

State of

4C Asset ID

4C Address

**REAL ESTATE PURCHASE AND SALE CONTRACT**

**1. PARTIES.** This Real Estate Purchase and Sale Contract is entered into by and between:

(a) The **Seller** is (check one and complete):

the **Federal Deposit Insurance Corporation ("FDIC"), as Receiver** for

*(Name of Failed Bank)*

,   ; or  
*(City of headquarters) (State of headquarters)*

the **FDIC in its corporate capacity**; or

*(Name of subsidiary)*

a(n)     
*(State of formation) (Legal entity type, such as LLC or corporation)*

(b) The **Purchaser** is (check one and complete):

*(Legal entity name)*

, a(n)    ; or  
*(State of formation) (Legal entity type, such as LLC or corporation)*

*(Individual(s) names)*

of ,   .  
*(City of residency) (State of residency)*

**PURCHASE PRICE.** The Purchase Price for the Real Property is .

**2. DEFINITIONS.**

**CLOSING** means the simultaneous delivery by Seller and Purchaser of documents and funds and the performance of the other acts provided in this Contract to be performed on the Closing Date to consummate the transactions described in this Contract.

**CLOSING DATE** means , or such earlier date as mutually agreed between Seller and Purchaser.

**CONTRACT** means this agreement and all Attachments and Exhibits, as the same may be modified and amended.

CONVEYANCE DEED means a quitclaim deed in the form of Exhibit "B" to this Contract and as may be modified under Section 8 of this Contract.

EARNEST MONEY means the deposit paid by or on behalf of Purchaser to Seller under Section 4 in the amount of  .

EFFECTIVE DATE means the latter date of execution of this Contract by Purchaser or Seller, under their respective signature blocks below.

EXCLUDED PROPERTY means all PII and any media, articles, devices, documents, records, data, information and items located in, upon or about the Real Property or Personal Property, which contain PII in any form, format or language, including but not limited to, furniture, fixtures, equipment, printers, fax machines, scanners, copiers, computer systems or any component thereof, servers, hardware and software, tapes, compact discs, disks, thumb drives, portable drives, hard disk drives, and any electronic storage media/devices or other property of any nature or kind.

EXHIBIT means any of the Exhibits to this Contract, each of which is incorporated by reference in and made a part of this Contract as if fully set forth herein. Exhibits to the Contract are as follows:

- A. REAL PROPERTY DESCRIPTION
- B. FORM OF CONVEYANCE DEED
- C. PERSONAL PROPERTY DESCRIPTION
- D. PURCHASER ELIGIBILITY CERTIFICATION
- E. CONFIDENTIALITY TERMS
- F.  ;
- G.  .

IMMEDIATELY AVAILABLE FUNDS means an electronic transfer of funds to Seller or cashier's check or certified check drawn on an FDIC insured financial institution.

INSPECTION PERIOD, if any is provided for in this Contract, expires at 5:00pm Central Time Zone on  .

Purchaser has zero days Inspection Period under this Contract, meaning Section 7. Inspection Period does not apply.

NON-DISCLOSURE AGREEMENT or NDA means the Non-Disclosure Agreement signed by the Purchaser as an Interested Party under Section 18 of the Contract.

NOTICE is defined in, and must be delivered in accordance with, Section 25 of this Contract to the addresses of the parties set forth in their respective signature blocks.

PERMITTED ENCUMBRANCES has the meaning under Section 8 of this Contract.

PERSONALLY IDENTIFIABLE INFORMATION or PII means any information about an individual which can be used to distinguish or trace that individual's identity, such as their full name, home address, Email address (non-work), telephone numbers (non-work), Social Security Number, driver's/state identification number, employee identification number, date and place of birth, mother's maiden name, photograph and biometric records. PII also includes, but is not limited to, education, financial information (including, but not limited to, account number, access or security code, password, personal identification number), medical information, investigation report or database, criminal or employment history or information, or any other information which is linked or linkable to an individual.

PERSONAL PROPERTY means any and all furniture, fixtures, equipment, and other personalty located within or about the Real Property, including but not limited to those items specifically listed in Exhibit "C". Purchaser will pay at Closing the sum of  for such Personal Property in addition to the Purchase Price.

No Personal Property is included in the transaction contemplated by this Contract, meaning Exhibit "C" is not applicable to this Contract.

PROPERTY means the Real Property and the Personal Property, if any.

PURCHASE PRICE has the meaning set forth in Section 1 of this Contract.

PURCHASER means the party set forth in Section 1 of this Contract.

REAL PROPERTY means that certain real property commonly known as

as more particularly described on Exhibit "A", exact legal title to govern, 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.

SELLER means the party set forth in Section 1 of this Contract.

SETTLEMENT AGENT means the title insurance agency or closing attorney designated by Seller to conduct the Closing.

STATE SPECIFIC ADDENDUM means Attachment "1" to this Contract that modifies this Contract to comply with state law in the state where the Property is located.

3. **SALE:** Effective at Closing, Seller will sell, transfer and assign to Purchaser, and Purchaser will purchase from Seller, all of Seller's right, title and interest in and to the Real Property and the Personal Property, if any, subject to the terms and conditions of this Contract.

4. **EARNEST MONEY:** Concurrently with Purchaser's execution of this Contract, Purchaser has delivered the Earnest Money to Seller or Settlement Agent in Immediately Available Funds. Earnest Money checks will be immediately be presented for payment. The Earnest Money will NOT earn interest at any time. If the sale contemplated by this Contract is consummated in accordance with its terms, the Earnest Money will be applied against the Purchase Price at Closing. In the event of Contract default, 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. Purchaser may elect to purchase a survey for Purchaser's benefit at Purchaser's sole cost and expense, but such election will in no event delay Closing or otherwise modify, extend or delay any term of this Contract.

6. **TITLE COMMITMENT; TITLE POLICY:** Seller has no obligation to provide Purchaser with a title commitment or an owner's policy of title insurance covering the Property. Purchaser may elect to purchase a title commitment or owner's policy at its sole expense from a title company of its choosing, but such election shall in no event delay Closing or otherwise modify any term of this Contract.

7. **INSPECTION PERIOD:**

(a) Purchaser will have until the expiration of the Inspection Period to examine the Property and conduct at its sole cost and expense such samplings, tests, inspections, surveys, or analyses of the Property and any media or substance located in or upon the Property (collectively, "Inspections") as are reasonably necessary for Purchaser to determine whether the Property is suitable for Purchaser's intended use. Purchaser, its agents and representatives will have reasonable access to the Property during normal business hours to conduct such Inspections. Notwithstanding the foregoing, (i) Purchaser must obtain Seller's prior written approval (which may include, in Seller's discretion, Purchaser's execution of a property access agreement) before conducting any Inspections; and (ii) Seller may require that Seller's representative accompany Purchaser or its agents during any Inspection. Purchaser's Inspections must not unreasonably interfere with the use and occupancy of the Property. If the transaction contemplated by this Contract does not close for any reason or no reason, Purchaser is obligated to restore the Property to its condition prior to Purchaser's entry. This obligation will survive termination of the Contract.

(b) Purchaser will deliver to Seller copies of every report of every Inspection conducted by or on behalf of Purchaser, including but not limited to, any geographical or other survey and environmental site assessment, within five (5) days following Purchaser's receipt of any such Inspection report. Purchaser will and does hereby release, indemnify, and hold Seller harmless, and Purchaser will defend Seller (with counsel acceptable to Seller), from and against any and all liabilities, liens, 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 Purchaser's agents' actions, presence on the Property and any Inspections conducted by Purchaser. Such indemnity will survive Closing or any termination of this Contract.

(c) If Purchaser reasonably determines that the Property is not suitable 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 neither party will have any further rights or obligations under this Contract except those set forth herein that expressly survive termination. If Purchaser does not terminate the Contract prior to the expiration of the Inspection Period, Purchaser will be obligated to close the transaction in accordance with this Contract.

**8. CONVEYANCE OF TITLE:** Seller will convey the Property by quitclaim deed substantially in the form of the Conveyance Deed; provided, however, that if the state in which the Property is located does not recognize a conveyance by quitclaim deed, Seller will convey the Property to Purchaser by a deed without warranty in form and substance satisfactory to Seller in its sole and absolute discretion. In each such instance, the Conveyance Deed will be expressly **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, liens, encumbrances, impositions (monetary and otherwise), 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, 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 prior and subsequent years and subsequent taxes and assessments for prior years becoming due by reason of a change in usage, ownership, or mistake, of the Property; and any and all zoning, building, and other laws, regulations, and ordinances of municipal and other governmental authorities affecting the Property (collectively referred to as the "Permitted Encumbrances"). Seller has no obligation to remove, eliminate or modify any Permitted Encumbrance, whether evidenced by a title commitment, survey, or otherwise.

Personal Property, if any, will be conveyed to Purchaser by a bill of sale without any warranty or representation of any kind in a form determined by Seller in its sole and absolute discretion.

**9. PROPERTY CONDITION; NO WARRANTIES OR REPRESENTATIONS; RELEASE OF CLAIMS BY PURCHASER:**

(a) Purchaser acknowledges that Seller has acquired the Property due solely to the failure of a financial institution, and consequently, Seller has little or no knowledge of the condition of the Property and surrounding areas. **ACCORDINGLY, PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS PURCHASING THE PROPERTY "AS-IS", "WHERE-IS", AND "WITH ALL FAULTS" AS OF THE EFFECTIVE DATE AND CLOSING DATE, AND PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT SELLER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES CONCERNING THE CONDITION, VALUE AND QUALITY OF THE PROPERTY AND ANY PORTIONS THEREOF, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER ACKNOWLEDGES THAT NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM OR COURSE OF DEALING WITH SELLER. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS HAD (OR IF NO INSPECTION PERIOD IS PROVIDED, PURCHASER EXPRESSLY WAIVES), THE OPPORTUNITY TO INSPECT THE PROPERTY AND PURCHASER WILL RELY SOLELY ON ITS INVESTIGATION OF THE PROPERTY IN ITS ACQUISITION THEREOF. SELLER HAS NO OBLIGATION TO ALTER, REPAIR OR IMPROVE THE PROPERTY.**

(b) Purchaser acknowledges and agrees that Purchaser will not rely upon any (i) representations or warranties (oral or written) made by or purportedly on behalf of Seller unless expressly set forth in this Contract, or (ii) documents or other information (oral or written) supplied by, or purportedly on behalf of, Seller. **PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY DOCUMENTS OR INFORMATION PROVIDED TO PURCHASER BY SELLER OR ON SELLER'S BEHALF HAVE BEEN OBTAINED FROM A VARIETY OF SOURCES, HAVE NOT BEEN INDEPENDENTLY INVESTIGATED OR VERIFIED BY SELLER, AND ARE**

**NOT TO BE RELIED UPON BY PURCHASER IN ENTERING INTO THIS CONTRACT OR PURCHASING THE PROPERTY. SELLER MAKES NO EXPRESS REPRESENTATIONS OR WARRANTIES AND DISCLAIMS ANY AND ALL IMPLIED WARRANTIES CONCERNING THE TRUTH, ACCURACY, AND COMPLETENESS OF ANY DOCUMENTS OR INFORMATION SUPPLIED TO PURCHASER BY SELLER OR ANYONE ACTING OR PURPORTING TO ACT ON SELLER'S BEHALF.**

**(c) EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN THIS CONTRACT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING ANY MATTERS INVOLVING THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER HEREBY AFFIRMATIVELY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CONCERNING THE FOLLOWING MATTERS:**

**(i) EXCEPT AS EXPRESSLY SET FORTH IN THE CONVEYANCE DEED, ANY MATTERS AFFECTING TITLE TO THE REAL PROPERTY INCLUDING THE EXISTENCE OR SUFFICIENCY OF LEGAL AND PHYSICAL ACCESS;**

**(ii) THE COMPLIANCE OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO IMPROVEMENTS, SOIL, GROUNDWATER AND SUBSURFACE GEOLOGY, WITH ANY AND ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, PERMITS, RULES, REGULATIONS, OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOREGOING PERTAINING TO ENVIRONMENTAL PROTECTION, POLLUTION AND LAND USE;**

**(iii) THE SUITABILITY OR APPROPRIATENESS OF THE PROPERTY OR ANY PORTION THEREOF FOR FUTURE DEVELOPMENT OR RENOVATION OR FOR THE CONDUCT OF ANY USES OR ACTIVITIES THAT PURCHASER MAY CONTEMPLATE OR ELECT TO CONDUCT THEREON;**

**(iv) THE PRESENCE OF ANY LATENT OR PATENT DEFECTS AFFECTING THE PROPERTY INCLUDING BUT NOT LIMITED TO IMPROVEMENTS, SOIL, GROUNDWATER AND SUBSURFACE GEOLOGY; AND**

**(v) THE QUALITY OF CONSTRUCTION AND MATERIALS INCORPORATED INTO ANY IMPROVEMENTS LOCATED ON THE PROPERTY AND THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR CONDITION OF ANY UTILITIES SERVING THE PROPERTY.**

**(d) PURCHASER, FOR ITSELF AND ITS HEIRS, SUCCESSORS AND ASSIGNS, AND ANYONE CLAIMING BY, THROUGH, OR UNDER PURCHASER, HEREBY EXPRESSLY (i) WAIVES ANY CLAIM AND CAUSE OF ACTION WHICH RELATE, REFER, PERTAIN TO, OR ARISE OUT OF ANY OF THE MATTERS DESCRIBED IN THIS SECTION 9, AND ANY FAILURE BY SELLER TO DISCLOSE INFORMATION TO PURCHASER CONCERNING THE PROPERTY (COLLECTIVELY, "SUCH CLAIMS") (REGARDLESS OF WHETHER SUCH CLAIMS ARE KNOWN OR DISCOVERABLE AS OF THE EFFECTIVE DATE OR THE CLOSING DATE) AND (ii) RELEASES SELLER FROM ANY AND ALL LIABILITY FROM ANY SUCH CLAIMS.**

**(e) PURCHASER WILL AND DOES HEREBY INDEMNIFY AND HOLD SELLER HARMLESS** from and against all claims, demands, liabilities, damages, losses and expenses (including cleanup or remediation costs), deficiencies, interest, fines, penalties, court costs, and consultants' and attorneys' fees and disbursements that Seller suffers, incurs, or may potentially suffer or incur, as a result of claims or causes of action made or asserted by any person, firm, entity, governmental or quasi-governmental authority on the basis of any of the matters set forth in this Section 9.

**10. BROKER'S COMMISSION:** Seller may pay its broker ("Seller's Broker") a real estate commission ("Commission") pursuant to a separate agreement. Purchaser expressly acknowledges that Seller bears no liability of any kind for payment of a fee or Commission to any other party. Further, Purchaser indemnifies Seller from any claims of any kind which may be asserted against Seller by any party claiming to have been authorized by Purchaser to act on Purchaser's behalf in the transaction contemplated by this Contract.

**11. CLOSING:**

(a) Closing. The Closing will occur on or before the Closing Date at Seller's or Settlement Agent's offices as designated by Seller in its sole discretion. Any extension of the Closing Date must be in writing and executed by Purchaser and Seller in advance of the Closing Date except that (i) Seller will have the right, in its sole discretion, to extend the Closing Date for a period of up to sixty (60) days as Seller may deem necessary or appropriate, and (ii) where the Contract otherwise allows for an extension.

(b) Seller's Deliveries. At Closing, Seller will deliver or cause to be delivered to Purchaser or Settlement Agent as appropriate, the following:

- (i) the Conveyance Deed;
- (ii) Seller's form of Owner's Affidavit; and
- (iii) if applicable, a bill of sale as described in Section 8.

(c) Purchaser's Deliveries. At Closing Purchaser will deliver or cause to be delivered to Seller or Settlement Agent as appropriate, the following:

- (i) the Purchase Price in Immediately Available Funds, with credit being given for the Earnest Money, deposits actually held by Seller in accordance with Section 14, and additional funds as may be necessary to pay Purchaser's share of the closing costs, prorations, taxes and other charges under Sections 13 and 14.

(d) Default. 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.

(e) Further Assurances. Seller and Purchaser will cause to be delivered to the Settlement Agent such other documents as may be reasonably necessary and appropriate under this Contract to complete the Closing of the sale of the Property.

**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 Conveyance Deed by Seller and acceptance of the Conveyance Deed by Purchaser will evidence the assignment by Seller and assumption by Purchaser of all written or oral agreements, including but not limited to, 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, contracts or other agreements.

**13. CLOSING COSTS:**

(a) Seller will pay only the following expenses and costs at Closing:

- (i) preparation of the Conveyance Deed, Bill of Sale and Assignment (of leases and contracts, if any);
- (ii) Seller's Broker's Commission; and,
- (iii) Seller's attorney's fees.

(b) Purchaser will pay at Closing all expenses and costs not included in Section 13(a), including, but not limited to, the following:

- (i) closing and escrow charges of Settlement Agent and all charges for any closing/escrow agent retained by Purchaser;
- (ii) costs of any title insurance commitment/binder, title insurance policy, survey, or financing obtained by the Purchaser in connection with its purchase of the Property;
- (iii) costs of any Inspection and survey of the Property;
- (iv) costs to remove any liens attributable to Purchaser;
- (v) documentary stamps and transfer taxes;
- (vi) all deed filing costs and recording fees;
- (vii) all taxes not subject to proration in accordance with Section 14 hereof;
- (viii) Purchaser's attorney's fees (including legal fees for any closing/escrow agent retained by Purchaser); and,
- (ix) all outstanding interest, fees or charges which may be due or become due on the foregoing.

#### **14. PRORATIONS AT CLOSING:**

(a) At Closing, any and all amounts owing for utilities, rents, service contracts and leases (to the extent the same are assignable), and all other customary items of income or expense related to the Real Property and Personal Property, will be prorated between Purchaser and Seller as of the Closing Date, Seller being charged and credited for all of same prior to the Closing Date and Purchaser being charged and credited for all of same on and after the Closing Date. All such Closing prorations are final and not adjustable.

(b) From and after Closing, Purchaser will be solely responsible for payment of all unpaid taxes and assessments affecting the Real Property and Personal Property, whether known or unknown, current or delinquent, including, without limitation, any assessments, reassessments, interest, penalties, court costs, attorney fees and other costs that are or may become due because of (i) the transfer of the Property, (ii) a subsequent change in the use of the Property (e.g., "rollback taxes"), or (iii) an omission or other mistake in assessment. Purchaser hereby agrees to pay all such taxes and costs and Purchaser will indemnify and save Seller harmless from and against all claims and liability for such taxes.

(c) 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 tenant security deposits not actually held by Seller at Closing. Seller will be credited at Closing with the amount of any and all other deposits held by third parties with respect to the Property.

**15. CASUALTY LOSS/CONDEMNATION:** In the event of damage to or destruction of the Property by fire or other casualty, or a condemnation or taking of the Property, prior to Closing, resulting in a loss exceeding the greater of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) or twenty percent (20%) of the Purchase Price, Purchaser may, at its option, either (i) terminate this Contract by delivering written notice 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, at Seller's option, receive a credit against the Purchase Price at Closing in an amount determined by Seller in its sole and absolute discretion. In no event will a casualty loss, condemnation or taking give rise to a claim against Seller for breach of Contract.

#### **16. REMEDIES:**

(a) If Purchaser defaults in the performance of its obligations hereunder or fails to consummate the purchase of the Property in accordance with this Contract for any reason other than Purchaser's right to terminate this Contract in accordance with the terms hereof or Seller's breach of its obligations hereunder, then Seller, as its sole and exclusive remedy, will have the right to terminate this Contract by providing written notice to Purchaser, in which event (i) Seller will be entitled to retain the Earnest Money as liquidated damages hereunder (Seller and Purchaser hereby acknowledging that the amount of damages from Purchaser's breach would be difficult or impossible to accurately ascertain); and, (ii) neither party hereto will have any further rights or obligations under this Contract except for those provisions which expressly survive the termination of this Contract. Notwithstanding the foregoing, in the event of any other default by Purchaser under this Contract, Seller will have any and all rights and remedies available at law or in equity by reason of such default.

(b) If Purchaser terminates this Contract in accordance with a right granted to Purchaser hereunder to do so, absent Seller default, the Earnest Money will be returned to Purchaser by Seller and neither party hereto will have any further rights or obligations under this Contract except for those provisions which expressly survive termination of this Contract.

(c) If Seller defaults in the performance of its obligations hereunder or fails to consummate the purchase of the Property in accordance with this Contract for any reason other than Seller's right to terminate this Contract in accordance with the terms hereof or Purchaser's breach of its obligations hereunder, then Purchaser, as its sole and exclusive remedy, will have the right to terminate this Contract by providing written notice thereof to Seller, in which event (i) the Earnest Money will be returned to Purchaser by Seller; (ii) subject to (A) Purchaser's compliance with Sections 7(a) and (b) hereof and (B) Purchaser's submission to Seller, within sixty (60) days of termination of this Contract pursuant to this Section 16(c), of paid invoices (so marked) evidencing such compliance, Seller will reimburse Purchaser of its reasonable out-of-pocket expenses incurred with this Contract prior to such default up to the maximum amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00); and, (iii) neither party hereto will have any further rights or obligations under this Contract except for those provisions which expressly survive the termination of this Contract. In no event will Seller be liable to Purchaser for any other actual, punitive, speculative, or consequential damages, nor will Purchaser be entitled to bring a claim to enforce specific performance of this Contract. Moreover, if Seller is in default of Seller's obligations hereunder and Purchaser fails

to exercise its right to terminate this Contract pursuant to this Section 16(c) on or before the Closing Date, then this Contract will expire by its own terms on the day following the Closing Date, Purchaser will have the right to return of the Earnest Money from Seller and reimbursement of its reasonable out-of-pocket expenses, subject to and in accordance with Purchaser's compliance with Section 16(c)(ii). In such event, neither party hereto will have any further rights or obligations under this Contract except for those provisions which expressly survive the termination of this Contract.

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

**18. CONFIDENTIALITY:** Prior to or contemporaneously with the execution of this Contract, Purchaser may have completed, executed, and delivered to Seller a Non-Disclosure Agreement. If Purchaser has not executed an NDA, Purchaser will be bound by the confidentiality terms attached hereto as Exhibit "E" ("Confidentiality Terms"). Any breach by Purchaser under the NDA or the Confidentiality Terms, as applicable, will constitute Purchaser's default under this Contract and Seller will have the right to terminate this Contract, retain the Earnest Money pursuant to Section 16 hereof, and pursue any other remedies provided by law. Purchaser may not record this Contract or a Contract memorandum in any public records and any such recording will constitute Purchaser's default under this Contract.

**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, will 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 authorized signatory of the Seller may execute this Contract on behalf of the Seller in the capacity identified in Section 1.

**21. SURVIVAL:** In addition to those certain provisions of this Contract expressly made to survive Closing or any termination of this Contract, Sections 7, 9, 10, 12, 14, 18, 23, 25, 26 and 29 of this Contract will survive Closing and the delivery of the Conveyance Deed and will not be merged therein.

**22. MODIFICATION:** This Contract is the entire agreement between Seller and Purchaser regarding the sale of the Property and supersedes all other prior statements, agreements and understandings. This Contract may only be amended by written instrument executed by both Seller and Purchaser.

**23. GOVERNING LAW:** The validity, construction, enforcement, interpretation, and performance of this Contract will 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 will be served (and will 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; (c) depositing the same into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified, or (d) confirmed electronic mail. For purposes of notice, the addresses of the parties will be under their respective signature blocks.

**26. 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. Seller and Purchaser agree that the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Contract.

**27. INDIVIDUAL LIABILITY:** The individual who purports to execute this Contract on behalf of a purchasing entity will nevertheless be bound under this Contract in his or her individual capacity unless, at least 15 days prior to Closing, the individual provides Seller with a copy of (a) the articles or agreement by which a legal purchasing 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) naming the individual to bind Purchaser's legal entity in such transaction.

**28. ASSIGNMENT:** This Contract will inure to the benefit of and be binding on the parties hereto and their permitted heirs, successors, and assigns. Purchaser will have no right to assign this Contract without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole and absolute discretion. Any purported assignment without Seller's prior written consent will be void and of no legal force or effect.

**29. EXCLUDED PROPERTY/PERSONALLY IDENTIFIABLE INFORMATION:**

(a) The Excluded Property is expressly excluded from the transaction contemplated by this Contract. All legal and equitable ownership of the Excluded Property remains vested solely in Seller.

(b) If Purchaser discovers, at any time, possible Excluded Property upon, in or around the Property, Purchaser will (i) provide notice to Seller, identifying the nature and location of the possible Excluded Property, and (ii) if deemed Excluded Property by Seller, Purchaser will cooperate with Seller to effect the prompt removal and delivery of the Excluded Property to Seller, at Seller's sole cost and expense.

(c) If any Excluded Property contains any data, information, program or system necessary for the routine operation and management of the Property, Purchaser will, within ten (10) business days after the Closing Date, and to the satisfaction of Seller, (i) transfer such non-PII data, information, program or system to replacement storage media/devices at Purchaser's sole cost and expense, and (ii) deliver the Excluded Property to Seller.

**(d) PURCHASER EXPRESSLY ACKNOWLEDGES AND AGREES: i) PURCHASER WILL NOT ACCESS, DOWNLOAD, READ, UTILIZE OR DETERMINE THE CONTENT OF ANY PII, ii) PURCHASER WILL NOT DIVULGE, OR ALLOW ACCESS TO, ANY PII TO ANY OTHER PERSON, FIRM OR ENTITY; AND, iii) ALL PII IS CONFIDENTIAL AND SUBJECT TO THE TERMS OF THE CONFIDENTIALITY TERMS DESCRIBED IN SECTION 18 HEREOF.**

**30. COUNTERPARTS; ELECTRONIC SIGNATURES:**

(a) This Contract and any amendments may be executed in one or more counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument. It will not be necessary for any counterpart to bear the signature of all Parties.

(b) Each counterpart of this Contract, any amendments, and any related documents signed and delivered by facsimile, portable document format (pdf) or DocuSign, or similar electronic means, will be treated in all manner and respect as an original signed document and will have the same legal force and effect as if it were the original signed counterpart thereof delivered in person. No Party to this Contract may raise the use of such electronic means to execute, transmit or deliver any such document as a defense to the formation, interpretation or enforceability of this Contract, any amendments hereto or related documents, and each Party forever waives and disclaims any such defense.

**[Signature pages, Exhibits and Attachments on the following pages.]**

**[The remainder of this page is intentionally blank.]**

**PURCHASER'S SIGNATURE PAGE**

The Purchaser has executed this Real Estate Purchase and Sale Contract on the date set forth in the signature block below.

**PURCHASER** (check one box and complete):

**INDIVIDUAL(S)** identified in Section 1(b). Sign on first line. Print name(s) on second line.

Signatures:

Print Names:

Date:

**LEGAL ENTITY** identified in Section 1(b). Example: XYZ Corporation, a New Jersey corporation.

Print:   
*(Legal entity name)*

, a(n)    
*(State of formation) (Legal entity type, such as LLC or corporation)*

By:   
*(Entity authorized representative signs here)*

Print Name:

Title:

Date:

**PURCHASER'S ADDRESS TO RECEIVE NOTICES UNDER THIS CONTRACT:**  
Purchaser's complete mailing address

(Street address only; a P.O. Box is NOT acceptable)

Telephone Number:

Email:

**[Seller's Signature Page follows.]**

**SELLER'S SIGNATURE PAGE**

The Seller has executed this Real Estate Purchase and Sale Contract on the date set forth in the signature block below.

**SELLER** (check one box and complete):

**FEDERAL DEPOSIT INSURANCE CORPORATION,**  
in the capacity stated in Section 1(a).

**SELLER LEGAL ENTITY** identified in Section 1(a):

Print:

*(Name of subsidiary)*

, a(n)    
*(State of formation)*  *(Legal entity type, such as LLC or corporation)*

By:

*(Entity authorized representative signs here)*

Print Name:

Title:

Date:

**SELLER'S ADDRESS TO RECEIVE NOTICES UNDER THIS CONTRACT:**

Seller's complete mailing address

Attn: ORE Department  
600 North Pearl Street  
Dallas, TX 75201

Telephone Number:

Email: DRROREOOANotices@fdic.gov

**A COPY OF ANY NOTICE TO SELLER MUST ALSO BE SENT TO:**

(Street address only; a P.O. Box is NOT acceptable)

,

Telephone Number:

Email:

Exhibit "A"

**REAL PROPERTY DESCRIPTION**

**[NOTE TO PREPARER: This legal description should be, except in unique circumstances, the legal description of the Real Property as found in the conveyancing instrument vesting title in the Seller or the Failed Bank named in Section 1 of the Contract.]**

SAMPLE

Clear Text

Exhibit "B"

FORM OF CONVEYANCE DEED

[Note to Contract preparer: the below form of Quitclaim 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:

4C Asset No. \_\_\_\_\_

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

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

QUITCLAIM DEED

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

GRANTOR: \_\_\_\_\_

Grantor's Mailing Address: \_\_\_\_\_

GRANTEE: \_\_\_\_\_

Grantee's Mailing Address: \_\_\_\_\_

PROPERTY: Those certain tracts or parcels of land situated in \_\_\_\_\_ County, \_\_\_\_\_ as such land is more particularly described in Exhibit "A" hereto, 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 Grantor in and to adjacent streets, alleys or rights-of-way ("Property").

RECITALS

A. \_\_\_\_\_

The Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said Grantor paid by Grantee named herein, the receipt of which is hereby acknowledged, hereby RELEASES, CONVEYS and QUITCLAIMS to Grantee, WITHOUT COVENANT, REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AND ANY AND ALL WARRANTIES THAT MIGHT ARISE BY COMMON LAW AND WARRANTIES CREATED BY STATUTE, AS THE SAME MAY BE HEREAFTER AMENDED OR SUPERSEDED, ARE EXCLUDED, all of Grantor's right, title and interest, if any, in and to the Property, 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, liens, encumbrances, impositions (monetary or otherwise), 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 but not limited to all items listed on the title policy, if any, 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, prior years, and subsequent years and subsequent taxes and assessments for prior years becoming due by reason of a change in usage, ownership, or mistake, of the Property; and any and all zoning, building, and other laws, regulations, and ordinances of municipal and other governmental authorities, if any, affecting the Property (collectively referred to as the "Permitted Encumbrances"). Grantee, by its acceptance of delivery of this Quitclaim Deed, assumes and agrees to perform any and all obligations of Grantor or the Institution under the Permitted Encumbrances.

Grantee acknowledges that Grantor has acquired the Property due solely to the failure of a financial institution, and consequently, Grantor has little or no knowledge of the condition of the Property and surrounding areas.

GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTEE IS PURCHASING THE PROPERTY "AS-IS", "WHERE-IS", AND "WITH ALL FAULTS" AS OF THE DATE OF THIS DEED, AND GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT GRANTOR HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES CONCERNING THE CONDITION, VALUE AND QUALITY OF THE PROPERTY AND ANY PORTIONS THEREOF, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. GRANTEE ACKNOWLEDGES THAT NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM OR COURSE OF DEALING WITH GRANTOR. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS HAD OR HAS WAIVED THE OPPORTUNITY TO INSPECT THE PROPERTY AND GRANTEE WILL RELY SOLELY ON ITS INVESTIGATION OF THE PROPERTY. GRANTOR HAS NO OBLIGATION TO ALTER, REPAIR OR IMPROVE THE PROPERTY.

GRANTOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING ANY MATTERS INVOLVING THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GRANTOR HEREBY AFFIRMATIVELY DISCLAIMS ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES CONCERNING THE FOLLOWING MATTERS:

- (i) EXCEPT AS MAY OTHERWISE BE EXPRESSLY SET OUT IN THIS DEED, ANY MATTERS AFFECTING TITLE TO THE REAL PROPERTY INCLUDING THE EXISTENCE OR SUFFICIENCY OF LEGAL AND PHYSICAL ACCESS;
- (ii) THE COMPLIANCE OF THE PROPERTY OR ANY PORTION THEREOF, INCLUDING BUT NOT LIMITED TO IMPROVEMENTS, SOIL, GROUNDWATER AND SUBSURFACE GEOLOGY, WITH ANY AND ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, PERMITS, RULES, REGULATIONS, OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, ANY OF THE FOREGOING PERTAINING TO ENVIRONMENTAL PROTECTION, POLLUTION AND LAND USE;
- (iii) THE SUITABILITY OR APPROPRIATENESS OF THE PROPERTY OR ANY PORTION THEREOF FOR FUTURE DEVELOPMENT OR RENOVATION OR FOR THE CONDUCT OF ANY USES OR ACTIVITIES THAT GRANTEE MAY CONTEMPLATE OR ELECT TO CONDUCT THEREON;
- (iv) THE PRESENCE OF ANY LATENT OR PATENT DEFECTS AFFECTING THE PROPERTY INCLUDING BUT NOT LIMITED TO IMPROVEMENTS, SOIL, GROUNDWATER AND SUBSURFACE GEOLOGY; AND,
- (v) THE QUALITY OF CONSTRUCTION AND MATERIALS INCORPORATED INTO ANY IMPROVEMENTS LOCATED ON THE PROPERTY AND THE EXISTENCE, QUALITY, NATURE, ADEQUACY, OR CONDITION OF ANY UTILITIES SERVING THE PROPERTY.

GRANTEE, FOR ITSELF AND ITS HEIRS, SUCCESSORS AND ASSIGNS, AND ANYONE CLAIMING BY, THROUGH, OR UNDER GRANTEE, HEREBY EXPRESSLY (i) WAIVES ANY CLAIMS AND CAUSES OF ACTION WHICH RELATE, REFER, PERTAIN TO, OR ARISE OUT OF ANY OF THE MATTERS DESCRIBED IN THIS DEED, AND ANY FAILURE BY GRANTOR TO DISCLOSE INFORMATION TO GRANTEE CONCERNING THE PROPERTY (COLLECTIVELY, "SUCH CLAIMS") REGARDLESS OF WHETHER SUCH CLAIMS ARE KNOWN, UNKNOWN, OR DISCOVERABLE AS OF THE DATE OF THIS DEED, AND (ii) RELEASES GRANTOR FROM ANY AND ALL LIABILITY FROM ANY SUCH CLAIMS.

Further, by its acceptance of delivery of this Quitclaim 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 all of Grantor's right, title, and interest in the Property, if any, together with all and singular the rights and appurtenances thereto in any wise belonging to Grantor, unto Grantee, its legal representatives, successors and assigns without covenant, representation, or warranty whatsoever and **subject to**, however, 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.

**NOTE:** All *ad valorem* taxes and assessments for the Property for prior years and the year in which this Quitclaim Deed is executed are to be paid by the Grantee. By its acceptance of delivery of this Quitclaim 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 any tax year or assessment period prior or subsequent to the date of this Quitclaim Deed, including, without limitation, taxes or assessments becoming due by reason of a change in usage or ownership, or both, of the Property or any portion thereof.

[Signature pages, Exhibits and Attachments on the following pages.]

[The remainder of this page is intentionally blank.]



IN WITNESS WHEREOF, this Quitclaim Deed is executed on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**GRANTOR:**

**Federal Deposit Insurance Corporation ("FDIC"), as Receiver for \_\_\_\_\_,**

*(City and State of headquarters)*

\_\_\_\_\_  
*(Name of Failed Bank)*

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

*(Seller's authorized representative signs here)*

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

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

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

**ACKNOWLEDGMENTS**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, Attorney in Fact of the Federal Deposit Insurance Corporation in the capacity stated above on behalf of said entity.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_



EXHIBIT "A"

[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 Institution named in the first recital above.]**

SAMPLE

Exhibit "C"

**Inventory of Personal Property to be Conveyed**

SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE EXISTENCE, OWNERSHIP, TITLE, POSSESSION, SIZE, SHAPE, CONFIGURATION, LOCATION, CAPACITY, QUANTITY, QUALITY, VALUE, CONDITION, MAKE, MODEL, COMPOSITION, AUTHENTICITY, OR AMOUNT OF THE PERSONALTY LISTED HEREON.

Any and all Personal Property located within the Real Property.

SAMPLE

Clear Text

**PURCHASER ELIGIBILITY CERTIFICATION**

OMB Number: 3064-0135  
Expiration Date: 02/28/2025

**PRIVACY ACT STATEMENT**

The Federal Deposit Insurance Act (12 U.S.C. §§1819, 1821, and 1823) and Executive Order 9397 authorizes the collection of this information. The FDIC will use this information in the marketing of assets, to identify qualified potential purchasers and to solicit bids for assets. Submitting this information to the FDIC is voluntary. Failure to submit all of the information requested could result in your inability to bid on or purchase assets held by the FDIC. The information provided by individuals is protected by the Privacy Act, 5 USC §552a. The information may be furnished to third parties as authorized by law and in accordance with any of the other routine uses described in the FDIC Potential Bidders List (FDIC-30-64-0019) System of Records. A complete copy of this System of Records is available at <https://www.fdic.gov/regulations/laws/rules/2000-4000.html#fdic200030-64-0019>. If you have questions or concerns about the collection or use of the information, you may contact the FDIC's Chief Privacy Officer at [Privacy@fdic.gov](mailto:Privacy@fdic.gov).

**ESTIMATED REPORTING BURDEN**

Public reporting burden for this collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Paperwork Reduction Act, Legal Division, FDIC, 5050 17<sup>th</sup> Street NW, Project (3064-0135), Washington, D.C. 20503.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

## PURCHASER ELIGIBILITY CERTIFICATION

**Sale/Loan Pool Number(s):** \_\_\_\_\_

The purpose of the Purchaser Eligibility Certification is to identify Prospective Purchasers who are not eligible to purchase assets of failed financial institutions from the Federal Deposit Insurance Corporation under the laws, regulations and policies governing such sales. Completion of the Purchaser Eligibility Certification, without modification, is a prerequisite to any such purchase.

### DEFINITIONS

**Affiliated Business Entity.** An Affiliated Business Entity of a Prospective Purchaser means its spouse, dependent child or any member of its household; or any entity that directly or indirectly is under the control of the Prospective Purchaser, controls the Prospective Purchaser or is under common control with the Prospective Purchaser.

**Associated Person.** An Associated Person of a Prospective Purchaser that is an individual is (1) the Prospective Purchaser's spouse or dependent child or any member of the Prospective Purchaser's household, (2) a partnership in which the Prospective Purchaser is or was a general or limited partner at the time of occurrence of any event that would prevent certification under the next section, (3) a limited liability company of which the Prospective Purchaser is or was a member at the time of occurrence of any event that would prevent certification under the next section, or (4) a corporation of which the Prospective Purchaser is or was an officer or director at the time of occurrence of any event that would prevent certification under the next section. An Associated Person of a Prospective Purchaser that is an entity is (1) an individual or entity that, acting individually or in concert with one or more individuals or entities, owns or controls 25 percent or more of the Prospective Purchaser; or (2) a managing or general partner, or managing member, of the Prospective Purchaser.

**Contractor.** A Contractor is any individual or entity that has submitted an offer to the FDIC to perform services or has a contractual arrangement with the FDIC to perform services.

**Delinquent Obligation.** A Delinquent Obligation is any debt or duty to pay money to the FDIC in excess of \$50,000 (in an aggregate for all such debts or duties) that is more than sixty (60) days delinquent, or any other failure to comply with the terms and conditions of a written agreement with the FDIC that continues for more than sixty (60) days following notice. A Delinquent Obligation does not include any debt that has been settled, nor any debt that has been sold or transferred by the FDIC, nor any debt for which the FDIC has reported forgiveness of debt through the issuance of an IRS form 1099, nor any debt discharged in bankruptcy.

**Failed Institution.** A Failed Institution is any bank or savings association that has been under the conservatorship or receivership of the FDIC or of the Resolution Trust Corporation. It includes any entity owned and controlled by such a bank or savings association.

**FDIC.** FDIC means the Federal Deposit Insurance Corporation, whether acting in its corporate capacity or as a conservator or receiver of a Failed Institution.

**Prospective Purchaser.** A Prospective Purchaser is any individual or entity that has made or intends to make an offer to purchase assets of a Failed Institution from the FDIC. For all purposes of the Certification, an “entity” includes any entity with a legally independent existence, including, without limitation, a trustee; the beneficiary of at least 25% share of the proceeds of a trust; a partnership; a limited liability company; a corporation; an association; or any other organization or society.

**Substantial Loss.** A Substantial Loss is (i) any debt or duty to pay money to the FDIC or a Failed Institution that has an outstanding balance of more than \$50,000 and that is more than ninety (90) days past due; (ii) an unpaid final judgement of more than \$50,000 regardless of whether it is forgiven in a bankruptcy proceeding; (iii) a deficiency balance following a foreclosure sale of more than \$50,000 regardless of whether it is discharged in a bankruptcy proceeding; or (iv) any lossee of more than \$50,000 reported on an IRS Form 1099-C (Information Reporting for Cancellation of Debt).

## ELIGIBILITY CERTIFICATION

The undersigned hereby certifies that all of the following statements are true, correct and complete when made and will be true at closing if the sale:

- A. **FDIC Employees.** The Prospective Purchaser is not an FDIC employee, the spouse of an FDIC employee, or the minor child of an FDIC employee.
- B. **Delinquent Obligors.** Neither the Prospective Purchaser nor any of its Affiliated Business Entities has a Delinquent Obligation. *Under certain circumstances, the certification required in this paragraph may be waived by the FDIC. For more information about the waiver process and criteria, contact the FDIC sales representative. Note: If the sale is for FDIC real estate owned or items such as furniture, fixtures or equipment, artwork, automobiles or other tangible items, and the Prospective Purchaser will bid less than \$250,000 (per item or per pool), then the certification set forth in this paragraph B is not required.*
- C. **FDIC Contractors.** Neither the Prospective Purchaser nor any of its Affiliated Business Entities is a Contractor that has performed services within three years preceding the date of this certification relating to any of the assets that the Prospective Purchaser might buy, unless the contract for services allows for the purchase of such assets. *Under certain circumstances, the certification required in this paragraph may be waived by the FDIC. For more information about the waiver process and criteria contact the FDIC sales representative.*
- D. **Officers or Directors of Failed Institutions.** Neither the Prospective Purchaser nor any of its Associated Persons has ever been an officer or director of a Failed Institution or of an affiliate of a Failed Institution who (1) has participated in a material way in one or more transactions that caused Substantial Loss to any such Failed Institution; and (2) in connection with such Substantial Loss has been found by a court or administrative tribunal, or alleged in a judicial or administrative action brought by the FDIC or any federal or state governmental entity to have (i) violated any law, regulation or order issued by a federal or state banking agency; (ii) breached a written agreement with a federal or state banking agency or with a Failed Institution; (iii) engaged in an unsafe or unsound practice in conducting the affairs of a Failed Institution; or (iv) breached a fiduciary duty owed to a Failed Institution.

- E. **Debarment from Participation in the Affairs of a Failed Institution.** Neither the Prospective Purchaser nor any of its Associated Person(s) has been removed from, or prohibited from participating in the affairs of a Failed Institution by a final enforcement action by the FDIC or any other federal banking agency (as defined under U.S.C. §1813(z)).
- F. **Pattern or Practice of Defalcation.** Neither the Prospective Purchaser nor any of its Associated Person(s) has borrowed money or guaranteed loans in more than one transaction with the intent to cause a loss or with reckless disregard for whether such transactions would cause a loss to any financial institution insured by the FDIC, where these loans, in the aggregate, caused a Substantial Loss to one or more Failed Institutions.
- G. **Convicted of Certain Crimes.** Neither the Prospective Purchaser nor any of its Associated Person(s) (1) has been convicted of committing or conspiring to commit any offense under Section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of Title 18 of the United States Code affecting any Failed Institution; and (2) has defaulted on any debt or duty to pay money (including any guaranty) owed to the FDIC or any Failed Institution to such an extent that a judgement has been rendered in favor of the FDIC or the property securing the debt has been foreclosed on.
- H. **If Seller Financing Is Used.** Neither the Prospective Purchaser nor any of its Associated Persons (1) has defaulted on any debts or duties to pay money (including any guaranty) to the FDIC or a Failed Institution that, in the aggregate, exceed \$1,000,000, to such an extent that a judgement has been rendered in favor of the FDIC or a Failed Institution or the property securing the debt has been foreclosed on; and (2) has made any fraudulent misrepresentations in connection with any of these debts or duties. *This representation is not required, and has no effect, if the Prospective Purchaser does not finance any portion of the purchase price through financing offered by the FDIC.*
- I. **Transactions Structured to Circumvent the Certification.** Neither the identity nor form of the Prospective Purchaser, nor any aspect of the contemplated transaction, has been created or altered with the intent, in whole or in part, to allow an individual or entity who otherwise would be ineligible to purchase assets from the FDIC to benefit directly or indirectly from the proposed transaction.

PROSPECTIVE PURCHASER INFORMATION

Name of Prospective Purchaser		
<input type="checkbox"/> Individual	<input type="checkbox"/> Corporation	<input type="checkbox"/> Trust
<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Other <i>(Specify below)</i>
Physical Address (For Overnight Delivery)		
Contact Person and Title		
Telephone Number	Fax Number	E-mail Address

IN WITNESS WHEREOF, the undersigned declares under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and has executed this Certification as of .

PROSPECTIVE PURCHASER

	[Print Name of Prospective Purchaser]
	[Signature]
	[Print Name and Title of Authorized Signatory]

**Notice Concerning Legal Action**

Any person who knowingly or willfully makes false or fraudulent statements or disclosures in connection with this Certification will be referred to the Office of Inspector General and/or the appropriate law enforcement officials for investigation and legal enforcement and may be subject to fines and/or imprisonment (18 U.S.C. §§1001, 1007 and 1014).

Exhibit "E"

**CONFIDENTIALITY TERMS**

In accordance with Section 18 of the Contract, Purchaser, as a party interested in evaluating the Property for purchase ("Interested Party"), understands, acknowledges and expressly agrees to the following confidentiality terms ("Terms") regarding information provided to Purchaser by Seller:

- 1. Information.** Seller may furnish Interested Party with non-public, confidential or proprietary information about the Property, including but not limited to data, documents, files, records and other information (whether written, oral or electronic, and whether prepared by Seller or by third parties), (collectively, the "Information"). Some Information may be further identified on Exhibit "E-1" attached to the Terms.
- 2. Limitation On Use Of Information.** Interested Party will (a) keep the Information confidential and will not, without Seller's prior written consent, disseminate or disclose any Information in any manner whatsoever, and (b) use the Information solely for the purpose of evaluating the suitability of the Property for Interested Party's intended purpose; provided, however, that Interested Party may reveal the Information to its partners, directors, officers, employees, advisors, attorneys, accountants, consultants, affiliates, representatives, agents, lenders and successors and assigns (collectively, "Representatives") (i) who reasonably need to know the Information for the purpose of evaluating Interested Party's purchase of the Property, (ii) who have been informed by Interested Party of the confidential nature of the Information and (iii) who agree in writing to act in accordance with the Terms. Interested Party is solely responsible for any breach of the Terms by any of its Representatives. Interested Party will keep a record of each Representative who receives the Information.
- 3. Legally Required Disclosure Of Information.** Interested Party will notify Seller in writing within one (1) business day upon Interested Party acquiring any knowledge that it may be legally compelled to disclose Information by subpoena, civil suit or other legal proceeding, so that Seller may seek an appropriate protective order and/or waive Interested Party's compliance with the Terms. In the absence of a protective order or waiver, Interested Party may disclose that portion of the Information that Seller is legally required to disclose if, in the written opinion of Interested Party's legal counsel, failure to disclose such Information would subject Interested Party to liability for contempt, censure or other legal penalty or liability.
- 4. Destroying the Information.** As to any Property not purchased by Interested Party, unless directed otherwise by Seller, Interested Party will destroy, and cause all persons or entities to whom Interested Party has disclosed the Information to destroy, all copies of the Information. Regardless of the destruction of the Information, Interested Party shall remain bound by the Terms.
- 5. Liability.** Interested Party will notify Seller immediately of any breach of the Terms. If Seller determines that Interested Party breached the Terms, Seller may, exercise any and all legal or equitable rights or remedies to which Seller is entitled on account of Interested Party's breach. Seller will not be deemed to have waived any of its rights or remedies on account of its failure, delay or forbearance in exercising any such right or remedy in a particular instance.
- 6. Indemnification.** Interested Party will defend, indemnify and hold harmless Seller from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs, and expenses (including attorneys' fees) asserted against or incurred by Seller as a result of any violation of, or failure to comply with, the Terms by Interested Party, its Representatives or any person or entity to whom Information has been disclosed.
- 7. Disclaimer as to Information; Release of Seller.** Interested Party acknowledges and understands that (a) some or all of the Information may have been prepared by third parties other than Seller, and (b) Seller expressly disclaims all representations and warranties either express or implied, including, but not limited to any implied warranty of merchantability or fitness for a particular purpose, and any warranty with respect to the content, completeness or accuracy of the Information. Interested Party is expressly prohibited from contacting any of these third parties at any time without the prior written consent of Seller. Interested Party is at all times responsible for independently assuring itself as to the content, completeness or accuracy of the Information, and Interested Party's reliance on the Information will be at Interested Party's sole risk. Interested Party hereby releases Seller from all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees) asserted against or incurred by Interested Party by reason of Interested Party's knowledge of, or reliance upon, the Information.

**8. Effect of Invalid Provision.** The invalidity or unenforceability of any provision of the Terms will not affect or limit the validity or enforceability of any other provision hereof and such invalid or unenforceable provision will be construed or deemed amended by the parties only to the extent necessary to make it valid and enforceable.

**9. Survival.** The Terms will survive Closing or any termination of the Contract for the latter of two (2) years from (a) the Effective Date of the Contract, (b) Closing, or (c) execution of the Non-Disclosure Agreement.

[The remainder of this page is intentionally blank.]

SAMPLE

Exhibit "E-1" to Confidentiality Terms

[List of Information Furnished by Seller to Interested Party]

SAMPLE

Clear Text

Validate & Distribute

Save as Draft