

FORECLOSURE PURCHASE AND SALE AGREEMENT

This **FORECLOSURE PURCHASE AND SALE AGREEMENT** (this “Agreement”) made this ___ day of December, 2018 (the “Effective Date”), by and between **Northway Bank**, a banking institution organized and existing under the laws of the State of New Hampshire and having its principal office at 3424 White Mountain Highway, North Conway, New Hampshire (03860) (“Seller”) and [_____], with a mailing address of:

_____ (“Buyer”), hereby
recites and provides:

RECITALS:

- A. On December 19, 2018, Seller foreclosed its interest in the property known as 10 Harrington Avenue, Berlin, Coos County, New Hampshire (the “Property”), by Power of Sale contained in that certain Mortgage dated January 26, 2012, and recorded on February 1, 2012, in the Coos County Registry of Deeds at Book 1343, Page 284, at foreclosure sale pursuant to NH RSA 479:25 (“Foreclosure Sale”);
- B. Buyer was the successful high bidder for the Property at the Foreclosure Sale and provided Seller’s agent a non-refundable Deposit (hereinafter defined); and
- C. Seller agrees to sell and convey, and Buyer agrees to purchase, the Property upon the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of the recitals hereinabove set forth and for other good and valuable consideration the parties hereto covenant and agree as follows:

1. **Covenants Pending Sale**

1.01 **Buyer’s Foreclosure Deposit.** Buyer is qualified to bid at the Foreclosure Sale and provided Seller a deposit payable to Cooper Cargill Chant, P.A. in the amount of Five Thousand Dollars (\$5,000.00) on the date of the Foreclosure Sale to qualify to bid (the “Deposit”). Buyer shall, within five (5) business days of the Effective Date, pay to the Mortgagee or its agent an additional deposit of Five Thousand Dollars (\$5,000.00) (the “Additional Deposit”). Payment of the Additional Deposit shall be a binding obligation of Buyer upon acceptance of the final bid at the Foreclosure Sale. The foregoing Deposits are non-refundable and shall, subject to the terms hereof, immediately become property of Seller.

2. **Foreclosure Sale.**

2.01 **Agreement to Purchase; Purchase Price.** Buyer acknowledges that it was the successful bidder for the Property at the Foreclosure Sale with a successful bid for the Property at the Foreclosure Sale in the amount of [_____] (\$_____) (the “Purchase Price”), and agrees to purchase all of the interest

in the Property from Seller in accordance with and in reliance upon the terms and conditions of this Agreement.

2.02 Purchase Price Payment. The Purchase Price shall be payable from Buyer to Seller or Seller's agent as follows:

(i) by application of the Deposit; and

(ii) by payment of the balance of the Purchase Price by certified check or wire transfer payable at Closing.

2.04 Other Obligations at Closing. In addition to the foregoing, Buyer shall pay one hundred percent (100%) of the New Hampshire real estate transfer taxes and all recording fees for the foreclosure deed;

2.05 Purchase Price Adjustments. Buyer acknowledges that there will be no adjustment whatsoever to the Purchase Price arising out of or relating to revenues received or expenses incurred in connection with the Property.

3. Closing.

3.01 Closing Date. The Closing shall take place on or before _____, 2019, by mail or at a mutually acceptable location. TIME BEING OF THE ESSENCE.

3.02 Seller's Deliveries at Closing. At closing Seller shall deliver to Buyer a Foreclosure Deed and reasonable and customary affidavits.

4. Physical Condition of the Property; Warranties; Disclaimers; Required Disclosures.

4.01 Buyer understands that Seller has not occupied the Property and has little or no direct knowledge concerning the condition of the Property. As a material inducement to Seller's execution and acceptance of this Agreement, Buyer acknowledges that the Property will be conveyed in "as is, where is" condition except as otherwise herein set forth and Buyer and agrees to accept title to the Property in "as is, where is" condition except as otherwise herein set forth including, without limitation, any hidden defects or environmental conditions affecting the Property whether known or unknown, whether such defects or conditions were discoverable through inspection or not.

4.02 Buyer acknowledges that Seller, and its agents, brokers, and representatives have not made, and Seller specifically negates and disclaims, any representations, warranties, promises, covenants, agreements, or guarantees, implied or express, oral or written, with respect to:

i. The physical condition or any other aspect of the Property and all components thereof including, but not limited to, the structural integrity or the quality or character of materials used in construction of any improvements, availability and quantity or quality of water, stability of the soil, susceptibility to landslide or

flooding, sufficiency of drainage, water leaks, water damage, mold, or any other matter affecting the stability or integrity of the Property;

- ii. The conformity of the Property to any zoning, land use or building code requirements or compliance with any laws, statutes, rules, ordinances, or regulations of any federal, state or local governmental authority, or the granting of any required permits or approvals, if any, of any governmental bodies that had jurisdiction over the construction of the original structure, any improvements, and/or any remodeling of the structure;
 - iii. all matters pertaining to Seller's title to the Property including any representation or warranty that title to the Property is marketable and/or insurable;
 - iv. The habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property, including defects, apparent or non-apparent or latent, that now exist or may hereafter exist and that, if known to Buyer, would cause Buyer to refuse to purchase the Property; and
 - v. The existence of Lead Paint, Urea Formaldehyde Foam Insulation, Radon Gas, Hazardous Waste, and/or Asbestos on the Property.
 - vi. Buyer expressly acknowledges that any warranty or representation other than those contained herein, are or were made without authority and that Buyer has not in any way relied thereon.
 - vii. No loss, damage, condemnation or destruction of the Property prior to the Closing shall relieve Buyer of its obligations hereunder.
- 4.03 IN FURTHERNACE OF THE FOREGOING, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, FURTHER EXCLUDING ANY WARRANTIES WHATSOEVER WITH RESPECT TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY. SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING TITLE TO ANY FIXTURES OR OTHER PERSONALTY. THIS SALE IS BEING MADE WITH NO WARRANTIES, THE PROPERTY IS BEING SOLD "AS IS" AND "WHERE IS", WITHOUT LIMITATION THE SALE IS BEING MADE SUBJECT TO ALL EXISTING CONDITIONS, IF ANY, OF LEAD PAINT, MOLD OR OTHER ENVIRONMENTAL OR HEALTH HAZARDS.
5. REQUIRED DISCLOSURES. New Hampshire law requires that Seller provide certain disclosures and notifications prior to and contemporaneous with the sale of real property as follows
- i. 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.

- ii. **Lead Paint:** 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 women. Tests are available to determine whether lead is present.

6. **Damages.**

- 6.01 **Seller's Breach.** In the event of a breach of this Agreement by Seller, Buyer's remedy shall be limited to return of the Deposit described in **Section 1.01**, above, which shall be repaid in whole or part upon entry of judgment in favor of Buyer by a New Hampshire Superior Court. Buyer shall not have and hereby waives any and all claims against Seller which Buyer has or may have in law or equity.
- 6.02 **Buyer's Breach.** In the event Buyer does not close the transaction herein described for any reason or no reason as and when required herein (other than as a result of a material breach of this Agreement by Seller), then, in such event, Seller shall retain the Deposit as liquidated damages ("Liquidated Damages"). The parties hereto acknowledge Seller's expenses and costs, in the event of a default by Buyer, would be impossible or very difficult to accurately estimate at the time of this Agreement and as a result, the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from breach of this Agreement by Buyer. As such, the Liquidated Damages constitute compensation, and not a penalty. In light of the foregoing, Buyer and Seller acknowledge and agree that the Liquidated Damages are fair, reasonable and necessary to provide Seller with a remedy upon Buyer's breach of this Agreement.
- 7. **Risk of Loss.** Buyer shall bear the Risk of Loss through the date of Closing, provided, however, that (i) Seller shall assign and transfer to Buyer at Closing insurance proceeds, if any, paid or payable to it as a result of any casualty loss arising between the date hereof and the Closing, and (ii) Buyer may rescind this Agreement and obtain a full refund of all Deposits in the event a casualty loss arising between the date hereof and Closing is uninsured or under-insured in an amount in excess of Ten Thousand Dollars (\$10,000.00). Seller makes no representation that the Property is or will be insured against casualty loss between the date hereof and Closing.
- 8. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Hampshire.
- 9. **Merger of Understanding.** All negotiations, understandings, undertakings and the like with respect to the transaction covered by this Agreement have been merged within this Agreement, and there are no further or contrary understandings with respect thereto. This Agreement forms the complete and entire understanding between the parties.
- 10. **Modification or Waiver.** This Agreement may not be changed orally, but only by an agreement in writing signed by the parties hereto, executed and delivered with the same formalities as the original instrument. The waiver of Seller of a breach of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No course of dealing between the parties shall operate as a waiver of any provision of this Agreement.

11. **Succession.** This Agreement shall be binding upon the parties hereto, their heirs, successors, assigns, and transferees.
12. **Severability.** If any provision of this Agreement is determined to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired thereby, and no provision shall be deemed dependent upon any other provision unless so expressed herein.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be duly executed by signing below, as of the day and year first above written.

SELLER:

Northway Bank

Witness

By: _____
Name:
Title:

BUYER:

[_____]

Witness
