

## MEMORANDUM OF SALE

This Memorandum of Sale, is made this 22<sup>nd</sup> day of September, 2009 by and among Eugene P. O'Donnell, Jr., Esq. of Fletcher, Tilton & Whipple, P.C. (the "Receiver"), Simond & Oakes Auctioneers and Appraisers, LLC, of 1085 Commonwealth Avenue, Suite 301, Boston, Massachusetts, 02215 (the "Auctioneer"), and \_\_\_\_\_, (the "Purchaser").

### RECEIVERS SALE AT PUBLIC AUCTION

Pursuant to a judicial order issued in Worcester, Probate & Family Court, Docket #08E002GC1 and W095D2358DV2 ("Court Orders"), the Receiver, through the Auctioneer, held a public auction Tuesday, September 22, 2009 at 2:00pm for the Property known as 799 Mt. Elam Road, Fitchburg, Massachusetts, described more fully below (the "Property"), and the Purchaser, as the highest bidder, agrees to purchase the Property in accordance with the terms of this Memorandum of Sale ("Agreement").

### DESCRIPTION OF THE PROPERTY

The Property shall mean the following, namely, the land with the buildings thereon located and described as follows:

The land with the buildings thereon being shown as Parcel Contains 26,857± sq. ft on a plan of land entitled "Plan of Land on Mt. Elam Road" prepared for Cynthia A. Dzuirgot by Defalco Engineering Incorporated dated June 16, 1987 and recorded with the Worcester North District Registry of Deeds in Plan Book 310, Plan 18.

Inaccuracy of the description of the Property as to bounds, area, buildings, taxes, encumbrances, and known and unknown defects SHALL NOT BE REASON FOR FAILURE ON THE PART OF THE PURCHASER TO COMPLETE THE SALE.

Verbal qualification by the Auctioneer or their respective agents SHALL NOT INVALIDATE nor become part of this sale as THE PURCHASER HAS EXAMINED TO HIS/HER SATISFACTION THE LISTED PROPERTY.

The Property shall be conveyed subject to the following encumbrances;

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1. Subject to and together with the benefit of an agreement and easement as recorded in Book 1242, Page 556.

## **TRANSFER OF THE PROPERTY**

The Property shall be conveyed by a Receiver's deed under the power of sale authorized in the Court Orders. The title to be conveyed by the Receiver's deed shall be free of all monetary encumbrances and with the real estate taxes paid through the date of the Closing.

The Property shall be conveyed subject to any violations, if any, of the State Sanitary Code or any other Federal, State or local statute, including building codes, zoning ordinances and M.G.L. c. 21E., public health rule, regulation or requirement; restrictions and rights of way insofar as same may be in force and effect.

The total bid price will be set forth as the consideration in the deed to the Property.

### **1. PRICE AND DEPOSIT**

The bid price for which the Property has been sold to the Purchaser is \$\_\_\_\_\_ ("Purchase Price"), of which Twenty Thousand and 00/100 Dollars (\$20,000.00) has been paid this day in accordance with the terms of the Real Estate Auction Terms and Conditions and Deposit Information ("Notice of Sale"), with an additional ten (10%) percent of the Purchase Price payable as an additional deposit, within seven (7) days of this Agreement with the balance to be paid in cash or by wire transfer to the account of Fletcher, Tilton & Whipple, P.C., at the time of the delivery of the deed. No interest will be earned on the deposits.

### **2. CLOSING**

The deed and associated papers shall be delivered and the balance of the consideration paid at the office of Fletcher, Tilton & Whipple, P.C., 370 Main Street, Worcester, Massachusetts on or before eleven o'clock (11:00 a.m.) on October 22, 2009 or such other time and place as may be mutually agreed upon by the Receiver and the Purchaser (the "Closing"). Time is of the essence of this Agreement. Notwithstanding anything to the contrary contained herein, in the event the party executing this Memorandum of Sale is the second highest bidder, the term Closing shall be deemed to mean the date on or before eleven o'clock (11:00 a.m.) on the twentieth (20) day following the date of notice pursuant to paragraph 7 herein.

### **3. TITLE**

In the event the Receiver cannot convey title to the Property as stipulated herein on the day of the Closing, the Receiver shall have the right, to extend the Closing for a thirty (30) day period. If at the end of the thirty (30) days, the Receiver shall not be able to convey title to the Property as stipulated, the deposit, and if applicable, the balance of the purchase price, shall be refunded and all rights hereunder shall cease, and the Purchaser shall have no recourse against the Receiver, or its employees, agents and representatives, whether at law or in equity; provided, however, that Purchaser shall have the election to accept such title as the Receiver can deliver to the Property in its then condition and to pay therefore the purchase price without deduction, in which event the Receiver shall convey such title.

In the event that the Receiver does not convey title to the Purchaser for any reason whatsoever, the Receiver's sole responsibility shall be the return of any deposits hereto paid by the Purchaser as the Purchaser's sole remedy at law or equity and the Purchaser shall have no further recourse against the Receiver, or the Auctioneer.

#### **4. RISK OF LOSS**

Receiver shall not be required to maintain casualty insurance covering the Property. Risk of loss for any and all occurrence, including but not limited to fire, casualty, act of God or any other liabilities, shall be with the Purchaser as of the execution of this Memorandum of Sale. If the Property is damaged by fire or other casualty prior to the closing, Purchaser shall accept a deed to the Property and an assignment of so much of the insurance proceeds, if any, as has not been used in the restoration of the Property prior to the Closing, Purchaser paying therefore the full balance of the purchase price.

#### **5. ACCEPTANCE OF DEED**

The acceptance of a deed to the Property by the Purchaser or Purchaser's nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed or arising out of said public auction on the part of the Receiver to be performed or observed.

#### **6. CONDITION OF THE PREMISES**

The Property shall be conveyed in "as-is" condition, subject to the present manner of use and occupancy of the Property. The Purchaser acknowledges that no representations or warranties of any kind whatsoever, other than as set forth in writing herein have been made by or on behalf of the Receiver concerning the premises, including but not limited to any information as to conformity with state or local zoning requirements (including building codes), having or containing oil or hazardous waste as defined under Massachusetts General Laws, having or containing lead paint, or having or containing Urea Formaldehyde Foam insulation, utilities and condition of the premises. Purchaser has not been influenced to enter this transaction by, nor has it relied upon, any warranties or representations of the Receiver, its agents or employees or the Auctioneer not set forth or incorporated in this Memorandum. The Receiver assumes no risk with regard to oil or hazardous waste, lead paint, urea formaldehyde foam insulation, or the condition of the premises. The Purchaser shall assume responsibility for compliance with Title 5 of the state environmental code, if applicable; the Receiver makes no representations or warranties regarding compliance with said regulation.

If there is any tenant or occupant in residence at the time of the Closing, the Purchaser, if he/she wishes to evict such tenant or occupant must do so at his/her own expense.

No personal property of any nature is included in this sale.

The Purchaser is advised that Massachusetts General Laws requires that smoke detectors and carbon monoxide detectors be installed in all residential structures. The Purchaser agrees that he/she will assume all costs of inspection fees for smoke detection equipment will conduct or arrange such inspection, if applicable and the Purchaser further acknowledges that such equipment shall meet all of the minimum state or municipal requirements and shall indemnify the Receiver, its agents and/or employees as to compliance with such requirements. The Purchaser agrees to sign a notification certification that he/she/it has been properly notified and advised that the structure and buildings may have lead paint contamination, the Purchaser is solely responsible for compliance with Massachusetts Lead Paint Law and Regulation and the Receiver makes no representation and assumes no risk or duty as to lead paint.

THE PURCHASER FURTHER ACKNOWLEDGES THAT THE RECEIVER, ITS AGENTS, EMPLOYEES, ATTORNEYS AND REPRESENTATIVES HAVE NOT MADE ANY REPRESENTATION OR WARRANTY TO THE PURCHASER IN CONNECTION WITH THE REAL PROPERTY, WHETHER EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO PHYSICAL CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. ANY AND ALL WARRANTIES AND REPRESENTATIONS BEING HERE MADE ARE EXPRESSLY DISCLAIMED.

## **7. PURCHASER'S DEFAULT; DAMAGES**

If the Purchaser shall fail to fulfill the Purchaser's agreements herein, all deposits made hereunder by the Purchaser shall be retained by the Receiver and the Purchaser shall reimburse the Receiver for all costs and expenses incurred by the Receiver, in excess of the amount of the deposit, due to the Purchaser's default, including the costs and expenses of subsequent sales of the Property or any portion thereof and attorneys' and auctioneers' fees in connection therewith. If the successful bidder at the foreclosure sale defaults in purchasing the property according to the terms of this Memorandum of Sale, the Receiver reserves the right, but not the obligation, to sell the property to the second highest bidder provided that the second highest bidder deposits with the Receiver's attorneys, Fletcher, Tilton & Whipple, P.C. the amount of the required deposit within three (3) business days after written notice of default of the previous highest bidder and title shall be conveyed to the second highest bidder within twenty (20) days of the default notice. If the second highest bidder fails to perform, at the Receiver's election, this Memorandum of Sale shall terminate.

## **8. DEED STAMPS, TITLE INSURANCE AND RECORDING FEES**

Purchaser shall pay for and cancel for the benefit of the Receiver the excise tax stamps required to be affixed to the deed by the law of the Commonwealth of Massachusetts. The Purchaser shall be responsible for obtaining at its sole cost and expense any title reports with the regard to the Property and any title insurance and this agreement may not be terminated due to the Purchaser's inability to obtain title insurance for any reason. The Purchaser shall pay all recording fees in connection with the transfer of the Property.

## **9. CONSTRUCTION OF AGREEMENT**

This instrument, executed in triplicate, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the Receiver and the Purchaser. If two or more persons are named herein as Purchaser, their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this memorandum or to be used in determining the intent of the parties to it.

## **10. OTHER PROVISIONS**

The Purchaser also recognizes and agrees that the Receiver will not execute any documentation in connection with the financing of this purchase by the Purchaser, including without limitation, the FNMA Affidavit and Agreement, title insurance affidavit and indemnities of any kind. The Purchaser recognizes and agrees that the Receiver has no information concerning the presence of Urea Formaldehyde Foam Insulation, Lead Paint or any other material or substance and the Receiver will not issue any certifications in regards thereto. The acceptance of the deed by the Purchaser shall be deemed to be full performance and discharge of the Receiver's duties hereunder.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as a sealed instrument as of the date first written above.

RECEIVER:

Eugene P. O'Donnell, Jr., Esquire

\_\_\_\_\_  
Eugene P. O'Donnell, Esquire, Receiver

AUCTIONEER:

Simond & Oakes Auctioneers & Appraisers, LLC

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

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

I, the purchaser at this public auction sale, do hereby acknowledge that I have read the foregoing and understand and agree to the terms and conditions as set forth and I further acknowledge receipt of a copy of this Memorandum of Sale, with any and all exhibits thereto.

PURCHASER:

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

Social Security No./Federal Tax ID No.:

\_\_\_\_\_

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

Address

\_\_\_\_\_

City/Town/State

\_\_\_\_\_

Phone Number:

\_\_\_\_\_