

# Contract For Sale of Real Estate at Auction

Date **SEPTEMBER 2, 2010**  
Property No. **/ 306035 /**

Seller  
Asset Manager

Legal **A CERTAIN PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 15 SOUTH, RANGE 8 EAST; SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A 1 INCH PIPE DESCRIBED AS BEING THE NORTHWEST CORNER OF SAID QUARTER-QUARTER; THENCE SOUTH 01 DEGREES 14 MINUTES 18 SECONDS EAST 112.15 FEET TO A CAPPED REBAR AND THE TRUE POINT OF BEGINNING OF THE HEREAFTER DESCRIBED PARCEL: THENCE SOUTH 01 DEGREES 39 MINUTES 03 SECONDS EAST 110.00 FEET TO A CAPPED REBAR; THENCE NORTH 88 DEGREES 46 MINUTES 15 SECONDS EAST 137.00 FEET; THENCE NORTH 01 DEGREES 39 MINUTES 03 SECONDS WEST 110.00 FEET; THENCE SOUTH 88 DEGREES 46 MINUTES 15 SECONDS WEST 137.00 FEET TO THE TRUE POINT OF BEGINNING.**

Reference  
Seller Signature **X**

Accepted Date  
Closing Date

Address **301 SANDERS HILL DRIVE**  
City, State, Zip **WEAVER, AL 36277**  
County **CALHOUN**



By signing below, Buyer acknowledges reading, understanding, and agreeing to be bound by this Contract and its Addenda (the 'Contract'). Buyer acknowledges receipt of the Contract and understands and agrees to his/her digital signature being placed in the 'Buyer' blanks on the attached Contract and understands that the digital signature has full force and effect as Buyer's original signature. Buyer shall receive a fully executed version of this Contract via email address or facsimile number provided at time of registration:

Disclosures **BUYER ACKNOWLEDGES UPON ACCEPTANCE PROPERTY MUST CLOSE ON OR BEFORE SEPTEMBER 28TH, 2010. BUYER UNDERSTANDS PROPERTY HAS A SHORT TERM (3 MONTH) DEED RESTRICTION PROHIBITING THE PROPERTY FROM BEING SOLD/ENCUMBERED FOR MORE THAN 120% OF TOTAL PURCHASE PRICE. BUYER ACKNOWLEDGES THAT SELLER WILL RE-KEY THE EXTERIOR DOORS TO THE PROPERTY PRIOR TO CLOSING AND FUNDING AT THE BUYER'S EXPENSE TO BE PAID AT CLOSING. REGARDLESS OF LOCAL CUSTOM, THE BUYER UNDERSTANDS AND AGREES THAT THE SELLER WILL PAY FOR THE OWNER'S TITLE POLICY AND LENDER'S TITLE POLICY (IF ANY) AND THAT THE BUYER WILL PAY ALL OTHER CLOSING/TRANSFER COSTS INCLUDING SURVEY, ESCROW, ALL CLOSING FEES, AND ALL REALTY TRANSFER TAXES. REDEMPTION NOTICE. BUYER ACKNOWLEDGES THAT THIS PROPERTY MAY BE BOUND BY THE STATE RULES OF REDEMPTION. THE FORECLOSED DEBTOR, JUNIOR LIEN HOLDERS, SPOUSE OF DEBTOR, HEIRS, AMONG OTHERS HAVE UP TO ONE YEAR FROM THE DATE OF THE FORECLOSURE TO REDEEM THE PROPERTY. REDEMPTION PERIOD DOES NOT PROHIBIT CONVEYANCE. THE REDEEMING PARTY MUST PAY TO THE NEW BUYER THE FORECLOSURE PURCHASE PRICE, PLUS 12% INTEREST FROM THE DATE OF FORECLOSURE SALE TO THE DATE OF REDEMPTION, PLUS LAWFUL CHARGES AS THAT TERM IS DEFINED IN ALABAMA CODE 6-5-253. REDEMPTION WILL EXPIRE NO LATER THAN 04/27/2011.**

Buyer 1 Signature: **X**



By signing below, Buyer acknowledges reading, understanding, and agreeing to be bound by this Contract and its Addenda (the 'Contract'). Buyer acknowledges receipt of the Contract and understands and agrees to his/her digital signature being placed in the 'Buyer' blanks on the attached Contract and understands that the digital signature has full force and effect as Buyer's original signature. Buyer shall receive a fully executed version of this Contract via email address or facsimile number provided at time of registration:

Notice  
Deed Name  
Buyer #1 Name  
Street Address  
City, State, Zip  
Telephone  
Buyer #2 Name  
Street Address  
City, State, Zip  
Telephone  
High Bid  
Buyer's Premium (5% w/ minimum)  
Total Purchase Price  
Down Payment  
Broker Contact

Buyer 2 Signature: **X**

Closer Contact

**SELLER RESERVES THE RIGHT TO ACCEPT OR REJECT THIS 'CASH AS-IS OFFER' IN SELLER'S SOLE DISCRETION.**

**OFFER, ACCEPTANCE AND CLOSING DATE:** As the high bidder at an Auction of the Property by Seller, as recorded by the Auctioneer ("Broker"), Buyer made and hereby makes an irrevocable offer ("offer") under the terms herein to purchase the Property being offered and/or described herein. The offer shall be irrevocable by the Buyer for fourteen (14) days from the date herein. Seller may accept the offer during this period or thereafter. The Buyer shall be bound by the offer unless and until Broker receives from Buyer a revocation of the offer after the fourteen (14) day timeframe and prior to notification to Buyer of Seller's acceptance of their offer. Revocation notification may be sent to Broker by Buyer via fax, email or letter sent to the Broker to the contact information above. Buyer and Seller agree that notice of Seller's acceptance may be sent to Buyer by Broker or Title Company, on Seller's behalf, via the fax, phone, email or street address provided by Buyer herein or at Registration and incorporated herein. Buyer and Seller agree that Closing shall occur at a time and place to be set by the Closer, on or before the Closing Date indicated above.

Buyer, Seller and Broker (the "Parties") acknowledge and agree: they have been encouraged to seek the advice of legal counsel and that no one on behalf of Broker or Closer has or will offer legal advice to Buyer or Seller; that the Parties negotiated this Contract and it is their intent that any rule of construction that would require this Contract be construed against the drafting party shall not apply; that they have not acted under any duress or compulsions, whether legal, economic, or otherwise; that the provisions of this Contract have been expressly agreed to and were taken into consideration in determining the price offered and accepted; that other provisions notwithstanding, "time-is-of-the-essence" for completion of this Contract; that upon approval by Seller as herein provided, a valid and binding contract of sale shall exist, the terms and conditions of which are as follows:

**1. BUYER'S INSPECTION, DISCLOSURES, REPRESENTATIONS AND WARRANTIES:** Buyer agrees, acknowledges and warrants without limitation to Seller and Broker, and their agents, affiliates, officers, employees and representatives: that it was Buyer's sole responsibility to inspect the Property prior to bidding to determine the location of structures, easements, improvements and encroachments or to determine any other matters relevant to Buyer's decision to Purchase; that the Property is being sold in gross and that any estimates of size or acreage were and are approximations only; that Buyer has had more than ten (10) days before signing this Contract to make any and all independent inspections of the Property to Buyer's complete and total satisfaction; during this period Buyer was specifically advised by Seller and Broker to seek from independent sources of Buyer's choosing expert advice and/or inspections on all matters affecting the Property or Buyer's decision to purchase including but not limited to a Lead Based Paint Inspection or Risk Assessment, Radon Gas Test, Survey, Appraisal, Structural Report, Heat/Air Inspection, EMP Inspection, Roof Inspection, Termite Inspection, Insurance Inspection, Flood Hazard Inspection, Environmental Audit, and Legal Advice; that Seller makes no representation and advises buyers to make their own investigation to determine the source of the water supply and type of sewage disposal system; that Buyer understands and agrees that neither Seller nor Broker are required or will make any inspections or repairs of any kind whatsoever to the Property; that Buyer's inspection of the Property (or waiver thereof) has relieved and shall relieve the foregoing of any liability to Buyer and Buyer hereby accepts all liability, as between Buyer and the foregoing, and shall indemnify and hold harmless Seller, Broker, their affiliates, agents, employees, officers, representatives and owners from and against any claims, liabilities, demands, or actions incident to, resulting from or in any way arising out of this transaction, or the possession, ownership, maintenance or use of the Property and that such indemnity shall survive Closing and not be merged therein; that BUYER'S OPPORTUNITY TO INSPECT OR THE WAIVER THEREOF WAS TAKEN FULLY INTO CONSIDERATION IN DETERMINING THE OFFER MADE HEREIN AND REPRESENTS BUYER'S EXPRESS INTENT TO ACCEPT ALL LIABILITY ATTENDANT THERETO.

BUYER ACKNOWLEDGES AND UNDERSTANDS THE FOLLOWING DISCLOSURES: 1) The mineral estate has been severed from this parcel and will not convey upon transfer of the surface estate, unless otherwise disclosed; 2) This property may be bound by the assessments and restrictions of a condo/home/property owners association and Buyer agrees to be bound by same and to assume any special assessments that may become payable after the Closing date; 3) Property may be subject to code violations within the municipality/city/county and Buyer accepts property in 'As-Is' condition with all faults and shall become responsible for any such violations or remediation thereof; 4) Property may be subject to city/county requirements for transfer and Buyer agrees to ascertain such requirements with the city/county or title company and to be responsible for any fee, permit, remediation required therein, to be done after closing; 5) Neither the Seller, Broker (or Auctioneer) make any assertions or guarantees for compliance standards of the property, including smoke or CO2 detectors, and Buyer accepts all responsibility for same, including any required inspections; and 6) Neither the Seller or Broker (or Auctioneer) make any assertions or guarantees as to the condition or inspection of any septic, sewer, location of leach lines, water service, or potability of any well that may be located on the property herein including but not limited to obtaining any necessary permits or inspection required by the municipality or any remediation, fees, or terms required by such authority due to dye testing or inspection, to be performed after closing.

BUYER expressly acknowledges being advised by Broker in sales literature and again at or prior to auction registration: that (1) the Buyer would be bound by this Contract, including all Addendums (incorporated by reference are Seller's Addendum, if any; a Property Disclosure or Disclaimer Statement, if any; and the EPA/HUD pamphlet provided Buyer prior to bidding titled "Protect Your Family from Lead in Your Home"); and (2) TO NOT BID IF BUYER HAD NOT READ AND AGREED TO BE BOUND BY THIS CONTRACT AND ITS ADDENDUMS IN THEIR ENTIRETY. **"Pursuant to section 28 of the Real Estate Purchase Addendum, this document is subject to all terms and conditions set forth in the Real Estate Purchase Addendum."**

**2. SALE AND DEED:** Unless otherwise specified above, SELLER shall sell the Property to Buyer and BUYER shall accept same and purchase the Property in its present condition "AS IS, WHERE IS and WITH ALL FAULTS" via a "CASH SALE" NOT SUBJECT TO FINANCING, APPRAISAL, SURVEY OR INSPECTIONS OF ANY KIND. Conveyance shall be by a Deed prepared by or on behalf of Seller, and of a form of Seller's choosing, including but not limited to a Quit Claim, Special Warranty, Bargain and Sale, U.S. Marshal's or Trustee's deed (Buyer shall rely only upon the warranty provided by title insurance as defined in P.4).

**3. RECEIPT AND PURCHASE PRICE:** Broker acknowledges receipt of the Down Payment amount indicated above and the Parties agree: Broker shall be entitled to accept Buyer's personal check for immediate deposit without recourse, trust or escrow as sums due Broker or Seller as of this date, and specifically agree and stipulate that the Down Payment SHALL NOT BE HELD IN TRUST OR ESCROW OR OTHERWISE TREATED AS 'FUNDS DUE OTHERS', AND INTEREST EARNED THEREON, IF ANY, SHALL BELONG TO BROKER. If the Buyer has tendered this deposit in the form of a certified check, cashier's check, or personal check, Buyer authorizes Broker to process the check itself, or to process the check electronically through ACH or other carrier. Buyer has funds available to cover this check at the time of execution and authorizes an electronic processing in the discretion of Broker. The balance of the Purchase Price plus costs due from Buyer shall be paid by cash, cashier's check or certified check at Closing.

**4. TITLE AND COSTS:** Buyer shall receive at or before Closing an Owner's Title Insurance Policy (a.k.a. "Title Insurance Commitment" until such policy is issued), which the Parties agree shall be ordered and/or prepared through Closer from an issuer Closer selects, at Buyer's expense, with a face value equal to the Purchase Price herein, issuing insurable title subject to the following "Permitted Title Exceptions": (i) mineral, oil and gas interest (whether owned, severed, or reserved); (ii) all easements, encroachments, overlaps, discrepancies or conflicts in boundary lines, shortage in area, or other matters of record or which could be disclosed by an accurate and complete survey or inspection of the premises; (iii) all restrictions on the use of the Property, whether or not recorded, under existing and future laws, ordinances, and regulations; (iv) subdivision, deed, and plat restrictions of record; (v) current city, state and county ad valorem property and sanitary sewer taxes not yet due and payable; (vi) current leases affecting the Property; (vii) customary exceptions made to the Title Commitment by the Issuer of the Title Commitment and (viii) other easements, restrictions, encumbrances or mortgages specified in this Contract or any exhibit incorporated herein. "Preclusion to title" shall be in the sole discretion of the Closer or Title Examiner and shall mean any issue which would preclude clear title or transfer thereof, including city inspections, occupancy certificates, tax stamps, boundary/title disputes, lost deeds, or payoff statements. No matter shall be construed as a valid objection or preclusion to title under this Contract unless it is a) not a "Permitted Title Exception" above, and b) is construed to be a valid objection or preclusion to title by the title insurance examination attorney chosen by Closer or the policy issuer (such attorney shall be deemed Buyer's attorney for title examination purposes only), and c) is communicated to the Parties prior to Closing. In case of such valid objection or preclusion to title, Seller shall, at Seller's option: have one-hundred and twenty (120) days (the "Cure Period") from the date of the original Closing or such additional time as may be agreed to in writing by the Parties to satisfy such objections and preclusions; or choose to terminate the transaction by returning Buyer's down payment upon which the parties shall incur no further liability to the transaction or each other. If such objections cannot be satisfied within the Cure Period, the Down Payment shall be returned to the Buyer and this Contract shall be of no further force and effect. This provision may not be applicable in certain states which do not utilize Title Insurance. Buyer may use counsel of choice as representation at settlement. The Parties acknowledge and agree the following costs were estimated and disclosed by Broker prior to the Auction or Sale:

BUYER shall pay their Closing fee, and all: Title exam and search fees; title insurance premium(s); filing fees for deed and any note/mortgage; each property will be subject to a charge as follows: Buyer's Premium of 5% (\$1,500 minimum for On-Line only properties, \$2,500 minimum for all others) added to the high bid, OR a fee of \$3,000 for the local services provided pre-auction through the closing, as indicated on Page 1 of this Contract; plat, survey, inspection or other fees announced or advertised for the Auction; costs of supplemental abstracting (if required); and any and all other Closing costs incurred by Buyer. Buyer shall deliver to Closer at or before Closing, for the benefit of Seller: payment in full of the unpaid portion of the Purchase Price; all such documents as the Closer or Seller shall require prior to or at the Closing to evidence and confirm the power and authority of Buyer to close the transaction contemplated herein; an affidavit waiving inspection and assuming payment of ad valorem and land benefit taxes for the current calendar year and thereafter; and such other documents, instruments and certificates as are contemplated herein to effect and complete the Closing.

Seller shall deliver to Closer, at or before Closing, the duly executed and acknowledged Deed for delivery to Buyer upon payment of the Purchase Price. If and when the sale is consummated and the total purchase price is fully funded, Seller agrees to pay Williams & Williams, as Auctioneer / Broker, a fee under the terms and conditions specified by separate agreement between Williams & Williams and Seller. Seller authorizes Closer to make disbursements at Closing. Williams & Williams will pay any cooperating brokers pursuant to such agreement and may also do so at Closing.

Buyer may not assign his/her/their right, title or interest in this transaction. Any attempted assignment by Buyer shall be void as to this Contract and shall further constitute a material breach of this Contract. The Seller may assign this Contract at its sole discretion to effectuate performance hereunder. Nothing in this section will prevent Buyer from conducting a simultaneous closing to another Buyer.

If the "Quick Close" option was available for this sale, as shown in DISCLOSURES section, and Buyer has paid the full Total Purchase Price, applicable service fees and all other announced costs in full herein on the day of the auction, Seller shall pay on behalf of Buyer their closing fee, the title exam and search fees, owner's title insurance premium and the filing fees for the deed; and Buyer shall make arrangements with the Closer identified above to execute all remaining documents required and/or customary for Closing within five (5) business days from the date herein or the earliest date Closer can accomplish such.

**5. TAXES AND PRORATIONS:** Seller shall pay in full: (i) all special assessments against the Property and of record at the date of Closing that are currently payable, Buyer agrees to be bound by same and to assume any special assessments (including payments) that may become payable after the Closing date; (ii) all taxes, other than general ad valorem taxes for the current calendar year, which are a lien on the Property at the date of Closing; and (iii) the cost of any item of workmanship or material furnished prior to the date of Closing which is or may become a lien on the Property. If this sale or Buyer's use of the Property results in the assessment of additional taxes, whether for periods prior to, at or subsequent to the Closing, said taxes shall be the obligation of Buyer. Unless otherwise specified, the following items shall be prorated between the Parties as of the date of Closing: (i) rents, if any; and (ii) general ad valorem taxes for the current calendar year, provided that, if the amount of such taxes has not then been fixed, the pro-ration shall be based upon the rate of levy for the previous calendar year. Any security deposit held by Seller from one or more tenants of the Property shall be transferred to Buyer at Closing

and Buyer shall then assume all further liability to tenants, both in relation to such deposits and in relation to any then existing leases covering all or any part of the Property. After Closing Buyer shall indemnify and hold Seller and Broker harmless from all liability to any tenant.

**6. CLOSING AND TRANSFER:** If the Closer or title issuer selected by Closer determines there are valid objections or preclusions to title as defined herein, the Closing shall be extended for the time permitted to allow Seller to cure same, as provided in Section 4 above. Upon notice from Seller or Broker that such objections have been satisfied, the Closer shall fix a date and time for Closing within two (2) business days. Until Closing, risk of loss to the Property, ordinary wear and tear excepted, shall be borne by Seller; after Closing such risk shall be borne by Buyer. In the event the property suffers damage after the auction but prior to Closing, Seller may, at its option, choose to 1) repair the premises or compensate Buyer for reasonable repairs at Closing; or 2) cancel this Contract and refund Buyer's down payment funds on deposit. BUYER SHALL NOT BE GRANTED POSSESSION OR USE OF THE PROPERTY IN ANY MANNER WHATSOEVER UNTIL CLOSING.

**7. BREACH OR FAILURE TO CLOSE:** The parties agree that if SELLER has performed Seller's obligations under this Contract, and if at the Closing the Buyer fails to pay the balance of the Purchase Price or to perform any other obligations under this Contract, then Seller may, at Seller's option, either a) unilaterally cancel and terminate Buyer's right to purchase the Property, including all legal and equitable interest, if any, Buyer may have regarding the Property and retain all sums previously paid on the Purchase Price as liquidated damages, or b) elect to recover from Buyer the actual damages incurred by Seller, including loss of the balance of the Purchase Price, costs of resale, attorney's fees, and such other incidental damages as may be lawfully recovered. If BUYER has performed Buyer's obligations under this Contract and Seller fails to perform its obligations under the Contract, then Buyer may, as Buyer's sole and exclusive remedy, terminate Buyer's obligation to purchase the Property, by written notice to Seller, and recovery to Buyer shall be limited to the down payment deposit on the property.

**8. LIMITATION OF REMEDIES:** Buyer agrees that in no event shall Seller, Broker or Closer be liable to Buyer for actual, punitive, speculative or consequential damages, nor shall Buyer be entitled to bring a claim to enforce specific performance of this Contract. The Parties agree that neither shall make a claim for any breach of this contract, for rescission or revocation of acceptance, or for any warranty, misrepresentation, mistake or tort unless such Party first notifies the other Parties in writing of the basis, nature and amount of such Party's claim within one-hundred and eighty (180) days after the date of this Contract, or if Closing occurs, within thirty (30) days after the Closing Date, whichever is earlier; and that any and all claims after such period shall be void as between the Parties. Any request for Arbitration by any Party must be filed within one (1) year after the date of this Contract, and shall be limited to the remedies previously described herein, or if the sale has already closed, Buyer agrees its sole and exclusive remedy, at law or in equity, shall be limited to liquidated damages not to exceed 1% of the Purchase Price herein. The Parties expressly stipulate and agree that it is difficult or impossible to accurately ascertain the amount of damages that might be suffered by Buyer (unless the sale was not closed and Buyer's Down Payment was returned, in which event it is stipulated and agreed herein that Buyer will have suffered no damages) and that the amount of 1% of the Purchase Price is a reasonable estimate of the amount of such damages to Buyer.

**9. ARBITRATION:** The Parties agree that any controversy or claim arising out of or relating to the sale or this Contract or the breach thereof shall be settled by binding arbitration administered by the American Arbitration Association (AAA) under its Commercial Arbitration Rules, and judgment on the award rendered may be entered in any court having jurisdiction thereof. Claims may include but are not limited to allegations of breach of contract, concealment, misrepresentation, negligence and/or fraud. Upon submission of a dispute to the AAA, the Parties agree to be bound by the rules of procedure and decision of the AAA. In the event any Party invokes Arbitration with respect to this Contract or any part of this transaction, including by or against Broker, the prevailing Party shall be entitled to an award of reasonable attorney's fees. THE PARTIES UNDERSTAND THAT BY ENTERING INTO THIS AGREEMENT THEY ARE GIVING UP THEIR CONSTITUTIONAL RIGHT TO HAVE CLAIMS DECIDED IN A COURT OF LAW BEFORE A JURY AND INSTEAD ARE ACCEPTING THE USE OF BINDING ARBITRATION.

**10. SELLER AND BROKER DISCLAIMER:** Buyer acknowledges and agrees that Seller, Broker, their affiliates, agents, employees, officers, representatives or owners have not made, do not make and specifically negate and disclaim any representations, warranties, promises, covenants, agreements or guaranties or 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, or geology, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Buyer 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 use or 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 the foregoing persons and entities have not made, do not make and specifically disclaim any representation regarding compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including the disposal or existence, in or on the Property, of any hazardous materials; that Buyer has not relied upon representations, warranties, guarantees or promises or upon any statements made or any information provided concerning the property including but not limited to ads, brochures, website materials, signs, maps and sale day comments and instead has determined to make Buyer's bid after having made and relied solely on Buyer's own independent investigation, inspection, analysis, and evaluation of the Property and the facts and circumstances related thereto; and that no warranty has arisen through trade, custom or course of dealing with Buyer. ANY INSPECTIONS, REPORTS, PROPERTY INFORMATION OR SURVEYS MADE AVAILABLE TO BUYER PRIOR TO OR AT THE SALE WERE FOR 'GENERAL INFORMATIONAL PURPOSES' ONLY AND ARE NOT, AND WILL NOT, BE RELIED UPON AS A REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED.

**11. INDEMNIFICATION OF BROKER AND CLOSER:** Seller and Buyer jointly and severally agree to indemnify and hold Closer and Broker harmless against any and all losses, claims, damages or liabilities and expenses not resulting from Broker or Closer's bad faith or gross negligence, including costs of investigation, attorney fees, and disbursements, which may be imposed upon or incurred by Broker or Closer hereunder relative to the performance of their duties related to the Parties or the Property, including without limitation any litigation arising from or in respect of this Contract or the transactions contemplated hereby. Closer and Broker shall not be liable for any error of judgment or for any act done or omitted by them in good faith. Closer and Broker are authorized to act on any document believed by them in good faith to be executed by the proper party or parties, and will incur no liability in so acting. Closer and Broker are in all respects and for all purposes third party beneficiaries of this Contract to the extent that this Contract would entitle them to rights or benefits if they were signatory parties hereto, and each of them is entitled to enforce such rights and benefits, as herein provided, to the same extent they would be entitled if they were such signatory parties. ANY INDEMNIFICATION, DEFENSE OR HOLD HARMLESS OBLIGATION OF BUYER FOR THE BENEFIT OF SELLER, CLOSER, OR BROKER IN THIS CONTRACT SHALL SURVIVE THE CLOSING AND/OR TERMINATION OF THIS CONTRACT.

**12. INTERPRETATION AND EFFECT OF THIS CONTRACT:** The Parties agree this Contract shall be binding upon and inure to the benefit of their heirs, legal representatives and successors; sets forth their understanding and supersedes all previous negotiations, representations and agreements between them and their agents; can only be amended or modified by a written agreement signed by both Parties; no amendment affecting Broker or Closer may be made in the absence of the prior written consent of the affected person; if any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Contract and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract; and furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable. The parties hereto hereby agree to execute such other documents, and to take such other actions as may reasonably be necessary, to further the purposes of this Agreement.

**13. AGENCY DISCLOSURE:** The Parties expressly agree and acknowledge that BROKER REPRESENTS SELLER ONLY, as previously disclosed to both Parties at first contact; that the identity of Broker's principal, the Seller, was available to the Buyer at all times prior to the auction; that both Parties shall indemnify and hold the other and Broker (unless previously approved in writing by Broker) harmless from any claim for a commission or other compensation of any broker or agent purporting to have represented or assisted them.

**14. LEAD-BASED PAINT AND/OR LEAD-BASED PAINT (for Pre-1978 housing only) AND OTHER HAZARDS DISCLOSURES:**

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

**Seller's Disclosure** As evidenced by Seller's signature herein Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing and has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Buyer's Acknowledgment** As evidenced by Buyer's signature herein Buyer has received copies of all information listed above, including the pamphlet Protect Your Family from Lead in Your Home and has received a 10-day opportunity prior to the auction to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards, and/or has waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment** As evidenced by Broker's name hereon Broker (Agent) has informed the seller of seller's obligations under 42 U.S.C. 4852d and is aware of its responsibility to ensure compliance.

**Mold Statement** There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. The seller, seller's agent, and Auctioneer cannot and does not represent or warrant the absence of mold. It is the buyer's obligation to determine whether a mold problem is present and to remediate such.

**Certification of Accuracy** The Parties have reviewed the information above and hereby certify as evidenced by their signatures herein on the date herein that to the best of their knowledge the information they have provided is true and accurate.

**NOTICE** Institutional and Fiduciary Sellers (courts, government agencies, banks and trustees) have not occupied the property and have NO information to provide for disclosure. Properties are sold 'As Is - Where Is' and should be fully inspected prior to bidding on. SELLER AND BROKER AND/OR AUCTION COMPANY HAVE NO KNOWLEDGE OF THE SUBJECT PROPERTY OR ITS FIXTURES OR CONDITION AND ARE NOT RESPONSIBLE FOR SUCH.

**REAL ESTATE PURCHASE ADDENDUM (Auction)**

This Real Estate Addendum ("Addendum") is to be made part of, and incorporated into, the Purchase Agreement with joint Escrow Instructions dated SEPTEMBER 2, 2010, (the "Contract"), between ("Seller") and \_\_\_\_\_ ("Purchaser") for the purchase and sale of property and improvements located at the following address: 301 SANDERS HILL DRIVE, WEAVER, AL, 36277 ("Property"). As used in this Addendum, the Contract, and any riders and exhibits thereto and this Addendum shall be collectively referred to as the "Agreement".

The Seller and the Purchaser agree as follows:

1. **Acknowledgement/Price:** The Purchaser acknowledges and agrees that this Agreement is subject to approval by the Seller's Management and must be signed by all parties in order to be binding. The Agreement shall be effective as of the date of execution by the Seller ("Effective Date"). The Purchaser's earnest money deposit of \$\_\_\_\_\_ will be deposited into an escrow account acceptable to the Seller on the date that the Purchaser executes and delivers the Agreement to Seller. The Purchase Price is the amount defined in the Contract and/or Paragraph 38 of this Addendum.
2. **Time of the Essence: Closing Date:**
  - a. It is agreed that time is of the essence with respect to all dates specified in this Agreement. This means that all deadlines are intended to be strict and absolute.
  - b. The closing shall take place on a date on or before \_\_\_\_\_ ("Settlement Date"), unless extended in writing signed by the Seller and the Purchaser or extended by the Seller under the terms of this Agreement. The closing shall be held in the offices of the Seller's attorney or agent, or at a place so designated and approved by the Seller, unless otherwise required by applicable law. If the closing does not occur by the Settlement Date, as extended, the Agreement is automatically terminated and the Seller shall retain any earnest money deposit as liquidated damages.
3. **Financing:** This Agreement **is not** contingent on the Purchaser obtaining financing for the purchase of the Property. The Purchaser shall ensure that any lender selected by the Purchaser to finance the sale shall provide funds to the settlement agent as of the Settlement Date. The Purchaser shall further ensure that the selected lender shall provide all lender prepared closing documentation to the settlement agent no later than 48 hours prior to the Settlement Date. Any delays in closing and funding as a result of the Purchaser's selected lender shall be the responsibility of the Purchaser, and the failure to close on or before the Settlement Date (as extended, if applicable) will result in the loss of Purchaser's earnest money deposit..
4. **Use of Property:** The Purchaser (check one): ( ) does, ( ) does not, intend to use and occupy the Property as Purchaser's primary residence.
5. **Inspections**
  - a. The Purchaser acknowledges that prior to the execution of this Agreement, the Purchaser had sufficient opportunity to inspect the Property or obtain for Purchaser's own use, benefit and reliance, inspections and/or reports on the condition of the Property, or has waived such inspection and any objections to the condition of the Property and has accepted the Property in "as is" condition. The Purchaser shall keep the Property free and clear of liens and indemnify and hold the Seller harmless from all liability claims, demands, damages, and costs related to the Purchaser's inspection and the Purchaser shall repair all damages arising from or caused by the inspections. The Purchaser shall not directly or indirectly cause any inspections to be made by any government building or zoning inspectors or government employees without the prior written consent of the Seller, unless required by law, in which case, the Purchaser shall provide reasonable notice to the Seller prior to any such inspection. The Purchaser acknowledges that any inspections of the Property were at Purchaser's expense and that the Seller will not reimburse Purchaser for expenses associated with any inspection.
  - b. If the Property is a condominium or planned unit development or co-operative, unless otherwise required by law, the Purchaser, at the Purchaser's own expense, is responsible for obtaining and reviewing the covenants, conditions and restrictions and bylaws of the condominium, or planned unit development or cooperative ("Governing Documents"). The Seller agrees to use reasonable efforts, as determined at the Seller's sole discretion, to assist the Purchaser in obtaining a copy of the covenants, conditions and restrictions and bylaws. The Purchaser will be deemed to have accepted the Governing Documents if the Purchaser does not provide the Seller notice in writing, within fifteen (15) calendar days of the Effective Date, of the Purchaser's disapproval of the Governing Documents. In the event Purchaser disapproves of the Governing Documents, Purchaser has the right to terminate the Agreement provided the Purchaser notifies Seller in writing of Purchaser's disapproval within fifteen (15) calendar days of the Effective Date.

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6. Repairs: Neither the Purchaser, nor its representatives, shall enter upon the Property to make any repairs and/or treatments prior to closing.

The Purchaser acknowledges that closing on this transaction shall be deemed the Purchaser's reaffirmation that the Purchaser is satisfied with the condition of the Property and Purchaser waives all claims related to such condition of the Property. THE PURCHASER AGREES TO EXECUTE AND DELIVER TO THE SELLER AT CLOSING NPDC FORM 4 WAIVER & RELEASE.

7. CONDITION OF PROPERTY: THE PURCHASER UNDERSTANDS THAT THE SELLER ACQUIRED THE PROPERTY BY FORECLOSURE, DEED-IN-LIEU OF FORECLOSURE, FORFEITURE, TAX SALE, OR SIMILAR PROCESS AND CONSEQUENTLY, THE SELLER HAS LITTLE OR NO DIRECT KNOWLEDGE CONCERNING THE CONDITION OF THE PROPERTY. AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY THE PURCHASER AND THE SELLER, THE PURCHASER ACKNOWLEDGES AND AGREES TO ACCEPT THE PROPERTY IN "AS IS" CONDITION AT THE TIME OF CLOSING, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS OR ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY, WHETHER KNOWN OR UNKNOWN, WHETHER SUCH DEFECTS OR CONDITIONS WERE DISCOVERABLE THROUGH INSPECTION OR NOT. THE PURCHASER ACKNOWLEDGES THAT THE SELLER, ITS AGENTS AND REPRESENTATIVES HAVE NOT MADE AND THE SELLER SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTEES, IMPLIED OR EXPRESS, ORAL OR WRITTEN IN RESPECT TO:

- (A) THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF THE PROPERTY INCLUDING THE STRUCTURAL INTEGRITY OR THE QUALITY OR CHARACTER OF MATERIALS USED IN CONSTRUCTION OF ANY IMPROVEMENTS (E.G. DRYWALL, ASBESTOS, LEAD PAINT, UREA FORMALDEHYDE FOAM INSULATION), AVAILABILITY AND QUANTITY OR QUALITY OF WATER, STABILITY OF THE SOIL, SUSCEPTIBILITY TO LANDSLIDE OR FLOODING, SUFFICIENCY OF DRAINAGE, WATER LEAKS, WATER DAMAGE, MOLD OR ANY OTHER MATTER AFFECTING THE STABILITY, INTEGRITY, OR CONDITION OF THE PROPERTY OR IMPROVEMENTS;
- (B) THE CONFORMITY OF THE PROPERTY OR THE IMPROVEMENTS TO ANY ZONING, LAND USE OR BUILDING CODE REQUIREMENTS OR COMPLIANCE WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY FEDERAL, STATE OR LOCAL GOVERNMENTAL AUTHORITY, OR THE GRANTING OF ANY REQUIRED PERMITS OR APPROVALS, IF ANY, OF ANY GOVERNMENTAL BODIES WHICH HAD JURISDICTION OVER THE CONSTRUCTION OF THE ORIGINAL STRUCTURE, ANY IMPROVEMENTS AND/OR ANY REMODELING OF THE STRUCTURE; AND
- (C) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY OR IMPROVEMENTS INCLUDING REDHIBITORY VICES AND DEFECTS, APPARENT, NON APPARENT OR LATENT, WHICH NOW EXIST OR WHICH MAY HEREAFTER EXIST AND WHICH, IF KNOWN TO THE PURCHASER, WOULD CAUSE THE PURCHASER TO REFUSE TO PURCHASE THE PROPERTY.

Mold, mildew, spores and/or other microscopic organisms and/or allergens (collectively referred to in this Agreement as "Mold") are environmental conditions that are common in residential properties and may affect the Property. Mold, in some forms, has been reported to be toxic and to cause serious physical injuries, including but not limited to, allergic and/or respiratory reactions or other problems, particularly in persons with immune system problems, young children and/or elderly persons. Mold has also been reported to cause extensive damage to personal and real property. Mold may have been removed or covered in the course of any cleaning or repairing of the Property. The Purchaser acknowledges that, if Seller, or any of Seller's employees, contractors, or agents cleaned or repaired the Property or remediated Mold contamination, that Seller does not in any way warrant the cleaning, repairs or remediation. Purchaser accepts full responsibility for all hazards that may result from the presence of Mold in or around the Property. The Purchaser is satisfied with the condition of the Property notwithstanding the past or present existence of Mold in or around the Property and Purchaser has not, in any way, relied upon any representations of Seller, Seller's employees, officers, directors, contractors, or agents concerning the past or present existence of Mold in or around the property.

The closing of this sale shall constitute acknowledgement by the Purchaser that Purchaser had the opportunity to retain an independent, qualified professional to inspect the Property and that the condition of the Property is acceptable to the Purchaser. The Purchaser agrees that the Seller shall have no liability for any claims or losses the Purchaser or the Purchaser's successors or assigns may incur as a result of construction or other defects which may now or hereafter exist with respect to the Property.

8. Occupancy Status of Property: The Purchaser acknowledges that neither the Seller, nor its representatives, agents or assigns, has made any warranties or representations, implied or expressed, relating to the existence of any tenants or occupants at the Property unless otherwise noted in Section 38 of this Addendum. Seller represents that the Property

may have tenants occupying same under an active lease but expressly disclaims any warranties regarding the validity, enforceability, performance under or continuation of said lease. The Purchaser acknowledges that closing on this transaction shall be deemed the Purchaser's reaffirmation that neither the Seller, nor its representatives, agents or assigns, has made any warranties or representations, implied or expressed, relating to the existence of any tenants or occupants at the Property unless otherwise noted in Section 38 of this Addendum. The Seller, its representatives, agents or assigns, shall not be responsible for evicting or relocating any tenants, occupants or personal property at the Property prior to or subsequent to closing unless otherwise noted in Section 38 of this Addendum. All leases shall be deemed assigned to Purchaser upon closing to the extent permitted under applicable laws.

The Purchaser further acknowledges that, to the best of the Purchaser's knowledge, the Seller is not holding any security deposits from former or current tenants and has no information as to such security deposits as may have been paid by the former or current tenants to anyone and agrees that no sums representing such tenant security deposits shall be transferred to the Purchaser as part of this transaction. The Purchaser further agrees to assume all responsibility and liability for the refund of such security deposits to the tenants pursuant to the provisions of applicable laws and regulations. All rents, due and payable and collected from tenants for the month in which closing occurs will be prorated according to the provisions of Section 10 of this Addendum.

The Purchaser acknowledges that this Property may be subject to the provisions of local rent control ordinances and regulations. The Purchaser agrees that upon the closing, all eviction proceedings and other duties and responsibilities of a property owner and landlord, including but not limited to those proceedings required for compliance with such local rent control ordinances and regulations, will be the Purchaser's sole responsibility.

9. Personal Property: Items of personal property, including but not limited to window coverings, appliances, manufactured homes, mobile homes, vehicles, spas, antennas, satellite dishes and garage door openers, now or hereafter located on the Property are not included in this sale or the purchase price unless the personal property is specifically described and referenced in Section 38 of this Addendum. Any personal property at or on the Property may be subject to claims by third parties and, therefore, may be removed from the Property prior to or after the Closing Date. The Seller makes no representation or warranty as to the condition of any personal property, title thereto, or whether any personal property is encumbered by any liens. The Seller assumes no responsibility for any personal property remaining on the Property at the time of closing.

10. Closing Costs and Adjustments:

- (a) The Purchaser and the Seller agree to prorate the following expenses as of the Settlement Date: real estate taxes and assessments, common area charges, condominium or planned unit development or similar community assessments, cooperative fees, maintenance fees, and rents, if any. In determining prorations, the Settlement Date shall be allocated to the Purchaser. Payment of special assessment district bonds and assessments, and payment of homeowner's association or special assessments shall be paid current and prorated between the Purchaser and the Seller as of the Settlement Date with payments not yet due and owing to be assumed by the Purchaser without credit toward Purchase Price. The Property taxes shall be prorated based on an estimate or actual taxes from the previous year on the Property. All prorations shall be based upon a 30-day month and all such prorations shall be final. The Seller shall not be responsible for any amounts due, paid or to be paid after closing, including but not limited to, any taxes, penalties or interest assessed or due as a result of retroactive, postponed or additional taxes resulting from any change in use of, or construction on, or improvement to the Property, or an adjustment in the appraised value of the Property. In the event the Seller has paid any taxes, special assessments or other fees and there is a refund of any such taxes, assessments or fees after closing, and the Purchaser as current owner of the Property receives the payment, the Purchaser will immediately submit the refund to the Seller.
- (b) is a congressionally chartered corporation and is exempt from realty transfer taxes pursuant to 12 U.S.C. 1723a(c)(2); however, real estate transfer taxes may be assessed against Purchaser and such taxes shall be the sole responsibility of the Purchaser.
- (c) The Seller shall pay the real estate commission per the listing agreement between the Seller and the Seller's listing broker.
- (d) Purchaser shall release Seller from any and all claims arising from the adjustments or prorations or errors in calculating the adjustments or prorations that are or may be discovered after closing. THE PURCHASER AGREES TO EXECUTE AND DELIVER TO THE SELLER AT CLOSING NPDC FORM 5 (Tax Proration Agreement).

11. Delivery of Funds: Regardless of local custom, requirements, or practice, upon delivery of the deed by the Seller to the Purchaser, the Purchaser shall deliver, or cause to be delivered, all funds due the Seller from the sale in the form of cash, bank check, certified check or wire transfer. An attorney's trust fund check shall not be sufficient to satisfy this provision unless the bank holding the account on which the trust fund check is drawn certifies the trust fund check.

12. Certificate of Occupancy: If the Property is located in a jurisdiction that requires a certificate of occupancy, smoke detector certification, septic certification or any similar certification or permit ("Certificate of Occupancy") or any form of improvement or repair to the Property to obtain such Certificate of Occupancy necessary for the Property to be occupied, the Purchaser understands that the Seller requires the Certificate of Occupancy to be obtained by the Purchaser at the Purchaser's sole expense. The Purchaser shall make application for all Certificates of Occupancy within ten (10) calendar days of the Effective Date. The Purchaser shall not have the right to delay the closing due to the Purchaser's failure or inability to obtain any required Certificate of Occupancy. Failure of the Purchaser to obtain and furnish the Certificate of Occupancy shall be a material breach of the Agreement.

13. Delivery of Possession of Property: The Seller shall deliver possession of the Property to the Purchaser at closing. The delivery of possession shall be subject to the rights of any tenants or parties in possession per Section 8 of this Addendum. If the Purchaser alters the Property or causes the Property to be altered in any way and/or occupies the Property or allows any other person to occupy the Property prior to closing without the prior written consent of the Seller, such event shall constitute a breach by the Purchaser under this Agreement and the Seller may terminate this Agreement and the Purchaser shall be liable to the Seller for damages caused by any such alteration or occupation of the Property prior to closing and waives any and all claims for damages or compensations for alterations made by the Purchaser to the Property including, but not limited to, any claims for unjust enrichment.

14. Deed: Regardless of local practice, the deed to be delivered by Seller at closing shall be a deed that covenants that grantor grants only that title which grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise. Any reference to the term "Deed" or "Special Warranty Deed" herein shall be construed to refer to such form of deed. Under no circumstances shall Seller be required to deliver any form of deed which grants a general warranty of title.

(check if applicable) Seller's deed shall include the following deed restriction:

GRANTEE HEREIN SHALL BE PROHIBITED FROM CONVEYING CAPTIONED PROPERTY FOR A SALES PRICE OF GREATER THAN FOR A PERIOD OF 3 MONTH(S) FROM THE DATE OF THIS DEED. GRANTEE SHALL ALSO BE PROHIBITED FROM ENCUMBERING SUBJECT PROPERTY WITH A SECURITY INTEREST IN THE PRINCIPAL AMOUNT OF GREATER THAN FOR A PERIOD OF 3 MONTH(S) FROM THE DATE OF THIS DEED. THESE RESTRICTIONS SHALL RUN WITH THE LAND AND ARE NOT PERSONAL TO GRANTEE. THIS RESTRICTION SHALL TERMINATE IMMEDIATELY UPON CONVEYANCE AT ANY FORECLOSURE SALE RELATED TO A MORTGAGE OR DEED OF TRUST.

15. Defects in Title: If the Purchaser raises an objection to the Seller's title to the Property, which, if valid, would make title to the Property uninsurable, the Seller shall have the right unilaterally to terminate this Agreement by giving written notice of the termination to the Purchaser. However, if the Seller is able to correct the problem through reasonable efforts, as the Seller determines, at its sole and absolute discretion, prior to Settlement Date, including any written extensions, or if title insurance is available from a reputable title insurance company at regular rates containing affirmative coverage for the title objections, then this Agreement shall remain in full force and the Purchaser shall perform pursuant to the terms set in this Agreement. The Seller is not obligated to remove any exception or to bring any action or proceeding or bear any expense in order to convey title to the Property or to make the title marketable and/or insurable but any attempt by the Seller to remove such title exceptions shall not impose an obligation upon the Seller to remove those exceptions. The Purchaser acknowledges that the Seller's title to the Property may be subject to court approval of foreclosure or to mortgagor's right of redemption. In the event the Seller is not able to (a) make the title insurable or correct any problem or (b) obtain title insurance from a reputable title insurance company, all as provided herein, the Purchaser may terminate this Agreement and any earnest money deposit will be returned to the Purchaser as the Purchaser's sole remedy at law or equity. The Purchaser's silence as to any title objections shall be deemed as acceptance.

16. Representations and Warranties: The Purchaser represents and warrants to the Seller the following:

- a. The Purchaser is purchasing the Property solely in reliance on its own investigation and inspection of the Property and not on any information, representation or warranty provided or to be provided by the Seller, its servicers, representatives, brokers, employees, agents or assigns;
- b. Neither the Seller, nor its servicers, employees, representatives, brokers, agents or assigns, has made any representations or warranties, implied or expressed, relating to the condition of the Property or the contents thereof, except as expressly set forth in Section 38 of this Addendum;
- c. The Purchaser has not relied on any representation or warranty from the Seller regarding the nature, quality or workmanship of any repairs made by the Seller; and
- d. The Purchaser will not occupy or cause or permit others to occupy the Property prior to closing and, unless and until any necessary Certificate of Occupancy has been obtained from the appropriate governmental entity, will not occupy or cause or permit others to occupy the Property after closing.

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- e. The undersigned, if executing the Agreement on behalf of the Purchaser that is a corporation, partnership, trust or other entity, represents and warrants that he/she is authorized by that entity to enter into the Agreement and bind the entity to perform all duties and obligations stated in the Agreement; and
- f. The Purchaser **has has not** previously purchased a owned property.

17. **WAIVERS:**

**AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY THE SELLER UNDER THIS AGREEMENT AS NEGOTIATED AND AGREED TO BY THE PURCHASER AND THE SELLER, THE PURCHASER WAIVES THE FOLLOWING:**

- a. **ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST THE SELLER FOR SPECIFIC PERFORMANCE;**
- b. **RIGHT TO RECORD A LIS PENDENS AGAINST THE PROPERTY OR TO RECORD THIS AGREEMENT OR A MEMORANDUM THEREOF IN THE REAL PROPERTY RECORDS;**
- c. **RIGHT TO INVOKE ANY OTHER EQUITABLE REMEDY THAT MAY BE AVAILABLE THAT IF INVOKED, WOULD PREVENT THE SELLER FROM CONVEYING THE PROPERTY TO A THIRD PARTY PURCHASER;**
- d. **ANY AND ALL CLAIMS ARISING FROM THE ADJUSTMENTS OR PRORATIONS OR ERRORS IN CALCULATING THE ADJUSTMENTS OR PRORATIONS THAT ARE OR MAY BE DISCOVERED AFTER CLOSING;**
- e. **ANY CLAIMS FOR FAILURE OF CONSIDERATION AND/OR MISTAKE OF FACT AS SUCH CLAIMS RELATE TO THE PURCHASE OF THE PROPERTY OR ENTERING INTO OR EXECUTION OF OR CLOSING UNDER THIS AGREEMENT;**
- f. **ANY REMEDY OF ANY KIND, INCLUDING BUT NOT LIMITED TO RESCISSION OF THIS AGREEMENT, OTHER THAN AS EXPRESSLY PROVIDED IN SECTION 19 OF THIS ADDENDUM, TO WHICH THE PURCHASER MIGHT OTHERWISE BE ENTITLED AT LAW OR EQUITY WHETHER BASED ON MUTUAL MISTAKE OF FACT OR LAW OR OTHERWISE;**
- g. **TRIAL BY JURY, EXCEPT AS PROHIBITED BY LAW, IN ANY LITIGATION ARISING FROM OR CONNECTED WITH OR RELATED TO THIS AGREEMENT;**
- h. **ANY CLAIMS OR LOSSES THE PURCHASER MAY INCUR AS A RESULT OF CONSTRUCTION ON, REPAIR TO, OR TREATMENT OF THE PROPERTY, OR OTHER DEFECTS, WHICH MAY NOW OR HEREAFTER EXIST WITH RESPECT TO THE PROPERTY;**
- i. **ANY CLAIMS OR LOSSES RELATED TO ENVIRONMENTAL CONDITIONS AFFECTING THE PROPERTY INCLUDING, BUT NOT LIMITED TO, MOLD, DRYWALL, LEAD PAINT, FUEL OIL, ALLERGENS, OR OTHER TOXIC SUBSTANCES OF ANY KIND;**
- j. **ANY RIGHT TO AVOID THIS SALE OR REDUCE THE PRICE OR HOLD THE SELLER RESPONSIBLE FOR DAMAGES ON ACCOUNT OF THE CONDITION OF THE PROPERTY, LACK OF SUITABILITY AND FITNESS, OR REDHIBITORY VICES AND DEFECTS, APPARENT, NONAPPARENT OR LATENT, DISCOVERABLE OR NONDISCOVERABLE; AND**
- k. **ANY CLAIM ARISING FROM ENCROACHMENTS, EASEMENTS, SHORTAGES IN AREA OR ANY OTHER MATTER WHICH WOULD BE DISCLOSED OR REVEALED BY A SURVEY OR INSPECTION OF THE PROPERTY OR SEARCH OF PUBLIC RECORDS.**

References to the "Seller" in this Section 17 of the Addendum shall include the Seller and the Seller's servicers, representatives, agents, brokers, employees, or assigns.

In the event that the Purchaser breaches any of the terms described or contemplated under this Section 17 of this Addendum, the Purchaser shall pay all reasonable attorneys fee and costs incurred by the Seller in defending such action, and the Purchaser shall pay Five Thousand Dollars (\$5,000) as liquidated damages for breach of this Section 17 of the Addendum, which amount shall be in addition to any liquidated damages held or covered by the Seller pursuant to Section 19 of this Addendum.

18. **Conditions to the Seller's Performance:** The Seller shall have the right, at the Seller's sole discretion, to extend the Settlement Date or to terminate this Agreement if:

- (a) full payment of any mortgage insurance claim related to the loan previously secured by the Property is not confirmed prior to the closing date or the mortgage insurance company exercises its right to acquire title to the Property;
- (b) the Seller determines that it is unable to convey title to the Property insurable by a reputable title insurance company at regular rates;
- (c) the Seller at any time has requested that the servicing lender, or any other party, repurchase the loan previously secured by the Property and/or such lender or other party has elected to repurchase the property;

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- (d) a third party with rights related to the sale of the property does not approve the sale terms.
- (e) full payment of any property, fire or hazard insurance claim is not confirmed prior to the closing;
- (f) any third party, whether tenant, homeowner's association, or otherwise, exercises rights under a right of first refusal to purchase the Property;
- (g) the Purchaser is the former mortgagor of the Property, or is related to or affiliated in any way with the former mortgagor, and the Purchaser has not disclosed this fact to the Seller prior to the Seller's acceptance of this Agreement. Such failure to disclose shall constitute default under this Agreement, entitling the Seller to exercise any of its rights and remedies, including, without limitation, retaining the earnest money deposit;
- (h) the Seller, at the Seller's sole discretion, determines that the sale of the Property to the Purchaser or any related transactions are in any way associated with illegal activity of any kind.
- (i) the Agreement was accepted and executed by Seller in noncompliance with procedures or guidelines;
- (j) Seller determines in its sole discretion that the sale of the Property will subject Seller to liability and/or have an impact on pending, threatening or potential litigation; or
- (k) material misrepresentation by the Purchaser.

In the event the Seller elects to terminate this Agreement as a result of (a), (b), (c), (d), (e), (f), (i) or (j) above, the Seller shall return the Purchaser's earnest money deposit.

19. Remedies for Default:

- a. In the event of the Purchaser's default, material breach or material misrepresentation of any fact under the terms of this Agreement, the Seller, at its option, may retain the earnest money deposit and any other funds then paid by the Purchaser as liquidated damages and/or invoke any other remedy available to Seller at law and/or equity and the Seller is automatically released from the obligation to sell the Property to the Purchaser and neither the Seller nor its representatives, agents, attorneys, successors, or assigns shall be liable to the Purchaser for any damages of any kind as a result of the Seller's failure to sell and convey the Property.
- b. In the event of the Seller's default or material breach under the terms of this Agreement or if the Seller terminates the Agreement as provided under the provisions of Paragraph 18 (a), (b), (c), (d), (e), (f), (i) or (j) of this Addendum, the Purchaser shall be entitled to the return of the earnest money deposit as Purchaser's sole and exclusive remedy at law and/or equity. The Purchaser waives any rights to file and maintain an action against the Seller for specific performance and the Purchaser acknowledges that a return of its earnest money deposit can adequately and fairly compensate the Purchaser. Upon return of the earnest money deposit to the Purchaser, this Agreement shall be terminated, and the Purchaser and the Seller have no further liability or obligation, each to the other in connection with this Agreement.
- c. The Purchaser agrees that the Seller shall not be liable to the Purchaser for any special, consequential or punitive damages whatsoever, whether in contract, tort (including negligence and strict liability) or any other legal or equitable principle, including but not limited to any cost or expense incurred by the Purchaser in selling or surrendering a lease on a prior residence, obtaining other living accommodations, moving, storage or relocation expenses or any other such expense or cost arising from or related to this Agreement or a breach of this Agreement.
- d. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.
- e. In the event either party elects to exercise its remedies as described in this Section 19 of this Addendum and this Agreement is terminated, the parties shall have no further obligation under this Agreement except as to any provision that survives the termination of this Agreement pursuant to Section 24 of this Addendum.

20. Indemnification: The Purchaser agrees to indemnify and fully protect, defend, and hold the Seller, its officers, directors, employees, shareholders, servicers, representatives, agents, attorneys, tenants, brokers, successors or assigns harmless from and against any and all claims, costs, liens, loss, damages, attorney's fees and expenses of every kind and nature that may be sustained by or made against the Seller, its officers, directors, employees, shareholders, servicers, representatives, agents, attorneys, tenants, brokers, successors or assigns, resulting from or arising out of:

- a. Inspections or repairs made by the Purchaser or its agents, employees, contractors, successors or assigns
- b. claims, liabilities, fines or penalties resulting from the Purchaser's failure to timely obtain any Certificate of Occupancy or to comply with equivalent laws and regulations;

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- c. claims for amounts due and owed by the Seller for taxes, homeowner association dues or assessment or any other items prorated under Section 10 of this Addendum, including any penalty or interest and other charges, arising from the proration of such amounts for which the Purchaser received a credit at closing under Section 10 of this Addendum and
- d. the Purchaser's or the Purchaser's tenants, agents or representatives use and /or occupancy of the Property prior to closing and/or issuance of required certificates of occupancy
21. **Risk of Loss:** In the event of fire, destruction or other casualty loss to the Property after the Seller's acceptance of this Agreement and prior to closing, the Seller may, at its sole discretion, repair or restore the Property, or the Seller may terminate the Agreement. If the Seller elects to repair or restore the Property, then Seller may, at its sole discretion, limit the amount to be expended. Whether or not Seller elects to repair or restore the Property, the Purchaser's sole and exclusive remedy shall be either to acquire the Property in its then condition at the Purchase Price with no reduction thereof by reason of such loss or terminate this Agreement and receive a refund of any earnest money deposit.
22. **Eminent Domain:** In the event that the Seller's interest in the Property, or any part thereof, shall have been taken by eminent domain or shall be in the process of being taken on or before the closing date, either party may terminate this Agreement and the earnest money deposit shall be returned to the Purchaser and neither party shall have any further rights or liabilities hereunder except as provided in Section 24 of this Addendum.
23. **Keys:** The Purchaser understands that the Seller may not be in possession of keys, including but not limited to, mailbox keys, recreation area keys, gate cards, or automatic garage remote controls, and any cost of obtaining the same will be the responsibility of the Purchaser. The Purchaser also understands that if the Property includes an alarm system, the Seller cannot provide the access code and/or key and that the Purchaser is responsible for any costs associated with the alarm and/or changing the access code or obtaining keys. If the Property is presently on a Master Key System, the Seller will re-key the exterior doors to the Property prior to closing at the Purchaser's expense. The Purchaser authorizes and instructs escrow holder to charge the account of the Purchaser at closing for the rekey.
24. **Survival:** Delivery of the deed to the Property to the Purchaser by the Seller shall be deemed to be full performance and discharge of all of the Seller's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, any provision which contemplates performance or observance subsequent to any termination or expiration of this Agreement, shall survive the closing and/or termination of this Agreement by any party and continue in full force and effect.
25. **Further Assurances:** The Purchaser agrees to execute and deliver to the Seller at closing, or otherwise as requested by the Seller, documents including NPDC Form 4 (Waiver and Release), NPDC Form 5 (Tax Proration Agreement) or documents that are substantially the same, and to take such other action as reasonably may be necessary to further the purpose of this Agreement. Copies of referenced documents are available from the Seller's listing agent upon request by the Purchaser.
26. **Severability:** The lack of enforceability of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.
27. **Assignment of Agreement:** The Purchaser shall not assign this Agreement without the express written consent of the Seller. The Seller may assign this Agreement at its sole discretion without prior notice to, or consent of, the Purchaser.
- 28. EFFECT OF ADDENDUM: THIS ADDENDUM AMENDS AND SUPPLEMENTS THE CONTRACT AND, IF APPLICABLE, ESCROW INSTRUCTIONS. IN THE EVENT THERE IS ANY CONFLICT BETWEEN THIS ADDENDUM AND THE CONTRACT OR ESCROW INSTRUCTIONS OR NOTICE OR OTHER DOCUMENTS ATTACHED AND MADE A PART OF THIS AGREEMENT, THE TERMS OF THIS ADDENDUM TAKE PRECEDENCE AND SHALL PREVAIL EXCEPT AS OTHERWISE PROVIDED BY LAW.**
29. **Entire Agreement:** This Agreement constitutes the entire agreement between the Purchaser and the Seller concerning the subject matter hereof and supersedes all previous communications, understandings, representations, warranties, covenants or agreements, either written or oral and there are no oral or other written agreements between the Purchaser and the Seller. All negotiations are merged into this Agreement. The Seller is not obligated by any other written or verbal statements made by the Seller, the Seller's representatives, or any real estate licensee.
30. **Modification:** No provision, term or clause of this Agreement shall be revised, modified, amended or waived except by an instrument in writing signed by the Purchaser and the Seller.
31. **Rights of Others:** This Agreement does not create any rights, claims or benefits inuring to any person or entity, other than Seller's successors and/or assigns, that is not a party to this Agreement, nor does it create or establish any third party beneficiary to this Agreement.

32. Counterparts: This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original, but all of which, when taken together, shall constitute one agreement.
33. Headings: The titles to the sections and headings of various paragraphs of this Agreement are placed for convenience of reference only and in case of conflict, the text of this Agreement, rather than such titles or headings shall control.
34. Electronic Signatures: An electronic signature by the Seller or its Attorney in Fact shall be given the same effect as a written signature.
35. Force Majeure: Except as provided in Section 21 to this Addendum, no party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war and terrorism, epidemics, power failures, earthquakes or other disasters, providing such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such party through use of alternate sources, workaround plans or other means.
36. Attorney Review: The Purchaser acknowledges that Purchaser has had the opportunity to consult with its legal counsel regarding this Agreement and that accordingly the terms of this Agreement are not to be construed against any party because that party drafted the Agreement or construed in favor of any Party because that Party failed to understand the legal effect of the provisions of the Agreement.
37. Notices: Any notices required to be given under this Agreement shall be deemed to have been delivered when actually received in the case of hand or overnight delivery, or five (5) calendar days after mailing by first class mail, postage paid, or by fax with confirmation of transmission to the numbers below. All notices to the Seller will be deemed sent or delivered to the Seller when sent or delivered to Seller's listing broker or agent or Seller's attorney, at the address or fax number shown below. All notices to the Purchaser shall be deemed sent or delivered when sent or delivered to the Purchaser or the Purchaser's attorney or agent at the address or fax number shown below.
38. Additional Terms or Conditions:  
Seller to pay for the owner's title policy in the amount of \$\_ and closing shall take place with Seller's Closing Agent/Attorney.

IN WITNESS WHEREOF, the Purchaser and the Seller have entered into this Agreement as of the date first set forth above.

**PURCHASER (S):**



Signature: \_\_\_\_\_

Date: SEPTEMBER 2, 2010

Print Name: \_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

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



Signature: \_\_\_\_\_

Date: SEPTEMBER 2, 2010

Print Name: \_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

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

**PURCHASER'S AGENT:**

Brokerage Firm: \_\_\_\_\_

Purchaser's Agent Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone : \_\_\_\_\_

Email Address: \_\_\_\_\_

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

**PURCHASER'S ATTORNEY:**

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

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

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

**SELLER:**

□: \_\_\_\_\_

□ \_\_\_\_\_

**as Attorney in Fact for**

for \_\_\_\_\_

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

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

**SELLER'S AGENT:**

Brokerage Firm: Williams & Williams

Seller's Agent Name: \_\_\_\_\_

Address: 7120 S. Lewis Avenue, Suite 220

Tulsa, OK 74136

Telephone : 800.801.8003

Email Address: closingfannie@williamsauction.com

Fax: 918.362.6528

:

**SELLER'S ATTORNEY:**

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

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

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

PURCHASER (Initials) \_\_\_\_\_

SELLER (Initials) \_\_\_\_\_