

Real Estate Contract (at Auction)

SAMPLE



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FORM SERIAL NUMBER: 092485-600145-6162752

1. PARTIES: _____

(Individually, or collectively, the "Buyer") offers to purchase, subject to the terms and conditions set forth herein, from the undersigned (Individually or collectively, the "Seller"), the real property described in Paragraph 2 of this Real Estate Contract (the "Property"):

2. ADDRESS AND LEGAL DESCRIPTION: _____

3. PURCHASE PRICE:

PURCHASE PRICE PURSUANT TO CASH:

Cash at Closing in the exact sum of

\$ _____

This contract is not contingent upon financing and/or appraisal.

4. AGENCY: (check all that apply)

A. LISTING FIRM AND SELLING FIRM REPRESENT SELLER: Buyer acknowledges Listing Firm and Selling Firm and all licensees associated with those entities are the agents of Seller and it is Seller who employed them, whom they represent, and to whom they are responsible. Buyer acknowledges that before eliciting or receiving confidential information from Buyer, Selling Firm, which may be the same as Listing Firm, verbally disclosed Selling Firm represents Seller. Buyer understands they are NOT represented in this transaction and rely only on the results of their own findings.

B. LISTING FIRM REPRESENTS SELLER AND SELLING FIRM REPRESENTS BUYER: Buyer and Seller acknowledge Listing Firm is employed by Seller and Selling Firm is employed by Buyer. All licensees associated with Listing Firm are employed by, represent, and are responsible to Seller. All licensees associated with Selling Firm are employed by, represent, and are responsible to Buyer. Buyer acknowledges Selling Firm verbally disclosed Listing Firm represents Seller. Seller acknowledges Listing Firm verbally disclosed Selling Firm represents Buyer.

C. LISTING FIRM AND SELLING FIRM ARE THE SAME AND REPRESENT BOTH BUYER AND SELLER: Seller and Buyer hereby acknowledge and agree Listing and Selling Firm are the same and all licensees associated with Listing and Selling Firm are representing both Buyer and Seller in the purchase and sale of the above referenced Property and Listing/Selling Firm has been and is now the agent of both Seller and Buyer with respect to this transaction. Seller and Buyer have both consented to and hereby confirm their consent to agency representation of both parties. Further, Seller and Buyer agree:

(i). Listing/Selling Firm shall not be required to and shall not disclose to either Buyer or Seller any personal, financial or other confidential information concerning the other party without the express written consent of that party; however, Buyer and Seller agree Listing/Selling Firm shall disclose to Buyer information known to Listing/Selling Firm related to defects in the Property and such information shall not be deemed "confidential information." Confidential information shall include but not be limited to any price Seller is willing to accept that is less than the offering price or any price Buyer is willing to pay that is higher than that offered in writing.

(ii). by selecting this option 4C, Buyer and Seller acknowledge when Listing/Selling Firm represents both parties, a possible conflict of interest exists, and Seller and Buyer further agree to forfeit their individual right to receive the undivided loyalty of Listing/Selling Firm.

(iii). to waive any claim now or hereafter arising out of any conflicts of interest from Listing/Selling Firm representing both parties. Buyer and Seller acknowledge Listing/Selling Firm verbally disclosed Listing/Selling Firm represents both parties in this transaction, and Buyer and Seller have given their written consent to this representation before entering into this Real Estate Contract.

D. NON-REPRESENTATION: See Non-Representation Disclosure Addendum

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5. **CLOSING COSTS:** Unless otherwise specified, all of Buyer's closing costs are to be paid solely by Buyer except for costs that cannot legally be paid by Buyer. Seller is to pay Seller's closing costs. Buyer and Seller warrant all funds received by Buyer from Seller (or other sources) will be disclosed to the Closing Agent(s) and reflected on the settlement statement(s).

6. **NON-REFUNDABLE DOWN PAYMENT:** The Non-Refundable Down Payment (the "Down Payment") in the amount of \$_____ shall apply toward Buyer's Purchase Price or Closing Costs. If Buyer fails to fulfill his obligations under this Real Estate Contract or Buyer fails to close this transaction, the Down Payment is not refundable to Buyer unless failure to close is exclusively the fault of Seller or if Seller cannot deliver marketable title to the Property. Buyer shall hold Listing Firm and Selling Firm harmless of any dispute regarding the Down Payment. Buyer warrants, represents and acknowledges the check tendered will be honored upon presentation to Buyer's bank, and Buyer shall be in default of this Real Estate Contract if the check is not honored upon first presentation to Buyer's bank. Buyer understands that failure to tender Down Payment as required by this Paragraph 6 shall constitute a breach of this Real Estate Contract. Buyer and Seller agree in the event of any dispute concerning entitlement to Down Payment, Listing Firm may interplead Down Payment into a court of competent jurisdiction, and upon such interpleading of Down Payment, both Listing Firm and Selling Firm shall be released from liability to Buyer and Seller. Listing Firm shall be reimbursed for all costs and attorney's fees from the funds entered for interpleading.

Down Payment is tendered by Buyer in the form of cash check. If Down Payment is tendered by check, it will be made payable to Listing Firm. Down Payment will be deposited by Listing Firm no later than three (3) business days following the date this Real Estate Contract has been signed by Buyer and the Seller.

7. **CONVEYANCE:** Unless otherwise specified, conveyance of the Property shall be made to Buyer by general warranty deed, in fee simple absolute, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the Property. Unless expressly reserved herein, **SUCH CONVEYANCE SHALL INCLUDE ALL MINERAL RIGHTS OWNED BY SELLER CONCERNING AND LOCATED ON THE PROPERTY, IF ANY, UNLESS OTHERWISE SPECIFIED IN PARAGRAPH 24. IT IS THE RESPONSIBILITY OF THE BUYER TO HAVE INDEPENDENTLY VERIFIED AND INVESTIGATED THE EXISTENCE OR NONEXISTENCE OF MINERAL RIGHTS AND ANY LEGAL RAMIFICATIONS THEREOF PRIOR TO SIGNING THIS REAL ESTATE CONTRACT.** Seller warrants and represents only signatures set forth below are required to transfer legal title to the Property. Seller also warrants and represents Seller has peaceable possession of the Property, including all improvements and fixtures thereon, and the legal authority and capacity to convey the Property by a good and sufficient general warranty deed, free from any liens, leaseholds or other interests

8. **TITLE REQUIREMENTS:** Buyer and Seller understand Listing Firm and Selling Firm are not licensed title insurance agents as defined by Arkansas law and do not and cannot receive direct or indirect compensation from any Closing Agent regarding the closing process or the possible purchase of title insurance by one or more of Buyer and Seller. An enhanced version of title insurance coverage may be available to Buyer for this transaction. Discuss enhanced title insurance coverage with the title insurance provider to determine availability and features.

- A. Seller shall furnish, at Seller's cost, a complete abstract reflecting merchantable title to Buyer or Buyer's Attorney.
- B. Seller shall furnish, at Seller's cost, an owner's policy of title insurance in the amount of the Purchase Price. If a loan is secured for the purchase of the Property, Buyer agrees to pay mortgagee's portion of title policy. If Buyer elects to obtain enhanced title insurance coverage, Buyer shall pay for the increase in title insurance cost in excess of the cost of a standard owner's title policy.
- C. Buyer is individually responsible for their own title insurance policy.
- D. Other: _____

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9. SURVEY:

- A. Buyer has been given the opportunity to obtain a new certified survey prior to auction at Buyers expense. Should Buyer decline to obtain a survey as offered in Paragraph 9A of this Real Estate Contract, Buyer agrees to hold the Seller, Listing Firm and Selling Firm involved in this Real Estate Contract harmless of any problems relative to any survey discrepancies that may exist or be discovered (or occur) after Closing.
- B. No survey shall be provided.
- C. Other: _____

If Buyer chose to accept the most recent survey provided by Seller, this survey is for information purposes only and Buyer will not be entitled to the legal benefits of a survey certified in Buyer's name.

10. PRORATIONS: Taxes and special assessments due on or before Closing shall be paid by Seller. Any deposits on rental Property are to be transferred to Buyer at Closing. Insurance, general taxes, special assessments, rental payments and interest on any assumed loan shall be prorated as of Closing, unless otherwise specified herein. Buyer and Seller agree to prorate general ad valorem taxes based on the best information available at Closing. Buyer and Seller agree to hold any Closing Agent(s) selected by Buyer and Seller, Listing Firm and Selling Firm harmless for error in such tax proration computation caused by unknown facts or erroneous information (or uncertainty) regarding the Homestead Tax Exemption adopted by the voters of the State of Arkansas in the Year 2000, as amended from time to time.

11. FIXTURES AND ATTACHED EQUIPMENT: Unless specifically excluded herein all fixtures and attached equipment, if any, are included in the Purchase Price. Such fixtures and attached equipment shall include but not be limited to the following: dishwasher, disposal, trash compactor, ranges, ovens, water heaters, exhaust fans, heating and air conditioning systems, plumbing and septic systems, electrical system, intercom system, ceiling fans, window air conditioners, carpeting, indoor and outdoor light fixtures, window and door coverings and related hardware, gas or electric grills, awnings, mail boxes, garage door openers and remote controls, antennas, fireplace inserts, _____

_____ and any other items bolted, nailed, screwed, buried or otherwise attached to the Property in a permanent manner. Television satellite receiver dish, cable wiring, water softeners, and propane and butane tanks also remain, if owned by Seller. Any items that are not owned by the Seller or do not convey with the Property will be noted in Paragraph 24.

12. INSPECTION AND REPAIRS: Buyer has inspected Property listed in paragraph 2 prior to auction and agrees the sale of the Property is made strictly on an "AS IS, WHERE IS, WITH ALL FAULTS BASIS INCLUDING ANY PATENT AND LATENT DEFECTS". The Buyer further acknowledges and has voluntarily waived and declined any right to require repair of the Property at Closing or after Closing.

BUYER HAS BEEN STRONGLY URGED BY SELLING FIRM AND THE LISTING FIRM TO MAKE ALL INDEPENDENT INSPECTIONS DEEMED NECESSARY PRIOR TO AUCTION, AND BUYER HAS MADE ALL OF THESE INSPECTIONS PRIOR TO SIGNING THIS CONTRACT.

13. SELLER PROPERTY DISCLOSURE:

- A. Buyer and Seller acknowledge that upon the authorization of Seller, a written disclosure prepared by the Seller is dated (month) _____, (day) _____, (year) _____, and is warranted by the Seller to be the latest disclosure and the answers contained in the disclosure are warranted to be true, correct, and complete to Seller's knowledge.
- B. Buyer understands the Seller has not provided a seller property disclosure on the Property.

14. TERMITE CONTROL REQUIREMENTS: The Seller, Listing Firm and Selling Firm are not responsible for any prior or future termite damage to the Property.

- A. None
- B. Seller will transfer an existing termite contract to Buyer. Transfer fees, if any, will be paid for by
 Buyer Seller
- C. Other: _____

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15. LEAD-BASED PAINT RISK ASSESSMENT/INSPECTION:

- A. Buyer understands and agrees that, according to the best information available; improvements on this Property were not constructed prior to 1978 and should not contain lead-based paint hazards.
- B. Buyer has been informed that the Property, including without limitation garages, tool sheds, other outbuildings, fences, signs and mechanical equipment on the Property that were constructed prior to 1978, may contain lead-based paint. Seller has provided the Lead-Based Paint Disclosure (pre-1978 construction) to the Buyer prior to the auction. Buyer has accepted the Lead-Based Paint Disclosure provided by Seller and has conducted an Inspection and/or Risk Assessment of the Property prior to the auction for the presence of lead-based paint and/or lead-based paint hazards obtained at Buyer's expense. By accepting this Real Estate Contract, Buyer's performance under this Real Estate Contract shall thereafter not be conditioned on Buyer's satisfaction with the Lead-Based Paint Inspection and/or Risk Assessment of the Property.

16. CLOSING: Closing is the date and time at which Seller delivers the executed and acknowledged deed. Buyer and Seller agree the Closing date will be (month) _____ (day) _____, (year) _____. The Closing date may be changed by written agreement of Buyer and Seller. If the sale is not consummated by the Closing date (or any written extension thereof), the parties shall have the remedies available to them in equity or at law, including the remedies available to them in Paragraph 6.

Buyer and Seller shall have the right to choose their Closing Agent(s) and are not relying on Listing Firm or Selling Firm to choose a Closing Agent. Should Buyer or Seller choose the services of a Closing Agent(s) other than Selling Firm or Listing Firm, then Buyer and Seller each jointly and severally agree to indemnify and hold Listing Firm and Selling Firm harmless for all intentional misconduct and negligent acts (including acts of omission) of the Closing Agent(s). This Real Estate Contract shall serve as written closing instructions to the Closing Agent on behalf of the Buyer and Seller. The Closing Agent(s) is/are authorized to provide Seller's settlement statement to Listing Firm (in addition to Seller) and Buyer's settlement statement to Selling Firm (in addition to Buyer) prior to settlement so Buyer, Seller, Listing Firm and Selling Firm shall have a reasonable opportunity to review prior to Closing.

Buyer and Seller shall each have the right to request title insurer(s), if any, issue closing protection to indemnify against loss of closing funds because of acts of a Closing Agent, title insurer's named employee, or title insurance agent. Any cost for closing protection will be paid by the requesting party(ies). Listing Firm and Selling Firm strongly advise Buyer and Seller to inquire of the Closing Agent(s) about the availability and benefits of closing protection.

This Real Estate Contract shall, unless otherwise specified in Paragraph 24 of this Real Estate Contract, constitute express written permission and authorization to Listing Firm and Selling Firm to disclose the terms of this Real Estate Contract (and all Addenda), including without limitation concessions provided by Buyer or Seller or other non-public personal information of Buyer and Seller regarding the purchase and sale of the Property, to any of the following: (i) an Arkansas licensed appraiser; (ii) multiple listing services for use by the members thereof; and (iii) any other person or entity which Listing Firm or Selling Firm determines, using sole discretion, may have a legitimate basis to request and obtain such information. The authorization and permissions granted in this Paragraph 16 shall not create any obligation or duty upon Listing Firm or Selling Firm to make any disclosure to any person or entity.

17. POSSESSION: Possession of the Property shall be delivered to Buyer:

- A. Upon the Closing (Seller's delivery of executed and acknowledged Deed).
- B. Upon Buyer's completion, signing and delivery to Seller (or to Listing Firm or the Closing Agent agreed to by Buyer and Seller) of all loan, closing documents and Purchase Price funds required to be executed or delivered by Buyer.
- C. Delayed Possession. (See Delayed Occupancy Addendum attached)

18. ASSIGNMENT: This Real Estate Contract may not be assigned by Buyer unless written consent of Seller is obtained, such consent not to be unreasonably withheld. It shall not be unreasonable for Seller to withhold consent if Seller is to provide financing for Buyer in any amount.

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19. RISK OF LOSS: Risk of loss or damage to the Property by fire or other casualty occurring prior to the time Seller delivers an executed and acknowledged deed to Buyer is expressly assumed by Seller. Should the Property be damaged or destroyed prior to Closing, Buyer shall have the option to: (i) enter into a separate written agreement with Seller whereby Seller will agree to restore the Property to its condition at the time this Real Estate Contract was accepted, (ii) accept all insurance proceeds and the Property in its existing condition, or (iii) terminate this Real Estate Contract and recover the Down Payment. Buyer and Seller agree any written agreement concerning option (i) or (ii) above shall be prepared only by licensed attorneys representing Buyer and Seller.

Buyer has inspected the Property prior to Auction and has waived their right to any repairs after closing of the Property. NO PRIOR DEFECTS OR DAMAGE will affect the closing date or time listed in Paragraph 16.

20. GOVERNING LAW: This Real Estate Contract shall be governed by the laws of the State of Arkansas.

21. SEVERABILITY: The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Real Estate Contract, which shall remain in full force and effect.

22. MERGER CLAUSE: This Real Estate Contract, when executed by both Buyer and Seller, shall contain the entire understanding and agreement between Buyer and Seller with respect to all matters referred to herein and shall supersede all prior or contemporaneous agreements, representations, discussions and understandings, oral or written, with respect to such matters. This Real Estate Contract shall not supersede any agency agreements entered into by Buyer or Seller and Listing Firm or Selling Firm.

23. BUYER'S DISCLAIMER OF RELIANCE:

BUYER CERTIFIES BUYER HAS PERSONALLY INSPECTED OR HAS HAD A REPRESENTATIVE INSPECT THE PROPERTY AS FULLY AS DESIRED PRIOR TO AUCTION. BUYER CERTIFIES BUYER HAS NOT AND WILL NOT RELY ON ANY WARRANTIES, REPRESENTATIONS, OR STATEMENTS OF SELLER, LISTING FIRM, SELLING FIRM, OR ANY AGENT, INDEPENDENT CONTRACTOR, OR EMPLOYEE ASSOCIATED WITH THOSE ENTITIES, OR INFORMATION FROM MULTIPLE LISTING SERVICES OR OTHER WEBSITES REGARDING MINERAL RIGHTS, YEAR BUILT, SIZE (INCLUDING WITHOUT LIMITATION THE SQUARE FEET IN IMPROVEMENTS LOCATED ON THE PROPERTY), QUALITY, VALUE OR CONDITION OF THE PROPERTY, INCLUDING WITHOUT LIMITATION ALL IMPROVEMENTS, APPLIANCES, PLUMBING ELECTRICAL OR MECHANICAL SYSTEMS.

LISTING FIRM AND SELLING FIRM CANNOT GIVE LEGAL ADVICE TO BUYER OR SELLER. LISTING FIRM AND SELLING FIRM HAVE STRONGLY URGED THAT BUYER OR A REPRESENTATIVE CHOSEN BY BUYER CONDUCT INDEPENDENT VERIFICATION AND INVESTIGATION OF STATUS OF TITLE TO THE PROPERTY, CONDITION OF PROPERTY, MINERAL RIGHTS, AND SQUARE FOOTAGE OF IMPROVEMENTS, QUESTIONS OF SURVEY AND ALL OTHER REQUIREMENTS OF BUYER PRIOR TO AUCTION. BUYER CERTIFIES BUYER OR BUYER'S REPRESENTATIVE HAS CONDUCTED SUCH INDEPENDENT VERIFICATION AND INVESTIGATION OF THE PROPERTY, OR BUYER WAIVED THE RIGHT TO DO SO, PRIOR TO SIGNING THIS REAL ESTATE CONTRACT.

24. OTHER: _____

25. TIME: Buyer and Seller agree time is of the essence with regard to all times and dates set forth in this Real Estate Contract. Unless otherwise specified, days as it appears in this Real Estate Contract shall mean calendar days. Further, all times and dates set forth in this Real Estate Contract refer to Arkansas Central time and date.

26. ATTORNEY'S FEES: Should Buyer or Seller initiate any type of administrative proceeding, arbitration, mediation or litigation against the other (or against an agent for the initiating party or agent for the non-initiating party), it is agreed by Buyer and Seller (aforementioned agents being third-party beneficiaries of this Paragraph 26) that all prevailing parties shall be entitled to an award of all costs and attorney's fees incurred in defense of such initiated action against the non-prevailing party.

27. COUNTERPARTS: This Real Estate Contract may be executed in multiple counterparts each of which shall be regarded as an original hereof but all of which together shall constitute one in the same.

28. FIRPTA COMPLIANCE, TAX REPORTING: Buyer and Seller agree to disclose on or before Closing, to the person or company acting as Closing Agent for this transaction, their United States citizenship status, solely for the purpose of compliance with the Foreign Investment in Real Property Taxation Act (FIRPTA). In addition, Buyer and Seller shall execute all documents required by such Closing Agent to document compliance with the FIRPTA and all other applicable laws. Buyer and Seller agree nothing in this Real Estate Contract is intended to limit the responsibility of the Closing Agent as defined pursuant to United States Treasury Regulation 1.6045-4 to (i) be the "reporting person" under state and federal tax laws (including without limitation 26 USC Section 6045(e)), and (ii) file all necessary forms regarding the Closing, including without limitation form 1099, 8288 or 8288A. By accepting the role as Closing Agent, this Real Estate Contract shall obligate the Closing Agent to fulfill their responsibilities as set forth above and as defined by the above statutes. Seller will execute an affidavit confirming compliance with FIRPTA, as prepared by the Closing Agent.

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29. EXPIRATION: This Real Estate Contract expires if not accepted on or before (month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.) .

30. LICENSEE DISCLOSURE: Check all that apply:

- A. Not Applicable.
- B. One or more parties to this Real Estate Contract acting as a Buyer Seller hold a valid Arkansas Real Estate License.
- C. One or more owners of any entity acting as Buyer Seller hold a valid Arkansas Real Estate License.

THIS IS A LEGALLY BINDING ADDENDUM WHEN SIGNED BY THE PARTIES BELOW. READ IT CAREFULLY. YOU MAY EMPLOY AN ATTORNEY TO DRAFT THIS FORM FOR YOU. IF YOU DO NOT UNDERSTAND THE EFFECT OF ANY PART, CONSULT YOUR ATTORNEY BEFORE SIGNING. REAL ESTATE AGENTS CANNOT GIVE YOU LEGAL ADVICE. THE PARTIES SIGNED BELOW WAIVE THEIR RIGHT TO HAVE AN ATTORNEY DRAFT THIS FORM AND HAVE AUTHORIZED THE REAL ESTATE AGENT(S) TO FILL IN THE BLANKS ON THIS FORM.

THIS FORM IS PRODUCED AND COPYRIGHTED BY THE ARKANSAS REALTORS® ASSOCIATION. THE SERIAL NUMBER BELOW IS A UNIQUE NUMBER NOT USED ON ANY OTHER FORM. THE SERIAL NUMBER BELOW SHOULD BE AN ORIGINAL PRINTING, NOT MACHINE COPIED, OTHERWISE THE FORM MAY HAVE BEEN ALTERED. DO NOT SIGN THIS FORM IF IT WAS PREPARED AFTER DECEMBER 31, 2016.

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The above Real Estate Contract is executed on (month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.) .

Selling Firm

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Principal or Executive Broker
Broker AALB# (if applicable) _____

Buyer

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Selling Agent

Agent AALB# (if applicable) _____

Buyer

The above Real Estate Contract is executed on (month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.) .

Listing Firm

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Principal or Executive Broker
Broker AALB# (if applicable) _____

Seller

Signature: _____ Signature: _____

Printed Name: _____ Printed Name: _____

Listing Agent

Agent AALB# (if applicable) _____

Seller

The above offer was rejected counter offered (Form Serial Number _____)

on (month) _____ (day) _____, (year) _____, at _____ (a.m.) (p.m.) .

Seller's Initials _____

Seller's Initials _____