

MEMORANDUM OF SALE

This Memorandum of Sale is made this 21<sup>st</sup> day of May, 2009, between BERKSHIRE BANK, of Pittsfield, Massachusetts (the "Seller"), AARON POSNIK & CO., INC., of Springfield, Massachusetts, (the "Auctioneer"), and \_\_\_\_\_, of \_\_\_\_\_, (the "Buyer").

1. MORTGAGEE'S SALE AT PUBLIC AUCTION

Pursuant to a public auction conducted on May 21, 2009, at 2:00 p.m., by the Auctioneer on behalf of the Seller as foreclosing mortgagee, in exercise of a Power of Sale contained in a Commercial Mortgage, Security Agreement and Assignment of Leases and Rents from Trent P. Gaylord to Berkshire Bank, dated September 9, 2003, and recorded with the Berkshire Northern District Registry of Deeds in Book 1125, Page 6, the Buyer as the highest bidder agrees to purchase the real property described below (the "Property"), in accordance with the terms hereof.

2. DESCRIPTION OF THE PROPERTY

The Property is described as follows:

Bounded southeasterly by Route 8, otherwise known as Reservoir Road, a distance of 620 feet, more or less;

bounded northwesterly by the Pittsfield and North Adams Railroad Corporation, presently part of the New York Central System;

bounded southwesterly by land now or formerly of Joseph A. and Irene H. Gentes;

bounded northeasterly by land now or formerly of Pettino's New England, Inc.

Reference is hereto made and had to a plan entitled "Commonwealth of Massachusetts Plan of Road in the Town of Cheshire, Berkshire County altered and laid out as a State Highway by Department of Public Works October 2, 1956" on file at the Northern Berkshire Registry of Deeds as Plan 116 in Drawer 8 (sheet 3 of 6), to which plan reference may always be had for a more particularly description of the southeasterly bound mentioned above.

SUBJECT TO easements granted by Anthony Choquette et ux to Northern Berkshire Electric Company by instrument dated October 19, 1954 and June 13, 1953, and recorded at said Registry of Deeds in Book 511, Page 176, and Book 529, Page 156, respectively, if applicable.

SUBJECT TO pole and wire easement of the Postal Telegraph & Cable Company created by instrument dated December 5, 1923, and recorded at said Registry in Book 367, Page 482, and to pole and wire easement of the Adams Gas Light Company created by instrument dated June 4, 1929, and recorded at said Registry in Book 397, Page 630, if applicable.

EXCEPTING the land taken by the Commonwealth of Massachusetts for widening of Route 8 by taking recorded in said Registry of Deeds in Book 731, Page 895, to the extent the same is applicable.

The purpose of this deed is to confirm prior deeds in which my intent was to convey 100% of my interest outright to my son, Trent P. Gaylord which deeds were recorded with Northern Berkshire Registry of Deeds in Book 997, Page 1101 and Book 999, Page 132. Said property is not to be owned by myself and Trent P. Gaylord as Tenants in Common. Reference is also made to an Affidavit recorded with Northern Berkshire Registry of Deeds in Book 999, Page 838.

Being the same premises conveyed to the Grantor and her husband Paul W. Gaylord by deed of Harvey J. Daniels and Laura G. Daniels, Trustees of L & H Realty Trust, dated June 30, 1971, recorded with Northern Berkshire Registry of Deeds in Book 640, Page 513. Reference is also made to deed of Paul W. Gaylord to Elodie A. Gaylord dated July 23, 1999, recorded with said Registry of Deeds in Book 987, Page 716.

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 conveyed and transferred:

(a) Subject to and together with the benefit of all rights, restrictions, easements, improvements, outstanding tax titles, municipal or other taxes, assessments, betterments, liens or claims in the nature of liens and existing encumbrances of record created prior to the mortgage, or entitled to precedence over the mortgage, if any there be, insofar as the same are still in force and applicable to the premises;

(b) Subject to any and all unpaid taxes, assessments and liens, and any outstanding utility (water/sewer) bills and liens;

(c) Subject to and together with the benefit of conditions and restrictions of record;

(d) Subject to provisions of applicable state and local law, including without limitation building codes, zoning ordinances and G.L. c. 21E;

(e) Subject to all tenancies, occupants and parties in possession. To the best of Seller's knowledge, there are no tenants in possession of the Property;

(f) Subject to all matters, if any, announced at the sale.

The total bid price will be set forth as the consideration in

the deed to the Property.

4. PRICE AND DEPOSIT

The purchase price for which the Property has been sold to the Buyer is \_\_\_\_\_ Dollars (\$\_\_\_\_\_)\*, (includes Buyer's Premium equal to five (5%) percent of the highest bid), of which Fifteen Thousand and 00/100 Dollars (\$15,000.00) has been paid this day in accordance with the terms of the mortgagee's notice of sale. An additional deposit equal to the difference of ten (10%) percent of the purchase price and \$15,000.00 must be paid within five (5) business days of the date hereof, and the balance of the purchase shall be paid by certified check or bank check at the time of the delivery of the deed. The Seller shall be entitled to interest earned on the deposit and the amount to be paid by the Buyer shall not be adjusted to reflect interest earned on the deposit.

The Buyer is responsible for payment of a Buyer's Premium equal to five (5%) percent of the highest bid, and said amount has been added to the Purchase Price set forth above.

5. CLOSING

The deed and associated papers shall be delivered and the balance of the consideration paid at the office of Hashim & Spinola, 82 Wendell Avenue, Pittsfield, Massachusetts on or before ten o'clock (10:00 a.m.) on the twenty-first day following the date hereof, or such other time and place as may be mutually agreed upon by the Seller and Buyer.

6. 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 Buyer shall have the election to accept such title as the Seller can deliver to the Property in its then condition and to pay therefore the purchase price without deduction, in which event the Seller shall convey such title.

7. ACCEPTANCE OF DEED

The acceptance of a deed to the Property by 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.

8. CONDITION OF THE PREMISES

The Property shall be conveyed in "AS-IS" condition, subject to the present manner of use and occupancy of the Property. The Buyer acknowledges that Buyer has not been influenced to enter this transaction by, nor has he relied upon, any warranties or representations of the Seller or the Auctioneer not set forth or incorporated in this Memorandum.

Seller makes no warranties, express or implied, as to the condition of the Premises, or as to whether anything other than

the real estate is to be sold, or as to the condition of any fixture that is to be sold; and the same is made with the understanding that the Seller is making no commitment as to the financing therefor.

There is no representation made by the Auctioneer, any representative of the Auctioneer, the Attorney for the Seller nor any representative of the Seller, with respect to the availability and/or issuance of any building or occupancy permits and/or any information dealing with any soil percolation tests and/or compliance with the State Environmental Code, Title 5, 310 CMR 15.301(1) et seq pertaining to septic systems or other "on site system" as defined by 310 CMR 15.002. It shall be the Buyer's sole responsibility to secure and pay for any and all necessary inspections, permits, licenses, test fees, etc., including without limitation, smoke detector inspection and certificate and any inspection required under the State Environmental Code, Title 5, 310 CMR 15.301(1) et seq.

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 Premises is damaged by fire or other casualty after the date hereof, then the Buyer shall remain obligated to consummate the sale without any reductions in the purchase price.

The Buyer further agrees to hold the Seller harmless from all claims or injuries however arising from any potential defects

hidden or otherwise in the Premises and further agrees to hold harmless and indemnify the Seller from any actions originating from third persons based on any claim or injury arising from said defects after this date. The within indemnifications shall survive the delivery of the Foreclosure Deed.

9. BUYER'S DEFAULT; DAMAGES

If the Buyer shall fail to fulfill the Buyer's agreements herein, Buyer shall forfeit all deposits and, in addition, 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 sale of the Property or any portion thereof and attorneys' and auctioneer's fees in connection therewith. The Seller shall also 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.

10. REAL ESTATE TAXES, UTILITY CHARGES

According to information received from the Tax Collector/Treasurer for the Town of Cheshire, there are outstanding real estate taxes, interest and penalties due through May 21, 2009, in the amount of \$12,846.89. The Buyer will be responsible for all outstanding real estate taxes, interest, penalties, including the per diem charges, through the date of delivery of the deed.

Additionally, as noted, the property will be sold subject to

said outstanding real estate taxes, including those due for the current fiscal period through the date of delivery of the deed.

The figures stated above have been received from the Tax Collector/Treasurer for the Town of Cheshire, Massachusetts, as contained in Municipal Lien Certificates dated May 15, 2009. Based upon the information obtained from the Tax Collector/Treasurer for the Town of Cheshire, Massachusetts, the amount of outstanding real estate taxes appears to be at least \$12,846.89. Based on these facts, neither the Auctioneer, the attorney for the Seller, nor any representative of the Seller, makes any guarantee or warranty as to the amount of the real estate taxes charges due and owing. Seller shall, at Buyer's expense, record the above-mentioned Municipal Lien Certificate with the Registry of Deeds and provide a copy to Buyer.

11. DEED STAMPS AND RECORDING FEES

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.

12. ADDITIONAL PROVISIONS

(a) Massachusetts General Laws Chapter 148, Section 26F requires that smoke detectors be installed in all residential structures. The Buyer in purchasing this property at this foreclosure sale agrees that he will assume all costs relative to the purchase and installation, plus all costs dealing with



inspection fees for such smoke detector equipment and Buyer further acknowledges that such equipment shall meet all other minimum state and city requirements.

(b) The parties acknowledge that, under Massachusetts law, whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible material contains dangerous levels of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age.

(c) The Buyer is advised that all information, as shown in the newspaper advertisements, the brochure, if any, that has been utilized for mailing purposes and/or pass out here at this auction sale, has been compiled purely for the convenience and assistance of the Buyer, and while the information shown is assumed to be reasonably correct, it is not guaranteed and/or warranted by the Auctioneer, Attorney for the Seller, nor any representative of the Seller.

(d) The Buyer recognizes and agrees that; (i) the Seller has no information concerning the presence of Urea Formaldehyde foam insulation at the premises; and will not issue any certification in regards thereto; and (ii) the Seller will not execute any documentation in connection with the financing of this purchase by Buyer, including without limitation, the Fannie Mae Affidavit and Agreement, Certification and Indemnification concerning the

installation of smoke detectors pursuant to Massachusetts General Law, and any title insurance affidavits and/or indemnities.

13. 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 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 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.

BERKSHIRE BANK

By: \_\_\_\_\_  
Seller

\_\_\_\_\_  
Auctioneer

\_\_\_\_\_  
Buyer