

MEMORANDUM OF AUCTION SALE

This ___ day of July, 2018

1. **PARTIES.** I Steven B. Webster of North Brookfield, MA as Personal Representative of the Estate of Brooks S. Webster formerly of 81 Lovell Road, Holden, MA, (the "Seller"), agrees to sell and _____ of _____, _____ (the "Buyer"), agree(s) to buy, upon the terms hereinafter set forth, the following described premises:

2. **DESCRIPTION.** The land with improvements thereon known as 81 Lovell Road, Holden, MA, recorded in Worcester County Registry of Deeds, Book 7353, Page 206, a copy of the legal description of which premises being sold is attached hereto as Exhibit A (the "Premises").

3. **BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES.** Included in the sale as a part of the Premises are the buildings, structures, and improvements now thereon, and the fixtures belonging to the Seller and used in connection therewith, if any.

4. **TITLE DEED.** The Premises are to be conveyed by a good and sufficient Massachusetts quitclaim Deed running to the Buyer (the "Deed"), and said Deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except:

- a. Provisions of existing building and zoning laws;
- b. Existing rights and obligations in party walls which are not the subject of written Agreement;
- c. Such taxes for the then current year as are not due and payable on the date of the delivery of such Deed; and
- d. Easements, restrictions, and rights of way of record, if any.

5. **BUYER'S PREMIUM.** There will be a Buyer's Premium of **ten percent (10%)** added to the high bid price to arrive at the total purchase price for the Premises to be paid by the successful bidder at the Closing (as hereinafter defined).

6. **PURCHASE PRICE.** At a public auction held on Saturday, July 21st, 2018, the Buyer agreed to purchase the Premises for the Total Purchase Price amount of (\$ _____, _____ .00) of which, (\$ _____, _____ .00) is the contract bid price and (\$ _____, _____ .00) is the **10% buyer's premium.** The Purchase Price shall be paid as follows:

\$ **\$10,000.00** is to be paid as a deposit upon signing this Agreement (the "Deposit") by certified or bank cashier's check; and

\$ _____, _____ .00 **balance** is to be paid at the time of delivery of the Deed in cash, or by certified or bank cashier's check(s) or wire transfer.

\$ _____, _____ .00 **TOTAL CONTRACT PURCHASE PRICE**

7. **THE CLOSING.** Payment of the Purchase Price (less the Deposit), delivery of the Deed and the consummation of the transactions contemplated by this Agreement (the "Closing") shall occur on Friday, September 7 th, 2018 at the Worcester Registry of Deeds at 12:00 p.m., unless otherwise agreed upon in writing. Time is of the essence of this Agreement.

8. **AUCTION SALE TERMS AND CONDITIONS.** The terms and conditions set forth on Exhibit B are attached hereto and incorporated herein by reference. **BUYER ACKNOWLEDGES THAT THIS AGREEMENT AND SUCH TERMS AND CONDITIONS ARE POSTED ON THE AUCTIONEER'S WEBSITE, WWW.BERMANPROPERTYSOLUTIONS.COM, AND THAT BUYER HAS HAD AN ADEQUATE OPPORTUNITY TO REVIEW THE SAME BEFORE THE AUCTION AND BEFORE EXECUTING THIS AGREEMENT. BUYER ACKNOWLEDGES THAT IT HAS HERETOFORE CONDUCTED ANY AND ALL DUE DILIGENCE DESIRED BY IT AND THAT IT IS PURCHASING THE PREMISES "AS IS" "WHERE-IS"; THIS AGREEMENT IS NOT CONTINGENT UPON ANY INSPECTIONS OF THE PREMISES. THE TERMS AND CONDITIONS CONTAIN FURTHER DISCLAIMERS, WAIVERS, TERMS AND CONDITIONS, ALL OF WHICH ARE INCORPORATED HEREIN.**

9. **FINANCING.** Buyer's obligations under this Agreement are NOT CONTINGENT upon Buyer securing any financing for the purchase of the Premises. Buyer's failure to apply for or to secure financing shall not excuse Buyer from timely performance of all obligations under this Agreement.

10. **EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM.** If the Seller shall be unable to give title or to make conveyance, or to deliver possession of the Premises, all as herein stipulated, or if at the time of the delivery of the Deed the Premises do not conform with the provisions hereof, the Seller shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event the Seller shall give written notice thereof to the Buyer at or before the time for performance hereunder and the time for performance hereof shall be extended for a period of thirty (30) days. Notwithstanding anything in this agreement to the contrary, the Seller's obligation to use reasonable efforts to remove any defects in title or to deliver possession as provided

herein, or to make the Premises conform to the provisions hereof shall not obligate the Seller to expend more than \$1,000 in so doing, except for the discharge of mortgages and liens of which the Seller has actual knowledge at the time of signing this agreement.

11. **FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM, etc.**

If at the expiration of the extended time the Seller shall have failed so to remove any defects in title, deliver possession, or make the Premises conform, as the case may be, all as herein agreed, or if at any time during the period of this Agreement or any extension thereof, the holder of a mortgage on the Premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then, the Deposit shall be forthwith refunded and all other obligations of all parties hereto shall cease and this Agreement shall be void without recourse to the parties hereto.

12. **BUYER'S ELECTION TO ACCEPT TITLE.** The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the Premises in their then condition and to pay therefor the Purchase Price without deduction, in which case the Seller shall convey such title, except that in the event of such conveyance in accord with the provisions of this clause, if the Premises shall have been damaged by fire or casualty insured against, then the Seller shall, unless the Seller has previously restored the Premises to their former condition either:

- a. pay over or assign to the Buyer, on delivery of the Deed, all amounts recovered or recoverable on account of such insurance, less any amounts reasonably expended by the Seller for any partial restoration; or
- b. if a holder of a mortgage on the Premises shall not permit the insurance proceeds or a part thereof to be used to restore the Premises to their former condition or to be so paid over or assigned, give to the Buyer a credit against the purchase price, on delivery of the Deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by the Seller for any partial restoration.

13. **ACCEPTANCE OF DEED.** The acceptance of a Deed by the Buyer or Buyer's nominees as the case may be, shall be deemed to be full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said Deed.

14. **USE OF PURCHASE MONEY TO CLEAR TITLE.** To enable the Seller to make conveyance as herein provided, the Seller may at the time of delivery of the Deed, use the Purchase Price or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded within a reasonable time after the delivery of said Deed.

15. **INSURANCE.** Until the delivery of the Deed, the Seller shall maintain insurance on the Premises as follows:

<u>Type of Insurance</u>	<u>Amount of Coverage</u>
(a) Fire	As presently insured
(b) Extended Coverage	As presently insured

16. **ADJUSTMENTS**. Real estate taxes for the then current year, and water and sewer charges, and fuel value shall be apportioned as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the Purchase Price.

17. **ADJUSTMENTS OF UNASSESSED AND ABATED TAXES**. If the amount of said taxes is not known at the time of delivery of the Deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained; and, if the taxes which are to be apportioned shall thereafter be reduced by abatement, the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties, provided that neither party shall be obligated to institute or prosecute proceedings for an abatement unless herein otherwise agreed.

18. **DEPOSIT**. The Deposit shall be held by the Auctioneer subject to the terms of this Agreement and the agreement between the Seller and the Auctioneer and shall be duly accounted for at the time for performance of this Agreement. In the event of any disagreement between the parties, the Auctioneer may retain all deposits made under this agreement pending instructions mutually given in writing by the Seller and the Buyer.

19. **WARRANTIES AND REPRESENTATIONS**. The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this Agreement.

20. **CONSTRUCTION OF AGREEMENT**. This instrument, executed in multiple counterparts, 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 cancelled, 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 Agreement or to be used in determining the intent of the parties to it.

21. **LEAD PAINT**. Seller makes no representation or warranty, express or implied, as to the lead paint content of the property. Buyer acknowledges receipt of the lead paint notification package previously supplied by the Seller and Buyer takes full responsibility for compliance with all laws relating to same (and in particular Massachusetts General Laws, Chapter 111, Section 197). Buyer will assume the burden of cost for all tests, costs and compliance arising therefrom.

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 level of lead, the owner of said premises must remove or cover said paint, plaster or other material so as to make in inaccessible to children under six years of age.

The BUYER warrants to the SELLER and Auctioneer that BUYER has read and reviewed the lead paint laws as amended of the Commonwealth of Massachusetts, if applicable, and has had the opportunity to review said lead paint laws with legal counsel of BUYER'S choice and states further that BUYER understands the same. The BUYER acknowledges that they have been afforded the ten day right to have the premises examined for such lead paint.

22. **GUARANTEED PERFORMANCE.** By executing this Memorandum of Auction Sale, the Buyer GUARANTIES PAYMENT OF THE PURCHASE PRICE IN THE EVENT OF DEFAULT; upon resale of the Premises for any lesser amount, the Buyer will pay the difference between the Purchase Price and that of the resale purchase price, if any. The Buyer will also pay any and all costs of collecting said difference, if such is needed, including reasonable attorneys' fees, court costs, witness fees, and other expenses of collection. The Buyer shall have no claim to any excess created by a resale of the Premises.

23. **ADDITIONAL PROVISIONS.** The terms and conditions of the auction stated by the Auctioneer are incorporated herein by reference. A copy of said terms and conditions is attached hereto as Exhibit B.

24. **CONTROL DOCUMENT.** This Agreement and the Terms and Conditions supersede all prior agreements between the parties, either oral or written, which are hereby deemed null and void.

25. **TITLE REPORT.** Seller shall order a title certification from a company routinely doing business at the Worcester County Registry of Deeds. Buyer to assume costs of said title.

26. **AS IS.** The Premises is sold "as is" and as shown, and no representations have been made by Seller in regard to its condition except those contained in this Agreement. Buyer and Seller agree that they have incorporated in this Agreement their entire understanding and no oral statement or prior written statement made by either of them or by any other person extrinsic to this Agreement shall have any force or effect. Buyer agrees that Buyer is not relying on any representations, oral or written, concerning the age, condition, workmanship or suitability of the Premises or any part thereof for any purposes made by any person, other than those representations expressly set forth in this Agreement or in other documents expressly made a part hereof.

27. **NO ASSIGNMENT.** If Buyer either makes an assignment of Buyer's right under this Agreement or records a copy of this Agreement, Seller, at Seller's option, may declare Seller's obligations hereunder to be null and void, and may deem Buyer to be in default of Buyer's obligations hereunder, whereupon this Agreement shall be deemed void and of no further force or effect and all deposits and interest thereon shall be retained by Seller.

28. **NOTICES.** All notices and mailing of any nature contemplated hereunder shall be sufficient if in writing and either delivered in hand, by certified mail, return receipt requested, postage prepaid, or by Federal Express or other recognized overnight delivery service, all delivery charges prepaid, and addressed:

If to Seller:

Steven B. Webster
106 New Braintree Road
N. Brookfield, MA 01535

With a copy to Sellers Attorney:

Attorney David Bennett
Bennett & Forts, P.C.
1093 Main Street
Holden, MA 01520
Phone: 508-829-6901
Fax: 508-829-7326
Email: dbennett@bennettandforts.com

If to Buyer:

Tel. No.: () -
Fax No.: () -

For purposes of this paragraph, delivery in hand to a party to this Agreement shall include facsimile transmission to either the party or such party's copy recipient if a fax number is listed above for such party or copy recipient and if immediately followed by telephone confirmation.

29. **AUCTIONEER'S FEE.** An auctioneer's fee, pursuant to an agreement between the Seller and Bidmark Services, Inc. d/b/a Berman Property Solutions, is due from the Seller to the auctioneer.

30. **POSSESSION AND CONDITION OF PREMISES.** Full possession of said premises, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted and (b) in compliance with provisions of any instrument referred to in clause 4 hereof.

31. **BROKER.** Buyer acknowledges that he has engaged no real estate broker, and no real estate broker has in any way been involved in this transaction except any broker previously registered with and acknowledged by AUCTIONEER in writing. Buyer agrees to indemnify and hold harmless the Seller and Auctioneer including Seller's and Auctioneer's reasonable attorney's fees, for any claim made by any real estate broker not registered with and acknowledged by Auctioneer in writing in connection with this transaction.

32. **CONTINGENCIES.** Buyer acknowledges that this Agreement contains no contingencies affecting the Buyer 's obligation to perform. If the sale as contemplated herein is not consummated for any reason, except Seller's inability to deliver marketable or insurable title (subject only to the matters set forth in paragraph 4), then the deposit paid by the Buyer upon the execution of this Agreement shall inure to and become the property of the Seller.

IN WITNESS WHEREOF, we set our hands and seals on the date first above written.

SELLER

BUYER

Seller

Buyer

Seller

Buyer

Address: _____

Telephone: (____)_____

SS# or Fed. I.D. _____

AUCTIONEER

Berman Property Solutions

(a division of BidMark Services, Inc.)

The Auctioneer acknowledges receipt of the Deposit made the effective date hereof and in accordance with this Memorandum of Sale.

By: _____

Name: Mark H. Shear

Title: President

EXHIBIT A - LEGAL DESCRIPTION

PROPERTY ADDRESS: 81 Lovell Road, Holden, MA

the land in Holden, County of Worcester, Massachusetts, bounded and described as follows:

[Description and encumbrances, if any]

BEGINNING at a point by land now or formerly of Arthur T. Winters et ux and a street in a plan of Lovell Acres duly recorded with the Worcester District Registry of Deeds, Plan Book 138, Plan 88, which forms an extension of Lovell Road at the northeasterly corner of Lot #2 in the aforementioned plan;

THENCE N. 63° 21' 50" W. 438.6 feet, more or less, by land now or formerly of Arthur T. Winters to a point;

THENCE N. 19° 20' 50" E. 84.9 feet, more or less, by land now or formerly of the Grove Cemetery Association to a point;

THENCE S. 63° 21' 50" E. 395.5 feet, more or less, by land now or formerly of Howard C. Willson (Lot No. 4) et ux to a point;

THENCE S. 5° 59' 20" E. 100 feet, more or less, by the westerly side of Lovell Road to the place of origin.

Subject to the restrictions of record.

Being the same premises conveyed to Brooks S. Webster and Linda A. Webster by deed of Catherine T. Minisce dated October 22, 1970 and recorded in the Worcester District Registry of Deeds, Book 5071, Page 133.

Said premises being known as 81 Lovell Road, Holden, Massachusetts

EXHIBIT B

ADDITIONAL TERMS AND CONDITIONS OF THE AUCTION

With reference to this Real Estate Sale by Public Auction on this day, July 21st, 2018, for the Property known as 81 Lovell Road, Holden, MA, (the "Premises"). I am at this time putting you on notice and advising you that **I am voice recording all the proceedings and transactions here today**, including your bidding in addition to any written records that may be kept so there will be no questions as to what is offered and the conditions of sale you are buying subject to. If there are any special terms of sale that may be invoked by either myself, by the Attorney, his/her representative or anyone connected with this sale, other than the published terms, we will have the recording on file.

Verbal descriptions by the Seller, the Auctioneer or anyone connected with this sale shall not invalidate nor become part of this sale. Capitalized terms not otherwise defined in these Terms and Conditions shall have the meanings ascribed to such terms in the Memorandum of Auction Sale (the "Memorandum") to which these Terms and Conditions are attached.

Buyer acknowledges that Buyer has been given the opportunity to conduct any and all inspections of the Premises and any and all component parts thereof, desired by the Buyer, including, without limitation, mechanical, structural, utility systems, dimensions and area of the Premises pest and termite, lead paint, asbestos, radon, mold and any hazardous chemicals, materials, or substances, and that Buyer is fully satisfied with the results of same, the condition of the Premises and accepts the Premises "**AS IS**" and is not relying upon any representations of the Seller or Seller's agents as to the character, quality, use, value, quantity or condition of the Premises except as expressly set forth herein.

Seller does not warrant or represent that the Premises comply with current municipal, county, state or federal codes, ordinances, statutes, laws, regulations or the like, relating to zoning, buildings, environmental, health or fire or any involving the maintenance, operation or condition of the Premises. Buyer has assumed the responsibility to check with appropriate planning authorities (including, but not limited to, zoning boards, rent control boards and housing authorities), and holds Seller harmless as to the suitability of the Premises for Buyer's occupancy. Buyer hereby agrees that Seller shall have no responsibility or liability for complying with any codes, ordinances, statutes, laws, regulations or the like which relate to lead paint, asbestos, radon, mold or any requirements that Seller remove any or all of the same, Buyer hereby assuming any and all such responsibility and liability. The Seller has made no statements and no warranties or representations, expressed or implied, regarding the Premises on which the Buyer has relied in connection with the Buyer's decision to purchase the Premises; and it is the understanding of the Parties that the entire agreement of the Parties with respect to this transaction is fully and completely set forth in the Memorandum and the attachments thereto. The Buyer's agreements in this Paragraph shall survive delivery of the Deed.

The Premises are being sold in “AS-IS” condition.

The Seller, the Auctioneers and all parties for whom the Auctioneer may be acting, shall not be liable to any person or persons while you are on or about the Premises. **All persons are upon the Premises at their own risk.** Buyer agrees to indemnify, defend and hold harmless the Seller from any and all costs, damages and claims for damage to property or persons caused by Buyer or Buyer’s agent(s) while on the Premises or as a result of Buyer or Buyer’s agent(s) being on the Premises

The Auctioneer reserves the right to:

1. Re-offer the Premises, reopening the auction at the last bid, in the event two or more Bidders claim to be the successful Bidder or that the Auctioneer missed a bid.
2. Bid for and on behalf of any Buyer.
3. To accept or reject any and all bids.

If the Premises cannot be delivered in accordance with the terms as specified, then where a deposit has been made, then only a refund of such deposit will be made to the Buyer as the Buyer’s sole remedy at law or in equity. The Buyer agrees to accept as full settlement the refund of such deposit and create no liability against the Seller, the Auctioneer and all parties involved in the sale.

The Buyer shall pay all recording charges with respect to this transaction, other than discharges of any mortgages granted by the Seller. In addition, the Buyer shall be responsible for the cost of Buyer's title examination and document preparation.

The acceptance of the Quitclaim Deed by the Buyer shall be deemed to be a full performance and discharge of every agreement and obligation of the Seller.

The Seller makes no representation as to the existing building and zoning laws. The Premises are being sold subject to any and all restrictions or covenants on record, if any, and the Buyer shall assume the responsibility for obtaining any and all permits from the Federal, State and Local Authorities as may be required for land use, building, zoning and conservation.

The Premises are being sold subject to all easements of record in Worcester District Registry of Deeds. (If applicable)

The Seller will be responsible for installation of fire and smoke detector devices, if needed, in compliance with Massachusetts General Laws.

The Premises are being sold and conveyed without representation or warranty of its condition, construction, fitness for habitation or whether it conforms to applicable state or local building or sanitary codes.

The Buyer will be required to sign the Memorandum and a Notification Certification that he/she has been properly advised as to the fact that the structure being sold was built prior to January 1, 1978 and may have **lead paint** contamination. Buyer acknowledges that the Seller and the Auctioneer have complied with the requirements of Massachusetts General Laws Chapter 111, as amended, relative to the possible presence of lead paint in the Premises, including the provisions of Section 197A of Chapter 111. Buyer acknowledge having been verbally informed of the possible presence of dangerous levels of lead in the Premises and of the provisions of the Lead Paint Statute, so called (M.G.L. Chapter 111, Sections 190 - 199A), and the regulations promulgated thereunder, and acknowledge receipt from Seller and/or Seller's agents, of a Commonwealth of Massachusetts, Department of Health Property Transfer Notification Certification, and further acknowledges being informed by Seller and/or Seller's agents about the availability of inspections for dangerous levels of lead. Buyer hereby releases Seller, and Seller's agents, from liability for any damages, cost or expenses Buyer incurs as a result of the presence of lead in the Premises or in the soil surrounding the Premises. A copy of the Property Transfer Notification Certification signed by the Buyer is attached hereto. The terms of said Certification shall survive the delivery of the Deed hereunder. The provisions of this Paragraph shall survive delivery of the Deed hereunder.: The BUYER warrants to the SELLER and Auctioneer that BUYER has read and reviewed the lead paint laws as amended of the Commonwealth of Massachusetts, if applicable, and has had the opportunity to review said lead paint laws with legal counsel of BUYER'S choice and states further that BUYER understands the same. The BUYER acknowledges that they have been afforded the ten day right to have the premises examined for such lead paint.

The Buyer is purchasing the Premises "**AS-IS**" and is therefore buying the property with all known and unknown defects that could exist, including but not limited to contaminants, if present, such as radon gas and asbestos.

The Buyer shall deposit the required deposit with the Auctioneer. Failure on the part of the Buyer to execute the Memorandum or failure on the part of the Buyer to perform within the specified time, as stated here today, will result in a forfeiture of deposits as liquidated damages and not as a penalty for not completing the sale.

The Buyer is buying subject to "**Guaranteed Performance**" of the amount bid and entered on the Memorandum of Auction Sale. Guaranteed Performance is understood to mean; that in the event of default, by this Buyer, necessitating a resale at public auction or private sale for any lesser amount, the Buyer will pay the difference between his/her bid and that of the resale bid or sale price, if any, and further agrees to pay all costs of collecting said deficiency, if such is needed, to include, without limitation, reasonable attorneys' fees, court costs and witness fees. The Buyer shall have no claim to any excess that may be created by a resale.

The Auctioneer requests that all qualified bidders please remain on the Premises even after the Premises have been 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 and/or parties in interest and the agreement of sale has been signed.

Acceptance of terms: All bidders, by bidding at this auction sale, shall be deemed to have read, heard, and understood all the aforelisted terms and conditions of this auction and by your bidding agree to abide by such rules, reservations, terms and conditions.

(Buyer signature)

_____ (Date)