

TERMS AND CONDITIONS OF AUCTION

1107 S. Dwight, Monahans, Tx
March 30, 2013 AT 9:00 AM

NOTE: All announcements made by Seller or Auction Company on the date of the Auction supersede any prior statements, whether oral or written, and no matter the source.

JEFFREY A. MESSER dba GREAT WESTERN AUCTION & APPRAISAL SERVICES and (herein collectively referred to as "Auction Company") have contracted with John Dunagan ("Seller") to offer to sell **ABSOLUTE TO THE HIGHEST BIDDER** at public auction certain property described in the Auction Company's brochure or website as

1107 S. Dwight, Monahans, Tx 79756

(the "Auction"). The Auction will include the Real Property, excluding any and all mineral interest, located at 1107 S. Dwight, Monahans, Tx 79756 that will be offered **ABSOLUTE without Reserve to the Highest Bidder**. These Terms and Conditions of Sale are intended for prospective bidders, buyers and purchasers (whether singular or plural interchangeably referred to herein as "Purchaser," "Buyer" or "bidder").

A. AGENCY DISCLOSURE: THE BROKER AND AUCTION COMPANY ARE ACTING EXCLUSIVELY AS THE AGENT FOR SELLER IN THIS TRANSACTION AND WILL BE PAID A FEE BY SELLER, PURSUANT TO A SEPARATE, WRITTEN AGREEMENT BETWEEN THE SELLER, BROKER AND AUCTION COMPANY. THE BROKER AND AUCTION COMPANY ARE NOT ACTING AS AN AGENT IN THIS TRANSACTION FOR ANY BUYER. ALSO, NO THIRD-PARTY BROKER IS ACTING AS A SUB-AGENT OF AUCTION COMPANY AND ANY SUCH BROKER IS TO BE PAID SOLELY BY SELLER.

B. PROPERTY:

- 1) The Property is identified in the offer to purchase and any attached legal description therewith.
- 2) Should Buyer have any survey made of the Property and such survey determine greater or lesser acreage or square footage in the Property than represented by Seller or Auction Company, no adjustment will be made to the total contract price to be paid by Buyer for that Property and the Seller, Broker and Auction Company shall have no liability whatsoever to Buyer on any basis and for any amount.
- 3) Seller shall convey the Property to Buyer by General or Special Warranty Deed, free and clear of all liens and encumbrances, except as specified in the "exceptions" of the Title Commitment, these Terms and Conditions, any additions and revisions to the Terms and Conditions issued by Auction Company prior to the Auction, the Auction Real Estate Sale Contract ("Sale Contract"), and subject to all existing restrictions and other matters of record.
- 4) **The Sale Contract is Not Contingent** and the Property will be offered for sale subject to all facts that a careful and accurate survey and personal inspection may reveal including, but not limited to, such matters as the Property's acreage, age, availability of and accessibility to utilities, building codes, condition, conveyances, deeds, development potential, dimensions, divisibility, easements, economic factors, encroachments, encumbrances, environmental condition and factors (including, but not limited to, asbestos, radon gas, and all other dangers and pollutants), fitness for a particular use or purpose, flood plain exposure, forest products, gas, geological conditions, hazards of

every kind, insurability, leases, littoral rights, location, marketability, matters of government (including, but not limited to, codes, laws, ordinances, regulations, and rules), measurements, merchantability, minerals, neighbors, nuisances, oil, operability, permissible uses, permits, pollution, prior reservations (including, but not limited to, crops, forest products, gas, minerals, oil, timber, and water), protected wildlife species and habitat, protective or restrictive covenants, proximity of known sex offenders, quality, right-of ways, rights or claims of parties in possession, rights of ingress or egress, rights of other access, riparian rights, soil percolation, soil (percolation, quality, and type), square footage, structural components and integrity, subdivision regulations and rules, safety, suitability, taxes, tenancies, timber, traffic, use, value, water, weather, wetlands, zoning, and all exceptions set forth in the title commitment. No mineral interest are being conveyed with the property.

C. PROPERTY INSPECTION

- 1) Buyer should obtain professional advice and inspection of the Property to determine and understand its condition prior to bidding in the Auction. It is Buyer's sole responsibility to: (a) perform all inspections (economic, environmental, suitability, use, etc.) of the Property, and any improvements thereon, to be fully informed and satisfied as to its condition; (b) review all information relevant to the Property; (c) independently verify all information deemed important, including that which is available in public records; and (d) inquire of legal counsel and/or public officials as to the applicability of various codes, laws, ordinances, regulations, and rules regarding the Property and all other issues relevant to it including, but not limited to, each of the items listed in paragraph A. 2) above, plus the applicability of local, state, and federal laws, regulations, and rules.
- 2) All information contained in the Auction Company's brochure on the Property, other promotional materials for this offering and the Auction, and the "property information package" (herein referred to as "PIP" which is available online at www.greatwesternauctioneering.com, by request, and posted at the Auction) was provided by Seller and is believed to be correct; however, neither Seller, Broker nor Auction Company is required to update any information provided or published regarding the Property or the Auction, and neither shall have any liability whatsoever to Buyer on any basis and for any amount for failing to do so.
- 3) Buyer and Buyer's agent and broker shall bear the sole and exclusive responsibility to confirm all information relevant to the Auction and the Property prior to Buyer bidding in the Auction and buying the Property. Buyer is cautioned and urged to conduct due diligence of the Property, its surrounding area, and all circumstances and facts of this offering for sale and the Auction. Buyer's failure to do so shall be Buyer's sole responsibility and the Seller, Broker and Auction Company shall have no liability whatsoever to Buyer on any basis and for any amount.

D. LEGAL DISCLOSURE

The Property will be offered for sale in the Auction subject to the laws of the State of Texas.

E. DISCLAIMER

- 1) **PERSONAL, ON-SITE INSPECTION OF THE PROPERTY AND ITS SURROUNDING AREA IS STRONGLY RECOMMENDED AND BUYERS ARE ADVISED TO INDEPENDENTLY VERIFY ALL INFORMATION PRIOR TO BIDDING IN THE AUCTION. THE PROPERTY WILL BE OFFERED FOR SALE IN “AS IS, WHERE IS” CONDITION WITH ALL DEFECTS, FAULTS, AND HAZARDS. THE SELLER, BROKER AND AUCTION COMPANY SPECIFICALLY AND UNCONDITIONALLY DISCLAIM ANY GUARANTEE, REPRESENTATION, OR WARRANTY, EITHER EXPRESSED, IMPLIED, OR STATUTORY, EITHER ORAL OR WRITTEN, WITH RESPECT TO THE AUCTION, THE PROPERTY, ITS SURROUNDING AREA AND INCLUDING, BUT NOT LIMITED TO, ANY GUARANTEE, REPRESENTATION, OR WARRANTY AS TO ACREAGE, AGE, AVAILABILITY AND ACCESSIBILITY TO UTILITIES, BUILDING CODES, CONDITION, CONVEYANCES, DEVELOPMENT POTENTIAL, DEEDS, DIMENSIONS, DIVISIBILITY, EASEMENTS, ECONOMIC FACTORS, ENCROACHMENTS, ENCUMBRANCES, ENVIRONMENTAL CONDITION AND FACTORS (INCLUDING, BUT NOT LIMITED TO, ASBESTOS, RADON GAS, AND ALL OTHER DANGERS AND POLLUTANTS), FITNESS FOR A PARTICULAR USE OR PURPOSE, FLOOD PLAIN EXPOSURE, FOREST PRODUCTS, GAS, GEOLOGICAL CONDITIONS, GROUNDWATER (EXISTENCE, QUANTITY, AND QUALITY), HAZARDS OF EVERY KIND, INSURABILITY, LEASES, LITTORAL RIGHTS, LOCATION, MARKETABILITY, MATTERS OF GOVERNMENT (INCLUDING, BUT NOT LIMITED TO, CODES, LAWS, ORDINANCES, REGULATIONS, AND RULES), MEASUREMENTS, MERCHANTABILITY, MINERALS, NEIGHBORS, NUISANCES, OIL, OPERABILITY, PERMISSIBLE USES, PERMITS, POLLUTION, PRIOR RESERVATIONS (INCLUDING, BUT NOT LIMITED TO, CROPS, FOREST PRODUCTS, GAS, MINERALS, OIL, TIMBER, AND WATER), PROTECTED WILDLIFE AND HABITAT, PROTECTIVE OR RESTRICTIVE COVENANTS, PROXIMITY OF KNOWN SEX OFFENDERS, QUALITY, RIGHT-OF-WAYS, RIGHTS OR CLAIMS OF PARTIES IN POSSESSION, RIGHTS OF INGRESS AND EGRESS, RIGHTS OF OTHER ACCESS, RIPARIAN RIGHTS, SAFETY, SOIL (PERCOLATION, QUALITY, AND TYPE), SQUARE FOOTAGE, STRUCTURAL COMPONENTS AND INTEGRITY, SUBDIVISION REGULATIONS AND RULES, SUITABILITY, TAXES, TENANCIES, TIMBER, TRAFFIC, USE, VALUE, WATER (INCLUDING SPRING AND WELL WATER), WEATHER, WETLANDS, ZONING, AND ALL EXCEPTIONS SET FORTH IN THE TITLE COMMITMENT.**
- 2) Neither Seller, Broker nor Auction Company shall be liable for any relief to Buyer including, but not limited to, adjustment, allowance, damages, reformation, or rescission based upon the failure of any Property to conform to any specific standard or expectation, or to third-party documents or information that address any of the items listed in the immediately preceding “Disclaimer” section.

F. EQUAL OPPORTUNITY CLAUSE

All bidding is open to the public. The Property is available to be bid on and purchased by any qualified Buyer without regard to age, color, ethnicity, familial status, gender, national origin, physical disability, race, religion, or sexual preference.

G. BIDDER REGISTRATION AND TERMS

- 1) Every Bidder must register and show evidence of a Cashiers Check for **\$5,000** made out as follows: **Pay to the order of Great Western Auction & Appraisal or (YOUR NAME)** or Bank Letter of Guarantee(call auction company for details) to receive a bidder's number in order to bid on the Property in the Auction. The bidder's number must be presented when Bidder is declared the highest Bidder and Buyer of the Property. Absentee bidders are permitted if registered as above and gives the Auctioneer a beginning bid and a final bid which the auctioneer will bid for the absentee bidder accordingly.
- 2) Bidder acknowledges that, once a bid is offered, Bidder shall be bound to the bid until Seller, through Auction Company, has accepted or rejected the bid.
- 3) Upon the Auction Company declaring Bidder to be Buyer for the Property, Buyer shall immediately be required to pay to the Escrow Agent, in U.S. dollars, **an earnest money deposit of no less than Ten Percent (10%) of the total contract price of the Property purchased.** The bid deposit shall be applied to the earnest money deposit and the difference between the bid deposit and the Buyer's earnest money deposit may be paid by personal, company or approved check deposited with the escrow agent. The balance of the total contract price shall be due and paid in full at closing.
- 4) Immediately after being declared the winning bidder for the Property, Buyer shall execute the Sales Contract and all related documents presented by Auction Company to bind Buyer and Seller to the purchase and sale of the Property. The Sale Contract may have terms that go beyond and, in some respects, may differ with these Terms and Conditions. The Seller, Broker and Auction Company advise caution and urge Buyer to carefully read the Sale Contract in its entirety before registering to bid and bidding in the Auction in an effort to buy the Property. No change shall be permitted to the Sale Contract and Buyer shall be required to execute the Auction Sale Contract as it exists on the date of the Auction. The Sale Contract, along with these Terms and Conditions and all additions and revisions hereto issued by Auction Company prior to the Auction, all of which are incorporated into the Sale Contract by reference here, shall exclusively define the contract for sale for the Property and constitute the entire agreement between Seller and Buyer. The Terms and Conditions, and all additions and revisions hereto, are intended to complement and supplement the Sale Contract and, in the event of any conflict between these documents, the Sale Contract shall control in all instances.
- 5) Any person bidding on behalf of another person or entity must have a fully executed, legally enforceable, recorded, and unexpired power of attorney approved by the Seller, Broker and Auction Company prior to the Auction.
- 6) Any person bidding on behalf of a corporation shall be required to execute the Sale Contract in both the corporation's name and the Bidder's personal name, until such time as the corporation presents the Seller, Broker and Auction Company with evidence of the corporation's good standing in its state of formation, plus a duly-passed and executed resolution from its board of directors authorizing the purchase of the Property and agreeing for the corporation to be bound by the Sale Contract.
- 7) By registering to bid in the Auction, Buyer acknowledges having previously received and read these Terms and Conditions and the Sale Contract, understands and fully accepts all of the terms included in both documents, and unconditionally agrees to be fully bound by these documents.
- 8) If for any reason Buyer fails to pay the required earnest money deposit or execute the Sale Contract immediately after being designated by Auction Company as the winning

bidder for one or more Property, Seller has the right, in Seller's sole discretion, to either (a) pursue all legal remedies available against Buyer, or (b) declare Buyer's bid to be forfeited, null, and void, Seller may then immediately re-offer and re-sell the Property(s) to another Buyer.

- 9) The requirements for registering to bid at the Auction, including without limitation, the Bid Deposit, are for the protection of the Seller and may be waived with respect to one or more prospective bidders by the Seller, in the Seller's sole discretion, without waiving the Seller's right to enforce those requirements with respect to other prospective bidders.

10) This is a CASH SALE and it is not contingent upon Buyer's ability to obtain financing of any amount and under any terms.

H. AUCTION PROCEDURES

- 1) The Seller, Broker and Auction Company reserve the right to offer the Property in any manner they choose. Seller has instructed Auction Company to offer the property in the manner that it deems appropriate to obtain the highest selling price reasonably achievable.
- 2) The property shall be bid by the dollar amount and shall be offered for sale to the highest bidder.
- 3) All decisions of Auction Company are final as to the methods for conducting the Auction and bidding, disputes amongst bidders, the increments of the bidding, and all other matters and issues that may arise before, during and after the Auction.
- 4) Seller, Broker and Auction Company reserve the right to deny any person admittance to the Auction, or to expel any person from the Auction, if that person is disruptive or noncompliant.

I. BUYER'S PREMIUM

A TEN (10%) Buyer's Premium shall be in effect for the Auction and added to each winning bid to arrive at the total contract price for the Property purchased by the Buyer.

J. ESCROW/CLOSING AGENCY

Security Preferred Title shall serve as the Escrow/Closing agent for this sale. Closing will be conducted at Security Preferred Title located at 321 South Alice, Monahans, Tx 79756 or via FedEx/UPS or USPS by said company. The contact person is Margaret Baucom (telephone 432-943-7332). Auction Company reserves the right to choose another closing attorney at it's discretion.

K. CLOSING

Closing shall occur on or before 5:00 pm on or before April 30th, 2013 at the offices of escrow/closing agent. All deposits and down payments shall then be paid by Buyer, in U.S. dollars, by cash, bank cashier's check, or confirmed wire transfer to be deposited by the Escrow/Closing Agent into a non-interest bearing escrow account. Upon completion of all necessary closing procedures, Buyer shall be given possession of the Property, subject to any matters contained in the Title Commitment and Sale Contract. The risk of loss of the Property shall remain exclusively on Seller until closing has been completed and title conveyed to Buyer, at which time the risk of loss shall pass to Buyer.

L. CLOSING COSTS

- 1) Seller's Costs. At Closing, Seller shall pay for half of the escrow agent's closing fees, courier fees related to the Seller, if any, any attorney or closing fees related to the Seller, any recording fees related to the release of lien and the cost of the tax certificate.
- 2) Buyer's Costs. At closing, Purchaser shall pay for half of the escrow agent's closing fees, owner's policy of title insurance, any attorney fees related to the Purchaser, all lender fees, any courier fees related to the Purchaser and the costs for recording the special warranty deed and any other buyer closing costs.
 - a. Ad Valorem Taxes and Special Assessments. The current year's ad valorem taxes and assessments, as applicable, shall be prorated at closing. Ad valorem taxes on the Property/Parcel for the calendar year of closing will be prorated between Purchaser and Seller as of the Closing Date. If the amount of taxes for the calendar year of closing is not known on the Closing Date, the proration will be based on taxes for the previous tax year, and Purchaser and Seller will adjust the proration in cash within thirty (30) days if written demand therefore is made by either after the actual amount of such taxes is known and before one (1) year after the Closing Date. Seller will promptly notify Purchaser of all notices of proposed or final tax valuations and assessments that Seller receives after the Effective Date and after closing. All taxes due as of closing will be paid at closing.

M. DEFAULT

In the event Buyer fails to close and pay the balance due on the total contract price for the Property(s) purchased, Buyer's earnest money deposit shall be forfeited to Seller, as liquidated damages and not as a penalty.

N. ASSIGNMENT AND THIRD PARTIES

- 1) Buyer may not assign or transfer purchase of the Property to another, without the prior, written consent of Seller.
- 2) Nothing contained in these Terms and Conditions, the Sale Contract, or in any related document or instrument executed by Buyer in connection with the Auction and any sale that results, shall create any rights in, or be deemed to have been executed for, the benefit of any person or entity not a party hereto, except as expressly provided in writing.

O. LEGAL ACTION AND ARBITRATION

- 1) Any claim, controversy, or dispute arising out of these Terms and Conditions, the Auction, the Sale Contract, the transaction contemplated herein, or any related dealings between Seller, Bidder, Buyer, Broker and/or Auction Company ("the Auction matters"), whether controlled by federal or state law, and whether an issue of law or equity, including whether this arbitration section is applicable and enforceable, shall be resolved exclusively by final and binding arbitration, with no appeal permitted, except as provided by applicable law for the judicial review or enforcement of arbitration decisions.
- 2) The arbitration shall be heard by one arbitrator and conducted in accordance with the commercial arbitration rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or its successor. Each party irrevocably waives all right to a trial by jury in any action, proceeding, or counterclaim arising out of the Auction Matters.
- 3) The costs of arbitration, including the fees and expenses of the arbitrator, shall initially be paid equally by the parties. Notwithstanding the foregoing, the prevailing party(ies) shall

be entitled to collect from the losing party the full costs associated with the arbitration, including reasonable attorneys' fees.

P. BINDING EFFECT

This Agreement shall be binding upon Seller and all Bidders and Buyers, plus their agents, assigns, attorneys, beneficiaries, distributees, employees, executors, heirs, legatees, officers, representatives, and successors in interest.

Q. CHOICE OF LAW, JURISDICTION, AND VENUE

- 1) This Auction and any sale of the Property that occurs, as well as all related issues and matters of every kind, shall be exclusively construed and governed in accordance with the laws of the state of Texas, without regard to its conflict of laws principles.
- 2) The exclusive jurisdiction and venue for any controversy or claim between the parties shall be in the county, as determined by the location of the Property.

R. SEVERABILITY, HEADINGS, PRONOUNS, AND CONSTRUCTION

- 1) If any clause or provision of these Terms and Conditions is later held illegal, invalid, or unenforceable, it is the intention of Seller, Bidders, and Buyers that the remainder of the Terms and Conditions shall not be affected and, in lieu of such clause or provision that is held illegal, invalid, or unenforceable, there shall be added by the court, as a part of these Terms and Conditions, a clause or provision as similar in terms of such illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.
- 2) Headings herein are for reference only and not intended to expand or restrict the scope or substance of the provisions of these Terms and Conditions. Any reference herein to an article heading includes all relevant sections, subsections, and paragraphs within that article.
- 3) Words used in the present tense may also include the future tense, as the context requires.
- 4) Wherever used in these Terms and Conditions, the singular shall include the plural, the plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter, as the context requires.

S. MISCELLANEOUS

- 1) All decisions of Auction Company are final as to the methods for conducting the auction and bidding, disputes amongst bidders, the increments of the bidding, and all other matters and issues that may arise before, during and after the auction. Seller reserves the right to deny any person admittance to the auction, or to expel any person from the auction, if that person is disruptive or noncompliant.
- 2) Title 15, Section 1 of the United States Code strictly prohibits collusion amongst bidders – bid rigging. The penalties for violating the federal antitrust laws include a felony conviction, imprisonment, monetary fine, monetary damages, and attorneys' fees. Collusion between bidders to depress selling prices is illegal and Auction Company will report all evidence of wrongdoing to the Federal Bureau of Investigation and Department of Justice for investigation and prosecution.
- 3) These Terms and Conditions contain the entire undertaking between Seller, Bidders, Buyers, Broker and Auction Company regarding the Auction and there are no oral or

written agreements, inducements, promises, representations, or warranties other than those expressly set forth herein.

- 4) These Terms and Conditions supersede any previous agreement, negotiation, or understanding between Seller, Bidders, Buyers, Broker and Auction Company regarding the Auction and the sale of the Property contemplated herein, and any such have been extinguished before the Auction and do not survive.
- 5) No deletion, modification, supplement, or waiver of any term of these Terms and Conditions shall be made.
- 6) The failure of Seller to insist upon the strict performance of any term of these Terms and Conditions by a Bidder, Buyer or Purchaser shall not be construed as a waiver of any subsequent default of the same or similar nature.
- 7) Buyer has had the opportunity to seek the independent advice of legal counsel of its choosing and has either done so or has voluntarily decided to forgo such advice, with full understanding of the risk involved in this course for this Auction and the sale of the Property contemplated herein.

BROKER AND AUCTION COMPANY ARE ACTING ONLY AS A SELLING AGENT IN THIS TRANSACTION AND EXCLUSIVELY REPRESENTS THE SELLER. THE BROKER AND AUCTION COMPANY MAKE NO REPRESENTATIONS WHATSOEVER CONCERNING ANY ASPECT OF THE PROPERTY AND EVERY BUYER IS EXCLUSIVELY RESPONSIBLE FOR CONDUCTING THE DUE DILIGENCE NECESSARY TO MAKE AN INFORMED DECISION REGARDING THE PROPERTY WHICH MIGHT INCLUDE THE BUYER'S VOLUNTARY DECISION TO BID FOR AND BUY THE PROPERTY IN THE AUCTION.

I HEREBY ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND AND AGREE TO ALL TERMS AND CONDITIONS ABOVE AND THAT MY PARTICIPATION IN THIS AUCTION IS SUBJECT TO THESE TERMS & CONDITIONS.

BIDDER

BIDDER