

PLEASE REVIEW THIS AUCTION PARTICIPATION AGREEMENT CAREFULLY. YOUR RIGHTS ARE SPECIFICALLY DEFINED AND LIMITED IN THIS AGREEMENT. EXCEPT AS MAY BE EXPRESSLY AUTHORIZED BY APPLICABLE LAW, YOU DO NOT HAVE ANY ADDITIONAL RIGHTS RELATING TO THE SUBJECT MATTER HEREIN BEYOND THOSE DESCRIBED IN THIS AGREEMENT.

SELLERS (AND SERVICERS IF APPLICABLE – SERVICERS ARE INVOLVED WITH SHORT SALE AUCTIONS ONLY) HAVE INSTRUCTED THE AUCTIONEER TO AUCTION PROPERTIES PURSUANT TO THE GUIDELINES AND REQUIREMENTS SET FORTH IN THIS AUCTION PARTICIPATION AGREEMENT AND THE “TERMS AND CONDITIONS” ALSO AVAILABLE ON THE WEBSITE.

## 1. DEFINITIONS

**Agreement** - Refers to this Auction Participation Agreement, as amended from time to time.

**Auction** - Refers to an online simulcast in which one or more Properties are made available to Bidders for purchase.

**Auctioneer** - Refers to Xome Inc., Xome CT LLC and/or their Website. The Auctioneer is the Seller's agent (and the Servicer's agent, if applicable).

**Bidder** - Refers to a prospective purchaser at Auction that has registered under the terms of this Agreement. Each Bidder will have a unique User Identification and password in order to access, and bid, at the Auction.

**Borrower** - Refers to the Seller of the Property in a Short Sale Auction.

**Broker/Agent** - Refers to a Real Estate Broker or Real Estate Salesperson that is licensed in the jurisdiction in which the Property is located and who represents a Bidder.

**Business Day** - Refers to any day that is not a Saturday, Sunday or other day on which banks are required or authorized by the laws of the State of Texas to be closed.

**Buyer's Premium** - With respect to each Property offered at Auction, refers to the amount, calculated as a percentage of the Winning Bid, that is payable by the Winning Bidder to the Auctioneer for the Auctioneer's own account. The Buyer's Premium is added to the amount of the Winning Bid to determine the Purchase Price. (Please note that for Short Sale Auctions, the Buyer's Premium will be waived for an Original Offeror if such Original Offeror submits the Highest Bid at the end of the Auction Event and becomes the Winning Bidder. As set forth in the definition below, the Original Offeror refers to the offeror who submitted an offer to the Borrower for Servicer's consideration on a Short Sale Property prior to the Property being entered into the Short Sale Auction.)

**Event** - Refers to the event, conducted either in an online format or through a live event with a corresponding online simulcast, allowing a Bidder to bid for Properties.

**Extended Closing** - Refers to a transaction in which the Seller has agreed to delay the original closing date specified in the Purchase Agreement pursuant to terms set forth in such Purchase Agreement.

**Family Member** - Refers, but is not limited, to a spouse, domestic partner, parent, sibling, child, stepchild, grandchild or grandparent.

**Highest Bid** - With respect to each Property offered at Auction, refers to the final, highest bid that is received and acknowledged by the Auctioneer and submitted to Seller (and to Servicer, if applicable) for review, consideration and acceptance.

**Highest Bidder** - With respect to each Property offered at Auction, refers to the individual and/or entity whose bid at Auction is the highest bid received and acknowledged by Auctioneer.

**Necessary Qualifying Amount** - With respect to each Property offered at Auction, refers to the minimum amount required to be submitted by a Bidder to qualify to bid at the Auction. The default Necessary Qualifying Amount is Two-Thousand Five-Hundred Dollars (\$2,500). At the discretion of the Auctioneer, the Necessary Qualifying Amount may be increased above \$2,500 and shall be identified by the Auctioneer on the Property Details Page for the particular Property. All Bidders are urged to pay close attention to the Property Details Page for each specific Property to determine the Necessary Qualifying Amount.

**Negotiated Bid** - With respect to any Property offered at the Auction, refers to the final amount accepted by Seller following post-Auction negotiations between the Seller and the Bidder who made the Highest Bid at the Auction when such Highest Bid was less than the Reserve Price.

**Occupied** - Refers to any non-Short Sale Auction Property marketed where Bidder assumes all responsibility and liability for any occupancy, and assumes all responsibility, liability and cost of taking possession, including eviction.

**Original Offeror** - Refers to the offeror who submitted an offer to the Borrower for Servicer's consideration on a Short Sale Property prior to the Property being entered into the Short Sale Auction.

**Person** - Refers to a natural person, trust, association, non-profit organization, corporation, limited liability company, partnership and any other entity.

**Pre-Auction** - Offers must be submitted at least 48 hours prior to the start of the Auction Event. If the Pre-Auction offer is not accepted by the Seller before the Auction starts, it will be deemed rejected. If rejected, we encourage all buyers to bid once the Auction begins.

**Privacy Notice** - Refers to the Privacy Notice available on the Website as of the date you register for an Auction Event using the Website.

**Property or Properties** - Refers to real property or mortgage notes relating to real property that are subject to Auction on the Website.

**Property Details Page** - The page on the Website that holds information pertaining to the Property, sometimes also referred to as the Property summary page or Property listing page.

**Purchase Agreement** - Refers to the documents that a Winning Bidder (or a Highest Bidder in a Short Sale Auction) is required to execute (including all addenda) that are in a form acceptable under the terms of this Agreement and to the Seller (and to the Servicer, if applicable). The Purchase Agreement contains the specific terms and conditions for the sale of any Property subject to Auction.

**Recently Foreclosed Auction** - Refers to an Auction of Property that has been designated by the Seller as subject to certain restrictions and exceptions found in Subsection 4(P) including, but not limited to: the removal of any Buyer's Premium, conveyance through a quitclaim deed, and the buyer's acquisition of title insurance at its sole cost and expense. Properties sold as a part of the Recently Foreclosed program have been generally foreclosed in the preceding 30 days but have not been subject to typical REO activities such as: retaining a real estate broker, initiating eviction proceedings or determining occupancy status. Properties sold under the Recently Foreclosure Auction designation may not be available for onsite inspection prior to bidding and throughout closing.

**Related Party** - Refers to owners, principals, officers, directors, agents, employees, independent contractors and subcontractors, as well as the Family Members of such persons, and any entities that are owned or affiliated, in whole or in part, with such persons.

**Reserve Price** - With respect to each property offered at Auction, means the minimum bid established by the Seller (or Servicer, if applicable) prior to the Auction that will qualify the Property to be sold. In the event the Highest Bid does not equal or exceed the Reserve Price, the Bidder submitting the Highest Bid may not qualify as a Winning Bidder but will be deemed the Highest Bidder. Although the Highest Bidder may not meet the Reserve Price, the Highest Bidder still may become the Winning Bidder if the Highest Bid is accepted by Seller, or if the Highest Bidder and Seller negotiate an amount acceptable to Seller that may or may not be equal to or greater than the Reserve Price.

**Seller** - Refers to the seller of Property by way of an Auction on the Website. Seller includes the selling entity as well as any affiliated companies. In a Short Sale Auction only, the Seller is the Borrower.

**Seller's Broker** - With respect to each Property offered at Auction, refers to the licensed real estate broker, if any, hired by Seller to sell the Property.

**Servicer** - As applicable, refers to the financial institution that services the Borrower's mortgage loan, including receiving and processing the Borrower's loan payments. The Servicer is responsible for maximizing the proceeds

from each transaction, including considering Short Sale offers and Highest Bids, and ultimately approving the sale of Property that will result in a short payoff of the mortgage loan securing the Property.

**Short Sale** - Refers to a sale of Property that generates proceeds that are less than the amount that the Borrower owes on the mortgage(s) securing the Property.

**Short Sale Auction** - Refers to an Auction of Property that has been designated by Servicer and Borrower as likely to result in a Short Sale.

**Short Sale Approval Letter** - Refers to a post-Short Sale Auction letter issued by the Servicer that sets forth the Servicer's approved terms and required closing timeframe of the Short Sale transaction.

**Terms and Conditions** - Refers to the Terms and Conditions available on the Website as of the date you register for an Auction Event using the Website.

**Total Purchase Price** - With respect to Properties sold at or subsequent to Auction, refers to the amount of the Winning Bid plus the amount of the Buyer's Premium.

**User Identification** - Refers to the unique identifier assigned to each registered Bidder for an Auction.

**Website** - Refers to the auction website found at [www.xome.com/pages/xome-auction](http://www.xome.com/pages/xome-auction).

**Winning Bid** - With respect to each Property offered at Auction, refers to the final, Highest Bid that has been accepted by the Seller (and the Servicer, if applicable). The term Winning Bid also includes a Negotiated Bid.

**Winning Bidder** - Refers to the Person who, at Auction, places the successful bid that is accepted by the Seller (and the Servicer, if applicable).

## 2. EVENT REGISTRATION AND ELIGIBILITY

You will be required to create a profile as a user and register for the Auction Event in order to place a bid using the Website during "live" bidding in an Auction. You can only bid by using the Website.

Services authorized under the Website are available only to Persons that are able to form legally binding contracts under applicable law. Such services are not available to minors, Persons lacking the requisite mental capacity to bid or to Persons that have been temporarily or permanently suspended from using the Website. If you register to act on behalf of an entity, you represent and warrant that you have the requisite mental capacity to bid and the actual authority to legally bind that entity. If you lack such authority, or if the existence of such authority is challenged, you expressly acknowledge and agree that you may be held individually liable by the Auctioneer, Seller and/or Servicer for all actions taken on behalf of such entity, and for all damages, costs and expenses, including reasonable attorneys' fees.

In connection with the Event registration process, you must authorize a charge to a credit card, or debit card if the debit card functions as a credit card, in the amount of the Necessary Qualifying Amount. The use of a corporate credit card will be conclusive of your authority to act on behalf of, and to bind the corporate cardholder. In doing so, a hold in the amount of the Necessary Qualifying Amount will be placed on the credit card. The hold will be subject to the terms and conditions of the credit card carrier and the carrier's requirements for release of such holds. Bidding will only be allowed when a hold has been satisfactorily placed during the Event Registration process.

When you register to participate in the Auction Event, you agree that the Auctioneer may charge your credit card the amount of the Necessary Qualifying Amount as an authorization and hold in the event you are the Winning Bidder. You expressly permit, and the Auctioneer is authorized to retain, the Necessary Qualifying Amount as liquidated damages if you: (1) do not timely execute and return the Purchase Agreement and all other necessary information and documentation, including completion of the high bid confirmation; or (2) do not timely submit the required earnest money deposit. By agreeing to have your credit card charged in the amount of the Necessary Qualifying Amount, you expressly agree that the damages associated with your breach of the terms of this Agreement equals the amount of the Necessary Qualifying Amount. In so doing, you expressly acknowledge and agree that the amount of the Necessary Qualifying Amount is a reasonable pre-estimate of any damages and that it would be difficult and impractical for you and the Auctioneer to calculate such damages. Auctioneer agrees that it will not attempt to collect

damages beyond the amount of the Necessary Qualifying Amount, even though its damages for such a breach may exceed the amount of the Necessary Qualifying Amount.

Certain users, such as non-institutional investors, may be required to show proof of readily available funds in order to qualify to place a bid for a Property at Auction. Such evidence may include bank and/or financial account statements (evidence of liquid or semi-liquid available assets). Such evidence must be dated within forty-five (45) days of the date of registration for the Auction. Additional documentation may be required by the Auctioneer.

**The purchase of Property will not be contingent on the availability of financing to you. If you intend to finance the purchase of the Property and your financing ceases to be available, you must purchase the Property with cash or you will forfeit the Necessary Qualifying Amount and/or earnest money deposit.** Please refer to Section 4(M) for additional information regarding cancellation and liquidated damages.

Please note that certain jurisdictions may limit the ability of non-United States citizens to acquire Property, and non-United States citizens must conduct their own due diligence in this regard without the assistance of the Auctioneer and its employees.

Your user identification and password information must not be shared with or transferred to any third party. Each Bidder is responsible for any and all bids, and all other actions (including, without limitation, malicious activity), undertaken with the use of such Bidder's User Identification and password. You must take great care to ensure that such information is not accessed or made available to any unauthorized third party. You expressly agree that the Auctioneer, the Website, Seller and Servicer are not responsible for a breach of any user's account information and/or the unauthorized use of such information.

### **3. PROPERTY DESCRIPTION, PRE-BIDDING INVESTIGATION, SURVEY AND DUE DILIGENCE**

**A. Description of the Property.** Any description of Property subject to Auction has been provided by the Seller, or is based solely on visual observation and/or review of public records, and is given solely for identification purposes. No description of Property given on the Website or, otherwise, by the Auctioneer creates any representation or warranty, express or implied, by Auctioneer. Auctioneer is not responsible for any acts or omissions of the Seller or Servicer.

**B. Inspection.** All Bidders must complete any necessary investigatory actions on the Property prior to the Close of Auction. The Property or Properties, including those in Short Sale Auctions, may not be purchased subject to a property inspection. To the extent that a Property is available for inspection, such inspection must occur prior to Auction bidding.

If the Property in a non-Short Sale Auction is Occupied, you acknowledge it will not be eligible for a property inspection at any time, including without limitation prior to the Auction. To the extent that a Property becomes vacant before the close of the non-Short Sale Auction, the rules pertaining to an Occupied Property will prevail. (See Section 3(C) for more information regarding the Auction and sale of non-Short Sale Occupied Properties.)

Each vacant Property may be scheduled to have up to two (2) open houses or may be available for showing by appointment only. Each Bidder acknowledges and agrees that such Bidder is relying solely on such Bidder's independent investigation and/or other analysis of the Property in its existing condition. **EACH BIDDER ACKNOWLEDGES AND AGREES THAT ALL PROPERTY IS OFFERED, AND IS BEING SOLD, IN ITS "AS IS" AND "WHERE IS" CONDITION, WITH ALL FAULTS, DEFECTS AND LIMITATIONS, WHETHER OR NOT APPARENT.**

Any information provided by Seller, Servicer, Seller's Broker or the Auctioneer regarding sizes, floor plans, square footage and/or bedrooms/bathrooms for the Properties are approximations and their accuracy is not warranted or guaranteed by any such parties. Such approximations are based only upon available information provided by the Seller or Servicer. Actual sizes, floor plans, square footage and/or bedroom/bathrooms may vary. The Website does not warrant the accuracy of any information found on its site. Neither Seller, Servicer, Seller's Broker, nor the Auctioneer shall be liable for any allowance, adjustment or revision in value of the Property based upon the failure of the Property, its appliances, or its floor plan to conform to any specific standards and every Person is urged to verify such information independently. Any information provided in the section describing the Property's previous value refers only to the greater of: (1) the Property's assessed value; (2) a recent real estate broker price opinion; (3) the

value of the Property as determined by an appraisal that was obtained in connection with the most recent mortgage securing the Property; or (4) a recent asking price in connection with the sale of the Property.

You acknowledge and agree that you are bidding for and, if you are the Winning Bidder, acquiring the Property in its present state and condition, with all defects, both patent and latent, and with all faults of the Property whether known or unknown, presently existing or that may hereafter arise.

Without limiting any other provision of this Agreement, you agree that the Property is subject to all terms and conditions set forth on the Auction Website and the specific Property Details Page. You acknowledge and agree that the Auctioneer, the Website, Seller and Servicer have not made, do not make and specifically negate, and disclaim, any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the Property. This disclaimer shall include: (a) the value, nature, quality or condition of the Property, including, without limitation, the water, soil and geology; (b) any income to be derived from the Property; (c) the suitability of the Property for any and all purposes, including occupancy, and any activities or uses which may be conducted thereon; (d) the compliance of or by the Property or its operation with any laws, rules, ordinances, or integrity of the land or any buildings or improvements of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability or fitness of the Property for any particular purpose; (f) the manner or quality of the construction or materials, if any, incorporated into the Property; (g) the manner, quality, state of repair or lack of repair of the Property; (h) the existence of any view from the Property or that any existing view will not be obstructed in the future; (i) the conformity of the improvements to any plans or specifications for the Property that may be provided to you; (j) the conformity of the Property to applicable zoning or building code requirements; (k) the existence of soil instability, past soil repairs, susceptibility to landslides and/or sinkholes, sufficiency of under-shoring, sufficiency of drainage, or any other matter affecting the stability or integrity of the land or any buildings or improvements situated thereon; (l) whether the Property is located in a special studies zone under the public resources code or a seismic hazards zone or a state fire responsibility area, or a special flood hazard zone; or (m) any other matter with respect to the Property.

You acknowledge that the Property may not be in compliance with applicable zoning, building, health or other law or codes, and that the Seller may not have occupied the Property and that the Property may not be in habitable condition. You also acknowledge and agree that, without limitation, the Auctioneer, the Seller's Broker, the Website, and any Seller have not made, do not make, and specifically disclaim any representation regarding compliance with the Americans With Disabilities Act or with any environmental protection, pollution or land use laws, rules, regulations or orders or requirements, as defined by the U.S. Environmental Protection Agency regulations or the disposal or existence, in or on the Properties, of any hazardous substance, as defined by the comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder.

Each Bidder acknowledges and agrees that such Bidder has had the opportunity to view and inspect the Property prior to bidding, and further acknowledges and agrees that the following inspections are not material to such Bidder bidding on, and/or purchasing the Property:

- a. Termite/pest/wood infestation inspection;
- b. Radon test;
- c. Structural (including roof and foundation);
- d. Electrical inspection;
- e. Plumbing inspection;
- f. Heating system inspection;
- g. Water analysis to determine potability;
- h. Percolation inspection to determine use of Property in conjunction with state sewage facilities law;
- i. Septic/sewage disposal system;
- j. Inspections to determine environmental hazards and/or toxic wastes or substances;
- k. Wetland studies; and
- l. Lead testing.

If and to the extent that a Bidder has not conducted any or all inspections prior to an Auction, such Bidder agrees and acknowledges that he/she/it has waived all rights to conduct such an inspection and that the failure to conduct such an inspection will not excuse performance or be a legally permissible reason for breach of the Purchase Agreement.

**NOTICE OF POTENTIAL DEFECTIVE DRYWALL:** Bidders are hereby notified that Properties sold at Auction may contain defective drywall, primarily manufactured in China. The presence of such Chinese or defective drywall may

cause corrosion and damage to structural systems in such Properties and corrode and destroy system components. Further, defective drywall can emit a strong sulfur-like odor or fume which may cause the occupants of such Properties to experience health problems. The presence of this odor and/or the aforementioned damages may indicate the presence of defective drywall, and Bidders should investigate. The only known way to eliminate the fumes and the health problems and to stop the damage to structural systems and system components is to remove and replace all of the defective drywall in such Properties, which can be very costly. If not remedied, defective drywall can impact the value or saleability of such Properties.

**NOTICE OF POTENTIAL METHAMPHETAMINE CONTAMINATION:** Bidders are hereby notified that Properties sold at Auction may contain methamphetamine contamination as well as other illegal or industrial chemicals. The presence of methamphetamine has been known to cause adverse health effects in individuals. Each state/local health department or environmental protection agency has standards for clean-up or remediation of a hazardous substance, which may be costly. The presence of methamphetamine contamination, if not remedied, can impact the value or saleability of such Properties.

**C. Occupied Properties.** (Note: This Section 3(C) applies to non-Short Sale Auctions only.) Neither Seller nor the Auctioneer make any representation or warranty regarding the occupancy status of the Property as of the closing of the transaction. You expressly agree that none of the Seller, Seller's Broker, the Auctioneer or the Website shall be required to evict or remove any occupants (or the personal property of any occupants) prior to the closing of a transaction. You expressly agree that none of the Seller, Seller's Broker, the Auctioneer or the Website shall be required to provide occupant information as it pertains to leases or tenants; however, the Property listing agent can be contacted to assist when information is known. The Winning Bidder expressly waives any right to cancel the purchase of the transaction based on the occupancy status of the Property, subject to the terms specified in the Purchase Agreement. To the extent that a Property becomes vacant before the close of the Auction, the rules pertaining to an Occupied Property will prevail (i.e., the occupancy status of a Property at the time that the Property is published to the Website for pre-marketing will remain the same to the close of the Auction).

Winning Bidder acknowledges that Occupied Properties may be subject to leasehold interests or other rights or claims of various tenants or other occupants, and may be subject to the provisions of federal, state or local rent control, rent stabilization, lease termination or similar laws, ordinances and regulations. Winning Bidder agrees that upon closing, all eviction proceedings and other duties and responsibilities of a property owner and landlord, including, but not limited to, those proceedings required for compliance with any federal, state or local laws, ordinances and regulations, will be Winning Bidder's sole responsibility and obligation. Without limiting the foregoing, Winning Bidder may be subject to the terms of the Protecting Tenants at Foreclosure Act of 2009 set forth as Division A, Title VII of the Helping Families Save Their Homes Act of 2009 [Publ. 111-22,123 Stat. 1632, S. 896, enacted May 20, 2009], the United States Servicemembers Civil Relief Act (50 USGS Appx. §531) and/or other applicable federal, state or local laws. None of Seller, Seller's Broker, the Auctioneer or the Website can provide physical access to Occupied Properties or Properties identified in the following manner: "Purchaser Acquires Property Subject to Undefined Occupancy Status." The Website and applicable purchase documentation provides additional information regarding Occupied Properties. Do not rely upon the Website for any or all requirements relating to legal requirements relating to Occupied Properties. The information provided on the Website is provided for informational purposes only and shall not be construed as legal advice. You are urged to consult with your own advisors and attorneys if seeking any such advice.

Each Bidder acknowledges and agrees that Occupied Properties may be "subject to Seller Approval," which shall be given or denied at Seller's sole and absolute discretion; Seller has fifteen (15) calendar days to make this determination.

Bidders (including their Brokers/Agents or other representatives) **MUST NOT** trespass on Occupied Properties or disturb the occupant(s) at any time during the Auction or post-Auction transaction process. Doing so may be deemed a breach of this Agreement.

Occupied Properties are not eligible for a property inspection at any time prior and subsequent to the Auction, through to closing. Occupied Properties cannot be purchased subject to a property inspection. To the extent physical access is not available to the Property, Winning Bidder assumes any and all risk associated with Winning Bidder's inability to conduct inspections of the Property and has taken the same into account in determining the amount Winning Bidder is willing to pay for the Property. Winning Bidder waives any objection to the condition of the Property regardless of whether Winning Bidder was able to conduct inspections of all or any portion of the Property.

Occupied Property transactions shall be all-cash purchases only; Occupied Property transactions shall not be financed, unless otherwise expressly deemed appropriate per Auction disclaimers (e.g., Short Sale Auctions).

By placing a bid on an Occupied Property, Bidder acknowledges and agrees that Bidder shall have no right to cancel the transaction and shall be bound by the terms of the Purchase Agreement and other related purchase documentation. The deed or other conveyance document to be delivered at closing for an Occupied Property shall be at Seller's option. Neither Seller nor the Auctioneer makes any representation or warranty regarding the occupancy status of the Property as of the closing of the transaction.

**D. Inspection Indemnity.** In connection with any necessary investigation, inspection or due diligence conducted on the Property by a prospective acquirer, Bidders, Highest Bidders and/or Winning Bidders, or any Person acting on their behalf, you agree to and cause such Persons to agree to: (1) keep the Property free and clear of liens; (2) repair any and all damage arising from such inspection; and (3) indemnify, defend and hold Seller, Servicer, Seller's Broker and Auctioneer harmless from all claims, demands, damages, expenses, fees, penalties, fines, liabilities, and/or costs arising directly or indirectly from acts on the part of Bidders, Highest Bidders, Winning Bidders or any Agents thereof. Bidders, Highest Bidders, Winning Bidders, and their Agents shall maintain and keep in their possession policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller, Servicer, Seller's Broker and Auctioneer from liability for any injuries to persons or property occurring during any inspection prior to the close of the transaction. Inspections will only be permitted prior to the close of the Auction. Short Sale Auction bidders should contact the Property listing agent for scheduling.

**E. Information Review.** Before you bid on a Property, please review the Website and all available information and documentation pertaining to such Property. We suggest that you scrutinize the public records and all other resources whereby information relating to the Property is available. In certain instances, information may be available at the Property during open houses.

By participating in the Auction, Bidder represents to Auctioneer, Seller and Servicer that he/she/it has conducted all necessary research and due diligence that Bidder deems appropriate or necessary to bid on the Property, that Bidder has sufficient resources to purchase the Property, and that Bidder understands the liquidated damages provisions as set forth in Section 2.

**F. No Contingencies.** The purchase of a Property by the Winning Bidder is not subject to any contingencies, including mortgage or inspection contingencies. Each Bidder understands that any and all required or needed repairs, inspections, surveys, or permits are strictly and solely at the Winning Bidder's expense and obligation.

**G. Zoning.** Each Bidder acknowledges and agrees that such Bidder is not relying on any representations by the Seller, the Servicer, or the Auctioneer concerning the zoning classification of any Property, and that it is the Bidder's sole responsibility to contact the appropriate officials to determine the zoning classification of each Property and the uses permitted thereon.

## 4. BIDDING AND PURCHASE

**A. Reserve Auction.** Unless otherwise noted in the Property Details Page for a particular Property, the Auction will be a reserve Auction. The reserve Auction will have an undisclosed Reserve Price. The starting bid is not the Reserve Price. Except where prohibited by law, the Auctioneer may open bidding on any Property by placing a bid on behalf of the Seller and may further bid on behalf of the Seller up to the amount of the Reserve Price by placing successive or consecutive bids for a Property or by placing bids in response to other Bidders. Any such bids placed by the Auctioneer will not result in a Winning Bid. If the Reserve Price has not been met, the Seller (or Servicer, if applicable) is under no obligation to sell or approve the sale of the Property.

Seller may withdraw the Property at any time prior to the Seller's execution of the Purchase Agreement; in such case neither Seller nor Auctioneer will be responsible for any reimbursement of expenses incurred by the Bidder.

Bidder understands and agrees that the Auctioneer is not acting as an agent for any Bidder in any capacity. The Auctioneer is acting exclusively as the Seller's agent (and the Servicer's agent, if applicable) as an auctioneer in the Auction.

In the event a Bidder is unable or restricted from bidding for any reason on any day, the Bidder has the option to arrange for an authorized representative to act on the Bidder's behalf; in such case the Bidder's authorized representative will be bound by all provisions of this Agreement.

Note that for all Auctions, the most recent mortgagor will not be allowed to participate in the Auction, nor will any Family Member or Related Party of the most recent mortgagor. In addition, Bidders may not be a Related Party to the Seller or Auctioneer.

**B. Short Sale Auctions.** Short Sale Auctions are subject to Seller/Servicer Approval. Bidders at Short Sale Auctions represent and warrant that they are not a Family Member of or Related Party to the Borrower and acknowledge that any such relation or affiliation shall disqualify them from purchasing a Property, whether or not they are the Highest Bidder. The Highest Bid at a Short Sale Auction will be presented to the Servicer and Borrower, and will be subject to their final review and approval. The Servicer and Borrower, at their sole and absolute discretion, reserve the right to reject any bid for any reason. The Highest Bid submitted by the Highest Bidder is not approved and accepted as the Winning Bid unless and until the Servicer issues a Short Sale Approval Letter. A Short Sale Approval Letter cannot be issued until the executed Purchase Agreement is submitted, the preliminary HUD-1 document is reviewed for acceptable fees and costs, and mortgage insurance, investor or other necessary approvals are obtained. Note that the Short Sale Seller and his/her/its listing agent are responsible for providing all required Property disclosures.

**C. Total Purchase Price and Buyer's Premium.** The Total Purchase Price to be paid by the Winning Bidder includes a Buyer's Premium equal to the greater of (i) five percent (5%) of the Winning Bid amount or (ii) \$2,500. In connection with certain Auctions, the Buyer's Premium may be greater or less than these amounts and such information will be disclosed on the Property Details Page. **Note: For Short Sale Auctions, the Buyer's Premium will be waived and not included in the Total Purchase Price for the Original Offeror if the Original Offeror submits the Highest Bid at the end of the Short Sale Auction and ultimately becomes the Winning Bidder. Further, if the Original Offeror does not participate in the Auction but his/her/its offer exceeds the Highest Bid and is accepted by the Servicer, the Buyer's Premium will be waived for the Original Offeror.** The Total Purchase Price excludes all other amounts that may be payable by the Winning Bidder during closing, including but not limited to property taxes, insurance, homeowner association fees, and escrow or closing fees. Information pertaining to additional fees may be set forth in greater detail in applicable purchase documentation. Bidders are reminded and encouraged to consult with local counsel or other local real estate professional(s) to determine all such other amounts that may be payable by the Winning Bidder at closing.

**D. Sales Prior to Auction Event.** Pre-Auction bids/offers may be submitted by clicking the "Make Offer" box on the Property Details Page. Pursuant to this Agreement, all prospective purchasers will be required to create a profile on the Website. At the sole and absolute discretion of Auctioneer, all reasonable bids received may be communicated to the Seller (and the Servicer, if applicable), who may accept or reject any such bid in its sole and absolute discretion. In the event the Seller accepts any such bid, the Purchase Agreement shall be the same as if the Property is purchased during an Auction. In the event Seller (or Servicer, if applicable) rejects any bids submitted prior to the Auction, such bids will not be utilized during the Auction of the Property. Instead, prospective purchasers who submitted bids during pre-Auction will need to register for the Auction Event holding the subject Property if they wish to attempt to bid on the Property.

All sales of Properties, including those made prior to an Auction, are subject to all terms and conditions of this Agreement, including payment of the required Buyer's Premium.

In the event a bulk-sale occurs, in which multiple Properties are purchased by the same Winning Bidder, each Property is subject to all terms and conditions of this Agreement, including payment of the required Buyer's Premium for each Property included in the bulk sale.

**E. Agency Disclosure.** Auctioneer and any licensees employed by, affiliated with, or associated with the Auctioneer **DO NOT** represent the Bidder or buyer in any form or manner. Auctioneer and all licensees employed by, affiliated with or associated with Auctioneer represent the Seller (and the Servicer, if applicable) in the sale of the Properties.

**F. Bidding at Auction.** In connection with the registration process, you will receive bidder authorization and login information. This information, provided upon the successful completion of the registration process, will allow you to bid on Properties during the Auction.

Note that during the Auction, bidding activity may occur in the final moments of the Auction. If any Bidder bids in the last five minutes of the bidding period, the deadline will extend by five minutes. The bidding period will automatically extend for successive five minute periods until five minutes pass with no new bids placed. At this point, the bidding period closes.



Upon the close of an Auction, the Highest Bid is submitted to the Seller (and to the Servicer, if applicable) for consideration and approval.

If the Highest Bid is not accepted by the Seller (and/or the Servicer, if applicable) within a reasonable period of time, the Auctioneer shall advise the Highest Bidder that acceptance of the Highest Bid is "subject to Seller/Servicer approval."

Even if you secure the Highest Bid at the Auction, you may not be designated as the Winning Bidder. If the Reserve Price is not met or the Seller (or the Servicer, if applicable) does not otherwise approve the Highest Bid, you will not become the Winning Bidder and instead are the Highest Bidder. In the event that you are the Highest Bidder, you will not be eligible to purchase the Property unless the Seller (and the Servicer, if applicable) expressly accepts the bid and the Auctioneer acknowledges the Highest Bidder as the Winning Bidder.

**G. Subject to Seller/Servicer Approval.** Highest Bidder acknowledges and agrees that its purchase may be subject to, and contingent upon, the Seller (and the Servicer, if applicable) approving the purchase. The Seller (and the Servicer, if applicable) can have the option to accept or deny, at its sole and absolute discretion, the Highest Bid within thirty (30) calendar days following the acknowledgment of becoming Highest Bidder for Short Sale Auctions (15 calendar days for REO Auctions). At the sole and absolute discretion of the Auctioneer or the Seller (and the Servicer, if applicable), timeframes may be adjusted. Please review the Auction's Website and the Property Details Page.

In the event Seller (or Servicer, if applicable) does not approve the purchase or otherwise cancels a transaction, Winning Bidders and Highest Bidders will receive a refund of the Necessary Qualifying Amount.

Those Bidders who are not successful Winning Bidders or are not the Highest Bidders during the Auction will receive a refund of the Necessary Qualifying Amount on the day following the Auction. Such refunds are subject to the card issuers' terms and conditions.

**H. Winning an Auction.** If the Seller expressly accepts your bid and you are acknowledged by the Auctioneer as the Winning Bidder, you will have earned the right to purchase the particular Property that was the subject of the Auction, subject to the remaining requirements in this Agreement for completing the purchase. You will be contractually obligated to purchase the Property, and you must enter into a written Purchase Agreement. By participating in the Auction and bidding, Bidder represents to Auctioneer, Seller and Servicer that **Bidder has agreed to and accepted this Agreement and its terms and conditions.**

If you are the Winning Bidder (or the Highest Bidder in a Short Sale Auction) and you fail to submit the executed purchase documentation or earnest money deposit in accordance with this Agreement, Auctioneer may charge the Necessary Qualifying Amount supplied during registration and retain such amount as liquidated damages. Further, if you have ever provided a cashier's check or a personal or company check for your earnest money as Winning Bidder in one of our Auctions that has been returned for any reason, including but not limited to being declared "NSF," being drawn on a closed account, being fraudulent, or having a stop order placed on it, you are not eligible to place any bids and may not participate in any Auction. If despite this notice you participate in the bidding on any Property, your bids will be disregarded.

The Purchase Agreement and certain other documents will be forwarded for signature unless otherwise directed. The Purchase Agreement contains the exact terms and conditions of the sale. The Winning Bidder must agree to be bound by all terms, provisions and conditions of the Purchase Agreement and the related conveyance documents, if any, for each particular Property. After executing the Purchase Agreement, additional information pertaining to the closing process will be provided.

If the Winning Bidder (or the Highest Bidder in a Short Sale Auction) does not complete a high bid confirmation within one (1) calendar day after being notified as the Winning Bidder following the completion of the Auction, the Auctioneer, Seller or Servicer in its sole and absolute discretion can declare the Winning (or Highest) Bidder to be in default. Further, if the Winning (or Highest) Bidder fails to submit the executed Purchase Agreement and related documentation within one (1) calendar day following completion of the high bid confirmation, the Auctioneer, Seller or Servicer in its sole and absolute discretion can declare the Winning (or Highest) Bidder to be in default. In the event of a declaration of default, the Winning (or Highest) Bidder's bid shall be null and void. If the Winning (or Highest) Bidder's bid is null and void, such Bidder shall forfeit the right to purchase the Property. If the Winning Bidder's bid becomes null and void, the Winning (or Highest) Bidder shall be subject to liquidated damages as set forth in this Agreement and shall forfeit the Necessary Qualifying Amount. If the Winning (or Highest) Bidder's bid becomes null

and void, the Auctioneer, Seller's Broker, Seller and Servicer reserve the right to immediately put the Property back up for sale at the Auction and/or declare another Bidder as the Winning (or Highest) Bidder.

Those Bidders who are Winning Bidders (or Highest Bidders in a Short Sale Auction) will receive a refund of the Necessary Qualifying Amount after confirmation that the Purchase Agreement and earnest money deposit have been timely submitted. Such refunds are subject to the card issuers' terms and conditions.

**I. Payment of Deposit and Remaining Balance.** Unless the Property requires an earnest money deposit greater than three percent (3%) of the Total Purchase Price, the Winning Bidder (or the Highest Bidder in a Short Sale Auction) shall be required to pay an earnest money deposit in the amount of the greater of (i) three percent (3%) of the Total Purchase Price or (ii) Three Thousand Dollars (\$3,000) on any Property purchase. Please check the Property Details Page at the Website and the Purchase Agreement and related information regarding Property-specific deposits.

The earnest money deposit amount required is not dependent on and will not change based on the amount financed. The earnest money deposit must be sent to the escrow/closing agent no later than 5:00 PM in the time zone where the Property is located on the first Business Day following the date the Winning Bidder (or the Highest Bidder in a Short Sale Auction) executes the Purchase Agreement (including for all Properties sold "subject to Seller/Servicer Approval"). Such funds are to be immediately deposited with an escrow/closing agent or settlement attorney. The balance of the Total Purchase Price, along with all other costs and/or fees, must be paid as required in the Purchase Agreement.

The Auctioneer, Seller or Servicer in its sole and absolute discretion can declare the Winning Bidder (or the Highest Bidder in a Short Sale Auction) to be in default if the Winning (or Highest) Bidder fails to timely send the earnest money deposit or Total Purchase Price as set forth above. In the event of a declaration of default, the Winning Bidder's bid shall be null and void. If the Winning Bidder's bid becomes null and void, the Auctioneer, Seller's Broker, Seller and Servicer reserve the right to immediately put the Property back up for sale at the Auction and/or declare another Bidder as the Winning (or Highest) Bidder. In the event the Winning (or Highest) Bidder is declared in default, the Winning (or Highest) Bidder shall be subject to liquidated damages and further liability as set forth in the Purchase Agreement.

**J. Closing (for non-Short Sale Auctions Only).** With the exception of Extended Closings, the timeframe for all closings are at Seller's discretion, but generally sales are expected to close with the escrow/closing agent or settlement attorney no later than fifteen (15) calendar days from full execution of the Purchase Agreement for all-cash transactions; no later than thirty (30) calendar days from full execution of the Purchase Agreement for conventional financing; and no later than forty-five (45) calendar days from full execution of the Purchase Agreement for FHA financing. The Winning Bidder shall pay any and all closing costs, including, but not limited to, escrow/closing fees, recording fees, prorated charges, lender's title insurance premium and fees, transfer fees, loan fees, document preparation fees, documentary transfer taxes (or other taxes) and, if applicable, Property, homeowner's association fees, condominium association, or other association fees. Winning Bidders also may be required to pay additional fees and costs as provided in the Purchase Agreement. Please review the Website, the Purchase Agreement, and all other relevant documentation for further information.

**K. Closing (for Short Sale Auctions Only).** The timeframe for all Short Sale closings are at the Servicer and Borrower's discretion, as set forth in the Short Sale Approval Letter. Allocation of allowable closing costs shall be provided in the Short Sale Approval Letter and memorialized in the Purchase Agreement.

**L. Property Conveyance.** At Seller's option, most Properties are conveyed with insurable title via a special warranty deed, with title insurance by standard title policies (as applicable), subject to current taxes, rights-of-way, assessments, easements and other conditions of record, and any exceptions written in the preliminary title report or commitment as well as other standard title exclusions, as set forth in the Purchase Agreement and other related purchase documentation. Certain Properties (e.g., Newly Foreclosed Auction Properties) may not be eligible for title insurance and title insurance will not be provided for such Properties. Certain other Properties (e.g., those sold subject to the redemption rights of third parties or pursuant to a Newly Foreclosed designation) will be conveyed either by quitclaim deed or by an assignment of the sheriff's deed/certificate, and the Seller makes no warranties of title. The Website, the Purchase Agreement and related documentation should be consulted for further information, and are available upon request.

**M. Cancellation/Liquidated Damages.** If Winning Bidder fails to comply with any of the terms of this Agreement or defaults under the Purchase Agreement, the sale may be cancelled by the Seller (or the Servicer, if applicable) in its

sole and absolute discretion and the Winning Bidder shall be required to pay liquidated damages as set forth herein and/or in the Purchase Agreement.

**N. Extensions.** At the sole and absolute discretion of the Seller (and the Servicer, if applicable), Winning Bidder may be granted an extension of the closing date. The terms and conditions of any such extension are set forth in the Purchase Agreement. The Seller (and the Servicer, if applicable) may require the Winning Bidder to pay a fee in the event the Winning Bidder requests an extension. Any extension fee paid by the Winning Bidder WILL NOT be credited towards the Total Purchase Price.

**O. Vesting.** Winning Bidders that desire to take title in the name of an entity, rather than in the name of a natural person, must provide the necessary entity formation documents and resolutions authorizing the transaction within seventy-two (72) hours of the conclusion of the Auction. All documentation/information provided must be complete and accurate at the time it is provided. Change in vesting requests will not be entertained after escrow has been opened. The Seller, Servicer, escrow/closing agent, Seller's Broker and/or settlement attorney possess discretion to require additional documentation prior to closing in the event an entity will take title to the Property.

**P. Recently Foreclosed Auctions.** Notwithstanding any provisions to the contrary found within this Agreement, the following exceptions apply to any Property designated by the Seller as Recently Foreclosed. The Total Purchase Price of a Property purchased as a part of any Recently Foreclosed Auction is not subject to and expressly excludes a Buyer's Premium. The Seller will convey the Property through a quitclaim deed or other similar instrument and makes no representations or warranties as to the condition of title. Seller shall not provide any form of title insurance on any Property purchased through a Recently Foreclosed Auction and the receipt or acquisition of title insurance on the part of the Buyer shall not be a condition precedent to closing any transaction resulting from a Recently Foreclosed Auction. Closing transactions on Recently Foreclosed Property Auctions is not contingent upon any financing obtained by the Winning Bidder as all sales must be cash only. Buyer may not be permitted to perform inspections on the Property prior to closing the transaction.

## 5. REAL ESTATE BROKER/AGENT PARTICIPATION

The Auctioneer invites Broker/Agent participation. A Broker/Agent must be duly licensed as a real estate broker or agent in the state in which the Property is located in order to be eligible to receive a commission. The Broker/Agent will be required to create a profile on the Website as a user. In order to be eligible to receive a commission, the Bidder's Broker/Agent information must be provided via the Website prior to the Auction Event, either within the Event registration process, or subsequently in the high bid confirmation process. Any Broker/Agent commission will be based upon the Winning Bid amount.

## 6. GENERAL AUCTION INFORMATION

Each Seller (and Servicer, if applicable) and the Auctioneer reserve the right to deny any person admittance to or expel anyone from the Auction Website for interference with the Auction activities, nuisance, canvassing, solicitation, or any other reason. Each Seller (and Servicer, if applicable) and the Auctioneer reserve the right to deny any person the ability to bid and/or access to the online bidding platform for interference with the Auction activities or any other reason. Auctioneer is committed to providing its services, including without limitation, its auctioneer services free of bias and discrimination towards all Bidders. All of Auctioneer's services will be provided in the same manner to all Bidders without regard to such Bidder's race, color, religion, sex, disability, familial or marital status or national origin. Each Seller (and Servicer, if applicable) and the Auctioneer have the right to postpone or cancel any Auction, to withdraw any Property from any Auction, and to change any and all terms of any Auction or particular conditions of sale upon announcement prior to or during the course of any Auction.

At its sole and absolute discretion, the Auctioneer may postpone or cancel the Auction, rearrange the order or sequence of the Auction, modify this Agreement, reject any or all bids and/or allow bids to be placed. The Auctioneer shall make the sole and final decision to either accept the final bid as the bid to be presented to Seller (and to Servicer, if applicable) for validation or to reoffer and resell the Property in dispute in the event of a dispute among Bidders.

Each registrant of the Auction shall be deemed to have authorized and consented to the issuance of press releases and other public communications by each Seller, Servicer, Seller's Broker, the Auctioneer and/or their agents regarding the Auction and the Properties offered or sold at the Auction.

The respective rights and obligations of the parties with respect to this Agreement and the conduct of the Auction shall be governed by, interpreted and enforced under the laws of the state of Texas, without reference to its conflict of laws principles. Auctioneer's principal office is located in Denton County, Texas. This Agreement is provided to you from Denton County, Texas, and is performable in Denton County, Texas. You agree that any claims based on or arising from the provisions, interpretation, or enforcement of this Agreement shall be brought only in state court located in Denton County, Texas or in federal court covering Denton County, Texas. By bidding at the Auction, each Bidder shall be deemed to have irrevocably: (a) submitted to all courts of competent jurisdiction located in Denton County, Texas (including applicable federal courts) in connection with any suit, proceeding or other legal process relating to the Auction and/or the offering or sale of any Property, (b) agreed that any suit, proceeding or other legal process relating to the Auction and/or the offering or sale of any Property may be heard in any such court, (c) waived the defense of any inconvenient forum to the maintenance of any suit, proceeding or other legal process relating to the Auction and/or the offering or sale of any Property in any such court, and (d) agreed to be subject to suit, service and legal process of such court in connection with any suit, proceeding or other legal process relating to the Auction and/or the offering or sale of any Property.

Offers made outside of the Website during the Auction are void where prohibited by law, and in such case Persons are directed to the Website to participate in the Auction.

Any information on any website or in any email or other communication, and any and all information available regarding the Properties, shall not constitute an offer to sell or a solicitation of any offer to buy any of the Properties referenced herein. In addition, and without limitation of the foregoing, any website, email communication, or brochure shall not constitute an offer to sell or a solicitation of any offer to buy, nor shall there be any sales of any of the Properties in any state in which such offer, solicitation, or sale would be unlawful prior to the registration or qualification under the applicable securities laws of that state.

None of the Seller, Servicer, Seller's Broker, or the Auctioneer make any representation or warranty as to the manner in which the sale process will be managed. No obligation to sell shall be binding on Seller unless and until the Purchase Agreement is signed and delivered to the Seller and accepted by the Seller. Seller (and Servicer, if applicable) reserves the right to rescind any oral acceptance of a Winning Bid prior to the dual execution and delivery of an executed Purchase Agreement for any reason, including the receipt of a subsequent higher bid, whether or not such subsequent bid was made within the timeframes set forth in this Agreement. Seller (and Servicer, if applicable) has discretion to accept/approve an offer on the Property that is separate and apart from the Auction until such time as Seller (and Servicer, if applicable) has accepted/approved Winning Bidder's executed Purchase Agreement.

In providing its services in an Auction and/or in brokering any subsequent Auction transaction, Auctioneer is acting on behalf of Seller (and Servicer, if applicable) as Seller's agent (and Servicer's agent, if applicable). Bidder acknowledges that Seller may be an organization or business entity in which Auctioneer is affiliated or has an interest. In the event that any such relationship exists with Seller, Bidder hereby provides Bidder's acknowledgement and consent to such relationship, affiliation and interest.

## **7. FINANCING YOUR PURCHASE**

Auctioneer does not perform lending or financial services. Nothing in this Agreement shall be construed as a commitment or agreement by or on behalf of Auctioneer or a lender to provide lending or financial services to any Winning Bidder. In order to provide Website users with access to additional resources and services, the Website provides links to certain third-party websites. Auctioneer does not endorse nor does it support the content (including information in the form of text or graphics) or accuracy of content on any third-party websites. Auctioneer is not responsible for the content of any such third-party websites and expressly disclaims any responsibility for the content on such sites. By clicking on a third-party link, each user acknowledges that he/she/it is leaving the Website and that Auctioneer is no longer responsible for the user's experience on such sites. Privacy and security policies on such third-party websites may differ from those presented on the Website. Any business, financial or other transactions or agreements you enter into with a third party listed, advertised or otherwise accessed through the Website is solely between you and such third party.

Financing may be made available for Properties in the Auction. Such financing shall be available subject to credit approval, satisfaction of the lender's requirements and execution of all documentation acceptable to Seller (or Servicer, if applicable) and the lender. Bidders understand and acknowledge that the purchase of a Property and the consummation of the transaction is not contingent on Winning Bidder obtaining financing for the purchase of the

Property. Bidders are advised to review the Purchase Agreement for specific terms and conditions regarding financing and Winning Bidder's default.

Availability of loan programs on selected Properties may be limited and may require a greater down payment. Seller (or Servicer, if applicable) will not provide any concessions for Department of Veterans Affairs loans, Federal Housing Administration-insured loans, Bond assisted, City assisted, First Time Buyer, or other special financing programs.

Notwithstanding that there is no financing contingency, Seller (or Servicer, if applicable) may require Bidders/Highest Bidder/Winning Bidder to obtain, and provide to Seller (or to Servicer, if applicable), a pre-qualification letter prior to, at, or after the conclusion of the Auction. Seller (or Servicer, if applicable) may require the Bidders/Highest Bidder/Winning Bidder to obtain such pre-qualification letter from a particular lender that it deems acceptable and reputable; in such instances, however, the Winning Bidder will have no obligation to obtain financing from such acceptable and reputable lender. During post-Auction, upon request of the Auctioneer, should Winning/Highest Bidder not provide Seller (or Servicer, if applicable) with a copy of such pre-qualification letter within five (5) Business Days of the request for same, Winning/Highest Bidder shall be deemed to be in default under the Purchase Agreement and Seller (or Servicer, if applicable) shall have the right to terminate the Purchase Agreement in Seller's (or Servicer's, if applicable) sole and absolute discretion.

If the Total Purchase Price is greater than one hundred percent (100%) of the buyer or lender's appraised value of the Property and any portion of the Property is to be financed by the Winning Bidder using financing eligible for insurance by the Federal Housing Administration, the Winning Bidder must provide cash in the amount of the greater of the required down payment based upon the Total Purchase Price or the difference between the Total Purchase Price and the appraised value. Note that the Federal Housing Administration requires the difference between the Total Purchase Price and the appraised value to be paid in cash.

The Auctioneer reserves the right to require Winning Bidders (or Highest Bidders in Short Sale Auctions) who intend to use cash to complete their purchase to provide proof of sufficient acceptable qualifying funds to cover the transaction (examples include, without limitation, a bank statement and/or investment statement evidencing semi-liquid assets, such as stocks or bonds).

## **8. INDEMNITY**

You agree to indemnify and hold the Auctioneer and the Website harmless from any claims, losses, liabilities, penalties, fines, damages, demands and/or expenses, including without limitation reasonable attorneys' fees and expenses, made by any third party due to or arising from your breach of this Agreement or the documents it incorporates by reference, or your violation of any law or the rights of a third party.

## **9. ATTORNEYS' FEES, COSTS & EXPENSES**

**In the event Auctioneer is required to defend against or bring any action, proceeding or arbitration by or against you arising out of or relating to this Agreement, and Auctioneer is a prevailing party, to the extent permitted by applicable law, you agree that Auctioneer is entitled to seek and recover from you, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses incurred in the action, proceeding or arbitration.**

## **10. LEGAL COMPLIANCE**

You agree that you will comply with all applicable laws, regulations, and ordinances regarding your activities and use of the Website, and regarding your purchase of any Property.

## **11. SEVERABILITY**

In the event any provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidation shall not invalidate the remaining portions of this Agreement, and those remaining provisions shall be enforced and remain in full force and effect.

## 12. ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (“E-SIGN”) AUTHORIZATION

By registering for the Auction, Bidder acknowledges having read, agreed to and accepted this Agreement, as it may be updated from time to time prior to the Auction. Such form of acceptance by Bidder is binding and Bidder acknowledges that such acceptance shall be binding and enforceable pursuant to the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”), Title 15, United States Code, Sections 7001 et. seq., the Uniform Electronic Transactions Act (“UETA”) and applicable state laws. In addition, by registering for the Auction, Bidder further acknowledges having read, agreed to and accepted the Consumer Electronic Signature Disclosure and Affirmative Consent.

## 13. ADDITIONAL DISCLAIMERS

Neither Seller, Servicer, Seller’s Broker, nor the Auctioneer makes any representations or warranties as to the accuracy or completeness of any information contained online at the Website, in any Auction brochure or brochure available at the Property (if any) or as otherwise made available by the Seller, Servicer, Seller’s Broker or Auctioneer. All prospective Bidders are required and encouraged to conduct their own due diligence and investigate all matters relating to the Properties that they are interested in purchasing at the Auction. Online bidding is provided on an “as is, where is, as available, and with all faults and limitations” basis. No warranties, expressed or implied, including, but not limited to, those of merchantability or fitness for a particular purpose or use, are made with respect to the online bidding platform or any information or software therein.

You acknowledge and agree that specific performance is not an available remedy for any alleged breach of this Agreement. Neither Seller, Servicer, Seller’s Broker, nor the Auctioneer will be liable for any damages or injury caused by, including but not limited to, any failure of performance, error, omission, interruption, defect, delay in operation of transmission, computer virus or line failure. Neither Seller, Servicer, Seller’s Broker, nor the Auctioneer will be liable for any damages or injury, including but not limited to special or consequential damages that result from the use of, or the inability to use, the Website, the materials on the Website, or the online bidding platform even if there is negligence on the part of the Auctioneer or its representatives, or the Auctioneer or an authorized Auctioneer representative has been advised of the possibility of such damages, or both. The above limitations or exclusions may not apply to you to the extent that applicable law may not allow the limitation or exclusion of liability for incidental or consequential damages, in which event **the Auctioneer’s, Seller’s, Servicer’s or Seller’s Broker’s liability to you for losses, damages and causes of action (in contract or tort, including without limitation negligence, or otherwise) will not be greater than the amount you paid to access the Website or bidding platform.**

Upon registering as a Bidder and bidding during the Auction, each Bidder shall be deemed to represent, warrant and agree that with respect to each Property it bids upon: (a) that such Bidder has examined, or has had the opportunity to examine, the Property and is familiar with the physical and legal condition thereof and has conducted such investigation of the Property as the Bidder has considered appropriate; (b) neither Auctioneer, Seller’s Broker, Seller or Servicer, nor any affiliate, agent, officer, employee or representative of either of them, has made any verbal or written representations, warranties, promises or guarantees whatsoever to the Bidder, expressed or implied, and in particular, that no such representations, warranties, guarantees, or promises have been made with respect to the physical condition, operation, legal condition, or any other matter or thing affecting or related to the Property and/or the offering or sale of the Property; (c) Bidder has not relied upon any representations, warranties, guarantees or promises or upon any statements made or any information provided concerning the Property, including but not limited to online at the Auction Website or the information provided or made available by Auctioneer, Seller’s Broker, Seller or by Servicer, or their respective agents, employees or representatives; (d) Bidder has determined to make its bid after having made and relied solely on its own independent investigation, inspection, analysis, appraisal and evaluation of the Property and the facts and circumstances related thereto, including but not limited to, any and all outstanding liens, encumbrances, assessments, dues, fines and/or penalties; and (e) that Bidder has received, agreed to and accepted the Auction Participation Agreement.

By registering as a Bidder and bidding during the Auction, each Bidder is automatically deemed to represent, warrant and agree that: (a) any information provided or to be provided by or on behalf of the Seller with respect to the Properties including, without limitation, all information contained online at the Auction Website and in the information being made available to Bidder by Seller, Servicer, Seller’s Broker and the Auctioneer, was obtained from a variety of sources and that Seller, Servicer, Seller’s Broker and the Auctioneer have not made any independent investigation or verification of such information, and make no representations as to the accuracy or completeness of such information;

(b) without limiting the generality of the foregoing, neither Auctioneer, Seller's Broker, Seller nor Servicer shall be under any obligation to disclose to any Bidder, and shall have no liability for its failure to disclose to any Bidder, any information known to them relating to any Property except as may be required by law, including but not limited to, any and all outstanding liens, encumbrances, assessments, dues, fines and/or penalties; and (c) Seller, Servicer, Seller's Broker and the Auctioneer are not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Properties, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. The foregoing shall include but is not limited to, except as may be required by law, any and all estimated amounts regarding outstanding liens, encumbrances, assessments, dues, fines and/or penalties of any kind or any nature.

**THE MATERIALS SET FORTH ON THE WEBSITE ARE PROVIDED "AS IS" AND "WHERE IS" WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESSED OR IMPLIED, TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW. THE AUCTIONEER DISCLAIMS ALL WARRANTIES INCLUDING THOSE OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE OR USE. AUCTIONEER DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE MATERIAL WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THIS WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. AUCTIONEER DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OF OR THE RESULT OF THE USE OF THE MATERIAL IN THIS WEBSITE IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. YOU SOLELY ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION DUE TO YOUR USE OF THE WEBSITE. THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, TO THE EXTENT THAT APPLICABLE LAW MAY NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES.**

**ALL OF THE PROPERTIES WILL BE SOLD BY SELLER, SELLER'S BROKER AND AUCTIONEER IN AN "AS IS, WHERE IS, AND WITH ALL FAULTS AND LIMITATIONS" CONDITION. ALL BIDDERS EXPRESSLY ACKNOWLEDGE AND AGREE THAT SELLER, SERVICER, SELLER'S BROKER AND THE AUCTIONEER HAVE NOT MADE, DO NOT MAKE, AND SPECIFICALLY NEGATE AND DISCLAIM ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, CONCERNING OR WITH RESPECT TO THE PROPERTIES. THERE IS NO GUARANTEE OR WARRANTY WHATSOEVER ON THE PROPERTIES IN ACCORDANCE WITH THE CONDITIONS HEREINAFTER DESCRIBED IN THE AUCTION PARTICIPATION AGREEMENT AND AS MAY BE FURTHER DESCRIBED IN THE PURCHASE AGREEMENT.**

**NO SALE WILL BE CONTINGENT UPON INSPECTION OF THE PROPERTY AFTER THE AUCTION UNLESS OTHERWISE SPECIFICALLY PERMITTED UNDER THE PURCHASE AGREEMENT OR BY APPLICABLE LAW.**

**NO PROPERTIES WILL BE OPEN FOR INSPECTION OR ACCESS BY THE WINNING BIDDER AFTER THE AUCTION UNTIL CLOSING HAS OCCURRED, UNLESS OTHERWISE EXPLICITLY ALLOWED BY APPLICABLE LAW (HOWEVER, WINNING BIDDER'S LENDER WILL BE ALLOWED ACCESS TO NON-OCCUPIED PROPERTIES FOR ALL REQUIRED APPRAISALS AND INSPECTIONS). PLEASE BID ACCORDINGLY.(NOTE: THIS PARAGRAPH DOES NOT APPLY TO SHORT SALE AUCTION PROPERTIES.)**

## **14. RELEASES**

**EACH BIDDER AND ANYONE CLAIMING BY, THROUGH OR UNDER THE SAME HEREBY FULLY AND IRREVOCABLY RELEASES SELLER, SERVICER, WEBSITE, SELLER'S BROKER AND AUCTIONEER, THEIR RESPECTIVE AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, REPRESENTATIVES, ATTORNEYS, BROKERS, AUCTIONEERS AND AGENTS (COLLECTIVELY, THE "RELEASED PARTIES") FROM ANY AND ALL CLAIMS THAT HE/SHE/IT OR THEY MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST ONE OR MORE OF THE RELEASED PARTIES FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, FEE (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES), FINE, PENALTY, DEMAND, ACTION OR CAUSE OF ACTION ARISING FROM OR RELATING TO ANY ERRORS, OMISSIONS OR OTHER CONDITIONS AFFECTING THE PROPERTIES OR ANY PORTION THEREOF, INCLUDING ANY CONSTRUCTION DEFECTS OR ENVIRONMENTAL MATTERS. THIS RELEASE INCLUDES CLAIMS OF WHICH PROSPECTIVE PURCHASER/BIDDER IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN HIS/HER/ITS FAVOR WHICH, IF KNOWN BY PROSPECTIVE PURCHASER/BIDDER, WOULD MATERIALLY AFFECT PROSPECTIVE PURCHASER'S/BIDDER'S RELEASE OF THE RELEASED PARTIES.**

**EACH BIDDER SPECIFICALLY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, AND OTHER APPLICABLE STATE STATUTES WHICH PROVIDE AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

## **15. ACCEPTANCE**

All Persons registering for an Auction, including all Bidders, unconditionally accept this Agreement in its entirety in connection with use of the Website. You acknowledge and agree that this Agreement, the Terms and Conditions and the Privacy Notice set forth the only rights and obligations applicable to the matters covered in those documents, and those documents may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements or representations by you, Seller, Servicer, Seller's Broker, or Auctioneer. You agree to abide by all of the terms and conditions set forth in this Agreement, the Terms and Conditions and the Privacy Notice. You further agree that you shall not have any recourse against the Auctioneer or the Website, as those parties are not involved in the actual transaction between you and the Seller (and the Servicer, if applicable). You further agree that the Auctioneer and the Website assume no control or liability over any issues that may arise as a result of any transaction between you and Seller (and the Servicer, if applicable).

## **16. AMENDMENTS TO THE AUCTION PARTICIPATION AGREEMENT**

Auctioneer reserves the right to update or amend this Agreement at any time in its sole discretion. This Agreement will reflect the date it was last updated. All amendments to this Agreement will be posted on the Auctioneer's Website, and will become effective upon posting for all subsequent Auction activity. It is imperative that Bidders review and accept this Agreement prior to registration for and participation in an Auction. Bidders' use or continued use of the Auctioneer's Website following any such amendments acknowledges receipt of the revisions and agreement to and acceptance of any revised Agreement or amendment.

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