



BOSTON – WORCESTER – MASSACHUSETTS – NEW ENGLAND

MEMORANDUM OF SALE

At a public auction the premises and business assets described therein have been sold to the undersigned high bidder herein after known as the Purchaser for the Total Purchase Price of:

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who has made the required deposit and agrees to pay the balance to **Fletcher Stubbs Inc and ANRW LLC** herein after called Sellers according to the terms of said notice. **The balance of the consideration shall be paid in cash, certified check, wire, or bank cashier’s check at a location to be determined by the Seller along with the passing of title for the premises and business assets thirty (30) days from the date this Memorandum of Sale is executed by Buyer and Seller.** The foregoing terms of payment and delivery may only be varied by mutual agreement of the Purchaser and Seller, in writing.

The signing of this Memorandum of Sale and delivery of a copy of same to the Purchaser shall bind both Purchaser and Sellers. This Memorandum of Sale shall constitute the entire agreement of the parties hereto, subject, however to the “Terms and Conditions” of the Auction as have been announced at the beginning of this sale, which Terms and Conditions are hereby incorporated by reference.

Inaccuracy of the description of the business assets and premises as to bounds, area, buildings, taxes, encumbrances, condition, completeness, and known and unknown defects SHALL NOT BE REASON FOR FAILURE ON THE PART OF THE PURCHASER TO COMPLETE THE SALE. The Purchaser will consider these premises and business assets as sufficiently described if such offering is indicated by number if that is the only description available at the time of this auction. Verbal qualification by Simond & Oakes Auctioneers & Appraisers LLC, herein after called Auctioneers or their respective agents SHALL NOT INVALIDATE nor become part of this sale as THE PURCHASER HAS EXAMINED TO HIS/HER SATISFACTION THE LISTED PREMISES AND BUSINESS ASSETS.

The premises, as described in a deed recorded with the **Registry of Deeds, Cheshire County New Hampshire in Book 3089, Page 934, commonly known as 19 Gilbo Avenue Keene New Hampshire** are sold subject to any outstanding mortgages, restrictions, orders of conditions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, federal or state tax liens, other liens, or claims in the nature of liens and existing encumbrances of record created prior to the mortgage, if there be any, including, without limitation, those encumbrances and liens specifically set forth in the attached printed notice of sale; outstanding water bills water liens and water taxes, if any; violations, if any, of the State Sanitary Code or any other Federal, State or local statute, public health rule, regulation or requirement; restrictions and rights of way insofar as same may be in force and effect.

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Notwithstanding the foregoing, Sellers will satisfy the following encumbrances recorded with the Cheshire County Registry of Deeds at or prior to closing: Mortgage from ANRW, LLC to Savings Bank of Walpole recorded in Bk. 3089, Pg. 938; Assignment of Rents & Leases to Savings Bank of Walpole recorded in Bk.3098, Pg. 949; Mortgage, Assignment of Rents & Leases and Fixture Filing to Granite State Economic Development Corp. recorded in Bk. 3098, Pg. 974; Mortgage to Savings Bank of Walpole recorded in Bk. 3098, Pg. 985; Assignment of Rents and Leases to Savings Bank of Walpole recorded in Bk. 3098, Pg. 986; and Notice of Lease recorded in Bk. 3098, Pg. 1003. Sellers will also satisfy the UCC-1 statement filed at the NH Secretary of State in favor of Savings Bank of Walpole Filing No. 1911220002264.

The premises and business assets are sold in “as is” condition, subject to all known and unknown defects, with no representation or warranty of any kind including, without limitation, any warranty or representation as to construction, fitness for habitation or condition. **Prior to sale, Purchaser acknowledges its responsibility to conduct its own review of title, liens, taxes, environmental and general building inspections, and any other due diligence related to the Premises and business assets. By placing a bid, Purchaser waives the right to any such inspections and review.**

The Purchaser shall be responsible for payment for any title search obtained or required by the Purchaser. Closing shall be conducted pursuant to NH practice with buyer and seller dividing the NH Transfer Tax equally, prorating ongoing real estate taxes, heating fuel, propane, natural gas, and water/sewer charges.

Subject to the terms and conditions of this Agreement and in consideration of the obligations of the Buyer herein, the Seller agrees to sell, convey, transfer and deliver to the Buyer at the Closing all right, title and interest of the Seller in the assets employed or arising in connection with the operation of Lindy’s Diner, such assets being all personal property located at 19 Gilbo Avenue, Keene, NH, including but not limited to dishware, cookware, silverware, menus, coolers, refrigeration systems, booths, tables, the use of the trade name “Lindy’s Diner” which Seller agrees to discontinue at Closing so as to free it up for Buyer’s use, business phone number, right and control over the domain and website [www.lindysdiner.com](http://www.lindysdiner.com), and goodwill of the business (“business assets”). **The Assets shall not include food, beverages, perishable goods, cash, financial accounts in Sellers’ name(s), nor accounts receivable.**

At the Closing, the Seller shall transfer the Assets to the Buyer, or the Buyer’s nominee, by a bill of sale and title to the Premises by a warranty deed conveying marketable title to the Premises, free and clear of any liens or encumbrances, except those to be paid at Closing.

The parties agree that the purchase price of the premises and assets shall be allocated as provided below and will file IRS Form 8594 based upon the following allocation:

- Real Estate - \$600,000.00
- Equipment - \$300,000.00
- Goodwill – all sums in excess of \$900,000.00

The Seller and the Buyer agree that all of the Seller’s employees shall be terminated upon Closing. The Buyer, at its option and sole discretion, may thereafter negotiate with the Seller's former employees regarding future employment with the Buyer.

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All transfer, documentary, sales, use, stamp, registration and other such taxes and fees (including penalties and interest) incurred in connection with this Agreement shall be paid by the party from which said taxes or fees are due. The Buyer and/or the Seller, shall, at their own expense, file all necessary tax returns and other documentation with respect to all such transfer, documentary, sales, use, stamp, registration and other such taxes and fees, and, if required by applicable law, and each party shall assist and join the other in the execution of any such tax returns and other documentation if necessary.

As a material inducement for Seller to execute this Agreement, Buyer acknowledges, represents and warrants that Buyer has fully examined and inspected the premises and business assets together with all materials provided by the auctioneer as Buyer deems necessary or appropriate, and Buyer will purchase the premises and business assets "AS IS" and "WHERE IS" and with all faults and, upon Closing, Buyer shall assume responsibility for the physical condition of the business assets and premise; Buyer will purchase the business assets and premises on the basis of this Agreement and its own independent investigation.

Purchaser acknowledges that the Sellers and the Auctioneers make no representations, warranties, promises, covenants, agreements or guaranties, express or implied, oral or written, past, present or future, of, as to, concerning or with respect to (a) the value, nature, or quality of the premises and business assets within the premises, (b) the income, if any, to be derived from the premises and business assets, (c) the suitability of the premises and business assets for activities and uses which buyer may conduct thereon, or (d) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of premises and/or business assets therein.

Buyer assumes no liability from operation of the business prior to Closing and Seller shall have no liability for operation of the business after Closing. Seller agrees to indemnify and hold harmless the Buyer, its successors and assigns, from and after the Closing Date, against any and all losses damages, liabilities, claims, deficiencies, costs, expenses, and expenditures, including, without limitation, reasonable attorney's fees and court costs, arising with respect to claims and liabilities arising from ownership of the Assets and conduct of its business at the premises prior to the Closing Date. Buyer agrees to indemnify and hold harmless the Seller, its successors and assigns, from and after the Closing Date, against any and all losses damages, liabilities, claims, deficiencies, costs, expenses, and expenditures, including, without limitation, reasonable attorney's fees and court costs, arising with respect to claims and liabilities arising from ownership of the business assets and premises on and after to the Closing Date.

Between the date of this Agreement and the Closing Date, the Seller will operate its business at the premises in the ordinary course of business; use reasonable efforts to maintain its relations and good will with suppliers, customers, employees, and others having business relationships with Seller's business at the premises; and maintain the premises and business assets in a state of ordinary repair and condition consistent with the normal conduct of Seller's business.

Seller's representations and warranties contained in this Agreement shall survive consummation of the transactions contemplated by this Agreement for a period of one (1) year from the Closing Date.

All legal, accounting, and other costs and expenses in connection with this Agreement and the transactions contemplated hereby shall be paid by the contracting party incurring such expenses.

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In the event of a breach of this Agreement, the non-breaching party shall be entitled to its costs of enforcement, including reasonable attorney's fees.

The Purchaser agrees to present to the Auctioneers a **\$25,000 (twenty-five thousand dollar)** registration fee in the form of cash or certified check at the time the Purchaser registers to obtain a bidder's number for the auction. The Purchaser agrees the registration fee will become part of the required deposit for the premises and business assets. The Purchaser agrees the deposit must be increased to 10% of the Total Purchase Price immediately after the sale on the Auction date and will convey said deposit to the Auctioneers and the Purchaser agrees that the full 10% deposit must be converted to cash or certified check and will convey said cash or certified check to the Auctioneers within seven (7) days of the Auction Date sale.

**The Purchaser agrees closing on the premises and business assets will be required of the Purchaser within 30 days following the execution of this Memorandum of Sale.** In the event the Sellers cannot convey title as stipulated or otherwise perform its obligations hereunder, the deposit shall be refunded and all rights hereunder shall cease and this agreement shall be null and void without recourse to any party hereto.

The Purchaser agrees in the event the Purchaser fails to close on the premises and business assets in accordance with the terms and conditions of this Memorandum of Sale agreement then in that event any and all of the deposit paid by the Purchaser shall be forfeited as liquidated damages.

The sale is not complete until the Purchaser has executed this Memorandum of Sale and made the required deposit which shall be forfeited as liquidated damages if the Purchaser does not perform the successful bidder's part of all of the terms and conditions of sale set forth herein. Failure of the Purchaser to execute this Memorandum of Sale or to comply in any way with the provisions hereof shall constitute a default hereunder and shall entitle the Sellers to retain the deposit. The Purchaser hereby guarantees performance of the Total Purchase Price entered on this Memorandum of Sale.

**Buyer agrees to pay a Buyer's Premium equal to ten (10%) percent of the Auction Sale Price.**

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Auction Sale Price (Auction Hammer Price): \$ \_\_\_\_\_

10% Buyer's Premium (added to Auction Sale Price): \$ \_\_\_\_\_

**TOTAL PURCHASE PRICE** (Hammer price + Buyer's Premium): \$ \_\_\_\_\_

Total Deposit Owed Today (10 % of the Total Purchase Price): \$ \_\_\_\_\_

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Registration fee (paid by Purchaser prior to auction, as part of deposit): \$ \_\_\_\_\_

Balance of Deposit Owed Today (10% of Total Purchased Price  
minus Registration Fee: \$ \_\_\_\_\_

Total Deposit Received on Auction Day (10 % of Total Purchase Price): \$ \_\_\_\_\_

As aforementioned in this Memorandum of Sale the Purchaser agrees the Total Deposit Received today on Auction Day (10 % of Purchase Price) must be converted to cash or certified check within seven (7) days of this sale.

BALANCE DUE by Purchaser to Sellers upon Closing: \$ \_\_\_\_\_

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**Purchaser-Sign & Date**

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**Purchaser-Printed Name**

**Signature & Date:** \_\_\_\_\_

**Seller – Fletcher Stubbs, Inc. by \_\_\_\_\_ (print name here)**

**Signature & Date:** \_\_\_\_\_

**Seller – ANRW, LLC by \_\_\_\_\_ (print name here)**

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PURCHASER INFORMATION:

Social Security #  
Or Federal Tax I.D. #  
or Driver's License #: \_\_\_\_\_

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

City/Town: \_\_\_\_\_

Phone: \_\_\_\_\_

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

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WITNESS to this Memorandum of Sale: Auctioneer - (sign & print name & date)

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