

Online Bidder Registration Instructions

**U.S. BANKRUPTCY COURT ONLINE AUCTION
Northern District of Illinois – Eastern Division
Ft. Myers ALF, Inc. | Case No. 20-08952
5.51± Acre Development Site**

4999 Winkler Avenue, Fort Myers, Florida 33966

Thursday, April 29, 2021 Beginning at 11:00AM ET and Concluding at 2:00PM ET

The following are guided instructions to assist an Online Bidder to participate in this Online Auction.

1. Download from www.fisherauction.com the Online Bidder Registration Package which includes the following documents;
 - a) Online Bidder Registration Form
 - b) Online Bidder Contract
 - c) Return of Initial Escrow Deposit Form
 - d) General Terms and Conditions of Sale
2. Complete, sign and date the Online Bidder Registration Form.
3. Complete, sign and date the Online Bidder Contract.
4. Complete, sign and date the Return of Initial Escrow Deposit Form.
5. Sign/Date/Time an acknowledgment that the Bidder has read and agrees to be bound by the General Terms and Conditions of Sale.
6. Retain copies of the above documents for your file.
7. Return the four (4) executed documents and a copy of your valid State issued Driver's License or a valid Passport no later than 5:00 PM ET, Tuesday, April 27, 2021 to Fisher Auction Company, 2112 East Atlantic Boulevard, Pompano Beach, Florida 33062; Facsimile: 954.782.8143; Email: info@fisherauction.com.
8. Wire into Genovese Joblove & Battista, P.A. – Real Estate Trust IOTA Account (the "Escrow / Settlement Agent"), via a Federal wire transfer in U.S. Funds (not an ACH Credit) a \$100,000 Initial Escrow Deposit no later than 5:00 PM ET on Tuesday, April 27, 2021. Contact Fisher Auction Company for wiring instructions via email info@fisherauction.com or call 954.942.0917, Ext. 4124.
9. The Auction will begin at 11:00 AM Eastern Time on Thursday, April 29, 2021 and conclude at 2:00 PM Eastern Time on Thursday, April 29, 2021 on Fisher Auction Company's Online Bidder Application which can be accessed through the Fisher Auction Company website. Please note that each Bidder will need to click "accept" to agree to the Online Bidding Application terms prior to the start of the sale in order to become activated to bid.
10. The highest and best bidder will execute the non-contingent "AS IS" Contract for Sale and Purchase and any and all Addenda, immediately following the Auction.
11. An Additional Escrow Deposit ("the Additional Deposit") totaling (10%) of the total contract price shall be due from the Highest and Best Bidder via a Federal wire transfer in U.S. Funds (not an ACH Credit) to Genovese Joblove & Battista, P.A. – Real Estate Trust IOTA Account (the "Escrow / Settlement Agent"), no later than (24) hours from the conclusion of the Auction.

A Sale Hearing ("Sale Hearing") will be scheduled in the United States Bankruptcy Court, for the Northern District of Illinois – Eastern Division, for the Court to approve the Sale of Real Property free and clear of all liens, claims and encumbrances to the Highest and Best Bidder.

ONLINE BIDDER REGISTRATION FORM

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(Please Print Clearly)

Name:	
Company Name (if applicable):	
Company Address:	
City, State & Zip:	
City, Country & Country Code (if outside the U.S.):	
Residential Address:	
City, State & Zip:	
City, Country & Country Code (if outside the U.S.):	
Valid State Issued Driver's License No. or Passport (Copy of License or Passport Required):	
Contact Phone:	Facsimile:
Email:	
Entity in which Bidder will take Title:	
Marital Status:	
Bidder's Signature:	Date:
How did you hear about Auction:	

ONLINE BIDDER CONTRACT
U.S. BANKRUPTCY COURT ONLINE AUCTION
Northern District of Illinois – Eastern Division
Ft. Myers ALF, Inc. | Case No. 20-08952
5.51± Acre Development Site
4999 Winkler Avenue, Fort Myers, Florida 33966
Thursday, April 29, 2021 Beginning at 11:00AM ET and Concluding at 2:00PM ET

Please carefully review this Online Bidder Contract (“Contract”) and the General Terms and Conditions of Sale (“Terms”). You must follow instructions for the required Initial Escrow Deposit, execute this Contract along with the other required documents within the Online Bidding Instructions Package, and send to Fisher Auction Company, 2112 East Atlantic Boulevard, Pompano Beach, Florida 33062; Facsimile: 954.782.8143; Email: info@fisherauction.com, in order for you to be able to participate as a Qualified Online Bidder in this Online Auction. All executed documents and the required Escrow Deposit to be received no later than 5:00 PM, ET, Tuesday, April 27, 2021.

This is a Contract entered into by and between the Bidder (“Bidder”) whose name is identified below and Fisher Auction Company, “Auctioneer”.

1. All registration information the Bidder provides to Auctioneer shall be current, complete, and accurate. Bidder must be 21 years of age or older. Bidder agrees not to use any device, software or routine to interfere or attempt to interfere with the proper working of any transaction being conducted during this Online Auction.
2. Bidder agrees not to retract its offer(s). The successful Bidder is legally bound to purchase the Property awarded in accordance with his / her bid, the Terms, the “As Is” Contract for Sale and Purchase and Addendums, and all other Federal and State Regulations governing contracts for the purchase of real property. Unilateral conditions asserted by any Bidder will not be accepted. There will be a 10% Buyer’s Premium added to the Final Bid Price and included in the Total Purchase Price.
3. Auctioneer reserves the right, for any reason, in its sole discretion, to terminate, change or suspend any aspect of this Online Auction.
4. Disputes Between Bidders - If a dispute arises between two or more Bidders, Auctioneer reserves the right to reopen the bidding. Auctioneer’s designation of the successful Bidder shall be final.
5. Termination: This Contract constitutes a binding agreement between Bidder and Auctioneer until terminated by Auctioneer, which Auctioneer may do at any time, without notice, in Auctioneer’s sole discretion. If Bidder dissatisfaction occurs with this Online Auction in any way, Bidder’s only recourse is to immediately discontinue use of this Online Auction. Auctioneer reserves the right to terminate Bidder registration and use of this Online Auction, and impose limits on certain features of this Online Auction or restrict Bidder access to, or use of, part or the entire Online Auction without notice or penalty.
6. Hold Harmless - Auctioneer cannot, and will not, be held responsible for any interruption in service, errors, and/or omissions, caused by any means, therefore they cannot guarantee continual, uninterrupted or error free service as the website could be interfered with by means out of Auctioneer’s control. Bidder acknowledges that this Online Auction is conducted electronically and relies on hardware and software that may malfunction without warning. The Auctioneer may void any sale, temporarily suspend bidding, extend bidding times and/or re-sell the Property that was affected by any malfunction. The decision of the Auctioneer is final.
7. Required Escrow Deposit – In order to be fully and properly registered to bid online for this Auction, Bidder will have wire transferred the required Initial Escrow Deposit in the amount of \$100,000 in U.S. Funds to Genovese Joblove & Battista, P.A. – Real Estate IOTA Account (“Escrow Agent” /Settlement Agent”), by 5:00 PM ET on Tuesday, April 27, 2021 and received Deposit confirmation by Fisher Auction Company. Once the Escrow Deposit and all required executed documents are received, no later than 5:00 PM ET on Tuesday, April 27, 2021, Auctioneer will approve your access to bid. Any questions regarding this online bidding process may be obtained by contacting Auctioneer at info@fisherauction.com or 800.331.6620 (U.S. calls) or 954.942.0917 (International calls).
8. Property Inspection: The Bidder is invited, urged and cautioned to inspect the Property prior to submitting any bid. Failure to inspect the Property shall not constitute cause for cancellation of sale.
9. OFFICE OF FOREIGN ASSETS CONTROL (OFAC) COMPLIANCE: All bidders are subject to providing appropriate government identification that includes full legal name and date of birth. In addition, all bidders are subject to being required to disclose their place of birth. By providing this information bidders agree to allow Seller to perform a search of the Specially Designated Nationals List, Blocked Persons List and Sanctioned Country List provided by the United States Office of Foreign Assets Control. Seller reserves the right to reject any bidder from registration after this search has been completed. By registering all bidders agree to abide by all of the Terms of Sale.
10. The Bidder agrees that, should they be the successful Bidder on the Property, all information regarding the transaction may be published on the Auctioneer’s web site per the Electronic Freedom of Information Act Amendments of 1996 (5 U.S.C. 522(2000)).

Name:			
Address:			
City – St – Zip:			
City, Country, Country Code (if outside the U.S.)			
Contact Telephone:		Email Address:	

I hereby acknowledge and accept the above terms of this Online Bidding Contract and agree to comply with same. Facsimile and electronic signatures of the parties to this Contract shall be treated as original signatures.

Signature	Date

Return of Initial Escrow Deposit Form

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In the event that you are not the successful Bidder on the Property, please fill out this form to instruct Genovese Joblove & Battista, P.A. (Escrow Agent / Settlement Agent), as to how to return your Initial Escrow Deposit. Please note, any return of escrowed funds will be returned to the same bank account where the funds had originated.

The amount of the Initial Escrow Deposit held in Escrow is: \$100,000.

I, _____, hereby authorize Genovese Joblove & Battista, P.A. (the “Escrow Agent”), to release my Initial Escrow Deposit back to me within three (3) business days via:

PLEASE TYPE OR PRINT CLEARLY

A wire transfer to the originating bank to the originator per the wiring instructions below:

Bank Information

Bank Name:
Address:
City, St., Zip
Phone:
Swift Code (International Wires):
ABA Number:

Account Information

Account Name:
Account Number:
Address:
City, St., Zip
Phone:

Bidder Signature:	Date:
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GENERAL TERMS AND CONDITIONS OF SALE

**U.S. BANKRUPTCY COURT ONLINE AUCTION
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Please review this document (“Terms and Conditions”) carefully. In order to be eligible to bid on the Property, a Bidder must sign their Acknowledgment and Acceptance of these General Terms and Conditions of Sale.

1. START / END DATES AND TIMES:

The Online Real Estate Auction (“Online Auction” or “Auction”) shall begin on Thursday, April 29, 2021 at 11:00 AM ET and will conclude on Thursday, April 29, 2021, at 2:00 PM ET.

2. ONLINE BIDDER REGISTRATION:

Registration is required to become a qualified and eligible online bidder (“Bidder”). To register, a prospective Bidder must:

(a) Complete the Online Bidder Registration Form providing Bidder’s full name, company name, residence / business addresses (if applicable) with telephone numbers, cellular telephone number, facsimile number, email address, a copy of a State valid driver’s license number or a valid passport, and the name(s) and / or entity in which the Bidder will take title to the Property.

(b) Bidders must wire into Genovese Joblove & Battista, P.A. – Real Estate Trust IOTA Account (the “Escrow / Settlement Agent”), via a Federal wire transfer in U.S. Funds (not an ACH Credit) a \$100,000 Initial Escrow Deposit no later than Tuesday, April 27, 2021 at 5:00 PM ET. Contact Fisher Auction Company for wiring instructions via email info@fisherauction.com or call 954.942.0917, Ext. 4124. All wired deposits must be verified by Fisher Auction Company prior to being approved to bid.

(c) Complete the Return of Initial Escrow Deposit Form.

(d) Sign / Date / Time an acknowledgment that the Bidder has read and agrees to be bound by these General Terms and Conditions of Sale.

(e) Execute the Online Bidder Contract.

(f) Return the required four (4) executed documents to Fisher Auction Company, 2112 East Atlantic Boulevard, Pompano Beach, Florida 33062; Facsimile: 954.782.8143; Email: info@fisherauction.com no later than 5:00 PM ET, Tuesday, April 27, 2021.

3. SUCCESSFUL BID, TOTAL PURCHASE PRICE (INCLUDES BUYER’S PREMIUM), ADDITIONAL ESCROW DEPOSIT, “AS IS” CONTRACT FOR SALE AND PURCHASE AND ADDENDUMS:

(a) If the Seller by and through Fisher Auction Company (“Auctioneer”) accepts a bid (“Successful Bid”) for the Property, then the successful Bidder will be required to (i) execute, as Buyer (“Buyer”) the “AS IS” Contract for Sale and Purchase and its Addendums (“Contract”), which has been previously furnished to Bidder, immediately following the bidding and / or no later than the conclusion of the Online Auction, with no changes / exceptions **(ii) within twenty-four (24) hours of the conclusion of the Auction initiate a wire transfer for an Additional Escrow Deposit equal to the difference between 10% of the Total Purchase Price and the Initial Escrow Deposit, to the Escrow Agent, Genovese Joblove & Battista, P.A.** Bidder will have no later than twenty-four (24) hours following the end of the Auction to execute and return the Contract and initiate a wire for the Additional Escrow Deposit. If the Successful Bidder does not initiate the wire for the Additional Escrow Deposit and execute and return the Contract within twenty-four (24) hours from the end of the Auction, they will be considered in default and the \$100,000 Initial Escrow Deposit will be forfeited and considered as liquidated damages.

(b) The amount of (i) the Successful Bid AND (ii) 10% of the Successful Bid (“Buyer’s Premium”), added together, will be the Total Purchase Price (“Total Purchase Price”) for the Property to be purchased by the Buyer under the Contract together with closing costs as further provided in the Contract.

4. IMMEDIATE BACK-UP BIDDER:

By participating in the Auction, each Qualified Bidder consents to its bid being designated as a back-up bid in the event its bid is designated as the second highest and best offer to purchase the Property (the “Immediate Back-Up Bid”) and as such, will execute the Contract at their bid price. If the successful Bidder fails to consummate the sale of the Property by the required closing date because of a breach or failure to perform on the part of such successful Bidder, the successful Bidder shall forfeit its Bidder Deposit to the Seller and the next highest or otherwise best qualified bid for the Property will be deemed to be the Successful Bid, and the Seller will be authorized to consummate the sale with the applicable second highest Bidder, submitting such bid without further order of the Bankruptcy Court (the “Immediate Back-Up Bidder”). The Closing to the Immediate Back-up Bidder shall take place within twenty (20) calendar days after such Immediate Back-Up Bidder receives notice from Seller that the successful Bidder failed to close, and that the Seller has elected to proceed to close with the Immediate Back-Up Bidder. If the Immediate Back-Up Bidder is unable or unwilling to close in the time permitted, the Immediate Back-Up Bidder shall forfeit its Bidder Deposit to the Seller. In the event that the successful Bidder closes, the Escrow / Settlement Agent shall return to the Immediate Back-Up Bidder its Bidder Deposit within three (3) business days after the closing. In the event the Immediate Back-Up Bidder closes on the purchase of the Property, its Bidder Deposit shall be applied by the Seller against the purchase price.

5. CLOSING AND PAYMENT OF PURCHASE PRICE:

(a) **The Closing (“Closing”) will take place within twenty (20) calendar days from the date of the signed U.S. Bankruptcy Court, Northern District of Illinois – Eastern Division, Order Approving the Sale.** The Closing will be coordinated and administered through the offices of the Escrow / Settlement Agent; Genovese Joblove & Battista, P.A.; 100 SE 2nd Street, Suite 4400, Miami, Florida 33131; Phone: 305.349.2300, Facsimile: 305.428.8873.

(b) The remaining balance of the Total Purchase Price will be due and payable by Buyer at Closing by Wire Transfer of immediately available U.S. funds, pursuant to written instructions from the Escrow / Settlement Agent. Buyer shall receive credit for the Escrow Deposits which shall be released from escrow and applied by the Escrow / Settlement Agent towards the Total Purchase Price at Closing.

(c) Time shall be of the essence as to Buyer's obligations in these General Terms and Conditions and as described in the Contract.

6. TITLE INSURANCE and ZONING:

(a) The Seller will provide an Owner's Title Commitment and Policy on the Property through the Escrow / Settlement Agent. **The Title Commitment and the Premium for the Owner's Title Policy shall be paid by the Buyer.** The Commitment and Owner's Title Insurance Policy shall be issued by the Settlement Agent from Chicago Title Insurance Company.

(b) Except as provided for herein, it is understood and agreed that fee simple title to the Property is being sold to the Buyer without representation or warranty and subject to the Permitted Exceptions.

(c) The Seller will convey title by a Quit Claim Deed ("Deed").

(d) Title to the Property will be subject to the exceptions set forth in the proposed Commitment ("Permitted Exceptions"). Buyer agrees to take title to the Property subject to the Permitted Exceptions, among other matters as described in these General Terms and Conditions of Sale and in the Contract.

(e) Buyer agrees that the Property is subject to all laws, ordinances, codes, rules and regulations of applicable governmental authorities pertaining to the ownership, use and occupancy of the Property including, but not limited to, zoning, land use, building codes, homeowner association documents / fees, if any, and agrees to take title subject to such matters, and the following permitted exceptions: (i) all covenants, restrictions, easements and agreements of record now on the Property; (ii) all liens for unpaid municipal charges not yet due; (iii) the state of facts which would be shown by a current survey or inspection of the Property; (iv) any matter created by or through Buyer; (v) any title matters which Buyer has accepted or is deemed to have accepted as set forth in the Contract; (vi) such other matters that will not make the Property unusable or unmarketable for commercial purposes.

(f) Seller is not providing to Buyer any survey of the Property. In the event Buyer desires to obtain a survey of the Property, Buyer will be solely responsible to obtain, and pay for, such survey without reducing the proceeds of the Total Purchase Price payable to Seller at the Closing. Buyer shall not have the right to terminate the Contract based upon the results of the survey.

7. BUYER'S ACKNOWLEDGEMENTS:

(a) The sale of the Property is an "All Cash" transaction and shall not be subject to any contingencies or post due diligence.

(b) The Seller, Trustee Realty, Inc., Cushman & Wakefield – Commercial Property Southwest Florida and Fisher Auction Company and their representatives, attorneys, agents, and sub-agents, assume no liability for errors or omissions in this or any other property listing or advertising or promotional / publicity statements and materials. The Seller, Trustee Realty, Inc., Cushman & Wakefield – Commercial Property Southwest Florida and Fisher Auction Company and their representatives, attorneys, agents and sub-agents, make no representation or guarantee as to the accuracy of the information herein contained or in any other property listing or advertising or promotional / publicity statements and materials. Neither Fisher Auction Company, Trustee Realty, Inc., Cushman & Wakefield – Commercial Property Southwest Florida nor the Seller have any obligation to update this information. Neither Fisher Auction Company, Trustee Realty, Inc., Cushman & Wakefield – Commercial Property Southwest Florida nor the Seller, their Agents and Sub-Agents, attorneys, Escrow / Settlement Agent, representatives, members, managers or affiliates have any liability whatsoever for any oral or written representations, warranties, or agreements relating to a Property except as is expressly set forth in the Contract.

(c) **The Property is sold in its "AS IS AND WHERE IS" condition and with all faults and defects, with no representations or warranties, express or implied. The Property is sold free and clear of all liens, claims, encumbrances and other interests including any back real estate taxes owed.** All Bidders are encouraged to inspect the Property prior to placing any bid at the Online Auction and the Successful Bidder, as Buyer, acknowledges that it has had a reasonable opportunity to inspect and examine all aspects of the Property and make inquiries of applicable governing authorities pertaining to such matters in connection with the Property as Buyer has deemed necessary or desirable prior to the Online Auction. Bidders should review all applicable zoning, land use, code compliance, environmental matters, physical condition, and any and all other governmental statutes, ordinances, rules, laws and regulations and do such other due diligence in advance of execution of this document and all of the accompanying documents in connection with the purchase of the Property ("Governing Documents"). Please review all Governing Documents carefully and seek the advice of an attorney if Bidder feels it is necessary.

(d) Competitive bidding is an essential element of an Online Auction sale, and such a sale should be conducted fairly and openly with full and free opportunity for competition among bidders. Any conduct, artifice, agreement, or combination the purpose and effect of which is to stifle fair competition and chill the bidding, is against public policy and will cause the sale to be set aside. Collusion / Bid Rigging is a Federal Felony punishable by imprisonment and fine. Fisher Auction Company will report all illegal conduct to the F.B.I., the U.S. Bankruptcy Court and will cooperate with any prosecution.

(e) The Property may be withdrawn from the Online Auction at any time without notice and is subject to prior sale.

(f) Seller / Court in their absolute sole discretion, reserve the right to amend, negotiate, modify, or add any terms and conditions to these General Terms and Conditions of Sale, the Contract and to announce such amendments, modifications, or additional terms and conditions at any time, including during this Online Auction.

(g) The bidding increments shall be determined by the Auctioneer, in its reasonable discretion.

(h) The highest bid shall be the Successful Bid only if same is acceptable to and accepted by the U.S. Bankruptcy Court, District of Northern Illinois – Eastern Division, at the Final Sale Hearing.

(i) **If you are unsure about anything regarding the Property or the Governing Documents, do not place a bid or participate in the Online Auction.** Review of the Governing Documents and all of the terms and conditions as well as a review of the Property before making any bids is strongly recommended and you will be deemed to have done so on execution of these General Terms and Conditions of Sale.

(j) At the close of this Online Auction, upon the acceptance of the Purchaser's bid is an acknowledgment that such bid is the highest bid, at which time it became a binding agreement to purchase the Property. Thereafter, you may not withdraw your bid and you are obligated to execute the Contract. Whether such bid is accepted, is subject to approval by the U.S. Bankruptcy Court, District of Northern Illinois – Eastern Division.

(k) In the event a conflict exists between the Contract and the General Terms and Conditions of Sale, then, (i) prior to Buyer's execution and delivery of the Contract, the terms of the General Terms and Conditions of Sale shall govern and control and (ii) following Buyer's execution and delivery of the Contract, the terms of the Contract shall govern and control over the General Terms and Conditions of Sale.

8. ANNOUNCEMENTS / NOTICES:

All announcements / notices provided to the bidders shall supersede and take precedence over all previously written or printed material and any other oral statements made; provided however that the Auctioneer shall not be authorized to make any representation or warranty (express or implied) with respect to the Property. The Auctioneer has the sole and absolute discretion to make any announcements via this Online Auction, including but not limited to any announcements that may amend or alter these Online Auction terms, conditions, or procedures that were previously set forth in written materials. In the event of a dispute over the bidding process, the Auctioneer shall make the sole and final decision and will have the right either to accept or reject the final bid or re-open the bidding.

9. DEFAULT:

If the Buyer fails to comply with any of these General Terms and Conditions of Sale, the Seller shall retain the required Initial and Additional Escrow Deposits, which shall be considered fully earned and non-refundable, under this Agreement and / or the Contract as liquidated damages and not as a penalty. The Escrow / Settlement Agent must immediately release the Initial and Additional Escrow Deposits upon request of the Seller. Buyer acknowledges and understands that this provision is enforceable and shall not be deemed a penalty because the damages are not readily ascertainable and generally impossible to calculate under the circumstances. Upon Default and notice of same by Seller to Escrow / Settlement Agent, Buyer understands and agrees to the immediate release of the Initial and Additional Escrow Deposit funds to the Seller by Escrow / Settlement Agent without the requirement of further documentation or consent from Buyer. Fisher Auction Company and the Seller also reserve the right to immediately put the Property up for sale again. These remedies are in addition to any other remedies, including specific performance and / or additional money damages that the Seller and / or Fisher Auction Company may have in equity or at law.

10. REPRESENTATIONS:

All information was derived from sources believed to be correct but is not guaranteed. Bidders shall rely entirely on their own information, judgment, and inspection of the Property and records. Neither the Seller, Trustee Realty Inc., Cushman & Wakefield – Commercial Property Southwest Florida nor Fisher Auction Company, its Agents and Sub-Agents makes any representation or warranties as to the accuracy or completeness of any information provided. All sizes, dimensions, drawings are approximations only.

11. BROKER PARTICIPATION:

Two and One-Half Percent (2.5%) of the Final Bid Price will be paid to a qualified Licensed Real Estate Broker ("Buyer's Broker") whose registered Buyer's offer is accepted by the Seller / Court and closes on the Property, provided the Buyer's Broker is not prohibited by law from being paid such commission. To qualify for a commission, the Buyer's Broker must first register their prospect on the MANDATORY REAL ESTATE BUYER BROKER PARTICIPATION REGISTRATION form. The form must be received by the office of Fisher Auction Company no later than 5:00 PM ET Tuesday, April 27, 2021. This registration MUST be sent to Fisher Auction Company, Inc., 2112 East Atlantic Boulevard, Pompano Beach, FL 33062. Buyer's Broker may fax their broker registration(s) to 954.782.8143 or email to info@fisherauction.com. NO LATE REGISTRATIONS WILL BE ACCEPTED. Commissions will be paid only after closing and after Fisher Auction Company, Trustee Realty Inc. and Cushman & Wakefield – Commercial Property Southwest have been paid in full. Buyer's Broker is not required to attend the Closing. If a Buyer's Broker has not met all of these requirements, no commission will be paid to the Buyer's Broker, even if the Buyer's Broker's prospect purchases the Property. No oral registrations will be accepted. Under no circumstances whatsoever will any commission be paid if the sale does not close for any reason.

12. FINAL BID PRICE:

The final bid price for the Property shall be determined by competitive bidding at the Auction. The Property is being sold to the highest bidder with the highest bid being subject to the Seller/Court's final approval and acceptance of price, plus the ten percent (10%) Buyer's Premium and is subject to the terms and conditions of the Governing Documents.

13. ACKNOWLEDGMENT AND ACCEPTANCE:

The Undersigned Bidder acknowledges receipt of a copy of these General Terms and Conditions of Sale and having read and understood the provisions set forth therein, accepts same and agrees to be bound thereby. Facsimile or electronic signatures will be treated and considered as original.

14. INDEMNIFICATION:

Buyer shall defend, indemnify, and hold harmless Seller, the Auctioneer, Fisher Auction Company, Trustee Realty Inc., Cushman & Wakefield – Commercial Property Southwest Florida, their officers, directors, employees, and agents, from and against any and all claims, demands, causes of action, costs, liabilities, losses, damages, and expenses (including reasonable attorneys and expert witness fees and expenses) (collectively, "Claims"), and by whomever brought, to the extent arising out of or in any way related to (i) the sale of, (ii) the performance of the parties' obligations under this Agreement; (iii) the physical condition and quality (and express or implied representations regarding such condition and quality) of the Property or any portion thereof, (iv) any breach of these General Terms and Conditions of Sale, Governing Documents, or the Contract; (v) any claim arising from the sale of the Property; (vi) any claim arising from Buyer's participation in the Online Auction; or (vii) any other act, omission or representation by Buyer.

15. HOLD HARMLESS:

Fisher Auction Company cannot, and will not, be held responsible for any interruption in service, bidding extension times, errors, and/or omissions, caused by any means, therefore they cannot guarantee continual, uninterrupted or error free service as the website could be interfered with by means out of Fisher Auction Company's control. Bidder acknowledges that this Online Auction is conducted electronically and relies on hardware and software that may malfunction without warning. Fisher Auction Company may void any sale, temporarily suspend bidding, extend bidding times and/or re-sell the Property that was affected by any malfunction. The decision of Fisher Auction Company is final.

16. GOVERNING LAW / JURISDICTION / VENUE:

The U.S. Bankruptcy Court, Northern District of Illinois – Eastern Division, shall retain exclusive jurisdiction over any matter or dispute relating to the sale.

17. WAIVER OF JURY TRIAL:

EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT CONTEMPLATED AND EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO.

18. ATTORNEY'S FEES:

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret any provision or provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs, whether at the trial court and appellate level, in addition to all other costs associated with the action whether or not the action advances to judgment, in addition to any other relief to which that party may be entitled.

19. ENTIRE AGREEMENT:

This Agreement embodies the entire agreement between the parties relative to the subject matter, and there are no oral or written agreements between the parties, or any representations made by either party relative to the subject matter, which are not expressly set forth herein. To the extent that any of the terms or provisions contained herein differs or conflicts with those contained within the Contract, the Contract shall control. However, the Order Approving Sale will control over any other document.

THE BIDDER ACKNOWLEDGES AND AGREES THAT THE BIDDER HAS READ ALL OF THE TERMS AND CONDITIONS AND EACH OF THE TERMS AND CONDITIONS CONTAINED IN THE GOVERNING DOCUMENTS AND AGREES TO BE BOUND TO SAME BY BIDDER'S SIGNATURE BELOW.

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Bidder's Signature

Date

Time