

**MEMORANDUM OF AUCTION SALE**

**375 DAVIS STREET, NORTHBOROUGH, MA**

January 31, 2020

1. **PARTIES.** ROBERT S. ADLER, Special Trustee of the WARREN S. OBERG IRREVOCABLE TRUSTS and JUNE E.O. ROMAN, as Trustee of the DAVIS STREET REALTY TRUST u/d/t dated September 16, 2004 and recorded with the Worcester District Registry of Deeds in Book 34623, Page 57 (the "SELLER"), agree to sell and \_\_\_\_\_ (the "BUYER"), agree(s) to buy, upon the terms hereinafter set forth, the following-described premises:

2. **DESCRIPTION.** The property known as 375 Davis Street, Northborough, MA with improvements, if any thereon, described in a deed dated September 16, 2004 and recorded with the Worcester District Registry of Deeds (the "Registry") in Book 34623, Page 65, as affected by Corrective Deed dated September 17, 2018 and recorded with said Registry in Book 59672, Page 322 (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. The SELLER shall, at the Closing, deliver possession of the Premises to the BUYER, with any furniture or other personal property that SELLER elects to leave at the Premises. After the Closing any such furniture or personal property remaining on the Premises shall be deemed abandoned by SELLER and shall be the property of BUYER.

4. **TITLE DEED.** The Premises are to be conveyed by a good and sufficient Massachusetts quitclaim deed running to the BUYER (the "Deed"). The Deed shall convey a good and clear record and marketable title to the Premises, 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 real estate taxes for the then-current fiscal year as are not due and payable on the date of the delivery of the Deed;
- (d) Any existing liens for municipal betterments; and
- (e) Easements, restrictions, and rights of way of record, if any.

5. **PURCHASE PRICE.** At a public auction sale on January 31, 2020, the BUYER agreed to purchase the Premises for \$\_\_\_\_\_ (the "Purchase Price"). The Purchase Price shall be paid as follows:

**\$50,000.00** has been paid as a deposit upon signing this Agreement (the "Deposit") by certified or bank cashier's check; and

\$ \_\_\_\_\_ (the "Balance") is to be paid at the time of delivery of the Deed by certified or bank cashier's check(s) or wire transfer.

\$ \_\_\_\_\_ **TOTAL PURCHASE PRICE**

6. **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 or before March 16, 2020 at Seder & Chandler, LLP, 339 Main Street, Worcester, Massachusetts 01608 at 1:00 p.m., unless otherwise agreed upon in writing. Time is of the essence of this Agreement.

7. **AUCTION SALE TERMS AND CONDITIONS.** The terms and conditions set forth on Exhibit A 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.BERMANAUCTIONS.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 BY REFERENCE.**

8. **EXTENSION TO PERFECT TITLE.** If the SELLER shall be unable to give title or to make conveyance of the Premises, all as herein stipulated, the SELLER shall use reasonable efforts to remove any defects in title, 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 (the "Extended Time"). In no event shall SELLER'S obligations under this Agreement to use reasonable efforts to cure any title defect or otherwise make the Premises conform to the requirements of this Agreement required the SELLER to spend any money.

9. **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 or make the Premises conform, as the case may be, all as herein agreed, then the Deposit shall be forthwith refunded and all other obligations of all parties hereto shall cease.

10. **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 its then condition and to pay therefor the Purchase Price without deduction, in which case the SELLER shall convey such title. Notwithstanding the foregoing, 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 its 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 encumbering the Premises shall not permit the insurance proceeds or a part thereof to be used to restore the Premises to its 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.

11. **AS IS.** The Premises are sold in "as is" condition, subject to all known and unknown defects, without any representation or warranty, whether express, implied or imposed by law. BUYER and SELLER 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 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. Without limiting the foregoing total exclusion of representations and warranties, the Premises are sold without any warranty or representation regarding: (a) the validity of the SELLER's right or interest, (b) construction, existence or validity of permits or licenses for construction or occupancy, (c) compliance of existing structures with state or local zoning ordinances or other ordinances, (d) compliance of the Premises with any federal, state or local regulations or laws, (e) encroachments onto the Premises or from the Premises, (f) the presence or absence of lead paint and/or Urea Formaldehyde Foam Insulation, (g) compliance of the Premises and/or management of the Premises with federal or state environmental statutes or regulations, including, without limitation, Title 5 (as hereinafter defined), or (h) fitness for habitation or condition. The BUYER has not been influenced to purchase the Premises by, nor has relied upon, any warranties or representations of the SELLER or the Auctioneer not set forth or incorporated in this Memorandum of Sale. The Premises are sold subject to the rights of any occupants or parties in possession of the Premises, if any. The Premises are sold subject to any liability to any occupant for security deposits and prepayments of rent, if any.

12. **SEPTIC.** The BUYER is required pursuant to regulations promulgated by the Massachusetts Department of Environmental Protection (310 CMR 15.300 et. seq. ("Title 5")) to have the underground septic system(s) on the Premises inspected within six (6) months from the date of transfer of the Premises and to make certain upgrades and/or repairs to (or replacement of) such system(s), if necessary. The BUYER accepts the septic system(s) in "as is" condition, shall be solely responsible for compliance with the provisions of Title 5 and hereby releases and holds harmless the SELLER from and against any claims or costs associated with the condition of such septic system(s) and any non-compliance with the provisions of Title 5. See, 310 CMR 15.301(3)(b).

13. **TITLE.** The BUYER shall be responsible for payment of any title search desired by the BUYER. The BUYER shall be responsible and shall pay for all deed stamps and recording charges associated with this sale. The BUYER shall pay for any surveying fees to establish metes and bounds of the Premises, if needed. The BUYER shall be responsible for obtaining a certificate from the local fire department stating that the Premises has been equipped with approved smoke detectors and carbon monoxide detectors in conformity with applicable law.

14. **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.

15. **ACCEPTANCE OF DEED.** The acceptance of a Deed by the BUYER or the BUYER's permitted nominee 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.

16. **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      |

17. **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.

18. **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.

19. **DEPOSIT**. The Deposit shall be held by Seder & Chandler, LLP, attorneys for Robert S. Adler, Special Trustee of the Warren S. Oberg Irrevocable Trusts (the "Special Trustee"), appointed by the Worcester Probate Court on December 14, 2017, subject to the terms of this Agreement and shall be duly accounted for at the time for performance of this Agreement. In the event of any disagreement between the parties, Seder & Chandler, LLP may retain all deposits made under this Memorandum of Sale pending instructions mutually given in writing by the SELLER and the BUYER.

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 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. **DEFAULT AND GUARANTEED PERFORMANCE**. Failure of the BUYER to execute this Memorandum of Auction Sale or to comply in any way with the provisions hereof shall constitute a default hereunder and shall entitle the SELLER to retain the deposit as liquidated damages. If, after a BUYER default, the SELLER sells the Premises

for an amount that is less than the Purchase Price, by executing this Memorandum of Auction Sale, the BUYER GUARANTIES PAYMENT OF THE PURCHASE PRICE IN THE EVENT OF BUYER'S DEFAULT; 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, including attorneys' reasonable 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, for an amount above the Purchase Price. In the event of the failure or inability of the BUYER to perform and to purchase the Premises in accordance herewith, at the second highest bidder's option (exercisable by written notice to the Special Trustee delivered within 24 hours of the Special Trustee's electronic notice of such failure or inability of BUYER to perform or purchase), the SELLER may accept, subject to the terms of this Memorandum of Sale, the second highest bid for the Premises, without further advertisement and without further notice to other bidders or persons. If the second highest bidder declines to purchase the Premises at the second highest bid price or to sign this Memorandum of Sale or fails or is unable to perform and to purchase the Premises in accordance herewith, then the SELLER may sell the Premises at a public auction.

23. **NO ASSIGNMENT.** If BUYER either assigns 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.

24. **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:

Robert S. Adler, Special Trustee of the  
Warren S. Oberg Irrevocable Trusts  
339 Main Street  
Worcester, MA 01608  
[radler@sederlaw.com](mailto:radler@sederlaw.com)

If to BUYER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

25. **AUCTIONEER'S FEE.** An auctioneer's fee, pursuant to an agreement between the SELLER and Bidmark Services, Inc. d/b/a Berman Auctioneers and Appraisers, is due from the SELLER to the auctioneer.

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

**SELLER**

**BUYER**

\_\_\_\_\_  
SELLER

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
BUYER

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

Telephone: \_\_\_\_\_