

GENERAL TERMS AND CONDITIONS OF SALE

“Public Auction” – Saturday, October 10, 2009 @ 11:00 A.M. E.D.T.

By Order of Receiver, Scott Brenner

Case No.: 05-2008-CA-25137

Ocean Dunes Condominium, 110 - 140 Warsteiner Way, Melbourne Beach, Florida 32951

Please review this document carefully. In order to register and receive a Bidder's Number, a Bidder must sign their Acknowledgment and Acceptance of these General Terms and Conditions of Sale, which may be incorporated into the Purchase and Sale Agreement.

1. AUCTION DATE, PLACE AND TIME:

The Auction (“Auction”) shall be held on Saturday, October 10, 2009, at the Crown Plaza Hotel, 2605 North A1A, Indialantic, Florida 32903, Telephone 321.777.4100. The Auction will commence at approximately 11:00 A.M. E.D.T.

2. AUCTION REGISTRATION:

Registration will begin two (2) hours prior to the Auction time. Registration is required to become a qualified and eligible bidder (“Bidder”) at the Auction. To register, a prospective Bidder must:

(a) Provide Bidder's full name, company name, residence/business addresses with telephone numbers, cellular telephone number, facsimile number, email address, a State valid driver's license number or a valid passport, and the name(s) and / or entity in which the Bidder will take title to the Property.

(b) Present (for review) at registration a Cashier's Check or Certified Funds (no exceptions) payable in U.S. Funds from a U.S. Bank to Alliance Title Insurance Agency, Inc. in the amount of \$10,000.00 (per Condominium Unit). If desired, Bidders may wire transfer said deposit(s) no later than two (2) business days prior to the Auction date. (See wiring instructions below). Wired deposit(s) must be verified by Settlement Agent as being received by Settlement Agent prior to the commencement of the Auction.

(c) Sign an acknowledgment that the Bidder has read and agrees to be bound by these General Terms and Conditions of Sale.

3. SUCCESSFUL BID, TOTAL PURCHASE PRICE, ESCROW DEPOSITS, CASHIER'S CHECK, PURCHASE AND SALE AGREEMENT:

(a) If the Receiver accepts the highest bid (“Successful Bid”) for the Property, then the successful Bidder will be required to execute, as Buyer (“Buyer”), the Purchase and Sale Agreement (“Agreement”) immediately following the bidding and / or no later than the conclusion of the Auction, with no changes / exceptions, and tender the escrow deposits so required. The Successful Bidder's deposit(s) stated in 2 (b) above shall be delivered to Alliance Title Insurance Agency, Inc., as Settlement Agent, (“Initial Deposit”) for deposit into their Escrow Account and held in escrow as a required deposit pursuant to the terms of the Agreement.

(b) The amount of (i) the Successful Bid **AND** (ii) 10% of the Successful Bid (“Buyer's Premium”), added together, will be the **Total Purchase Price** (“Total Purchase Price”) for the Property to be purchased by the Buyer under the Agreement.

(c) An additional deposit (“Additional Deposit”) equal to the difference between 10% of the Total Purchase Price and the Initial Deposit, will also be due Auction Day in the form of a personal or business check from a U.S. Bank payable to Alliance Title Insurance Agency, Inc. and delivered to Alliance Title Insurance Agency, Inc., as Settlement Agent, for deposit into their Escrow Account and held in escrow as a required deposit pursuant to the terms of the Agreement.

4. CLOSING AND PAYMENT OF TOTAL PURCHASE PRICE:

(a) The Closing (“Closing”) will be on or before Tuesday, November 10, 2009 and will be coordinated through the offices of the Settlement Agent; Tina Mendes, Alliance Title Insurance Agency, Inc., 730 East Strawbridge Avenue, Suite 100, Melbourne, Florida 32901, Phone: 321.724.9600, Facsimile: 321.733.5605.

(b) The Total Purchase Price will be due and payable by Buyer at Closing by Cashier's Check from a U.S. Bank in U.S. Funds (payable to Alliance Title Insurance Agency, Inc.) or by Wire Transfer pursuant to written instructions from the Settlement Agent. Buyer shall receive credit for the Initial Deposit and the Additional Deposit, upon clearance, which shall be released from escrow and applied by the Settlement Agent towards the Total Purchase Price at Closing.

(c) Time shall be of the essence as to the Buyer's obligation as described in the Agreement.

5. TITLE INSURANCE and ZONING:

(a) Receiver will provide Buyer a Commitment (“Commitment”) to issue an Owner's Title Insurance Policy for the Property at the promulgated rate as required by and provided in applicable Florida Statutes, Codes, Rules and Regulations (including the Florida Administrative Rules). The Commitment and Owner's Title Insurance Policy will be issued by the Settlement Agent from Chicago Title Insurance Company. A copy of the proposed Commitment will be attached to the Agreement.

(b) It is understood and agreed that fee simple title to the Property being sold to the Buyer is free and clear of liens.

(c) The Receiver will convey title by a Special Warranty Deed (the “Deed”).

(d) Title to the Property will be subject to the exceptions set forth in the proposed Commitment (“Permitted Exceptions”). Buyer agrees to take title to the Property subject to the Permitted Exceptions.

(e) Buyer agrees that the Property is subject to all laws, ordinances, codes, rules and regulations of applicable governmental authorities pertaining to the ownership, use and occupancy of the Property including, but not limited to, zoning, land use, building codes, and agrees to take title subject to such matters, and the following permitted exceptions: (i) all covenants, restrictions, easements and agreements of record now on the Property; (ii) all taxes and assessments for years subsequent to year of closing, which are not yet due and payable; (iii) any matter created by or through Buyer; (iv) any title matters which Buyer has accepted or is deemed to have accepted as set forth in the Agreement; (v) any Condominium's Association Documents / Fees; and (vi) such other items that will not make the Property unusable or unmarketable for the purposes for which it is currently used.

6. BUYER'S NOTE:

(a) The sale of the Property is an "All Cash" transaction and shall not be subject to any financing, other contingencies or post due diligence.

(b) The Receiver, Fifth Third Bank, Mercantile Bank, a division of Carolina First Bank, Brenner Real Estate Group, Prudential Sterling Properties, Alliance Title Insurance Agency, Inc. and Fisher Auction Co., Inc., their representatives, attorneys, agents, and sub-agents, assume no liability for errors or omissions in this or any other property listing or advertising or promotional/publicity statements and material. The Receiver, Fifth Third Bank, Mercantile Bank, a division of Carolina First Bank, Brenner Real Estate Group, Prudential Sterling Properties, Alliance Title Insurance Agency, Inc. and Fisher Auction Co., Inc. their representatives, attorneys, agents and sub-agents, make no guarantee as to the accuracy of the information herein contained or in any other property listing or advertising or promotional/publicity statements and material. Neither Fisher Auction Co., Inc., Brenner Real Estate Group, Prudential Sterling Properties Alliance Title Insurance Agency, Inc., Fifth Third Bank, Mercantile Bank, a division of Carolina First Bank nor the Receiver have any obligation to update this information. Neither the Receiver, Fifth Third Bank, Mercantile Bank, a division of Carolina First Bank, Brenner Real Estate Group, Prudential Sterling Properties, Alliance Title Insurance Agency, Inc., nor Fisher Auction Co., Inc., their Agents and Sub-Agents, have any liability whatsoever for any oral or written representations, warranties, or agreements relating to the Property except as is expressly set forth in the Agreement.

(c) The Property is being sold in "AS IS AND WHERE IS" condition and with all faults and defects, with no representations or warranties, express or implied. All Bidders are encouraged to inspect the Property prior to placing any bid at the Auction and the Successful Bidder, as Buyer, acknowledges that it has had a reasonable opportunity to inspect and examine the condition of the Property and make inquiries of applicable governmental authorities pertaining to Buyer's proposed use of the Property prior to the Auction as Buyer has deemed necessary or desirable. Please review the Agreement, including all Disclosures.

(d) Competitive bidding is an essential element of an Auction sale, and such a sale should be conducted fairly and openly with full and free opportunity for competition among bidders. Any conduct, artifice, agreement, or combination the purpose and effect of which is to stifle fair competition and chill the bidding, is against public policy and will cause the sale to be set aside. Collusion / Bid Rigging is a Federal Felony punishable by imprisonment and fine. Fisher Auction Co., Inc. will report all illegal conduct to the F.B.I. and cooperate with any prosecution.

(e) The Property may be withdrawn from the Auction at any time without notice and is subject to prior sale.

(f) The Receiver in its absolute sole discretion reserves the right to amend, negotiate, modify, or add any terms and conditions to these General Terms and Conditions of Sale and to announce such amendments, modifications, or additional terms and conditions, at anytime.

(g) The highest bid shall be the Successful Bid only if same is acceptable to and accepted by Receiver as evidenced by Receiver and the Successful Bidder, as Buyer, each executing the Agreement.

(h) Back-up bids will be recorded and received. Should the Property not close with the Buyer, the Receiver will have the option to pursue back-up bids.

(i) If you are unsure about anything regarding the Property, do not place a bid. Review of the Agreement before making any bids is strongly recommended.

7. ANNOUNCEMENTS:

All announcements from the Auction Block at the Auction will take precedence over all previously printed material and any other oral statements made; provided however that the Auctioneer shall not be authorized to make any representation or warranty (express or implied) with respect to the Property. In the event of a dispute over the bidding process, the Auctioneer shall make the sole and final decision and will have the right either to accept or reject the final bid or re-open the bidding. Bidding increments shall be at the sole discretion of the Auctioneer.

8. ABSENTEE/TELEPHONE/ONLINE BIDDING:

Absentee / Telephone / Online Bidding will be accepted, subject to all terms and conditions of the Auction. Interested bidders must obtain and sign the proper forms by contacting Fisher Auction Co., Inc. and tender the required escrow deposit(s).

9. DEFAULT:

If the Buyer fails to comply with any of these General Terms and Conditions of Sale, the Receiver shall retain the required deposit(s), which shall be considered fully earned and non-refundable, under the Agreement as liquidated damages and not as a penalty. Upon Default, Buyer agrees to the immediate release of the Deposit funds to the Receiver without the requirement of further documentation from Buyer.

10. REPRESENTATIONS:

All information was derived from sources believed to be correct, but is not guaranteed. Bidders shall rely entirely on their own information, judgment, and inspection of the Property and records. Neither Receiver, Brenner Real Estate Group, Prudential Sterling Properties, Alliance Title Insurance Agency, Inc., Fisher Auction Co., Inc., or its Agents and Sub-Agents makes any representation or warranties as to the accuracy or completeness of any information provided. All sizes, dimensions, drawings are approximations only.

11. SLIDING GLASS DOORS / WINDOWS DISCLAIMER:

Seller has become aware that certain balcony sliding glass doors and windows have, in some instances, evidenced water intrusion, the cause of which has not yet been determined. Seller has or will undertake to have such balcony sliding glass doors and windows inspected by an independent inspector, which inspector shall determine whether a repair is necessary. Buyer acknowledges that if repairs to the sliding glass doors and windows are recommended by such inspector then repairs will be made pre-closing or post closing of sale of the Property. If the repairs will be done post closing, Seller shall escrow funds necessary to repair the sliding glass doors and windows in accordance with the inspector's recommendations. Receiver shall not be responsible in any manner whatsoever for the inspector's determinations or repairs made by or for Seller in connection with the same. Buyer acknowledges and agrees that any escrowed funds not used or needed for the repairs will be delivered to Seller's mortgage lender (the plaintiff in Case No. 05-2008-CA-25137).

12. BROKER PARTICIPATION:

Three Percent (3%) of the Bid Price(s) will be paid to a qualified Licensed Real Estate Broker ("Broker") whose registered Buyer's offer(s) is accepted by the Receiver and closes on the Property(s), provided the Broker is not prohibited by law from being paid such commission. To qualify for a commission, the Broker must first register their prospect on the MANDATORY REAL ESTATE BUYER BROKER PARTICIPATION REGISTRATION form. The form must be received by the office of Fisher Auction Co., Inc. no later than 5:00 P.M. E.D.T., Friday, October 9, 2009. This registration MUST be sent to Fisher Auction Co., Inc., 619 East Atlantic Blvd., Pompano Beach, FL 33060. Brokers may also fax their broker registration(s) to 954.782.8143. NO LATE REGISTRATIONS WILL BE ACCEPTED. Commissions will be paid only after closing and after Fisher Auction Co., Inc. has been paid in full. Brokers are not required to attend the closing. If a cooperating Broker has not met all of these requirements, no commission will be paid to the cooperating Broker, even if the cooperating Broker's prospect purchases the Property(s). No oral registrations will be accepted. Under no circumstances whatsoever will any commission be paid if the sale does not close for any reason.

13. BID PRICE:

The bid price for the Property shall be determined by competitive bidding at the Auction. Twenty (20) Properties will be sold Absolute to the highest Bidders with no minimums or reserves and the remaining Properties will be sold Subject to Final Approval of and Acceptance of Price by the Receiver.

14. ACKNOWLEDGMENT AND ACCEPTANCE:

The Undersigned Bidder acknowledges receipt of a copy of these General Terms and Conditions of Sale, and having read and understood the provisions set forth therein, accepts same and agrees to be bound thereby. Facsimile signatures will be treated and considered as original.

15. GOVERNING LAW:

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the laws of the United States pertaining to transactions in Florida.

16. WAIVER OF JURY TRIAL:

EACH PARTY TO THIS AGREEMENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS AGREEMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER AGREEMENT CONTEMPLATED AND EXECUTED IN CONNECTION HERewith, OR ANY COURSE OF DEALING, COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO.

17. VENUE:

All claims, counterclaims, disputes and other matters in question between Purchaser and Seller arising out of, relating to, or pertaining to this Agreement, or the breach thereof, or the standard of performance therein required, shall be determined by litigation in the Circuit Court of the 18th Judicial Circuit in and for Brevard County, Florida, and appellate courts for such jurisdiction.

18. ENTIRE AGREEMENT:

This Agreement embodies the entire agreement between the parties relative to the subject matter, and there are no oral or written agreements between the parties, or any representations made by either party relative to the subject matter, which are not expressly set forth herein. To the extent that any of the terms or provisions contained herein differs or conflicts with those contained within Seller's Contract for Sale and Purchase ("Purchase Contract") and/or the Addendum to Purchase and Sale Agreement ("Addendum"), the Purchase Contract and Addendum shall control.

Bidder's #

Bidder's Signature

Date

Wiring Instructions:	
Beneficiary Bank:	Mercantile Bank 200 E Las Olas Blvd, Ste 1820 Fort Lauderdale, FL 33301 954.712.3800
ABA #:	063113772
Beneficiary:	Alliance Title Insurance Agency, Inc. for Ocean Dunes at Aquarina Developer, Inc. 730 East Strawbridge Avenue, Suite 100 Melbourne Florida 32901
Account #:	7600703253
Reference:	Please notify Liz Cassella when funds arrive 321.724.9600