

## MEMORANDUM OF SALE

This Memorandum of Sale is made this 18<sup>th</sup> day of October, 2012, by and among NEWBURYPORT FIVE CENTS SAVINGS BANK, a Massachusetts corporation, whose principal address is 63 State Street, Newburyport, Massachusetts 01950 (the "Mortgagee"), John McInnis of Amesbury, Massachusetts, (the "Auctioneer"), and \_\_\_\_\_ (the "Buyer").

### 1. MORTGAGEE'S SALE AT PUBLIC AUCTION

Pursuant to a public auction conducted on October 18, 2012 by the Auctioneer on behalf of the Mortgagee as foreclosing mortgagee, in exercise of the Power of Sale contained in a Mortgage from Santa Dora Kirby dated June 28, 2007 and recorded with Rockingham County Registry of Deeds at Book 4829, Page 463, and subject to and in accordance with the terms and conditions set forth in that certain Notice of Sale attached hereto as Exhibit A and incorporated herein by reference, and as supplemented by further terms set forth below, the Buyer as the highest bidder agrees to purchase the real property described below (the "Property").

### 2. DESCRIPTION OF THE PROPERTY

The Property shall mean the following, namely:

All that certain property situated in Seabrook, County of Rockingham, and State of New Hampshire being more particularly described in a deed recorded in Book 2422 at Page 597 among the land records of the County set forth above.

Known as: 52 Alison Drive

### 3. TRANSFER OF THE PROPERTY

The real property shall be conveyed by the Statutory Form of Foreclosure Deed under Power of Sale, N.H. Rev. Stat. §477:31.

The real property shall be conveyed and transferred subject to and with the benefit of all rights, rights of way, restrictions, easements, covenants, liens or claims in the nature of liens, improvements, public assessments, any outstanding tenancies and/or leases, the rights of parties in possession, any and all unpaid taxes, tax titles, municipal taxes, tax liens, water and sewer liens and any other municipal assessments or liens or existing encumbrances, whether or not of record, having priority over said mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed, and to the provisions of applicable federal, state and local law, including, but not limited to, all liens for hazardous waste cleanup asserted by the United States of America, the State of New Hampshire, or any other political subdivision thereof.

The total bid price will be set forth as the consideration in the deed to the Property.

#### **4. BUYER'S RESPONSIBILITY FOR COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.**

The Buyer shall assume responsibility for and costs relating to compliance with all federal, state and local laws. Mortgagee makes no warranties or representations regarding the Property's current compliance with any federal, state or local regulations or laws, including building, zoning, sanitary and environmental laws.

#### **5. PRICE AND DEPOSIT**

The bid price for which the Property has been sold to the Buyer is

\_\_\_\_\_ Dollars

(\$\_\_\_\_\_) of which Ten Thousand and 00/100 (\$10,000.00) has been paid this day in accordance with the terms of the mortgagee's notice of sale. The sale shall not be deemed completed until the Buyer has made his or her deposit and signed this Memorandum of Sale. The balance of the purchase price shall be paid by certified check or bank check at the time of the delivery of the deed. Buyer shall execute such other

documentation as is reasonably requested by Mortgagee, including, without limitation, a Receipt and Acknowledgement of Delivery of Deed and Affidavit and a Declaration of Consideration. The Mortgagee shall be entitled to any interest earned on the deposit and the amount to be paid by the Buyer shall not be adjusted to reflect any interest earned on the deposit.

## **6. CLOSING**

The deed and associated papers shall be delivered and the balance of the consideration paid at the office of Connolly & Connolly, 51 Green Street, Newburyport, Massachusetts on or before ten o'clock (10:00 A.M.) on the thirtieth day following the sale, provided that such day is one on which said Registry is open for business, and if not, then on the next day on which said Registry is open for business (the "Closing"). Time is of the essence of this agreement.

## **7. TITLE**

No representation or warranty of any kind whatsoever have been made by or on behalf of the Mortgagee concerning the state of the title to the premises. Mortgagee shall transfer to the Buyer only such title as Mortgagee has pursuant to its Mortgage Deed. In the event the Mortgagee cannot convey title to the Property as stipulated, the deposit, and if applicable, the balance of the purchase price, shall be refunded and all rights hereunder shall cease, and the Buyer shall have no recourse against the Mortgagee, or its employees, agents and representatives, whether at law or in equity; provided, however, that Buyer shall have the election to accept such title as the Mortgagee can deliver to the Property in its then condition and to pay therefor the purchase price without deduction, in which event the Mortgagee shall convey such title.

## **8. RISK OF LOSS**

The Buyer acknowledges that from and after this date he or she shall have the sole risk of loss or damage to the premises that might occur upon the conclusion of the foreclosure sale, and the Mortgagee shall have no responsibility for maintaining insurance on the

premises. If the Property is damaged by fire or other casualty prior to the closing, Buyer shall accept a deed to the Property and an assignment of so much of the insurance proceeds, if any, as has not been used in the restoration of the Property prior to the Closing, to the extent any such proceeds may be available to the Mortgagee, Buyer paying therefor the full balance of the bid price.

#### **9. ACCEPTANCE OF DEED**

The acceptance of a deed to the Property by the Buyer or Buyer's nominee, as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed or arising out of said public auction on the part of the Mortgagee to be performed or observed.

#### **10. CONDITION OF THE PREMISES**

The Property shall be conveyed in "as-is" condition. The Buyer acknowledges that Buyer has not been influenced to enter this transaction by, nor has it relied upon, any warranties or representations of the Mortgagee or the Auctioneer regarding the condition or possession of the Property: the Buyer accepts the premises in an as-is condition with no express or implied warranties of any kind. No personal property of any nature is included in this conveyance except as expressly set forth herein. If, as of this date, there is any tenant or occupant in residence, the Buyer, if he or she wishes to evict such tenant or occupant, must do so at his or her own expense.

#### **11. BUYER'S DEFAULT; DAMAGES**

If the Buyer shall fail to fulfill the Buyer's agreements herein, all deposits made hereunder by the Buyer shall be retained by the Mortgagee and the Buyer shall reimburse the Mortgagee for all costs and expenses incurred by the Mortgagee, in excess of the amount of the deposit, due to the Buyer's default, including the costs and expenses of subsequent sale of the Property or any portion thereof and attorneys' and auctioneers' fees in connection therewith. The Mortgagee shall also be free to sell the Property to the second highest bidder at the public auction in accordance with the terms announced at the public

auction.

## 12. DEED STAMPS AND RECORDING FEES

Buyer shall pay for and cancel for the benefit of the Mortgagee all tax stamps required to be affixed to the foreclosure deed by the law of the State of New Hampshire. The Buyer shall pay all recording fees in connection with the transfer of the Property.

## 13. RADON GAS AND LEAD PAINT NOTIFICATION

Pursuant to New Hampshire R.S.A. 477-:4-a, Mortgagee hereby notifies and Buyer hereby acknowledges receipt of notification of the following:

Radon Gas: Radon gas, the product of the decay of radioactive materials in rock may be found in some areas of New Hampshire. This gas may pass into a structure through the ground or through water from a deep well. Testing can establish its presence and equipment is available to remove it from the air or water.

Lead Paint: Before 1977, paint containing lead may have been used in structures. The presence of flaking lead paint can present a serious health hazard, especially to young children and pregnant women. Tests are available to determine whether lead is present.

## 14. WATER SUPPLY AND SEWAGE DISPOSAL DISCLOSURE

Pursuant to RSA 477:4-c, Mortgagee hereby notifies and Buyer hereby acknowledges receipt of water supply and sewage disposal disclosure, attached as Exhibit B hereto.

## 15. CONSTRUCTION OF AGREEMENT

This instrument, executed in triplicate, is to be construed as a New Hampshire contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and enures to the benefit of the parties hereto and their respective heirs,

devises, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both the Mortgagee and the Buyer. If two or more persons are named herein as Buyer, their obligations hereunder shall be joint and several. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this memorandum or to be used in determining the intent of the parties to it.

## 16. SUCCESSOR AND ASSIGNS

This Agreement shall be binding upon and shall inure the benefit of the parties hereto and their respective successors and assigns. Any assignment of rights under this Agreement by Buyer must be consented to by Mortgagee, which consent shall not be unreasonably withheld, and must be in writing in form and content satisfactory to Mortgagee.

IN WITNESS WHEREOF, the parties have executed this Memorandum as a sealed instrument as of the date first written above.

MORTGAGEE

Newburyport Five Cents Savings Bank

BY: \_\_\_\_\_

Kimberley A. Foulkes, Senior Vice-President

\_\_\_\_\_  
John McInnis, AUCTIONEER

\_\_\_\_\_  
, BUYER

EXHIBIT "A"

**Notice of Mortgagee's Foreclosure Sale of Real Estate**

Pursuant to the Mortgage from Santa Dora Kirby (the "Mortgagor") to Newburyport Five Cents Savings Bank (the "Mortgagee"), dated June 28, 2007 and recorded in the Rockingham County Registry of Deeds (the "Registry") at Book 4829, Page 463 (the "Mortgage"), and pursuant to the remedies set forth in the Mortgage and N.H. RSA 479:25, the Mortgagee, for breach of the conditions of the Mortgage and other loan documents secured thereby, and pursuant to the power of sale contained in the Mortgage, shall foreclose upon and sell the real property at PUBLIC AUCTION ON October 18, 2012 AT 10:00 A.M. TO BE HELD AT THE PREMISES LOCATED AT: 52 Alison Drive, Seabrook, County of Rockingham, State of New Hampshire, as further described as follows ("the Mortgaged Premises"):

All that certain property situated in Seabrook, County of Rockingham, and State of New Hampshire being more particularly described in a deed recorded in Book 2422 at Page 597 among the land records of the County set forth above.

Known as: 52 Alison Drive

1. Premises to be sold and conveyed subject to and with the benefit of all rights, rights of way, restrictions, easements, covenants, liens or claims in the nature of liens, improvements, public assessments, any and all unpaid taxes, tax titles, tax liens, water and sewer liens and any other municipal assessments or liens or existing encumbrances, whether or not of record, having priority over said mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed.

2. All property shall be conveyed "AS IS, WHERE IS". Mortgagee makes no warranties or representations of any kind in connection with the property and/or any rights which may be conveyed with the property. In particular, and without limiting the foregoing, Mortgagee makes no warranty or representation regarding the title to the property; the current status or performance of any leases; the accuracy of any statement as to the boundaries, acreage or frontage; the habitability of any structures; the condition of any wells or septic

systems; the availability of any utilities, access, income potential, rental or income information; compliance of the property with applicable zoning or other land use laws or regulations; or the existence or non-existence of hazardous material, asbestos, radon, lead paint or other health hazards. MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MORTGAGEE EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING TITLE TO ANY PERSONALTY. Risk of loss between the auction and closing shall be entirely on the successful bidder. Any warranty or representation made by any auctioneer or other person is not binding on Mortgagee. Mortgagee is expressly not responsible for any security deposits not in its possession.

3. Only qualified bidders may register to bid. In order to register to bid, such bidder shall tender to the auctioneer a certified check, or other form of payment satisfactory to the Mortgagee, in the amount of Ten Thousand Dollars (\$10,000.00) as the deposit. The deposits tendered by unsuccessful bidders shall be endorsed over and returned to them at the conclusion of the foreclosure auction. The deposit tendered by the successful bidder (the "Deposit") is non-refundable upon the lowering of the gavel. If the successful bidder neglects or refuses, for any reason, to execute the Memorandum of Sale, the Deposit shall be retained by Mortgagee.

4. The successful bidder shall be required to execute a Memorandum of Sale at the conclusion of the auction. Copies of the Memorandum of Sale can be obtained from the undersigned prior to the auction. Closing shall occur within thirty (30) days of the date of the auction, time being of the essence. At Closing the Mortgagee shall deliver its Foreclosure Deed and Affidavit of the acts undertaken by it pursuant to N.H. RSA 479:26, and the Purchaser shall pay the balance of the purchase price to Mortgagee by certified check or wire transfer. The successful bidder shall be responsible for 100% of the New Hampshire real estate transfer tax. There shall be no pro ration of real estate taxes, rents, fuel or any other item of expense or income. Failure of the successful bidder to close the sale, for any reason whatsoever, other than failure of Mortgagee to deliver its Foreclosure Deed and Affidavit, shall result in forfeiture of the Deposit as liquidated damages.

5. The successful bidder shall not be responsible for any fees due to the



auctioneer. However, the successful bidder shall be responsible for any real estate commission or finder's fee due and payable to any other person and in no event shall Mortgagee or any of its agents be responsible for such fees or commissions.

6. The Mortgagee hereby reserves the right to (i) cancel the sale, (ii) postpone the sale one or more times to a date certain by announcement made prior to or at the time of the sale without further public notice, (iii) bid at and purchase the mortgaged property, (iv) reject any and all bids, (v) change the terms of sale stated in this notice by oral or written announcement made at any time before or during the auction sale and such changes shall be binding upon all bidders, and (vi) waive the reading of all or portions of the notice of the sale provided that copies of this notice are made available to bidders at the time and place of sale.

7. The Mortgagee, in its sole discretion, reserves the option to accept back-up foreclosure bids. If the successful bidder fails to complete the purchase of the mortgaged premises as provided in the aforementioned Memorandum of Sale, the Deposit shall be retained by the Mortgagee as liquidated damages, and the Mortgagee may sell the mortgaged premises to the party submitting the next highest bid at the auction sale, or to sell the mortgaged premises to itself at such next highest bid.

8. Pursuant to RSA 479:25, the Mortgagor is notified as follows:  
YOU ARE HEREBY NOTIFIED THAT YOU HAVE A RIGHT TO PETITION THE SUPERIOR COURT FOR THE COUNTY IN WHICH THE MORTGAGED PREMISES ARE SITUATED, WITH SERVICE UPON THE MORTGAGEE, AND UPON SUCH BOND AS THE COURT MAY REQUIRE, TO ENJOIN THE SCHEDULED FORECLOSURE SALE.

9. For more information about the Premises, please call McInnis Auctioneers at 978-388-0400.

Dated at Newburyport, Massachusetts, this 20<sup>th</sup> day of September, 2012.

Newburyport Five Cents Savings Bank

By its attorney,

Connolly & Connolly

P.O. Box 332

51 Green Street

Newburyport, MA 01950

EXHIBIT B

WATER SUPPLY AND SEWAGE DISPOSAL  
DISCLOSURE PURSUANT TO RSA 477:4-C

MORTGAGEE/

SELLER:     Newburyport Five Cents Savings Bank    

BUYER: \_\_\_\_\_

PROPERTY:     52 Alison Drive, Seabrook, NH 03874    

Seller discloses the following information to Buyer regarding the water supply at the Property:

Type of water supply system:

  XX   Based on appraisal of Property, Seller believes Property is served by municipal water supply

OR

       Based on appraisal of property, Seller believes water is obtained from a well located on the Property.

B. Location:

Information unknown by Seller

C. Malfunctions:

Information unknown by Seller

D. Date of Installation:

Information unknown by Seller

E. Date of most recent water test:

Information unknown by Seller

F. Unsatisfactory water test or water test with notations:

Information unknown by Seller

II. Seller discloses the following information to Buyer regarding the sewage disposal system at the Property:

Size of tank:

Information unknown by Seller

Type of sewage disposal system:

XX Based on appraisal of Property, Seller believes Property is served by municipal sewer system.

OR

     Based on appraisal of Property, Seller believes Property contains a septic system.

C. Location:

Information unknown by Seller

D. Malfunctions:

Information unknown by Seller

E. Age of system:

Information unknown by Seller

F. Date of most recent service:

Information unknown by Seller

G. Name of contractor who services the system:

Information unknown by Seller

MORTGAGEE/SELLER:

Newburyport Five Cents Savings Bank

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By Kimberley A. Foulkes, Senior Vice-President

Buyer acknowledges receipt of this disclosure

BUYER:

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_

Date: \_\_\_\_\_