

**MEMORANDUM OF SALE**  
**297-301 Central Street**  
**Gardner, Massachusetts 01440**

This Memorandum of Sale is made this 29<sup>th</sup> day of June, 2015, by and among Colonial Co-operative Bank, a Massachusetts banking institution with a principal place of business at 6 City Hall Avenue, Gardner, Massachusetts (the 'Mortgagee'), Berman Auctioneers & Appraisers, a division of BidMark Services, Inc., of Worcester, MA (the "Auctioneer") and \_\_\_\_\_ (the "successful bidder/purchaser").

Subject to and in accordance with the terms and conditions set forth in that certain Notice of Sale attached hereto as Exhibit A and incorporated herein by reference, and as supplemented by further terms set forth below, the Buyer hereby agrees to purchase the Property more fully described in said Exhibit A.

THE OTHER TERMS TO BE ANNOUNCED ARE AS FOLLOWS:

The premises will be sold subject to any and all unpaid taxes, assessments, water and sewer charges, including without limitation real estate taxes, to the City of Gardner, up to and including the current fiscal year ending June 30, 2015, and upcoming fiscal year. The successful bidder/purchaser shall assume all taxes and other obligations, without adjustments, including the payment of the Massachusetts deed stamps.

The premises shall be sold subject to any and all conditions, restrictions, easements, rights of way, of record, whether created before or after the mortgage being foreclosed.

The Mortgagee, its agents, servants or employees and the Auctioneer and all parties for whom the Auctioneer may be acting shall not be liable for any reason what-so-ever as to the accuracy of description of the listed premises, the bounds, area involved, building, taxes and encumbrances of every name and nature, known and unknown defects shall not be reason for the failure on the part of the successful bidder/purchaser to complete the sale.

Said premises shall be sold and conveyed without representation or warranty as to its condition, construction, or fitness for habitation, or intended use, or whether they conform to applicable state or local building and sanitary codes.

The Property shall be conveyed in "as is where as" condition. No warranties either expressed or implied are given by the Mortgagee. The successful bidder/purchaser acknowledges that he/she/it has not been influenced to enter this transaction by, nor has it relied upon, any warranties or representations of the Mortgagee or the Auctioneer not set forth or incorporated in this Memorandum. No personal property of any nature is included in this conveyance except as expressly set forth herein. If, as of this date, there is any tenant or occupant in residence, the Buyer, if he or she wishes to evict such tenant or occupant, must do so at his or her own expense.

The successful bidder/purchaser acknowledges that from and after this date he or she shall have the sole risk of loss, and the Mortgagee shall have no responsibility for maintaining insurance on the premises. 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 the insurance proceeds as has not been used in the restoration of the Property prior to the Closing, to the extent any such proceeds may be available to the Mortgagee, Buyer paying therefore the full balance of the bid price.

The successful bidder/purchaser shall assume responsibility for obtaining any and all permits from the Federal, State and local governments as pertains to land use requirements, including but not limited to zoning, building, subdivision and conservation. No representations are made by the mortgagee, regarding the status of the above land use requirements. The successful bidder / purchaser shall be responsible for removing all motor vehicles and rubbish from the premises.

It shall be the responsibility of the successful bidder/purchaser to obtain all necessary occupancy permits, Board of Health permits including but not limited to Title V Certification, Smoke Detector and Carbon Monoxide permits, at it or their expense and same shall not be a condition of sale. Failure to obtain said permits shall not be a basis for delay or postponement of the delivery of the balance of the purchase price, not shall same be a requirement to release funds held in escrow.

The parcel is being sold whereby the Mortgagee makes no representations or warranties as to the presence or absence of contaminants or other substances as noted under Mass. Gen. Laws 21E, and Federal Environmental Statutes. If such a violation does exist, the correction thereof will be at the successful bidder/purchasers expense and separate from the purchase price, and the successful bidder/purchaser shall indemnify and hold harmless the Mortgagee from any costs.

The premises are to be conveyed subject to any municipal light liens and unpaid charges.

The title to the premises shall be that title which was conveyed by mortgage deed to the mortgagee and the successful bidder/purchaser shall take title to the premises by the usual deed under power. The mortgagee does not warrant or represent the status of the title and any examination of title, shall be the responsibility of the successful bidder/purchaser.

If this parcel cannot be delivered in accordance with the terms as specified, then where a deposit has been made, then only the refund of such a deposit will be made to the successful bidder/purchaser. The successful bidder/purchaser agrees to accept as full settlement, the refund of such a deposit and create no liability against the mortgagee its agents, servants, employees or the auctioneer and all parties involved in this sale.

In the event the Mortgagee 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 Mortgagee, or its employees, agents and representatives, whether at law or in equity.

The successful bidder/purchaser shall consider these premises as sufficiently described if such offering is indicated by number only, if that being the only description available at the time of this sale. Verbal qualifications by the Mortgagee or Auctioneer shall not invalidate nor become part of this sale as the buyer has examined to his/her satisfaction the listed premises.

The premises are sold subject to the rights, if any, of any tenants or occupants in possession.

The mortgagee makes no commitment to finance any successful bidder/purchaser.

Failure on the part of the successful bidder/purchaser to perform within the specified time, as stated herein today, will result in forfeiture of deposit as damages for costs in arranging this foreclosure sale.

In case of forfeiture, it is specifically understood and agreed that the deposit shall become the property of the Mortgagee and shall not be applied on the mortgage debt and such forfeiture shall not release the successful bidder/purchaser from his agreement to purchase for the amount. The premises are sold to the successful bidder/purchaser, subject to guaranteed performance of the amount bid and entered on this Memorandum of Sale. Guaranteed Performance is understood to mean, that upon successful bidder/purchasers failure to purchase the premises and upon resale of the premises at public auction, for any lesser amount, the undersigned successful bidder/purchaser will pay the mortgagee, the difference between his, her or its bid and the resale bid. It is further understood, that the successful bidder/purchaser in the event of default is responsible for reasonable cost of collections, including all reasonable collection fees, court costs, reasonable attorney fees and witness fees. The successful bidder/purchaser shall have no claim to any excess funds.

In the event that the successful bidder at the foreclosure sale shall default in purchasing the within described property according to the terms of this Notice of Sale and/or the terms of the Memorandum of Sale executed at the time of the foreclosure, the Mortgagee reserves the right to sell the property by Foreclosure Deed to the second highest bidder provided that the second highest bidder shall deposit the amount of the required deposit with The Law Office of Richard A. Cella within three (3) business days after written notice of default of the previous highest bidder and title shall be conveyed to said second highest bidder within twenty (20) days of said written notice.

The successful bidder/purchaser acknowledges by signing a copy of this memorandum of sale, that he, she or it, has been advised of the Commonwealth of Massachusetts Department of Public Health Lead Poisoning Notice, and has had an opportunity to review the Department's Property Transfer Notification form, and shall assume all responsibilities for compliance with same.

The sale shall not be complete until the successful bidder/purchaser has made the required deposit which shall be forfeited if he does not perform his part of the agreement to

purchase. All qualified bidders, should remain on the premises even after the parcel is declared as sold, as the Auction proceedings are not complete until the deposit, as stipulated in the newspaper advertisement has been accepted by the Auctioneer, the Attorney or the Parties in Interest.

The premises shall be conveyed by the usual mortgagee's deed under the Statutory Power of Sale, subject as aforesaid, papers to be passed and the considerations to be paid in cash or by bank check or certified check, within thirty (30) days of sale on July 29, 2015 at the offices of Richard A. Cella, 65 Pleasant Street, Leominster, Massachusetts 01453.

In the event that a Bankruptcy Court proceeding is filed by the Mortgagor, the successful bid shall be subject to Bankruptcy Court Approval, and the time for performance shall be extended to sixty (60) days instead of the thirty (30) days referenced above. In the event no approval is obtained the successful bidder/purchaser will receive a refund of its deposit, without interest, and all parties shall be discharged of liability hereunder.

At the sale held under the above notice and terms, the premises have been sold for \_\_\_\_\_ Dollars, to the undersigned successful bidder/purchaser who has made the required deposit of FIVE THOUSAND AND NO/100, (\$5,000.00) Dollars, and hereby agrees to the balance of \$ \_\_\_\_\_ Dollars, in accordance with the terms of sale as provided above.

SOLD FOR: \$ \_\_\_\_\_

\_\_\_\_\_  
Auctioneer

Deposit: \_\_\_\_\_

\_\_\_\_\_  
Purchaser

Balance Due: \_\_\_\_\_

\_\_\_\_\_  
Address:

\_\_\_\_\_

\_\_\_\_\_

Rec'd By: \_\_\_\_\_

Phone No. \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Soc. Sec. #

EXHIBIT A

**MORTGAGEE'S SALE OF REAL ESTATE**

By virtue and in execution of the Power of Sale contained in a certain mortgage given by Jon S. Menear and Deborah L. Menear (the "Mortgagor") to Colonial Co-operative Bank (the "Mortgagee"), having a usual place of business at 6 City Hall Avenue, Gardner, Worcester County, Massachusetts, dated September 10, 2004 and recorded with the Worcester District Registry of Deeds, Book 34591, Page 296 of which mortgage the undersigned is the present holder, and for breach of the conditions of said mortgage and for the purpose of foreclosing the same will be sold at Public Auction on the premises situated at 297-301 Central Street, Gardner, Massachusetts, at 11:00 A.M. on the 29<sup>th</sup> day of June, 2015, all and singular the premises described in said mortgage, to wit: the following described land with all buildings, equipment and fixtures now or hereafter placed thereon:

A certain parcel of land, with buildings and other improvements thereon, situated on the northwesterly side of Central Street, in Gardner, Worcester Count, Massachusetts, shown on a plan entitled, "Compiled Plan of Land prepare for Gardner News, Inc., Gardner, Mass., Scale: 1 inch = 20 ft. – April 30, 1984, Michael S. Szoc, Surveyor", and recorded in Worcester District Registry of Deeds, Plan Book 522, Plan 108, bounded and described as follows:

BEGINNING at the most southerly corner thereof at a point in the northwesterly line of Central Street at a corner of land now or formerly of Tousignant, Inc., Realtors;

THENCE northwesterly, at an included angle of 90° 17', by said Tousignant land, 72.45 feet to a corner of said Tousignant land and in line of land now or formerly of the Gardner News, Inc.;

THENCE the following three courses by said Gardner News land;

Northeasterly, at an included angle of 90°, by a retaining wall, about 9.5 feet;

Northwesterly, at an included angle of about 270°, by said wall, 0.8 feet;

Northeasterly, at an included angle of about 90°, still by said wall, about 36.59 feet to a point in line of land now or formerly of Alfred J. Richard and Gloria R. Richard;

THENCE southeasterly, at an included angle of about 89° 43', by said Richard land, about 73.48 feet to the northwesterly line of Central Street;

THENCE southwesterly, at an included angle of 90°, by the northwesterly line of Central Street, 45.73 feet to the point of beginning.

Containing about 3,360 square feet.

Being the same premises conveyed by deed of James S. Boone and David T. Boudreau, co-Trustees of B&B Realty Trust to Jon S. Menear and Deborah L. Menear, dated September 8, 2004 and recorded with the Worcester District Registry of Deeds, Book 34591, Page 294.

Said premises are to be sold and conveyed subject to any and all unpaid real estate taxes to the City of Gardner Massachusetts, and to any unpaid liens and assessments thereon, and subject to and with the benefit of all restrictions, easements, improvements, outstanding liens, or claims in the nature of liens and existing encumbrances of record, created prior to the mortgage, if there be any.

Said premises will be sold subject to and/or with the benefit of any and all restrictions, easements, improvements, covenants, leaseholds, tenancies, occupants, municipal or zoning regulations or requirements, 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 or to which the Mortgage has been subordinated, if any there be.

No representation is made as to the existence or non-existence of lead paint or UFFI at the premises and Buyer purchases subject to all requirements related thereto.

If the premises are not serviced by a public sewage system, Buyer will be solely responsible for compliance with all Title V Regulations, including but not limited to, any inspection and upgrade requirements set forth in 310 CMR (Code of Massachusetts Regulations) 15.300 through 15.305.

The Mortgagee will offer for sale the mortgaged premises as an entirety.

Terms of sale: A deposit of FIVE THOUSAND AND NO/100 (\$5,000.00) DOLLARS, to be paid in cash, (U.S. Currency), Bank Certified Check, Bank Treasurers Check, Bank Cashiers Check or other official Bank Check, at the time and place of sale. Such deposit must be shown to the auctioneer prior to the commencement of bidding in order to be entitled to bid. The purchaser will be required to sign a Memorandum of Sale containing the above terms and such other terms as may be announced at the time and place of the sale. The sale will not be complete until such deposit is paid and such Memorandum is signed.

The Purchaser will be required to deliver the balance of the purchase price to be paid within thirty (30) days of sale, upon the delivery of the foreclosure deed at the office of Richard A. Cella, Esquire, 65 Pleasant Street, P.O. Box 297, Leominster, Massachusetts, at which time the foreclosure deed and all related documents will be delivered to the Purchaser. The Purchaser will be solely responsible for completing the filing and recording of all foreclosure documents as required by applicable laws and for the payment of all deed excise stamps and all filing and recording fees.

The Mortgagee reserves the right to postpone the sale to a later date by public proclamation at the time and date appointed for the sale and to further postpone at any

adjourned sale date by public proclamation at the time and date appointed for the adjourned sale date.

In the event that the successful bidder at the foreclosure sale shall default in purchasing the within described property according to the terms of this Notice of Sale and/or the terms of the Memorandum of Sale executed at the time of foreclosure, the Mortgagee reserves the right to sell the property by foreclosure deed to the second highest bidder providing that said second highest bidder shall deposit with the Mortgagee's attorney, RICHARD A. CELLA, 65 Pleasant Street, P.O. Box 297, Leominster, Massachusetts 01453, the amount of the required deposit as set forth herein within three (3) business days after written notice of the default of the previous highest bidder and title shall be conveyed to the said second highest bidder within thirty (30) days of said written notice.

In the event that the second highest bidder shall not be interested in purchasing the mortgage premises, the Mortgagee reserves the right, at its sole election, to sell the premise by foreclosure deed to the other qualified bidders. Mortgagee also reserves the right, at its sole election, to assume the bid of any defaulting or declining bidder.

If the second highest bidder declines to purchase the within described property, the Mortgagee reserves the right to purchase the within described property.

Except for warranties arising by operation of law, the sale of the mortgaged property and personal property is "as is", "where is" and with all faults, latent or patent, and subject to all prior encumbrances. The mortgagee expressly disclaims all warranties of merchantability or fitness for a particular purpose and/or regarding title to the personal property and/or any such fixtures or other personalty.

The description of the Mortgaged Premises contained in the Mortgage shall control in the event of a typographical error in this publication.

Subject to such other terms and conditions as may be announced at the time, date and place of sale.

Other terms to be announced at the sale.

COLONIAL CO-OPERATIVE BANK  
Present Holder of Mortgage  
By Its Attorney,  
Richard A. Cella, Esq.  
65 Pleasant Street  
P. O. Box 297  
Leominster, Massachusetts 01453  
Telephone No. (978) 537-8214