

# J. P. KING AUCTION COMPANY, INC.

## TERMS OF AUCTION

### Green Mountain Estate Green Mountain (Yancey County), North Carolina Thursday, November 5, 2009 at 1:00 PM (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 North Carolina 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 True North Equities, LLC ("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.

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. Bidder must deposit a cashier's check in the amount of Twenty-five Thousand Dollars and no/100 (\$25,000.00) with Auctioneer at registration. 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:* 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. 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 Property is scheduled to be sold at auction to the highest respective bidder(s). Seller has reserved the liberty for itself and any member of the Seller's family and/or any LLC the Seller may be associated with to bid in the Auction on the Property. If Seller or any of its family members or associated LLC's and its members do bid in the Auction, they will do so on the same terms as all other bidders. If any one of them purchases the Property, they will do so under the same terms as any other Purchaser.

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. *ESCROW/CLOSING AGENTS:* Seller has chosen Van Winkle Law Firm (an issuing agent for Chicago Title Company) to serve as the Escrow/Closing Agent for this sale. The closing will be held at the law firm's office located at 11 North Market Street, #300, Asheville, NC 28801-2929; telephone (828) 258-2991. Closing must occur on or before 5:00 p.m. December 7, 2009 ("Closing Date"). The contact for Van Winkle Law Firm is Michael Thompson. 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 North Carolina, 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 Yancey in the State of North Carolina.

*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:** 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 Purchaser is concerned or desires additional information, Purchaser should consult an appropriate professional. The Seller, Broker and the Auction Company specifically make no representations, guarantees, or warranties of any kind whatsoever regarding the present condition of the property, the future condition of the property, or anything regarding mold, mildew and the remediation process. The Seller, Broker and the Auction Company fully and unconditionally disclaim any liability whatsoever for any action, arbitration, claim, cost, damage, deficiency, expense, loss, suit, or other demand of any kind related to the property, these conditions, damages, problems, the remediation process, and all related issues.

**Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to personnel who are exposed to it over time. Additional information regarding radon and radon testing may be obtained from the county public health unit.

**Designated Escrow/Closing Agent:** The designated Escrow/Closing Agent for this Auction sale is Van Winkle Law Firm. Should Buyer elect to choose their own attorney to close this transaction, Buyer will still be responsible for any and all cost charged by the designated Escrow/Closing agent (Van Winkle Law Firm), as well as any cost associated with using their own attorney. Closing must still be facilitated through Van Winkle Law Firm.

**Wells:** There are three (3) working wells located on the Property. The wells have not been tested by the Yancey County Health Department. The condition of the water in these untested wells is unknown and Seller and Auctioneer make no representation or warranty to the potable quality or suitability of the water for any purpose.

**Cemetery:** A private cemetery is located on the Property. Buyer relies exclusively upon Buyer's own due diligence regarding any federal, state and/or local rules and regulations on the upkeep and maintenance of the cemetery.