

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE  
OF FINANCIAL AND INSURANCE  
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL  
INSURANCE COMPANY,

Respondent.

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Allison M. Dietz (P73612)  
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**PETITION FOR APPROVAL OF THE REHABILITATOR'S PLAN TO  
SELL REAL PROPERTY OWNED BY  
AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY**

Ken Ross, Commissioner of the Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator"), by and through his attorneys, Michael A. Cox, Attorney General, and Christopher L. Kerr and Allison M. Dietz, Assistant Attorneys General, petitions this Court pursuant to MCL 500.8114(4) to approve the Rehabilitator's plan to sell the real property, including the land and building, owned by American Community located at 39201 Seven Mile Road, Livonia, Michigan (the "Property"). In support of this Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order"). Pursuant to MCL 500.8113(1), the Rehabilitation Order appointed the Commissioner as the Rehabilitator of American Community.

2. As required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to "take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision."<sup>1</sup>

3. According to MCL 500.8113(1), as incorporated by the Rehabilitation Order,<sup>2</sup> the Rehabilitation Order "by operation of law vest[ed] title to all assets of [American Community] in the rehabilitator." The assets to which the Rehabilitator gained lawful title upon entry of the Rehabilitation Order include, but are not limited to, the Property.

4. Under the Rehabilitation Order<sup>3</sup> and MCL 500.8114(2), the Rehabilitator "shall have and exercise the full and complete power" of American Community's directors, officers, and managers, whose authority was suspended upon entry of the Rehabilitation Order.

5. The Rehabilitation Order further provides that "[p]ursuant to MCL 500.8114(2) and (4), the Rehabilitator may take such action as he considers necessary or appropriate to reform or revitalize American Community, and is empowered to pursue all avenues of reorganization, consolidation, conversion, reinsurance, merger, or other transformation of

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<sup>1</sup> Rehabilitation Order, p 4, ¶ 3.

<sup>2</sup> Rehabilitation Order, p 4, ¶ 4.

<sup>3</sup> Rehabilitation Order, p 5, ¶ 7.

American Community to effectuate rehabilitation and maintain, to the greatest extent possible, a continuity of health care services."<sup>4</sup>

6. The Rehabilitation Order additionally provides that "[p]ursuant to MCL 500.8114(4), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community is appropriate, he shall prepare a plan to effect those changes and shall apply to the Court for approval of such plan."<sup>5</sup>

7. The Rehabilitator's assumption of all powers of American Community's former directors, officers, and managers, together with his broad powers with respect to reforming and revitalizing American Community, authorize and enable him—with the Court's approval—to take any action in connection with the Property that he deems necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and to maximize the protection of American Community's creditors, policyholders, and the public.

8. On August 3, 2010, this Court entered an Order approving the compensation to be paid to Summit Commercial, LLC ("Summit") as the exclusive real estate broker for the sale or lease of the Property.

9. In its role as exclusive real estate broker, Summit has negotiated a sale of the Property to Agree Development, LLC ("Agree"), which is evidenced by the attached Purchase Agreement between American Community and Agree executed by the parties on December 8, 2010.<sup>6</sup>

10. The Purchase Agreement provides, *inter alia*, for the following:

- a. Agree shall pay American Community Four Million Six Hundred Thousand and 00/100 Dollars (\$4,600,000.00) as the Purchase Price for the Property.

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<sup>4</sup> Rehabilitation Order, p 6, ¶ 10.

<sup>5</sup> Rehabilitation Order, p 6, ¶ 11.

<sup>6</sup> See Exhibit A, Purchase Agreement.

- b. Agree shall pay \$150,000 of the Purchase Price in the form of an earnest money deposit that shall be deposited in escrow with the title company/escrow agent within five (5) business days after the Effective Date of the Purchase Agreement, or by December 15, 2010.
- c. Agree shall pay the balance of the Purchase Price, plus or minus closing adjustments, to American Community at the Closing on the sale of the Property.
- d. The Closing on the sale of the Property shall occur no earlier than April 30, 2012. This delayed closing affords the Rehabilitator over sixteen (16) months to continue to occupy and use the Property for purposes of this rehabilitation proceeding.
- e. Agree is provided a period of 180 days to inspect the Property, review due diligence materials, obtain any necessary governmental approvals, etc.
- f. The Purchase Agreement is expressly subject to the approval of this Court, and American Community agrees to seek such approval within a reasonable period following the Agreement's Effective Date.<sup>7</sup>

11. Based on the terms of the Purchase Agreement with Agree and other considerations, the Rehabilitator has determined that entering into the Purchase Agreement and consummating the sale of the Property to Agree is necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to American Community's creditors, policyholders, and the public.

12. Specifically, the Purchase Agreement and sale of the Property to Agree will bring significant funds into the American Community rehabilitation estate for the benefit of the company's policyholders and creditors. In addition, the delayed closing on the sale of the Property allows the Rehabilitator to continue rehabilitation operations at American Community's headquarters, where the business of the company has been conducted both before and since entry of the Rehabilitation Order. This continuity of location avoids the additional costs, delays, and

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<sup>7</sup> See Exhibit A, Purchase Agreement.

inconvenience associated with relocating all of the personnel, records, and equipment of the company before the rehabilitation is substantially completed.

13. Summit has actively marketed the Property for sale or lease since its employment as exclusive real estate broker on August 3, 2010. Summit received two other offers to purchase the Property, one for the purchase price of \$3,750,000 and the other for only \$1,980,000.

14. The Rehabilitator rejected these alternative offers—and Agree's offer to purchase the Property is clearly superior—based on its agreed-to Purchase Price of \$4,600,000, which is \$850,000 more than the next closest offer and over \$2.6 million more than the low-ball offer received from one potential purchaser. Moreover, Agree understood and assented to the Rehabilitator's need for a delayed Closing on the sale of the Property, which again allows the Rehabilitator to continue rehabilitation operations at the current premises and avoids the additional costs, delays, and inconvenience of relocating operations before the rehabilitation is substantially completed.

15. Prior to the Rehabilitation, American Community issued two surplus notes totaling \$30 million, which remain outstanding. As the attached Proof of Service reflects, a copy of this Petition, the proposed Order approving the sale of the Property to Agree,<sup>8</sup> and a Notice of Hearing on this Petition have been served via e-mail and regular mail on the two holders of the surplus notes: Peter Addei of Cohen and Company on behalf of surplus note holder ALESCO Preferred Funding VII, Ltd., and Carolyn Thagard of Trapeza Capital Management, LLC on behalf of surplus note holder Credit Suisse, Cayman Branch. These papers have also been served via e-mail and regular mail on the trustee of the two surplus notes, Mudasir Mohamed of

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<sup>8</sup> A copy of the proposed Order is attached as Exhibit B.

The Bank of New York Mellon Trust Company, N.A. The Rehabilitator has identified these individuals as the parties with the strongest potential interest in this transaction.

16. Beyond the surplus note holders and their trustee, providing personalized notice of this Petition and any resulting Order to all other parties that have a general interest in American Community's rehabilitation is impractical at this time because there has been no claims submission or other process to identify such interested parties. Moreover, attempting to identify and personally notify every party having a general interest would be time-intensive and costly to American Community's rehabilitation estate. For these reasons, the Rehabilitator requests that the Court authorize and ratify service of this Petition, the Notice of Hearing, and any resulting Order on any potentially interested parties (other than the two surplus note holders and their trustee) by posting electronic copies on the OFIR website, [www.michigan.gov/ofir](http://www.michigan.gov/ofir), under the section "Who We Regulate," and the subsection "American Community." Service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, the Commissioner, as Rehabilitator of American Community, respectfully requests this Court to approve the Rehabilitator's plan to sell the Property to Agree Development, LLC, according to the terms contained in the attached Purchase Agreement. In addition, the Rehabilitator requests this Court to authorize and ratify service of this Petition, together with the attached Exhibits (including the proposed Order), the Notice of Hearing, and any resulting Order: (a) via e-mail and regular mail on the two surplus note holders and their trustee only; and (b) on other potentially interested parties (beyond the two surplus note holders and their trustee) by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted,

Michael A. Cox  
Attorney General

A handwritten signature in black ink, appearing to read "Christopher Kerr". The signature is fluid and cursive, with the first name "Christopher" written in a larger, more prominent script than the last name "Kerr".

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Dated: December 14, 2010

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## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement"), is made and entered into as of the date of Purchaser's acknowledgment of its receipt of a fully executed copy of this Agreement with all exhibits attached thereto (the "Effective Date"), by and between AGREE DEVELOPMENT, LLC, a Delaware limited liability company, on behalf of an entity to be formed ("Purchaser"), and AMERICAN COMMUNITY MUTUAL INSURANCE CO. (the "Seller").

### RECITALS:

A. Seller is the owner of certain real property located at 39201 Seven Mile Road, on the southeast corner of Seven Mile Road and Haggerty Road in the City of Livonia, Wayne County, Michigan, consisting of approximately 409,695 square feet and an existing building located thereon and designated as Tax Parcel No. 026-99-0001-000 (the "Real Estate"). A legal description of the Real Estate shall be attached hereto by Seller as Exhibit "A" and made a part hereof.

B. Seller desires to sell and Purchaser desires to purchase the Real Estate and any improvements located thereon, all in accordance with and subject to the terms and conditions hereinafter set forth.

### CONSIDERATION AND AGREEMENT:

IN CONSIDERATION of the mutual covenants and agreements herein contained and of the benefits to be derived herefrom, receipt whereof is hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Offer. Purchaser hereby offers and agrees to purchase the Real Estate together with all improvements, tenements, hereditaments, privileges and appurtenances thereto belonging or in any way appertaining thereto and, subject to Seller's rights, if any, to remove fixtures and attached equipment as provided in Section 25 hereof, all fixtures and attached equipment located thereat, and including all right, title and interest of Seller in any street, road or avenue, open or proposed, in front of or adjoining the Real Estate, or any part thereof, to the centerline thereof, all right, title and interest of the Seller to the use of any easements, reciprocal parking agreements and all water, air, riparian and mineral rights, and the use of appurtenant easements, whether or not of record, strips and rights of way abutting, adjacent, contiguous or adjoining the Real Estate, subject only to those easements and restrictions of record which are approved by Purchaser. All of the foregoing is hereinafter referred to as the "Subject Premises".

2. Acceptance. Seller hereby accepts the said Offer of the Purchaser. Such Offer and Acceptance are subject to and in accordance with the terms and conditions hereinafter set forth.

3. Purchase Price. The purchase price for the Subject Premises is Four Million Six Hundred Thousand and 00/100 (\$4,600,000.00) Dollars. The Purchase Price shall be paid as follows:

A. Deposit. Within five (5) business days after the Effective Date, Purchaser shall deposit in escrow with Liberty Title Commercial Title Agency, Farmington Hills, Michigan ("Escrow Agent"), an earnest money deposit in the amount of One Hundred Fifty Thousand and 00/100 (\$150,000.00) Dollars, which sum shall be applied upon the Purchase Price at Closing if the transaction is consummated or delivered to Purchaser or Seller, as the circumstances warrant, under the terms of this Agreement (the "Deposit").

B. Balance. The balance of the Purchase Price shall be paid, plus or minus closing adjustments, as the case may be, in certified, cashiers or wire transferred funds to Seller at Closing in exchange for a Warranty Deed conveying fee simple, marketable title to Purchaser, free and clear of any and all liens or encumbrances except as specifically set forth herein and subject only to those easements and restrictions of

record as are agreeable to Purchaser in its sole discretion. Any existing land contracts and mortgages shall be discharged at Closing, with Seller being responsible for any prepayment penalties thereon.

4. Evidence of Title.

A. Title Commitment. As evidence of Title, Seller shall provide to Purchaser within fourteen (14) days after the Effective Date a Commitment for an A.L.T.A. fee owner's policy of title insurance to be issued at Closing (or as soon as possible thereafter) without standard exceptions if Purchaser provides an updated survey to the Title Company (as defined below) and without standard exceptions, but subject to the survey exception if Purchaser does not provide the "New Survey" (as defined below) to the Title Company, in the amount of the total Purchase Price (the "Commitment"), which Commitment shall be issued by Liberty Title Commercial Title Agency ("Title Company"), the same to bear a date later than the date hereof, wherein the Title Company shall agree to insure the title in the condition required hereunder as marketable title. Seller shall, at the time of Closing, order a Policy of Title Insurance from the Title Company pursuant to said Commitment. The cost of the Title Insurance Policy shall be paid for by Seller.

B. Survey. Seller agrees to furnish or cause to be furnished to Purchaser, as soon as possible, a copy of its existing survey of the Subject Premises, if any (the "Existing Survey"). Thereafter, Purchaser shall have the right to obtain an update to such survey or if Seller does not have an Existing Survey, then Purchaser may also obtain a new survey of the Subject Premises (the "New Survey"), at Purchaser's sole cost and expense.

C. Objections. If objection to the title is made by Purchaser within ten (10) days following Purchaser's receipt of the last of the Commitment, legible copies of all items of record and the New Survey, but, in all events, not later than the expiration date of the "Inspection Period" (as defined below), that the title is not suitable for Purchaser's intended use of the Real Estate, Seller shall have thirty (30) days from the date notified in writing of the particular defects claimed, either (1) to remedy the title, or (2) to obtain title insurance as required above, or (3) to refund the Deposit in full termination of this Agreement if unable to remedy the title or obtain the title insurance after using commercially reasonable efforts to do so; provided, that Purchaser may elect to waive such defects and proceed with this transaction subject thereto and, provided further, that, in the event that any such defect results from liens or encumbrances having liquidated amounts, such as mortgages or other liens for the payment of money, Seller shall be responsible for causing such mortgages or other liens for the payment of money to be paid off at Closing and, Purchaser may, at its option and subject to Seller's prior approval, pay such amounts and receive credit against sums due Seller at Closing. Purchaser shall accept, and not object to a title condition if it only includes taxes, mortgages or other liens for the payment of money that can and will be satisfied by Seller at Closing. If the Seller remedies the title or shall obtain such title policy within the time specified, the Purchaser agrees to complete the sale within fifteen (15) days of written notification thereof but no sooner than the Closing Date hereinafter specified. If the Seller is unable to remedy the title or obtain title insurance within the time specified and unless Purchaser then elects to waive such defaults, the Deposit shall be refunded forthwith in full termination of this Agreement.

5. Possession. Exclusive possession shall be delivered to Purchaser at the time of Closing.

6. Representations, Warranties and Covenants. Seller represents and warrants unto Purchaser, as of the date hereof, the date of Closing and to survive thereafter, as follows:

A. The party executing this Agreement on behalf of Seller has the full power and authority to enter into and perform this Agreement on behalf of Seller and the person executing this Agreement has been duly authorized to do so on behalf of Seller.

B. There are no lawsuits, condemnation proceedings or environmental investigations, pending or, to the best of Seller's knowledge, threatened, affecting the Subject Premises or Seller's ability to

convey same and, except as otherwise set forth in the Commitment, and to the best of Seller's knowledge, there are no assessments, charges or other obligations for improvements affecting the Subject Premises.

C. Except as provided to Purchaser pursuant to Exhibit B, there are no leases, contracts or other agreements of any kind or nature whatsoever, written or oral, express or implied, with respect to the Subject Premises and Seller hereby represents and warrants that it occupies the Subject Premises without a lease and there are no third parties other than Seller in occupancy of the Subject Premises.

D. To the best of Seller's knowledge the Subject Premises has no violations of any building codes or zoning ordinances. In the event that any state or local governmental authority requires inspections of the Subject Premises before transfer, then Seller shall arrange and pay for any such inspections and any requirements associated therewith.

E. To the best of Seller's knowledge, there is no hazardous material, substance or waste, whether liquid, solid, gaseous or otherwise, located in, upon, under or adjacent to the Subject Premises (including buildings thereon) or any ground or surface waters or water courses thereon or thereunder, and to the best of Seller's knowledge the Subject Premises and any adjacent properties are not now nor were they previously used for storage, disposal, manufacture, generation, whether as a by-product or otherwise, of any hazardous or toxic substance. To the best of Seller's knowledge, the Subject Premises do not now, nor have they ever had installed thereon any above ground storage tank or thereunder any underground storage tank.

F. Seller is not a "foreign person" as defined in §1445(f)(3) of the Internal Revenue Code; Seller shall so certify at Closing.

G. That, from the date of acceptance hereof until the date of Closing, Seller shall refrain from transferring any of the Subject Premises or creating on the Subject Premises any easements, leases, liens, mortgages, encumbrances, or other interest that would affect the Subject Premises.

Except as otherwise provided herein, Purchaser acknowledges and agrees that the Purchaser is purchasing the Subject Premises "AS IS," "WHERE IS" and without representation or warranty of any kind or nature whatsoever other than as may be specifically set forth in this Agreement or in the documents executed at Closing. If at any time Purchaser has independent evidence that any of the representations and warranties set forth above are incorrect or untrue or in the event that Seller fails to perform any of the covenants contained in this Agreement, then, in such event, and notwithstanding anything contained herein to the contrary, Purchaser shall have the right to terminate this Agreement upon written notice to Seller setting forth the reasons for termination and detailing the independent evidence, in which event the entire Deposit shall be returned to Purchaser in addition to any other rights and remedies available to Purchaser as provided in this Agreement.

Purchaser hereby releases and discharges, waives and covenants not to sue or proceed against, Seller, with respect to any and all claims, demands, actions, suits, or causes of action (collectively, the "Claims"), whether at law or in equity, and whether sounding in tort, contract, nuisance, trespass, negligence, strict liability, contract, or any other statutory, regulatory, administrative, or common law cause of action of any sort that in any relate to or arise from the presence of hazardous substances and/or waste materials at, under, or migrating from the Subject Premises, including without limitation the presence of any hazardous substances and/or waste materials at, under, or migrating from the Subject Premises prior to the execution of this Agreement, Closing and/or Purchaser's possession of the Subject Premises other than Claims resulting from the presence of hazardous substances and/or waste materials at or under the Subject Premises resulting from the actions or omissions of Seller or its agents or Claims arising out of Seller's default or breach under the terms of this Agreement or the closing documents to be executed in connection therewith.

7. Conditions Precedent. The obligation of Purchaser to proceed on this Offer, if accepted, shall be conditioned upon each of the following conditions precedent:

[DOCS#1014339-4A-Purchase\_Agreement][12/06/10/LDS]

A. Title and Survey. Satisfaction of the title and survey conditions of Section 6 hereof.

B. Inspection Period. Purchaser and its agent shall have a period of one hundred eighty (180) days commencing from the date of Purchaser's receipt from Seller of the last to be received of (i) a fully executed, accepted copy hereof; (ii) satisfactory evidence of the issuance of the "Court Approval" (as defined below), and (iii) all of the "Seller's Due Diligence Materials" (as defined below) (the "Inspection Period") to:

(i) Inspect or cause to be inspected all aspects of the physical and economic condition of the Subject Premises, access to which shall be freely granted to Purchaser and/or Purchaser's agents, representatives, upon prior written notice to Seller and at all reasonable times during business hours ("Inspections").

(ii) Obtain all necessary municipal and/or governmental approvals as may be necessary, or required or prudent in Purchaser's sole judgment for Purchaser's intended use and development of the Subject Premises (the "Governmental Approvals").

Purchaser agrees to indemnify and hold Seller harmless of and from any claim for damages or injuries arising from Purchaser's inspection of the Subject Premises, and, notwithstanding anything to the contrary in this Agreement, such obligation to indemnify shall survive the Closing Date or any termination of this Agreement. In no event shall Purchaser shall be responsible to indemnify Seller with respect to existing conditions at the Subject Premises discovered by Purchaser as part of its inspections of the Subject Premises. All inspections shall occur at reasonable times and shall be conducted so as not to unreasonably interfere with the use of the Subject Premises by Seller, its employees, or its tenants. Purchaser shall give Seller prior notice of the dates and times of any anticipated inspections so that those may be coordinated with Seller's operation schedule. In all events, Purchaser shall be responsible for restoring any damage caused to the Subject Premises caused by Purchaser's or its agents in the event Purchaser terminates this Agreement.

If Purchaser is not satisfied in its sole and exclusive discretion with the results of the inspections for any reason whatsoever, Purchaser may rescind this transaction by mailing written notice to Seller within two (2) business days following the expiration date of the Inspection Period and, shall thereupon receive a refund of the Deposit and be relieved of any and all liability hereunder. Purchaser shall have no obligations to notify Seller of any reasons for such rescission.

Notwithstanding the foregoing, Purchaser shall have the right to extend the Inspection Period for an additional one hundred eighty (180) days (the "First Extended Inspection Period") by giving notice to Seller of such extension on or before the expiration date of the Inspection Period and in the event that Purchaser exercises its right to extend the Inspection Period for the First Extended Inspection Period, then, in such event, Fifty Thousand and 00/100 (\$50,000.00) Dollars of the Deposit shall, except as otherwise provided in this Agreement, and provided Seller does not default under the terms of this Agreement, become non-refundable and applicable to the Purchase Price to be paid at Closing. Purchaser shall have the further right to extend the Inspection Period for two (2) additional ninety (90) day extension periods (the "Second Extended Inspection Period" and, if applicable, the "Third Extended Inspection Period") by giving notice to Seller of such extension on or before the expiration date of the preceding Extended Inspection Period and in the event that Purchaser exercises its right to extend the Inspection Period for the Second Extended Inspection Period or a Third Extended Inspection Period, as the case may be, then, as to each such Extended Inspection Period, an additional Twenty-Five Thousand and 00/100 (\$25,000.00) Dollars of the Deposit shall, except as otherwise provided in this Agreement or in the event of a default by Seller hereunder, become non-refundable and applicable to the Purchase Price to be paid at Closing. Purchaser shall have the right during the First Extended Inspection Period, Second Extended Inspection Period or Third Extended Inspection Period, as the case may be, to (i) waive such condition and proceed to closing by provided written notice to Seller; or (ii) rescind this transaction by mailing written notice to Seller on or before the expiration date of the then applicable Extended Inspection Period (or any time during such Extended Inspection Period) and, thereupon, that portion of the Deposit, if any, which shall have become non-refundable as provided above, shall be released to Seller and the

balance of the Deposit shall be released to Purchaser and Purchaser shall be relieved of any and all liability hereunder. If Purchaser does not provide Seller with written notice of its intent either to proceed with this transaction or to rescind this Agreement, then, in such event, Purchaser shall be deemed to have terminated this Agreement as of the expiration date of the Inspection Period or the then expiring Extended Inspection Period, in which event, that portion of the Deposit, if any, which shall have become non-refundable as provided above, shall be released to Seller and the balance of the Deposit shall be released to Purchaser and Purchaser shall be relieved of any and all liability hereunder except for Purchaser's indemnification and hold harmless obligations contained in this 7.B (ii) and its obligation to restore the Subject Premises and return Seller's documents and materials which will survive the termination of this Agreement. Purchaser shall have no obligation to notify Seller of any reason for such rescission.

C. Court Approval. As Seller is in rehabilitation, the parties acknowledge that this Agreement is contingent upon receipt of approval from the Ingham County Circuit Court, State of Michigan. Within a reasonable period following the Effective Date, Seller shall file a petition seeking final approval of this transaction from the Ingham County Circuit Court and Seller shall provide evidence that such court has issued written approval of this transaction (the "Court Approval"), if and when obtained, which shall be provided to Purchaser as soon as possible thereafter.

D. Due Diligence Information. Within five (5) days after the Effective Date, Seller shall provide Purchaser with copies of any and all due diligence materials in its possession relating to the Subject Premises including, without limitation, copies of any existing title policies, surveys, appraisals or environmental reports and each of the items set forth on Exhibit "B" attached hereto and made a part hereof (collectively, the "Seller's Due Diligence Information").

E. Existing Occupant. The Subject Premises is occupied by the Seller and Seller shall vacate the Subject Premises prior to the Closing.

F. Representations and Warranties. All of Seller's representations, warranties and agreements contained herein shall be true and correct as of the date hereof and on the date of Closing, which Seller shall certify to at Closing, and Seller shall not have, on the date of Closing, failed to meet, comply with, or perform, any condition or agreement on its part to be performed under the terms and conditions contained herein.

8. Closing. Purchaser and Seller shall close this transaction ("Closing") thirty (30) days after the expiration date of the Inspection Period, as extended, but not earlier than April 30, 2012; provided, however, in no event shall the Closing occur prior to the satisfaction (or written waiver by Purchaser) of all conditions precedent to Closing. If the conditions precedent set forth in Sections 7.E and 7.F have not been satisfied on or before the date of Closing, then Purchaser may (i) waive such condition(s) and proceed with this transaction, or (ii) declare this transaction null and void, in which event Purchaser shall receive a refund of the Deposit and Purchaser and Seller shall be relieved of any and all liability hereunder. Notwithstanding the foregoing, however, Seller shall have the right, upon not less than ninety (90) days prior written notice sent to Purchaser, to delay the Closing for up to one hundred twenty (120) days from the date otherwise set for Closing, and in the event that Seller exercises such right, Seller shall have the right to delay the Closing until not earlier than August 30, 2012. The Closing shall take place via escrow or at the office of the Title Company or such other place as the parties may mutually agree. At Closing, such documents as may be necessary to complete this transaction shall be executed and/or delivered by Purchaser and Seller.

9. Closing Adjustments. The following shall be apportioned against sums due Seller at Closing:

A. All real and personal property taxes and special assessments (general or special) which have become a lien on the Subject Premises, all charges for improvements or services already made to or for the benefit of the Subject Premises, and all assessments (general or special) due and payable prior to the date of Closing shall be paid by Seller at or before Closing. Current real property taxes shall be prorated on a

due date basis of the taxing authority on the basis of a three hundred sixty-five (365) day year; Seller being responsible for taxes up to the day of Closing. Assessments that first become due and payable after the Closing shall be Purchaser's responsibility.

B. Seller shall pay for all state and county transfer taxes and revenue stamps due upon Closing or required to be paid upon recording of the Warranty Deed.

C. Seller shall pay all outstanding bills of utility companies and service providers with respect to the Subject Premises through the date of Closing.

D. Seller shall pay the brokers' commission due to the Brokers at Closing.

10. Casualty/Condemnation. Until Closing, all risk of loss with respect to the Subject Premises shall be borne by Seller. In the event of destruction or damage to the Subject Premises prior to the date of Closing, Purchaser shall, at its option, have the right to (i) take the proceeds of the insurance requiring Seller to pay the deductible amounts and proceed and go forward with this transaction, or (ii) declare the transaction to be void and of no further full force and effect and Purchaser shall thereupon receive a refund of the Deposit and be relieved of any and all liability hereunder. In the event that notice of any action, suit or proceeding shall be given prior to the Closing date for the purpose of condemning any part of the Subject Premises, then Purchaser shall have the right to terminate its obligations hereunder within fifteen (15) days after receiving notice of such condemnation proceeding, and upon such termination, the Deposit shall be refunded to Purchaser in full termination of this Agreement, and the proceeds resulting from such condemnation shall be paid to Seller. In the event Purchaser shall not elect to terminate its obligations hereunder, the proceeds of such condemnation shall be assigned and belong to Purchaser at Closing.

11. Deposit As Liquidated Damages. The Deposit shall be held by Escrow Agent and applied against cash due at Closing when the transaction is consummated. In the event of failure of any condition precedent, the Deposit shall be returned to Purchaser upon demand. In the event of a default by Purchaser hereunder, which default remains uncured for a period of ten (10) days after written notice thereof is received by Purchaser, Purchaser shall remain liable under the indemnification and hold harmless provisions of Section 7.B and Seller shall also be entitled to receive the Deposit as liquidated damages as its sole and exclusive remedy. In the event of a default by Seller hereunder, Purchaser shall be entitled to a return of the Deposit and to maintain an action to collect Purchaser's out-of-pocket costs and expenses incurred in connection with this transaction prior to the date of default by Seller or an action for specific performance. In the event that any action is brought to enforce the terms and conditions of this Agreement, the non-prevailing party in such action shall be responsible for payment of all reasonable attorneys' fees, court costs and legal expenses incurred by the prevailing party.

12. Indemnity.

A. Seller shall indemnify, defend and hold Purchaser harmless from and in respect to any claims asserted by tenants, creditors or employees of or claimants against Seller or of the Subject Premises up to and including the date of Closing. In no event shall Purchaser assume any liability of Seller. The parties acknowledge that this is not a sale of a business nor shall Purchaser be deemed a successor of Seller.

B. Purchaser shall indemnify, defend and hold Seller harmless from and in respect to any claims asserted by tenants, creditors or employees of or claimants against Purchaser or of the Subject Premises arising from events occurring after the date of Closing.

13. Cooperation. Seller shall cooperate with Purchaser in connection with Purchaser's development of the Subject Premises including, without limitation, the joining in of petitions for rezoning, site plan approval, utility approvals, execution of easements for roads and utilities, and the like, but all at no cost to Seller, and Seller hereby consents to and authorizes Purchaser to obtain any and all necessary permits and

approvals from all applicable governmental bodies in order to develop the Subject Premises. Upon request by Purchaser, Seller shall execute such documentation as may be necessary for Purchaser to obtain any and all necessary permits and approvals from all applicable governmental authorities in order to develop the Subject Premises, all within five (5) business days of written request therefor.

14. **Broker.** Seller and Purchaser do hereby certify, represent and warrant, each to the other, that they have not engaged, enlisted, employed or otherwise made use of any real estate broker or sales person in connection with this sale other than Summit Commercial and Armada Real Estate Services (collectively, the "Brokers"), whose commissions shall be paid by Seller. Purchaser and Seller shall indemnify, defend and hold each other and their respective successors and assigns, harmless with respect to any claim of any other real estate broker or sales person claiming a commission and/or damages through or under them in connection with this transaction, including, without limitation, reasonable attorneys fees.

15. **Governing Law.** This Agreement shall be governed by laws of the State of Michigan and, notwithstanding that the Subject Premises is located in Wayne County, the parties expressly acknowledge and consent to the jurisdiction and venue of the Ingham County Circuit Court for all matters arising with respect to this Agreement and/or the Subject Premises

16. **Binding Effect.** This Agreement shall bind the parties hereto, their respective heirs and assigns. Purchaser shall be permitted to assign this Agreement to its affiliates and entities created for purposes of acquiring the Subject Premises at Closing; provided, however, Purchaser shall remain jointly and severally liable with such assignee for all of Purchaser's obligations hereunder including obligations that shall survive the Closing Date or the termination of this Agreement. Purchaser shall not otherwise assign this Agreement without first obtaining Seller's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided such assignee has the capability and financial wherewithal to complete the purchase of the Subject Premises.

17. **Notices.** Any notices, demands or requests required or permitted to be given hereunder must be in writing and shall be deemed to be given (i) when hand delivered, or (ii) one (1) business day after delivery to FedEx or similar overnight service for next business day delivery, or (iii) three (3) business days after deposit in the U.S. mail first class postage prepaid, or (iv) when sent by facsimile or telecopier transmission during normal business hours (i.e., 8:00 a.m. to 6:00 p.m., Monday through Friday), if such transmission is immediately followed by any of the other methods for giving notice. In all cases notices shall be addressed to the parties at their respective addresses as follows:

**If to Seller**

American Community Mutual Insurance Co.  
James Gerber, Deputy Rehabilitator  
Office of Financial and Insurance Regulation  
P.O. Box 30220  
Lansing, Michigan 48909-7720  
Phone: (517) 335-1738  
Fax: (517) 241-4610

**If to Purchaser:**

Agree Development, LLC  
Attn: Joel N. Agree  
31850 Northwestern Highway  
Farmington Hills, MI 48334  
Phone: (248) 737-4190  
Fax: (248) 737-9110

**With a Copy to::**

Lucy R. Benham, Esq.  
Lucy R. Benham PLLC  
210 East Third Street  
Suite 204  
Royal Oak, Michigan 48067  
Phone: (248) 414-5840  
Fax: (248) 414-5842

**With a Copy to:**

Lowell D. Salesin, Esq.  
Maddin, Hauser, Wartell,  
Roth & Heller, P.C.  
28400 Northwestern Highway, Suite 300  
Southfield, MI 48034-1839  
Phone: (248) 827-1889  
Fax: (248) 359-6189

[DOCS#1014339-4A-Purchase\_Agreement][12/06/10/LDS]

18. Time for Performance. In the event the last date for performance of any obligation or for giving any notice hereunder falls on a Saturday, Sunday or legal holiday of the state wherein the Real Estate is located, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday in such state. Time shall be of the essence for purposes of this transaction.

19. Counterparts. This Agreement may be executed in one or more counterpart copies, all of which together shall constitute and be deemed an original, but all of which together shall constitute one and the same instrument binding on all parties. This Agreement may be executed in telecopy (faxed) copies and facsimile signatures shall be binding upon the parties.

20. Interpretation. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

21. Waiver. No forbearance on the part of either Party to insist upon compliance by the other Party with the terms of this Agreement shall be construed as, or constitute, a waiver of any of the terms of this Agreement.

22. Exhibits. All exhibits referred to in this Agreement are attached hereto and incorporated herein by reference.

23. Conflict With Law. To the extent that this Agreement may be in conflict with any applicable law or regulation, this Agreement will be amended, at the mutual agreement of both parties, to the extent possible, to comply with such law and regulation. If any term or provision of this Agreement will be found by a court of competent jurisdiction to be illegal or otherwise unenforceable, the same will not invalidate the whole of this Agreement, but such term or provision will be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties will be construed and enforced accordingly preserving to the fullest permissible extent the intent and agreements of the parties set forth herein.

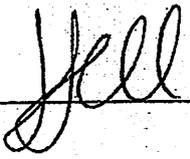
24. Survival. Purchaser's obligations contained herein shall survive the Closing Date or any termination of this Agreement.

25. Removal of Fixtures and Attached Equipment. On or before the expiration date of the Inspection Period, Purchaser shall provide Seller with written notice as to whether it intends to reutilize the improvements located on the Subject Premises and in the event that Purchaser elects not to reutilize the improvements located on the Subject Premises after Closing, then Seller shall have the right, prior to Closing, to remove any fixtures and attached equipment from the Subject Premises provided that Seller delivers the improvements located on the Subject Premises in a safe and secure condition with all utilities properly shut off. Notwithstanding anything contained herein to the contrary, Seller shall have the right to remove from the Subject Premises the equipment and personal property identified on the excluded personal property list attached hereto as Exhibit "C" at any time prior to Closing and Seller shall repair any damage caused to the improvements on the Subject Premises as a result thereof that adversely affects the operations of the Subject Premises, if any.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF, the Purchaser has executed this Agreement on the date signed by Purchaser shown below and Seller has accepted same on the date signed by Seller shown below.

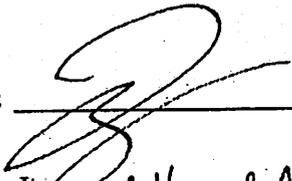
IN THE PRESENCE OF:

  
\_\_\_\_\_

Date signed by Purchaser: December 8, 2010

PURCHASER:

AGREE DEVELOPMENT, LLC, a  
Delaware limited liability company

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

Its: Authorized Agent

SELLER:

AMERICAN COMMUNITY MUTUAL  
INSURANCE CO.,

By: \_\_\_\_\_  
James Gerber

Its: Deputy Rehabilitator

\_\_\_\_\_  
Date signed by Seller: \_\_\_\_\_, 2010

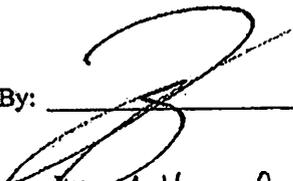
**ACKNOWLEDGMENT OF PURCHASER**

By execution below, Purchaser acknowledges receipt of a fully executed copy of the Purchase Agreement with all Exhibits attached thereto as of the date set forth below.

  
\_\_\_\_\_

Date signed by Purchaser: December 8, 2010

AGREE DEVELOPMENT, LLC, a  
Delaware limited liability company

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

Its: Authorized Agent

IN WITNESS WHEREOF, the Purchaser has executed this Agreement on the date signed by Purchaser shown below and Seller has accepted same on the date signed by Seller shown below.

**IN THE PRESENCE OF:**

**PURCHASER:**

AGREE DEVELOPMENT, LLC, a  
Delaware limited liability company

\_\_\_\_\_

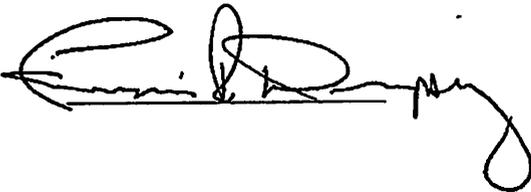
By: \_\_\_\_\_

Its: \_\_\_\_\_

Date signed by Purchaser: \_\_\_\_\_, 2010

**SELLER:**

AMERICAN COMMUNITY MUTUAL  
INSURANCE CO.,



By:   
James Gerber

Its: Deputy Rehabilitator

Date signed by Seller: December 8, 2010

**ACKNOWLEDGMENT OF PURCHASER**

By execution below, Purchaser acknowledges receipt of a fully executed copy of the Purchase Agreement with all Exhibits attached thereto as of the date set forth below.

AGREE DEVELOPMENT, LLC, a  
Delaware limited liability company

\_\_\_\_\_

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

Its: \_\_\_\_\_

Date signed by Purchaser: \_\_\_\_\_, 2010

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

THE EAST 715.05 FT OF THE WEST 780.05 FT OF THE SOUTH 573 FT OF THE NORTH 633 FT OF  
THE NW 1/4 OF SEC 7 T1S R9E. 9.41 ACRES

Commonly known as: 39201 Seven Mile Road, Livonia, Michigan

## **EXHIBIT "B"**

### **DUE DILIGENCE ITEMS**

1. Copies of utility bills for 2010 YTD.
2. Copy of real and personal property tax bills for the last two years and YTD.
3. Copies of all contracts and/or easement agreements, if any.
4. Copies of any and all warranties.
5. "As Built" construction plans.
6. Copies of existing appraisals and engineering reports, if any.
7. Copies of certificates of occupancy.
8. Copies of lawsuits and violation notices pending against the Subject Premises, if any.
9. Copies of operating statements for 2009 and 2010 YTD.
10. Detailed list of capital expenditures related to the property and building made in the prior three (3) years.
11. Utility account numbers.
12. Copies of all service contracts and list of all vendors providing services to the Subject Premises.

**EXHIBIT "C"**

**EXCLUDED PERSONAL PROPERTY**

1. All computer equipment, including hardware, software, servers, network switches, appliances, video/audio conferencing projection systems, telecommunication systems, etc.
2. All Server Room facilities equipment, including mini chiller, mini air handler, raised flooring, hanging cable track, etc.
3. Telephone Room mini air conditioner.
4. Building generator.
5. All cabinetry, including custom, storage, kitchen and bathroom.
6. Pathway (Steelcase) removable office walls, doors and tracks.
7. Cubicle walls.
8. All storage and shelving racks, including rolling systems and stationary.
9. Facilities camera security system.
10. Hydraulic lift in forms storage area
11. Ceiling tiles.
12. Carpet tiles.
13. Overhead light fixtures.
14. Window blinds/treatments.
15. Sinks, mounted towel dispensers, soap dispensers and air scent sprayers.
16. Drinking fountains.
17. Ice machines.
18. Digital satellite clocks.
19. Digital scrolling Spectrum wall boards.
20. Whiteboards, bulletin boards.
21. Coat racks.
22. Landscaping, including bushes, shrubs, rocks and excluding trees.

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STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT  
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE  
OF FINANCIAL AND INSURANCE  
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL  
INSURANCE COMPANY,

Respondent.

---

Christopher L. Kerr (P57131)  
Allison M. Dietz (P73612)  
Assistant Attorneys General  
Attorneys for Petitioner  
Corporate Oversight Division  
P. O. Box 30755  
Lansing, MI 48909  
(517) 373-1160

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**ORDER APPROVING THE REHABILITATOR'S PLAN TO  
SELL REAL PROPERTY OWNED BY  
AMERICAN COMMUNITY MUTUAL INSURANCE COMPANY**

At a session of said Court held in the  
Circuit Courtrooms for the  
County of Ingham, State of Michigan  
on the \_\_\_\_ day of December, 2010

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

**WHEREAS**, Ken Ross, the Commissioner of the Michigan Office of Financial and  
Insurance Regulation and duly appointed Rehabilitator of American Community Mutual  
Insurance Company (the "Rehabilitator") has filed a Petition for Approval of the Rehabilitator's

Plan to Sell Real Property Owned by American Community Mutual Insurance Company (the "Petition"); and

**WHEREAS**, the Rehabilitator has served the Petition, together with the attached Exhibits (which included a copy of this proposed Order) and a Notice of Hearing: (a) via e-mail and regular mail on American Community's two surplus note holders and their trustee; and (b) on other potentially interested parties (beyond the two surplus note holders and their trustee) by posting electronic copies on the "American Community" section of OFIR's website; and

**WHEREAS**, MCL 500.8114(4) authorizes the Rehabilitator, upon making a determination that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of American Community is appropriate, to prepare a plan to effect such changes and to apply for this Court's approval of the plan; and

**WHEREAS**, the Rehabilitator has determined that entering into a Purchase Agreement with Agree Development, LLC for the sale of the real property, including the land and building, owned by American Community located at 39201 Seven Mile Road, Livonia, Michigan (the "Property") is necessary and appropriate for the effective and efficient administration of this rehabilitation proceeding and will assist in providing the maximum protection to American Community's creditors, policyholders, and the public; and

**WHEREAS**, the Court having reviewed the Petition and any objections or responses filed thereto, having heard oral arguments on December 22, 2010 at 10:00 a.m., and being otherwise fully advised;

**NOW, THEREFORE, IT IS HEREBY ORDERED** that the Court APPROVES the Rehabilitator's plan to sell the Property to Agree Development, LLC, according to the terms contained in the executed Purchase Agreement attached as Exhibit A to the Petition;

**IT IS FURTHER ORDERED** that the Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Petition, together with the attached Exhibits, the Notice of Hearing, and this Order via e-mail and regular mail on American Community's two surplus note holders and their trustee only;

**IT IS FURTHER ORDERED** that due to the difficulty and prohibitive cost associated with providing personalized notice of the Petition, Notice of Hearing, and this Order to all other parties having a general interest in the American Community rehabilitation, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of these papers on other potentially interested parties (beyond the two surplus note holders and their trustee) by posting electronic copies on the OFIR website, [www.michigan.gov/ofir](http://www.michigan.gov/ofir), under the section "Who We Regulate," and the subsection "American Community." The Court finds that service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

**IT IS SO ORDERED.**

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Honorable William E. Collette  
Circuit Court Judge