** REAL ESTATE AUCTION **

**1008 S. Holly St., Medford , OR 97501**

**Saturday July 19, 2014**

**TERMS AND CONDITIONS OF SALE**

These Terms and Conditions of Auction supersede all other printed and oral statements and will be attached to and become part of the **Real Estate Purchase and Sale Agreement (“further known as Agreement”),** which will contain the precise conditions of sale and will prevail over this document and any other agreement between Buyer and Seller. John L. Scott Real Estate, Medford (“further known as JLS”) & Wall Auctioneers (“further known as Auctioneer”) has entered into a contract with **Seller (hereinafter jointly referred to as Seller)** to sell certain property known as, Real Property(“**further known as Property”)**, at auction.

**BIDDING**: ALL BIDDERS MUST REGISTER AND RECEIVE A BID NUMBER TO BID IN THE AUCTION SALE.

To obtain a bidder’s number for the auction sale, prospective buyer must provide at registration either:

1. CERTIFIED CHECK IN THE AMOUNT OF $10,000.00 MADE PAYABLE TO THE BIDDER(THEMSELVES) , OR

2. A BANK LETTER OF GUARANTY ALONG WITH A PERSONAL CHECK FOR $10,000.00 ON SAID ACCOUNT.

The winning bidder will use this $10,000.00 as a **non-refundable Earnest Money Deposit (“Deposit”)** toward the purchase & sale of the Real Property located at 1008 S. Holly St., Medford, OR 97501 (Map Taxlot: 371W31BA8400).

The successful bidder shall be required to sign the **Purchase and Sale** **Agreement** and pay the **Deposit** immediately following the Auction. The total purchase price shall be the high winning bid plus any Buyer’s Premium if applicable.

 The **Deposit** will be held in a non-interest-bearing escrow account under the control of Titcor Title, 1555 E. McAndrews Rd. Suite 100, Medford, OR as Escrow agent, phone # 541-779-2811 pending closing and in accordance with the terms of the Agreement. No disbursement will be made from this escrow account until closing or as otherwise set forth in accordance with the Agreement.

In the event the Buyer fails to close and pay his/her balance when due, the Deposit may be retained by Seller as liquidated damages in addition to any other remedies available to the Seller.

**CLOSING:** Closing shall take place on or before thirty(30) days from the sale date, or in accordance with the Agreement or such date as mutually agreed upon by Seller and Buyer in writing. Taxes for the year shall be prorated to the date of the Closing. Buyer will be responsible for any subsequent assessments for prior years due to any change in the usage of the property, if applicable.

Seller shall have paid all property taxes that are due and owing as of the Closing Date. Seller will deliver a fee simple title, as is, free and clear of all liens and encumbrances, subject to current taxes, assessments, easements, rights-of-way, conditions, restrictions, other matters of record and any printed exceptions specified in the preliminary title report. All prospective bidders should consider engaging counsel of their own choosing to examine the commitment for title insurance and all matters referred to therein as affecting the state of the title of property. Seller, Auctioneer, John L. Scott, Medford and it’s agents make no warranties or representations, expressed or implied, written or oral, with respect to the state of title on the property, the title company, or of the correctness or completeness of the information contained in the commitment for title insurance. Buyer shall pay closing costs including, but not limited to document preparation fees, document transfer tax, recording fees, perorations and closing fees. Possession Shall Be Upon Closing and Funding.

 **FINANCING:** Buyer is required to obtain your own financing. The sale will not be contingent upon obtaining financing and will not be extended for that purpose. Successful bidder must have adequate financial resources to fulfill bid commitments. If you successfully bid on the Property, you contract to purchase the Property for the bid amount plus any buyer’s premium, if applicable. Further, by participating in the Auction you are representing to John L. Scott Real Estate, Auctioneer and Seller that you have adequate financing and you have done sufficient due diligence to bid on the property and pay the amount bid. By participating in the Auction, you acknowledge that JLS, Auctioneer and Seller will be injured if you do not have sufficient financing or have not already satisfied yourself as to the condition of the Property and its value, including losses of resources used to market the Property and conduct the Auction. .Buyer who fails to qualify for his/her own financing, and subsequently fails to close the sale for that reason will be required to release the entire Earnest Money Deposit to Seller as liquidated damages.

**AGENCY RELATIONSHIP:** John L. Scott Real Estate is acting as agent of the Seller in this transaction and is to be paid a fee by the Seller pursuant to a separate written agreement between Seller and John L. Scott Real Estate. Wall Auctioneers and Steven Wall are subagents of John L. Scott Real Estate. Neither John L. Scott Real Estate, nor it’s subagents, Wall Auctioneers or Steven Wall are acting as an agent of the Buyer for this transaction. Any third party broker is not a subagent of John L. Scott Real Estate. John L. Scott Real Estate , is the Seller’s agent only and makes no representation concerning this property whatsoever.

**BROKER PARTICIPATION:** Broker must perform the duties below to receive a referral fee:

* Must have current Oregon Real Estate license in good standing
* Review the “Terms and Conditions” with Buyer
* Complete the Broker Registration Form
* Professionally assist buyer and inspect property with buyer
* Attend auction and submit bids with Buyer
* Accompany Buyer to contract room following the auction and sign Agreement

Each step must be completed. If any of these steps have been omitted, the broker will not receive a referral fee. There will be no exceptions. Bidders are required to acknowledge Broker relationship and sign the Broker Registration Form. Each bidder and Broker agree to indemnify and hold harmless Seller and Auctioneer for any and all claims for compensation made by any person or entity in connection with the auction. On-site solicitation of Buyers on the day of the Auction is prohibited and is grounds for removal from the auction at the sole discretion of the Auctioneer. No commissions will be considered earned and shall not be paid to a Broker that solicits a Buyer on-site the day of the Auction. Brokers may not represent themselves or any immediate family members.

**DUE DILIGENCE:** All information contained in the advertising and promotion of this sale has been provided by the Seller and is believed to be true and correct. The Auctioneer reserves the right to announce any additional terms and conditions before or during the Auction. John L. Scott Real Estate and its representatives, including the auctioneer make no warranty or guarantee as to the correctness and completeness of any information.

The Property will be sold subject to all easements, restrictions, any existing right-of-ways, public utilities, Health Dept. regulations, encroachments, zoning ordinances, and all other matters now of record.

The information set forth herein has not been independently verified by Seller or John L. Scott Real Estate or its representatives. Its accuracy is not warranted in anyway, including but not limited to information set forth herein concerning utilities, lease information, zoning, acreage of parcel, square footage of improvements and all photographs. Buyer is responsible for verification of the legal description of the property. Seller and Auctioneer make no warranty expressed or implied as to the accuracy of the same.

Bidder(s) have inspected the Property and are not relying on any warranty or representation of John L. Scott Real Estate, it’s agents or Auctioneer and that the real property located at 1008 S. Holly St., Medford, OR is sold in “**AS IS, WHERE IS”**, condition with no warranties by seller, John L. Scott Real Estate or auctioneer, expressed or implied, of any kind whatsoever, including those as to the fitness for a particular use or purpose, habitability, merchantability, quality of construction, or environmental condition. Any decision to purchase or not to purchase is the sole and independent business decision of the potential purchaser. The sale is **not** contingent upon inspection and will not be extended for that purpose. No recourse or cause of action may be taken against John L. Scott Real Estate, the Auctioneer or Seller should purchaser become dissatisfied with their decision, whatever it may be, at a later date. The Buyer is entitled to rely solely on their own inspections and evaluations, and not on any representations from seller or auctioneer. The bidder is buying the property AS WHERE IS and WITH ALL FAULTS. All bidders are encouraged to personally inspect the Property and any documentation relating hereto.

All information and materials provided by John L. Scott Real Estate and Auctioneer is subject to inspection by all appropriate parties and John L. Scott Real Estate assumes no liability for its accuracy, errors, or omissions or its Agents, the Seller or its agents. Prospective bidders should independently verify any information being materially relied upon in making a decision to purchase. Due Diligence is solely the responsibility of the prospective buyer.

The **Seller** has the right, at his/her sole discretion, for any or no reason, to withdraw the Property, prior to the commencement of the bidding, before or at the Auction, on the day of sale.

**ALL SALES ARE FINAL. BY PLACING A BID YOU ARE ENTERING INTO A LEGAL CONTRACT TO PURCHASE.**

A **2%** buyers premium will be added to the final bid.

 Announcements made on the day of the auction sale take precedence over any previous printed material. Wall Auctioneers reserves the right to postpone or cancel the auction sale for any reason whatsoever, and no Bidder or prospective Bidder shall have any claim as a result thereof, including consequential damages. All decisions of the auctioneer shall be final, including but not limited to, decisions on matters such as method of bidding, increments of bidding, disputes among bidders and any other issues arising before, during or after sale.

The Auctioneer reserves the right to deny any person admittance to the Auction, to postpone or cancel the Auction, to withdraw the property from the Auction and to change any terms of the Auction or particular conditions of the sale upon announcement prior to or during the course of the Auction.

 Buyer and anyone claiming by, through or under Buyer hereby fully and irrevocably release Seller, John L. Scott Real Estate and their representatives and agents from any and all claims that buyer may now have or hereafter acquire against seller and broker, their representatives and agents for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to any construction defects, errors, omissions or other conditions, including environmental matters, affecting the property, or any portion thereof. This release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist in his favor which, if known by buyer, would materially affect Buyer’s release of Seller, Broker and Auctioneer.

Buyer assumes entire responsibility and liability for any claim or actions based on or arising out of injuries, including death, to persons or damages to or destruction or loss of property, sustained or alleged to have been sustained by Buyer, its agents, principals, in connection with or to have arisen out of or incidental to the auction, including but not limited to the performance of this contract, regardless of whether such claims or actions are founded in whole or part upon alleged negligent or negligent misrepresentations of Seller, John L. Scott Real Estate, their representatives or agents. Buyer further agrees to indemnify and hold harmless Seller, John L. Scott Real Estate and their representatives and agents in respect of any such matters and agrees to defend any claim or suit or action brought against Seller, John L. Scott Real Estate and their representatives and agents.

DISPUTE RESOLUTION--AGREEMENT FOR ARBITRATION

Bidder (s) and John L. Scott Real Estate, it’s agents & representatives & "Wall Auctioneers, LLC." agree that any disputes, controversy, or claims between the Bidder(s) and John L. Scott Real Estate, it’s agents & representatives and "Wall Auctioneers” that arise out of or relate in any way to this auction sale and any events occurring before or after the auction sale shall be settled by arbitration and shall be administered by the American Arbitration Association in accordance with Title 9 of the United States Code (United States Arbitration Act) and the commercial Arbitration Rules of the American Arbitration Association.

By way of example only, such claims include, but are not limited to, claims for fraud, breach of contract, negligence, wantonness, and or any other action or claim in contract or tort. The parties agree to be bound exclusively by final and binding arbitration as described herein. Judgment on the award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.

Bidder(s) and John L. Scott Real Estate, it’s agents & representatives &"Wall Auctioneers, LLC” shall upon the written request of the other party, promptly provide the other party with copies of documents on which the producing party may rely in support of or in opposition to any claim or defense. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the Arbitrator(s) which determination shall be conclusive. All discoveries shall be completed on or before ninety (90) days after the appointment of the Arbitrator(s). At the request of

a party, the Arbitrator(s) shall have the discretion to order examination by deposition of witnesses to the extent the Arbitrator(s) deems such additional discovery relevant and appropriate. However, depositions shall be limited to a maximum of three (3) per party and shall be held within forty-five (45) days of the date of the Order of the ' Arbitrator approving the taking of depositions. Each deposition shall be limited to a maximum of six hours duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. '.The arbitrator(s) will have no authority to award punitive or other damages not measured by the prevailing party’s actual damages. Bidder(s) and John L. Scott Real Estate, it’s agents & representatives & "Wall Auctioneers, LLC" shall bear their

own costs and expenses (including attorneys' fees) and an equal share of the arbitrators' fees and the administrative fees of arbitration.

The award of the arbitrator(s) shall be accompanied by a reasoned opinion, signed by the arbitrator(s) and shall include a statement regarding the reasons for the disposition of any claim including [Hidings of fact and a breakdown as to specific claims. Except as may be required by law, neither a party nor an arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. The place of arbitration shall be Medford, Oregon.

Bidder(s) and John L. Scott Real Estate, it’s agents & representatives & "Wall Auctioneers, LLC agree and acknowledge that the business of John L. Scott Real Estate, it’s agents & representatives & "Wall Auctioneers, LLC” and this auction sale involve interstate commerce. Bidder(s) and John L. Scott Real Estate, it’s agents & representatives &"Wall Auctioneers, LLC-" agree that Bidder(s)' execution of this Agreement to Arbitrate is an integral part of John L. Scott Real Estate, it’s agents & representatives & "Wall Auctioneers, LLC" agreement to allow Bidder(s) to participate in the bidding at the auction. Bidder(s) and John L. Scott Real Estate, it’s agents & representatives & "Wall Auctioneers, LLC” further agree that there is adequate consideration between the parties for this Dispute Resolution--Agreement to Arbitrate. Bidder(s) and John L. Scott Real Estate, it’s agents & representatives & "Wall Auctioneers, LLC" agree to keep the dispute resolution and arbitration proceedings confidential except as necessary to effectuate the resolution of the dispute by arbitration.

PLEASE ACKNOWLEDGE BELOW ITEMS.

\_\_\_\_ I have read and agree to the Terms and Conditions of the Auction.

\_\_\_\_ I have personally inspected the property and all improvements.

\_\_\_\_ I accept full responsibility for due diligence.

\_\_\_\_ I understand that the improvements, business inventory, assets and goodwill are being sold asis, without covenant or warranty, expressed or implied.

\_\_\_\_ I understand that, in the event I am the winning bidder of the Property & Business, and if I fail to close within thirty(30) days from the date of sale, 100% of my Earnest Money Deposit may be forfeited.

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