**MEMORANDUM OF SALE**

**TWO TRACTS LOCATED IN STAUNTON, VIRGINIA**

**IMPROVED BY THE FORMER INN AT WESTSHIRE FARMS**

THIS MEMORANDUM OF SALE is made this 17th day of November, 2020, by and between Dale A. Davenport (Trustee) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Purchaser).

**RECITALS**

A. Pursuant to a Deed of Trust recorded locally as Instrument No. 180001700 (the Deed of Trust), the Trustee conducted at public auction at 12:30 p.m. on November 17, 2020, a sale of those two certain lots or parcels of land with all improvements thereon and all appurtenances thereunto belonging, situate in the City of Staunton, Virginia, (formerly Beverley Manor District, Augusta County, Virginia), to the east of and just off U.S. Rt. 11, designated as Tract 1 containing 11.74 acres and Tract 2 containing 0.46 acre as shown on “Physical Survey Jill L. Webb Property,” made by L. W. Knighting, P.C., dated July 31, 1986, of record in the Clerk’s Office of the Circuit Court of Augusta County, Virginia, in Plat Book 1, Page 143. Appurtenant to the real property are two adjacent access right of ways depicted on the plat and further described in Deed Book 643, Page 318 and Deed Book 780, Page 187, for the purpose of accessing U.S. Rt. 11. Tax. PIN 10444 and 10446 (together, the “Property”). The Property does not include any personal property.

B. The Purchaser was the successful bidder at the public auction of the Property.

**AGREEMENT**

For and in consideration of the payment of the "Purchase Price" (as defined below) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. The Purchaser shall buy and the Trustee shall sell the Property for the sum of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Base Price”) and in addition thereto the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ representing a buyer’s premium, for a total amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(the "Purchase Price").

2. The Purchase Price shall be paid as follows:

(a) $50,000.00 (the “Initial Deposit”), which has been deposited with the Trustee upon execution of this Memorandum of Sale; and

(b) $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Supplemental Deposit”, which together with the Initial Deposit is referred to herein as the “Deposit”). The Supplemental Deposit must be wired as follows and received by the Trustee by 5:00 p.m. EST on Friday, November 20, 2020 –

*Wire to Farmers & Merchants Bank, Timberville VA*

*Routing Number 051404419*

*For Credit to (Beneficiary): Dale Davenport Trustee for the Westshire Enterprises Inc. Foreclosure Account*

*342 South Main Street*

*Harrisonburg, VA. 22801*

*For Credit to (Account):  100120385*; and

(c) Balance of the Purchase Price to be paid to the Trustee in cash within thirty (30) days of the Sale Date.

3. The conveyance of the Property is subject to the covenants, conditions, easements, restrictions, and reservations, if any, superior to the lien of the Deed of Trust, duly of record and constituting constructive notice, and to any and all liens, encumbrances, or adverse claims of whatever nature, recorded and unrecorded, including any and all statutory liens for labor or materials that are superior to the lien of the Deed of Trust. The conveyance of the Property shall further be made subject to the rights, if any, of persons in possession of the Property.

4. The Trustee makes no representations or warranties of any sort or nature concerning the condition of the Property (including, but not limited to, whether or not any person is in possession of the Property), the ownership of any personal property located on the Property, or any land use issues, and the Property is sold in an "as is" condition.

5. The Trustee and the holder of the Note secured by the Deed of Trust (the Noteholder) disclaim, and the Purchaser waives, any implied warranty of any kind or nature with regard to the Property or any of the improvements thereon, including, but not limited to:

a. Any implied warranty of merchantability;

b. Any implied warranty of fitness for a particular purpose;

c. Any implied warranty that the improvements to the Property together with all their fixtures are free from structural defects so as to pass without objection in the trade;

d. Any implied warranty that the improvements to the Property together with all their fixtures are constructed in a workmanlike manner so as to pass without objection in the trade;

e. Any implied warranty that the improvements to the Property together with all their fixtures are fit for habitation;

f. Any warranty relating to the zoning, structural integrity, environmental condition, physical condition, or extent of construction.

6. The Purchaser acknowledges and agrees that the risk of loss or damage to the Property passes to the Purchaser immediately upon the conclusion of the auction, not at the Closing. Except as otherwise set forth herein, all other liabilities of ownership of the Property, including obtaining possession of the Property, shall be the sole responsibility of the Purchaser, and shall pass to the Purchaser immediately upon the conclusion of the Closing.

7. All past due real estate taxes and assessments affecting the Property through the Trustee’s sale shall be paid from the Purchase Price. The Purchaser shall pay all of the costs and expenses of its examination of title to the Property, the premium for any Owner's Title Insurance that the Purchaser may desire, the costs of recording the deed to the Property, including State Grantor Tax, Revenue Tax, and all other costs and expenses of the Purchaser in connection with settlement under this Memorandum of Sale. Real estate taxes are prorated to date of auction.

8. Settlement and closing shall take place in the offices of the Trustee, on or beforeDecember 17, 2020, (Closing) or such other mutually agreed place, at which time, the Purchaser shall deliver to the Trustee the balance of the Purchase Price in cash or other form acceptable to the Trustee, and the Trustee shall deliver to the Purchaser a deed containing special warranty for the Property. If the Purchaser fails to deliver to the Trustee the balance of the Purchase Price in cash or other immediately available funds acceptable to the Trustee at Closing, and in no event later than the date above written, the Trustee shall have the right, in his sole discretion, to declare the Purchaser in default of this Memorandum of Sale and to enforce the Trustee’s rights in accordance with this Memorandum of Sale and the laws of the Commonwealth of Virginia as a result of the failure of the Purchaser to complete its purchase of the Property promptly, in which event Purchaser shall be liable for the Trustee’s reasonable attorneys’ fees and costs incurred in enforcing its rights. Such rights include but are not limited to: (i) action to require the Purchaser to close on its bid; (ii) application of the Deposit (or the Initial Deposit if the Supplemental Deposit shall not have been paid) to the costs and expenses of the resale of the Property and to the difference between the price the defaulting Purchaser agreed to pay hereunder and the price received at the resale of the Property fairly made; (iii) deferral of settlement in writing, signed by both parties; and (iv) closing with the next highest bidder for the Property and application of the Deposit to the difference between the bids and suit for recovery of any deficiency.

9. This Memorandum of Sale constitutes the full and complete understanding between the Purchaser and the Trustee and supersedes all previous writings, representations, warranties, advertisements, and other communications, whether oral or written, between the Purchaser and the Trustee, the Noteholder, or any of their respective officers, directors, employees, agents, or attorneys, including The Counts Realty & Auction Group. This Memorandum of Sale may not be modified or amended in any manner other than by written instrument signed by both the Purchaser and the Trustee.

10. The terms and conditions of this Memorandum of Sale shall survive closing of the sale of the Property to the Purchaser, the conveyance of the Property to the Purchaser and the delivery, acceptance, and recording of the deed to the Property from the Trustee to the Purchaser.

11. Any notices to either party hereunder must be in writing and hand delivered or mailed by United States certified mail, return receipt requested, by the sending party to the receiving party at the address set forth beneath the signature of the receiving party herein.

12. To the extent the terms of this Memorandum of Sale are in conflict with the terms set forth in the Trustee’s sale advertisement, this Memorandum shall be controlling with respect to the terms of sale and conveyance, consistent with the laws of the Commonwealth of Virginia. The language used in this Memorandum of Sale shall not be construed against any party because that party or the attorney for that party prepared the Memorandum of Sale. The term “Trustee” as used herein refers to the undersigned trustee named in the Deed of Trust and to either of two substitute trustees subsequently appointed by the holder of the indebtedness secured thereby, any of whom are authorized to act solely pursuant to the Deed of Trust.

13. The Purchaser confirms that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ was timely registered with the Trustee or The Counts Realty & Auction Group as the Virginia licensed broker for the Purchaser (the “Participating Broker”) and is therefore entitled to a commission of 2% of the Base Price, to be paid from the Closing proceeds within a reasonable time after the Closing.

IN WITNESS WHEREOF, the Purchaser and the Trustee have duly executed this Memorandum of Sale under seal as of the day and year first above written.

TRUSTEE:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

DALE A. DAVENPORT

Address: 342 South Main Street

Harrisonburg, VA 22801

(540) 433-2444 (phone)

ddavenport@hooverpenrod.com

PURCHASER(S):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deed to be made to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[If Purchaser is an entity and not a natural person]*  The undersigned is a principal of the Purchaser and guarantees all of the obligations of the Purchaser set forth in this Memorandum of Sale.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

Sold on the foregoing terms:

The Counts Realty & Auction Group, Auctioneer

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

Pete Ramsey, Vice President

*[If a Participating Broker is involved]* The commission terms set forth above are acceptable to me and my company.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_