

## MEMORANDUM OF SALE

This Memorandum of Sale is made this 20<sup>th</sup> day of Septemebr, 2006 by and among **SOUTHBRIDGE SAVINGS BANK**, a Massachusetts savings bank having an office at 253 Main Street, Southbridge, Massachusetts (the "Seller"), **AUCTION MARKETING GROUP, INC.** of Shrewsbury, Massachusetts (the "Auctioneer"), and

or nominee (the "Buyer").

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

Pursuant to a public auction conducted September 20, 2006 by the Auctioneer on behalf of the Seller as foreclosing mortgagee, in exercise of the Power of Sale contained in a Commercial Mortgage (the "Mortgage") given by Robert F. Williams to Southbridge Savings Bank, which Mortgage is dated March 19, 2003 and recorded with the Worcester District Registry of Deeds in Book 29675, Page 330, the Buyer as the highest bidder agrees to purchase the real property described below (the "Property"), in accordance with the terms hereof and in accordance with the Additional Terms and Conditions of Mortgagee's Sale as announced at the time and place of sale, which Additional Terms and Conditions of Mortgagee's Sale are incorporated herein by reference.

### 2. DESCRIPTION OF THE PROPERTY

The Property shall mean the property described in the Mortgagee's Notice of Sale of Real Estate, a copy of which is attached hereto as Exhibit A, being known as property at 704 Main Street, Sturbridge, Massachusetts.

### 3. TRANSFER OF THE PROPERTY

The Property shall be conveyed by the usual mortgagee's deed (Massachusetts General Laws, Chapter 183, Appendix Form 11) under the statutory power of sale.

The Property shall be transferred subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal and other public taxes, assessments, liens, claims in the nature of liens, and existing encumbrances of record.

The total bid price will be set forth as the consideration in the deed to the Property.

### 4. PRICE AND DEPOSIT

The bid price for which the Property has been sold to the Buyer or his nominee is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) of which TWENTY-FIVE THOUSAND and 00/100 DOLLARS (\$25,000.00) has been paid this day in accordance with the terms of the auction sale, with the balance to be paid by certified check or bank check within forty-five (45) days of the date hereof, said funds to be held in

escrow by the firm of Bowditch & Dewey, LLP, Attorneys for the Mortgagee, 311 Main Street, Worcester, Massachusetts, in accordance with the terms hereof. 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.

5. CLOSING

The deed and related documents shall be delivered and the balance of the consideration paid at the offices of Bowditch & Dewey, LLP, 311 Main Street, Worcester, Massachusetts on the forty-fifth (45<sup>th</sup>) day following the date hereof or such other time and place as may be mutually agreed upon in writing by the Seller and the Buyer (the "Closing"). Time is of the essence hereof.

6. TITLE

In the event the Seller cannot convey title to the Property as stipulated, the deposit 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 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. Any certificate of title and title insurance policy obtained by the Buyer shall be at the Buyer's sole cost and expense.

The Buyer acknowledges that Buyer may be unable to obtain title insurance to the premises without the so-called "creditors rights exception" if the title company concludes that the purchase price is not sufficient. The Buyer specifically acknowledges that the Seller shall be under no duty to cause the title company to remove the "creditors' rights exception" from Buyer's title insurance policy.

7. RISK OF LOSS

Seller shall be under no obligation to maintain casualty insurance covering the Property. If the Property is damaged by fire or other casualty prior to the Closing, Buyer shall accept a deed to the Property and an assignment of so much of any insurance proceeds as may be payable to the Seller under any policy of insurance as has not been used in the restoration of the Property prior to the Closing, paying therefor the full bid price.

8. DELIVERY OF DEED

The delivery of a deed to the Property to the Buyer or 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.

9. CONDITION OF THE PROPERTY

THE PROPERTY SHALL BE CONVEYED IN "AS-IS" CONDITION, SUBJECT TO KNOWN AND UNKNOWN DEFECTS, IF ANY, AND SUBJECT TO THE PRESENT MANNER OF USE AND OCCUPANCY OF THE PROPERTY. THE SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE PROPERTY, OR TO ITS USE AND OCCUPANCY. THE BUYER ACKNOWLEDGES THAT 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 OR 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 acknowledges that it has had the opportunity to investigate the condition of the Property and to examine such public records pertaining to the Property as it has deemed necessary. The Buyer agrees that the cost of any inspections of the Property necessary for compliance with any state, federal or local law, ordinance or regulation will be the Buyer's sole responsibility, and that Seller shall have no liability or responsibility therefor whatsoever.

10. BUYER'S DEFAULT; DAMAGES

If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Seller and the Seller shall be free to sell the Property to the second highest bidder at the public auction in accordance with the terms announced at the public auction. The Buyer shall reimburse the Seller for all costs and expenses incurred by the Seller in excess of the amount of the deposit due to the Buyer's default, including the costs and expenses of subsequent sales of the Property or any portion thereof and attorneys' and auctioneers' fees in connection therewith and herewith. The Buyer guarantees payment of the bid price. The Buyer shall have no claim to any excess of the resale price of the Property over the bid price contained in this Memorandum of Sale. In addition, the Seller reserves all remedies at law and in equity against the Buyer for any default by the Buyer under this Memorandum of Sale.

11. DEED STAMPS AND RECORDING FEES

The Buyer shall pay for and cancel for the benefit of the Seller the excise tax stamps required to be affixed to the foreclosure deed by the law of the Commonwealth of Massachusetts. The Buyer shall pay all recording fees in connection with the transfer of the Property.

12. CONSTRUCTION OF AGREEMENT

This instrument, executed in triplicate, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a

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written instrument executed by both the Seller and the Buyer. If two or more persons are named herein as 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.

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

SOUTHBRIDGE SAVINGS BANK

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

AUCTION MARKETING GROUP

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

\_\_\_\_\_  
Buyer Name:

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Tax ID Number

**ADDITIONAL TERMS AND CONDITIONS**  
**OF THE MORTGAGEE'S SALE**

1. The real estate known as 704 Main Street, Sturbridge, Massachusetts will be sold in its entirety to the highest bidder pursuant to the Mortgagee's Notice of Sale of Real Estate. The successful bidder shall be required to execute a Memorandum of Sale upon acceptance of the bid.
2. The Auctioneer will prequalify bidders by inspecting their deposit checks and requiring reasonable identification. The successful bidder shall deposit the required deposit with the Seller's attorney which deposit shall be forfeited if the successful bidder shall refuse to execute a Memorandum of Sale, or if, after signing, the successful bidder does not perform in accordance with the terms, provisions and conditions set forth in the Memorandum of Sale. In case of forfeiture, the deposit shall become the property of the Seller and such forfeiture by the successful bidder shall not release him or her from his or her agreement. The successful bidder guarantees payment and performance of the Buyer's obligations under the Memorandum of Sale.
3. No adjustment shall be made for real estate taxes, assessments, or other municipal charges, liens or claims in the nature of liens, as the successful bidder shall take the property subject to all taxes, charges, rents, security deposits, assessments and liens up to the date of delivery of the deed. The Seller makes no representations or warranties with respect to any such matter.
4. The premises are being sold and conveyed (a) AS IS, WHERE IS, subject to known and unknown defects, if any, (b) subject to the present manner of use and occupancy, (c) without representation or warranty as to their condition, construction, or fitness for habitation, and (d) without regard to whether they conform to applicable federal, state or local health, building, zoning, environmental and sanitary codes or other laws and regulations.
5. The Auctioneer reserves the right to accept or reject any and all bids. The Auctioneer reserves the right to bid for or on behalf of the Seller.
6. The Seller reserves the right to adjourn, postpone or cancel this sale up until the moment the Auctioneer accepts the bid and declares the premises sold.
7. ALL PERSONS ARE UPON THE PREMISES AT THEIR OWN RISK. BY BIDDING AT THE AUCTION, ALL BIDDERS SHALL BE DEEMED TO HAVE AGREED TO THE TERMS AND CONDITIONS OF THE MORTGAGEE'S SALE.
8. Bids shall only be accepted in increments acceptable to the Auctioneer.
9. In the event of a default by the successful bidder at today's auction sale, the Seller reserves the right to sell the property to the second highest bidder and/or any subsequent

high bidder(s), at his or her last highest bid, under substantially the same terms and conditions as were offered at today's foreclosure auction and without re-offering the property at foreclosure sale. Said second highest bidder will have three (3) business days after notification by the Seller to make the required deposit pursuant to the Secondary Memorandum of Sale, and shall have thirty (30) days following the date of written notice of default of the highest registered bidder by the Seller to accept the deed and pay the purchase price for the premises.