

**REAL ESTATE PURCHASE AND SALE CONTRACT**

*{ Instructions throughout the contract are in italics in "{ }" brackets. }*

1. PARTIES: This Real Estate Purchase And Sale Contract (the "**Contract**") is entered into by and between the **Federal Deposit Insurance Corporation**, in the capacity of Receiver for \_\_\_\_\_, hereafter referred to as "**Seller**," and \_\_\_\_\_ {check one} [ ] an individual, or [ ] a state of {name of state} \_\_\_\_\_ {circle one} corporation/partnership/limited liability company/trust ("**Purchaser**").
2. PROPERTY: That certain tract or parcel of land described on ATTACHMENT A affixed hereto and incorporated herein, which parcel of land is to be sold together with all buildings and other improvements situated thereon, all fixtures and other property affixed thereto and subject to all easements and restrictions of record 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 (the "**Property**").
3. PURCHASE PRICE: Subject to the terms, provisions, covenants and conditions herein contained, Seller hereby agrees to sell and convey and Purchaser hereby agrees to purchase the Property for the purchase price of \_\_\_\_\_ and no/100 dollars (\$ \_\_\_\_\_ ) (the "**Purchase Price**"), to be paid in CASH at Closing (as defined in Section 11).
4. EARNEST MONEY: An earnest money deposit in the amount of (a) TEN (10%) per cent of the Purchase Price or (b) ONE THOUSAND and 00/100 (\$1,000.00) Dollars, whichever is greater, (the "**Earnest Money**") is herewith tendered by Purchaser and is to be held by Seller. The Earnest Money will be in the form of cash, a cashier's check, or certified funds payable to \_\_\_\_\_ ("Escrow Agent"). The Earnest Money will NOT bear interest at any time. Subject to the provisions of Section 6 and 15 below, the earnest money shall become non-refundable upon the Effective Date. 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 by Purchaser, the Earnest Money will be applied as provided in Section 16.
5. SURVEY: If Seller already has in its records a survey of the Property obtained in the normal course of its business, Seller will provide a copy of same to the Purchaser. In no event will Seller be required to furnish a current survey of the Property.
6. TITLE COMMITMENT AND TITLE POLICY: As soon as practicable after the Effective Date (as defined in Section 26), Seller will furnish Purchaser a Title Commitment from a title insurance company chosen by Seller and reasonably acceptable to Purchaser (the "**Title Company**"). At Closing, Seller will provide Purchaser a Title Policy in the full amount of the Purchase Price.

Purchaser will have five (5) days after receipt of the Title Commitment to make written title and survey objections to Seller (the "**Objections**"). Objections must be limited to matters which substantially and adversely affect title to the Property. If Purchaser does not give Seller written notice of Objections within the time period specified, Purchaser will have waived the right to raise Objections, will accept any and all deficiencies without postponement of Closing (as defined in Section 11), and will close under the terms of the Contract.

If Purchaser timely delivers Objections to Seller, Seller will have until the Closing Date (as defined in Section 11) to cure same. Seller has the right, in its sole discretion, to extend the Closing Date up to ninety (90) days from the original Closing Date in order to resolve Objections (the "**Extended Closing Date**"). Seller's intention to extend must be provided in writing to Purchaser on or before the Closing Date.

Seller may notify Purchaser at any time that Seller declines to cure one or more of the Objections. Purchaser has five (5) days from the receipt of such declination to make the election described below. If Seller fails to give notice of declination and fails to cure any of the Objections by the Closing Date or the Extended Closing Date, as applicable, Purchaser has five (5) days after such Closing Date or Extended Closing date, as applicable, to make the election described below. The election Purchaser has, in either event described above, is to either (i) terminate the Contract and obtain the Earnest Money per Section 16 of this Contract, or (ii) waive the unsatisfied Objections and complete the purchase under the terms of this Contract. Failure by the purchaser to make an election within the time frame specified in this paragraph will be treated as an election of option (ii) above. The Property is sold "AS IS, WHERE IS" without any warranty of condition, survey or boundaries, as further described in paragraph 9 below.

7. **INSPECTION PERIOD:** Purchaser will have a period of NO days from and after the Effective Date to examine the Property and to conduct such physical tests, inspections, surveys, and other investigations as are reasonably necessary to determine whether the Property is suitable for Purchaser's intended purpose (the "**Inspection Period**"). Purchaser and Purchaser's agents and representatives will have reasonable access to the Property during normal business hours prior to closing. Notwithstanding the above, (a) Purchaser will give Seller reasonable notice of Purchaser's intention to enter onto the Property; (b) Purchaser must obtain written approval from Seller before Purchaser conducts any tests on the Property; and (c) Seller may require that a representative of the Seller accompany Purchaser or its agents while they are on the Property. Purchaser's tests and other inspections will not unreasonably interfere with the use and occupancy of the Property by Seller or Seller's tenants. In the event that the transaction contemplated by this Contract does not close for any reason, Purchaser is obligated to restore the Property to its condition prior to Purchaser's entry. This obligation will survive termination of this Contract. Purchaser will pay for all such tests and inspections.

A copy of every report of every test and inspection conducted by Purchaser on the Property, including but not limited to, any survey and any Environmental Report or Environmental Site Assessment, will be delivered to Seller within five (5) days after such report is received by Purchaser. Purchaser agrees to indemnify Seller, hold it harmless from, and defend it against any claims, causes of action, damages and expenses (including attorney's fees) in any way arising out of (a) Purchaser's or Purchaser's agent's presence on or about the Property, or (b) any test or inspection conducted by Purchaser on the Property. Such indemnity will survive the closing or any termination of this Contract and will not be merged therein.

8. **CONVEYANCE OF TITLE:** Seller will convey the Property by Special Warranty Deed (the "**Deed**") subject to all easements, rights-of-way, exceptions, covenants, conditions, restrictions, encroachments, reservations, encumbrances, access limitations, and all other matters or conditions affecting the Property (including any Objections Seller has declined to cure and Purchaser has waived, per Section 6 above). Purchaser will execute and acknowledge the deed at Closing. Any personal property that may be owned by Seller that is situated on the Property at Closing will be conveyed to Purchaser by Quitclaim Bill of Sale.

9. **PROPERTY CONDITION: PURCHASER, BY ITS EXECUTION HEREOF, ACKNOWLEDGES THAT:**

- (i) **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 --AS TO (a) THE VALUE, NATURE, QUALITY, OR CONDITION OF THE**

PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, RIGHTS OF WAY, EASEMENTS, BOUNDARIES AND SET BACKS, (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 PROPERTY'S COMPLIANCE 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 OTHER THAN THE WARRANTIES OF TITLE IN THE COVENANT DEED, IF SUCH COVENANT DEED IS ISSUED. 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 THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS MATERIALS.

- (ii) PURCHASER HAS FULLY INSPECTED THE PROPERTY AND THAT THE CONVEYANCE AND DELIVERY OF THE PROPERTY IS "AS IS" AND "WITH ALL FAULTS."
- (iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM OR COURSE OF DEALING WITH PURCHASER. PURCHASER REPRESENTS THAT, PURSUANT TO THE INSPECTION PERIOD (IF ANY), PURCHASER HAS MADE (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 MOLD, LEAD-BASED PAINT, 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) AS OF THE CLOSING DATE WILL HAVE RELIEVED SELLER OF ANY LIABILITY TO PURCHASER AS A RESULT OF ANY ENVIRONMENTAL HAZARD ON OR TO THE PROPERTY AND PURCHASER ACCEPTS ALL LIABILITY THEREFOR, AS BETWEEN PURCHASER AND SELLER, AND INDEMNIFIES AND HOLDS SELLER HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DEMANDS, OR ACTIONS INCIDENT TO, RESULTING FROM, OR IN ANY WAY ARISING OUT OF SUCH HAZARD. THIS INDEMNITY SURVIVES CLOSING AND WILL NOT BE MERGED WITH THE SELLER'S DEED.

- 10. BROKER'S FEE: By separate document, Seller has agreed to pay a real estate commission (the "Commission") to the real estate agent specified therein (the "Broker"), subject to the closing of this sale and payment of the full Purchase Price to Seller. 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 to any agent other than Broker. Purchaser represents to Seller that Purchaser \_\_\_ IS or \_\_\_ IS NOT represented by a real estate broker, who has pre-registered according to the Buyer=s Broker Guidelines for this auction.
- 11. CLOSING: The closing and funding of this sale (the "Closing") will be on or before thirty (30) days from

the Effective Date, (the “**Closing Date**”). Should the Closing Date fall on a Saturday, Sunday, or legal holiday, Closing will occur on the first business day thereafter. The Closing will take place at the office of the Escrow Agent. 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. Any extension of the Closing Date must be in writing and executed by Purchaser and Seller in advance of the scheduled Closing Date, except in the case of the Seller’s unilateral extension of the Closing Date as described in Section 6.

12. POSSESSION: Possession of the Property in its condition existing at the date of execution hereof, ordinary wear and tear excepted, will be delivered to Purchaser at Closing, subject to the rights or claims of parties in possession or vendors thereto. Delivery of the Deed by Seller and acceptance of the Deed by Purchaser will evidence the assignment by Seller and assumption by Purchaser of all written or oral agreements for lease of the Property and contracts in effect as of the Closing Date. From and after Closing, Purchaser will defend, indemnify, and hold Seller harmless from and against all claims, demands, and actions arising under such leases or contracts.
13. CLOSING COSTS: Seller will pay the cost of (i) preparation of the Deed and all other conveyance documents, (ii) one-half of the escrow fees charged by the Title Company, (iii) the premium for the Title Commitment and Title Policy, and (iv) Seller's attorneys' fees. Seller will cause any mortgages, deeds of trust, or other monetary liens recorded against the Property to be released, unless it elects not to cure according to Section 6 above. All other costs and expenses incurred in connection with the sale of the Property will be paid by Purchaser.
14. PRORATIONS: At Closing, Seller will deliver or credit to Purchaser all tenant security deposits then actually held by Seller. Seller will have no responsibility for security deposits not held by Seller at Closing. All prepaid rents, prepaid expenses, and accrued but unpaid expenses incurred in connection with the operation or maintenance of the Property will be prorated between Purchaser and Seller as of the Closing Date. 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. All ad valorem taxes and assessments assessed against the Property will be prorated between Seller and Purchaser as of the Closing Date. Any proration will be final and not adjustable unless Seller challenges the assessed value of the Property for the year of Closing. If such challenge results in a reduction of the taxes for the year of Closing, then Seller will (i) notify Purchaser, (ii) provide Purchaser a recalculation of the proration based on the revised taxes, and (iii) provide Purchaser evidence of Seller’s costs in challenging that year’s assessment. Within fifteen (15) days of receipt of such notice and information, Purchaser will reimburse Seller for (i) the difference between the Seller’s proration at Closing and the Seller’s revised proration, plus (ii) Purchaser's pro rata share of Seller’s costs in challenging that year’s assessment. Notwithstanding the above, Purchaser will be responsible for all ad valorem taxes and transfer taxes, if any, interest, penalties, court costs, title costs, and attorney fees that become due as a result of (a) the transfer of the Property, (b) a subsequent change in the use of the Property, or (c) the omission of assessments on improvements. There will be no proration of such taxes.
15. CASUALTY LOSS: Only in the event of damage or destruction of the Property by fire or other casualty prior to the Closing Date, which results in a loss exceeding twenty percent (20%) of the Purchase Price, Purchaser, within five (5) days of notice from Seller of the occurrence of such event, may either (i) receive the insurance proceeds payable as a result of the event and consummate the transaction in accordance herewith, or (ii) terminate this Contract. In the event of termination of this Contract the Earnest Money will be returned to Purchaser. Thereafter neither party hereto will have any further rights or obligations under this Contract.
16. DEFAULT: If Purchaser fails to perform any of his obligations hereunder, Seller's exclusive remedy for such default is (a) termination of this Contract by written notice to the Purchaser, and (b) retention of the Earnest Money as liquidated damages. If Seller fails to perform any of its obligations hereunder, Purchaser's exclusive remedy for such default is (a) termination of this Contract and liquidated damages as

follows: (i) refund of the Earnest Money, and (ii) reimbursement by the 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, rather they are reasonable estimates of the cost to the Seller of holding the Property off the market, and the cost to the Purchaser of the lost transaction.

17. **PROHIBITED PURCHASER:** Purchaser acknowledges that certain persons are prohibited from purchasing assets from Seller. Purchaser also acknowledges that under certain circumstances, Seller will not sell assets to certain persons. Accordingly, prior to the execution hereof, Purchaser has completed and executed the Purchaser Eligibility Certification (the "**PEC**") attached here to as ATTACHMENT B. Purchaser represents and warrants that the completed PEC is true and correct, and acknowledges that Seller is relying on the truth and accuracy of the completed PEC.

Any incorrect information on the PEC will constitute a breach of this Contract by the Purchaser. Should the Seller determine prior to Closing that any portion of the Purchaser's completed PEC is incorrect, Seller may terminate the Contract and retain the Earnest Money per Section 16 of this Contract and may pursue other sanctions provided by law.

18. **CONFIDENTIALITY:** At the sole discretion of the FDIC and prior to the execution hereof, Purchaser may be required to complete and execute the Confidentiality Agreement attached hereto as ATTACHMENT C. Any breach of the Confidentiality Agreement by Purchaser will be a default hereunder, as provided in Section 16.
19. **ATTORNEYS' FEES:** In any legal proceeding brought under or with relation to this Contract, the prevailing party will be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing party.
20. **AUTHORITY TO EXECUTE:** Only an FDIC employee who is an Attorney-in-Fact for the FDIC acting in the capacity stated in Section 1 is authorized by the FDIC to execute this Contract.
21. **SURVIVAL:** Sections 9, 10, 14, 23 and 27 of this Contract will survive the Closing and the delivery of the Deed and other conveyance documents from Seller to Purchaser. All of the terms and conditions of Sections 9, 10, 14, 23, and 27 will be and remain in full force and effect between the parties hereto.
22. **MODIFICATION:** This Contract supersedes any and all prior discussions, communications, and agreements between the Seller and the Purchaser, if any, with respect to the purchase of the Property and other matters contained herein. This Contract contains the sole and entire understanding between the parties hereto with respect to the transaction contemplated herein. This Contract will not be modified or amended except in writing executed by the Purchaser and Seller.
23. **APPLICABLE LAW:** This Contract will be governed by and construed and enforced in accordance with 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 of this Contract.
25. **NOTICES:** All notices, requests, demands, or other communications required or desired to be given hereunder will be in writing and either delivered by (a) hand, (b) telecopier, (c) overnight delivery service, or (d) certified mail, return receipt requested, postage prepaid, to the addresses in the signature section below, and will be deemed given two (2) days after the date mailed, if mailed, one (1) day after the date sent, if sent by overnight delivery service, and on the day delivered if delivered personally to the address set forth or by telecopier to the facsimile (fax) number also set forth below.
26. **EFFECTIVE DATE:** The effective date of this Contract (the "**Effective Date**") will be the date upon which

the last party to sign executes this Contract.

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. Purchaser waives the presumption that ambiguities, if any, will be construed against the drafting party. This Contract will be construed liberally and not in favor of the non-drafting party.

28. ATTORNEY CONSULTATION: The parties acknowledge and agree that this is intended to be a legally binding contract. The parties further acknowledge that federal law may impose certain duties upon brokers or signatories to this Contract when any of the signatories is a foreign party, or when any of the signatories receives certain amounts of U.S. currency in connection with a real estate closing. To the extent, if any, that either party fails to understand the effect of any part of this Contract, that party hereby agrees to consult an attorney prior to signing.

29. STATE SPECIFIC ATTACHMENTS: The following attachments are affixed and incorporated herewith to conform this Contract to the laws of the state in which the Property is located:  
*{If none of the attachments listed below are used, write “None” on the first line.}*

ATTACHMENT NO. D: Seller’s Disclosure Statement

ATTACHMENT NO. E:

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ATTACHMENT NO. F:

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ATTACHMENT NO. G:

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ATTACHMENT NO. H:

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30. INDIVIDUAL LIABILITY: The individual signing this Contract purportedly on behalf of a corporation, partnership, limited liability company, or trust will be bound under this Contract in his or her individual capacity unless, prior to Closing, the individual complies with requirements that the Seller deems necessary or appropriate to insure conveyance of title to the named entity.

31. DISCLOSURES. As required by applicable law, the following disclosures are attached to this Contract, and the terms thereof are incorporated herein:

ATTACHMENT NO. I: Lead-Based Paint Disclosure. If the Property includes any interest in real property on which a residential dwelling was built prior to 1978.

ATTACHMENT NO. J: Other Environmental Matters. Other environmental matters require disclosure in connection with the conveyance of the Property to the Purchaser.

**IN WITNESS WHEREOF**, the parties have affixed their signatures hereto on the dates set forth beneath their

signatures.

**PURCHASER:**

\_\_\_\_\_  
{Individual Purchaser signs here. Entity Purchaser prints or types entity's name here.}

By: \_\_\_\_\_  
{Entity's representative signs here.}

Name of Entity Purchaser's representative printed or typed: \_\_\_\_\_

Title of Entity Purchaser's representative: \_\_\_\_\_

Individual Purchaser's Name Printed or Typed: \_\_\_\_\_

Address: \_\_\_\_\_  
{Use street address only. A Post Office Box address is **NOT** acceptable.}

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

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

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

**PURCHASER'S BROKER (IF APPLICABLE):**

Name of Entity Purchaser's Broker/Agent (pre-registered pursuant to Buyer's Broker Guidelines)  
printed or typed:

\_\_\_\_\_  
Title of Entity Purchaser's Broker/Agent: \_\_\_\_\_

Individual Name Printed or Typed: \_\_\_\_\_

Address: \_\_\_\_\_  
{Use street address only. A Post Office Box address is **NOT** acceptable.}

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

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

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

**SELLER:**

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

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

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

Its: Attorney in Fact

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

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

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