

## MEMORANDUM OF SALE

THIS AGREEMENT, made as of the 6<sup>th</sup> day of December, 2018, by and between Mascoma Bank, f/k/a Mascoma Savings Bank (the "Mortgagee"), with an address of 67 North Park Street, Lebanon, NH 03766 and \_\_\_\_\_, with an address of \_\_\_\_\_ (jointly and severally, if more than one, the "Purchaser").

WHEREAS, the Mortgagee has auctioned the Property (as defined in Section 1.02 below) and;

WHEREAS, the above-referenced Purchaser bid \$\_\_\_\_\_ for the Property, which bid the Mortgagee has accepted.

### W I T N E S S E T H:

In consideration of the mutual covenants set forth herein, the parties undertake and agree as follows:

#### 1. PURCHASE AND SALE

1.01. Pursuant to the power of sale contained in those two certain Mortgage Deeds from **All Kitchens of New Hampshire, Inc.** (hereinafter referred to as the "Mortgagor") to **Mascoma Bank**, f/k/a Mascoma Savings Bank, the first of which is dated June 19, 2015, recorded with the Grafton County Registry of Deeds in Book 4137, Page 0894 (hereinafter referred to as the "First Mortgage"), and the second of which is dated February 2, 2017, recorded with the Grafton County Registry of Deeds in Book 4266, Volume 0203 (hereinafter referred to as the "Second Mortgage", and together with the First Mortgage, the "Mortgages") and pursuant to N.H. RSA 479:25, the Mortgagee conducted a foreclosure sale on December 6, 2018.

1.02. At said sale, the Purchaser was the highest bidder for the real property and improvements thereon identified in the Mortgages, being the parcel described on Exhibit A hereto (the "Property"), which has a street address of 18 Mascoma Street, Lebanon, Grafton County, New Hampshire 03766.

1.03. Purchaser agrees to purchase and Mortgagee agrees to sell, for the Purchase Price described below, the Property.

1.04 The total purchase price (the "Purchase Price") for the Property is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

1.05 First Deposit. A non-refundable deposit (the "Deposit") in the total amount of Five Thousand Dollars (\$5,000.00) was paid to Mortgagee upon Purchaser's registering to bid at said foreclosure auction.

2. CLOSING TIME AND PLACE

2.01. The closing of the sale of the Property (the "Closing") shall take place no later than 2:00 P.M. on Monday, January 7, 2019 at the offices of Sheehan Phinney Bass & Green PA, 17 ½ Lebanon Street, Hanover, New Hampshire, unless a different time and place is mutually agreed to by the parties.

2.02. At Closing, Mortgagee shall deliver to Purchaser a Foreclosure Deed and Affidavit in statutory form.

2.03. The Purchase Price, minus the amount of the Deposit, shall be paid by Purchaser either by bank check, wire transfer, or certified check payable to Mortgagee at Closing.

2.04. There shall be no proration of real estate taxes, real estate transfer taxes, water or sewer charges, rents, fuels, utilities or any other expenses or items of income associated with the Property. Any outstanding charges, known or unknown, will be assumed by the Purchaser.

2.05. Purchaser shall be responsible for all real estate transfer taxes.

3. TERMS OF SALE

3.01. The Property shall be sold subject to any and all unpaid real estate taxes, leases, prior liens, or other enforceable encumbrances, whether or not of record, which may be entitled to precedence over the Mortgages, except that the Mortgagee shall provide a discharge of its rights relative to the Property pursuant to the Mortgages. The Property will be sold subject to any person who remains in possession of the Property.

3.02. Mortgagee expressly disclaims any representations as to the state of the title to the Property.

3.03. No statement regarding the square footage of units or acreage of land, whether contained herein or in any advertisement or foreclosure notice, shall be deemed to be a warranty or representation with respect thereto but is included merely to aid in the identification of the Property.

3.04. The Property shall be conveyed "AS IS, WHERE IS." Mortgagee makes no warranties or representations of any kind in connection with the Property and/or any rights that may be conveyed with the Property. In particular, and without limiting the foregoing, Mortgagee makes no warranty or representation regarding the title to the Property; the current status or performance of any leases; the accuracy of any statement as to the boundaries, acreage or frontage; the habitability of any structures; the condition of any wells or septic systems; the availability of any utilities, access, income potential, rental or income information; compliance of the Property with applicable zoning or other land use laws or regulations, building, fire or sanitary codes or any other applicable law, regulation or permit; or the existence or non-existence

of hazardous material, asbestos, radon, lead paint or other health hazards. All personal property and fixtures being sold (if any) shall be conveyed AS IS and WHERE IS. MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PERSONAL PROPERTY. MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING TITLE TO ANY PROPERTY INCLUDING PERSONALTY. The Property shall be sold subject to any and all unpaid rents, real estate taxes, leases, liens, attachments, tenancies, encumbrances, and all other rights, title and interests of third persons of any and every nature whatsoever, whether or not of record, which are or may be entitled to precedence over the Mortgages. Mortgagee is not responsible for the safekeeping of any personal property, either before or after the foreclosure auction. Risk of loss between the auction and Closing shall be entirely on the Purchaser. Any warranty or representation made by any auctioneer or other person is not binding on Mortgagee. Mortgagee is expressly not responsible for any security or room rent deposits not in its possession.

3.05. Any representation or warranty other than contained herein is without authority and not binding on Mortgagee.

#### 4. REAL ESTATE COMMISSION

4.01. Mortgagee shall be responsible for the fee due to the Auctioneers, if any.

4.02. The Purchaser shall be responsible for any real estate commission or finder's fee due any other person, and in no event shall Mortgagee or any of its agents be responsible for such fees or commissions.

#### 5. DEFAULT

Failure of Purchaser to close the sale, for any reason whatsoever other than failure of Mortgagee to deliver its Foreclosure Deed and Affidavit, shall result in forfeiture of the Deposit, a suit for specific performance, and/or a suit for damages, in Mortgagee's discretion, including without limitation a suit to collect any deficiency between the bid price of such Purchaser and the price obtained at any subsequent auction.

#### 6. MISCELLANEOUS

6.01. This Agreement contains all the agreements of the parties with respect to the subject matter hereof. All prior discussions are merged herein. Any amendment hereto shall be effective only if executed with all the formalities hereof by the party against whom the amendment is asserted.

6.02. This Agreement shall be governed by the laws of the State of New Hampshire.

6.03. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

6.04. New Hampshire law provides that prior to the execution of any contract for the purchase and sale of any real property that includes a building, the seller, or the seller's agent shall provide the following notification and disclosure:

Radon Gas: Radon Gas, the product of decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

Lead Paint: Before 1977, paint containing lead may have been used in structures. The presence of leaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

Private Water Supply and Sewage Disposal System: As set forth more specifically in the Seller's Disclosure of Private Water Supply and Sewage Disposal System Information attached hereto, the Mortgagee has no knowledge regarding the water supply, sewage disposal system or insulation.

6.05. All notices required by this Agreement shall be deemed given when received and shall be mailed by United States mail, postage prepaid, certified, return receipt requested, and shall be mailed to the parties at the addresses set forth on Page 1 of this Agreement.

6.06. No loss, damage, condemnation or destruction of the Property shall relieve Purchaser of its obligation hereunder.

**6.07. TIME IS OF THE ESSENCE OF THIS AGREEMENT.**

6.08. The captions in this Agreement are inserted for convenience of reference only and do not define, describe, or limit the scope or intent of this Agreement or any of its terms.

6.09. This agreement is subject to the condition that in the event an order is issued by any Court of competent jurisdiction enjoining or otherwise staying or delaying the sale of the Property, then the Mortgagee shall have the opportunity to cure or remove said stay or injunction order. In the event that the Mortgagee is unable to cure or remove said stay or injunction order, this Agreement shall be null and void and the Purchaser hereunder shall be entitled to the refund of its Deposit and all of the parties' obligations hereunder shall be discharged and terminated and this Agreement shall be null and void.

6.10. Purchaser represents that neither it nor any individual or entity having an interest in it is a person or entity either (i) described by Section 1 of the Executive Order (No. 13,224) Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, 66 Fed. Reg. 49,079 (September 24, 2001), or (ii) is listed on the current list of Specialty Designated Nationals and Blocked Persons issued by the U.S.

Department of the Treasury, and does not engage in any dealings or transactions, and is not otherwise associated, with any such persons or entities.

IN WITNESS WHEREOF, the Parties hereto have set their hands to the written instrument as of the date first above written.

WITNESS:

PURCHASER:

\_\_\_\_\_

\_\_\_\_\_

WITNESS:

PURCHASER:

\_\_\_\_\_

By: \_\_\_\_\_

WITNESS:

MORTGAGEE:  
Mascoma Bank

\_\_\_\_\_

By: \_\_\_\_\_

**MORTGAGEE SELLER'S DISCLOSURE OF PRIVATE WATER SUPPLY,  
SEWAGE DISPOSAL SYSTEM, INSULATION AND LEAD PAINT INFORMATION**

The Mortgagee hereby discloses the following information concerning the private water supply, sewage disposal and insulation of the property located at:

**18 Mascoma Street, Lebanon, Grafton County, New Hampshire**

**I. PRIVATE WATER SUPPLY: Based upon an appraisal of the property, the Mortgagee believes the property is served by municipal water OR:**

1. Type of system: Unknown
2. Location: Unknown
3. Any malfunctions: Unknown
4. Date of installation: Unknown
5. Date of most recent water test (including the results thereof and a description of any unsatisfactory conditions or notations): Unknown

**II. SEWAGE DISPOSAL SYSTEM: Based upon an appraisal of the property, the Mortgagee believes the property is served by municipal water OR:**

The Mortgagee hereby discloses the following information concerning the sewage disposal system:

1. Size of tank: Unknown
2. Type of system: Unknown
3. Location: Unknown
4. Malfunctions: Unknown
5. Age of system: Unknown
6. Date most recently serviced: Unknown
7. The name of the contractor who services the system: Unknown

**III. INSULATION INFORMATION: UNKNOWN**

The Mortgagee hereby discloses the following information concerning insulation in any buildings on the property:

- 1. Type: Unknown
- 2. Location: Unknown
- 3. Date of installation and installer: Unknown

**IV. LEAD PAINT DISCLOSURE PURSUANT TO RSA 477: 4-a, I.** Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant woman. Tests are available to determine whether lead is present.

\_\_\_\_\_, PURCHASER(S), hereby acknowledges receipt of the within Disclosure this \_\_\_\_ day of \_\_\_\_\_, 2018, prior to execution of a Memorandum of Sale with Mortgagee.

WITNESS:

PURCHASER:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

A certain tract of land, with the buildings thereon, situate in Lebanon, in the County of Grafton and State of New Hampshire, as shown on a "Plan of Land Belonging to Heather Shop" made August 20, 2963 [sic] by L.P. Davis, recorded in the Grafton County Registry of Deeds in Book 593 [sic], Page 38, bounded and described as follows:

Beginning at a nail set in the pavement at the junction of the westerly line of Water Street with the southerly line of Mascoma Street;

Thence South 02° 50' West along the westerly line of Water Street 68.6 feet to a stone bound at the northeasterly corner of land formerly owned by Lebandale Mills, Inc. and being known as the Riverside Mill and also known as the Lebandale Mill;

Thence North 87° 38' West along the northerly line of the Lebandale Mill land, in a line 7.5 feet northerly of and parallel to the northerly wall of the building known as the Lebandale Mill, 93.6 feet to a drill hole in a retaining wall;

Thence continuing in the same direction (North 07° 38' West) to Mascoma River;

Thence northerly up the Mascoma River to the southerly line of Mascoma Street;

Thence North 89° 02' East along the southerly line of Mascoma Street 25 feet, more or less, to a cross cut on a concrete wall;

And thence continuing North 89° 02' East along the southerly line of Mascoma Street 76.6 feet to the point of beginning.

The Bearings as given are Magnetic (1962), and all distances to be more or less.

Also conveying herewith a right of way 7.5 feet in width extending westerly from Water Street to the Mascoma River, southerly of and adjoining the southerly line of the premises hereby conveyed. Said right of way is contained within a fence on said Lebandale Mill premises, and is conveyed primarily to give the owner access at all reasonable times for the purpose of maintaining the building on the premises hereby conveyed.

There is reserved to the City of Lebanon the right to enter upon the premises hereby conveyed for the purpose of maintaining the southerly wing wall of the bridge over Mascoma River.

Excepting from said premises the portion thereof which was taken by the State of New Hampshire in connection with improvements to Water Street and Mascoma Street as set forth in Commissioner's Return of Highway Layout, recorded in the Grafton County Registry of Deeds, Book 1088, Page 276.