

J. P. KING AUCTION COMPANY, INC.

INVITATION FOR SEALED BID AUCTION TERMS OF AUCTION

GRAND HARBOUR DEVELOPMENT
Orange Beach (Baldwin County), Alabama
Wednesday, July 16, 2008

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 Alabama broker, J. Craig King ("Broker") whose address is 108 Fountain Avenue, Gadsden, Alabama 35901 (King and its Broker being referred to herein collectively as "Auctioneer") have contracted with Grand Harbour Development, LLC, ("Seller") to offer to sell invitation for sealed bid auction ("Auction") certain real property ("Property").

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. **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.

3. **PROPERTY:** The Property is described in the "Real Property Sale Contract" ("Sale Contract"), a copy of which is available online at www.jpking.com.

4. **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, surrounding area, all information provided by Seller or Auctioneer, "Property Information Package" (available online at www.jpking.com), public records, Terms of 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.

5. **DISCLAIMER:** Participation in the sealed bid 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.

6. **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.

7. **BID REQUIREMENTS AND TERMS:** Bidder must deposit a bank cashier's or certified check in the amount of One Hundred Thousand Dollars and no cents (\$100,000.00) along with an executed Sale Contract and all related documents. This deposit must be in the form of a bank cashier's or certified check made payable to the escrow agent, Gulf Shores Title Co., Inc. By submitting \$100,000.00 bid deposit, Terms of Auction and an executed Sale Contract, Bidder unconditionally and irrevocably agrees to be bound by both.

8. **BID DEADLINE:** All Sale Contracts and earnest money deposits must be received by J. P. King Auction Company, Inc. on or before the deadline of 5:00 p.m. (CT), July 16, 2008. Sale Contracts and earnest money deposits are to be mailed to 108 Fountain Avenue, Gadsden, Alabama 35901, Attention: Grand Harbour Development Site.

9. **AUCTION:** The Property will be offered as an invitation for sealed bid auction and sold subject to Seller's confirmation of the bid price. The bid made by the Bidder shall be binding on the Bidder until Seller has either accepted or rejected such bid. Seller shall have the right to accept or reject any bid within three (3) days immediately following the

deadline of 5:00 p.m. (CT), June 16, 2008. Bidder will be notified immediately thereafter of Seller's acceptance or rejection of such bid.

Seller does reserves the right to review contingent offers; however, priority will be given to the non-contingent offers made on the property. Seller has the right to accept or reject non-conforming offers, which may not necessarily be the highest sales price offered for the property.

10. SALE CONTRACT: This is a cash sale and not contingent upon any matter, including buyer obtaining financing. buyer shall have submitted with his bid deposit, a signed Sale Contract along with 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 have executed 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.

11. DEPOSIT: A successful bidder ("buyer") will be required to increase the amount of the earnest money deposit to 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. This additional earnest money deposit must also be in the form of a bank cashier's or certified check and payable to escrow agent. The buyer's earnest money deposit will be considered fully earned and become non-refundable liquidated damages in the event the buyer defaults and fails to close the sale. If for any reason buyer fails to timely submit the additional earnest money 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.

12. 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.

13. CHOICE OF LAW, JURISDICTION, AND VENUE: Any Auction matter shall be exclusively construed and governed in accordance with the laws of the State of Alabama, without regard to its conflict of laws principles. 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.

14. 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

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.

As evidenced by my/our signature(s) below, I/we do hereby acknowledge that I/we have received, read, and understand these Terms of Auction for Grand Harbour Development.

Name (Bidder)

Date

Name (Bidder)

Date