

REAL ESTATE PURCHASE AND SALE CONTRACT

1. PARTIES: This Real Estate Purchase And Sale Contract (this "Contract") is entered into by and between the Federal Deposit Insurance Corporation (the "FDIC"), [check one] [ ] as Receiver for \_\_\_\_\_ [ ] in its corporate capacity ("Seller"), and \_\_\_\_\_, [check one] [ ] an individual [ ] a \_\_\_\_\_ ("Purchaser").

2. PROPERTY: That certain tract or parcel of land commonly known as \_\_\_\_\_, and described on Exhibit "A" attached hereto and incorporated herein for all purposes, which parcel of land is to be sold together with all buildings and other improvements situated thereon, all fixtures and other property affixed thereto, and all and singular the rights and appurtenances pertaining to the property, including any right, title and interest of Seller in and to adjacent streets, alleys or rights-of-way (collectively, the "Property").

3. PURCHASE PRICE: The purchase price (the "Purchase Price") for which Seller agrees to sell and convey the Property to Purchaser, and which Purchaser agrees to pay to Seller, subject to the terms hereof, is the amount of \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_), which shall be paid by wired funds, cashier's or certified check at Closing (hereinafter defined). Additionally, if any personal property is to be conveyed hereunder, as provided for in Section 32 hereof, Purchaser shall pay Seller at Closing the amount of \$ \_\_\_\_\_ for such personalty, over and above the Purchase Price.

4. EARNEST MONEY: Concurrently with the execution hereof, Purchaser has delivered to [check one] [ ] Seller or its third party marketing contractor a cashier's or certified check payable to Seller [ ] the Settlement Agent (as hereinafter defined in Section 11) a cashier's or certified check payable to the Settlement Agent in the amount of \$ \_\_\_\_\_ as earnest money hereunder (the "Earnest Money"), equal to [check one] [ ] five percent (5%) of the Purchase Price [ ] \_\_\_\_\_ percent (\_\_\_\_%) of the Purchase Price. The Earnest Money check shall immediately be presented for payment, and the Earnest Money will NOT bear interest at any time. If the sale hereunder is consummated in accordance with the terms hereof, the Earnest Money will be applied against the Purchase Price at Closing. In the event of default hereunder, the Earnest Money will either be retained by Seller or refunded to Purchaser in accordance with Section 16 hereof.

5. SURVEY: Seller has no obligation to provide Purchaser with a survey of the Property. However, if Seller has a prior survey of the Property in its possession, it will provide a copy of same to Purchaser. Purchaser may elect to purchase a current survey of the Property at its own expense, which shall in no event delay Closing.

6. TITLE COMMITMENT AND TITLE POLICY:

(a) As soon as practicable after the Effective Date (hereinafter defined), Seller will furnish Purchaser a commitment for title insurance covering the Property (the "Title Commitment") from a title insurance company selected by Seller in its sole

discretion (the "Title Company"). At Closing, Seller will cause the Title Company to issue to Purchaser an owner's policy of title insurance (the "Title Policy") in the full amount of the Purchase Price.

(b) Purchaser will have five (5) days from receipt of the Title Commitment to make written objections thereto, limited solely to matters which substantially and adversely affect title to the Property, to Seller, failing which, Purchaser will be deemed to have waived the right to raise any such objections and will accept title to the Property subject to all matters reflected on the Title Commitment. If, however, Purchaser timely delivers such written objections to Seller, Seller will have until Closing to attempt to cure same, but shall have no obligation to expend any sums to do so. Seller may, in its sole discretion, extend the Closing Date (hereinafter defined) for up to ninety (90) days as it may deem necessary for further attempted resolution of any title matters.

(c) If Seller notifies Purchaser that Seller is not able or willing to cure any such title objections ("Seller's Notice") prior to Closing, Purchaser shall have the right to either (i) terminate this Contract by written notice thereof to Seller within five (5) days of receipt of Seller's Notice and receive the immediate return of the Earnest Money, and thereafter neither party hereto will have any further rights or obligations under this Contract; or (ii) waive the unsatisfied objections and thereafter close the purchase of the Property in accordance with this Contract. Failure by Purchaser to timely exercise its right to terminate this Contract under Section 6.(c)(i) hereinabove shall be deemed to be Purchaser's election to proceed under Section 6.(c)(ii).

7. INSPECTION PERIOD:

(a) Purchaser will have a period of \_\_\_\_\_ days from and after the Effective Date to examine the Property and to conduct at its sole cost and expense such physical tests, inspections, surveys, and other investigations as are reasonably necessary for Purchaser to determine whether the Property is suitable for Purchaser's intended use (the "Inspection Period"). Purchaser and Purchaser's agents and representatives will have reasonable access to the Property during normal business hours prior to Closing. Notwithstanding the foregoing, (i) Purchaser will give Seller reasonable notice of Purchaser's intention to enter upon the Property; (ii) Purchaser must obtain written approval from Seller before Purchaser conducts any sampling, testing, or analysis of any media on or inspection of the Property, including, in Seller's discretion, the execution of a property access agreement for those purposes; and (iii) Seller may require that a representative of Seller accompany Purchaser or its agents while they are on the Property. Any sampling, testing, or analysis of any media on or inspection of the Property performed or caused to be performed by Purchaser shall not unreasonably interfere with the use and occupancy of the Property by Seller or Seller's tenants, if any. In the event that the transaction contemplated by this Contract does not close for any reason, Purchaser is obligated to restore the Property to its condition prior to Purchaser's entry thereon. This obligation will survive termination of this Contract.

(b) A copy of every report of every sampling, testing, analysis, and inspection conducted by Purchaser or on its behalf on the Property, including but not limited to any survey and any environmental report or environmental site assessment, will be delivered to Seller within five (5) days after such report is received by Purchaser. Purchaser shall and does hereby release, indemnify, and hold Seller harmless, and Purchaser shall defend Seller (with counsel acceptable to Seller), from and against any and all liabilities, claims, demands, causes of action, damages, and expenses (including attorneys' fees) incident to, resulting from, or in any way arising out of Purchaser's or its agents' presence on the Property and any such sampling, testing, analysis, or inspection conducted by Purchaser on the Property. Such indemnity shall survive Closing or any termination of this Contract and shall not be merged therein.

(c) If Purchaser reasonably determines that the Property is unsuitable for Purchaser's intended use, Purchaser may terminate this Contract by delivery of written notice to Seller prior to the expiration of the Inspection Period. In such event, the

Earnest Money will be returned to Purchaser and thereafter neither party hereto will have any further rights or obligations under this Contract. If Purchaser does not terminate this Contract prior to the expiration of the Inspection Period, Purchaser will be obligated to close the transaction contemplated herein under the terms of this Contract and Purchaser's failure to do so will entitle Seller to retain the Earnest Money as liquidated damages as provided in Section 16 hereof.

8. CONVEYANCE OF TITLE: Seller will convey the Property to Purchaser by a special warranty deed substantially in the form of Exhibit "B" attached hereto and incorporated herein for all purposes (the "Deed"), **subject to** any and all exceptions, easements, rights-of-way, covenants, conditions, restrictions, reservations, encroachments, protrusions, shortages in area, boundary disputes and discrepancies, matters which could be discovered or would be revealed by, respectively, an inspection or current survey of the Property, encumbrances, access limitations, licenses, leases, prescriptive rights, rights of parties in possession, rights of tenants, co-tenants, or other co-owners, and any and all other matters or conditions affecting the Property (including, without limitation, all matters reflected on the Title Commitment and not objected to by Purchaser under Section 6.(b) hereof and any title objections waived or deemed waived by Purchaser under Section 6.(c)(ii), above), whether known or unknown, recorded or unrecorded, as well as standby fees, real estate taxes, and assessments on or against the Property for the current year and subsequent years and subsequent taxes and assessments for prior years becoming due by reason of a change in usage or ownership, or both, of the Property; and any and all zoning, building, and other laws, regulations, and ordinances of municipal and other governmental authorities affecting the Property (all of the foregoing being collectively referred to as the "Permitted Encumbrances"). Any personalty to be conveyed to Purchaser under Section 32 hereof shall be conveyed by a quitclaim bill of sale (the "Bill of Sale").

9. PROPERTY CONDITION:

**(a) PURCHASER, BY ITS EXECUTION OF THIS CONTRACT, ACKNOWLEDGES THAT:**

**(i) EXCEPT FOR THE SPECIAL (OR LIMITED) WARRANTY OF TITLE TO BE CONTAINED IN THE DEED, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) ANY INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT OR HOPE TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE DESCRIPTION, POSSESSION, HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR ANY PART THEREOF, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO, (H) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS**

**ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY OR ANY PART THEREOF, OF ANY HAZARDOUS MATERIALS;**

**(ii) PURCHASER HAS FULLY INSPECTED THE PROPERTY AND THAT THE CONVEYANCE OF THE PROPERTY IS "AS IS" AND "WITH ALL FAULTS," AND SELLER HAS NO OBLIGATION TO ALTER, REPAIR, OR IMPROVE THE PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO; AND**

**(iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM OR COURSE OF DEALING WITH SELLER.**

**(b) ADDITIONALLY, PURCHASER HEREBY REPRESENTS TO SELLER THAT, BY VIRTUE OF THE INSPECTION PERIOD, PURCHASER HAS MADE, WILL MAKE, OR HEREBY WAIVES: (A) ALL INSPECTIONS OF THE PROPERTY DEEMED NECESSARY OR APPROPRIATE BY PURCHASER TO DETERMINE THE PROPERTY'S VALUE AND CONDITION, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, UNDERGROUND STORAGE TANKS, HAZARDOUS WASTE, AND ANY OTHER HAZARDOUS MATERIALS, AND (B) ALL INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY. PURCHASER'S INSPECTION OF THE PROPERTY OR WAIVER THEREOF WILL RELIEVE SELLER OF ANY LIABILITY TO PURCHASER AS A RESULT OF ANY ENVIRONMENTAL HAZARD ON OR TO THE PROPERTY AND PURCHASER HEREBY ACCEPTS ALL LIABILITY THEREFOR AS BETWEEN PURCHASER AND SELLER AND INDEMNIFIES AND HOLDS SELLER HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, DEMANDS, OR ACTIONS INCIDENT TO, RESULTING FROM, OR IN ANY WAY ARISING OUT OF SUCH HAZARD. THIS INDEMNITY SHALL SURVIVE CLOSING AND SHALL NOT BE MERGED THEREIN.**

10. **BROKER'S FEE:** By separate document, Seller has agreed to pay a real estate commission (the "Commission") to the real estate agent specified therein (the "Broker"), subject to the closing of the transaction contemplated by this Contract and payment of the full Purchase Price to Seller. The Broker may agree to pay a portion of the Commission to any other licensed real estate agent but Seller will bear no liability for payment of the Commission or any portion thereof to any agent other than the Broker. Purchaser hereby (i) acknowledges that Seller will bear no liability for payment of the Commission or any portion thereof to any agent other than the Broker, and (ii) indemnifies Seller from any claims which may be asserted against Seller by any real estate agent who has or claims to have been authorized by Purchaser to act on Purchaser's behalf in the transaction contemplated by this Contract.

11. **CLOSING:** The closing of the sale of the Property by Seller to Purchaser ("Closing") shall occur on the first business day following the expiration of \_\_\_\_\_ ( ) days from and after the expiration of the Inspection Period (the "Closing Date"). The Closing shall occur at Seller's offices or, at Seller's option, at the offices of the Title Company or a closing attorney designated by Seller in its sole discretion (either of which, in that role, the "Settlement Agent"). At Closing, among the other requirements set forth in this Contract, Purchaser shall deliver the Purchase Price to Seller in accordance with Section 3 hereinabove and, if applicable, the additional amount set forth in said Section 3 for the personalty to be conveyed hereunder, and

Seller shall deliver the Deed and, if applicable under Section 32 hereof, the Bill of Sale, to Purchaser. If either party fails to close the sale under the terms of this Contract, the non-defaulting party will be entitled to exercise the remedies provided in Section 16 hereof. Any extension of the Closing Date must be in writing and, except for Seller's right to unilaterally extend the Closing Date under Section 6.(b) hereinabove, be executed by Purchaser and Seller in advance of the scheduled Closing Date.

12. POSSESSION: Possession of the Property in its condition existing on the Effective Date, ordinary wear and tear excepted, will be delivered to Purchaser at Closing, subject to the rights or claims of parties in possession or vendors thereto. Delivery of the Deed by Seller and acceptance of the Deed by Purchaser will evidence the assignment by Seller and assumption by Purchaser of all written or oral agreements for lease of the Property and contracts in effect as of the Closing Date. From and after Closing, Purchaser will defend, indemnify, and hold Seller harmless from and against all claims, demands, and actions arising under such leases or contracts.

13. CLOSING COSTS: Seller will pay the cost of (i) preparation of the Deed and all other conveyance documents, (ii) one-half of the Title Company's escrow fee, (iii) the premium for the Title Policy, and (iv) Seller's attorneys' fees. Seller will cause any mortgages, deeds of trust, or other monetary liens recorded against the Property to be released, unless (a) Purchaser made no objection thereto under Section 6.(b) hereof, or (b) if Purchaser made such an objection, Seller has notified Purchaser that Seller is unable or unwilling to cure same under Section 6.(c) hereof and Purchaser nevertheless elected, or is deemed to have elected, to proceed under Section 6.(c)(ii) hereof. All other costs and expenses incurred in connection with the sale of the Property hereunder will be paid by Purchaser, including, without limitation, recordation of the Deed and any other recording fees, one-half of the Title Company's escrow fee, Purchaser's attorneys' fees, the removal of any liens remaining on the Property, the costs and expenses of services incurred by Purchaser in performing its feasibility study and related tests and investigations under Section 7 hereof, any documentary stamp taxes, deed taxes, transfer taxes, intangible taxes, mortgage taxes and any and all other similar taxes, fees or assessments, and any financing obtained by Purchaser in connection with its purchase of the Property.

14. PRORATIONS: The provisions of this Section 14 shall survive Closing and not be merged therein.

(a) At Closing, all normal and customarily proratable items, including, without limitation, all ad valorem taxes and assessments assessed against the Property, prepaid rents and other expenses and fees payable under any leases on the Property, prepaid and accrued but unpaid expenses incurred in connection with the operation or maintenance of the Property, including, without limitation, all utilities servicing the Property, and any dues and assessments of home or condominium owners' associations, shall be prorated between Purchaser and Seller as of the Closing Date, Seller being charged and credited for all of same up to such date and Purchaser being charged and credited for all of same on and after such date. If the assessments for any such proratable items for the year of Closing have not yet been made, then any such prorations shall be based upon the prior year's assessments. No prorations shall be made in relation to rents not collected as of the Closing Date, but Purchaser shall make a commercially reasonable attempt to collect the same for Seller's benefit after Closing, but shall not be required to initiate legal proceedings in such attempt, and such collections, if any, shall be accounted for between Purchaser and Seller on the Reconciliation Date (hereinafter defined).

(b) On the first business day immediately prior to the day which is sixty (60) days after the Closing Date, or such other date as may be agreed upon in writing by Seller and Purchaser in order to have in hand the tax or any other assessments for the Property for the year of Closing or for any other reason (in any event, the "Reconciliation Date"), Seller hereby agrees to cause to be paid to Purchaser, or Purchaser hereby agrees to pay to Seller, as the case may be, a payment in an amount which reflects (i) net adjustments to the prorations made at Closing under Section 14.(a), above, including, without limitation, (a) any and all rents

delinquent and unpaid on the Closing Date and subsequently collected by Purchaser, and (b) any savings resulting from any tax abatements on the Property for the year of Closing resulting from a challenge brought by either party hereto and the costs or expenses incurred by the challenging party in that regard, and (ii) any costs and expenses incurred by Purchaser under Section 32.(b)(ii) hereof.

(c) Notwithstanding anything else to the contrary in this Section 14, if the Property has been assessed for property tax purposes at such rates as would result in reassessment (i.e., "roll-back" taxes) based upon a change in land usage or ownership of the Property, Purchaser hereby agrees to pay all such taxes and Purchaser shall and does hereby indemnify and save Seller harmless from and against all claims and liability for such taxes.

(d) At Closing, Seller will, at its election and in its sole discretion, either deliver or credit to Purchaser any and all tenant security deposits then actually held by Seller under leases covering the Property. Seller will have no responsibility for security deposits not held by Seller at Closing. Further, Seller will be credited at Closing with the amount of any and all deposits held on behalf of Seller by utility companies with respect to the Property.

15. CASUALTY LOSS: In the event of damage to or destruction of the Property by fire or other casualty prior to Closing, resulting in a loss exceeding twenty percent (20%) of the Purchase Price, Purchaser may, at its option, either (i) terminate this Contract by written notice thereof to Seller within five (5) days after Seller notifies Purchaser of the casualty and receive the immediate return of the Earnest Money, and thereafter neither party hereto will have any further rights or obligations under this Contract; or (ii) proceed to close the transaction contemplated herein in accordance with the terms hereof and receive the insurance proceeds payable as a result of such casualty (or, at Seller's option, allow Purchaser at Closing a credit against the Purchase Price in the amount of such casualty loss).

16. DEFAULT: If Purchaser fails to perform any of its obligations hereunder, Seller's exclusive remedy for such default is (a) termination of this Contract by written notice thereof to Purchaser, and (b) retention of the Earnest Money as liquidated damages hereunder. If Seller fails to perform any of its obligations hereunder, Purchaser's exclusive remedy for such default is termination of this Contract by written notice thereof to Seller and liquidated damages as follows: (i) refund of the Earnest Money, and (ii) reimbursement by Seller of Purchaser's documented out-of-pocket expenses, not to exceed \$1,000.00. The liquidated damages specified in this Section are not penalties, but reasonable estimates of, respectively, the cost to Seller of holding the Property off of the market and the cost to Purchaser of the lost transaction. In no event shall Seller be liable to Purchaser for any other actual, punitive, speculative, or consequential damages, nor shall Purchaser be entitled to bring a claim to enforce specific performance of this Contract.

17. PROHIBITED PURCHASER: Purchaser hereby acknowledges that certain persons are prohibited from purchasing assets from Seller and that under certain circumstances Seller will not sell assets to certain persons. Accordingly, prior to or contemporaneously with the execution of this Contract, Purchaser has completed, executed, and delivered to Seller a Purchaser Eligibility Certification (the "PEC") in the form attached here to as Exhibit "C." Purchaser hereby represents and warrants to Seller that the PEC is true and correct, and Purchaser hereby further acknowledges that Seller is relying on the truth and accuracy of the PEC. Any incorrect information on the PEC shall be a default by Purchaser under this Contract. Accordingly, if Seller determines prior to Closing that any portion of the PEC is incorrect, Seller may terminate this Contract and retain the Earnest Money as provided for in Section 16 hereof, and may pursue any other sanctions provided by law.

18. **CONFIDENTIALITY:** Prior to or contemporaneously with the execution of this Contract, Purchaser has completed, executed, and delivered to Seller a Confidentiality Agreement (herein so called) in the form attached hereto as Exhibit "D" and incorporated herein for all purposes. Any breach of the Confidentiality Agreement by Purchaser shall be a default under this Contract, in which event Seller may terminate this Contract and retain the Earnest Money as provided for in Section 16 hereof, and may pursue any other sanctions provided by law.

19. **ATTORNEYS' FEES:** In any legal proceeding brought under or with regard to this Contract, the prevailing party will be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party; provided, however, that Seller's liability, if any, for court costs and attorneys' fees, shall be determined in accordance with the Equal Access to Justice Act, codified at 28 U.S.C. § 2412 (2006), to the extent applicable, as well as any other applicable federal law.

20. **AUTHORITY TO EXECUTE:** Only an Attorney in Fact for the FDIC, acting in the capacity stated in Section 1 hereof, is authorized by the FDIC to execute this Contract.

21. **SURVIVAL:** In addition to those certain provisions of this Contract expressly made to survive Closing or any termination of this Contract, Sections 9, 10, 12, 14, 23 and 27 of this Contract shall survive Closing and the delivery of the Deed and shall not be merged therein.

22. **MODIFICATION:** This Contract is the entire agreement between Seller and Purchaser concerning the sale of the Property and supersedes all prior agreements and understandings, if any, with regard thereto, and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound.

23. **GOVERNING LAW:** The validity, construction, enforcement, interpretation, and performance of this Contract shall be governed by the laws of the United States of America, and to the extent that state law would apply under applicable federal law, the state in which the Property is located.

24. **TIME:** Time is of the essence in the performance of each party's obligations under this Contract.

25. **NOTICES:** Any notice provided or required to be given under this Contract must be in writing and shall be served (and shall be deemed to have been served) by (a) depositing same in the United States mail, addressed to the party to be notified, postage prepaid and certified with return receipt requested; (b) delivering the same to such party or agent of such party, in person or by commercial courier; or (c) depositing the same into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified. For purposes of notice, the addresses of the parties shall be as set forth in their respective signature blocks hereinbelow.

26. **EFFECTIVE DATE:** The date of execution of this Contract by the latter of Purchaser or Seller, as set forth in their respective signature blocks hereinbelow, shall be the "Effective Date" hereof for all purposes.

27. **CONSTRUCTION:** Unless stated otherwise, the words "day" or "days" refer to calendar days. Pronouns are used interchangeably herein to refer to masculine, feminine, or neuter antecedents. The parties hereby acknowledge that each party and its counsel have reviewed this Contract and had the opportunity to revise same, and each consequently agrees that the normal rule

of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

28. **INDIVIDUAL LIABILITY:** The individual who purports to execute this Contract on behalf of a purchasing legal entity will nevertheless be bound under this Contract in his or her individual capacity unless, prior to Closing, the individual provides Seller with a copy of (a) the articles or agreement by which the purchasing legal entity was created, as filed, if applicable, with the proper state office or authority, (b) a resolution of that legal entity authorizing (i) the transaction contemplated herein, and (ii) such individual to bind such legal entity in such transaction.

29. **ASSIGNMENT:** This Contract shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors, and assigns. Notwithstanding the foregoing, Purchaser shall not have the right to assign its interest in this Contract without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole and absolute discretion, and any such assignment to which Seller has not so consented shall be null and void and of no force or effect.

30. **STATE SPECIFIC ATTACHMENTS:** The following attachments, if any, are attached hereto and incorporated herein for all purposes in order to conform this Contract to the laws of the state in which the Property is located:

- ATTACHMENT "1:" \_\_\_\_\_;
- ATTACHMENT "2:" \_\_\_\_\_;
- ATTACHMENT "3:" \_\_\_\_\_;
- ATTACHMENT "4:" \_\_\_\_\_.

31. **DISCLOSURES REGARDING THE PROPERTY:**

- ATTACHMENT "\_\_\_:" Lead-Based Paint Disclosure. Required if improvements to the Property include a residential dwelling built prior to 1978.
- ATTACHMENT "\_\_\_:" Other Environmental Matters. Other environmental matters require disclosure prior to conveyance of the Property to Purchaser.

32. **PERSONAL PROPERTY; PERSONAL IDENTIFYING INFORMATION [check one]:**  No personal property is included in the transaction contemplated by this Contract.  An inventory of the personal property included in the transaction contemplated by this Contract is set forth on Exhibit "E" attached hereto and made a part hereof for all purposes.

(a) Regardless of whether or not any personal property is included in the transaction contemplated by this Contract, as indicated hereinabove, this Section 32 shall survive Closing and not be merged therein. For the purposes of this Section 32, "personal identifying information" or "PII" shall mean any piece of information which can potentially be used to uniquely identify, contact, or locate a particular person.

(b) Notwithstanding anything to the contrary in this Contract or in any exhibit hereto, and to the extent that any furniture, fixtures, and equipment, including, without limitation, printers, fax machines, scanners, copiers, computer systems, servers, hardware and software, tapes, CD's, disks, thumb drives, portable drives, hard disk drives, or any other portable electronic storage media/devices, and the electronic data stored therein or thereon, and all hard data, records, documents, and information, including, without limitation and with regard to each and all of the foregoing, personal identifying information or PII, remain in, on, or about the Property at Closing, and whether or not apparently described in whole or in part on Exhibit "E" hereto, Purchaser hereby acknowledges and agrees that (i) any and all such hardware, software, tapes, CD's, disks, thumb drives, portable drives, hard disk drives, and any other portable electronic storage media/devices and the electronic data stored therein or thereon and any hard data, records, documents, or information, including, without limitation and with regard to each and all of the foregoing, personal identifying information or PII (all of the foregoing described in this Section 32.(b)(i) are hereinafter collectively referred to as the "Excluded Personalty"), are hereby expressly and unequivocally excluded from the transaction contemplated by this Contract, and (ii) within ten (10) business days from and after Closing, Purchaser, at Seller's sole cost and expense, shall effect the removal of the Excluded Personalty from the Property and delivery of same to Seller.

(c) If any software or systems necessary to or for the operation of any building located upon the Property, reside in or on any Excluded Personalty, then within ten (10) business days from and after Closing, Purchaser shall transfer that data to replacement portable electronic storage media/devices at Purchaser's sole cost and expense, and immediately thereafter deliver all such Excluded Personalty to Seller.

(d) If at any time Purchaser discovers the presence of any Excluded Personalty which Seller or Purchaser has previously failed to remove from the Property, Purchaser shall promptly (i) notify Seller in writing of the existence of such Personal Property, and (ii) at Seller's sole cost and expense, effect the removal of the discovered Excluded Personalty from the Property and delivery of same to Seller.

**(e) Purchaser hereby acknowledges and agrees that any and all personal identifying information or PII that remains in, on, or about the Property at Closing and thereafter is (i) the property of Seller, and Purchaser hereby agrees that it will not attempt to access or read or determine the content of any such personal identifying information or PII, and (ii) confidential and governed by the Confidentiality Agreement described in Section 18 hereof. Notwithstanding anything to the contrary in the Confidentiality Agreement, the terms thereof shall not terminate and shall bind Purchaser as to any and all personal identifying information or PII that remains in, on, or about the Property at Closing or thereafter.**

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have executed this Real Estate Purchase And Sale Contract to be effective as of the Effective Date.

PURCHASER [check applicable box]:

[ ] \_\_\_\_\_ [if an individual, sign on this first line, print name on second]

Name: \_\_\_\_\_

[ ] \_\_\_\_\_ [print name of legal entity, including type of entity and state in which it was formed, e.g., Whiteacre, LLC, a New Jersey limited liability company]  
\_\_\_\_\_

By: \_\_\_\_\_  
[entity's representative signs here]

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Tax ID Number: \_\_\_\_\_

Purchaser's complete mailing address [whether individual or legal entity]:

\_\_\_\_\_ [use street address only; a P.O. Box is NOT acceptable]  
\_\_\_\_\_  
\_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

[Seller's signature page follows.]

SELLER:

Federal Deposit Insurance Corporation,  
in the capacity stated above  
1601 Bryan Street  
Dallas, Texas 75201

**Note:** for purposes of notice under Section 25 hereof, if Seller utilized a third party marketing contractor in this transaction, a copy of all notices to Seller must be sent simultaneously to:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Attorney in Fact \_\_\_\_\_

Date: \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

SAMPLE

EXHIBIT "A"

[Legal Description of the Property]

SAMPLE

EXHIBIT "B"

[Note to Contract preparer: the below form of Special Warranty Deed is an exhibit only and is not to be completed as part of the contract preparation.]

Recording requested by  
and when recorded return to:

Asset No. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ space above this line for Recorder's use only

SPECIAL WARRANTY DEED

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

RECITALS

WHEREAS, \_\_\_\_\_ [insert name of failed institution out of which Seller obtained the Property, including City and State where main branch was located] (the "Institution"), acquired the Property by that certain \_\_\_\_\_ [insert the style of the deed into the failed institution, e.g., General or Special Warranty Deed, Deed in Lieu of Foreclosure, or simply Deed] dated \_\_\_\_\_, and recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_ of the records of \_\_\_\_\_ County, \_\_\_\_\_, on \_\_\_\_\_; and

WHEREAS, the Institution was closed by \_\_\_\_\_ [insert the name of the federal or state regulator that closed the Institution – this information MUST be accurate and may be obtained from the FDIC representative working on this transaction or the FDIC Legal Division] on \_\_\_\_\_, and the Federal Deposit Insurance Corporation (the "FDIC") was appointed as receiver for the Institution (the "Receiver"); and

WHEREAS, as a matter of federal law, 12 U.S.C. § 1821(d)(2)(A)(i), the Receiver succeeded to all of the right, title, and interest of the Institution in and to, among other things, the Property. [if the additional recital set forth below is needed, then delete the preceding period and add: ; and]

[if Seller is the FDIC in its corporate capacity, add the following additional recital (the information necessary to properly complete this recital may also be obtained from the FDIC representative working on this transaction or the FDIC Legal Division): WHEREAS, by that certain Certificate of Termination effective \_\_\_\_\_ [insert the effective date of such Certificate], the receivership estate of the Institution was terminated and the remaining assets of such estate, including, without limitation, all of its right, title, and interest in and to the Property, were transferred to the FDIC in its corporate capacity ("FDIC-Corporate").]

NOW, THEREFORE, the Receiver [or, if applicable: FDIC-Corporate] (hereinafter, "Grantor"), whose address is 1601 Bryan Street, Dallas, Texas 75201, for and in consideration of \_\_\_\_\_ AND NO/100 DOLLARS (\$ \_\_\_\_\_ .00), the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto

\_\_\_\_\_ [if a legal entity, include type and state in which formed] ("Grantee"), whose address is \_\_\_\_\_, that certain real property situated in \_\_\_\_\_ County, \_\_\_\_\_, as described on Exhibit "A" attached hereto and made a part hereof for all purposes, together with any and all improvements thereto and all and singular the

rights and appurtenances pertaining thereto, including, but not limited to, any right, title and interest of Grantor in and to adjacent streets, alleys or rights-of-way (collectively, the "Property"), **subject** however to any and all exceptions, easements, rights-of-way, covenants, conditions, restrictions, reservations, encroachments, protrusions, shortages in area, boundary disputes and discrepancies, matters which could be discovered or would be revealed by, respectively, an inspection or current survey of the Property, encumbrances, access limitations, licenses, leases, prescriptive rights, rights of parties in possession, rights of tenants, co-tenants, or other co-owners, and any and all other matters or conditions affecting the Property, including, without limitation, any and all matters or conditions reflected on Exhibit "B" attached hereto and made a part hereof for all purposes, and whether known or unknown, recorded or unrecorded, as well as standby fees, real estate taxes, and assessments on or against the Property for the current year and subsequent years and subsequent taxes and assessments for prior years becoming due by reason of a change in usage or ownership, or both, of the Property; and any and all zoning, building, and other laws, regulations, and ordinances of municipal and other governmental authorities affecting the Property (all of the foregoing being collectively referred to as the "Permitted Encumbrances"). Grantee, by its acceptance of delivery of this Special Warranty Deed, assumes and agrees to perform any and all obligations of Grantor or the Institution under the Permitted Encumbrances.

FURTHER, GRANTEE, BY ITS ACCEPTANCE OF DELIVERY OF THIS SPECIAL WARRANTY DEED, ACKNOWLEDGES AND AGREES THAT (i) EXCEPT FOR THE SPECIAL (OR LIMITED) WARRANTY OF TITLE CONTAINED HEREIN, GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL, AND GEOLOGY, (B) ANY INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT OR HOPE TO CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE DESCRIPTION, POSSESSION, HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR ANY PART THEREOF, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO, (H) THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR PHYSICAL CONDITION OF ANY UTILITIES SERVING THE PROPERTY, OR (I) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT GRANTOR HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, REGULATIONS, ORDERS, OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY OR ANY PART THEREOF, OF ANY HAZARDOUS MATERIALS; (ii) GRANTEE HAS FULLY INSPECTED THE PROPERTY AND THAT THE CONVEYANCE HEREUNDER OF THE PROPERTY IS "AS IS" AND "WITH ALL FAULTS", AND GRANTOR HAS NO OBLIGATION TO ALTER, REPAIR, OR IMPROVE THE PROPERTY OR ANY PORTION THEREOF OR ANY IMPROVEMENTS THERETO; and (iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM, OR COURSE OF DEALING WITH GRANTOR, AND ALL STATUTORY, COMMON LAW, AND CUSTOMARY COVENANTS AND WARRANTIES, IF ANY, OF WHATEVER KIND, CHARACTER, NATURE, PURPOSE, OR EFFECT, WHETHER EXPRESS OR IMPLIED OR ARISING BY OPERATION OF LAW, ARE HEREBY EXPRESSLY, UNCONDITIONALLY, AND IRREVOCABLY WAIVED, DISCLAIMED, AND EXCLUDED FROM THIS SPECIAL WARRANTY DEED, NOTWITHSTANDING ANY CUSTOM OR PRACTICE TO THE CONTRARY, OR ANY STATUTORY, COMMON LAW, DECISIONAL, HISTORICAL, OR CUSTOMARY MEANING, IMPLICATION, SIGNIFICANCE, EFFECT, OR USE OF CONTRARY IMPORT OF ANY WORD, TERM, PHRASE OR PROVISION HEREIN.

Further, by its acceptance of delivery of this Special Warranty Deed, Grantee or anyone claiming by, through, or under Grantee, hereby fully releases Grantor, the Institution, and the FDIC in any and all of its various

other capacities, and their respective employees, officers, directors, representatives, and agents from any and all claims, costs, losses, liabilities, damages, expenses, demands, actions, or causes of action that it or they may now have or hereafter acquire, whether direct or indirect, known or unknown, suspected or unsuspected, liquidated or contingent, arising from or related to the Property in any manner whatsoever. This covenant releasing Grantor, the Institution, and the FDIC in any and all of its various other capacities shall be a covenant running with the Property and shall be binding upon Grantee, its successors, and assigns.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in any wise belonging to Grantor, unto Grantee, its heirs, personal representatives, successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT SPECIALLY AND FOREVER DEFEND all and singular the Property unto Grantee, its heirs, personal representatives, successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through, or under Grantor, but not otherwise, **subject**, however, to the Permitted Encumbrances.

The fact that certain encumbrances, limitations, or other matters or conditions may be mentioned, disclaimed, or excepted in any way herein, whether specifically or generally, shall not be a covenant, representation, or warranty of Grantor as to any encumbrances, limitations, or any other matters or conditions not mentioned, disclaimed, or excepted. Notwithstanding anything herein to the contrary, however, nothing herein shall be construed or deemed as an admission by Grantor or Grantee to any third party of the existence, validity, enforceability, scope, or location of any encumbrances, limitations, or other matters or conditions mentioned, disclaimed, or excepted in any way herein, and nothing shall be construed or deemed as a waiver by Grantor or Grantee of its respective rights, if any, but without obligation, to challenge or enforce the existence, validity, enforceability, scope, or location of same against third parties.

By its acceptance of delivery of this Special Warranty Deed, Grantee hereby assumes the payment of all *ad valorem* taxes, standby fees, and general and special assessments of whatever kind and character affecting the Property which are due, or which may become due, for the current tax year or assessment period and for any tax year or assessment period subsequent to the date of this Special Warranty Deed, including, without limitation, taxes or assessments for prior years becoming due by reason of a change in usage or ownership, or both, of the Property or any portion thereof.

IN WITNESS WHEREOF, this Special Warranty Deed is executed on \_\_\_\_\_.

FEDERAL DEPOSIT INSURANCE CORPORATION,  
[either as Receiver for \_\_\_\_\_ (insert name of Institution, including City and State – see first recital on first page of Deed), or in its corporate capacity]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Attorney in Fact



EXHIBIT "A" to Special Warranty Deed

[Legal Description of the Property]

**[NOTE TO PREPARER: This legal description should be, except in unique circumstances, the legal description of the Property as found in the conveyancing instrument into Grantor or into the failed institution named in the first recital hereinabove.]**

SAMPLE

EXHIBIT "B" to Special Warranty Deed

[Specific Permitted Encumbrances]

**[Note to preparer of Deed: List hereon any matters or conditions reflected on the Title Commitment and not objected to by Purchaser under Section 6.(b) of the Contract and any title objections waived or deemed waived by Purchaser under Section 6.(c)(ii) of the Contract.]**

- 1.
- 2.
- 3.
- 4.

SAMPLE

EXHIBIT "C"

[Form of Purchaser Eligibility Certification]

SAMPLE

EXHIBIT "D"

[Form of Confidentiality Agreement]

SAMPLE

EXHIBIT "E"

[Inventory of personalty to be conveyed]

SAMPLE