

## AUCTION REAL ESTATE SALES CONTRACT

1. Purchase and Sale. As a result of the efforts of **Seven Hills Auctions, LLC**, a Florida limited liability company, hereinafter referred to as "Auctioneer," the undersigned "Purchaser" agrees to buy, and The Bank, a banking corporation ("Seller"), agrees to sell, that certain real property municipally known as \_\_\_\_\_, more particularly described in Exhibit "A" attached hereto, together with all improvements, if any, thereon ("Property").

The purchase price of the Property, including a ten percent (10%) buyer's premium, is \$\_\_\_\_\_ ("Purchase Price"). Said amount shall be paid in cash, in full, at closing. Purchaser's obligation to close upon the Property is not contingent upon Purchaser's ability to obtain financing and/or any other contingency, provided Seller can deliver marketable title. For an outline of the financial terms of sale, see below.

| Bidder Number | OUTLINE OF FINANCIAL TERMS OF SALE                                           | Property Number(s) |
|---------------|------------------------------------------------------------------------------|--------------------|
|               | High Bid ..... = _____                                                       |                    |
|               | Buyer's Premium (10%)..... + _____                                           |                    |
|               | <b>Purchase Price</b> .....\$ _____                                          |                    |
|               | Earnest Money ..... - _____                                                  |                    |
|               | Estimate Balance Due at Closing* .....\$ _____                               |                    |
|               | <i>*subject to any applicable pro-rations and exclusive of closing costs</i> |                    |

2. Earnest Money and Default. Purchaser has remitted to Auctioneer the sum of \$ \_\_\_\_\_, as "Earnest Money", which shall be deposited into an escrow account with Auctioneer and/or Seller, at the discretion of Auctioneer, and which will be applied as part payment of the Purchase Price at the closing and is NON-REFUNDABLE to Purchaser, unless otherwise provided herein. All parties agree that if any obligation in this contract is not performed as provided, there shall be the following remedies:

IF PURCHASER IS IN DEFAULT, then at Seller's option: (i) the Earnest Money shall be forfeited by Purchaser and retained by Seller as LIQUIDATED DAMAGES and as SELLER'S SOLE AND ONLY REMEDY, and all parties shall be released from all obligations hereunder, or (ii) Seller may seek damages to the extent reasonably ascertainable. Seller and Purchaser hereby acknowledge and agree they have included the provision for payment of liquidated damages, not as a penalty, but because the actual damages incurred by Seller can reasonably be expected to approximate the amount of liquidated damages set forth herein and because the actual amount of such damages would be difficult, if not impossible, to accurately measure. Purchaser shall at all times, and in addition to the above, remain liable for the Buyer's Premium.

IF SELLER IS IN DEFAULT, then, and subject to the provisions of No. 3 below, at Purchaser's option: (i) Purchaser may terminate this contract and this contract shall then be void and of no further effect, and all parties shall be released from all obligations hereunder, and the Earnest Money deposited shall be returned to Purchaser; or (ii) Purchaser may seek the remedy of specific performance. If Purchaser elects to seek specific performance, such election shall be made in writing to Seller and Auctioneer within thirty (30) days of Seller's default, or forever waived and Purchaser shall be deemed to have elected option (i) here above.

Anything to the contrary herein notwithstanding, in the event of litigation arising out of this contract between Purchaser and Seller, the Court shall award to the prevailing party (either Purchaser or Seller) all reasonable costs and expenses, including attorneys' fees. Notwithstanding, Auctioneer may disburse the Earnest Money following receipt of a written agreement signed by Purchaser and Seller. If any dispute arises between Purchaser and Seller as to the final disposition of all or part of the Earnest Money, Auctioneer shall make a disbursement of the Earnest Money upon a reasonable interpretation of this contract. If Auctioneer is unable to make a reasonable interpretation of this contract so as to disburse the Earnest Money, Auctioneer may, in its sole discretion, provide fifteen (15) days' advance written notice to Purchaser and Seller in writing that Auctioneer is unable to resolve such dispute and may interplead all or any disputed part of the Earnest Money into a Court of competent jurisdiction where the Property is located, whereupon Auctioneer shall be discharged from any further liability with respect to the Earnest Money and shall be entitled to recover its fees and expenses, including attorneys' fees in connection with said interpleader from the defaulting party up to but not more than the amount of the Earnest Money.

3. Title. Seller warrants that it presently has, or will have as of the closing, marketable title to the Property. Seller agrees to convey title to the Property to Purchaser by a Special Warranty Deed, subject only to (1) all zoning ordinances, restrictions, and regulations, including, without limitation, all governmental restrictions, affecting the Property; (2) all matters of public record affecting the Property; (3) all prior oil, gas and

mineral rights, conveyances and reservations, if any; (4) all matters that would be shown on a current and accurate ALTA/NSPS survey of the Property; (5) any and all recorded and unrecorded leases and the rights of any party(s) in possession; (6) any portions of the Property underlying public road(s); and (7) all real property taxes and assessments for the current year. Marketable title, as set forth above, shall mean that the Seller is able to convey title upon which a reputable title insurance underwriter would issue a standard owner's policy with standard exceptions, including, without limitation, survey exceptions. Marketable title shall, in no event, mean that the Property is zoned and/or subdivided and/or in compliance with municipal, county, and/or governmental restrictions so as to be eligible for any building permit(s) and/or for any specific purpose. Purchaser shall have twenty (20) days from the date he/she/it signs this contract to examine title and to furnish Seller with a written statement of objections affecting the insurability of said title. If Purchaser does not submit any objections, any such objections shall be waived. If Seller is unable to convey marketable title by the closing, Seller, at its option, shall be allowed an additional fifteen (15) business day extension of the closing date to cure said defects. If Seller elects not to cure any defect(s) and/or cannot cure any defect(s) in the aforesaid time period, Purchaser shall have the option of either: (i) accepting such title as Seller can transfer with limited or no warranties and without abatement of the Purchase Price, or (ii) terminating this contract whereby this contract shall become null and void with no further liability of any party hereto to any other party on account of the Property but with Auctioneer refunding the Earnest Money to Purchaser, along with any other moneys which may have been paid by Purchaser to Auctioneer in relation to the Property.

4. Duty to Cooperate. Seller and Purchaser agree that such documents as may be legally necessary to carry out the terms of this contract shall be executed and/or delivered at the time the sale is consummated.

5. Property Condition. Seller warrants that when the sale is consummated the improvements, if any, on the Property will be in materially the same condition as on the date hereof, normal wear and tear accepted. However, should any improvements on the Property be destroyed or substantially damaged before the closing is consummated, then, at the election of either Seller or Purchaser: (a) the contract may be cancelled, or (b) Purchaser may consummate the closing and accept the Property in its as-is condition after the casualty event.

6. Agency and Brokerage. Commission is to be paid to Auctioneer pursuant to and in accordance with that certain agreement between Auctioneer and Seller regarding authorization and compensation, and to Broker, if any, pursuant to the auction sales brochure relative to the Property, which documents are incorporated herein by reference. Seven Hills Auctions, auctioneer/broker, is acting exclusively as agent for the Seller.

(a) "Listing Broker" (Seller's Representative) shall mean: Agent Name: \_\_\_\_\_; Brokerage Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_; Email Address: \_\_\_\_\_

(b) "Selling Broker" (Buyer's Representative) shall mean: Agent Name: \_\_\_\_\_; Brokerage Firm: \_\_\_\_\_ Telephone: \_\_\_\_\_; Email Address: \_\_\_\_\_

7. Prorations. Real estate taxes, and HOA/POA fees, if any, and any other assessments upon the Property shall be prorated as of the date of closing for the year of the closing, with the day of closing assessed to Purchaser, based upon the last available tax bill(s) and millage rates, which pro-rations shall be final.

8. Closing Date/Closing Costs. Subject to any extension on account of No. 3 above, the closing shall be consummated on or before the date that is thirty (30) days from the date this contract is signed by both Purchaser and Seller. The closing shall be conducted for the Seller by Martin, Tate, Morrow & Marston, PC ("MTMM"), 6410 Poplar Avenue, Suite 1000, Memphis, Tennessee 38119, (901) 866-6139, bschubert@martintate.com. Purchaser has the right to engage its own real estate attorney to represent Purchaser in reviewing this contract, title to the Property, and to close the transaction for Purchaser. Unless, otherwise specified, \_\_\_\_\_ shall act as closing agent for Purchaser. All closing costs with the exception of Seller's attorneys' fees, including, without limitation, wire transfer fees, the costs of a title search which Seller and/or MTMM will order and provide to Purchaser or Purchaser's counsel, any charges relating to any financing, costs for recording the deed and any deed of trust (along with any transfer/indebtedness tax), and the cost of any title insurance policy(s) purchased for or on behalf of Purchaser shall be paid by Purchaser.

9. Property Sold "AS-IS". The Property is being sold "as is" and Seller makes no, and has made no, warranties and/or representations as to the Property's condition, title, future marketability, including, without limitation, any representations and/or warranties as to any buildings, structures, easements, leases, restrictions, covenants, conditions, zoning and/or any and all other matters including, without limitation, those that would be revealed by a current and accurate ALTA/NSPS survey and an inspection of the Property. Purchaser warrants that Purchaser is purchasing the Property and the contents thereof on an "as is", "where is" basis with all faults and defects which may exist, if any, and with no warranties of any kind, express or implied, either oral or written, and disclaims all of same, whether of habitability, merchantability, fitness for a particular purpose, condition of improvements, environmental condition or otherwise made by Seller, Auctioneer, MTMM and/or any agent of Seller or Auctioneer, including, but not limited to, information contained in the sales brochure or supplemental brochures and/or presentations and warranties regarding zoning matters, the ability of Purchaser to construct new improvements, the ability of Purchaser to remodel existing improvements, the availability of zoning variances, building and demolition permits or plats of consolidation and/or subdivision. No liability for inaccuracies, errors or omissions contained in any materials provided to Purchaser is assumed by Seller, Auctioneer, MTMM and/or any of their agents. In addition, the parties hereto acknowledge that Auctioneer is not obligated to and has not made any independent investigation of the condition of, or title to, the Property. Purchaser specifically disclaims all property disclosure statement(s) as may be otherwise required by the law of the State in which the Property is located.

Prior to entering into this contract, Purchaser had the opportunity to conduct Purchaser's own due diligence and investigations. Purchaser's obligations hereunder are not contingent on any additional due diligence or investigation. Further, Purchaser represents that either Purchaser, or a duly authorized agent of Purchaser, has inspected the Property, performed all due diligence reviews which Purchaser deems necessary to determine whether to acquire the Property and verified all facts and information contained in any materials provided to Purchaser prior to executing this contract. Purchaser has not relied upon any sales plans, selling brochures, advertisements, representations, warranties, statements or estimates of any nature whatsoever, whether written or oral, made by Seller, Auctioneer, or others, including, but not limited to, any relating to the description of physical condition of the Property, the dimensions of the Property, and/or any other physical dimensions thereof, the estimated real estate taxes applicable to the Property, the right to any income tax deduction for any real estate taxes or mortgage interest paid by Purchaser, and/or any other

data. Purchaser has relied on his/her/its own examination and investigation of the Property in determining whether to enter into this contract and purchase the Property. No person/entity has been authorized to make any representations on behalf of Seller. Purchaser agrees: (a) to purchase the Property without offset or any claim against, or liability to, Seller and/or its agents and attorneys, whether or not any layout or dimension of the Property or any part thereof, is accurate or correct, and (b) that Purchaser shall not be relieved of any of Purchaser's obligations hereunder by reason of any minor inaccuracy or error. Purchaser agrees that Seller is under no obligation to extend the closing date to allow Purchaser to perform any due diligence or inspections and that if Purchaser fails to close by the closing date, Purchaser will lose and forfeit the Earnest Money and shall remain responsible as provided for in this contract, including, without limitation, for the payment of the Buyer's Premium.

10. Seller's Knowledge of Property. Purchaser acknowledges that the Seller's title to the Property may have resulted from a foreclosure or a deed in lieu of foreclosure made by a beneficiary under a deed to secure debt, mortgage or deed of trust. Further, regardless of how Seller obtained title, Seller is not familiar with the condition of the Property, other than as may be disclosed in any inspection reports obtained by or on behalf of Seller, Seller's representatives or agents, or that Seller may have received otherwise. Any such reports furnished by Seller or its agents in connection herewith shall be for informational purposes only, are not made a part of the Agreement, and Seller makes no representations or warranties about their accuracy or completeness. Purchaser acknowledges that in consideration of Seller's execution of the contract, Purchaser, on behalf of himself/herself/itself and all other parties having any claims, covenants that neither Purchaser nor any such other party will sue, commence, prosecute or in any way participate in any judicial, administrative, or other regulatory proceedings for breach of contract based on any disclosures relating to any alleged breach or violation of any state law, rule or regulation by Seller, or any other party engaged on Seller's behalf, including, without limitation, MTMM, Auctioneer and/or any real estate broker or agent now or previously representing Seller.

11. Miscellaneous Provisions.

- A. Purchaser acknowledges he/she is familiar with any HOA/POA (or any other) covenants and/or restrictions applicable to the Property, and has had the opportunity to examine same.
- B. Possession of the Property shall be granted by Seller to Purchaser no later than the date of closing.
- C. If residential property was built prior to 1978, Purchaser has received PROTECT YOUR FAMILY FROM LEAD IN YOUR HOME pamphlet and EPA and HUD Disclosure Rule pamphlet from the Auctioneer. Purchaser waives the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead based paint hazards.
- D. Seller may extend the closing of this contract for up to thirty (30) days for any reason in addition to the time period it has, if applicable, in No. 3 hereof to correct any title defects.
- E. Purchaser acknowledges that any assignment of this contract must be made in writing to Auctioneer within 10 days of the date the contract is fully signed and is subject to final approval from Seller.
- F. Time is of the essence.
- G. All notices required or permitted under this contract shall be in writing, sent to the addresses set forth below, and shall be sent by: (i) nationally recognized overnight courier, (ii) certified mail with return receipt requested and postage prepaid, or (iii) by email provided that a copy is sent in accordance with clause (i) and (ii) of this sentence.
- H. Binding Agreement Date. The Binding Agreement Date shall be the date upon which the party last executing this contract signs.
- I. Governing Law/Interpretation/Counterparts. This contract may be signed in multiple counterparts each of which shall be deemed to be an original. This contract shall be construed and interpreted in accordance with, and with venue situated for any dispute, in the State in which the Property is located, to which all parties subject to personal jurisdiction by signing hereto. If any provision herein is to be unenforceable, it shall be severed from this contract while the remainder of the contract shall, to the fullest extent permitted by law, continue to have full force and effect as a binding contract. No provision herein, by virtue of the party who drafted it, shall be interpreted less favorably against one party than another. This contract may be signed in counterparts, which when taken together, shall constitute one binding enforceable contract. Any party may rely upon a scanned copy hereof as if same were the original.
- J. Entire Agreement. This contract constitutes the sole and entire agreement between the parties hereto and no modification of this contract shall be binding unless attached hereto and signed by all parties to this agreement. No representation, promise, or inducement not included in this contract shall be binding upon any party hereto.

PURCHASER:

(if an individual sign and date below)

\_\_\_\_\_  
Date  
Print Name: \_\_\_\_\_

(if a corporate entity, write company name  
below and below the name have signed and  
dated by authorized representative)

\_\_\_\_\_  
By: \_\_\_\_\_ Date  
Title: \_\_\_\_\_

Purchaser's Address:

\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_

Phone: \_\_\_\_\_

Auctioneer: **SEVEN HILLS AUCTIONS, LLC**

\_\_\_\_\_  
By: \_\_\_\_\_ Date  
Title: \_\_\_\_\_

SELLER:

*THE BANK*

\_\_\_\_\_  
By: \_\_\_\_\_ Date  
Title: \_\_\_\_\_