

## GENERAL TERMS AND CONDITIONS OF SALE

**By Order of Developer  
Online Real Estate Auction  
3 Units of Sale – 24 Condominiums per Unit  
“Seasons At Biltmore Lake”  
1000 Lake Vista Drive, Candler, North Carolina 28715**

**Please review this document carefully. In order to register to participate as a qualified Online Bidder, a Bidder must sign their Acknowledgment and Acceptance of these General Terms and Conditions of Sale.**

### **1. START / END DATES:**

The Online Auction (“Auction”) shall begin on Tuesday, December 1, 2009 at 2:00 PM, EST and end on Tuesday, December 8, 2009 at 2:00 PM, EST.

### **2. ONLINE AUCTION REGISTRATION:**

Registration is required to become a qualified and eligible online bidder (“Bidder”). 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 copy of 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) Bidders must wire transfer \$100,000.00 (per unit of sale) in U.S. Funds from a U.S. Bank to Hollifield Law Offices P.C. Trust Account no later than 12:00 Noon EST, Tuesday, December 1, 2009.

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

(d) Execute the Online Bidder Contract and Return of Escrow Instructions

(e) Return the required original documents to Fisher Auction Co., Inc., 619 E. Atlantic Blvd, Pompano Beach, Florida 33060 no later than 12:00 Noon, EST, Tuesday, December 1, 2009.

### **3. SUCCESSFUL BID, TOTAL PURCHASE PRICE, ESCROW DEPOSITS AND PURCHASE AGREEMENT:**

(a) If the Seller accepts the highest bid (“Successful Bid”) for the Property, then the successful Bidder will be required to execute via facsimile and / or email, as Buyer (“Buyer”), the Purchase Agreement (“Agreement”) immediately following the conclusion of the Online Auction, with no changes / exceptions. The Successful Bidder’s deposit(s) stated in 2 (b) above is the Initial Escrow Deposit (“Initial Deposit”) 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 be due via wire transfer in U.S. funds from a U.S. bank to Hollifield Law Offices, P.C. Trust Account on Wednesday, December 9, 2009 by 5:00 PM, EST.

### **4. CLOSING AND PAYMENT OF TOTAL PURCHASE PRICE:**

(a) The Closing (“Closing”) will be on or before Monday, January 11, 2010 and will be coordinated through the offices of the Settlement Agent; Joseph Taylor of Hollifield Law Offices, P.C. (Escrow and Settlement Agent), 19 Zillicoa Street, Suite 200, Asheville, N.C., 28801, Phone: 828.255.8282 Facsimile 828.255.8299.

(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 Hollifield Law Offices, P.C. Trust Account) or by Wire Transfer pursuant to written instructions from the Settlement Agent. Buyer shall receive credit for the Initial Deposit and the Additional Deposit, 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) Seller will provide Buyer a Commitment (“Commitment”) to issue an ALTA Owner’s Title Insurance Policy for the Property, at its expense. 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 Seller 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 Seller, Montecito Realty, 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 Seller, Montecito Realty, 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 the Seller, Montecito Realty, Inc. nor Fisher Auction Co., Inc., have any obligation to update this information. Neither the Seller, Montecito Realty, 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 online bid 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 Online Auction as Buyer has deemed necessary or desirable. Please review the Agreement, including all attachments.

(d) Competitive bidding is an essential element of an Online 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 Seller 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 Seller as evidenced by Seller 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 Seller 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.

(j) **Each Unit of Sale / Block MUST be sold to Separate Entities.**

**7. DEFAULT:**

If the Buyer fails to comply with any of these General Terms and Conditions of Sale, the Seller 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 Seller without the requirement of further documentation from Buyer.

**8. 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 Seller, Montecito Realty, 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.

**9. BROKER PARTICIPATION:**

Three Percent (3%) of the Bid Price will be paid to a qualified Licensed Real Estate Broker ("Broker") whose registered Buyer's offer is accepted by the Seller and closes on the Property, 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.S.T., Friday, December 7, 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. Brokers are not required to attend the closing. If a Broker has not met all of these requirements, no commission will be paid to the Broker, even if the Broker's prospect purchases the Property. No oral registrations will be accepted. Under no circumstances whatsoever will any commission be paid if the sale does not close for any reason.

**10. BID PRICE:**

The bid price for the Property shall be determined by competitive bidding. The Property will be sold to the Highest and Successful Bidder at or above \$1,116,000.00 per unit of sale (\$46,500.00 per individual unit) plus the 10% Buyer's Premium.

**11. GOVERNING LAW:**

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

**12. DISCLAIMER:**

The information above has been obtained from sources deemed reliable. While we do not doubt the accuracy, we have not verified it and make no guarantee, warranty or representation about it. Any projections, opinions, assumptions or estimates used are for example only and do not represent the current or future performance of the Property. It is your responsibility to independently verify the accuracy and completeness of the information. "Seasons at Biltmore Lake, a Condominium is not a part of the Biltmore Lake Community and owners and tenants of units at Seasons at Biltmore Lake, a Condominium do not have the right to use the Biltmore Lake trails, lake, clubhouse, playgrounds or any other Biltmore Lake amenities."

**13. 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 Purchase Agreement, the Purchase Agreement shall control.

**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.

\_\_\_\_\_  
**Bidder's #**

\_\_\_\_\_  
**Bidder's Signature**

\_\_\_\_\_  
**Date**

**Wiring Instructions:**

Beneficiary Bank:	Hometrust Bank 10 Woodfin Place Asheville, NC 28802 Tel. 828.254.8144
Bank ABA #:	253170279
Account #:	0000868638
Reference:	Hollifield Law Offices, P.C. Trust