

J. P. KING AUCTION COMPANY, INC.

TERMS OF AUCTION

**Halo Notch Vineyard
Madisonville (Monroe County), TN
Saturday, May 16, 2009 at 1:00 P.M. (ET)**

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 Tennessee 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 Michael D. and Tina Lea S. Frizzell, husband and wife (known as "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, and posted at the Auction. No personal property will be conveyed with the real estate.

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, 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. 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*: 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. An individual purchase shall be considered a singular transaction whether it includes one or more parcels. Under no circumstances will the sale of any parcel be contingent upon the sale of any other parcel whether or not purchased by the same Buyer.

(a) Parcel no. 13 will be bid by the dollar and the remaining Parcels will be bid by the acre.

(b) The Property is scheduled for a combination of absolute/reserve auction using "*High Bidder's Choice*" and "*Multi-Parcel Bidding*" (also known as "*Multi-Par Bidding*") methods of auction as follows:

(1) Parcel nos. 1, 2, 4, 5, 6, 7, 8, and 9 will be sold by absolute auction to the highest respective bidder for the Parcel.

(2) Parcel nos. 3, 10, 11, 12 and 13 will be offered subject to Seller's acceptance of the highest bid price for each Parcel.

(c) *Round One*: The initial highest Bidder in round one will select any one or more of the parcels from the Property inventory designated for round-one bidding. Once the initial highest bidder has completed this selection, if any parcels in the round-one Property inventory remain available, bidding will resume in a second phase of round one for the available parcels. The highest Bidder in the second phase of round one will select any one or more of the available parcels from the round-one Property inventory. This process will continue into a third and subsequent phases of round-one bidding until all parcels in the round-one Property inventory have been selected by their respective highest Bidders. Prior to starting the second and any subsequent phase of round-one bidding, Seller and Auctioneer may offer Bidders, on a first-come-first-served basis, the opportunity to select any one or more of the unselected parcels included in the round-one Property inventory for the amount of the last highest Bidder's bid. Once a high Bidder has selected one or more parcels from the round-one Property inventory, that Bidder may NOT exchange any parcel previously selected for any other parcel.

(d) *Round Two*: All Bidders, including the respective high bidders in round one, shall have the right to select any parcel for re-bidding in round two, or to select and combine any two or more parcels for re-bidding, on the terms defined by Auctioneer and subject to a minimum, five-percent (5.00%) increase over the current highest bid price for the parcel(s) selected. Round-two bidding shall remain open for the parcel(s) selected through one or more phases of bidding until all bidding for all of the parcels has ended and the Bidders make no further request to re-bid any parcel or combination of parcels, at which time Auctioneer will close the round-two bidding and announce which parcels have been sold and the identities of the respective highest Bidder(s) to become the Buyer(s).

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. *CLOSING*: The Closing of the Property will be on or before June 16, 2009. Closing shall be conducted at Valley Title Services, located at 202 North White Street, Athens, TN 37303; telephone (423) 745-4660. An alternate closing office is located at 695 New Hwy. 68, Suite A, Sweetwater, TN 37874; telephone (423) 337-0220. The contact is Arlena Shell. Closing may be conducted by mail.

14. *RELEASE* Bidders, Buyers, and other persons present at the Auction (collectively "Attendees") are advised that Auctioneer and its agents, contractors, employees, and/or representatives may record the Auction, related matters, and

Attendees through audiotape, photography, motion pictures, and/or videotape for advertising, marketing, promotion, publicity, record, and/or trade purposes, and in consideration of being allowed to attend the Auction, Attendees unconditionally and irrevocably agree that their images and voices may be so recorded and used by Auctioneer in all types of media without territorial, time, or use limitation, and without compensation being owed or paid to Attendees by Auctioneer or Seller.

15. *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.

16. *CHOICE OF LAW, JURISDICTION, AND VENUE*: Any Auction matter shall be exclusively construed and governed in accordance with the laws of the State of Tennessee, 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 Monroe in the State of Tennessee.

17. *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.

Mold Disclosure and Waiver: Mold is a natural occurring microbe and mold should pose no health threat unless there are concentrated high levels in the living environment. If the Buyer is concerned or desires additional information, Purchaser should consult an appropriate professional. Buyer of the property must execute a "Mold Disclosure and Waiver" ("Mold Waiver") in favor of Seller to be made part of the Sale Contract, thereby waiving Buyer's right to conduct any risk assessment for mold or mold contaminants. Every Bidder should read and understand the "Mold Warning Statement" in the Sale Contract.

Deed Restrictions: The Property/Parcels are selling subject to the deed restrictions as recorded, which include the following:

- All roadways/driveways must be paved asphalt, poured concrete or crusher run gravel
- No mobile homes
- No modular homes without permanent foundation
- No pig or poultry farm/operations
- No commercial dog kennels
- No multi-family dwellings; excluded are overnight rentals such as a Bed & Breakfast Inn
- No recreational vehicle storage/parking (covered or uncovered) exceeding 30 days annually
- No non-functioning vehicles or machinery
- No manufacturing, storage or dumping of chemicals, batteries, fuel, oil, or other substance that may leach into the groundwater

Plat Map: The Property/Parcels have been surveyed by Paul Lingerfelt Surveying (Sweetwater, TN) as of March 6, 2009. The plat map will be recorded.

Survey Fee: At closing, the Buyer will be responsible for reimbursing the Seller the costs for the surveying in the amount of \$375.00 per Parcel.

Fencing: The existing fencing and/or trellises are not necessarily an indication of the Property/Parcel lines.

Fruit & Harvest: At the time of Closing, any and all existing fruit may be harvested by the Buyer of each Parcel. The Seller is not reserving any rights to this fruit.

Well & Easement: A well is located on Parcel #2 for the strict use and benefit of Parcel #13 together with a Water Line Easement, 20 feet in width, extending from the well across Parcels #2, #3, #4 and #5, as depicted on the recorded plats thereof. The Buyer of Parcel #13 will be responsible for all costs of repairs and maintenance of the water pump and well house. The Buyer of Parcel #13 will have up to 12 months after the Closing of Parcel #13 to disconnect from the existing well (located on Parcel #2). Access to, and use of, the water well and the attendant Easement shall automatically terminate at 12 noon on May 16, 2010. Upon disconnection from service of the well by the owner of Parcel #13, the owner of Parcel #2 will have strict and sole use and benefit of the well located on Parcel #2.

Possession of Home on Parcel #13: The Seller has reserved the right to have up to thirty (30) days after the date of closing to vacate the premises, at which time possession of the home and property will then be granted to the Buyer.

Lead-Based Paint (Parcel #13): 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.