

# J. P. KING AUCTION COMPANY, INC.

## TERMS OF AUCTION

MERCER ISLAND MANSION  
MERCER ISLAND, WA  
Tuesday, August 30, 2011, 2:00 P.M. (PT)

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 Washington broker, Elaine Sutter ("King's Broker") whose address is 27329 Northridge Rd. Davenport, Washington 99122 (King and King's Broker referred to herein collectively as "Auctioneer") have contracted with David A. Sandwith, as Family Trustee of the Perpetual Asset Shield Trust FBO David A. Sandwith ("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. The media equipment and televisions as listed on the inventory attached to the Sale Contract will be conveyed with the home.
- 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, inspect, and conduct due diligence on the Property, any occupancy of it, 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, 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. Bidder has either performed all inspections and other due diligence that it deems necessary in advance of bidding in the Auction, or Bidder understands and fully accepts the risk of not having done so. The Property will not be open for inspection following the Auction through the time of closing of the sale. Except to the extent required by law, Seller and Auctioneer are not required to update any information provided or published and will have no liability whatsoever 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, directors, employees, members, officers, and representatives will have no liability whatsoever. The Property will be offered "**AS IS, WHERE IS, WITH ALL FAULTS.**" 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:** Unless otherwise disclosed, the Property will be offered for sale and conveyed by deed free and clear of all liens, mortgages, deeds of trust, delinquent taxes, assessments and warrants, but subject to all non-monetary encumbrances such as conditions, covenants, deeds, easements, reservations, restrictions, right-of-ways, title exceptions, zoning regulations 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. 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. Asbestos was commonly used in building construction prior to 1981 and can pose a significant health risk if disturbed and or dislodged in a way that causes asbestos fibers to be released. This can result from pounding, sanding, sawing, scraping, tearing,

removing, or other remodeling procedures involving asbestos-containing material. Radon is a radioactive gas that comes from the natural breakdown of uranium in soil, rock, and water. It is drawn into buildings through foundation and other openings to the soil. The U.S. Environmental Protection Agency and Surgeon General recommend all homebuyers have an indoor radon test conducted. Radon is a Class-A carcinogen and the second leading cause of lung cancer in the U.S. A building built, improved, or renovated during the approximate timeframe beginning in 2004 to present could contain defective drywall primarily manufactured in China. The presence of Chinese or other defective drywall has been linked to corrosion and significant damage to structural systems and other elements within and on affected properties. Chinese or other defective drywall is reported to emit a strong sulfur-like odor or fume which may also cause persons to experience health problems. The only cure known for Chinese or other defective drywall is to remove and replace it. Seller and Auctioneer notify Bidders of the potential issues and problems involved with Chinese or other defective drywall and make no representation of its existence or absence from the Property and specifically disclaim any and all responsibility or liability whatsoever to Bidder, Buyer, or anyone else if it is present.

**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 One Hundred Thousand Dollars (\$100,000.00) 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 will 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:** The Property is scheduled for auction with reserve subject to Seller's acceptance of the highest bid price. 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, and after the Auction. Unless otherwise noted, Seller will not bid. Bidder will not retract any bid.

**11. SALE CONTRACT:** Bidder should carefully read and understand the Sale Contract before bidding in the Auction. The Property will be offered subject to the terms of the Sale Contract which is not negotiable. This is a cash sale and not contingent upon any matter, including Buyer obtaining financing. Buyer will immediately execute the Sale Contract and all related documents presented by Auctioneer to bind Bidder and Seller to a 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. Buyer will execute the Sale Contract and no addition, deletion, or revision will be permitted. The Sale Contract will exclusively govern the Parties' rights, responsibilities, and remedies with respect to any sale of the Property and all related matters. The sale must close within 30 days following the Auction.

**12. DEPOSIT:** Buyer will 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 ("Earnest Money Deposit"). If for any reason Buyer fails to timely execute the Sale Contract or pay the 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.

**13. 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.

**14. ARBITRATION:** Any action, claim, controversy, counterclaim, dispute, or proceeding concerning Auctioneer or Auctioneer's Broker, 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 terms of this Paragraph 14 do not apply to any other dispute arising out of the Auction. The parties will submit any claim or controversy governed by this Paragraph 14 to Judicial Arbitration Mediation Service or its successor in Seattle, Washington

(either referred to herein as "JAMS") for mediation. A Party may initiate mediation by providing JAMS and the other Party with a written request setting forth the claim or controversy and the relief requested. The Parties will cooperate in selecting a mediator from JAMS's panel of neutrals, scheduling the mediation, participating in good faith, and will share the costs equally, except each will solely pay its own attorneys' fees. Any matter not resolved through mediation will be submitted by the Parties to JAMS for final and binding arbitration to be decided by one (1) arbitrator selected from JAMS's panel of neutrals, pursuant to the terms herein and JAMS's Comprehensive Arbitration Rules & Procedures. A Party may initiate arbitration by filing a written demand at any time following the initial mediation session, or forty-five (45) days after the date of filing the written request for mediation, whichever occurs first. Unless the Parties otherwise agree, the mediator will be disqualified from serving as an arbitrator. The prevailing Party will be entitled to collect from the other its full costs associated with the arbitration and any subsequent enforcement, including reasonable attorneys' fees. This section may be enforced by any court of competent jurisdiction. Any arbitration must be commenced within two (2) years from the date when the cause of arbitration accrued 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, injury, or other Party Matter event is sustained and not when the resulting cost, damage, deficiency, expense, harm, injury, liability, loss, obligation, or penalty is discovered. Any mediation or arbitration will be kept permanently confidential and not disclosed by the Parties in any manner.

**15. CHOICE OF LAW, JURISDICTION, AND VENUE:** Any Auction matter will be exclusively construed and governed in accordance with the laws of the State of Washington, without regard to its conflict of laws principles. The exclusive jurisdiction and venue for any controversy or claim between the Parties will be the County of King in the State of Washington.

**16. MISCELLANEOUS:** The 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 the Terms of Auction will be made, except by Auctioneer's written revision or announcement at the Auction.