons, occurring from the beginning of the world to the date of this Agreement, and the Oliver Sr. Persons further agree that this Agreement may be pleaded and shall serve as a full defense to any action, suit or other proceeding covered by the terms of this Agreement which is or may be initiated, prosecuted or maintained, it being agreed and understood, however, that notwithstanding the foregoing, the obligations of this Agreement remain in full force and effect as an agreement of the Parties and as an Order of the Florida Court upon the Florida Court's approval hereof.

(ii) Subject to the performance in full by each of (a) the Guardian, acting on behalf of Oliver Sr., (b) the Estate, and (c) BTLLC, of their respective promises and covenants herein, the failure of which shall void this paragraph (J)(ii), the Oliver Jr. Persons hereby release, acquit, and forever discharge the Oliver Sr. Persons, the Estate Persons, and the BTLLC Persons, from any and all claims, counterclaims, demands, causes of actions, liabilities, contracts, agreements, promises, obligations or defenses of any kind whatsoever, whether known or unknown, related to or arising out of the matters described herein and in the Cases, which any of

the Oliver Jr. Persons have or may have against any or all of the Oliver Sr. Persons, the Estate Persons, or the BTLLC Persons, occurring from the beginning of the world to the date of this Agreement, and the Oliver Jr. Persons further agree that this Agreement may be pleaded and shall serve as a full defense to any action, suit or other proceeding covered by the terms of this Agreement which is or may be initiated, prosecuted or maintained, it being agreed and understood, however, that notwithstanding the foregoing, the obligations of this Agreement remain in full force and effect as an agreement of the Parties and as an Order of the Florida Court upon the Florida Court's approval hereof.

(iii) Subject to the performance in full by each of (a) the Guardian, acting on behalf of Oliver Sr., (b) Oliver Jr., acting individually, and (c) BTLLC, of their respective promises and covenants herein, the failure of which shall void this paragraph (J)(iii), the Estate Persons hereby release, acquit, and forever discharge the Oliver Sr. Persons, the Oliver Jr. Persons, and the BTLLC Persons, from any and all claims, counterclaims, demands, causes of actions, liabilities, contracts, agreements, promises, obligations or defenses of any kind whatsoever, whether known or unknown, related to or arising out of the matters described herein and in the Cases, which any of the Estate Persons have or may have against any or all of the Oliver Sr. Persons, the Oliver Jr. Persons, or the BTLLC Persons, occurring from the beginning of the world to the date of this Agreement, and the Estate Persons further agree that this Agreement may be pleaded and shall serve as a full defense to any action, suit or other proceeding covered by the terms of this Agreement which is or may be initiated, prosecuted or maintained, it being agreed and understood, however, that notwithstanding the foregoing, the obligations of this Agreement remain in full force and effect as an agreement of the Parties and as an Order of the Florida Court upon the Florida Court's approval hereof.

(iv) Subject to the performance in full by each of (a) the Guardian, acting on behalf of Oliver Sr., (b) Oliver Jr., acting individually, and (c) Oliver Jr., acting on behalf of the Estate, of their respective promises and covenants herein, the failure of which shall void this paragraph (J)(iv), the BTLLC Persons, hereby release, acquit, and forever discharge the Oliver Sr. Persons from any and all claims, counterclaims, demands, causes of actions, liabilities, contracts, agreements, promises, obligations or defenses of any kind whatsoever, whether known or unknown, related to or arising out of the matters described herein and in the Cases, which any of the BTLLC Persons have or may have against the Oliver Sr. Persons occurring from the beginning of the world to the date of this Agreement, and the BTLLC Persons further agree that this Agreement may be pleaded and shall serve as a full defense to any action, suit or other proceeding covered by the terms of this Agreement which is or may be initiated, prosecuted or maintained, it being agreed and understood, however, that notwithstanding the foregoing, the obligations of this Agreement remain in full force and effect as an agreement of the Parties.

(v) Nothing in any of the foregoing releases shall be construed to release any of the Parties from their obligations as set forth in this Agreement or shall release any claims specifically excluded on Exhibit A.

4. Enforcement of Obligations. The Parties understand and agree that notwithstanding any contrary terms in this Agreement, in the event any party fails to comply with any of the party's obligations as set forth in Sections 2 and 3 of this Agreement, the party to whom the obligation is owed shall have the right to enforce the terms set forth therein, and the legal fees and costs

incurred by the aggrieved party in enforcing such terms shall be paid by the Party found to be in breach of such terms.

5. No Admission of Liability. The Parties understand and agree that this Agreement is only a compromise in settlement of disputed claims and matters and shall not be construed as an admission of liability or wrongdoing by any party.

6. Waiver of Interim and Final Report. Oliver Jr. hereby waives any and all objections to any interim or final report prepared or to be prepared and submitted by the Guardian to the Florida Court, including without limitation any accounting, plan, discharge, compensation and expenses of the Guardian, attorneys fees and costs. The Guardian hereby waives any and all objections to any interim or final report prepared or to be prepared and submitted by Oliver Jr. as the Personal Representative of the Estate to the Florida Court, including without limitation any accounting, plan, discharge, compensation and expenses of the Personal Representative, attorneys fees and costs.

7. Continued Guardianship. The Parties hereby agree that none shall object, in any manner, to Curtis C. Rogers' continued service as the Guardian at least until the consummation in full of this Settlement or the appointment of the Successor Guardian as contemplated in the Compromised Settlement Agreement, whichever occurs first.

8. Authority. Each Party executing this Agreement hereby represents and warrants that it has full power and authority to enter into this Agreement. Each individual executing this Agreement on behalf of an entity Party hereby represents and warrants that he or she has the full power and authority to so execute this Agreement.

9. No Assignment. Each Party represents and warrants that it is the lawful owner of all claims being released by such Party and has not assigned any released claim or portions thereof to any other person or entity. In the event that a Party shall have assigned, sold, transferred, or otherwise disposed of any claim or other matter herein released, such Party shall hold harmless and indemnify the other Parties to this Agreement from and against any loss, cost, claim or expense, including but not limited to all costs related to the defense of any action, including attorneys' fees, based upon, arising from, or incurred as a result of any such claim or matter.

10. Confidentiality. The terms of this Agreement shall remain confidential, and none of the Parties shall disclose such terms to any third party (other than a Party's affiliates, officers, directors, employees, shareholders, partners, members, managers, attorneys, accountants, auditors, or governmental agencies), except as may be required by law or fiduciary duty. In the event any of the Parties shall receive a subpoena, discovery request or other legal process seeking the production or disclosure of this Agreement or the terms of the Agreement, such party promptly shall notify the other Parties to enable them to seek a protective order. However, no Party shall be precluded by this provision from complying with any such subpoena, discovery request or other legal process seeking production or disclosure of this Agreement unless ordered by a court of competent jurisdiction not to comply. Any failure to keep the terms and conditions of this Agreement confidential shall be a default, entitling the non-defaulting Party to the default remedies set forth in this Agreement or otherwise permitted by law.



11. Understanding and Counsel. The Parties further represent and warrant that:
  - (A) They have read and understand the terms of this Agreement.
  - (B) They have been represented by counsel with respect to this Agreement and all matters covered by and relating to it.
  - (C) They have entered into this Agreement for reasons of their own and not based upon any representation of any other person other than those set forth herein.
12. Legal Fees and Costs. Except as provided herein, each of the Parties shall pay its own respective costs and attorneys' fees.
13. Entire Agreement. This Agreement constitutes the entire agreement with respect to the subject matter addressed herein and supersedes any prior written and/or verbal agreement between the Parties, including the Memorandum of Understanding among the Parties, dated May 8, 2013; but excluding the 808 Notes and the 808 Mortgages, and any other agreement by, between, or among BTLIC, the Estate, and/or Oliver Jr. dated on or after May 7, 2013.
14. Amendments. This Agreement may not be orally modified. This Agreement may only be modified in a writing signed by all of the Parties.
15. Illegality or Unenforceability of Provisions. In the event any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction in whole or in part to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. A reviewing court also shall have the authority to amend or "blue pencil" this Agreement so as to make it fully valid and enforceable.
16. Successors, Assigns and Third Party Beneficiaries. This Agreement shall be binding on, inure to the benefit of, and be enforceable by, each of the Parties, and each of their respective personal representatives, heirs, successors and assigns.
17. Headings. All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of the Agreement.
18. Waiver and Modification. The failure of a Party to insist, in any one or more instances, upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver, or a relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect.
19. Further Necessary Actions. To the extent that any document or action is reasonably required to be executed or taken by any Party to effectuate the purposes of this Settlement Agreement, the Party will execute and deliver such document or documents to the requesting Party or take such action or actions at the request of the requesting Party.
20. Florida Law. The Parties understand and agree that this Agreement shall be construed and interpreted in accordance with the laws of the State of Florida, without giving effect to

principles of conflicts of law that would require the application of the law of any other jurisdiction; and provided, however, that except as to the location of the realty where specific enforcement is sought, the law of such jurisdiction shall govern. Notwithstanding the foregoing, the laws of the State of New York shall govern and control all controversies arising out of this Agreement which may relate to New York State, including but not limited to 808 Lexington, 39E67, the 808 Notes, the 808 Mortgages, the Mortgage Loan, and the Mortgage Debt (collectively, the "New York Matters").

21. Construction of Settlement Agreement. The Parties acknowledge that this Agreement is the product of negotiations by Parties represented by counsel of their choice and that the language of this Agreement shall not be presumptively construed either in favor or against any of the Parties but shall be given a reasonable interpretation.

22. Notices. Any notices that the Parties may wish to serve upon each other pursuant to this Agreement shall be served by hand, facsimile, email, or overnight courier service as follows:

**TO THE GUARDIAN:**

Curtis C. Rogers  
710 First Avenue South  
Lake Worth, FL 33460  
Email: rogersdna@gmail.com

**With a copy to:**

Brian M. O'Connell, Esq.  
Ashley N. Crispin, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20<sup>th</sup> Floor  
West Palm Beach, FL 33401  
Facsimile: 561-833-4209  
Email: boconnell@ciklinlubitz.com  
acrispin@ciklinlubitz.com

**And to:**

Keith B. Stein, Esq.  
Roy C. Justice, Esq.  
Beys Stein Morbargha & Berland LLP  
405 Lexington Avenue, 7<sup>th</sup> Floor  
New York, NY 10174  
Facsimile: 646-755-3599  
Email: kstein@beysstein.com  
rjustice@beysstein.com

**TO OLIVER BIVINS, JR.:**

Oliver Bivins, Jr.  
39 E. 67<sup>th</sup> St.  
New York, NY 10065  
Email: o.bivins.ii@gmail.com

**With a copy to:**

Donna P. Levine, Esq.  
Levine & Susaneck, P.A.  
324 Datura Street, Suite 145  
West Palm Beach, FL 33401  
Facsimile: 561-820-8099  
Email: dlevinelaw@aol.com

**And to:**

Mark N. Axinn, Esq.  
Brill & Meisel  
845 Third Avenue  
New York, NY 10022  
Email: markaxinn@hotmail.com

**TO BEACHTON TUXEDO LLC:**

Edward Kuhnel  
49 West Lake Stable Road  
Tuxedo Park, NY 10987  
Facsimile: N/A  
Email: edward.kuhnel@gmail.com

**With a copy to:**

Peter G. Goodman, Esq.  
Benjamin Gorelick, Esq.  
Smith, Gambrell & Russell, LLP  
250 Park Avenue, Suite 1900  
New York, NY 10177  
Facsimile: 212-907-9865  
Email: pgoodman@srglaw.com;  
bgorelick@srglaw.com

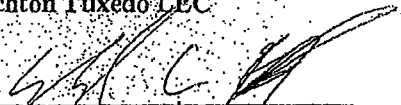
23. Counterparts and Electronic Signature. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall be considered one and the same document as if all Parties had executed a single original document. This Agreement may be executed in Portable Document Format and each signature thereto shall be and constitute an original signature, again as if all Parties had executed a single original document.

24. Continuing Jurisdiction. The Florida Court shall retain continuing jurisdiction over the Petitioners and enforcement of this Agreement (with respect to the Petitioners only) until all property transfers and monetary payments required by this Agreement have been made. During such period and except with respect to the New York Matters, any disputes or controversies arising with respect to the interpretation, enforcement or implementation of this Agreement shall be resolved by motion to the Florida Court. Notwithstanding anything to the contrary, all disputes and/or controversies arising out of the New York Matters at any time shall be resolved in the New York courts, and the Parties hereby submit to the jurisdiction of such courts for such purpose.

25. Survival. All of the representations, warranties and covenants set forth in this Agreement shall survive the performance by the Parties of their obligations hereunder.

*- Remainder of Page Intentionally Left Blank – Signatures Appear on Next Page -*

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first set forth above.

<p><b>Curtis C. Rogers</b> <i>As Guardian for Oliver Bivins, Sr.</i></p> <p><b>Beachton Tuxedo LLC</b></p> <p>By: </p> <p>Name: <u>Edward Kuback</u> Title: <u>Managing Member</u></p>	<p><b>Oliver Bivins, Jr.</b> <i>Individually, and as Personal Representative of the Estate of Lorna Bivins</i></p>
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Counterparts and Electronic Signature. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original hereof, and all of which shall be considered one and the same document as if all Parties had executed a single original document. This Agreement may be executed in Portable Document Format and each signature thereto shall be and constitute an original signature, again as if all Parties had executed a single original document.

Continuing Jurisdiction. The Florida Court shall retain continuing jurisdiction over the Petitioners and enforcement of this Agreement (with respect to the Petitioners only) until all property transfers and monetary payments required by this Agreement have been made. During such period and except with respect to the New York Matters, any disputes or controversies arising with respect to the interpretation, enforcement or implementation of this Agreement shall be resolved by motion to the Florida Court. Notwithstanding anything to the contrary, all disputes and/or controversies arising out of the New York Matters at any time shall be resolved in the New York courts, and the Parties hereby submit to the jurisdiction of such courts for such purpose.

Survival. All of the representations, warranties and covenants set forth in this Agreement shall survive the performance by the Parties of their obligations hereunder.

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first set forth above.

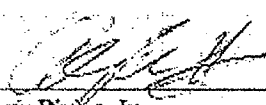
<p>Curtis C. Rogers As Guardian for Oliver Bivins, Sr.</p> <p>Beachton Tuxedo LLC</p> <p>By: _____ Name: _____ Title: _____</p>	 <p>Oliver Bivins, Jr. Individually, and as Personal Representative of the Estate of Lorna Bivins</p>
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EXHIBIT A

CASES TO BE DISMISSED AND/OR OBJECTIONS TO BE WAIVED

- Dismissed - Petition to Determine Beneficiaries, In Re: Estate of Lorna Bivins, Circuit

**EXHIBIT A**

**CASES TO BE DISMISSED AND/OR OBJECTIONS TO BE WAIVED**

1. Dismissed - Petition to Determine Beneficiaries, In Re: Estate of Lorna Bivins, Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, Probate Division, File No. 502011CP001130XXXXMB.
2. Dismissed - Curtis Rogers, as Guardian of Oliver Bivins, Sr. v. Oliver Bivins, as Personal Representative of the Estate of Lorna Bivins Complaint, 502013CA006086XXXXMB/AJ **excepting** COUNT 3- DECLARATORY ACTION - TAXES and any claim by the Guardian for contribution, or otherwise, relating to potential or current income tax liabilities for the period of time predating January 1, 2011 of Oliver Sr, the Guardian and/or the Estate.
3. Waiver - The Estate and/or Oliver Jr.'s objections to Guardian Compensation and Expenses and the Guardian's Attorney's Fees and Costs, including but not limited to Ciklin Lubitz, Bill T. Smith, P.A., and Beys Stein Mobargha & Berland LLP, and any report of the Guardian, including but not limited to any Plans, Accountings, Petition for Discharge, In Re: Guardianship of Oliver Bivins, Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, Guardianship Division, File No. 502011GA000006XXXXSB.
4. Dismissed - Petition to Order Personal Representative of the Estate of Lorna Bivins to Disgorge Chase Account Funds In Re: Guardianship of Oliver Bivins, Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, Guardianship Division, File No. 502011GA000006XXXXSB.
5. Dismissed - Petition to Order Oliver Bivins, II to Disgorge Chase Account Funds In Re: Guardianship of Oliver Bivins, Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, Guardianship Division, File No. 502011GA000006XXXXSB.
6. Dismissed - Petition to Order Personal Representative of the Estate of Lorna Bivins to Disgorge Chase Account Funds In Re: Guardianship of Lorna Bivins, Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, Guardianship Division, File No. 502011GA000007XXXXSB.
7. Dismissed - Petition to Order Oliver Bivins, II to Disgorge Chase Account Funds In Re: Guardianship of Lorna Bivins, Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, Guardianship Division, File No. 02011GA000007XXXXSB.
8. Dismissed - Curtis C. Rogers, as Guardian of Oliver Bivins, Sr. v. Oliver Bivins, as Personal Representative of the Estate of Lorna Bivins, Oliver Bivins, individually, and Beachton Tuxedo LLC, Supreme Court of the State of New York, County of New York, Index No. 650242/2013.

9. Dismissed- Partition Action- Oliver Bivins, as Personal Representative of the Estate of Lorna vs. Curtis Rogers, as Guardian of Oliver Bivins, File No: 502013CP000632XXXXSB.
10. Dismissed- Appeal by Oliver Bivins, individually and Personal Representative of the Lorna Bivins vs. the Guardianship of Oliver Bivins, Case No: 4D13-1363.
11. Waiver- The Estate and/or Oliver Jr.'s objections to Stephen Kelly, Emergency Temporary Guardian of Lorna Bivins and Oliver Bivins, Petition for Discharge, Final Accounting and any other report, plan, pleading or paper filed by Mr. Kelly.
12. Dismissed - Casey Ciklin v. The Estate of Lorna Bivins, collection of Lorna Bivins Guardianship Attorneys' fees and costs, Circuit Civil Court, Palm Beach County, Florida, File No. 2011CC011689XXXXMB.
13. Dismissed- Steven Kelly v. Estate of Lorna Bivins, collection of ETG compensation and expenses in Lorna Bivins Guardianship, Palm Beach County Circuit Court, Case No. 2011CC011688XXXXMB.

**EXHIBIT B**

**FORM OF DEED**

**808 Lexington Avenue**



NY - 1005 Bargain and Sale Deed, with Covenant against Grantors Acts-Individual or Corporation (Single Sheet)

**CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT - THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.**

THIS INDENTURE, made as of the \_\_\_\_ day of \_\_\_\_\_, 2013

**BETWEEN**

Oliver Bivins as Executor of the Estate of Lorna Bivins a/k/a Lorna M. Bivins, c/o Mark N. Axinn, Esq., Brill & Meisel, 845 Third Avenue, New York, NY 10022, and Curtis C. Rogers, as Guardian of the person and property of Oliver Bivins a/k/a Oliver Bivins, III, c/o Beys Stein Mobargha & Berland, LLP, The Chrysler Building, 405 Lexington Avenue, 7<sup>th</sup> fl., New York, NY 10174,

parties of the first part, and

Curtis C. Rogers, as Guardian of the person and property of Oliver Bivins, c/o Beys Stein Mobargha & Berland, LLP, The Chrysler Building, 405 Lexington Avenue, 7<sup>th</sup> fl., New York, NY 10174,

party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of Ten and no/100 (\$10.00) Dollars paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City, County and State of New York described as follows: 808 Lexington Avenue, New York, NY, Block 1397, Lot 16 on the Tax Map of New York County, and more fully described on Schedule A annexed hereto and made part hereof.

**BEING** the same premises previously conveyed by deed dated December 27, 1988 from Wilson Furnished Leasing, Inc., as grantor, to Lorna Bivens a/k/a Lorna M. Bivens and Oliver Bivins, III, collectively as grantee, and recorded on January 9, 1989 in Reel 1518, Page 623.

**TOGETHER** with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof;

**TOGETHER** with the appurtenances and all the estate rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

**AND** the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

**AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, the party of the first part has duly executed this deed the day and year first above written.

Oliver Bivins as Executor of the Estate of Lorna  
Bivins

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Curtis C. Rogers, as Guardian of the person and  
property of Oliver Bivins

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STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_ day of \_\_\_\_\_, 2013 before me, the undersigned, personally appeared Curtis C. Rogers, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF NEW YORK )

On the \_\_\_ day of \_\_\_\_\_, 2013 before me, the undersigned, personally appeared Oliver Bivens, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**RECORD AND RETURN TO:**

Beys Stein Mobargha & Berland, LLP  
The Chrysler Building  
405 Lexington Avenue-7<sup>th</sup> fl.  
New York, NY 10174  
Attn: Keith B. Stein, Esq.

**PROPERTY ADDRESS & TAX MAP DESIGNATION**

808 Lexington Avenue, New York, NY  
Block: 1397  
Lot: 16  
County: New York

**SCHEDULE A**

BEGINNING at a point on the westerly side of Lexington Avenue distant forty feet five inches northerly from the corner formed by the intersection of the westerly side of Lexington Avenue and the northerly side of 62<sup>nd</sup> Street; running thence WESTERLY parallel with 62<sup>nd</sup> Street and part of the distance through a party wall eighty feet; thence NORTHERLY parallel with Lexington Avenue twenty feet; thence EASTERLY parallel with 62<sup>nd</sup> Street, and part of the distance through a party wall eighty feet to the westerly side of Lexington Avenue and thence SOUTHERLY along the westerly side of Lexington Avenue twenty feet to the point or place of BEGINNING.

Said premises being known as and by the street number 808 Lexington Avenue.

The said premises are being sold and are being conveyed subject to Party-wall Agreement, recorded in Liber 3672 of Conveyances, at page 367.