

## COLLATERAL ASSIGNMENT OF REAL ESTATE OPTION

**THIS COLLATERAL ASSIGNMENT OF REAL ESTATE OPTION** (this "Assignment"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by **DSW BROADVIEW, LLC**, a Kansas limited liability company (the "Assignor") to **SUNFLOWER BANK, NATIONAL ASSOCIATION** (the "Assignee"),

### WITNESSETH:

**WHEREAS**, the City of Wichita, Kansas (the "City") granted Assignor the exclusive right to purchase (the "Option") the approximately 1.13 acre tract of land located at 132 N. Waco, in the City of Wichita, more particularly described on Exhibit A attached hereto and incorporated herein (the "Real Property"), pursuant to that certain Option to Purchase Real Estate Agreement dated as of October 7, 2008, a copy of which is attached hereto as Exhibit B (the "Option Agreement"); and

**WHEREAS**, Assignee has made a loan to Assignor evidenced by a Loan Agreement dated of even date herewith (the "Loan Obligation"), and Assignee has required Assignor to assign to Assignee all of its interest in the Option Agreement, including the Option, as collateral to secure repayment by the Assignor of its obligations thereunder.

**THEREFORE**, Assignor by these presents GRANTS and ASSIGNS unto Assignee, and unto its successors and assigns, as collateral to secure payment to Assignee of all sums due from time to time under the Loan Obligation, all of Assignor's right, title and interest in the Option Agreement and the Option;

**TO HAVE AND TO HOLD THE SAME**, together with all privileges and rights whatsoever in any way belonging, relating or appertaining to the Assignor's option to purchase the Real Property.

#### 1. Assignment.

1.1 This Assignment is to secure Assignor's payment and performance of the Loan Obligation and all extensions and renewals thereof. The purpose of this Assignment is to enable Assignee to assign or exercise the Option if an Event of Default under the Loan Obligation occurs, or to retain Assignor's interest in the Option.

1.2 Unless and until an Event of Default by Assignor in the performance of any obligations or liability of Assignor to Assignee under the Loan Obligation, Assignor shall have the rights under the Option Agreement.

1.3 Provided no default exists under the Loan Obligation, Assignor shall have the right to exercise the Option and purchase the Real Property provided that Assignee is granted a first priority lien on the Real Property at the time of closing of the purchase of the Real Property.

2. **Representations, Warranties and Covenants.** Assignor, for itself and its successors and assigns, hereby covenants and agrees to and with Assignee, its successors and assigns, as follows:

2.1. The Option Agreement is in full force and effect and unmodified, and there is no existing default under the provisions of the Option Agreement or in the performance of any terms, covenants, conditions or warranties thereof on the part of Assignor to be observed and performed.

2.2. Assignor will not modify, amend or in any way alter the terms of the Option Agreement or cancel or surrender the Option Agreement without the prior written consent of Assignee, such consent not to be unreasonably withheld.

2.3. No right, power, or remedy conferred upon or reserved to Assignee by this Assignment is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.4. Neither this Assignment nor any terms hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the charge, waiver, discharge or termination is sought. Any agreement hereafter made by Assignor and Assignee relating to this Assignment shall be superior to the rights of the holder of any intervening lien or encumbrance.

2.5. If the Loan Obligation secured hereby shall be paid according to its terms and provisions, then this Assignment shall terminate and be promptly released by Assignee at the cost of Assignor.

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**IN WITNESS WHEREOF**, Assignor has executed this Collateral Assignment of Real Estate Option as of the day and year first above written.

**DSW BROADVIEW, LLC**  
By: DSW Management, LLC  
its sole manager

By: \_\_\_\_\_  
Carolyn F. Bohnert  
Senior Vice President

**"Assignor"**

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2011, by Carolyn F. Bohnert, Sr. Vice President of DSW Management, LLC, a Missouri limited liability company, as manager of DSW Broadview, LLC, a Kansas limited liability company, who is personally known to me to be such Sr. Vice President, and who is personally known to me to be the same person who executed, as such Sr. Vice President, the within instrument of behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

[SEAL]

\_\_\_\_\_  
Notary Public

My Appointment Expires:

\_\_\_\_\_  
Typed or Printed Name of Notary Public

\_\_\_\_\_

**CONSENT BY CITY**

The City of Wichita, Kansas (the "City") hereby acknowledges and consents to the collateral assignment by DSW Broadview, LLC ("Assignor") in favor of Sunflower Bank, National Association ("Assignee"), of Assignor's rights in and to the Option to Purchase Real Estate Agreement dated as of October 7, 2008 for the property located at 132 N. Waco, Wichita, Kansas. The City agrees that, upon receipt of a written notice from Assignee that an Event of Default has occurred under the Loan Obligation by Assignor, the City shall recognize Assignee's rights in and to the Option to Purchase Real Estate Agreement and shall further consent to any assignment of Assignee's rights under the Option to Purchase Real Estate Agreement.

Date of execution: \_\_\_\_\_

THE CITY OF WICHITA

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

Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
By \_\_\_\_\_, City Clerk

## **EXHIBIT A**

### **DESCRIPTION OF REAL PROPERTY**

Legal Description of Real Property:

Beginning at the Northwest corner of Engstrom Second Addition to Wichita, Kansas, thence N 00°00'00" E along the West line of said Addition, said line also being the East of Waco Avenue, a distance of 264.30 feet; thence N 45°20'52" E, along the South Right-of-Way line of the former Missouri Pacific Railroad Right-of-Way, a distance of 81.98 feet; thence N 89°46'54" E, a distance of 99.88 feet; thence S 00°38'11" W, a distance of 152.52 feet; thence N 89°53'39" E, a distance of 1.65; thence S 00°00'05" E, along the West line of Civic Center Place, a distance of 169.48 feet to the Northeast corner of said Addition; thence S 89°53'39" W along the North line of said Addition, a distance of 158.15 feet to the Point of Beginning.

**EXHIBIT B**

**OPTION TO PURCHASE  
REAL PROPERTY AGREEMENT**