

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

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

Seller agrees to sell the Property to Buyer, and Buyer 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 effective as of the date Seller signs this Agreement (the "Effective Date"), and shall also constitute joint escrow instructions to Closing Agent.

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

- (A) **Seller:** \_\_\_\_\_
- (B) **Buyer:** \_\_\_\_\_  
phone number: \_\_\_\_\_ email address: \_\_\_\_\_  
mailing address: \_\_\_\_\_
- (C) **Purchase Price:** \$ \_\_\_\_\_ (which includes any fees owed to Marketplace Provider).
- (D) **Earnest Money Deposit:** \$ \_\_\_\_\_ (if blank, then 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 30 calendar days after the Effective Date for cash transactions or 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:** \_\_\_\_\_ contact: \_\_\_\_\_  
address: \_\_\_\_\_ 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 agrees to pay all fees of Closing Agent, despite anything to the contrary in this Agreement.)
- (H) **Title Insurance Company:** \_\_\_\_\_. (Buyer agrees to Seller's selection of Title Insurance Company; or,  if this box is checked, Buyer has selected Title Insurance Company, and agrees to pay all fees of Title Insurance Company, including, without limitation, the owner's title insurance policy, despite anything to the contrary in this Agreement.)
- (I) **Marketplace Provider:** \_\_\_\_\_
- (J) **Closing Cost Allocations:** As described in the Section below entitled "Closing Cost Allocations".

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

### **4. 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 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) ("Deed") signed by Seller and acknowledged in accordance with the laws of the state in which the Property is located.
  - (ii) A Non-Foreign Transferor Declaration signed by Seller or evidence reasonably acceptable to Closing Agent and Buyer 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 necessary to Close 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**"):

- (i) An amount in immediately available "good funds" equal to the Purchase Price, plus Buyer's share of closing costs, prorations and expenses as set forth in this Agreement.
- (ii) Any and all other instruments reasonably required by Buyer's lender, Closing Agent or otherwise necessary to Close the transactions contemplated by this Agreement.

## 5. 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 in this Agreement 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 in this Agreement 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 Insurance Company is irrevocably committed to issue to Buyer an owner's title insurance policy covering the Property with standard coverage 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 Insurance 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 Insurance 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.

## 6. CLOSING INSTRUCTIONS TO CLOSING AGENT.

At Closing, Closing Agent is 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 Buyer.
- (C) Pay to Seller the balance of the Purchase Price and any other funds remaining after Closing.

## 7. COSTS AND PRORATIONS.

(A) **Pre-Closing Costs.** Buyer and Seller acknowledge that Closing Agent may incur certain costs while processing this transaction which must be paid prior to Closing. Closing Agent is authorized and instructed to release funds for payment of such costs prior to Closing from funds deposited into Escrow by Buyer. Such funds are not refundable and Closing Agent is released from any liability for payment of any such funds pre-released through the Escrow. Closing Agent is authorized to charge the appropriate party for costs incurred, or credit the appropriate party for credits, as applicable at Closing or upon termination of this Agreement.

(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. Despite anything to the contrary in this Agreement, insurance premiums will not be prorated, and Seller may cancel any existing insurance on the Property after Closing. If either party receives income or a refund of any applicable real property taxes, assessments or other expenses attributable, in whole or in part, to the other party's period of ownership, the party that received such income or refund shall immediately submit to the other party the portion attributable to such other party's period of ownership. Except as set forth in this Agreement, Seller shall not be responsible for any amounts due, paid, or payable after Closing. This Section shall survive Closing.

- (C) **Closing Costs.** Seller and Buyer shall pay closing costs as described in the Closing Cost Allocations (and Closing Agent is authorized to (i) pay Seller's costs from Seller's proceeds, and (ii) pay Buyer's costs from funds deposited into Escrow by Buyer).

## 8. 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 Insurance Company. If Seller is the defaulting party, Closing Agent shall return the Earnest Money Deposit 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 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. DESPITE 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) **Non-Default.** 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 giving written notice to the other party and Closing Agent. Upon such cancellation, Closing Agent shall return the Earnest Money Deposit to Buyer, and Buyer and Seller shall each bear 50% of all cancellation fees of Closing Agent and Title Insurance 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.

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

- (A) **Authority.** Buyer has the necessary authority to enter into this Agreement and perform its obligations hereunder. If Buyer is an entity, the natural person signing this Agreement on behalf of Buyer 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 necessary authority to bind Buyer to this Agreement.
- (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) is deemed approximate and not guaranteed. Except as otherwise expressly set forth in this Agreement or in written disclosures to Buyer signed by Seller, (i) Seller does not make, and expressly disclaims, any representation or warranty, express or implied, regarding the Property, and (ii) 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 irrevocably waives) all disclosure documents required to be provided by or on behalf of Seller or Seller

representatives. 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.

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

- (A) Authority. Seller has the necessary authority to enter into this Agreement and perform its obligations hereunder. If Seller is an entity, the natural person signing this Agreement on behalf of Seller 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 necessary authority to bind Seller to this Agreement.

**11. 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 Property access in Seller's possession.

**12. MISCELLANEOUS.**

- (A) Survival of Representations and Warranties. Except as otherwise set forth in this Agreement, all representations and warranties of Seller and Buyer in this Agreement shall survive Closing for a period of one 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. Despite the foregoing, Buyer may assign this Agreement to any entity wholly owned, directly or indirectly, by Buyer; provided, however, that, in such event, the undersigned Buyer shall remain liable for the obligations of Buyer under this Agreement.
- (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) prior to Closing, Seller shall notify Buyer promptly after Seller obtains knowledge thereof. Within 10 business days after Buyer receives such written notice (if necessary, the Closing Date shall be extended until one business day after the expiration of such period), Buyer may, at its option, either (i) terminate this Agreement, or (ii) proceed to Closing in accordance with this Agreement. 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 or planned community, unless otherwise required by law, Buyer acknowledges that Buyer, at Buyer's own expense, was and is responsible for obtaining and reviewing (or, to the extent not obtained, Buyer waives any right to review) the declaration of covenants, conditions, restrictions and/or bylaws and other documentation regarding such common interest development or planned community and Buyer acknowledges that Buyer has reviewed such documentation to the fullest extent Buyer deems necessary and, by signing this Agreement, Buyer accepts the declaration of covenants, conditions, restrictions and/or bylaws of the common interest development or planned community.
- (E) Local Requirements. Some counties, cities, municipalities and other state subdivisions may require 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 for the Property to be transferred to or occupied by Buyer, Buyer 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, 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 Closing and shall not be deemed to have merged into any of the documents signed or delivered as of Closing.

Despite 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 5% of the Purchase Price for the Property, Buyer may terminate this Agreement under Section 8(B) hereof.

- (F) **Counterparts, Electronic Signatures, and Complete Agreement.** This Agreement and any addenda hereto or other document necessary for the Closing of the transactions contemplated hereby may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. 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 Closing of the transactions contemplated by this Agreement may be accepted, signed 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 of this Agreement and supersedes any other instruments purporting to be an agreement of the parties hereto relating to such subject matter.
- (G) **Severability.** If any portion of this Agreement is judicially determined to be invalid or unenforceable, such portion shall be deemed severable from this Agreement and the invalidity or unenforceability of such portion shall not affect the validity and enforceability of the remainder of this Agreement, which shall remain in full force and effect and 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 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 and other communications contemplated under this Agreement shall be in writing and shall be deemed given and received upon receipt if: (i) delivered personally; or (ii) mailed by registered or certified mail return receipt requested, postage prepaid; (iii) sent by a nationally recognized overnight courier; (iv) delivered via facsimile transmission, provided receipt is confirmed by telephone or by a statement generated by the transmitting machine, and/or (v) 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) **Brokers.** In connection with the transactions contemplated by this Agreement, Seller is represented by Listing Broker identified on the signature page hereto, Buyer is represented by Buyer's Broker identified on the signature page hereto, Marketplace Provider is acting as the marketing firm and marketplace provider, and Seller and Buyer each represents and warrants that it has not dealt with any other broker, finder or other agent. Seller and Buyer shall each indemnify and hold harmless the other from and against any claims, losses, costs, damages, liabilities or expenses, including reasonable attorneys' fees, arising in connection with any breach by the indemnifying party of the representations and warranties in this paragraph. The provisions of this paragraph shall survive Closing.
- (O) **Form of Agreement.** Buyer and Seller acknowledge that no representation, recommendation or warranty is made by Marketplace Provider 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 with this Agreement.

**13. CLOSING COST ALLOCATIONS.** See applicable rider or addendum attached hereto and incorporated herein by reference.

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

**SELLER:**

**BUYER:**

Seller Company Name: \_\_\_\_\_

Buyer Signature: \_\_\_\_\_

\_\_\_\_\_

Printed Name: \_\_\_\_\_

Seller Signature: \_\_\_\_\_

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Buyer Signature: \_\_\_\_\_

Title (if applicable): \_\_\_\_\_

Dated: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Dated: \_\_\_\_\_

**LISTING BROKER (if any):**

**BUYER'S BROKER (if any):**

Broker Printed Name: \_\_\_\_\_

Broker Printed Name: \_\_\_\_\_

Broker License Number: \_\_\_\_\_

Broker License Number: \_\_\_\_\_

Brokerage Printed Name: \_\_\_\_\_

Brokerage Printed Name: \_\_\_\_\_

Brokerage License Number: \_\_\_\_\_ State: \_\_\_\_\_

Brokerage License Number: \_\_\_\_\_ State: \_\_\_\_\_

**DISCLOSURE AND CONFIRMATION OF AGENCY RELATIONSHIP**

Buyer and Seller acknowledge that, unless Marketplace Provider is listed as Listing Broker above, Marketplace Provider is not acting as Seller's real estate agent or Buyer's real estate agent, and Marketplace Provider is acting as a marketing firm and marketplace provider only.

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

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

**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: \_\_\_\_\_

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 \_\_\_\_\_