

## **LEGAL NOTICE**

### **NOTICE OF FORECLOSURE SALE**

Reference is hereby made to that certain Mortgage given by **ESC Investments, LLC** (“ESC”) to **Merrimack County Savings Bank** (“MCSB”) dated May 16, 2007 and recorded in the Merrimack County Registry of Deeds at Book 2988, Page 996 (the “Mortgage”) and assumed by **276 State Street, LLC** (together with ESC the “Mortgagor”) by Assumption of Note, Mortgage and Related Loan Documentation executed and delivered by 276 State Street, LLC to Merrimack County Savings Bank dated February 6, 2013 and recorded in the Merrimack County Registry of Deeds at Book 3612, Page 1127, with respect to certain land, buildings, fixtures and other personal property located in Concord, Merrimack County, New Hampshire, as further described in the Mortgage (the “Mortgaged Property”), which Mortgage is now held by the **Capital Regional Development Council** (and hereinafter the “Mortgagee”) as assignee of the U.S. Small Business Administration (“SBA”) pursuant to Assignment of Loan Documents dated November 20, 2018 and recorded in the Merrimack County Registry of Deeds at Book 3616, Page 490 (see also Transfer and Assignment of Loan Documents from MCSB to SBA dated as of September 28, 2018 and recorded in the Merrimack County Registry of Deeds at Book 3612, Page 1146).

#### **A. SALE**

By virtue of the statutory power of sale contained in the Mortgage, and pursuant to and in execution of said power of sale, for nonpayment in breach of the conditions of the Mortgage and the Note secured thereby, to satisfy the amounts due thereon, together with all costs, expenses and attorneys’ fees incurred by the Mortgagee in connection with the sale, and expressly for the purposes of foreclosing all rights of the Mortgagor, and all persons claiming by, through or under it, the Mortgagee will sell at:

## **PUBLIC AUCTION**

on **January 11, 2019, at 11:00 a.m.**, local time, all of said Mortgagee's right, title and interest in and to the Mortgaged Property described in the Mortgage. The auction shall be held on the Mortgage Property, which has a street address of 276 North State Street, Concord, Merrimack County, New Hampshire. This foreclosure sale will be made for the purpose of foreclosure of all rights of redemption of the Mortgagor therein possessed by it and any and all persons, firms, corporations, or agencies claiming by, from or under it.

### **B. CONDUCT OF SALE**

1. The Mortgaged Property will be sold subject to the conditions and restrictions contained in the Mortgage, and subject to all other liens, easements, rights and encumbrances of any and every nature which are or may be entitled to precedence over the Mortgage.

### **C. TERMS OF SALE**

1. The Mortgaged Property will be sold subject to all unpaid real estate taxes, and other municipal assessments and liens therefore, whether or not of record, state or federal liens, including, but not limited to, liens for hazardous waste cleanup, if any, asserted by the United States of America, the State of New Hampshire, or any political subdivision thereof having priority over the Mortgage, outstanding condominium fees, and all other liens, encumbrances, restrictions of record of any and every nature which are or may be entitled to precedence over the Mortgage. Notwithstanding any title information contained in this notice, the Mortgagee expressly disclaims any representations as to the state of the title to any or all of the Mortgaged Property as of the date of this notice or the date of sale.

2. Any structures, buildings or improvements may be conveyed together with any personal property contained therein in which a security interest has been conveyed by Mortgagor to Mortgagee.

3. To qualify to bid, bidders must register to bid and present to the Mortgagee or its agent the sum of Five Thousand Dollars (\$5,000.00) (the "Initial Deposit") in cash or by certified check or other form of payment acceptable to the Mortgagee or its agent ("Satisfactory Funds") prior to the commencement of the public auction.

4. The successful bidder (the "Purchaser") shall be required to execute a purchase and sale agreement (the "Purchase Agreement") immediately after the close of the bidding reflecting the property purchased (the "Purchased Property") the purchase price thereof (the "Purchase Price") and such other terms as the Mortgagee shall require. The Purchaser shall also be required to pay an additional deposit (the "Additional Deposit" and together with the Initial Deposit collectively the "Deposit") with respect to the Purchased Property, within five (5) business days of the sale date in Satisfactory Funds in an amount equal to the difference between the Initial Deposit and ten percent (10%) of the bid accepted at the sale for the Purchased Property.

5. All risk or damage to Purchased Property shall be assumed and borne by the applicable Purchaser immediately after the close of the bidding.

6. The Closing(s) will occur within forty-five (45) days of the date of the auction sale, TIME BEING OF THE ESSENCE. At Closing, the Mortgagee shall deliver its Foreclosure Deed(s) and Affidavit(s) of the acts undertaken by it pursuant to New Hampshire RSA 479:25, and the Purchaser shall tender the balance of the Purchase Price applicable to the Purchased Property to be acquired by the Purchaser in Satisfactory Funds. The Purchaser shall pay all costs and expenses associated with the Purchased Property to be acquired by the Purchaser. There shall be no pro rations of any kind.

7. If the Purchaser fails to complete its purchase of the Purchased Property to be acquired by the Purchaser, the Deposit may, at the option of the Mortgagee, be retained as

reasonable liquidated damages or may be held on account of the damages actually sustained by the Mortgagee, which shall also have all of the legal and equitable rights and remedies resulting from the Purchaser's breach of its Purchase Agreement.

8. Initial Deposits of unsuccessful bidders shall be returned at the conclusion of the public auction. Other terms may be announced at sale.

**D. DISCLAIMER OF WARRANTIES**

The Mortgagee makes and shall make no warranties or representations of any kind with respect to the Mortgaged Property. In particular, and without limiting the foregoing, the Mortgagee makes and shall make no warranty or representation regarding the present or future development, use or occupation of the Mortgaged Property, the validity of any permits affecting the Mortgaged Property, the subdivision of the Mortgaged Property, the legal status of the Condominium or any unit owner's association with respect thereto, compliance of the Mortgaged Property with applicable permits, zoning, building codes or other applicable laws or regulations, the condition, fitness or structural soundness of the Mortgaged Property, the state of construction of or the ability to construct improvements on the Mortgaged Property, the state of construction of or the ability to construct water, sewage disposal and other utility systems on the Mortgaged Property, the existence or non-existence of hazardous materials, lead paint, radon gas or arsenic on or at the Mortgaged Property, the acreage of the Mortgaged Property, title to the Mortgaged Property, the rent rolls of the Mortgaged Property, the validity of any lease(s) affecting the Mortgaged Property, or any other matter.

1. The Purchaser shall acknowledge and represent in the Purchase Agreement that the Purchaser has duly inspected the Purchased Property, the title thereto, the occupancy thereof, and all other matters in connection with the purchase of the Purchased Property by itself and by various experts as is reasonable and prudent.

2. All Mortgaged Property shall be conveyed by the Mortgagee and accepted by each successful bidder "AS IS", "WHERE IS" and "WITH ALL FAULTS". THE MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING TITLE TO ANY FIXTURES OR OTHER PERSONALTY.

**E. RESERVATION OF RIGHTS**

1. The Mortgagee reserves the right to (I) cancel or continue the public auction to such subsequent date or dates as the Mortgagee may deem necessary or desirable; (ii) waive the reading of this notice or any portion thereof at the same provided that copies of said notice are made available to bidders at the sale, (iii) bid upon and purchase any or all of the Mortgaged Property at the public auction without producing any deposit; (iv) reject any and/or all bids for any or all of the Mortgaged Property in Mortgagee's sole discretion; (v) amend or change the terms of sale set forth herein by announcement, written or oral, made before or during the foreclosure sale and such change(s) or amendment(s) shall be binding on all bidders; and/or (vi) convey Purchased Property to the next highest bidder should the Purchaser thereof default under its Purchase Agreement.

**F. STATUTORY NOTICE**

To the Mortgagor, any grantee of the Mortgagor, and any other person claiming a lien or other encumbrance on the Mortgaged Property:

**YOU ARE HEREBY NOTIFIED THAT YOU HAVE THE RIGHT TO PETITION THE SUPERIOR COURT FOR THE COUNTY IN WHICH THE MORTGAGED PREMISES ARE SITUATED, WITH SERVICE UPON THE MORTGAGEE, AND UPON SUCH BOND AS THE COURT MAY REQUIRE, TO ENJOIN THE**

**SCHEDULED FORECLOSURE SALE.**

Failure to institute such petition and complete such service upon the Mortgagee or its agent conducting the sale prior to sale shall thereafter bar any action or right to action of the Mortgagor based on the validity of the foreclosure.

The original Mortgage referred to in this notice may be examined by any interested person upon contacting the undersigned.

Further information concerning this sale may be obtained from the auctioneers, James R. St. Jean Auctioneers, Inc., 45 Exeter Road, P.O. Box 400, Epping, New Hampshire 03042, whose telephone number is (603) 734-4348.

Dated this 7<sup>th</sup> day of December, 2018.

CAPITAL REGIONAL DEVELOPMENT  
COUNCIL

By Its Attorneys,

CLEVELAND, WATERS AND BASS, P.A.

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

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