

## Terms and Conditions Online Auctions

### **INTERNET AUCTION TERMS AND CONDITIONS**

These Terms and Conditions generally describe the terms on which certain real properties (individually, a "Property" and collectively, the "Properties") owned by the various selling entities (each, a "Seller" and collectively, the "Sellers") are to be offered for sale at auction (the "Auction"), held by First American Capital Real Estate Services, Inc. DBA First American Real Estate Auctions ("FACRES") and conducted by FACRES online, with bidding over the Internet. The Sellers of the Properties have retained FACRES to offer such Properties for sale during the Auction on the Terms and Conditions set forth below. By participating in this Auction, you consent to be bound by these Terms and Conditions as well as by any additional terms that may be imposed by the Seller or announced prior to or during the Auction by FACRES. Prospective purchasers who register in accordance with these Terms and Conditions will be deemed "Bidders" during the Auction. All high Bidders (each a "Winning Bidder") will be required to execute a Purchase Contract for that particular Property and any required Seller Addenda to the Purchase Contract (collectively, the "Purchase Contract") at the conclusion of the Auction for such Property. Please note that the Purchase Contract only constitutes an offer to purchase the subject Property and does not become a binding contract unless and until it has been accepted by the Seller. If an offer is later accepted by the Seller, the Winning Bidder shall become the "Purchaser." As between Seller and Purchaser, to the extent of any conflict or inconsistency between the Purchase Contract and these Terms and Conditions, the Purchase Contract will control.

Each property has a "previously valued to" amount stated on our website and in our auction brochure. This value is determined by FACRES as the highest of one or more of the following values for the property: the appraised value of the property in connection with a recent mortgage of the property, the assessed value by the local tax assessor, a recent sale price of the property, a recent listing price, market analysis or broker price opinion, or the highest value of the property as listed on Zillow.com or Cyberhomes.com.

**THIS IS A "RESERVE" AUCTION (AS DEFINED BELOW) AND ALL WINNING BIDDERS MUST HAVE THEIR BID CONFIRMED BY THE SELLER IN ORDER TO BE ACCEPTED. NO OFFER MADE DURING THE AUCTION SHALL BE DEEMED ACCEPTED UNTIL AND UNLESS SELLER HAS COMMUNICATED ITS ACCEPTANCE TO THE WINNING BIDDER BY EXECUTING A PURCHASE CONTRACT, IN WHICH CASE A BINDING CONTRACT WILL BE CREATED.**

#### **1. REGISTRATION**

You must register in order to bid during the Auction; however there is no fee to register. In order to register for the Auction, please go to [www.facres.com](http://www.facres.com) and fill out the on-line Registration Form.

#### **2. QUALIFYING TO BID**

During or after you register, you need to register for the Online Auction. In order to bid during the Online Auction, a credit card authorization and hold (not a charge) will be taken in lieu of the \$5,000 cashier's check typically presented onsite at a traditional

ballroom Auction. The amount of the authorization taken depends upon the maximum bidding amount you request. The authorization amounts and maximum bidding amounts are as follows:

Bidders who wish to qualify for a maximum bidding amount above \$3,000,000 need to prequalify with a designated auction lender or provide proof of funds and should send a request to [customerservice@facres.com](mailto:customerservice@facres.com).

You will also be required to indicate whether or not you intend to finance your purchase through an auction designated lender, through your own lender, or to pay cash. This form will be reviewed by FACRES's designated auction lender and you will be contacted by them for verification of financing to complete the purchase (whether through the FACRES designated lender or your own lender), or if you indicated that you will be making a cash purchase, verification of assets to complete the purchase.

Upon completion of your registration and qualification to bid, you will receive an email with your Bidder Registration Confirmation which will allow you to bid online during the Auction. We recommend registering prior to the beginning of the Auction to insure your ability to bid throughout the auction.

### **3. DUE DILIGENCE**

**Inspection** - Each Property may be scheduled to have up to three open houses (except for occupied Properties) pursuant to the schedule posted at [www.facres.com](http://www.facres.com). Open house events are hosted solely by third party brokers acting on behalf of Sellers, and FACRES has no responsibility for such open houses, including, but not limited to, cancellations or changes in times, all of which are the sole responsibility of the third party brokers. Additionally, the listing broker may be available to show the Property by appointment. All Bidders must fully complete their Property due diligence prior to bidding on any Property. Bidders shall represent, covenant, and warrant that they are offering to purchase the Property relying solely on their independent inspection of the Property in its existing "AS-IS, WHERE IS, WITH ALL FAULTS" condition. Neither Sellers nor FACRES shall be liable for any allowance, adjustment or revision whatsoever including, but not limited to, those based upon any defect in the Property, the improvements, or the building systems, appliances or other contents, or the failure of the Property to conform to any specific standards. Any and all descriptions provided by FACRES regarding any Property including, but not limited to, lot size, building dimensions, floor plans, square footage and/or number of bedrooms/bathrooms, are approximations only provided as an accommodation to Bidders, and are based on information provided by Seller which may or may not be accurate. A Property's actual characteristics including lot size, building dimensions, floor plans, square footage and/or number of bedroom/bathrooms may vary, and FACRES is not responsible for the accuracy or completeness of any such Property descriptions. Moreover, information provided to FACRES may change prior to or during the Auction. FACRES disclaims any obligation to notify you of any changes to the information on its website and, therefore, strongly recommends that you check the FACRES website, [www.facres.com](http://www.facres.com), regularly to receive all the latest information relating to the Properties that you are interested in purchasing prior to your bid.

**YOU SHOULD PERSONALLY INSPECT EACH PROPERTY YOU ARE INTERESTED IN PURCHASING AND SATISFY YOURSELF REGARDING ITS PHYSICAL CONDITION AND OTHER CHARACTERISTICS. EACH**

**BIDDER ASSUMES ALL RISKS ASSOCIATED WITH ANY SUCH INSPECTION. YOUR INSPECTION SHOULD INCLUDE ANY INVESTIGATION YOU FEEL IS NECESSARY OR USEFUL, INCLUDING A THOROUGH PHYSICAL INSPECTION OF THE PROPERTY AND REVIEW OF THE DOCUMENTS WHICH HAVE BEEN MADE AVAILABLE ON-LINE AT THE AUCTION WEBSITE WWW.FACRES.COM. EACH PROPERTY IS BEING OFFERED FOR SALE "AS IS, WHERE IS, AND WITH ALL FAULTS", WITH NO GUARANTEE OR WARRANTY BY ANY PARTY WHATSOEVER, AND IN ACCORDANCE WITH THE CONDITIONS HEREINAFTER DESCRIBED AND AS FURTHER DESCRIBED IN THE PURCHASE CONTRACT (SEE BELOW FOR MORE DETAILS). YOU MAY WISH TO CONSULT WITH A LICENSED REAL ESTATE BROKER OR CONTRACTOR PRIOR TO MAKING ANY BID. ALL SALES ARE SUBJECT TO THESE TERMS AND CONDITIONS AND THOSE CONTAINED IN THE PURCHASE CONTRACT. IN THE EVENT THAT YOUR OFFER IS ACCEPTED BY THE SELLER, YOUR OBLIGATION TO PURCHASE THE PROPERTY WILL NOT BE CONTINGENT UPON INSPECTION OF THE PROPERTY AFTER THE AUCTION UNLESS OTHERWISE SPECIFICALLY PERMITTED UNDER THE PURCHASE CONTRACT. PLEASE BID ACCORDINGLY.**

**Occupied Properties** - Some of the Properties being offered for sale in the Auction may be occupied and unavailable for inspection prior to the Auction. Please do not disturb the current tenants. As with all other Properties, occupied Properties will be offered at Auction for sale on an "AS-IS, WHERE IS, AND WITH ALL FAULTS" basis. If the Property is occupied, Seller will attempt to evict the occupants prior to Close of Escrow as permitted by law. However, Seller does not guaranty that the Property will not be occupied upon the close of escrow, and Buyer expressly waives any right to cancel based on the occupancy of the Property.

**Indemnity** - In connection with any due diligence, inspection, visit and/or investigation of the Property, prospective purchasers shall (1) ensure that they keep the Property free and clear of liens, and repair all damage arising from such inspection, and (2) indemnify, defend and hold Seller and FACRES harmless from all liability, claims, demands, damages and/or costs directly or indirectly arising therefrom. Prospective purchasers shall carry, or require anyone acting on their behalf to carry, policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller and FACRES from liability for any injuries to persons or property occurring during any inspection prior to the purchase of any property.

**Documents** - Prospective Bidders are strongly advised to thoroughly review with your attorney: (a) the Purchase Contract, (b) all disclosure documentation (if any), and (c) other pertinent information (if any). Prospective Bidders are advised to visit regularly our website [www.facres.com](http://www.facres.com) in order to review any changes made during the Auction.

**Exclusion/Disclaimer of Warranty** - FACRES makes no representation or warranty as to the accuracy or completeness of any information regarding the Property, including but not limited to information contained on-line at [www.facres.com](http://www.facres.com), in any video tour of the Property, in any Auction advertising, in the Auction brochure or in the Property information available at the Property. By registering as a Bidder and bidding during the Auction, each Bidder shall be deemed to represent, warrant and agree with respect to each Property it bids upon that: (a) such Bidder has inspected the Property and is familiar and satisfied with the physical condition

thereof and has conducted such investigation of the Property as the Bidder has determined appropriate, (b) neither FACRES nor Seller, nor any affiliate, agent, officer, employee or representative of either of them, has made any verbal or written representation, warranty, promise or guarantee whatsoever to the Bidder, expressed or implied, and in particular, that no such representations, warranties, guarantees, or promises have been made with respect to the physical condition, operation, or any other matter or thing affecting or related to the Property and/or the offering or sale of the Property, (c) Bidder has not relied upon any representation, warranty, guarantee or promise or upon any statement made or any information provided concerning the Property including, but not limited to, information made available on-line at [www.facres.com](http://www.facres.com), in any video tour of the Property, in Auction advertising, in the Auction brochure, or in Property information provided or made available by FACRES or by Seller, or their respective agents, employees or representatives, (d) Bidder has made its bid after having relied solely on its own independent investigation, inspection, analysis, appraisal and evaluation of the Property and the facts and circumstances related thereto, (e) Bidder has the capacity and ability to close the transaction pursuant to the terms and conditions of sale, (f) Bidder has actual authority to enter a bid and to enter into an agreement to purchase the Property. (g) any information provided or to be provided by or on behalf of the Sellers with respect to the Properties including, without limitation, all information contained on-line at [www.facres.com](http://www.facres.com), in any video tour of the Property, in Auction advertising, in the Auction brochure and in the Property information being made available to Bidder by Sellers and FACRES, was obtained from Seller and/or Seller's agents, and FACRES has not made any independent investigation or verification of such information, and makes no representations or warranties as to the accuracy or completeness of such information (h) without limiting the generality of the foregoing, neither FACRES nor Sellers shall be under any obligation to disclose to any Bidder, and shall have no liability for its failure to disclose to any Bidder, any information known to them relating to any Property except as may be required by law and (i) Sellers and FACRES are not liable or bound in any manner by any oral or written statements, representations, warranties, or information pertaining to the Properties, or the operation thereof, made or furnished by any real estate broker, agent, employee, or other person.

**WITHOUT LIMITING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS OR THE PURCHASE CONTRACT, EACH BIDDER ACKNOWLEDGES AND AGREES THAT IT IS BIDDING FOR AND, IF IT BECOMES THE PURCHASER CONFIRMED BY THE SELLER, WILL ACQUIRE THE PROPERTY, INCLUDING THE IMPROVEMENTS CONSTRUCTED ON THE PROPERTY AND ALL APPLIANCES AND BUILDING SYSTEMS, IN ITS STATE AND CONDITION AS OF AUCTION DAY, WITH ALL DEFECTS, BOTH PATENT AND LATENT, AND WITH ALL FAULTS, WHETHER KNOWN OR UNKNOWN, PRESENTLY EXISTING OR THAT MAY HEREAFTER ARISE. EACH PROSPECTIVE BIDDER ACKNOWLEDGES AND AGREES THAT FACRES 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; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL PURPOSES, ACTIVITIES AND USES WHICH MAY BE CONDUCTED 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, (M) 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. EACH BIDDER ACKNOWLEDGES THAT THE PROPERTY AND ITS IMPROVEMENTS MAY NOT BE IN COMPLIANCE WITH APPLICABLE ZONING, BUILDING, HEALTH OR OTHER LAWS OR CODES, AND NEITHER SELLER, FACRES, NOR ANY OF THEIR RESPECTIVE REPRESENTATIVES OR AGENTS HAS OCCUPIED THE PROPERTY AND THAT THE PROPERTY MAY NOT BE IN HABITABLE CONDITION. EACH PROSPECTIVE BIDDER FURTHER ACKNOWLEDGES AND AGREES THAT, WITHOUT LIMITATION, SELLER AND FACRES HAVE NOT MADE, DO NOT MAKE, AND SPECIFICALLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES REGARDING COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OR WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, AS DEFINED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PROPERTIES, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER. EACH PROSPECTIVE BIDDER AND ANYONE CLAIMING BY, THROUGH OR UNDER THE SAME HEREBY FULLY AND IRREVOCABLY RELEASES SELLERS AND FACRES, 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 FACRES, 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 FACRES. EACH PROSPECTIVE BIDDER SHOULD CONSIDER THESE MATTERS WHEN REGISTERING AS A BIDDER AND BEFORE PLACING BIDS.**

**SECTION 1542 RELEASE: BIDDER ACKNOWLEDGES THAT IT IS FAMILIAR WITH AND UNDERSTANDS THE PROVISION OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:**

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." BEING AWARE OF THE ABOVE CODE SECTION, BIDDER EXPRESSLY WAIVES AND RELINQUISHES ANY RIGHTS OR BENEFITS IT MAY HAVE THEREUNDER, AS WELL AS ANY OTHER STATE OR FEDERAL STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.**

**Property Conveyance** - All Properties are to be conveyed by Seller to the Purchaser, if confirmed by Seller, at closing, and each such Purchaser will receive at closing an ALTA owner's policy of title insurance insuring Purchaser for the amount of the purchase price, subject to current taxes and assessments, easements, rights of way and other conditions of record, and any exceptions listed in the Preliminary Title Report for the Property and other standard title policy exclusions.

#### **4. TERMS OF AUCTION BIDS/PURCHASE**

**Reserve Price** - EACH PROPERTY HAS A RESERVE PRICE, which means that the Seller of each Property has established an unpublished, minimum selling price. By participating in the Auction, you agree and acknowledge that the "current minimum bid" may be below the Reserve Price. In order to become the Purchaser for a Property, a Winning Bidder must meet or exceed the Reserve Price and the Seller must confirm that bid by executing the Purchase Contract. If no Bidders meet the Reserve Price, the Seller is under no obligation to entertain any offer for the Property; however, each Seller has the right to entertain and accept an offer from a Winning Bidder whose bid is lower than the Reserve Price. Subject to Confirmation - All Winning Bidders acknowledge and

agree that Winning Bidder's right to purchase a Property, where the Winning Bid Amount is below the Reserve Price or where the Winning Bidder has not been prequalified or had assets verified for a cash purchase, is subject to, and contingent upon, the Seller approving the purchase, which shall typically be given or denied in Seller's sole and absolute discretion within ten (10) days following the Winning Bidder's execution and delivery of the Purchase Contract. FACRES shall have no liability to any Bidder if the Seller has not responded within such ten (10) day period. Until the Purchase Contract is mutually accepted, no party shall be bound to purchase or sell the Property. Winning Bidder will receive a refund of monies deposited in the event Seller rejects the Winning Bid, or if Seller does not accept the Purchase Contract within the ten (10) day period following the Winning Bidder's execution and delivery of the Purchase Contract and the Winning Bidder chooses to cancel the transaction prior to Seller's acceptance of the Purchase Contract. Sales at auction are never final until Seller's acceptance of the Purchase Contract is communicated to Winning Bidding in writing.

**No Agency. FACRES is not acting as an agent for any Bidder in any capacity.**

**Buyer's Premium** - The total purchase price will include a buyer's premium equal to four percent (4%) of the highest amount bid by the Winning Bidder. Therefore, the actual total purchase price on the Auction day (and at the closing), if accepted by Seller, shall be equal to the highest amount bid by the Winning Bidder plus four percent (4%) ("Total Purchase Price") - The Total Purchase Price does not include other amounts payable by the Buyer in connection with the closing, such as escrow/closing fees, property taxes, insurance, and costs of obtaining financing. The buyer's premium is not a real estate commission; it is the fee that FACRES charges to Bidders for bringing the Property to the Auction. Any applicable real estate commissions will be determined separately in escrow. FACRES 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 professionals.

## **5. BIDDING**

Bidders use the unique bidder identifier given to them when they registered in order to place a bid on a Property during the Auction. A Bidder can bid the current minimum bid amount or above the current minimum bid; however FACRES reserves the right to reject any bid that FACRES believes was made illegally, in error or in bad faith. In the event of a dispute among bidders, FACRES may, in its sole discretion, either accept what it deems to be the final bid or solicit further bids on the Property in dispute. FACRES reserves the right to bid on behalf of the seller. In the event of any dispute concerning the Winning bid price for a Property, the records kept by FACRES shall control. The Seller may withdraw a Property at any time prior to the completion of the sale.

FACRES is in no way responsible for technical issues which could impede your ability to bid on any Properties. FACRES DOES NOT WARRANT THAT THE WEBSITE OR ITS WEBCAST SERVICES INCLUDING, WITHOUT LIMITATION, ANY THIRD-PARTY SOFTWARE, PRODUCTS OR OTHER MATERIALS USED IN CONNECTION WITH THE WEBSITE, WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED.

**"Buy It Now" Bidding** - Bidders may try to purchase a Property prior to the end of the Auction by submitting a "Buy it Now" bid.

"Buy it Now" bids are sealed bids by a Bidder directly to FACRES and should be the Bidder's highest and best bid. ["Buy it Now" bids must be a minimum of 20% above the Current Minimum Bid to be considered]. "Buy it Now" bids will be immediately reviewed by FACRES, and if the bid is accepted, FACRES will follow the procedures for Winning Bidders set forth below with respect to that Property, even though the Auction has not ended.

When the bidding for a Property ends, a Bidder is recognized and announced by FACRES as the Winning Bidder. If you are the Winning Bidder, you will be contacted via phone by a FACRES representative at the phone number you provided during registration, and sent, via e-mail, the Purchase Contract and other documents required to complete the purchase. The Purchase Contract will contain the exact terms and conditions of the sale. Additionally, Winning Bidder must agree to be bound by all terms, provisions and conditions of the Purchase Contract, including the Total Purchase Price, and the related conveyance and loan documents, if any, for each particular Property.

The Winning Bidder must take the following actions no later than twenty-four (24) hours following the recognition by FACRES as the Winning Bidder:

1. Pay by wire transfer, as the earnest money deposit (the "Earnest Money Deposit") (a) the greater of four percent (4%) of the Total Purchase Price or \$5,000 on the first Property purchased and (b) fifteen percent (15%) of the Total Purchase Price for any Property purchased beyond the first;
2. Be prequalified by a designated auction lender, or satisfy asset verification if the Winning Bidder is making a cash purchase (if the Winning Bidder hasn't already done so); and
3. Execute and return the Purchase Contract.

If the Winning Bidder cannot be reached or fails to complete these three (3) requirements within twenty-four (24) hours following the recognition by FACRES as the Winning Bidder, then FACRES or Seller can declare the Winning Bidder to be in default. In such event, the Winning Bidder's bid shall be deemed revoked and shall be null and void, and FACRES and Seller shall have absolutely no further liability or obligation to that Bidder. In addition, the Winning Bidder may be subject to liquidated damages in the amount of up to Four Thousand Dollars (\$4,000) per Property and FACRES may charge Winning Bidder's credit card in such amount. Furthermore, FACRES reserves the right to offer the Property to another qualified Bidder.

In order to allow final bids to be properly input and processed, FACRES may extend the close of bidding for any Property in [two (2)] minute increments to allow for additional bids. Once a two (2) minute extension of time has elapsed with no additional, higher bids, then the bidding will be closed.

After Seller accepts the Winning Bidder's offer and executes the Purchase Contract previously executed by the Winning Bidder, the Purchase Contract supersedes any and all other documents or information (including without limitation these Terms and Conditions) and serves as the governing document for the sale of each Property. All monies will be immediately deposited with an escrow agent



or closing attorney. The balance of the Total Purchase Price, along with all other costs and/or fees, must be paid as required in the Purchase Contract.

NOTE: Practices that eliminate competition, such as collusive bidding, may result in criminal, civil, and/or administrative action against the participants of such practices.

## **6. CLOSING**

All sales shall close through the designated escrow company no later than thirty (30) days after the Seller executes the Purchase Contract, unless extended (see "Extensions" below) and/or unless otherwise specifically designated in the description of an individual Property. Actual scheduled closing dates will be set by the escrow company or closing attorney, but will generally be no later than forty (40) days after the date of the Auction. Purchasers shall be required to pay customary and normal closing costs, including, but not limited to, closing/escrow fees, recording fees, customary pro-rations of property taxes and assessments, lender's title insurance premium and fees, loan fees, document preparation fees, all documentary transfer taxes customarily paid by buyers, and Homeowner's Association fees and assessments, if applicable.

Cancellation/Damages - If Purchaser fails to comply with any of the foregoing, or subsequently defaults under the Purchase Contract after it has been accepted by Seller, the sale may be canceled by the Seller and the Buyer shall be liable for damages as set forth in the Purchase Contract.

Extensions - In certain cases, the Seller may grant extensions of the closing date pursuant to the Purchase Contract or as otherwise negotiated between Seller and Buyer. Vesting - Winning Bidders that intend to take title in the name of an entity (not an individual person) must provide the following entity formation documents:

- (a) For Corporations provide: (1) Articles of Incorporation; (2) By-laws; and (3) a resolution authorizing the Corporation to purchase the Property and the party signing the Purchase Contract to act on behalf of the Corporation.
- (b) For Limited Liability Companies ("LLC") provide: (1) Articles of Organization; (2) Operating Agreement; and (3) a resolution authorizing the LLC to purchase the Property and the party signing the Purchase Contract to act on behalf of the LLC. >
- (c) For Trusts, provide: (1) Declaration of Trust; and (2) evidence that party signing the contract is the Trustee of the Trust and is authorized to sign on behalf of the Trust.
- (d) For Partnerships, provide: (1) Partnership Agreement evidencing the authority of party signing the contract to sign on behalf of the Partnership.

## **7. FINANCING YOUR PURCHASE**

FACRES's designated auction lenders will be available prior to and during the Auction to provide financing, subject to credit approval, satisfaction of the lender's requirements and execution of all documentation acceptable to the Winning Bidder and the lender. Potential financing information will be made available by pre-qualifying for the Auction. We recommend that you pre-qualify

for any necessary financing to expedite the closing process. All loans financed by FACRES's designated auction lenders shall be secured by a first priority deed of trust on the Property. Lenders may charge loan origination fees and other fees and costs for which you will be responsible. Availability of loan programs on selected Properties may be limited and may require a greater down payment. We encourage you to contact the FACRES designated auction lenders for prequalification procedures and/or current rates or fees. FACRES's designated auction lenders will be available as an accommodation only. FACRES is not related to the FACRES designated auction lenders, which are third party independent contractors. The fact that such FACRES designated auction lenders are available does not constitute an endorsement by FACRES of such lenders, their services, or their products. Such lenders may not be willing to provide financing on a particular Property due to its physical condition or for any other reason. You are not required to fund your loan with a FACRES designated auction lender.

Winning Bidders choosing to use such third-party financing must have a written, unconditional lending commitment from their lender of choice, in the minimum of the full amount they intend to finance. Winning Bidders who do not wish to apply for financing through FACRES's designated auction lenders must still fill out a credit authorization with a FACRES designated auction lender to confirm the credit status of such Winning Bidder. All Winning Bidders are deemed to irrevocably consent to and authorize the lender and their agents, and/or any other third party to the purchase transaction, to obtain any type of credit report of Buyer's history at any time prior to the closing of the transaction. Winning Bidders intending to use cash to complete their purchase must provide proof, on the Auction day, of sufficient funds to cover the entire transaction (e.g., bank statements and/or investment statements for liquid assets, stocks, bonds etc.).

If a Winning Bidder desires to use financing, then the sale will not be contingent upon financing, nor will the Seller be required to extend the closing for that purpose. Seller reserves the right to require additional deposits (above the 5%) for financed purchases, depending upon the condition of the property and the lender used by the buyer. No additional deposits will be required on cash purchases.

## **8. BROKER PARTICIPATION**

We invite broker participation. A one percent (1%) commission, based on the winning bid price, will be paid by Seller or FACRES to a broker representing a Purchaser and licensed in the state in which the Property is located, who has completed all of the following steps, and whose client(s) successfully purchase the Property and close the transaction. To qualify for a commission when representing a Bidder during the Auction, a broker must:

- (a) Pre-Register with FACRES as a "Registered Broker" [prior to the broker's client submitting his/her first bid] and identify the Bidder as the Broker's client.;
- (b) If their client is the winning bidder, provide a copy of their valid real estate license from the jurisdiction where the Property is located to the escrow company; and
- (c) execute the Purchase Contract as a broker/agent. . Commissions will be paid upon closing. There are no exceptions to the above

broker participation rules. Commissions shall not be paid on the amount of the buyer's premium and are based solely on the winning bid.

## **9. ARBITRATION OF DISPUTES**

**BY BIDDING DURING THE AUCTION, WHETHER IN PERSON, ON-LINE, OR BY PROXY, EACH BIDDER ACKNOWLEDGES AND AGREES IRREVOCABLY THAT ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS AND/OR THE AUCTION, WITH THE EXCEPTION OF THOSE CONTROVERSIES OR CLAIMS SPECIFICALLY**

**EXCLUDED BELOW, SHALL BE SETTLED BY BINDING ARBITRATION HELD IN BROWARD COUNTY, CALIFORNIA BEFORE A RETIRED JUDGE OR JUSTICE IN ACCORDANCE WITH THE AMERICAN ARBITRATION ASSOCIATION ("AAA") COMMERCIAL ARBITRATION RULES ("AAA RULES"), AND, WHERE APPROPRIATE, THE AAA'S SUPPLEMENTARY PROCEDURES FOR CONSUMER RELATED DISPUTES ("AAA CONSUMER RULES"). IF FACRES AND BIDDER ARE UNABLE TO AGREE ON A RETIRED JUDGE OR JUSTICE, EACH PARTY WILL NAME A RETIRED JUDGE OR JUSTICE AND THE TWO NAMED PERSONS WILL SELECT A NEUTRAL JUDGE OR JUSTICE WHO WILL ACT AS THE SOLE ARBITRATOR. THE PREVAILING PARTY IN ANY ARBITRATION OR OTHER COURT PROCEEDING SHALL BE AWARDED ITS REASONABLE COSTS AND ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE DISPUTE.**

**THE DETERMINATION OF WHETHER A DISPUTE IS SUBJECT TO ARBITRATION SHALL BE GOVERNED BY THE FEDERAL ARBITRATION ACT AND DETERMINED BY THE ARBITRATOR. YOUR ARBITRATION FEES AND YOUR SHARE OF ARBITRATOR COMPENSATION SHALL BE GOVERNED BY THE AAA RULES AND, WHERE APPROPRIATE, LIMITED BY THE AAA CONSUMER RULES. ANY ARBITRATION SHALL BE LIMITED TO THE DISPUTE BETWEEN FACRES AND BIDDER INDIVIDUALLY. TO THE FULL EXTENT PERMITTED BY LAW, (1) NO ARBITRATION SHALL BE JOINED WITH ANY OTHER; (2) THERE IS NO RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE ARBITRATED ON A CLASS-ACTION BASIS OR TO UTILIZE CLASS ACTION PROCEDURES; AND (3) THERE IS NOT RIGHT OR AUTHORITY FOR ANY DISPUTE TO BE BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR ANY OTHER PERSONS. THE FOLLOWING DISPUTES ARE NOT SUBJECT TO THIS BINDING ARBITRATION PROVISION: (1) ANY DISPUTES SEEKING TO ENFORCE OR PROTECT, OR CONCERNING THE VALIDITY OF, ANY OF YOUR OR FACRES'S INTELLECTUAL PROPERTY RIGHTS; (2) ANY DISPUTE RELATED, OR ARISING FROM, ALLEGATIONS OF INVASION OF PRIVACY OR UNAUTHORIZED USE; AND (3) ANY CLAIM FOR INJUNCTIVE RELIEF. WITH RESPECT TO DISCOVERY IN ANY ARBITRATION PROCEEDING. NO MORE THAN 45 CALENDAR DAYS BEFORE THE ARBITRATION; A PARTY MAY SERVE A DOCUMENT REQUEST CALLING FOR ANY DOCUMENT THAT WOULD BE DISCOVERABLE IN CIVIL LITIGATION PURSUANT TO THE CALIFORNIA**

**CODE OF CIVIL PROCEDURE. THE PARTY SERVED WITH THIS REQUEST SHALL DELIVER THE REQUESTED DOCUMENTS AND ANY OBJECTIONS WITHIN 15 BUSINESS DAYS. THE ARBITRATOR MAY RESOLVE ANY DISPUTE OVER THE EXCHANGE OF DOCUMENTS.**

**THEREAFTER, EACH PARTY MAY TAKE NO MORE THAN FOUR DEPOSITIONS, WHICH SHALL LAST NO MORE THAN SIX HOURS EACH. THE ARBITRATOR MAY RESOLVE ANY DISPUTE OVER DISCOVERY AS SUCH DISPUTE WOULD BE RESOLVED IN CIVIL LITIGATION PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE. BY AGREEING TO HAVE ANY DISPUTE THAT IS SUBJECT TO THIS "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW, YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL, AS WELL AS YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT TO THE EXTENT THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.**

#### **10. GENERAL AUCTION INFORMATION**

FACRES reserves the right to deny any person admittance to, or to expel anyone from, the Auction site for interference with the Auction activities, nuisance, canvassing, solicitation, or any other reason. FACRES has the right to postpone or cancel the Auction at any time, with or without advance notice, and to change any terms of the Auction or particular conditions of the Auction upon announcement prior to or during the course of the Auction. Seller and FACRES have the right to withdraw any Property from the Auction at any time, with or without advance notice. FACRES may rearrange the order or sequence of the Auction, modify the Auction Terms and Conditions, reject any or all bids and/or advance the bidding. Modifications made by FACRES during the Auction shall supersede and take precedence over all prior oral or written Terms and Conditions. In the event of a dispute among Bidders, FACRES shall make the sole and final decision to either accept the Winning Bid or to re-offer and resell the Property in dispute.

Each person participating in the Auction consents to any recording, audio or visual, of the Auction and its related activities, and the use of his/her picture, image, likeness and/or voice from any recording by FACRES or persons acting on its behalf. Each person participating in the Auction further consents to the dissemination or public broadcast of such recording, including the issuance of press releases and other public communications in any advertising media such as print, video, television, radio and/or the Internet.

Neither FACRES 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. Without limiting the foregoing, in no event shall FACRES'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 FACRES as a deposit or as payment for a particular Property.

The respective rights and obligations of the parties with respect to these Auction Terms and Conditions and the conduct of the Auction shall be governed by, interpreted and enforced under the laws of the state of Arizona. Upon execution of the Purchase Contract, all rights and remedies with respect to the Property covered by such Purchase Contract shall be governed by such Purchase Contract. In the event of any dispute arising between FACRES and any Bidder, whether or not subject to arbitration pursuant to Section 8 above, the prevailing party will be awarded its reasonable costs and attorneys' fees. Offers made during the Auction are void where prohibited by law. Any information on any website, including [www.facres.com](http://www.facres.com), in any brochure, e-mail or postcard and any and all information available 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, including [www.facres.com](http://www.facres.com), advertisement or brochure shall not constitute an offer to sell or a solicitation of any offer to buy nor shall there be any sales of any of the Properties in any state in which such offer, solicitation, or sale would be unlawful. These Terms and Conditions, together with any additional terms and conditions specific to a particular auction (which are incorporated herein by reference and can be found through one or more links on the detail page for the auction in question), constitute the entire agreement between FACRES and Bidder regarding its subject matter and supersede and replace any and all prior or contemporaneous agreements between the parties regarding such subject matter. If any provision of these Terms and 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 so as to effect the intent of these Terms and Conditions, and the remainder of this Agreement shall continue in full force and effect.