

REAL ESTATE AUCTION PURCHASE AND SALE AGREEMENT

1. **PARTIES.** This Real Estate Auction Purchase and Sale Agreement (“Agreement”) is made this 3rd day of June 2020, between **Vermont Housing Finance Agency** (“Transferor”), of the City of Burlington, County of Chittenden, State of Vermont and

_____ (“Buyer”) of _____,

Transferor agrees to transfer and Buyer agrees to buy, in accordance with the terms and conditions hereinafter set forth, the following described lands and premises.

2. **PROPERTY.** Land and premises known as **56 Maple Street, Poultney, Vermont** and more particularly described as follows:

Being all and the same lands and premises conveyed to Vermont Housing Finance Agency by Confirmation Order of the Vermont Superior Court-Rutland Civil Division in the matter captioned Vermont Housing Finance Agency v. Monique Peters, et al, Vermont Superior Court-Rutland Civil Division Docket # 384-7-18 Rdcv filed August 19, 2019 and of record as of August 26, 2019 in Book 189 at Page 176 of the Town of Poultney Land Records.

"Being all and the same lands and premises this day conveyed to Grant C. Peterson and Monique Peterson by Warranty Deed of Dennis S. Jondro and Lorraine Jondro, husband and wife, which is to be recorded simultaneously herewith in the Land Records of the Town of Poultney and which may be further described as follows: _..

Being all and the same lands and premises conveyed to Dennis S. Jondro and Lorraine Jondro by Executor's Deed of Chad E. Berry, Executor of the Estate of Ervin B. Berry dated November 1, 2002 and recorded in the Town of Poultney Land Records in Book 114 at page 321 and more particularly described as follows:

Being the lands and premises described in a deed from Raymond F. Williams and Edith M. Williams, husband and wife, to Ervin B. Berry and Joyce Berry, husband and wife (Joyce Berry predeceased Ervin B. Berry) dated May 1, 1959, and recorded in Poultney Land Records in Book 52, Pages 433-444.

Being the lands and premises described in a deed from Raymond F. Williams and Edith M. Williams, husband and wife, to Ervin B. Berry and Joyce Berry, husband and wife, (Joyce Berry predeceased Ervin B. Berry), dated May 1, 1959, and recorded in Poultney Land Records in Book 52, Pages 433-434. The premises herein conveyed are described in said deed as follows:

'Being all and singular the same lands and premises mentioned and described in a deed from Chloe Powell Benjamin to Raymond F. Williams and Edith M. Williams, husband and wife, dated November 10,1951, and recorded in Poultney Land Records in book 49, Pages 424-425, as follows:

'Beginning in the west line of Maple Street at the northeast corner of the Baptist Parsonage lot, thence along the north line of the same N 79 Deg. 50' W. two chains and 23 links to land of Frances Clark; thence in her east line N 11 Deg. 30' E one chain and 13 links to the southwest corner of the house lot of Gertrude Derven; thence along said Derven's south line 78 Deg. 30' E. two chains and 23 links to said west line of Maple Street; thence along the same S 10 Deg. 30' W one chain and links to the place of beginning; containing 247/10000 acre, more or less. Begin the lands described in deed from John Duggan to Martin Powell et al, recorded in Poultney Land Records, Vol. 46, and Page 303. 'Excepting therefrom a parcel described in deed from Chloe Benjamin to Gertrude Derven, recorded in Poultney Land Records, Vol. 48, Page 189; which said excepted parcel contains a reservation in favor of the said Chloe Benjamin; her heirs and assigns, which reservation passes to the grantees herein.'

Reference is made to the License to Sell Real Estate granted by the Probate Court for the District of Fair Haven in the Estate of Ervin B. Berry, dated April 17; 2002, to be recorded in the Poultney Land Records."

(the "Property").

3. **CLOSING.** The Closing and transfer of title ("Closing") shall take place as soon as possible, but no later than 30 calendar days after the date of this Agreement at a time and place mutually agreed to by the parties. Neither party shall be obliged to extend the date for Closing.
4. **PURCHASE PRICE.** The agreed purchase price for the property is _____ payable to Vermont Housing Finance Agency ("Purchase Price"). Buyer is also responsible for and agrees to pay a 10% buyer's premium in the amount of \$ _____ to the Thomas Hirchak Company ("Buyer's Premium"). The Purchase Price and Buyer's Premium are payable as follows: a deposit of \$5,000.00 by wire transfer at the time this Agreement is signed, ("Deposit") to be increased to 10% of the high bid within 5 business days (if applicable) and the balance of the Purchase Price and the Buyer's Premium to be paid at the time of the Closing in cash, official bank treasurer's or cashier's check, or by wire transfer. The Deposit will be held by the Thomas Hirchak Company in its auction account, which is interest-bearing. Purchaser acknowledges and agrees that the interest which will be earned on the deposit is de minimis, and that said interest shall be deemed and considered as earned by and due to the Thomas Hirchak Company solely for undertaking the fiduciary obligations associated with holding the deposit. The Deposit is nonrefundable, except as specifically provided herein.

The Buyer's Premium has been earned at the time this Agreement is signed and is due and payable by Buyer even if the sale does not close.

5. **NO FINANCING CONTINGENCY.** This contract is not subject to any financing contingency. Transferor shall not be obligated to provide financing of any kind.

6. **TRANSFER OF TITLE.** At Closing, Transferor shall deliver to Buyer, a Limited Warranty Deed conveying title to the Property to Buyer, in "AS IS" condition, subject to superior liens, if any; all title defects and encumbrances of record that are not extinguished by the sale; federal, state, and local codes, environmental, health, safety, zoning, and building laws and any violations of any of the foregoing; rights, easements, rights of way, covenants, conditions, reservations, agreements, privileges, obligations, duties, and restrictions of record, insofar as such are now in force and applicable.

7. **BUYER REPRESENTATIONS AND ACKNOWLEDGEMENTS** Buyer represents that Buyer has performed such due diligence as Buyer deems sufficient, and enters into this agreement with the understanding that the purchase is not subject to any further due diligence review. Buyer agrees to accept the Property in its present condition, notwithstanding the possible existence of hidden defects or other matters not visible or ascertainable from such inspections and Buyer hereby expressly assumes the risk of any and all defects in the Property. Buyer acknowledges that Transferor has made NO WARRANTIES OR REPRESENTATIONS concerning the condition of the Property or otherwise. Transferor hereby EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF HABITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE; Buyer represents to Transferor as a material inducement to this Agreement that Buyer is relying solely on such inspections, examinations and due diligence, if any, that Buyer has conducted prior to entering into this agreement. Buyer acknowledges that Transferor is under no obligation to alter, repair, or improve the Property or any portion thereof. Buyer acknowledges that Buyer has fully inspected and reviewed the Property, including without limitation, the physical aspects thereof and all matters affecting the operation thereof and that delivery of the Property will be conveyed is "AS IS", WITH ALL FAULTS", and that Transferor has disclaimed any and all implied warranties with respect to the Property. Buyer acknowledges that Buyer is not relying on any representation, warranty, written information, advertisement,

announcement, data, reports, or statement of Transferor or any employee, agent, or representative thereof, if any, with respect to the Property, including without limitation, the physical condition or operation of the Property. Buyer acknowledges that any and all information of any type that Buyer has received or may have received from Transferor or Transferor's employees, agents, or representatives was furnished on the express condition that Buyer would make, and Buyer acknowledges that Buyer has made an independent verification of the accuracy of any and all such information, all such information being furnished without any representation or warranty as to the accuracy or completeness whatsoever. Buyer agrees that no warranty has arisen through trade, custom, or course of dealing with Transferor, and agrees that all disclaimers of warranties shall be construed liberally in favor of Transferor.

8. **REAL ESTATE, TRANSFER TAXES AND OTHER CLOSING COSTS.** Current fiscal year taxes and utilities will be prorated at closing. Buyer shall be responsible for and shall pay the Vermont Property Transfer Tax due on the sale covered by this Agreement. Buyer will be responsible for all costs incident to searching the title to the Property and all other closing costs, except for Transferor's attorney's fees.
9. **FUEL PRORATION.** Buyer shall reimburse Transferor, based on the per gallon price paid at the time of the most recent fuel delivery, for any fuel at the Property on the date of Closing.
10. **RISK OF LOSS.** During the period between the date of this contract and transfer of title, risk of loss shall be on Transferor. If any of the buildings or improvements are destroyed between the date of this agreement and the date set forth for Closing, either party may terminate this Agreement by written notice to the other party as provided herein.
11. **POSSESSION.** Possession and occupancy of the Property, together with any keys to the Property in Transferor's possession, shall be given to Buyer at Closing.
12. **PERSONAL PROPERTY NOT INCLUDED.** No personal property is included in the sale. Personal property on the Property at the time of this Agreement may be subject to the rights of others and may be removed prior to Closing. Transferor shall not be responsible for or required to remove, store, or take any other action with respect to any such personal property.

13. **DISCLAIMER.** Transferor MAKES NO WARRANTY, express or implied, or arising by operation of law, as to: (1) the nature, condition, or geology of the property conveyed hereby or any portion thereof, including without limitation, the nature and condition of the water and soil, (2) the suitability or appropriateness of the property conveyed hereby for development or renovation of for any and all activities which Buyer may elect to conduct thereon, (3) the existence of any environmental hazards or conditions on the property conveyed hereby (including the presence of asbestos), (4) the compliance of the property conveyed hereby or its operation with all applicable laws, rules, and regulations, (5) the condition or state of repair of the property conveyed hereby or any portion thereof, (6) the visible or hidden defects in material, workmanship, or capacity of the property conveyed hereby or any portion thereof. No representations or warranties of any kind are made with respect to the Property, including, without limitation, its condition or any use to which it may be put. Buyer acknowledges that the Property is being sold on an "AS IS", "WHERE IS", "WITH ALL DEFECTS" basis, and any and all warranties, express, implied or otherwise, including without limitation, the warranties of habitability, merchantability, marketability and fitness for any purpose, shall be and hereby are disclaimed. No representation or warranty is made as to the Property's compliance with any laws, rules, regulations or ordinances, including, without limitation, any of the same pertaining to zoning, environmental law, health, safety or hazardous waste. Transferor and its officers, employees, agents, and attorneys shall have no responsibility or liability for loss of assets, loss of income, loss of time, inconvenience, commercial loss and/or any incidental or consequential damage, loss or injury.

Disclaimer as to Land Use Regulation and Permits. Buyer acknowledges and represents that Transferor has made no representations in respect of, that Buyer has conducted such investigations as Buyer deems necessary and appropriate relating to, and Transferor hereby EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES pertaining to, and concerning all of the following:

The applicability of federal, state and local laws, rules, and regulations concerning the ownership, use and occupancy of the Property, including but not limited to such laws, rules, and regulations concerning state and local land use, subdivision, building, planning, zoning, health, public buildings, vacant buildings, water supply, wastewater disposal, on-site sewage disposal, stormwater disposal, and the compliance of the Property with the same.

The existence, status, and availability of all permits, licenses, approvals, and certificates of occupancy applicable to the Property, and the compliance of the Property with the same. Buyer waives all rights under 27 V.S.A. §612 to terminate this Agreement based on the lack of any required municipal permit or the violation of any such municipal permit. Any state or municipal permits required for demolition, removal, renovation use, or occupancy of the buildings on the Property shall be obtained by Buyer at Buyer's sole cost and expense.

Notwithstanding any other term or condition of this Agreement, any defect in the status of permits, licenses, approval or certificates of occupancy or non-compliance with any such laws, rules or regulations shall not be deemed a defect in the marketability of title and shall not be cause to delay the Closing.

Buyer acknowledges that Transferor has no responsibility to Buyer for any hazardous waste, asbestos, oil, petroleum waste, lead paint, urea formaldehyde, mold, mildew, allergens and /or any other liability causing or toxic substances on, under, or emitting from the Property. Buyer agrees to indemnify and hold Transferor harmless from any liability for or on account of the presence of any such substance on, under or emitting from the Property.

14. **HAZARDOUS SUBSTANCES.** Buyer acknowledges that Transferor has no responsibility to Buyer for any hazardous waste, asbestos, oil, petroleum waste, lead paint, urea formaldehyde, mold, mildew, allergens and /or any other liability causing or toxic substances on, under, or emitting from the Property. Transferor has not occupied the Property and Transferor obtained title to the Property pursuant to a court order. Buyer agrees to indemnify and hold Transferor, its officers, directors, employees, agents, successors and assigns, harmless from any liability, including liability for contribution for or on account of the presence of any such substance on, under or emitting from the Property. If cleanup or remediation of asbestos or other hazardous substances is required by any federal, state or municipal law, statute, regulation, ordinance, or order or directive of any court, governmental office or agency, such cleanup or remediation shall be completed by Buyer at Buyer's sole cost and expense.

15. **TIME.** Time is an essential part of this Agreement.
16. **TRANSFEROR'S INABILITY TO CLOSE.** If Transferor is unable to close pursuant to this contract, its sole obligation shall be to return the Buyer's Deposit to Buyer. Buyer shall have no other claims for damages or any other legal or equitable remedy.
17. **BUYER'S DEFAULT.** If Buyer fails to close as agreed or pay the Purchase Price on the Closing Date, then Transferor may, at Transferor's option, retain the Buyer's Deposit as agreed upon liquidated damages. Because of the nature and subject matter of this agreement, damages arising from Buyer's default may be difficult to calculate with precision and the amount of the Deposit reflects a reasonable estimate of Transferor's damage for Buyer's default. **If the Buyer defaults, the Buyer will be responsible for payment of the Buyer's Premium to the Thomas Hirchak Company in addition to forfeiting the deposit.**
18. **MERGER.** No oral or other representations have been made by Transferor or its agents to induce Buyer to sign this Agreement. This Agreement contains the entire agreement by and between the parties hereto, superseding any and all prior agreements, written or oral. This Agreement shall be governed by the laws of the State of Vermont.
- Transferor's disclaimers and Buyer's representations and acknowledgments contained in this Agreement shall not become merged in, but shall survive Closing of the conveyance of title to the Buyer. At Transferor's election, the form and substance of Transferor's disclaimers may be set forth in the Limited Warranty Deed as further evidence of Buyer's acceptance of the terms and conditions of Transferor's conveyance of the Property; however, Transferor's disclaimers and Buyer's representations shall survive Closing and conveyance of title regardless of whether they are set forth in the Limited Warranty Deed.
19. **NON-ASSIGNMENT.** Buyer may not assign this Agreement without the written consent of Transferor. Any such approval shall be obtained by Buyer at Buyer's sole cost and expense and shall not be cause to delay the Closing.
20. **NOTICES.** All notices, requests and other communications hereunder shall be in writing and delivered or mailed:

- (a) If to Transferor, Polly A. Thibault, Loan Servicing Manager, Vermont Housing Finance Agency, P. O. Box 408, Burlington, Vermont 05402-0408, facsimile 802-863-5422 or at such other address as may be furnished to Buyer by Transferor in writing, with copies to Tyler Hirschak, CAI, Thomas Hirschak Company, 1878 Cady's Falls Road, Morrisville, Vermont 05661, facsimile 802- 888-2211.
- (b) If to Buyer, to Buyer at the address on Page 1 of this Agreement.

Any notice or other communication required or permitted under this Agreement shall be deemed delivered: (a) two business days after deposit in a receptacle of the United States Postal Service, certified mail, return receipt requested, postage prepaid, (b) when sent via facsimile transmission to the party at the facsimile number provided above, with a copy via certified mail as aforesaid, (c) when personally delivered, or (d) when delivered to the party by an overnight courier service.

- 21. **AMENDMENTS.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of, or amendment to, this Agreement shall be effective unless it is in writing, signed by all parties hereto, and expressly states that this Agreement is amended thereby.
- 22. **EFFECT.** This Agreement, including without limitation, and provisions which survive Closing, shall inure to the benefit of and be binding upon each of the parties hereto and their respective heirs, successors, legal representatives, administrators, and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals as of the day and year first above written.

Transferor:

Vermont Housing Finance Agency

Witness to Transferor

By: _____
By: Polly A. Thibault,
Loan Servicing Manager

Witness to Buyer

Buyer:

X: _____

Buyer:

Witness to Buyer

X _____