

# J. P. KING AUCTION COMPANY, INC.

## TERMS OF AUCTION

**Last Dollar Ranch  
San Miguel County, Colorado**

**And**

**Eagles Nest  
Ouray County, Colorado**

**October 11, 2007 at 11:00 AM (MT)**

J. P. King Auction Company, Inc. ("King"), an Alabama corporation headquartered at 108 Fountain Avenue in Gadsden, Alabama 35901 (telephone 800-662-5464 or 256-546-5217 and facsimile 256-543-8036) and its Colorado broker, J. Craig King ("Broker") whose address is 108 Fountain Avenue, Gadsden, Alabama 5901 (King and its Broker being referred to herein collectively as "Auctioneer") have contracted with Vincent L. and Joan D. Kontny Trust and Last Dollar Ranch LLLP ("Seller") to offer to sell at public auction ("Auction") certain real property ("Property"). These terms, plus any additions, deletions, and/or revisions announced by Auctioneer before the commencement of the Auction, represent the exclusive terms for the Auction ("Terms of Auction").

1. **AGENCY:** Auctioneer is acting exclusively as an agent for Seller and not as an agent for any Bidder or Buyer. No third-party broker is acting as a sub-agent of Auctioneer.

2. **COLLUSION:** Bid-rigging is a federal felony punishable by imprisonment and fine. Auctioneer will report all illegal conduct to the F.B.I. and cooperate with any prosecution.

3. **COPYRIGHT:** The Auction is the exclusive intellectual property of Auctioneer, covered by copyright protection, and may not be recorded, reproduced, or used in any form by anyone other than Auctioneer.

4. **PROPERTY:** The Property is described in the "Real Property Sale Contract" ("Sale Contract"), a copy of which is available from Auctioneer, online at [www.jpking.com](http://www.jpking.com), and posted at the Auction. The Seller has provided a list of personal property, which is limited to those items shown on the list, to be conveyed with the real estate. The Seller and Auction Company shall have no liability whatsoever to Buyer for any subsequent claim of variance, deficiency, or defect in the personal property. The list has been included in the property information packet, will be posted at the auction and incorporated into the Sale Contract.

5. **DUE DILIGENCE:** Seller and Auctioneer do not attempt to provide Bidder with all of the information Bidder may need to make an informed decision about the Auction and Property. Bidder should obtain professional advice and conduct due diligence on the Property, title commitment (available from Auctioneer and posted at the Auction), surrounding area, all information provided by Seller or Auctioneer, "Property Information Package" (available from Auctioneer, online at [www.jpking.com](http://www.jpking.com), and posted at the Auction), public records, Terms of Auction, Auction, Sale Contract, transaction contemplated, and all circumstances, defects, facts, issues, problems, and other relevant matters (collectively "Property Issues"). All information provided by Auctioneer came from Seller and is believed to be accurate, but neither Seller nor Auctioneer guarantees, represents, or warrants its accuracy or completeness and Bidder should not rely upon it without independent inspection and verification from sources Bidder knows to be reliable. Seller and Auctioneer are not required to update any information provided or published and shall have no liability on any basis for failing to do so.

6. **DISCLAIMER:** Participation in the Auction is at Bidder's sole risk and Seller and Auctioneer, plus their agents, contractors, and employees, shall have no liability on any basis. The Property will be offered in "**AS IS, WHERE IS**" condition. To the fullest extent allowed by law, Seller and Auctioneer unconditionally disclaim any guarantee, representation, or warranty of every kind, whether expressed, implied, or statutory, whether oral or written, whether past, present, or future, with respect to all Property Issues, except as expressly provided in the Terms of Auction and the Sale Contract.

7. **DISCLOSURES:** The Property will be offered for sale and conveyed subject to all conditions, covenants, deeds, easements, reservations, restrictions, right-of-ways, title exceptions, and matters of record. Maps, depictions, and

sketches in any materials related to the Property are for illustration purposes only and Seller and Auctioneer do not guarantee, represent, or warrant their accuracy or completeness.

*Property Specific Disclosures:* Property specific disclosures shall be attached to these Terms of Auction as referenced herein.

8. **REGISTRATION:** Any competent adult with a satisfactory photo identification who properly registers and complies with the Terms of Auction may bid. Auctioneer may refuse to register or expel any person who is disruptive, noncompliant, or previously caused a problem for Seller or Auctioneer. In order to bid in the Auction, Bidder must deposit a cashier's check with Auctioneer at registration in the amount of Two Hundred Thousand Dollars and no/100 (\$200,000.00) to bid on Last Dollar Ranch and/or a cashier's check in the amount of Fifty Thousand Dollars and no/100 (\$50,000.00) to bid on Eagles Nest. This deposit must be in the form of a cashier's check made payable to Bidder. Any person intending to bid on behalf of another must present Auctioneer with an executed, enforceable, recorded, and unexpired power of attorney which is subject to Auctioneer's approval. The requirements for Bidder registration may be waived by Auctioneer with respect to any Bidder, without waiving same for any other Bidder. By registering, Bidder acknowledges receipt of the Terms of Auction and access to the Sale Contract and unconditionally and irrevocably agrees to be bound by both.

9. **BUYER'S PREMIUM:** A Ten percent (10.00%) buyer's premium shall be in effect for the Auction and added to the amount of the highest bid to arrive at the selling price for the Property ("total contract price").

10. **AUCTION:** The Property is scheduled to be sold by absolute auction. Auctioneer's discretion includes, but is not limited to, the auction method, bid-calling, bid increments, and determining the buyer. The decision of Auctioneer is final regarding all matters that arise before, during, or after the Auction. Seller shall not bid. Bidder shall not retract any bid. Bidder's purchase shall be considered a single transaction whether of the whole or a fraction of the Property. The sale of any fraction of the Property shall not be contingent upon the sale of any other portion thereof, whether purchased by the same Buyer or not.

11. **SALE CONTRACT:** This is a cash sale and not contingent upon any matter, including Buyer obtaining financing. Buyer shall immediately execute the Sale Contract and all related documents presented by Auctioneer to bind Bidder and Seller to the sale of the Property. Any Buyer purchasing on behalf of a business or arm of government ("artificial person") shall immediately execute the Sale Contract in both the artificial person's and buyer's names, until such time as the artificial person presents Auctioneer with acceptable, written evidence of the artificial person's good standing in its state of formation, plus written authority, in a form acceptable to Auctioneer, agreeing to be bound by the Sale Contract. The Terms of Auction are incorporated into the Sale Contract which defines the entire agreement between Seller and Buyer. The Terms of Auction complement the Sale Contract and, in the event of any conflict between them, the Sale Contract shall control in all instances. Buyer shall execute the Sale Contract and no addition, deletion, or revision shall be permitted.

12. **DEPOSIT:** Buyer shall immediately pay to the escrow/closing agent, in U. S. Dollars, an earnest money deposit of no less than Ten percent (10.00%) of the total contract price of the Property ("deposit"). If for any reason Buyer fails to timely execute the Sale Contract or pay the deposit, Seller has sole discretion, to: (a) pursue all legal and equitable remedies available against Buyer, or (b) declare Buyer's bid to be immediately forfeited, null, and void, without any requirement of notice, and immediately re-sell the Property to another buyer.

13. **ARBITRATION:** Any action, claim, controversy, counterclaim, dispute, or proceeding arising out of the Property Issues and involving Seller, Bidder, Buyer, or Auctioneer, in any combination, whether controlled by federal or state law, and whether an issue of law or equity, including the determination of the scope and applicability of this agreement to arbitrate, shall be determined and 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. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc., or its successor, and decided by a panel of three (3) independent arbitrators. Judgment on the arbitration award may be entered in any court having jurisdiction. The parties waive the right to any legal action and trial by jury. The costs of arbitration, including the fees and expenses of the arbitrators, but not including the parties' attorneys' fees, shall initially be paid equally by them. The prevailing party shall be entitled to collect from the other its full costs associated with the arbitration, including reasonable attorneys' fees. All aspects of any arbitration shall be permanently kept confidential and not disclosed in any form or manner to any entity, media, or person, and the parties shall jointly move the court entering judgment on the arbitration award to so order. Any arbitration must be commenced within two (2) years from the date when the cause of arbitration accrues or it will be forever barred. The right of arbitration shall accrue, and the two (2) year limitation period shall begin to run, on the date the breach, damage, or injury is sustained and not when the resulting damage or harm is discovered.

*14. CHOICE OF LAW, JURISDICTION, AND VENUE:* Any Auction matter shall be exclusively construed and governed in accordance with the laws of the State of Colorado, without regard to its conflict of laws principles. The exclusive jurisdiction and venue for any controversy or claim between the parties shall be the County of San Miguel in the State of Colorado.

*15. MISCELLANEOUS:* The Terms of Auction shall bind Bidders and their agents, assigns, attorneys, beneficiaries, brokers, directors, distributees, employees, executors, heirs, legatees, officers, representatives, shareholders, and successors in interest. No deletion, modification, supplement, or waiver of any provision of the Terms of Auction shall be made, except by Auctioneer's written revision or announcement at the Auction.

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## PROPERTY SPECIFIC DISCLOSURES

### DISCLOSURES SPECIFIC TO LAST DOLLAR RANCH:

*Deed of Conservation Easement for the Last Dollar Ranch:* The Property is selling subject to the conditions and restrictions described in a Deed of Conservation Easement ("Conservation Easement"), recorded November 7, 1994 in Book 537, page 590 in the records of the County Clerk of San Miguel County, Colorado. The easement created by the deed shall be a servitude running with the land in perpetuity. A conservation easement, including the one referenced herein, creates a severed interest in the real property vested in a third party; Buyer takes subject to this severed interest.

*Fencing:* Any fencing situated on the Property is not necessarily an indication of the Property's boundary. Buyer should rely on the legal description contained within the Tract abstracts of the Property for a description of the location of any and all Property boundaries. Seller hereby discloses that the ALTA/ACSM Land Title Survey prepared by Del-Mont Consultants on May 15, 2006 disclosed several areas of the property boundary in which the boundary fence appears not to be on the legally described boundary. Approximately three of those areas depict real property which has been fenced in with the property but are not part of the legally described property to be conveyed with the Property. Seller has had communication with some neighbors on the eastern and southern boundary where this fence line encroachment exists. The neighbors and Seller disagree as to the ownership of the fenced areas, but no legal action has ever been pursued nor has this matter ever been resolved. The survey also discloses two areas in which the Boundary fence appears to be in a location which encroaches on the Property. At Closing, Seller shall execute a quit claim deed for any and all areas fenced in with the property but not part of the attached legal description. At Closing, Seller's general warranty deed shall transfer the property which is fenced out of the Property but within the attached legal description without any warranties of title whatsoever.

*LP Gas Tanks:* There is one (1) 1,000-gallon LP gas tank located on the Property. At the time of closing of the sale, Seller will convey the LP gas tank, plus all LP gas then remaining in the tank, to the Buyer.

*Mineral and Water Rights:* The Seller retains no reservations to the mineral and water rights on the Property. All mineral and water rights as described in the Conservation Easement and as owned by the Seller, will be conveyed with the real estate. The Buyer will be responsible for the transfer of the well permits and water rights and any other requirements by the State of Colorado. Seller is conveying water rights by quit claim deed. Seller makes no affirmative representation and/or warranty as to the historic use or legal status of any use of water associated with and/or used on the Property.

*Ranch Manager Residential Lease:* Seller shall tender Buyer possession of the Property immediately upon closing except that Seller's Ranch Manager and family shall have the right to occupy the house and surrounding structures to and through December 31, 2007. Seller and/or Seller's Ranch Manager shall, if desired, execute an appropriate residential lease for the time period between closing and December 31, 2007.

*Seller's Property Disclosure:* As required by Colorado Real Estate Commission (SPD 19-10-05), Seller has provided a Seller's Property Disclosure for each Parcel offered in the Auction. This disclosure statement is not intended to be a substitute for prospective Buyer's hiring of qualified experts to inspect the property, nor is this disclosure a warranty or guarantee, of any kind by the Seller, Broker, or Auction Company. The buyer will be required to acknowledge receipt and acceptance of the Seller's responses to this Seller's Property Disclosure.

*Lead-Based Paint:* Residential dwellings built prior to 1978 may include lead-based paint. Buyer of such property must immediately execute a "Lead-Based Paint Waiver" in favor of Seller to be made part of the Sale Contract, thereby waiving Buyer's right to conduct any risk assessment or inspection for lead-based paint hazards. Every Bidder should read and understand the lead hazard information pamphlet provided and the "Lead Warning Statement" in the Sale Contract.

### DISCLOSURES SPECIFIC TO EAGLES NEST:

*HOA Assessment: Common Interest Community Disclosure.* **THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS**

**AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.**

Not Conditional on Review. Buyer acknowledges that Buyer has received a copy of the owners' association (Association) declarations, bylaws, rules and regulations, party wall agreements, minutes of most recent annual owners' meeting and minutes of any directors' meetings during the 6-month period immediately preceding Title Deadline, if any (Governing Documents), most recent financial documents consisting of (a) annual balance sheet, (b) annual income and expenditures statement, and (c) annual budget (Financial Documents), if any (collectively CIC Documents). Buyer has reviewed them, agrees to accept the benefits, obligations and restrictions that they impose upon the Property and its owners and waives any right to terminate this Contract due to such documents, notwithstanding the provisions of § 8e.

The Property is selling subject to the Declaration of Covenants, Conditions and Restrictions for Pleasant Valley Vista Subdivision Filing No. 2 as recorded at Reception No. 169662 on May 19, 1999 in the County Clerk and Recorder's office of Ouray County, Colorado. The current yearly dues are \$200.00 payable to the Pleasant Valley Vista Filing No. 2 Homeowners Association. The association dues will be prorated through the date of closing between the Seller and the Buyer at the time of closing of the sale of the Property.

*Mineral and Water Rights:* The Seller retains no reservations to the mineral and water rights on the Property. All mineral and water rights, as owned by the Seller, will be conveyed with the real estate. **The surface estate is owned separately from the underlying mineral estate, and transfer of the surface estate does not include transfer of the mineral rights or water rights. Third parties do hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property. Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract**

*Seller's Property Disclosure:* As required by Colorado Real Estate Commission (SPD 19-10-05), Seller has provided a Seller's Property Disclosure for each Parcel offered in the Auction. This disclosure statement is not intended to be a substitute for prospective Buyer's hiring of qualified experts to inspect the property, nor is this disclosure a warranty or guarantee, of any kind by the Seller, Broker, or Auction Company. The buyer will be required to acknowledge receipt and acceptance of the Seller's responses to this Seller's Property Disclosure.

#### **DISCLOSURES SPECIFIC TO LAST DOLLAR RANCH AND EAGLES NEST:**

*Sex Offenders:* State law enforcement may maintain a database of known sex offenders who reside within the area. Information regarding sex offenders may be obtained by contacting local law enforcement authorities. Buyer relies exclusively upon Buyer's own due diligence and inquiry into this issue and Buyer acknowledges having done all of the research that Buyer desires to do or, in the alternative, Buyer waives the right to research this issue prior to entering into this Sale Contract. Buyer unconditionally and irrevocably acknowledges and agrees that Buyer has not relied upon Seller or Auctioneer for any information regarding this issue and Seller and Auctioneer are not required to provide any additional information regarding the proximity to the Property of registered sex offenders.

*Methamphetamine Laboratory Disclosure:* The parties acknowledge that Seller is required to disclose whether Seller knows that the Property was previously used as a methamphetamine laboratory. No disclosure is required if the Property was remediated in accordance with state standards and other requirements are fulfilled pursuant to Section 25-18.5-102, C.R.S. Buyer further acknowledges that Buyer has the right to engage a certified hygienist or industrial hygienist to test whether the Property has ever been used as a methamphetamine laboratory. In the event that the Property has been used as a methamphetamine laboratory, Buyer may deliver written notice to Seller, on or before Closing, to terminate this Contract.

*Title Advisory:* The permitted title exceptions affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the permitted title exceptions may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property. Such matters may be excluded from or not covered by the title insurance policy.**

***SPECIAL TAXING DISTRICTS:* SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.**