

**MEMORANDUM OF SALE**

This Memorandum of Sale is made this \_\_\_\_ day of June, 2010 by and among **TD BANK, N.A.**, a national banking association with an office at 75 John Roberts Road, Building B, South Portland, Maine (the "Seller"), formerly known as Banknorth, N.A., **TRANZON AUCTION PROPERTIES**, of 93 Exchange Street, Portland, Maine 04101 (the "Auctioneer") and the party identified below as Buyer.

DATE OF FORECLOSURE: June \_\_, 2010 (the "Foreclosure Date")

PROPERTY ADDRESS: \_\_\_\_\_;  
See Exhibit A-1 attached for legal description.

ORIGINAL MORTGAGOR: \_\_\_\_\_ (the "Original Mortgagor")

ORIGINAL MORTGAGE: Mortgage dated as of \_\_\_\_\_ and recorded with the \_\_\_\_\_ County Registry of Deeds (the "Registry") in Book \_\_\_\_\_ at Page \_\_\_\_\_ (the "Mortgage")

BID PRICE: \_\_\_\_\_ (\$\_\_\_\_\_) (the "Bid Price")

BUYER: \_\_\_\_\_ or its nominee (the "Buyer")

DEPOSIT: TEN THOUSAND and 00/100 DOLLARS (\$10,000.00) (the "Initial Deposit") have been paid as of the Foreclosure Date in accordance with the terms of the auction sale, with an additional deposit to be paid by the Buyer within five (5) business days from the Foreclosure Date, which additional deposit will in the aggregate, with the Initial Deposit, equal ten percent (10%) of the Bid Price.

The Buyer, as the successful bidder at the above-referenced foreclosure, hereby acknowledges and agrees to be bound by the terms and conditions set forth in the Terms and Conditions of Sale attached hereto as Exhibit A, which are made a part hereof and incorporated herein.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties have executed this Memorandum as a sealed instrument as of the date first written above.

**TD BANK, N.A.**

By: \_\_\_\_\_  
Name:  
Title:

**TRANZON AUCTION PROPERTIES**

By: \_\_\_\_\_  
Name:  
Title:

**[BUYER]**

\_\_\_\_\_  
Printed Name:

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

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

\_\_\_\_\_  
Social Security/Taxpayer Identification  
Number: \_\_\_\_\_

## EXHIBIT A

### TERMS AND CONDITIONS OF SALE

Terms not defined herein shall have the meanings ascribed to them on the attached Memorandum of Sale (above).

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

Pursuant to a public auction conducted on the Foreclosure Date by the Auctioneer on behalf of the Seller as foreclosing mortgagee, in exercise of the Power of Sale contained in a Mortgage given by Original Mortgagor to Seller, the Buyer as the highest bidder agrees to purchase the real and personal property described below (the "Property") in accordance with the terms hereof and in accordance with the Additional Terms and Conditions of the Mortgagee's Sale (the "Additional Terms and Conditions") as announced at the time and place of sale, which Additional Terms and Conditions are incorporated herein by reference.

#### 2. DESCRIPTION OF THE PROPERTY

The "Property" shall mean the property described in the Notice of Mortgagee's Sale of Real Estate, a copy of which is attached hereto as Exhibit A-1 (the "Notice"), together with the personal property described on Exhibit B attached hereto.

#### 3. TRANSFER OF THE PROPERTY

The Property shall be conveyed by a mortgagee's foreclosure deed in substantially the form of the usual foreclosure deed contained in Massachusetts General Laws, Chapter 183, Appendix Form 11, under the statutory power of sale, subject to:

- a. provisions of building codes and local zoning laws, if any;
- b. such taxes and municipal betterment assessments outstanding on the date of the delivery of the deed;
- c. all easements, restrictions and rights of way of record, if any, which may be enforced against the Seller;
- d. the provisions of Massachusetts General Laws, Chapter 21E;
- e. the tenancy of any present occupant to the extent such tenancy may be enforced against the rights of the Seller;
- f. any other liens, claims or existing encumbrances of record created prior to the Mortgage or to which the Mortgage has been subordinated of record; and
- g. all of the terms, conditions and provisions of the documents, laws, regulations, declarations, restrictions, easements, rules or interests set forth in the Notice.

The total Bid Price will be set forth as the consideration in the deed to the Property.

The personal property shall be conveyed by a Bill of Sale, without covenants, which shall transfer the Seller's right, title and interest in and to all the personal property described in Exhibit B. The Bill of Sale shall recite a consideration of \$1.00 and other valuable consideration.

4. PRICE AND DEPOSIT

The bid price for which the Property has been sold to the Buyer is the Bid Price, of which TEN THOUSAND and 00/100 DOLLARS (\$10,000.00) have been paid this day in accordance with the terms of the auction sale, with an additional deposit to be paid by the Buyer within five (5) business days from the date of the sale, which additional deposit will aggregate, with the initial deposit made by the Buyer, ten percent (10%) of the successful Bid Price (collectively, the "Deposit"). The balance is to be paid by wire transfer, certified check or bank check at Bowditch & Dewey, LLP, 311 Main Street, Worcester, Massachusetts 01608 within forty-five (45) days from the date of sale. Funds paid with this Memorandum shall be held in a non-interest bearing escrow account by the firm of Bowditch & Dewey, LLP, Attorneys for the Seller, 311 Main Street, Worcester, Massachusetts, in accordance with the terms hereof.

5. CLOSING

The deed and related documents shall be delivered and the balance of the consideration paid at the offices of Bowditch & Dewey, LLP, 311 Main Street, Worcester, Massachusetts, on the forty-fifth (45<sup>th</sup>) day following the Foreclosure Date 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 hereof.

6. TITLE

If the Seller cannot convey title to the Property as stipulated, the Deposit 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. Any certificate of title and title insurance policy obtained by the Buyer shall be at the Buyer's sole cost and expense.

The Buyer acknowledges that Buyer may be unable to obtain title insurance to the premises without the so-called "creditors rights exception" if the title company concludes that the purchase price is not sufficient. The Buyer specifically acknowledges that the Seller shall be under no duty to cause the title company to remove the "creditors' rights exception" from Buyer's title insurance policy.

7. RISK OF LOSS

The Seller shall be under no obligation to maintain casualty insurance covering the Property. 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 any insurance proceeds as may be payable to the Seller under any policy of insurance as has not been used in the restoration of the Property prior to the Closing, paying therefor the full Bid Price.

8. DELIVERY OF DEED AND BILL OF SALE

The delivery of a deed to the real property and a Bill of Sale to the personal property to 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 the 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" CONDITION, SUBJECT TO KNOWN AND UNKNOWN DEFECTS, IF ANY, AND SUBJECT TO THE PRESENT MANNER OF USE AND OCCUPANCY OF THE PROPERTY. THE SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE PROPERTY, OR TO ITS USE AND OCCUPANCY. THE BUYER ACKNOWLEDGES THAT BUYER HAS NOT BEEN INFLUENCED TO ENTER THIS TRANSACTION BY, NOR HAS IT RELIED UPON, ANY REPRESENTATIONS OR WARRANTIES OF THE SELLER OR THE AUCTIONEER, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS OR WARRANTIES CONCERNING COMPLIANCE WITH ANY HEALTH, BUILDING, ZONING, ENVIRONMENTAL OR OTHER LAW OR ORDINANCE OR REGULATION (FEDERAL, STATE OR LOCAL) WHICH MAY AFFECT THE TRANSFER OF THE PROPERTY OR THE BUYER'S USE AND/OR ENJOYMENT OF THE PROPERTY, EACH OF WHICH REPRESENTATIONS AND WARRANTIES IS EXPRESSLY DISCLAIMED.

The Buyer acknowledges that it has had the opportunity to investigate the condition of the Property and to examine such public records pertaining to the Property as it has deemed necessary. The Buyer acknowledges that the cost of any inspections of the Property necessary for compliance with Title 5 of the Massachusetts Environmental Code shall be the Buyer's sole responsibility. If the Property is serviced by such a system, the Buyer agrees to comply with the provisions of 310 CMR 15.301 requiring inspection of the system within six months after the date of this Memorandum of Sale. The Buyer agrees that such inspection will be made at the Buyer's sole expense.

The Buyer agrees that the cost of any inspections of the Property necessary for compliance with any state, federal or local law, ordinance or regulation will be the Buyer's sole responsibility, and that Seller shall have no liability or responsibility therefor whatsoever.

The Buyer acknowledges that the Seller shall be under no obligation to comply with any statute or regulation, including, without limitation, Massachusetts General Laws c. 148, §§26F,

26G and 28 concerning installation of smoke detectors, carbon monoxide detectors or automatic fire suppression or sprinkler systems, which obligations the Buyer specifically assumes.

10. BUYER'S DEFAULT; DAMAGES

If the Buyer shall fail to fulfill the Buyer's agreements herein, the Deposit shall be retained by the Seller and the Seller shall 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 or at a subsequent public auction. 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 and herewith. The Buyer hereby guarantees payment of the amount bid and entered on this Memorandum of Sale and performance hereunder. If the Seller shall subsequently sell the Property for a price higher than the Bid Price, the Buyer shall have no claim to any excess of the resale price of the Property over the Bid Price. In addition, the Seller reserves all remedies at law and in equity against the Buyer for any default by the Buyer under this Memorandum of Sale.

11. DEED STAMPS AND RECORDING FEES

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

12. 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 inures to 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.

*THIS SPACE INTENTIONALLY LEFT BLANK*

**EXHIBIT A-1: LEGAL DESCRIPTION**

## EXHIBIT B – DESCRIPTION OF COLLATERAL

All machinery, equipment, furniture, fixtures (as defined in the Massachusetts Uniform Commercial Code) owned by the Original Mortgagor and now or hereafter placed in or on the Mortgaged Property.

The “Mortgaged Property” shall mean the real estate located at \_\_\_\_\_, with all buildings and improvements thereon, including without limiting the generality of the foregoing, any and all boilers, pumps, tanks, electric panel switchboards, lighting equipment and wiring, heating, plumbing and ventilating apparatus, sprinklers, if any, elevators, escalators, refrigerating, air conditioning and air-cooling equipment and other building service equipment.