



# AUCTION MANAGEMENT CORPORATION

1827 Powers Ferry Road, Building 5, Atlanta, Georgia 30339  
Phone: (770) 980-9565 Fax: (770) 980-9383 Email : info@AMCbid.com

## AUCTION REAL ESTATE SALES AGREEMENT

**Property 3577 Duberry Ct. DATE: October 20, 2017**

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 **DeKalb** County, Georgia, being more particularly described as **3577 Duberry Ct. Brookhaven, GA** together with any systems or fixtures as may be attached thereto, all improvements thereon and appurtenances thereto, hereinafter referred to as the "Property",  
( ) [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. [Applicable provision must be checked:] ( ) This offer remains binding and irrevocable by Purchaser through \_\_\_\_\_ at 5:00 PM. If this contract is not executed by Seller prior thereto the earnest money deposit shall be refunded to Purchaser and this agreement shall be null and void. ( ) 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 **Stout Kaiser Matteson Peake & Hendrick, LLC**, (hereinafter "StoutKaiser") within 24 hours of completion of auction the sum of \$ \_\_\_\_\_ (10% of the Purchase Price), as earnest money, which earnest money is to be promptly deposited into **StoutKaiser's** attorney's IOLTA account, a non-interest bearing 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 parties hereto understand and acknowledge that disbursement of earnest money held by **StoutKaiser** 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 the parties to enter into a binding agreement; or (e) the failure of a contingency; (f) upon failure of either party to fulfill the obligations thereof contained in this contract. In addition, Holder may disburse the earnest money upon a reasonable interpretation of the Agreement, provided that Holder first gives all parties at least ten (10) days notice stating to whom and why the disbursement will be made. Any party may object to the proposed disbursement by giving written notice of the same to Holder within the ten (10) day notice period. Objections not timely made in writing shall be deemed waived. If Holder receives an objection and, after considering it, decides to disburse the earnest money as originally proposed, Holder may do so and send notice to the parties of Holder's action. If Holder decides to modify its proposed disbursement, Holder shall first send a new ten (10) day notice to the parties stating the rationale for the modification and to whom the disbursement will now be made. Holder shall offer to disburse the earnest money to Seller by check in the event Holder:

- (1) makes a reasonable interpretation of the Agreement that the Agreement has been terminated due to Buyer's default; and
- (2) sends the required ten (10) day notice of the proposed disbursement to Buyer and Seller. If Seller accepts the offer and Holder issues a check to Seller which is deposited by Seller, it shall constitute liquidated damages in full settlement of all claims of Seller against Buyer and the Brokers in this transaction. Holder may require Seller to sign a W-9 before issuing a check to Seller for liquidated damages of \$600 or more. Such liquidated damages are a reasonable pre-estimate of Seller's actual damages, which damages are difficult to ascertain and are not a penalty. Nothing herein shall prevent the Seller from declining the tender of the earnest money by the Holder. In such event, Holder, after giving Buyer and Seller the required ten (10) day notice of the proposed disbursement, shall disburse the earnest money to Buyer.

**Interpleader:** If an earnest money dispute cannot be resolved after a reasonable time, Holder may interplead the earnest money into a court of competent jurisdiction if Holder is unsure who is entitled to the earnest money. Holder shall be reimbursed for and may deduct its costs, expenses and reasonable attorney's fees from any funds interpleaded. The prevailing defendant in the interpleader lawsuit shall be entitled to collect its attorney's fees, court costs and the amount deducted by Holder to cover Holder's costs and expenses from the non-prevailing defendant.

**Hold Harmless:** All parties hereby covenant and agree to: (1) indemnify and hold Holder harmless from and against all claims, injuries, suits and damages arising out of the performance by Holder of its duties; (2) not to sue Holder for any decision of Holder to disburse earnest money in accordance with this Agreement.

Seller warrants 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 Limited Warranty deed, subject only to (1) all zoning; general utility, sewer and drainage easements of record as of the Binding Agreement Date; (2) matters affecting title that would be disclosed by an accurate survey of the property, (3) Declaration of Covenants, conditions and restrictions of record on the Binding Agreement Date 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 fifteen (15) days from the Binding Agreement Date 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. This Agreement shall be assignable by Purchaser to a validly exiting entity controlled by Purchaser, on the following conditions: (a) the assignment (does ~~not~~) require approval of Seller, (b) the Purchaser provides Seller, Auctioneer and Closing Attorney proof of organization and good standing for the entity, and (c) the assignment must take place no later than 10 days prior to Closing. Seller warrants 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

revisions to the contract. Unless specifically represented on the Exhibit B attached, if any, no warranties, treatments, nor repairs are to be made by the Seller.

Real estate taxes, sanitation and HOA assessments, if any, on the Property shall be prorated as of the date of closing. Sale shall be closed at the offices of James M. Ottley Esq, Stout Kaiser Matteson Peake & Hendrick, LLC, (770) 349-8214, Jottley@stoutkaiser.com, 1117 Perimeter Center West, Suite W400, Atlanta, Georgia 30338.. Seller shall pay auctioneer commission and reasonable title corrective expenses and for any expenses related to Seller not attending the closing in person. Purchaser shall pay all other closing costs including designated attorney closing fees, title search and/or policy fees, recording fees, and all of Purchaser's attorney fees (should Purchaser choose representation).

**Closing Date:** This 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 hereby directs StoutKaiser to 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.)

For purposes of this contract, the "Binding Agreement Date" shall be the last date upon which either the Seller or Purchaser signs the contract and transmits it to the other party as indicated by the latest date on the signature page. 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]

[Individual Sellers:]

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

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

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

[If Seller is a LLC or Corporation]

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

By: \_\_\_\_\_ **DATE**

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

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

Listing Agent/Auctioneer: \_\_\_\_\_

Auction Management Corporation

Brokerage Firm License Number: H-20307

MLS Office Code: N/A

Agent Name: Amy Martin

Agent License #: 341898

Agent Email Address: amy@AMCbid.com

Agent Phone Number: 404-734-3606

Address \_\_\_\_\_

Address \_\_\_\_\_

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

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

Cooperating Broker Name: \_\_\_\_\_  
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 February 22, 2017.

Brokerage Firm License Number: \_\_\_\_\_

MLS Office Code: \_\_\_\_\_

Agent Name: \_\_\_\_\_

Agent License #: \_\_\_\_\_

Agent Email Address: \_\_\_\_\_

Agent Phone Number: \_\_\_\_\_

## **EXHIBIT A**

All that tract or parcel of land lying and being in Land Lot 304 of the 18th District of DeKalb County, Georgia, being Lot 16 of the Subdivision of Duberry Court, according to plat of same by Shirey, Nelson and Associates, dated December 18, 1964, revised June 30, 1965, and revised in November 10, 1965, and recorded in Plat Book 43, Page 87, DeKalb County Records.

**EXHIBIT B**  
**SPECIAL STIPULATIONS**

PRELIMINARY