COUNCIL ITEM 7E
DATE 12/5/11

MEMORANDUM

TO: JERRY A. BENTROTT, CITY MANAGER

THRU: ROGER G. ORR, CITY ATTORNEY

FROM: STEFANIE BESKOVOYNE, ASSISTANT CITY ATTORNEY SB

DATE: NOVEMBER 30, 2011

SUBJECT: NEIGHBORHOOD STABILIZATION PROGRAM 3 ("NSP3") CONTRACT FOR PURCHASE OF FORECLOSED PROPERTY

Attached for review and approval by the Port St. Lucie City Council is a sample contract for the donation of a foreclosed property to the Neighborhood Stabilization Program 3 ("NSP3"). The following provides a brief summary of the pertinent information concerning this real estate transaction. With Council's approval, NSP will proceed with negotiating contract terms to finalize this donation.

Address:	2450 SW Madiera Street, Port St. Lucie, Florida
Legal Description:	Lot 1, Block 1668, Port St. Lucie Section Thirty-One
Parcel ID:	3420-650-0127-000/2
Seller:	Bank of America, NA
List Price:	N/A
Appraised Value:	N/A
Purchase Price:	$1.00

Please place this Contract on the Consent Agenda for the December 5, 2011 City Council Meeting. If you should you have any questions or need additional information, please do not hesitate to contact me at ext. 6321.

SB/bb
Attach.

c: Tricia Swift-Pollard, Director, Community Services Department (via e-mail)
Marcia Dedert, Finance Director (via e-mail)

H:\Stefanie\NSP\2450 SW Madiera lot donation\2450 SW Madiera st - lot donation memo to cm.doc

RECEIVED
NOV 30 2011
City Manager's Office

REO ID #

BAC Home Loans, LP

AGREEMENT TO SELL REAL ESTATE

This Contract of Sale ("Contract") is made on . This contract and any addenda, riders or amendments together constitute the "Agreement."

BETWEEN **BAC Home Loans Servicing, LP, a subsidiary or Bank of America, N.A.** as authorized servicing agent for , ("Seller"), and ("Buyer"). It is agreed that the Seller shall sell and the Buyer shall buy the following described property UPON THE TERMS AND CONDITIONS HEREINAFTER SET FORTH, which shall include the STANDARDS FOR REAL ESTATE TRANSACTIONS set forth within this Agreement.

Buyer and Seller may each be referred to herein as a "Party" and collectively as the "Parties." Seller is the owner of the property described **by Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property").

1. **PROPERTY ADDRESS** of real estate and any improvements thereon ("Property"):

2. **EFFECTIVE DATE:**
   The date of Seller's execution of this Agreement shall be the "Effective Date" of the Agreement, notwithstanding any prior understanding or agreement with respect to the financial terms set forth herein. The Agreement shall be null and void if the Agreement signed by the Buyer is not actually received by the Seller before the Seller accepts a competing offer, or gives verbal or written notice of revocation to the Buyer, the Buyer's agent or attorney, or the listing agent. The Agreement must be approved by the Seller's management, and it must be signed by all parties in order to be binding.

3. **PURCHASE PRICE: $**

4. **FINANCING:**
   The Agreement is not contingent on the Buyer obtaining financing for the purchase of the Property.

5. **RESTRICTIONS, EASEMENTS, LIMITATIONS:**
   Buyer shall take title to the Property subject to all matters of record unless otherwise set forth in Exhibit "B" attached hereto and incorporated here by this reference.

6. **TIME OF THE ESSENCE; CLOSING DATE:**
   (a) It is agreed that time is of the essence with respect to all dates specified in the Agreement and any addenda, riders, or amendments thereto, meaning that all deadlines are intended to be strict and absolute. The Agreement shall terminate automatically, and without notice, if it is not concluded by the Closing Date, or any extension thereof.

   (b) The closing shall take place on or before ("Closing Date"), unless the Closing Date is extended in writing signed by the Seller and the Buyer, or extended by the Seller under the terms of the Agreement. If the closing does not occur (through no fault of Seller) by the Closing Date, the Agreement is automatically terminated unless extended, in writing, by both parties.

BUYER (Initials) _____

SELLER (Initials) _____

7. **DOCUMENTS FOR CLOSING:**
Seller or Seller's representative shall prepare a deed and after funding of this transaction, Seller shall be responsible for recording the deed. Seller shall provide all title insurance and closing services through Forum Title Insurance Company. Buyer agrees to pay all title insurance and closing costs shall be split equally among the parties. The deed to be delivered at closing shall be a deed that covenants that grantor grants only that title that grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise (which deed may be known as a Special Warranty, Limited Warranty, Quitclaim or Bargain and Sale Deed). Any reference to the term "deed" or "Special Warranty Deed" herein shall be construed to refer to such form of deed.

8. **PROPERTY CONDITION:**
(a) Buyer acknowledges and agrees that Seller has not made and hereby specifically disclaims any warranty, guaranty, or representation, oral or written, past, present, or future, of, as to, or concerning (i) the nature, square footage, condition, value, or quality of the geology, the presence of environmental hazards and the suitability thereof and the Property for any and all activities and uses which Buyer may elect to conduct thereon, (ii) the manner, construction, condition, quality, the state of repair or lack of repair of any of the Property, (iii) except for any warranties contained in the deed, the nature and extent of any right of way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise (iv) the compliance of the Property or its operation with any laws, rules, ordinances, or regulations of any government or other body, and, (v) the income to be derived from the Property, Buyer hereby expressly acknowledges and agrees that Buyer has thoroughly inspected and examined the Property to the extent deemed necessary by the Buyer in order to enable Buyer to evaluate the purchase of the Property. Buyer hereby further acknowledges and agrees that Buyer is relying solely upon the inspection, examination, and evaluation of the Property by Buyer and that Buyer is purchasing the Property on an "AS IS, WHERE IS" and "WITH ALL FAULTS" basis and not on any information provided or to be provided by Seller. Buyer acknowledges that it has sufficient information regarding the property is relying on its own experts and not seller or any information provided by seller, if any, and is not looking, to seller for any additional information with respect to condition of property. Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, Seller makes no warranty of representation expressed or implied, or arising by operation of law, including, but in no way limited to any warranty of condition, habitability, merchantability, or fitness for a particular purpose except otherwise specified herein. It is further agreed that Seller has not warranted, and does not hereby warrant the Property or any improvements located thereon now or in the future will meet or comply with the requirements of any safety code or regulation of the state, city, or county in which the Property is located, or any other authority or jurisdiction.

(b) If the Property was built prior to 1978, the Property may contain lead-based paint or other sources of lead. Exposure to lead-based paint or other sources 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, behavior problems and impaired memory. Lead poisoning also poses a particular risk to pregnant woman. Buyer agrees that it is purchasing the Property "as-is" without any representations or warranties whatsoever as to the condition of the Property. Buyer further agrees that the Seller has no responsibility or liability for, and Buyer hereby unconditionally releases Seller from, any and all liability, both known and unknown, present or future, that is based upon or related to, the existence of lead or lead-based paint on or about the Property. Buyer acknowledges that it has been informed by Seller of possible health hazards posed by exposure to lead from lead-based paint or other sources on or about the Property. Buyer further acknowledges that Buyer has waived the opportunity to conduct a risk assessment for the presence of lead-based paint hazards on the Property. Finally, Buyer releases BAC Home Loans, LP from any and all claims respecting the property and the sale of the property.

9. **DELIVERY OF FUNDS:**

BUYER (Initials) _____

SELLER (Initials) _____

Regardless of local custom or practice, Buyer shall deliver all funds due the Seller from the sale by wire transfer prior to delivery of the deed by the Seller..

10. DEFECTS IN TITLE:

If the Buyer 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 the Agreement by giving written notice of the termination to the Buyer. The Seller is not obligated to (A) remove any exception, (B) bring any action or proceeding or bear any expense in order to convey title to the Property; or (C) make the title marketable or insurable. Any attempt by the Seller to remove such title exceptions shall not impose an obligation upon the Seller to remove those exceptions.

11. REPRESENTATIONS AND WARRANTIES:

In addition to Buyer's representations and warranties made elsewhere herein, the Buyer represents and warrants to the Seller the following:

(a) Buyer is purchasing the Property solely in reliance on its own information and/or findings and not on any information, representation or warranty provided or to be provided by the Seller, its servicers, representatives, brokers, employees, agents, or assigns, including, but not limited to, any information provided on any brochures or web sites of Seller or Seller's agents or brokers, or any information on the Multiple Listing Service;

(b) Neither the Seller, nor its servicers, employees, representatives, brokers, agents or assigns, has made any representations or warranties, implied or express, relating to the condition of the Property or the contents thereof;

(c) The Buyer has not relied on any representation or warranty from the Seller, or Seller's agents or brokers regarding the nature, quality, or workmanship of any repairs made by the Seller;

(d) The Buyer will not occupy, or cause or permit others to occupy, the Property prior to closing and funding; and

(e) Buyer is not an officer, an employee, a director, or a Business Partner (as defined below) of BAC Home Loans, LP or its parent company, subsidiaries, or affiliated companies. Buyer understands and acknowledges that Seller prohibits such persons from purchasing the Property, directly, indirectly, or through a family member or an interest in a partnership, corporation, joint venture, trust, or other entity. "Business Partner" shall mean any agent, broker, appraiser, attorney, trustee, property inspection or, title company, representative, or vendor of BAC Home Loans LP, or its parent company, subsidiaries, or affiliated companies.

12. CONDITIONS TO THE SELLER'S PERFORMANCE:

The Seller shall have the right, at the Seller's sole discretion, to extend the Closing Date or to terminate the 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) a third party having an interest in the Property (or the loan that was secured by the Property) has requested that the servicing lender, or any other party, release the servicing of or repurchase such loan or the Property;

(c) full payment of any property, fire or hazard insurance claim is not confirmed prior to the Closing Date;

(d) any third party, whether tenant, homeowner's association, or otherwise, exercises rights under a right of first

BUYER (Initials) _____

SELLER (Initials) _____

refusal to purchase the Property;

(e) the Buyer is the former mortgagor of the Property whose interest was foreclosed, or is related to or affiliated in any way with the former mortgagor, and the Buyer has not disclosed this fact to the Seller prior to the Seller's acceptance of the Agreement. Such failure to disclose shall constitute a material breach under the Agreement, entitling the Seller to exercise any of its rights and remedies, including, without limitation, retaining the earnest money deposit; or

(f) the Seller, at the Seller's sole discretion, determines that the sale of the Property to the Buyer, or any related transactions, are in any way associated with illegal activity of any kind.

13. SELLER'S REMEDIES FOR BUYER'S DEFAULT:
In the event of Buyer's material breach or material misrepresentation of any fact under the terms of the Agreement, the Seller is automatically released from the obligation to sell the Property to the Buyer, and the Seller and any indemnified parties shall not be liable to the Buyer for any Claims arising out of or relating in any way to the Seller's failure to sell and convey the Property to Buyer.

14. INDEMNIFICATION:
Buyer agrees to indemnify and hold harmless Seller and its agents from and against any and all losses, claims, demands, liabilities, costs, damages and expenses (including attorney's fees and costs) that Seller may incur arising from the Buyer's actions or failure to act on, respond to or comply with any local, state or federal law, rule or ordinance affecting the Property including, but not limited to, building code requirements, nuisance claims or abatements thereof, condemnation proceedings, lien enforcement actions, and the like. Further, except for money claims for nuisance or utility charges arising prior to the date of title transfer, Buyer acknowledges that the Property may be subject to proceedings in law or equity to abate, correct, or otherwise comply with local, state or federal requirements regarding the Property and that this indemnity shall also apply in such instances.

15. RISK OF LOSS:
In the event of fire, destruction, or other casualty loss to the Property after the Seller's acceptance of the Agreement and prior to closing and funding, the Seller may, at its sole discretion, repair or restore the Property, or either Party may terminate the Agreement. If the Seller elects to repair or restore the Property, then the Seller may, at its sole discretion, limit the amount to be expended. If the Seller elects to repair or restore the Property, the Buyer shall either (a) acquire the Property in its AS-IS condition at the time of such acquisition at the original purchase price provided in Section 3 herein with no reduction for such loss, or (b) terminate the Agreement.

16. SPECIAL CLAUSES:
RESERVED

17. OTHER AGREEMENTS:
No other agreements or representations, unless specifically set forth in the Agreement, shall be binding upon any of the parties. This Agreement sets forth the full and complete understanding of the parties hereto. No amendment, modification or supplement to this Agreement shall be binding unless in writing and duly executed and delivered by each of the parties hereto to the other party. Nothing herein shall be construed as constituting a partnership or joint venture between Buyer and Seller. Neither buyer nor seller has employed a broker and cross indemnification for broker fees and commissions.

18. 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 the Agreement and neither Party shall have any further rights or liabilities hereunder.

BUYER (Initials) _____

SELLER (Initials) _____

19. KEYS:

Buyer is aware that the Property may be on a master key system. Buyer is encouraged to re-key the property after closing. Buyer agrees to hold Seller harmless for any claims relating in any way to any theft or damage of personal property that occurs after the Closing Date.

20. SURVIVAL:

Delivery of the deed to the Property to the Buyer by the Seller shall be deemed to be full performance and discharge of all of the Seller's obligations under the Agreement. Notwithstanding anything to the contrary in the Agreement, any provisions that contemplate performance or observance subsequent to any termination or expiration of the Agreement, shall survive the closing, funding and the delivery of the deed and/or termination of the Agreement by any Party and such provisions shall continue in full force and effect.

21. SEVERABILITY:

If any provision of the Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired thereby, and no provision shall be deemed dependent upon any other provision
unless so expressed herein.

22. TERMINATION OF AGREEMENT:

If either Party terminates the Agreement when permitted to do so, the Parties shall have no further obligation to each other, except as to any provision that survives the termination of the Agreement.

23. ASSIGNMENT OF AGREEMENT:

The Buyer shall not assign the Agreement. The Seller may assign the Agreement at its sole discretion without prior notice to, or consent of, the Buyer.

24. MODIFICATION AND WAIVER:

No provision, term or clause of the Agreement shall be revised, modified, amended or waived, except by an instrument in writing signed by the Buyer and the Seller. The waiver by any Party of a breach of the Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No course of dealing between the Parties shall operate as a waiver of any provision of the Agreement.

25. RIGHTS OF OTHERS:

The 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 the Agreement, nor does it create or establish any third party beneficiary to the Agreement.

26. COUNTERPARTS AND FACSIMILE:

The Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument. A signed facsimile or photocopy of the Agreement shall be treated as an original, and shall be deemed to be as binding, valid, genuine, and authentic as an originally signed agreement for all purposes, including all matters of evidence and the "best evidence" rule.

27. HEADINGS:

The titles to the sections and headings of various paragraphs of the Agreement are placed for convenience of reference only, and in case of conflict the text of the Agreement, rather than such titles or headings, shall control.

28. GENDER:

Unless the context otherwise requires, singular nouns and pronouns, when used herein, shall be deemed to

BUYER (Initials) _____

SELLER (Initials) _____

include the plural of such nouns or pronouns, and pronouns of one gender shall be deemed to include the equivalent pronoun of the other gender.

29. FORCE MAJEURE:
Except pursuant to the Risk of Loss provisions above, no Party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, 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.

30. ATTORNEY REVIEW:
The Buyer acknowledges that Buyer has had the opportunity to consult with its legal counsel regarding the Agreement and that accordingly the terms of the 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.

31. NOTICES:
Any notices required to be given under the Agreement shall be deemed to have been delivered when actually received in the case of hand or overnight delivery or by fax with confirmation of transmission to the numbers below, or five (5) calendar days after mailing by first class mail, postage paid. 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 Buyer shall be deemed sent or delivered and effective when sent or delivered to the Buyer or the Buyer's attorney or agent at the address or fax number shown below.

32. APPLICABLE LAW:
This Agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State in which the Property is located.

33. DISPUTE RESOLUTION:
At the request of either Party, any dispute arising under this Agreement shall be submitted to mediation before resorting to arbitration or court action. Mediation fees shall be divided equally and each Party shall bear his or its own attorney's fees and costs. Neither Party may require binding arbitration prior to commencement of court action, although the parties may mutually agree to such arbitration.

34. INITIALS:
Buyer and Seller agree to all of the terms in the Agreement whether any provision or page is separately initialed or not. For emphasis some sections or provisions in the Agreement contain a place for Buyer and/or Seller to separately initial, but the failure by Buyer or Seller to initial any section, provision, or page in the Agreement shall not affect the enforceability of any term or provision in the Agreement.

35. ATTORNEYS' FEES, COURT COSTS, AND LEGAL EXPENSES:
In any action, proceeding, or arbitration arising out of, brought under, or relating to the terms or enforceability of the Agreement each party shall bear their own attorneys' fees, costs, and expenses incurred in such action, proceeding, or arbitration.

36. NO BROKERS:

BUYER (Initials) _____

SELLER (Initials) _____

Seller has agreed to pay to in the amount of . Buyer represents that there are no other fees or commissions owed to any broker or agent in connection with the transfer of title to Buyer.

37. COMPLIANCE

Buyer assumes all duties and obligations for compliance with any and all applicable requirements or conditions precedent to conveyance of the Property, including (without limitation) any requirements imposed by governmental agencies or authorities as conditions precedent to conveyance of property generally, or conditions precedent to conveyance of foreclosed or distressed real estate, or otherwise.

38. LANGUAGE IN BOLD OR CAPITALIZED:

FOR EMPHASIS AND BUYER'S BENEFIT SOME PROVISIONS HAVE BEEN BOLDED AND/OR CAPITALIZED (LIKE THIS SECTION), BUT EACH AND EVERY PROVISION IN THIS ADDENDUM IS SIGNIFICANT AND SHOULD BE REVIEWED AND UNDERSTOOD. NO PROVISION SHOULD BE IGNORED OR DISREGARDED BECAUSE IT IS NOT IN BOLD OR EMPHASIZED IN SOME MANNER, AND THE FAILURE TO BOLD, CAPITALIZE, OR EMPHASIZE IN SOME MANNER ANY TERMS OR PROVISIONS IN THIS ADDENDUM SHALL NOT AFFECT THE ENFORCEABILITY OF ANY TERMS OR PROVISIONS.

IN WITNESS WHEREOF, the Buyer and the Seller have entered into the Agreement effective as of the date it is executed by Seller as set forth below.

BUYER(S):

Signature: _____

Date: _____

Print Name: _____

Address: _____

_____

Telephone: _____

Fax: _____

SELLER:

BAC Home Loans, LP: _____

BAC Home Loans, LP, _____

as Agent in Fact For:

_____

By: _____

Title: _____

Date: _____

BAC CLOSING CONTACT:

Escrow/Closing Officer Name: _____

Escrow/Closing Officer Phone No.: _____

BUYER (Initials) _____

SELLER (Initials) _____

Exhibit "A"

BUYER (Initials) _____

SELLER (Initials) _____

Saint Lucie County, Florida

Property Appraiser's - Internet Mapping Print Service

NSP: 2450 SW Madiera Street
Lot 1 Block 1668, PSL-31
(Bank of America Land Donation)