

**MEMORANDUM OF FORECLOSURE SALE**

**Capital Regional Development Council** (“CRDC” and “Mortgagee”), a non-profit corporation duly organized under the laws of the State of New Hampshire, with a mailing address of 91 North State Street, P.O. Box 664, Concord, New Hampshire 03301 (the “Mortgagee” and the “Seller”), holder of that certain Mortgage from **ESC Investments, LLC** (the “Mortgagor”) 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”) which Mortgage is now held by **CRDC**, 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), has this day, pursuant to the power of sale contained in the said Mortgage, conducted by public auction a foreclosure sale of the land and buildings located at 276 North State Street, Concord, Merrimack County, New Hampshire (collectively, the “Premises”) mortgaged thereby in accordance with notices given as required by statute and by said Mortgage.

It is hereby acknowledged that the highest bid made at said auction sale with respect to the Premises was made by:

Purchaser: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

(hereinafter the “Purchaser”) and that the terms of sale are as follows:

**1. Bid.** The Purchaser acknowledges that, prior to making its bid, the Purchaser understood that its bid was irrevocable and subject to the terms and conditions of the Notice of Foreclosure Sale and this Memorandum of Foreclosure Sale (hereinafter the “Agreement”).

**2. Purchase Price.** The total purchase price for the Premises shall be \_\_\_\_\_ and No/100ths Dollars (\$\_\_\_\_\_), which is the amount bid by the Purchaser at the foreclosure sale. The Mortgagee and the Purchaser agree that in accordance with the published terms of sale, the Purchaser has deposited with the Mortgagee, or its agent, the sum of Five Thousand and No/100ths Dollars (\$5,000.00) (the “Initial Deposit”), receipt of which is hereby acknowledged. Not later than five (5) business days from the date of this Agreement, the Purchaser shall pay to the Mortgagee, or Mortgagee’s agent, an additional amount equal to the difference between the Initial Deposit and ten percent (10%) of the Purchase Price (the “Additional Deposit” and together with the Initial Deposit, the “Deposit”). The balance of the Purchase Price shall be paid to the Mortgagee on the date of the

Closing by wire transfer.

**3. Title and Deed.** At the Closing, upon payment of the balance due under Paragraph 2, above, the Mortgagee shall convey the Premises to the Purchaser, or its assignee, by foreclosure deed in accordance with N.H. RSA 477:31 and 479:26.

**4. Closing.** The Closing shall be held at the offices of Cleveland, Waters and Bass, P.A., Two Capital Plaza, Concord, New Hampshire within forty-five (45) days of the date hereof (i.e. **on or before February 25, 2019**) at **11:00 a.m.** The parties agree that **TIME IS OF THE ESSENCE** as to this Agreement.

**5. Risk of Loss.** The Purchaser hereby acknowledges that all risk or damage to the Premises has been assumed and shall be borne by the Purchaser as of the close of the bidding with respect to the Premises.

**6. Prorations.** There shall be no proration of any expense or income associated with the Premises. In particular, and without limitation, there shall be no proration of utilities, water expenses, fuel oil, real estate taxes, transfer taxes, or any other expense or asset associated with the Premises.

**7. Recording Fees and Revenue Stamps.** At Closing, the **Purchaser shall pay all of the real estate transfer taxes** assessed under New Hampshire RSA Chapter 78-B. The Purchaser shall pay the fees associated with the recording of the foreclosure deed and related documents.

**8. Warranties and Representations.**

a. By execution hereof, the Purchaser hereby acknowledges that the Premises is being sold subject to any unpaid real estate taxes and other municipal assessments and liens therefor, and all other liens, easements, rights and encumbrances of any and every nature, including, without limitation, hazardous waste liens, if any, and the rights of tenants in possession, if any, whether or not of record, which may be entitled to precedence over the Mortgage. The Purchaser also acknowledges that Purchaser shall be responsible for the payment of any debts arising out of the aforementioned taxes, liens, easements, rights and encumbrances (the "debts") in addition to the total Purchase Price set forth in Paragraph 2, above.

b. The Mortgagee makes and shall make no warranties or representations of any kind in connection with the Premises. In particular, and without limiting the foregoing, the Mortgagee makes and shall make no warranty or representation regarding the present or future use or occupation of the Premises, the subdivision of the Premises, compliance of the Premises with applicable zoning ordinances, building codes or other applicable laws or regulations, the validity of any permits affecting the Premises, compliance of the Premises with any permits affecting the Premises, the condition, fitness or structural soundness of the Premises, the existence or non-existence of hazardous material, lead paint or radon gas at the Premises, the acreage of the Premises, title to the Premises, the rent roll of the Premises, the validity of any lease affecting the Premises or any other matter. The Premises shall be conveyed "**AS IS**" and "**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 SUCH FIXTURES OR OTHER PERSONALTY.

c. The Purchaser expressly acknowledges that any warranty or representation other than those contained herein made by any person is without authority.

d. By execution hereof, the Purchaser acknowledges receipt of certain notifications made pursuant to New Hampshire RSA 477:4-a and 477:4-c prior to executing this Agreement.

e. The Purchaser acknowledges and represents, and shall, at the Closing, acknowledge and represent, that the Purchaser has duly inspected the Premises, the title thereto, the occupancy thereof, and all other matters in connection with the purchase of the Premises by itself and by such experts as the Purchaser deems reasonable and prudent.

f. The Purchaser agrees to indemnify and hold the Mortgagee harmless from all claims or injuries, however arising, from any potential defects, hidden or otherwise, in the Premises, and further agrees to indemnify and hold the Mortgagee harmless from any actions, claims or causes of action by any person whatsoever brought or made after the Closing.

g. Purchaser hereby represents to the Mortgagee that he, she or they are not related in any way with the Mortgagor.

**9. Real Estate Commission.** Each party represents to the other that no real estate broker, agent or finder's fee is due with respect to the sale of the Premises except the fee to the auctioneer, James R. St. Jean Auctioneers, Inc., which the Mortgagee shall pay. The Purchaser agrees to hold the Mortgagee harmless from the claims of any broker or finder provided the claims are based upon having shown the Premises to the Purchaser or having interested the Purchaser in the Premises.

**10. Default.**

a. In the event of the Mortgagee's default in its obligations hereunder for any reason whatsoever, upon the return of the Deposit to the Purchaser, the Mortgagee will have no further obligation to the Purchaser and this Agreement will be null and void. The remedies set forth in this paragraph are the sole and exclusive remedies available to Purchaser and no other damages, rights or remedies shall in any case be collectible, enforceable or available to Purchaser against Mortgagee. Purchaser expressly waives any right to seek damages against Mortgagee.

b. In the event of the Purchaser's default hereunder, the Mortgagee may, at its option, retain the Deposit as full liquidated damages, or may hold said Deposit on account of the damages actually sustained by the Mortgagee, and may enforce all of its rights in law or in equity that it may have as a result of the Purchaser's default.

c. In the event of a default by the Purchaser, the Mortgagee may, at its option, and in lieu of all other remedies hereunder:

- i. retain the Deposit;
- ii. effect and receive an assignment of the Purchaser's rights hereunder to itself, or to another bidder from the auction sale; and
- iii. acquire the Premises as purchaser, or sell the Premises to another bidder from the auction sale, for a price equal to the Purchase Price, against which price the Deposit may be credited.

**11. Miscellaneous.**

a. Notices. All notices required under 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 sent to the parties at the addresses first set forth above, together with a copy of each such notice to Seller's attorneys as follows:

Cleveland, Waters and Bass, P.A.  
Two Capital Plaza  
P.O. Box 1137  
Concord, NH 03302-1137  
Attention: Timothy E. Britain, Esquire  
Email: [britaint@cwbp.com](mailto:britaint@cwbp.com)

b. Governing Law. This Agreement is made in and shall be interpreted and enforced according to New Hampshire law.

c. Integration. This Agreement sets forth in full 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.

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

e. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns; provided, however, the rights of the Purchaser hereunder are not assignable or transferable without the prior written consent of the Mortgagee.

f. Gender and Number. All words denoting gender or number shall be construed to include any other gender or number as the context and facts require.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this 11<sup>th</sup> day of January, 2019, to duplicate original counterparts hereof.

MORTGAGEE/SELLER:

**CAPITAL REGIONAL DEVELOPMENT  
COUNCIL**

\_\_\_\_\_  
Witness

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

PURCHASER(S):

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Witness

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