

## MEMORANDUM OF SALE

This Memorandum of Sale is made this 17<sup>th</sup> day of December, 2015, by and among NEWBURYPORT FIVE CENTS SAVINGS BANK, a Massachusetts corporation, whose principal address is 63 State Street, Newburyport, Massachusetts 01950 (the "Mortgagee"), John McInnis of Amesbury, Massachusetts, (the "Auctioneer"), and

\_\_\_\_\_ (the "Buyer").

### 1. MORTGAGEE'S SALE AT PUBLIC AUCTION

Pursuant to a public auction conducted on December 17, 2015 by the Auctioneer on behalf of the Mortgagee as foreclosing Mortgagee, in exercise of the Power of Sale contained in a Mortgage from George W. Baletsa, Jr. dated March 6, 2006 and recorded in the Rockingham County Registry of Deeds in Book 4626, Page 0240, and subject to and in accordance with the terms and conditions set forth in that certain Notice of Sale attached hereto as Exhibit A and incorporated herein by reference, and as supplemented by further terms set forth below, the Buyer as the highest bidder agrees to purchase the real property described below (the "Property").

### 2. DESCRIPTION OF THE PROPERTY

The Property shall mean the following, namely:

A certain tract of land, with the two-tenement house and all other buildings thereon, situated in said Exeter, Rockingham County, New Hampshire, at the corner of Park and Oak Streets bounded as follows:

Westerly by land n/f of Foster W. Smith, as the fence now stands; Northerly by land n/f of John H. and Grace E. Tuck as the fence now stands; Easterly by Oak Street; Southerly by Park Street.

Being the same premises conveyed to Mortgagor by deed dated September 2, 2005 recorded with the Rockingham County Registry of Deeds at Book 4545, Page 2672.

### 3. TRANSFER OF THE PROPERTY

The real property shall be conveyed by the Statutory Form of Foreclosure Deed under Power of Sale, N.H. Rev. Stat. §477:31.

The real property shall be conveyed and transferred subject to and with the benefit of all rights, rights of way, restrictions, easements, covenants, liens or claims in the nature of liens, improvements, public assessments, any outstanding tenancies and/or leases, the rights of parties in possession, any and all unpaid taxes, tax titles, municipal taxes, tax liens, water and sewer liens and any other municipal assessments or liens or existing encumbrances, whether or not of record, having priority over said Mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed, and to the provisions of

applicable federal, state and local law, including, but not limited to, all liens for hazardous waste cleanup asserted by the United States of America, the State of New Hampshire, or any other political subdivision thereof.

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

#### **4. BUYER'S RESPONSIBILITY FOR COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

The Buyer shall assume responsibility for and costs relating to compliance with all federal, state and local laws. Mortgagee makes no warranties or representations regarding the Property's current compliance with any federal, state or local regulations or laws, including building, zoning, sanitary and environmental laws.

#### **5. PRICE AND DEPOSIT**

The bid price for which the Property has been sold to the Buyer is \_\_\_\_\_ Dollars (\$\_\_\_\_\_) of which Ten Thousand and 00/100 (\$10,000.00) has been paid this day in accordance with the terms of the Mortgagee's Notice of Sale. The sale shall not be deemed completed until the Buyer has made his or her deposit and signed this Memorandum of Sale. The balance of the purchase price shall be paid by certified check or bank check at the time of the delivery of the deed. Buyer shall execute such other documentation as is reasonably requested by Mortgagee, including, without limitation, a Receipt and Acknowledgement of Delivery of Deed and Affidavit and a Declaration of Consideration. The Mortgagee shall be entitled to any interest earned on the deposit and the amount to be paid by the Buyer shall not be adjusted to reflect any interest earned on the deposit.

#### **6. FINANCIAL CAPACITY**

Buyer represents to Mortgagee that Buyer has the financial capacity and financial resources to effect closing within the time specified by and on the terms and conditions provided by this Agreement. Buyer's obligation to purchase the Property is not conditioned, in whole or part, upon Buyer's ability to obtain financing for this purchase.

#### **7. CLOSING**

The deed and associated papers shall be delivered and the balance of the consideration paid at the office of Connolly & Connolly, 51 Green Street, Newburyport, Massachusetts on or before ten o'clock (10:00 A.M.) on the thirtieth day following the sale, provided that such day is one on which said Registry is open for business, and if not, then on the next day on which said Registry is open for business (the "Closing"). Time is of the essence of this agreement.

## **8. TITLE**

No representation or warranty of any kind whatsoever have been made by or on behalf of the Mortgagee concerning the state of the title to the premises. Mortgagee shall transfer to the Buyer only such title as Mortgagee has pursuant to its Mortgage Deed. In the event the Mortgagee cannot 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 Buyer shall have no recourse against the Mortgagee, or its employees, agents and representatives, whether at law or in equity; provided, however, that Buyer shall have the election to accept such title as the Mortgagee can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which event the Mortgagee shall convey such title.

## **9. RISK OF LOSS**

The Buyer acknowledges that from and after this date he or she shall have the sole risk of loss or damage to the premises that might occur upon the conclusion of the foreclosure sale, and the Mortgagee shall have no responsibility for maintaining insurance on the premises. If the Property is damaged by fire or other casualty prior to the closing, Buyer 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, to the extent any such proceeds may be available to the Mortgagee, Buyer paying therefor the full balance of the bid price.

## **10. ACCEPTANCE OF DEED**

The acceptance of a deed to the Property by the Buyer or Buyer'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 Mortgagee to be performed or observed.

## **11. CONDITION OF THE PREMISES**

The Property shall be conveyed in "as-is" condition. The Buyer acknowledges that Buyer has not been influenced to enter this transaction by, nor has it relied upon, any warranties or representations of the Mortgagee or the Auctioneer regarding the condition or possession of the Property: the Buyer accepts the premises in an as-is condition with no express or implied warranties of any kind. No personal property of any nature is included in this conveyance except as expressly set forth herein. If, as of this date, there is any tenant or occupant in residence, the Buyer, if he or she wishes to evict such tenant or occupant, must do so at his or her own expense.

## **12. BUYER'S DEFAULT; DAMAGES**

If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Mortgagee and the Buyer shall reimburse the Mortgagee for all costs and expenses incurred by the Mortgagee, in excess of the amount of the deposit, due to the Buyer's default, including the costs and expenses of subsequent sale of the Property or any

portion thereof and attorneys' and auctioneers' fees in connection therewith. The Mortgagee shall also be free to sell the Property to the second highest bidder at the public auction in accordance with the terms announced at the public auction.

### **13. DEED STAMPS AND RECORDING FEES**

Buyer shall pay for and cancel for the benefit of the Mortgagee all tax stamps required to be affixed to the foreclosure deed by the law of the State of New Hampshire. The Buyer shall pay all recording fees in connection with the transfer of the Property.

### **14. RADON GAS AND LEAD PAINT NOTIFICATION**

Pursuant to R.S.A. 477:4-a, Mortgagee hereby notifies and Buyer hereby acknowledges receipt of notification of the following:

**Radon Gas:** Radon gas, the product of the decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

**Lead Paint:** Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

### **15. WATER SUPPLY AND SEWAGE DISPOSAL DISCLOSURE**

Pursuant to R.S.A. 477:4-c and R.S.A.

477:4-d, Mortgagee hereby notifies and Buyer hereby acknowledges receipt of water supply and sewage disposal disclosure, attached as Exhibit B hereto.

### **16. CONSTRUCTION OF AGREEMENT**

This instrument, executed in triplicate, is to be construed as a New Hampshire contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and enures 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 Mortgagee and the Buyer. If two or more persons are named herein as Buyer, 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.

**17. SUCCESSOR AND ASSIGNS**

This Agreement shall be binding upon and shall inure the benefit of the parties hereto and their respective successors and assigns. Any assignment of rights under this Agreement by Buyer must be consented to by Mortgagee, which consent shall not be unreasonably withheld, and must be in writing in form and content satisfactory to Mortgagee.

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

MORTGAGEE  
Newburyport Five Cents Savings Bank

BY: \_\_\_\_\_

\_\_\_\_\_  
John McInnis, AUCTIONEER

\_\_\_\_\_  
, Buyer

## Legal Notice

### MORTGAGEE'S NOTICE OF SALE OF REAL PROPERTY

BY virtue and in execution of the Power of Sale contained in a certain mortgage given by George W. Bafetsa, Jr. (the "Mortgagor") to Newburyport Five Cents Savings Bank (the "Mortgagee") which mortgage is dated March 3, 2006 and recorded with the Rockingham County Registry of Deeds in Book 4826, Page 0240 (the "Mortgage") of which mortgage the undersigned is the present holder, pursuant to the remedies set forth in said Mortgage and N.H. RSA 479:25, the Mortgagee, for breach of the condition of said Mortgage and for the purpose of foreclosing the same will sell at Public Auction On December 17, 2015 at 3:00 P.M., to be held on the premises, the mortgaged real property having a present address of 45-47 Park Street, Exeter, Rockingham County, New Hampshire. The premises are described in said Mortgage, to wit:

A certain tract of land, with the two-tenement house and all other buildings thereon, situated in said Exeter, Rockingham County, New Hampshire, at the corner of Park and Oak Streets bounded as follows:

Westerly by land n/f of Foster W. Smith, as the fence now stands; Northerly by land n/f of John H. and Grace E. Tuck as the fence now stands; Easterly by Oak Street; Southerly by Park Street.

Being the same premises conveyed to Mortgagor by deed dated September 2, 2005 recorded with the Rockingham County Registry of Deeds at Book 4545, Page 2872.

**NOTICE PURSUANT TO NEW HAMPSHIRE RSA 479:25 TO MORTGAGOR AND ANY PERSON CLAIMING UNDER SAME: YOU ARE HEREBY NOTIFIED THAT YOU HAVE THE RIGHT TO PETITION THE SUPERIOR COURT FOR THE COUNTY IN WHICH THE MORTGAGED PREMISES ARE SITUATED, WITH SERVICE UPON THE MORTGAGEE, AND UPON SUCH BOND AS THE COURT MAY REQUIRE, TO ENJOIN THE SCHEDULED FORECLOSURE SALE.**

**TERMS OF SALE:** A deposit of Fifteen Thousand and 00/100 (\$15,000.00) Dollars cash or certified check or other funds acceptable to Mortgagee or agent at the time of sale; balance within thirty (30) days, or on delivery of deed, at option of Mortgagee.

**Reservation of Rights:** Mortgagee reserves the right to bid at the sale, to reject any and all bids, to cancel or continue the foreclosure sale to a later date by public proclamation at the time and date appointed for the sale, and to amend or change the terms of the sale by written or oral announcement made before or during the foreclosure sale, in which event such terms as amended or altered shall be binding on all bidders and interested persons, and to qualify some or all bidders.

In the event that the successful bidder at the foreclosure sale shall default in purchasing the within described property according to the terms of this Notice of Sale and/or the terms of the Memorandum of Sale executed at the time of the foreclosure, the Mortgagee reserves the right to sell the property by Foreclosure Deed to the second highest bidder provided that the second highest bidder shall deposit with Mortgagee's attorneys, Connolly & Connolly, the amount of the required deposit as set forth herein within three (3) business days after written notice of default of the previous highest bidder and title shall be conveyed to said second highest bidder within thirty (30) days of said written notice.

The Mortgagee's agent intends to bid at said sale and shall not be required to have a check for the deposit. All other bidders at said sale shall be required to show proof of the necessary deposit satisfactory to the auctioneer and the Mortgagee, as a pre-condition of bidding. A Memorandum of Sale shall be executed by the purchaser. The purchaser shall be responsible for all closing costs, transfer taxes and recording fees.

No warranties: Except for warranties arising by operation of law, the conveyance of the Mortgaged Premises will be made by the Mortgagee and accepted by the successful bidder therefor without any other expressed or implied warranties whatsoever. Said Mortgaged Premises will be sold "AS IS, WHERE IS" in all respects, including, but not limited to, the physical condition of the Mortgaged Premises and the rights, if any, of the occupants of the Mortgaged premises, and subject to all unpaid real estate taxes and all other liens and encumbrances, easements, rights of way and other conditions of record of every kind which may be entitled to precedence over the said Mortgage.

For further information regarding Mortgaged Premises and/or terms of the foreclosure sale, please contact John McInnis Auctioneers, 76 Main Street, Amesbury, Massachusetts 01913; telephone (978) 388-0400; email address [mcinnisauctions@ymhoo.com](mailto:mcinnisauctions@ymhoo.com).

Dated the 18th of November, 2015,  
Newburyport Five Cents Savings Bank  
Present Holder of said Mortgage.

By its Attorneys,  
Connolly & Connolly  
51 Green Street  
P.O. Box 332  
Newburyport, MA 01850  
Telephone: (978) 462-2251  
(UL - Nov. 23, 30; Dec. 7)

## EXHIBIT B – WATER SUPPLY AND SEWAGE DISPOSAL DISCLOSURE

To the best of the Mortgagee's knowledge, the Property is served by public water and sewage disposal system. Mortgagee has no information concerning the following in connection with said water and or sewage disposal systems:

- a. Location
- b. Malfunctions
- c. Date of installation
- d. Date of most recent water test
- e. Existence of any problems with the water or unsatisfactory water test
- f. Date of most recent service of sewage disposal system
- g. Name of contractor servicing the sewage disposal system
- h. Insulation