

## **DISCLAIMER, WAIVER, AND CONFIDENTIALITY AGREEMENT**

This Disclaimer, Waiver, and Confidentiality Agreement (this “**Agreement**”) is executed this \_\_\_\_ day of \_\_\_\_\_, 2010 by \_\_\_\_\_ (the “**Requesting Party**”), with an address of \_\_\_\_\_, \_\_\_\_\_, and is delivered to, and is for the benefit of BANK OF AMERICA, N.A. (the “**Mortgagee**”)

Reference is made to that certain Mortgagee’s Notice of Sale of Real Estate (the “**Notice of Sale**”) attached hereto as Exhibit A. As more particularly described in the Notice of Sale, the Mortgagee will sell at public auction on Thursday, October 21, 2010 at 11:00 A.M. (the “**Sale**”), real property located at Hedge Road and High Cliff Road, Plymouth, Massachusetts, as described more particularly in the Notice of Sale (the “**Real Property**”). In addition, as part of the Sale, the Mortgagee will also sell certain personal property related to the Real Property in which the Mortgagee has been granted a security interest (such personal property together with the Real Property, collectively, the “**Mortgaged Property**”).

The Requesting Party has expressed its interest to Mortgagee in bidding at the Sale, and in connection therewith, has requested that the Mortgagee provide the Requesting Party with certain information relating to the Mortgaged Property, as more particularly described on Schedule 1 attached hereto and incorporated herein by reference (singly and collectively, the “**Evaluation Materials**”). The Mortgagee has agreed to allow the Requesting Party to review copies of the Evaluation Materials at this time, but only upon the terms and conditions expressly set forth herein:

In consideration of permitting the Requesting Party to review copies of the Evaluation Materials, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Requesting Party hereby warrants to, represents to, and agrees with the Mortgagee as follows:

1. The Evaluation Materials are in the form delivered to the Mortgagee, and the Mortgagee has not made any independent inquiry as to the content, validity, accuracy, completeness, and/or sufficiency of the Evaluation Materials. The Mortgagee makes absolutely **NO REPRESENTATIONS OR WARRANTIES WHATSOEVER** with respect to the Evaluation Materials, the Mortgaged Property, and/or as to the validity, accuracy, completeness, and/or sufficiency of the Evaluation Materials, whether at the time that the Evaluation Materials were prepared, as of the date hereof, and/or otherwise in connection with the Sale, including, without limitation, as such total exclusion of representations and warranties shall be further described in the Sales Agreement to be executed by the purchaser at the Sale. No contractual or other relationship exists between the preparers of the Evaluation Materials and the Requesting Party, or with any other party (including any other “Mortgagee Parties” as defined below).

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING AND THE APPLICABILITY OF THE OTHER PROVISIONS OF THIS AGREEMENT, THE REQUESTING PARTY EXPRESSLY AND IRREVOCABLY ACKNOWLEDGES AND AGREES THAT: (I) ALL EVALUATION MATERIALS PROVIDED OR TO BE PROVIDED TO THE REQUESTING PARTY PURSUANT HERETO SHALL BE **FOR**

**INFORMATIONAL PURPOSES ONLY** AND MAY NOT BE RELIED ON BY THE REQUESTING PARTY, OR ANY OTHER PARTY, IN ANY MANNER WHATSOEVER; (II) NEITHER THE MORTGAGEE NOR ANY OF ITS OFFICERS, EMPLOYEES, ATTORNEYS, AGENTS, REPRESENTATIVES, AUCTIONEERS, AND/OR ANY PREPARERS OF THE EVALUATION MATERIALS (COLLECTIVELY, “**MORTGAGEE PARTIES**”), HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER TO OR FOR THE BENEFIT OF THE REQUESTING PARTY RELATING IN ANY WAY TO THE EVALUATION MATERIALS (OR OTHERWISE), WHETHER EXPRESS, IMPLIED, OR IMPOSED BY LAW, AND NONE OF THE MORTGAGEE PARTIES SHALL HAVE ANY LIABILITY OR OTHER OBLIGATION WHATSOEVER TO THE REQUESTING PARTY RELATING IN ANY WAY TO THE EVALUATION MATERIALS, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE VALIDITY, SUFFICIENCY, COMPLETENESS, AND/OR ACCURACY THEREOF; (III) THE REQUESTING PARTY SHALL AT ALL TIMES BE RESPONSIBLE FOR PERFORMING ITS INDEPENDENT DUE DILIGENCE AND ANALYSIS WITH RESPECT TO ALL MATTERS RELATING IN ANY WAY TO THE SALE AND/OR THE MORTGAGED PROPERTY, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE EVALUATION MATERIALS AND THE VALIDITY, SUFFICIENCY, COMPLETENESS, AND/OR ACCURACY THEREOF AND/OR WITH RESPECT TO DETERMINING THE LEGAL RIGHTS AND OBLIGATIONS OF ALL APPLICABLE PARTIES THEREUNDER OR OTHERWISE RELATING THERETO; AND (IV) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE REQUESTING PARTY SPECIFICALLY ACKNOWLEDGES THAT THE EVALUATION MATERIALS PROVIDED OR TO BE PROVIDED PURSUANT HERETO: (A) HAVE BEEN COMPILED AND PROVIDED TO THE REQUESTING PARTY FOR INFORMATIONAL AND CONVENIENCE PURPOSES ONLY TO ASSIST THE REQUESTING PARTY IN PERFORMING ITS INDEPENDENT DUE DILIGENCE IN CONNECTION WITH THE SALE, AND (B) ARE NOT MEANT TO (AND SHALL NOT) CONSTITUTE EITHER: (1) A COMPLETE OR EXHAUSTIVE COMPILATION, LISTING, OR OTHER DETERMINATION BY ANY OF THE MORTGAGEE PARTIES WITH RESPECT TO THOSE MATERIALS, ISSUES, DOCUMENTS, PUBLIC AND NON-PUBLIC RECORDS, OR OTHER MATTERS WHICH MAY BE NECESSARY OR DESIRABLE FOR THE REQUESTING PARTY TO OBTAIN, REVIEW, AND CONSIDER INDEPENDENTLY IN PERFORMING ITS DUE DILIGENCE AND/OR IN DETERMINING WHETHER OR NOT MAKE A BID AT THE SALE IN ACCORDANCE WITH THE SALE REQUIREMENTS AND/OR (2) ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, BY ANY OF THE MORTGAGEE PARTIES RESPECTING THE FOREGOING.

2. The Requesting Party expressly and irrevocably: (i) acknowledges and agrees to the terms and conditions set forth in this Agreement, (ii) **WAIVES** any and all claims against the Mortgagee and any of the preparers of the Evaluation Materials, and/or any other Mortgagee Parties, which the Requesting Party may have now, or which may arise hereafter, in connection with the Evaluation Materials, and (iii) acknowledges and agrees that in no event and under no circumstance shall the Mortgagee, any preparers of the Evaluation Materials, and/or any other Mortgagee Parties have any liability or other obligation whatsoever to the Requesting Party relating in any way to the Evaluation Materials, including, without limitation, with respect to the validity, sufficiency, and/or accuracy thereof.

3. The Requesting Party further expressly acknowledges and agrees that the contents of the Evaluation Materials are, and shall remain, confidential and may not be shared with, or disclosed to, any other party other than the employees and attorneys of the Requesting Party directly involved in this matter, and then only if such parties agree to be bound by the terms of this Agreement. Moreover, if the Requesting Party is not the successful bidder at the Sale or upon the Mortgagee's request, the Requesting Party shall either return all copies of the Evaluation Materials to the Mortgagee, or certify to the Mortgagee in writing that Requesting Party has destroyed the Evaluation Materials (including any copies thereof which the Requesting Party has made).

4. Given the sensitive and confidential nature of certain of the Evaluation Materials, the Mortgagee may be irreparably damaged by any breach of this Agreement. Requesting Party agrees that Mortgagee may enforce this Agreement by legal action, including injunctive and other equitable relief. Further, the Requesting Party shall indemnify each of the Mortgagee Parties and hold each of them harmless from and against any claims, suits, actions, judgments, loss, cost, expense, and liability of whatever nature which may be threatened, asserted, or brought against, or imposed upon, any of them by virtue of the Requesting Party's failure to comply in any material respect with the terms of this Agreement. The provisions of this paragraph shall survive the Sale and the delivery by the Mortgagee of the "Conveyancing Documents" (as defined in the Sales Agreement to be executed by the purchaser at the Sale).

5. The Requesting Party warrants and represents to the Mortgagee that this Agreement has been duly authorized, executed, and delivered by such Requesting Party and is in full force and effect as of the date set forth above, and the agreements and obligations of such Requesting Party contained herein constitute the legal, valid, and binding obligations of such Requesting Party, enforceable against it in accordance with their respective terms, except to the extent that the enforcement thereof or the availability of equitable remedies may be limited by applicable bankruptcy, reorganization, insolvency, moratorium, fraudulent transfer, fraudulent conveyance, or similar laws now or hereafter in effect relating to or affecting creditors, rights generally, or by general principles of equity, or by the discretion of any court in awarding equitable remedies, regardless of whether such enforcement is considered in a preceding in equity or at law.

6. The Requesting Party has read and understands each of the terms and conditions of this Agreement and is entering into this Agreement freely and voluntarily, without duress, after having had an opportunity for consultation with independent counsel of its own selection, and not in reliance upon any representations, warranties, or agreements made by the Mortgagee.

7. All rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts, and this Agreement is intended to take effect as a sealed instrument as of the date first written above.

[Remainder of Page Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this Disclaimer, Waiver, and Confidentiality Agreement as of the date first set forth above.

\_\_\_\_\_

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

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

Title \_\_\_\_\_

Tel No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

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

**EXHIBIT A**

[Mortgagee's Notice of Sale of Real Estate]

**SCHEDULE 1**

[Evaluation Materials (Table of Contents)]