

THIS EARNEST MONEY ESCROW AGREEMENT (this "Agreement") is made and entered into this

16th day of August 2020, by and among \_\_\_\_\_ ("Purchaser")  
and Estate of Gerald S. Berenson and BPH Real Estate.

Lp ("Seller"), and Joseph (Joe) C. Stewart, Pc. Attorney At Law ("Escrow Agent").

- A. Seller and Purchaser entered into those certain purchase agreements, as amended by addendums thereto (collectively, the "Contracts") executed as of **16th day of August 2020** for certain properties located in **Pearl River County, Mississippi** and being more particularly described in Exhibit A to the Contracts (collectively, the "Property").
- B. Purchaser and Seller desire that Escrow Agent hold the Earnest Money in escrow as defined in, and required under, the Contracts and this Agreement, subject to the **Conditions of Escrow**, attached to this Agreement.
- C. In consideration of the promises and undertakings in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties covenant and agree as follows:
  1. Purchaser and Seller hereby appoint **Joseph (Joe) C. Stewart, PC. Attorney At Law** as escrow agent.
  2. Purchaser will deliver and deposit with Escrow Agent the amount of \$ \_\_\_\_\_ representing the Earnest Money as required by the Contracts. Escrow Agent will confirm, by written notice to Seller and Purchaser, receipt of the Earnest Money. Escrow Agent agrees to deposit the funds in a non-interest bearing account and to hold and disburse the funds as provided in this Agreement. Any additional earnest money required by the Contracts will likewise be deposited, if and when due, with Escrow Agent and will be a part of the "Earnest Money" in this Agreement.
  3. Upon written notification from Purchaser and Seller that the sale is consummated, Escrow Agent will deliver the Earnest Money to Seller to be applied to the purchase price.
  4. Upon written notification from Purchaser and Seller that the sale will not take place, Escrow Agent will deliver the Earnest Money in accordance with the release disbursement instructions also included in this Agreement. Notwithstanding the foregoing, in the event Purchaser terminates either one, or both, of the Contracts prior to closing of the transactions contemplated thereby, and in accordance with the terms thereof, Purchaser will provide a copy of the termination(s) to the Escrow Agent, and Escrow Agent will immediately deliver the Earnest Money to Purchaser without requiring approval or authorization from Seller.
  5. The parties covenant and agree that in performing any of its duties under this Agreement, Escrow Agent will not be liable for any loss, costs or damage which it may incur in the capacity of Escrow Agent, except for any loss, costs or damage arising out of its own default or gross negligence or willful misconduct. Accordingly, Escrow Agent will not incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of counsel for the parties given with respect to any questions relating to duties and responsibilities, or (ii) any action taken or omitted to be taken in reliance upon any documents, including but not limited to, any written notice of instruction provided for in this Agreement or in the Contracts, not only as to its execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained in the same, which Escrow Agent in good faith believes to be genuine, to be signed or presented by a proper person or persons and to conform with the provisions of this Agreement.
  6. The parties covenant and agree that, in an event of a dispute under this Agreement, the Escrow Agent may, in the Escrow Agent's discretion, tender into the registry or custody of any court of competent jurisdiction sitting in the State of Georgia, all money held under the terms of this Agreement, together with such legal pleading as is appropriate and will be discharged of its duties under this Agreement. Escrow Agent will be reimbursed for any and all costs and expenses, including reasonable attorney's fees in connection with any such action.

7. Notices will be given in accordance with Section 16 of the Contract. The address for Escrow Agent is:

Joseph (Joe) C. Stewart, PC. Attorney At Law  
Williams, Smith, Stockstill PLLC  
105 North Main Street  
Picayune, Ms. 39466  
601-798-2382  
[joecestewart@gmail.com](mailto:joecestewart@gmail.com)

The undersigned have caused this Agreement to be duly executed under seal as of day and year first above written.

**PURCHASER:**

\_\_\_\_\_ (SEAL)

**ESCROW AGENT:**

Joseph (Joe) C. Stewart, Pc. Attorney At Law

By:  \_\_\_\_\_ (SEAL)

Name: Joseph C. Stewart

Title: Member / Manager

**SELLER:**

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CONDITIONS OF ESCROW

### **Escrow Agent accepts this undertaking subject to these Conditions of Escrow:**

1. The Earnest Money may be processed for collection in the normal course of business by Escrow Agent, who may commingle funds received by it with escrow funds of others in its regular escrow account at a nationally recognized bank (the "**Depository**"). Escrow Agent will not be accountable for any incidental benefit which may be attributable to the funds so deposited.
2. Escrow Agent will not be liable for any loss caused by the failure, suspension, bankruptcy or dissolution of the Depository;
3. Escrow Agent will not be liable for loss or damage resulting from:
  - a. any good faith act or forbearance of Escrow Agent;
  - b. any default, error, action or omission of any party, other than the Escrow Agent;
  - c. the expiration of any time limit or other delay which is not solely caused by the failure of Escrow Agent to proceed in its ordinary course of business, and in no event where such time limit is not disclosed in writing to the Escrow Agent;
  - d. the lack of authenticity of any writing delivered to Escrow Agent or of any signature, or the lack of authority of the signatory to sign the writing;
  - e. Escrow Agent's compliance with all attachments, writs, orders, judgments, or other legal process issued out of any court;
  - f. Escrow Agent's assertion or failure to assert any cause of action or defense in any judicial or administrative proceeding; and
  - g. Any loss or damage which arises after the Earnest Money has been disbursed in accordance with the terms of this Agreement.
4. Escrow Agent will be fully indemnified by the parties for all its expenses, costs and reasonable attorney's fees incurred in connection with any interpleader action which Escrow Agent may file, in its sole discretion, to resolve any dispute as to the Earnest Money; or which may be filed against the Escrow Agent. Such costs, expenses or attorney's fees, as well as the fees of Escrow Agent described below, may be deducted from the Earnest Money.
5. If Escrow Agent is made a party to any judicial, non-judicial or administrative action, hearing or process based on acts of any of the other parties and not on the malfeasance and/or negligence of Escrow Agent in performing its duties, the expenses, costs and reasonable attorney fees incurred by Escrow Agent in responding to such action, hearing or process may be deducted from the funds held and the party/parties whose alleged acts are a basis for such proceedings will indemnify and hold Escrow Agent harmless from said expenses, costs and fees incurred.
6. All controversies, issues, interpretation and other matters relating in any way to these Conditions of Escrow will be interpreted and governed by the laws of the State of Georgia.
7. In the event of any conflict between the terms any provisions of these Conditions of Escrow and the terms and provisions of the Agreement or other document to which this is attached, the terms and provisions of these Conditions of Escrow will prevail.
8. Escrow Agent will be fully indemnified by the other parties and such parties will hold Escrow Agent harmless from all damages, costs, claims and expenses arising from Escrow Agent's performance of its duties under this Agreement, including reasonable attorney's fees, except for those damages, costs, claims and expenses resulting from the gross negligence or willful misconduct of Escrow Agent.

**AUCTION PURCHASE CONTRACT**

**STATE OF MISSISSIPPI, COUNTY OF PEARL RIVER**

The undersigned Purchaser, \_\_\_\_\_, agrees to buy and the undersigned Seller, ESTATE OF GERALD S. BERENSON. AND BPH REAL ESTATE, L.L.C.. BATON ROUGE, LOUISIANA agrees to sell the following described real property, to wit:

PARCEL NUMBERS \_\_\_\_\_

SEE ATTACHED PLAT AND LEGAL DESCRIPTION AS EXHIBIT "A".  
SEE ATTACHED TERMS AND CONDITIONS AS EXHIBIT "B"  
SEE ATTACHED SPECIAL STIPULATIONS AS EXHIBIT "C"

**1. PURCHASE PRICE**

Parcel Bid Price		Acres	
_____	X	_____	\$ _____
_____	X	_____	\$ _____
_____	X	_____	\$ _____
_____	X	_____	\$ _____
Total Acres of Parcels		_____	\$ _____
Plus Ten (10) % Buyer's Premium			\$ _____
Plus _____ Per Acre For Survey			\$ _____
<b>TOTAL CONTRACT PRICE</b>			<b>\$ _____</b>

**THERE ARE NO CONTINGENCIES, FINANCING, OR ANY OTHER.**

2. **TERMS OF SALE.** Purchaser has paid to the below escrow agent the sum of \$ \_\_\_\_\_ as earnest money, which is to be applied to the purchase price of the real property described above, at such time as the sale is consummated which shall occur on or within 30 days from contract date. **Should Purchaser fail to close by the specified closing date, then at Seller's option, Purchaser will forfeit, and Seller may retain the earnest money as liquidated damages in full settlement of all claims of Seller.**

3. **TITLE.** Seller agrees to furnish a good and fee simple, marketable title, as determined by title standards of the State Bar of Mississippi, to the real property described above; to furnish a properly drawn and executed special warranty deed to Purchaser, having affixed thereto deed transfer tax as required by law and inchoate lien and possession affidavit; and subject to only exceptions for taxes which may not be due and payable, all recorded easements, restrictions and encumbrances and zoning laws. Seller reserves all oil, gas and mineral interests in the Property.

**AUCTION PURCHASE CONTRACT**

- 4. **INSPECTION.** Seller makes no representations or warranties as to the Property. The parties hereto agree that the property is being sold "AS IS" with all faults, with no representations or warranties, express or implied.
- 5. **CLOSING DOCUMENTS.** Seller and Purchaser agree that such instruments, deeds and other papers as may be necessary to carry out the terms of this contract, shall be executed and delivered by each party hereto at the time this sale is consummated.
- 6. **BINDING, EFFECT, ENTIRE AGREEMENT.** This contract shall constitute the entire agreement between all parties hereto and same may only be changed by written consent of all parties hereto and no representations, promises or inducement not specifically included in this agreement shall be binding upon any party hereto.
- 7. **CLOSING DATE AND POSSESSION.** This sale is to be consummated on or within 30 days from contract date. at the office of Joseph C. Stewart , of Williams, Smith and Stockstill PLLC; 105N Main Street, Picayune, Mississippi 39466, 601-798-2382. Possession of premises shall be granted at the time of closing. Buyer pays for all closing costs, transfer taxes and the commission to The Auction Way.


**TIME IS OF THE ESSENCE OF THIS CONTRACT.**

THIS IS A LEGAL DOCUMENT. READ EACH AND EVERY PROVISION (INCLUDING EXHIBITS) OF THIS DOCUMENT BEFORE SIGNING BELOW. PURCHASER UNDERSTANDS THE AUCTION WAY COMPANY/GERALD A. BOWIE MISSISSIPPI REAL ESTATE BROKER Ms. Lic. #15107 OF LAGRANGE, GEORGIA IS AGENT OF THE SELLER AND IS NOT RESPONSIBLE FOR THE PERFORMANCE OF EITHER BUYER OR SELLER.

IN WITNESS WHEREOF, each party has hereunto set his hand and affixed his seal on the date indicated below:

SIGNED AND SEALED by Purchaser on this 3<sup>th</sup> day of May 2020

Purchaser: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ St. \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

Escrow Agent:   
 Joseph C. Stewart, Attorney at Law

Purchaser: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ St. \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

Seller: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ St. \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_

Seller: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 City: \_\_\_\_\_ St. \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Email: \_\_\_\_\_