

MEMORANDUM OF SALE

Third Party Purchaser

Property Address: 2575 Homeview Drive, Henrico, Virginia 23227

THIS MEMORANDUM OF SALE (“Memorandum of Sale” or “Agreement”), dated as of February 26, 2024, between HAMILL D. JONES, JR. as Sole Acting Substitute Trustee ("Trustee"), AUCTION MANAGEMENT CORPORATION, a Georgia Corporation, (“Agent”), and

Print Name of Successful Bidder

("Successful Bidder"), recites and provides:

RECITALS:

By virtue of the occurrence of an event of default under a certain Deed of Trust and Security Agreement recorded May 2, 2019 in the Clerk’s Office, Circuit Court, County of Henrico, VA (the “Clerk’s Office”) in Deed Book 5846, Page 1127, Instrument No. 201900012324 (the "Deed of Trust"), from Dean Atlantic, LLC, a Virginia limited liability company ("Owner"), for the benefit of First National Bank of Pennsylvania ("Beneficiary"); in participation with the Administrator of the Small Business Administration, an agency of the United States, with the assistance of Agent, Trustee offered for sale at foreclosure on February 26, 2024 (the “Foreclosure Sale”) the real property described above and in the Deed of Trust, and further described in the notice of Trustee’s Sale, a copy of which is attached hereto and made a part hereof, located in the County of Henrico, Virginia, together with all buildings, structures, and other improvements thereon (if any) and all leases, rents, issues and profits and other appurtenant rights associated therewith (if any), as more particularly described above and in the Deed of Trust to which reference is hereby made (as so described, the "Property").

The Deed of Trust secures the indebtedness as such term is defined in the Deed of Trust (the “Indebtedness”). Trustee was named as a substitute trustee under the Deed of Trust with respect to sale of the Property. Successful Bidder was the high bidder for the Property at the Foreclosure Sale.

Trustee and Successful Bidder desire to enter into this Agreement to evidence the agreement of Successful Bidder to purchase the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which are acknowledged, and to evidence the agreement of Successful Bidder to purchase the Property, Trustee, Agent and Successful Bidder agree as follows:

AGREEMENTS:

1. Agreement to Purchase. Successful Bidder acknowledges that it was the successful bidder at the Foreclosure Sale for the Property, and it agrees to purchase the Property from Trustee in accordance with the provisions of this Agreement.

2. Purchase Price. The successful bid for the Property at the Foreclosure Sale was \$ _____ (the "Bid Amount"). In addition, Successful Bidder agrees to pay at settlement (the "Settlement") a ten percent (10%) buyer's premium of \$ _____, which shall be paid to Agent from settlement proceeds at closing. Accordingly, the purchase price for the Property is \$ _____ (the "Purchase Price").

3. Deposit. Successful Bidder has paid to Trustee a bidder's deposit of \$ _____ and shall pay an additional \$ _____ for deposit by wire transmission by Tuesday, February 27, 2024 at 2:00 p.m. (collectively the "Deposit"). The Deposit, without interest, shall be applied to the Purchase Price at Settlement.

4. Settlement. Amounts due Agent and Cooperating Broker. Settlement shall occur at the offices of Trustee within thirty (30) days of the date of the Foreclosure Sale, with the right to extend the date of Settlement reserved to Trustee, TIME BEING OF THE ESSENCE AS TO SUCCESSFUL BIDDER. At Settlement, Trustee shall pay Agent from sale proceeds the amount due it pursuant to the Foreclosure Sale Agreement by and among Trustee, Agent, and Beneficiary. At Settlement, Agent shall pay _____ ("Cooperating Broker) a commission of _____% of the High bid.

5. Amounts Due at Settlement. At Settlement, Successful Bidder shall pay the following amounts to Trustee by wire transfer of immediately available federal funds: (a) an amount equal to the Purchase Price less the Deposit; (b) any Taxes Payable (defined below), including any amounts pro-rated; and (c) any other amounts due hereunder.

6. Delivery of Deed and Transfer Statement. At Settlement, Trustee will execute and deliver to Successful Bidder a **SPECIAL WARRANTY DEED** conveying the Property. Conveyance of the Property will be subject to (A) all recorded or unrecorded liens, encumbrances, security interests, easements, rights-of-way, covenants, agreements, conditions, restrictions, reservations, limitations, mechanics' liens, materialmen's liens, tenancies and any other matter lawfully applicable to the Property, to the extent prior or superior to the lien of the applicable Deed of Trust and Security Agreement, and (B) all existing housing, building, and zoning code violations, all environmental problems and violations which may exist on or with respect to the Property, and all matters that an accurate survey or physical inspection of the Property might disclose. Trustee shall not be required to deliver any documents at Settlement except such deed.

7. Sale "As Is, Where Is, And With All Faults;" **No Representations or Warranties. THE PROPERTY IS BEING SOLD WITHOUT ANY WARRANTIES AND "AS IS, WHERE IS, AND WITH ALL FAULTS."** Successful Bidder acknowledges, agrees, represents and warrants that none of the Trustee, Beneficiary, or Agent (including any and all agents or employees of any of them) makes or has made any representations or warranties

of any sort relating to the Property, including, but not limited to, those relating to the status of title, liens, identity, ownership, possession, quiet enjoyment, environmental matters, use, structural integrity, physical condition, construction, zoning (and related proffers), topography, soil type or content, workmanship, materials, habitability, fitness for a particular purpose or merchantability of all or any part of the Property, nor the compliance of the Property with any law, ordinance or regulation, including, without limitation, those dealing with zoning, subdivision, building codes, or the environment, nor the status and/or survival of any lease or leases of the Property.

Successful Bidder agrees and represents that Successful Bidder is purchasing the Property subject to all matters known and unknown, in "**AS IS, WHERE IS AND WITH ALL FAULTS**" condition. In making and executing this Agreement, Successful Bidder recognizes that Trustee is foreclosing pursuant to a power of sale contained in the Deed of Trust and that Successful Bidder has not relied upon nor been induced by any statements or representations of any person, including the Trustee, the Beneficiary, the Agent or any respective agents, successors or assigns of any of them, in respect of the condition of the Property, the status of title to the Property, the environmental condition of the Property, and/or any condition or aspect of the Property including any that may not be in compliance with any federal, state, or local ordinance, law, regulation, or ruling including, without limitation, any laws, regulations, and rulings relating to environmental contamination or hazardous waste unless such representations or statements are specifically set forth in this Memorandum of Sale. Successful Bidder has relied solely on such representations, if any, as are expressly set forth in this Memorandum of Sale and on such investigations, examinations, or inspections of the Property as Successful Bidder has made, if any. Successful Bidder recognizes and agrees that any investigation, examination, or inspection of the Property is within the control of the Successful Bidder and Successful Bidder's agents and not within the control of the Trustee, the Beneficiary, the Agent or their respective agents, successors or assigns. Successful Bidder hereby knowingly and voluntarily releases any and all claims or causes of action Successful Bidder, or its successors and assigns may have now or in the future against Trustee, Beneficiary, and/or Agent (and all agents or employees of any of them) relating in any way to the Property, the condition of the Property, the status of title to the Property, the environmental condition of the Property and/or any condition or aspect of the Property including any that may not be in compliance with any federal, state, or local ordinance, law, regulation, or ruling including, without limitation, any laws, regulations, and rulings relating to environmental contamination or hazardous waste. Successful Bidder acknowledges and agrees that this provision was an important part of this Memorandum of Sale and serves as an essential component of consideration for the same. The parties specifically acknowledge and agree that this clause bars all claims by the Successful Bidder including those arising from the condition of the Property pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and all other actions pursuant to state or local laws, ordinances or regulations for any environmental condition of the Property. Notwithstanding the parties' intent that this clause bar all such claims, should a court of competent jurisdiction deem otherwise, Successful Bidder agrees that the presence of this clause should serve as the overwhelming, primary factor in any equitable apportionment of response costs under applicable federal, state, or local laws, ordinances, or regulations. Nothing in this Agreement shall release, waive, or preclude any claims by the Successful Bidder against the owner or any other party in possession or control of the Property, other than Trustee, Beneficiary and/or Agent (and all agents or employees of them).

8. Risk of Loss. The risk of loss from fire, casualty, or otherwise and all liabilities of ownership of the Property passed to Successful Bidder upon the completion of the bidding at the Foreclosure Sale.

9. Charges to be Paid or Assumed by Successful Bidder. The Trustee shall pay all Taxes (defined below) due on account of the Property through the date of the Foreclosure Sale from the sale proceeds (to the extent available); provided, however, Successful Bidder shall be responsible for the payment of all other Taxes, including post-settlement Taxes (the "Taxes Payable"). In the event that any Taxes (defined below) have been paid or will be paid ahead (i.e., for periods after the date of the Foreclosure Sale), then those will be prorated at the Foreclosure Sale date in favor of the Trustee. The term "Taxes" means all assessments, sewer, storm water or water charges, and real estate taxes, and any penalties and interest due on any of the foregoing, with respect to the Property. All fuel, gas, electricity, utilities, and other operating charges of any sort relating to the Property shall be assumed by Successful Bidder. Successful Bidder shall be responsible for all costs relating to title examination, survey, and title insurance with respect to the Property, and shall advance an amount sufficient to pay all recordation and transfer taxes and all other costs of purchase and transfer of the Property, except the grantor's recording tax. Successful Bidder acknowledges and agrees that Trustee shall not be liable for the payment or reimbursement of any lease or other deposits of any sort. Successful Bidder shall pay any fee charged for the wire transfer to Trustee of all amounts due pursuant to Paragraph 5 hereof.

10. Delivery of the Property. None of Beneficiary, Trustee, or Agent shall be obligated to deliver possession of the Property to Successful Bidder. The costs of and risks relating to identifying and obtaining possession of the Property shall be borne by Successful Bidder.

11. Default; Remedies. If Successful Bidder defaults in making settlement, the Deposit shall be forfeited and applied to the costs and expenses of the Foreclosure Sale and then to the balance due under the Indebtedness, and the Property may either be resold at the risk and expense of Successful Bidder, or Trustee may accept the next highest available bid at the Foreclosure Sale. Successful Bidder shall be liable personally for any deficiency resulting from the resale of the Property at a lower price as well as for all costs, expenses, and attorneys' fees in connection with such resale. The forfeiture of the Deposit shall not limit any rights or remedies of Trustee with respect to any such default. Any delay or failure by Trustee to proceed to Settlement shall be excused if such delay or failure is caused by the occurrence of a "Force Majeure" (defined below). The term "Force Majeure" means war, strike, riot, crime, hurricane, flooding, earthquake, volcanic eruption or other circumstance or event beyond the reasonable control of Trustee, including, but not limited to, a bankruptcy or other proceeding involving the Owner, the Property, and/or any other present owner of the Property.

If the validity of the sale is challenged by any party in interest, the Trustee, in its sole discretion, if it believes the challenge to have merit, may declare this Memorandum of Sale and the Foreclosure Sale to be void and return the Successful Bidder's deposit. In such event, the Successful Bidder will have no further remedy.

In addition, if Trustee determines in good faith that a defect exists with respect to the Foreclosure Sale that renders the sale void or voidable (in either case, a "Sale Defect"), then Trustee may terminate this Agreement at any time prior to Settlement. In the event that Settlement

does not occur because of a Force Majeure or because of a termination due to a Sale Defect, or because the Trustee otherwise cannot consummate the sale, then Successful Bidder shall be entitled to a refund of the Deposit as its sole remedy, Trustee reserving the right to resell the Property by foreclosure.

The Foreclosure Sale and this Memorandum of Sale is contingent upon Trustee's post-sale confirmation that any maker, guarantor or obligor related to the Indebtedness secured by the Deed of Trust did not file for protection under the U.S. Bankruptcy Code prior to the conclusion of the Foreclosure Sale. Successful Bidder acknowledges that should this have occurred, the Foreclosure Sale is subject to cancellation by Trustee in which case this Memorandum of Sale and the Foreclosure Sale itself shall become void. The deposit shall be promptly refunded to Successful Bidder, after which the parties shall be relieved of all further liability to each other.

12. Governmental Authorizations. Successful Bidder will be responsible for obtaining, at its expense, the approval for any license, privilege, permit, or right necessary to improve, renovate, and/or develop the Property, or to construct, improve, and/or alter any improvements on the Property, and Successful Bidder will be responsible for the fulfillment of any conditions imposed or required for such approvals. The Foreclosure Sale will be final whether or not any such approvals are obtained of any necessary or desirable licenses, permits, privileges, or rights.

13. Miscellaneous Provisions. A determination that any provision of this Agreement is unenforceable shall not affect the enforceability of any other specific provision or of this Agreement. This Agreement shall be binding upon and inure to the benefit of Trustee and Successful Bidder and their respective successors, assigns, heirs, personal representatives, executors and administrators, as may be applicable. Successful Bidder may not assign its rights and/or delegate its duties under this Agreement without the prior written consent of Trustee, which consent shall not be unreasonably withheld. Agent's prior written consent to any such assignment will not be necessary. The information contained in this Memorandum of Sale and the Foreclosure Advertisement (as defined below) and on Agent's website as to the Property including the nature and description or use of the Property, zoning, dimensions, descriptions, and acreage have been obtained from sources deemed reliable and believed to be accurate. However, no express or implied warranty is made, or may be inferred from any such representations. This Memorandum of Sale, together with the provisions of the foreclosure advertisement published with respect to the Property in the *Richmond Times Dispatch* on February __ __ __, and __, 2024; (the "Foreclosure Advertisement"), constitutes the entire agreement of Trustee and Successful Bidder with respect to the subject matter of this Memorandum of Sale and supersedes all prior proposals, negotiations, agreements and understandings between Trustee and Successful Bidder relating to such subject matter. To the extent the provisions of this Memorandum of Sale and the Foreclosure Advertisement are inconsistent, the provisions of this Memorandum of Sale shall control. Any provision in this Memorandum of Sale may be waived or modified only by an agreement in writing signed by Trustee, Agent and Successful Bidder.

TRUSTEE:

HAMIL D. JONES, JR. as substitute trustee

Date of Execution: _____

AGENT:

AUCTION MANAGEMENT COMPANY,
a Georgia Corporation

By: _____

Name: _____

Its: _____

Date of Execution: _____

SUCCESSFUL BIDDER (if an entity):

PRINT NAME OF SUCCESSFUL BIDDER

By: _____

Name: _____

Its: _____

Date of Execution: _____

SUCCESSFUL BIDDER (if an individual):

PRINT NAME OF SUCCESSFUL BIDDER

Date of Execution: _____

CONTACT INFORMATION:

TRUSTEE:

Hamill D. Jones, Jr.
FloranceGordonBrown, P.C.
901 East Cary Street, Suite 1900
Richmond, VA 23219
Phone: (804) 697-5128
Fax: (804) 697-5159
hjones@fgb.com
www.fgb.com

AGENT:

SUCCESSFUL BIDDER:
