

## ACKNOWLEDGMENTS REGARDING AUCTION

### NOTICE TO PROSPECTIVE PURCHASERS/BIDDERS AT AUCTION HAZARDOUS WASTES OR SUBSTANCES AND UNDERGROUND STORAGE TANKS

Comprehensive federal and state laws and regulations have been enacted in an effort to develop controls over the use, storage, handling, clean-up, removal and disposal of hazardous wastes or substances. Some of these laws and regulations, such as the so-called "Superfund Act," provide for broad liability schemes wherein an owner, prior owner, buyer, tenant or other user of the property may be liable for clean-up costs and damages regardless of fault. Other laws and regulations set standards for the handling of asbestos or establish requirements for the use, modification, abandonment, or closing of underground storage tank.

It is not practical or possible to list all such laws and regulations in this Notice. Therefore, owners and buyers are urged to consult legal counsel and hazardous waste and substances experts to determine their respective rights and liabilities with respect to the issues described in this Notice as well as all other aspects of the proposed transaction. If hazardous wastes or substances have been used, stored, handled or disposed of on the property, or if the property has or may have underground storage tanks, it is essential that legal and technical advice be obtained to determine, among other things, what permits and approvals have been or may be required, if any, the estimated costs and expenses associated with the use, storage, handling, clean-up, removal or disposal of the hazardous wastes of substances and what contractual provisions and protections are necessary or desirable. It may also be important to obtain expert assistance for site investigations and building inspections. The past uses of the property may provide valuable information as to the likelihood of hazardous wastes or substances, or underground storage tanks being on the property.

The Liquidating Trustee in Bankruptcy, its real estate brokers, and Auctioneer, their agents and representatives (herein sometimes referred to collectively as "Trustee") are unaware of the existence of hazardous wastes or substances, or underground storage tanks on the property, except as described in separate disclosure in writing on the Auction Management Corporation website <http://www.auctionebid.com/23-5-Acres-on-Interstate-45-Houston-Texas-a128549.php> including but not limited to a Phase I Environmental Site Assessment dated January 8<sup>th</sup>, 2010 that shows multiple environmental concerns and the fact that the property is located in Flood Zone AE, inside the 100 year flood plain. Bidder hereby acknowledges it has completed the Environmental Site Disclaimer and obtained a copy of the Phase I Environmental Site Assessment. They have not made investigations or obtained reports regarding the subject matter of this Agreement, except as may be described in a separate written document signed by them. The Liquidating Trustee in Bankruptcy, its real estate brokers, and Auctioneer, their agents and representatives make no representations regarding the existence or nonexistence of hazardous

wastes of substances, or underground storage tanks on the property. You should contact a professional, such as a civil engineer, geologist, industrial hygienist or other persons with experience in these matters to advise you concerning the property.

The term “hazardous wastes or substances” is used in this Agreement in its very broadest sense, and includes, but is not limited to gasoline, diesel, oils or other petroleum base products, paints and solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonium compounds, asbestos, PCB’s and other chemical products. Hazardous wastes or substances and underground storage tanks may be present on all types of real property. This agreement is therefore meant to apply to any transaction involving any type of real property, whether improved or unimproved, and any personal property involved in the transaction.

#### AMERICANS WITH DISABILITIES ACT

The United States Congress has recently enacted the Americans With Disabilities Act (ADA). Among other things, this act is intended to make many business establishments equally accessible to persons with a variety of disabilities; modifications to real property may be required. State and local laws also may mandate changes. The real estate brokers in this transaction are not qualified to advise you as to what, if any, changes may be required now, or in the future. Owners and tenants should consult the attorneys and qualified design professionals of their choice for information regarding these matters. Real estate brokers cannot determine which attorneys or design professionals have the appropriate expertise in this area.

#### ACKNOWLEDGMENTS:

Prospective Purchasers and/or Bidders herein sometimes referred to as “Bidder” acknowledge and agree the following terms, conditions and agreements shall apply to this transaction:

1. Bidder is encouraged to obtain and has the right to obtain independent legal counsel to review all legal documents and instruments pertinent to the transaction.
2. Bidder is encouraged to obtain and has the right to obtain environmental experts and inspectors for on-the-ground inspections of the property prior to auction sale.
3. This is an arms length transaction between the parties and the purchase price at auction is bargained on the basis of as “as is”, “where is”, “with all faults” transaction with an express negligence and indemnity provision. Bidder has exercised due diligence in preparing for the auction and has the skill and expertise to so do, and has sought professional counsel and advise for such purposes.

4. Bidder and any legal counsel of Bidder's choosing has had the opportunity to review and approve the Special Warranty Deeds with the terms, conditions and exceptions to deed and warranty that are intended to be used in substantially the same form upon sale by auction.
5. Other bidders may exercise their right to inspect the property and may have experts or other persons generate reports concerning the property. Such reports may or may not be provided to the Liquidating Trustee, his agents, brokers or auctioneer. Bidder herein acknowledges that Trustee, his agents, representatives, brokers and auctioneer shall have no duty to provide such reports to Bidder, and in the event Trustee, his agents, representatives, brokers or auctioneer are able to make such reports available prior to the auction sale, Bidder disclaims any reliance upon such reports and acknowledges it shall rely solely on its own inspection, experts and reports, and not on any reports so disclosed. Bidder further acknowledges Trustee, his agents, representatives, brokers and auctioneer shall not be responsible for either the disclosure or non-disclosure of any information about the property including disclosure of any other bidders' reports or the contents and opinions contained in such reports.
6. AFTER CLOSING, AS BETWEEN BIDDER AND SELLER, THE RISK OF LIABILITY OR EXPENSE FOR ENVIRONMENTAL PROBLEMS, EVEN IF ARISING FROM EVENTS BEFORE CLOSING, WILL BE THE SOLE RESPONSIBILITY OF BIDDER REGARDLESS OF WHETHER THE ENVIRONMENTAL PROBLEMS WERE KNOWN OR UNKNOWN AT CLOSING. ONCE CLOSING UPON AUCTION HAS OCCURRED, BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER, ITS AGENTS, BROKERS, AUCTIONEER, AGENTS AND REPRESENTATIVES FROM LIABILITY FOR ANY LATENT DEFECTS AND FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY, INCLUDING LIABILITY UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA), THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), THE TEXAS SOLID WASTE DISPOSAL ACT, OR THE TEXAS WATER CODE. **BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF SELLER'S OWN NEGLIGENCE OR THE NEGLIGENCE OF SELLER'S REPRESENTATIVES.** BUYER INDEMNIFIES, HOLDS HARMLESS, AND RELEASES SELLER, ITS AGENTS, BROKERS, AUCTIONEER, AGENTS AND REPRESENTATIVES FROM ANY LIABILITY FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY ARISING AS THE RESULT OF THEORIES OF PRODUCTS LIABILITY AND STRICT LIABILITY, OR UNDER NEW LAWS OR CHANGES TO EXISTING LAWS ENACTED AFTER THE EFFECTIVE DATE THAT WOULD OTHERWISE IMPOSE ON SELLERS IN THIS TYPE OF TRANSACTION NEW LIABILITIES FOR ENVIRONMENTAL PROBLEMS AFFECTING THE PROPERTY.
7. Bidder further acknowledges he has received the form "Information About Brokerage Services" (TREC No. OP-K) and understands that Broker, Hunter

Schuehle, represents the Liquidating Trustee in Bankruptcy Court, Cause No. 08-83029-JAC-11, in the U. S. Bankruptcy Court for the Northern District of Alabama, Northern Division, in re: Bill Heard Enterprises, Inc., et al., conducting a sale by auction through the Auctioneer, Auction Management Corporation.

8. Bidder further acknowledges he has received or reviewed the Motion for an Order Approving the Sale the Property and the Order Approving the Sale of Property in Cause No. 08-83029-JAC-11, in the U. S. Bankruptcy Court for the Northern District of Alabama, Northern Division, in re: Bill Heard Enterprises, Inc., et al., and understands and agrees the auction sale is subject to such Order granting the Motion, including the provision that provides that “if during the Proposed Auction, no bids are received which meet a fair and reasonable predetermined minimum threshold or “reserve”, the Liquidating Trustee will not consummate the sale of the property”.

I hereby acknowledge the receipt of this document.

PURCHASER/ BIDDER

BY: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_