

J. P. KING AUCTION COMPANY, INC.

TERMS OF AUCTION

**Planetta Custom Homes, et al.
Properties in Mississippi, Louisiana, and Florida
Saturday, November 21, 2009**

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 brokers of record (King and its Broker being referred to collectively as "Auctioneer"), have contracted with the various owners (individually and collectively "Seller") of certain real property ("Property" which term may have either a singular or plural meaning and means the totality of all of the various parcels included in the auction, as well as each individual parcel; "Properties" is also used in some instances for the plural) to be offered for sale at public auction ("Auction"). These terms, plus any additions, deletions, and/or revisions published or announced by Auctioneer represent the exclusive terms for the Auction ("*Terms of Auction*").

NOTICE AND DISCLAIMER

THIS IS A PROPERTY "CLOSE-OUT" OFFERING AND SELLER AND AUCTIONEER DO NOT, HERE OR OTHERWISE, ATTEMPT TO PROVIDE BIDDER WITH ALL OF THE INFORMATION THAT MIGHT BE NEEDED TO CONDUCT ADEQUATE 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, ATTORNEYS, BROKERS, CONTRACTORS, DIRECTORS, EMPLOYEES, OFFICERS, AND REPRESENTATIVES WILL HAVE NO LIABILITY ON ANY BASIS WHATSOEVER. THE PROPERTY WILL BE OFFERED IN "AS IS, WHERE IS" CONDITION WITH ALL BURDENS, CIRCUMSTANCES, DEFECTS, FACTS, FAULTS, DANGERS, HAZARDS, ISSUES, ITEMS, MATERIAL FACTS, PROBLEMS, VANDALISM, AND OTHER RELEVANT MATTERS, WHETHER LATENT OR PATENT, WHETHER PAST, PRESENT, OR FUTURE, AND WHETHER OR NOT REFERENCED HEREIN, WHICH AFFECT, INVOLVE, OR RELATE IN ANY WAY TO THE PROPERTY OR ANY PORTION OF IT ("PROPERTY ISSUES"). 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 AND OTHER MATTERS AFFECTING, INVOLVING, OR RELATED IN ANY WAY TO THE AUCTION AND PROPERTY, EXCEPT AS EXPRESSLY PROVIDED FOR IN THESE *TERMS OF AUCTION* OR THE *REAL PROPERTY SALE CONTRACT* ("*SALE CONTRACT*"). DISCLOSURES MADE ARE NOT REPRESENTED TO BE COMPLETE OR CORRECT AND THERE MAY BE OTHER PROPERTY ISSUES AFFECTING, INVOLVING, OR RELATED IN SOME WAY TO THE PROPERTY AND BIDDERS SHOULD GOVERN THEMSELVES ACCORDINGLY. EXCEPT AS EXPRESSLY STATED HEREIN, SELLER WILL TAKE NO ACTION TO ADDRESS, CURE, FIX, REMEDY, REPAIR, OR SOLVE ANY PROPERTY ISSUES.

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 *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 might need to conduct adequate due diligence and make an informed decision about the Auction and Property. Bidder should obtain professional advice and conduct due diligence on the Property, title commitment for the Property in which Bidder is interested (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, these *Terms of Auction*, the Auction, *Sale Contract*, transaction contemplated, and all burdens, circumstances, defects, facts, faults, dangers, hazards, issues, items, material facts, problems, vandalism, and other relevant matters, whether latent or patent, whether past, present, or future, and whether or not referenced herein, which affect, involve, or relate in any way to the property or any portion of it ("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 will 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, attorneys, brokers, contractors, directors, employees, officers, and representatives will have no liability on any basis whatsoever. The Property will be offered in "**AS IS, WHERE IS**" condition with all Property Issues. 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 these *Terms of Auction* or the *Sale Contract*.

7. **DISCLOSURES:** The Property will be offered for sale and, if sold, 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. Also see the attachment(s) to these *Terms of Auction* that contain additional disclosures.

Property Specific Disclosures: Property specific disclosures will be attached to these *Terms of Auction* or respective *Sale Contract*, or otherwise published or announced by Auctioneer.

8. **REGISTRATION:** Any competent adult with a satisfactory photo identification who properly registers and complies with these *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. **A cashier's check, in the amount of \$1,000.00 PER PROPERTY, made payable to the bidder, will be required to bid on any of the Properties.** 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 these *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%) buyer's premium will be in effect for the Auction and added to the amount of the highest bid to arrive at the selling price for the respective 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 will not bid. Bidder will not retract any bid. Bidder's purchase of a Property will be considered a single transaction. The sale of any Property will not be contingent upon the sale of any other Property in the Auction, whether purchased by the same Buyer or not.

Some Properties, as specifically announced by Auctioneer, will be sold at "Absolute Auction" to the highest respective bidder(s) for these Properties.

All remaining Properties will be offered to Bidders subject to Seller's confirmation (i.e., acceptance or rejection) of the highest bid price for each such Property ("Property Unit"). **BIDDER UNDERSTANDS AND AGREES THAT ANY SALE CONTRACT EXECUTED BY BIDDER FOR SUCH A PROPERTY WILL BE CONTINGENT UPON SUBSEQUENT ACCEPTANCE OR REJECTION BY SELLER AND WILL BE OF NO EFFECT TO BIND A SALE OF THE SUBJECT PROPERTY UNLESS THE SALE CONTRACT IS EXECUTED BY SELLER AND A FULLY-EXECUTED COPY IS RETURNED TO BIDDER.** For each of these Property Units offered subject to Seller's confirmation, Auctioneer will conduct the bidding to determine the highest bid made. The highest bidder for a Property Unit will immediately execute the *Sale Contract* form provided by Auctioneer and pay the earnest money deposit, as required. Seller will then consider the highest bid made for a Property Unit and advise Auctioneer of its decision to accept or reject such bid. Seller will have until Friday, December 4, 2009 at 5:00 p.m. to make this decision. During the period that Seller is considering whether to accept or reject the highest bid made for a Property Unit, the Escrow Agent will hold the subject *Sale Contract* and the Bidder's earnest money deposit in escrow. If Seller approves and accepts the *Sale Contract*, Auctioneer will notify Buyer (by telephone, email, or facsimile transmission) not later than Friday, December 4, 2009 at 5:00 p.m. CST. Bidder would then become the Buyer for the subject Property and Seller and Buyer would proceed to fully perform their respective duties, obligations, and responsibilities contained in the *Sale Contract*. Should Auctioneer not notify Bidder by the date and time specified above that Seller has approved and accepted the *Sale Contract* and agreed to make the sale and conveyance of the subject Property to Bidder, Bidder's bid

and prospective purchase of the subject Property will be deemed to be disapproved by Seller and will immediately be cancelled, without any further action required by Seller, Bidder, or Auctioneer, and the *Sale Contract* will immediately become null, void, and of no force or effect. Seller will then have no obligation to sell and convey the subject Property to Bidder under the *Sale Contract* and the Escrow Agent will immediately mark the *Sale Contract* void and refund to Bidder the entire earnest money deposit that Bidder paid upon executing the *Sale Contract*. Neither Seller nor Auctioneer will thereafter have any duty, obligation, responsibility, or liability of any kind or amount whatsoever to Bidder, with regard to the *Sale Contract* or their related dealings and, likewise, Bidder will have no such duty, obligation, responsibility, or liability of any kind or amount whatsoever to either Seller or Auctioneer.

11. *SALE CONTRACT*: This is a cash sale and not contingent upon any matter, including Buyer obtaining financing, except as specifically stated in these *Terms of Auction* or the *Sale Contract*. Buyer will 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”) will 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*. These *Terms of Auction* are incorporated into the *Sale Contract* which defines the entire agreement between Seller and Buyer. These *Terms of Auction* complement the *Sale Contract* and, in the event of any conflict between them, the *Sale Contract* will control in all instances. Buyer will execute the *Sale Contract* and no addition, deletion, or revision will be permitted.

12. *DEPOSIT*: Buyer will immediately pay to the Escrow Agent, in U. S. Dollars, an earnest money deposit of Ten-Percent (10%) of the total contract price Per Property or One-Thousand Dollars (\$1,000.00) whichever is greater (“deposit”). The buyer’s registration fee (cashier’s check of \$1,000.00) will be endorsed over to the Escrow Agent and this amount will be applied towards the 10% deposit. The difference between the 10% deposit and the \$1,000.00 bidder registration fee may be paid by buyer in the form of a personal or company check. 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 Seller has designated an Escrow/Closing Agent for each Property and all Closings will be conducted at the office of the designated Escrow/Closing Agent on or before 5:00 p.m., December 21, 2009 (“closing date”).

14. *FINANCING*: Promotional financing is available through Wells Fargo Home Mortgage to all buyers of auction properties subject to credit approval. Credit qualifications as well as other terms and conditions may apply and are subject to change. For more information, contact Mari Stoeger or Roxanne Brooks at Wells Fargo Home Mortgage, telephone: (228) 604-2597 or e-mail them at maribel.c.stoeger@wellsfargo.com or roxanne.m.brooks@wellsfargo.com.

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, will 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 will 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, will initially be paid equally by them. The prevailing party will be entitled to collect from the other its full costs associated with the arbitration, including reasonable attorneys’ fees. All aspects of any arbitration will be permanently kept confidential and not disclosed in any form or manner to any entity, media, or person, and the parties will 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 will accrue, and the two (2) year limitation period will 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 will be exclusively construed and governed in accordance with the laws of the state where the Property is located, without regard to its conflict of laws principles. The exclusive jurisdiction and venue for any controversy or claim between the parties will be the city/county where the Property is located.

18. *MISCELLANEOUS:* These *Terms of Auction* will 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 these *Terms of Auction* will be made, except by Auctioneer's written revision or oral announcement at the Auction.

ADDITIONAL DISCLOSURES

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. Levels of radon gas that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit.

Lead-Based Paint: 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*.

Association Memberships: Some Properties may be part of an Association in which Buyer automatically becomes a member of said Association by purchase of a Property. Buyer is subject to all Association fees, which may include, but are not limited to, assessments, common expenses, and capital contributions.

Property Tax Disclosure Summary: Purchaser should not rely on Seller's current property tax assessment on the Property as being indicative of the amount of tax that will be owed on the Property in the future. A change of ownership or improvement of the Property may trigger a tax reassessment for the Property and could result in higher taxes being assessed to Purchaser. If you have any question concerning valuation or taxation of the Property, you should immediately contact the municipal treasurer's office for further information.

Closing Costs: Buyer will be responsible for paying the following closing costs, including but not limited to the following:

(a) **For a Sale Contract of \$25,000 or less** (high bid price; prior to inclusion of buyer's premium), the preparation of the deed will be paid by the Seller. Buyer will be responsible for all closing expenses and costs incurred in connection with the Buyer's purchase of the Property, including all utility costs and expenses incurred by any party in connection with the Property, whether or not such costs or expenses are assessed against the Property will be paid by the Buyer. The expenses and costs to be paid by the Buyer include, but are not limited to, escrow/closing fees charged by the title/closing company, preparation of the Title Commitment and the premium for the Title Policy, documentary stamp fees (if applicable), ad valorem and transfer taxes, outstanding back taxes, if any, and recording fees. The Seller will convey the Property to Buyer by General Warranty Deed.

(B) **For a Sale Contract above \$25,001** (high bid price; prior to inclusion of buyer's premium), Seller will pay the costs associated with the preparation of the Deed and all other conveyance documents, one-half of the escrow fees charged by the Title Company, the premium for the Title Commitment and Title Policy, and Seller's attorneys' fees. All other costs and expenses incurred in connection with the sale of the Property will be paid by Buyer. The Property will be conveyed by Seller to Purchaser by General Warranty Deed.

Occupied Properties: Certain Properties, as identified in the "Additional Property Specific Disclosures" are currently occupied by tenants. Seller has provided copies of any leases which will be posted by Auctioneer on auction day for inspection and also included in the Property Information Packet available at www.jpking.com. Tenant security deposits, if any, will be credited to the Buyer at closing. Rent will be pro-rated between Seller and Buyer through the date of closing, with the day of closing being credited to the Buyer.

Flood Zone: Some Properties, or portions thereof, may be located within a flood zone.