

**MEMORANDUM OF SALE**

This Memorandum of Sale is made as of August 17, 2017, between and among \_\_\_\_\_ (the "Buyer"), and JONATHAN R. GOLDSMITH, ESQ. (the "Receiver"), as he is the Receiver of Bill Willard, Inc. ("Owner"). Buyer and Receiver are also referred to individually as a "Party" and collectively as "Parties."

1. Purchase and Sale: Pursuant to a public auction conducted on August 17, 2017 (the "Auction"), on behalf of the Receiver, the Buyer, as the highest bidder, agrees to purchase the real estate described below (the "Property") in accordance with the terms hereof, and in accordance with the Additional Terms and Conditions of Sale (the "Additional Terms and Conditions") as announced at the time and place of sale, which Additional Terms and Conditions are incorporated herein by reference.

2. Description of Property: The property shall mean the following, namely:

**Perry Hill Road/Perry Hill Road Extension, Westhampton, MA**, being three (3) parcels of land comprising of approximately 87.87 acres of land *in toto*, and is more specifically identified as:

The property is more specifically identified as:

- A. Assessor's Map 19, Block 68  
Hampshire Registry of Deeds Book 3814, Page 25
- B. Assessor's Map 19, Block 69  
Hampshire Registry of Deeds Book 3814, Page 25
- C. Assessor's Map 19, Block 70  
Hampshire Registry of Deeds Book 3814, Page 25

3. Transfer of Property: The Property shall be conveyed by a Receiver's Deed, without covenants, subject to and with the benefit of, inter alia:
- a. the provisions of applicable state and local law, including building codes and local zoning laws, if any;
  - b. all of record easements, restrictions, improvements, conveyances, rights of way, and all other instruments of record, if any, and any encroachments of retaining walls or fences situated on or in proximity to any property lines;
  - c. the provisions of Massachusetts General Laws, Chapter 21E;

- d. Such taxes for the then current period as are not due and payable on the date of the delivery of such deed; and
- e. Any liens for municipal betterments assessed after the date of this Agreement.

4. Price and Deposit: The Purchase Price is \_\_\_\_\_, of which TWENTY-FIVE THOUSAND and 00/100 (\$25,000.00) DOLLARS has been paid this day in accordance with the terms of the Auction Sale, with an additional deposit to be delivered to the Receiver by the Buyer within five (5) business days from the date of the sale in an amount that increases the total deposit to ten percent (10%) of the Purchase Price (collectively, the "Deposit"). The balance of the Purchase Price shall be paid in cash, certified check, bank treasurer's or cashier's check at the Closing. In all events the Receiver shall be entitled to any interest, if any, earned on the Deposit, and the amount to be paid by the Buyer shall not be adjusted to reflect any interest earned on the Deposit.

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 Eight (8%) Percent of the Purchase Price.

6. Court Confirmation: The Receiver's obligations under this Memorandum of Sale Receiver's obligations under this Agreement are contingent upon approval thereof by the Hampshire County Superior Court in the Receivership matter of Beth A. Willard, et. al. v. Bill Willard, Inc., Docket No. 1780CV0050. The Receiver agrees promptly to seek Court approval.

7. Closing: The Receiver's Deed and related documents shall be delivered and the balance of the consideration paid at the offices of Goldsmith, Katz & Argenio, PC, 1350 Main Street, Springfield, Massachusetts, on or before the later of: (i) the tenth (10th) business day following the approval by the Superior Court of this Memorandum of Sale; or (ii) the thirtieth (30<sup>th</sup>) day following the execution of this Memorandum of Sale, time being of the essence, unless the Receiver agrees otherwise in writing (the "Closing"). Each party shall pay the costs of its own counsel or other professionals hired by such party. Recording costs, excise tax and documentary stamps shall allocated between the Parties as is as consistent with practice in Hampshire County, Massachusetts. In addition, Buyer shall be responsible for all costs relative to title examination, document preparation, and closing. The conveyance by the Receiver does not warrant or represent that the title to the property will be insurable or marketable.

8. Risk of Loss: The Buyer acknowledges that from and after this date Buyer shall have the sole risk of loss, and the Receiver shall have no responsibility for maintaining insurance covering the Property. If the Property is damaged by fire or other casualty prior to the Closing, Buyer shall accept a deed to the Property and an assignment of so much of any insurance proceeds as may be payable to the Receiver under any policy of

insurance as has not been used in the restoration of the Property prior to the Closing, paying therefor the full Purchase Price.

9. Other Assets: If Buyer has agreed to buy other assets from the Receiver pursuant to the Auction, Buyer represents, warrants, and agrees as follows: (a) the identity, extent, and condition of the other assets are not material inducements for this Memorandum of Sale, and they are not material to this Memorandum of Sale; and (b) no sale of any asset to be sold at the Auction is contingent on the sale of any other asset at said Auction, except as set forth on the Asset List attached hereto, if any.

10. Default: If the Buyer shall fail to fulfill the Buyer's agreements herein, the Deposit shall be retained by the Receiver and the Receiver shall be free to sell the Property to the second highest bidder at the public auction in accordance with the terms announced at the public auction, or at a subsequent public auction or private sale. The Buyer shall have no claim to any excess that may be created by a resale. In addition, the Receiver reserves all remedies at law and in equity against the Buyer for any default by the Buyer under this Memorandum of Sale including, without limitation, the right to demand specific performance of the Buyer's obligations hereunder.

11. Receiver's Title: If the Receiver cannot convey title to the Property as stipulated, or the Court fails to approve the sale, the Deposit shall be refunded and all rights hereunder shall cease; and the Buyer shall have no recourse against the Receiver or his employees, agents, attorneys and representatives, whether at law or in equity. The acceptance of the Deed by the Buyer in any event constitutes conclusive evidence of full performance and discharge of all of the Receiver's obligations under this Memorandum of Sale.

12. "As Is" Condition: The Property shall be conveyed in "as-is" condition, subject to known and unknown defects, if any, and subject to the present manner of use and occupancy of the Property, and any improvement on the Property likewise are sold "as is, where is" with no warranties expressed or implied. The Receiver makes no representation or warranty of any kind with respect to the Property, or to its use and occupancy. The Buyer acknowledges that Buyer has not been influenced to enter this transaction by, nor has it relied upon, any warranties or representations of the Receiver or the auctioneer, including but not limited to representations or warranties concerning compliance with any health, building, zoning, environmental or other law or ordinance or regulation (federal, state or local) which may affect the transfer of the Property or the Buyer's use and/or enjoyment of the Property, each of which representations and warranties is expressly disclaimed.

The Buyer acknowledges that it has had the opportunity to investigate the condition of the Property and to examine such public records pertaining to the Property as it has deemed necessary. The Buyer agrees that the cost of any inspections of the Property necessary for compliance with any state, federal or local law, ordinance or regulation will be the Buyer's sole responsibility, and that the Receiver shall have no liability or responsibility therefor whatsoever.

The Buyer acknowledges that the Receiver shall be under no obligation to comply with any statute or regulation, including, without limitation, Massachusetts General Laws c. 148, §§26F, 26G and 28 concerning installation of smoke detectors, carbon monoxide detectors or automatic fire suppression or sprinkler systems, which obligations the Buyer specifically assumes. The Buyer assumes responsibility for all costs relating to compliance with Environmental Codes, state and city requirements regarding smoke detection equipment and lead paint regulations, all as applicable.

In the event the Premises contains an on-site sewage system, the Buyer shall be responsible for complying with the Commonwealth of Massachusetts regulations pertaining thereto at its own cost by obtaining an inspection of the system and, if necessary, repairing and/or replacing the sewage system components in order to bring the system into compliance with the Code of Massachusetts Regulations Ch. 310.

In the event that the premises contain an underground storage tank(s), the Buyer shall be responsible for complying with the applicable regulations issued by the Massachusetts Board of Fire Prevention as set forth in 527 CMR 9.00 et. seq., which may require removal of any existing tank(s).

The Buyer shall be responsible for compliance with all 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 Seller 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.

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, the Buyer, if Buyer wishes to evict such tenant or occupant, must do so at Buyer's own expense.

13. Adjustments: Adjustment shall be made for current real estate taxes or payments due in lieu thereof, assessments, or other municipal charge, rental payments, liens or claims in the nature of liens at Closing as consistent with practice in Hampshire County, Massachusetts. The Receiver makes no representation as to the accuracy of those charges listed on the Certificate(s) of Municipal Lien issued by the City of Northampton.

14. 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, or any adverse claims with respect to the Property;

- (b) Buyer has had full and adequate opportunity to perform due diligence as to the Property; and
- (c) Buyer is satisfied with the Receiver's and the auctioneer's conduct of the auction from which this Memorandum of Sale results, and there are no defects or irregularities in the auction.

15. 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 Memorandum of Agreement.

16. No Other Obligations: This Memorandum of Sale imposes no obligations or duty on the Receiver other than those expressed in this Memorandum of Sale.

17. No Recording this Memorandum of Sale: Buyer agrees not to record or cause this Memorandum of Sale to be recorded with the land evidence records and that, should this Memorandum of Sale 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 Memorandum of Sale 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.

18. Entire Agreement, Binding Effect: This Memorandum of Sale 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.

19. 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.

20. Assignment: Buyer shall not assign Buyer's rights under this Memorandum of Sale or nominate a third-party buyer without the written consent of the Receiver.

21. Construction: The captions and headings in this Memorandum of Sale are for convenience only and are not to be used to interpret or define the provisions of this Memorandum of Sale. This Memorandum of Sale shall be construed without regard to any presumption or rule requiring that it be construed against the Party causing all or part of this Memorandum of Sale to be drafted. This Memorandum of Sale is executed in multiple counterparts and is to be construed as a Massachusetts contract, to take effect as a sealed instrument, and may be canceled, modified, or amended only by a written instrument executed by the Receiver and Buyer. If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several.

22. Severability: If any provisions of this Memorandum of Sale 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 Memorandum of Sale in any jurisdiction.

23. Governing Law: This Memorandum of Sale 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.

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

25. Time of the Essence: It is hereby agreed that time is of the essence of this Agreement.

26. Receiver Not Personally Liable; Buyer Waives Right to Certain Damages: The Receiver signs this Memorandum of Sale solely in the Receiver's capacity as Receiver of the Property. Nothing makes the Receiver personally liable under this Memorandum of Sale 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 Property.

27. 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 Memorandum of Sale or the Property or any transaction or occurrence arising from any of the foregoing or related to any of the foregoing.

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Witness:

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Witness:

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RECEIVER:

Jonathan R. Goldsmith, Esq.,  
Receiver of Bill Willard, Incorporated

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BUYER:

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(Print Name)

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(Address)

**ASSET LIST**