

## MEMORANDUM OF SALE

This Memorandum of Sale is made this 14th day of December, 2009, by and among The Provident Bank, whose principal address is 5 Market Street, Amesbury, Massachusetts (the "Seller"), and \_\_\_\_\_, of \_\_\_\_\_, (the "Buyer").

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

Pursuant to a public auction conducted by John McInnis, the Auctioneer, on behalf of the Seller as foreclosing mortgagee, in exercise of the Power of Sale contained in a mortgage from Michael J. Cerasuolo, Trustee of Lions Mouth Realty Trust under Declaration of Trust dated October 29, 2002, to The Provident Bank dated October 30, 2002, and recorded with the Essex South District Registry of Deeds in Book 19517, Page 461, and in the exercise of the Power of Sale contained in a Security Agreement from Terry's Flower Shop, Inc. and Michael J. Cerasuolo, Trustee of Lions Mouth Realty Trust to The Provident Bank dated June 24, 1998, the Buyer, as the highest bidder, agrees to purchase the real and personal property described below (the "Property") in accordance with the terms hereof.

### 2. DESCRIPTION OF THE PROPERTY

The Property shall mean the following, namely:

The land in Amesbury, Essex County, Massachusetts, with the buildings thereon, bounded and described as follows:

Beginning at the Southeasterly corner thereof at the corner of Friend Street and Lindbergh Avenue; thence running

NORTHEASTERLY by said Lindbergh Avenue, fifty (50) feet, to land now or formerly of Vedrani; thence running

NORTHWESTERLY by said land now or formerly of Vedrani to land now or formerly of Jackson; thence running

SOUTHWESTERLY by said land now or formerly of Jackson, eighty-seven (87) feet, to said Friend Street; thence running

SOUTHEASTERLY by said Friend Street, eighty-three and five tenths (83.5) feet, to said Lindbergh Avenue and the point of beginning.

Subject to an easement for the maintenance and repair of a water line dated September 6, 1984, recorded in Essex South District Registry of Deeds, Book 7515, Page 372.

Being the same premises conveyed to the Mortgagor by deed of Marc Whitehouse and Virginia Whitehouse dated October 28, 2002, and recorded with the Essex South District Registry of Deeds in Book 19517, Page 459.

### **3. TRANSFER OF THE PROPERTY**

The Property shall be conveyed by the usual mortgagee's deed under the statutory power of sale.

The personal property shall be transferred by a Bill of Sale, without covenants, which shall transfer the right, title and interest in and to all the personal property, which is subject to the Seller's security interest pursuant to the Security Agreement described above.

The property shall be conveyed and transferred subject to all restrictions, easements, improvements, liens, tax titles, mortgages, municipal taxes and assessments, any outstanding water or sewer bills or other liens having priority over the mortgage and Security Agreement described herein and to any outstanding tenancies and/or leases, the rights of parties in possession, and the provisions of applicable state and local law, including building codes, zoning ordinances and G.L. c. 21E.

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 is \$\_\_\_\_\_ of which \$25,000.00 has been paid this day in accordance with the terms of the mortgagee's notice of sale, with the balance to be paid by certified check or bank check at the time of the delivery of the deed. 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 associated papers shall be delivered and the balance of the consideration paid at the office of Healey, Deshaies, Gagliardi & Woelfel, PC, 24 Market Street, Amesbury, Massachusetts, on or before ten o'clock (10:00 A.M.) on the thirtieth day following the date hereof, or such other time and place as may be mutually agreed upon by the Seller and the Buyer (the "Closing").

### **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 therefor the purchase price without deduction, in which event the Seller shall convey such title.

**7. RISK OF LOSS**

Seller shall maintain casualty insurance covering the Property in a reasonable amount as determined in the sole discretion of the Seller. 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, paying therefor the full balance of the bid price.

**3. 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.

**4. 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 it relied upon, any warranties or representations of the Seller or the Auctioneer not set forth or incorporated in this Memorandum.

**5. 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 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. 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.

**6. DEED STAMPS AND RECORDING FEES**

Buyer and Seller agree that 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 laws of the Commonwealth of

Massachusetts. The Buyer shall pay all recording fees in connection with the transfer of the Property.

**7. 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 enures 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.

The Provident Bank

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

Its Vice President

\_\_\_\_\_  
BUYER

\_\_\_\_\_  
BUYER