



# AUCTION MANAGEMENT CORPORATION

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## AUCTION REAL ESTATE SALES AGREEMENT

**DATE: June 11, 2019**

As a result of the efforts of AUCTION MANAGEMENT CORPORATION, hereinafter referred to as "Auctioneer", the undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell, all that tract or parcel of land lying and being in Buncombe County, North Carolina, being more particularly described as (strike any that do not apply) 398 Hemlock Springs Trail (Lot 39), Weaverville, NC 28787, 406 Hemlock Springs Trail (Lot 38), Weaverville, NC 28787, 55 Double Brook Drive (Lot 49), Weaverville, NC 28787 together with any systems or fixtures as may be attached thereto, all improvements thereon and appurtenances thereto, hereinafter referred to as the "Property", ( x ) [checked if applicable] which is more particularly described in Exhibit A, attached hereto and incorporated herein by reference.

The Purchase Price of the Property is \$ \_\_\_\_\_

(\$ \_\_\_\_\_) Dollars, to be paid by certified or cashier's check to Seller, in full, at closing.

The Purchase Price is the sum of the bid of \$ \_\_\_\_\_

plus a premium of ten (10%) percent of the bid or \$ \_\_\_\_\_.

Purchaser's obligation to close shall not be contingent upon Purchaser's ability to obtain financing. This sale is absolute, becoming a binding contract upon execution hereof by Purchaser and without further requirement of execution by Seller.

Purchaser shall pay to Auctioneer within \_\_\_\_ hours of completion of auction the sum of

\$ \_\_\_\_\_ (20% of the Purchase Price), as earnest money, which earnest money is to be promptly deposited into Auctioneer's escrow account and is to be applied as part payment of the purchase price at time of closing. Any earnest money paid by other than cash or certified funds will not be refunded, if applicable, until such time as the deposited funds have fully cleared payor bank. The deposit is non-interest bearing and shall be placed in escrow in Auctioneer's local bank without responsibility on the part of Auctioneer in the event of failure or suspension of such bank. The parties hereto understand and acknowledge that disbursement of earnest money held by Auctioneer may occur only as follows: (a) at closing; (b) upon written agreement signed by all parties having an interest in said funds; (c) upon court order; (d) upon failure of any contingency; or (e) upon failure of either party to fulfill the obligations thereof contained in this contract. If any dispute arises between Purchaser and Seller as to the final disposition of all or part of the earnest money, Auctioneer may, at its sole option and discretion, notify Purchaser and Seller in writing that Auctioneer is unable to resolve such dispute and may interplead all or any disputed part of the earnest money into court in the state in which the property is located, whereupon Auctioneer shall be entitled to be compensated by the party who does not prevail in the interpleader action for its costs and expenses, including, but not limited to, Auctioneer's commission and actual attorneys' fees incurred in filing said interpleader; or, upon fifteen (15) days written notice to the parties, Auctioneer may make a disbursement of the earnest money upon a reasonable interpretation of this contract. In either event, the parties hereto shall thereafter make no claim whatsoever against Auctioneer and/or any agents acting on its behalf for said disputed earnest money and shall not seek damages from Auctioneer by reason thereof or by reason of any other matter arising out of this contract or the transaction contemplated hereunder.

Seller states that Seller presently has title to said Property, and at the time the sale is consummated agrees to convey insurable title to said Property to Purchaser by Special Warranty deed, subject only to (1) all title matters of record as of the date of closing, (2) matters affecting title that would be disclosed by an accurate survey of the property, and (3) all taxes not yet due and payable. In the event there are leases on the property, Purchaser agrees to assume Seller's responsibility thereunder to the tenant(s) and broker(s) who negotiated such leases. Purchaser shall have a reasonable time to examine title and to furnish Seller a written statement of objections affecting the insurability of said title. Should Purchaser fail to furnish Seller with a written statement of objections within the time allotted, then Purchaser shall be deemed to have accepted title as is. Seller shall have forty-five (45) days after receipt of such objections to satisfy all valid objections and, if Seller fails to satisfy such valid objections within said forty-five (45) days, then at the option of Purchaser, evidenced by written notice to Seller, this contract shall be null and void, and Purchaser's earnest money shall be returned or Purchaser shall accept the title with the exceptions and Purchaser shall have no further claims against the Seller whatsoever.

PURCHASER, BY ITS EXECUTION HEREOF, ACKNOWLEDGES THAT (i) SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE OF, AS TO, CONCERNING OR WITH RESPECT TO (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 ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, (E) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY, (F) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY, , (G) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, WITHOUT LIMITATION,

THE AMERICANS WITH DISABILITIES ACT AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER OR IN CONNECTION THEREWITH, OR (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTY, OF ANY HAZARDOUS MATERIALS AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND OTHER APPLICABLE STATE LAWS, AND REGULATIONS PROMULGATED THEREUNDER, INCLUDING, WITHOUT LIMITATION, SOLID WASTE AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261. PURCHASER FURTHER ACKNOWLEDGES AND AGREES AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT THAT PURCHASER HAS FULLY INSPECTED THE PROPERTY AND THAT THE CONVEYANCE AND DELIVERY OF THE PROPERTY CONTEMPLATED BY THIS AGREEMENT IS "AS IS" AND "WHERE IS" WITH ALL FAULTS; AND (iii) NO WARRANTY HAS ARISEN THROUGH TRADE, CUSTOM OR COURSE OF DEALING WITH PURCHASER. PURCHASER REPRESENTS THAT PURCHASER HAS MADE (OR DOES HEREBY WAIVE): (i) INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY PURCHASER, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES AND/OR OTHER TOXIC OR POTENTIALLY TOXIC SUBSTANCES; AND/OR (ii) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY. PURCHASER'S INSPECTION OF THE PROPERTY (OR WAIVER THEREOF) SHALL RELIEVE SELLER OF ANY LIABILITY TO PURCHASER AS A RESULT OF ANY ENVIRONMENTAL HAZARD ON OR TO THE PROPERTY AND PURCHASER SHALL ACCEPT ALL LIABILITY THEREFORE AS BETWEEN PURCHASER AND SELLER, AND SHALL INDEMNIFY AND HOLD HARMLESS SELLER FROM AND AGAINST ANY CLAIMS, LIABILITIES, DEMANDS OR ACTIONS INCIDENT TO, RESULTING FROM OR IN ANY WAY ARISING OUT OF SUCH DISCOVERY. SUCH INDEMNITY SHALL SURVIVE ANY TERMINATION OF THE AGREEMENT AND SHALL SURVIVE CLOSING AND NOT BE MERGED THEREIN.

Seller and Purchaser agree that such documents as may be legally necessary to carry out the terms of this contract shall be executed and delivered by such parties at the time the sale is consummated. Seller states that when the sale is consummated the improvements on the Property will be in the same condition as on the date hereof, normal wear and tear excepted. However, should the premises be destroyed or substantially damaged before the contract is consummated, then both Purchaser and Seller retain the right to cancel or negotiate the contract. Unless specifically represented on Exhibit B, no warranties, treatments, nor repairs are to be made by the Seller.

Real estate taxes and assessments on the Property shall be prorated as of the date of closing. Sale shall be closed at the offices of \_\_\_\_\_ Phone: \_\_\_\_\_ (Closing Agent), Auctioneer will transfer the earnest money to Closing Agent prior to closing. Seller shall pay auctioneer commission, deed preparation, transfer tax and reasonable title corrective expenses. Purchaser shall pay all other closing costs including designated closing attorney closing fees, title search and/or policy fees, and recording fees. Unless specified otherwise in Exhibit B, sale shall be closed on or before 30 days from date hereof, or on or before 10 days following Seller's satisfaction of valid title objections (*supra*), if applicable, whichever shall last occur. Auctioneer is acting as agent for the Seller, not as Purchaser's agent. Time is of the essence.

Should Seller fail to perform or otherwise be in default hereunder for any reason other than a title defect or objection, Seller shall pay the full commission to Auctioneer immediately, the earnest money shall be refunded to Purchaser, and Purchaser shall be entitled to all remedies available in law and equity, including, without limitation, specific performance. Should Purchaser fail to perform or otherwise be in default hereunder, the earnest money shall be retained by Seller and Auctioneer as full liquidated damages. Purchaser specifically agrees that, at Auctioneer's sole option and discretion, any unresolved claim arising out of or relating to this contract, or the breach thereof, may be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Purchaser and Auctioneer shall each pick an arbitrator. The two chosen arbitrators shall choose a third arbitrator. The decision of this panel of arbitrators shall be final and may be enforced by any court having jurisdiction thereof. This panel of arbitrators shall assess the cost and payment of the arbitration.

Possession of the premises shall be granted by Seller to Purchaser no later than date of closing, subject to any leases.

( ) Special stipulations continued on Exhibit B, attached hereto and made a part hereof. (This provision is not applicable if not checked and Exhibit B not attached.)

This contract constitutes the sole and entire agreement between the parties hereto and no modification of this contract shall be binding unless attached hereto and signed by all parties to this agreement. No representation, promise, or inducement not included in this contract shall be binding upon any party hereto. The invalidity or unenforceability of any provision of this contract shall not affect the validity or enforceability of any other provision set forth herein.

(SIGNATURE PAGE FOLLOWS)

\_\_\_\_\_  
Purchaser(s) DATE

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone # (daytime) (evening)

Email: \_\_\_\_\_

Seller: \_\_\_\_\_ DATE

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

Its: \_\_\_\_\_

\_\_\_\_\_  
Cooperating Broker

Cooperating Broker is working as agent of (check one) (\_\_\_\_\_) Purchaser (\_\_\_\_\_) Seller  
Cooperating Broker agrees to be bound by the terms of the Auction as set forth in the  
Auction announcements and the Auction Materials dated June 11, 2019.

**Exhibit A**

Indicate which lots are included in this contract by checking Included or Not Included

**TRACT I: Known as 406 Hemlock Springs Trail** ( ) Included ( ) Not Included

**Being all of Lot 38, Section 2 of Twin Brook Hills** as shown on that Plat recorded in **Plat Book 78 at Page 105** of the Buncombe County, NC Registry; reference to said Plat is hereby made for a more particular description of said Lot.

Together with and subject to all easements and rights of way as reflected on the above referenced Plat.

And being a portion of that property described in Deed recorded in **Book 2281 at Page 535** of the Buncombe County, NC Registry.

**TRACT II: Known as 398 Hemlock Springs Trail** ( ) Included ( ) Not Included

**Being all of Lot 39, Section 2 of Twin Brook Hills** as shown on that Plat recorded in **Plat Book 78 at Page 105** of the Buncombe County, NC Registry; reference to said Plat is hereby made for a more particular description of said Lot.

Together with and subject to all easements and rights of way as reflected on the above referenced Plat.

And being a portion of that property described in Deed recorded in **Book 2281 at Page 535** of the Buncombe County, NC Registry.

**TRACT III: Known as 55 Double Brook Drive** ( ) Included ( ) Not Included

**Being all of Lot 49, Section 3 of Twin Brook Hills** as shown on that Plat recorded in **Plat Book 84 at Page 47** of the Buncombe County, NC Registry; reference to said Plat is hereby made for a more particular description of said Lot.

Together with and subject to all easements and rights of way as reflected on the above referenced Plat.

And being a portion of that property described in Deed recorded in **Book 2281 at Page 535** of the Buncombe County, NC Registry.

11-1656

