

# ELITE AUCTIONS

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James Gall, Jr. - Licensed Florida Real Estate Broker & Licensed Florida Auctioneer #AU-2

## TERMS AND CONDITIONS

**BIDDER NAME:** \_\_\_\_\_ (“Bidder”)

**PROPERTY ADDRESS:** 961 Mandalay Avenue, Clearwater Beach, Florida 33767

**AUCTION DATE:** Saturday, November 4<sup>th</sup> at 11am Local Time – Registration begins 9am – On-Site At Property

### TERMS AS FOLLOWS:

**Bidder Registration is Required for this Auction.** Elite Auctions, LLC, its affiliates, agents, auctioneers and representatives ("Elite") will present the Property for sale by auction (the "Auction") on behalf of the seller of the Property (the "Seller"). The Auction is only open to those persons who register as "Bidders," in accordance with these Terms & Conditions ("Terms and Conditions"). These Terms & Conditions constitute the entire agreement between Seller, Elite and Bidders. By participating in the Auction, Bidder acknowledges and agrees that Bidder is bound by these Terms & Conditions as well as any additional terms that may be imposed by the Seller or announced prior to or at the Auction by Elite.

1. **BIDDING**. All bidding is open to the public without regard to race, religion, color, sex, familial status, national origin, disability or sexual orientation or any other factor protected by federal, state or local law. Elite reserves the right to reject any bid in its sole discretion. The Bidder who submits the High Bid accepted by Elite will be the buyer of the Property ("Buyer"). The "High Bid" shall mean the highest bid acknowledged by Elite. By participating in the Auction, Bidder represents, warrants and covenants that any bid it makes constitutes an irrevocable offer to purchase the Property(s) for the full amount of the bid and that once a High Bid is accepted, Bidder is obligated to purchase the Property for the amount of the High Bid. In the event of any dispute between Bidders, or in the event of doubt on the part of Elite as to the validity of any bid, Elite will have the final discretion to determine the successful Buyer, cancel the Auction, or to re-offer the subject Property(s) for auction. If any dispute arises after the Auction, the Auction record of Elite shall be conclusive to determine all bidding issues, including but not limited to the High Bid and the Buyer.

Elite may allow telephonic, absentee, proxy or Internet bids as a convenience to Bidders. Bidders assume the risk of any errors or omissions in connection with such bids.

2. **BIDDER REGISTRATION; DEPOSIT**. The Auction is only open to members of the public who have properly registered as Bidders pursuant to these Terms and Conditions. To obtain a bidder's paddle, Bidder must (1) register by signing and submitting to Elite these Terms & Conditions, registration materials, and any required escrow instructions and (2) bring a Cashier's Check for **\$25,000** (Bidder's Deposit) made payable to yourself (the bidder) on Auction day. There are no exceptions unless otherwise approved by the seller.

If Bidder is the Buyer, the Bidder's Deposit shall be handled in accordance with these Auction Terms & Conditions and the Purchase and Sale Contract.

3. **BUYER PREMIUM.** A Buyer's Premium in the amount of 10% will be added to the High Bid and will be paid by the successful high bidder. The buyer premium added to the High Bid will be the sum and will equal the Total Purchase Price.

Buyer acknowledges and agrees that the Buyer's Premium is deemed earned upon conclusion of the Auction and shall be held by **Platinum National Title, LLC** and disbursed to Elite by **Platinum National Title, LLC** upon closing. If the sale of the Property is not consummated for any reason other than default by the Seller, the Buyer Premium shall nevertheless be due and payable to Elite. The Buyer Premium is not a real estate commission; it is the fee that Elite charges to bidders for bringing the Property(s) to auction. Any applicable real estate commissions will be determined by the parties in a separate agreement in escrow. Elite is not involved in any way in connection with the closing of any real property transaction and all such functions will be handled exclusively by third party real estate brokerage or legal professionals.

4. **OPENING BID; OPENING BID CREDIT.** An Opening Bid shall be considered the Bidder's initial bid at the Auction. If the same Opening Bid Amount has been submitted by more than one Opening Bidder, the first qualifying form received by Auctioneer will be given precedence. Bidder acknowledges that Opening Bids are legally binding and irrevocable.

Seller agrees to grant a (two-percent) 2% credit of the Opening Bid Amount to Opening Bid Buyer where Opening Bid Buyer is the High Bidder ("Opening Bid Credit"). The Opening Bid Buyer Credit will be deducted from the total amount paid by the Bidder at closing if the Buyer is the successful purchaser of the Property. To qualify for the Opening Bid Credit, Bidders must submit the Opening Bid Buyer Credit Form (attached hereto as Exhibit 1) and submit it to Auctioneer prior to **November 3<sup>rd</sup>, 2017 at 5:00pm ET.**

5. **BID ACCEPTANCE; COMPLETION.** THIS PROPERTY IS BEING SOLD TO THE HIGHEST BIDDER WITHOUT RESERVE. Once the High Bid is accepted, the Buyer is declared, and the Auction closed, Buyer will be required immediately to 1) execute the Purchase and Sale Contract (the "Contract"), Escrow Instructions and other documents required by the Closing and Escrow Agent, and 2) to initiate a wire transfer in the amount necessary to meet 10% of the Purchase Price (the "Deposit"), no later than by the close of business on the Auction Date. Bidder understands that its failure to perform either of these requirements will result in forfeiture of the Bidder's Deposit.

6. **PURCHASE AND SALE CONTRACT.** The Contract is an As-Is Contract. It is available for review by all Bidders prior to the Auction. Bidders are encouraged to request and review the Contract in advance. The terms of the Contract are not negotiable upon being declared the Buyer. The Contract has been modified to correspond with these Terms of Sale. The Buyer agrees to sign the Contract immediately after the Auction.

As between Buyer and Seller, the Purchase and Sale Contract supersedes any and all other documents or information (including without limitation these Terms & Conditions) and serves as the definitive document for the purchase and sale of the Property(s). Elite is not a party to the Purchase and Sale Contract. Elite does not guarantee that any sale of the Property will be consummated. The term "Purchase Price" shall mean the High Bid, excluding the Buyer Premium and any other amounts payable by the Buyer pursuant to the Contract such as closing costs, escrow/closing fees, property taxes, insurance, transfer fees/taxes.

7. **CLOSING.** The Buyer must sign Contract and ancillary documents on the day of the Auction and will be required to make an appointment with a closing agent to pay the balance of the purchase price and receive the deed to the property. All closings must occur within 30 days. The date of closing the purchase of the Property between Buyer and Seller shall be the "Closing Date" set forth in the Contract, which shall be no later than thirty (30) days from the Auction Date, unless modified in writing and signed by the parties. In the event the parties agree to an extension of the closing date; Elite's Fee shall remain due no later than thirty (30) days from the Auction Date.

8. **CLOSING AND ESCROW AGENT; CLOSING COSTS.** Closing and escrow services shall be provided exclusively by **Platinum National Title, LLC, License# W147033, Clearwater, FL** at Buyer's expense ("Escrow Agent"). Elite does not provide closing services. The Buyer shall pay all closing costs for residential sales in the county where the Property is located. Closing costs shall include documentary stamps, transfer taxes, and title insurance.

9. **DEFAULT.** Failure to comply with these Terms & Conditions by the Buyer will result in a default being declared and the Deposit and Buyer Premium being retained by Seller in addition to other equitable and legal remedies under applicable law all of which are reserved.
10. **AUCTION PROCEDURES.** Open and verbal announcements made at the Auction will take precedence over all printed material. Seller reserves the right at its sole discretion to accept or reject any offers made before the Auction begins. Method, order of sale, and bidding increments shall be at the sole discretion of the Elite. Auction does not begin until Elite accepts the first bid on the day of the Auction. ELITE AND SELLER RESERVE THE RIGHT TO MODIFY OR AMEND ANY TERMS OF THE AUCTION, THE AUCTION METHOD OR PARTICULAR CONDITIONS OF THE AUCTION UPON ANNOUNCEMENT PRIOR TO OR DURING THE COURSE OF THE AUCTION. SELLER RESERVES THE RIGHT TO OFFER THE PROPERTY(S) FOR SALE IN ANY MANNER OR METHOD.

Elite may, in the event of any dispute between bidders, determine the successful bidder or reoffer the subject Property for auction. Should there be any dispute after the Auction, Elite's record of the High Bid, and the Purchase Price shall be conclusive to resolve the dispute. Elite reserves the right to withdraw the Property before or at the Auction in its sole discretion and shall have no liability whatsoever for such withdrawal.

11. **PROPERTY INSPECTION.** Prospective buyers are encouraged to personally inspect the Property prior to Auction day. Bidder assumes all risks associated with such inspection. Buyers are solely responsible to verify any information they deem important to the purchase of the Property. Elite and Seller make no guarantees or warranties as to the condition of the Property and assume no liability for any errors or omissions contained in any advertising or promotion of the Property, whether they are written, oral or otherwise stated. The Property is being offered in its "AS-IS, WHERE-IS" condition, with no guarantees or warranties whatsoever. Although information has been obtained from resources deemed reliable, neither Elite nor Seller makes any guarantee as to the accuracy of any such information.

In connection with any due diligence, inspection, visit and/or investigation of the Property(s) by Prospective Bidders, Bidders and or any person/entity/representative acting on their behalf (the "Inspectors"), the Prospective Bidders, Bidders, and Inspectors shall (a) ensure that the Property(s) is kept free and clear of liens, (b) ensure that any and all damage arising from such inspection is repaired, and (c) indemnify, defend and hold Seller and Elite harmless from all liability, claims, demands, damages and/or costs directly or indirectly arising there from. Inspectors shall carry, or require anyone acting on Inspector's behalf to carry, policies of liability insurance, workers' compensation and other applicable insurance, defending and protecting Seller and Elite from liability for any injuries to persons or property occurring during any inspection of the Property(s).

12. **DISCLAIMER.** Bidder acknowledges and agrees that Bidder is bidding for and, when the High Bidder is confirmed by the Elite, will acquire the Property, including the improvements constructed thereon and all appliances and building systems, in its state and condition as of Auction Date, with all defects, both patent and latent, and with all faults, whether known or unknown, presently existing or that may hereafter arise (to the fullest extent allowed by applicable law). Bidder acknowledges and agrees that Elite has not made, does not make and specifically negates and disclaims any representation, warranty, promise, covenant, agreement or guaranty of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning or with respect to the property, including without limitation: (a) the value, nature, quality or condition of the property, including, without limitation, the water, soil and geology; (b) the income to be derived from the Property, if any; (c) the suitability of the Property for any and all purposes, activities and uses which bidder may conduct thereon; (d) the compliance of or by the property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (e) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property; (f) the manner or quality of the construction or materials, if any, incorporated into the Property; (g) the manner, quality, state of repair or lack of repair of the Property; (h) the existence of any view from the Property or that any existing view will not be obstructed in the future; (i) any other matter with respect to the Property, (j) the structural integrity of any improvements on the Property, (k) the conformity of the improvements to any plans or specifications for the Property that may be provided to Bidder, (l) the conformity of the Property to applicable zoning or building code requirements, the existence of soil instability, past soil repairs, susceptibility to landslides, sufficiency of under-shoring, sufficiency of drainage, or any other matter affecting the stability or integrity of the land or any buildings or improvements situated thereon, (n) whether the Property is located in a special studies zone under the public resources code or a seismic hazards zone or a state fire responsibility area, or a special flood hazard zone or (o) the presence of termites or other pests and any damage to the Property and/or its improvements that may have occurred as a result. Bidder acknowledges that the Property and its improvements may not be in compliance with applicable zoning, building, health or other laws or codes, and Elite has not occupied the Property and the Property may not be in habitable condition. Bidder further acknowledges and agrees that, without limitation, Seller and Elite have not made, do not make, and specifically disclaim any representations regarding compliance with the ADA or with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements, as defined by the U.S. EPA regulations or the disposal or existence, in or on

the properties, of any hazardous substance, as defined by the CERCLA of 1980, as amended, and regulations promulgated thereunder. Each prospective bidder and anyone claiming by, through or under the same hereby fully and irrevocably release seller and Elite, and their respective affiliates, employees, officers, directors, representatives, attorneys and agents, from any and all claims that he/she/it or they may now have or hereafter acquire against sellers and/or Elite, and/or their respective affiliates, employees, officers, directors, representatives, attorneys and agents, for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or relating to the conduct of the auction and/or the condition of the property, including but not limited to any construction defects, errors, omissions or other conditions, including but not limited to environmental matters, affecting the property, or any portion thereof. this release includes claims of which prospective bidder is presently unaware or does not presently suspect to exist in his/her/its favor which, if known by prospective bidder, would materially affect prospective bidder's release of sellers and Elite. Each prospective bidder should consider these matters when registering as a bidder and before placing bids. BIDDER ACKNOWLEDGES THAT THIS RELEASE AND DISCLAIMER IS INTENDED TO BE VERY BROAD AND BIDDER EXPRESSLY WAIVES AND RELINQUISHES ANY RIGHTS OR BENEFITS IT MAY HAVE UNDER ANY STATE OR FEDERAL LAW OR LEGAL PRINCIPLE DESIGNED TO INVALIDATE RELEASES OF UNKNOWN OR UNSUSPECTED CLAIMS TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW.

13. **FURNISHINGS.** Furnishings are not included as part of the sale.
14. **BROKER PARTICIPATION FEE.** A **three percent (3%)** participation fee ("Participation Fee") will be paid from the High Bid to any properly registered and licensed real estate Broker and whose client is the Buyer at the Auction and whose client completes the purchase of the Property. Such Participation Fee shall be payable concluding a successful closing on the Property between Broker's client and Seller. In order to be entitled to any commission/referral fee, the Real Estate Broker and/or licensed Real Estate Agent must be present at Auction with his or her client, and must submit the attached properly executed Broker Participation Fee Form.

**ELITE IS NOT ACTING IN ANY CAPACITY AS AN AGENT OR BROKER FOR ANY BIDDER, BUYER OR SELLER.**

15. **TITLE.** Seller will convey good and marketable fee simple title in accordance with the Contract.
16. **NO FINANCING CONTINGENCY; NO INSPECTION CONTINGENCY; AS-IS PROPERTY.** Buyer's purchase of the Property is a cash transaction with no financing contingency and no inspection contingency. Buyer's purchase of the property is an As-Is transaction.
17. **TIME.** Calendar days shall be used in computing time periods, unless otherwise directed herein. Any time periods provided for in these Terms and Conditions, which shall end on a Saturday, Sunday, or national legal holiday (5 U.S.C. 6103) shall extend to 5:00PM (where the Property is located) of the next business day. TIME IS OF THE ESSENCE IN THESE TERMS AND CONDITIONS.
18. **CANCELLATION/POSTPONEMENT.** Elite and Seller reserve the right to cancel, postpone or withdraw the Property before or up to the start of the Auction.

Elite and the Seller reserve the right to offer the Property in any manner and reserve the right to sell the property in any manner up to the start of the auction. Elite and Seller reserve the right to alter, modify, or change any of the terms or this sale at its sole discretion before or at the start of the Auction. The Auction starts when the auctioneer accepts the first bid on the day of auction.

All announcements made from the Auction block shall take precedence over any previously printed material or any other oral statements made.

19. **APPLICABLE LAWS.** The respective rights and obligations of the parties with respect to these Terms & Conditions and the conduct of the Auction shall be governed, enforced and interpreted by the laws of **Florida**, without regard for conflicts of law principles.
20. **CONSENT TO PUBLIC COMMUNICATIONS.** Each attendee of the Auction shall be deemed to have consented to the issuance of press releases and other public communications by Seller, Elite and/or their agents regarding the Auction and the Property offered or sold at the Auction. By executing these Terms & Conditions each attendee of the Auction authorizes and consents to the recording of such attendee's participation and appearance on video tape, audio tape, film, photograph or any other medium and the exhibition or distribution of such recording without restrictions or limitation for any promotional purpose which Elite and those acting pursuant to its authority, deem appropriate. Bidder hereby releases and discharges Elite, its

officers, employees and agents, from any and all claims and demands arising out of or in connection with the use of such photographs, film or tape, including but not limited to any claims for defamation or invasion of privacy or rights to publicity.

21. **LIMITATION OF LIABILITY.** Neither Elite nor Seller shall be liable for any damages of any type or nature (whether in contract, tort or otherwise) sustained or claimed by any Bidder or any other person or entity in connection with the Auction and/or the sale of any Property and/or the failure of any party to complete the sale of any Property. Without limiting the foregoing, in no event shall Elite's liability to any Bidder for any act or omission occurring in connection with the Auction exceed the amount that such Bidder has actually paid to Elite as a deposit or as payment for a particular Property. Offers made at the Auction are void where prohibited by law.
22. **NOT AN OFFER TO SELL; SOLICITATION ONLY.** Any marketing or promotional information regarding the Properties shall not constitute an offer to sell or a solicitation of any offer to buy any of the Properties referenced herein. In addition, and without limiting the foregoing, any website, advertisement or brochure shall not constitute an offer to sell or a solicitation of any offer to buy nor shall there be any Auctions of any of the Properties in any state in which such offer, solicitation, or Auction would be unlawful. Offers made at the Auction are void where prohibited by law.
23. **THIRD PARTIES.** Elite and/or Seller may provide and/or designate certain third parties to provide ancillary services in connection with a Property Auction. Any such designations do not constitute an endorsement by Elite or Seller of such third-party service providers, or the products, or services of such third parties. These third parties operate independently of Elite and Seller and have established their own terms and conditions and policies. Bidder acknowledges and agrees that Elite and Seller are not responsible for any damages or losses caused or alleged to have been caused by the use of any Third-Party Services.
24. **SEVERABILITY.** If any provision of these Terms & Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible to affect the intent of these Terms & Conditions, and the remainder of these Auction Terms & Conditions shall continue in full force and effect.
25. **ENTIRE AGREEMENT.** These Terms & Conditions constitute the entire agreement between Elite and Bidder regarding its subject matter and supersede and replace any and all prior or contemporaneous agreements between the parties regarding such subject matter.
26. **JURY TRIAL; VENUE; PREVAILING PARTY.** If a dispute arises with respect to these Terms and Conditions, the prevailing party shall be entitled to pursue all remedies for breach of this Agreement available to them provided by law or equity and recover all expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in ascertaining that party's rights, in preparing to enforce, or in enforcing that party's rights under this Agreement, whether or not it was necessary for that party to institute suit.

**THIS PROPERTY IS SUBJECT TO PRE-AUCTION OFFERS AND SALE AND/OR DIRECT SALE PRIOR TO AUCTION**

By Signing Below, I signify that I have read and agree to these Terms & Conditions of Sale in their entirety.

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Bidder Signature

Print Name

Date