



**BIDDER'S INFORMATIONAL PACKAGE**

FOR THE PROPERTY LOCATED AT

***195 RUSSELL STREET, HADLEY, MA.***

ALL POTENTIAL BIDDER'S MUST EXECUTE THE ATTACHED "**CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**" PRIOR TO RECEIVING THE BIDDER'S INFORMATIONAL PACKAGE!

**INSTRUCTIONS:**

- 1. PLEASE COMPLETE & SIGN THE FORM BELOW.**
- 2. SIGN & ATTACHED THE LAST PAGE OF THE CONFIDENTIALITY AGREEMENT.**
- 3. RETURN BOTH PAGES VIA E-MAIL OR FAX TO:**

**MR. DAVID MENDEL:**  
**E-MAIL: dam@posnik.com      FAX 413-731-5946**

**NAME:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**E-MAIL ADDRESS:** (Please print) \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

**THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT ("AGREEMENT")** is made and entered into as of the \_\_\_\_ day of September, 2008, by \_\_\_\_\_ of \_\_\_\_\_ (the "Bidder") in favor of **NEWALLIANCE BANK** a Connecticut banking institution with its principal place of business at 195 Church Street, New Haven, Connecticut (the "Mortgagee").

### RECITALS:

WHEREAS, Bidder is considering the possible acquisition of the premises known as 195 Russell Street and/or 11 Railroad Street, Hadley, Massachusetts (the "Premises") which is owned by Registry Plaza, Inc. (the "Borrower") pursuant to a Mortgage Foreclosure Sale (the "Transaction") to be conducted by Aaron Posnik & Co. (the "Auctioneer") in connection with a mortgage held by the Mortgagee upon the Premises; and

WHEREAS, Mortgagee, Auctioneer and the Bidder desire to set forth the terms and conditions of an agreement covering the confidentiality and nondisclosure of certain information, documents, materials, leases, appraisals and reports, which are being provided to the Bidder by the Mortgagee and/or the Auctioneer with respect to the Transaction.

NOW, THEREFORE, in reliance upon the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Bidder agrees as follows:

1. Confidentiality of Information.

During the course of the Bidder's due diligence concerning the Transaction, the Mortgagee and the Auctioneer (the "Disclosure Parties") may, in their discretion, furnish or make available for review by, Bidder certain confidential information regarding the Premises and/or the Borrower, including, without limitation, some or all of the following: loan documents, financial statements, loan information, appraisals, financial information, plans, deeds, lease information, environmental and/or hazardous material reports, materials or documents, or other documents or writings containing or otherwise reflecting information concerning the Borrower and/or the Premises, which is not generally available to the public, all of which information, documents, reports or materials shall be deemed to be of a confidential and/or proprietary nature, provided it is so specified upon each such item or document. All reports, documents and information which thereafter may contain or reflect additional analyses, compilations or conclusions prepared from or using the information, documents, reports or materials furnished or made available by the Disclosure Parties, whether prepared by Bidder or by others at its direction shall also be deemed to constitute confidential and/or proprietary information (all

confidential and/or proprietary information referred to in this paragraph shall be referred to herein collectively as the "Information".)

Notwithstanding the foregoing, the following shall not constitute Information for purposes of this Agreement: (i) the information which is a matter of public record or has become generally available to the public other than as a result of a disclosure by or through Bidder; or (ii) information which was available to Bidder (from sources other than the Disclosure Parties) on a non-confidential basis prior to its disclosure by Disclosure Parties to Bidder. Bidder's covenants and agreements hereunder are made to induce Disclosure Parties to permit Bidder access to such Information.

2. Use of Information.

- (a) Bidder will use the Information solely for the purpose of evaluating the Premises as part of its due diligence in connection with the Transaction. Bidder will not disclose the Information to any other person or entity, and will not use the Information for any other purpose except as set forth above.
- (b) Bidder shall not photocopy or otherwise reproduce any documents or writings containing any portion of the Information, except for the use of Bidder as permitted hereunder. All such documents, writings and other Information and any copies thereof will be returned by Bidder to the Auctioneer by October 1, 2008, unless the Bidder has executed a Memorandum of Sale in connection with the Transaction.
- (c) If Bidder is requested or required, orally or in writing, or by interrogatories, discovery, requests for information or documents, subpoenas, civil investigative demands, investigation by a regulatory authority or any similar legal process, to disclose any Information, Bidder shall promptly notify the Disclosure Parties in writing of such request or requirement so that Disclosure Parties may seek an appropriate protective order.

3. Public Communications.

Bidder hereby agrees to not make, without the prior written approval of Disclosure Parties in their sole and exclusive discretion, any comment, statement or communication to any representative of: (A) any community, homeowners or business association or entity, (B) any media entity (including, without limitation, any newspaper, television or radio firm or entity) or (C) any representative of any governmental or quasi-governmental body or agency with respect to any matter whatsoever relating to the Information.

4. Remedies and Indemnification.

Bidder agrees: (i) that money damages alone would not be a sufficient remedy for

any breach or threatened breach of this Agreement by Bidder; and (ii) that, in addition and without prejudice to all other remedies they may have hereunder, at law or in equity, including, without limitation, money damages, Disclosure Parties shall be entitled to specific performance of this Agreement, or injunctive or other equitable relief, as a remedy for any such breach or threatened breach. Bidder further agrees to waive, any requirement for the securing or posting of any bond by Disclosure Parties in connection with the enforcement of any such remedy and the Bidder shall be responsible for all fees, expenses and costs including all legal fees incurred by the Disclosure Parties in enforcing any of its rights and remedies under this Agreement. The Bidder hereby agrees to indemnify, defend and hold harmless the Disclosure Parties from and against any and all claims, losses, damages and injury relating in anyway to the release of the Information to the Bidder or respecting the Bidder's use thereof.

5. Acknowledgments and Further Agreements.

- (a) Bidder acknowledges and agrees that: (i) Disclosure Parties are not making any representations or warranties as to the accuracy or completeness of any Information provided to Bidder or regarding the right of Bidder to rely on such information; (ii) Bidder has an independent duty to analyze and evaluate the Information, and to obtain any additional information which it considers necessary or desirable for the analysis and evaluation of the same; and (iii) Disclosure Parties shall have no liability hereunder resulting from the use by Bidder of any of the Information. Bidder further acknowledges that Disclosure Parties have, and will incur, no liability to Bidder for any compensation, fee or expenses incurred by Bidder in connection with its evaluation of the Transaction or the review by Bidder of the Information.
- (b) The Bidder and Disclosure Parties agree that: (i) neither the execution of this Agreement nor any performance hereunder will give rise to any obligation on the part of the Disclosure Parties to enter into or consummate the Transaction with the Bidder; (ii) notwithstanding this Agreement, the Disclosure Parties shall retain absolute discretion to enter into or not enter into the Transaction; and (iii) Bidder shall not rely on, or assert that this Agreement is the basis of any such obligation on the part of the Disclosure Parties.

6. Miscellaneous.

- (a) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one and the same instrument.
- (b) Partial Invalidity. Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other

provisions hereof, and such other provisions shall remain in full force and effect.

- (c) Governing Law. The terms and provisions of this Agreement shall be governed and construed pursuant to the laws of the Commonwealth of Massachusetts.
- (d) Construction. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to sections and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference.
- (e) Notices. All notices or other communications required or permitted hereunder to be delivered as communicated from one party to another, shall be in writing and shall be personally delivered (including by means of professional messenger service), by facsimile (provided that a confirming copy is sent by air courier, personal delivery or regular mail) and shall be addressed as follows:

To Bidder:

To Auctioneer:  
Aaron Posnik & Company, Inc.  
83 State Street  
Springfield, MA 01103

To Mortgagee:  
NewAlliance Bank  
195 Church Street  
New Haven, CT 06510

- (f) Integration. This Agreement represents the entire and integrated agreement between Disclosure Parties and Bidder and supercedes all prior negotiations, representations or agreements, either written or oral. This Agreement may only be amended by written instrument signed by both Disclosure Parties and Bidder.

- (g) Successors and Assigns. The terms, covenants and conditions herein contained shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto. As a condition of any permitted assignment of any rights to purchase the Loans granted by Bidder, Bidder shall cause the assignee to assume and agree to perform all of Bidder's obligations hereunder.
- (h) No Waiver. No waiver by either party of any breach or default hereunder shall be deemed a waiver of any other breach or default, and no delay or forbearance by either party hereunder in enforcing any of its rights or remedies shall be deemed a waiver of such rights or remedies, unless waiver is embodied in a writing signed by the authorized representative of the party to be bound.

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

Witness:

Bidder:

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