

INFORMATIONAL BIDDER'S PACKAGE

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MORTGAGEE'S SALE OF REAL ESTATE

By virtue and in execution of the Power of Sale contained in a certain mortgage (the "Mortgage") given by Thomas D. L'Esperance and Carol A. Balakier to TD Banknorth, N.A. dated May 30, 2007 and recorded with the Hampden County Registry of Deeds in Book 16711, Page 1, of which Mortgage the undersigned (the "Mortgage Holder") is the present holder, for breach of the conditions of said Mortgage and for the purpose of foreclosing the same will be sold at Public Auction at 1:00 p.m. on January 27, 2011 at the mortgaged premises, being known as 1869 Memorial Drive, Chicopee, Massachusetts, all and singular the premises described in said Mortgage (the "Premises"), to wit:

"Certain real estate and all of the buildings, structures and other improvements thereon situated in Chicopee, Hampden County, Massachusetts, more particularly bounded and described as follows:

Beginning at the point of intersection of the Westerly line of Gladdu Street with the Northerly line of Britton Street; and running

Thence N 07° 27' 57" E, on said Gladdu Street, three hundred sixty-five (365.00) feet to an iron pin at the Southeasterly corner of land now or formerly of Fairview Auditorium Corporation;

Thence N 82° 32' 03" W, on last named land, ninety-four (94.00) feet to an iron pin in the Easterly line of Memorial Drive;

Thence S 07° 27' 57" W, on said Memorial Drive, two hundred seventy-eight and 58/100 (278.58) feet to an angle in said Memorial Drive;

Thence S 04° 06' 06" W, on said Memorial Drive, fifty-seven and 90/100 (57.90) feet to the intersection of said Easterly line of Memorial Drive with said Northerly line of Britton Street; and

Thence S 65° 00' 14" E, on said Britton Street, ninety-five and 02/100 (95.02) feet to the point of beginning. Containing 32,819 square feet of land, more or less.

Excluding from the premises described hereby that portion of the premises more particularly described as "Parcel D" on a plan entitled "Plan of Land in City of Chicopee, Massachusetts Owned by F.L. Roberts and Company, Incorporated" prepared by Durkee, White, Towne and Chapdelaine, dated December 12, 1972, recorded in the Hampden County Registry of Deeds at Plan Book 141, Page 45, more particularly bounded and described as follows:

Beginning at an iron pin on the easterly side of Memorial Drive, said iron pin being located one hundred thirty-six and 48/100 (136.48) feet northerly of Britton Street measured along the easterly side of Memorial Drive; thence

N 07° 27' 57" E a distance of two hundred and 00/100 (200.00) feet along the easterly side of Memorial Drive to a point; thence

S 82° 32' 03" E a distance of ninety-four and 00/100 (94.00) feet along the land of Fairview Auditorium Corporation to a point on the westerly side of Gladu Avenue; thence

S 07° 27' 57" W a distance of two hundred forty-five and 00/100 (245.00) feet along the westerly side of Gladu Avenue to an iron pin; thence

N 56° 57' 09" W a distance of one hundred four and 22/100 (104.22) feet along other land of the grantor herein to the point of beginning.

Together with and subject to the easements and easement rights more particularly described in the deed conveying Parcel D from F.L. Roberts and Company, Incorporated to Richard E. Frattesi and Tracy L. Frattesi recorded in the Hampden County Registry of Deeds at Book 5990, Page 42.

The premises conveyed hereby (the "Premises") are subject to a restrictive covenant in favor of F.L. Roberts and Company, Incorporated ("F.L. Roberts"), its successors and assigns, that shall be applicable to the Premises for a period of five (5) years from the date of recording of this Deed (the "Restrictive Covenant"). The Restrictive Covenant provides as follows:

1. F.L. Roberts and Nelvar Enterprises, Inc. (the "Operator") are parties to a Supply Agreement, under which the Operator agrees to purchase from F.L. Roberts all of the Operator's requirements for gasoline and other petroleum products for resale at the Premises as Mobil branded gasoline (the "Supply Agreement").
2. Upon the occurrence of any Event of Default by the Operator pursuant to the Supply Agreement attributable to any failure by the Operator to purchase from F. L. Roberts in accordance with the terms of the Supply Agreement all of the Operator's requirements for gasoline and other petroleum products for resale at the Premises as Mobil branded gasoline, the Grantee and the Grantee's successors and assigns with respect to the Premises shall be prohibited from operating a gasoline service station at the Premises for the remainder of the five (5) year period beginning upon the date of recording of this Deed.
3. Through its acceptance of this Deed the Grantee agrees on its own behalf and on behalf of its successors and assigns that F.L. Roberts does not have an adequate remedy at law in the event of any breach of the Restrictive Covenant by the Grantee, or the Grantee's successors and assigns with respect to the Premises conveyed hereby, and F.L. Roberts will suffer immediate and irreparable loss and damage in the event of any breach of the Restrictive Covenant. The Grantee therefore agrees on its own behalf and on behalf of the Grantee's successors and assigns with respect to the Premises that F.L. Roberts shall be entitled to the issuance of a temporary, preliminary and permanent injunction prohibiting the Grantee, its successors and assigns with respect to the Premises, from any breach of the Restrictive Covenant in the event of any such breach of the Restrictive Covenant by the Grantee, its successors and assigns with respect to the Premises, in addition to such other rights and remedies as F.L. Roberts may have as a result of any such breach of the

Restrictive Covenant.

4. Through its acceptance of this Deed the Grantee agrees on its own behalf and on behalf of its successors and assigns with respect to the Premises that upon the request of F.L. Roberts the Grantee shall enter into a separate agreement in recordable form setting forth the Restrictive Covenant applicable to the Premises and the Grantee, its successors and assigns with respect to the Premises, provided that any such separate agreement shall be consistent in all material respects with the Restrictive Covenant as set forth herein.

Being the same premises conveyed to the Mortgagor herein by deed of F.L. Roberts and Company, Incorporated, which deed is dated January 14, 2003 recorded in Hampden County Registry of Deeds in Book 12871, Page 329."

The Premises will be sold subject to and with the benefit of all rights, rights of way, restrictions, easements, covenants, liens or claims in the nature of liens, improvements, outstanding tax titles, rights of tenants and parties in possession, unpaid taxes, municipal liens and other public taxes, assessments or liens and existing encumbrances having priority over the Mortgage, if any.

TERMS OF SALE: A deposit of Twenty Thousand Dollars (\$20,000) will be required to be paid in cash or by certified or bank check by the successful bidder at the time and place of the sale. An additional deposit amount will be required to be paid by certified or bank check by the successful bidder within five (5) business days from the date of the sale in an amount that increases the total deposit to not less than ten percent (10%) of the successful bid amount. The balance of the successful bid amount is to be paid by certified or bank check within thirty (30) days from the date of the sale, and the deed for the Premises shall be delivered contemporaneously with such payment.

The Mortgage Holder reserves the right to postpone or adjourn this sale to a later time or date by public proclamation at the time and date appointed for the sale and to further postpone or adjourn any postponed or adjourned sale by public proclamation at the time and date appointed for the postponed or adjourned sale.

The successful bidder at the sale will be required to sign a Memorandum of Sale containing the above terms, and other announced terms, at the sale.

The description for the Premises contained in the Mortgage shall control in the event of a typographical error in this notice.

Other terms to be announced at the sale.

TD BANK, N.A., formerly known as
TD Banknorth, N.A.
Present Holder of said Mortgage

By: 

Its Attorney

John W. Davis, Esq.

Cooley, Shrair P.C.

1380 Main Street, 5th Floor

Springfield, MA 01103

AUCTIONEER'S MEMORANDUM OF SALE AT PUBLIC AUCTION

The undersigned _____ of _____ (the "BUYER") hereby acknowledges that BUYER has this day purchased at a Mortgagee's Sale of Real Estate at Public Auction from Aaron Posnik & Co., Inc. (the "AUCTIONEER"), as agent for TD Bank, N.A. (the "SELLER"), that certain real estate (the "Premises") known as 1869 Memorial Drive, Chicopee, Massachusetts and more fully described in the Mortgagee's Sale of Real Estate notice attached hereto (the "Sale Notice"), for the sum of \$ _____ (the "Purchase Price").

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

BUYER agrees to be bound by, and to comply with, and that the Premises are being sold subject to, the terms and conditions as stated in this Memorandum of Sale and the Sale Notice and also the additional terms and conditions read by the Auctioneer at the sale, a copy of which is attached hereto (the "Additional Terms and Conditions").

BUYER has this day paid to SELLER \$20,000 as a non-refundable deposit on the sale, with an additional deposit in the amount of \$ _____ to be paid by BUYER to SELLER, in accordance with the terms and conditions of the sale. Said deposit(s) shall be forfeited to the use of SELLER if BUYER fails to comply with any of the terms and conditions of the sale. Any such forfeiture shall not relieve BUYER of any liability under this agreement.

The balance of the Purchase Price is due and payable at the office of Cooley, Shrair P.C., at 1380 Main Street, Springfield, Massachusetts, as counsel for the SELLER, on or before February 28, 2011, by certified or bank check or other form acceptable to SELLER, and contemporaneous with a timely receipt by SELLER of such payment, SELLER shall convey the Premises to BUYER by delivery to BUYER of a statutory form foreclosure deed under the statutory power of sale (M.G.L. ch. 183, Appendix Form 11) from SELLER. Time is of the essence of this agreement.

In addition to the Purchase Price, BUYER assumes and agrees to pay all real estate taxes, water and sewer bills, municipal liens, tax titles, betterments, and assessments applicable to the Premises and, in addition to BUYER's own closing costs, all Massachusetts document tax stamps and recording charges applicable to this sale.

BUYER acknowledges that BUYER has not been influenced to enter into this transaction by, nor has BUYER relied upon, any warranty or representation of the SELLER or AUCTIONEER not expressly set forth or incorporated in this Memorandum of Sale.

AUCTIONEER acknowledges that SELLER has this day received from BUYER the \$20,000 non-refundable deposit and that the Premises were this day sold by AUCTIONEER at public auction for the Purchase Price noted above, subject to the terms and conditions contained herein and in the attached Sale Notice and Additional Terms and Conditions.

Signed as a sealed instrument on this 27th day of January, 2011.

BUYER:

Buyer's Signature

AUCTIONEER:

Aaron Posnik & Co., Inc.

By: _____
Name:
Title:

ADDITIONAL TERMS AND CONDITIONS

The following additional terms and conditions shall apply to the sale of the premises as described in the sale notice of TD Bank, N.A. (the "Mortgage Holder") that has just been read to you:

1. The successful bidder will be required to execute in duplicate a Memorandum of Sale upon acceptance of the bid. Copies of the Memorandum of Sale are here for anyone to inspect prior to the bidding.
2. The premises will be sold to the highest bidder who will be required to make the required deposit prior to signing the Memorandum of Sale.
3. If the successful bidder fails to pay the required deposit and sign the Memorandum of Sale and any other required document or if, after paying the deposit and signing the required documents, fails to perform its obligations thereunder, any deposit made, including any additional deposit made after today, shall be forfeited to the use of the Mortgage Holder. Such forfeiture shall not release the successful bidder from any of its obligations. The Mortgage Holder also reserves the right to convey the premises to the second highest bidder, at its last highest bid, under the same terms and conditions as are being offered at today's auction, and without further notice by publication or otherwise. Such second highest bidder will have five (5) days after notification by the Mortgage Holder to make the required deposit and sign the Memorandum of Sale and any other required documents.
4. No items of personal property are included in this sale, and the premises are being sold in "AS IS" condition, subject to all known and unknown defects, and subject to all applicable laws.
5. The Mortgage Holder is in possession of a Preliminary Environmental Site Screening prepared by Environmental Compliance Services, Inc. on or about April, 2007 and a Phase I Environmental Site Assessment dated September 3, 2009 with respect to the premises, copies of which are here for anyone to inspect prior to the bidding. Each report is being made available for information purposes only and is not to be relied upon by you, or anyone else, for any

purpose, and the Mortgage Holder makes no representations or warranties regarding the accuracy, completeness or usefulness of the reports or any of the information contained therein.

6. No representations or warranties of any kind whatsoever are made by or on behalf of the Mortgage Holder with respect the premises, including, without limitation, any warranty or representation as to (a) condition, construction, or fitness for habitation, (b) the presence or absence of asbestos, urea formaldehyde, lead paint, radon gas, oil or other hazardous materials, or aboveground or underground storage tanks, (c) compliance or non-compliance with any law, including, without limitation, any federal, state or local law relating to environmental, zoning, building or occupancy matters, or (d) zoning, state of title, utilities, tenants or occupants, or other matters.

7. The successful bidder shall be responsible for complying with all laws applicable to any on site sewage disposal system, including, without limitation, Title V of the State Environmental Code, and is specifically hereby notified of, and shall be responsible for complying with, the inspection and upgrade requirements contained in Sections 15.300 through 15.305 of Volume 310 of the Code of Massachusetts Regulations, if applicable.

8. A municipal lien certificate has been obtained from the city collector's office, and a copy is available for inspection prior to the bidding. Based on the certificate and information provided by the city's water/sewer department, the following amounts appear due and owing to the City of Chicopee with respect to the premises:

Real estate taxes, interest and other charges for 1st half of fiscal year 2011 calculated through January 27, 2011	\$6,640.79
Unpaid water and sewer charges, including any interest, for the period from 9/13/10 to 12/1/10.	\$ 87.59
	Total \$6,728.38

No representations or warranties are made by or on behalf of the Mortgage Holder as to the accuracy, completeness or usefulness of the foregoing or as to the extent to which such amounts

constitute a lien against the premises. All municipal taxes and other municipal charges, together with all interest, fees and costs relating thereto through the date of payment, shall be the responsibility of the successful bidder.

9. The premises are also being sold subject to the following matters of record with the Hampden County Registry of Deeds, to the extent presently applicable and in effect against the premises and having priority over the mortgage being foreclosed upon today:

(i) Restrictions set forth in deed dated January 14, 2003 and recorded in Book 12871, Page 329;

(ii) Cross easements and easement rights set forth in deed dated January 15, 1986 and recorded in Book 5990, Page 42;

(iii) A taking evidenced by 1975 instrument of taking by the Massachusetts Department of Public Works for alteration of Memorial Drive recorded in Book 4218, Page 313 and as shown on a plan recorded in Book of Plans 162, Page 50;

(iv) All matters shown by or referred to in a plan dated December 12, 1972 and recorded in Book of Plans 144, Page 45;

10. The Mortgage Holder, or its affiliate, may bid at this sale, and if either is the successful bidder, neither shall be required to pay any deposit.

11. All information as shown in the Auctioneer's circulars or published advertisements for this sale has been compiled for the convenience and assistance of the successful bidder, and while the information is assumed to be reasonably correct, it is not guaranteed or warranted by the Auctioneer or the Mortgage Holder or any of their representatives.

12. From and after this date, the successful bidder shall have the sole risk of loss and the Mortgage Holder shall have no responsibility for maintaining insurance on the premises. In the

event the premises are hereafter damaged by fire or other casualty, the successful bidder shall remain obligated to consummate the sale without any reduction in the purchase price.

13. In the event the Mortgage Holder cannot convey title to the premises as stipulated, the deposit, including any additional deposit thereafter made, shall be refunded and all rights under the Memorandum of Sale shall cease and the successful bidder shall have no recourse against the Mortgage Holder or its employees, agents or representatives, whether at law or in equity.

14 The premises will be conveyed by the usual statutory form foreclosure deed under the statutory power of sale, such deed to be delivered contemporaneously with the Mortgage Holder's timely receipt of full payment pursuant to the Memorandum of Sale. No adjustments of any kind shall be made to the purchase price. The successful bidder will be responsible for its own closing costs and all Massachusetts document tax stamps and recording fees applicable to the purchase of the premises. The acceptance of the Mortgage Holder's foreclosure deed by the successful bidder, or any successor in interest, shall be deemed to be a full performance and discharge of all obligations of the Mortgage Holder to the successful bidder, and any successor in interest, in connection with this sale.

15. The successful bidder will be required to sign this document when signing the Memorandum of Sale and, by doing so, the successful bidder will be acknowledging that the successful bidder agrees to the foregoing terms and conditions.

Successful Bidder's signature