

# J. P. KING AUCTION COMPANY, INC.

## TERMS OF AUCTION

**St. Simons Island  
St. Simons Island (Glynn County), Georgia  
Saturday, October 24, 2009 at 2:00 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 Georgia 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 three separate sellers: (a) Villas Development Company, (b) Hamby Corporation, and (c) Denvil B. Hamby, Jr., Individually (these three sellers of real property herein individually, collectively, and in any combination, referred to herein by the singular term "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 with**

**Auctioneer at registration in the amount of Twenty-Five Thousand Dollars and no cents (\$25,000.00) to bid for the Idea House. Bidder must deposit a cashier's check with Auctioneer at registration in the amount of Ten Thousand Dollars and no cents (\$10,000.00) per Property to bid for The Villas at Coast Cottages, the Villas at Coast Cottage Lots and the Residential Lots.** 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. Seller shall not bid. Bidder shall not retract any bid. Bidder's purchase shall be considered a single transaction whether of the whole or a fraction of the Property. The sale of any fraction of the Property shall not be contingent upon the sale of any other portion thereof, whether purchased by the same Buyer or not.

(a) The Property is scheduled to be sold using the "*High Bidder's Choice*" method of auction as follows:

1. The Villas at Coast Cottages, as selected by the highest bidder, will be sold at absolute auction.
2. The Villa at Coast Cottages Lots, as selected by the highest bidder, will be sold at absolute auction.
3. The residential lots located at 2204 Bruce Drive and 2208 Bruce Drive, as selected by the highest bidder, will be sold at absolute auction.

4. The Idea House will be offered subject to Seller's acceptance of the highest bid price.

(b) The initial highest Bidder will select any one or more of the villas/lots from the Property inventory designated for round-one bidding. Once the initial highest bidder has completed this selection, if any villas/lots in the round-one Property inventory remain available, bidding will resume in a second phase of bidding for the available villas/lots. The highest Bidder in the second phase of bidding will select any one or more of the available villas/lots from the Property inventory. This process will continue into a third and subsequent phases of bidding until all villas/lots in the Property inventory have been selected by their respective highest Bidders. Prior to starting the second and any subsequent phase of bidding, Seller and Auctioneer may offer Bidders, on a first-come-first-served basis, the opportunity to select the unselected Villa/lot 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 villa/lot from the Property inventory, that Bidder may NOT exchange any villa/lot previously selected, for any other villa/lot.

11. **SALE CONTRACT:** This is a cash sale and not contingent upon any matter, including Buyer obtaining financing. Buyer shall, immediately upon the completion of the Auction and the determination of Buyer as the high bidder, 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 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 November 24, 2009. Closing shall be conducted at the offices of Bishop Law Firm, (an agent for Chicago Title Company), located at 777 Gloucester Street, #401, Brunswick, Georgia 31521-1396; telephone (912) 264-2390. The contact for Bishop Law Firm is Marty Crabtree. Closing may be conducted by mail.

*14. FINANCING:* Promotional financing is available to buyers of auction properties subject to credit approval. Credit qualifications as well as other terms and conditions may apply and are subject to change.

*15. 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.

*16. 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.

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

*18. 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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J. P. King Auction Company, Inc.

## 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.

## PROPERTY SPECIFIC DISCLOSURES:

### Idea House

**Association Memberships:** Buyer will automatically become a member of The Villas at Coast Cottages Owners Association, Inc. Buyer will be responsible for all association fees and special assessments, if any, as required and any capital contribution or transfer fees as outlined in the association's documents. The association dues or assessments, if any, as required, will be prorated through the date of closing between the Seller and the Buyer at the time of closing of the sale of the Property.

**Personal Property:** No personal property will be conveyed with any of the real estate.

**Declaration of Protective Covenants, Restrictions, Easements and Agreements:** The property is selling subject to the Declaration of Covenants, Conditions, and Restrictions for The Villas at Coast Cottages as recorded (204168) in the Glynn County Superior Court Records on November 6, 2002, and any applicable recorded additions or amendments thereto, and the easements, options, liens for assessments, if any, contained therein.

**PROPERTY SPECIFIC DISCLOSURES:**  
**The Villas At Coast Cottages**

***Association Memberships:*** Buyer will automatically become a member of The Villas at Coast Cottages Condominium Association, Inc. Buyer will be responsible for all association fees and special assessments, if any, as required and any capital contribution or transfer fees as outlined in the association's documents. The association dues or assessments, if any, as required, will be prorated through the date of closing between the Seller and the Buyer at the time of closing of the sale of the Property.

***Declaration of Protective Covenants, Restrictions, Easements and Agreements:*** The property is selling subject to the Declaration of Covenants, Conditions, and Restrictions for The Villas at Coast Cottages as recorded (204168) in the Glynn County Superior Court Records on November 6, 2002, and any applicable recorded additions or amendments thereto, and the easements, options, liens for assessments, if any, contained therein.

***Declaration of Condominium:*** The property is selling subject to the Declaration of Condominium for The Villas At Coast Cottages, A Condominium as recorded (204170) in the Glynn County Superior Court Records on November 6, 2002, and any applicable recorded additions or amendments thereto.

**PROPERTY SPECIFIC DISCLOSURES:**  
**Villas at Coast Cottages Lots**

***Recordation of Property/Lots:*** Villas at Coast Cottages Lots are identified on the Final Plat for The Villas at Coast Cottages Lots 1, 2, 3, 4, 5, 6, 7 & 8, St. Simons Island, 25<sup>th</sup> G.M.D., Glynn County, Georgia as recorded in the Office of the Clerk of Superior Court of Glynn County, Georgia in Plat Drawer 27, as Map No. 172 **as ALL OF LOTS 6 and 7, THE VILLAS AT COAST COTTAGES**, having street address of 5 Sea Oats Lane, 7 Sea Oats Lane, 9 Sea Oats Lane and 11 Sea Oats Lane according to the numbering system of Glynn County, Georgia:

- 5 & 7 Sea Oats Lane (Lot 7 Villas at Coast Cottages)
- 9 & 11 Sea Oats Lane (Lot 6 Villas at Coast Cottages)

***Association Memberships:*** Buyer will automatically become a member of The Villas at Coast Cottages Owners Association, Inc. Buyer will be responsible for all association fees and special assessments, if any, as required and any capital contribution or transfer fees as outlined in the association's documents. The association dues or assessments, if any, as required, will be prorated through the date of closing between the Seller and the Buyer at the time of closing of the sale of the Property.

***Declaration of Protective Covenants, Restrictions, Easements and Agreements:*** The property is selling subject to the Declaration of Covenants, Conditions, and Restrictions for The Villas at Coast Cottages as recorded (204168) in the Glynn County Superior Court Records on November 6, 2002, and any applicable recorded additions or amendments thereto, and the easements, options, liens for assessments, if any, contained therein.

**PROPERTY SPECIFIC DISCLOSURES:**  
**Residential Lots**

***Recordation of Property/Lots:*** Described and identified according to the map and plan of record in the Office of the Clerk of Superior Court of Glynn County, Georgia in Deed Book 3-R, Page 312-315, **as ALL OF LOTS 2 AND 3, BLOCK 26, EAST BEACH SUBDIVISION**, having street addresses of 2204 Bruce Drive and 2208 Bruce Drive according to the numbering system in Glynn County, Georgia:

- 2204 Bruce Drive (2-26 East Beach Subdivision)
- 2208 Bruce Drive (3-26 East Beach Subdivision)

***Declaration of Protective Covenants, Restrictions, Easements and Agreements:*** The property is selling subject to the Declaration of Covenants, Conditions, and Restrictions as recorded in Deed Book 3-Y, Page 110, aforesaid records, and any applicable recorded additions or amendments thereto, and the easements, options, liens for assessments, if any, contained therein.