

## MEMORANDUM OF SALE

**1037-1045 Elm Street  
Manchester, New Hampshire**

MEMORANDUM OF SALE made as of the 24th day of February, 2020, by Cambridge Trust Company f/k/a Optima Bank & Trust Company, with an address c/o Denis O. Robinson, Esq., Pierce Atwood LLP, One New Hampshire Avenue, Suite 350, Portsmouth, NH 03801, as “Mortgagee” and \_\_\_\_\_, as “Purchaser”, as their interests may appear below.

### WITNESSETH:

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 a Mortgage Deed and Security Agreement from 1037-1045 Elm Street, LLC, (the “Mortgagor”) to Optima Bank & Trust Company, with an execution date of July 25, 2018; and a recording date of July 26, 2018, and recorded in the Hillsborough County Registry of Deeds at Book 9094, Page 913 (the “Mortgage”), and pursuant to RSA 382-A:9-604 and other applicable provisions of the Uniform Commercial Code, Mortgagee conducted a foreclosure sale on February 24, 2020.

1.02 At said foreclosure and secured party sale, Purchaser was the highest bidder on and purchaser of certain real property known as 1037-1045 Elm Street, Manchester, County of Hillsborough, State of New Hampshire more particularly bounded and described on Schedule A of the Mortgage, together with certain personal property of the Mortgagor described in the Mortgage (collectively, the “Property”).

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

1.04 The total Purchase Price for the Property shall be an amount equal to \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

1.05 A non-refundable deposit in the total amount of Twenty Thousand and 00/100 Dollars (\$20,000.00) shall be paid to Mortgagee upon execution of this Agreement. An additional amount sufficient to increase the non-refundable deposit to an amount equal to ten percent (10%) of the Purchase Price for the Property shall be paid to the Mortgagee within ten (10) days of the execution of this Agreement. All deposits will be held in a non-interest bearing account and are non-refundable.

## 2. CLOSING TIME AND PLACE AND NO PRORATIONS

2.01 Closing shall take place at 11:00 a.m. on March 25, 2020 at the offices of Pierce Atwood LLP, One New Hampshire Avenue, Suite 350, Portsmouth, NH 03801, 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, together with a Bill of Sale and a Declaration of Consideration (CD-57-S Form).

2.03 The balance of the Purchase Price shall be paid by Purchaser in cash, bank, or certified check, or by wire transfer at Closing. The Purchaser shall be responsible for all of the statutory real estate transfer taxes, whether assessed to Purchaser or to Mortgagee. Purchaser shall be responsible for the cost of recording the Foreclosure Deed and Affidavit.

2.04 There shall be no proration of rents, real estate taxes, association fees, common area maintenance charges, utilities, fuel oil, or any other expenses or items of income associated with the Property.

2.05 The Purchaser shall pay all real estate transfer taxes associated with the transfer of the Premises to Purchaser, whether assessed against Mortgagee or Purchaser. The Purchaser shall pay the said real estate transfer taxes at Closing based upon the Purchase Price, and shall further pay any and all additional amounts as may be assessed against Mortgagee by the New Hampshire Department of Revenue Administration subsequent thereto; provided, however, that Purchaser may contest such amounts at Purchaser's sole cost and expense and with the reasonable cooperation of the Mortgagee. The obligations of Purchaser and Mortgagee pursuant to this Section 2.05 shall survive the Closing.

## 3. WARRANTIES AND REPRESENTATIONS

3.01 The Property shall be sold subject to any and all unpaid real estate taxes, leases, association fees, park fees, water, sewer and other utility fees, prior liens, or other enforceable encumbrances, whether or not of record, which may be entitled to precedence over the Mortgage.

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 Mortgagee makes no warranties or representations of any kind in connection with the Property. In particular, and without limiting the foregoing, Mortgagee makes no warranty or representation regarding the present or future use of the Property, the habitability of any

structures, the condition of any wells or septic systems, availability of any utilities, access, income potential, compliance of the property with applicable zoning or other land use laws or regulations, the existence or non-existence of hazardous material, asbestos, radon, lead paint, or other health hazards. All property shall be conveyed "AS IS." Any warranty or representation made by any auctioneer, or other person, are expressly without authority. 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. MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING TITLE TO ANY SUCH FIXTURES OR OTHER PERSONALTY. THERE IS NO WARRANTY RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT OR THE LIKE IN THIS DISPOSITION. Prior to the auction Purchaser was encouraged to inspect the Property, the title thereto, the occupancy thereof, and all other matters in connection with the purchase of the Property by itself and by various experts as Purchaser considers reasonable and prudent.

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

#### 4. 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 Property except the fee to the auctioneer which Mortgagee shall pay. Each party agrees to hold the other party harmless from the claims of any other broker or finder claiming that a real estate commission or fee is due.

#### 5. DEFAULT

In the event of Purchaser's default hereunder, the Mortgagee may at its option do one or more of the following: (a) receive an assignment of Purchaser's rights hereunder and acquire the Property as purchaser for a price equal to the Purchase Price; and/or (b) pursue its remedies at law or in equity. In the event of any such breach by Purchaser then in addition to all of its other rights and remedies, Mortgagee shall be entitled to recover all of its costs and expenses arising from such default including its actual attorney's fees. Purchaser hereby irrevocably appoints Mortgagee as its attorney in fact for the purpose of executing any assignment of Purchaser's rights under this Agreement.

#### 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 which includes a building, the seller or the seller's agent shall provide the following notification and disclosure:

Radon: Radon, the product of decay of radioactive materials in rock, may be found in some areas of New Hampshire. Radon gas may pass into a structure through the ground or through water from a deep well. Testing of the air by a professional certified in radon testing and testing of the water by an accredited laboratory can establish radon's presence and equipment is available to remove it from the air or water.

Arsenic: Arsenic is a common groundwater contaminant in New Hampshire that occurs at unhealthy levels in well water in many areas of the state. Tests are available to determine whether arsenic is present at unsafe levels, and equipment is available to remove it from water. The buyer is encouraged to consult the New Hampshire department of environmental services private well testing recommendations ([www.des.nh.gov](http://www.des.nh.gov)) to ensure a safe water supply if the subject property is served by a private well.

Lead: Before 1978, paint containing lead may have been used in structures. Exposure to lead from the presence of flaking, chalking, chipping lead paint or lead paint dust from friction surfaces, or from the disturbance of intact surfaces containing lead paint through unsafe renovation, repair or painting practices, or from soils in close proximity to the building, can present a serious health hazard, especially to young children and pregnant women. Lead may also be present in drinking water as a result of lead in service lines, plumbing and fixtures. Tests are available to determine whether lead is present in paint or drinking water.

Private Water Supply, Sewage Disposal System, and Insulation: As set forth more specifically in the Seller's Disclosure of Private Water Supply, Sewage Disposal System and Insulation Information, reviewed by and executed by Purchaser, the Mortgagee is unaware of the information required to be disclosed under RSA 477:4-c and 477:4-d. (See Appendix A)

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 this sale, 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 Purchase and Sale Agreement shall be null and void and the Purchaser hereunder shall be entitled to the refund of its full deposit and all of the parties' obligations hereunder shall be discharged and terminated and this Agreement shall be null and void.

6.10 I/we have read the information contained in paragraph 6.04 regarding Notification pursuant to RSA 477:4-c, and 477:4-d prior to the execution of any contract for the purchase and sale of real property.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Mortgagee and Purchaser have hereto set their hand to the written instrument as of the date first above written.

WITNESS:

MORTGAGEE  
Cambridge Trust Company f/k/a  
Optima Bank & Trust Company

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Name: Denis O. Robinson, Esq.  
Title: Duly Authorized Attorney-in-Fact

PURCHASER:

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Printed Name:

APPENDIX A

SELLER'S DISCLOSURE RELATIVE TO  
PRIVATE SUPPLY SYSTEM, SEWAGE DISPOSAL  
SYSTEM AND INSULATION  
(Pursuant to NH RSA 477:4-c, d)

The undersigned Seller hereby disclose the following information:

1. Brief property description: 1037-1045 Elm Street, Manchester, County of Hillsborough, State of New Hampshire.

2. Description of the private water supply system (if any) serving the property, including its location, malfunctions, date of installation, date of most recent water test, and whether or not the Seller has experienced a problem such as an unsatisfactory water test or a water test with notations.

unknown

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3. Information relative to the sewage disposal system serving the property, including the size of the tank, type of system, its location, malfunctions, the age of the system, the date it was most recently serviced, and the name of the contractor who services the system.

unknown

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4. Information relative to the insulation, including type and location.

unknown

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5. If the information required above is unknown by the Seller, check here see above.