

STATE OF MAINE  
YORK, SS

TENTH DISTRICT COURT  
DIVISION OF EASTERN YORK  
DOCKET NO. BID-RE-08-309

BLACKBURNE & BROWN )  
MORTGAGE FUND I, et al )  
    **PLAINTIFF** )  
 )  
v. )  
 )  
THOMAS J. BURNS )  
    **DEFENDANT** )  
 )  
and )  
 )  
BRAGDON WHARF CORPORATION )  
    **PARTY-IN-INTEREST** )

\*\*\*\* **DISCLAIMER** \*\*\*\*

Blackburne & Brown Mortgage Fund I, et al, and James B. Bartlett PA have provided the information contained in this bid package to persons interested in bidding for the real property described herein. Each believes the information contained herein to be accurate and complete. ***However, neither Blackburne & Brown Mortgage Fund I, et al, nor James B. Bartlett PA, nor their respective 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.

For further information regarding the sale, please contact James B. Bartlett PA at (207)363-8100 or [www.yorkmainelaw.net](http://www.yorkmainelaw.net)

James B. Bartlett, Esq.  
James B. Bartlett PA  
226 York Street  
PO Box 836  
York, ME 03909-0836  
***Auctioneer and Attorney for  
Blackburne & Brown Mortgage Fund I, et al***  
[www.yorkmainelaw.net](http://www.yorkmainelaw.net)

## TERMS AND CONDITIONS OF PUBLIC SALE

*Blackburne & Brown Mortgage Fund I, et al, vs. Thomas J. Burns, et al.*

265 Main Street  
Biddeford, Maine

The following are the terms of the public sale of the property described in the mortgage deed of Thomas J. Burns to Blackburne & Brown Mortgage Fund I, et al, (“B&B”), dated September 15, 2006, and recorded in the York County Registry of Deeds in Book 14962, Page 156. The mortgage interest being foreclosed is also described in more detail in the Order and Judgment of Foreclosure dated March 10, 2009, and entered by the Biddeford District Court in York County in the action docketed as *Blackburne & Brown Mortgage Fund I, et al, vs. Thomas J. Burns et al.*, Docket No. BID-RE-08-309.

**Date/Place of Sale** – July 15, 2009, commencing at 10:30 AM, at the Law Office of James B. Bartlett, 226 York Street, York, Maine.

**Nature of Sale** – B&B is foreclosing the real estate mortgage described above and granted by Thomas J. Burns. The public sale of the mortgaged property is pursuant to 14 M.R.S.A. § 6321 et seq. and the said judgment of foreclosure.

**Terms of Sale** – (a) All of those terms set forth in the Notice of Public Sale published in the *Biddeford Journal Tribune* on June 10, 17, and 24, 2009, including but not limited to the following: (i) a deposit to bid of \$10,000.00 in cash or certified funds, payable to James B. Bartlett PA, IOLTA Trust Account, to be increased to 10% of the bid amount on or before July 20, 2009; and (ii) the balance of the purchase price is due and payable within 30 days of the public sale. All bid deposits from the highest bidder are non-refundable.

(b) B&B 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 encumbrances, whether or not of record in the York County Registry of Deeds, as well as all real estate transfer taxes.

(d) No personal property is being sold with the real estate, and bidders must satisfy themselves as to the legal character of specific property as real or personal in nature.

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

(f) B&B 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 B&B.

(g) The transfer of the property by B&B 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 by the auctioneer.

**Purchase and Sale Agreement** – the highest bidder for the property will be required to execute a Purchase and Sale Agreement with Blackburne & Brown Mortgage Fund I, et al, 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: July 15, 2009

James B. Bartlett, Esq.  
James B. Bartlett PA  
226 York Street  
PO Box 836  
York, ME 03909-0836  
*Auctioneer and Attorney for  
Blackburne & Brown Mortgage Fund I, et al*  
[www.yorkmainelaw.net](http://www.yorkmainelaw.net)

## PURCHASE AND SALE AGREEMENT

AGREEMENT made this 15<sup>th</sup> day of July, 2009, by and between the following parties:

**Seller:** Blackburne & Brown Mortgage Fund I, et al, a California Limited Partnership organized under the laws of the United States of America with a place of business in Sacramento, California ("Seller"); and

**Buyer:**

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(“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 265 Main Street in Biddeford, Maine, and more particularly described in the mortgage deed of Thomas J. Burns dated September 15, 2006, and recorded in the York County Registry of Deeds in Book 14962, Page 156 ("the Property").

2. **Basic Terms of Transfer.** Seller hereby agrees to transfer, and Buyer agrees to purchase, the Property on or before August 14, 2009, ("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 James B. Bartlett, 226 York Street, York, 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 York County 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 July 15, 2009, 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 non-refundable and the receipt thereof is hereby acknowledged by Seller;

(ii) an additional deposit equal (with the initial deposit) to ten percent (10%) of the purchase price and which additional deposit is due and payable to James B. Bartlett PA IOLTA Trust Account within five (5) calendars days of the date of this Agreement; and

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

(b) Should Buyer fail to tender the additional deposit as required by subparagraph (3)(a)(ii) hereinabove; or, having tendered such additional deposit, 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 except to the auctioneer. Buyer is not Liable, by virtue of this Agreement, for payment of any fees to the auctioneer.

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 York 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:

**BLACKBURNE & BROWN  
MORTGAGE FUND I, ET AL**

\_\_\_\_\_

By: \_\_\_\_\_  
Richard Clowdus, Executive Vice President  
Blackburne & Brown Mortgage Company, Inc.

\_\_\_\_\_

\_\_\_\_\_  
**Buyer - SS#/EID**

\_\_\_\_\_

\_\_\_\_\_  
**Buyer - SS#/EID**

**Disclaimer:** *Please read this Purchase and Sale Agreement carefully.* Neither Seller nor the auctioneer, nor their respective 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:** James B. Bartlett, Esq., 226 York Street, PO Box 836, York, Maine, 03909  
▪ 207-363-8100 ▪ [jbartlett@yorkmainelaw.net](mailto:jbartlett@yorkmainelaw.net)

## RELEASE DEED

**Blackburne & Brown Mortgage Fund I, et al, a California Limited Partnership,** organized under the laws of the United States of America with a place of business in Sacramento, County of Sacramento and State of California, for consideration paid, releases to \_\_\_\_\_ **[Buyer]**, certain real property situated in the City of Biddeford, County of York, and State of Maine, and more particularly bounded and described as follows:

Certain real estate situated in the City of Biddeford in the County of York and State of Maine, bounded and described as follows:

Beginning on the southerly side of Main Street at the northerly corner of Jefferson Street; thence by the southerly side of said Main Street northwesterly seventy (70.00') feet; thence at right angles with said Main Street southerly ninety-nine (99.00') feet to Centre Street; thence by said Centre Street easterly to said Jefferson Street; thence by said Jefferson Street northeasterly to said Main Street and point and place of beginning.

Subject to all property liens and encumbrances, including, but not limited to, real property taxes, whether or not of record in the York County 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 Thomas J. Burns dated September 15, 2006, and recorded in the York County Registry of Deeds in Book 14962, Page 156. The Grantor foreclosed said mortgage deed in an action commenced in the Biddeford District Court for York County and docketed as *Blackburne & Brown Mortgage Fund I, et al, v. Thomas J. Burns et al.*, Docket No. BID-RE-08-309, 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: *Biddeford Journal Tribune*.

Dates of publication: June 10, 17, and 24, 2009.

Sale date: July 15, 2009. [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, Blackburne & Brown Mortgage Company, Inc., has caused this instrument to be executed by Richard Clowdus, Its Executive Vice President, duly authorized this \_\_\_\_\_ day of July, 2009.

Witness:

**BLACKBURNE & BROWN  
MORTGAGE FUND I, ET AL**

\_\_\_\_\_

By: \_\_\_\_\_  
Richard Clowdus, Executive Vice President  
Blackburne & Brown Mortgage Company, Inc.

State of California  
Sacramento, ss.

July \_\_\_\_, 2009

Personally appeared the above-named Richard Clowdus, Executive Vice President of Blackburne & Brown Mortgage Company, Inc., and acknowledged the foregoing instrument by him signed to be his free act and deed in said capacity and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Notary Public

## 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 March 10, 2009, which judgment was entered by the Biddeford District Court for York County in the case of *Blackburne & Brown Mortgage Fund I, et al, v. Thomas J. Burns et al.*, Docket No. BID-RE-08-309, and wherein the Court adjudged a foreclosure of a mortgage deed granted by Thomas J. Burns dated September 15, 2006, and recorded in the York County Registry of Deeds in Book 14962, Page 156; the period of redemption from said judgment having expired; a public sale will be conducted on July 15, 2009, commencing at 10:30 AM at the Law Office of James B. Bartlett, 226 York Street, York, Maine. Reference should be had to said mortgage deed for a more complete legal description of the property to be sold.

The property will be sold by public auction subject to all outstanding municipal assessments and encumbrances. The deposit to bid is \$10,000.00, to be increased to 10% of the bid amount within five days of the public sale. The balance after such deposits is due and payable within 30 days of the public sale. All other terms and conditions of the sale will be available from the auctioneer.