

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
Docket No. RE-2009-252

SALEM FIVE MORTGAGE COMPANY,)
LLC,)
)
Plaintiff)
)
vs.)
)
DAVID L. KIMBALL,)
)
Defendant)

**** **DISCLAIMER** ****

Salem Five Mortgage Company, LLC has provided the information contained in this bid package to persons interested in bidding for the real property described herein. It believes the information contained herein to be accurate and complete. **However, neither Salem Five Mortgage Company, LLC 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
▪ Attorney for Salem Five Mortgage Company, LLC ▪
207-990-4905 ▪ www.haennlaw.com

TERMS AND CONDITIONS OF PUBLIC SALE

Salem Five Mortgage Company v. David L. Kimball

553 Ossipee Trail West
Standish, Maine

The following are the terms of the public sale of the property situated generally at 553 Ossipee Trail West in Standish, Maine ("the Property"). The Property is described in the mortgage deed of David L. Kimball and the late Shirley R. Dubois to Salem Five Mortgage Corporation, predecessor by merger to Salem Five Mortgage Company, LLC ("Salem Five"), dated July 6, 2001 and recorded in the Cumberland Registry of Deeds in Vol. 16509, Page 289. The mortgage interest being foreclosed is also described in more detail in the Order and Judgment of Foreclosure dated August 23, 2011 and entered by the Superior Court for Cumberland County in the action docketed as *Salem Five Mortgage Company v. Kimball*, Docket No. RE-2009-252.

Date/Place of Sale - February 6, 2012 commencing at 10:00 a.m. at the Law Office of Michael S. Haenn, 88 Hammond Street, Bangor, Maine.

Nature of Sale - Salem Five is foreclosing the real estate mortgage described above and granted by David L. Kimball et al. 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 *Press Herald* on January 7, 14, and 21, 2012, including but not limited to the following: (i) a deposit to bid of \$5,000.00 in certified funds, payable to Michael S. Haenn IOLTA; 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) Salem Five 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 tax liens and municipal and quasi-municipal encumbrances, whether or not of record in the Cumberland 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, Salem

Five 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 Property for any loss, injury or damage sustained as a result of the storage or removal of said personal property.

(e) A record of bidding will be maintained by Salem Five 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, Salem Five reserves the right to either hold a new sale or to contact the next highest bidder and allow that party to purchase the Property for the next highest bid as the assignee of the highest bidder. Salem Five disclaims any responsibility for providing notice of any kind to any person subsequent to the public sale.

(f) Salem Five 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 Salem Five.

(g) The transfer of the Property by Salem Five will be by release deed in substantially the same form as that attached to the Purchase and Sale Agreement and included 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 Salem Five, 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: February 6, 2012

Michael S. Haenn, Esq., 88 Hammond Street, Bangor, ME 04401
▪ Attorney for Salem Five Mortgage Company, LLC ▪
207-990-4905 ▪ www.haennlaw.com

PURCHASE AND SALE AGREEMENT

AGREEMENT made as of this 6th day of February, 2012 by and between the following parties:

Seller: Salem Five Mortgage Company, LLC, a Delaware limited liability company with a place of business in Salem, Massachusetts ("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 553 Ossipee Trail West in Standish, Maine, and more particularly described in the mortgage deed of David L. Kimball et al. dated July 6, 2001 and recorded in the Cumberland Registry of Deeds in Vol. 16509, Page 289 ("the Property").

2. **Basic Terms of Transfer.** Seller hereby agrees to transfer, and Buyer agrees to purchase, the Property on or before March 7, 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

Cumberland 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 February 6, 2012 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) Five Thousand Dollars (\$5,000.00) 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) 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 Cumberland 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:

SALEM FIVE MORTGAGE COMPANY LLC

By: _____
Kim A. Downey
Its Asst. Vice President

Buyer - SS#/EID

Buyer - SS#/EID

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

Salem Five Mortgage Company, LLC, successor by merger to **Salem Five Mortgage Corporation**, a Delaware limited liability company with a place of business in Salem, County of Essex and State of Massachusetts, for consideration paid, releases to _____ **[Buyer]** _____, certain real property situated in Standish, County of Cumberland and State of Maine, and more particularly bounded and described as follows:

Two certain lots or parcels of land with the buildings thereon, situated in the Town of Standish, County of Cumberland and State of Maine, as follows:

Tract I: A certain lot or parcel of land situated in the Town of Standish, County of Cumberland and State of Maine, northerly of the Ossipee Trail, near the southerly shore of Watchic Pond and being Lot 78 on the Ossipee Trail, excepting so much thereof as may have been taken for the widening of the highway, as shown on Plan of Watchic Shores, recorded in the Cumberland County Registry of Deeds, in Plan Book 17, Page 26, to which plan reference is hereby made for a more particular description of said lot.

Including herein a right of way, in common with others, in the street and roads shown on said plan.

Tract II: A certain lot or parcel of land situated in the Town of Standish, County of Cumberland and State of Maine, on the Ossipee Trail, near the southerly shore of Watchic Pond and begin lot numbered 79 as shown on Plan of Watchic Shores, recorded in the Cumberland County Registry of Deeds, in Plan Book 17, Page 26, to which plan reference is hereby made for a more particular description of said lot.

Including herein a right of way in common with others in the street and roads shown on said Plan.

This conveyance is subject to the rights of way of the State of Maine for highway trespass.

Subject to all municipal liens and encumbrances, including but not limited to real property taxes, whether or not of record in the Cumberland 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 David L. Kimball and the late Shirley R. Dubois dated July 6, 2001 and recorded in the Cumberland Registry of Deeds in Vol. 16509, Page 289. Shirley R. Dubois deceased on March 25, 2010, survived by David L. Kimball as the sole surviving joint tenant as to the mortgaged property. The Grantor foreclosed said mortgage deed in an action commenced in the

Superior Court for Cumberland County in the action docketed as *Salem Five Mortgage Company, LLC v. Kimball*, Docket No. RE-2009-252, 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: *Press Herald*.
Dates of publication: January 7, 14, and 21, 2012.
Sale date: February 6, 2012. [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, Salem Five Mortgage Company, LLC has caused this instrument to be executed by Kim A. Downey, Its Asst. Vice President duly authorized this _____ day of February, 2012.

Witness:

**SALEM FIVE MORTGAGE COMPANY, LLC
Successor by merger to
Salem Five Mortgage Corporation**

By: _____
Kim A. Downey
Its Asst. Vice President
duly authorized

State of Massachusetts
Essex, ss.

February ____, 2012

Personally appeared the above-named Kim A. Downey, Asst. Vice President of Salem Five Mortgage Company, LLC, 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 dated August 23, 2011 and entered by the Superior Court for Cumberland County in the action entitled *Salem Five Mortgage Company, LLC v. David L. Kimball*, Docket No. RE-2009-252; and wherein the Court adjudged a foreclosure of a mortgage deed dated July 6, 2001 and recorded in the Cumberland Registry of Deeds in Vol. 16509, Page 289; the period of redemption from said judgment having expired; a public sale will be conducted on February 6, 2012 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 553 Ossipee Trail West in Standish, Maine. Reference should 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 Cumberland 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 \$5,000.00 in certified funds. The deposit to bid should be made payable to Michael S. Haenn IOLTA. The highest bidder will be required to execute a purchase and sale agreement with Salem Five Mortgage Company. 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. Further information and a bid package are also available at www.haennlaw.com

Michael S. Haenn, Esq., Attorney for Salem Five Mortgage Company, LLC, 88 Hammond Street, Bangor, Maine.