



# *O'Dea's Realty & Auction Room Ltd.*

## **Notice of Public Auction**

### **Location and time:**

**Offices of Benson Myles  
Suite 900  
Atlantic Place  
215 Water St.  
St. John's, NL**

**10:00 A.M. on Wednesday Oct 13, 2010**

**O'Dea's Realty and Auction Room will be selling by Public Auction; the property situated at 54 Poplar Ave, St. John's, NL.**



**The auction will be conducted at the offices of Benson Myles unless registered bidders are given notice, by phone or email, that the venue has been changed. Only those registered will be permitted to attend the auction, unless the lawyer or executor for the vendor agrees in advance to allow additional representation.**

### **Terms and Conditions**

The deadline for registering for the auction is 11 AM, Friday Oct 8, 2010. A \$5000 certified cheque or bank draft, payable to "Benson Myles in Trust" is required before a registration certificate will be issued. If the registrant is not successful at the auction, the certified cheque or bank draft will be returned after the auction.

To register, please call Chris O'Dea at 685-6559.

For successful bidders, the \$5000 deposit will form a portion of deposit towards the purchase price and such deposit will be non refundable. The balance of the deposit due will be the difference between the initial deposit of \$5000 and 10% of the purchase price. That amount will be due, by the successful bidder, by 3:30 PM on the day of the auction and made payable by certified cheque or bank draft to "Benson Myles in Trust". This second deposit will also be non refundable and both deposits will be applied to the purchase price or forfeited in the event that the successful bidder decides to withdraw for any reason.

The only basis for withdrawal would be based on any potential inability of the vendor to provide clear title.

Bidders should insure that arrangements are made with their bankers or other lenders for the required funds for purchase as failure to close will result in the forfeiting of the 10% of the purchase price.

A standard purchase and sale agreement will apply, however, the agreement will be fully unconditional, with the exception of a condition of clear title and the property are being sold "as is where is". Purchasers will be required to close on the sale within 45 days of the auction date.

### **Conditions of Sale By Public Auction**

1. The highest approved bidder will be the buyer subject to:
  - o the reserve price of \$275,000; and
  - o the seller's approval.
  
2. The bidder warrants their ability to enter and complete the contract of sale in accordance with its terms, (without conditions such as financing, inspection, etc) and without modification.
  
3. Any person bidding on behalf of another person must provide the Auctioneer with a copy of their written authority at the time of registration and such authority may be subject to approval of Benson Myles; otherwise the bidder will be taken to be acting on their own behalf. Realtors are welcome to participate on behalf of their clients, however, any commission arrangements are to be worked out between the realtor and the buyer as no seller's commission applies.

- 4. The Auctioneer has the discretion to refuse to accept any bid from any person. A bid will be taken to be accepted and irrevocable unless the Auctioneer, after it is made, refuses it.**
- 5. The decision of the Auctioneer is final in all matters relating to the auction and no bidder has any right of recourse against the Auctioneer or the seller.**
- 6. Without affecting condition 5, if there is any dispute over a bid, the Auctioneer may:**
  - o re-open the bidding and resubmit the property for sale starting with the highest bid previously accepted; or**
  - o determine the dispute in any other way the Auctioneer considers appropriate in his absolute discretion**
- 7. Immediately on the fall of the hammer, the bidder with the highest bid accepted must sign, as buyer, the Contract of Sale in the form displayed or circulated with these conditions of sale and pay the remaining deposit in the amount made up of the difference between the \$5000 paid at Registration and 10% of the selling price, and as referenced above this second amount is payable by 3:30 PM on the day of the auction.**
- 8. The seller and the buyer agree to sign all documents and do everything else necessary to transfer the property to the buyer. The seller and the buyer each appoint the Auctioneer to facilitate and witness the signing of the agreement of purchase and sale immediately after the auction has ended. The buyer agrees that the auctioneer is not acting as his or her buyer's agent, and that the buyer is a Customer, and the Auctioneer's only obligation is to provide information relating to the auction and conduct the auction on behalf of the vendor and the buyer agrees that he or she is not represented by the auctioneer.**
- 9. If the buyer does not pay the full deposit, at the seller's option:**
  - o the result of the auction will be treated as invalid and the property may be resubmitted to public auction at the risk and expense of that buyer; or**
  - o the seller may affirm the Contract of Sale and pursue their legal and other remedies against the buyer as they see fit.**
- 10. Other special conditions may apply.**

#### **Contract For Sale**

**Based on these conditions of sale, the vendors selling agent prepares the contract of sale.**

**This document is available for viewing at the time of registration for the auction and the registrant will acknowledge acceptance of the terms outlined herein by paying the \$5000 deposit at the time of registration.**

### **Important Aspects**

- **Inspecting The Property:** Inspections of the property will be held on Tues, Oct 5, 2010 between 9:00-11:00 AM, and Wed, Oct 6, 2010- between 9:00-11:00 AM.

Inspection at other times by appointment, and based on availability may be arranged by calling Chris O'Dea at O'Dea's Realty and Auction Room at 709-685-6559. Bidders are expected to have done their own due diligence and determined the suitability and condition of the property before the auction. The buyer shall accept the property in an as-is condition as of the closing date and the buyer agrees that neither the seller nor the auctioneer makes any representation or warranties of any kind whatsoever, expressed or implied, to the buyer as to condition or fitness of the property, environmental or otherwise, or any improvements thereon. Bidders will be obliged to sign a schedule A attached to this file below, prior to receiving a bid card. All descriptions, and measurements provided by the seller or auctioneer are to be used as a guide only. The vendor will prepare a new survey in advance of closing. Subject to confirmation by the new survey, the property measures approximately 70 ft by 96 ft by 70 ft by 101 ft. The buyer shall have satisfied himself as to the location and condition of the property, and all descriptions with respect thereto, prior to bidding.

- **The Vendor reserves the right to sell the property in question any time up to the time of the auction**
  - **Reserve Price:** The property is subject to a "reserve price". This is the minimum price that the vendor will be prepared to accept for the property. The reserve price is \$275,000.

The auctioneer has no authority to sell under the reserve price, however should the reserve price be equalled or exceeded; the property is "on the market" and can be sold to the highest bidder on the fall of the hammer.

- **Other Considerations:** To know exactly what you are buying, you may consider having the property inspected by a professional building inspector, property appraiser, architect, or other consultants as appropriate.

#### **□ Bidding At Auction**

When the property is knocked down to you as the successful bidder, you are required to sign the Contract for Sale immediately and pay the Benson Myles in Trust, by certified cheque, the balance of the deposit to 10% of the selling price before 3:30 PM on the day of the auction. Otherwise the \$5000 paid at registration will be forfeited to the Vendor.

Properties are being sold as is where is with no warrantee being offered by the vendor or vendor's agent.

**The \$10% deposit is irrevocable unless the vendor cannot provide clear title, in which case it will be returned.**

**To bid at an auction:**

- Attract the auctioneer's attention by using a gesture such as raising your hand, calling out or nodding your head when you catch the auctioneer's eye.**
- Don't hesitate to indicate your interest when the auction starts and the auctioneer calls for your bids.**
- Don't leave your bidding until the last moment - you may just miss the property. Remember, subject to the reserve price, when the hammer falls the highest bidder is the purchaser.**

**Bidders will register in advance and will need to provide photo ID in the form of a driver's license or passport or other ID as deemed appropriate by the vendor's agent.**

**Closing date will be within 45 days from the auction.**

**The buyer agrees that the auctioneer is not acting as his or her buyer's agent, and that the buyer is a Customer, and the Auctioneer's only obligation is to provide information relating to the auction and conduct the auction on behalf of the vendor and the buyer agrees that he or she is not represented by the auctioneer.**

**Registration form associated with the Public Auction 54 Polpar Ave**

**Name** \_\_\_\_\_

**Name of Business** \_\_\_\_\_

**Bid Number** \_\_\_\_\_

**Driver's License ID number** \_\_\_\_\_

**Mailing address home** \_\_\_\_\_

\_\_\_\_\_

**Mailing address business** \_\_\_\_\_

\_\_\_\_\_

**Business Phone number** \_\_\_\_\_

**Cell Phone number** \_\_\_\_\_

**Home Phone Number** \_\_\_\_\_

**Email address** \_\_\_\_\_

**I have read and agree with all of the contents of the document titled "Notice of Public Auction" associated with the sale of 54 Poplar Ave. and all conditions outlined therein, as viewed by me on registration for the auction of the properties on 54 Poplar Ave and hereby submit my \$5000 certified cheque or bank draft for my bid card. I understand that the cheque will be non refundable for the successful bidder and that it will be returned for the unsuccessful bidders. I further agree that the purchase for successful bidder is unconditional with the exception of the condition of clear title being provided by the vendor. I further agree, if I am the successful bidder, I will provide a second certified cheque or bank draft payable to Benson Myles in Trust, by 3:30 PM on the day of the auction, in the amount that represents the difference between 10% of the purchase price and the \$5000 bid deposit payment. I further agree that both cheques are non refundable for successful bidder and will be applied to closing which will take place within 45 days of the date of the auction. I further agree that the property being offered for sale by auction is being offered on an as is where is basis and that neither the seller or the auctioneer makes any representation or warranties of any kind whatsoever, expressed or implied, to the buyer as to condition or fitness of the property, environmental or otherwise, or any improvements thereon.**

**Signature of Registrant** \_\_\_\_\_

**Date** \_\_\_\_\_ **Time** \_\_\_\_\_

**Witnessed by** \_\_\_\_\_

**Agreement of Purchase and Sale**

I, We \_\_\_\_\_ of  
\_\_\_\_\_

Hereinafter called the purchaser(S), having inspected the property known civically as:  
54 Poplar Ave, St. John's, in the Province of Newfoundland and Labrador (hereinafter  
called the property) offer to purchase the property from :

\_\_\_\_\_ (hereinafter called the Vendor)

At a price of \$ \_\_\_\_\_

of lawful money of Canada upon the following terms and conditions payable as follows:

10 percent of the purchase price , or \_\_\_\_\_ as a deposit representing the  
\$5000 bid deposit plus the balance payable by 3:30 PM on the date of this agreement  
payable by certified cheque to Benson Myles in Trust.

Balance of \_\_\_\_\_ due on closing by bank draft or certified  
cheque.

The buyer agrees that the auctioneer is not acting as his or her buyer's agent,  
and that the buyer is a Customer, and the Auctioneer's only obligation is to  
provide information relating to the auction and conduct the auction on behalf of  
the vendor and the buyer agrees that he or she is not represented by the  
auctioneer.

On the following terms and conditions:

1. Providing the title is good and free of all encumbrances, except as aforesaid, and  
except as to any restrictions or covenants that run with the land and the vendor  
will provide a current property survey.
2. Property taxes to be apportioned and allowed to date herein fixed for completion  
for the sale.
3. Vacant possession to be given by vendor and the transaction of purchase and sale  
shall be completed on or before \_\_\_\_\_ day of \_\_\_\_\_, A.D.  
2010

Witness initials \_\_\_\_\_ Purchaser's Initials \_\_\_\_\_

Witness Initials \_\_\_\_\_ Vendor's Initials \_\_\_\_\_

4. This offer, when accepted, shall constitute a binding contract of purchase and sale, and time shall in all respects be of the essence hereof.

5. This offer and its acceptance to be read with all changes of gender or number required by the context

6. This agreement shall ensure to the benefit of and be binding upon all parties hereto, and their respective heirs, executors, administrators, successors, and assigns.

7. I agree to buy upon the above terms, and I understand that this offer shall not constitute a binding agreement of sale unless signed by the vendor.

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
A.D. 2010

Witness \_\_\_\_\_

Purchaser \_\_\_\_\_

Witness \_\_\_\_\_

Purchaser \_\_\_\_\_

I hereby accept the above offer and agree to sell on the above terms

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
A.D. 2010

Witness \_\_\_\_\_

Vendor \_\_\_\_\_

Purchaser's Solicitor \_\_\_\_\_

Vendor's Solicitor \_\_\_\_\_

**SCHEDULE "A"**  
TO THE AGREEMENT OF PURCHASER AND SALE

54 Poplar Avenue, St. John's, Newfoundland (municipal address)

Estate of Elizabeth Collins to \_\_\_\_\_, (Purchaser)

The following terms and conditions shall apply to and shall form part of the Agreement of Purchase and Sale to which this Schedule applies. Where there is any conflict or discrepancy between the terms and conditions in this Schedule and the terms and conditions in the Agreement of Purchase and Sale. The terms and conditions in this Schedule shall supersede and shall apply in place of such other conflicting or inconsistent terms and conditions:

1. The Vendor will provide a copy of any survey or location certificate in its possession. The Purchaser shall not call for the production of, and the Vendor shall not be required to produce, any deed, document, abstract, survey or other evidence of title or a copy thereof, except such as are in the Vendor's possession or control. With respect to anything produced by the Vendor, including a survey or location certificate, the Purchaser acknowledges that the Vendor makes no representations or warranties as to the accuracy of same.
2. The description of the property is believed to be correct, but if any misstatement, error or omission is found in its particulars, the Purchaser shall not be entitled to any abatement or to declare the Agreement null and void as a result thereof.
3. This Agreement is made without representation, warranty or condition with respect to the fitness, condition, zoning or lawful use of the property. The Purchaser acknowledges having inspected the property and that the property is being purchased on an "as is, where is" basis subject to existing tenancies. Without limiting the foregoing, the Purchaser acknowledges that the property is being purchased subject to all Judicial, municipal, environmental and any other governmental by-laws, agreements, restrictions, legislation, directives, policies, regulations, notices, ordinances and orders affecting or regarding its condition or use (including deficiency and other notices, work and other orders), as well as all registered or unregistered restrictions, agreements, rights of way, easements or covenants running with the land regardless of whether there is compliance.
4. The Vendor will not provide to the Purchaser a certificate certifying that the property is not subject to the goods and services tax ("G.S.T.)/harmonized sales tax ("H.S.T").
5. The conveyance shall be subject to any existing tenancy or occupancy disclosed by a search of title, or by an inspection of the property.
6. The Vendor is selling only such interest as it may have in the fixtures and chattels referred to in the Agreement if any and/or located on the property and does not warrant title thereto. The Vendor will not be liable for the removal of any chattels found on the property prior to or on the date of closing. On closing, the Purchaser may have possession of the fixtures and chattels then on or about the property "as is". No bill of sale or other title documentation will be provided by the Vendor and there will be no adjustment or abatement of any kind to the purchase price with respect to fixtures and chattels.
7. If the property is a condominium, (i) the Vendor does not have to deliver to the Purchaser any condominium and related documents, except a consent to the issuance of an estoppel certificate. (ii) notwithstanding anything to the contrary in this agreement, the Vendor makes no representations and warranties and agrees to no conditions about condominium matters, including potential special assessments or legal actions pending against the condominium corporation, if any, and the Purchaser shall not be entitled to terminate or to any abatement or damages relating to these matters and (iii) if special assessments are levied prior to closing, the Vendor is responsible for amounts payable on accounts thereof to closing.
8. The Vendor and Purchaser agree that the acceptance of this offer communicated by confirmed facsimile transmission will be binding upon the parties. The Purchaser agrees to promptly deliver an executed original Agreement and Schedule "A" to the Vendor.

9. The Vendor makes no representation whatsoever as to whether the property has been insulated with urea formaldehyde foam insulation or whether the property contains any other substances which may be considered hazardous or toxic within the meaning of provincial or federal environmental protection or similar legislation.
10. The Vendor's only obligation with respect to municipal improvements shall be to pay any arrears, annual installments and interest on same with respect to these improvements as are due and payable to the municipality as of the date of closing. The Purchaser agrees to assume the balance of all improvements completed or uncompleted as of the Closing Date.
11. Purchaser shall assume any outstanding leases for any leased equipment, including but not limited to water heaters, furnaces and propane tanks.
12. Municipal taxes, water rates and fuel to be apportioned up to the Closing Date.

~~(DELETE THE INAPPROPRIATE PARAGRAPHS)  
(IF PROPERTY VACANT, DELETE ALL THREE OPTIONS)  
(Where property to be sold with occupants as is)~~

- ~~13. The Vendor makes no representation whatever with reference to the tenancy or occupancy of the property and the Vendor will transfer possession subject to such tenancies and occupancies as may exist at closing without any adjustments with respect thereto.~~

~~(Where property to be sold with tenants with adjustments)~~

- ~~13. The purchaser agrees to assume all tenancies as may be existing on closing. The Vendor shall provide the Purchaser at closing with any documentation relating to these tenancies which it has in its possession but shall not be required to provide any documentation signed by each tenant confirming the status of the tenancy. Adjustments shall be for current rentals and prepaid rents which have been actually received by the Vendor. All payments must have cleared the banking system.~~

~~(Where property to be sold with tenants with adjustments)~~

- ~~13. In the event that vacant possession cannot be provided by the closing date, the Vendor may, at its sole option, extend the closing date for any period or periods not exceeding in total 60 days. If vacant possession cannot be provided by the expiry of the extension period or periods, the Purchaser may accept the property with existing occupants or other party may terminate the Agreement without penalty.~~

PURCHASER

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

Estate of Elizabeth Collins

Per: \_\_\_\_\_