

PRELIMINARY
PURCHASE AND SALE AGREEMENT
“Northcreek Commons”
Northcreek Blvd.
Northport, Tuscaloosa County, Alabama
December 17, 2009

The undersigned seller (“Seller”) and buyer (“Buyer”) hereby agree as follows:

1. **THE PROPERTY:** Seller agrees to sell and Buyer agrees to purchase the property described as _____, **Northcreek Commons, Northcreek Blvd., Northport, Tuscaloosa County, Alabama**, and more particularly described on **Exhibit “A”** attached hereto, (the “Property”) for the price and upon the terms and conditions as set forth below and further in the Terms and Conditions of Auction attached hereto as **Exhibit "B"**.
2. **THE PRICE:** The total purchase price is \$_____ (*which includes the Ten Percent (10%) Buyer's Premium*) payable at closing in cash or equivalent good funds acceptable to the Closing Agent.
3. **THE TITLE:** The Seller shall convey the Property by **Warranty Deed**, in the form attached hereto as Exhibit "C", free and clear of all liens and monetary encumbrances, but subject to all easements and prescriptive rights existing at law or of record as of the date of the transfer. An owner’s title insurance policy will be provided by the Seller.
4. **THE SURVEY: AS TO THE COMMERCIAL PROPERTY ONLY:** The commercial tracts will be sold from a sales map. If the commercial property sells to more than one buyer, the tracts will be sold subject to subdivision approval by the Northport Planning Commission. The plat will be recorded prior to closing and a survey will be provided by the Seller. If a survey reveals a greater or lesser number of acreage than is shown on the sales map, the purchase price will NOT be adjusted. If the Commercial Property sells as an entirety, a survey will be at the Buyer’s option and expense.

AS TO THE RESIDENTIAL PROPERTY ONLY: A survey will be at the Buyer’s option and expense.
5. **CLOSING:** This sale and purchase transaction shall be closed by **Tuscaloosa Title Company, Inc.**, (“Escrow Agent” / “Closing Agent”) at **2210 8th Street, Suite A, Tuscaloosa, AL 35401; Phone No.: (205) 345-7444, on or before January 18, 2010**, (“Closing Date”), time being of the absolute essence.

However, if the commercial property sells to more than one person subdivision approval will be required and the parties agree that closing shall occur within five business days after the subdivision plat is recorded. **IN THE EVENT THAT THE PLAT FOR THE COMMERCIAL PROPERTY IS NOT APPROVED AND RECORDED BY MARCH 18, 2010, THE PARTIES AGREE THAT THE PURCHASE AND SALE AGREEMENT CAN BE VOIDED AT THE BUYER’S**

Initials:			
“Buyers”		“Sellers”	

SOLE DISCRETION AND ANY EARNEST MONEY DEPOSIT BEING HELD BY TUSCALOOSA TITLE COMPANY, INC. WILL BE REFUNDED TO THE BUYER. IF THE PURCHASE AND SALE AGREEMENT IS NOT VOIDED BY THE BUYER, THE SELLER SHALL HAVE THE OPTION OF EXTENDING THE CLOSING DATE UNTIL SUCH TIME AS THE PLAT IS RECORDED.

Initials: _____/_____

6. **DEFAULTS:** Seller shall have the right to damages, including reasonable attorneys' fees, in the event Buyer neglects or refuses to perform Buyer's obligations hereunder. Buyer and Seller agree that based upon circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damages by reason of Buyer's default under this contract. Accordingly, Buyer and Seller agree that in the event of a default by Buyer under this contract, Seller shall receive "liquidated damages" equal to the amount represented by the Earnest Money Deposit ("Deposit") then held by Escrow Agent identified in Paragraph No. 5 herein. At their option, Seller and Buyer shall have the additional right to receive equitable relief, including, without limitation, the alternative right to enforce specific performance of this Purchase and Sale Agreement ("Agreement").

7. **EARNEST MONEY:** Buyer has delivered to Seller, Buyer's Deposit check payable to **Tuscaloosa Title Company, Inc., ("Escrow Agent")** in the amount of \$_____. The Escrow Agent (i) shall apply same to the cash portion of the price if Buyer performs Buyer's obligations hereunder; or (ii) shall refund same to Buyer if Seller fails or refuses to perform Seller's obligations hereunder; or (iii) shall pay all of the Deposit then held by it over to Seller if Buyer fails or refuses to perform Buyer's obligations hereunder. In the event of a dispute, Escrow Agent may file a suit in interpleader in any court having jurisdiction in the matter for the purpose of having the respective rights of the parties adjudicated and may deposit with the court any and all monies and other escrowed items held hereunder. Upon institution of such interpleader suit or other action, depositing such monies and other escrowed items with the court, and giving notice thereof to the parties thereto by personal service or in accordance with the order of the court, Escrow Agent shall be fully released and discharged from all further obligations hereunder with respect to the items so deposited.

8. **PRORATIONS:** Prorations and adjustments shall be made at closing as follows: ad valorem taxes shall be prorated to the date of closing on the basis of the latest available information and assumed by the Buyer. These taxes are subject to readjustment and re-proration when the actual tax bills are received or the actual tax amounts for the year of closing become known.

9. **BROKERAGE:** Each party represents and warrants that no real estate broker or salesman has been involved in this transaction except The National Auction Group, Inc. ("Auction Company") and _____ ("Participating Broker"). Any commission due the Auction Company shall be paid simultaneously with any proceeds paid to the Seller or any other person or entity. The parties agree that all deposits and purchase funds shall be paid to the Escrow Agent for its proper disbursement. If the Buyer defaults in closing this Agreement, the deposit paid by the Buyer shall be paid as follows: 50% to the Seller and 50% to the Auction Company. If Seller seeks and obtains specific performance of any Agreement and/or damages in respect thereof, Auction Company shall be paid the full amount of its commission due in respect thereof.

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10. **CLOSING DOCUMENTS:** (a) To perform its closing obligations hereunder, Seller shall execute and deliver, in form for recording, said Warranty Deed and do and perform all other acts and things that are required hereby and do and perform all other acts and things as shall be required by the Closing Agent; (b) To perform its closing obligations hereunder, Buyer shall execute all documents and do and perform all other acts and things that are required hereby and do and perform all other acts and things as shall be required by the Closing Agent as conditions precedent (i) to its making and showing on its closing statement to Buyer and Seller the price, all prorations, etc., as herein provided for and contemplated, and (ii) to its issuing to Seller of its check representing the net proceeds of the sale due to Seller.
11. **CLOSING COSTS SHALL BE PAID AS FOLLOWS:** *Approximate* closing costs are attached hereto as **Exhibit "D"**. **Closing shall take place on or before January 18, 2010, unless otherwise agreed to in writing, or as set forth in Paragraph 5 herein.**
12. **PROPERTY CONDITION:** The Property is selling subject to Restrictive Covenants of Northcreek Commons, any existing rights-of-way, easements, encroachments, zoning regulations, governmental agency regulations, environmental conditions, leases, adverse possession, restrictions, sewer assessments and all other matters of record. This Property is selling in **"AS IS, WHERE IS"** condition, without warranty or representation, either statutory or otherwise express or implied.
13. **NOTICES:** Notices required or permitted hereby shall be in writing, mailed postage prepaid by certified or registered mail, return receipt requested, to the Seller and the Buyer at their respective addresses as set forth below, or to such other address designated by either party by written notice to that effect.
14. **ENTIRE AGREEMENT:** This Agreement represents the entire and final Agreement between the parties, superseding and canceling all prior oral and written communications and agreements between them, their agents and representatives, and this Agreement may not subsequently be changed or amended except in writing signed by the parties.
15. **DISCLAIMER AS TO AUCTION COMPANY:** Buyer shall look only to Seller as to all matters regarding this Agreement and the Property. The Auction Company shall not be responsible or liable in any way (i) if Seller fails or refuses to or cannot close title hereunder or (ii) if the Property is affected in any way, is in need of attention or repairs or is in any other way unsatisfactory to Buyer as Buyer may determine before or after closing.
16. **AUCTION COMPANY NOTICE OF AGENCY RELATIONSHIP:** Buyer acknowledges that the Auction Company is acting as agent for the Seller in this transaction and is to be paid a fee by the Seller pursuant to a separate written agreement between Seller and the Auction Company. The Buyer further acknowledges that the Auction Company is not acting as agent for the Buyer in this transaction. Any third party broker is not a subagent of the Auction Company.

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17. **1031 EXCHANGE:** It is understood that Seller or Buyer may wish to make a like kind tax-deferred exchange, therefore; Seller or Buyer shall have the right to assign their rights to an intermediary for the purposes of effecting a like kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended (“Section 1031”, “exchange”, or a “tax-free exchange”). Seller and Buyer agree to execute any documents as reasonably necessary to effect such an exchange. The exchanging party will pay any costs associated with said exchange.

18. **AGENCY DISCLOSURE:**

The listing company, The National Auction Group, Inc. is:

(Two blocks may be checked)

- An agent of the seller. INITIAL: _____/_____
- An agent of the buyer.
- An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- Assisting the _____ buyer _____ seller as a transaction broker.

The selling company, The National Auction Group, Inc. is:

(Two blocks may be checked)

- An agent of the seller. INITIAL: _____/_____
- An agent of the buyer.
- An agent of both the seller and buyer and is acting as a limited consensual dual agent.
- Assisting the _____ buyer _____ seller as a transaction broker.

18. ATTACHMENTS HERETO:

- Exhibit A – Sales Map or Legal Description;
- Exhibit B - Terms and Conditions of Auction;
- Exhibit C - Sample Warranty Deed;
- Exhibit D – Estimated Closing Costs;
- Exhibit E - Restrictive Covenants of Northcreek Commons; and
- Exhibit F - Any Addendum hereto.

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BUYER REPRESENTS AND WARRANTS THAT BUYER AND BUYER'S EXPERTS HAVE THOROUGHLY AND CAREFULLY INSPECTED THE PROPERTY AND AGREE TO PURCHASE SAME "AS IS, WHERE IS", "WITH ALL FAULTS, IF ANY".

IN WITNESS WHEREOF, the parties have executed this Agreement on the **17th** day of **December, 2009**.

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AS TO COMMERCIAL PROPERTY ONLY:

BUYER:

SELLER: **NORTHCREEK PROPERTIES, LLC.,**

By: _____

By: _____

(signature)

(signature)

Print Name: _____

Print Name: _____

SS#: _____

AS ITS: _____

By: _____

Address: _____

(signature)

Print Name: _____

Phone No.: _____

SS#: _____

AS TO RESIDENTIAL PROPERTY ONLY:

ADDRESS: _____

SELLERS:

SULLIVAN DEVELOPMENT, INC.,

PHONE NO.: _____

By: _____

EMAIL: _____

(signature)

Print Name: _____

AS ITS: _____

RYAN SHIRLEY

WILLIAM F. BARNES

Address: _____

Phone No.: _____

Initials:			
"Buyers"		"Sellers"	