



## TERMS AND CONDITIONS FOR AUCTION BIDDING AND SALE

These Terms and Conditions for Auction Bidding and Sale ("Terms and Conditions") apply to all marketing, auctions and sales of property by American Auctions, LLC and may be amended from time to time.

Registering for or submitting an Offer in an auction Event, whether in person or electronically, is deemed to be an acknowledgment to have read, agreed to and accepted these Terms and Conditions, as amended at the time the Offer is submitted.

American Auctions, LLC represents only the Owner of the Property which is the subject of the marketing and auction processes ("Event"). American Auctions, LLC hereby have the exclusive right to sell by auction in accordance with these terms. The contract is effective upon date of signature and expires ninety (90) days from the auction date ("Auction Period").

American Auctions, LLC retains the right to control the Event, including:

- denying, limiting or imposing conditions on access to the Event (on-line or live)
- denying, limiting or imposing conditions on Offers during the Event
- arrange, promote and conduct the sale of the Property by auction in accordance with these Terms and Conditions

### Definitions

"Auction Date" is the date in which the auction will take place.

"Bidders," including their principals, agents and affiliates are potential buyers of the Property.

"Buyer" is the "Successful Bidder" who is acknowledged by American Auctions, LLC to have (1) submitted an offer that is accepted by Seller, or (2) submitted the highest net bid in the Event.

"Buyer's Agent" is the party who registers the successful bidder.

"Close" the transaction means that all documents and agreements between Buyer and Seller have been executed, the proceeds of the purchase price have been relayed to Seller, title has passed to Buyer, and the escrow account for the Property has been closed.

"Contract" refers to the Contract for Auction Services.

"Default" means when a Buyer fails to close the transaction for any reason.

"Escrow Company" is the escrow company provided: \_\_\_\_\_.

"Fee" paid to the Auctioneer will be the greater of (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) or (ii) \_\_\_\_\_ percent (\_\_\_\_%) of the total purchase price from the sale of the Property sold at auction under the



Contract for Auction Services ("Auction Fee"), or sold between the commencement of American Auctions, LLC's services and sixty (60) days after Auction Day.

"Initial Bid Deposit" is the amount the Buyer will be required to immediately provide a deposit of \_\_\_\_\_ percent (\_\_\_%) of the Bid to Start Amount. The winning Bidder's deposit will be credited toward the Purchase Price. Unsuccessful Bidders' deposits will be refunded to those Bidders.

"Interested Client List" is a list containing any interested party or parties that have inquired or requested Information about the Auction.

"Listing Broker" will be listed as: \_\_\_\_\_ and is affiliated with American Auctions, LLC.

"Permitted Exceptions" to marketable title on the property include any validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Seller, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; all rights, obligations, and other matters arising from and existing by reason of any applicable governmental district, agency or authority; and current taxes will be pro-rated as of the date of closing.

"Post-Auction Sale" is when a Purchase and Sale Agreement is executed for the Property subsequent to the execution of this Agreement and within sixty days (60) days after the Auction Date.

"Pre-Auction Sale" is when a Purchase and Sale Agreement for the Property is executed subsequent to the execution of this Agreement but prior to the Auction Date.

"Property" is the property the Seller has made available for auction located at:

\_\_\_\_\_.

The "Purchase Price" is the amount of the successful bid on Auction Day, or the agreed-upon price for any sale from the date of the commencement of American Auctions, LLC's service up to 60 days post-auction.

"Purchase and Sale Agreement" is an agreement containing purchase and escrow instructions for the sale of the subject property.

A "Qualified Bid" is a bid by a bidder who has furnished registration, the Initial Bid Deposit with regard to the subject property and who meets all of the requirements of the auction process.

"Title Company" is the title company provided: \_\_\_\_\_.



**Registration**

Any and all bidders must register by the Registration Deadline of \_\_\_\_\_. A bidder may only be registered with American Auction, LLC upon the satisfaction and showing of a valid government-issued photo identification card, executed the signature page to these Terms and Conditions, and complete the Bidder’s Registration Form. Registration must be complete and confirmed by the American Auctions, LLC prior to the Registration Deadline. Valid government-issued photo identification card will also be required on the day of the auction to be issued auction bidding power.

**Seller Duties**

**Initial Bid Deposit**

The Initial Bid Deposit is intended to protect the integrity of the auctions. The Initial Bid Deposit is separate and apart from the Earnest Money Deposit made by the Buyer and may not be transferred to the auction of a different property. The Initial Bid Deposit will be deposited upon the opening of escrow for the sale of the Property with Escrow Company and will be held pending close of escrow. The balance of the purchase price will be deposited into escrow prior to closing or in accordance with the escrow instructions relating to the sale of the Property. When escrow closes, the purchase price will be disbursed by the escrow holder as provided herein, and after disbursement to American Auctions, LLC and the Listing Broker, the balance will be disbursed as provided in the escrow instructions including any amendments thereof.

**Bid Payment Options** *[check method to be used]*

\_\_\_ Wire: Wire to \_\_\_\_\_

\_\_\_ Cashier’s Check: Payable to \_\_\_\_\_

**Successful Bid Process**

The process is considered complete upon Seller’s acceptance of the bid, and the Seller agreement to promptly execute a Purchase and Sale Agreement. The Purchase and Sale Agreement will contain additional terms and conditions that should be agreed upon by Seller and Buyer. The Successful Bidder be required to immediately provide the Initial Deposit, with due credit being given for the Registration Deposit made by the Successful Bidder. The Initial Deposit will be deposited upon the opening of escrow for the sale of the Property with Escrow Company and will be held pending close of escrow. The balance of the Purchase Price will be deposited into escrow prior to closing or in accordance with the escrow instructions relating to the sale of the Property. When escrow closes, the Purchase Price will be disbursed by the escrow holder as provided herein, and after disbursement to American Auctions, LLC and the Listing Broker, the balance will be disbursed as provided in the escrow instructions including any amendments thereof.

**Close of Escrow**

Seller will convey marketable title to the property free and clear of all liens and encumbrances, save and except for the following Permitted Exceptions upon the close of escrow. All parties to this agreement hereby agree that Seller will use a Purchase and Sale Agreement or an Agreement which all parties agree to use. The sale will be accomplished without any contingencies and all of the Property is conveyed "as is" and "where is" conditions, with no representations and warranties of any kind or nature other than being free and clear, subject to the Permitted Exceptions. The Property will be sold unfurnished unless otherwise negotiated. Seller agrees to execute all other documents and disclosure statements as may be required to sell or convey title to the Property upon the close of escrow. Should there be any amounts held in

*Contract for Auction Services by American Auctions, LLC*

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escrow which have become non-refundable to Buyer and who are not payable to American Auctions, LLC, the Listing Broker, or the Buyer's Agent, will be paid to the Seller from escrow. In the event of a default by Buyer which results in the escrow for the sale of the Property not closing, Seller will have no other or further liability to American Auctions, LLC.

**Auction Date**

The Auction Date will occur on \_\_\_\_\_. American Auctions, LLC, with the Seller's permission, reserves the right to postpone or reschedule the Auction Date should the Seller and American Auctions, LLC determine that it is in the Seller's best interest to do so. Such rescheduling will also change the sixty-day (60) post-Auction Day period in which American Auctions, LLC is entitled to compensation. Seller reserves the right to sell the property prior to or after the Auction Date.

**Pre-Auction Sale**

If a Pre-Auction Sale occurs, Seller agrees that Seller is obligated to pay American Auctions, LLC the Fee. For purposes of calculating the Fee and the Initial Deposit in a Pre-Auction Sale, an offer to purchase the Property that is accepted by the Seller, will be treated as the Successful Bid. Seller is advised that when property is sold at Auction, the Fee will be paid through escrow from the proceeds of the sale.

**Post-Auction Sale**

If a Post-Auction Sale occurs, Seller agrees that Seller is obligated to pay American Auctions, LLC the Fee. The method of calculating the Fee and the Initial Deposit in such a Post-Auction Sale will be the same as that so stated in the Pre-Auction Sale.

**Withdrawal Without Sale**

Seller may withdraw the Property at any time, including on Auction Day.

**Interested Client List**

American Auctions, LLC will provide the Seller the Interested Client List on or prior to the date the Post Auction period ends if within the sixty days (60) past the expiration of this Agreement. Any Buyers provided by American Auctions, LLC named on the Interested Client List who enter into a contract to purchase the Property and subsequently closes escrow will result in American Auctions, LLC to be paid their Fee by the Seller. The closing terms of any Post-Auction Sale other than American Auctions, LLC and the Listing Broker's commissions will be mutually agreed upon by the Seller and the Buyer.

**Marketing Services**

Seller may also choose, for an additional fee, to use American Auctions, LLC marketing services. American Auctions, LLC will provide a marketing services for the Property that will include creating sales literature, posting advertisements in electronic media, tele-marketing to real estate brokers and agents, newspapers and periodicals, advertising on targeted Internet websites, and any proprietary databases. The Seller will pay American Auctions, LLC \_\_\_\_\_ (\$\_\_\_\_\_). \_\_\_\_\_ (\$\_\_\_\_\_ ) is due at the time the Contract is executed and the remaining balance, \_\_\_\_\_ (\$\_\_\_\_\_ ) is due within 30 days of the Contract execution.

### **Seller Acknowledgments**

Seller fully acknowledges that:

- American Auctions, LLC is not performing any due diligence regarding the title to, condition of or deficiencies with, if any, the Property and is relying upon the Title Company, Seller's and Listing Broker's representations, warranties and indemnities as provided herein.
- The nature and condition of the Property is not warranted nor guaranteed by American Auctions, LLC or the Listing Broker, both of whom will thoroughly disclaim any statements to the contrary in the Purchase and Sale Agreement at the auction.
- Listing Broker and Seller acknowledges that American Auctions, LLC and potential buyers are specifically relying upon the representations, warranties, and documentation furnished by Listing Broker and Seller; and the completeness and accuracy thereof. Seller further understands that American Auctions, LLC, without these representations, warranties and documentation, would not enter into this Agreement nor undertake to auction the Property. The Property will be sold subject to all recorded liens and encumbrances (except for liens and encumbrances resulting from mortgages and deeds of trust, or mechanics liens, which will be removed from record prior to close), and subject to the real estate laws of California.

### **Representations & Warranties**

Seller represents and warrants that all representations and warranties will survive up to the sale of the Property. Seller is the sole legal fee owner of the Property and has full authority to sell same. No person or entity has any right of first refusal, option to purchase, or other similar right to or interest in the Property. There are no liens or encumbrances on the Property other than those reflected on the preliminary title reports obtained by Listing Broker and American Auctions, LLC. There is no pending or, to Seller's knowledge, threatened claims, disputes or law suits involving and/or affecting the Property. To the best of Seller's knowledge, there are no;

- Issues or problems concerning the ability to acquire insurance on the Property;
- Known dangerous conditions upon the Property, either open or concealed;
- Hazardous waste on, under, or adjacent to the Property;
- Asbestos or other toxic materials on the Property; and
- Zoning problems or conditions or facts, whether readily observable or not readily observable that would materially affect the value of the Property, except as disclosed herewith.

Seller further warrants that Seller will be in a position to, and will, convey marketable title to Buyer, convey the Property by Grant Deed, and be responsible for the payment of Seller's share of any escrow or recording cost as provided in the applicable escrow instructions.

Buyer may, but is not required to, inspect the Property prior to bidding or purchase. Buyer understands that bidding on or purchasing Property without such inspection is done at Buyer's own risk. American Auctions, LLC will not be liable for Buyer's waiver of such inspection.

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Buyer's Initials

### **Limitation of Liability**

American Auctions, LLC not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property including, but not limited to, injuries or damages caused by acts of third parties, a dangerous condition on the Property or the Property's non-compliance with any law or ordinance. **American Auctions, LLC will not be held liable for any Property information or advertisements by Seller deemed fraudulent, misrepresented, inaccurate, or negligent. Accuracy of any and all information in relation to the Property for which Seller provides is not warranted or verified by American Auctions, LLC.** If an auction Buyer who did not previously inspect the Property wishes to inspect the property prior to purchase, he or she should not bid on the property. Seller agrees to protect, defend, indemnify, and hold Listing Broker and American Auctions, LLC harmless from any damage, costs, attorney's fees, and expenses that are caused by Seller knowingly giving incorrect information to any person.

### **Severability**

The invalidity of any portion of this Agreement will not affect the validity or enforceability of any other portion of any other provision set forth herein.

*(Continued on next page)*

### **Choice of Law**

All actions or lawsuits under these Terms and Conditions will be construed in accordance with and pursuant to the laws of California. Any lawsuit or action that may be brought arising out of it, in connection with, or by reason of these Terms and Conditions, the laws of California will be applicable and will govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any such lawsuit or action may be instituted. The venue for any such lawsuit or action will be in Orange County, California, with the prevailing party entitled to reasonable attorney's fees and costs.

### **Miscellaneous**

- **Notices.** All notices desired or required to be given pursuant to the Contract by either party to the other will be in writing and delivered either personally, by professional courier service, by certified mail with return receipt requested postage prepaid, and addressed to the party to which it is directed at the address provided in the Bidder Qualification Information form, if to Owner, or to 2355 Main Street #105, Irvine, CA 92614 if to American Auctions, LLC. Any change in address for such notices will be in writing and provided at least five (5) business days in advance of the address change.