

KEY TERMS

REO Number _____

WINNING BIDDER CONFIRMATION

PROPERTY SOLD SUBJECT TO CONFIRMATION. SEE "SUBJECT TO CONFIRMATION" ADDENDUM TO THIS PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

Buyer(s) acknowledges and agrees that its bid and purchase is subject to, and contingent upon, Seller approving the bid and purchase, which approval shall be given or denied at Seller's sole and absolute discretion in accordance with the terms of this Purchase Agreement and Joint Escrow Instructions, including the "Subject to Confirmation" Addendum. Any change to the original financing terms or Buyer(s) vesting must be approved by the seller prior to processing. Buyer(s) to provide a full copy of the completed lender appraisal when available (cash transactions exempt of appraisal requirement).

Buyer(s):

A. SELLER

B. BUYER(S)

BUYER(S) PRINTED NAME _____

BUYER(S) PRINTED NAME, IF ANY _____

ADDRESS _____

CITY, STATE, ZIP _____

Home Phone No.: _____

Cell Phone No.: _____

Work Phone No.: _____

Email Address: _____

C. PURCHASE PRICE

Total Purchase Price Calculation:

Winning Bid Amount \$ _____

Plus Buyer(s) premium \$ _____

Equals TOTAL PURCHASE PRICE: \$ _____

Earnest Money Deposit from Buyer(s)*: \$ _____

*Minimum Earnest Money Deposit to be 1% of Total Purchase Price or \$1,000, whichever is greater.

D. PROPERTY:

Property Address: _____

E. CLOSING DATE:

See Section 7.A. _____

F. ESCROW AGENT SELECTED BY (CHECK ONE): BUYER(S) _____ SELLER _____

*If Buyer(s) elects their own escrow agent they are responsible for the expenses. (Check addendum for section)

G. ESCROW AGENT:

Telephone: _____

Email Address: _____

**AUCTION AND RETAIL CONTRACT
PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

This Purchase Agreement and Joint Escrow Instructions, including the "Subject to Confirmation" addendum and Key Terms provisions (the "**Key Terms**") and exhibits and other addenda attached hereto and incorporated into this agreement (but excluding any and all statutory disclosures attached hereto) (sometimes hereinafter, collectively, this "**Agreement**") is hereby entered into by and between Bank of America, N.A., ("Seller" or "Bank" or "Servicer" and the terms "Seller" or "Bank" may also include Bank of America, N.A., not in its individual capacity but as agent in fact on behalf of Seller) and

_____ (each individual buyer herein referred to as Buyer and collectively all Buyers referred to herein as "Buyers"), for that certain real property located at the following address:

_____ more particularly described on Exhibit "A" (the "**Property**"). Buyer(s) and Seller may each be referred to herein as a "Party" and collectively as the "Parties."

Buyer(s) and Seller hereby agree as follows:

1. LIMITATION OF LIABILITY.

- A. THIS AGREEMENT IS SUBJECT IN ALL RESPECTS TO THE FOLLOWING LIMITATION OF SELLER'S LIABILITY AND BUYER(S) WAIVER OF IMPORTANT RIGHTS:
- B. BUYER(S) UNDERSTANDS AND ACKNOWLEDGES THAT SELLER HAS OR MAY HAVE ACQUIRED THE PROPERTY THROUGH FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FORFEITURE, TAX SALE OR A SIMILAR PROCESS, SELLER HAS NEVER OCCUPIED THE PROPERTY, AND SELLER HAS LITTLE OR NO DIRECT KNOWLEDGE ABOUT THE CONDITION OF THE PROPERTY. BUYER(S) AGREES THAT BUYER(S) IS BUYING THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS" (AS MORE FULLY SET FORTH IN THIS AGREEMENT).
- C. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY IN THIS AGREEMENT, SELLER'S LIABILITY OR THE LIABILITY OF ANY AFFILIATES, SUBSIDIARIES, PARENT COMPANY, REPRESENTATIVES, AGENTS, OFFICERS, DIRECTORS, EMPLOYEES, ATTORNEYS, SHAREHOLDERS, SERVICERS, AUCTIONEERS, TENANTS, BROKERS, VENDORS, PREDECESSORS, SUCCESSORS AND ASSIGNS, (EACH, A "SELLER PARTY" AND COLLECTIVELY, "SELLER PARTIES"), BUYER(S) SOLE AND EXCLUSIVE REMEDY IN ALL CIRCUMSTANCES FOR ALL CLAIMS (AS DEFINED IN SECTIONS 14 AND 16(D) BELOW) AND/OR LIABILITIES ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR THE SALE OF THE PROPERTY TO BUYER(S) SHALL BE LIMITED TO NO MORE THAN:
 - (i) A RETURN OF BUYER(S) EARNEST MONEY DEPOSIT IF THE SALE TO BUYER(S) DOES NOT CLOSE AS A RESULT OF A DEFAULT BY SELLER OR IF SELLER ELECTS TO TERMINATE THIS AGREEMENT UPON THE TERMS HEREOF OTHER THAN FOR A DEFAULT BY BUYER(S), OR
 - (ii) IF THE SALE TO BUYER(S) CLOSSES, THE LESSER OF BUYER(S) ACTUAL DAMAGES OR \$5,000.00.

AUCTION AND RETAIL CONTRACT

- D. BUYER(S) SHALL NOT BE ENTITLED TO A RETURN OF BUYER(S) EARNEST MONEY DEPOSIT IF BUYER(S) BREACHES THIS AGREEMENT.
- E. Buyer(s) agrees that Seller shall not be liable to Buyer(s) under any circumstances for a special, consequential, or punitive damages whatsoever, whether in contract, tort (including negligence and strict liability) or any other legal or equitable principle, theory or cause of action arising out of or related in any way to any claim, including, but not limited to, the aforementioned claims. Any reference to a return of the Buyer(s) earnest money deposit contained in the Agreement shall mean a return of the earnest money deposit, less any escrow cancellation fees applicable to the Buyer(s) under the Agreement and less fees and costs payable for services and products provided during escrow at the Buyer(s) request. To the fullest extent permitted by law the Buyer(s) waives any claims that the Property is unique, and the Buyer(s) acknowledges that a return of its earnest money deposit can adequately and fairly compensate the Buyer(s). Upon the return of the earnest money deposit to Buyer(s), the Agreement shall be terminated, and the Buyer(s) and the Seller shall have no further liability, obligation, or responsibility to each other in connection with the Agreement, except as to any provision that survives the termination of this Agreement pursuant to Section 20(K) below. If the sale to Buyer(s) closes and Seller compensates Buyer(s) as provided above for Buyer(s) actual damages, if any, then the Buyer(s) and the Seller shall have no further liability, obligation, or responsibility to each other in connection with the Agreement.

Seller's limitation of liability and Buyer(s) waivers provided in the Agreement are a material part of the consideration to be received by the Seller under the Agreement as negotiated and agreed to by the Buyer(s) and the Seller.

- F. The Buyer(s) further waives the following, to the fullest extent permitted by law:
- (i) All rights to file and maintain an action against the Seller for specific performance;
 - (ii) Right to record a Lis Pendens against the Property or to record the Agreement or a memorandum thereof in the real property records;
 - (iii) Right to invoke any equitable remedy that would prevent the Seller from conveying the Property to a third-party Buyer(s);
 - (iv) Any claims arising from the adjustments or proration or errors in calculating the adjustments or proration that are or may be discovered after closing unless such claims are material and Buyer(s) notifies Seller in writing of such claims within thirty (30) days of the closing date;
 - (v) Any remedy of any kind that the Buyer(s) might otherwise be entitled to at law or equity (including, but not limited to, rescission of the Agreement). Except as expressly provided in this Agreement;
 - (vi) Any right to a trial by jury in any litigation arising from or related in any way to the Agreement;
 - (vii) Any right to avoid the sale of the Property or reduce the price or hold the Seller liable for any claims arising out of or related in any way to the condition, construction, repair or treatment of

AUCTION AND RETAIL CONTRACT

the Property, or any defects, apparent or latent, that may now or hereafter exist with respect to the Property;

- (viii) Any claims arising out of or relating in any way to encroachments, easements, boundaries, shortages in area or any other matter that would be disclosed or revealed by a survey or inspection of the Property or search of public records; and
- (ix) Any claims arising out of or relating in any way to the square footage, size or location of the Property, or any information provided on the multiple listing service, or brochures or websites of Seller or Seller's agent or broker.

References to the "Seller" in this Section 1 of this Agreement shall include the Seller and the Indemnified Parties (as defined in Section 2 of this Agreement),

2. INDEMNIFIED PARTIES.

The term "**Indemnified Parties**" shall mean Seller and its affiliates, subsidiaries, parent company, representatives, agents, officers, directors, employees, attorneys, shareholders, servicers, auctioneers, brokers, vendors, predecessors, successors, and assigns.

3. PROPERTY; PURCHASE PRICE.

- A. The Property includes the permanent improvements or fixtures thereon, including those items which applicable law provides are part of the Property at Closing. Seller makes no representation or warranty as to the existence or condition of such items or as to the existence, condition, ownership or right of possession of any personal property located on the Property on the date hereof or on the Closing Date. The Property does not include any of the following: (i) personal property, (ii) insurance proceeds under policies maintained by Seller or others, or (iii) bonds, letters of credit, deposits or similar assurances posted with any governmental authority, utility company or Association (defined below) to secure performance of public or private improvements, utility services, repairs, maintenance or other matters.
- B. On and subject to the terms of this Agreement, Seller agrees to sell to Buyer(s), and Buyer(s) agrees to purchase from Seller, the Property for the price identified above in the Key Terms as the total purchase price (the "Purchase Price"). Prior to the Closing Date (as defined and determined under **Section 7(A)** below), Buyer(s) shall deposit with the Escrow Agent in immediately available funds, an amount equal to the balance of the Purchase Price, plus Buyer(s) share of closing costs and prorations, plus Buyer(s) expenses as provided herein.

4. ESCROW AGENT; EARNEST MONEY.

- A. Buyer(s) will deposit or cause to be deposited with the "Escrow Agent" identified in the Key Terms above (the "**Escrow Agent**") the Earnest Money Deposit described in the Key Terms above (the "**Earnest Money Deposit**") within two business days after a fully executed Agreement signed by all parties, which Earnest Money Deposit will be held pursuant to local law and custom and any separate escrow instructions signed by Seller and Buyer(s).

AUCTION AND RETAIL CONTRACT

- B. In connection with Buyer(s) purchase of the Property, Buyer(s) has been notified, prior to entering into this Agreement, that Buyer(s) may have the right, under applicable laws, including the "Buyer(s) Choice Act" (if applicable), to make an independent selection of the entity or entities that will act as escrow/closing agent and/or as the title insurer from which Buyer(s) (or its lender) will receive a title insurance policy. By entering into this Agreement, Buyer(s) has agreed to accept the services of the Escrow Agent and the Title Company identified in the Key Terms above ("**Title Company**"). This Agreement shall constitute joint escrow instructions to the Escrow Agent who shall handle and close this transaction as set forth herein. Escrow shall be "open" upon the occurrence of the Escrow Agent's receipt of: (A) this Agreement executed by Buyer(s); and (B) the Earnest Money Deposit from Buyer(s).

- C. If there was an escrow previously opened at any escrow company, title company or with any closing agent and/or a separate contract exists between Seller and any third party covering the sale of the Property (a "**Previous Transaction**"), Closing under this Agreement is subject to and contingent upon Seller's ability to successfully cancel the Previous Transaction, if any, prior to or concurrently with Closing. Should Closing be cancelled due to failure to successfully cancel the Previous Transaction, Buyer(s) shall receive a return of the Earnest Money Deposit less any escrow cancellation fees, which are borne by Buyer(s). Buyer(s) shall also be responsible for payment of services or products provided during escrow at the request of Buyer(s). Failure to cancel such Previous Transaction shall not be deemed a default of Seller hereunder.

5. FINANCING.

The Agreement (check one): is **is not** contingent on the Buyer(s) obtaining financing for the purchase of the Property. If the Agreement is contingent on financing, the type of financing shall be the following

(Check one):

Conventional

FHA

VA

Other (specify: _____)

- A. The Buyer(s) shall complete and submit to a mortgage lender an application for a mortgage loan within three (3) business days of the Effective Date and shall use diligent efforts to obtain a mortgage loan commitment within fifteen (15) calendar days from the said date. If, despite the Buyer(s) diligent efforts, the Buyer(s) cannot obtain a mortgage loan commitment by the specified date, then either the Buyer(s) or the Seller may terminate the Agreement by giving written notice to the other Party. The Buyer(s) notice must include a copy of the loan application, proof of the application date, and a copy of the denial letter from the prospective lender. In the event of a proper termination of the Agreement under this paragraph, the earnest money deposit shall be returned to the Buyer(s) and the parties shall have no further obligation to each other under the Agreement. The Buyer(s) agrees to cooperate and comply with all requests for documents and information from the Buyer(s) chosen lender during the loan application process. Failure of the Buyer(s) to comply with such requests from the lender that results in the denial of the mortgage loan shall be considered a material breach of the Agreement and Seller shall be entitled to exercise its remedies under Section 16(D) of this Agreement.

AUCTION AND RETAIL CONTRACT

- B. If the Agreement is contingent on financing, as a sales condition, Buyer(s) must obtain a prequalification letter from Bank of America, N.A. or Merrill Lynch, or another financial institution to proceed with the purchase for a mortgage loan in an amount and under terms sufficient for Buyer(s) to perform its obligations under the Agreement, and such letter must accompany the Agreement. The prequalification letter shall include, but is not limited to, the Buyer(s) name and loan approval amount necessary to meet Buyer(s) obligations under the Agreement. Buyer(s) submission of proof of prequalification is a condition precedent to Seller's acceptance of Buyer(s) offer. Seller may require Buyer(s) to obtain, at no cost to Buyer(s), loan prequalification as Seller may direct. Notwithstanding any Seller required prequalification, Buyer(s) is not required to obtain financing from Bank of America, N.A. or Merrill Lynch and Buyer(s) may obtain financing from any source.

- C. Cash Offer: Buyer(s) shall provide Listing Broker (Broker representing the Seller for this Property sale) and/or Bank Representative proof of liquid funds on deposit in the United States sufficient to close this transaction. Such proof shall be provided within three (3) business days of the Effective Date and shall be subject to Seller's approval. The Property shall remain on the market until such proof of funds is accepted by Seller. Notwithstanding the terms provided in Section 9 for inspection of the Property, in the event of a noncontingent cash offer, all inspections shall be completed and any notice of disapproval shall be given to Seller within seven (7) calendar days of the Effective Date. Failure to timely notify Seller of any disapproval shall be deemed acceptance by Buyer(s) of the inspection results and the condition of the Property. Cash offers shall not be subject to any contingency, unless specifically described in Section 5(C) of this Agreement.

- D. The Buyer(s) is aware that the price and terms of this transaction were negotiated on the basis of the type of financing selected by the Buyer(s). Any change of the loan type, loan terms, financing, or Buyer(s) lender after the Agreement has been entered into shall be subject to Seller's approval and may require, at Seller's sole discretion, renegotiation of all or some of the terms of the Agreement.

SAMPLE

AUCTION AND RETAIL CONTRACT

6. OTHER FINANCIAL TERMS.

Requested Closing Costs to Be Paid by Seller on Behalf of Buyer(s): (Limited to loan guidelines)

Conventional/FHA/VA Allowable Costs: \$ _____

Other Loan Types Non-Allowable: \$ _____

Property Transfer Taxes: \$ _____

Home Protection Policy: \$ _____

Other: \$ _____

Other: \$ _____

TOTAL: \$ _____

Request Repairs:

By Buyer(s)/Lender not to exceed (NTE): \$ _____

Fumigation/Chemical Only: \$ _____

Termite Repairs (NTE): \$ _____

Pest Report (NTE): \$ _____

Other: \$ _____

TOTAL: \$ _____

Notwithstanding any provision in the Agreement to the contrary, if Seller agrees in the Agreement to pay any of the Buyer(s) closing costs, then Seller shall only pay the lesser of the Buyer(s) actual closing costs and the closing costs that Seller has agreed to pay in the Agreement. Sections 15(B) and (C) has additional provisions pertaining to closing costs.

7. CLOSING.

A. **Closing Date.** The Escrow Agent shall close the transaction contemplated by this Agreement (“**Closing**”) on the earlier of the date set forth in the Key Terms above or the date that is thirty (30) calendar days after the date of Seller’s execution of this Agreement for cash transactions or forty-five (45) calendar days after the date of Seller’s execution of this Agreement for transactions being financed (as same may be extended pursuant to the terms of this Agreement, the “**Closing Date**”). If such date falls on a weekend or a state or federally recognized holiday in the jurisdiction in which the Property is located, such Closing Date shall be the next business day. The Escrow Agent is instructed to close Escrow on such date, subject to **Section 7B** below. As used herein, the term “**Closing**” or “**Close**” refers to the date on which Seller receives from Buyer(s) the Purchase Price and Buyer(s) receives, or is deemed to have received, from Seller the deed to the Property (if such actions occur on different days, then “**Close**” or “**Closing**” shall refer to the later of the two days).

AUCTION AND RETAIL CONTRACT

B. Closing. At Closing, the Escrow Agent is hereby irrevocably instructed to:

- (i) Pay all fees, costs and transfer taxes related to the sale of the Property which are required to be paid by Seller or Buyer(s) under this Agreement, the portion of any fees charged by the Escrow Agent which are payable by Seller or Buyer(s) (if any) and any other expenses relating to the sale of the Property, including all fees due to Auctioneer, property management and broker related fees and commissions, which are required to be paid by Seller or Buyer(s) under this Agreement, any Homeowners' association or other association fees, or any such fees and commissions contemplated under any separate written agreement executed by Seller;
- (ii) Pay to Seller the balance of the Purchase Price and any other funds remaining after Closing; and
- (iii) If Buyer(s) requests an extension of the Closing Date in writing at least five (5) days prior to the scheduled Closing Date and such extension is attributable to Buyer(s) delay, and Seller, in its sole and absolute discretion grants, in writing, an extension, Buyer(s) agrees to pay to Seller no later than Closing a nonrefundable fee of Two Hundred and No/100 Dollars (\$200.00) per day (the "**Extension Fee**") through and including the new Closing Date agreed to by Seller in writing. Any extension failing to specify a new proposed Closing Date shall be null and void. The Extension Fee will **not** be credited towards the Purchase Price. If the transaction fails to Close, any accrued Extension Fee shall immediately be due and owing to Seller as a portion of Seller's liquidated damages.

C. Closing Deliverables.

- (i) Prior to Closing, Seller shall deposit with the Escrow Agent (the "**Seller's Deliveries**"): (i) a deed ("Deed"), in form acceptable to Seller, in Seller's sole and absolute discretion, transferring Seller's interest in the Property to Buyer(s) executed by Seller and acknowledged pursuant to applicable law and (ii) a Non-Foreign Transferor Declaration executed by Seller (or evidence reasonably acceptable to the Escrow Agent that Seller is exempt from the withholding requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), Internal Revenue Code Section 1445).
- (ii) Prior to Closing, Buyer(s) shall deposit with the Escrow Agent (the "**Buyer(s) Deliveries**"): (i) immediately available funds via either cash payment or electronic transfer an amount equal to the Purchase Price, including Buyer(s) Premium, less the Earnest Money Deposit previously deposited into Escrow, plus Buyer(s) expenses and Buyer(s) share of costs and prorations as provided in this Agreement, and (ii) any and all other instruments required by Seller, the Escrow Agent, Title Company or otherwise necessary to consummate Buyer(s) acquisition of the Property.

D. Recording. Upon completion of the Closing and after Seller has received the balance of the Purchase Price and any other funds remaining after Closing pursuant to **Section 7.B.(ii)**, Escrow Agent is instructed to record the Deed. In no event shall Escrow Agent record the Deed prior to Seller's receipt of said funds.

AUCTION AND RETAIL CONTRACT

8. PRIMARY RESIDENCE.

The Buyer(s) (check one): ___ does ___ does not intend to use and occupy the Property as Buyer(s) primary residence.

9. BUYER(S) INSPECTION.

A. On or before ten (10) calendar days (seven (7) days for noncontingent cash offers as indicated in Section 5(C) above) from the Effective Date, the Buyer(s) shall, at Buyer(s) sole cost and expense, inspect the Property or obtain for its own use, benefit and reliance, inspections and/or reports on the condition of the Property, or Buyer(s) shall be deemed to have (1) waived such inspections and any objections to the condition of the Property, and (2) accepted the condition of the Property. The Buyer(s) shall keep the Property free and clear of liens and indemnify and hold the Seller and the Indemnified Parties harmless from all Claims arising out of or relating in any way to the Buyer(s) inspections, and the Buyer(s) shall repair the Property, at Buyer(s) sole expense, for all such Claims. The Buyer(s) shall not directly or indirectly cause any inspections to be made by any government building or zoning inspectors or government employees without the prior written consent of the Seller unless required by law, in which case the Buyer(s) shall provide reasonable notice to the Seller prior to any such inspection. If the Seller has winterized the Property and the Buyer(s) desires to have the Property inspected, the listing agent will have the Property dewinterized by seller's property preservation vendor prior to inspection and rewinterized after inspection. All winterizations and dewinterizations must be performed by the Seller's property preservation vendor. Within five (5) calendar days of receipt of any inspection report prepared by or for the Buyer(s), but not later than ten (10) calendar days (seven days for noncontingent cash offers as indicated in Section 5(C) above) from the Effective Date, whichever first occurs, the Buyer(s) shall provide written notice to the Seller of any items disapproved or problems with the condition of the Property. The Buyer(s) failure to provide such written notice to the Seller shall be deemed as Buyer(s) acceptance of condition of the Property. The Buyer(s) shall immediately provide to the Seller at no cost, upon request by the Seller, complete copies of all inspection reports upon which the Buyer(s) disapproval of the condition of the Property is based. Seller may provide written notice to Buyer(s) within five (5) days of receipt of Buyer(s) written notice and any inspection reports of any matters objected to by Buyer(s) which Seller intends to cure. Seller's election not to provide such written notice to Buyer(s) shall be deemed as Seller's decision not to cure any matters objected to by Buyer(s). In no event shall the Seller be obligated to make any repairs or replacements or correct any problems or defects that may be indicated in the Buyer(s) inspection reports. The Seller may, at its sole discretion, make such repairs, replacements, or corrections to the Property. If the Seller elects not to repair or correct the Property, the Buyer(s) may (i) waive such matters and proceed to Closing, or (ii) cancel the Agreement within five (5) calendar days of receiving notice from the Seller that Seller elects not to repair or correct the Property. If Buyer(s) timely notifies Seller of such cancellation, the Buyer(s) shall receive all earnest money deposited. If the Seller elects to make any such repairs or corrections to the Property, the Seller shall notify the Buyer(s) after completion of the repairs or corrections and the Buyer(s) shall have five (5) calendar days from the date of such notice to inspect the repairs or corrections and notify the Seller of any items disapproved. The Buyer(s) failure to notify Seller of any items disapproved shall be deemed acceptance by Buyer(s) of the condition of the Property.

AUCTION AND RETAIL CONTRACT

In situations that are applicable, a structural, electrical, mechanical or termite inspection report may have been prepared for the benefit of the Seller. Upon Buyer(s) request, the Buyer(s) may review such reports, but the Buyer(s) acknowledges that such inspection reports were prepared for the sole use and benefit of the Seller. Buyer(s) shall not rely upon any such inspection reports obtained by the Seller in making a decision to purchase the Property, and such reports shall not serve as a basis for Buyer(s) to terminate the Agreement.

- B. If the Property is a condominium or planned unit development or co-operative, unless otherwise noted required by law, the Buyer(s), at the Buyer(s) own expense, is responsible for obtaining and reviewing the covenants, conditions and restriction, and bylaws of the condominium or planned unit development or cooperative within ten (10) calendar days of the Effective Date. The Seller agrees to use reasonable efforts, as determined at the Seller's sole discretion, to assist the Buyer(s) in obtaining a copy of the covenants, conditions and restrictions, and bylaws. The Buyer(s) will be deemed to have accepted covenants, conditions and restrictions, and bylaws if the Buyer(s) does not notify the Seller in writing within ten (10) calendar days of the Effective Date of the Buyer(s) objection to the covenants, conditions, and restrictions, and/or bylaws.

10. CONDITION OF PROPERTY.

- A. The Buyer(s) understands that the Seller acquired the Property by Foreclosure, Deed-In-Lieu of Foreclosure, forfeiture, tax sale or similar process and consequently the Seller has little or no direct knowledge concerning the condition of the Property. As a material part of the consideration to be received by the Seller under the Agreement as negotiated and agreed to by the Buyer(s) and the Seller, the Buyer(s) acknowledges and agrees to accept the Property in "AS IS" condition at the time of closing including without limitation, any hidden defects or environmental conditions affecting the Property, whether known or unknown, whether such defects or conditions were discoverable through inspection or not. The Buyer(s) acknowledges that the Seller and its agents, brokers and representatives have not made, and the Seller specifically negates and disclaims, any representations, warranties, promises, covenants, Agreements or guarantees, implied or express, oral or written, with respect to:
- (i) The physical condition or any other aspect of the Property including, but not limited to, the structural integrity or the quality or character of materials used in construction of any improvements, availability and quantity of quality of water, stability of the soil, susceptibility to landslide or flooding, sufficiency of drainage, water leaks, water damage, mold or any other matter affecting the stability or integrity of the Property;
 - (ii) The conformity of the Property to any zoning, land use or building code requirements or compliance with any laws, statues, rules, ordinances or regulations of any federal, state or local governmental authority, or the granting of any required permits or approvals, if any, of any governmental bodies that had jurisdiction over the construction of the original structure, any improvements and/or any remodeling of the structure;
 - (iii) The habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the Property, including redhibitory vices and defects, apparent or non-apparent or latent, that now exist or may hereafter exist and that, if known to Buyer(s), would cause Buyer(s) to refuse to purchase the Property; and

AUCTION AND RETAIL CONTRACT

- (iv) The existence, location, size or condition of any outbuildings or sheds on the Property.
- B. Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to in the Agreement as “**Mold**”) are environmental conditions that are common in residential Property and may affect the Property. Mold in some forms, has been reported to be toxic and to cause serious physical injuries, including but not limited to, allergic and/or respiratory reactions or other problems, particularly in young children, elderly persons, persons with immune system problems, allergies or respiratory problems, and pets. Mold has also been reported to cause extensive damage to personal and real Property. Buyer(s) is advised to thoroughly inspect the Property for Mold. Mold may appear as discolored patches or cottony or speckled growth on walls, furniture, or floors, behind walls and above ceilings. Any and all presence of moisture, water stains, mildew odors, condensation and obvious Mold growth are all possible indicators of a Mold condition, which may or may not be toxic. Mold may have been removed or covered in the course of any cleaning or repairing of the Property. Buyer(s) acknowledges that, if Seller or any of Seller’s employees, contractors, representatives, broker, or agents cleaned or repaired the Property or remediated the Mold contamination, that Seller does not in any way warrant the cleaning, repairs, or remediation, or that the Property is free of Mold. Buyer(s) is further advised to have the Property thoroughly inspected for Mold, any hidden defects and/or environmental conditions or hazards affecting the Property. Buyer(s) is also advised that all areas contaminated with Mold should be properly and thoroughly remediated. Buyer(s) represents and warrants that:
- (i) Buyer(s) accepts full responsibility and liability for all hazards, and Claims that may result from the presence of Mold in or around the Property;
 - (ii) If Buyer(s) proceeds to close on the purchase of the Property, then Buyer(s) has inspected and evaluated the condition of the Property to Buyer(s) complete satisfaction, and Buyer(s) is satisfied with the condition of the Property notwithstanding the past or present existence of Mold in or around the Property; and
 - (iii) Buyer(s) has not in any way relied upon any representations or warranties of Seller or Seller’s employees, officers, directors, contractors, representatives, broker, or agents concerning the past or present existence of Mold or any environmental hazards in or around the Property. In the event the Property is affected by an environmental hazard, either Party may terminate the Agreement. In the event the Seller decides to sell the Property to the Buyer(s) and the Buyer(s) agrees to purchase the Property (as evidenced by Buyer(s) and Seller proceeding to close) despite the presence of an environmental hazard, the Buyer(s) releases the Seller and the Indemnified Parties from any Claims arising out of or relating in any way to the environmental hazard or conditions of the Property, and Buyer(s) agrees to also execute an additional general release at closing, in a form acceptable to Seller, related to the environmental hazard. In the event the Buyer(s) elects not to execute the additional release, Seller may, at the Seller’s sole discretion, terminate the Agreement upon notice given to Buyer(s). If Buyer(s) elects to proceed with the closing, Buyer(s) waives and forever releases the Indemnified Parties arising out of the environmental condition of the Property. In the event the Seller has received official notice that the Property is in violation of building codes or similar laws or regulations, the Seller may terminate the Agreement or delay the date of closing, or the Buyer(s) may terminate the Agreement. In the event the Agreement is terminated by either Buyer(s) or Seller pursuant to this Section 10(B)(iii), any earnest money deposit will be returned to the Buyer(s). If there is an enforcement proceeding arising from allegations of such violations before an enforcement

AUCTION AND RETAIL CONTRACT

board, special master, court or similar enforcement body, and neither the Buyer(s) nor the Seller terminate the Agreement, the Buyer(s) agrees (A) to accept the Property subject to the violations and (B) to be responsible for compliance with the applicable code and with orders issued in any code enforcement proceedings. Buyer(s) agrees to execute for closing any and all documents necessary or required by any agency with jurisdiction over the Property and to resolve the deficiencies as soon as possible after the closing.

- (iv) The Closing of this sale shall constitute acknowledgement by the Buyer(s) that Buyer(s) had the opportunity to retain an independent, qualified professional to inspect the Property and that the condition of the Property is acceptable to the Buyer(s) at the time of Closing. The Buyer(s) agrees that Seller and the Indemnified Parties shall have no liability for any Claims that the Buyer(s) or the Buyer(s) successors or assigns may incur as a result of construction or other defects that may now or hereafter exist with respect to the Property. The Seller may be exempt from filing a disclosure statement regarding the condition of the Property because the Property was acquired through foreclosure, deed-in-lieu of foreclosure, forfeiture, tax sale, eminent domain, or similar process. To the fullest extent allowed by law, Buyer(s) waives any right to receive a disclosure statement from Seller, and Buyer(s) agrees to execute a separate waiver, in a form acceptable to Seller, if the law requires the waiver to be in a separate form.

11. REPAIRS.

All treatments for wood-infesting organisms and all repairs shall be completed by a vendor approved by the Seller and shall be subject to the Seller's satisfaction only. If the Seller has agreed to pay for treatment of wood-infesting organisms, the Seller shall treat only active infestation. Neither the Buyer(s) nor its representatives shall enter upon the Property to make any repairs and/or treatments prior to closing without the prior written consent of the Seller. To the extent that the Buyer(s) or its representatives make repairs and/or treatments to the Property prior to closing, the Buyer(s) hereby agrees to release, defend, indemnify and hold the Seller and the Indemnified Parties harmless from and against any and all Claims, losses, liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs), damages, liens, mechanics' or materialmen's liens or claims of liens, actions and causes of action to the extent caused by the act or omission of Buyer(s), its agents, and representatives related to the repairs or treatments. Buyer(s) further agrees to execute a separate release and indemnification in a form acceptable to the Seller prior to the commencement of any such repairs or treatments. The Buyer(s) acknowledges that all repairs and treatments are done for the benefit of the Seller and not for the benefit of the Buyer(s) unless and until the sale of the Property closes in accordance with the Agreement, and if Buyer(s) closes Buyer(s) acknowledges that the Buyer(s) has inspected or has been given the opportunity to inspect all repairs and treatments. Any repairs or treatments made or caused to be made by the Seller shall be completed prior to the closing. Under no circumstances shall the Seller be required to make any repairs or treatments after the Closing Date. The Buyer(s) acknowledges that closing on this transaction shall be deemed to be the Buyer(s) reaffirmation that the Buyer(s) is satisfied with the condition of the Property and with all repairs and treatments to the Property. Further, if Buyer(s) closes, Buyer(s) waives all Claims arising out of relating in any way to the condition of, or treatments or repairs to, the Property. Any repairs or treatments shall be performed for functional purposes only and exact restoration of appearance or cosmetic items following any repairs or treatments shall not be required. The Seller shall not be obligated to obtain or provide to the Buyer(s) any receipts for repairs or treatments, written statements indicating dates or types of repairs and/or treatments, copies of such receipts or statements, or any other documentation regarding any repairs

AUCTION AND RETAIL CONTRACT

and treatments to the Property. The Seller does not warrant or guarantee any work, repairs, or treatments to the Property.

12. BUYER(S) INDEMNITY FOR ENTRY UPON PROPERTY.

In connection with any due diligence, inspection, visit and/or investigation of the Property by Buyer(s) or any person/entity on Buyer(s) behalf (a **"Buyer(s) Inspection"**), Buyer(s) shall (1) keep the Property free and clear of any and all liens, (2) repair all damage arising from a Buyer(s) Inspection, at Buyer(s) sole cost, and (3) indemnify, defend and hold Seller and any Seller Parties and Indemnified Parties harmless from any and all Claims (as hereinafter defined) directly or indirectly arising therefrom. Buyer(s) shall carry, or require anyone acting on Buyer(s) behalf to carry, policies of liability, workers' compensation, and other applicable insurance, defending and protecting Seller Parties from liability for any injuries to persons or property occurring during any Buyer(s) Inspection prior to Closing. Notwithstanding any other provision of this Agreement, the obligations, and agreements of Buyer(s) under this **Section 12** shall survive Closing or the earlier termination of this Agreement.

13. PERSONAL PROPERTY.

Items of personal property, including but not limited to, window coverings, appliances, manufactured homes, mobile homes, vehicles, spas, antennas, satellite dishes and garage door openers now or hereafter located on the Property are not included in this sale or the purchase price unless the personal Property is specifically described in this Agreement. Any personal property at or on the Property may be subject to claims by third parties and therefore may be removed from the Property prior to or after the Closing Date. The Seller makes no representations or warranties as to the condition of any personal Property, title thereto, or whether any personal property is encumbered by any liens. The Buyer(s) assumes responsibility for any personal Property remaining on the Property at the time of closing.

14. TITLE.

Buyer(s) represents and warrants that Buyer(s) has read, received and approved copies of (1) a preliminary title report or commitment for the Property, (2) deed, covenants, conditions, restrictions, reservations, rights, rights of way and easements of record, if any, affecting the Property, and (3) any and all other matters disclosed in the preliminary title report. Buyer(s) covenants and agrees that Seller shall be under no obligation to (A) remove any title exception or defect identified in a title commitment or title report, (B) bring any action or proceeding or bear any expense whatsoever in order to enable Seller to convey title to the Property in accordance with this Agreement, or (C) otherwise make such title to the Property marketable and/or insurable. Any attempt by Seller to remove any such title exceptions and/or title defects will not impose an obligation upon Seller to remove those exceptions or defects. Buyer(s) acknowledges that Seller's title to the Property may be subject to court approval of foreclosure or to a mortgagor's right of redemption.

Unless otherwise set forth in the "Key Terms", the providers of title and escrow/closing services ("Closing Agent") have been designated by Seller, with Seller agreeing to pay the policy premium for a state-specific standard owner's policy of title insurance (without endorsements)." In the event that Buyer(s) has selected the Closing Agent, Buyer(s) shall be deemed to have waived any obligation for Seller to pay the premium for a such state-specific standard owner's policy of title insurance, and hereby agrees to be solely responsible for all title and closing costs charged by Closing Agent.

AUCTION AND RETAIL CONTRACT

IF, FOR ANY REASON, SELLER DETERMINES IN ITS SOLE DISCRETION THAT IT IS UNABLE OR IT IS ECONOMICALLY NOT FEASIBLE TO CONVEY GOOD AND MARKETABLE TITLE TO THE PROPERTY AT CLOSING AND SUCH CLOSING DATE IS NOT EXTENDED OR OTHERWISE AMENDED IN THE SOLE AND ABSOLUTE DISCRETION OF SELLER AS SET FORTH ELSEWHERE IN THIS AGREEMENT, THEN SELLER MAY CANCEL THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT BY WRITTEN NOTICE TO BUYER(S) AND THE ESCROW AGENT. SUCH RIGHT TO CANCEL SHALL BE AN UNLIMITED RIGHT TO CANCEL. IN SUCH EVENT, ESCROW AGENT SHALL RETURN TO BUYER(S) (AS BUYER(S) SOLE AND EXCLUSIVE REMEDY) THE EARNEST MONEY DEPOSIT. UPON RETURN OF THE EARNEST MONEY DEPOSIT AS PROVIDED IN THIS SECTION, THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT SHALL BE TERMINATED, AND BUYER(S) AND SELLER SHALL BE RELEASED FROM ANY FURTHER OBLIGATION, EACH TO THE OTHER, IN CONNECTION WITH THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN.

15. COSTS AND PRORATIONS.

A. Prorations; Charges, Reinstitution of Services. Subject to the terms of this **Section 15A**, the parties allocate responsibility for, and will prorate, costs and expenses related to the Property as follows:

- (i) Real property taxes shall be prorated as of Closing, with Seller responsible for such standard real property taxes which first arise or are assessed with respect only to the period on and after the date Seller obtained title to the Property to the day prior to Closing and Buyer(s) responsible for all real property taxes with respect to all other periods, including from and after Closing and any period prior to the date Seller obtained title to the Property. Proration of real property taxes shall be based on the current real property tax charges for the Property, provided that if such information is not readily available, such proration shall be based on the real property taxes for the immediately prior tax year (with Buyer(s) assuming responsibility for any difference between the prior period's taxes and the current period's taxes). Buyer(s) acknowledges and agrees that Seller shall not be responsible for (i) any taxes, penalties or interest charged, imposed or due as a result of retroactive, postponed or additional taxes, (ii) any governmental charges, assessments, fines, or penalties of any kind resulting from any existing or prior improvements to the Property or from any existing or prior violations of any kind on or related to the Property (whether or not denominated property taxes or assessments), (iii) any additional or new taxes or charges resulting from any change in the use of, construction on, or improvement to the Property, or any adjustment in the appraised value of the Property or (iv) charges of any kind related to or arising from any special assessments, bonds, special districts, community or Property improvements.
- (ii) Rent and other income under leases of the Property, if any, for the month in which the closing occurs shall not be prorated and shall be the property of and retained by Seller.
- (iii) Charges made for services provided to the Property by a municipal public utility or a private public utility or other service provider shall be prorated as of Closing with Seller responsible for such charges with respect only to the period on and after the date Seller obtained title to the Property to the day prior to Closing and Buyer(s) responsible for such charges with respect to all other periods, including from and after Closing and any period prior to the date Seller obtained title to the Property.

AUCTION AND RETAIL CONTRACT

- (iv) If the Property is part of any Homeowners or Condominium Association (each, an “**Association**”) that charges regular fees or assessments against the Property as part of an assessment process applicable to the Property and other properties generally in that Association (such regular fees or assessments being referred to herein as “**HOA Dues**”), excluding from the HOA Dues any special fees or dues or any fees or assessments charged specifically against the Property, including, without limitation, fines, penalties or other specific assessments not charged to other properties in such Association (“**Special HOA Assessments**”). The HOA Dues shall be prorated as of Closing with Seller (to the extent Seller determines that it is legally liable therefore under the applicable laws governing the Property or the applicable Association’s governing documents) responsible for such HOA Dues with respect only to the period on and after the date Seller obtained title to the Property to the day prior to Closing and Buyer(s) responsible for such fees and assessments with respect to all other periods, including from and after Closing and any period prior to the date Seller obtained title to the Property. Buyer(s) acknowledges that under applicable law, or the governing documents of an Association, Seller may not be liable for some or all of the HOA Dues or other Association charges and assessments against the Property and Seller may elect in its sole discretion not to pay such HOA Dues or other Association charges and assessments. Nothing in this Agreement shall be deemed to make Seller responsible for HOA Dues or other Association charges or assessments which Seller is not liable for under applicable law or the governing documents of an Association, either to an Association or to Buyer(s), or be deemed to be an express or implied indemnification of Buyer(s) against such HOA Dues or other Association charges or assessments. Furthermore, under applicable law or the governing documents of an Association, it is possible that defenses against such HOA Dues or other Association charges or assessments available to Seller may not be available to Buyer(s) or its transferees. Buyer(s) agrees that it is acquiring the Property subject to the risk there may be outstanding HOA Dues or other Association fees or charges applicable to the Property for periods prior to Closing for which Seller is not responsible or reasonably believes Seller is not responsible, and Buyer(s) assumes all risk and liability associated therewith. In addition, Buyer(s) shall be solely responsible for all costs of obtaining any Association documents and for payment of any and all fees charged by such Association relating to the transfer of the Property to Buyer(s).
- (v) Buyer(s) acknowledges and agrees that, except for Seller’s obligations for those portions of Property taxes, utility charges, and HOA Dues set forth in subsections (i), (iii), and (iv) above, Buyer(s) shall be solely responsible for all other taxes, assessments, impositions, fees, violations, fines, penalties, liens or any other costs or expenses of any kind or character, whether known or unknown, in any manner related to the Property, whether arising before or after Closing or during Seller’s ownership of the Property or otherwise, including, without limitation, Special HOA Assessments.
- (vi) Buyer(s) acknowledges that some or all utilities, services or other benefits provided or available to the Property may not be working or may have been disconnected, suspended or terminated and to the extent currently in service or active, Seller intends to terminate any currently existing utilities, services or benefits for the Property at or prior to Closing. Buyer(s) shall be solely responsible for continuing or reestablishing, to the extent possible, any or all such utilities, services or benefits, including payment of any fees, costs, penalties, fines or connection or reconnection costs.

AUCTION AND RETAIL CONTRACT

(vii) This Section shall survive Closing and the recordation of the Deed.

- B. Seller's Expenses.** Seller shall only pay those closing costs and fees associated with the transfer of the Property that local custom or practice clearly allocates to Seller and any closing costs and fees especially agreed to in Section 6, and Buyer(s) shall pay all remaining fees and costs. Notwithstanding the foregoing, FHA/VA allocation of closing costs shall apply when applicable. Except as provided herein, or in any addenda or exhibits attached hereto, Seller shall not be responsible for any amounts due, paid, or to be paid after Closing. If Seller has paid any taxes, special assessments or other fees at or prior to Closing and there is a refund of any such taxes, assessments or fees after Closing, and Buyer(s) as current owner of the Property receives such amounts, Buyer(s) will immediately submit such refund to Seller. The Escrow Agent is hereby authorized to pay from Seller's proceeds Seller's expenses set forth in this Section.
- C. Buyer(s) Expenses.** Buyer(s) shall pay Buyer(s) share of prorations and charges under **Section 15(A)** above and closing costs and fees associated with the transfer of the Property that local custom or practice clearly allocates to Buyer(s). Buyer(s) hereby authorizes the Escrow Agent to debit Buyer(s) account in the amount of any fee imposed by local authorities for a delayed filing of a change of ownership statement or similar report, if Buyer(s) fails to deposit with the Escrow Agent such change of ownership statement prior to Closing, if and to the extent any such statement is required. The foregoing costs and expenses shall be paid by the Escrow Agent on Buyer(s) behalf from funds deposited into Escrow by Buyer(s).
- D. Pre-Closing Expenses.** Buyer(s) and Seller acknowledge and agree that the Escrow Agent may incur certain expenses during the course of processing this transaction which must be paid prior to Closing. Such costs may include, without limitation, demand request fees, association document fees, courier fees, overnight mail service costs and building and/or inspection reports, if applicable. The Escrow Agent is authorized and instructed to release funds for payment of such costs prior to the Closing Date from funds deposited with Escrow Agent by Buyer(s). In the event that such amounts deposited with Escrow Agent are not sufficient to pay any expenses due, upon request by Escrow Agent Buyer(s) shall immediately deposit with Escrow Agent any additional amounts necessary to pay such expenses. The parties acknowledge that the funds are not refundable, and the Escrow Agent is specifically released from all responsibility and/or liability for payment of any funds pre-released through Escrow. At Closing, the Escrow Agent is authorized to charge the appropriate party for costs incurred and/or credit the other party for such amounts if necessary.
- E. Post-Closing and Subsequent Notice of Costs, Liens, or Assessments.** The delivery of the Deed to Buyer(s) by Seller will be deemed to constitute full compliance by Seller with all of the terms and conditions of this Agreement and will discharge Seller from any further obligations under this Agreement. Notwithstanding any other provision of this Agreement, Seller shall NOT be responsible for any unpaid real estate taxes and/or assessments, levies, fees, fines, penalties, HOA Dues, Special HOA Assessments utility charges and/or any other charges. **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IF AT ANY TIME AFTER CLOSING, BUYER(S) OR BUYER(S) HEIRS, SUCCESSORS, OR ASSIGNS OBTAINS ACTUAL OR CONSTRUCTIVE NOTICE OF ANY CLAIMS ASSOCIATED WITH THE PROPERTY THAT WERE NOT OF RECORD AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, CODE VIOLATIONS, TAXES, ASSESSMENTS, FEES, CHARGES, PENALTIES, UTILITY LIENS, HOA DUES, OR SPECIAL HOA ASSESSMENTS, BUYER(S) SHALL BE SOLELY RESPONSIBLE FOR PAYMENT AND SATISFACTION OF SUCH ITEMS AND BUYER(S) HEREBY RELEASES ALL SELLER PARTIES OF ANY**

AUCTION AND RETAIL CONTRACT

AND ALL CLAIMS IN CONNECTION THEREWITH, REGARDLESS OF WHETHER (I) SELLER OWNED THE PROPERTY AT THE TIME SUCH COSTS WERE ASSESSED OR INCURRED OR (II) SELLER HAD ACTUAL OR CONSTRUCTIVE NOTICE OF THE EXISTENCE OF ANY SUCH MATTERS. Buyer(s) is responsible for verifying any possible Claims that may not be of record and hereby releases Seller from any and all liability related to any such Claims. Notwithstanding anything to the contrary in this Agreement, any provision which contemplates performance or observance by Buyer(s) subsequent to any termination or expiration of this Agreement, including paragraphs A, B, C, D and E of this **Section 15**, shall survive Closing and recordation of the Deed and/or termination of this Agreement by any party and will continue in full force and effect.

16. DEFAULT; REMEDIES, CANCELLATION OF AGREEMENT.

- A. **Seller Default.** If the Closing fails to take place due to any default of Seller, then this Agreement may be cancelled upon Buyer(s) written notice to Seller. In such event, Buyer(s) Earnest Money Deposit shall be returned to Buyer(s). Such return of Buyer(s) Earnest Money Deposit shall be Buyer(s) sole and exclusive remedy in such event. Upon such termination, the parties shall have no further obligation to the other, except with respect to obligations expressly set forth in this Agreement to survive the termination hereto.
- B. **Waiver of Specific Performance Remedy.** As a material part of the consideration to be paid or received by Buyer(s) and Seller under this Agreement, Buyer(s) waives all rights to file and maintain an action against Seller for specific performance and to record a Lis Pendens or notice of pendency of action against the Property if a dispute arises concerning this Agreement. Buyer(s) agrees that the Property is not unique and in the event of Seller's default, Buyer(s) can be adequately and fairly compensated solely by receiving a return of Buyer(s) Earnest Money Deposit and cancellation of Buyer(s) obligation to purchase the Property. Upon return of Buyer(s) Earnest Money Deposit, this Agreement shall be terminated, and Buyer(s) and Seller irrevocably instruct the Escrow Agent to return all funds and documents to the party that deposited them without further direction.
- C. **Buyer(s) Default.** If the Closing fails to take place due to any default of Buyer(s), as determined by Seller in its sole discretion, (1) Seller shall be released from any obligation to sell the Property to Buyer(s), and (2) Buyer(s) and Seller expressly agree that it would be extremely difficult to determine Seller's actual damages as a result of such default by Buyer(s). As such, the parties agree that Seller shall retain as liquidated damages and not as a penalty and as a reasonable pre-estimate of Seller's actual damages for breach of this Agreement, an amount equal to the Earnest Money Deposit without any further action, consent or document from Buyer(s) (provided, however, the amount retained shall be no more than the maximum amount Seller is allowed to retain from the Purchase Price under applicable laws, any excess to be promptly returned to Buyer(s)). Notwithstanding any termination of the Agreement resulting from Buyer(s) default, Seller retains the right to proceed against Buyer(s) for enforcement of Buyer(s) indemnification, defense, and hold harmless obligations under this Agreement, all of which shall survive the Closing or earlier termination of this Agreement.
- D. **Seller's Right to Cancel Agreement.** If, for any reason, Seller determines, in its sole discretion, that this Agreement is in violation of applicable law, and/or is in material violation of any existing contract or agreement binding upon Seller and/or the Property, including any agreements with the prior owner of the Property, any mortgage insurer or any mortgage broker, then Seller may cancel the transaction contemplated by this Agreement by written notice to Buyer(s) and the Escrow Agent. Such right to cancel

AUCTION AND RETAIL CONTRACT

this Agreement shall be unlimited right to cancel. In such event, the Escrow Agent shall return to Buyer(s) (as Buyer(s) sole and exclusive remedy) the Earnest Money Deposit. Upon return of the Earnest Money Deposit, the transaction contemplated by this Agreement shall be terminated, and Buyer(s) and Seller shall be released from any further obligation, each to the other, in connection with this Agreement or the Property, except as otherwise expressly provided herein.

17. REPRESENTATIONS, WARRANTIES AND DISCLOSURES.

- A. **“AS IS, WHERE IS.”** BUYER(S) IS ACQUIRING THE PROPERTY “AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS,” IN ITS PRESENT STATE AND CONDITION, WITH ALL DEFECTS, BOTH PATENT AND LATENT, AND WITH ALL FAULTS OF THE PROPERTY, WHETHER KNOWN OR UNKNOWN, AND WHETHER DISCOVERABLE THROUGH INSPECTION OR NOT, PRESENTLY EXISTING OR THAT MAY HEREAFTER ARISE INCLUDING, WITHOUT LIMITATION, ALL EXISTING CONDITIONS, IF ANY, OF LBP, MOLD OR OTHER ENVIRONMENTAL OR HEALTH HAZARDS (“ENVIRONMENTAL MATTERS”). NO SELLER PARTY MAKES, AND SELLER SPECIFICALLY NEGATES AND DISCLAIMS, ANY REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION: (A) ANY APPRAISED VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, TENANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY APPLICABLE LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL AUTHORITY OR BODY, INCLUDING ANY APPLICABLE ZONING, LAND USE OR BUILDING CODE REQUIREMENT OR THE REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT OR SIMILAR STATE OR LOCAL LAWS; (E) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY OR ANY IMPROVEMENTS THEREON; (F) THE MANNER, QUALITY, STRUCTURAL INTEGRITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY OR ANY IMPROVEMENTS THEREON; (G) THE EXISTENCE OF ANY VIEW FROM THE PROPERTY OR THAT ANY EXISTING VIEW WILL NOT BE OBSTRUCTED IN THE FUTURE; (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, INCLUDING THE EXISTENCE OF ANY HAZARDOUS MATERIALS OR SUBSTANCES ON OR ADJACENT TO THE PROPERTY OR IN THE IMPROVEMENTS LOCATED ON THE PROPERTY; (I) THE CONFORMITY OF ANY IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY THAT MAY BE OBTAINED BY BUYER(S); (J) THE EXISTENCE OF SOIL INSTABILITY, PAST SOIL REPAIRS, SUSCEPTIBILITY TO LANDSLIDES, SUFFICIENCY OF UNDER-SHORING OR LATERAL SUPPORT, SUFFICIENCY OF DRAINAGE, OR ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE LAND OR ANY BUILDINGS OR OTHER IMPROVEMENTS SITUATED THEREON; (K) WHETHER THE PROPERTY IS LOCATED IN A HISTORIC PRESERVATION DISTRICT OR SUBJECT TO OR ELIGIBLE FOR SPECIAL REGULATIONS RELATED TO HISTORIC PRESERVATION; OR (L) WHETHER THE PROPERTY IS LOCATED IN A SPECIAL STUDIES ZONE UNDER APPLICABLE LAWS, A SEISMIC HAZARDS ZONE, A STATE FIRE RESPONSIBILITY AREA, A SPECIAL FLOOD HAZARD ZONE OR FLOOD PLAIN, IN THE PRESENCE OF WETLANDS OR SHORELAND OR ANY OTHER GOVERNMENTALLY DESIGNATED UNIQUE OR SPECIAL AREA. BUYER(S) ACKNOWLEDGES THAT THE PROPERTY MAY NOT BE IN COMPLIANCE WITH APPLICABLE ZONING, BUILDING, HEALTH OR OTHER LAW OR CODES, THAT NO SELLER PARTY HAS OCCUPIED THE PROPERTY AND THAT THE PROPERTY MAY NOT BE IN HABITABLE CONDITION.

UPON CLOSING, BUYER(S) ACKNOWLEDGES AND AGREES THAT NO SELLER PARTY HAS ANY FURTHER RESPONSIBILITY, OBLIGATION OR LIABILITY TO BUYER(S). BUYER(S) FURTHER AGREES THAT NEITHER SELLER NOR ANY SELLER PARTY SHALL HAVE ANY LIABILITY FOR ANY CLAIM OR LOSS BUYER(S) OR

AUCTION AND RETAIL CONTRACT

BUYER(S) HEIRS, SUCCESSORS AND ASSIGNS MAY INCUR AS A RESULT OF DEFECTS THAT MAY NOW OR MAY HEREAFTER EXIST WITH RESPECT TO THE PROPERTY, AND BUYER(S) SHALL HOLD HARMLESS, INDEMNIFY AND DEFEND THE SELLER AND ALL SELLER PARTIES WITH RESPECT TO ANY SUCH CLAIMS. THE OBLIGATIONS AND AGREEMENTS OF BUYER(S) UNDER THIS SECTION SHALL SURVIVE CLOSING OR THE EARLIER TERMINATION OF THIS AGREEMENT.

ON BEHALF OF BUYER(S) AND ANYONE CLAIMING BY, THROUGH OR UNDER BUYER(S), BUYER(S) HEREBY FULLY AND IRREVOCABLY RELEASES THE SELLER PARTIES FROM ANY AND ALL CLAIMS THAT BUYER(S) MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST THE SELLER PARTIES FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, WHETHER ADMINISTRATIVE OR JUDICIAL, LOSSES, COSTS (INCLUDING ANY AND ALL REASONABLE ATTORNEYS' FEES, COURT COSTS, AND REASONABLE COSTS OF INVESTIGATION, LITIGATION, AND SETTLEMENT), EXPENSES, SANCTIONS, CURTAILMENTS, INTEREST, LIABILITIES, PENALTIES, FINES, DEMANDS, LIENS, JUDGMENTS, COMPENSATION, ASSESSMENTS, FEES, LOSS OF PROFITS, INJURIES, DEATH, AND/OR DAMAGES OF ANY KIND WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FIXED OR CONTINGENT, JOINT OR SEVERAL, CRIMINAL OR CIVIL, OR AT LAW OR IN EQUITY ("CLAIMS") ARISING FROM OR RELATING TO THE PROPERTY, BUYER(S) BREACH OF OR FAILURE TO COMPLY FULLY WITH ANY PROVISION IN THIS AGREEMENT, INSPECTIONS OR REPAIRS MADE BY BUYER(S) OR HIS/HER/ITS AGENTS, REPRESENTATIVES, BROKERS, EMPLOYEES, CONTRACTORS, SUCCESSORS OR ASSIGNS, THE IMPOSITION OF ANY FINE OR PENALTY IMPOSED BY ANY GOVERNMENTAL ENTITY RESULTING FROM BUYER(S) FAILURE TO TIMELY OBTAIN ANY CERTIFICATE OF OCCUPANCY OR OTHER CERTIFICATIONS OR PERMITS, OR TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS, ANY CONSTRUCTION DEFECTS, ERRORS, OMISSIONS OR OTHER CONDITIONS, INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL MATTERS AFFECTING THE PROPERTY OR ANY PORTION THEREOF, OR THE USE, RELEASE OR DISPOSAL ON, IN OR UNDER THE PROPERTY OF ANY HAZARDOUS SUBSTANCE AND THE ENVIRONMENTAL CONDITION OF THE PROPERTY. THIS PROVISION SHALL SURVIVE CLOSING. THIS RELEASE INCLUDES CLAIMS OF WHICH BUYER(S) IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN HIS/HER/ITS FAVOR WHICH, IF KNOWN BY BUYER(S), WOULD MATERIALLY AFFECT BUYER(S) RELEASE OF SELLER.

- B. **Disclosures.** Buyer(s) acknowledges that the purchase and sale of the Property pursuant to this Agreement has been conducted at an auction. As such, Seller is exempt from certain requirements regarding filing a disclosure statement and otherwise making certain disclosures. To the fullest extent permitted by applicable law, Buyer(s) waives any right to receive a disclosure statement from Seller, and Buyer(s) agrees to execute a separate waiver, in a form acceptable to Seller, if applicable law requires such waiver to be in a separate document. Any reports furnished by Seller to Buyer(s) in connection with this Agreement shall be for informational purposes only and are not made part of this Agreement. Seller makes no representation or warranty about the accuracy or completeness of any such reports. Buyer(s) agrees that, in consideration of Seller's execution of this Agreement, Buyer(s), on behalf of itself and any and all other parties claiming through Buyer(s), covenants that neither Buyer(s) nor any such other party will sue, commence, prosecute or in any way participate in any judicial, administrative, or other regulatory proceeding for breach of contract based on any disclosure (or lack thereof) or relating to any alleged breach or violation of any applicable law, rule or regulation by any Seller Parties.

C. **Other Disclosures.**

- (i) **Radon.** Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels

AUCTION AND RETAIL CONTRACT

of radon that exceed federal and state guidelines may have been found in buildings in the state where the Property is located. Additional information regarding radon and radon testing may be obtained from your county or state public health unit. Buyer(s) represents and warrants that he/she/it has not relied on the accuracy or completeness of any representations, if any, that have been made by Seller Parties as to the presence of radon and that Buyer(s) has not relied on any Seller Party's failure to provide information regarding the presence or effects of any radon found on the Property. Buyer(s) acknowledges that auctioneers, real estate brokers and agents are not generally qualified to advise Buyer(s) on radon treatment or its health and safety risks.

- (ii) **Mold.** Mold, mildew, spores and/or other microscopic organisms and/or allergens (“**Mold**”) is naturally occurring and may cause health risks or damage to property. If Buyer(s) is concerned or desires additional information regarding Mold, Buyer(s) should contact an appropriate professional. Seller further advises Buyer(s) that as a consequence of possible water damage and/or excessive moisture, the Property may be or may have been irrevocably contaminated with Mold. Buyer(s) is advised that exposure to certain species of Mold may pose serious health risks, and those individuals with immune system deficiencies, infants, children, the elderly, individuals with allergies or respiratory problems, and pets are particularly susceptible to experiencing adverse health effects from Mold exposure. Buyer(s) acknowledges that Seller has advised Buyer(s) to make his/her/its own evaluation of the Property and to have the Property thoroughly inspected. Buyer(s) has been further advised by Seller that all areas contaminated with Mold and/or other environmental hazards or conditions should be properly and thoroughly remediated. Additionally, Buyer(s) has been advised by Seller that habitation of the Property without complete remediation may subject the inhabitants to potentially serious health risks and/or bodily injury. Buyer(s) acknowledges that it is the sole responsibility of Buyer(s) to conduct any remediation on the Property, including without limitation as a result of the presence of Mold.
- (iii) **Lead-Based Paint Disclosure.** If the Property was built prior to 1978, Seller shall (i) notify Buyer(s) of any known lead-based paint (“**LBP**”) or LBP hazards in the Property; (ii) provide Buyer(s) with any LBP risk assessments or inspections of the Property in Seller's possession; and (iii) provide Buyer(s) with the LBP Hazard Disclosure and Acknowledgment and access to any report, records, pamphlets, and/or other materials referenced therein, including the pamphlet “Protect Your Family From Lead In Your Home” (collectively “**LBP Information**”). Buyer(s) shall return a signed copy of the LBP Hazard Disclosure and Acknowledgment to Seller prior to Closing. Buyer(s) waives the right under 42 U.S.C. § 4852d and any other applicable law to conduct a risk assessment or inspection for the presence of LBP hazards.
- (iv) **Property Tax Disclosure Summary.** Buyer(s) should not rely on Seller's current property taxes and assessments as the amount of property taxes and/or assessments that Buyer(s) may be obligated to pay in any year subsequent to purchase. A change of ownership, use, or property improvements may trigger reassessments of the Property that could result in higher property taxes and/or assessments. In addition, property taxes and/or assessments may increase for other reasons, including tax rate increases and imposition of new taxes and assessments. The Property may also be subject to one or more special assessment liens or charges imposed by a public body payable in installments which will continue after Closing, for which Buyer(s) shall be solely responsible after Closing. If Buyer(s) has any questions concerning valuation or property

AUCTION AND RETAIL CONTRACT

taxes and assessments, Buyer(s) is advised to contact the applicable county property appraiser's office for information.

- (v) **Permits and Repairs.** If the Property is located in a jurisdiction that requires a certificate of occupancy, inspection on sale, certificate of use, smoke detector/carbon monoxide certification, septic certification or any similar certification or permit or requires any form of improvement, repair, modification or upgrade (e.g., installation of energy or water conservation equipment) to the Property prior to occupancy or sale (collectively, "**Permits and Repairs**"), Buyer(s) acknowledges and agrees that Buyer(s) shall be solely responsible for obtaining and/or performing any and all such Permits and Repairs at Buyer(s) sole cost and expense. Seller makes no representation or warranty as to whether any Permits and Repairs are required or regarding the compliance or conformity of the Property with any applicable building codes, laws, rules, or regulations. Buyer(s) shall not have the right to delay Closing due to Buyer(s) failure or inability to obtain any required Permits and Repairs. Buyer(s) shall indemnify, defend, and hold the Seller Parties harmless from and against any and all Claims arising out of or relating to Buyer(s) obtaining or failure to obtain any Permit and Repair, if one is required. This indemnification shall survive Closing and shall not be deemed to have merged into any of the documents executed or delivered at Closing.
- (vi) **Condominium/Homeowners Association.** If the Property is part of or subject to a condominium association, cooperative, common interest community, planned community, homeowner association, community association or other similar structure that has the ability to impose fees, charges or assessments on the Property or to impose rules or regulations applicable to the Property (an "**Association**"), unless otherwise specifically required by applicable law, Buyer(s) acknowledges that Buyer(s), at Buyer(s) sole expense, was and is responsible for obtaining, reviewing and complying with any declaration of covenants, conditions, restrictions, rules, bylaws, articles of incorporation and/or other governing documentation of such Association. Seller makes no representation or warranty of any kind with respect to any of the foregoing, including, without limitation, whether the Property is subject to or part of any Association, and, if subject to or part of an Association, whether the Property is in compliance with the covenants, conditions and restrictions, rules, bylaws, articles of incorporation and/or other governing documents of the Association. Buyer(s) hereby waives any and all rights Buyer(s) has or may have, pursuant to applicable law or otherwise, to require Seller to either provide to Buyer(s), or authorize any Association to provide to Buyer(s), copies of any documentation related to said Association, including, without limitation, any governing or financial documents or records of assessments or fees for the Property.
- (vii) **Building and Zoning Codes.** Buyer(s) should consult the local jurisdiction for information on building and zoning codes, as well as information about transportation beltways and/or planned or anticipated land use or construction within proximity of the Property and whether the Property is in compliance with all applicable building, zoning and land use codes and regulations. Seller makes no representation or warranty regarding compliance or conformity with any applicable building codes, laws, rules, or regulations.
- (viii) **Square Footage.** Buyer(s) acknowledges that the square footage of the Property (including the lot and buildings, if any) has not been measured by any Seller Party and the square footage quoted on any marketing tools such as advertisements, brochures, multiple listing service

AUCTION AND RETAIL CONTRACT

(“MLS”) data or auction websites and any other information provided by any Seller Party is based on information supplied to Seller and is deemed approximate and not guaranteed. Buyer(s) further acknowledges and agrees that Buyer(s) has not relied upon any such marketing tools and that such tools are not representations and/or warranties of any Seller Party.

- (ix) **Redemption Right.** Buyer(s) understands that the Property may be subject to the rights of the mortgagor and any other party under applicable law to redeem the Property from any foreclosure sale that may have been conducted with respect to the Property upon payment of certain sums, and Buyer(s) may be dispossessed of the Property. Buyer(s) is advised to consult with an attorney to fully understand the import and impact of the foregoing. Buyer(s) agrees Buyer(s) shall have no recourse against Seller in the event a right of redemption is exercised.
 - (x) **Occupied Property.** Seller makes no representation or warranty as to whether the Property is occupied as of Closing. If Seller or Buyer(s) believes the Property may be occupied, they shall so notify the other and Seller and Buyer(s) shall execute an Addendum to this Agreement in the form supplied by Seller related to such occupancy. If Buyer(s) fails or refuses to execute such Addendum in the form provided by Seller, such action or inaction shall constitute a material default by Buyer(s) and Seller may elect to terminate this Agreement.
- D. **Receipt of Disclosures.** Buyer(s) acknowledges and agrees that Buyer(s) has received and/or has had adequate opportunity to read and understand all disclosures and documents regarding the Property made available by any Seller Party in print or electronic form (the “Disclosures”) prior to entering into this Agreement including, without limitation:
- (i) The pamphlet “Protect Your Family From Lead in Your Home,” the pamphlet “Homeowners Guide to Earthquake Safety,” and the pamphlet “Environmental Hazards: A Guide for Homeowners, Buyer(s), Landlords and Tenants”;
 - (ii) The documents and information made available on the internet at the auction website, if any;
 - (iii) Any written disclosures made available at the Property or at the location where the sale of the Property was conducted;
 - (iv) Any real estate brokerage relationship disclosures and any disclosures made available and provided to Buyer(s) during the registration process, prior to bidding at auction or prior to entering into this Agreement for the purchase and sale of the Property; and
 - (v) The disclosures listed herein and on Exhibits or Addenda attached to this Agreement.

Buyer(s) acknowledges and agrees that any information provided by or on behalf of Seller with respect to the Property, including, without limitation, all information in the Disclosures and the Brochure (as defined in **Section 17E** below) was obtained from a variety of sources and that no Seller Party has made any independent investigation or verification of such information and makes no representation as to the accuracy or completeness of such information. **Buyer(s) shall not have the right to cancel this Agreement by reason of any information, facts, condition, or other aspect of the Property discovered by Buyer(s) subsequent to Buyer(s) execution of this Agreement.**

AUCTION AND RETAIL CONTRACT

- E. **Brochure.** Buyer(s) represents and warrants that Buyer(s) has received, read and accepted the terms and conditions pertaining to the sale of the Property which were made available in the auction brochure (the “**Brochure**”), related advertising, or on the auction website, if any, which terms and conditions are incorporated herein by reference. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Brochure or the auction materials, the terms and conditions of this Agreement shall control and prevail in all respects. Buyer(s) acknowledges and agrees that no Seller Party makes any representation or warranty whatsoever in connection with any terms, conditions, warranties and/or representations contained in the Brochure or any advertising or on the auction website.
- F. **Execution of Disclosures by Buyer(s).** Buyer(s) shall execute, deliver, and deposit with the Escrow Agent, at or prior to the scheduled Closing Date, all federal, state, and local disclosures concerning the Property that Buyer(s) is required to execute under applicable laws and regulations or otherwise required by Seller or the Escrow Agent.

18. TRANSFER OF POSSESSION.

- A. **Possession.** Buyer(s) shall have the right to take possession of the Property at Closing, subject to all rights of record and rights of occupants (if any). If Buyer(s) alters the Property, occupies the Property or allows any other person to occupy the Property prior to Closing without the prior written consent of Seller, then: (A) such event shall constitute a material breach by Buyer(s) of this Agreement, (B) Seller may terminate this Agreement and (C) Buyer(s) shall indemnify Seller for all Claims caused by any such alteration or occupation of the Property prior to Closing.
- B. **Keys, Remotes and New Locks/Security.** At Closing, Seller shall provide Buyer(s) with a key to the front door of the Property, to the extent one is in Seller’s possession. Any and all keys, including garage door keys, pool keys, security keys, and mailbox keys, may not be provided by Seller and, if not provided, Buyer(s) must obtain the same or rekey the Property at Buyer(s) own expense. All remote control devices must also be obtained by Buyer(s) at Buyer(s) own expense. Buyer(s) also understands that if the Property includes an alarm system, Seller will not provide the access code and Buyer(s) is responsible for any costs associated with the alarm system, including changing the code. Notwithstanding the foregoing, Buyer(s) shall be responsible for installing new locks (or re-keying existing locks) and installing or activating any alarm system on the Property immediately after Closing, and Buyer(s) shall hold the Seller Parties harmless from and indemnify the Seller Parties against any and all Claims of every kind and nature that may be made against the Seller Parties as a result of Buyer(s) failure to install new locks (or re-key existing locks) or install or activate alarm systems on the Property.

19. RISK OF LOSS.

If any material portion of the Property is damaged or destroyed prior to Closing, as determined by Seller in its sole discretion, Seller shall give Buyer(s) written notice thereof. Buyer(s) shall have the option, exercisable within two (2) days after receipt of such written notice, to either (a) terminate this Agreement by providing written notice of such termination to Seller, or (b) consummate this Agreement in accordance with its terms. In any event, Seller shall not be deemed in default under this Agreement as a result of such damage or destruction. Buyer(s) shall be deemed to have waived its right to terminate this Agreement if Buyer(s) does not notify Seller in writing of its election to terminate this Agreement within ten (10) business days after receipt of Seller’s written notice of

AUCTION AND RETAIL CONTRACT

material damage. Notwithstanding the foregoing, any termination notice given by Buyer(s) under this Section shall be rendered ineffective if, within three (3) calendar days after Seller's receipt of such written notice, Seller delivers to Buyer(s) Seller's written agreement to repair at its sole cost and expense all such material damage. In such event, notwithstanding any other provision of this Agreement, the Closing Date shall be deemed automatically extended to the fifth (5th) business day following Seller's completion of such repairs. Buyer(s) shall not be entitled to any insurance proceeds or obtain any rights with respect to any Claims Seller may have with respect to any insurance maintained by Seller with respect to the Property. Buyer(s) shall have no right to terminate this Agreement (or any right to a reduction in or credit against the Purchase Price) if a non-material portion of the Property is damaged or destroyed prior to the Closing, even if no insurance proceeds or other funds are available to repair any damages to the Property, and Seller shall not be obligated to repair any such non-material damage, the parties hereto agreeing that the risk of loss related to non-material damage to the Property or any improvements thereon shall be deemed to have passed to Buyer(s) on the date Buyer(s) executes this Agreement.

20. MISCELLANEOUS.

- A. **Assignment.** Buyer(s) may not assign or record Buyer(s) right, title or interest in this Agreement or transaction without the express prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Seller may assign any and all right, title, or interest in this Agreement at its sole discretion without prior notice to, or consent of, Buyer(s). This Agreement shall bind and inure to the benefit of the parties and their successors in interest.
- B. **Titles, Headings and Captions.** All titles, headings, and captions used in this Agreement have been included for convenience of reference only and shall not limit or otherwise affect the construction of this Agreement.
- C. **Entire Agreement.** This Agreement constitutes the entire agreement between Seller and Buyer(s) concerning the subject matter hereof and supersedes all prior written and oral communications, understandings, representations, warranties, covenants, and agreements. Buyer(s) and Seller represent that there are no oral or other written agreements between the parties. All negotiations are merged into this Agreement, and no oral or written, express or implied, promises, representations, warranties, covenants, understandings, communications, agreements, or information made or provided by any Seller Party shall be deemed valid or binding upon Seller unless expressly included herein.
- D. **Attorney's Fees.** In any action, proceeding or arbitration arising out of, brought under, or relating to the terms or enforceability of this Agreement, the prevailing party shall be entitled to recover from the losing party all reasonable attorneys' fees, costs and expenses incurred in such action, proceeding or arbitration.
- E. **Severability; Interpretation.** If any portion of this Agreement shall be judicially determined to be invalid or unenforceable, the same shall, to that extent, be deemed severable from this Agreement and the invalidity or unenforceability thereof shall not affect or impair the validity or enforceability of the remainder of this Agreement. The remainder of this Agreement shall remain in full force and effect and shall be construed to fulfill the intention of the parties hereto. Buyer(s) and Seller acknowledge that each party has reviewed this Agreement and has had adequate opportunity to consult legal counsel with respect thereto and that the rule of construction to the effect that any ambiguities are to be resolved

AUCTION AND RETAIL CONTRACT

against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto. Furthermore, (i) terms such as “including,” “includes” and other similar terms will mean “including, without limitation,” (ii) any reference to a particular article, section, subsection or other subdivision or particular exhibits or addendum will be a reference to that article, section, subsection or other subdivision, exhibits or addendum to this Agreement, (iii) “herein,” “hereof,” “hereunder” and other similar terms refer to this Agreement as a whole and (iv) “or” is not exclusive. Whenever the context indicates that such is the intent, words in the singular shall include the plural and vice versa, and the masculine shall include the feminine and vice versa. Pronouns shall be deemed to refer to all genders. All provisions herein for the benefit of Seller shall be deemed to be for the benefit of all Seller Parties.

- F. **Time is of the Essence.** Time is of the essence for the performance of each and every covenant of Buyer(s) under this Agreement and the satisfaction of each and every condition imposed upon Buyer(s) under this Agreement.
- G. **Governing Law and Venue.** All questions with respect to the construction of this Agreement, and the rights and obligations of the parties hereto, shall be governed by the laws of the state in which the Property is located. The state and federal courts located in the county in which the Property is located shall be proper forums for any legal controversy between the parties arising in connection with this Agreement, which courts shall be the exclusive forums for all such suits, actions, or proceedings. The parties irrevocably consent to the service of process in connection with any such controversy by the mailing by registered or certified mail, postage prepaid, at the respective addresses set forth in, or designated pursuant to, this Agreement.
- H. **Mediation.** At the request of either party, any dispute arising under this Agreement shall be submitted to mediation before resorting to arbitration or court action. Mediation fees shall be divided equally and each party shall bear his/her/its own attorney’s fees and costs. Neither party may individually require binding arbitration prior to commencement of court action, although the parties may mutually agree to such arbitration.
- I. **Counterparts and Electronic Signatures.** This Agreement may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original Agreement, all of which shall constitute one agreement to be valid as of the date of this Agreement. Facsimile documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. Seller and Buyer(s) agree that this Agreement, any Addendum hereto or any other document necessary for the consummation of the transactions contemplated by this Agreement may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act, Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act and any applicable law. Any document accepted, executed, or agreed to in conformity with such laws will be binding on both Seller and Buyer(s) the same as if it were physically executed and Buyer(s) hereby consents to the use of any third-party electronic signature capture service providers as may be chosen by Seller.

AUCTION AND RETAIL CONTRACT

- J. **Further Assurances.** The parties hereto hereby agree to execute such other documents, and to take such other actions, as may reasonably be necessary, to further the purposes of this Agreement.
- K. **Survival.** Any release, waiver, indemnification, defense or hold harmless obligation of Buyer(s) for the benefit of Seller in this Agreement, as well as any other provision that contemplates performance or observance subsequent to Closing or termination of this Agreement, shall survive Closing and/or termination of this Agreement and shall continue in full force and effect.
- L. **Full Performance.** Seller's delivery of the Deed to the Property to the Escrow Agent shall be deemed to be full performance and discharge of all of Seller's obligations under this Agreement.
- M. **Eminent Domain.** If Seller's interest in the Property, or any part thereof, shall be taken by eminent domain, or shall be in the process of being taken on or before Closing, either party may terminate this Agreement, the Earnest Money Deposit shall be returned to Buyer(s) and neither party shall have any further rights or obligations hereunder, except as otherwise specifically provided in this Agreement.
- N. **Force Majeure.** No party shall be responsible for delay or failure of performance resulting from acts of God, riots, acts of war, terrorist attacks, epidemics, power failures, earthquakes or other disasters, provided that such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such party through use of alternate sources, workaround plans, or other means.
- O. **Notice.** All notices, demands, approvals, and other communications contemplated or required under this Agreement shall be in writing and shall be deemed to have been delivered: (a) when actually received (or refused), if delivered personally, (b) three (3) calendar days after mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid, (c) one (1) calendar day after mailing, if sent by a nationally recognized overnight courier or (d) when sent, if delivered via facsimile transmission, provided receipt is confirmed by telephone or by a statement generated by the transmitting machine. Notice to Buyer(s) shall be given as set forth in the Key Terms herein and notice to Seller shall be given at: Bank of America – REO, 16001 N. Dallas Parkway, Addison, TX 75001, or to such other address or addresses as may from time to time be designated by either party by written notice to the other.
- P. **Modification and Waiver.** No provision, term or clause of this Agreement shall be revised, modified, amended, or waived, except by an instrument in writing signed by Buyer(s) and Seller. The waiver by any party of a breach of this Agreement shall not operate or be construed as a waiver of any other or any subsequent breach. No course of dealing between the parties shall operate as a waiver of any provision of this Agreement.
- Q. **Third-Party Beneficiaries.** Unless expressly stated herein, this Agreement does not create any rights, Claims or benefits inuring to any person or entity that is not a party to this Agreement.
- R. **Auction; Sale Process.** No Seller Party is making any representation or warranty as to the manner in which the sale process has been or will be managed. Seller may select the winning bid in its sole and absolute discretion. No obligation to sell shall be binding on Seller unless and until a written contract of sale or purchase agreement is signed and delivered by Seller (and then shall be subject to the terms and conditions in this Agreement). Seller may rescind any oral acceptance of a winning bid prior to the

AUCTION AND RETAIL CONTRACT

execution and delivery of this Agreement for any reason, including, without limitation, the receipt of a subsequent higher bid or offer to purchase whether such higher bid or offer to purchase was received pursuant to the auction terms and conditions or otherwise.

- S. **Prohibited Persons and Transactions.** Each party represents and warrants to the other that neither it, nor any of its affiliates, nor any of their members, directors or other equity owners (excluding holders of publicly traded shares), and none of their principal officers and employees: (i) are listed as a “specifically designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control (“**OFAC**”), (ii) are persons or entities with whom U.S. persons or entities are restricted from doing business under OFAC regulations or any other statute or executive order (including the September 24, 2001 “Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism”), or (iii) are engaged in prohibited dealings or transactions with any such persons or entities.
- T. **Joint and Several.** In the event there is more than one Buyer(s) hereunder, reference to Buyer(s) shall be to each Buyer(s) and each Buyer(s) shall be jointly and severally liable under this Agreement.
- U. **Capacity and Execution.** The undersigned, if executing this Agreement on behalf of a corporation, partnership, trust or other entity, represents and warrants that he/she is duly authorized by the governing documents of such entity and under applicable law to enter into this Agreement and bind the entity to perform all duties and obligations as stated in this Agreement, such entity being duly formed and in good standing with unabated powers to conduct its activities (including the power to contract). Buyer(s) shall provide Seller with proof of such authority upon execution of this Agreement. Further, Seller and Buyer(s) agree to all of the terms in this Agreement, whether any provision or page is separately initialed or not. For emphasis, some pages, sections, or provisions in this Agreement contain a place for Buyer(s) and/or Seller to separately initial, but the failure by Seller or Buyer(s) to initial any section, provision, or page in this Agreement shall not affect the enforceability of any term or provision in this Agreement.
- V. **Legally Binding Contract.** This is a legally binding contract enforceable against Buyer(s) in accordance with its terms. If you do not understand the terms and conditions contained in this Agreement, consult legal or other counsel before signing. Buyer(s) has been advised by the Seller Parties to seek the assistance of legal, financial, construction, air quality, environmental and real estate professionals regarding Buyer(s) purchase of the Property and the terms of this Agreement. By signing this Agreement, Buyer(s) represents and warrants that Buyer(s) has consulted with, had the opportunity to consult with or waived the right to consult with legal or other professionals Buyer(s) deems necessary. Accordingly, the terms of this Agreement not to be construed against Seller because Seller prepared this Agreement or construed in favor of Buyer(s) because Buyer(s) failed to understand the legal effect of the Provisions of this Agreement.
- W. **Language in Bold or Capitalized. FOR EMPHASIS AND BUYER(S) BENEFIT, SOME PROVISIONS HAVE BEEN BOLDED AND/OR CAPITALIZED (LIKE THIS SECTION), BUT EACH AND EVERY PROVISION IN THIS AGREEMENT IS SIGNIFICANT AND SHOULD BE REVIEWED AND UNDERSTOOD. NO PROVISION SHOULD BE IGNORED OR DISREGARDED BECAUSE IT IS NOT IN BOLD OR EMPHASIZED IN SOME MANNER, AND THE FAILURE TO BOLD, CAPITALIZE, OR EMPHASIZE IN SOME MANNER SOME TERMS OR PROVISIONS IN THIS AGREEMENT SHALL NOT AFFECT THE ENFORCEABILITY OF ANY SUCH TERMS OR PROVISIONS.**

AUCTION AND RETAIL CONTRACT

IN WITNESS WHEREOF, Buyer(s) and Seller have entered into the Agreement effective as of the later of the dates set forth below.

SELLER:

BUYER(S):

PRINTED NAME

By: _____
SIGNATURE

TITLE: _____

Dated: _____

PRINTED NAME

By: _____
SIGNATURE

TITLE: _____

Dated: _____

BUYER(S):

PRINTED NAME

By: _____
SIGNATURE

TITLE: _____

Dated: _____

BUYER(S) AGENT/BROKER (if any):

Buyer(s) agent/broker hereby represents that he/she has registered prior to the auction pursuant to the auction terms and conditions as a registered agent/broker, that he/she accepts the auction terms and conditions in their entirety and specifically as to the compensation due to the agent/broker, if any, and that this is the only compensation agent/broker shall receive or is entitled to for this transaction from any Seller Party and that such compensation shall only be paid if the sale contemplated hereby actually Closes. Agent/broker further represents that he/she is not a principal in the transaction (as such terms are defined in the auction terms and conditions):

PRINTED NAME

BROKERAGE NAME

By: _____

License Number: _____

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

If available, please refer to the attached preliminary title report and/or legal description of the property.

SAMPLE

SELLER'S INITIALS _____

BUYER(S) INITIALS _____

LEAD-BASED PAINT HAZARD DISCLOSURE AND ACKNOWLEDGMENT

LEAD WARNING STATEMENT: Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the Buyer(s) with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the Buyer(s) of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase, at purchaser's expense.

EPA'S LEAD-BASED PAINT RENOVATION, REPAIR AND PAINTING RULE: The rule requires that contractors and maintenance professionals working in pre-1978 housing, childcare facilities, and schools with lead-based paint be certified, that their employees be trained, and that they follow protective work practice standards. The rule applies to renovation, repair, or painting activities affecting more than six square feet of lead-based paint in a room or more than 20 square feet of lead-based paint on the exterior. Enforcement of the rule began October 1, 2010. See the EPA website at www.epa.gov/lead for more information.

1. **SELLER'S DISCLOSURE:** Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the Property. Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the Property.
2. **PURCHASER'S ACKNOWLEDGMENT:** By executing this Disclosure, Buyer(s) acknowledges that it (i) has read the Lead Warning Statement set forth above and understands its contents; (ii) has reviewed the lead hazard information pamphlet, "Protect Your Family From Lead in Your Home" posted on the website of the United States Department of Housing and Urban Development (currently located at http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12337.pdf); and (iii) has waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

BUYER(S) AGREES HE/SHE/IT IS PURCHASING THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS AND LIMITATIONS" AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO THE CONDITION OF THE PROPERTY. BUYER(S) FURTHER AGREES THAT NO SELLER PARTY HAS ANY RESPONSIBILITY OR LIABILITY FOR, AND BUYER(S) HEREBY UNCONDITIONALLY RELEASES ALL SELLER PARTIES FROM, ANY AND ALL LIABILITY, BOTH KNOWN AND UNKNOWN, PRESENT AND FUTURE, THAT IS BASED UPON, OR RELATED TO, THE EXISTENCE OF LEAD OR LEAD-BASED PAINT ON OR ABOUT THE PROPERTY.

By executing below, Seller and Buyer(s) each acknowledge and agree that they have reviewed the information above and each certifies, to the best of their respective knowledge, that the information provided is true and correct.

[Remainder of Page Intentionally Left Blank; Signatures Appear on Next Page]

LEAD-BASED PAINT HAZARD DISCLOSURE AND ACKNOWLEDGMENT

SELLER:

BUYER(S):

PRINTED NAME

By: _____
SIGNATURE

TITLE: _____

Dated: _____

PRINTED NAME

By: _____
SIGNATURE

TITLE: _____

Dated: _____

BUYER(S):

PRINTED NAME

By: _____
SIGNATURE

TITLE: _____

Dated: _____

SAMPLE

ADDENDUM TO PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS "SUBJECT TO CONFIRMATION"

This Addendum to Purchase Agreement and Joint Escrow Instructions (this "**Addendum**"), is entered into by and between Seller and Buyer(s), who are parties to that certain Purchase Agreement and Joint Escrow Instructions dated _____ (the "**Agreement**").

This is a reserve auction and the Property has a reserve price ("**Reserve Price**"), meaning Seller can accept or reject any bid and has also established an unpublished, minimum selling price. The starting bid is not the Reserve Price. To become the winning bidder for the Property, a bidder must meet or exceed the Reserve Price, have the highest bid, and such highest bid must be accepted by Seller. Buyer(s) and Seller agree that Seller may reject any bid and/or terminate this Agreement and the Escrow in Seller's sole and absolute discretion, if Seller does not approve the sale where it is noted that the sale is "Subject to Confirmation." Seller's right to reject a bid and terminate this Agreement shall exist whether or not Seller and/or Buyer(s) have signed the Agreement. Seller shall make such election within fifteen (15) business days (i.e. excluding weekends and holidays) from the date of this Agreement. If accepted, Seller or Seller's designee will provide written notice to Buyer(s) within such fifteen (15) business-day period via overnight courier service or registered mail (return receipt requested) or via email, with notice deemed given upon the date of sending of such notice. If Seller or Seller's designee does not provide notice by such deadline date, then Seller shall be deemed to have rejected the bid and this Agreement shall be deemed cancelled without further action.

If Seller elects, or is deemed to have elected, NOT to approve this Agreement and cancels, or is deemed to have cancelled, this Agreement and the Escrow, the Escrow Agent shall return to Buyer(s) any Earnest Money Deposit given by Buyer(s) to the Escrow Agent, subject to any adjustments to the Earnest Money Deposit provided in this Agreement, such return contingent upon the Escrow Agent's confirmation of the Earnest Money Deposit having been received as Good Funds, as defined in this Agreement. Auctioneer is authorized to provide the necessary instruction to the Escrow Agent directing return of such amounts. Effective upon release of such amounts to Buyer(s), this Agreement shall be cancelled and Buyer(s) and Seller shall be relieved of any further liability and/or obligation to each other under this Agreement and with respect to the Property. Buyer(s) hereby releases all Seller Parties from and against any and all Claims in connection with the transaction and this Agreement upon such cancellation. Buyer(s) grants Seller and Seller's authorized agent the unilateral right to execute cancellation instructions if Seller elects to cancel and terminate Escrow pursuant to the terms of this Addendum.

If Seller elects to approve and confirm this Agreement, then this Agreement shall continue in full force and effect and the Closing Date shall occur as determined pursuant to the Agreement, except as may otherwise be allowed pursuant to the terms of this Agreement.

[Remainder of Page Intentionally Left Blank; Signatures Appear on Next Page]

SELLER:

BUYER(S):

PRINTED NAME

PRINTED NAME

By: _____
SIGNATURE

By: _____
SIGNATURE

TITLE: _____

TITLE: _____

Dated: _____

Dated: _____

BUYER(S):

PRINTED NAME

By: _____
SIGNATURE

TITLE: _____

Dated: _____

SAMPLE

WHAT DOES “SUBJECT TO CONFIRMATION” MEAN?

If your bid was accepted by the auctioneer “Subject to Confirmation,” it means that your winning bid is subject to, and contingent upon, Seller approving the purchase as described in the auction terms and conditions. Seller has the right to accept or reject any bid and has established an unpublished, minimum selling price.

Common Questions and Answers

Q. When is my closing date if my contract is “Subject To Confirmation”?

A. Your closing date will be as set forth in the Purchase Agreement and Joint Escrow Instructions (the “Agreement”). Please see the Addendum to Purchase Agreement and Joint Escrow Instructions – “Subject To Confirmation.”

Q. How long will it take before I know if Seller has accepted the Agreement?

A. Seller has fifteen (15) business days to make this decision and notify you in writing of acceptance. Please see the Addendum to Purchase Agreement and Joint Escrow Instructions – “Subject To Confirmation.”

Q. What should I do or not do before Seller’s confirmation?

A. DO: Start communicating with your lender, if any, including providing any necessary documentation. Please remember, your financing is not a condition to closing under the Agreement.

DON’T: Spend money on any appraisals or make any definite plans for moving or use of this property until you know Seller has confirmed it has accepted the Agreement and will proceed with the transaction.

Q. Can I back out before Seller’s Confirmation?

A. The Addendum to Purchase Agreement and Joint Escrow Instructions – “Subject To Confirmation” allows Seller to confirm or reject the Agreement. You are obligated to proceed with the transaction unless Seller decides not to sell the property to you at the total purchase price set forth in the Agreement.

Q. Who do I call to find out the status?

A. Your first point of contact for anything relating to the purchase of the property is the Escrow Agent. You will receive their contact information along with your copy package on auction day. If you do not get an answer that way, please contact the auctioneer.

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“Acknowledgement of Occupant Rights”

Buyer(s) Initials _____ IMPORTANT REMINDER: The Seller has not authorized you to enter the above-referenced property and possession is subject to the rights of any tenants or other parties occupying the premises.

Buyer(s) Initials _____ Do not attempt to contact the occupants or claimants in any way until your purchase has closed. You are hereby advised that you may be subject to civil and criminal penalties if you violate the rights of any occupant or claimant.

Buyer(s) Initials _____ Seller reserves all rights and remedies against any purchaser who violates the above restrictions and could result in your offer being terminated.

BUYER(S):

BUYER(S):

PRINTED NAME

PRINTED NAME

By: _____
SIGNATURE

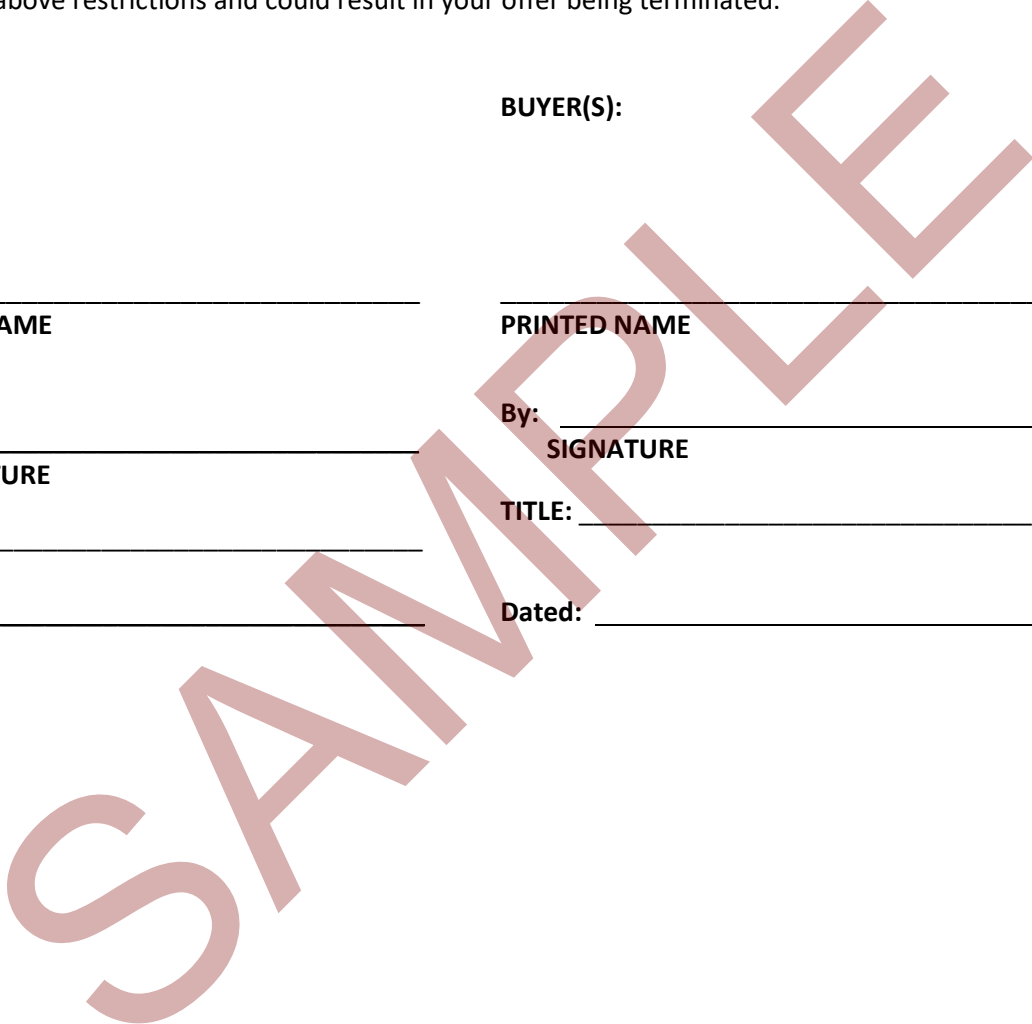
By: _____
SIGNATURE

TITLE: _____

TITLE: _____

Dated: _____

Dated: _____



Title and Closing Agent Option

Property Address: _____

REO Number: _____

Definitions

Seller's Choice Closing (cash or finance)	Buyer(s) Choice Closing (cash or finance)
<ul style="list-style-type: none">• Buyer(s) elects to close with Seller's closing entity.• Seller pays for and provides owner's title policy (if applicable).	<ul style="list-style-type: none">• Seller and Buyer(s) each have their own Closing representative.• Buyer(s) pays Buyer(s) customary title and closing fees to their Closing Agent and for owner's title policy (when applicable).• Buyer(s) Closing Agent entity shall prepare the deed and incur any associated costs.• Buyer(s) Closing Agent to provide and insure title.

Please select one of the options below (required)

Buyer(s) Choice

Seller's Choice

****This section must be completed if you have chosen BUYER(S) CHOICE closing****

An amendment to the purchase contract is required when the Buyer(s) elects to change closing/escrow agent or title company after the initial contract package has been executed.

Company Name: _____

Closing Contact's Name: _____

Closing Contact's Address: _____

Phone Number: _____

Email: _____

Buyer(s), please sign below indicating that the selection above is correct.

Note: If Buyer(s) has selected the Buyer(s) Choice closing option, Buyer(s) shall be deemed to have waived any obligation for Seller to pay the premium for a state-specific standard owner's policy of title insurance, and hereby agrees to be solely responsible for all title and closing costs charged by Closing Agent, pursuant to the contract.

If Buyer(s) decides to switch entities three business days after the closing has been opened, Buyer(s) will be responsible for all Seller's/Agent's out-of-pocket expenses, such as Title cancellation Fee, Tax and Lien Search, Estoppels, Deed preparation, and Buyer(s) Choice Fees payable to the Seller's National Closing agent.

BUYER(S):

BUYER(S):

PRINTED NAME

PRINTED NAME

By: _____
SIGNATURE

By: _____
SIGNATURE

TITLE: _____

TITLE: _____

Dated: _____

Dated: _____