



# The Auction Way Company

## PURCHASE AND SALE AGREEMENT (FL)

1. **PURCHASE AND SALE.** The undersigned Purchaser (hereinafter "PURCHASER") agrees to buy and the undersigned seller (hereinafter "Seller") agrees to sell the property with the following address:

\_\_\_\_\_, City \_\_\_\_\_, County \_\_\_\_\_, Florida, Zip Code \_\_\_\_\_ TAX ID/Pin # \_\_\_\_\_,

together with all fixtures, landscaping, improvements, and appurtenances and as more particularly described in the Legal Description paragraph below (all of which is hereinafter collectively referred to as the "Property"). The Property includes the permanent improvements thereon, including those items which Florida law provides are part of the Property, at the Closing Date. Seller makes no representation or warranty as to the existence or condition of such items. Seller makes no representation or warranty as to the existence, condition, ownership or right of possession of any personal property located on the Property

2. **LEGAL DESCRIPTION.** [Select A or B below. The section not marked shall not be a part of this Agreement.]

A. The legal description of the Property is attached as an exhibit hereto.

B. The full legal description of the Property is the same as is recorded in the land records of the county in which the Property is located and is incorporated by reference. The legal description of the Property is more specifically described below and can be found in said land records in the following deed book or plat book, if filled in below:

Land Lot(s) \_\_\_\_\_ of the \_\_\_\_\_ District, \_\_\_\_\_ Section/GMD, Lot \_\_\_\_\_, Block \_\_\_\_\_, Unit \_\_\_\_\_, Phase/section \_\_\_\_\_ of the \_\_\_\_\_ subdivision/development, \_\_\_\_\_ County, Florida as recorded in:

1. Plat Book \_\_\_\_\_, Page \_\_\_\_\_ et seq.

OR

2. Deed Book \_\_\_\_\_, Page \_\_\_\_\_ et seq.

3. **PURCHASE PRICE AND METHOD OF PAYMENT.** At Closing PURCHASER agrees to pay Seller the purchase price of the Property of \_\_\_\_\_ (\$ \_\_\_\_\_) in U.S. Dollars in cash or wire transfer of immediately available funds. The Purchase Price consists of the Winning Bid Amount of \$ \_\_\_\_\_, plus Purchaser's Premium of five percent (5%) \$ \_\_\_\_\_. Prior to the Closing Date PURCHASER shall deposit with the ESCROW AGENT, as hereafter defined, in immediately available funds an amount equal to the balance of the Purchase Price, plus PURCHASER's share of closing costs and pro rations, plus PURCHASER's expenses provided herein.

4. **AMOUNT AND DEPOSIT OF EARNEST MONEY.** PURCHASER has paid to Landcastle Title, LLC (hereinafter "ESCROW AGENT") earnest money of \$ \_\_\_\_\_ (hereinafter the "Earnest Money") which has been received by ESCROW AGENT. [If this is PURCHASER'S first property acquired at auction, the earnest money must be 10% of the Purchase Price. The first \$ \_\_\_\_\_ of said earnest money shall in the form of a wire transfer. The Earnest Money shall be deposited in ESCROW AGENT's escrow/trust account within 5 banking days from the Binding Agreement Date. If PURCHASER writes a check for any part of the Earnest Money and the same is deposited into ESCROW AGENT's escrow/trust account, ESCROW AGENT shall not be required to return the Earnest Money until the check has cleared the account on which the check was written. In the event any Earnest Money check is dishonored by the bank upon which it is drawn, ESCROW AGENT shall give notice of the same to PURCHASER and Seller. PURCHASER shall have 3 banking days after receiving such notice to deliver good funds to ESCROW AGENT. In the event PURCHASER does not timely deliver good funds, Seller shall have the right to terminate this Agreement upon giving notice to PURCHASER.



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## 5. FINANCING.

A. PURCHASER understands and acknowledges that the purchase of the Property and this Agreement IS NOT contingent on Purchaser obtaining financing for the purchase of the Property. Notwithstanding that there is no financing contingency, Seller may require PURCHASER to obtain pre-qualification at or prior to entering into this Agreement. If required, PURCHASER agrees to pre-qualify with Seller's lender at the auction of the Property and cooperate with such lender in the processing of this transaction.

B. PURCHASER understands and acknowledges that that Seller shall not pay any costs for any financing programs such as VA, FHA, bond assisted, city assisted, or other loan programs nor will the Closing be extended for such purpose.

C. PURCHASER hereby authorizes Seller and/or its representative to check and PURCHASER'S lender to report to Seller or Seller's agent regarding PURCHASER's current credit and loan status. If PURCHASER is obtaining financing, PURCHASER acknowledges that PURCHASER is doing so at PURCHASER's sole cost and expense. PURCHASER understands and agrees that the obtaining of any financing is and shall remain PURCHASER's (and not Seller's) obligation. PURCHASER hereby authorizes any such lender to release copies of any written loan approval and commitment to ESCROW AGENT and/or Seller.

D. \_\_\_\_\_ whether acting as Seller's Broker or in any other capacity, is not providing financial or lending services in this transaction. Neither \_\_\_\_\_ nor Seller are affiliated with any lender unless otherwise disclosed pursuant to applicable law.

6. **OPENING OF ESCROW.** In consideration of Seller paying for and providing the Owner's Policy of Title Insurance issued by Landcastle Title, LLC as set forth herein, Seller and PURCHASER shall open an escrow account related to this Agreement for the sale of the Property with the ESCROW AGENT (hereinafter the "Escrow") immediately upon execution of this Agreement by the parties by depositing a fully executed copy of this Agreement with the ESCROW AGENT. This Agreement shall constitute joint Closing instructions to the ESCROW AGENT who shall handle and close this transaction as set forth herein. Escrow shall be "open" upon the occurrence of the following: (A) ESCROW AGENT has received this Agreement executed by PURCHASER and Seller herein; and (B) ESCROW AGENT has received the Earnest Money from PURCHASER.

## 7. CLOSING.

A. **Closing Date.** ESCROW AGENT shall close the transaction contemplated by this Agreement hereinafter the "Closing") on the earlier of \_\_\_\_\_ or the date that is thirty days (30) after the date this Agreement is executed by PURCHASER. If such date falls on a weekend or a state or federally recognized holiday, such Closing Date shall be the next business day. ESCROW AGENT is instructed to conduct the Closing on such date, subject to Section 7C below.

B. **Closing Location.** The closing of this transaction shall take place at the office of ESCROW AGENT at 2410 Lake Park Drive, Suite 150, Smyrna, GA 30080; phone 678-805-0265, fax 678-805-0264; or at another office of ESCROW AGENT.

C. **Conditions of Closing.** ESCROW AGENT is instructed to conduct the Closing on such date set forth in Section 6A above, subject to each of the following:

(1) If Seller is unable to close on or before the original Closing Date, then such Closing Date shall be automatically extended for thirty (30) days; provided, however, that Seller, Seller's representative, or ESCROW AGENT may give PURCHASER written notice during such thirty (30) period that Seller is ready to close and such Closing shall occur within five (5) days following such written notice. If Seller is unable to close the transaction on or before the first extended Closing Date, then such Closing Date shall be automatically extended for another thirty (30) days; provided, however, that Seller, Seller's representative, or the ESCROW AGENT may give PURCHASER written notice during such thirty (30) day period that Seller is ready to close and such Closing shall occur within five (5) days following such written notice. No further extensions by Seller may be given unless agreed to in writing by PURCHASER.



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(2) If Seller is unable to deliver insurable title to PURCHASER as required in this Agreement at or prior to the Closing Date, as may be extended herein, then the Closing shall not occur, in which case such inability shall be deemed no fault of Seller, and Seller may cancel this Agreement and the provisions of Section 6F(2) below and Section 10 shall apply.

(3) If this transaction has been cancelled or terminated as permitted elsewhere in this Agreement, the Closing shall not occur.

(4) If PURCHASER requests an extension of the Closing Date in writing at least five (5) calendar days prior to the scheduled Closing Date, and Seller, in its sole and absolute discretion (after consultation with Seller's Broker) grants, in writing, an extension, PURCHASER agrees to pay to Seller a non-refundable per diem of \$25.00 (hereinafter the "Extension Fee") through and including the Closing Date as specified in the written extension up to 90 days. Such written extension shall specify the new Closing Date. Any extension failing to specify the new Closing Date shall be void. This fee will NOT be credited towards the Purchase Price. In the event the transaction fails to close, such accrued Extension Fee shall immediately be due and owing to Seller (See Section 12).

(5) If the Closing Date has been extended pursuant to an Addendum to this Agreement or an extension executed by both Seller and PURCHASER, then ESCROW AGENT shall conduct the Closing on the Closing Date as so extended.

**C. Conditions Precedent.** The Closing Date is further subject to each of the following conditions precedent (the failure of any of which shall not, in and of itself, relieve any party of its obligations set forth elsewhere in this Agreement): (1) Seller shall have delivered Seller's Deliveries set forth in Section 6 below, (2) PURCHASER shall have delivered Purchaser's Deliveries set forth in Section 6F below, (3) Seller shall not have given written notice to ESCROW AGENT that PURCHASER is in default of this Agreement, and (4) the title insurance company (hereinafter "Title Insurance Company") shall have irrevocably committed to issue to PURCHASER an owner's policy of title insurance covering the Property showing liability in the amount of the Purchase Price and showing insurable title to the Property, subject to any and/or all of the following (the failure of which shall not be deemed a default of Seller): (1) Title Insurance Company's standard exceptions, and (2) the following encumbrances and other matters: (i) liens for all current general and special real property taxes and assessments not yet due and payable; (ii) covenants, conditions, restrictions, reservations, rights, rights of way, and easements of record, if any; (iii) a new security deed (if any) to be recorded; (iv) the standard exceptions in the printed form of ALTA Standard Coverage Owner's Title Insurance Policy or Lender's Title Insurance Policy and any other exceptions or other matters contained or disclosed in the preliminary title report with respect to the Property (hereinafter the "Title Report"); (v) any state of facts an accurate survey and/or a personal inspection of the Property may disclose; (vi) rights of existing tenants and/or occupants of the Property, if any; (vii) any laws, regulations, ordinances (including, but not limited to zoning, building and environmental) as to the use, occupancy, subdivision or improvement of the Property adopted or imposed by any governmental body, or the effect of any noncompliance with or any violation thereof, including but not limited to any disclosure and/or report required by ordinance; and, (viii) any other matter for which the Title Insurance Company agrees to provide insurance at no additional cost to Purchaser.

**D. Closing Instructions to ESCROW AGENT.** At the Closing Date, ESCROW AGENT is hereby irrevocably instructed to complete the following:

(1) record the Deed conveying title to the Property to PURCHASER (for the purposes of this Agreement and the transactions contemplated by this Agreement. The term "Deed" shall mean statutory warranty deed or other form of deed acceptable to Seller in Seller's sole and absolute discretion. The Deed to be delivered at Closing shall be a deed that grants only whatever title that grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise;

(2) Pay all fees, costs deed and transfer taxes for the sale of the Property which are required to be paid by Seller under this Agreement, the portion of any fees charged by the ESCROW AGENT which are payable by Seller (if any) and other expenses relating to the sale of the Property which are required to be paid by Seller under this Agreement; pay all fees, costs and transfer taxes for the sale of the Property which are required to be paid by PURCHASER under this Agreement, the portion of any fees charged by the ESCROW AGENT which are payable



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by PURCHASER (if any) and other expenses relating to the sale of the Property which are required to be paid by PURCHASER under this Agreement

(3) Pay all property management and broker related fees and commissions to be paid by Seller or N/A, including fees and commissions to Seller's Broker and to the PURCHASER's broker identified on the signature page of this Agreement (hereinafter the "PURCHASER's Broker") as well as under any separate written agreement executed by Seller or N/A; and

(4) Pay to Seller the balance of the Purchase Price and any other funds remaining after the Closing Date.

**E. Any Previous Transaction.** If there was a transaction previously opened at any escrow company, title company or with any ESCROW AGENT and/or a separate contract exists by and between Seller and any third party, covering the sale of the Property (hereinafter "First Transaction"), the Closing Date under this Agreement is subject to and contingent upon Seller's ability to successfully cancel the First Transaction, if any, prior to or concurrently with the Closing Date. This condition precedent shall be deemed satisfied when ESCROW AGENT is in possession of a copy of signed cancellation instructions from Seller and the purchaser in the First Transaction. Failure to cancel such Previous Transaction shall not be deemed a default of Seller hereunder and the provisions of Section 6G(2) and Section 13 shall apply.

## **F. Deliveries to ESCROW AGENT.**

(1) By Seller. Prior to or on the Closing Date, Seller shall provide to the ESCROW AGENT (the hereinafter "Seller's Deliveries"): (i) a statutory warranty deed transferring Seller's interest in the Property to PURCHASER properly executed by Seller; and (ii) a non-foreign transferor declaration executed by Seller or evidence reasonably acceptable to ESCROW AGENT that Seller is exempt from the withholding requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), Internal Revenue Code Section 1445.

(2) By Purchaser. Prior to or on the Closing Date, PURCHASER shall provide to the ESCROW AGENT (hereinafter the "PURCHASER's Deliveries"): (i) immediately available good funds, as defined in Section 6F(3), below, in an amount equal to the Purchase Price less the Earnest Money previously deposited with the ESCROW AGENT, plus PURCHASER's share of closing costs and pro rations provided herein, plus PURCHASER's expenses set forth in Section 12 below, and (ii) any and all other instruments required by Lender, ESCROW AGENT or otherwise to consummate PURCHASER's acquisition of the Property.

(3) Final Funds to Close. All parties acknowledge that good funds are required to close this transaction. "Good funds" are defined as cash or electronic transfer (wired funds) such that ESCROW AGENT can disburse the funds on the same business day as the business day of the deposit of such funds. Out-of-state checks and all drafts are subject to waiting periods that can delay Closing and do not constitute good funds until the money is actually transferred to the ESCROW AGENT's account.

## **G. Cancellation of Transaction.**

(1) DEFAULT. If, due to a failure of a party to perform any of its obligations hereunder, the Transaction does not close by no later than the date provided above, subject to Section 6 for Closing Date, then the non-defaulting party may terminate this transaction by written notice to the defaulting party and the ESCROW AGENT, and the defaulting party shall pay all termination fees of the ESCROW AGENT and the Title Insurance Company. The parties shall be further subject to the provisions of Section 13 below.

(2) NO DEFAULT. If any of the conditions precedent to the Closing Date are not satisfied or are not waived by the date for Closing, and both parties have performed all of their respective obligations hereunder, then either party may cancel this transaction by written notice to the other party and the ESCROW AGENT. In such event, ESCROW AGENT shall return to PURCHASER (as PURCHASER's sole and exclusive remedy) the Earnest Money less an amount equal to PURCHASER's expenses set forth in Section 12 below, and Seller and PURCHASER shall each bear one-half (1/2) of the cancellation fees of the ESCROW AGENT and the Title Insurance Company. Upon return of the Earnest Money as provided in this Section, this Agreement shall be terminated, and PURCHASER and Seller shall be released from any further obligation, each to the other, in connection with this Agreement. PURCHASER





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grants Seller the unilateral right to execute cancellation instructions in the event that Seller elects to cancel this transaction.

## 8. PURCHASER'S INSPECTION AND DUE DILIGENCE .

**A. Representations and Warranties.** PURCHASER represents and warrants to Seller that: (1) prior to the execution of this Agreement, PURCHASER has had adequate time and access to the Property to conduct a complete and thorough inspection of the Property, examine all title matters concerning the Property and all agreements relating to the Property including but not limited to the any disclosures and reports required by any ordinance, (2) prior to the execution of this Agreement, PURCHASER has conducted and completed such inspections, or has freely and voluntarily waived the right to conduct any such inspections, (3) PURCHASER is purchasing the Property based solely upon PURCHASER's own inspection of the Property, (4) prior to the execution of this Agreement, PURCHASER has satisfied PURCHASER in all respects as to the Property and the condition thereof, including, without limitation, its location, its insurability, its physical condition, its environmental condition, the structural integrity of any and all improvements on the Property, all title matters concerning the Property, all applicable common interest community and unit owner's association documents, rules and regulations concerning the Property. PURCHASER hereby waives any and all rights PURCHASER has or may have, pursuant to applicable law or otherwise, to require Seller to either provide to PURCHASER or authorize anyone to provide to PURCHASER copies of any of the documentation for any condominium association or homeowners association, including without limitation any governing or financial documents and all other matters with respect to the Property, and (5) PURCHASER is aware of all laws, ordinances and requirements affecting the use, condition and ownership of the Property, including, without limitation, all applicable zoning and land use regulations and local ordinance. Seller makes no representation or warranty, and PURCHASER has investigated to PURCHASER's satisfaction, regarding the location of the Property in any flood hazard zone, whether the Property is subject to any flood disaster or other insurance requirements or whether the Property contains wetlands or other environmental constraints.

**B. Purchaser Indemnity And Seller Protection For Entry Upon Property.** In connection with any due diligence, inspection, visit and/or investigation of the Property ("PURCHASER'S Inspection") by PURCHASER or any person/entity on PURCHASER's behalf, PURCHASER shall (1) keep the Property free and clear of liens, (2) repair all damage arising from PURCHASER's Inspection, and (3) indemnify, defend and hold Seller harmless from all liability, claims, demands, damages and/or costs directly or indirectly arising therefrom. PURCHASER shall carry, or require anyone acting on PURCHASER's behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any PURCHASER Inspection prior to the Closing Date. Notwithstanding any other provision of this Agreement, the obligations and agreements of PURCHASER under this Section 8B shall survive the Closing of the transaction contemplated by this Agreement or the earlier termination of this Agreement..

## 9. DISCLOSURES.

**A. Post-Foreclosure Transaction.** PURCHASER acknowledges that the purchase of the Property results from a transfer made by a beneficiary under a security deed which acquired the Property at a sale conducted pursuant to a power of sale under security deed, or deed in lieu thereof, or foreclosure under a power of sale as provided under Title 44 of the Official Code of Florida.. Further, PURCHASER acknowledges that Seller is not familiar with the condition of the Property, other than as may be disclosed in any inspection reports obtained by or on behalf of Seller, Seller's representatives or agents or that Seller may have received otherwise. Any such reports furnished by Seller or its agents in connection herewith shall be for informational purposes only, are not made part of this Agreement, and Seller makes no representations or warranties about their accuracy or completeness.

### **B. Other Disclosures.**

(1) **Mold.** PURCHASER understands that mold is naturally occurring and may cause health risks or damage to property. If PURCHASER is concerned or desires additional information regarding mold, PURCHASER agrees to contact an appropriate professional. Real property (including, but not limited to, the basement) is or may be affected by water or moisture damage, toxic mold, and/or other environmental hazards or conditions. Seller further advises PURCHASER that as a consequence of possible water damage and/or excessive moisture, the Property may be or has been irrevocably contaminated with mildew, mold, and/or other microscopic organisms. PURCHASER is hereby advised that exposure to certain species of mold may pose serious health risks, and that individuals with



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immune system deficiencies, infants, children, the elderly, individuals with allergies or respiratory problems, and pets are particularly susceptible to experiencing adverse health effects from mold exposure. PURCHASER acknowledges and agrees that Seller has advised PURCHASER to make PURCHASER's own evaluation of the Property and to have the Property thoroughly inspected. PURCHASER acknowledges and agrees that PURCHASER has been further advised by Seller that all areas contaminated with mold, and/or other environmental hazards or conditions, should be properly and thoroughly remediated. Additionally, PURCHASER has been advised by Seller that living in the Property without complete remediation may subject the inhabitants to potentially serious health risks and/or bodily injury. PURCHASER acknowledges and agrees that it is the sole responsibility of PURCHASER to conduct any remediation on the Property. PURCHASER also acknowledges that PURCHASER is buying the Property AS IS, WHERE IS. PURCHASER represents and warrants to Seller that PURCHASER has made his own inspection and evaluation of the Property to PURCHASER's complete satisfaction, and PURCHASER accepts the Property AS IS, WHERE IS at the time of Closing. PURCHASER is electing to purchase the Property from Seller in an AS IS, WHERE IS condition with full knowledge of the potential condition of the Property, the potentially serious health risks, and the potential liability that PURCHASER could incur as the owner of the Property for claims, losses, and damages arising out of any toxic mold contamination, and/or other environmental hazards or conditions on the Property. PURCHASER agrees that the purchase price of the Property reflects the agreed upon value of the Property AS IS, WHERE IS taking into account the aforementioned disclosures

(2) Lead Based Paint Disclosure. If the Property was built prior to 1978, Seller shall (i) notify Purchaser of any known lead-based paint or lead based paint hazards in the Property; (ii) provide the PURCHASER with any lead based paint risk assessments or inspections of the Property in Seller's possession; (iii) provide Purchaser with the Disclosure of Information on lead based paint and lead-based paint hazards, and any report, records, pamphlets, and/or other materials references therein, including the pamphlet "Protect Your Family From Lead In Your Home" (collectively "Lead Based Paint Information"). PURCHASER shall return a signed copy of the Disclosure of Information on lead based paint and lead-based paint hazards to Seller prior to Closing.

Lead Based Paint Information was provided prior to Binding Agreement Date and PURCHASER acknowledges the opportunity to conduct lead based paint risk assessments or inspections during the Inspections. PURCHASER hereby waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards.

(3) Assessments. If the Property is subject to a special assessment lien imposed by a public body payable in installments which continue beyond Closing, Purchaser shall be responsible for and pay all amounts which become due after Closing.

(4) Radon. Purchaser understands that radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines may have been found in buildings Florida.

(5) Property Tax Disclosure. PURCHASER understands and agrees that PURCHASER should not rely on Seller's current property taxes as the amount of property taxes that PURCHASER may be obligated to pay in the year subsequent to purchase. A change of ownership, use, or property improvements may trigger reassessments of the property that could result in higher property taxes. PURCHASER acknowledges that if PURCHASER has any questions concerning valuation or the tax rate, PURCHASER must contact the county property appraiser's office or the county tax commissioner for information.

(6) Condominium Associations, Homeowners Associations and Their Assessments. If the Property is part of a condominium or is located in a subdivision with a mandatory homeowners association (hereinafter the "Community"), unless otherwise required by law, PURCHASER acknowledges and agrees that PURCHASER, at PURCHASER's own expense, was and is responsible for (a) obtaining (PURCHASER having made the waiver in connection therewith set forth in Section 8A of this Agreement) and (b) reviewing the covenants, conditions, restrictions and/or bylaws and other documentation regarding the Community and PURCHASER acknowledges that, prior to PURCHASER's execution of this Agreement, PURCHASER has reviewed such documentation to the fullest extent PURCHASER deems necessary and, upon execution of this Agreement, PURCHASER is deemed to have accepted the covenants, conditions, restrictions and/or bylaws of the Community and understands that PURCHASER is bound by them. PURCHASER also acknowledges and agrees that if the Property is part of the Community, PURCHASER may be subject to paying assessments made by the association.



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(7) Building and Zoning Codes. PURCHASER understands that PURCHASER must consult the local jurisdiction for information on building and zoning codes or information about transportation beltways and/or planned or anticipated land use within proximity of the Property. Seller makes no representations or warranties regarding compliance or conformity with any building codes, laws, rules or regulations.

(8) Permits and Repairs. If the Property is located in a jurisdiction that requires a certificate of occupancy, smoke detector certification, septic certification or any similar certification or permit or any form of improvement or repair to the Property (hereinafter collectively, "Permits and Repairs"), PURCHASER acknowledges and agrees that PURCHASER shall be responsible for obtaining any and all of the Permit and Repairs at PURCHASER's sole cost and expense. Seller makes no representations or warranties regarding compliance or conformity with any building codes or regulations, including but not limited to any certificate of use or other certification required by the ordinance.

(9) Square Footage. PURCHASER acknowledges that the square footage of the Property has not been measured by Seller, its auctioneer or real estate broker (including the square footage of the lot and home) and the square footage quoted on any marketing tools such as advertisements, brochures, MLS data, and any other information provided is based on information supplied to Seller and is deemed approximate and not guaranteed. PURCHASER further acknowledges that PURCHASER has not relied upon any such marketing tool and that such tools are not representations and/or warranties of Seller.

**C. Receipt of Disclosures.** PURCHASER acknowledges and agrees that PURCHASER has received and/or had adequate opportunity to read and understand all disclosures and documents regarding the Property made available by Seller in print or electronic form (hereinafter the "Disclosures"), including without limitation: the pamphlet "Protect Your Family From Lead in Your Home;" (1) the written disclosures made available at the Property and at the location where the sale of the Property is conducted; (2) the disclosures listed herein and on Exhibits attached to this Agreement, which Exhibits are incorporated into this Agreement by reference herein; and (3) the documents and information made available on the internet at [www.\\_\\_\\_\\_\\_](http://www._____). PURCHASER understands and acknowledges that any information provided by or on behalf of Seller with respect to the Property, including without limitation, all information in the Disclosures and the Brochure as defined in Section 9D below was obtained from a variety of sources and that Seller and Seller's Broker have not made any independent investigation or verification of such information and make no representations as to the accuracy or completeness of such information. PURCHASER agrees that PURCHASER shall not have the right to cancel this Agreement by reason of any information, facts, condition or other aspect of the Property discovered by PURCHASER subsequent to PURCHASER's execution of this Agreement. PURCHASER further waives PURCHASER's right under 42 U.S.C. § 4852(d) and any other applicable law to conduct a risk assessment or inspection for the presence of lead-based paint hazards.

**D. Brochure.** PURCHASER represents and warrants that PURCHASER has received, read and accepts the terms and conditions pertaining to the sale of the Property which are set forth in the Auction Brochure (hereinafter the "Brochure"), which terms and conditions are incorporated herein by reference. In the event of any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Brochure, the terms and conditions of this Agreement shall control and prevail in all respects.

**E. No Repairs.** PURCHASER acknowledges and agrees that Seller is selling the Property "as is, where is" with all faults and Seller shall have no liability for or any obligation to make any repairs or improvements of any kind to the Property, including but not limited to the inability of PURCHASER to obtain a certificate of occupancy or municipal code compliance certificate, if required, for the Property. Seller shall comply with municipal laws and ordinances regarding the presence of smoke detector(s), carbon monoxide detectors and/or fire extinguishers required at the Property, if any. Any and all additional smoke detector(s), carbon monoxide detectors and/or fire extinguishers required by local ordinance shall be installed by PURCHASER at PURCHASER's cost and expense prior to the Closing Date. In some municipalities, a certificate of occupancy, certificate of use or municipal code compliance certificate may be required in order to transfer and/or occupy the Property. If a certificate of occupancy, certificate of use or municipal code compliance certificate is required to be obtained in order for the Property to be transferred to or occupied by PURCHASER, PURCHASER shall obtain such certificate of occupancy, certificate of use or municipal code compliance certificate at PURCHASER's sole cost and expense. If any violations at the Property shall be required to be corrected by the municipality or other work performed at the Property to obtain a certificate of occupancy, certificate of use or municipal code compliance certificate,



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PURCHASER shall correct and/or perform same at PURCHASER's sole cost and expense. Seller makes no representation as to whether a certificate of occupancy, certificate of use or municipal code compliance certificate is required or whether the Property may be occupied by PURCHASER. PURCHASER shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expenses, claims and liabilities arising out of or relating to PURCHASER's obtaining or its failure to obtain a certificate of occupancy, certificate of use or municipal code compliance certificate if one is required. This indemnification shall survive the ClosingDate and shall not be deemed to have merged into any of the documents executed or delivered at Closing. Seller makes no representations or warranties regarding compliance or conformity with any building codes or regulations.

**F. Preliminary Title Report and Declaration of Covenants, Conditions, and Restrictions.** PURCHASER represents and warrants that PURCHASER has read, received and approved copies of (1) the preliminary title report or commitment for the Property, (2) the recorded Declaration of Covenants, Conditions, Restrictions and Easements governing the Property, (3) any rights of way and easements of record, if any, affecting the Property, and (e) any and all other matters disclosed in the preliminary title report.

**G. Execution of Disclosures By Purchaser.** PURCHASER shall execute, deliver and deposit with ESCROW AGENT, at or prior to the date set for Closing, all federal, state and local disclosures concerning the Property that PURCHASER is required to execute under applicable laws and regulations or required by the ESCROW AGENT.

**H. Occupied Property.** Seller makes no representations or warranties as to whether the Property is occupied as of the Closing Date.

(1) If the Property is occupied, Seller will endeavor (but shall not be obligated) to evict or dispossess the occupants prior to the Closing Date. PURCHASER expressly waives any right to terminate this Agreement based on the status of occupancy of the Property.

(2) The Property may be subject to leasehold interests of various tenants. Seller has included in the Disclosures true copies of all leases and amendments, if any, in Seller's possession. Seller makes no warranties or representations as to whether or not other leases of the Property are or will be in force; whether or not anyone else has a right of possession; whether or not any rent concessions were given to any tenant; whether or not any other agreements were made with the tenants; whether or not any rent charged violates any applicable statute, or law; whether or not any other violations of any applicable ordinance, statute or law exist; and whether or not Seller or any tenant is in default under any lease. Because the Property was acquired by Seller through foreclosure, trustee's sale pursuant to a power of sale under a deed of trust, power of sale under a security deed, sheriff's sale or deed in lieu of foreclosure, Seller has no security deposits or last month's rent to surrender to PURCHASER. PURCHASER shall be responsible for notifying tenants of the transfer of ownership of the Property, and shall be liable to any and all tenants for repayment of any outstanding security deposit, less lawful deductions. This provision shall survive the Closing of this transaction and shall not be deemed to have merged into any of the documents executed or delivered at closing. PURCHASER shall defend, indemnify and hold harmless Seller, its affiliates, parent companies, officers, directors, shareholders, agents, attorneys and representatives from and against any claims, demands, actions or expenses, including reasonable attorney's fees, arising out of any and all actions concerning security deposits, and for any eviction or unlawful detainer or other litigation arising out of the tenancy, occupancy or lease of the Property after the Closing Date.

(2) PURCHASER understands and agrees that PURCHASER shall be responsible for installing new locks on the Property immediately after the closing, and PURCHASER agree to hold harmless Seller and Seller's representatives and agents from, and indemnify Seller and Seller's representatives and agents against, any and all damages, claims, liens, liabilities, costs, injuries, attorney's fees and expenses of every kind and nature that may be made against Seller as a result of PURCHASER's failure to install new locks on the Property.

**I. Possession.** Seller shall deliver possession of the Property to Purchaser at the Closing and funding of the sale. PURCHASER shall have no further right to access or inspect the Property prior to Closing. The delivery of possession shall be subject to the rights of any tenants or parties in possession per Section 9H. If Purchaser alters the Property or causes the Property to be altered in any way and/or occupies the Property or allows any other person to occupy the Property prior to Closing and funding without the prior written consent of Seller, then: (A) such event





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shall constitute a material breach by Purchaser under this Agreement; (B) Seller may terminate the Agreement; (iii) Purchaser shall be liable to Seller for all Claims caused by any such alteration or occupation of the Property prior to Close of Escrow and funding; and (iv) PURCHASER waives all Claims for improvements made by Purchaser to the Property including, but not limited to, any Claims for unjust enrichment.

(1) Keys and Remote Controls. At Closing, Seller shall provide PURCHASER with a key to the front door of the Property to the extent in Seller's possession. Any and all keys, including garage door keys, pool keys, security keys, and mail box keys, may not be provided by Seller and, if not provided, PURCHASER must obtain same at PURCHASER's own expense. All remote control devices must also be obtained by PURCHASER at PURCHASER's own expense.

## 10. "AS IS. WHERE IS" SALE.

PURCHASER ACKNOWLEDGES AND AGREES THAT PURCHASER IS ACQUIRING THE PROPERTY "AS IS, WHERE IS", 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 INCLUDING, WITHOUT LIMITATION, ALL EXISTING CONDITIONS, IF ANY, OF LEAD PAINT, MOLD OR OTHER ENVIRONMENTAL OR HEALTH HAZARDS ("ENVIRONMENTAL MATTERS"). SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL PURPOSES, ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (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) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, (J) THE STRUCTURAL INTEGRITY OF ANY IMPROVEMENTS ON THE PROPERTY, (K) THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PROPERTY THAT MAY BE PROVIDED TO PURCHASER, (L) THE CONFORMITY OF THE PROPERTY TO APPLICABLE ZONING OR BUILDING CODE REQUIREMENTS, (M) THE EXISTENCE OF SOIL INSTABILITY, PAST SOIL REPAIRS, SUSCEPTIBILITY TO LANDSLIDES, SUFFICIENCY OF UNDERSHORING, SUFFICIENCY OF DRAINAGE, OR ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE LAND OR ANY BUILDINGS OR IMPROVEMENTS SITUATED THEREON, OR (N) WHETHER THE PROPERTY IS LOCATED IN A HISTORIC PRESERVATION DISTRICT OR SUBJECT TO SPECIAL REGULATIONS RELATED TO HISTORIC PRESERVATION, (O) 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 FLOOD PLAIN, OR IN THE PRESENCE OF WETLANDS OR SHORELAND. PURCHASER ACKNOWLEDGES THAT THE PROPERTY MAY NOT BE IN COMPLIANCE WITH APPLICABLE ZONING, BUILDING, HEALTH OR OTHER LAW OR CODES, AND NEITHER SELLER NOR ANY PERSON ACTING AS SELLER'S REPRESENTATIVE OR AGENT HAS OCCUPIED THE PROPERTY AND THAT THE PROPERTY MAY NOT BE IN HABITABLE CONDITION.

PURCHASER FURTHER ACKNOWLEDGES AND AGREES THAT, WITHOUT LIMITATION, SELLER HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OR WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AND ANY OTHER STATE, FEDERAL, OR LOCAL ENVIRONMENTAL LAWS AND REGULATIONS APPLICABLE TO THE PROPERTY, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE



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PROPERTY OR ANY ADJACENT OR NEARBY PROPERTY, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER AND ANY OTHER STATE, FEDERAL OR LOCAL ENVIRONMENTAL LAWS AND REGULATIONS APPLICABLE TO THE PROPERTY.

UPON CLOSING, PURCHASER ACKNOWLEDGES AND AGREES THAT SELLER AND ITS AGENTS AND ASSIGNS HAVE NO FURTHER RESPONSIBILITY, OBLIGATION OR LIABILITY TO PURCHASER. PURCHASER AGREES THAT SELLER AND ITS AGENTS AND ASSIGNS SHALL HAVE NO LIABILITY FOR ANY CLAIM OR LOSSES PURCHASER OR PURCHASER'S HEIRS, SUCCESSORS AND ASSIGNS MAY INCUR AS A RESULT OF DEFECTS THAT MAY NOW OR MAY HEREAFTER EXIST WITH RESPECT TO THE PROPERTY, AND PURCHASER SHALL HOLD HARMLESS, INDEMNIFY AND DEFEND SELLER FROM ANY SUCH CLAIM. THE OBLIGATIONS AND AGREEMENTS OF PURCHASER UNDER THIS SECTION SHALL SURVIVE THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT OR THE EARLIER TERMINATION OF THIS AGREEMENT. PURCHASER AND ANYONE CLAIMING BY, THROUGH OR UNDER THE SAME HEREBY FULLY AND IRREVOCABLY RELEASES SELLER AND ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, BROKERS AND AGENTS FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, WHETHER ADMINISTRATIVE OR JUDICIAL, LOSSES, COSTS (INCLUDING ANY AND ALL REASONABLE ATTORNEYS' FEES, COURT COSTS, AND REASONABLE COSTS OF INVESTIGATION, LITIGATION, AND SETTLEMENT), EXPENSES, SANCTIONS, CURTAILMENTS, INTEREST, LIABILITIES, PENALTIES, FINES, DEMANDS, EXPENSES, LIENS, JUDGMENTS, COMPENSATION, FEES, LOSS OF PROFITS, INJURIES, DEATH, AND/OR DAMAGES, OF ANY KIND WHATSOEVER, WHETHER KNOWN OR UNKNOWN, FIXED OR CONTINGENT, JOINT OR SEVERAL, CRIMINAL OR CIVIL, OR IN LAW OR IN EQUITY ("CLAIMS") ARISING FROM OR RELATING TO PURCHASER'S BREACH OF OR FAILURE TO COMPLY FULLY WITH ANY PROVISION IN THIS AGREEMENT, INSPECTIONS OR REPAIRS MADE BY PURCHASER OR HIS/HER/ITS AGENTS, REPRESENTATIVES, BROKERS, EMPLOYEES, CONTRACTORS, SUCCESSORS OR ASSIGNS, THE IMPOSITION OF ANY FINE OR PENALTY IMPOSED BY ANY GOVERNMENTAL ENTITY RESULTING FROM PURCHASER'S FAILURE TO TIMELY OBTAIN ANY CERTIFICATE OF OCCUPANCY OR TO COMPLY WITH EQUIVALENT LAWS AND REGULATIONS, CONSTRUCTION DEFECTS, ERRORS, OMISSIONS OR OTHER CONDITIONS, INCLUDING ENVIRONMENTAL MATTERS, AFFECTING THE PROPERTY, OR ANY PORTION THEREOF. THIS RELEASE INCLUDES CLAIMS OF WHICH PURCHASER IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN HIS/HER/ITS FAVOR WHICH, IF KNOWN BY PURCHASER, WOULD MATERIALLY AFFECT PURCHASER'S RELEASE OF SELLER.

**Purchaser's Initials** \_\_\_\_\_/\_\_\_\_\_

11. **CONVEYANCE OF TITLE.** Insurable title shall be delivered to PURCHASER by Limited Warranty Deed on a form acceptable to Seller in Seller's sole and absolute discretion. Seller shall be under no obligation to (A) remove any exception (B) bring any action or proceeding or bear any expense in order to enable Seller to convey title to the Property in accordance with this Agreement or (C) otherwise make the title to the Property insurable. Any attempt by Seller to remove such title exceptions shall not impose an obligation upon Seller to remove those exceptions. Purchaser acknowledges that Seller's title to the Property may be subject to court approval of foreclosure or to a mortgagor's right of redemption. IF FOR ANY REASON, SELLER IS (A) IS UNABLE OR UNWILLING TO MAKE THE TITLE INSURABLE OR CORRECT ALL TITLE PROBLEMS OR (B) IS UNABLE OR UNWILLING TO OBTAIN TITLE INSURANCE FOR THE PROPERTY FROM A REPUTABLE TITLE INSURANCE COMPANY OR (C) DETERMINES THAT IT IS UNABLE OR IT IS ECONOMICALLY NOT FEASIBLE TO CONVEY GOOD AND MARKETABLE TITLE TO THE PROPERTY INSURABLE BY A REPUTABLE TITLE INSURANCE COMPANY AT REGULAR RATES, AT THE CLOSING DATE, AND SUCH CLOSING DATE IS NOT EXTENDED OR OTHERWISE AMENDED IN THE SOLE AND ABSOLUTE DISCRETION OF SELLER AS SET FORTH ELSEWHERE IN THIS AGREEMENT, THEN SELLER MAY TERMINATE THE TRANSACTION AND THIS AGREEMENT BY WRITTEN NOTICE TO THE OTHER PARTY AND THE ESCROW AGENT. IN SUCH EVENT, ESCROW AGENT SHALL RETURN TO PURCHASER (AS PURCHASER'S SOLE AND EXCLUSIVE REMEDY) THE EARNEST MONEY LESS AN AMOUNT EQUAL TO PURCHASER'S EXPENSES SET FORTH IN SECTION 12 BELOW, AND SELLER AND PURCHASER SHALL EACH BEAR ONE-HALF (1/2) OF THE CANCELLATION FEES OF THE



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ESCROW AGENT AND THE TITLE INSURANCE COMPANY. UPON RETURN OF THE EARNEST MONEY AS PROVIDED IN THIS SECTION, THIS AGREEMENT SHALL BE TERMINATED, AND PURCHASER AND SELLER SHALL BE RELEASED FROM ANY FURTHER OBLIGATION, EACH TO THE OTHER, IN CONNECTION WITH THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN. PURCHASER GRANTS SELLER THE UNILATERAL RIGHT TO EXECUTE TERMINATION INSTRUCTIONS IN THE EVENT THAT SELLER ELECTS TO TERMINATE THIS TRANSACTION AND THIS AGREEMENT.

## 12. COSTS AND PRORATIONS.

A. **Prorations.** The ESCROW AGENT shall prorate the following expenses as of the Closing Date: all real property taxes and assessments, municipal water and sewer charges, rents, condominium or planned unit development or similar community assessments, cooperative fees, maintenance fees, homeowner association regular, special and emergency dues and assessments, payments on bonds, and other special assessment district bonds and assessments imposed prior to the Closing Date. Payment of special assessment district bonds and assessments, and payments of homeowner's associations or condominium association special assessments shall be paid current with payments not yet due and owing to be assumed by PURCHASER without credit toward the Purchase Price. Seller shall provide ESCROW AGENT with any rent rolls in Seller's possession that would assist ESCROW AGENT in prorating rents. If the regular homeowner association dues were paid prior to the Closing Date for a period of time subsequent to the Closing Date, then PURCHASER shall pay to Seller that portion of the assessment attributable to the period of time after the date of Closing. Any homeowners' association transfer fees or document fees payable in connection with the sale of the Property from Seller to PURCHASER shall be paid by PURCHASER. Insurance premiums will not be prorated. Seller cannot endorse or assign existing insurance policies (if any) to PURCHASER, and Seller may cancel any existing insurance on the Property as of the Closing Date.

B. **Purchaser's Expenses.** PURCHASER shall pay all costs of credit reports, loan fees, loan points and other costs of obtaining the new secured loan(s), lender's title insurance charges for the policy of the lender(s) of the secured loan(s), closing fees and charges unless otherwise required by law or agreed to in writing by Seller, tax service fees, recordation fees for the Limited Warranty deed, and the intangible recording tax due on any security deed(s), the Florida real property transfer taxes, PURCHASER's share of prorations and charges under Section 12A above, and first month's condominium/homeowner's association membership fees and assessments, if any, and other closing costs of PURCHASER. All other costs and expenses, including any cost, expense or transfer tax imposed by any state or local entity not otherwise addressed herein, shall be paid by PURCHASER. Any and all termite clearances and reports and any inspections required by any lender, and/or repairs recommended or required by any termite and/or property inspection report including, but not limited to, any roof certifications shall all be at the sole cost and expense of PURCHASER. The foregoing costs and expenses shall be paid by ESCROW AGENT on PURCHASER's behalf from funds deposited with ESCROW AGENT by PURCHASER.

C. **Seller's Expenses.** Seller shall pay the premium for the owner's title insurance policy identified in Section 6 above, a title search fee and a Seller's closing fee, Seller's share of prorations under Section 12A. Seller shall not be responsible for any amounts due, paid or to be paid after Closing. In the event Seller has paid any taxes, special assessments or other fees and there is a refund of any such taxes, assessments or fees after the Closing, and PURCHASER as current owner of the Property receives the payment, PURCHASER will immediately submit the refund to Seller. ESCROW AGENT is hereby authorized to pay from Seller's proceeds Seller's expenses set forth in this Section.

D. **Pre-Closing Expenses.** PURCHASER and Seller are aware that the ESCROW AGENT may incur certain expenses during the course of processing this transaction which must be paid prior to the Closing Date. Such costs may include, but are not limited to, demand request fees, homeowner association document fees, courier fees, overnight mail service and City building reports, if applicable. ESCROW AGENT is authorized and instructed to release funds for payment of such costs prior to the Closing Date from funds deposited with ESCROW AGENT by PURCHASER. The parties acknowledge that said funds are not refundable and ESCROW AGENT is specifically released from all responsibility and/or liability for payment of any funds pre-released through the Transaction. At Closing, ESCROW AGENT is authorized to charge the appropriate party for costs incurred or credit either one if necessary.



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E.. **Post Closing Adjustments.** PURCHASER agrees to pay any shortages in taxes directly to the taxing authority, if such shortages were attributable to the time period from and after the Closing Date. Seller agrees to pay any shortages in taxes attributable to periods of time prior to the Closing Date upon notification of such shortages by PURCHASER to Seller. Notwithstanding the foregoing, Seller shall have no obligation to pay such shortages unless PURCHASER notifies Seller in writing and submits the tax bill to Seller not later than ten (10) days from the date of the Closing.

13. **DEFAULT AND REMEDIES.** PURCHASER and Seller agree as follows:

A. **Purchaser's Default and Liquidated Damages.** PURCHASER AND SELLER AGREE THAT IF PURCHASER FAILS TO COMPLETE THIS PURCHASE BY REASON OF ANY DEFAULT OF PURCHASER, AS DETERMINED BY SELLER IN ITS SOLE DISCRETION:

(1) SELLER SHALL BE RELEASED AND DISCHARGED FROM ANY OBLIGATION TO SELL THE PROPERTY TO PURCHASER, AND

(2) PURCHASER AND SELLER EXPRESSLY AGREE THAT IT WOULD BE EXTREMELY DIFFICULT TO DETERMINE SELLER'S ACTUAL DAMAGES AS A RESULT OF SUCH A DEFAULT BY PURCHASER, THEREFORE THE PARTIES AGREE THAT SELLER SHALL BE PAID BY ESCROW AGENT AS LIQUIDATED DAMAGES AND NOT AS A PENALTY AND AS A REASONABLE PRE-ESTIMATE OF SELLER'S ACTUAL DAMAGES FOR BREACH OF THIS AGREEMENT AN AMOUNT EQUAL TO THE EARNEST MONEY ACTUALLY PAID. (PROVIDED, HOWEVER, THE AMOUNT PAID SHALL BE NO MORE THAN FIVE PERCENT (5%) OF THE TOTAL PURCHASE PRICE, ANY EXCESS SHALL BE PROMPTLY RETURNED TO PURCHASER). NOTWITHSTANDING ALL OF THE FOREGOING, SELLER RETAINS THE RIGHT TO PROCEED AGAINST PURCHASER FOR ENFORCEMENT OF PURCHASER'S INDEMNIFICATION/DEFENSE/HOLD HARMLESS OBLIGATIONS UNDER THIS AGREEMENT.

(B) **Seller Default.** PURCHASER AND SELLER AGREE THAT IF SELLER IS UNABLE TO PERFORM AS REQUIRED BY THIS AGREEMENT, THEN THIS AGREEMENT MAY BE CANCELLED UPON SELLER'S WRITTEN NOTICE TO PURCHASER. IN SUCH EVENT, ESCROW AGENT SHALL RETURN PURCHASER'S EARNEST MONEY TO PURCHASER; SUCH RETURN OF PURCHASER'S EARNEST MONEY SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDY IN SUCH EVENT. UNDER NO CIRCUMSTANCES SHALL PURCHASER HAVE THE RIGHT TO SEEK OR OBTAIN SPECIFIC ENFORCEMENT OF THIS AGREEMENT.

(C) **Waiver of Specific Performance Remedy.** AS A MATERIAL PART OF THE CONSIDERATION TO BE RECEIVED BY SELLER UNDER THIS AGREEMENT, PURCHASER WAIVES ALL RIGHTS TO FILE AND MAINTAIN AN ACTION AGAINST SELLER FOR SPECIFIC PERFORMANCE AND TO RECORD A LIS PENDENS AGAINST THE PROPERTY IF A DISPUTE ARISES CONCERNING THIS AGREEMENT. PURCHASER AGREES THAT THE PROPERTY IS NOT UNIQUE AND THAT IN THE EVENT OF SELLER'S DEFAULT OR MATERIAL BREACH OF THE AGREEMENT, PURCHASER CAN BE ADEQUATELY AND FAIRLY COMPENSATED SOLELY BY RECEIVING A RETURN OF PURCHASER'S EARNEST MONEY. UPON RETURN OF PURCHASER'S EARNEST MONEY, THIS AGREEMENT SHALL BE TERMINATED, AND PURCHASER AND SELLER HEREBY IRREVOCABLY INSTRUCT ESCROW AGENT TO RETURN ALL FUNDS AND DOCUMENTS TO THE PARTY THAT DEPOSITED THEM WITHOUT FURTHER DIRECTION.

(D) **Waiver of Additional Release Document.** PURCHASER ACKNOWLEDGES AND AGREES AND CONFIRMS TO THE ESCROW AGENT THAT BY SIGNING THIS AGREEMENT, SELLER SHALL HAVE THE RIGHT TO SEEK THE RELEASE OF THE EARNEST MONEY UNDER THIS SECTION 13, OR CANCEL THE TRANSACTION UNDER SECTION 6, WITHOUT ANY FURTHER ACTION, CONSENT OR DOCUMENT FROM PURCHASER.

SELLER'S INITIALS \_\_\_\_\_ PURCHASER'S INITIALS \_\_\_\_\_/\_\_\_\_\_

14. **DISPUTE RESOLUTION.**

A. **Mediation.** AT THE REQUEST OF EITHER PARTY, ANY DISPUTE ARISING UNDER THIS





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AGREEMENT SHALL BE FIRST SUBMITTED TO MEDIATION BEFORE RESORTING TO OR INITIATING ARBITRATION OR COURT ACTION. MEDIATION FEES SHALL BE DIVIDED EQUALLY AND EACH PARTY SHALL BEAR HIS, HER OR ITS OWN ATTORNEY'S FEES AND COSTS.

**B. Binding Arbitration.** PURCHASER AND SELLER AGREE THAT ANY DISPUTE OR CLAIM IN LAW OR EQUITY ARISING BETWEEN THEM OUT OF THIS AGREEMENT SHALL BE DECIDED BY NEUTRAL, BINDING ARBITRATION HELD IN FULTON COUNTY GEORGIA WITH AND UNDER THE DISPUTE RESOLUTION RULES OF CONSTRUCTION ARBITRATION ASSOCIATES, LTD. IN ADDITION, ANY DISPUTE ARISING OUT OF THIS AGREEMENT, INCLUDING ITS INTERPRETATION, ENFORCEABILITY, AND THE ARBITRABILITY OF DISPUTES BETWEEN THE PARTIES WILL BE DECIDED BY THE ARBITRATOR. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

SUBJECT TO SECTION 14(A) ABOVE, BY INITIALING IN THE SPACE BELOW, PURCHASER AND SELLER AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL BINDING ARBITRATION AS PROVIDED BY GEORGIA LAW AND ARE GIVING UP ANY RIGHTS PURCHASER AND SELLER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW, PURCHASER AND SELLER ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF EITHER PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THAT PARTY MAY BE COMPELLED TO ARBITRATE. PURCHASER'S AND SELLER'S AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

SELLER AND PURCHASER ACKNOWLEDGE AND AGREE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS "DISPUTE RESOLUTION PROVISION TO MEDIATION AND/OR NEUTRAL BINDING ARBITRATION.

SELLER'S INITIALS \_\_\_\_\_ PURCHASER'S INITIALS \_\_\_\_\_/\_\_\_\_\_

15. **RISK OF LOSS.** If any material portion of the Property is damaged or destroyed prior to the Closing Date, Seller shall give PURCHASER written notice thereof. PURCHASER shall have the option, exercisable within ten (10) business days after receipt of such written notice, to either (a) terminate this Agreement, or (b) consummate this Agreement in accordance with its terms. In any event, Seller shall not be deemed in default under this Agreement as a result of such damage or destruction. PURCHASER shall be deemed to have waived its right to terminate this Agreement if PURCHASER does not notify Seller in writing of its election to terminate this Agreement within ten (10) business days after receipt of Seller's written notice of material damage. Notwithstanding the foregoing, any termination notice given by PURCHASER under this Section shall be rendered ineffective if, within five (5) calendar days after Seller's receipt of such written notice, Seller delivers to PURCHASER Seller's written agreement to repair at its sole cost and expense all such damage. In such event the Closing Date shall be deemed automatically extended to the third (3<sup>rd</sup>) business day following Seller's completion of such repair. PURCHASER shall not be entitled to any insurance proceeds or obtain any rights which respect to any claims Seller may have with regard to insurance maintained by Seller with respect to the Property.

16. **AGENCY AND BROKERAGE.**

A. **Agency.**

(1) In this Agreement, the term "Broker" shall mean a licensed Florida real estate broker or brokerage firm and where the context would indicate the broker's affiliated licensees.

(2) PURCHASER acknowledge that if PURCHASER not represented by a broker then PURCHASER is solely responsible for protecting PURCHASER'S own interests, and that Broker's role is limited to performing ministerial acts for that party.

(3) The Broker working with Seller is identified on the signature page as the "Listing Broker"; and said Broker is representing Seller; and

(4) The Broker, if any, working with PURCHASER is identified on the signature page as the "Selling Broker"; and said Broker is  OR, is NOT  representing PURCHASER.



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## Single Agent Notice

**FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSES OPERATING AS SINGLE AGENTS DISCLOSE TO PURCHASERS AND SELLERS THEIR DUTIES.**

As a single agent [redacted] and its associates owe Seller and PURCHASER the following duties:

1. Dealing honestly and fairly;
2. Loyalty;
3. Confidentiality;
4. obedience;
5. Full disclosure;
6. Accounting for all funds;
7. Skill, care and diligence in the transaction;
8. Presenting all offers and counteroffers in a timely manner, unless a party has previously directed the licensee otherwise in writing; and
9. Disclosing all known facts that materially affect the value of residential real property and are not readily observable.

**B. Brokerage.** The Broker(s) identified herein have performed valuable brokerage services and are to be paid a commission pursuant to a separate agreement or agreements. Unless otherwise provided for herein, the Listing Broker will be paid a commission by the Seller, and the Selling Broker will receive a portion of the Listing Broker's commission pursuant to a cooperative brokerage agreement. The ESCROW AGENT is directed to pay the commission of the Broker(s) at closing out of the proceeds of the sale. If the sale proceeds are insufficient to pay the full commission, the party owing the commission will pay any shortfall at closing. If more than one Broker is involved in the transaction, the ESCROW AGENT is directed to pay each Broker their respective portion of said commission.

17. **MANDATORY ASSOCIATION.** The Property  is subject  is not subject to a mandatory homeowners association. [If "is not" is checked the following disclosure does not apply].

IF THE DISCLOSURE SUMMARY REQUIRED BY CHAPTER 720, FLORIDA STATUTES, HAS NOT BEEN PROVIDED TO THE PROSPECTIVE PURCHASER BEFORE EXECUTING THIS AGREEMENT, THIS AGREEMENT IS VOIDABLE BY PURCHASER BY DELIVERING TO SELLER OR SELLER'S AGENT OR REPRESENTATIVE WRITTEN NOTICE OF PURCHASER'S INTENTION TO CANCEL WITHIN 3 DAYS AFTER RECEIPT OF THE DISCLOSURE SUMMARY OR PRIOR TO CLOSING, WHICHEVER OCCURS FIRST. ANY PURPORTED WAIVER OF THIS VOIDABILITY RIGHT HAS NO EFFECT. PURCHASER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

DISCLOSURE SUMMARY FOR \_\_\_\_\_ [name of community]:

1. As a purchaser of property in this community, you will be obligated to be a member of a homeowners association (hereinafter the "Association").
2. There have been or will be recorded restrictive covenants (hereinafter "Covenants") governing the use and occupancy of properties in this community.
3. You will be obligated to pay assessments to the Association. Assessments may be subject to periodic change. If applicable the current amount is \$\_\_\_\_\_ per \_\_\_\_\_. You will also be obligated to pay any special assessments imposed by the Association. Such special assessments may be subject to change. If applicable, the current amount is \$\_\_\_\_\_ per \_\_\_\_\_.
4. You may be obligated to pay special assessments to the respective municipality, county, or special district. All assessments are subject to periodic change.
5. Your failure to pay special assessments or assessments levied by a mandatory homeowners association could result in a lien on your property.



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- 6. There may be an obligation to pay rent or land use fees for recreational or other commonly used facilities as an obligation of membership in the homeowners association. If applicable, the current amount is \$ \_\_\_\_\_ per \_\_\_\_\_.
- 7. The Developer may have the right to amend the Covenants without the approval of the Association membership or the approval of the parcel owners.
- 8. The statements contained in this Disclosure form are only summary in nature, and, as a prospective purchaser, you should refer to the Covenants and the Association governing documents before purchasing property.
- 9. These documents are either matters of public record and can be obtained from the record office in the county where the property is located, or are not recorded and can be obtained from the Developer.

**PURCHASER ACKNOWLEDGES RECEIPT OF THIS SUMMARY BEFORE SIGNING THIS AGREEMENT.**

PURCHASER'S SIGNATURE \_\_\_\_\_  
PURCHASER'S SIGNATURE \_\_\_\_\_

**18. MISCELLANEOUS MATTERS.**

**A. Multiple Listing Service.** If Seller's Broker is a participant of a multiple listing service ("MLS"), Seller's Broker is authorized to report the sale, its price, terms, and financing for the publication, dissemination, information and use of the MLS, its parent entity, authorized members, participants and subscribers.

**B. Assignment.** PURCHASER understands and agrees that PURCHASER may not assign or record his, her, their and/or its right, title or interest in this transaction without the express prior written consent of Seller which may be withheld in the sole and absolute discretion of Seller. This Agreement shall bind and inure to the benefit of the parties and their successors in interest.

**C. Entire Agreement.** This Agreement constitutes the entire agreement between PURCHASER and Seller concerning the subject matter hereof and there are no oral or other written agreements between PURCHASER and Seller. All negotiations are merged into this Agreement. This Agreement shall not be modified or amended except by an instrument in writing signed by PURCHASER and Seller. No oral promises, representations (express or implied), warranties or agreements made by Seller or Seller's Broker shall be deemed valid or binding upon Seller unless expressly included in this Agreement.

**D. Time is of the Essence.** Time is of the essence for the performance of each and every covenant of PURCHASER under this Agreement and the satisfaction of each and every condition imposed upon PURCHASER under this Agreement.

**E. Attorney's Fees.** In any action, proceeding or arbitration arising out of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs from the non-prevailing party.

**F. Severability and Interpretation.** In the event that any portion of this Agreement shall be judicially determined to be invalid or unenforceable, the same shall, to that extent, be deemed severable from this Agreement and the invalidity or unenforceability thereof shall not affect the validity and enforceability of the remaining portion of this Agreement. The remainder of this Agreement shall remain in full force and effect and shall be construed to fulfill the intention of the parties hereto. PURCHASER and Seller acknowledge that each party has reviewed this Agreement and has had adequate opportunity to consult legal counsel with respect thereto and that the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

**G. Governing Law.** All questions with respect to the construction of this Agreement, and the rights and liabilities of the parties hereto, shall be governed by the laws of Florida. The parties further irrevocably consent to the service of mediation or arbitration requests or demands in connection with any such controversy by the mailing by registered or certified mail, postage prepaid, at the respective addresses set forth in, or designated pursuant to, this Agreement.



# The Auction Way Company

**H. Titles, Headings and Captions.** All titles, headings, and captions used in this Agreement have been included for administrative convenience only and do not constitute matters to be construed in interpreting this Agreement.

**I. Counterparts.** This Agreement may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original Agreement all of which shall constitute one agreement to be valid as of the date of this Agreement. Facsimile and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such facsimile and electronic signatures having the same legal effect as original signatures.

**J. Further Assurances.** The parties hereto hereby agree to execute such other documents, and to take such other actions as may reasonably be necessary, to further the purposes set forth in this Agreement.

**K. Gender and Number References to Seller.** Whenever the context indicates that such is the intent, words in the singular number shall include the plural and vice versa, and the masculine shall include the feminine and vice versa. Pronouns shall be deemed to refer to all genders. All provisions herein for the benefit of Seller shall be deemed to be for the benefit of Seller and all of Seller's agents and sub-agents (including without limitation \_\_\_\_\_, auctioneer(s) and any Seller's broker(s)) and each of their respective officers, directors, shareholders, employees, attorneys, representatives, affiliates, subsidiaries.

**L. Survival of Indemnification and Hold Harmless Provisions.** Any indemnification, defense or hold harmless obligation of PURCHASER for the benefit of Seller in this Agreement shall survive the Closing Date and/or termination of this Agreement.

**M. Force Majeur.** No party shall be responsible for delays or failure of performance resulting from acts of God, riots, acts of war, epidemics, power failures, earthquakes or other disasters, providing such delay or failure of performance could not have been prevented by reasonable precautions and cannot reasonably be circumvented by such Party through use of alternate sources, workaround plans, or other means, except as provided in Section 15 of this Agreement.

**N. Eminent Domain.** In the event that Seller's interest in the Property, or any part thereof, shall have been taken by eminent domain, or shall be in the process of being taken on or before the Closing Date, either Party may terminate this Agreement and the Earnest Money shall be returned to Purchaser and neither Party shall have any further rights or liabilities hereunder, except as otherwise specifically provided in this Agreement.

**O. Notice.** All notices, approvals, and other communications contemplated, given, or required under this Agreement shall be in writing and shall be deemed given and received upon receipt if: (a) delivered personally; or (b) mailed by registered or certified mail return receipt requested, postage prepaid; (c) sent by a nationally recognized overnight courier; and/or (d) delivered via facsimile transmission, provided receipt is confirmed by telephone or by a statement generated by the transmitting machine, in any case to the parties at the following addresses or facsimile numbers (or at such address or facsimile number for a party as will be specified by like notice). Notice to Purchaser shall be given to Purchaser at the address stated below and to Seller at the address set forth below or to such other address or addresses as may from time to time be designated by either party by written notice to the other.

**P. Auction Process.** Neither Seller, Auctioneer nor Listing Broker is making any representation or warranty as to the manner in which the sale process will be managed. Seller may select the winning bid in its sole and absolute discretion. No obligation to sell shall be binding on Seller unless and until a written contract of sale or purchase agreement is signed and delivered by Seller to PURCHASER. Seller shall have the right to rescind any oral acceptance of a winning bid prior to the execution and delivery to PURCHASER of this Purchase Agreement for any reason, including, but not limited to the receipt of a subsequent higher bid or offer to purchase whether such higher bid or offer to purchase was received pursuant to the Auction Terms and Conditions or otherwise.

**Q. Other Disclosures by Seller.**





# The Auction Way Company

(1) Agricultural Disclosure (if applicable). Seller has no knowledge as to whether the Property is within, partially within, or adjacent to any property zoned or identified on an approved county land use plan as agricultural or forestry use. PURCHASER understands that it is the policy of Florida and the community to conserve, protect, and encourage the development and improvement of farm and forest land for the production of food, fiber, and other products, and also for its natural and environmental value. This notice is to inform prospective property owners or other persons or entities leasing or acquiring an interest in real property that property in which they are about to acquire an interest may lie within, partially within, or adjacent to an area zoned, used, or identified for farm and forest activities and that farm and forest activities occur in the area. Such farm and forest activities may include intensive operations that cause discomfort and inconveniences that involve, but are not limited to, noises, odors, fumes, dust, smoke, insects, operations of machinery during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides. One or more of these inconveniences may occur as the result of farm or forest activities which are in conformance with existing laws and regulations and accepted customs and standards.

(2) Environmental Hazards. Seller is not aware of a environmental defect or environmental hazard at the Property. However this does not mean that it does not exist. PURCHASER understands and agrees that it is Purchaser's responsibility to be informed and take additional steps to further investigate any such defect and/or hazards.

Some potential hazards that may be found in Florida include: (i) radon ([www.epa.gov/radon](http://www.epa.gov/radon)); (ii) floods ([www.epa.gov/ebtpages/emernaturaldisastefloods.html](http://www.epa.gov/ebtpages/emernaturaldisastefloods.html)); (iii) methamphetamine labs located in the vicinity of the Property; (iv) underground storage tanks on or near the Property ([www.epa.gov](http://www.epa.gov)); (v) well & septic systems contamination ([www.epa.gov/ebtpages/wategroundwaterwells.html](http://www.epa.gov/ebtpages/wategroundwaterwells.html)); (vi) wood-burning devices located on the Property ([www.epa.gov/iaq/pubs/combust.html](http://www.epa.gov/iaq/pubs/combust.html)); and (vii) contaminated soils ([www.epa.gov/ebtpages/pollsoilcontaminants.html](http://www.epa.gov/ebtpages/pollsoilcontaminants.html)). More information on environmental hazards may be found at [www.epa.gov](http://www.epa.gov).

**R. Bold or Capitalized Language.** FOR EMPHASIS AND PURCHASER'S BENEFIT, SOME PROVISIONS HAVE BEEN BOLDED AND/OR CAPITALIZED, BUT EACH AND EVERY PROVISION IN THIS AGREEMENT IS SIGNIFICANT AND SHOULD BE REVIEWED AND UNDERSTOOD. NO PROVISION SHOULD BE IGNORED OR DISREGARDED BECAUSE IT IS NOT IN BOLD OR EMPHASIZED IN SOME MANNER, AND THE FAILURE TO BOLD, CAPITALIZE, OR EMPHASIZE IN SOME MANNER ANY TERMS OR PROVISIONS IN THIS AGREEMENT SHALL NOT AFFECT THE ENFORCEABILITY OF ANY TERMS OR PROVISIONS.

**S. Binding Agreement Date.** The Binding Agreement Date shall be the date that Seller signs this Agreement and delivers a signed Agreement to Purchaser.

T. Seller and Brokers have entered into a separate contract regarding commission to be paid Brokers by Seller.



# The Auction Way Company

\_\_\_\_\_  
Buyer's Signature SS/FEI#

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

\_\_\_\_\_  
Buyer's Signature: SS/FEI#

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

Buyer's Address: \_\_\_\_\_  
\_\_\_\_\_

Buyer's Phone Numbers: home: \_\_\_\_\_;  
business: \_\_\_\_\_; Cell: \_\_\_\_\_  
Fax: \_\_\_\_\_

Buyer's email address: \_\_\_\_\_

Seller:

\_\_\_\_\_

By:

Title: \_\_\_\_\_

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

Seller's Address: \_\_\_\_\_  
\_\_\_\_\_

## **ESCROW AGENT ACKNOWLEDGMENT:**

ESCROW AGENT acknowledges receipt of a copy of this Agreement and Earnest Money in the amount of \$ \_\_\_\_\_ and agrees to act as escrow agent subject to the terms and conditions of this Agreement and any supplemental closing instructions agreed upon by the parties.

LANDCASTLE TITLE, LLC

By: \_\_\_\_\_



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