



CITY COUNCIL AGENDA REPORT

Meeting Date: 12/09/2021

From: Stuart Schillinger Assistant City Manager

Subject: Approve Resolution 2021-79 Approving the Purchase and Sale Agreement for the Bank of America Site Located at 70 Old County Road

Community Goal/Result

Fiscally Prudent

Economic Development

Community Building

Purpose

Purchase prime corner entrance to Brisbane to ensure community values are taken into account in determining the future development of the site, likely for commercial purposes and/or housing.

Recommendation

Direct the City Manager to complete all legal documents needed to purchase the property at 70 Old County Road for a purchase price of \$4,250,000.

Background

The Northeast corner of Bayshore Boulevard and Old County Road is the site of the former Bank of America building. The bank closed operations at the site early in 2021. The bank requested proposals to purchase the property. The site is listed as approximately 1.27 acres.

On November 19, 2021 the City submitted a proposal to purchase the site for \$4,250,000. On December 2, 2021 the City was informed that the Bank has tentatively accepted the City's proposal pending final legal review.

Discussion

Staff anticipates that after the purchase of the site is complete, the City Council will direct staff to conduct a public process to determine the use of the site. Staff will work closely with the City Council to ensure that a robust process is available in order for the community as a whole to weigh in on possible uses of this site.

Fiscal Impact

The City has \$4,250,000 available in cash in order to ensure a quicker closing process. However, using this amount from the General Fund would reduce the City’s Fund Balance (below \$8.2 Million) which is to be sustained under City Council policy for the General Fund, Fund Balance. Staff recommends that the City issue a bond to cover the cost of this purchase. If directed by Council to do so, staff will return with a staff report early next year related to the sale of the bond. The annual bond payment is estimated to be \$250,000 per year and will maintain the City’s minimum General Fund, Fund Balance. The exact dollar amount of the payment will depend on interests at the time of the sale and a more accurate amount will be presented to City Council at the time of the staff report.

Measure of Success

The community ends up with a use on the property that is acceptable to it.

Attachments

Resolution 2021-79

Purchase Agreement showing price the City offered

Stuart Schillinger

Stuart Schillinger, Assistant City Manager

Clay Holstine, City Manager

RESOLUTION NO. 2021-79

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING A PURCHASE AND SALE AGREEMENT FOR REAL PROPERTY (FORMER BANK OF AMERICA SITE) IN A FINAL FORM AS APPROVED BY THE CITY ATTORNEY, AUTHORIZING THE MAYOR, CITY MANAGER, AND/OR CITY STAFF TO SIGN ALL DOCUMENTS NECESSARY TO TRANSFER THE PROPERTY TO THE CITY AND ACCEPT THE PROPERTY, AND AUTHORIZING THE CITY CLERK TO RECORD A DEED WITH THE COUNTY RECORDER TO TRANSFER THE PROPERTY TO THE CITY

Whereas, Bank of America (“Bank”) is the owner in fee simple of that certain real property located at 70 Old County Road, in the City of Brisbane, San Mateo County, California (the “Property”); and

Whereas, Bank desires to enter into a Purchase and Sale Agreement with the City by which the City would purchase the Property from the Bank for a purchase price of \$4,250,000, and subject to the other terms and conditions of the Purchase and Sale Agreement; and

Whereas, City desires to purchase the Property from the Bank on the price set forth above; and

Whereas, the purchase price of \$ 4,250,000 represents the fair market value of the Property.

NOW, THEREFORE, the City Council of the City of Brisbane resolves as follows:

Section 1. The City Council approves the Purchase and Sale Agreement concerning the Property, in a final form as approved by the City Attorney..

Section 2. The City Council accepts the Property.

Section 3. The City Council authorizes the Mayor and/or City Manager/City staff to sign all documents necessary to transfer the Property to the City and to accept the Property.

Section 4. The City Clerk is authorized and directed to record in the San Mateo County’s Recorder’s Office a deed from the Bank to the City, in a form approved by the City Attorney.

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Brisbane at a regular meeting on December 9, 2021.

Mayor of the City of Brisbane

I hereby certify that the foregoing Resolution was adopted by the City Council of the City of Brisbane at a regular meeting held on December 9, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

Name of Property: Brisbane CA5-159
Address: 70 Old County Rd., Brisbane, CA
94005
County and State: San Mateo County, California

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made between BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking association ("**Seller**"), and _____, a _____ ("**Purchaser**").

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

1. PURCHASE AND SALE

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

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

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

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

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

(e) Tangible Personal Property. Subject to the provisions of Section 9.2 and Section 9.3 hereinafter, all of Seller's right, title and interest in all appliances, fixtures, equipment, machinery, furniture, carpet, drapes and other personal property, if any, owned by Seller and located on or about the Land and the Improvements not removed by Seller by the Closing Date.

2. PURCHASE PRICE

2.1 Purchase Price. The purchase price (the "**Purchase Price**") for the Property shall be Four Million Two hundred and Fifty Thousand _____ AND NO/100 DOLLARS (\$4,250,000 .00) and shall be paid by Purchaser to Seller at the Closing (as defined in Section 6.1). The Purchase Price shall be payable at Closing in United States currency as provided in Section 6.6(a) below.

3. EARNEST MONEY

3.1 Earnest Money. Within two (2) business days after the date this fully executed Agreement has been delivered to Purchaser, in accordance with Section 10.1 of this Agreement, Purchaser shall deliver to FIRST AMERICAN TITLE INSURANCE COMPANY (the "**Escrow Agent**"), as escrow agent, at 201 South College St., Suite 1440, Charlotte, NC 28244, Attn: Peggy Hey, 704.405.3208, phey@firstam.com, by cashier's check at the address in Section 10.1 hereof or by wire transfer to such account as directed by Escrow Agent a deposit in an amount equal to ten percent (10%) of the Purchase Price in United States dollars (such amount, together with all interest, if any, earned thereon being referred to as the "**Earnest Money**"), together with an executed W-9 form if Purchaser desires to have Escrow Agent invest such Earnest Money in an interest bearing account. The Earnest Money shall be held in accordance with the Earnest Money Escrow Agreement Terms attached to this Agreement as Exhibit B. Seller shall have the option to declare a default and Terminate this Agreement if the Earnest Money and the executed W-9 form are not delivered to the Escrow Agent within such time. As used herein, "**Terminate**" and/or "**Terminated**" shall mean the termination of this Agreement, by Purchaser or Seller as applicable as expressly set forth in this Agreement, in which event thereafter neither party hereto shall thereafter have any further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives the termination of this Agreement. The Earnest Money shall be non-refundable for any reason, except Seller's default, and is effectively option money to induce Seller to sell the Property to Purchaser in accordance with this Agreement. If the sale of the Property is consummated pursuant to the terms of this Agreement, the Earnest Money shall be paid to Seller and applied to the payment of the Purchase Price.

4. CONDITIONS TO CLOSING

4.1 Title Commitment, Survey and Phase I.

(a) Prior to the execution of this Agreement, Seller has delivered or made available to Purchaser for Purchaser's review, among other items, (i) a commitment for title insurance (the "**Title Commitment**") for an Owner's Policy of Title Insurance issued by First American Title Insurance Company (the "**Title Company**"); (ii) a survey of the Property (the "**Survey**"); and (iii) a Phase I environmental site assessment of the Property ("**Phase I**").

(b) Seller shall deliver to Purchaser within thirty (30) days after full execution of this Agreement for the Property, (i) if Purchaser desires to purchase an Owner's Policy of Title Insurance and desires to incur further costs (beyond those set forth in Section 6.4) with respect thereto, an endorsement or its equivalent to the Title Commitment (the "**Endorsement**"), naming Purchaser as the insured and updating the effective date of the Title Commitment; and (ii) a Survey certified to Purchaser and updating the effective date of the Survey, if required by the Title Company, but only if Purchaser desires such update and desires to incur further costs (beyond those set forth in Section 6.4) with respect thereto, if any. Purchaser shall be required to accept title insurance from Seller's Title Company and title agent, and by execution of this Agreement, Purchaser agrees that said title agent shall close the transaction contemplated by this Agreement. Seller shall not be obligated to cure or satisfy any new requirements and exceptions contained on the Endorsement or updated Title Commitment and shall not be obligated to cure any new matters disclosed by the Survey certified to Purchaser.

(c) The conveyance of the Property shall be subject to certain Permitted Exceptions. The term "**Permitted Exceptions**", as used herein, shall mean (i) the title exceptions listed in

Purchaser's Initials _____

Schedule B of the Title Commitment, (ii) any general exceptions and exclusions contained in the standard owner's policy of the Title Company that are not deleted pursuant to the Owner's Affidavit, and (iii) the exceptions listed on Exhibit C hereto.

(d) Seller shall deliver to Purchaser within ten (10) days after full execution of this Agreement a copy of the Commercial Real Property Owner's Guide to Earthquake Safety (including whether or not the Property is situated in a Special Study Zone as designated under the Alquist-Priolo Special Earthquake Studies Zone Act, which may subject construction or development of the Property to the findings of an acceptable geologic report).

4.2 Inspection. Upon forty-eight (48) hours prior request, Purchaser may inspect the Property at any reasonable time on or before thirty (30) days after the date of this Agreement for the purpose of conducting such investigations and inspections as Purchaser shall deem appropriate, including but not limited to obtaining geotechnical reports and obtaining building reports, but excluding any Phase II environmental site assessment without Seller's express written consent, which may be withheld in Seller's sole discretion (the "**Inspection Period**"). Purchaser acknowledges that the Property is comprised of banking centers and agrees that Purchaser must be accompanied by a representative of Seller when inspecting the Property and that certain inspections must occur after business hours. Purchaser may Terminate this Agreement by notifying Seller in writing prior to the expiration of the Inspection Period, for any reason in Purchaser's sole discretion, provided the Earnest Money shall not be refundable to Purchaser, and the Earnest Money shall be paid to Seller. In the event Purchaser does not give such notification to Seller in writing prior to the expiration of the Inspection Period, Purchaser shall be deemed conclusively to have waived its right to Terminate under this Section 4.2. Purchaser shall bear the cost of all such inspections and investigations of the Property. Purchaser shall be liable for all costs and expenses, and for damages or injury to any person or property resulting from any inspection, and Purchaser shall indemnify and hold harmless Seller from any liability, claims or expenses (including, without limitation, construction liens and/or reasonable attorneys' fees) resulting therefrom. The obligations of Purchaser set forth in this Section 4.2 shall survive Closing or the termination of this Agreement, as applicable.

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

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

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

5.1 Disclaimer. PURCHASER ACKNOWLEDGES AND AGREES THAT NEITHER SELLER NOR ITS AGENTS HAVE MADE AND DO NOT MAKE, AND SELLER AND ITS AGENTS SPECIFICALLY NEGATE AND DISCLAIM, ANY REPRESENTATIONS, WARRANTIES (OTHER THAN THE WARRANTY OF TITLE AS SET OUT IN THE DEED, AS DEFINED BELOW), PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, OR THE OPERATION THEREOF, INCLUDING, BUT NOT LIMITED TO, ANY APPLIANCES, FIXTURES, EQUIPMENT, MACHINERY, FURNITURE, VAULTS AND VAULT DOORS (IF ANY ARE SO LOCATED IN THE PROPERTY), OR (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER AND ITS AGENTS HAVE NOT MADE, DO NOT MAKE AND SPECIFICALLY DISCLAIM ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE, CALIFORNIA HEALTH & SAFETY CODE, ZONING OR DEVELOPMENT OF REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN OR ON THE PROPERTY OF HAZARDOUS MATERIALS (AS DEFINED BELOW), MOLD OR MILDEW. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, PURCHASER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY SELLER OR ITS AGENTS AND AT THE CLOSING AGREES TO ACCEPT THE PROPERTY AND WAIVE ALL OBJECTIONS OR CLAIMS AGAINST SELLER AND/OR SELLER'S AGENTS (INCLUDING, BUT NOT LIMITED TO, ANY RIGHT OR CLAIM OF CONTRIBUTION) ARISING FROM OR RELATED TO THE PROPERTY OR TO ANY HAZARDOUS MATERIALS ON THE PROPERTY, MOLD OR MILDEW. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT NEITHER SELLER NOR ITS AGENTS HAVE MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

Purchaser's Initials _____

SELLER AND ITS AGENTS ARE NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT ALL OF THE PROPERTY IS SOLD BY SELLER AND PURCHASED BY PURCHASER SUBJECT TO THE FOREGOING. THE PROVISIONS OF THIS SECTION 5.1 SHALL SURVIVE THE CLOSING.

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

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

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

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

Purchaser's Initials _____

Materials being located now or previously on the Property or in the Improvements or as a result of Purchaser's failure to comply with the requirements of this Section in connection with Purchaser's proper maintenance and handling of any and all Hazardous Materials, if any, located in or on the Property or in the Improvements. This Section shall survive the Closing of this Agreement.

5.6 Release. Purchaser, on behalf of itself and its heirs, successors and assigns hereby waives, releases, acquits and forever discharges Seller, its officers, directors, shareholders, employees, agents, attorneys, brokers, property managers, representatives, and any other persons acting on behalf of Seller and the successors and assigns of any of the preceding, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Purchaser or any of its heirs, successors or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present, or future physical characteristic or condition of the Property or the Improvements (including, but not limited to, any vault that may be located in the Property and the access and operation of any such vault and the door(s) thereof, including any keys or codes with respect thereto obtained by Purchaser) including, without limitation, any Hazardous Materials in, at, on, under or related to the Property or the Improvements, or any violation or potential violation of any Environmental Requirement applicable thereto. Notwithstanding anything to the contrary set forth herein, this Section shall survive the Closing or termination of this Agreement.

THIS RELEASE INCLUDES CLAIMS OF WHICH PURCHASER IS PRESENTLY UNAWARE OR WHICH PURCHASER DOES NOT PRESENTLY SUSPECT TO EXIST WHICH, IF KNOWN BY PURCHASER, WOULD MATERIALLY AFFECT PURCHASER'S RELEASE TO SELLER. PURCHASER SPECIFICALLY WAIVES THE PROVISION OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Seller's initials _____ Purchaser's initials _____

Notwithstanding anything to the contrary set forth herein, this release shall survive the Closing or termination of this Agreement.

5.7 Natural Hazard Disclosures. Purchaser hereby waives any obligation of Seller to deliver a report detailing the natural hazards affecting the Property prepared by an independent third party pursuant to California Civil Code Sec. 1102.4. Seller shall make the natural hazard disclosures pursuant to California Government Code Sections 8589.3, 8589.4 and 8589.5, and California Public Resources Code Sections 2621.9, 2694 and 4136.

6. CLOSING

6.1 Closing. The closing (the "**Closing**") shall be held on a date determined by Seller (the "**Closing Date**"), which shall be the later of (i) if applicable, thirty (30) days after the banking center located on the Property has closed for business, if the banking center is operational on the Effective Date of this Agreement, or (ii) thirty (30) days after the expiration of the Inspection Period (the "**Closing Deadline**"), provided Seller shall have the right to extend the Closing Deadline for up to an additional thirty (30) days. The Closing shall be held in escrow by delivering all documents and the Purchase Price

Purchaser's Initials _____

to the Escrow Agent, or its designee, on or before the Closing Deadline, unless the parties mutually agree upon another time or date.

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

6.3 Proration: Taxes. At Closing, pro-rations of income and expense and the apportionment of taxes shall be as follows:

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

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

6.4 Closing Costs. Except as otherwise expressly provided herein, Seller shall pay, on the Closing Date, all of the cost of the preparation of the Deed (as defined in Section 6.5 (a) below), any documentary stamps or transfer taxes on the deed and surtax, if any (exclusive of any that, under state or local laws, are imposed on the buyer or grantee), and certified and pending special assessment liens for which the work has been substantially completed, and Purchaser shall pay, on the Closing Date, the cost of the Title Commitment, including, without limitation, the cost of any title searches or abstracts of the Property, and the premium for the Owner's Policy, all recording costs, intangible tax on any mortgage, documentary stamps or tax on any note, pending special assessment liens for which the work has not been substantially completed, the cost of any inspections conducted by or for the benefit of Purchaser, including, but not limited to, any zoning, permitting or other certification that may be obtained by Purchaser or that may be required to be delivered to Purchaser by any governmental authority as a condition to the conveyance of the Property from Seller to Purchaser, and any other customary charges and costs of closing. In addition, Purchaser shall reimburse Seller for the cost of (a) the Title Commitment and any search fees, the Survey, and the Phase I, which costs are, as of the date hereof, \$835.00 for the costs of the initial Title Commitment, \$4,100.00 for the costs of the initial Survey, and \$1,900.00 for the costs of the initial Phase I, and which costs for Survey and Phase I are in accordance with the rates negotiated by Seller with the vendors, and (b) any recertifications, endorsements and updates thereof required in connection herewith. Notwithstanding the foregoing, in the event Purchaser assigns this Agreement after the full execution of this Agreement, provided Purchaser receives Seller's consent for said assignment as outlined in Section 10.8 below, Purchaser shall be responsible for Seller's attorney's fees associated with said assignment in the amount of SEVEN HUNDRED FIFTY and 00/100 DOLLARS (\$750.00). Except as otherwise provided herein, each party shall pay its own attorneys' fees. Purchaser shall pay the cost of any escrow fees, closing fees, and any fees to prepare the Closing Statement (as defined in Section 6.5 (f) below) charged by the Escrow Agent. The premiums for the title

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insurance policies shall be at the rates promulgated by the state or recording district, as applicable, where the Property is located.

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

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

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

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

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

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

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

(g) California Form 593-C. A properly executed California Form 593-C or other evidence sufficient to establish that Purchaser is not required to withhold any portion of the Purchase Price pursuant to Sections 18805 and 26131 of the California Revenue and Taxation Code.

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

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

(a) Purchase Price. The Purchase Price by wire transfer of immediately available U.S. fund.

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

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

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

(e) California Filing. A properly executed Preliminary Change of Ownership Report.

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

7. RISK OF LOSS

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

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

8. DEFAULT

8.1 Default by Purchaser. The parties acknowledge that in the event of a default by Purchaser, Seller's actual damages would be extremely difficult or impracticable to determine; therefore, the parties agree that the amount of the Earnest Money has been agreed upon, as the parties' reasonable estimate of Seller's damages, and in the event that Purchaser fails to perform all of Purchaser's obligations under this Agreement, and any such failure continues for five (5) business days after the date of written notice (which written notice shall detail such failure), Seller shall be entitled to Terminate this Agreement by written notice to Purchaser of such termination and the Earnest Money deposited hereunder by Purchaser, together with all interest earned thereon, shall be paid to Seller within five (5) business days of such

Purchaser's Initials _____

written notice of termination, as liquidated damages and such shall be Seller's sole and exclusive remedy at law or in equity for any default by Purchaser under this Agreement; provided that such liquidated damages shall not be a limitation upon any obligation of the Purchaser to indemnify and hold harmless the Seller contained in this Agreement. The obligations of Purchaser set forth in this Section 8.1 shall survive the termination of this Agreement.

IN ADDITION, THE EVENT THE CLOSING AND THE CONSUMMATION OF THE TRANSACTION HEREIN CONTEMPLATED DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT OF PURCHASER, PURCHASER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY SELLER AS A RESULT OF PURCHASER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH FAILURE; PROVIDED, HOWEVER THAT THIS PROVISION WILL NOT LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES, NOR WAIVE OR AFFECT PURCHASER'S INDEMNITY OBLIGATIONS AND SELLER'S RIGHTS TO THOSE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT, NOR WAIVE OR AFFECT PURCHASER'S OBLIGATIONS TO RETURN OR PROVIDE TO SELLER DOCUMENTS, REPORTS OR OTHER INFORMATION PROVIDED TO OR PREPARED BY OR FOR PURCHASER PURSUANT TO APPLICABLE PROVISIONS OF THIS AGREEMENT. THEREFORE, PURCHASER AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT PURCHASER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AN AMOUNT EQUAL TO THE LIQUIDATED DAMAGES AS SET FORTH ABOVE IN THIS SECTION 8.1. SAID AMOUNT WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY PURCHASER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON DEFAULT BY PURCHASER, THIS AGREEMENT WILL BE TERMINATED AND, EXCEPT FOR PURCHASER'S INDEMNITY AND OTHER SPECIFIC OBLIGATIONS REFERRED TO HEREIN WHICH MAY BE ENFORCED BY SELLER (IN ADDITION TO COLLECTION AND RETENTION BY SELLER OF PURCHASER'S DEPOSIT AS PROVIDED HEREUNDER), NEITHER PARTY WILL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF SELLER TO COLLECT SUCH LIQUIDATED DAMAGES FROM PURCHASER AND ESCROW HOLDER.

Seller's initials _____

Purchaser's initials _____

8.2 Default by Seller. The parties acknowledge that in the event of a default by Seller, Purchaser's actual damages would be extremely difficult or impracticable to determine; therefore, the parties agree that the amount of the Earnest Money, together with (a) all interest earned thereon and (b) the sum of \$5,000.00 has been agreed upon, as the parties' reasonable estimate of Purchaser's damages, and should Seller default, and should any such default continue for five (5) business days after the date of written notice (which written notice shall detail such default), Purchaser shall be entitled to Terminate this Agreement by written notice to Seller of such termination and the Earnest Money deposited hereunder by

Purchaser's Initials _____

Purchaser, together with the sums listed in (a) and (b) above, shall be returned to Purchaser and such shall be Purchaser's sole and exclusive remedy at law or in equity for any default by Seller under this Agreement.

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

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

9. FUTURE OPERATIONS

9.1 Future Operations. From the date of this Agreement until the Closing or earlier termination of this Agreement, Seller will (a) maintain the Property in a manner consistent with Seller's past practices with respect to the Property, and (b) promptly advise Purchaser of any litigation, arbitration or administrative hearing condemnation or damage or destruction concerning the Property arising or threatened of which Seller has written notice.

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

9.3 Customer Information. Notwithstanding anything contained in this Agreement to the contrary, no computer servers, desktop stations, laptops, files, documents, records or other personal property which could reasonably be expected to contain customer information, proprietary information or other confidential information (collectively, the "**Protected Items**") shall become the property of or shall be disposed of by Purchaser. In the event any Protected Items remain on the Property after Closing, Purchaser shall notify Seller immediately and shall promptly provide access during normal business hours for Seller to retrieve said items; it being acknowledged by both Purchaser and Seller that such items may contain sensitive, confidential and/or proprietary information which is subject to federal and/or state regulations as to ownership, possession, storage, disposal, removal or other handling. Further, Purchaser shall not make any copies of the information contained in the Protected Items, nor display or disseminate the Protected Items or the information contained therein to any third parties. Purchaser agrees that it will not contact any media outlet or other third party to publicize any Protected Items left on the Property. Upon request, Purchaser shall execute a certificate in a form prepared and provided by the Seller, attesting under penalty of perjury to the foregoing. This provision shall survive Closing.

10. MISCELLANEOUS

10.1 Notices. All notices, demands and requests which may be given or which are required to be given by either party to the other under this Agreement, and any exercise of a right of termination provided by this Agreement, shall be in writing and shall be deemed effective when either: (i) personally delivered to the intended recipient; (ii) three (3) business days after having been sent, by certified or registered mail, return receipt requested, addressed to the intended recipient at the address specified below; (iii) delivered in person to the address set forth below for the party to whom the notice was given; or (iv) at noon of the business day next following after having been deposited into the custody of a nationally recognized overnight delivery service such as Federal Express Corporation or UPS, addressed to such party at the address specified below. Any notice sent as required by this section and refused by recipient shall be deemed delivered as of the date of such refusal. For purposes of this Section 10.1, the addresses of the parties for all notices are as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

IF TO SELLER:

Bank of America, National Association
Real Estate Services
Two Smith St.
Mail Code MA6-152-02-01
Wakefield, MA 01880
Attention: Kathleen M. Luongo (MH #CA5-159)
Telephone: 781.756.4818
Email: kathleen.m.luongo@bofa.com

WITH A COPY TO:

Katten Muchin Rosenman LLP
550 South Tryon St. – Suite 2900
Charlotte, NC 28202-4213
Attention: Jennifer Dunbar
Telephone: 704.344.3077
Email: jennifer.dunbar@katten.com

IF TO PURCHASER:

Attn: _____
Telephone: (____) _____
Fax: (____) _____

WITH A COPY TO:

Attn: _____
Telephone: (____) _____
Fax: (____) _____

IF TO ESCROW AGENT/
TITLE COMPANY:

First American Title Insurance Company
201 South College St., Suite 1440
Charlotte, NC 28244

Purchaser's Initials _____

Attn: Peggy Hey
Telephone: 704.405.3208
Email: phey@firstam.com

10.2 Real Estate Commissions. Seller agrees to pay Jones Lang LaSalle (“**Broker**”), upon the closing of the transaction contemplated hereby, and not otherwise, a cash commission in accordance with a separate agreement between Seller and Broker. Purchaser agrees to pay any commission due Purchaser’s broker, if applicable. Purchaser acknowledges that Seller has no obligations, either express or implied, to Purchaser’s broker and that this Agreement shall not create any privity of contract between Seller and Purchaser’s broker.

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

10.3 Entire Agreement. This Agreement embodies the entire agreement between the parties relative to the subject matter hereof, and there are no oral or written agreements between the parties, nor any representations made by either party relative to the subject matter hereof, which are not expressly set forth herein, as this Agreement supersedes all prior negotiations or agreements between Seller and Purchaser with respect to the subject matter hereof, including, but not limited to, any term sheet, letter of intent, or other communication.

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

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

10.6 Time of Essence. Time is of the essence of this Agreement; however, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the state in which the Property is located, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

10.7 Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located and the laws of the United States pertaining to transactions in such State. For any controversy hereunder, the parties shall submit to the venue of a court of competent jurisdiction in the county in which the Property is located. All of the parties to this Agreement have participated freely in the negotiation and preparation hereof; accordingly, this Agreement shall not be more strictly construed against any one (1) of the parties hereto.

10.8 Successors and Assigns; Assignment. This Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective heirs, executors, administrators, personal and legal representatives, successors and assigns. Purchaser shall not assign Purchaser’s rights under this

Purchaser’s Initials _____

Agreement without the prior written consent of Seller, which may be denied in Seller's sole discretion. In the event any assignment of rights is approved and the Property is conveyed to an assignee of Purchaser, such assignment and conveyance shall not alter, impair or relieve either Purchaser or such assignee from the waivers, acknowledgments, assumptions and agreements of Purchaser set forth herein, all of which are binding upon the assignee of Purchaser, and all of which are expressly assumed by such assignee as among the obligations and liabilities which survive the Closing by the closing of the transaction and acceptance of the Deed.

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

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

10.11 Multiple Counterparts. This Agreement may be executed in a number of identical counterparts which, taken together, shall constitute collectively one (1) agreement; but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party to be charged.

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

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

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

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

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

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

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

10.18 Digital Image; Facsimile Execution. A facsimile, digital or electronic copy (such as a pdf or other computer image) of this Agreement or any of the documents to be delivered at Closing under Section 6.5 and 6.6, and any signatures thereon, shall be considered for all purposes as originals when delivered and shall be valid and effective to bind the party so signing when delivered and released by the party so signing. The parties agree to accept a digital image of this Agreement or any of the documents to be delivered at Closing under Section 6.5 and 6.6, as executed, as a true and correct original and admissible as best evidence for the purposes of State law, Federal Rule of Evidence 1002, and like statutes and regulations, and to the extent permitted by a court with proper jurisdiction. Notwithstanding the foregoing, originals of the Deed and any local filings related thereto that are required to be recorded or filed as original signed copies shall be delivered in accordance with Article 6.

10.19 Economic Sanctions Compliance. Purchaser represents that neither Purchaser nor any of its subsidiaries or, to the knowledge of the Purchaser, any director, officer, employee, agent, affiliate or representative of the Purchaser is an individual or entity ("**Person**") currently the subject of any sanctions administered or enforced by the *United States Department of Treasury's Office of Foreign Assets Control* ("**OFAC**"), or other relevant sanctions authority (collectively, "**Sanctions**"), nor is Purchaser located, organized or resident in a country or territory that is the subject of Sanctions; and Purchaser represents and covenants that it has not knowingly engaged in, is not now knowingly engaged in, and shall not engage in, any dealings or transactions with any Person, or in any country or territory, that is the subject of Sanctions.

10.20 Employee and Insiders Representation. If Purchaser is or includes an individual person, Purchaser represents and warrants that it is not an employee or a spouse, domestic partner or dependent child of an employee of Seller and that no employee or spouse, domestic partner or dependent child of an employee of Seller has a controlling interest in Purchaser. If Purchaser is or includes an entity (such as a limited liability company, partnership, corporation), Purchaser represents and warrants that no employee or spouse, domestic partner or dependent child of an employee of Seller has a controlling interest in Purchaser. If Purchaser is or includes a trust, Purchaser represents and warrants that neither Purchaser nor any trustee or beneficiary of Purchaser is an employee or spouse, domestic partner or dependent child of an employee of Seller and that no employee or spouse, domestic partner or dependent child of an employee of Seller has a controlling interest in Purchaser. Without limiting the foregoing, the Prohibition on the Purchase of Property by Bank of America Employees and Insiders Policy ("**Policy**") prohibits Bank of America employees and their spouses or domestic partners or dependent children that live with the employee, or any other person residing in the household who derives his or her primary means of

Purchaser's Initials _____

financial support from the employee (herein, referred to as “**Household Members**”) from purchasing Bank Controlled Properties (as defined in the Policy). The prohibition applies as well to directors, executive officers and any principal shareholders of Bank of America (together referred to as “**Insiders**” and defined further in the Regulation O policy). Per Regulation O, Insiders are further defined as a Director, Regulation O Executive Officer, or a Related Interest (as defined in the Policy) of Bank of America, National Association. Related Interests are further defined as a company, partnership, or other legal entity that is controlled by an Insider, or a political or campaign committee that is controlled by or that benefits that Insider. Control is defined generally as the ability to vote twenty-five percent (25%) or more of any class of voting securities of an entity, the ability to control the election of a majority of the directors of an entity, or the ability to exercise a controlling influence over the management or policies of an entity. Purchaser represents and warrants that the transaction contemplated by this Agreement does not violate the Policy.

10.21 Attorney Consultation. Purchaser acknowledges and agrees that it has either (a) executed and delivered this Agreement only after review by, and consultation with, an attorney selected by Purchaser, in order to allow Purchaser to be advised of the meaning and appropriateness of any of the terms of this Agreement, or (b) waived the right for such review and consultation, as Purchaser has determined that the terms of this Agreement are appropriate or that review by an attorney is not necessary for Purchaser to proceed in accordance herewith.

10.22 Dispute Resolution. Seller and Purchaser agree that any action or proceeding by either of them against the other arising out of or in connection with this Agreement shall, upon the motion of either party, be submitted to arbitration. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration. The arbitrator shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. To the extent not inconsistent with State law, Seller and Purchaser shall use the procedures for arbitration and judicial reference, if any, adopted by Judicial Arbitration and Mediation Services/Endispute (“**JAMS**”), as relevant, to supplement any applicable State statutes, provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

- (a) The proceedings shall be heard in the City of San Francisco, California;
- (b) Unless the parties agree otherwise, JAMS shall provide a list of three (3) reputable arbitrators experienced in arbitrating commercial disputes to the parties who may each strike one (1) from the list, and the parties shall consent to appointment of the remaining person as the arbitrator. If JAMS is no longer in existence or unwilling to arbitrate the matter, then the American Arbitration Association shall provide said list. If neither is willing or able to arbitrate the matter, then the trial court shall appoint the arbitrator;
- (c) Any dispute regarding the selection of the arbitrator shall be resolved by JAMS or the entity providing the reference services; or if no entity is involved, by the court with appropriate jurisdiction;
- (d) The arbitrator may require one (1) or more pre-hearing conferences;
- (e) The parties shall be entitled to discovery as allowed by state law. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (f) A stenographic record of the arbitration may be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

Purchaser's Initials _____

(g) The arbitrator's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

(h) The arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the arbitrator upon all of the issues considered by the arbitrator shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the arbitrator shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

BY INITIALING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND ACCEPT THAT BY CHOOSING ARBITRATION THEY ARE GIVING UP THE RIGHT TO A JURY TRIAL.

Seller's initials _____ Purchaser's initials _____

IN ANY ACTION OR PROCEEDING ARISING HEREFROM, SELLER AND PURCHASER HEREBY CONSENT TO (A) SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION, THE JURISDICTION OF ANY COMPETENT COURT IN THE STATE OF CALIFORNIA, AND (B) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY CALIFORNIA LAW. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE EXPIRATION, TERMINATION OR CLOSING OF THIS AGREEMENT.

(SIGNATURES FOLLOW ON NEXT PAGE)

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

SELLER:
BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking association

**DATE OF EXECUTION
BY SELLER:**

_____, 202__

By: _____
Name: Kathleen M. Luongo
Title: Vice President
Date: _____

PURCHASER:

_____, a

**DATE OF EXECUTION
BY PURCHASER:**

_____, 202__

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT AND AGREEMENT BY THE ESCROW AGENT

The undersigned joins in execution of this Agreement for the purpose of acknowledging and agreeing to the terms and provisions of this Agreement relative to the obligations of Escrow Agent hereunder, including, without limitation, the Earnest Money Escrow Agreement Terms attached to this Agreement as Exhibit B.

Escrow Agent has not, as of the date hereof, received the Earnest Money, but on receipt thereof shall (a) hold the Earnest Money in accordance with this Agreement and the Earnest Money Escrow Agreement Terms attached to this Agreement as Exhibit B, and (b) issue a notice of its receipt of the Earnest Money to Purchaser and Seller by email to the addresses noted herein.

DATE OF EXECUTION
BY ESCROW AGENT:

_____, 202__

ESCROW AGENT:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT AND AGREEMENT BY PURCHASER'S BROKER

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

PURCHASER'S BROKER:

DATE OF EXECUTION
BY PURCHASER'S BROKER:

_____, 202__

By: _____

Name: _____

Title: _____

EXHIBIT A

LAND

Legal Description for the Land to be verified by title commitment and survey

Being that property situated in the City of Brisbane, County of San Mateo, State of California, and is described as follows:

All of PARCEL B as shown on that certain map entitled "PARCEL MAP OF A RESUBDIVISION OF LOT 1, BLOCK A, TRACT 778, CROCKER INDUSTRIAL PARK, UNIT NO. 1", recorded August 1, 1974 in Volume 25 of Parcel Maps, Page 37, Records of San Mateo County California.

Address: 70 Old County Rd., Brisbane, CA 94005
San Mateo County Tax APN: 005-212-120

EXHIBIT B

EARNEST MONEY ESCROW AGREEMENT TERMS

These Earnest Money Escrow Agreement Terms are made by and among the Seller, Purchaser, and Escrow Agent referenced in the Purchase and Sale Agreement (the "**Agreement**").

RECITALS

Seller and Purchaser have entered into the Agreement concerning Property referenced in the Agreement.

In connection with the Agreement, Seller and Purchaser have requested Escrow Agent to receive funds to be held in escrow and applied in accordance with the terms and conditions of this Escrow Agreement.

NOW THEREFORE, in consideration of the above recitals, the mutual promises set forth herein and other good and valuable consideration, the parties agree as follows:

1. ESCROW AGENT. First American Title Insurance Company hereby agrees to act as Escrow Agent in accordance with the terms and conditions hereof.

2. INITIAL DEPOSIT/ADDITIONAL DEPOSITS. Escrow Agent shall receive an initial deposit in the amount set forth in Section 3.1 of the Agreement. Any additional amounts deposited with Escrow Agent shall be added to the initial deposit and together with the initial deposit and all interest and other earnings thereon shall be referred to herein collectively as the "**Escrow Fund**".

3. DEPOSITS OF FUNDS. All checks, money orders or drafts will be processed for collection in the normal course of business. Escrow Agent may initially deposit such funds in its custodial or escrow accounts which may result in the funds being commingled with escrow funds of others for a time; however, as soon as the Escrow Fund has been credited as collected funds to Escrow Agent's account, then Escrow Agent shall immediately deposit the Escrow Fund into an interest bearing account with any reputable trust company, bank, savings bank, savings association, or other financial services entity approved by Seller and Purchaser, not to be unreasonably withheld. Deposits held by Escrow Agent shall be subject to the provisions of applicable state statutes governing unclaimed property. Seller and Purchaser will execute the appropriate Internal Revenue Service documentation for the giving of taxpayer identification information relating to this account. Seller and Purchaser do hereby certify that each is aware the Federal Deposit Insurance Corporation coverages apply to a maximum amount of \$250,000.00 per depositor. Further, Seller and Purchaser understand that Escrow Agent assumes no responsibility for, nor will Seller or Purchaser hold same liable for any loss occurring which arises from a situation or event under the Federal Deposit Insurance Corporation coverages.
 - 3.1. All interest will accrue to and be reported to the Internal Revenue Service for the account of Purchaser, at the address set forth in Section 10.1 of the Agreement, Tax Identification No: _____.

 - 3.2. Escrow Agent shall not be responsible for any penalties, or loss of principal or interest, or any delays in the withdrawal of the funds which may be imposed by the depository institution as a result of the making or redeeming of the investment pursuant to Seller and Purchaser instructions.

4. DISBURSEMENT OF ESCROW FUND. Escrow Agent may disburse all or any portion of the Escrow Fund in accordance with and in reliance upon written instructions from both Seller and Purchaser. The Escrow Agent shall have no responsibility to make an investigation or determination of any facts underlying such instructions or as to whether any conditions upon which the funds are to be released have been fulfilled or not fulfilled, or to whom funds are released. If Escrow Agent receives a notice from Seller or Purchaser that the Agreement has been Terminated other than pursuant to Section 8.2 of the Agreement on account of Seller's default, Escrow Agent shall immediately deliver all of the Escrow Fund to Seller. Escrow Agent shall release the Escrow Fund to Seller without the consent of Purchaser or notice to Purchaser.

5. DEFAULT AND/OR DISPUTES. In the event any party to the transaction underlying this Agreement shall tender any performance after the time when such performance was due, Escrow Agent may proceed under this Agreement unless one of the parties to this Agreement shall give to the Escrow Agent written direction to stop further performance of the Escrow Agent's functions hereunder. In the event written notice of default or dispute is given to the Escrow Agent by any party, or if Escrow Agent receives contrary written instructions from any party, the Escrow Agent will promptly notify all parties of such notice. Thereafter, Escrow Agent will decline to disburse funds or to deliver any instrument or otherwise continue to perform its escrow functions, except upon receipt of a mutual written agreement of the parties or upon an appropriate order of court. In the event of a dispute, the Escrow Agent is authorized to deposit the escrow into a court of competent jurisdiction for a determination as to the proper disposition of said funds. In the event that the funds are deposited in court, the Escrow Agent shall be entitled to file a claim in the proceeding for its costs and counsel fees, if any. Notwithstanding the foregoing, if Escrow Agent receives a notice from Seller that the Agreement has been Terminated based on Purchaser's default, in accordance with Section 8.1 of the Agreement, Escrow Agent shall immediately deliver all of the Escrow Fund to Seller without the consent of Purchaser or notice to Purchaser.

6. PERFORMANCE OF DUTIES. In performing any of its duties under this Agreement, or upon the claimed failure to perform its duties hereunder, Escrow Agent shall not be liable to anyone for any damages, losses or expenses which may occur as a result of Escrow Agent so acting, or failing to act; provided, however, Escrow Agent shall be liable for damages arising out of its willful default or gross negligence under this Agreement. Accordingly, Escrow Agent shall not incur any such liability with respect to (i) any good faith act or omission upon advice of counsel given with respect to any questions relating to the duties and responsibilities of Escrow Agent hereunder, or (ii) any good faith act or omission in reliance upon any document, including any written notice or instructions provided for in the Agreement, not only as to its due execution and to the validity and effectiveness of its provisions but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the proper person or persons and to conform with the provisions of this Agreement.

7. LIMITATIONS OF LIABILITY. Escrow Agent shall not be liable for any loss or damage resulting from the following:
 - 7.1. The effect of the transaction underlying this Agreement including without limitation, any defect in the title to the real estate, any failure or delay in the surrender of possession of the property, the rights or obligations of any party in possession of the property, the financial status or insolvency of any other party, and/or any misrepresentation of fact made by any other party;

 - 7.2. The default, error, act or failure to act by any other party to the escrow;

- 7.3. Any loss, loss of value or impairment of funds which have been deposited in escrow while those funds are in the course of collection or while those funds are on deposit in a depository institution if such loss or loss of value or impairment results from the failure, insolvency or suspension of a depository institution;
- 7.4. Any defects or conditions of title to any property that is the subject of this escrow provided, however, that this limitation of liability shall not affect the liability of First American Title Insurance Company under any title insurance policy which it has issued or may issue. NOTE: No title insurance liability is created by this Agreement.
- 7.5. Escrow Agent's compliance with any legal process including but not limited to, subpoena, writs, orders, judgments and decrees of any court whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.
8. HOLD HARMLESS. Purchaser and Seller shall indemnify the Escrow Agent and hold the Escrow Agent harmless from all damage, costs, claims and expenses arising from performance of its duties as Escrow Agent including reasonable attorneys' fees, except for those damages, costs, claims and expenses resulting from the gross negligence or willful misconduct of the Escrow Agent.
9. RELEASE OF PAYMENT. Payment of the funds so held in escrow by the Escrow Agent, in accordance with the terms, conditions and provisions of this Escrow Agreement, shall fully and completely discharge and exonerate the Escrow Agent from any and all future liability or obligations of any nature or character at law or equity to the parties hereto or under this Agreement.
10. NOTICES. Shall be sent in accordance with the within Agreement.
11. MISCELLANEOUS.
- 11.1. This Agreement shall be binding upon and inure to the benefit of the parties respective successors and assigns.
- 11.2. This Agreement shall be governed by and construed in accordance with the Laws of the State in which the Property is located.
- 11.3. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute but one and the same instrument.
- 11.4. Time shall be of the essence of this Agreement and each and every term and condition hereof.
- 11.5. In the event a dispute arises between Purchaser and Seller under this Agreement, the losing party shall pay the attorney's fees and court costs of the prevailing party.

EXHIBIT C

PERMITTED EXCEPTIONS TO DEED

1. Rights of parties in possession, if any.
2. Governmental rights of police power or eminent domain unless notice of the exercise of such rights appears in the public records as of the date hereof; and the consequences of any law, ordinance or governmental regulation including, but not limited to, building and zoning ordinances.
3. Defects, liens, encumbrances, adverse claims or other matters (a) not known to the Grantor and not shown by the public records but known to the Grantee as of the date hereof and not disclosed in writing by the Grantee to the Grantor prior to the date hereof; (b) resulting in no loss or damage to the Grantee; or (c) attaching or created subsequent to the date hereof.
4. Visible and apparent easements and all underground easements, the existence of which may arise by unrecorded grant or by use.
5. Any and all unrecorded leases, if any, and rights of parties therein.
6. Taxes and assessments for the year of closing and subsequent years.
7. All judgments, liens (excluding construction liens), assessments, code enforcement liens, encumbrances, declarations, mineral reservations, covenants, restrictions, reservations, easements, agreements and any other matters as shown on the public records.
8. Any state of facts which an accurate survey or inspection of the Property would reveal, including inland/tidal wetlands designation if applicable.
9. Any liens for municipal betterments assessed after the date of the within Agreement and/or orders for which assessments may be made after the date of the within Agreement.
10. Without limiting the foregoing, all covenants, conditions, restrictions and other matters of record recorded or filed in the applicable records of San Mateo County, California, with respect to the real property conveyed hereby.
11. All exceptions and other matters shown on that First American Title Insurance Company Title Commitment No. NCS-401470-767A-NC, with an effective date of February 10, 2021 at 8:00 a.m.

EXHIBIT D

FORM OF BILL OF SALE

BILL OF SALE AND ASSIGNMENT

FOR VALUE RECEIVED, BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking association (“**Assignor**”), hereby, as of _____, 202__, sells, bargains, conveys, assigns, transfers and sets over to _____, a _____ (“**Assignee**”), its successors and assigns forever, all of Seller’s right, title and interest in and to the furniture, fixtures, equipment and other items of personal property, if any, owned by Seller (collectively, the “**Personal Property**”), all as located on or attached to the real estate and the building and improvements erected thereon located at 70 Old County Road, Brisbane, California (the “**Property**”).

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

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

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

Notwithstanding anything contained herein to the contrary, no computer servers, desktop stations, laptops, files, documents, records or other personal property which could reasonably be expected to contain customer information, proprietary information or other confidential information (collectively, the “**Protected Items**”) shall become the property of or shall be disposed of by Assignee. In the event any Protected Items remain on the Property after closing, Assignee agrees to notify Assignor immediately and to promptly provide access during normal business hours for Assignor to retrieve said items; it being acknowledged by both Assignee and Assignor that such items may contain sensitive, confidential and/or proprietary information which is subject to federal regulations as to ownership, possession, storage, disposal, removal or other handling. Further, Assignee agrees not to make any copies of the information contained in the Protected Items, nor display or disseminate the Protected Items or the information contained therein to any third parties. Assignee agrees that it will not contact any media outlet or other third party to publicize any Protected Items left on the Property. In addition, upon request, Assignee agrees to execute a certificate in a form prepared and provided by the Assignor, attesting under penalty of perjury to the foregoing. This provision shall survive the Closing of the sale of the Property.

The parties agree to accept a digital image of this Bill of Sale and Assignment, as executed, as a true and correct original and admissible as best evidence for the purposes of State law, Federal Rule of Evidence 1002, and the like statutes and regulations.

IN WITNESS WHEREOF and intending to be legally bound hereby, the undersigned have executed this Bill of Sale and Assignment as of the date first set forth hereinabove.

ASSIGNOR:

BANK OF AMERICA, NATIONAL ASSOCIATION, a
national banking association

By: _____
Name: Kathleen M. Luongo
Title: Vice President

ASSIGNEE:

_____, a _____

By: _____
Name: _____
Title: _____