

AUCTIONEER'S MEMORANDUM OF SALE

Sold at public auction on September 19, 2014 to _____

highest bidder (the "Buyer"), all the right, title and interest in and to a portion of the premises at **444 Merrill Road, Pittsfield, Massachusetts** (the "Premises") as shown a plan entitled "Plan of Property and Restricted Area, Pittsfield Assessor's Lot No. L12-1-5," consisting of one sheet, prepared by Hill Engineers, Architects, Planners, dated September 15, 2011, which was recorded in the Berkshire Middle District Registry of Deeds on January 30, 2012, in Plat K, No. 12, a copy of which is attached hereto, and being the same premises described in a deed dated August 9, 2001, and recorded with said Registry of Deeds in Book 4754, Page 337, to the, for the sum of

_____, shall be conveyed by quitclaim deed, free of all liens and encumbrances of record, except that certain:

Grant of Environmental Restriction and Easement from 444 Merrill Road, LLC in favor of the Massachusetts department of Environmental Protection, dated October 13, 2011, and recorded with said Registry of deeds in Book 4890, Page 56, a copy of which is attached hereto,

subject to the terms of this Auctioneer's Memorandum and the Terms and Conditions contained in the Bidder's Package which are incorporated herein by reference.

Buyer's Premium: The successful bidder agrees to pay to the auctioneer a Buyer's Premium equal to five percent (5%) of the highest bid.

All bidders were informed of and agree to purchase subject to the following:

1. Current real estate taxes, water rates, sewer use charges and fuel are to be apportioned as of the Closing Date. If the real estate tax rate has not been set as of the Closing Date, the parties shall apportion real estate taxes based on the tax assessed for the most recent preceding year.

2. Any title matter or practice arising under or relating to this Agreement which is the subject of a Title Standard or a Practice Standard of the Massachusetts Real Estate Bar Association (REBA) shall be governed by said Standard to the extent applicable.

3. The Buyer must deliver to **444 Merrill Road, LLC** (“Seller”), in addition to the **\$10,000** good faith deposit, an additional deposit equal to the difference between **ten percent (10%)** of the highest bid and **\$10,000** on or before **September 24, 2014** (all deposits shall hereinafter be referred to as the “Deposit”).

4. The Buyer is not entitled to a return of the Deposit if the Buyer fails to complete the Purchase, and the Seller reserves all of its rights and remedies at law and in equity for any default of the Buyer.

5. The closing shall occur on **October 20, 2014** at noon or sooner at the Buyer’s request at the offices of George, Massimiano & McCarthy, P.C., Berkshire Common, 2 South Street, Suite 255, Pittsfield, MA. At the closing, the Buyer shall pay the balance of the purchase price by wired funds, by certified check or by cashier or treasurer’s check from a bank.

6. Time is of the essence;

7. Acceptance of the Deed shall constitute a discharge of each and every obligation of Seller.

8. In the event Seller cannot convey title to the Premises, the Deposit shall be refunded and all rights hereunder shall cease, and the Buyer shall have no recourse against Seller, or its employees, agents and representatives, whether at law or in equity.

9. The Risk of Loss shall remain with the Seller until the Closing.

10. Prior to the delivery of the Deed, the risk of loss shall be on the Seller. The Seller shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Premises (or, upon the written request of the Buyer, and at the Buyer’s expense, in such greater amount as the Buyer may reasonably request). If the Premises is damaged by fire or other casualty prior to the Closing Date, and the Seller has not restored the Premises to their former condition, the Buyer has the option to take an assignment of the Seller's insurance proceeds or terminate this Agreement. If the Buyer elects to purchase, the Seller shall assign all insurance proceeds to the Buyer and the Purchase Price shall be reduced by:

a. the net amount of any insurance proceeds which a mortgagee has applied to the mortgage debt, less any amounts reasonably expended by the Seller for partial renovation.

- b. the amount of any insurance proceeds received by the Seller; and
- c. any deductible amount under the Seller's insurance policy.

The Seller will credit the Buyer the amount of the deductible towards the Purchase Price.

12. The Premises 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 Seller or the Auctioneer not set forth or incorporated in this Memorandum. 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.

13. Seller makes no warranties or representations regarding the Premises' current compliance with any state or local regulations or laws, including, without limitation, environmental compliance laws.

14. In the event that the successful bidder at the 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 auction, Seller reserves the right to sell the Premises to the second highest bidder provided that the second highest bidder shall deposit the amount of the required deposit with the law offices of George, Massimiano & McCarthy, P.C. 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.

I read said notice and other terms of sale above set forth and conducted the auction in accordance therewith. I made this memorandum immediately following said sale, and delivered a copy thereof to the Buyer.

Aaron Posnik & Co., Inc.
Auctioneer

The undersigned has this 19th day of September, 2014 agreed to purchase at public auction of Aaron Posnik & Co., Inc., Auctioneer, #161 the real estate at 444 Merrill Road, Pittsfield, Massachusetts, and agrees to comply with the terms of the sale as stated by the Auctioneer and as set forth above.

WITNESS:

Print Name: