

MEMORANDUM OF SALE OF REAL ESTATE BY RECEIVER

This Memorandum of Sale (this “Memo”) is made as of _____, 2015, between and among _____ (the “Buyer”), AARON POSNIK & CO., INC. (“Auctioneer”), and THOMAS S. HEMMENDINGER (the “Receiver”), receiver of MATCHOW REALTY LLC (“Owner”). Buyer, Receiver, and Auctioneer are also referred to individually as a “Party” and collectively as “Parties”.

1. Purchase and Sale. Subject to the terms and conditions of this Memo, Buyer hereby agrees to purchase the real estate commonly known as 79 Fairhaven Road, Mattapoisett, Massachusetts, as more particularly described in Exhibit A to this Memo (the “Property”).

2. Excluded Assets. Buyer understands and agrees that the Property excludes the following: licenses, permits, or other governmental approvals; leased equipment; books and records; cash; accounts receivable; deposit accounts; tax refunds; pre-paid deposits; unearned insurance premiums; choses-in-action; any and all claims of the Receiver or the receivership estate against any shareholder, officer, director, manager, member, partner, employee or other insider of Owner, including claims for breach of fiduciary duties, fraudulent transfers, preferences, or breach of any other duties to Owner or its creditors; employee benefit plans, including retirement, health or welfare plans; employment agreements, including collective bargaining agreements; software and intellectual property that is owned by and/or subject to the copyrights or other intellectual property of third parties; any other assets not owned by Owner; and the proceeds of any of the foregoing.

3. Purchase Price. The Purchase Price is _____ Dollars (\$ _____), and is payable certified check, bank cashier’s check, or wire transfer as follows:

(a) A deposit of \$35,000 accompanies this Memo (the “Initial Deposit”).

(b) An additional deposit of \$ _____ must be paid within 5 business days after the date of this Memo (the “Additional Deposit”).

(c) The balance of the Purchase Price must be paid at the Closing.

4. Closing. The Closing shall take place at the Receiver’s office set forth below on at 10:00 a.m. on the tenth (10th) business day after the Superior Court (the “Court”) approves this Memo (the “Closing Date”), or at such other time as Buyer and the Receiver may agree in writing. At the Closing, and in exchange for the Purchase Price, the Receiver agrees to sell and convey the Property to Buyer by a good and sufficient receiver’s deed (the “Deed”), free and clear of all liens and encumbrances, which shall attach to the proceeds of sale in accordance with their respective priorities. The transfer and conveyance of the Property nevertheless is subject to each of the following:

(a) Restrictions, covenants, agreements, and easements of record (but not mortgages of record).

(b) Environmental, zoning, building code, housing code, fire, health, and other federal, state and municipal laws, rules, and regulations, any violations thereof, and injunctions by any court or other tribunal of competent jurisdiction.

(c) Real estate taxes, other municipal liens, charges, and assessments for the current tax year, as adjusted below.

5. Buyer's Premium. At the Closing, as separate bargained-for consideration for the Auctioneer's services Buyer shall pay to the Receiver a buyer's premium equal to 7% of the Purchase Price.

6. Court Confirmation. The Receiver's obligations under this Memo are subject to confirmation by the Court. The Receiver agrees promptly to seek Court confirmation.

7. Closing Adjustments. At the Closing, Buyer and the Receiver shall apportion municipal liens, rents, security deposits, water, sewer, and utilities as follows:

(a) Real estate taxes due and payable in the current year together with installments of special assessments and interest thereon due and payable therewith, and water and sewer charges, on the basis of the fiscal period for which assessed (without regard to when such taxes or charges are payable) shall be apportioned as of 12:01 a.m. local time on the Closing Date.

(b) The Receiver shall receive a credit for all unpaid rents through the Closing Date with respect to all tenants as of the Closing Date. Paid rents for the month in which the Closing Date falls shall be apportioned as of the Closing Date.

(c) The Receiver shall credit Purchaser an adjustment to the Purchase Price equal to the amount of all tenant security deposits and advance rent payments from tenants. The Receiver shall execute and deliver to Buyer a signed notice to each tenant that the Property has been sold to Purchaser and that future rents should be paid to Purchaser.

(d) All charges for electric and gas service supplied to the Property before the Closing shall be the obligation of the Receiver. Buyer agrees to transfer all utility service into Buyer's name effective as of the Closing Date.

(e) If the Closing occurs before a new tax rate is fixed, the apportionment of taxes shall be on the basis of the old tax rate for the preceding tax period applied to the latest assessed valuation.

(f) Buyer shall obtain and give to the Receiver readings of water and sewer meters to a date not more than three (3) days before the Closing Date and the meter charges shall be apportioned on the basis of the last reading.

(g) The Receiver has the option to credit Buyer as an adjustment of the Purchase Price the amount of any unpaid real estate taxes, assessments, water and sewer charges, and collected rents, together with any adjustments under this Memo in favor of Buyer, in which case Buyer assumes the obligation to pay such amounts when they become due and payable.

(h) Property tax refunds and credits received after the Closing Date which are attributable to the fiscal year during which the Closing occurs shall be apportioned between the Receiver and Buyer, after deducting the expenses of collection of the refunds and credits. Notwithstanding any other provision of this Memo, any tax rebates, refunds, abatements, adjustments or other reductions for any prior fiscal year belong to the Receiver.

(i) Any errors or omissions in computing apportionments at the Closing shall be corrected immediately on discovery after the Closing. However, the Receiver has no obligation to correct any errors or omissions discovered more than one month after the Closing.

8. Entry on the Property. Buyer and its employees, agents and independent contractors may, before conveyance of title, enter the Property at no charge to make tests, do surveys, and obtain other data. Buyer must restore to its prior condition any portion of the Property disturbed pursuant to the rights granted in this section. Buyer shall defend, indemnify, and hold the Receiver and the Receiver's agents harmless from and against any claim, loss, cost, expense, liability, or damage, including reasonable attorneys' fees, incurred by the Receiver or the Receiver's agents arising from or related to any act or omission of Buyer, its employees, agents or independent contractors during such entry and must provide Receiver with evidence of personal injury and property damage insurance on terms reasonably acceptable to Receiver. Buyer must also provide Receiver mechanic's lien waivers for anyone working on the Property directly or indirectly for Buyer.

9. Possession. At the Closing, the Receiver shall deliver possession the Property.

10. Insurance. The risk of loss shall pass to Buyer upon Buyer's execution of this Memo. Therefore, Buyer must procure fire and casualty insurance on the Property effective as of the time of the acceptance of the Initial Deposit. In the event of loss or damage to the Property by fire or other casualty between the time of sale and the tender of the Deed, Buyer shall remain obligated to pay the full balance of the Purchase Price.

11. Other Assets. If Buyer has agreed to buy other assets from the Receiver pursuant to any other Memorandum of Sale, Buyer represents, warrants, and agrees as follows: (a) the identity, extent, and condition of the other assets are not material inducements for this Memo, and they are not material to this Memo; and (b) no Memorandum of Sale is contingent on any other Memorandum of Sale.

12. Receiver's Title. If for any reason Receiver is unable to give title or to make conveyance under this Memo, all payments made by Buyer to Receiver on account of the Purchase Price shall be returned to Buyer, and all obligations of Buyer and the Receiver shall be terminated, and the Parties shall be without further recourse under this Memo. The acceptance of the Deed by Buyer in any event constitutes conclusive evidence of full performance and discharge of all of the Receiver's obligations under this Memo. Notwithstanding anything in this Memo to the contrary, if Buyer notifies Receiver of a defect in title within ten (10) days after Receiver signs this Memo and Receiver is unable to give title as required by this Memo and such defect is susceptible to being cured, Receiver, at Receiver's option, may extend the Closing Date for such period of time as is reasonably necessary to permit Receiver to cure the defect.

13. Default. If Buyer defaults in the performance of Buyer's obligations under this Memo, or if any condition to the Receiver's obligation to perform under this Memo is not satisfied as of the Closing Date, the Receiver has the right to retain the Initial Deposit and the Additional Deposit (collectively, the "Deposit"), such remedy to be without prejudice to the right of Receiver to require specific performance or payment of other or further damages or to pursue any remedy, legal or equitable, which accrues by reason of such default. Without limiting such rights or remedies, the Receiver may, without first tendering the Deed to the Buyer, sell the Property, separately or as an entirety to any third party, subject to Court confirmation. If Receiver defaults in the performance of Receiver's obligations under this Memo, the Deposit shall be returned to Buyer, this Memo shall be terminated, and the Parties shall be without further recourse under this Memo.

14. Broker. The Buyer represents and warrants (Buyer must select the Alternative that applies, by initialing the appropriate space below. If Buyer fails to complete this section, the First Alternative applies):

[First Alternative] initials _____: Buyer has dealt with no broker, finder or drummer; and no real estate sales commission, finder's fee or other charge of any kind is due or shall arise with respect to the conveyance contemplated in this Memo.

[Second Alternative] initials _____: Buyer has dealt with no broker, finder or drummer, other than _____ (fill in name of broker), and no real estate sales commission, finder's fee or other charge of any kind is due or shall arise with respect to the conveyance contemplated in this Memo, except:

(a) Any compensation, fee or other charge which Buyer has agreed to pay separately to said person or organization, with no deduction from the Purchase Price.

(b) To the extent eligible for broker participation, one-seventh (1/7) of the buyer's premium.

15. Representations, Warranties and Covenants of Buyer. Buyer represents and warrants as follows:

(a) Buyer is not relying on any warranty, statement or representation, express or implied, made by or on behalf of Receiver as to any matter whatsoever with respect to the Property, including zoning matters, the structural condition of the Property, the merchantability of any portion or the suitability of any portion of the Property for any particular use or as to any adverse claims with respect to the Property.

(b) Buyer made its own structural, mechanical, electrical, pest, and other inspections which Buyer deems appropriate before Buyer signed this Memo.

(c) Buyer has had full and adequate opportunity to inspect the Property.

(d) Buyer is satisfied with the Receiver's and the Auctioneer's conduct of the auction from which this Memo results, and there are no defects or irregularities in the auction.

16. Indemnity. Buyer shall defend, indemnify, and hold the Receiver and the Receiver's agents harmless from and against any claim, loss, cost, expense, liability, or damage, including reasonable attorneys' fees, incurred by the Receiver or the Receiver's agents arising from or related to a breach of any one or more of Buyer's representations, warranties, covenants, or agreements in this Memo.

17. Conveyance of Property "AS IS". **Buyer acknowledges and agrees that the Receiver shall convey the Property, and that Buyer shall accept the Property, strictly "AS IS" and "WHERE IS."**

18. No Other Obligations. This Memo imposes no obligations or duty on the Receiver or Auctioneer other than those expressed in this Memo.

19. Notice. In the event that notice is necessary or desirable under the provisions of this Memo, it shall be given by first-class mail, postage prepaid, mailed to the addressee at the addresses set forth for each party in this Memo.

20. No Recording this Memo. Buyer agrees not to record or cause this Memo to be recorded with the land evidence records and that, should this Memo be so recorded by or on behalf of Buyer in breach of this provision, a default by Buyer is deemed to have occurred and Receiver has the right to terminate this Memo by recording with said land evidence records a written notice of termination, executed by Receiver only. Buyer hereby appoints Receiver as Buyer's attorney-in-fact for such purpose.
21. Entire Memo, Binding Effect. This Memo merges any and all understandings and agreements between Buyer and Receiver with respect to the Property and binds and inures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.
22. Survival of Terms. All promises, representations, warranties, covenants, and indemnifications made by the Buyer in this Memo shall survive the Closing and the delivery of the Deed.
23. Assignment. Buyer shall not assign Buyer's rights under this Memo or nominate a third-party buyer without the written consent of the Receiver.
24. Lead Paint. Buyer understands and acknowledges that the Property may have lead exposures that may place young children or others at risk of developing lead poisoning. Lead poisoning in young children or others may produce permanent neurological damage, including learning disabilities, reduced IQ, behavioral problems, and impaired memory. Testing for the presence of lead paint before purchase is advisable. Buyer acknowledges and understands that the Receiver has no obligation to perform any such tests, and any test shall be done solely at Buyer's expense.
25. Radon. Radon has been determined to exist in the Commonwealth of Massachusetts. Testing for the presence of radon before purchase is advisable. Buyer acknowledges and understands that the Receiver has no obligation to perform any such tests, and any test shall be done solely at Buyer's expense.
26. Further Assurances. Buyer and the Receiver shall each obtain and issue statutorily-required certificates or other instruments with respect to a conveyance of the Property.
27. Disclosure. Buyer acknowledges that disclosure requirements do not apply to the Property or to the transactions contemplated by this Memo.
28. Construction of Memo. The captions and headings in this Memo are for convenience only and are not to be used to interpret or define the provisions of this Memo. This Memo shall be construed without regard to any presumption or rule requiring that it be construed against the Party causing all or part of this Memo to be drafted.
29. Severability. If any provisions of this Memo is held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or enforceability without in any manner affecting the validity or enforceability of such provision in any other jurisdiction or the remaining provisions of this Memo in any jurisdiction.
30. Expenses. Buyer agrees to pay all costs of recording and to pay the cost of all documentary stamps. Each Party otherwise bears its own expenses in connection with this Memo and the transactions contemplated by this Memo.

31. Governing Law. This Memo must be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts applicable in the case of agreements made and to be performed entirely in Massachusetts.

32. Signature and Effective Date of Memo. This instrument is not binding on the Receiver until the Receiver executes this Memo where indicated below.

33. Time is of the Essence. The Parties agree that time is of the essence in each provision of this Memo.

34. Receiver Not Personally Liable; Buyer Waives Right to Certain Damages. **The Receiver signs this Memo solely in the Receiver's capacity as receiver of the Property. Nothing makes the Receiver personally liable under this Memo in any way whatsoever. Buyer unconditionally and irrevocably waives any right it may have to recover any special, exemplary, punitive or consequential damages, or any damages other than actual damages, even if the person or organization is on notice of the possibility of any of these types of damages, and limits its recovery of actual damages to the proceeds of the Property.**

35. Waiver of the Right to Trial by Jury. **The Parties each hereby unconditionally and irrevocably waive any right to trial by jury in any proceeding arising out of or otherwise relating to this Memo or the Property or any transaction or occurrence arising from any of the foregoing or related to any of the foregoing.**

IN WITNESS WHEREOF, the Parties have caused this Memo to be duly executed under seal, all as of the day and year first above written.

_____ (Buyer)

Thomas S. Hemmendinger, receiver of Matchow Realty
LLC and not individually

By _____

c/o Brennan, Recupero, Cascione, Scungio &
McAllister, LLP
362 Broadway
Providence, RI 02909

Buyer's address:

Aaron Posnik & Co., Inc. (Auctioneer)

Buyer's telephone: _____

Buyer's fax: _____

Buyer's email: _____

By _____

Name:

Title:

31 Capital Drive
West Springfield, MA 01089

Exhibit A

The land in Mattapoisett, Plymouth County, Massachusetts, bounded and described as follows:

BEGINNING at the southeast corner of land herein described at a point formed by the intersection of the northerly line of Fairhaven Road with the westerly line of River Road as shown on plan of land hereinafter mentioned; thence

SOUTH 65° 08' 00" WEST in line of said Fairhaven Road, 167.52 feet to land now or formerly of William A. Goyette, Jr., as shown on said plan; thence

NORTH 24° 52' 00" WEST in line of last-named land, 65 feet to an angle; thence

NORTH 48° 27' 47" WEST in line of last-named land, 16.37 feet to a point; thence

NORTH 24° 52' 00" WEST still in line of last-named land, 154.63 feet to Lot "D" as shown on said plan; thence

NORTH 65° 08' 00" EAST in line of last-named lot, 157.47 feet to a point; thence

SOUTH 55° 53' 54" EAST in line of last-named lot, 95.96 feet to the said line of River Road; thence

SOUTHEASTERLY in line of said River Road in the arc of a curve having a radius of three hundred feet, a distance of 89.40 feet to a point; thence

SOUTH 07° 50' 10" EAST in line of said River Road, 67.27 feet to the said northerly line of Fairhaven Road and point of beginning.

CONTAINING 1 acre, 623 square feet, more or less.

BEING shown as Lot E on "Plan of Land in Mattapoisett, Mass., prepared for the Nest, Inc." dated February 2, 1982, Arthur C. Thompson Inc. Engineers & Surveyors, Marion, Mass. and filed in Plymouth Registry of Deeds in Plan Book 22, Page 1072.

Subject to and together with the Declaration of Restrictive Covenants recorded with said Registry of Deeds in Book 4840, page 182, as amended in Book 7865, Page 265.

Subject to water line easement recorded with said Registry of Deeds in Book 4849, Page 359.

For title, see deed of Mark F. Koran to Matchow Realty, LLC, dated June 15, 2006 and recorded in the Plymouth County Registry of Deeds in Book 32874 at Page 21.