

## MEMORANDUM OF FORECLOSURE SALE

It is hereby acknowledged that on July 25, 2023, the undersigned Buyer, its agents, representatives, successors and assigns (the "Buyer"), has purchased by public auction conducted by James R. St. Jean Auctioneers of Epping, New Hampshire (the "Auctioneer"), on behalf of Yager Family Management, LLC (hereinafter the "Seller" or the "Mortgagee"), the Property (as defined herein) in accordance with the (the "Auction"). Reference is made to the Mortgagee's Notice of Foreclosure and Secured Party Sale attached hereto as Exhibit A (the "Notice of Sale"). Buyer agrees to purchase in accordance with and be bound by the terms and conditions contained in this Memorandum of Foreclosure Sale, the Notice of Sale and all terms and conditions announced at the Auction (collectively, the "Agreement").

### 1. MORTGAGEE'S SALE AT PUBLIC AUCTION

Pursuant to the Auction on behalf of the Seller as foreclosing mortgagee and in exercise of the power of sale contained in (1) a certain Mortgage Deed, Security Agreement, Assignment of Leases and Rents, and Financing Statement granted by NEWCO, LLC (the "Mortgagor") to the Mortgagee, dated March 8, 2018 and recorded with the Grafton County (N.H.) Registry of Deeds (the "Registry") in Book 4347, Page 0454 (the "First Mortgage") and (2) a certain Second Mortgage Deed, Security Agreement, Assignment of Leases and Rents, and Financing Statement from Mortgagor to Mortgagee, dated June 19, 2018 and recorded with the Registry in Book 4368, Page 0809 (the "Second Mortgage" and together with the First Mortgage, the "Mortgages"), and pursuant to UCC rights of disposition granted under the Mortgages and perfected lien filed in connection therewith, the Buyer, as the highest bidder, agrees to purchase the Property in accordance with the terms of this Agreement.

### 2. DESCRIPTION OF THE PROPERTY

The Property shall mean: (i) the Mortgaged Premises (as defined in the Notice of Sale); and (ii) the Collateral (as defined in the Notice of Sale).

### 3. TRANSFER OF THE PROPERTY

The Property shall be conveyed by (i) a good and sufficient foreclosure deed under the statutory power of sale and (ii) a bill of sale.

The Property shall be conveyed and transferred subject to the above, and all superior or prior liens on the Property, if any including liens, encumbrances, attachments, levies, unpaid taxes, tax titles, mortgages, security interests, occupancies, leases, tenancies, municipal charges, federal, state, district and municipal taxes, liens and assessments, building codes, zoning laws, rights of way restrictions, easements and covenants, to the extent in force and applicable to the Property or claims in the nature of liens, and existing encumbrances, having priority over the Mortgages.

The total bid price will be set forth as the consideration in the deed to the Property. The bill of sale shall recite a consideration of \$1.00 and other valuable consideration.

#### 4. PRICE AND DEPOSIT

The bid price for which the Property has been sold to the Buyer is \_\_\_\_\_ Dollars (\$\_\_\_\_\_) of which One Hundred Thousand and 00/100 Dollars (\$100,000.00) has been paid this day as a deposit to be held by the Seller's counsel, Sheehan Phinney Bass & Green PA ("Escrow Agent"). Within three (3) business days after the date hereof, an additional deposit shall be paid by Buyer by cash, certified funds, certified check or bank check sufficient to bring the aggregate deposit up to an amount equal to five (5%) percent of the bid price, with the balance to be paid by cash, certified funds, certified check or bank check at the time of the delivery of the deed. The Seller shall be entitled to any interest earned on the deposit and the amount to be paid by the Buyer shall not be adjusted to reflect any interest earned on the deposit. All deposited funds are a non-refundable earnest money deposit to be held at the option of the Seller as liquidated damages for any default or breach by the Buyer.

There shall be no proration of rents, real estate taxes, utilities, fuel oil, condominium fees, or any other expenses or items of income associated with the Property.

Mortgagee shall be responsible for the fee due to the Auctioneer, if any. The Buyer shall be responsible for any real estate commission or finder's fee due any other person and in no event shall Mortgagee or any of its agents be responsible for such fees or commissions.

#### 4. CLOSING

The deed and related documents shall be delivered and the balance of the consideration paid at the office of Sheehan Phinney Bass & Green, PA, 1000 Elm Street, Manchester, New Hampshire on or before ten o'clock (10:00 A.M.) on \_\_\_\_\_, or such other time and place as may be mutually agreed upon by the Seller and the Buyer (the "Closing"). **TIME WILL BE OF THE ESSENCE.**

#### 5. TITLE

In the event the Seller cannot convey title to the Property as stipulated, the deposit, and if applicable, the balance of the purchase price, shall be refunded and all rights hereunder shall cease, and the Buyer shall have no recourse against the Seller, or its employees, agents and representatives, whether at law or in equity; provided, however, that the Buyer shall have the election to accept such title as the Seller can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which event the Seller shall convey such title.

The Buyer acknowledges that the Buyer may be unable to obtain title insurance to the Property without the so-called "creditors rights exception." The Buyer acknowledges that the Seller shall be under no duty to cause the title company to remove the creditors rights exception from the Buyer's title insurance policy.

## **6. RISK OF LOSS**

The Buyer acknowledges that from and after this date, the Buyer shall have the sole risk of loss and the Seller shall have no responsibility for maintaining insurance on the Premises. In the event that the Property is damaged by fire or other casualty after the date hereof, then the Buyer shall remain obligated to consummate the sale without any reduction in the purchase price, and upon consummation of such sale, the Seller shall pay over or assign to the Buyer any amounts recovered or recoverable if and to the extent any such damage by fire or other casualty was insured against, less any amounts reasonably expended by the Seller in order to obtain such recovery.

## **7. ACCEPTANCE OF DEED**

The acceptance of a deed to the Property by the Buyer or the Buyer's nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed or arising out of said public auction on the part of the Seller to be performed or observed.

## **8. CONDITION OF THE PREMISES**

THE PROPERTY SHALL BE CONVEYED IN "AS-IS" "WHERE IS", SUBJECT TO KNOWN AND UNKNOWN DEFECTS, IF ANY, WITH ALL FAULTS, LATENT OR PATENT, AND SUBJECT TO THE PRESENT MANNER OF USE AND OCCUPANCY OF THE PROPERTY, WITHOUT ANY WARRANTIES OR REPRESENTATIONS WHETHER EXPRESS, IMPLIED OR IMPOSED BY OPERATION OF LAW AND SUBJECT TO ALL PRIOR ENCUMBRANCES. TO THE EXTENT THE PROPERTY AND THE TRANSFER HEREUNDER INCLUDES FIXTURES OR OTHER PERSONAL PROPERTY, THEN ALL SUCH ITEMS SHALL BE CONVEYED "AS IS," AND "WHERE IS." THE SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE BUYER ACKNOWLEDGES THAT THE BUYER HAS NOT BEEN INFLUENCED TO ENTER THIS TRANSACTION BY, NOR HAS IT RELIED UPON, ANY REPRESENTATIONS OR WARRANTIES OF THE SELLER OR THE AUCTIONEER, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS OR WARRANTIES CONCERNING COMPLIANCE WITH ANY HEALTH, BUILDING, ZONING, ENVIRONMENTAL OR OTHER LAW, INCLUDING ANY ORDINANCE OR REGULATION (FEDERAL, STATE OR LOCAL) WHICH MAY AFFECT THE TRANSFER OF THE PROPERTY OR THE BUYER'S USE AND/OR ENJOYMENT OF THE PROPERTY, EACH OF WHICH REPRESENTATIONS AND WARRANTIES IS EXPRESSLY DISCLAIMED. THE BUYER SHALL ASSUME ANY AND ALL RESPONSIBILITY AND/OR LIABILITY FOR COMPLIANCE THEREWITH.

ANY DOCUMENTS OR INFORMATION DELIVERED OR DISCLOSED TO THE BUYER BY THE SELLER OR AUCTIONEER OR ANY OTHER PARTY ON THEIR BEHALF WAS FOR INFORMATIONAL PURPOSES ONLY WITHOUT REPRESENTING OR WARRANTING THE TRUTH OR ACCURACY THEREOF.

The only warranty or representation that the Mortgagee makes is that it was duly authorized to make the sale of the Property and that in all of its proceedings in the sale thereof, it has complied with the requirements of NH RSA 479:25.

Buyer acknowledges that the Property is being sold subject to lead paint, urea formaldehyde, radon, private septic system and any other environmental conditions. Buyer further acknowledges that the Seller will not provide the Buyer access to the Property to obtain a smoke detector or carbon monoxide detector certificate, lead paint, urea formaldehyde, radon, private septic system if applicable, prior to acquiring record title to the Property, nor shall Seller provide any certificates under applicable law. The Seller makes no representation or warranties regarding compliance with said regulations.

The Buyer agrees that the cost of any inspections of the Property necessary for compliance with any state, federal or local, ordinance or regulation, including but not limited to inspection fees for lead paint, urea formaldehyde, radon, private septic system and any other environmental conditions, smoke detection equipment and carbon monoxide detection equipment, will be the Buyer's sole responsibility, and that Seller shall have no liability or responsibility therefore whatsoever.

New Hampshire law (RSA 477:4-a and 477:4-c) 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 Gas:** 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 Paint:** 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.

New Hampshire law also 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 disclosures, depending on the nature of the property:

RSA 477:4-c and d, Water Supply, Sewage Disposal and Insulation: Seller has no information.

RSA 477:4-g, Methamphetamine Production Site: Seller has no information regarding whether Property was used for methamphetamine production.

RSA 485-A:39 Waterfront Property Site Assessment Study: Seller has no information.

RSA 477:4-h, Public Utility Tariff Pursuant to RSA 374:61: Seller has no information whether Property is subject to a public utility tariff Under RSA 374:61.

New Hampshire RSA 477:4-f, Notification required prior to Condominium Sale. Buyer has the right to obtain the information in RSA 356-B:58, I from the condominium unit owners' association. Such information shall include a copy of the condominium declaration, by-laws, any formal rules of the association, a statement of the amount of monthly and annual fees, and any special assessments made within the last 3 years.

Buyer acknowledges that it has read the information contained in this paragraph 8 regarding notification pursuant to RSA 477:4-a, 4-c, 4-d, and 4 f as well as RSA 485-A:39 and RSA 477:4-H, as applicable to the nature of the property, prior to the execution of any contract for the purchase and sale of real property.

## **9. BUYER'S DEFAULT; DAMAGES**

If the Buyer shall fail to fulfill the Buyer's agreements herein, the Seller reserves all of its rights at law and equity against the Buyer, and in addition, the Seller may, at its election, assume the bid of the Buyer or terminate this Agreement and sell the Property to the second highest bidder or subsequent high bidders in order of their bids at the public auction, provided however, the Seller in its discretion may require, (i) said subsequent highest bidders to deposit with the Escrow Agent the amount of the required deposit as set forth herein within three (3) business days after written notice to the subsequent highest bidder of the default of the previous highest bidder, (ii) the subsequent highest bidder to execute a Memorandum of Sale, and (iii) the closing to occur within thirty (30) days of said written notice, time being of the essence unless the Seller agrees otherwise. The Seller may, at its option, assume any subsequent highest bid should that bidder fail to fulfill its obligations under this Agreement. No such assumption of the highest or any subsequent highest bid or sale of the Property by the Seller to a subsequent highest bidder shall relieve the highest or and subsequent highest bidder, as applicable, from its obligations under the applicable Memorandum of Sale nor operate as a waiver by the Seller of its rights and remedies against the highest or subsequent highest bidder at the auction sale.

## **10. TRANSFER TAXES AND RECORDING FEES**

The Buyer agrees to pay and be responsible for all real estate transfer taxes required under New Hampshire law. The Buyer shall also pay and be responsible for all recording fees in connection with the recording of the foreclosure deed and any related documents associated with the transfer of

the Property.

## **11. CONSTRUCTION OF AGREEMENT**

This Agreement, executed in triplicate, is to be construed as a New Hampshire contract governed by the law of the State of New Hampshire, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the Seller and the Buyer. If two or more persons are name herein as the Buyer, their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this memorandum or to be used in determining the intent of the parties to it. To the extent there are any inconsistencies between this Memorandum and the Notice of Sale and/or terms and conditions announced at the auction, this Memorandum shall control.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum as a sealed instrument as of the date first written above.

**Seller:**

**YAGER FAMILY MANAGEMENT, LLC**

By: \_\_\_\_\_  
Name: David Yager

Its Manager, Duly Authorized

**JAMES R. ST. JEAN AUCTIONEERS**  
Auctioneer

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

**Buyer:**

By: \_\_\_\_\_  
Name:  
Title: \_\_\_\_\_, Duly Authorized

**Exhibit A**