

STATE OF MAINE
HANCOCK, ss.

DISTRICT COURT
DISTRICT FIVE
Location: Ellsworth
Docket No. ELL-RE-2011-95

BAR HARBOR BANK & TRUST,)
)
 Plaintiff)
)
 vs.)
)
 MARY JO FREY,)
 as Voluntary Administrator)
 of the Estate of)
 RICHARD M. CARMAN,)
)
 Defendant)

**** DISCLAIMER ****

Bar Harbor Bank & Trust has provided the information contained in this bid package to persons interested in bidding for the property described herein. It believes the information contained herein to be accurate and complete. **However, neither Bar Harbor Bank & Trust nor its agents, employees or attorneys, make any warranties of any kind as to the accuracy or completeness of the information contained herein.** Prospective bidders are urged to make such an independent investigation as to each of those matters to which an ordinary and prudent buyer would inquire.

Michael S. Haenn, Esq., 88 Hammond Street, Bangor, ME 04401
■ 207-990-4905 ■ Attorney for Bar Harbor Bank & Trust ■
www.haennlaw.com

TERMS AND CONDITIONS OF PUBLIC SALE

Bar Harbor Bank & Trust v. Frey/Estate of Carman

20 Thomas Road
Swans Island, Maine

The following are the terms of the public sale of the property situated generally at 20 Thomas Road in Swans Island, Maine ("the Property"). The Property is also described in the mortgage deed of Richard M. Carman to Bar Harbor Bank & Trust ("BHBT") dated November 30, 2007 and recorded in the Hancock Registry of Deeds in Vol. 4901, Page 127. The interest being foreclosed is described in more detail in the Order and Judgment of Foreclosure dated October 25, 2011 and entered by the Maine District Court (at Ellsworth) in the action docketed as *Bar Harbor Bank & Trust v. Frey/Estate of Richard M. Carman*, Docket No. ELL-RE-2011-95.

Date/Place of Sale - December 13, 2011 commencing at 10:00 a.m. at the Law Office of Michael S. Haenn, 88 Hammond Street, Bangor, Maine.

Nature of Sale - BHBT is foreclosing the real estate mortgage described above. The public sale of the Property is pursuant to 14 M.R.S.A. § 6321 et seq. and the judgment of foreclosure.

Terms of Sale - (a) All of those terms set forth in the Notice of Public Sale published in the *Ellsworth American* on November 10, 17, and 24, 2011, including but not limited to the following: (i) a deposit to bid of \$10,000.00 in certified funds, payable to Bar Harbor Bank & Trust; and (ii) the balance of the purchase price is due and payable within 30 days of the public sale. The deposit to bid from the highest bidder is nonrefundable.

(b) BHBT makes no warranties of any kind whatsoever regarding its title to the Property; or the physical condition, location or value of the property; or compliance with any applicable federal, state or local law, ordinance and regulation, including zoning or land use ordinances. Bidders must satisfy themselves as to each of those matters to which an ordinary and prudent buyer would inquire.

(c) The Property is sold subject to all outstanding property tax liens and municipal and quasi-municipal encumbrances, whether or not of record in the Hancock Registry of Deeds, as well as all real estate transfer taxes.

(d) No personal property is being sold with the Property, and bidders must satisfy themselves as to the legal character of specific property as real or personal in nature. Further, BHBT reserves the right, but not the obligation, to itself and its assigns to remove any personal property from the Property without liability of any kind to the buyer of the real estate for any loss, injury or damage sustained as a result of the storage or removal of said personal property.

(e) All rents arising from the Property and as may accrue prior to the date of closing shall be retained by BHBT and shall not be prorated.

(f) A record of bidding will be maintained by BHBT for its own use. All persons present at the public sale and wishing to submit a bid must register with the auctioneer and submit the requisite deposit in cash or certified funds prior to the commencement of bidding. In the event that there is a failure to close the sale with any person who executes a Purchase and Sale Agreement, BHBT reserves the right to either hold a new sale or to contact the next highest bidder and allow that party to purchase the Property as the assignee of the highest bidder. BHBT disclaims any responsibility for providing notice of any kind to any person subsequent to the public sale.

(g) BHBT reserves the right to refuse or accept any irregular bid; to hold periodic recesses in the sale process; to continue the sale from time to time without notice to any person; and to amend the terms of sale as it deems in the best interests of BHBT.

(h) The transfer of the Property by BHBT will be by release deed in substantially the same form as that attached to the Purchase and Sale Agreement and distributed in the bid package.

Purchase and Sale Agreement - the highest bidder for the Property will be required to execute a Purchase and Sale Agreement with BHBT, and which must be executed immediately after the close of bidding.

ADDITIONAL TERMS AND CONDITIONS MAY BE ANNOUNCED BY THE AUCTIONEER ON THE DATE OF THE PUBLIC SALE AND ARE INCORPORATED HEREIN BY REFERENCE.

Dated: December 13, 2011

Michael S. Haenn, Esq., 88 Hammond Street, Bangor, ME 04401
■ 207-990-4905 ■ Attorney for Bar Harbor Bank & Trust ■
www.haennlaw.com

PURCHASE AND SALE AGREEMENT

AGREEMENT made as of this 13th day of December, 2011 by and between the following parties:

Seller: Bar Harbor Bank & Trust, a Maine corporation with a place of business in Bar Harbor, Maine ("Seller"); and

Buyer: _____

("Buyer").

1. **Purchase and Sale; Property.** Seller hereby agrees to sell, and Buyer hereby agrees to buy, a certain lot or parcel of land with any buildings thereon situated generally at 20 Thomas Road in Swans Island, Maine, and more particularly described in the mortgage deed of Richard M. Carman dated November 30, 2007 and recorded in the Hancock Registry of Deeds in Vol. 4901, Page 127 ("the Property").

2. **Basic Terms of Transfer.** Seller hereby agrees to transfer, and Buyer agrees to purchase, the Property on or before January 12, 2012 ("the Closing Deadline"). Seller will convey its interest in the Property subject to the following conditions and restrictions:

(a) conveyance of the Property at closing (on or before the Closing Deadline) will be by release deed from Seller to Buyer in substantially the same form as that annexed hereto. Unless otherwise indicated below, and if more than one Buyer executes this Agreement, the deed from Seller to Buyer will be a deed to Buyer as tenants in common.

Buyer's affirmative election as to the form of the deed of conveyance from Seller:

- joint tenancy
- tenancy in common

(b) the closing will take place at the Law Office of Michael S. Haenn, 88 Hammond Street, Bangor, Maine, or at such other place as may be agreed between the parties.

(c) Seller makes no representations of any kind or nature as to the physical condition or title to the Property, both of which are expressly and strictly sold on "AS IS, WHERE IS" basis.

(d) conveyance at closing will be subject to all outstanding

property tax liens or other municipal or quasi-municipal encumbrances or assessments, whether or not of record in the Hancock Registry of Deeds on the date of closing, and further subject to all real estate transfer taxes assessed by the State of Maine, all of which are entirely the responsibility of Buyer.

(e) Buyer specifically and affirmatively waives the right to request any writ of possession from Seller and for the Property.

(f) conveyance is further subject to the terms and conditions of sale as announced at the public sale of the Property on December 13, 2011 or as set forth in the Terms and Conditions of Public Sale distributed by the auctioneer to registered bidders at the time of registration to bid.

3. Purchase Price. (a) Buyer hereby agrees to pay to Seller the sum of

_____ Dollars

(\$ _____) for the Property as follows:

(i) Ten Thousand Dollars (\$10,000.00) at the time of the execution of this Agreement, all of which is nonrefundable and the receipt thereof is hereby acknowledged by Seller; and

(ii) the balance (after such deposit) is due and payable at the time of closing in cash or by certified check.

(b) Should Buyer fail to tender the balance due at closing and on or before the Closing Deadline, all deposit(s) from Buyer shall be retained by Seller as liquidated damages but which shall not limit the right of Seller to enforce any other right or remedy against Buyer, including an action to compel specific performance.

4. Risk of Loss. The risk of loss or damage to the Property by fire or otherwise until closing and the delivery of a deed is assumed by Buyer.

5. Personal Property. Buyer recognizes that there are or may be items of personal property situated on or in the Property, and that Seller is not conveying any interest in such personal property to Buyer. Buyer agrees that Seller has made and will make no representations as to the legal character of specific property as real or personal in nature. Further, Seller reserves the right, but not the obligation, to itself and its designees to remove any personal property from the property without liability of any kind to Buyer for any loss, injury or damage sustained as a result of the storage or removal of such personal property.

6. **Broker.** Seller and Buyer agree that there is no real estate broker involved in this transaction, and that no one is due a commission in conjunction with the sale or purchase of the Property.

7. **Non-reliance; Construction.** Buyer acknowledges that Buyer has not relied upon any oral or written representations of any employee, agent, or attorney for Seller not expressly set forth in this Agreement as a basis for Buyer's decision to execute this Agreement. In express recognition thereof, Buyer agrees that in the event of any ambiguity as to the meaning or intent of the terms or obligations set forth herein, or any documents executed in connection herewith, such ambiguous term or provision shall not be construed more favorably to one party than to another.

8. **Limitation on Buyer Damages.** Buyer agrees that in any dispute or action arising out of this Agreement, or the matters described herein, the damages to which Buyer may be due at any time and as against Seller for any reason shall be specifically limited to the amount of Buyer's deposit, repayable without interest, and that under no circumstances may such damages include any claim for punitive damages, lost profits or investment opportunities, or attorneys' fees.

9. **Waiver of Jury Trial, Arbitration.** (a) Buyer agrees that in the event of any dispute as between Buyer and Seller and relating to the subject matter of this Agreement, or the property hereby contemplated to be transferred by Seller to Buyer, such dispute shall (unless Seller shall have demanded arbitration as set forth in this paragraph) be tried before a single Justice of the Superior Court in Hancock County sitting without a jury.

(b) Buyer further agrees that in any dispute or controversy with Seller as to the terms of this Agreement, or with respect to the matters described herein, and whether sounding in contract or tort, shall, at the election of Seller and at any time, be resolved by binding arbitration in accordance with the applicable provisions of the Maine Uniform Arbitration Act, at 14 M.R.S.A. § 5927 et seq. and as the same may be amended from time to time. Seller may further elect to submit less than all disputes or controversies as between Buyer and Seller to binding arbitration. Nothing herein shall be construed as limiting the rights or remedies of Seller pursuant to this Agreement or any document or agreement as between Buyer and Seller and at any time, whether or not Seller shall have previously demanded such arbitration.

10. **Assignment.** Buyer may assign its rights under this Agreement to any third party by a writing approved by Seller, but such assignment may not mitigate or modify Buyer's obligations

and liability to Seller pursuant to the terms hereof. Any such assignment, in a form approved by and acceptable to counsel for Seller, must be executed and delivered by Buyer and the proposed assignee(s) to counsel for Seller at least seven (7) calendar days prior to the date of closing.

11. **Amendments.** This Agreement contains the entire agreement of the parties, and it may not be amended subsequent to the execution hereof except by a writing executed by each of the parties to this Agreement.

12. **Binding Nature.** This Agreement shall be binding upon the respective heirs, successors, personal representatives and assigns of the parties hereto.

13. **Applicable Law.** This Agreement shall be enforced and construed in accordance with the laws of the State of Maine.

14. **TIME IS OF THE ESSENCE AND NOT A MERE RECITAL.** Should Buyer default in any obligation under this Agreement, Buyer agrees to indemnify and hold Seller harmless from any resulting or consequential loss, claim or damage of any kind whatsoever, including but not limited to any attorneys' fees incurred by Seller.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement in duplicate original as of the day and year first above written.

Witness:

BAR HARBOR BANK & TRUST

By: _____
Stacie J. Alley
Its Asst. Vice President

Buyer - SS#/EID

Buyer - SS#/EID

****** DISCLAIMER ON NEXT PAGE ******

Disclaimer: Please read this Purchase and Sale Agreement carefully. Neither Seller nor its agents, employees or attorneys, make any warranties or representations of any kind to Buyer beyond those expressly set forth in this Agreement. Further, none of such persons offer any advice to you as to any aspect of the arrangement reflected by, or contemplated by, the foregoing.

Counsel for Seller: Michael S. Haenn, Esq., 88 Hammond Street,
Bangor, Maine 04401 ■ 207-990-4905 ■ www.haennlaw.com

RELEASE DEED

Bar Harbor Bank & Trust, a Maine corporation with a place of business in Bar Harbor, County of Hancock and State of Maine, for consideration paid, releases to [Buyer] , certain real property situated generally in Swans Island, County of Hancock and State of Maine, and more particularly bounded and described as follows:

Certain lots or parcels of land, together with the buildings and improvements thereon, situated on Swans Island, Hancock County, Maine, described in a deed from Margaret S. Thomas to Fred L. Thomas and Margaret S. Thomas dated August 9, 1995 and recorded in the Hancock County, Maine, Registry of Deeds in Book 2423, Page 194 and more particularly described as follows:

FIRST LOT: Being the same premises described in a deed from Keith Joyce to Margaret S. Thomas, dated June 3, 1971, and recorded in Book 1118, Page 509 of the Hancock County, Maine, Registry of Deeds, wherein said premises are described as follows:

Beginning at a point marking the Southeast corner of land of Loretta Rodman; thence northerly following the east line of land of Rodman six hundred (600) feet, more or less, to the South line of land of Leighton; thence easterly following the South line of land of Leighton and a continuation of said line eight hundred eleven (811) feet, more or less, to the northeast corner of land of the Grantor; thence southwesterly eight hundred thirty-two (832) feet, more or less, on a course that will intersect the point of beginning.

Meaning to convey a triangular shaped parcel of land being a part of the premises described as conveyed in a deed from Sherman W. Joyce to the Grantor herein dated November 12, 1947, recorded in the Hancock County, Maine, Registry of Deeds in Book 718, Page 404.

Together with a right of way for all purposes of a way sixteen (16) feet in width over other land of the Grantor from the hereinabove described premises to the Ferry Road, so called. The northern line of said right of way to follow the south line of land of Loretta Rodman.

SECOND LOT: Being the same premises described in a deed from Keith Joyce to Margaret S. Thomas, dated May 2, 1972, and recorded in Book 1141, Page 378 of the Hancock County, Maine, Registry of Deeds, wherein said premises are described as follows: Beginning at an iron pipe driven in the ground marking the northeast corner of land of the Grantor herein, said pipe

also marking the most easterly point of a triangular shaped lot of land described as conveyed in a deed from the Grantor herein to the Grantee herein dated June 3, 1971 and recorded in the Hancock County, Maine, Registry of Deeds in Book 1118, Page 509; thence South one hundred four (104) feet to a point; thence in a general westerly direction in a course that will intersect the south line of the hereinabove mentioned lot conveyed by the Grantor herein to the Grantee herein at a point two hundred seventy-four (274) feet measured northeasterly in said south line from the southeast corner of land of Loretta Rodman; thence northeasterly following the south line of said lot conveyed by the Grantor herein to the Grantee herein five hundred fifty-eight (558) feet, more or less to the place of beginning.

Meaning to convey a triangular shaped parcel of land being a part of the premises described as conveyed in a deed from Sherman W. Joyce to the Grantor herein dated November 12, 1947, recorded in the Hancock County, Maine, Registry of Deeds in Book 718, Page 404.

Excepting from the above-described premises a certain lot or parcel of land described as conveyed in deed from Margaret S. Thomas to Jeffrey S. Thomas, dated March 16, 1988 and recorded in Book 1684, Page 278 of the Hancock County, Maine, Registry of Deeds.

The above-described parcel is subject to an underground utility easement dated March 17, 2005, granted to Jeffrey S. Thomas, to be recorded in the Hancock County Registry of Deeds. Said underground utility easement is for all purposes of utility services and repair and maintenance of that service as defined in 33 M.R.S.A. § 458 and any corresponding provision of any future Maine law and described as follows: beginning at a pole on the northeast side of the driveway, and crossing under the driveway and running East along the southerly boundary of said lot herein described to the boundary of land now or formerly owned by Jeffrey S. Thomas.

Subject to all municipal liens and encumbrances, including but not limited to real property taxes, whether or not of record in the Hancock Registry of Deeds. Further subject to all real estate transfer taxes.

For Grantor's source of title reference may be had to the mortgage deed of Richard M. Carman dated November 30, 2007 and recorded in the Hancock Registry of Deeds in Vol. 4901, Page 127. Mr. Carman deceased on March 2, 2011. Mary Jo Frey was appointed Voluntary Administrator of the estate of Mr. Carman by an Order of the Surrogate's Court of the State of New York dated April 12, 2011 in File #2011-1437. The Grantor foreclosed said mortgage

deed in an action commenced in the Maine District Court (at Ellsworth) in the action docketed as *Bar Harbor Bank & Trust v. Frey/Estate of Richard M. Carman*, Docket No. ELL-RE-2011-95, and pursuant to an Order and Judgment of Foreclosure entered by the said Court. This deed is a conveyance of all right, title and interest of the Grantor and all parties to said action and in and to the above property pursuant to 14 M.R.S.A. § 6323.

For purposes of compliance with 14 M.R.S.A. § 6323(1):
Newspaper in which publication occurred: *Ellsworth American*.

Dates of publication: November 10, 17, and 24, 2011.

Sale date: December 13, 2011. [If the public sale was continued from the date reflected in the notice of public sale as printed in such newspaper, such sale was continued in accordance with 14 M.R.S.A. § 6323(1)].

In witness whereof, Bar Harbor Bank & Trust has caused this instrument to be executed by Stacie J. Alley, Its Asst. Vice President duly authorized this _____ day of December, 2011.

Witness:

BAR HARBOR BANK & TRUST

By: _____
Stacie J. Alley
Its Asst. Vice President

State of Maine
Hancock, ss.

December ____, 2011

Personally appeared the above-named Stacie J. Alley, Asst. Vice President of Bar Harbor Bank & Trust, and acknowledged the foregoing instrument by her signed to be her free act and deed in said capacity and the free act and deed of said corporation.

Before me,

Notary Public
Printed Name:

NOTICE OF PUBLIC SALE

14 M.R.S.A. § 6323

Notice is hereby given that in accordance with an Order and Judgment of Foreclosure entered by the Maine District Court (at Ellsworth) dated October 25, 2011 and entered in the action entitled *Bar Harbor Bank & Trust v. Frey/Estate of Richard M. Carman*, Docket No. ELL-RE-2011-95; and wherein the Court adjudged a foreclosure of the mortgage deed of Richard M. Carman dated November 30, 2007 and recorded in the Hancock Registry of Deeds in Vol. 4901, Page 127; the period of redemption from said judgment having expired; a public sale will be conducted on December 13, 2011 commencing at 10:00 a.m. at the Law Office of Michael S. Haenn, 88 Hammond Street, Bangor, Maine of the following property:

Property Description: Certain property situated generally at 20 Thomas Road, Swans Island, Maine. Reference Swans Island Tax Map 13, Lot 26. Reference should also be had to the mortgage deed for a more detailed legal description of the property to be conveyed.

Terms of Sale: The property will be sold subject to all outstanding municipal assessments, whether or not of record in the Hancock Registry of Deeds, as well as all real estate transfer taxes assessed on the transfer. The sale will be by public auction. The deposit to bid, non-refundable as to the highest bidder, is \$10,000.00 in certified funds. The bid deposit should be made payable to Bar Harbor Bank & Trust. The highest bidder will be required to execute a purchase and sale agreement with Bar Harbor Bank & Trust. The balance of the sale price will be due and payable within 30 days of the public sale. Conveyance of the property will be by release deed. All other terms will be announced at the public sale. For a bid package please visit www.haennlaw.com

Michael S. Haenn, Esq., Attorney for Bar Harbor Bank & Trust, 88 Hammond Street, Bangor, Maine.