

PURCHASE AND SALE AGREEMENT

This Agreement is dated this 14th day of October, 2020 by and between **People’s United Bank, N.A.**, a national bank association in its capacity as foreclosing mortgagee, with a mailing address of 122 West St., Keene, NH 03431 (hereinafter “Seller”) and

_____ (Name)
_____ (Address)
_____ (Telephone No.)
_____ (E-mail)

(“Buyer”).

RECITALS

WHEREAS, in execution of and in accordance with the Consent Judgment of Foreclosure and Order of Sale entered April 17, 2020 by the Maine District Court in the case of People’s United Bank, N.A. v. Gregg M. Donovan-Kaloust, et al. Docket No. AUGDC-RE-2019-068 (“Judgment”), and wherein the Court adjudged a foreclosure of a Mortgage Deed recorded in the Kennebec County Registry of Deeds in Book 11259, Page 56 (“Mortgage”), for property located at 36 Brunswick Ave., City of Gardiner, County of Kennebec and State of Maine (the “Property”), the period of redemption from said Judgment having been expired; and

WHEREAS, the Seller having published a Notice of Real Estate Foreclosure Auction pursuant to 14 M.R.S.A. § 6323 for the Property in the *Kennebec Journal*, a newspaper of general circulation in Kennebec County on September 11, 18 & 25, 2020; and

WHEREAS, on October 14, 2020 at 11:00 at the Property, Seller held a public sale of all its right, title and interest in the Property (“Sale”); and

WHEREAS, at the Sale Buyer bid and, in so doing, paid a deposit of \$5,000 (“Deposit”) and agreed to purchase the Property, in the entirety, for the sum of \$_____ subject to all the Terms and Conditions of Mortgagee’s Sale announced at auction and this Agreement.

AGREEMENT

NOW THEREFORE, Seller, in consideration of the Deposit, receipt of which is hereby acknowledged, does hereby agree to sell and convey the Property to Buyer for the total purchase price of U.S. \$_____ (the “Purchase Price”) and Buyer agrees to purchase the same for said Purchase Price upon the following terms and conditions:

- 1. **Transfer of Property.** Seller agrees, at the time of closing hereunder and upon receipt of the balance due on the Purchase Price, to execute and deliver to Buyer a Quitclaim Deed Without Covenant of the Property, and said Deed shall release to Buyer all right, title and interest of Seller in and to the Property, subject to all senior encumbrances, liens, charges, laws,

matters and regulations, (except senior encumbrances which may be held by the Seller) including, but not limited to:

- a. any exception, reservation, restriction, easement or condition set out in the attached Exhibit A;
- b. any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records;
- c. any lien relating to hazardous materials or hazardous substance sites, including, without limitation, any liens pursuant to 38 M.R.S.A. §§ 1731, *et seq.*, imposed by law and not shown by the public records;
- d. any and all provisions of existing environmental, building, zoning planning, and land use laws and any matters covered or governed by any of the same;
- e. any and all other real property taxes and municipal or quasi-municipal charges and assessments, which taxes, charges and assessments Buyer hereby assumes and agrees to pay;
- f. rights of redemption of the United States of America, Internal Revenue Service pursuant to 28 U.S.C. § 2410(c), and any other rights of redemption with respect to the interests of governmental or quasi-governmental units, agencies or entities, including, without limitation, taxing authorities holding liens against the Property;
- g. discrepancies, conflicts in boundary lines, shortages in area, encroachments or any other matters as would be revealed by a physical inspection of the Property or an accurate survey thereof;
- h. all rights, restrictions, easements, encumbrances, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record created prior to the Mortgage as well as any benefit thereof to the extent in force and applicable;
- i. all matters set forth in the Judgment; and
- j. any other matters announced at the sale.

2. Terms of Sale. The sale of the Property is subject to the Terms of Sale provided to prospective bidders and/or announced at the Sale, the terms of which are incorporated herein by reference.

3. Deposit. The Buyer must deliver an additional deposit of \$ _____ to increase the Deposit to 10% of the Purchase Price. The additional Deposit shall be payable to James R. St. Jean Auctioneers, 45 Exeter Road, Epping, NH 03042, and must be received before Wednesday, October 21, 2020 at 4:00 P.M.

4. **No Warranty.** Buyer acknowledges that Seller is selling the Property at auction and that Buyer has had an opportunity to inspect the Property and any public records in any way affecting or relating to the Property. Buyer agrees that the Property are to be conveyed “**AS IS, WHERE IS**” and “**WITH ALL FAULTS**” as of the time of closing hereunder without recourse and without any representation or warranty of any kind whatsoever by Seller, its agents, employees, officers, attorneys, servants or independent contractors, either expressed or implied.

5. **Risk of Loss - Insurance.** Risk of loss of the Property shall pass to the Buyer upon execution of this Agreement.

6. **Financial Capacity.** The Buyer represents to the Seller that it has the financial capacity and financial resources to effect closing within the time specified by and on the terms and conditions provided by this Agreement. The Buyer’s obligation to purchase the Property is not conditioned, in whole or in part, upon Buyer’s ability to obtain financing for the purchase of the Property effected hereby.

7. **Closing.** The closing hereunder shall be held at a place agreed upon by the parties hereto on or before **Friday, November 13, 2020**. If the time of day or place of closing is not otherwise agreed upon, the closing shall be at the office of Seller’s counsel, Pearce, Dow & Burns, LLP, 2 Monument Square, Ste 901, Portland, Maine at 11:00 AM or some other location designated by Seller. Buyer must contact Seller’s counsel on or before Friday, November 6, 2020 via e-mail sent to aburns@pearcedow.com to confirm the time, date, location and procedures of closing so that Seller’s counsel may make appropriate COVID-19 safety arrangements for the closing. **Buyer’s failure to contact Seller’s counsel on or before Friday, November 6, 2020 to schedule the closing will be deemed a material breach of this Agreement and will entitle the Seller exercise its rights and remedies for Buyer’s default as specified in paragraph 8 below. These deadlines will be strictly enforced.**

8. **Default by Buyer.** If Buyer fails to pay the Purchase Price within the time set forth or otherwise fails to perform in accordance with the terms or provisions of this Agreement, Seller shall retain the Deposit paid hereunder as liquidated damages, it being agreed that said Deposit is a reasonable estimate of the Seller’s damages. In addition, the Property may be resold in any manner to any party and any deficiency, together with expenses and costs of re-sale, including reasonable attorneys’ fees and costs, will be paid by the defaulting Buyer. Without limiting the generality of the foregoing, upon default by the Buyer, Seller shall also have the right to purchase Buyer’s rights hereunder for the sum of One Dollar (\$1.00) and resell the Property as assignee of Buyer’s rights hereunder free and clear of all claims of Buyer, the Buyer hereby assigning effective as of such default all of Buyer’s right, title, and interest under this contract to the Seller conditioned upon the Seller’s depositing in the U.S. Mails postage prepaid, cash or check for \$1.00 addressed to Buyer at the address above given. Seller also reserves the right to make a junior bid at the completion of the auction proceedings.

9. **Default by Seller.** If Seller fails to perform in accordance with the terms or provisions of this Agreement, the Buyer’s sole and exclusive remedy will be for a return of the Deposit, repayable without interest. Buyer waives the right to recover consequential damages,

punitive damages, lost profits, investment opportunities, other “opportunity” costs, or attorneys’ fees and costs of collection.

10. Taxes and Other Assessments. Buyer assumes and agrees to pay all unpaid real estate taxes, unpaid utility charges and any and all other municipal or quasi-municipal assessments without proration. The Buyer will be responsible for a 5.5% State of Maine sales tax assessed on the value of any personal property that is being sold with the Property. The 5.5% sales tax will be due from the Buyer at closing, made payable to James R. St. Jean Auctioneers.

11. Real Estate Transfer Tax. Buyer shall pay all real estate transfer taxes pursuant to 36 M.R.S.A. §§ 4641, *et seq.* with the transaction herein described, including, without limitation, transfer taxes that are assessed to the Seller. At or prior to closing, Seller shall provide Buyer’s counsel with a fully completed IRS Form W-9.

12. Recording Fees. Buyer agrees to pay all recording fees with the Kennebec County Registry of Deeds for documents to be recorded pursuant to the sale of the Property, including, without limitation the recording fees for the Quitclaim Deed Without Covenant, and Seller’s Report of Sale.

13. Tenants and Occupants. The Property shall be conveyed subject to leases, tenancies-at-will, occupants and parties in possession, if any, as of the time of closing. The Property may be occupied by third parties at the time of the Sale and closing, and the Property is sold subject to any claims such third parties may have to continue possession.

14. Full Performance by Seller. The acceptance of a deed by Buyer shall be deemed to be full performance and discharge of every agreement and obligation of Seller herein contained or expressed.

15. No Broker(s). Buyer represents and warrants that Buyer is not represented by a real estate broker with respect to the transaction described herein and that no party is due a commission in conjunction with the sale of the Property. Buyer shall defend, indemnify and hold Seller harmless from any claims for a commission made by a real estate broker purportedly or actually representing Buyer in this transaction.

16. No Reliance. Buyer acknowledges that Buyer has not been influenced to enter into this transaction by Seller or its agents, nor has Buyer relied upon any warranties or representations not set forth or incorporated herein.

17. Assignment. Buyer may assign its rights under this Agreement to any third party by a writing approved by Seller (which approval Seller may withhold without cause), but such assignment may not mitigate or modify Buyer’s obligations and liability to Seller pursuant to the terms hereof. Any such assignment, in a form approved by and acceptable to Seller, must be executed and delivered by Buyer and the proposed assignee(s) to counsel for Seller at least seven (7) calendar days prior to the date of closing.

18. Notices. Any notices required to be given by one party to the other party hereto

shall be given at the address for such receiving party set forth at the beginning of this Agreement or by electronic mail to the Buyer as set forth at the beginning of this Agreement.

19. WAIVER OF JURY TRIAL. ALL PARTIES HERETO HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT ANY SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE SUBJECT CONTRACT.

20. Construction/Applicable Law. This Agreement is to be construed under the laws of the State of Maine, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, personal representatives, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer. The parties submit to the jurisdiction of any court of the State of Maine sitting in Kennebec County with respect to any dispute that may arise hereunder. If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several.

21. Captions/Headings. Any captions or headings used herein are for convenience only, are not substantive parts of this Agreement and are not being used to determine the intent of the parties.

22. Public Auction Bid Disclosure. The Seller and Buyer authorize the Auctioneer, its agents and employees, to disclose the public auction bid prices to any party prior to the actual closing date, and in the event of a non-confirmed, canceled, or defaulted sale.

23. Force Majeure. Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes (which events and/or circumstances are hereinafter referred to as "Force Majeure"), to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy; provided that the parties stipulate that Force Majeure shall not include the novel coronavirus COVID-19 pandemic, which is ongoing as of the date of the execution of this Agreement or governmental orders or lack of access to the Courts associated with the COVID-19 pandemic. Without limitation of the preceding, the parties agree that Seller shall have no obligation to put Buyer into possession of the Property, *inter alia*, because of the inability to obtain a writ of possession pursuant to the Judgment due to emergency governmental orders which may be in effect as of closing.

For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in the market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

24. Time is of the essence. The parties acknowledge that due to the time constraints placed on the Seller to complete the sale of the Property pursuant to the Judgment and 14 M.R.S.A. §§ 6321, *et seq.*, that the deadlines for Buyer's performance and for the closing including, without limitation, in paragraphs 3, 5 7, 17 must be strictly adhered to by the Buyer. Seller will not be required to allow the Buyer any additional time to perform its obligations or satisfy any condition under this Agreement.

25. No Waiver. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Any waiver granted hereunder must be in writing and shall be valid only in the specific instance in which given.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have hereunder set their hands and seals on the date first above set forth.

Seller

PEOPLE'S UNITED BANK, N.A.

Witness

By: _____
Craig A. Lougee, Its Vice President

Buyer

Witness

Signature

Printed Name

Title

Buyer

Witness

Signature

Printed Name

Title

Exhibit A

36 Brunswick Avenue
Gardiner, Maine

Two certain lots or parcels of land with the buildings thereon, situated in Gardiner, County of Kennebec, State of Maine bounded and described as follows:

FIRST PARCEL:

Beginning at a point in the southeasterly limit of Brunswick Avenue at a distance northeasterly from the northerly corner of land now or formerly of heirs of Jerry T. Desmond of seventy-five (75') feet; thence southeasterly in a straight line to a point in the northwesterly line of a parcel sold by Fred Trafton to Sophia J. Haley by deed dated July 12, 1927 recorded in Kennebec County Registry of Deeds at Book 642, Page 304 which is at a distance northeasterly from the easterly corner of said heirs of Desmond of sixty-six and three-tenths (66.3') feet; thence northeasterly, along the northwesterly line of the said parcel purchased of Trafton and line of land now or formerly of First Baptist Church Society, about ninety-six and two-tenths (96.2') feet to land now or formerly of Buell Merrill; thence northwesterly along the southwesterly line of the said Merrill land and of land now or formerly of American Legion to Brunswick Avenue, thence southwesterly along southeasterly limit of Brunswick Avenue about eighty-nine and five-tenths (89.5') feet to the point of beginning.

SECOND PARCEL:

Adjoining first parcel on the southeast and described as follows: Beginning at the southeasterly end of the first described line of the first parcel; thence southeasterly in the said first described line extended to the southerly limit of the above mentioned parcel sold by Trafton to Haley; thence easterly along said southerly limit to land now or formerly of First Baptist Church Society; thence northerly along westerly line of said Baptist land to the southeasterly limit of the first parcel; thence southwesterly along said southeasterly line to the point of beginning.

Being the same premises conveyed from Heribert A. Goudreau, Jr. & Heidi P. Goudreau to Bernard E. Davis, Jr., & Donna E. Davis found at Book 3325, Page 44 dated March 3, 1988 and recorded April 1, 1986 in the Kennebec County Registry of Deeds.