

# **SALE OF REAL ESTATE BY AUCTIONEER**

## **MEMORANDUM OF SALE**

### **IMPORTANT NOTICES:**

- **EXECUTOR'S SALE OF REAL ESTATE BY PUBLIC AUCTION**
- **NO INSPECTION CONTINGENCY**
- **NO FINANCING CONTINGENCY**
- **NO REPRESENTATIONS; NO WARRANTIES**
- **DEPOSIT IS NON-REFUNDABLE**
- **"AS IS" SALE OF REAL PROPERTY**

This 28th day of October 2017, Julie-Anne Fowler, Personal Representative for The Estate of George A. Fowler, Sr., hereinafter called the SELLER, agrees to SELL and

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hereinafter called the BUYER or PURCHASER, agrees to BUY, upon the terms thereafter set forth, the following described premises:

### **1. OWNER'S SALE AT PUBLIC AUCTION**

Pursuant to a public auction conducted by the Auctioneer on behalf of David Geffen, Manager Const. Co. LLC, Authorized Agent for the Estate of George A. Fowler, as Seller (the "Seller"), the Buyer as the successful bidder agrees to purchase the real property described in Paragraph 2 below in accordance with the terms hereof. The Auctioneer may require the successful bidder, other than the Owner, to deposit the required deposit amount with the Auctioneer.

### **2. DESCRIPTION OF THE PROPERTY**

The Buyer agrees to purchase the real property and improvements thereon, more particularly described as 25 Jackson Road, Barnstable County, Mashpee, Massachusetts. Map Ref.: **M:90 B:52 L:0** and subject to and with the benefit of all rights and restrictions of record, insofar as the same are now in force and applicable.

No personal property of any kind or description is included in this sale.

The sale will not be invalidated by errors or misdescription of the size of the parcel of land sold, or the improvements thereon, and the Buyer hereby waives any claim or right he or she might otherwise have by reason of any such error or misdescription, and agrees that if the Property sold can be identified by the description as given or any part thereof, he or she will accept same at the full price bid in complete satisfaction of the contractual obligations of the Owner and Auctioneer.

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

The Property shall be conveyed by good and sufficient quitclaim deed running to the Buyer.

#### 4. PRICE AND DEPOSIT

The bid price for which the Property has been sold to the Buyer is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) of which **Ten Thousand and 00/100 Dollars (\$10,000.00)** has been paid this day, as a deposit. The deposit must be increased to 5% of the total purchase price, within three business days (**November 1, 2017**) after the auction, with the balance to be paid by bank check or wire transfer 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 purchase price paid at the Barnstable Registry of Deeds, on or before **1:00 p.m., December 12, 2017** provided that such day is one on which the Registry is open for business, and, if not, then on the next day on which such Registry is open for business, or such other time and place as may be mutually agreed upon in writing by the Seller and the Buyer (the "Closing"). **TIME IS OF THE ESSENCE IN THIS AGREEMENT AS TO BUYERS OBLIGATIONS HEREUNDER.**

#### 6. TITLE

In the event the Seller for any reason 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. In the event of such election by Buyer, the Seller shall have no duty or obligation to remove any cloud or defect in title.

If the Seller or Buyer executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the Seller or Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

#### 7. RISK OF LOSS

As of the execution of this Memorandum, Buyer shall have the sole risk of loss on the Property and shall maintain casualty insurance covering the Property as currently insured. If the Property is damaged by fire or other casualty prior to closing, Buyer shall accept a deed to the Property and an assignment, if applicable, of so much of the insurance proceeds as has not been used in the restoration of the Property prior to the Closing, paying therefore the full balance of the bid price. The Seller is under no obligation to maintain insurance on the property.

## **8. 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.

## **9. CONDITION OF THE PROPERTY**

The Property shall be conveyed in "AS-IS, WHERE-IS" condition with all inherent faults, should any exist, without representation or warranty whether written or implied, as to the condition, construction, fitness for habitation or whether it conforms to applicable federal, state or local building and sanitary codes, including but not limited to, whether or not the septic system, if any, complies with Title 5 Regulations enacted by the Department of Environmental Protection of the State of Massachusetts. Buyer hereby agrees to perform all inspections and upgrades of the septic system required by Title 5 and regulations set forth in the Code of Massachusetts Regulations ("CMR"), including without limitation, 310 CMR 15.300 through 15.305. Such inspections and upgrades shall be at Buyer's sole expense and shall be performed within the time frame and in accordance with the requirements set forth in Title 5 and the aforesaid regulations. Buyer agrees to indemnify and hold harmless the Seller from and against any and all claims or liabilities relating to or arising out of the Title 5 septic system requirements relating to the Property. **THE SELLER SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY APPROVALS, CERTIFICATIONS, INSPECTIONS AND UPGRADES OF THE SEPTIC SYSTEM, IF ANY.** This provision shall survive the delivery of the deed.

The Buyer is advised that the Massachusetts General Laws provide for a program of lead poisoning prevention and control if a child under six years of age becomes a resident of the dwelling being purchased. The Buyer hereby acknowledges and represents receipt of the "lead paint" notification as required in 105 C.M.R. 460.720(B). The Buyer assumes all risks as regards the lead poisoning prevention statutes.

The Buyer is further advised that Massachusetts General Laws require that smoke detectors be installed in all residential structures. The Buyer agrees to assume all costs of inspection fees for smoke detection equipment and Buyer further acknowledges that such equipment shall meet all of the minimum State or City requirements.

Any inspections or improvements to the Property referenced in this Memorandum or required by law shall be performed by the Buyer after the Closing.

The Buyer acknowledges that Buyer has not been influenced to enter into 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.

## **10. ADJUSTMENTS**

Water and sewer use charges, taxes for the then current fiscal year shall be apportioned

and fuel value shall be adjusted, 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 payable by the Buyer at the time of delivery of the deed.

If the amount of said taxes is not known at the time of the delivery of the deed, they shall be apportioned on the basis of the taxes assessed for the preceding fiscal 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.

## **11. BROKERS**

No commission shall be payable to any party on account of this sale unless the Seller, in writing prior to this auction, has indicated its intention to pay commission and has stipulated, in writing, the terms under which commission will be paid. Buyer agrees to indemnify and hold harmless Seller and Auctioneer from and against any claim, loss, damage, cost or liability for any brokerage commission or fee which may be asserted against Seller or Auctioneer in connection with this transaction. The provisions of this paragraph shall survive delivery of the deed.

## **12. BUYER'S DEFAULT; NON-LIQUIDATED DAMAGES**

In the event that Buyer notifies the Seller, or Seller's attorneys, at or prior to Closing that Buyer does not intend to purchase the Property at the Closing, or Buyer fails to tender the balance of the purchase price on or before the Closing, such Buyer shall be in default hereunder.

In the event of such default by Buyer, the Seller reserves the right, but shall not be required, to enter into this Memorandum with the next highest bidder or subsequent bidder at this auction who is then willing to purchase the Property at the price bid by him or her at the time of this Auction. If the Seller, in its sole discretion, elects to exercise such right, it may enter into this Memorandum with the next highest bidder or subsequent bidder. Any means of communication with such bidder, including without limitation, telephone, facsimile, mail, hand-delivery or overnight mail service, may be utilized by the Seller in ascertaining whether such bidder is then willing to enter into this Memorandum. If such bidder expresses a willingness to enter into this Memorandum, the proposed Memorandum reflecting a purchase price equal to such bidder's bid made at this auction, and providing for a Closing to take place within the time specified herein, shall be delivered to such bidder for signature by forwarding same by overnight mail, to such bidder at the address provided by such bidder at the time of this auction (the "Delivery"). The sending of the Memorandum to such address shall constitute delivery of same to the bidder regardless of whether same is actually received by such bidder. The signed Memorandum and the deposit required thereunder must be received by the Seller's attorneys, no later than 5:00 p.m. on the third business day following Delivery. Failure by such bidder to sign and return the Memorandum and deposit within the time set forth herein, **TIME BEING OF THE ESSENCE**, shall constitute a refusal by such bidder to enter into such Memorandum. Nothing set forth in this Memorandum shall create any rights in favor of an unsuccessful bidder unless and until the Seller and such bidder have entered into this Memorandum.

The Seller shall have the option, in its sole discretion, and as an alternative to the remedy set forth above, to resell the Property at auction or otherwise without notice to or approval from Buyer or any other bidders. The Seller is under no obligation to offer the Property to any subsequent bidder in the event of a default by Buyer, before conducting a resale of the Property.

The sale of the Property to an unsuccessful bidder as set forth herein, shall not release the defaulting Buyer from liability for breach of contract, and in the case of default by the Buyer, the deposit paid by the Buyer shall become the property of the Seller. Retention of said deposit shall not constitute a waiver of the Seller's rights to pursue all other available remedies, including but not limited to specific performance, and nothing in this provision or contained in this Memorandum shall be deemed to constitute such a waiver.

### **13. CONSTRUCTION OF AGREEMENT**

This instrument 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.

I, the Buyer at this Public Auction Sale, do hereby acknowledge that I have read the foregoing Memorandum of Sale and agree to the terms and conditions contained herein. I further acknowledge that I have received a copy of this Memorandum.

**IN WITNESS WHEREOF**, the parties have executed this Memorandum as a sealed instrument this October 28, 2017 at \_\_\_\_\_ a.m./p.m.

**Julie-Anne Fowler, Personal Representative for The Estate of George A. Fowler, Sr.**

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

**Stanley J. Paine Co., Inc. (Auctioneer)**

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

**Please be advised that, unless you provide us, in writing, the grantee's name and address that is to appear on the quitclaim deed within three (3) business days of the auction sale date, the deed will be prepared in the name of the person who executed the terms/conditions of sale. No revisions to the quitclaim deed after that time will be made.**

**Buyer's Signature:**

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**Buyer's Telephone Number(s):**

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**Buyer's Address:**

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**Buyer's Email:**

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