

IL4-003, Glen Ellyn South  
22 W 151 Butterfield Rd  
Glen Ellyn, DuPage County, IL

## AUCTION REAL ESTATE SALES CONTRACT

THIS AUCTION REAL ESTATE SALES CONTRACT (this "Agreement") is made between BANK OF AMERICA, N.A., a national banking association ("Seller"), and \_\_\_\_\_, a \_\_\_\_\_ ("Purchaser").

In consideration of the mutual covenants herein contained, Seller and Purchaser agree as follows:

### 1. PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, the following described property (herein called the "Property"):

(a) Land. That certain tract of land (the "Land") more particularly described on Exhibit A, attached hereto and incorporated herein by reference together with all improvements, if any, located thereon;

(b) Easements. All easements, if any, benefiting the Land;

(c) Rights and Appurtenances. All rights and appurtenances pertaining to the foregoing, if any, including any right, title and interest of Seller, if any, in and to adjacent streets, alleys or rights-of-way;

(d) Improvements. All improvements (the "Improvements") in and on the Land; and

(e) Tangible Personal Property. Subject to the provisions of Section 9.2 hereinafter, all of Seller's right, title and interest in all appliances, fixtures, equipment, machinery, furniture, carpet, drapes and other personal property, if any, owned by Seller and located on or about the Land and the Improvements not removed by Seller by the Closing Date.

### 2. PURCHASE PRICE

2.1 Purchase Price. The purchase price (the "Purchase Price") for the Property shall be the total of the bid on the date of the auction (the "Auction Date") in the amount of \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) (the "Bid Amount") plus a premium of ten percent (10%) of the bid (the "Purchaser's Premium") for a total Purchase Price equal to \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00). This amount shall be paid by Purchaser to Seller at the Closing (as defined in Section 6.1). The Purchase Price shall be payable at Closing in United States currency as provided in Section 6.6(a) below.

### 3. EARNEST MONEY

3.1 Earnest Money. Within forty-eight (48) hours after the date this Agreement has been executed by Seller and Purchaser, Purchaser shall deliver to FIRST AMERICAN TITLE INSURANCE COMPANY (the "Escrow Agent"), as escrow agent, by cashier's check at the address in Section 10.1 hereof a deposit in an amount equal to ten percent (10%) of the Purchase Price in cash (the "Earnest Money"), together with an executed W-9 form and a signed Earnest Money Escrow Agreement attached to this Agreement as Exhibit "B." The Earnest Money shall be deposited in a non-interest bearing account. Seller shall have the option of declaring a default and terminating this Agreement if the Earnest Money, the W-9 and the Earnest Money Escrow Agreement are not delivered to the Escrow Agent within such time. The Earnest Money shall be non-refundable for any reason, except Seller's default. If the sale of the Property is consummated pursuant to the terms of this Agreement, the Earnest Money shall be paid to Seller and applied to the payment of the Purchase Price.

### 4. CONDITIONS TO CLOSING

#### 4.1 Title Commitment, Survey and Phase I.

(a) At or prior to the execution of this Agreement, Seller shall deliver to Purchaser for Purchaser's review of the Property, (i) a commitment for title insurance (the "Title Commitment") for an Owner's Policy of Title Insurance issued by First American Title Insurance Company (the "Title Company"); (ii) a survey of the Property (the "Survey"); and (iii) a Phase I environmental site assessment and limited asbestos survey of the Property ("Phase I").

(b) Seller shall deliver to Purchaser within thirty (30) days after full execution of this Agreement for the Property, (i) an endorsement or its equivalent to the Title Commitment (the "Endorsement"), naming Purchaser as the insured and updating the effective date of the Title Commitment; (ii) an Survey certifying the Survey to Purchaser and updating the effective date of the Survey, only if required by the Title Company; and (iii) a certificate certifying the Phase I to Purchaser ("Certificate"). Purchaser shall be required to accept title insurance from Seller's Title Company and title agent, and by execution of this Agreement, Purchaser agrees that said title agent shall close the transaction contemplated by this Agreement. Seller shall not be obligated to cure or satisfy any new requirements and exceptions contained on the Endorsement or updated Title Commitment and shall not be obligated to cure any new matters disclosed by the Survey certified to Purchaser.

Purchaser shall have five (5) days after receipt of the Endorsement or updated Title Commitment and the Survey certified to Purchaser to notify Seller in writing of any objection to any new title requirement or title exception (collectively, the "Objections"). Seller shall then elect in its sole discretion whether or not to cure said Objections. In the event Seller elects to cure said Objections, Seller shall do so on or before the Closing Date, as may be extended. In the event Seller elects not to cure some or all of the Objections, Seller shall notify Purchaser ("Seller's Notice"), and Purchaser shall notify Seller in writing within five (5) days after receipt of Seller's Notice whether Purchaser elects to either: (i) waive said Objections and proceed to Closing without a reduction in the Purchase Price, or (ii) terminate the Agreement whereupon Purchaser shall receive a refund of the Earnest Money and the parties shall have no further liability hereunder except as set forth in Sections 4.2, 4.3, 4.4 and 10.2 hereof. In the event

Purchaser fails to notify Seller in writing of Purchaser's election within five (5) days after receipt of Seller's Notice, Purchaser shall be deemed to have elected to waive the Objections and to proceed to Closing without a reduction in the Purchase Price.

(c) The conveyance of the Property shall be subject to certain Permitted Exceptions. The term "Permitted Exceptions", as used herein, shall mean (i) the title exceptions listed in Schedule B of the Title Commitment, as endorsed, (ii) any general exceptions and exclusions contained in the standard owner's policy of the Title Company that are not deleted pursuant to the Owner's Affidavit, and (iii) the exceptions listed on Exhibit C hereto.

4.2 Inspection. Purchaser represents and warrants to Seller that Purchaser has or has had the opportunity before the auction, independently and personally, to inspect the Property and that Purchaser has entered into this Agreement based upon its approval of such personal examination and inspection of the Property. Purchaser acknowledges and agrees that Purchaser is purchasing the Property in its current AS IS condition with all faults and that Seller has no obligation to make repairs, replacements or improvements to the Property, except as may otherwise be expressly stated herein. Purchaser shall bear the cost of all such inspections and investigations of the Property. Purchaser shall be liable for all costs and expenses, and for damages or injury to any person or property resulting from any inspection, and Purchaser shall indemnify and hold harmless Seller from any liability, claims or expenses (including, without limitation, construction liens and/or reasonable attorneys' fees) resulting therefrom. The obligations of Purchaser set forth in this Section 4.2 shall survive Closing or the termination of this Agreement, as applicable.

4.3 Confidentiality. All information provided by Seller to Purchaser or obtained by Purchaser relating to the Property in the course of its review, including, without limitation, any environmental assessment or audit, shall be treated as confidential information by Purchaser and Purchaser shall instruct all of its employees, agents, representatives and contractors as to the confidentiality of all such information. Purchaser will not, except with the express prior written consent of Seller, directly or indirectly, (a) disclose or permit the disclosure of any information to any person or entity, except persons who are bound to observe the terms hereof, or (b) use or permit the use of all information pertaining to the Property (1) in any way detrimental to the Seller or (2) for any purpose other than evaluating the contemplated purchase of the Property. Purchaser agrees, that if the closing does not occur, Purchaser will promptly return to the Seller or its authorized agent all written or tangible information pertaining to the Property, including all copies or extracts thereof, and all notes based upon the information. Neither the Seller, nor any of its officers, directors, employees, agents or representatives, shall be deemed to make or have made any representation or warranty as to the accuracy or completeness of any information pertaining to the Property or whether or not the information provided constitutes all of the information available to the Seller; and neither the Seller nor any of its officers, directors, employees, representatives or agents shall have any liability resulting from Purchaser's use of any information pertaining to the Property. Notwithstanding anything to the contrary set forth in this Agreement, the obligations of Purchaser set forth in this Section 4.3 shall survive the Closing or the termination of this Agreement, as applicable.

4.4 Termination. If this Agreement is terminated for any reason, Purchaser shall, within ten (10) days of such termination, deliver to Seller copies of the Title Commitments, Surveys, and any updates, all feasibility studies, engineering reports, environmental reports and all other information obtained by Purchaser with respect to the Property.

5. NO REPRESENTATIONS OR WARRANTIES BY SELLER;  
ACCEPTANCE OF PROPERTY; COVENANTS BY SELLER

5.1 Disclaimer. PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES (OTHER THAN THE WARRANTY OF TITLE AS SET OUT IN THE DEED, AS DEFINED BELOW), 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) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY 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 HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (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 (H) 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, ZONING OR DEVELOPMENT OF REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS (AS DEFINED BELOW), MOLD OR MILDEW. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT 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 PROVIDED OR TO BE PROVIDED BY SELLER AND AT THE CLOSING AGREES TO ACCEPT THE PROPERTY AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST SELLER (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PROPERTY OR TO ANY HAZARDOUS MATERIALS ON THE PROPERTY, MOLD OR MILDEW. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY

PURCHASER SUBJECT TO THE FOREGOING. THE PROVISIONS OF THIS SECTION 5.1 SHALL SURVIVE THE CLOSING.

5.2 Hazardous Materials. “Hazardous Materials” shall mean any substance which is or contains (i) any “hazardous substance” as now or hereafter defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) (“CERCLA”) or any regulations promulgated under or pursuant to CERCLA; (ii) any “hazardous waste” as now or hereafter defined in the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.) (“RCRA”) or regulations promulgated under or pursuant to RCRA; (iii) any substance regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (iv) gasoline, diesel fuel, or other petroleum hydrocarbons; (v) asbestos and asbestos containing materials, in any form, whether friable or non-friable; (vi) polychlorinated biphenyls; (vii) radon gas; and (viii) any additional substances or materials which are now or hereafter classified or considered to hazardous or toxic under Environmental Requirements (as hereinafter defined) or the common law, or any other applicable laws relating to the Property. Hazardous Materials shall include, without limitation, any substance, the presence of which on the Property, (A) requires reporting, investigation or remediation under Environmental Requirements; (B) causes or threatens to cause a nuisance on the Property or adjacent property or poses or threatens to pose a hazard to the health or safety of persons on the Property or adjacent property; or (C) which, if it emanated or migrated from the Property, could constitute a trespass.

5.3 Environmental Requirements. Environmental Requirements shall mean all laws, ordinances, statutes, codes, rules, regulations, agreements, judgments, orders, and decrees, now or hereafter enacted, promulgated, or amended, of the United States, the states, the counties, the cities, or any other political subdivisions in which the Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over the owner of the Property, the Property, or the use of the Property, relating to pollution, the protection or regulation of human health, natural resources, or the environment, or the emission, discharge, release or threatened release of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or waste or Hazardous Materials into the environment (including, without limitation, ambient air, surface water, ground water or land or soil).

5.4 Environmental Risks. Purchaser acknowledges that there are, or may be, certain environmental issues and/or risks with respect to the Property.

5.5 Indemnity. Purchaser hereby expressly acknowledges that from and after the Closing, Purchaser shall be responsible and liable for the proper maintenance and handling of any and all Hazardous Materials, if any, located in or on the Property or in the Improvements in accordance with all Environmental Requirements, including the regulations at 40 C.F.R. Section 61 as authorized under the Clean Air Act and all regulations promulgated or to be promulgated under all other applicable local, state or federal laws, rules or regulations, as same may be amended from time to time. Furthermore, from and after Closing, Purchaser shall indemnify and hold Seller harmless from and against any and all claims, costs, damages or other liability, including attorney’s fees, incurred by Seller as a result of any Hazardous Materials being located now or previously on the Property or in the Improvements or as a result of Purchaser’s failure to comply with the requirements of this Section in connection with Purchaser’s proper maintenance and handling of any and all Hazardous Materials, if any, located in or on the Property or in the Improvements. This Indemnification shall survive the Closing of this Agreement.

5.6 Release. Purchaser, on behalf of itself and its heirs, successors and assigns hereby waives, releases, acquits and forever discharges Seller, its officers, directors, shareholders, employees, agents, attorneys, representatives, and any other persons acting on behalf of Seller and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Purchaser or any of its heirs, successors or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present, or future physical characteristic or condition of the Property or the Improvements, including, without limitation, any Hazardous Materials in, at, on, under or related to the Property or the Improvements, or any violation or potential violation of any Environmental Requirement applicable thereto. Notwithstanding anything to the contrary set forth herein, this release shall survive the Closing or termination of this Agreement.

## 6. CLOSING

6.1 Closing. The closing (the “Closing”) shall be held on a date determined by Seller, which shall be on or before forty-five (45) days after the date of this Agreement (the “Closing Date”), provided Seller shall have the right to extend the Closing Date for up to an additional thirty (30) days. The Closing shall be held in escrow by delivering all documents and the Purchase Price to the Escrow Agent, or its designee, on or before the Closing Date, unless the parties mutually agree upon another time or date.

6.2 Possession. Possession of the Property shall be delivered to Purchaser at the Closing, subject to the Permitted Exceptions.

6.3 Prorations. At Closing, pro-rations shall be as follows:

(a) All prorations of income, expense and taxes shall be made as of midnight of the day prior to the Closing. Taxes shall be prorated based upon the maximum allowable discount and other applicable exemptions. If the Closing shall occur before the tax rate or the assessed valuation of the Property is fixed for the then current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation based upon the maximum allowable discount and other applicable exemptions. Subsequent to the Closing, when the tax rate and the assessed valuation of the Property is fixed for the year in which the Closing occurs, the parties agree that there shall be no post-closing adjustment of the tax proration. If the Property is not assessed as a separate parcel for tax or assessment purposes, then such taxes and assessments attributable to the Property shall be determined by Seller in its reasonable discretion. If, as of the Closing, the Property is not being treated as a separate tax parcel, then Purchaser shall, at its sole cost and expense, use diligent best efforts to ensure that the Property is assessed separately for tax and assessment purposes within no more than one year from the Closing Date.

(b) The agreements of Seller and Purchaser set forth in this Section 6.3 shall survive the Closing.

6.4 Closing Costs. Except as otherwise expressly provided herein, Seller shall pay, on the Closing Date, all of the cost of the preparation of the deed, any documentary stamps or transfer taxes on the deed and surtax, if any, and certified and pending special assessment liens for which the work has been substantially completed, and Purchaser shall pay, on the Closing Date, the premium for the Owner’s Policy and any endorsements to the Owner’s Policy requested by Purchaser, or its lender, all recording

costs, intangible tax on any mortgage, documentary stamps or tax on any note, pending special assessment liens for which the work has not been substantially completed, the cost of any inspections conducted by Purchaser, and any other customary charges and costs of closing. In addition, Purchaser shall pay Seller \$6,527.00 representing the cost of the Title Commitment and any search fees, the Survey, and the Phase I. Seller shall pay the cost of any recertifications, endorsements and updates of the Title Commitment, Survey and Phase I, except any recertifications, endorsements and updates specifically requested and required by Purchaser or its lender, which shall be paid by Purchaser at Closing. Except as otherwise provided herein, each party shall pay its own attorneys' fees. Purchaser shall pay the cost of any escrow fees charged by the Escrow Agent.

6.5 Seller's Obligations at the Closing. At the Closing, Seller shall deliver to Escrow Agent, or its designee, each of the following documents but in no event earlier than the delivery to Seller of all of the proceeds of sale of the Property by wire transfer or immediately available U.S. funds:

(a) Deeds. Special, Limited or Quitclaim Warranty Deed in the form approved for or otherwise customarily used for conveyances in the recording district in which the Property is situated (the "Deed") properly executed by Seller for recording conveying the Property and the Improvements located thereon to Purchaser subject to no exceptions other than the Permitted Exceptions.

(b) Evidence of Authority. Copy of such documents and resolutions as may be acceptable to the Title Company, so as to evidence the authority of the person signing the Deed and other documents to be executed by Seller at the Closing.

(c) Foreign Person. An affidavit of Seller certifying that Seller is not a "foreign person", as defined in the Federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, as amended.

(d) Owner's Affidavits. An executed affidavit or other document for the Property acceptable to the Title Company in issuing the Owner's Policy without exception for possible lien claims of mechanics, laborers and materialmen or for parties in possession, and insuring the "gap."

(e) Bill of Sale and Assignment. Bill of Sale and Assignment for the Property (the "Bill of Sale") executed by Seller assigning to Purchaser the Tangible Personal Property, in the form attached to this Agreement as Exhibit D.

(f) Closing Statement. A closing statement setting forth the allocation of closing costs, purchase proceeds, etc.

(g) Other Documentation. Such other documents as may be reasonable and necessary in the opinion of the Title Company to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement, provided Seller shall not be required to cure any title objections.

6.6 Purchaser's Obligations at the Closing. At the Closing, Purchaser shall deliver to Seller the following:

(a) Purchase Price. The Purchase Price by certified funds or wire transfer of immediately available U.S. funds;

(b) Evidence of Authority. Such consents and authorizations as Seller may reasonably deem necessary to evidence authorization of Purchaser for the purchase of the Property, the execution and delivery of any documents required in connection with Closing and the taking of all action to be taken by the Purchaser in connection with Closing; and

(c) Other Documentation. Such other documents as may be reasonable and necessary in the opinion of the Title Company to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement, including without limitation the Closing Statement.

## 7. RISK OF LOSS

7.1 Condemnation. If, after the date of this Agreement and prior to the Closing, action is initiated to take the Property by eminent domain proceedings or by deed in lieu thereof, Purchaser may either (a) terminate this Agreement, or (b) consummate the Closing, in which latter event the award of the condemning authority shall be assigned to Purchaser at the Closing. If, prior to the date of this Agreement, an action has been initiated to take any of the Property by eminent domain proceedings or by deed in lieu thereof, any award made by the condemning authority shall be paid to Seller and the portion of the Property taken shall be deleted from the Property without a reduction in the Purchase Price.

7.2 Casualty. Seller assumes all risks and liability for damage to or injury occurring to the Property by fire, storm, accident, or any other casualty or cause until the Closing has been consummated. If the Property and its Improvements suffer any damage in excess of \$100,000.00 prior to the Closing from fire or other casualty, which Seller, at its sole option, does not repair, Purchaser may either (a) terminate this Agreement, or (b) consummate the Closing, in which latter event the proceeds of any insurance not exceeding the Purchase Price and covering such damage shall be assigned to Purchaser at the Closing. If the Property and its Improvements suffer any damage less than or equal to \$100,000.00 prior to the Closing, Purchaser agrees that it will consummate the Closing and accept the assignment of the proceeds of any insurance covering such damage at the Closing.

## 8. DEFAULT

8.1 Default by Purchaser. The parties acknowledge that in the event of a default by Purchaser, Seller's actual damages would be extremely difficult or impracticable to determine. Therefore, the parties agree that the amount of the Earnest Money and the Purchaser's Premium have been agreed upon as the parties' reasonable estimate of Seller's damages, and in the event that Purchaser fails to perform all of Purchaser's obligations under this Agreement, the Earnest Money deposited hereunder by Purchaser shall be paid to Seller, and Purchaser shall also pay to Seller the Purchaser's Premium, as liquidated damages, and such shall be Seller's sole and exclusive remedy at law or in equity for any default by Purchaser under this Agreement; provided that such liquidated damages shall not be a limitation upon any obligation of the Purchaser to indemnify and hold harmless the Seller contained in this Agreement.



8.2 Default by Seller. The parties acknowledge that in the event of a default by Seller Purchaser's actual damages would be extremely difficult or impracticable to determine; therefore, the parties agree that the amount of the Earnest Money, together with the lesser of (i) the amount of \$5,000.00 and (ii) the amount of Earnest Money actually deposited with Escrow Agent, has been agreed upon as the parties' reasonable estimate of Purchaser's damages, and should Seller default, the Earnest Money made hereunder by Purchaser, together with the sums listed above, shall be returned to Purchaser and such shall be Purchaser's sole and exclusive remedy at law or in equity for any default by Seller under this Agreement.

8.3 Return/Delivery of Earnest Money. In the event the Earnest Money is returned to the Purchaser, as provided in Section 8.2 above, or delivered to the Seller, as provided in Section 8.1 above, upon the return or delivery of the same, the parties hereto shall have no further rights, obligations or liabilities with respect to each other hereunder, except for the obligations specified in Section 4.2, Section 4.3, Section 4.4 and Section 10.2 hereof.

Nothing set forth herein shall release Purchaser from its obligations and indemnifications set forth in Sections 4.2, 4.3, 4.4 and 10.2 of this Agreement.

## 9. FUTURE OPERATIONS

9.1 Future Operations. From the date of this Agreement until the Closing or earlier termination of this Agreement, Seller will (a) keep and maintain the Property in substantially the same condition as of the date of this Agreement, reasonable wear and tear excepted, and (b) promptly advise Purchaser of any litigation, arbitration or administrative hearing condemnation or damage or destruction concerning the Property arising or threatened of which Seller has written notice.

9.2 Trade Fixtures and Equipment. Purchaser acknowledges that Seller is currently operating a banking facility on the Property. Seller shall be entitled, at Seller's option, to remove from the Property all trade fixtures, equipment, furniture, furnishings, artwork, appliances, supplies, records, documents, cash, coin, and other items of moveable personal property relating to the operation of Seller's business that may be situated upon the Property (including, without limitation, all safes, vaults, vault doors, signage, pylons, alarms and security equipment, auxiliary generators, cubicles and removable partitions, computers and computer-related equipment, telecommunication equipment, halon systems, draperies, and decorations), and such items removed by Seller shall be excluded from the Improvements and Tangible Personal Property to be conveyed hereunder and shall remain the property of Seller. Seller shall have no obligation to repair any damage to the Property caused by the removal of such items, and Purchaser shall accept the Property in its then-existing condition at Closing. [OPTION: Purchaser acknowledges and agrees that the personal property of the tenants under the Leases shall be excluded from the Tangible Personal Property to be conveyed hereunder and shall remain the property of tenants.]

## 10. MISCELLANEOUS

10.1 Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when either: (i) personally delivered to the intended recipient; (ii) three (3) business days after having been sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified

below; (iii) delivered in person to the address set forth below for the party to whom the notice was given; or (iv) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation or UPS, addressed to such party at the address specified below. Any notice sent as required by this section and refused by recipient shall be deemed delivered as of the date of such refusal. For purposes of this Section 10.1, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

**IF TO SELLER:**

Bank of America, N.A.  
101 East Kennedy, 16<sup>th</sup> Floor (FL1-400-16-12)  
Tampa, FL 33602  
Attention: Patricia L. Ramos  
Ph: (813) 225-8176  
Fax: (704) 409-0874

**WITH A COURTESY COPY TO  
AUCTION COMPANY:**

Auction Management Company  
1827 Powers Ferry Road, Bldg 5  
Atlanta, GA 30339  
Attn: Jeb Howell  
Ph: (770) 980-9565  
Fax: (770) 980-9383

**WITH A COURTESY COPY TO  
COOPERATING BROKER:**

Schrader Real Estate and Auction Company  
P.O. Box 508  
Columbia City, IN 46725  
Attn: Rex Schrader  
Ph: (260) 244-7606  
Fax: (260) 244-4431

**IF TO PURCHASER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Ph: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_

**WITH A COURTESY COPY TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Ph: ( ) \_\_\_\_\_  
Fax: ( ) \_\_\_\_\_

IF TO ESCROW AGENT:

First American Title Insurance Company  
Six Concourse Parkway, Suite 2000  
Atlanta, GA 30328  
Attn: John D. Uhlir, VP Sales & Relationship Manager  
Ph: (770) 390-6520  
Fax: (866) 735-3071

10.2 Real Estate Commissions. Seller agrees to pay from the ten percent (10%) Purchaser's Premium a broker's commission equal to two percent (2%) of the Bid Amount to the properly licensed broker (the "Broker"), if any, whose prospect purchases and closes on the Property in accordance with this Agreement. The parties acknowledge that the Auction Company shall cooperatively conduct the auction with [REDACTED] (the "Cooperating Broker"), that the Auction Company shall pay any fee due the Cooperating Broker for the sale of the Property, that the Seller shall have no liability to the Cooperating Broker, and that there is no privity of contractor between Seller and the Cooperating Broker. The remainder of the Purchaser's Premium shall be paid to the Auction Company at Closing. To qualify for a commission, the Broker must register by sending Auction Management Company ("Auction Company") by mail or fax to the contact information above, the prospect's name and address on the Broker Registration form available as a download on the Auction Company's website listing for this asset. The form must be signed by the prospect and the Broker and must be received at the office of the Auction Company no later than 5:00 p.m. on October 6, 2010. Broker must also be present with his or her prospect during the bidding and must sign the Acknowledgement and Agreement by Broker attached hereto if his or her client is the winning bidder. Commissions shall be paid only upon Closing. A broker cannot act as a principal and a broker on the same transaction.

As used herein, "Acquisition Fees" shall mean all fees paid to any person or entity in connection with the selection and purchase of the Property including real estate commissions, selection fees, nonrecurring management and startup fees, development fees or any other fee of similar nature. Seller and Purchaser each hereby agree to indemnify and hold harmless the other from and against any and all claims for Acquisition Fees or similar charges with respect to this transaction, arising by, through or under the indemnifying party, and each further agrees to indemnify and hold harmless the other from any loss or damage resulting from an inaccuracy in the representations contained in this Section 10.2. This indemnification agreement of the parties shall survive the Closing.

10.3 Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein.

10.4 Amendment. This Agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.

10.5 Headings. The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement.

10.6 Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal

holiday under the laws of the United States or the state in which the Property is located, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

10.7 Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located and the laws of the United States pertaining to transactions in such State. For any controversy hereunder, the parties shall submit the venue to a court of competent jurisdiction in the county in which the Property is located. All of the parties to this Agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

10.8 Successors and Assigns; Assignment. This Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, personal and legal representatives, successors and assigns. Purchaser shall not assign Purchaser's rights under this Agreement without the prior written consent of Seller.

10.9 Invalid Provision. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid, or unenforceable provision or by its severance from this Agreement.

10.10 Attorneys' Fees. In the event it becomes necessary for either party hereto to file suit to enforce this Agreement or any provision contained herein, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages, as provided herein, reasonable attorneys' fees, paralegal fees and cost incurred in such suit at trial, appellate, bankruptcy and/or administrative proceedings.

10.11 Multiple Counterparts and Facsimile Execution. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party to be charged. A facsimile copy of this Agreement and any signatures thereon shall be considered for all purposes as originals.

10.12 Date of this Agreement. As used in this Agreement, the terms "date of this Agreement" or "date hereof" shall mean and refer to the date on which Seller executes this Agreement.

10.13 Exhibits. The following exhibits are attached to this Agreement and are incorporated into this Agreement and made a part here:

- (a) Exhibit A, the Properties;
- (b) Exhibit B, the Earnest Money Escrow Agreement;
- (c) Exhibit C, the Permitted Exceptions; and
- (d) Exhibit D, the Bill of Sale.

10.14 Authority. Each party hereto represents and warrants to the other that the execution of this Agreement and any other documents required or necessary to be executed pursuant to the provisions hereof are valid, binding obligations and are enforceable in accordance with their terms.

10.15 Recordation; Publicity. Neither this Agreement nor any memorandum or other summary of this Agreement shall be placed of public record under any circumstances except with the prior written consent of the Seller and the Purchaser. In addition, from and after the effective date of this Agreement, whether this Agreement is closed or terminated, neither Purchaser nor Seller shall make or permit to be made any public announcements or press releases concerning the existence of this Agreement, the terms of the purchase of the Property or any other information concerning this Agreement or the transaction contemplated herein, without the prior written consent of Seller and Purchaser.

10.16 Confidentiality. The terms of this Agreement shall remain confidential, except to the extent disclosure is required by the Federal Reserve or other governmental authorities or required in order to close the transactions contemplated in this Agreement. From and after the date of this Agreement, except with the prior written consent of the other party, neither Purchaser nor Seller shall prior to Closing make or permit to be made any public announcements or press releases concerning this Agreement, the terms of the purchase of the Property or any other information concerning this Agreement or the transaction contemplated herein. After the Closing, the parties will agree on the information contained in any press release or announcement as to the Closing of the transaction contemplated by this Agreement. This provision shall survive the Closing of this Agreement.

10.17 Section 1031 Exchange. Either Seller or Purchaser shall have the right to treat this Property as part of a tax-deferred like-kind exchange under Section 1031 of the Internal Revenue Code and, to that end, shall have the right to assign or otherwise alter this Agreement in order to accomplish that objective, provided the net economic effect (including the date of Closing and the exposure of the parties to liability) shall be essentially the same as under this original Agreement.

10.18 Digital Image. The parties agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed under seal by persons duly empowered to bind the parties to perform their respective obligations hereunder the day and year set forth beside their respective signatures.

**SELLER:**  
**BANK OF AMERICA, N.A**  
**a national banking association**

**DATE OF EXECUTION**  
**BY SELLER:**  
  
\_\_\_\_\_, 2010

**By:** \_\_\_\_\_  
**Name:** Jay Taylor  
**Title:** Senior Vice President  
**Date:** \_\_\_\_\_

**DATE OF EXECUTION**  
**BY PURCHASER:**  
  
\_\_\_\_\_, 2010

**PURCHASER:**  
\_\_\_\_\_, a  
\_\_\_\_\_  
  
**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

ACKNOWLEDGMENT AND AGREEMENT BY THE COOPERATING BROKER

The undersigned joins in execution of this Agreement for the purpose of representing and warranting to Purchaser and Seller that the undersigned (i) is a duly licensed real estate broker under the real estate licensing act(s) of the State in which the Property is located and any applicable regulations, (ii) is duly authorized to earn and receive a commission in connection with the transaction evidenced by this Agreement, and (iii) acknowledges and agrees to the terms and provisions of Section 10.2 hereof, including, without limitation, the entitlement to commission only accruing upon a final closing of the transaction. The undersigned shall indemnify and hold Purchaser and Seller harmless from any loss, liability, damage, cost or expense (including attorneys' fees) resulting by reason of a breach of the representations and warranties made herein.

**COOPERATING BROKER:** \_\_\_\_\_  
\_\_\_\_\_

**DATE OF EXECUTION BY AGENT:**

\_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**ACKNOWLEDGMENT AND AGREEMENT BY PURCHASER'S BROKER**

The undersigned joins in execution of this Agreement for the purpose of representing and warranting to Purchaser, Seller and Auction Company that the undersigned (i) is a duly licensed real estate broker under the real estate licensing act(s) of the State in which the Property is located and any applicable regulations, (ii) is duly authorized to earn and receive a commission in connection with the transaction evidenced by this Agreement, and (iii) acknowledges and agrees to the terms and provisions of Section 10.2 hereof, including, without limitation, the entitlement to commission only accruing upon a final closing of the transaction. The undersigned shall indemnify and hold Purchaser, Seller and the Auction Company harmless from any loss, liability, damage, cost or expense (including attorneys' fees) resulting by reason of a breach of the representations and warranties made herein.

**PURCHASER'S BROKER:**

\_\_\_\_\_

**DATE OF EXECUTION BY BROKER:**

\_\_\_\_\_

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_



**EXHIBIT "A"**  
**Legal Description**

That part of the Southeast Quarter of Section 26, Township 39 North, Range 10, East of the Third Principal Meridian, described by commencing at the point of intersection of the South right of way line of Federal Aid Route 131 (Butterfield Road) and the West line of Illinois Route 53; thence running South 86 degrees 14 minutes 50 seconds West along said South right of way line 200.00 feet for a Place of Beginning; thence South 04 degrees 04 minutes 00 seconds West parallel with the West line of Illinois Route 53, 226.11 feet; thence North 87 degrees 39 minutes 40 seconds West along the North edge of a blacktop drive 256.67 feet; thence North 02 degrees 20 minutes 20 seconds East along the edge of a blacktop parking lot 197.88 feet to said South right of way line; thence North 86 degrees 14 minutes 50 seconds East along said right of way line 265.04 feet to the Place of Beginning, in Du Page County, Illinois.

EXHIBIT B

**EARNEST MONEY ESCROW AGREEMENT**

ESCROW NO. \_\_\_\_\_

This is an ESCROW AGREEMENT, made the day and year written below, by and between: FIRST AMERICAN TITLE INSURANCE COMPANY ("Escrow Agent"), and \_\_\_\_\_, (Buyer) and BANK OF AMERICA, N.A. ("Seller").

Whereas Buyer and Seller are parties under a certain contract dated \_\_\_\_\_ (the "contract"); and

Whereas Buyer and Seller have requested First American Title Insurance Company to act as Escrow Agent to hold the earnest money agreed to therein (hereafter "Deposit"), in accordance with the terms and provisions of this Earnest Money Escrow Agreement, and the contract. Now, therefore, in consideration of the promises and undertaking herein made, and the proposed issuance of a title insurance policy (or policies) by Escrow Agent, it is agreed that:

1. Buyer and Seller hereby appoint First American Title Insurance Company as Escrow Agent, hereunder; and the Deposit is hereby delivered to Escrow Agent who by signing below acknowledges its receipt, in the form of check dated \_\_\_\_\_, and payable to Escrow Agent; (or wire transfer), in the amount of \$ \_\_\_\_\_; such receipt is made subject to Conditions of Escrow on the third (3rd) page hereof. The Escrow Agent shall receive a fee in accordance with the Company's Schedule of Fees which will be for serving as Escrow Agent under this agreement which fee shall be deducted from the Deposit when return of the Deposit is requested.

2. Escrow Agent **SHALL HOLD THE DEPOSIT UNTIL WRITTEN RELEASE DISBURSEMENT INSTRUCTIONS ARE RECEIVED FROM SELLER AND BUYER.**

3. Escrow Agent is hereby authorized to and directed to invest the Deposit in the name of First American Title Insurance Company, custodial escrow agent for Buyer, as follows:

- a. Deposits will be invested in an FDIC Money Market Account at a bank chosen by First American Title Insurance Company.
- b. Other types of investments will be considered upon written request directed by the Company and subject to possible additional fees payable to the Escrow Agent as negotiated.
- c. If no investment is requested please check here  X .

4. Interest shall be payable at the time the Deposit is disbursed in accordance with the terms of the Escrow Agreement and the contract; and

5. All investments will be made in the regular course of business. To be entitled to same day investment (assuming good funds are provided) the Deposit must be received by noon; otherwise, such funds will be deposited on the next business day.

6. Escrow Agent shall have NO OBLIGATION TO INVEST the deposit unless and until it is in receipt of the executed **Investment of Escrow Funds and IRS Form W-9** attached hereto.

7. The investment shall be subject to the rules, regulations, policies and procedures of said Depository.

8. The fee for the services of the Escrow Agent may be deducted from the escrow funds upon disbursement.

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
\_\_\_\_\_

BUYER:

By: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone/Fax: \_\_\_\_\_ / \_\_\_\_\_

Agreed to this \_\_\_\_\_ day of \_\_\_\_\_, 2010

SELLER: Bank of America, N.A.  
By: \_\_\_\_\_  
Jay Taylor, Senior Vice President  
Address: 101 East Kennedy, 16<sup>th</sup> Floor  
Legal Department – FL1-400-16-12  
Tampa, FL 33602  
Attn: Patricia L. Ramos  
Phone/Fax: 813-225-8176/704-409-0874

Accepted:  
**FIRST AMERICAN TITLE INSURANCE COMPANY**

BY: \_\_\_\_\_

Dated: \_\_\_\_\_

## GENERAL CONDITIONS OF ESCROW

Notwithstanding the written settlement instructions executed by all parties and accepted by First American Title Insurance Company (First American) to the contrary, these General Conditions of Escrow shall apply to this escrow or settlement, and the property received hereunder.

1. **First American:** First American Title Insurance Company is herein referred to as First American.
2. **DEPOSITS:** All funds will be processed for collection in the normal course of business. No disbursements will be made until the funds deposited have been irrevocably credited to First American's account. First American may commingle funds received by it in escrow with escrow funds of others, and may, without limitation, deposit such funds in its custodial or escrow accounts with any reputable trust company, bank, savings bank, savings association, or other financial services entity, including any affiliate of First American. It is understood that First American shall be under no obligation to invest the funds deposited with it on behalf of any depositor, nor shall it be accountable for any earnings or incidental benefit attributable to the funds which may be received by First American which it holds such funds. Deposits held by First American shall be subject to the provisions of Florida Statute 717. A service charge will be made equal to the greater of the original service charge assessed or \$100.00 for each six (6) month period that the money deposited with First American is held beyond six (6) months from the date of deposit.
3. **LIMITATIONS OF LIABILITY:** Without limitation, First American shall not be liable for any loss or damage resulting from the following:
  - a. The effect of the transaction underlying this escrow or of any element of any element of that transaction, including without limitation, any failure or delay in the surrender of possession of the property, the rights or obligations of any party in possession of the property, the rights or obligation of any party in possession of the property; the financial status of insolvency of any other party, and any misrepresentation made by any other party.
  - b. Any legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by First American or exchanged by the parties hereunder, whether or not First American prepared such instrument.
  - c. The default, error, action or omission of any party to the escrow.
  - d. Any loss or impairment of funds that have been deposited in escrow while those funds are on deposit in a financial institution if such loss or impairment results from the failure, insolvency or suspension of a financial institution.
  - e. Any defects or conditions of title to any property that is the subject of this escrow, provided however that this limitation of liability does not limit or affect the liability of First American Title Insurance Company under any title insurance policy which it has issued or may issue and no title insurance liability is created by this agreement.

Purchaser's Initials \_\_\_\_\_

- f. The expiration of any time limit or other consequence of delay, unless a properly executed settlement instruction, accepted by First American has instructed First American to comply with said time limit.
  - g. First American's compliance with any legal process, subpoena, writs, orders, judgments and decree of any court whether issued with or without jurisdiction and whether or not consequently vacated, modified, set aside or reversed.
4. **DEFAULTS, NON-PERFORMANCE AND DISPUTES:** In the event written notice of a default, non-performance or dispute is given to First American by any party hereto, First American will promptly notify all other parties in writing, return receipt requested of such claim. Ten days after receipt of return receipt by First American, the escrowed funds or documents will be released pursuant to the demand unless contrary written instructions are received from any other party(s) to the Escrow Agreement. If contrary written instructions are received by First American before return of the return receipt, thereafter First American will not disburse funds or deliver any instrument except on receipt of a mutual written agreement of all parties to the escrow or upon appropriate order of court.

In the event of disagreement about the interpretation of the Escrow Agreement or these General Settlement Instructions, or about the rights and obligations or the propriety of any action contemplated by First American thereunder, First American may in its sole discretion, file an action to interpleader to resolve the disagreement.

First American may consult with counsel of its own choice and shall have full and complete authorization and protection for any action taken or suffered by it hereunder, in good faith and in accordance with the opinion of such counsel. First American shall otherwise not be liable for any mistakes of facts or error in judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence, and the parties hereto agree to indemnify and hold First American harmless from any claims, demands, causes of action, liability, damages, judgments, including the costs of defending any action against it together with any reasonable attorney's fees incurred therewith, in connection with First American's undertaking pursuant to the terms and conditions of the Escrow Agreement.

5. **SETTLEMENT STATEMENTS:** First American shall prepare settlement statements or otherwise account to the parties for all funds received and disbursed hereunder at the time of final settlement and closing of this escrow. First American shall not be liable for the accuracy of information furnished to it by the other persons in the normal course of business, or the failure to adjust items not designated in writing. Adjustment items shall be prorated on the basis of a calendar year and a thirty day month. First American shall account for adjustments, credits and charges of expense items according to the custom and usage of the community. Signed approval of settlement statements or other accounting of funds shall constitute the authority to First American to disburse funds as shown thereon, and deliver instruments held in escrow as set forth in the escrow instruments.

If disbursement is to be by wire transfer, and provided that First American transfers such disbursement in accordance with written instructions, First American shall not be liable for any act or omission of any financial institution, or any other person, nor shall First American have any liability for loss of funds or interest thereon. In no event will damages exceed interest at a rate equal to the Federal Funds rate, adjusted daily, for the number of days that such funds are unavailable. The party requesting the wire transfer shall indemnify and hold harmless First American, its successors or assigns, from any loss, liability, and/or cost incurred as a result of any incorrect information supplied. In no event shall First American be

Purchaser's Initials \_\_\_\_\_

liable for any special, consequential, indirect or incidental damages, regardless of whether any claim is based on contract or tort, or whether the likelihood of such damage was known to First American.

Upon completion of the disbursement of funds and delivery of instruments, First American shall be released and discharged.

6. **ATTORNEY'S FEES:** In the event of disagreement about the interpretation of the Escrow Agreement or these General Settlement Instructions, or about the rights and obligations or the propriety of any action contemplated by First American thereunder. First American may, in its sole discretion, file an action in interpleader or other appropriate Court Action to resolve the disagreement. To that end, all parties hereto agree (a) to indemnify First American from all such attorney's fees, court costs and expenses and (b) to the extent that First American holds a fund under the terms of this escrow, First American may charge that fund with any such attorney's fees, court costs and expenses as they are incurred by First American as well as any service charges which may be unpaid.

EXHIBIT C

PERMITTED EXCEPTIONS  
TO DEED

1. Rights of parties in possession.
2. Governmental rights of police power or eminent domain unless notice of the exercise of such rights appears in the public records as of the date hereof; and the consequences of any law, ordinance or governmental regulation including, but not limited to, building and zoning ordinances.
3. Defects, liens, encumbrances, adverse claims or other matters 1) not known to the Grantor and not shown by the public records but known to the Grantee as of the date hereof and not disclosed in writing by the Grantee to the Grantor prior to the date hereof; 2) resulting in no loss or damage to the Grantee; or 3) attaching or created subsequent to the date hereof.
4. Visible and apparent easements and all underground easements, the existence of which may arise by unrecorded grant or by use.
5. Any and all unrecorded leases, if any, and rights of parties therein.
6. Taxes and assessments for the year of closing and subsequent years.
7. All judgments, liens (excluding construction liens), assessments, code enforcement liens, encumbrances, declarations, mineral reservations, covenants, restrictions, reservations, easements, agreements and any other matters as shown on the public records.
8. Any state of facts which an accurate survey or inspection of the Premises would reveal, including inland/tidal wetlands designation if applicable.
9. Any liens for municipal betterments assessed after the date of this Agreement and/or orders for which assessments may be made after the date of this Agreement.

EXHIBIT D

BILL OF SALE  
AND ASSIGNMENT

FOR VALUE RECEIVED, BANK OF AMERICA, N.A. (“Seller”), hereby sells, bargains, conveys, assigns, transfers and sets over to \_\_\_\_\_ (“Purchaser”), its successors and assigns forever, all of Seller’s right, title and interest in and to the furniture, fixtures, equipment and other items of personal property (collectively, the “Personal Property”) all as located on or attached to the real estate and the building and improvements erected thereon located at \_\_\_\_\_ (the “Property”), excluding the personal property of any tenant of any portion of the Property.

TO HAVE AND TO HOLD the above-mentioned Personal Property unto Purchaser, its successors and assigns forever.

Seller covenants, represents and warrants that it has good and legal title to the Personal Property free and clear of all claims, liens, security interests, charges and encumbrances, subject to the Permitted Exceptions shown in any public records or listed in the Deed from Assignor to Assignee of even date herewith conveying the Property, and that Seller has the right to transfer and convey such title to the Personal Property to Purchaser. All terms, covenants, representations and warranties contained herein shall be for and inure to the benefit of, and shall bind, the parties hereto and their respective successors and assigns.

Assignee takes the Personal Property “AS IS” and “WITH ALL FAULTS” and acknowledges that Assignor has not made and does not make any representations or warranties as to physical condition, operation, merchantability, marketability, profitability, suitability or fitness for a particular use or purpose or any other matter.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned has executed this Bill of Sale as of the \_\_ day of \_\_\_\_\_, 2010.

BANK OF AMERICA, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_