

MEMORANDUM OF FORECLOSURE SALE

BNP Paribas, an agent on behalf of certain co-lenders, having an address at 787 Seventh Avenue, New York, New York 10019 (the "Mortgagee" and the "Seller"), holder of that certain Mortgage and Security Agreement from **Kill Mountain Realty LLC** (the "Mortgagor") to Kennedy Funding, Inc. dated December 16, 2008 and recorded in the Grafton County Registry of Deeds at Book 3571, Page 243 (the "Mortgage") which Mortgage is now held by **BNP Paribas**, as assignee of Kennedy Funding, Inc. pursuant to Assignment of Mortgage, Assignment of Leases and Rents and Loan Documents dated November 10, 2011 and recorded in the Grafton County Registry of Deeds at Book 3837, Page 365, has this day, pursuant to the power of sale contained in the said Mortgage, conducted by public auction a foreclosure sale of certain condominium units at Hebron Country Estates, A Condominium (the "Condominium") located in Hebron, Grafton County, New Hampshire, including **Home Sites 1, 2, 8, 10, 11, 17, 18, 19, 20, 21, 23, 24 and 26** of the Condominium and allocated common area with respect thereto (each a "Home Site" and collectively, the "Mortgaged Property") mortgaged thereby in accordance with notices given as required by statute and by said Mortgage.

The Condominium was formed under Declaration of Condominium dated April 7, 2006 and recorded in the Grafton County Registry of Deeds at Book 3353, Page 757, as amended by First Amendment dated March 28, 2007 and recorded in said Registry at Book 3393, Page 116, as amended by Second Amendment dated November 25, 2008 and recorded in said Registry at Book 3571, Page 223, as amended by Third Amendment dated September 9, 2010 and recorded in said Registry at Book 3729, Page 554, as affected by Amended and Restated Declaration of Condominium for Hebron Country Estates, A Condominium, dated April 7, 2011 and recorded in said Registry at Book 3799, Page 571 (collectively, the "Declaration"). The Mortgaged Property is shown on a certain Condominium Site Plan prepared by Alan M. Barnard, LLS dated May 2, 2007 and recorded in the Grafton County Registry of Deeds as Plan No. 12798.

It is hereby acknowledged that the highest bid made at said auction sale with respect to the real property described in Exhibit A attached hereto (the "Purchased Property") was made by:

Purchaser: _____
Address: _____

Telephone No.: _____
Email Address: _____

(hereinafter the "Purchaser") and that the terms of sale are as follows:

1. **Bid.** The Purchaser acknowledges that, prior to making its bid, the Purchaser understood that its bid was irrevocable and subject to the terms and conditions of the Notice of Foreclosure Sale and this Memorandum of Foreclosure Sale (hereinafter the “Agreement”).

2. **Purchase Price.** The total purchase price for the Purchased Property shall be _____ and No/100ths Dollars (\$_____), which is that amount bid by the Purchaser at the foreclosure sale. The Mortgagee and the Purchaser agree that in accordance with the published terms of sale, the Purchaser has deposited with the Mortgagee, or its agent, the sum of Five Thousand and No/100ths Dollars (\$5,000.00) (the “Initial Deposit”), receipt of which is hereby acknowledged. Not later than five (5) business days from the date of this Agreement, the Purchaser shall pay to the Mortgagee, or Mortgagee’s agent, an additional amount equal to the difference between the Initial Deposit and ten percent (10%) of the Purchase Price (the “Additional Deposit” and together with the Initial Deposit, the “Deposit”). The balance of the Purchase Price shall be paid to the Mortgagee on the date of the Closing by wire transfer.

3. **Title and Deed.** At the Closing, upon payment of the balance due under Paragraph 2, above, the Mortgagee shall convey the Purchased Property to the Purchaser, or its assignee, by foreclosure deed in accordance with N.H. RSA 477:31 and 479:26.

4. **Closing.** The Closing shall be held at the offices of Cleveland, Waters and Bass, P.A., Two Capital Plaza, Concord, New Hampshire within forty-five (45) days of the date hereof (i.e. on or before July 11, 2017) at 11:00 a.m. The parties agree that TIME IS OF THE ESSENCE as to this Agreement.

5. **Risk of Loss.** The Purchaser hereby acknowledges that all risk or damage to Purchased Property has been assumed and shall be borne by the Purchaser as of the close of the bidding with respect to the Purchased Property.

6. **Prorations.** There shall be no proration of any expense or income associated with the Purchased Property. In particular, and without limitation, there shall be no proration of utilities, water expenses, fuel oil, real estate taxes, transfer taxes, or any other expense or asset associated with the Purchased Property.

7. **Recording Fees and Revenue Stamps.** At Closing, the Purchaser shall pay all of the revenue stamps assessed under New Hampshire RSA Chapter 78-B. The Purchaser shall pay the fees associated with the recording of the foreclosure deed and related documents.

8. **Warranties and Representations.**

a. By execution hereof, the Purchaser hereby acknowledges that the Purchased Property is being sold subject to any unpaid real estate taxes and other municipal assessments and liens therefor, and all other liens, easements, rights and encumbrances of any and every nature, including, without limitation, hazardous waste liens, if any, and the rights of tenants in possession, if any, whether or not of record, which may be entitled to precedence over the Mortgage. The Purchaser also acknowledges that Purchaser shall be responsible for the payment of any debts arising out of the aforementioned taxes, liens, easements, rights and encumbrances (the “debts”) in addition to the total Purchase Price set forth in Paragraph 2,

above.

b. The Mortgagee makes and shall make no warranties or representations of any kind with respect to the Purchased Property. In particular, and without limiting the foregoing, the Mortgagee makes and shall make no warranty or representation regarding the present or future development, use or occupation of the Purchased Property, the validity of any permits affecting the Purchased Property, the subdivision of the Purchased Property, the legal status or accounts of the Condominium or any unit owner's association with respect thereto, compliance of the Purchased Property with applicable permits, zoning, building codes, approvals, exemptions or other applicable laws, ordinances or regulations, the condition, fitness or structural soundness of the Purchased Property, the state of construction of or the ability to construct improvements on the Purchased Property, the state of construction of or the ability to construct water, sewage disposal and other utility systems on the Purchased Property, the existence or non-existence of hazardous materials, lead paint, radon gas or arsenic on or at the Purchased Property, the acreage of the Purchased Property, title to the Purchased Property, the rent rolls of the Purchased Property, the validity of any lease(s) affecting the Purchased Property, or any other matter. The Purchased Property shall be conveyed "AS IS" and "WHERE IS" and "WITH ALL FAULTS". THE MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING TITLE TO ANY SUCH FIXTURES OR OTHER PERSONALTY.

c. The Purchaser expressly acknowledges that any warranty or representation other than those contained herein made by any person is without authority.

d. By execution hereof, the Purchaser acknowledges receipt of certain notifications made pursuant to New Hampshire RSA 477:4-d and 4-f prior to executing this Agreement.

e. The Purchaser acknowledges and represents, and shall, at the Closing, acknowledge and represent, that the Purchaser has duly inspected the Purchased Property, the title thereto, the occupancy thereof, the Declaration and all other matters in connection with the purchase of the Purchased Property by itself and by such experts as the Purchaser deems reasonable and prudent.

f. The Purchaser agrees to indemnify and hold the Mortgagee harmless from all claims or injuries, however arising, from any potential defects, hidden or otherwise, in the Purchased Property, and further agrees to indemnify and hold the Mortgagee harmless from any actions, claims or causes of action by any person whatsoever brought or made after the Closing.

9. Real Estate Commission. Each party represents to the other that no real estate broker, agent or finder's fee is due with respect to the sale of the Purchased Property except the fee to the auctioneer, James R. St. Jean Auctioneers, Inc., which the Mortgagee shall pay. The Purchaser agrees to hold the Mortgagee harmless from the claims of any broker or finder provided the claims are based upon having shown the Purchased Property to the Purchaser or having interested the Purchaser in the Purchased Property.

10. Default.

a. In the event of the Mortgagee's default in its obligations hereunder for any reason whatsoever, upon the return of the Deposit to the Purchaser, the Mortgagee will have no further obligation to the Purchaser and this Agreement will be null and void. The remedies set forth in this paragraph are the sole and exclusive remedies available to Purchaser and no other damages, rights or remedies shall in any case be collectible, enforceable or available to Purchaser against Mortgagee. Purchaser expressly waives any right to seek damages against Mortgagee.

b. In the event of the Purchaser's default hereunder, the Mortgagee may, at its option, retain the Deposit as full liquidated damages, or may hold said Deposit on account of the damages actually sustained by the Mortgagee, and may enforce all of its rights in law or in equity that it may have as a result of the Purchaser's default.

c. In the event of a default by the Purchaser, the Mortgagee may, at its option, and in lieu of all other remedies hereunder:

- i. retain the Deposit;
- ii. effect and receive an assignment of the Purchaser's rights hereunder to itself, or to another bidder from the auction sale; and
- iii. acquire the Purchased Property as purchaser, or sell the Purchased Property to another bidder from the auction sale, for a price equal to the Purchase Price, against which price the Deposit may be credited.

11. Miscellaneous.

a. Notices. All notices required under this Agreement shall be deemed given when received and shall be mailed by United States mail, postage prepaid, certified, return receipt requested, and shall be sent to the parties at the addresses first set forth above, together with a copy of each such notice to Seller's attorneys as follows:

Cleveland, Waters and Bass, P.A.
Two Capital Plaza
P.O. Box 1137
Concord, NH 03302-1137
Attention: Timothy E. Britain, Esquire
Email: britaint@cwbp.com

b. Governing Law. This Agreement is made in and shall be interpreted and enforced according to New Hampshire law.

c. Integration. This Agreement sets forth in full all the agreements of the parties with respect to the subject matter hereof. All prior discussions are merged herein. Any amendment hereto shall be effective only if executed with all the formalities hereof by the party against whom the amendment is asserted.

d. Captions. The captions in this Agreement are inserted for convenience or reference only and do not define, describe, or limit the scope or intent of this Agreement or any of its terms.

e. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, legal representatives, successors and assigns; provided, however, the rights of the Purchaser hereunder are not assignable or transferable without the prior written consent of the Mortgagee.

f. Gender and Number. All words denoting gender or number shall be construed to include any other gender or number as the context and facts require.

IN WITNESS WHEREOF, the parties have duly executed this Agreement this 26th day of May, 2017, to duplicate original counterparts hereof.

MORTGAGEE/SELLER:

BNP PARIBAS
By Its Attorneys,

CLEVELAND, WATERS AND BASS, P.A.

Witness

By: _____
Timothy E. Britain, Esquire
Two Capital Plaza
P.O. Box 1137
Concord NH 03302-1137
(603) 224-7761

PURCHASER(S):

Witness

By: _____
Name: _____

Witness

By: _____
Name: _____

EXHIBIT A
Description of Purchased Property

Home Site(s) (as designated below; select and complete as appropriate) located in the Hebron Country Estates Condominium under Declaration of Condominium dated April 7, 2006 and recorded in the Grafton County Registry of Deeds at Book 3353, Page 757, as amended by First Amendment dated March 28, 2007 and recorded in said Registry at Book 3393, Page 116, as amended by Second Amendment dated November 25, 2008 and recorded in said Registry at Book 3571, Page 223, as amended by Third Amendment dated September 9, 2010 and recorded in said Registry at Book 3729, Page 554, as affected by Amended and Restated Declaration of Condominium for Hebron Country Estates, A Condominium, dated April 7, 2011 and recorded in said Registry at Book 3799, Page 571:

- Home Site 1 (**Tax Map 000018 000030 000001**)
- Home Site 2 (**Tax Map 000018 000030 000002**)
- Home Site 8 (**Tax Map 000018 000030 000008**)
- Home Site 10 (**Tax Map 000018 000030 000010**)
- Home Site 11 (**Tax Map 000018 000030 000011**)
- Home Site 17 (**Tax Map 000018 000030 000017**)
- Home Site 18 (**Tax Map 000018 000030 000018**)
- Home Site 19 (**Tax Map 000018 000030 000019**)
- Home Site 20 (**Tax Map 000018 000030 000020**)
- Home Site 21 (**Tax Map 000018 000030 000021**)
- Home Site 23 (**Tax Map 000018 000030 000023**)
- Home Site 24 (**Tax Map 000018 000030 000024**)
- Home Site 26 (**Tax Map 000018 000030 000026**).