

# J. P. KING AUCTION COMPANY, INC.

## REAL PROPERTY SALE CONTRACT

**GRAND HARBOUR DEVELOPMENT**  
**Orange Beach (Baldwin County), Florida**  
**July 16, 2008**

THIS REAL PROPERTY SALE CONTRACT ("Sale Contract"), made \_\_\_\_\_ day of June, 2008 ("Effective Date"), by and between Grand Harbour Development LLC ("Seller"), whose address is 2829 Lakeland Drive, Jackson, Mississippi 39232, and

\_\_\_\_\_ ("Buyer"),  
whose address is \_\_\_\_\_

Seller is represented in this sale by 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 broker, J. Craig King ("Broker") whose address is 108 Fountain Avenue, Gadsden, Alabama 35901 (unless otherwise noted, King and Broker collectively referred to as "Auctioneer").

NOW, THEREFORE, in consideration of the agreements and covenants herein, and other good and valuable consideration, the adequacy and receipt of which are acknowledged, the parties being duly authorized and empowered to execute this Sale Contract and intending to be legally bound agree as follows:

### AGREEMENTS

#### ***ARTICLE I – AGREEMENT TO PURCHASE***

1.1. Seller agrees to sell and Buyer agrees to buy, pursuant to the terms herein, the real property described below ("Property").

1.2. The terms for the Auction ("Terms of Auction") are incorporated into this Sale Contract which defines the entire agreement between Seller and Buyer for the purchase and sale of the Property, whether by auction ("Auction") or otherwise.

1.3. The Terms of Auction complement this Sale Contract and may differ in some respects from it. In the event of any conflict between the Terms of Auction and this Sale Contract, the Sale Contract shall control in all instances.

1.4. In the event of a sale of the Property other than by Auction, Buyer is advised that the Terms of Auction are still incorporated into this Sale Contract to define the entire agreement between Seller and Buyer for the purchase and sale of the Property, and Buyer is advised to obtain, read, and fully understand the Terms of Auction before entering into this Sale Contract.

#### ***ARTICLE II – THE PROPERTY***

2.1. The Property is described as Lot 3, Terry Cove Marina Planned Unit Development, as recorded on Slide 2150-E, part of Lot 10, and part of Lot 11 of the G. C. Bill Estate, as recorded in Map Book 3, page 90 in the office of the Judge of Probate, Baldwin County, Alabama ("Property"). The Property is further described in the legal description contained in the title commitment prepared by Gulf Shores Title.

2.2. Should any survey, now existing or later made, indicate greater or lesser acreage or square footage in the Property than represented by Seller or Auctioneer, no adjustment will be made to the purchase price ("total contract price") to be paid by Buyer to Seller for the Property.

**ARTICLE III – TOTAL CONTRACT PRICE**

3.1. The Property’s selling price and scheduled payments follows:

BID PRICE: .....\$ \_\_\_\_\_

LESS – EARNEST MONEY DEPOSIT (5.00%) .....\$ \_\_\_\_\_

BIDDER DEPOSIT \$( 100,000.00 )

BALANCE EARNEST MONEY DEPOSIT TO PAY .....\$( \_\_\_\_\_ )

BALANCE OF TOTAL CONTRACT PRICE OWED.....\$ \_\_\_\_\_

3.2. All payments must be made in U. S. Dollars.

3.3 The bidder registration deposit in the amount of One Hundred Thousand Dollars and no cents (\$100,000.00) received from the Buyer shall become part of the earnest money deposit. Buyer will be required to pay the balance of the earnest money deposit within two (2) business days immediately following the Effective Date of this Sale Contract.

3.4. Buyer’s earnest money deposit (“Buyer’s deposit”) shall be paid to Gulf Shores Title, the designated escrow/closing agent (“Escrow Agent”), and Escrow Agent shall administer the deposit and conduct the closing of the sale of the Property (“closing”).

3.5 This is a cash sale which is not contingent upon any matter including, but not limited to, Buyer’s ability to obtain financing for this purchase.

3.6. The balance of the total contract price owed by Buyer for the Property does not include Buyer’s closing costs, any costs associated with financing, any prepaid or prorated closing charges, or taxes applicable to Buyer.

**ARTICLE IV – DISCLAIMER**

4.1. As a material part of the consideration for this Agreement, Seller and Buyer agree that the Property is being sold in “AS IS, WHERE IS” condition with all burdens, circumstances, defects, faults, dangers, hazards, issues, material facts, problems, and other relevant matters, whether latent or patent, whether past, present, or future, and whether or not referenced herein, or in the Terms of Auction, and Buyer knowingly, voluntarily, unconditionally, and irrevocably waives, releases, and discharges Seller and Auctioneer from any claim that Buyer may otherwise have had with respect to the Property, the Auction, this Sale Contract, and the transaction contemplated.

4.2. To the fullest extent allowed by law, Seller and Auctioneer unconditionally disclaim any guarantee, representation, and warranty of every kind, whether expressed, implied, or statutory, whether oral or written, with respect to the Property, the surrounding area, the Auction, the Terms of Auction and all matters referenced therein (including, but not limited to, all matters referred to within this Article, plus the section on “Bidder’s Due Diligence” included in the Terms of Auction), plus all other relevant matters, whether past, present, or future, and whether or not referenced herein, in the Terms of Auction, or elsewhere, except for limited warranties that may be given by Seller to Buyer in the deed of conveyance, or as expressly stated herein.

4.3. Maps, depictions, and sketches included in the marketing material for the Auction are for illustration purposes only and neither Seller nor Auctioneer warrants or guarantees these materials or related information to be accurate or complete.

4.4. Buyer acknowledges and agrees that it is Buyer’s exclusive responsibility to make and independently verify such factual, legal, and other inquiries, inspections, investigations, and studies as Buyer deems appropriate, desirable, and necessary with respect to the Property, the Auction, this Sale Contract, and this sale, all of which shall be at Buyer’s exclusive cost, and Seller and Auctioneer shall have no liability whatsoever on any basis or in any amount.

4.5. Buyer acknowledges and agrees that, in executing this Sale Contract and purchasing the Property, Buyer is not relying upon any guarantee, representation, or warranty of any kind that Seller and Auctioneer have disclaimed, nor is Buyer relying upon any assertion, brochure, claim, document, information, literature, map, projection, sketch, or statement of any kind with respect to the Property and any improvements thereon, including the surrounding area and all relevant circumstances, facts, issues, and matters, whether past, present, or future, whether expressed or implied, whether oral or written, whether material or immaterial, and whether given or made by, or on behalf of, Seller or Auctioneer. Instead, Buyer is relying solely upon Buyer’s independent due diligence, inspection, investigation, and findings with respect to the

Property, the surrounding area, the Auction, the Terms of Auction and all relevant matters whether past, present, or future, and whether or not referenced herein, in the Terms of Auction, or elsewhere.

4.6. Seller and Auctioneer shall not be liable to Buyer for any relief, including, but not limited to, adjustment, allowance, damages, reformation, or rescission, based upon the failure of the Property to conform to any specific condition, expectation, standard, or any third-party documents or information.

4.7. Buyer shall look only to Seller, and not Auctioneer, with respect to all matters regarding the sale of the Property and this Sale Contract.

**ARTICLE V – INTENTIONALLY LEFT BLANK**

**ARTICLE VI – DISCLOSURES**

6.1. Any disclosures made and information given by Seller and/or Auctioneer to Buyer regarding the Property and any improvements thereon, the surrounding area, and all circumstances, facts, issues, and other matters relevant to this sale are provided subject to the disclaimers stated herein. All disclosures, information, representations, and statements made or given are attributable solely to Seller and not Auctioneer, and these represent Seller’s belief at the time this Sale Contract was drafted, but nothing is guaranteed or warranted to be accurate, complete, or correct.

6.2. A list of Property Specific Disclosures has been made a part of this Sale Contract as referenced herein.

6.3. 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.

**ARTICLE VII – BUYER’S DEPOSIT**

7.1. The successful bidder (“buyer”) will be required to pay an earnest money deposit of five percent (5.00%) of the total contract price for the Property within two (2) business days following notification by King of Seller’s acceptance of the bid. The earnest money deposit must be in the form of a bank cashier’s or certified check and payable to Escrow Agent to be held on deposit by Escrow Agent in a designated bank escrow account, insured by Federal Deposit Insurance Corporation, and Escrow Agent shall administer the funds in accordance with this Sale Contract. This escrow account shall be non-interest bearing, unless otherwise required by law.

7.2. The parties agree Escrow Agent shall be relieved of all liability and held harmless by them so long as Escrow Agent holds Buyer’s Deposit and makes any disbursement from it in accordance with this Sale Contract and the Escrow Agreement previously executed by Escrow Agent with Seller and Auctioneer.

7.3. In the event of any controversy regarding Buyer’s Deposit, Escrow Agent shall not be required to take any action, but may await the result of any proceeding, or at Escrow Agent’s discretion, interplead Buyer’s deposit into a court of competent jurisdiction for determination, and Escrow Agent shall thereafter have no liability whatsoever on any basis and for any amount with regards to Buyer’s deposit and this Sale Contract.

**ARTICLE VIII – BROKER INVOLVEMENT**

8.1. Buyer warrants that Buyer (check one) ... [ \_\_\_\_\_ is] ... [ \_\_\_\_\_ is not] ... represented by a qualified, licensed, real-estate broker in this transaction. If Buyer is represented by a broker, the broker’s full name, firm, and address are:

\_\_\_\_\_

8.2. Buyer warrants not to have contacted or communicated with any real-estate agent or broker about the Property, other than Auctioneer and any broker identified in the previous paragraph, and no other real-estate agent or broker was in any way instrumental in effecting this sale of the Property and there are no brokerage commissions, expenses, fees, or other sums due to any other real-estate agent or broker.

8.3. Buyer agrees to hold Seller and Auctioneer harmless against any claim by any real-estate agent or broker not properly registered with and qualified by Auctioneer in the Buyer-Broker Incentive Program (see below), and Buyer shall indemnify Seller and Auctioneer against any action, arbitration, award, claim, cost, damage, deficiency, demand, expense,

injury, judgment, liability, loss, or suit of every kind, including attorneys' fees and costs of defense, asserted by a real-estate agent or broker as a result of, or in relation to, the Auction, this Sale Contract, the transaction contemplated, or any related dealings involving Buyer, Seller, and/or Auctioneer.

8.4. Buyer understands that upon closing, Seller shall pay Auctioneer a commission pursuant to the terms of a separate, written agreement.

#### ***ARTICLE IX – BUYER-BROKER INCENTIVE PROGRAM***

9.1. If the Buyer-Broker Incentive Program is in effect for the Auction, a properly licensed broker (“Buyer-Broker”) who timely registers and qualifies with Auctioneer in accordance with the terms of this program shall be paid a commission by Seller at closing, in accordance with the terms of this program, provided that both Buyer-Broker and the Buyer that Buyer-Broker represents fulfill all requirements under the Terms of Auction, this Sale Contract, and this incentive program.

9.2. If for any reason closing does not occur, including, but not limited to, the default of any party hereto, no commission shall be due or paid to any Buyer-Broker and Seller and Auctioneer shall have no liability on any basis and for any amount.

#### ***ARTICLE X – INTENTIONALLY LEFT BLANK***

#### ***ARTICLE XI – CASUALTY***

11.1. All risk of loss or damage to the Property shall be borne exclusively by Seller until closing. Immediately upon closing, all risk of loss shall be borne exclusively by Buyer.

11.2. In the event the Property is, in the opinion of Seller, significantly damaged or destroyed by fire or other casualty after the execution of this Sale Contract and before closing, Seller shall have the option to restore the Property to its pre-casualty condition or cancel this Sale Contract, after giving written notice to Buyer of the option Seller selects. In the event Seller chooses to cancel this Sale Contract, Buyer's deposit shall be promptly and fully refunded and this shall be a complete and final settlement with Buyer of all of Seller's obligations to Buyer herein, or otherwise relating to the Property and this sale. Should Seller desire to restore the Property to its pre-casualty condition, Seller shall have one hundred twenty (120) days, immediately following the date on which written notice is given to Buyer, to complete restoration. In the event Seller timely completes restoration, Seller shall give written notice of this fact to Buyer and closing shall immediately occur. In the event Seller does not timely complete restoration, Buyer shall have the option to give written notice to Seller of Buyer's intention to terminate this Sale Contract and Buyer's obligations herein shall then be immediately ended and Buyer's deposit shall be promptly and fully refunded, together with any interest accrued thereon, if applicable, or Buyer may continue to seek performance from Seller under this Sale Contract.

#### ***ARTICLE XII – SELLER'S BREACH***

12.1. If Seller defaults in the performance of any term or obligation herein and closing does not timely occur as a result, Buyer shall have the option to give Seller written notice of Buyer's intention to terminate this Sale Contract and Buyer's obligations herein shall be immediately ended and Buyer's deposit shall be promptly and fully refunded, together with any interest accrued thereon, if applicable, or Buyer may have all rights allowed by law and in equity and pursuant to this Sale Contract, including the right to pursue a claim against Seller for specific performance of this Sale Contract, including Seller's payment of Buyer's reasonable attorneys' fees and costs.

12.2. In no event shall Auctioneer have any liability whatsoever on any basis and for any amount as a result of Seller's breach of this Sale Contract or other wrongful act or omission.

#### ***ARTICLE XIII – BUYER'S BREACH***

13.1. If Buyer defaults in the performance of any term or obligation herein and closing does not timely occur as a result, Seller shall give written notice to Buyer that Buyer's deposit shall be immediately forfeited to Seller and King (but not King's Broker) as reasonable liquidated damages and not as a penalty against Buyer. Seller and King (but not King's Broker) shall equally split Buyer's deposit between them and keep their respective shares. Buyer forever waives and releases any right to sue Seller, Auctioneer, or Escrow Agent to recover the Buyer's deposit, or any part thereof, on the grounds that it is unreasonable in amount, or that its retention by Seller and Auctioneer is wrongful or a penalty not agreed upon by the parties as reasonable liquidated damages.

13.2. If Buyer defaults in the performance of any term or other obligation herein and closing does not timely occur as a result, Seller shall have all rights allowed by law and in equity and pursuant to this Sale Contract, including the

right to pursue a claim against Buyer for additional damages, specific performance of this Sale Contract, or cancellation of the sale, and including Buyer's payment of Seller's reasonable attorneys' fees and costs.

13.3. In no event shall Auctioneer have any liability whatsoever on any basis and for any amount as a result of Buyer's breach of this Sale Contract or other wrongful act or omission.

#### **ARTICLE XIV – CONVEYANCE AND TITLE**

14.1 Seller shall convey fee simple title to the Property to Buyer by warranty deed, free and clear of all liens and encumbrances, except as specified in the "exceptions" of the title commitment, the Terms of Auction, this Sale Contract, and subject to all existing covenants, easements, restrictions, and matters of record.

14.2. Buyer agrees to accept title to the Property subject to: (a) all standard exclusions and printed exceptions set forth in the owner's policy of title insurance, including all matters that would be disclosed by a current and accurate survey of the Property, (b) taxes and liens for taxes not yet due and payable, (c) easements for public utilities affecting the Property, (d) all other easements or claims to easements, covenants, restrictions, and rights-of-way affecting the Property; (e) rights and claims of any persons in possession, (f) all title exceptions referenced in the title commitment, (g) land-use laws, (g) applicable statutes, rules, and regulations, (h) zoning ordinances, and (i) all matters herein waived by Buyer (individually and collectively (a) through (i) are referred to as "permitted title exceptions").

14.3. If the title commitment reveals a defect in title which is not one of the permitted title exceptions, or if prior to closing a new defect in title is disclosed by an updated endorsement to the title commitment, which defect is not one of the permitted title exceptions, prior to closing Buyer may either waive such defect or give written notice of such to Seller and Escrow Agent not later than five (5) days from the date of discovery of such defect in title, whereupon Seller may, at its option, attempt to cure such defect prior to closing, or decline to cure the defect. If Buyer has given written notice to Seller of a defect in title which Buyer does not waive, and Seller is unable or unwilling to cure the defect on or before closing, this Sale Contract shall be terminated without liability to either party and Buyer's deposit shall be promptly and fully refunded, together with any interest accrued thereon, if applicable, except that, upon written notice to Buyer, Seller shall have the right, at Seller's sole election, to extend the date of closing by up to sixty (60) days, but not longer, to allow time for Seller to attempt to cure any defect in title.

14.4. Seller shall not voluntarily create or cause any lien or other encumbrance to attach to the Property between the date this Sale Contract is made and closing.

#### **ARTICLE XV – CLOSING**

15.1. Closing shall be conducted at the offices of Gulf Shores Title Co., Inc., Escrow Agent, whose address is 100 Cove Avenue, Gulf Shores, Alabama 36542 (telephone 251-968-6185) within forty-five (45) days immediately following notification by King of Seller's acceptance of the bid ("closing date").

15.2. At closing, Seller shall deliver to Buyer the deed provided for herein to convey good and clear title to the Property to Buyer, and Buyer shall pay to Seller the balance of the purchase price owed in cash or by confirmed bank wire transfer of funds.

15.3. Seller shall solely pay the costs for preparing the deed and all other legal documents needed to convey title to the Property to Buyer, including reproduction costs and the costs to record the release of every encumbrance against the Property, plus Seller's attorney's fees.

15.4. Buyer shall solely pay the costs for the owner's policy of title insurance, the transfer (documentary) taxes on the deed, the costs for recording the deed, and all other closing, financing, and sale costs, plus Buyer's attorney's fees.

15.5. The current year's assessments and any special assessments, association dues and fees, current year's *ad valorem* taxes, insurance, interest, rents, and all similar items applicable shall be prorated between Seller and Buyer to the closing date, with Buyer being responsible for the day of closing. Should any additional assessments, other costs, or taxes be levied or charged as a result of any change of use of the Property attributable to Buyer, such amounts shall be the exclusive responsibility of Buyer to pay.

15.6. Closing may be conducted by mail.

15.7. Seller shall grant Buyer possession of the Property immediately upon closing.

#### **ARTICLE XVI – ASSIGNMENT AND THIRD PARTIES**

16.1. Neither party may assign or transfer any interest in this Sale Contract without the prior, written consent of the other.

16.2. Nothing contained in this Sale Contract, or in any document or instrument executed by a party in connection with the sale contemplated, 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 herein.

#### **ARTICLE XVII – AGENCY**

17.1. The parties understand and agree that Auctioneer is acting solely as a single agent and exclusively representing Seller on this Sale Contract, the transaction contemplated, and all related matters, and Auctioneer is not acting as a sub-agent, Buyer's agent, or limited consensual dual agent.

#### **ARTICLE XVIII – HOLD HARMLESS AND INDEMNIFICATION**

18.1. A party at fault shall hold a party not at fault, as well as Auctioneer, harmless from, and indemnify the party not at fault against, any action, arbitration, award, claim, cost, damage, deficiency, demand, expense, indemnity, injury, judgment, liability, loss, obligation, or suit of every kind, including reasonable attorneys' fees and costs of defense, asserted by any person, real or artificial, or by any entity of government, that the party not at fault incurs as a result of any act, error, omission, or wrongdoing attributable to the party at fault or that party's agents, assigns, attorneys, brokers, contractors, directors, employees, invitees, licensees, members, officers, representatives, shareholders, or successors in interest, and which arises out of this Sale Contract, the transaction contemplated, or the related dealings of the parties, except as expressly provided herein.

#### **ARTICLE XIX – NOTICE**

19.1. Any notice between the parties permitted, required, or otherwise relating to this Sale Contract, the transaction contemplated, or the related dealings of the parties, shall be given in writing including, but not limited to, notice which addresses approval, breach, cancellation, claim, closing, complaint, consent, default, demand, objection, option, termination, waiver, or exercise of right.

19.2. Notice shall be deemed given by a party and effective on the date when personally delivered to the other party or, in lieu of personal delivery, when addressed to the other party at the address set forth herein and deposited in the mail handled by the United States Postal Service and sent certified mail with postage prepaid and a receipt retained, or sent by a nationally-recognized overnight courier or delivery service with a receipt retained.

19.3. A copy of any notice shall simultaneously be given to Auctioneer at the addresses listed on page one of this Sale Contract.

#### **ARTICLE XX – LEGAL ACTION AND ARBITRATION**

20.1. Any action, claim, controversy, or dispute arising out of this Sale Contract including, but not limited to, its breach, enforcement, interpretation, termination, validity, or the transaction contemplated, the Auction, or any related dealings between Seller, Bidder, Buyer, and/or Auctioneer ("Sale Issues"), whether controlled by federal or state law, and whether an issue of law or equity, including the determination of the scope or 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.

20.2. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc., or its successor, pursuant to its "Comprehensive Arbitration Rules and Procedures" then in effect, and heard and decided by a panel of three (3) independent arbitrators. Judgment on the arbitration award may be entered in any court having jurisdiction.

20.3. Each party unconditionally and irrevocably waives all right to a trial by jury in any action, proceeding, or counterclaim arising out of or related to this Sale Contract, the transactions contemplated, and the related dealings of the parties.

20.4. 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 the parties.

20.5. The prevailing party shall be entitled to collect from the other its full costs associated with the arbitration, including reasonable attorneys' fees.

20.6. The parties agree that the filing, proceedings, rulings, decisions, result, and award from any arbitration shall be permanently kept confidential and not disclosed in any form or manner to any entity, media, or person whatsoever, and the parties shall jointly move the court entering judgment on the arbitration award to so order.

20.7. Any arbitration or other adversarial proceeding must be commenced within one (1) year from the date of the Auction or when the cause of arbitration accrued, whichever first occurs, or it will be forever barred. The right of

arbitration shall accrue, and the one-year (1) limitation period shall begin to run, from the date the breach, damage, or injury is sustained and not when discovered.

**ARTICLE XXI – BINDING EFFECT**

21.1. This Sale Contract shall be binding upon the parties and their agents, assigns, attorneys, beneficiaries, brokers, directors, distributees, employees, executors, heirs, legatees, members, officers, representatives, shareholders, and successors in interest.

**ARTICLE XXII – CHOICE OF LAW, JURISDICTION, AND VENUE**

22.1. This Sale Contract, the transaction contemplated, and all related dealings of the parties shall be exclusively construed and governed in accordance with the laws of the State of Alabama, without regard to its conflict of laws principles.

22.2. The exclusive jurisdiction and venue for any controversy or claim between the parties shall be the City of Orange Beach in the County of Baldwin in the State of Alabama.

**ARTICLE XXIII – SEVERABILITY, HEADINGS, PRONOUNS, AND CONSTRUCTION**

23.1. If any clause or provision of this Sale Contract is held illegal, invalid, or unenforceable, it is the parties' intention that the remainder of this Sale Contract shall not be affected and, in lieu of such clause or provision that is held illegal, invalid, or unenforceable, there shall be added, as a part of this Sale Contract, a clause or provision as similar in term and effect as such illegal, invalid, or unenforceable clause or provision as may be possible, legal, valid, and enforceable.

23.2. Article headings are for reference only and not intended to expand or restrict the scope or substance of the provisions of this Sale Contract. Any reference herein to an Article heading includes all relevant sections, subsections, and paragraphs within that Article.

23.3. Words used in the present tense also include the past and future tense, as the context requires.

23.4. Wherever used in this Sale Contract, 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.

23.5. The parties agree that this Sale Contract have been mutually agreed upon by them and no legal inference, presumption, principle, or other rule of draftsmanship or construction shall be used in favor of or against either of them.

**ARTICLE XXIV – MISCELLANEOUS**

24.1. Buyer certifies to be of legal age and have full capacity and competence to understand, enter into, execute, and deliver this Sale Contract.

24.2. If Buyer is purchasing the Property on behalf of an arm of government or business entity (i.e., corporation, limited liability company, etc.) ("artificial person"), Buyer shall be personally liable under this Sale Contract until such time as the artificial person presents Seller with acceptable, written evidence of the artificial person's good standing in its state of formation, plus a duly-passed and executed resolution or similar written authority from its board of directors or other governing authority that authorizes the purchase of the Property and agrees for the artificial person to be bound by this Sale Contract.

24.3. This Sale Contract may be signed in multiple counterparts and each shall be an original of this Sale Contract, with all counterparts constituting a single instrument.

24.4. A facsimile signature shall be considered as valid as an original signature.

24.5. This Sale Contract and the incorporated Terms of Auction contain the entire undertaking between the parties regarding the Auction, the transaction contemplated, and all related dealings of the parties, and there are no oral or written agreements, inducements, promises, representations, or warranties other than those expressly set forth.

24.6. This Sale Contract supersedes any previous agreement, negotiation, or understanding between the parties regarding the transaction contemplated, and such have been merged here and shall not survive execution of this Sale Contract.

24.7. No deletion, modification, supplement, or waiver of any term of this Sale Contract shall be effective unless made in writing and executed by the parties with the same formality as this Sale Contract.

24.8. The failure of either party to insist upon the strict performance of any term of this Sale Contract shall not be construed as a waiver of any subsequent default of the same or similar nature.

**24.9.** Each party had the opportunity to seek the independent advice of legal counsel of its choosing and each has either done so or has voluntarily decided to forgo such advice, with full understanding of the risk involved in this course with regard to the Property, Auction, Sale Contract, and this sale..

**24.10.** Each party acknowledges that it has received and read the Terms of Auction and this Sale Contract in their entirety, understands and fully accepts all of the terms contained, and has received an executed copy of this Sale Contract.

**24.11.** In addition to any other attachments, exhibits, or other documents or materials referenced herein, the following Attachments are attached hereto and incorporated herein by reference:

- Exhibit A - Property Specific Disclosures
- Exhibit B - Agency Disclosure
- Attachment I - Title Commitment

***ARTICLE XXV – TIME OF THE ESSENCE***

**25.1.** Time is of the essence of this Sale Contract. Each party shall fully perform all respective obligations herein at such times as to ensure that closing occurs on the date specified, or any mutually agreed-upon extension of that date.

***ARTICLE XXVI – SURVIVAL***

**26.1.** This Sale Contract and all of its terms shall survive closing.

IN WITNESS WHEREOF, the parties being duly authorized and empowered have agreed to the terms herein and executed this Sale Contract intending to be legally bound.

ADDRESS:

2829 Lakeland Drive  
Jackson, MS 39232

SELLER: Grand Harbour Development, LLC  
By: Bay Harbour Development, LLC

Signature \_\_\_\_\_  
Jim Defoe  
Vice President

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_

BUYER:

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Social Security No. \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_

Phone No. (Work) \_\_\_\_\_

(Home) \_\_\_\_\_

(Fax ) \_\_\_\_\_

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_

BUYER:

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Social Security No. \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_

Phone No. (Work) \_\_\_\_\_

(Home) \_\_\_\_\_

(Fax ) \_\_\_\_\_

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**EXHIBIT A**

**PROPERTY SPECIFIC DISCLOSURES**

*DISCLAIMER:* Seller and Auctioneer (this term to include Broker) do not, here or otherwise, attempt to provide Bidder with all of the information Bidder may need to conduct due diligence and make an informed decision about the Auction and Property. Participation in the Auction is at Bidder's sole risk and Seller and Auctioneer, plus their agents, brokers, contractors, employees, and representatives shall have no liability whatsoever on any basis. The Property will be offered and sold in "AS IS, WHERE IS" condition with all defects, faults, issues, and related problems. 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 issues and matters affecting, involving, or related in any way to the Auction and Property, except as expressly provided for in the *Terms of Auction* and the *Real Property Sale Contract*. The disclosures that follow are made to Bidders to assist them in performing their due diligence, but this list is not represented to be complete or correct and there may be other defects, facts, faults, issues, items, problems, and other relevant matters affecting, involving, or related in some way to the Property. Bidders should govern themselves accordingly.

*Covenants, Conditions and Restrictions:* The property is selling subject to the Declaration of Easements, Covenants, and Rights as executed by Grand Harbour Development, LLC and recorded December 15, 2005 at Instrument Number 943372 in the office of Judge of Probate, Baldwin County, Alabama.

*Covenants, Conditions and Restrictions:* The property is selling subject to the Declaration of Easements, Protective Restrictions and Covenants of Terry Cove Marina Planned Unit Development as recorded at Instrument 798547 in the office of Judge of Probate, Baldwin County, Alabama.

*Subdivision Regulations:* The property is selling subject to Subdivision Regulations of the City of Orange Beach, Alabama as recorded January 30, 2007 at Instrument No. 1028536 in the office of Judge of Probate, Baldwin County, Alabama

*Plat of Survey:* The property is selling subject to all easements, claim of easements, rights of way, terms and conditions as noted on the plat of survey by Ercil E. Godwin, Hutchinson, Moore & Rauch LLC, dated May 13, 2008 at job number M5562\3208\3011. The property includes all of Lot 3, Terry Cove Marina Planned Unit Development, as recorded on Slide 2150-E, part of Lot 10, and part of Lot 11 of the G. C. Bill Estate, as recorded in Map Book 3, page 90 in the office of the Judge of Probate, Baldwin County, Alabama.

*Wetlands:* Portions of the Property are considered wetlands.

**EXHIBIT B**

**AGENCY DISCLOSURE**

The LISTING COMPANY is: J. P. KING AUCTION COMPANY, INC.

The SELLING COMPANY is: \_\_\_\_\_

The LISTING COMPANY is: (Two blocks may be checked)

- AN AGENT OF THE SELLER
- AN AGENT OF THE BUYER
- AN AGENT OF BOTH THE SELLER AND THE BUYER AND IS ACTING AS A LIMITED  
CONSENSUAL DUAL AGENT
- ASSISTING THE \_\_\_\_\_ BUYER AS A TRANSACTION BROKER  
\_\_\_\_\_ SELLER AS A TRANSACTION BROKER

The SELLING COMPANY is: (Two blocks may be checked)

- AN AGENT OF THE SELLER
- AN AGENT OF THE BUYER
- AN AGENT OF BOTH THE SELLER AND THE BUYER AND IS ACTING AS A LIMITED  
CONSENSUAL DUAL AGENT
- ASSISTING THE \_\_\_\_\_ BUYER AS A TRANSACTION BROKER  
\_\_\_\_\_ SELLER AS A TRANSACTION BROKER

**ACKNOWLEDGEMENTS:**

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PURCHASER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SELLER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SELLER

\_\_\_\_\_  
DATE

**ATTACHMENT I**

**TITLE COMMITMENT**

**[Attached]**

# Chicago Title Insurance Company

601 Riverside Avenue Jacksonville, FL 32204

## SCHEDULE A

RI \$ 37,850,000.00

Issuing Office File No.: **GS 53439**

Address Reference: N/A

ORANGE BEACH, AL 36561

1. Commitment Date: **May 12, 2008** at **08:00 AM**
  
2. Policy (or Policies) to be issued: Amount
  - (a) Owner's Policy  
Proposed Insured:  
**A NATURAL PERSON OR LEGAL ENTITY TO BE DESIGNATED**
  
  - (b) Loan Policy  
Proposed Insured:  
**A NATURAL PERSON OR LEGAL ENTITY TO BE DESIGNATED**
  
3. A Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by:  
**GRAND HARBOUR DEVELOPMENT, LLC**
  
4. The land referred to in this Commitment is described as follows:  
That real property situated in the County of BALDWIN, State of Alabama, described as follows, to-wit:

**SEE SCHEDULE C ATTACHED HERETO**

Issue Date: May 21, 2008

**GULF SHORES TITLE CO., INC.**

By:           SPECIMAN            
Authorized Officer or Agent

Chicago Title Insurance Company

Commitment Number: 53439

**SCHEDULE C**  
**PROPERTY DESCRIPTION**

The land referred to in this Commitment is described as follows:

Beginning at the Northwest corner of Lot 3, Terry Cove Marina Planned Unit Development, as recorded on Slide 2150-E, in the office of the Judge of Probate, Baldwin County, Alabama; thence run North 87°14'49" East along the South right-of-way line of Alabama Highway 180, 39.71 feet to the Northeast corner of said Lot 3, said point also being the Northwest corner of Lot 1, Terry Cove Marina Planned Unit Development, thence run South 00°02'01" West, along the East line of said Lot 3, said line also being the West line of Lots 1 and 2 of said Terry Cove Marina Planned Unit Development, 1089.97 feet to the Southwest corner of said Lot 2; thence run South 89°57'55" East, along the South line of said Lot 2, 290.03 feet to the Southeast corner of said Lot 2; thence continuing along said East line of Lot 3, run South 00°01'47" West, 163.14 feet to a point; thence run South 89°56'47" East, leaving said East line of Lot 3, 208.73 feet to a point; thence run South 40°41'35" East, 95.17 feet to a point; thence run North 1334.71 feet to a point on said South right-of-way line of Alabama Highway 180; thence run North 89°20'00" East, along said South right-of-way line, 150.00 feet to a point; thence run South, leaving said South right-of-way line, 2014.08 feet to a point on the North margin of Terry Cove; thence run Southwesterly along said North margin, 937 feet more or less to a point on the West line of said Lot 3 that is South 69°43'14" West, 800.48 feet from the last point of call; thence run North 00°01'41" East, along said West line of Lot 3, leaving said North margin of Terry Cove, 103.06 feet to a point; thence run North 89°58'55" West, 145.13 feet to a point; thence continuing along said West line of Lot 3, run North 00°00'29" West, 299.92 feet to a point; thence run South 89°58'55" East, 145.32 feet to a point; thence continuing along said West line of Lot 3, run North 00°01'41" East, 1875.83 feet to the point of beginning, and lying in Section 12, Township 9 South, Range 5 East, Baldwin County, Alabama.

Said land includes all of Lot 3, Terry Cove Marina Planned Unit Development, as recorded on Slide 2150-E, part of Lot 10, and part of Lot 11 of the G. C. Bill Estate, as recorded in Map Book 3 page 90.

# Chicago Title Insurance Company

## SCHEDULE B - SECTION I REQUIREMENTS

Schedule B, Part I, consists of 2 pages

Issuing Office File No. GS 53439

### The following requirements must be met:

1. Pay and/or disburse the agreed amounts for the interest in the land to be insured and/or according to the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Payment of all taxes, charges, assessments, levied and assessed against subject premises, which are due and payable.
4. The following documents, satisfactory to us, creating the interest in the land and/or the mortgage to be insured, must be signed, delivered and recorded:
  - A. Cancellation of Mortgage from GRAND HARBOUR DEVELOPMENT, LLC to AMSOUTH BANK, dated December 13, 2005, and recorded at Instrument 943370, or the same will be excepted on the policy. NOTE: SAID MORTGAGE SECURES FUTURE ADVANCES
  - B. Cancellation of Mortgage from GRAND HARBOUR DEVELOPMENT, LLC to AMSOUTH BANK, dated September 20, 2005, and recorded at Instrument 927003, or the same will be excepted on the policy. NOTE: SAID MORTGAGE SECURES FUTURE ADVANCES
  - C. Warranty Deed from GRAND HARBOUR DEVELOPMENT, LLC, an Alabama limited liability company, to A NATURAL PERSON OR LEGAL ENTITY TO BE DESIGNATED, conveying the land described in Schedule A.
  - D. Mortgage from A NATURAL PERSON OR LEGAL ENTITY TO BE DESIGNATED to A NATURAL PERSON OR LEGAL ENTITY TO BE DESIGNATED, encumbering the land described in Schedule A.
5. NOTE: WE RESERVE THE RIGHT TO MAKE FURTHER OR OTHER REQUIREMENTS UPON RECEIPT OF THE IDENTITY OF THE PROPOSED INSURED.
6. An affidavit should be furnished prior to closing stating that there are no amendments to the Articles of Organization and any operating agreement of GRAND HARBOUR DEVELOPMENT, LLC.  
  
NOTE: In the event there is no operating agreement, said affidavit should state that said LLC has no operating agreement.
7. Certificate executed by all members of GRAND HARBOUR DEVELOPMENT, LLC, approving the transaction and authorizing the execution of the instrument required in Item 4 hereinabove, and designating the name of each and every member of said limited liability company, and naming the person or persons who are authorized to execute all of the documents associated with the transaction contemplated by this commitment.
8. Payment of any assessments which may be due the City of Orange Beach.

# Chicago Title Insurance Company

## SCHEDULE B - SECTION I REQUIREMENTS (Continued)

Issuing Office File No53439

9. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
10. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, subcontractor, labor and materialmen are all paid.
11. If the subject property is located in a condominium or a PUD, we require satisfactory proof of payment of all dues and/or assessments which may be due the condominium or PUD owner's association, or an exception will appear on the policy for any unpaid dues to said association.
12. Gap Indemnity to be executed by GRAND HARBOUR DEVELOPMENT, LLC.
13. Because the subject property is commercial property (which is all property other than a single family residential home, a mobile home, a residential lot, a townhome, a condominium, or property conveyed to a governmental entity or to a utility) we require the following:

A sworn statement from both the Seller(s) and the Purchaser(s) that there is no unpaid or disputed real estate commission, all compensation due or to become due under any listing, agency or other brokerage agreement has been paid or has been waived in writing by the potential lien claimant, and there has been no written notice received concerning any unpaid real estate commission which could give rise to a Broker's Lien under Act #98-160, Regular Session, 1998, Alabama Legislature (Sec. 35-11-450 et. seq., Code of Ala., 1975).

NOTE: The Examination of the Revenue Commissioner's records indicates the following:

2007 taxes were paid 12/10/07, in the amount of \$2,117.76, assessed to Grand Harbour Development LLC, tax map 05-65-02-04-4-001-002.000, PPIN 065329.

2007 taxes were paid 12/10/07, in the amount of \$14,305.92, assessed to Grand Harbour Development LLC, tax map 05-65-02-12-0-000-053.001, PPIN 065328.

2007 taxes were paid 12/10/07, in the amount of \$13,292.16, assessed to Grand Harbour Development LLC, tax map 05-65-02-12-0-000-057.001, PPIN 287640.

2007 taxes were paid 12/10/07, in the amount of \$7,589.76, assessed to Grand Harbour Development LLC, tax map 05-65-02-12-0-000-058.000, PPIN 023795.

NOTE: Any exhibits to the above required instruments should be executed by the grantor(s) and/or mortgagor(s) as the case may be.

# Chicago Title Insurance Company

Issuing Office File No.: 53439

## SCHEDULE B - SECTION II

Schedule B, Part II, consists of 3 pages

### EXCEPTIONS

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. All taxes for the year 2008 and subsequent years, not yet due and payable.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstances affecting the title that would be disclosed by an accurate and complete survey of the land.
4. Any rights, interests, or claims of parties in possession of the land not shown by the public records.
5. Easements or claims of easements not shown by the public records.
6. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Taxes or special assessments which are not shown as existing liens by the public records.
8. Any prior reservation or conveyance, together with release of damages of minerals of every kind and character, including, but not limited to, oil, gas, sand and gravel in, on and under subject property.
9. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land prior to Date of Policy, and any adverse claim to all or part of the land that is, at Date of Policy, or was previously, under water.
10. Any loss, claim, damage or expense, including additional taxes due, if any, due to the fact that ad valorem taxes for subject property have been paid under a current use assessment (See 1975 Code of Alabama, Section 40-7-25.3)
11. Any loss or damage due to discrepancies in actual and record distances and bearings as shown on plat of survey by Ercil E. Godwin, Hutchinson, Moore & Rauch LLC, dated May 13, 2008, job number M5562\3208\3011. The Company insures the lesser of actual and title measurements.
12. Asphalt drive, brick pavers, osprey nest, wave attenuator, mail box, guy wire, electric meter box, air conditioner, fire hydrant, flush hydrant, power poles and power lines, bulkhead, boardwalk, OE, 15" HDPE, 48" CMP, water meter, sanitary sewer valve, junction box, telephone pedestal, transformer box, light pole, gas valve, water valve, cable TV and other matters as shown on plat of survey by Ercil E. Godwin, Hutchinson, Moore & Rauch LLC, dated May 13, 2008, job number M5562\3208\3011.
13. Reservation of 1/2 interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Thelma Bill Carter, Robert F. Carter, Edith Bill Ragusin aka Edith Bill Ragusine and Anthony V. Ragusin to John Miles Collins and John Albert Hauser, dated May 22, 1957, and recorded in Deed Book 252 page 303.

**SCHEDULE B - SECTION II**  
**EXCEPTIONS**  
(Continued)

Commitment Number: 53439

14. Terms and conditions of Boundary Line Agreement by and between Mitchell G. Lattof, Jr., individually and as Trustee under the Last Will and Testament of Frankie T. Lattof, deceased; Mitchell G. Lattof, Sr., Delores S. Trent, and Cove Properties, Inc., dated April 12, 1993 and recorded in Real Property Book 510 page 279, and Amendment to Boundary Line Agreement dated August 15, 2002 and recorded at Instrument 679585, and failure to comply with said terms and conditions.
15. Rights of the United States of America, State of Alabama, or other parties in and to the bed, shore and water of Bay Ornocor a/k/a Terry Cove. Riparian rights are neither guaranteed nor insured and title to no portion of the herein described land lying below ordinary mean high water mark is insured hereby.
16. Rights of the United States of America, State of Alabama, or other parties in and to the bed, shore and water of the Creek as shown on plat of survey by Ercil E. Godwin, Hutchinson, Moore & Rauch LLC, dated May 13, 2008, job number M5562\3208\3011. Riparian rights are neither guaranteed nor insured and title to no portion of the herein described land lying below ordinary mean high water mark is insured hereby.
17. Rights, if any, of the public to use as a public beach or recreation area any part of the herein described land lying between the body of water abutting said land and the natural line of vegetation, dunes, extreme high water line or other apparent boundary lines separating the publicly used area from the upland private area.
18. Any part of the land described which may constitute wetlands or tidelands and any restriction on use or development arising out of a determination that the land, or some portion thereof, may be subject to provisions of Alabama Coastal Preservation statutes.
19. The Company does not insure title to any submerged, filled or accreted lands.
20. Subdivision Regulations of the City of Orange Beach, Alabama as recorded at Instrument 1028536, and any amendments thereto.
21. Terms and conditions of Assignment of Buyer's Rights under Option Agreements by and between Marina at Terry Cove, LLC and Grand Harbour Development, LLC, executed on June 7, 2005, and recorded at Instrument 898780.
22. Indian Midden, power poles, overhead electric, telephone pedestal, electric meter box, piping vault, flush plug, water meter, 2x2 MH, grinder pump, 18" HDPE, gravel drive, 2X2 piping vault, as shown on plat of survey by Ercil E. Godwin, Hutchinson, Moore & Rauch, LLC, dated December 13, 2005, Project No. M5662\1978\1501.
23. Declaration of Easements, Covenants and Rights executed by GRAND HARBOUR DEVELOPMENT, LLC by instrument dated December 15, 2005 and recorded at Instrument 943372.
24. Easement granted Alabama Electric Cooperative, Inc. and Baldwin County Electric Membership Corporation, dated July 26, 1995 and recorded in Real Property Book 639 page 1682.
25. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Magnolia Land Company, to Earl W. Griffiths and Sarah G. Griffiths, dated December 8, 1976, and recorded in Deed Book 506 page 473.

**SCHEDULE B - SECTION II**  
**EXCEPTIONS**  
(Continued)

Commitment Number: 53439

26. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Earl W. Griffiths and Sarah G. Griffiths, to Captain's Cove, Inc. dated September 19, 1988, and recorded in Real Property Book 333 page 1665.
27. Reservation of 1/2 interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Trust Company of Georgia and Dorothy Peteet Mitchell, as Trustees under the Last Will and Testament of Dennie R. Peteet, to Magnolia Land Company, dated October 16, 1959, and recorded in Deed Book 285 page 63.
28. Reservation of 1/2 interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Jeffrey I. Friedman to Hammock Dunes, LLC, dated April 7, 2004, and recorded in 723877.
29. Reservation of 1/2 interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Louis R. Harms and Mabel B. Harms to Cove Properties, Inc. dated May 15, 1985 and recorded in Real Property Book 214, Page 730.
30. Reservation of all interest in and to all oil, gas, and minerals and rights in connection therewith as contained in deed from Richard C. McDuffie and Jeffrey I. Friedman to M C & F, Inc., dated March 13, 1983 and recorded in Real Property Book 141, Page 1270.
31. Declaration of Easements, Protective Restrictions and Covenants of Terry Cove Marina Planned Unit Development appearing of record at Instrument 798547.
32. Agreement not to utilize the surface of the lands without the consent of Hammock Dunes, L.L.C. its successors and assigns for the purpose of producing mining or exploring for any minerals and all rights in connection therewith, as contained in the deed from Richard McDuffie to Hammock Dunes, L.L.C. dated April 9, 2003 and recorded at Instrument 723878.
33. Building setback lines, and drainage and utility easements appearing of record on Slide 2150F.
34. Grant of Appurtenant Easement by Hammock Dunes, LLC to the owners of the Lots shown on the Plat of Terry Cove Motorcoach Resort recorded at Slide 2150F, said instrument is dated March 31, 2004 and recorded at Instrument 814945.
35. Easement granted J. C. Bryars by Captain's Cove, Inc., dated December 30, 1995 and recorded in Real Property Book 672 page 1129.
36. Encroachment of Griffith Marina Road a/k/a Capt. Earl Griffith Drive, as shown on plat of survey by Ercil E. Godwin, Hutchinson, Moore & Rauch LLC, dated May 13, 2008, job number M5562\3208\3011.

**DELETING ANY COVENANT, CONDITION OR RESTRICTION INDICATING A PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN TO THE EXTENT SUCH COVENANTS, CONDITIONS OR RESTRICTIONS VIOLATE 42 USC 3604(c).**