

## **PURCHASE AND SALE AGREEMENT WITH JOINT CLOSING INSTRUCTIONS**

Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to purchase the Property from Seller, in accordance with the terms of this Purchase and Sale Agreement with Joint Escrow Instructions (this "Agreement"). This Agreement is dated effective as of the date this Agreement is executed by Seller (the "Effective Date") and shall also constitute joint escrow instructions to Closing Agent.

### **1. KEY TERMS.**

- (A) Seller: \_\_\_\_\_
- (B) Buyer: \_\_\_\_\_  
 phone number: \_\_\_\_\_ email address: \_\_\_\_\_
- (C) Purchase Price: \$ \_\_\_\_\_ (which equals the "Winning Bid Amount" of \$ \_\_\_\_\_).
- (D) Earnest Money Deposit: \$ \_\_\_\_\_ (which equals 5% of the Purchase Price, but no less than \$2,500).
- (E) Property: Address: \_\_\_\_\_ as legally described on Exhibit A, including all permanent improvements thereon (but excluding any personal property unless specifically identified by addendum or amendment to this Agreement).
- (F) Closing Date: \_\_\_\_\_ (if blank, then thirty (30) calendar days after the Effective Date for cash transactions or forty-five (45) calendar days after the Effective Date for transactions being financed). If the Closing Date falls on a weekend or a state or federally recognized holiday, the Closing Date shall be the next business day.
- (G) Closing Agent (Escrow Agent/Closing Attorney): \_\_\_\_\_ phone number: \_\_\_\_\_  
 email address: \_\_\_\_\_. (Buyer agrees to Seller's selection of Closing Agent; or,  if this box is checked, Buyer has selected Closing Agent, and hereby agrees to pay all fees of Closing Agent, notwithstanding anything to the contrary in this Agreement.)
- (H) Title Company: \_\_\_\_\_. (Buyer agrees to Seller's selection of Title Company; or,  if this box is checked, Buyer has selected Title Company, and hereby agrees to pay all fees of Title Company (including, without limitation, the owner's policy of title insurance), notwithstanding anything to the contrary in this Agreement.)
- (I) Auctioneer:
- (J) Closing Cost Allocations: As described in Section 15.

**2. EARNEST MONEY DEPOSIT.** Buyer must deposit the Earnest Money Deposit with Closing Agent on or before 5:00 PM in the time zone where the Property is located on the first business day after Seller countersigns this Agreement. The Earnest Money Deposit is non-refundable except as set forth in this Agreement and may be applied towards the amounts payable by Buyer hereunder. The escrow ("Escrow") for the purchase of the Property shall be opened upon Closing Agent's receipt of the Earnest Money Deposit and a fully signed copy of this Agreement.

**3. OPENING OF ESCROW.** Buyer shall open an escrow account ("Escrow") with Closing Agent for the purchase of the Property by (a) delivering a signed copy of this Agreement to Closing Agent and (b) depositing the Earnest Money Deposit with Closing Agent.

**4. CLOSING.** The transactions contemplated by this Agreement shall close ("Close" or "Closing") on the Closing Date.

### **5. CLOSING DELIVERIES.**

- (A) Seller's Deliveries. On or before the Closing Date, Seller shall deliver the following to Closing Agent ("Seller's Deliveries"):
  - (i) The quitclaim deed or other similar instrument conveying Seller's interest in the Property, or where appropriate the transfer deed warranting against title defects arising by, through or under Seller (in the form customarily used for similar transactions in the state where the Property is located) (the "Deed") executed by Seller and acknowledged in accordance with the laws of the state in which the Property is located.
  - (ii) A Non-Foreign Transferor Declaration executed by Seller or evidence reasonably acceptable to Closing Agent that Seller is exempt from the withholding requirements of the Foreign Investment in Real Property Tax Act (FIRPTA), Internal Revenue Code Section 1445.
  - (iii) Any and all other instruments reasonably required by Buyer's lender, Closing Agent or otherwise to consummate the transactions contemplated by this Agreement.
- (B) Buyer's Deliveries. On or before the Closing Date, Buyer shall deliver the following to Closing Agent ("Buyer's Deliveries"):
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- (i) An amount in immediately available "good funds" equal to the Purchase Price (less any Earnest Money Deposit held by Closing Agent), plus Buyer's share of closing costs, prorations and expenses as provided herein.
- (ii) Any and all other instruments reasonably required by Buyer's lender, Closing Agent or otherwise to consummate the transactions contemplated by this Agreement.

## 6. CONDITIONS PRECEDENT TO CLOSING.

### (A) Seller's Conditions. Seller's obligations to Close are conditioned upon the following ("Seller's Conditions"):

- (i) All representations and warranties of Buyer herein shall be true, correct and complete in all material respects as of the Closing Date and Buyer shall have performed in all material respects all covenants and obligations required to be performed by Buyer on or before the Closing Date.

### (B) Buyer's Conditions. Buyer's obligations to Close are conditioned upon the following ("Buyer's Conditions"):

- (i) All representations and warranties of Seller herein shall be true, correct and complete in all material respects as of the Closing Date and Seller shall have performed in all material respects all covenants and obligations required to be performed by Seller on or before the Closing Date.

- (ii) Title Company shall have irrevocably committed to issue to Buyer an owner's policy of title insurance covering the Property with standard coverage that is customary in the state where the Property is located showing liability in the amount of the Purchase Price and showing insurable title to the Property vested in Buyer, subject only to the following: (a) Title Company's standard exceptions; (b) liens for all current general and special real property taxes and assessments not yet due and payable; (c) liens of supplemental taxes, if any assessed; (d) any facts an accurate survey and/or a personal inspection of the Property may disclose; (e) the mortgage/deed of trust/deed to secure debt lien in connection with any Buyer financing; (f) 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 non-compliance with or any violation thereof, including but not limited to, any disclosure and/or report required by ordinance; (g) rights of existing tenants and/or occupants of the Property (if any); (h) covenants, restrictions, easements and other matters that do not materially impair the value of the Property or the use thereof; (i) non-monetary encumbrances disclosed to Buyer in writing prior to entering into this Agreement; and (j) any other matter for which Title Company agrees to provide insurance at no additional cost to Buyer.

- (C) Waiver of Conditions. Either party may waive its respective closing conditions in its sole discretion. By proceeding to Closing, each party waives its respective closing conditions and irrevocably releases the other party from any liability arising from any facts known by such waiving party that would otherwise have resulted in a failure of a closing condition.

## 7. CLOSING INSTRUCTIONS TO CLOSING AGENT. At Closing, Closing Agent is hereby irrevocably instructed to do the following:

- (A) Record the Deed.
- (B) Pay all fees, costs, deed and transfer taxes for the sale of the Property which are required to be paid by Seller and Buyer under this Agreement, the portion of any fees charged by Closing Agent which are payable by Seller and Buyer (if any) and other expenses relating to the sale of the Property which are required to be paid by Seller and/or Buyer under this Agreement (including, without limitation, property management fees, broker fees, and Auctioneer's fees).
- (C) Pay to Seller the balance of the Purchase Price and any other funds remaining after Closing.

## 8. COSTS AND PRORATIONS.

- (A) Pre-Closing Costs. Buyer and Seller acknowledge that Closing Agent may incur certain expenses during the course of processing this transaction which must be paid prior to Closing. Closing Agent is hereby authorized and instructed to release funds for payment of such costs prior to Closing from funds deposited into Escrow by Buyer. The parties acknowledge that the funds are not refundable, and Closing Agent is specifically released from all responsibility and/or liability for payment of any funds pre-released through the Escrow. Closing Agent is authorized to charge the appropriate party for costs incurred or credit either one if necessary at Closing or upon termination of this Agreement, as applicable.

- (B) Prorations. Closing Agent shall prorate as of the date of Closing all real property taxes, assessments, and other applicable items of income and expense normally apportioned in sales of property in similar situations in the state where the Property is located, in accordance with local customs. For the avoidance of doubt, Seller shall be responsible for any delinquent items. Notwithstanding anything to the contrary herein, insurance premiums will not be prorated, and Seller may cancel any existing insurance on the Property after Closing. In the event either party receives a refund of any applicable real property taxes, assessments or other applicable expenses attributable, in whole or in part, to the other party's period of ownership, the party that received such refund shall immediately submit to the other party the portion attributable to such other party's period of ownership. Except as provided herein, Seller shall not be responsible for any amounts due, paid, or to be paid after the Closing. This Section shall survive Closing.

- (C) Closing Costs. Seller and Buyer shall pay closing costs as described in Section 15 (and Closing Agent is hereby authorized to (a) pay Seller's costs from Seller's proceeds, and (b) pay Buyer's costs from funds deposited into Escrow by Buyer).

## 9. CANCELLATION OF ESCROW.

- (A) Default. If Closing does not occur on or before the Closing Date due to a breach of this Agreement by Buyer or Seller, then the non-defaulting party may cancel the Escrow by written notice to the defaulting party and Closing Agent. Upon such cancellation, the defaulting party shall pay all cancellation fees of Closing Agent and Title Company. If Seller is the defaulting party, Closing Agent

shall return the Earnest Money to Buyer, and Buyer shall not be entitled to pursue remedies at law or in equity. If Buyer is the defaulting party, then the following shall apply:

**BUYER AND SELLER EXPRESSLY AGREE THAT IT WOULD BE EXTREMELY DIFFICULT TO DETERMINE SELLER'S ACTUAL DAMAGES AS A RESULT OF SUCH A DEFAULT BY BUYER, THEREFORE THE PARTIES AGREE THAT SELLER SHALL RETAIN (AND CLOSING AGENT IS HEREBY DIRECTED TO DELIVER TO SELLER) 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 DEPOSIT, AS SELLER'S SOLE AND EXCLUSIVE REMEDY. NOTWITHSTANDING THE FOREGOING, IF APPLICABLE LAW LIMITS THE AMOUNT OF THE EARNEST MONEY DEPOSIT THAT MAY BE RETAINED BY SELLER, CLOSING AGENT SHALL ONLY DELIVER TO SELLER THE AMOUNT PERMITTED BY LAW, AND ANY EXCESS SHALL BE PROMPTLY RETURNED TO BUYER.**

**SELLER'S INITIALS \_\_\_\_\_**

**BUYER'S INITIALS \_\_\_\_\_**

- (B) **Force Majeure.** If Closing does not occur on or before the Closing Date for reasons beyond the reasonable control of Buyer or Seller, and not resulting from a breach of this Agreement by Buyer or Seller, then either party may cancel the Escrow by written notice to the other party and Closing Agent. Upon such cancellation, Closing Agent shall return the Earnest Money Deposit to Buyer, and the party requesting such cancellation shall bear all cancellation fees of Closing Agent and Title Company.
- (C) **Effect of Cancellation.** Upon cancellation of Escrow pursuant to this Section, Buyer, Seller, and each of their respective agents shall be released from all obligations and liabilities under this Agreement. In such event, except as otherwise set forth above, all costs incurred in connection with the transactions contemplated by this Agreement (including, without limitation, payments for loan applications, inspections, appraisals, and other reports) shall be the sole responsibility of the party incurring such costs.

**10. BUYER'S REPRESENTATIONS AND WARRANTIES.** Buyer represents and warrants to Seller as follows as of the Effective Date:

- (A) **Authority.** Buyer has the requisite authority to enter into this Agreement and consummate the transactions contemplated hereby. If Buyer is an entity, the natural person signing this Agreement on behalf of Buyer hereby represents and warrants that (i) Buyer is duly formed and in good standing and (ii) the natural person signing on behalf of Buyer has the requisite authority to so bind Buyer.
- (B) **Property Condition and Attributes.** Prior to entering into this Agreement, Buyer had the opportunity to conduct Buyer's own due diligence and investigations. Except as expressly set forth in this Agreement, Buyer's obligations hereunder are not contingent on any further due diligence and/or investigation. Buyer acknowledges that the square footage of the Property (including the square footage of the lot and any improvements thereon) has not been measured by Seller, Listing Broker or Auctioneer and the square footage quoted on any marketing tools such as advertisements, brochures, MLS data, Auctioneer's website and any other information provided is based on information supplied to Seller and is deemed approximate and not guaranteed. Except as otherwise expressly set forth in this Agreement or in written disclosures to Buyer executed by Seller, Buyer acknowledges and agrees that Seller is selling the Property "As Is, Where Is, With All Faults and Limitations" and Seller shall have no liability for or any obligation to make any repairs or improvements of any kind to the Property.
- (C) **Disclosures.** Prior to entering into this Agreement, Buyer has received (or, to the extent not received, Buyer hereby irrevocably waives) all disclosure documents required to be provided by or on behalf of Seller or Auctioneer. Reports furnished by or on behalf of Seller shall be for informational purposes only and are not made part of this Agreement unless required under applicable law.
- (D) **Owner Occupier Declaration.** Following the purchase of the Property pursuant to the terms herein, Buyer  **intends to**  **does not intend to** occupy the Property as Buyer's primary residence.

**11. SELLER'S REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants to Buyer as follows as of the Effective Date:

- (A) **Authority.** Seller has the requisite authority to enter into this Agreement and consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, Seller is either the record owner of the Property or has the requisite authority granted by the record owner to consummate the transactions contemplated hereby. If Seller is an entity, the natural person signing this Agreement on behalf of Seller hereby represents and warrants that (i) Seller is duly formed and in good standing and (ii) the natural person signing on behalf of Seller has the requisite authority to so bind Seller.
- (B) **Property Condition and Attributes.** Except for any representations and warranties of Seller expressly set forth in this Agreement or in written disclosures to Buyer executed by Seller, Seller does not make, and expressly disclaims, any representation or warranty, express or implied, regarding the Property.

**12. SELLER'S COVENANTS.**

- (A) **Possession.** At Closing, Seller shall relinquish possession of the Property to Buyer and promptly provide Buyer with all keys, codes and other means of access to the extent in Seller's possession.

**13. DISPUTE RESOLUTION. AT THE REQUEST OF EITHER PARTY TO THIS AGREEMENT, ANY DISPUTE ARISING UNDER THIS 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/ITS OWN ATTORNEYS' FEES AND COSTS. NEITHER PARTY MAY REQUIRE BINDING ARBITRATION PRIOR TO COMMENCEMENT OF COURT ACTION.**

**WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT TO MEDIATION PRIOR TO COMMENCEMENT OF COURT ACTION.**

**SELLER'S INITIALS \_\_\_\_\_**

**BUYER'S INITIALS \_\_\_\_\_**

**14. MISCELLANEOUS.**

- (A) **Survival of Representations and Warranties.** All representations and warranties of Seller and Buyer in this Agreement shall survive the Closing for a period of one (1) year.
- (B) **No Assignment or Recording.** Buyer may not assign or record all or any part of this Agreement without the express prior written consent of Seller.
- (C) **Casualty and Condemnation.** If any material portion of the Property is damaged or taken by eminent domain (or is the subject of a pending taking which has not yet been consummated) prior to Closing, Seller shall promptly notify Buyer promptly after obtaining knowledge thereof. In such event, Buyer shall have the option, exercisable within ten (10) business days after receipt of such written notice (and, if necessary, the Closing Date shall be extended until one business day after the expiration of such period), to either (i) terminate this Agreement, or (ii) consummate this Agreement in accordance with its terms. Buyer shall be deemed to have waived its right to terminate this Agreement if Buyer does not notify Seller in writing of its election to terminate this Agreement within such period. Buyer shall not be entitled to any insurance proceeds or obtain any rights with respect to any claims Seller may have with regard to insurance maintained by Seller with respect to the Property. In the event of a taking by eminent domain, Seller shall assign to Buyer at Closing all of Seller's right, title and interest in and to all awards, if any, for such taking.
- (D) **Common Interest Development.** If the Property is in a common interest development, unless otherwise required by law, Buyer acknowledges that Buyer was provided for review (or, to the extent not provided, Buyer hereby waives any right to review) the declaration of covenants, conditions, restrictions and/or bylaws and other documentation regarding such common interest development and Buyer acknowledges that, prior to Buyer's execution of the Agreement, Buyer has reviewed such documentation to the fullest extent Buyer deems necessary and, upon execution of the Agreement, Buyer is deemed to have accepted the declaration of covenants, conditions, restrictions and/or bylaws of the common interest community.
- (E) **Local Requirements.** In some counties, cities, municipalities and other state subdivisions, a certificate of occupancy, certificate of use or code compliance certificate and/or inspection ("**Local Requirement**") may be required in order to transfer and/or occupy the Property. If a Local Requirement is required to be satisfied in order for the Property to be transferred to or occupied by Buyer, Buyer hereby waives such Local Requirements to the extent waivable. To the extent any such Local Requirement is not waivable by Buyer, Buyer shall comply with the Local Requirement at Buyer's sole cost and expense, including, without limitation, the correction of any violations or performance of other work which may be required in connection therewith. Seller makes no representation as to whether a Local Requirement applies. Buyer shall indemnify, defend and hold Seller harmless from and against all fines, penalties, costs, expenses, claims and liabilities arising out of or relating to any Local Requirements. This indemnification shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered as of the Closing.
- Notwithstanding the foregoing, (i) Seller shall reasonably cooperate with Buyer in Buyer's efforts to comply with any applicable Local Requirement, but in no event shall Seller be required to expend any money in connection therewith, and (ii) if there is a Local Requirement discovered by Buyer after the Effective Date but before Closing (and unknown to Buyer prior to the Effective Date) that is not waivable by Buyer and would require Buyer to make improvements to the Property, or expend money, in either case in excess of five percent (5%) of the Purchase Price for the Property, Buyer may terminate this Agreement under Section 9(B) hereof.
- (F) **Counterparts, Electronic Signatures, and Complete Agreement.** This Agreement any addenda hereto or other document necessary for the consummation of the transaction contemplated hereby may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and electronic signatures shall have the same legal effect as original signatures. This Agreement and any addenda hereto or other document necessary for the consummation of the transaction contemplated hereby may be accepted, executed or agreed to through the use of an electronic signature in accordance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), Title 15, United States Code, Sections 7001 et seq., the Uniform Electronic Transaction Act (UETA) and any applicable state law. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and shall supersede and take the place of any other instruments purporting to be an agreement of the parties hereto relating to the subject matter hereof.
- (G) **Severability.** In the event that any portion of this Agreement shall be judicially determined to be invalid or unenforceable, the same shall be deemed severable from this Agreement and the invalidity or unenforceability thereof shall not affect the validity and enforceability of the remainder 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.
- (H) **Time is of the Essence.** Time is of the essence for the performance of each and every covenant under this Agreement and the satisfaction of each and every condition under this Agreement.
- (I) **Governing Law and Venue.** This Agreement shall be interpreted, construed, applied and enforced in accordance with the laws of the state in which the Property is located. The state and federal courts located in the county in which the Property is located shall

be proper forums for any legal controversy between the parties arising in connection with this Agreement, which courts shall be the exclusive forums for all such suits, actions or proceedings.

- (J) **Attorneys' Fees.** In any action, proceeding or arbitration arising out of this Agreement, the prevailing party (defined as the party who prevails as to a substantial part of the litigation or claim) shall be entitled to reasonable attorneys' fees and costs.
- (K) **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 of this Agreement.
- (L) **Notices.** All notices other communications contemplated 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; (d) delivered via facsimile transmission, provided receipt is confirmed by telephone or by a statement generated by the transmitting machine, and/or (e) email, provided receipt is confirmed by telephone or by an email response. Notice to Buyer and Seller shall be given as set forth on the first page of this Agreement or to such other address or addresses as may from time to time be designated by either party by written notice to the other.
- (M) **Prohibited Persons and Transactions.** Each party represents and warrants to the other that neither it, nor any of its affiliates, nor any of their members, directors or other equity owners (excluding holders of publicly traded shares), and none of their principal officers and employees: (i) is listed as a "specifically designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control ("**OFAC**"); (ii) is a person or entity with whom U.S. persons or entities are restricted from doing business under OFAC regulations or any other statute or executive order (including the September 24, 2001 "Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism"); and (iii) is engaged in prohibited dealings or transactions with any such persons or entities.
- (N) **Form of Agreement.** Buyer and Seller acknowledge that no representation, recommendation or warranty is made by Auctioneer or any broker relating to the legal sufficiency or tax consequences of this Agreement or any attachments hereto, and Buyer and Seller each represent and warrant that it has consulted with, had the opportunity to consult with or waived the right to consult with counsel in connection therewith.

**15. CLOSING COST ALLOCATIONS.** See applicable addendum or state-specific rider attached hereto and incorporated herein by reference.

**16. STATE-SPECIFIC PROVISIONS.** See state-specific rider attached hereto and incorporated herein by reference.

*(Remainder of Page Intentionally Left Blank)*

**SELLER:**

**BUYER(S):**

\_\_\_\_\_  
SELLER COMPANY NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
SELLER PRINTED NAME

\_\_\_\_\_  
PRINTED NAME

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

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

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

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

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

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

**CLOSING AGENT ACKNOWLEDGEMENT**

Closing Agent acknowledges receipt of a copy of this Agreement and the Earnest Money Deposit set forth in Section 1(D) and agrees to act as Closing Agent in accordance with this Agreement.

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

SAMPLE

ITEM NUMBER \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

If available, please refer to the attached preliminary title report and/or legal description of the property.

SAMPLE

SELLER'S INITIALS \_\_\_\_\_

BUYER'S INITIALS \_\_\_\_\_