

AUCTIONEER'S MEMORANDUM OF PUBLIC AUCTION

Sold at public auction on June 23, 2009, to _____ of _____, Massachusetts, the highest bidder, (hereinafter called the "Buyer"), all of the right, title and interest of NewAlliance Bank (the "Mortgagee") to that portion of the premises believed to be known as 784 College Highway, Southwick, Massachusetts, (the "Premises"), constituting a portion of the premises more particularly described in a certain mortgage given by Sfakios LLC to NewAlliance Bank dated August 3, 2007 and recorded with the Hampden County Registry of Deeds in Book 16851, Page 229 (the "Mortgage") and described as 784 College Highway, Southwick, Hampden County, Massachusetts, in the printed notice of foreclosure sale entitled "MORTGAGEE'S SALE OF REAL ESTATE", attached hereto and made a part hereof, for the sum of _____ DOLLARS.

The Premises shall be conveyed, subject to the terms and conditions of the Mortgagee's Sale of Real Estate and the Additional Terms of Sale, attached hereto and made a part hereof, and further subject to the following terms and conditions:

1. **Buildings, Structures, Improvements, Fixtures.** The Premises, and any fixtures, if any, are taken by Buyer AS IS, WHERE IS, WITH ALL FAULTS and without representation or warranty. MORTGAGEE SPECIFICALLY MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE BUILDING, STRUCTURE ANY IMPROVEMENTS OR ITEMS OF PERSONAL PROPERTY. MORTGAGEE SPECIFICALLY DISCLAIMS ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED OR EXPRESS WARRANTIES OF FITNESS AND/OR MERCHANTABILITY.
2. **Title Deed.** Said Premises are to be conveyed by the Mortgagee's Foreclosure Deed (the "Deed") running to the Buyer as herein provided, subject to those items set forth in the Mortgagee's Sale of Real Estate, and Additional Terms of Sale including but not limited to:
 - (a) Provisions of existing building and zoning laws;
 - (b) Existing rights and obligations in party walls;
 - (c) Such taxes and water and sewer use charges attributable to the Premises, which taxes the Buyer hereby assumes and agrees to pay;
 - (d) Any liens for municipal betterment assessed against the Premises;
 - (e) Rights of tenants or other parties in possession; and
 - (f) Any and all restrictions, easements, improvements, covenants, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens, rights of redemption held by the Internal Revenue Service or the United States Government and existing encumbrances of record superior to the Mortgage, if any.
3. **Deposit.** The sum of \$20,000.00, tendered as a deposit (the "Deposit") is hereby acknowledged, leaving a balance of \$ _____ (the "Balance Due").
4. **Performance.** The Deed together with the Affidavit of compliance with M.G.L. ch. 244, § 14, and the Judgment or Order under the Soldiers' and Sailors' Civil Relief Act, if applicable, (the "Closing Documents") are to be delivered, and the Balance Due is to be paid, by certified or bank check, at the offices of Sapirstein & Sapirstein, P.C., 1350 Main Street, 12th Floor, Springfield, Massachusetts, on July 23, 2009 at 1:00 p.m. **Time being of the essence**, (the "Closing Date") unless some other place and time should be mutually agreed upon in writing, in which case time will be of the essence thereof. The Mortgagee shall not be responsible for the execution or delivery of any other documents in connection with the closing other than the Closing Documents.
5. **Possession And Condition Of Premises.** The Premises shall be delivered, subject to the rights of tenants or other parties in possession, at the time of the delivery of the Closing Documents, in its then condition.
6. **Extension To Make Conveyance.** If, for any reason, the Mortgagee shall be unable to give title or to make conveyance, all as herein stipulated, the Mortgagee shall return the Deposit and this Agreement shall be void and without recourse to the parties hereto, unless the Mortgagee, in its sole and exclusive discretion, elects to use reasonable efforts to resolve any impediment to such conveyance, in which event the Mortgagee shall give written notice thereof to the Buyer on or before the Closing Date, and thereupon the time for performance hereof shall be extended for a period of seventy-five (75) days from the Closing Date, or seven (7) days from the date Buyer is notified by the Mortgagee that the Mortgagee is prepared to make conveyance, whichever is sooner, time being of the essence.
7. **Failure To Make Conveyance.** If at the expiration of the extended time the Mortgagee, for any reason, has failed or is unable to make conveyance, all as herein agreed, any payments made by the Buyer to the Mortgagee under this Agreement shall be refunded to the Buyer, all other obligations of all parties hereto shall cease and this Agreement shall be void and without recourse to the parties hereto.
8. **Delivery Of Closing Documents.** The delivery of the Closing Documents by the Mortgagee to the Buyer (or Buyer's agent or representative) shall be deemed to be a full performance and discharge by the Mortgagee of every agreement and obligation except such as are, by the express terms hereof, to be performed after delivery of the Closing Documents. Notwithstanding the foregoing, all of the Buyer's acknowledgments, agreements (including any agreement to indemnify), warranties and representations, and all of the disclaimers set forth herein, shall survive the delivery of the Closing Documents and shall be binding upon the Buyer and the Buyer's successors and assigns.
9. **Inspection Of The Premises.** The Buyer acknowledges that the Buyer has viewed and inspected, or has had the opportunity to view and inspect, the Premises prior to signing this Agreement and is satisfied with the condition thereof.
10. **Adjustments.** No adjustments shall be made to the purchase price. The Buyer shall be responsible for the recordation of the Closing Documents, payment of Massachusetts Deed Excise Tax stamps, and all recording fees and costs incident to the closing.
11. **Deposit.** The Deposit shall be held by the Mortgagee, or its designee, subject to the terms of this Agreement, and shall be duly accounted for at the time for performance of this Agreement. Under no circumstances will interest be paid to the Buyer in connection with the Deposit.

12. **Default.** If the Buyer shall fail to fulfill the Buyer's obligations herein, the Deposit shall, without the necessity of any notices, become property of the Mortgagee and such retention of Deposit shall not relieve the Buyer from any and all damages of the Mortgagee, including but not limited to, actual and consequential damages, and reasonable attorney's fees. In addition to all other rights and remedies allowed by law or equity, the Premises may be resold to the next highest bidder or such other party as the Mortgagee may elect, without notice to the Buyer, with the Mortgagee reserving the right to pursue the Buyer for any and all damages incurred, including all expenses, costs of resale and attorneys' fees.
13. **Limitation of Mortgagee's Liability.** Notwithstanding anything in this Agreement to the contrary, the Buyer waives any and all rights to any action against the Mortgagee for specific performance, and the Buyer agrees that the Buyer shall not record this Agreement, nor any notice (or any instrument) in any public record which could create a lien, cloud or encumbrance on the title to the Premises or otherwise affect the Mortgage or title to the Premises in any way whatsoever, without the prior written consent of the Mortgagee. In no event shall the Mortgagee's liability as a result of any breach of this Agreement, or default, or otherwise, exceed the refund of the Deposit. A refund of the Deposit shall constitute the Buyer's sole and exclusive remedy as against the Mortgagee, at law or in equity in connection with this transaction.
14. **Smoke Detectors.** The Buyer acknowledges that the Mortgagee is not the owner of the Premises and the Buyer hereby assumes responsibility for and agrees to procure, any and all smoke detector certificates as required by M.G.L. ch. 148.
15. **Lead Paint.** The Buyer acknowledges that the Mortgagee has informed the Buyer that the Premises may be contaminated with dangerous levels of lead, as defined in Massachusetts General Laws, Chapter 111, Section 194, and that if a child or children under six (6) years of age is to become a resident, the Buyer agrees that the Buyer shall hold the Mortgagee, and its agents and assigns, harmless from any injury or damage to said child or children as a result of lead paint poisoning and for the removal or cover of any paint, plaster, or other material containing such dangerous levels of lead, and said Buyer shall at Buyer's own expense remove or cover said paint, plaster or other materials in accordance with Chapter 111, Section 197 of the Massachusetts General Laws, so as to make said dangerous levels of lead inaccessible to such child or children, including such requirements as law may from time to time require. The Buyer further represents that the Massachusetts Department of Public Health's notification was provided to Buyer by the Mortgagee and the Buyer acknowledges that the Buyer has read said notification prior to executing this Agreement.
16. **State Environmental Code.** No warranty or representation is made concerning whether the Premises are serviced by a private sewer system or whether the Premises are subject to the provisions of Title 5 of the State Environmental Code. Any and all inspections or certificates which may be required under the State Environmental Code shall be the sole responsibility of, and at the sole expense, of the Buyer. If the Premises are not serviced by a public sewage system, Buyer will be solely responsible for compliance with all Title 5 Regulations, including but not limited to, any inspection and upgrade requirements set forth in 310 CMR (Code of Massachusetts Regulations) 15.300 through 15.305.
17. **Environmental Contamination.** The Buyer acknowledges that there may have occurred the use, storage, disposal, transportation, release or threat of release of hazardous or toxic materials or substances on, or in connection with, the Premises and that the Premises may not be in compliance with applicable environmental laws, including, without limitation, the Massachusetts Oil and Hazardous Material Release Prevention Response Act (M.G.L. c. 21E), Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 *et. seq.*) and other federal, state and local laws and regulations, and any judicial or administrative decree or decisions. The Buyer hereby releases the Mortgagee from any and all liability in connection with any environmental claims, of any kind or nature, which may arise in connection with, or relating to the Premises and agrees to indemnify and defend the Mortgagee in connection with any such claims which may be asserted against the Mortgagee hereinafter.
18. **Corporate Authority.** If the Buyer is a corporation, then the undersigned, in his or her individual capacity, represents that the corporation is a validly existing corporation duly organized and in good standing under the Laws of the Commonwealth of Massachusetts, with full power to execute all documents in connection herewith. The undersigned, in his or her individual capacity, also represents that the execution and delivery of this agreement has been duly authorized by the lawfully constituted Board of Directors and lawfully constituted stockholders of the corporation, where applicable.
19. **Risk of Loss.** The Buyer acknowledges that from and after this date the Buyer shall have the sole risk of loss and the Mortgagee shall have no responsibility for maintaining insurance on the Premises. In the event that the Premises are damaged by fire or other casualty after the date hereof, then the Buyer shall remain obligated to consummate the sale without any reduction in the purchase price.
20. **No Reliance by Buyer.** The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction, nor has the Buyer relied upon any warranties or representations not set forth or incorporated in this Agreement. The Buyer acknowledges that the Buyer has not relied upon any commercial advertisement, and that information contained in such advertisements is furnished for informational purposes only. The Mortgagee makes no warranties or representations concerning the accuracy or correctness of the information in such commercial advertising.
21. **Asbestos.** The Buyer acknowledges that the Mortgagee has informed the Buyer that the Premises described in this Agreement may contain asbestos as defined in Chapter II of the Massachusetts Sanitary Code, Regulation 410.353. The Buyer agrees that he shall hold the Mortgagee and Auctioneer harmless from any injury or damage to persons or property caused on account of any asbestos located on the Premises. The Buyer also agrees to hold both the Mortgagee and Auctioneer harmless from any and all costs or expenses associated with the removal of any asbestos from the Premises.
22. **No Commission.** No commission shall be payable to any party on account of this sale. The Buyer agrees to indemnify the Mortgagee against and to hold the Mortgagee harmless from any claim, loss, damage, cost or liability for any brokerage commission or fee which may be asserted against the Mortgagee in connection with this transaction.

23. Notice.

- a. Any notice to the Buyer hereunder may be given in writing to the Buyer at either the Buyer's address above or the last address of the Buyer currently on file with the Mortgagee. Alternatively, the Mortgagee may give notice to the Buyer's attorney or other legal representative.
- b. Said notice may be sent by any of the following methods:
 - (1) first class mail, postage prepaid;
 - (2) certified mail, return receipt requested;
 - (3) a national overnight courier service which provides a receipt or other evidence of delivery; or
 - (4) delivery in hand or by facsimile.
- c. Any such notice shall be effective upon any of the following:
 - (1) date of post mark for first class mail;
 - (2) placement with a national overnight courier service;
 - (3) receipt of mailing certified mail, return receipt requested; or
 - (4) receipt of an acknowledged facsimile transmission.

24. Buyer Acknowledgments.

- (a) THE BUYER WARRANTS, ACKNOWLEDGES, AND AGREES WITH THE MORTGAGEE THAT THE BUYER IS PURCHASING THE PREMISES IN AN "AS IS," "WHERE IS" CONDITION, "WITH ALL FAULTS," AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTEES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE, OR TYPE WHATSOEVER FROM OR ON BEHALF OF THE MORTGAGEE. The Buyer acknowledges that the Buyer has not relied and is not relying upon any information, document, sales brochures or other literature, maps or sketches, projection, proforma, statement, representation, guarantee or warranty whether express or implied, oral or written, material or immaterial that may have been given by or made by or on behalf of the Mortgagee.
- (b) The Buyer hereby acknowledges that the Buyer has not and shall not rely upon the Mortgagee or its agents as to:
 - (1) the quality, nature, adequacy or physical condition of the Premises, including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities or the electrical, mechanical HVAC, plumbing, sewage or utility systems, facilities or appliances at the Premises, if any;
 - (2) the quality, nature, adequacy or physical condition of soils or the existence of ground water at the Premises;
 - (3) the existence, quality, nature, adequacy or physical condition of any utilities serving the Premises;
 - (4) the development potential of the Premises;
 - (5) the habitability, merchantability or fitness, suitability or adequacy of the Premises for any particular purpose;
 - (6) the zoning or other legal status of the Premises;
 - (7) compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restriction of any governmental or quasi-governmental entity relating in any way to the Premises; or
 - (8) the condition of title to the Premises or the nature, status and extent of any right of way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting title to the Premises.
- (c) THE BUYER ACKNOWLEDGES AND AGREES WITH THE MORTGAGEE THAT WITH RESPECT TO THE PREMISES, THE MORTGAGEE HAS NOT, DOES NOT AND WILL NOT MAKE ANY WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, MERCHANTABILITY, HABITABILITY OR FITNESS FOR PARTICULAR USE OR WITH RESPECT TO THE VALUE, PROFITABILITY OR MARKETABILITY OF THE PREMISES, AND MORTGAGEE HEREBY DISCLAIMS ANY SUCH WARRANTIES.
- (d) THE BUYER ACKNOWLEDGES THAT THE MORTGAGEE HAS NOT, DOES NOT AND WILL NOT MAKE ANY REPRESENTATION OR WARRANTY WITH REGARD TO COMPLIANCE WITH REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO THOSE PERTAINING TO THE HANDLING, GENERATING, STORING, TREATING OR DISPOSING OF ANY HAZARDOUS WASTE OR SUBSTANCE, AND MORTGAGEE HEREBY DISCLAIMS ANY SUCH WARRANTIES.
- (e) The Buyer acknowledges that the Buyer has had and/or has been given, pursuant to this Agreement and prior to its execution, an adequate opportunity to make such legal, factual and other inquiries and investigations as the Buyer deems necessary, desirable or appropriate with respect to the Premises. Such inquiries and investigations of the Buyer shall be deemed to include, but shall not be limited to, any leases and contracts pertaining to the Premises, the physical components of the Premises, the condition of the Premises, the existence of any wood-destroying organisms on the Premises, such state of facts as an accurate survey and inspection would show, the present and future zoning ordinances, resolutions and regulations of the city, county and state where the Premises are located and the value and marketability of the Premises.
- (f) Without in any way limiting the generality of the foregoing subparagraphs, the Buyer specifically acknowledges and agrees that the Buyer hereby waives, releases and discharges any claim the Buyer has, might have had or may have against the Mortgagee.

its agents and assignees, with respect to the condition of the Premises, either patent or latent, the ability or inability to obtain or maintain building permits, either temporary or final, certificates of occupancy or other licenses for the use or operation of the Premises, and/or certificates of compliance for the Premises, the actual or potential income or profits to be derived from the Premises, the real estate taxes or assessments now, or hereafter payable thereon, the compliance with any environmental protection, pollution or land use laws, rules, regulations or requirements and any other state of facts which exist with respect to the Premises.

(g) The Buyer has sufficient funds or has obtained financing from third parties to close this transaction in a timely fashion and to pay the Balance Due in full, and the Buyer fully understands and acknowledges that Buyer's obligations hereunder are not contingent upon the Buyer's ability to obtain financing. The Buyer acknowledges that neither the Mortgagee nor its officers, directors, employees or agents have offered any loan or financing in connection with this transaction and that the Buyer is not relying upon any such offer for financing in entering into this Agreement.

25. **Construction.** Whenever the context so requires, a pronoun used in this Agreement may be deemed to include the masculine, feminine or neuter gender, and the singular form of any nouns and pronouns may be deemed to include the corresponding plural form, and vice versa.

26. **Miscellaneous.** This instrument is to be construed under the laws of Massachusetts, is to take effect as a sealed instrument, sets forth the entire agreement 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 the parties hereto or their legal representatives. If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several. The Buyer acknowledges that he has thoroughly reviewed this Agreement prior to execution.

EXECUTED as a sealed instrument this 23rd day of June, 2009.

AUCTIONEER

BUYER'S SIGNATURE

BUYER'S NAME - PLEASE PRINT

ADDRESS

TELEPHONE NUMBER