Reserve Form
Auction (042611)

State of Georgia
Lot No. «Lot»
Auction Date & Location:
June 21-25, 2011 – Event 2
Hotel Duval, Tallahassee, FL
Property Name and/or Address:
«Property_Address»
«City», «State_» «Zip»
Asset No. «Asset»

AUCTION REAL ESTATE PURCHASE AND SALE CONTRACT

1. PARTIES: This Auction Real Estate Purchase And Sale Contract (this "Contract") is entered into by and between the Federal Deposit Insurance Corporation (the "FDIC"), **[**X**]** as Receiver for «FIN_»**[ ]** in its corporate capacity ("Seller"), and _____, **[check one] [ ]** an individual **[ ]** a _____ **[insert name of state in which purchasing entity was formed]** _____ **[insert type of purchasing entity]** ("Purchaser").

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

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

4. EARNEST MONEY: An earnest money deposit in an amount equal to the greater of (a) $2,500.00, or (b) five percent (5%) of the Purchase Price (the "Earnest Money"), is herewith tendered by Purchaser and is to be held by the Title Company (hereinafter defined) under the terms of this Contract. If the amount of the Earnest Money is in excess of the $2,500.00 cashier's check that was required for Purchaser to register as a bidder under the Auction Terms & Conditions and endorsed and tendered herewith, Purchaser shall immediately tender, and Seller will accept, Purchaser's personal check to make up the difference between the $2,500.00 cashier's check and the amount of the Earnest Money. The Title Company shall immediately present the check(s) representing the Earnest Money for payment. The Earnest Money will NOT bear interest at any time. If the sale hereunder is consummated in accordance with the terms hereof, the Earnest Money will be applied against the Purchase Price at Closing. In the event of default hereunder, the Earnest Money will be retained or refunded in accordance with Section 16 hereof.

5. SURVEY: Seller has no obligation to provide Purchaser with a survey of the Property. Purchaser may elect to purchase same at its own expense, which shall in no event delay Closing. If there was a prior survey of the Property in Seller's possession prior to the auction event at which the Property is being sold, an attempt was made to include such survey in the electronic information made available to all prospective bidders on the Internet.

6. TITLE COMMITMENT AND TITLE POLICY: (a) Seller has no obligation to provide Purchaser with a commitment for title insurance covering the Property. Prior to the auction event at which the Property is being sold, an attempt was made to include such a commitment in the electronic information made available to all prospective bidders on the Internet. At Closing, Seller will cause an owner's policy of title insurance covering the Property in the full amount of the Purchase Price (the "Title Policy") to be issued to Purchaser by a title insurance company selected by Seller in its sole discretion (the "Title Company").

(b) Purchaser has no right to raise any objection to, nor does Seller have any obligation to eliminate or modify, any easement, lien, imposition, encumbrance, restriction, condition, covenant, or any other matter with respect to the Property, whether of record or not, or whether evidenced by a title commitment, survey, or otherwise. Purchaser hereby acknowledges and agrees that all such matters are permitted encumbrances hereunder and that conveyance of the Property pursuant to this Contract will be subject thereto.

(c) Notwithstanding Subsection 6.(b), above, Seller will either cause any mortgages, deeds of trust, or other monetary liens or impositions recorded against the Property to be released at or prior to Closing, or provide Purchaser with written notice that Seller is unable or unwilling to do so. If Seller notifies Purchaser that Seller is not able or willing to cause any such mortgages, deeds of trust, or other monetary liens or impositions to be released ("Seller's Notice") prior to Closing, Purchaser shall have the right to either (i) terminate this Contract by written notice thereof to Seller within five (5) days of receipt of Seller's Notice and receive the immediate return of the Earnest Money, and thereafter neither party hereto will have any further rights or obligations under this Contract; or (ii) waive the continuing existence of any such mortgages, deeds of trust, or other monetary liens or impositions that have not been released and thereafter close the purchase of the Property in accordance with this Contract. Failure by Purchaser to timely exercise its right to terminate this Contract under Section 6.(c)(i) hereinabove shall be deemed to

be Purchaser's election to proceed under Section 6.(c)(ii).

7. INSPECTION OF THE PROPERTY: There is no inspection period granted under this Contract. Purchaser hereby acknowledges its responsibility to perform due diligence with regard to its purchase of the Property, including, without limitation, any physical inspection of the Property it desired to make, prior to the auction event at which the Property is being sold. Purchaser further hereby acknowledges and agrees that (i) having been given the opportunity to inspect the Property, Purchaser is relying solely on its own investigation of the Property and not on any information that may have been provided or to be provided by Seller, Seller's third party marketing contractor, or the auctioneer or any of their respective representatives, and (ii) any information provided by or on behalf of Seller with respect to the Property, including, without limitation, all information contained in any property information package previously made available to Purchaser by Seller, its third party marketing contractor, or the auctioneer, was obtained from a variety of sources and, while none of those parties has any reason to believe that such information contains any material inaccuracies, they make no representations or warranties, express or implied, at law or in equity, as to the validity, accuracy or completeness of such information or in any advertisements, press releases or promotional materials with respect to the sale of the Property.

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

9. PROPERTY CONDITION: (a) **PURCHASER, BY ITS EXECUTION OF THIS CONTRACT, ACKNOWLEDGES THAT:**

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

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

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

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

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

11. CLOSING: The closing of the sale of the Property by Seller to Purchaser ("Closing") shall occur on the first business day following the expiration of thirty (30) days from and after the date of the auction event at which the Property is being sold, or such earlier date to which Purchaser and Seller may agree (in either event, the "Closing Date"). The Closing shall occur at the offices of the Title Company or, at Seller's option, at the office of a closing attorney designated by Seller in its sole discretion. At Closing, among other requirements set forth herein, Purchaser shall deliver the Purchase Price to Seller in accordance with Section 3 hereinabove and, if applicable, the amount set forth in Section 32 hereof for the personalty to be conveyed hereunder, and Seller shall deliver the Deed and, if applicable under Section 32 hereof, the Bill of Sale, to Purchaser. In addition, Purchaser and Seller shall execute an assignment and assumption of any Leases and Service Contracts (the "Assignment and Assumption") in a form satisfactory to Seller in its sole discretion, assigning and transferring to Purchaser without warranty by or recourse against Seller, Seller's interest in and under any and all (1) tenant leases in force on the Closing Date covering the Property or any portion thereof (the "Leases"), together with all rentals and other payments arising therefrom on and after the Closing Date, and (2) contract agreements in force on the Closing Date with respect to the operation, maintenance and use of the Property (the "Service Contracts"), together with all rights and obligations of Seller arising from the Leases and the Service Contracts on and after the Closing Date. If either party fails to close the sale under the terms of this Contract, the non-defaulting party will be entitled to exercise the remedies provided in Section 16 hereof. Any extension of the Closing Date must be in writing and executed by Purchaser and Seller in advance of the scheduled Closing Date. Notwithstanding the foregoing, Seller shall have the right, in its sole discretion, to extend the Closing Date for a period of up to N/A (N/A) days as it may deem necessary or appropriate.

12. POSSESSION: Upon completion of the Closing, Seller shall deliver to Purchaser possession of the Property in its condition existing on the Effective Date, ordinary wear and tear excepted, and free and clear of all tenancies of every kind and parties in possession, except for tenants entitled to possession under any Leases, and except for any Service Contracts. Purchaser shall and does hereby indemnify and hold Seller harmless, and Purchaser shall defend Seller (with counsel acceptable to Seller), from and against all claims, demands, and actions made or brought by any tenants under any Leases or by any vendors, suppliers, or tradespeople providing goods and services to the Property under any Service Contracts or otherwise. The obligations of Purchaser set forth in the immediately preceding sentence shall survive Closing and not be merged therein.

13. CLOSING COSTS: Seller will pay the cost of (i) preparation of the Deed, the Assignment and Assumption, and any other conveyance documents, (ii) one-half of the Title Company's escrow, settlement, or closing fee(s), (iii) the premium for the Title Policy, and (iv) Seller's attorneys' fees. Seller will cause any mortgages, deeds of trust, or other monetary liens or impositions recorded against the Property to be released, unless Seller has notified Purchaser that Seller is unable or unwilling to cause same to be released under Section 6.(c) hereof and Purchaser nevertheless elected, or is deemed to have elected, to proceed under Section 6.(c)(ii) hereof. All other costs and expenses incurred in connection with the sale of the Property hereunder will be paid by Purchaser, including, without limitation, recordation of the Deed and any other recording fees, one-half of the Title Company's escrow, settlement, or closing fee(s), Purchaser's attorneys' fees, the removal of any liens remaining on the Property, any costs and expenses incurred by Purchaser in performing its inspection of the Property, any documentary stamp taxes, deed taxes, transfer taxes, intangible taxes, mortgage taxes and any and all other similar taxes, fees or assessments, and any financing obtained by Purchaser in connection with its purchase of the Property.

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

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

(b) On the first business day immediately prior to the day which is sixty (60) days after the Closing Date, or such other date as may be agreed upon in writing by Seller and Purchaser in order to have in hand the tax or any other assessments for the Property for the year of Closing or for any other reason (in any event, the "Reconciliation Date"), Seller hereby agrees to cause to be paid to Purchaser, or Purchaser hereby agrees to pay to Seller, as the case may be, a payment in an amount which reflects (i) net adjustments to the prorations made at Closing under Section 14.(a), above, including, without limitation, (a) any and all rents delinquent and unpaid on the Closing Date and subsequently collected by Purchaser, and (b) any savings resulting from any tax abatements on the Property for the year of Closing resulting from a challenge brought by either party hereto and the costs or expenses incurred by the challenging party in that regard, and (ii) any costs and expenses incurred by Purchaser under Section 32.(b)(ii) hereof.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. CONSTRUCTION: Unless stated otherwise, the words "day" or "days" refer to calendar days. Pronouns are used interchangeably herein to refer to masculine, feminine, or neuter antecedents. The parties hereby acknowledge that each party and its counsel have reviewed this Contract and had the opportunity to revise same, and each consequently agrees that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

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

29. ASSIGNMENT: This Contract shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors, and assigns. Notwithstanding the foregoing, Purchaser shall not have the right to assign its interest in this Contract without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole and absolute discretion, and any such assignment to which Seller has not so consented shall be null and void and of no force or effect. Purchaser hereby acknowledges and agrees that any request by Purchaser for Seller's consent to Purchaser's assignment of its interest in this Contract shall be (i) in writing and shall be delivered to Seller, together with any and all documentation required by Seller with regard to the proposed assignee, no later than fifteen (15) days prior to Closing, and (ii) documented by an assignment and assumption of this Contract in form and substance satisfactory to Seller in its sole discretion, including, without limitation, compliance by any such assignee with the requirements of Sections 17 and 18 hereof.

30. STATE SPECIFIC AND OTHER ATTACHMENTS: The following attachments, if any, are attached hereto and incorporated herein for all purposes in order to, among other things, conform this Contract to the laws of the state in which the Property is located **[if no such attachments are used, write "None" on the first line; if more are needed, add same and number sequentially]**:

[X] ATTACHMENT 1: State-Specific Addendum to Auction Real Estate Purchase and Sale Contract **;**

[ ] ATTACHMENT 2: _____**;**

[ ] ATTACHMENT 3: _____**;**

[ ] ATTACHMENT 4: _____**.**

31. ENVIRONMENTAL DISCLOSURES REGARDING THE PROPERTY **[mark and attach if applicable,**

identifying numerically depending on number of attachments included under Section 30, above]:

[ ] ATTACHMENT __: Other Environmental Matters. Other environmental matters require disclosure prior to conveyance of the Property to Purchaser.

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

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

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

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

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

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

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

PURCHASER **[check applicable box]**:

[ ] _____

Name: _____

_____

Name: _____

[if an individual, sign on this first line, print name on second; if husband and wife, have second spouse do likewise on next two lines]

[ ] _____

_____

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

By: _____
[entity's representative signs here]

Print Name: _____
Title: _____
Date: _____
Tax ID Number: _____

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

_____
_____
_____

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

Phone number: _____
Fax number: _____

SELLER:

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

By: _____
Name: _____
Title: Attorney in Fact
Date: _____
Phone number: _____
Fax number: _____

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

_____
_____
_____

EXHIBIT "A"

[Legal Description of the Property]

EXHIBIT "B"

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

Recording requested by
and when recorded return to:
_____
_____
_____

Asset No. _____

_____ space above this line for Recorder's use only

SPECIAL WARRANTY DEED

STATE OF _____ §
§
COUNTY OF _____ §

RECITALS

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

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

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

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

NOW, THEREFORE, the Receiver **[or, if applicable:** FDIC-Corporate**]** (hereinafter, "Grantor"), whose address is 1601 Bryan Street, Dallas, Texas 75201, for and in consideration of _____ AND NO/100 DOLLARS ($_____.00), the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto _____ **[if a legal entity, include type and state in which formed]** ("Grantee"), whose address is _____, that certain real property situated in _____ County, _____, as described on Exhibit "A" attached hereto and made a part hereof for all purposes, together with any and all improvements thereto and all and singular the rights and appurtenances pertaining thereto, including, but not limited to, any right, title and interest of Grantor in and to adjacent streets, alleys or rights-of-way (collectively, the "Property"), **subject** however **to** any and all exceptions, easements, rights-of-way, covenants, conditions, restrictions, reservations, encroachments, protrusions, shortages in area, boundary disputes and discrepancies, matters which could be discovered or would be revealed by, respectively, an inspection or current survey of the Property, encumbrances, access limitations, licenses, prescriptive rights, rights of any tenants under any leases covering the Property or any portion thereof, and any and all other matters or conditions affecting the Property, including, without limitation, any and all matters or conditions reflected on Exhibit "B" attached hereto and made a part hereof for all purposes, and whether known or unknown, recorded or unrecorded, as well as standby fees, real estate taxes, and assessments on or against the Property for the current year and subsequent years and subsequent taxes and assessments for prior years becoming due by reason of a change in usage or ownership, or both, of the Property; and any and all zoning, building, and other laws, regulations, and ordinances of municipal and other governmental authorities affecting the Property (all of the foregoing being collectively referred to as the "Permitted Encumbrances"). Grantee, by its acceptance of delivery of this Special Warranty Deed, assumes and agrees to perform any and all obligations of Grantor or the Institution under the Permitted Encumbrances.

FURTHER, GRANTEE, BY ITS ACCEPTANCE OF DELIVERY OF THIS SPECIAL WARRANTY DEED, ACKNOWLEDGES AND AGREES THAT (i) EXCEPT FOR THE SPECIAL (OR LIMITED)

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

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

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

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

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION,
[either as Receiver for _____ (**insert name of Institution, including City and**

State – see first recital on first page of Deed), or in its corporate capacity**]**

By: _____

Name: _____

Title: Attorney in Fact

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, _____, by _____, Attorney in Fact of the Federal Deposit Insurance Corporation, **[**as Receiver for _____ , **or, if applicable:** in its corporate capacity**]**, on behalf of said entity.

_____
Notary Public, State of _____

EXHIBIT "A" to Special Warranty Deed

[Legal Description of the Property]

[NOTE TO PREPARER: This legal description should be, except in unique circumstances, the legal description of the Property as found in the conveyancing instrument into Seller or into the Institution, and be the same legal description attached to the Auction Real Estate Purchase and Sale Contract covering this transaction.]

EXHIBIT "B" to Special Warranty Deed

[Specific Permitted Encumbrances]

[Note to preparer of Deed: List hereon any matters or conditions reflected on the Title Policy, including, without limitation, any mortgages, deeds of trust, or other monetary liens or impositions that have not been released, the continuing existence of which have been waived or deemed waived by Purchaser under Section 6.(c)(ii) of the Contract.]

1.

2.

3.

4.

EXHIBIT "C"

[Form of Purchaser Eligibility Certification]

PURCHASER ELIGIBILITY CERTIFICATION

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

DEFINITIONS

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

Associated Person. An Associated Person of a Prospective Purchaser who is an individual is (1) the Prospective Purchaser's spouse or dependent child or any member of the household, (2) a partnership in which the Prospective Purchaser is or was a general or limited partner, or (3) a corporation of which the Prospective Purchaser is or was an officer or director. An Associated Person of a Prospective Purchaser that is an entity is (1) any individual or entity that, acting individually or in concert with one or more individuals or entities, owns or controls 25 percent or more of the Prospective Purchaser; or (2) a managing or general partner of the Prospective Purchaser.

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

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

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

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

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

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

ELIGIBILITY CERTIFICATION

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

A. **FDIC Employees**. The Prospective Purchaser is not an FDIC employee, the spouse of an FDIC employee, or the minor child of an FDIC employee.

B. **Delinquent Obligors**. Neither the Prospective Purchaser nor any of its Affiliated Business Entities has a Delinquent Obligation. *Under certain circumstances, the certification required in this paragraph may be waived. For more information about the waiver process and criteria, contact the FDIC sales representative. Note: If the sale is for FDIC real estate owned or items such as furniture, fixtures or equipment, artwork, automobiles or other tangible items, and the bid price will be less than $250,000 (per item or per pool), then the certification set forth in this paragraph B is not required.*

C. **FDIC Contractors**. Neither the Prospective Purchaser nor any of its Affiliated Business Entities is a Contractor that has performed services within the past three years relating to any of the assets that the Prospective Purchaser might buy, unless the contract for services allows for the purchase of such assets. *Under certain circumstances, the certification required in this paragraph may be waived. For more information about the waiver process and criteria contact the FDIC sales representative.*

D. **Officers or Directors of Failed Institutions**. Neither the Prospective Purchaser nor any of its Associated Persons has ever been an officer or director of a Failed Institution or of an affiliate of a Failed Institution who (1) has participated in a material way in one or more transactions that caused a Substantial Loss to any such Failed Institution; *and* (2) in connection with such Substantial Loss has been found by a court or administrative tribunal, or alleged in a judicial or administrative action brought by the FDIC or any federal or state governmental entity to have (i) violated any law, regulation or order issued by a federal or state banking agency; (ii) breached a written agreement with a federal or state banking agency or with a Failed Institution; (iii) engaged in an unsafe or unsound practice in conducting the affairs of a Failed Institution; or (iv) breached a fiduciary duty owed to a Failed Institution.

E. **Debarment from Participation in the Affairs of a Failed Institution**. Neither the Prospective Purchaser nor any of its Associated Person(s) has been removed from, or prohibited from participating in the affairs of a Failed Institution by a final enforcement action by the FDIC or any other federal banking agency (Office of the Comptroller of the Currency, Office of Thrift Supervision, or the Board of Governors of the Federal Reserve System).

F. **Pattern or Practice of Defalcation**. Neither the Prospective Purchaser nor any of its Associated Person(s) has borrowed money or guaranteed loans in more than one transaction with the intent to cause a loss or with reckless disregard for whether such transactions would cause a loss to any financial institution insured by the FDIC, where these loans, in the aggregate, caused a Substantial Loss to one or more Failed Institutions.

G. **Convicted of Certain Crimes**. Neither the Prospective Purchaser nor any of its Associated Person(s) (1) has been convicted of committing or conspiring to commit any offense under Section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 of Title 18 of the United States Code affecting any Failed Institution; *and* (2) has defaulted on any debt or duty to pay money (including any guaranty) owed to the FDIC or any Failed Institution to such an extent that a judgment has been rendered in favor of the FDIC or the property securing the debt has been foreclosed on.

H. **If Seller Financing Is Used**. Neither the Prospective Purchaser nor any of its Associated Persons (1) has defaulted on any debts or duties to pay money (including any guaranty) to the FDIC or a Failed Institution that, in the aggregate, exceed $1,000,000, to such an extent that a judgment has been rendered in favor of the FDIC or the property securing the debt has been foreclosed on; *and* (2) has made any fraudulent misrepresentations in connection with any of these debts or duties. *This representation is not required, and has no effect, if the Prospective Purchaser does not finance any portion of the purchase price through financing offered by the FDIC.*

I. **Transactions Structured to Circumvent this Certification**. Neither the identity nor form of the Prospective Purchaser, nor any aspect of the contemplated transaction, has been created or altered with the intent, in whole or in part, to allow an individual or entity who otherwise would be ineligible to purchase assets from the FDIC to benefit directly or indirectly from the proposed transaction.

PROSPECTIVE PURCHASER INFORMATION

Name of Prospective Purchaser			Tax ID Number or SSN
☐ Individual ☐ Partnership ☐ Corporation ☐ Trust ☐ Other *(Specify)*			
Physical Street Address (For Overnight Delivery)			
City	State or Province	Country	Postal Code
Contact Person and Title			
Telephone Number ( )	Fax Number ( )	E-Mail Address ( )	

IN WITNESS WHEREOF, the undersigned has executed this Certification as of this 22st day of June, 2011.

PROSPECTIVE PURCHASER

_____
[Print Name of Prospective Purchaser]

_____
[Signature]

_____
[Print Name and Title of Authorized Signatory]

Notice Concerning Legal Action

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

PRIVACY ACT STATEMENT

The Federal Deposit Insurance Act (12 U.S.C. §§1819, 1821, and 1823), 5 C.F.R. Part 3201, 12 C.F.R. Parts 340 and 366, and Executive Order 9397 authorize the collection of this information. The FDIC will use the information to assist in the determination of whether a Prospective Purchaser is eligible to purchase assets under the laws, regulations and policies pertaining to the FDIC. The FDIC may disclose this information: 1) to other federal, state or local agencies and to contractors to assist in the marketing or sale of assets; 2) to appropriate Federal, State or local agency or responsible authority, to the extent that disclosure is necessary and pertinent for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation or order, when the information indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by any statute, or by regulation, rule or order issued pursuant thereto; 3) to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosure to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings, when the FDIC is a party to the proceeding or has a significant interest in the proceeding and the information is determined to be relevant and necessary; 4) to a congressional office in response to a written inquiry made by the congressional office at the request of the individual to whom the record pertains; or 5) in accord with any other routine use appropriate for the FDIC's Insured Bank Liquidation Records, # 30- 64- 0013. Submitting this information to the FDIC is voluntary. Your failure, however, to submit all of the information requested and to complete the form entirely could result in your inability to bid on or purchase FDIC-held assets.

ESTIMATED REPORTING BURDEN

Public reporting burden for this collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Paperwork Reduction Act, Legal Division, FDIC, Washington, D.C. 20429; and to the Office of Management and Budget, Paperwork Reduction Project (3064-0089), Washington, D.C. 20503. Respondents need not respond to this request for information unless it displays a currently valid OMB Control Number.

EXHIBIT "D"

CONFIDENTIALITY AGREEMENT
(Auction Property Sales)

This Confidentiality Agreement (this "Agreement") is entered into by and between the Federal Deposit Insurance Corporation in the capacity indicated on the signature page of this Agreement (the "FDIC"), and _____ **[check one] [ ]** an individual **[ ]** a _____ **[insert name of state in which purchasing entity was formed]** _____ **[insert type of purchasing entity]** ("Purchaser").

WHEREAS, the FDIC has offered for sale at auction certain real property together with any improvements thereon (the "Property") as described on Exhibit "A" attached hereto and made a part hereof for all purposes; and

WHEREAS, Purchaser has expressed an interest in purchasing the Property; and

WHEREAS, in consideration of the FDIC, its agents, and representatives furnishing Purchaser with information regarding the Property, some of which may be confidential or proprietary in nature, Purchaser has agreed to the placement of certain restrictions on the use of such information, including any and all notes, analyses, compilations, studies, or other documents, whether prepared by Purchaser or others, which contain or otherwise reflect such information (all such information being hereinafter collectively referred to as the "Evaluation Material").

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the FDIC and Purchaser hereby agree as follows:

Section 1. Term. This Agreement shall become effective as of the date of execution as set forth on the signature page hereof and shall terminate only upon the closing of the sale of the Property by the FDIC to Purchaser, with the result that the FDIC is no longer the record title holder of the Property.

Section 2. Limitation on Use. Purchaser shall use the Evaluation Material solely for the purpose of evaluating the suitability of the Property for purchase and the preparation of a bid for such purchase and for no other purpose.

Section 3. Limited Access. Without the prior written consent of the FDIC, to be granted or withheld in the FDIC's sole discretion, Purchaser shall not disseminate or divulge the Evaluation Material to any person or entity, other than as set forth below. Purchaser shall limit access to the Evaluation Material to such persons or entities who have a need to know the information contained in the Evaluation Material for the purpose of advising Purchaser on the suitability of the Property for purchase (including, without limitation, any prospective institutional lender from whom Purchaser may seek financing for the purchase) and assisting Purchaser in the preparation of a bid for such purchase. Purchaser shall keep a record of the recipients of the Evaluation Materials. Purchaser shall be responsible for any breach of this Agreement by its partners, directors, officers, employees, agents, representatives, affiliates, successors, or assigns. **Without the prior written consent of the FDIC, which consent may be withheld in its sole discretion, Purchaser shall not directly or indirectly, contact, seek, or attempt to seek any information from any person other than the FDIC regarding the Evaluation Material**.

Section 4. Confidentiality. Purchaser shall ensure that all persons or entities to whom it discloses the Evaluation Material shall keep the Evaluation Material confidential. This Agreement shall be inoperative as to particular portions of the Evaluation Material if such information (i) becomes generally available for the public other than as a result of a disclosure by Purchaser, its partners, directors, officers, employees, agents, representatives, affiliates, successors or assigns; (ii) was available to Purchaser on a non-confidential basis prior to its disclosure to Purchaser by the FDIC; (iii) becomes available to Purchaser on a non-confidential

basis from a source other than the FDIC which source, insofar as is known to Purchaser after reasonable inquiry, is not prohibited from making the disclosure to Purchaser; or (iv) is independently developed by Purchaser without use of the Evaluation Material.

Section 5. Return of Documents. Unless otherwise directed by the FDIC, Purchaser shall return and ensure that all persons or entities to whom it has disclosed the Evaluation Material shall return all copies of the Evaluation Material (whether prepared by Purchaser or others) to the FDIC, upon the earlier of: (i) the fifth (5th) business day after receipt by Purchaser of notice from the FDIC that the FDIC has not accepted Purchaser's bid to purchase the Property; or (ii) the sixtieth (60th) day following the submission by Purchaser of its bid, whether of not Purchaser has received any notice from the FDIC regarding such bid. Purchaser will inform the FDIC immediately of any improper disclosure of any of the Evaluation Material and of any breach of any provision of this Agreement which may come to Purchaser's attention. The return of all Evaluation Material to the FDIC, as required by this Section 5, shall not relieve Purchaser of its obligations created by this Agreement regarding confidentiality and use of the Evaluation Material.

Section 6. Other Disclosure. To the extent that Purchaser is required to disclose the Evaluation Material pursuant to the requirements of any legal proceeding, Purchaser shall notify the FDIC within one (1) business day of its knowledge of such legally required disclosure so that the FDIC may seek an appropriate protective order and/or waive the Purchaser's compliance with this Agreement. Notice shall be both by telephone and in writing. In the absence of a protective order or waiver, Purchaser may disclose that portion of the Evaluation Material which is required to be disclosed pursuant to such legal proceeding if, in the written opinion of its counsel, failure to disclose such Evaluation Material in any tribunal would subject Purchaser to liability for contempt, censure or other legal penalty or liability.

Section 7. Liability. If the FDIC determines that Purchaser has breached any provision of this Agreement, the FDIC may in its sole discretion, exercise any of all legal or equitable rights or remedies to which the FDIC is entitled on account of Purchaser's breach. The FDIC shall not be deemed to have waived any of its rights or remedies on account of its failure, delay or forbearance in exercising any such right or remedy in a particular instance.

Section 8. Indemnification. Purchaser shall defend, indemnify and hold harmless the FDIC from and against any and all claims, demands, causes of action, losses, damages, liabilities, judgments, costs, and expenses (including attorneys' fees) asserted against or incurred by the FDIC as a result of any violation of, or failure to comply with, the provisions of this Agreement by Purchaser or any person or entity to whom it has disclosed the Evaluation Material.

Section 9. Release of FDIC. Purchaser acknowledges and understands that some or all of the Evaluation Material may have been prepared by parties other than the FDIC, and further acknowledges and understands that the FDIC expressly disclaims all representations and warranties either express or implied, including, but not limited to any implied warranty of merchantability or fitness for a particular purpose, and any warranty with respect to the content, completeness or accuracy of the Evaluation Material. Purchaser is responsible for assuring itself as to the content, completeness, or accuracy of the Evaluation Material, and any reliance on the Evaluation Material shall be solely at Purchaser's risk. Purchaser hereby releases the FDIC from all claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees) asserted against or incurred by Purchaser by reason of Purchaser's reliance on or knowledge of the Evaluation Material or for any other reason.

Section 10. Effect of Invalid Provision. The invalidity or unenforceability of any provision of this Agreement shall not affect or limit the validity or enforceability of any other provision hereof and such invalid or unenforceable provision shall be construed or deemed amended by the parties only to the extent necessary to make it valid and enforceable.

Section 11. Miscellaneous. This Agreement represents the entire agreement between the Purchaser and the FDIC relating to the receipt, use, and disclosure of the Evaluation Material, and may be amended only by written agreement of the parties hereto. This Agreement shall apply to and be binding upon Purchaser and its partners, directors, officers, employees, agents,

representatives, affiliates, successors and assigns. The representative(s) signing this Agreement on behalf of Purchaser represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to bind legally Purchaser. The construction, interpretation, and performance of this Agreement shall be governed by the laws of the United States of America, and to the extent that state law would apply under applicable federal law, the laws of the state where the Property is located, without regard to conflicts of law principles thereof. Notices under this Agreement shall be addressed to the parties at the following addresses:

If to the FDIC, to:

Federal Deposit Insurance Corporation
c/o John Dixon & Associates, Inc.
200 Cobb Parkway North, Suite 120
Marietta, GA 30062-3538
770-425.1141 or 800-479-1763

If to Purchaser, to:

_____
_____
_____
_____
_____

IN WITNESS WHEREOF, the FDIC and Purchaser have executed this Confidentiality Agreement effective as of the 22st day of June, 2011.

FDIC: Federal Deposit Insurance Corporation, **[check one]**
[X] as Receiver for «FIN_»
[ ] in its corporate capacity

FDIC:	Purchaser:
By:_____	By:_____
Signature	Signature
_____	_____
Print Name	Print Name
_____	_____
Title	Title

EXHIBIT "A" – Legal Description of the Property