

## TERMS OF SALE – On line Auction; 23 Burncoat Street, Worcester MA.

### **THIS IS AN INTERNET ONLY REAL ESTATE AUCTION FULL LEGAL TERMS FOLLOW**

- 1) AUCTION CLOSING: “**Dynamic Ending**” Tuesday November 25<sup>th</sup>, 2008 bidding closes 6 PM unless bidding occurs in the last moments of the sale in which case the computer auction will be automatically extend an additional 15 minutes to allow for competitive bids to be administered. This process will repeat indefinitely until no further bidding occurs in the final 15 minutes of the auction, at which point the timer will count down and display the word “**ended**”.
- 2) REGISTRATION: Interested parties must agree with the terms of sale to participate in bidding. Register on-line with major credit card. Bidder's credit cards will NOT be charged however will be pre-authorized for the amount of \$1000 in case of default. Bidders will be authorized to participate when auction firm receives adequate bank pre-approval and signed lead pain disclosure via fax or e-mail.
- 3) BIDDING ERRORS: Bidders agree to be responsible for reviewing their own bids. It is customary that many bidders increase their own bid to price the property out of reach of other bidders. Immediately review your bids once submitted. If you mistakenly increase your own bid, or make a typographical error you must immediately contact our office by email. (This must be an immediate written request). All bids are time stamped. We will not reverse bids after the auction has closed, and will deem all bids that not immediately reported “erroneous” binding.
- 4) MAXIMUM BIDDING FEATURE: You may enter your bids one at a time or to be certain that you are not outbid you may opt to enter a “Maximum Bid” that will be administered competitively by proxy at the pre established increment unique to this auction event. You may review this increment within the auction applet associated with the subject auction.
- 5) BID NOTIFICATION: If you have been outbid you will be notified by email until the close of the sale. To quickly review your bids and see if you are in a desired position you can utilize the 'review bids' feature. Properties that you have been outbid on will be clearly marked.
- 6) PARTICIPATION: Through this medium, internet bidding service offered to our clients and prospective bidders. Those parties who agree to utilize this convenient service agree not hold Strategic Auctions, Inc, its auctioneers, staff or its client responsible for technical issues that may prevent connectivity or any failure that might cause loss of the auction applet during bidding or any failure that may cause inability to log on, failure to send e-mail outbid notifications or any other platform or software issue or any other usability failure that might inhibit a user's ability to participate.
- 7) BROKER PARTICIPATION: Strategic Auctions Inc. is an MLS participating firm with offices in Worcester and Braintree, Massachusetts. A cooperative commission upon closing is offered on this property to the buyer's agent who is the procuring cause of sale by representing a client in a successful sale as set forth by the terms of MLSPIN regulating policy. To be compensated in this auction process the buyer's must complete and the on line buyer's agent registration form stating the relationship with your client **prior to bidding**. This time stamped on-line form is conveniently located on the website relative to the subject property. It's quick, easy and required for compensation. Please call Strategic Auctions Inc. with any questions 877-426-8175 NOTICE: We encourage all buyers to utilize the expertise of a buyer's agent in this process however Strategic Auctions Inc. will not recognize any buyer's agent for compensation by any party entering into the bidding process without registering the buyer's agent prior to the bidding process.
- 8) MINIMUM SALES PRICE: This property will be sold to the high bidder at the specified minimum bid or any higher level at the conclusion of this computer generated on line auction, unless a pre auction offer is accepted by the seller through an alternate MLS “exclusive right to sell” listing, in which case this auction would then be cancelled.
- 9) OPEN HOUSE/ VIEWING AND SHOWINGS. Property will be available for viewing at the date and time of any scheduled open house published in newspapers and our website. Private showings may be accommodated with reasonable notice. Please call Strategic Auctions, Inc. for scheduling.
- 10) PROPERTY INSPECTION: It is the Buyer's sole responsibility to: a) perform all inspections (legal, environmental, economic or otherwise) of the Property and to be satisfied as to its condition prior to bidding; b) review all property information and due diligence materials; c) independently verify any information they deem important including information available in public records; and d) inquire of public officials as to the applicability of and compliance with land use and environmental laws, zoning, building and health & safety codes and ordinances and any other local, state or federal laws and regulations. A current mechanical inspection report is available on line for the convenience of interested parties only. Any buyer wishing to schedule their own inspections may do so at their own expense prior to bidding but post auction inspections or price negotiations will not be allowed. This method qualifies all buyers equally.

- 11) REPRESENTATION OF INFORMATION: All information printed or published relating to this property and all promotional materials, including, but not limited to, photographs, directions, acreage, square footage, dimensions, zoning, maps used for promotion, environmental conditions, taxes, etc., was provided by or on behalf of the Seller and is believed to be correct; however, neither the Seller nor the Auctioneer makes any promise, representation, guarantee, or warranty as to the accuracy or completeness of such information. There is no obligation on the part of Seller or Auctioneer to update any information. Buyer and Buyer's broker shall be responsible for verifying all acreage and square footage amounts through public records.
- 12) ENTIRE AGREEMENT: All information distributed to a bidder and all other materials or information (including any oral agreements or representations) shall be subject to and superseded by the terms of the "agreement to purchase real estate" contract, the Terms & Conditions of Auction Sale, the Lead Based Paint Disclosure and any other contract documents which shall constitute the entire agreement between the parties. Download or contact Strategic Auctions, Inc. for a copy of the "Agreement to Purchase Real Estate" contract, Terms & Conditions of Auction Sale and the Lead Based Paint Disclosure and any other required contract documents prior to auction for review.
- 13) ENVIRONMENTAL AUDIT: If a residential auction property was built prior to 1978, each bidder will receive a copy of a Lead Based Paint Disclosure from the Broker. For all residential properties built prior to 1978, the Bidder must sign the Lead Based Paint Disclosure to ratify the contract. For any auction property, the Seller, Auctioneer, Auction Firm, Broker or their Agents bear no responsibility to remove or to pay to remove any lead-based paint, lead-based paint hazard, asbestos, radon, ground pollution and/or any other environmental contamination from any auction property prior to, on the day of or after settlement. As post sale inspections are not allowed in this process by engaging in the auction the bidder hereby agrees to arrange for an opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; (during a mutually agreed upon period **prior** to bidding) or agrees to waive the opportunity to do so in writing upon the lead paint property transfer notification certification form.
- 14) PURCHASE AND SALES AGREEMENT: The successful bidder agrees to sign the "Agreement to Purchase Real Estate" contract and furnish the required minimum down payment to the auctioneers no later than 24 hours following the conclusion of the auction. Failure to do so will be considered a default, (see default paragraph 22 herein). Digital signatures and wire transfer of funds are accepted.
- 15) DOWN PAYMENT: This auction requires a minimum of \$5000. earnest money furnished to Strategic Auctions Inc. from the successful bidder to serve as the down payment payable at signing of the "Agreement to Purchase Real Estate" contract . Said down payment will be deposited in a non interest bearing escrow account with any balance due upon closing.
- 16) CLOSING DATE: Closing is to occur no later than Monday December 29<sup>th</sup>, 2008.
- 17) CLOSING COSTS: The Successful Bidder agrees to pay for all their closing costs permitted under state law. This includes, but is not limited to any points, loan origination fees, attorney's fees, lender required inspections, mechanical or insect inspections, courier fees, lender fees, transfer taxes and recordation fees. In some cases, the closing costs can be financed. Please consult your loan officer.
- 18) CLOSING DOCUMENTS: Seller shall provide a good clear record and marketable title at closing. Seller has represented to Auctioneer that title conveyed shall be insurable and free and clear of liens or encumbrances. In the event that any title issues are discovered the Seller has the right to extend the closing date up to 30 additional days to perfect title. The sole remedy for any unforeseen title defects that are not able to be corrected during this interim shall be the refund of any deposits to the buyer and the cancellation of the purchase agreement.
- 19) CONTINGENCIES: All sales are made without contingencies. It is strongly recommended that prospective Buyers investigate available financing prior to the Auction. Each bidder is responsible for determining availability and qualifying for such financing.

- 20) REPRESENTATIONS AND WARRANTIES: All property is being sold "As-Is, Where-Is" and "With All Faults" as of the Closing Date. Neither the Seller, Auctioneer, Strategic Auctions, Inc., Broker nor any of their agents, contractors, attorneys, officers or directors ("Agents") makes any representations or warranties with respect to the physical condition of the land or any improvement thereon, the Property's fitness for any particular purpose, the Property's merchantability, or any other warranty, express or implied. No representations or warranties are made with respect to the subject premises, as same address zoning, site plan approval or other federal, state or local laws. Any maps, plats, surveys, site plans, subdivision maps or the like have been supplied by seller and broker and auctioneer make no representation, warranties or guarantees with respect to locations, dimensions, tract sizes, suitability for use, or subsurface conditions. The Seller, Auctioneer, Auction Firm, Broker and their Agents, specifically disclaim any warranty, guaranty, or representation, oral or written, past or present, express or implied concerning the Property. Bidders are expected to undertake their own independent physical inspection of the Property prior to bidding. If the Successful Bidder's lender requires any repair(s) and/or treatment(s) to be done to the property, it is the Successful Bidder's responsibility to pay for those repair(s) and/or treatments(s) and shall not be considered a contingency to be met by the Seller under any agreement executed between the parties hereto. If the local or state laws require a property Disclaimer or Disclosure from the Seller, the Seller will meet this requirement and Strategic Auctions, Inc. will provide any signed documentation from the Seller to all prospective bidders.
- 21) BUYERS PREMIUM: There will be **NO BUYER'S PREMIUM** assessed at this auction sale. The bid (or offered) price will become the contract price, if confirmed.
- 22) DEFAULT: If failure to comply with these Terms & Conditions of Auction Sale or the "Agreement to Purchase Real Estate" contract, or closing is delayed by actions or lack of actions on the part of the Successful Bidder, default will be declared. When default is declared, credit card pre-authorizations will be charged as a transaction and the all Earnest Money will be retained by the Auctioneer as liquidated damages, representing the negotiated and fair measure of damages, not to be construed as a penalty and this shall be seller's sole and exclusive remedy at law or equity.
- 23) AGENCY REPRESENTATION: By execution of this agreement the bidder acknowledges the auctioneer and broker, Strategic Auctions, Inc., represents the seller only. In all circumstances, the Listing Agent, the Listing Broker, (if any) the Auctioneer and Strategic Auctions, Inc. and its representatives represent the authoritative Seller, except if that Seller allows the designated Broker to be a dual agent.
- 24) DETERMINATION OF DISPUTES. In the case of disputed bids, Strategic Auctions, Inc. shall exercise its discretion in determining the resolution of claims, and such decision is final. Such decision shall not be the subject of any post-auction claims. No transfer shall be recognized from one buyer to another buyer. In the event a dispute should arise after the auction, Strategic Auctions, Inc. records shall be conclusive.
- 25) INDEMNITY PROVISIONS: By execution of this agreement, bidder agrees to bear responsibility for any charges, claims or expenses incurred by reason of any violation, breach or default in respect to these terms and conditions, including, reasonable attorney's fees, court costs, the cost of re-sale, and remarketing costs. The foregoing remedies are not exclusive.
- 26) GENERAL PROVISIONS: This agreement shall not be interpreted or construed in a manner which creates a negative inference based upon the fact that Strategic Auctions, Inc. prepared the agreement. Facsimile and digital signatures shall be considered binding. In case any section, clause, sentence, paragraph or part of this contract shall for any reason be judged by any court of competent or final jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this contract, but shall be confined in its operation to the section, clause, sentence, paragraph or part thereof directly involved in the controversy in which said judgment shall have been rendered. Further, this contract shall be subject to and interpreted by the laws of the Commonwealth of Massachusetts.
- 27) INTERPRETATION: Interpretation of this agreement shall be consistent with the Agreement to Purchase Real Estate, it being the stated intent that this document and the Agreement to Purchase Real Estate are to be read as integrated documents conferring the same rights and obligations.
- 28) ALTERNATE BID ADMINISTRATION: Strategic Auctions, Inc. as auctioneers, reserve the rights to receive and administer telephone, proxy, absentee, internet or any other technical means of bid submission in conjunction with the timed auction event and to administer those bids within the applet on the behalf of any buyer or seller.
- 29) Time is of the essence as to all terms of this contract.
- 30) If any terms of this document conflict with any part of the "Agreement to Purchase Real Estate" contract, this document shall supersede.