

# Contract For Sale Of Real Estate At Auction

**Date:** November 30, 2009

**Property:** 7555 Briarwood Lane, Barnhart, MO 63012

**Legal Description:** Legal To Govern

**Real Estate Tax ID Number:** 088.033.0053 & 088.033.0047

**Date Of Closing:** With In Thirty (30) Days Of The Auction Date Above, Excluding Weekends And Holidays, During Title Company Regular Closing Hours Only.

**Seller(s):** \_\_\_\_\_

\_\_\_\_\_

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**Seller(s) Broker/Agent:** Roland R. Bauer III, 2850 Lawndell Drive, St. Louis, MO 63144

**Buyer(s):** Highest Bidder Date And Time Of Auction

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\_\_\_\_\_

**Purchase Price (To Include A 6 % Buyer(s) Premium):** \_\_\_\_\_

\_\_\_\_\_

**Down Payment:** \_\_\_\_\_

**Escrow Closing Contact:** to be mutually agreed upon

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**LENDER & SELLER CONTINGENCY:** This contract is contingent on the sellers lender(s) approval of the sale, including all terms in this contract and including the lender(s) agreement to allow a lender(s) "Short Sale" and/or postpone and/or stop foreclosure proceeding to allow for the sale and closing of the above referenced real estate, and this contract is further contingent on the seller(s) agreement with and excepting all lender terms and requirements that the lender may impose for this "Short Sale" and/or postpone and/or stop foreclosure proceeding .

**OFFER, ACCEPTANCE AND CLOSING DATE:** As the high bidder at an Auction of the Property by Seller, as recorded by the Auctioneer, Buyer made and hereby makes an irrevocable offer ("offer") under the terms herein to purchase the Property being offered and/or described herein. Seller may accept other Backup Offer(s) during this period or thereafter. Buyer and Seller agree that Closing shall occur at a time and place to be set by the Seller, on or before the Closing Date indicated above. Buyer, Seller (the "Parties") acknowledge and agree: they have been encouraged to seek the advice of legal counsel and that no one on behalf of Auctioneer, Broker or Closer has or will offer legal advice to Buyer or Seller; that the Parties negotiated this Contract and it is their intent that any rule of construction that would require this Contract be construed against the drafting party shall not apply; that they have not acted under any duress or compulsions, whether legal, economic, or otherwise; that the provisions of this Contract have been expressly agreed to and were taken into consideration in determining the price offered and accepted; that other provisions notwithstanding, "Time-Is-Of-The-

Essence" for completion of this Contract; that upon approval by Seller as herein provided, a valid and binding contract of sale shall exist, the terms and conditions of which are as follows:

**1. BUYER'S INSPECTION, REPRESENTATIONS AND WARRANTIES:** Buyer agrees, acknowledges and warrants without limitation to Auctioneer, Seller and Broker, and their agents, affiliates, officers, employees and representatives: that it was Buyer's sole responsibility to inspect the Property prior to bidding to determine the location of structures, easements, improvements and encroachments or to determine any other matters relevant to Buyer's decision to Purchase; that the Property is being sold in gross and that any estimates of size or acreage were and are approximations only; that Buyer has had more than six (6) days before signing this Contract to make any and all independent inspections of the Property to Buyer's complete and total satisfaction; during this period Buyer was specifically advised by Seller and Broker to seek from independent sources of Buyer's choosing expert advice and/or inspections on all matters affecting the Property or Buyer's decision to purchase including but not limited to a Lead Based Paint Inspection or Risk Assessment, Radon Gas Test, Survey, Appraisal, Structural Report, Heat/Air Inspection, EMP Inspection, Roof Inspection, Termite Inspection, Insurance Inspection, Flood Hazard Inspection, Environmental Audit, Mine Subsidence and Legal Advice; that Buyer understands and agrees that neither Seller, Auctioneer, nor Broker are required or will make any inspections or repairs of any kind whatsoever to the Property; that Buyer's inspection of the Property (or waiver thereof) has relieved and shall relieve the foregoing of any liability to Buyer and Buyer hereby accepts all liability, as between Buyer and the foregoing, and shall indemnify and hold harmless Seller, Auctioneer and Broker, their affiliates, agents, employees, officers, representatives and owners from and against any claims, liabilities, demands, or actions incident to, resulting from or in any way arising out of this transaction, or the possession, ownership, maintenance or use of the Property and that such indemnity shall survive Closing and not be merged therein; that BUYER'S OPPORTUNITY TO INSPECT OR THE WAIVER THEREOF WAS TAKEN FULLY INTO CONSIDERATION IN DETERMINING THE OFFER MADE HEREIN AND REPRESENTS BUYER'S EXPRESS INTENT TO ACCEPT ALL LIABILITY ATTENDANT THERETO.

BUYER acknowledges and understands the following disclosures: 1) The mineral estate has been severed from this parcel and will not convey upon transfer of the surface estate, unless otherwise disclosed; 2) This property may be bound by the assessments and restrictions of a condo/home/property owners association and Buyer agrees to be bound by same and to assume any special assessments that may become payable after the Closing date; 3) Buyer acknowledges and understands that property herein may be subject to multiple code violations with the city/county/borough and Buyer accepts in "As Is Condition". Buyer accepts all responsibility for any remediations, fees, or terms required by the authority thereof, which may or may not include demolition, escrow fees, or habitation certificates; 4) Property may be subject to city/county requirements for transfer and Buyer agrees to ascertain such requirements with the city/county or title company and to be responsible for any fee, permit, remediation required therein, to be done after closing; 5) Neither the Seller, Auctioneer or Broker make any ascertains or guarantees for compliance standards of smoke or CO2 detectors to this property and Buyer accepts all responsibility for same, including any required inspections; and 6) Neither the Seller, Auctioneer or Broker make any ascertains or guarantees as to the condition or inspection of any septic, sewer, location of leach lines, or potability of any well that may be located on the property herein including but not limited to obtaining any necessary permits or inspection required by the municipality or any remediation, fees, or terms required by such authority due to dye testing or inspection, to be performed after closing at buyer's expense.

BUYER expressly acknowledges being advised by Auctioneer and Broker in sales literature and again at or prior to auction registration: that (1) the Buyer would be bound by this Contract, including all Addendums (incorporated by reference are Seller's Addendum, if any; a Property Disclosure or

Disclaimer Statement, if any; and the EPA/HUD pamphlet provided Buyer prior to bidding titled "Protect Your Family from Lead in Your Home"); and (2) TO NOT BID IF BUYER HAD NOT READ AND AGREED TO BE BOUND BY THIS CONTRACT AND ITS ADDENDUMS IN THEIR ENTIRETY.

**2. SALE AND DEED:** Unless otherwise specified above, SELLER shall sell the Property to Buyer and BUYER shall accept same and purchase the Property in its present condition "AS IS, WHERE IS and WITH ALL FAULTS" via a "CASH SALE" NOT SUBJECT TO FINANCING, APPRAISAL, SURVEY OR INSPECTIONS OF ANY KIND. Conveyance shall be by a Deed prepared by or on behalf of Seller, and of a form of Seller's choosing, including but not limited to a Quit Claim, Special Warranty, Bargain and Sale, U.S. Marshal's or Trustee's deed (Buyer shall rely only upon the warranty provided by title insurance as defined in P.4). If a modular, manufactured or mobile home or similar structure exists on the Property which may be considered separate from the real property as assessed or otherwise described, same will only be conveyed by Seller via a hold harmless agreement or quit claim Bill of Sale.

**3. RECEIPT AND PURCHASE PRICE:** Auctioneer acknowledges receipt of the Down Payment amount indicated above and the Parties agree: Auctioneer or Broker shall be entitled to accept Buyer's personal check for immediate deposit without recourse with title company listed above, for trust or escrow as sums due Seller as of this date, and specifically agree and stipulate that the Down Payment SHALL BE HELD IN TRUST OR ESCROW WITH TITLE COMPANY AND /OR OTHERWISE TREATED AS 'FUNDS DUE OTHERS', AND NO INTEREST EARNED THEREON. If the Buyer has tendered this deposit in the form of a certified check, cashiers check, or personal check, Buyer authorizes Auctioneer or Broker to turn all monies over to the title company listed above. Buyer warrant they have funds available to cover this check at the time of execution with the above referenced title company. The balance of the Purchase Price plus costs due from Buyer shall be paid by cash, cashiers check or certified check at Closing.

**4. TITLE AND COSTS:** Buyer shall receive at or before Closing an Owner's Title Insurance Policy (a.k.a. "Title Insurance Commitment" until such policy is issued), which the Parties agree shall be ordered and/or prepared through Closer from an issuer Closer selects, at Buyer's expense, with a face value equal to the Purchase Price herein, issuing insurable title subject to the following "Permitted Title Exceptions": (i) mineral, oil and gas interest (whether owned, severed, or reserved); (ii) all easements, encroachments, overlaps, discrepancies or conflicts in boundary lines, shortage in area, or other matters of record or which could be disclosed by an accurate and complete survey or inspection of the premises; (iii) all restrictions on the use of the Property, whether or not recorded, under existing and future laws, ordinances, and regulations; (iv) subdivision, deed, and plat restrictions of record; (v) current city, state and county ad valorem property and sanitary sewer taxes not yet due and payable; (vi) current leases affecting the Property; (vii) customary exceptions made to the Title Commitment by the Issuer of the Title Commitment and (viii) other easements, restrictions, encumbrances or mortgages specified in this Contract or any exhibit incorporated herein. "Preclusion to title" shall be in the sole discretion of the Closer or Title Examiner and shall mean any issue which would preclude clear title or transfer thereof, including city inspections, occupancy certificates, tax stamps, boundary/title disputes, lost deeds, or payoff statements. No matter shall be construed as a valid objection or preclusion to title under this Contract unless it is a) not a "Permitted Title Exception" above, and b) is construed to be a valid objection or preclusion to title by the title insurance examination attorney chosen by Closer or the policy issuer (such attorney shall be deemed Buyer's attorney for title examination purposes only), and c) is communicated to the Parties prior to Closing. In case of such valid objection or preclusion to title, Seller shall, at Seller's option: have one-hundred and twenty (120) days (the "Cure Period") from the date of the original Closing or such additional time as may be agreed to in writing by the Parties to satisfy such objections and preclusions; or choose to terminate the transaction by returning Buyer's down payment upon which the parties shall incur no further liability to the transaction or each other. If such objections cannot be satisfied within the Cure Period, the Down Payment shall be returned to the

Buyer and this Contract shall be of no further force and effect. The Parties acknowledge and agree the following costs were estimated and disclosed by Auctioneer and/or Broker prior to the Auction or Sale: SELLER shall pay their Closing fee (or 1/2 of a 'single' Closing Fee), and all: State deed tax or stamps; the cost of certifying base abstracts (if required); filing fees for releases (if any); bankruptcy search fee (if any); and any other document fees incurred by Seller (including lease assignment/estoppels). Seller shall deliver to Closer at or before Closing the duly executed and acknowledged Deed for delivery to Buyer upon payment of the Purchase Price.

BUYER shall pay their Closing fee (or 1/2 of a 'single' Closing fee), and all: Title exam and search fees; title insurance premium(s); filing fees for deed and any note/mortgage; plat, survey, inspection or other fees announced or advertised for the Auction; costs of supplemental abstracting (if required); and any and all other Closing costs incurred by Buyer. Buyer shall deliver to Closer at or before Closing, for the benefit of Seller: payment in full of the unpaid portion of the Purchase Price; all such documents as the Closer or Seller shall require prior to or at the Closing to evidence and confirm the power and authority of Buyer to close the transaction contemplated herein; an affidavit waiving inspection and assuming payment of ad valorem and land benefit taxes for the current calendar year and thereafter; and such other documents, instruments and certificates as are contemplated herein to effect and complete the Closing.

**5. TAXES AND PRORATIONS:** Seller shall pay in full: (i) all special assessments against the Property and of record at the date of Closing that are currently payable, Buyer agrees to be bound by same and to assume any special assessments (including payments) that may become payable after the Closing date; (ii) all taxes, other than general ad valorem taxes for the current calendar year, which are a lien on the Property at the date of Closing; and (iii) the cost of any item of workmanship or material furnished prior to the date of Closing which is or may become a lien on the Property. If this sale or Buyer's use of the Property results in the assessment of additional taxes, whether for periods prior to, at or subsequent to the Closing, said taxes shall be the obligation of Buyer. Unless otherwise specified, the following items shall be prorated between the Parties as of the date of Closing: (i) rents, if any; and (ii) general ad valorem taxes for the current calendar year, provided that, if the amount of such taxes has not then been fixed, the pro-ration shall be based upon the rate of levy for the previous calendar year. Any security deposit held by Seller from one or more tenants of the Property shall be transferred to Buyer at Closing and Buyer shall then assume all further liability to tenants, both in relation to such deposits and in relation to any then existing leases covering all or any part of the Property. After Closing Buyer shall indemnify and hold Seller and Broker harmless from all liability to any tenant.

**6. CLOSING AND TRANSFER:** If the Closer or title issuer selected by Closer determines there are valid objections or preclusions to title as defined herein, the Closing shall be extended for the time permitted to allow Seller to cure same, as provided in Section 4 above. Upon notice from Seller or Broker that such objections have been satisfied, the Closer shall fix a date and time for Closing within two (2) business days. If Buyer requests an extension of the Closing, Seller shall have the sole right to grant Buyer an extension of Closing, for which Buyer shall pay Seller in advance a per diem fee equal to \$150 or 5/100 of a percent of the total sales price herein (.0005 x Sales Price), whichever is greater. Until Closing, risk of loss to the Property, ordinary wear and tear excepted, shall be borne by Seller; after Closing such risk shall be borne by Buyer. **BUYER SHALL NOT BE GRANTED POSSESSION OR USE OF THE PROPERTY IN ANY MANNER WHATSOEVER UNTIL CLOSING.**

**7. BREACH OR FAILURE TO CLOSE:** The parties agree that If SELLER has performed Seller's obligations under this Contract, and if at the Closing the Buyer fails to pay the balance of the Purchase Price or to perform any other obligations under this Contract, then Seller may, at Seller's option, either a) unilaterally cancel and terminate Buyer's right to purchase the Property, including all legal and equitable interest, if any, Buyer may have regarding the Property and retain all sums previously paid on the Purchase Price as liquidated damages, or b) elect to recover from Buyer the actual damages incurred by Seller, including loss of the balance of the Purchase Price, costs of resale, attorney's fees, and such other incidental damages as may be lawfully recovered. If BUYER has performed Buyer's

obligations under this Contract and Seller fails to perform its obligations under the Contract, then Buyer may, as Buyer's sole and exclusive remedy, terminate Buyer's obligation to purchase the Property, by written notice to Seller.

**8. LIMITATION OF REMEDIES:** Buyer agrees that in no event shall Seller, Auctioneer, Broker or Closer be liable to Buyer for actual, punitive, speculative or consequential damages, nor shall Buyer be entitled to bring a claim to enforce specific performance of this Contract. The Parties agree that neither shall make a claim for any breach of this contract, for rescission or revocation of acceptance, or for any warranty, misrepresentation, mistake or tort unless such Party first notifies the other Parties in writing of the basis, nature and amount of such Party's claim within one-hundred and eighty (180) days after the date of this Contract, or if Closing occurs, within thirty (30) days after the Closing Date, whichever is earlier; and that any and all claims after such period shall be void as between the Parties. Any request for Arbitration by any Party must be filed within one (1) year after the date of this Contract, and shall be limited to the remedies previously described herein, or if the sale has already closed, Buyer agrees its sole and exclusive remedy, at law or in equity, shall be limited to liquidated damages not to exceed 1% of the Purchase Price herein. The Parties expressly stipulate and agree that it is difficult or impossible to accurately ascertain the amount of damages that might be suffered by Buyer (unless the sale was not closed and Buyer's Down Payment was returned, in which event it is stipulated and agreed herein that Buyer will have suffered no damages) and that the amount of 1% of the Purchase Price is a reasonable estimate of the amount of such damages to Buyer.

**9. SELLER AND BROKER DISCLAIMER:** Buyer acknowledges and agrees that Seller, Auctioneer, Broker, their affiliates, agents, employees, officers, representatives or owners have not made, do not make and specifically negate and disclaim any representations, warranties, promises, covenants, agreements or guaranties or any kind or character whatsoever, whether express or implied, oral or written, past, present, or future of, as to, concerning or with respect to (a) the value, nature, quality or condition of the Property, including, without limitation, the water, soil, or geology, (b) the income to be derived from the Property, (c) the suitability of the Property for any and all activities and uses which Buyer may conduct 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 use or 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, or (h) any other matter with respect to the Property, and specifically, that the foregoing persons and entities have not made, do not make and specifically disclaim any representation regarding compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including the disposal or existence, in or on the Property, of any hazardous materials; that Buyer has not relied upon representations, warranties, guarantees or promises or upon any statements made or any information provided concerning the property including but not limited to ads, brochures, website materials, signs, maps and sale day comments and instead has determined to make Buyer's bid after having made and relied solely on Buyer's own independent investigation, inspection, analysis, and evaluation of the Property and the facts and circumstances related thereto; and that no warranty has arisen through trade, custom or course of dealing with Buyer. ANY INSPECTIONS, REPORTS, PROPERTY INFORMATION OR SURVEYS MADE AVAILABLE TO BUYER PRIOR TO OR AT THE SALE WERE FOR "GENERAL INFORMATIONAL PURPOSES" ONLY AND ARE NOT, AND WILL NOT, BE RELIED UPON AS A REPRESENTATION OR WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED.

**10. INDEMNIFICATION OF AUCTIONEER, BROKER AND CLOSER:** Seller and Buyer jointly and severally agree to indemnify and hold Auctioneer, Broker, and Closer harmless against any and all losses, claims, damages or liabilities and expenses not resulting from Auctioneer, Broker or Closer's bad faith or gross negligence, including costs of investigation, attorney fees, and disbursements, which may be imposed upon or incurred by Auctioneer, Broker or Closer hereunder

relative to the performance of their duties related to the Parties or the Property, including without limitation any litigation arising from or in respect of this Contract or the transactions contemplated hereby. Auctioneer, Broker, and Closer shall not be liable for any error of judgment or for any act done or omitted by them in good faith. Auctioneer, Broker and Closer are authorized to act on any document believed by them in good faith to be executed by the proper party or parties, and will incur no liability in so acting. Auctioneer, Broker and Closer are in all respects and for all purposes third party beneficiaries of this Contract to the extent that this Contract would entitle them to rights or benefits if they were signatory parties hereto, and each of them is entitled to enforce such rights and benefits, as herein provided, to the same extent they would be entitled if they were such signatory parties.

**11. INTERPRETATION AND EFFECT OF THIS CONTRACT:** The Parties agree this Contract shall be binding upon and inure to the benefit of their heirs, legal representatives and successors; sets forth their understanding and supersedes all previous negotiations, representations and agreements between them and their agents; can only be amended or modified by a written agreement signed by both Parties; no amendment affecting Auctioneer, Broker or Closer may be made in the absence of the prior written consent of the affected person; if any provision of this Contract is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Contract and the remaining provisions of this Contract shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Contract; and furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable.

**12. AGENCY DISCLOSURE:** The Parties expressly agree and acknowledge that AUCTIONEER AND BROKER REPRESENTS SELLER ONLY, as previously disclosed to both Parties at first contact; that the identity of Auctioneer's and Broker's principal, the Seller, was available to the Buyer at all times prior to the auction; that both Parties shall indemnify and hold the other Auctioneer and Broker (unless previously approved in writing by Auctioneer or Broker) harmless from any claim for a commission or other compensation of any broker or agent other than Auctioneer and Broker purporting to have represented or assisted them.

**13. LEAD-BASED PAINT AND/OR LEAD-BASED PAINT (for Pre-1978 housing only) AND OTHER HAZARDS DISCLOSURES:**

**Lead Warning Statement** Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure** As evidenced by Seller's signature herein Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing and has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

**Buyer's Acknowledgment** As evidenced by Buyer's signature herein Buyer has received copies of all information listed above, including the pamphlet Protect Your Family from Lead in Your Home and has received a 10-day opportunity prior to the auction to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards, and/or has waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment** As evidenced by Broker's name hereon Broker (Agent) has informed the seller of seller's obligations under 42 U.S.C. 4852d and is aware of its responsibility to ensure compliance.

**Mold Statement** There are many types of mold. Inhabitable properties are not, and cannot be, constructed to exclude mold. Information about controlling mold growth may be available from your county extension agent or health department. Certain strains of mold may cause damage to property and may adversely affect the health of susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. The seller, seller's agent, and Auctioneer cannot and does not represent or warrant the absence of mold. It is the buyer's obligation to determine whether a mold problem is present and to remediate such.

**Certification of Accuracy** The Parties have reviewed the information above and hereby certify as evidenced by their signatures herein on the date herein that to the best of their knowledge the information they have provided is true and accurate.

**NOTICE** Institutional and Fiduciary Sellers (courts, government agencies, banks and trustees) have not occupied the property and have NO information to provide for disclosure. Properties are sold "AS IS – WHERE IS" and should be fully inspected prior to bidding on. SELLER, AUCTIONEER AND/OR BROKER HAVE NO KNOWLEDGE OF THE SUBJECT PROPERTY OR ITS FIXTURES OR CONDITION AND ARE NOT RESPONSIBLE FOR SUCH.

**By signing below Seller(s) and Buyer(s) acknowledges reading and understanding this Contract and it's Addendum(s) and agrees to be bound by the Contract if the Buyer is recognized as the high bidder by the Auctioneer:**

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**Seller(s) Signature – Date:**

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**Seller(s) Signature – Date:**

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**Buyer(s) Signature – Date:**

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**Buyer(s) Signature – Date:**

Gary P. Chura, Attorney at Law  
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