

**MEMORANDUM OF SALE**

**Auction sale of real estate by:**       **The Zekos Group**  
**Date of Auction:**                       **November 10, 2022**  
**Description of Property:**           **1685 West Housatonic St., Pittsfield, MA (B030001006)**  
**Owner and Seller:**                   **The City of Pittsfield**  
**Purchase Price:**                       **\$ \_\_\_\_\_**  
**Buyer(s):**                               \_\_\_\_\_

This AGREEMENT is made this \_\_\_\_ day of November, 2022, by and between the CITY OF PITTSFIELD, a municipal corporation have a place of business at 70 Allen Street, Pittsfield, Massachusetts 01201 (hereinafter the “SELLER”) and \_\_\_\_\_, of \_\_\_\_\_ (hereinafter the “BUYER”).

1.       PROPERTY TO BE CONVEYED

The SELLER hereby agrees to sell, and the BUYER agrees to purchase, subject to all terms and conditions of this Agreement, a certain property identified as :

1685 West Housatonic Street, Pittsfield, Massachusetts 01201

and more particularly described in SCHEDULE A attached hereto and made part hereof (hereinafter the “Property”).

2.       CONVEYANCE OF PROPERTY

The SELLER shall convey title to the Property to the Buyer by means of a Quit Claim Deed (hereinafter the “Deed”).

3.       PURCHASE PRICE

The BUYER shall pay a Purchase Price of \$\_\_\_\_\_ to the SELLER for the Property. This Purchase Price shall include (a) an initial deposit of \$10,000.00 to be paid (via certified or bank cashier’s check) on the date of the Auction and (b) an additional deposit of \$10,000.00 to be paid (via certified, bank cashier’s or attorney’s IOLTA check) no later than 12:00 p.m. on November 11, 2022, with (c) the balance of \$\_\_\_\_\_ to be paid on the Closing Date as described in paragraph 4 below.

BUYER acknowledges and agrees that the \$20,000.00 in deposits referred to above shall be forfeited to the SELLER as liquidated damages in the event that the BUYER fails to comply with any of the terms and conditions of sale and is in default hereunder.

Forfeiture of the said deposits shall not relieve the BUYER of his/her/their/its liability under this contract, including but not limited to, BUYER's obligation to purchase the Property pursuant to this agreement. In such event, the SELLER shall be entitled to specific performance of this contract including any legal fees and expenses incurred in connection therewith.

Conversely, if the SELLER shall fail to fulfill for any reason any of the terms contained herein, the deposits shall be returned to the BUYER and all other obligations of the parties hereto shall cease and this agreement will be void without further recourse to the parties hereto.

Furthermore, in addition to the balance of the Purchase Price, the BUYER shall also pay the amounts referred to in paragraphs 7 and 9 below to the SELLER on the Closing Date.

4. CLOSING DATE

The SELLER shall deliver the Deed and possession of the Property to the BUYER, either upon (a) December \_\_\_\_, 2022, or (b) the date as extended pursuant to paragraph 6 below, or (c) on such other date as the parties may mutually agree in writing (hereinafter the "Closing Date"). Said delivery of the Deed shall be made at the Office of the City Solicitor, City Hall, 70 Allen Street, Pittsfield, Massachusetts, or at such other place as the parties may mutually agree in writing, and the BUYER shall accept the Deed and pay the balance of the purchase price to the SELLER at that time and place.

5. NO WARRANTIES AS TO THE PROPERTY

Verbal descriptions by the SELLER, its Agents, the Custodian, the Auctioneer or anyone connected with this sale shall not invalidate nor become part of this sale as the BUYER agrees that he/she/it/they has examined the premises to his/her/its/their satisfaction and accepts all known and unknown defects. The SELLER, its Agents, the Custodian and the Auctioneer shall not be liable for any reason whatsoever as to the accuracy of the description of the Property, the bounds, area involved, building and/or buildings, or taxes.

The BUYER acknowledges both that he/she/it, they is/are aware that the Property is being sold "AS IS" and that no representations or warranties of any kind regarding the Property have been made by the SELLER or any representative of the SELLER.

The BUYER is acquiring the Property based solely on his/her/its/their independent investigation and inspection of the Property, and not in reliance on any information, whether verbal or written, supplied or provided by the SELLER or any representative of the SELLER.

6. SELLER'S ELECTION IN THE EVENT OF A MATERIAL DEFECT IN TITLE

If a material defect in the recorded title to the Property shall be claimed by the BUYER, the BUYER shall notify the SELLER in writing at least ten (10) days prior to the Closing Date as specified in paragraph 4(a) above and the SELLER shall then be entitled to elect to either terminate this Agreement or use sixty (60) days from the date of notice thereof to perfect said title. If the SELLER elects to perfect title, but is unable to clear the record title or make conveyance as above stipulated, the deposit made under paragraph 3 above shall be refunded to the BUYER and all obligations of all the parties hereto shall cease and be null and void.

BUYER's sole recourse in the event of the SELLER's failure to deliver title as required herein is the return of the deposit.

7. RECORDATION OF DEED

In addition to the Purchase Price as described in paragraph 3 above, the BUYER shall pay to the SELLER the cost of recording the deed conveying the Property at the time the balance of the balance of the purchase price is paid. This amount is **\$155.00**. The SELLER shall record the deed pursuant to Massachusetts General Laws chapter 60, section 77A.

8. PRO FORMA AND/OR PRO RATA MUNICIPAL REAL ESTATE TAXES

The Buyer shall pay to the SELLER pro forma and/or pro rata Municipal Real Estate Taxes from the Closing Date until June 30, 2023 in an amount to be established on the setting of the Fiscal Year 2023 tax rate.

9. BUYER'S PREMIUM

The BUYER shall pay to the Zekos Group, as Auctioneer, a "buyer's premium" on the Closing Date in the amount of \$ \_\_\_\_\_, which constitutes **7.00 % (seven per cent)** of the Purchase Price.

10. COMPLIANCE WITH G.L. c. 60, § 77B

The BUYER also agrees to execute an affidavit under the provisions of Massachusetts General Laws chapter 60, section 77B as amended by Chapter 803 of the Acts of 1986 in which he/she/it/they make(s) an oath stating that he/she/it/they has/have never been convicted of the crime of arson or of aiding in the commission of the crime of arson or the fraudulent filing of a claim for fire insurance and that he/she/it/they is/are not delinquent in the payment of real estate taxes to the SELLER.

11. COMPLIANCE WITH TITLE V

The BUYER also agrees to enter into an agreement with the Board of Health for the SELLER pursuant to Title V, 310 Code of Massachusetts Regulations section 15.301(4)(b), which states that he/she/it/they agree to upgrade the existing septic system/cesspool located on said Property or to connect the facility to a sanitary sewer or a shared system within the next two years from the date title is transferred to the BUYER.

12. RISK OF LOSS

The SELLER is under no obligation to maintain casualty insurance covering the Property. The obligation of the BUYER to pay the Purchase Price and all other amounts as defined herein is not dependent upon the SELLER's maintenance of insurance and is not dependent upon the state or condition of the Property. Risk of loss shall be on the BUYER as of the Date of Auction specified above.

13. NOTICES

Any notice or other communication by one party to the other shall be in writing and shall be given, and be deemed to have been given, if either delivered personally or mailed, postage prepaid, certified mail (return receipt requested), addressed as follows:

For Notice to the SELLER

Mayor  
City of Pittsfield  
70 Allen Street  
Pittsfield, MA 01201

and

For Notice to the BUYER

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

14. FURTHER ACTIONS

Each of the parties agree to hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are consistent with the terms thereof.

15. AMENDMENT/WAIVER

Changes as to any of the provisions specified in this Agreement can occur only when mutually agreed upon by the BUYER and the SELLER, set forth in writing, and signed by both the BUYER and the SELLER. All conditions, covenants, duties and obligations contained in this Agreement can be waived only by written agreement by the parties. Forbearance or indulgence in any form by a party shall not be a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

16. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws provision.

17. COUNTERPARTS AS ORIGINALS

This Agreement may be executed in any number of identical counterparts and, if so executed, each such counterpart is deemed an original for all purposes, and all such counterparts shall collectively constitute an agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

18. ENTIRE AGREEMENT

Except for modifications issued in compliance with paragraph 15 of this Agreement, the Agreement represents the entire agreement between the BUYER and the SELLER, and supersedes and cancels all previous agreements between the parties.

19. SUPERVENING LAW AND SEVERABILITY

The parties recognize that this Agreement shall be subject to amendments to Federal, State and local laws, regulations and ordinances. Any provisions of the law which may invalidate, or otherwise are inconsistent with, the terms of this Agreement, or that would cause one or both of the parties to be in violation of that law, shall be deemed to have superseded the terms of this Agreement. Notwithstanding such invalidity or illegality, the remaining terms and provisions of this Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provisions had not been contained herein.

20. SELLER'S RESERVATION OF RIGHTS IN CASE OF BUYER'S DEFAULT

The SELLER reserves the right to sell to the second highest bidder in the event that the highest bidder (named as the BUYER herein) defaults or to the third highest bidder in the event that both the first and second highest bidders default. However, this reservation of rights should not be construed as requiring the SELLER to sell to the second highest bidder or the third highest bidder in the event of such defaults.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the Date of Auction specified above.

BUYER: ( \_\_\_\_\_ )

By \_\_\_\_\_

\_\_\_\_\_

SELLER (CITY OF PITTSFIELD)

By \_\_\_\_\_

Matthew Kerwood, Finance Director (Tax Title Custodian)

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

Approved as to form and legality  
Office of the City Solicitor

SCHEDULE "A"

The land, with any buildings thereon, in said Pittsfield, bounded and described as follows:

"Beginning at a point in the southerly line of West Housatonic Street at the northwesterly corner of land conveyed to Clara K. Nicholson by Earl W. Kibby, Jr. et ux. by deed dated October 18, 1965 and recorded in the Berkshire Middle District Registry of Deeds in Book 808, Page 115&c.;

thence southerly along the westerly line of said land conveyed to Nicholson by Kibby to the northerly line of land conveyed to Shaker Community, Inc. by Albert S. Silverman et al. by deed dated March 8, 1968 and recorded in said Registry of Deeds in Book 853, Page 3&c.

thence westerly along the northerly line of said land of Shaker Community, Inc. 560 feet, more or less, to a corner;

thence northerly along the easterly line of said land of Shaker Community Inc. 860 feet, more or less, to the southerly line of said West Housatonic Street;

thence easterly along the southerly line of said West Housatonic Street 600 feet, more or less, to the place of beginning.

Being the same premises shown as Lot 1007 on Pittsfield Assessors' Map 247.

Meaning and intending to convey and hereby conveying the most westerly portion of the premises conveyed to Martha Irene Kibby by William R. Clark by deed dated October 31, 1910 and recorded in said Registry of Deeds, Book 361, Page 217 and to Martha Irene Kibby by William R. Clark, by administrator, by deed dated September 11, 1916 and recorded in said Registry of Deeds, Book 384, Page 452. The grantors herein are residuary devisees (remaindermen) under the will of said Martha Irene Kibby (see Berkshire Probate No. 68488), Earl W. Kibby, Sr., life tenant, being now deceased. Being the most westerly portion of the tract of land shown on sketch attached hereto marked "A".

Being all and the same premises conveyed to James Arace by deed of Clara K. Nicholson et al dated May 10, 1974 and recorded in said Registry of Deeds in Book 949, Page 76&c. and subsequently conveyed as Parcel III in a deed from James Arace to James Arace as Trustee of Arace Realty Trust dated June 30, 1981 and recorded in said Registry of Deeds in Book 1047, Page 643. For the City of Pittsfield's Title to said premises, see (a) the Instrument of Taking, dated June 13, 2011 and recorded in said Registry of Deeds in Book 4784, Page 231 and (b) the Judgement in Tax Lien Case dated June 6, 2019 and recorded in said Registry of Deeds in Book 6435, Page 62.