



# NICHOLLS

## Auction Marketing Group

**PREMIER SERVICE SINCE 1968**

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 VAAF-2908000729

### REAL ESTATE CONTRACT of PURCHASE

THIS CONTRACT of purchase made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_  
 \_\_\_\_\_, (hereinafter called "Seller"),  
 and \_\_\_\_\_  
 \_\_\_\_\_ (hereinafter called "Purchaser").

That, for and in consideration of the hereinafter contained mutual promises other good and valuable consideration, the parties do hereby agree as follows:

1. Seller shall sell and convey and Purchaser shall purchase all that certain Real Estate (hereinafter the "Real Estate" or the "Property") with all rights and privileges thereto appurtenant and all buildings and improvements thereon situate, lying and being in \_\_\_\_\_ Magisterial District, \_\_\_\_\_, Virginia, more particularly described as follows: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
2. The purchase price of the Real Estate is \$ \_\_\_\_\_ as determined at public auction by Auctioneer. The purchase price shall be payable by Purchaser at settlement in cash or immediately available funds. \_\_\_\_\_
3. Purchaser has paid a deposit (hereinafter the "deposit") to Auctioneer in the amount of \$ \_\_\_\_\_ with the signing of this contract. The deposit shall be held in escrow in a non-interest bearing account by Auctioneer and then applied to the purchase price at settlement, subject to the payment of Auctioneer's commission and the payment of Auctioneer's costs and expenses in preparing for and conducting the auction pursuant to that separate agreement between Seller and Auctioneer (the "Listing Agreement"). In the event Purchaser breaches this Contract, the deposit shall be paid to Seller, less Auctioneer's commission and all costs and expenses as set forth in the Listing Agreement, but such payment shall not preclude any other remedies available to Seller for such breach. In the event Seller breaches this Contract, the deposit shall be returned to Purchaser, but such payment shall not preclude any other remedies available to Purchaser for such breach; provided further that Seller shall remain responsible for Auctioneer's commission and all costs and expenses as set forth in the Listing Agreement. If this Contract is not consummated and a dispute exists between Seller and Purchaser, the deposit shall be held in escrow by the Auctioneer until Seller and Purchaser have agreed to the disposition thereof, or a court of competent jurisdiction orders disbursement. If resolution on the disposition of the deposit is not timely reached to the satisfaction of Auctioneer, Auctioneer is hereby authorized to commence an interpleader action and deposit the deposit with a court of competent jurisdiction and in such event, Auctioneer shall be relieved of all further obligation and liability. Purchaser and Seller shall indemnify Auctioneer for all costs and expenses (including reasonable attorney's fees) incurred by Auctioneer arising from any dispute between Seller and Purchaser with respect to the deposit or this Contract.
4. Pursuant to the Listing Agreement, Auctioneer shall be paid from the deposit a commission of \$ \_\_\_\_\_ plus all costs and expenses of sale.
5. Settlement shall be made at the offices of \_\_\_\_\_ on or before \_\_\_\_\_. Possession shall be given at settlement, unless otherwise agreed in writing by the parties hereto, subject to the rights of tenants, if any. TIME IS OF THE ESSENCE. \_\_\_\_\_
6. Seller and Purchaser agree that Auctioneer was the sole procuring cause of this Contract of Purchase. If either Seller or Purchaser defaults under this Contract of Purchase, such defaulting party shall be liable for the commission of Auctioneer and for any expenses incurred by the non-defaulting party and by Auctioneer, such expenses including their respective attorney's fee, advertising expenses, and labor, if any, in connection with this transaction and the enforcement of such Contract.
7. PURCHASER EXPRESSLY AGREES THAT THE PROPERTY IS OR WILL BE SOLD "AS IS, WHERE IS, WITH ALL FAULTS", WITHOUT ANY WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND SUBJECT TO ORDINARY WEAR AND TEAR OCCURRING AFTER THE DATE HEREOF. Purchaser further acknowledges that Seller has neither made nor extended to Purchaser any representation, warranty or indemnity with regard to the environmental condition of the Property. The Virginia Residential Property Disclosure Act (Section 55.1-700 through 55.1-714 of the Code of Virginia) requires Seller of a certain residential property to furnish the Purchaser a property disclosure statement in a form provided by the Real Estate Board. Disclosure \_\_\_\_\_ is or \_\_\_\_\_ is not attached.
8. Seller represents that the Property (check as applicable) \_\_\_\_\_ is or \_\_\_\_\_ is not located within a development which is subject to the Virginia Property Owners' Association Act (55.1-1800 et seq. of the Code of Virginia). If the Property is within such a development, the Act requires Seller to obtain from the property owners' association an association disclosure packet and provide it to Purchaser. \_\_\_\_\_

9. Seller agrees to pay the expense of preparing the deed, certificates for non-foreign status and Form 1099-S and the recordation tax applicable to grantors and all amounts payable to Auctioneer pursuant to the Listing Agreement. Except as otherwise agreed herein, all other expenses incurred by Purchaser in connection with this purchase, including, without limitation, title examination, insurance premiums, survey costs, recording costs, loan document preparation costs and fees of Purchaser's attorney, shall be borne by Purchaser. Real estate taxes shall be prorated as of settlement. Seller shall pay no closing costs on behalf of Purchaser. Except as expressly provided herein, each party shall be responsible for its own attorney's fees.
10. At Settlement, Seller shall convey to Purchaser good and marketable fee simple title to the Property by deed of \_\_\_\_ Special or \_\_\_\_ General warranty and free and clear of all mortgages, deed of trust or other monetary liens, same to be released by Seller at or prior to Closing. Purchaser's and Seller's obligations hereunder are contingent upon Seller being able to convey good and marketable title to the Property subject, however, to the following (the "Permitted Encumbrances"): (i) matters that do not render title to the Property unmarketable; (ii) the rights of tenants, if any; (iii) the lien of ad valorem real estate taxes not yet due and payable; (iv) such state of facts as an accurate survey and inspection of the Property would reveal; (v) easements of record granted to providers of utility services; and (vi) the matters shown as exceptions on any title commitment or title policy provided to Purchaser by Auctioneer prior to the auction sale, if any, provided no representation or warranty is made as to accuracy or completeness of such title work. If, prior to settlement hereunder, Purchaser identifies a title defect other than the Permitted Encumbrances, Seller shall have the opportunity, but not the obligation, to attempt to cure the title defect, and Seller shall be able to extend the settlement date accordingly. If Seller does not elect to attempt to cure the title defect, or if Seller attempts but is not successful in curing the title defect, Purchaser shall have the option to terminate this Agreement, in which case Seller shall instruct Auctioneer to return the deposit to Purchaser and neither party will have any further obligation or liability to the other, or to waive the title defect and proceed to settlement hereunder; provided Seller shall remain responsible for payment of Auctioneer's commission and the cost and expense of the auction pursuant to the Listing Agreement. If an owner's title insurance policy can be obtained without exception to the title defect or with affirmative protection over the title defect, Purchaser agrees to waive its objection to the title defect. It is understood and acknowledged between the parties that Auctioneer shall be paid its commission and all costs and expenses of sale in the event of a termination of this Contract pursuant to this Section 10.
11. In the event the Property is taxed under land use assessment and this sale results in disqualification from land use eligibility, Purchaser shall pay any rollback taxes assessed.
12. All risk of loss or damage to the Property by fire, windstorm, casualty or other cause, or taking by eminent domain, is assumed by Seller until Settlement. In the event of substantial loss or damage to the Property before Settlement, Purchaser shall have the option (to be exercised within five (5) business days of written notice of such event) of either (i) terminating this Contract, or (ii) proceed with settlement in which event Seller shall assign to Purchaser all of Seller's rights under any applicable policy or policies of insurance and any condemnation awards and pay over the Purchaser any sums received as a result of such loss or damage. Failure to timely make such election shall be deemed Purchaser's election to proceed with settlement under (ii).
13. Virginia law (Va. Code Ann Section 43-1 et seq.) permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (i) 90 days from the last day of the month in which the lienor last performed work or furnished materials or (ii) 90 days from the time the construction, removal, repair or improvement is terminated. Seller shall deliver to Purchaser at settlement an affidavit, in a form acceptable to Purchaser's title insurer, if applicable, signed by Seller, that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the Property. If labor or materials have been furnished during the statutory period, Seller shall deliver to Purchaser an affidavit signed by Seller and the person(s) furnishing the labor or materials that the costs thereof have been paid in full.

AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.

14. Purchaser may wish at Purchaser's cost to purchase owner's title insurance. Depending on the particular circumstances of the transaction, such insurance could include affirmative coverage against possible mechanics' and materialmen's liens for labor and materials performed prior to closing and which, though not recorded at the time of recordation of Purchaser's deed, could be subsequently recorded and would adversely affect Purchaser's title to the Property. The coverage afforded by such title insurance will be governed by the terms and conditions thereof, and the dollar amount of the cost of obtaining such title insurance coverage. At settlement, Seller shall deliver an owner's affidavit in a form reasonably satisfactory to Purchaser's title insurer.
15. This agreement is made in the Commonwealth of Virginia and shall be governed and construed in accordance with the laws of the Commonwealth of Virginia.
16. If any provisions herein shall be legally unenforceable or in the event that a Court of competent jurisdiction shall deem any of the provisions contained in this Contract invalid or unenforceable, they shall be deemed severed from the other provisions of this Contract, and the remaining provisions shall, nevertheless, be valid and enforceable and continue in full force and effect. The invalidity or the unenforceability of any particular provision of this Contract shall not affect the other provisions hereof and the Contract shall be construed in all respects as though such invalid or unenforceable provisions were omitted.
17. This Contract contains the entire understanding between the parties with reference to the matters contained herein, and there are no terms, conditions, warranties, or representations other than those contained herein and no amendments hereto are valid unless made in writing and signed by both of the parties hereto.
18. All notices and other communications hereunder in connection herewith shall be deemed to have been duly given if they are in writing and delivered personally or sent by registered or certified mail, return receipt requested and first-class postage prepaid to the following addresses:

Seller: _____	Purchaser: _____
_____	_____
_____	_____
_____	_____
_____	_____

Phone: _____	Phone: _____
Email: _____	Email: _____

19. Except as herein otherwise provided to the contrary, this agreement shall be binding upon and inure to the benefit of the parties signatory hereto, their heirs, personal representatives, guardians and successors and assigns.

20. No party shall assign or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) under this Contract without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.
21. Nothing under this Contract shall be construed to give any rights or benefits in this Contract to anyone other than the parties hereto, and all duties and responsibilities undertaken pursuant to this Contract will be for the sole and exclusive benefit of the parties hereto and not for the benefit of any other party. Notwithstanding the foregoing, Nicholls Auction Marketing Group, Inc. a Virginia corporation ("Auctioneer") shall be deemed a third party beneficiary of this Contract and entitled to enforce the provisions of this Contract against the parties hereto. Auctioneer shall have no liability hereunder to either Purchaser or Seller, except in the event of intentional misconduct or gross negligence with respect to the deposit, in which case Auctioneer's liability shall be limited to the deposit amount. All Property is to be sold at the auction in "AS-IS, WHERE IS" condition. Seller or Purchaser shall indemnify and hold harmless Auctioneer and its employees, affiliates, subcontractors, and independent contractors, from any claims, actions, causes of action, demands, rights, damages, losses, or costs that may result or occur due to the breach of any covenant, warranty or representation made by Seller or Purchaser in this agreement or any misrepresentation by Seller or Purchaser which adversely affects the Property.
22. This Contract supersedes any and all other understandings or agreements between the parties, either oral or in writing, with respect to the subject matter hereof.
23. The parties hereto declare and acknowledge that each has read and fully understands the terms set forth in this Contract.

WITNESS the following signatures and seals:

**SELLER:**

**PURCHASER:**

\_\_\_\_\_  
 NAME \_\_\_\_\_ (SEAL), indiv.

\_\_\_\_\_  
 NAME \_\_\_\_\_ (SEAL), indiv.

\_\_\_\_\_  
 NAME \_\_\_\_\_ (SEAL), indiv.

\_\_\_\_\_  
 NAME \_\_\_\_\_ (SEAL), indiv.

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 NAME \_\_\_\_\_ (SEAL), indiv.

\_\_\_\_\_  
 NAME \_\_\_\_\_ (SEAL), indiv.

\_\_\_\_\_  
 NAME \_\_\_\_\_ (SEAL), indiv.

\_\_\_\_\_  
 NAME \_\_\_\_\_ (SEAL), indiv.

\_\_\_\_\_  
 (Entity Name)

\_\_\_\_\_  
 (Entity Name)

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_ (SEAL)

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

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

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

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

Closing Information \_\_\_\_\_

Closing Information \_\_\_\_\_

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