

AUCTION AGREEMENT

1. **Statement of Contract Purpose:** The undersigned seller (as the "Seller") and Aaron's Auctions, Inc. d/b/a Pacific Auction & Realty (as the "Auctioneer") agree to sell at public auction (herein "Auction"), or otherwise, the real property described as follows:
Parcel Number 168124 or more fully described as SECTION 34 TOWNSHIP 05 RANGE 69 QTR NE SUBDIVISION CD 238600 SUBDIVISION NAME FAIRVIEW HEIGHTS PT BLKS 23 24 & 25 EX SUR #3 BLOCK LOT 0G-2 County of Jefferson, State of Colorado; a/k/a 9155 West Fairview Ave, Littleton, CO. including all improvements (herein the "Property").
2. **Place/Date of Sale:** The auction shall be held on or about October 4, 2022 as either a live in-person auction with simultaneous online bidding or, at the sole discretion of the Auctioneer, or an online only auction, regardless of weather at the time of the Auction. A Property Inspection (open house) open to the public, will be scheduled within two weeks in advance of October 4, 2022, or the actual date of the Auction.
3. **Duties and Obligations of Auctioneer:** Auctioneer shall carry out the following duties and obligations regarding the sale of Seller's Property pursuant to this Agreement:
 - A. **Advertisement:** Auctioneer shall cause the auction of Seller's property to be advertised locally, regionally and nationally, in print, electronic media, and online, in the manner the Auctioneer believes reasonable for this type of sale and in accordance with the marketing budget approved by Seller. The Auctioneer shall prepare a brochure of Seller's property for the Auction and shall distribute copies of such brochure by hard copy and electronically means, as requested, in a manner calculated to advise those who might reasonably be interested in such property. Auctioneer will post Seller's property on Pacific Auction, CAA, and other websites, and advertise and offer the property on any other websites or internet service as the Auctioneer believes would be beneficial.
 - B. **Display of Property:** Auctioneer shall, in its sole discretion, prepare Seller's property for sale in a manner designed to induce the highest possible bids.
 - C. **Use of Best Effort:** The Auctioneer shall conduct the Auction to the best of its ability so as to maximum the sale price of Seller's Property, provided, however, the Auctioneer shall not responsible for the breach, by the buyer or the Seller, of this Agreement or any other related agreement. Online bids will be accepted prior to and during the Auction.
 - D. **Memorandum of Sale:** The Auctioneer shall keep a record of the sale and the auction clerk's record shall be the final record as to the sale price and identity of the buyer. The Auctioneer shall obtain a written contract of sale and purchase between Seller and the buyer immediately after the Auction (the "Contract"). Such Contract shall confirm the purchase price in cash with no contingencies, other than that of merchantable title, and the title will be transferred by a special warranty deed and bill(s) of sale for all of the Property. The Contract shall provide for closing within 30 days after the Auction, subject to extensions as may be agreed to by the buyer and Seller.
 - E. **Disclosure:** Colorado law requires the Auctioneer to disclose to any prospective buyer all adverse material facts actually known by its real estate broker, including but not limited to adverse material facts pertaining to the title to, and use of, the Property and the physical condition of the Property, any material defects in the Property, and any environmental hazards affecting the Property which are required by law to be disclosed. Seller agrees that any buyer may have the Property (including any inclusions) inspected prior to the Auction.

4. Duties and Obligations of Seller: The Seller covenants, represents, warrants and agrees to the following terms and conditions:

A. Auction Sale Price: The Property shall be offered for sale to the highest bidder with no minimum bid or reserve price. If Seller does not accept the final purchasing bid Seller shall immediately owe to Auctioneer the 10% buyers fee on the highest bid attained or the Withdrawal Fee described in section 4(H)(iv), whichever is greater.

B. Delivery: Seller shall make the property available to the auctioneer at all reasonable dates and times requested by Auctioneer. Exclusive possession of the Property shall be delivered to buyer on the closing date, when full payment is made from buyer to Seller.

Subject to a general L. etc.

C. Compensation and Costs of Sale:

i. Buyer's Premium: The Auctioneer shall charge to, to be paid by the buyer, a fee of ten percent (10%) of the final bid accepted at the Auction for the Property ("Buyer's Premium"). Such Buyer's Premium shall be paid to Auctioneer as and for Auctioneer's commission for the Auction. The Buyer's Premium is added to the final purchasing bid and the sum of the two becomes the total purchase price of the Property. The Auctioneer is not obligated to negotiate this fee with any buyer. The Auctioneer shall advertise in advance and announce at the sale the requirement that all buyers shall pay the Buyer's Premium. If the Auctioneer accepts a co-broker arrangement or assistance from other real estate broker(s), then the Auctioneer may pay a portion of the Buyer's Premium to the other broker in an amount that the Auctioneer may negotiate, but in any event the Seller shall not be responsible to pay a commission or any other amount to the co-broker. In the event the buyer defaults on the Contract, any collected earnest money deposit shall be split equally between Seller and Auctioneer.

ii. Costs: Auctioneer will pay all advertising costs, as long as the high bid is accepted for the property. If the high bid is not accepted the seller will owe \$5000.00 in compensatory expenses.

iii. The Seller shall pay the costs of sale that are traditionally an expense of a seller of real property including, but not limited to, final utility bills, title insurance commitment, recording fees, and other title closing fees and costs. Real estate taxes shall be prorated until the end of the day of closing. As the standard Colorado real estate sale and purchase contract contain many provisions that do not apply to an auction sale, a custom drafted Contract of sale and purchase of the Property and any other appropriate legal documents will be generated. The Seller shall pay these costs. The Contract and other documents may be drawn by the buyer, by the attorney of the Seller's choice, or an attorney referred by the Auctioneer.

iv. Residual Obligation of Seller: In the event the real property does not sell on the day of the auction, for any reason, and the Property within eight (8) weeks of the date of the Auction ("Residual Time") becomes the subject of a sales contract with any party acquiring, through the advertising efforts of the Auctioneer, knowledge of the status of the Property for sale, then the Seller will be obligated to pay to Auctioneer a Buyer's Premium of ten per cent (10%) of the actual sales price. At the end of the Residual Time, Seller shall have no further obligation to pay any Buyer's Premium or any commission to Auctioneer unless a sale contract for the property has been entered into.

D. Ownership of Property: Seller hereby covenants, warrants and represents that he/she/they is/are the owner of the Property and has/have the sole and exclusive right to sell the Property, and that the Property is, or will be at the time of closing the Contract free and clear of all liens and encumbrances of any kind and nature whatsoever, and that the Seller has marketable title to, and has the unqualified right to transfer the Property. Seller also represents that no listing agreement with a real estate agent or broker relating to the

Property exists. Seller warrants, to the best of Seller's actual knowledge, that there is no action, claim, court proceeding, or investigation involving Seller or the Property. To the best knowledge and information of the Seller, no such claims have been threatened or pending before any court, administrative agency, or panel of arbitration, whether federal, state, or local, and which could reasonably have or be expected to have, a material adverse effect upon the sale of the Property, or which could prohibit or delay the performance of this Agreement, or any of the transactions which are contemplated by this Agreement.

E. Title Commitment. Prior to the Auction, Auctioneer shall order (and use its best efforts to obtain) from a title company of Seller's choice, with respect to each parcel to be sold, a title insurance commitment evidencing the current status of title with respect to each parcel, which shall include copies of all Schedule B-2 Exceptions (or electronic links thereto), and a certificate of taxes due (the "Preliminary Title Evidence"). Seller agrees to pay the cost of the title insurance commitment and to cooperate with Auctioneer's procurement thereof. The title insurance commitment shall be made available to bidders prior to bidding. Any purchase of a parcel at auction shall be subject to the matters set forth therein and shall not be subject to the buyer's approval of any title insurance commitment.

F. Sales Prior to Auction: Seller shall not sell, transfer, encumber or gift the property after the date of this Agreement. Seller understands that the Auctioneer will make representations in advertisements, and that once advertised, the Property must be available at the date of sale. The Seller shall not incur any liabilities or debts against the Property, and shall not permit the creation of any lien, claim, charge or any encumbrance as against Property.

G. Indemnification: Seller shall indemnify and hold harmless the Auctioneer, its officers, directors, employees, agents, representatives, successors and assigns from and against any and all claims, causes of action, suits, complaints, demands, liabilities, damages, losses, debts, fees, costs, and expenses, including, but not limited to, attorney's fees and costs reasonably incurred by the Auctioneer in defending against any of the following actions or to recover such losses or damages incurred by the Auctioneer that may arise from:

- i. Any material breach, default, or violation by the Seller of a covenant, warranty, or term of this Agreement or the Contract; or
- ii. Any material misrepresentation or omission of fact by the Seller in this Agreement or the Contract.

H. Remedies in the Event of Default:

i. Withdrawal Fee: In the event that the Seller breaches this Agreement by withdrawal of the Property before or at the Auction, or breaches the Contract with the buyer, the Seller agrees to pay Auctioneer **liquidated damages of \$ 30,000.** , Which is agreed to because of the uncertainty of, and inability to precisely determine, the damage to the Auctioneer's reputation and the actual financial losses suffered by Auctioneer in the event of withdrawal of the Property before completion of the Auction. Auctioneer shall be entitled to recover interest at the rate of twelve percent (12%) on all damages from the date of the breach of this Agreement until paid in full.

ii. Attorney's Fees: Should either party be required to obtain legal counsel to enforce any provision of this Auction Agreement, or institute legal proceedings to enforce the Agreement or recover damages by reason of a breach of any provision of this Agreement, the prevailing party shall be entitled to recover their attorney's fees and costs from the non-prevailing party.

iii. Auctioneer Default: Should Auctioneer materially breach this agreement, Seller has the right, by and upon written notice to Auctioneer served pursuant to §4(H)(iv) hereof, to terminate this Agreement with no further obligation for payment of any monies to Auctioneer and with any monies paid to Auctioneer by Seller shall be returned to Seller.

iv. Notice: All notice pursuant to this Agreement, including notices associated with an event of default, must be given in writing to the other party, and may be delivered by:

(a) personal delivery to one of the Sellers or to an officer of Auctioneer, including delivery by a private delivery service, which such notice shall be effective upon delivery.

(b) email to the email address of either party at the respective email address stated at the end of this Agreement for such party, which shall be effective upon delivery; or

(c) United States first class pre-paid certified mail, return receipt requested, addressed to the party to be noticed at the address of such party stated at the end of this Agreement, which shall be effective two business days after such mailing.

5. Consignments: The auctioneer may market and advertise the sale of consignments from other sellers.

6. Payment to Seller:

A. The Seller shall receive the proceeds of the Auction from the title company (less commissions, buyer's premium, sales taxes, if any, and other closing expenses where applicable) at closing of the Contract. A non-refundable earnest money deposit of \$20,000.00 in the form of good funds (cashier's check, bank money order or bank wire transfer), shall be collected from the buyer at the signing of the Contract and such earnest money deposit shall be held by Seller's title company. In the event of a default by the buyer, this deposit shall be split equally between Seller and Auctioneer.

B. The Auctioneer has no liability or obligation to enforce payment by the buyer. In the event of non-payment by the buyer, the Auctioneer in its sole discretion may, as a convenience to the Seller, take action to assist in collecting from the buyer but may cease collection efforts at any time and notify the Seller of the nonpayment. The Auctioneer will cooperate with the Seller in all civil and criminal collection efforts by providing documentation and testimony as deemed necessary, subject to the payment of travel costs and expenses incurred by the Auctioneer. The Auctioneer shall not be liable for any consequential damages to the Seller as a result of non-payment by the buyer.

7. Risk of Loss: The Seller shall remain responsible for all loss or damage that may occur to or upon the Property until it is sold, except for gross negligence of the Auctioneer.

8. Warranties: Seller may give any warranty as to quality or description of the Property that the Seller may deem appropriate, but the Seller and not the Auctioneer shall be solely responsible to the buyer for any liability under such warranty.

9. Cooperation of Seller: The Seller shall in all respects cooperate with and further the interests of the Auctioneer in discharge of its duties under this Agreement and by law, and shall refrain from all acts which could reasonably tend to interfere with the Auctioneer in discharge of its duties under this Agreement. The Seller shall assist the Auctioneer when the Auctioneer requests such assistance to obtain sale of the Property, to educate the Auctioneer as to the quality and history of the Property, to make the improvements functional at the day of sale, or any other reasonable request. The Seller shall sign the Contract prepared by the Seller or Auctioneer's attorney and take all reasonable efforts to enforce the Contract including but not limited to filing litigation against the buyer to recover the Auctioneer's fee. The Seller shall enter into such amendments and

extensions of the Contract as the Auctioneer recommends. If the Seller elects not to enforce the Contract, then the Seller shall pay the Buyer's Premium to the Auctioneer as liquidated damages. Provided, however, that the Auctioneer may, in its discretion, accept an assignment of the Contract from the Seller and pursue enforcement thereof against the buyer.

10. Lien: The auctioneer may have a priority lien for payment of all amounts due to the Auctioneer under this Agreement and the Contract against the 's Property and the proceeds from the Auction sale. Auctioneer's right to file such a lien against the Property shall arise only after completion of, or failure of, mediation of any dispute between the parties, as described in § 21 below.
11. Payment of Debts: In the event of any controversy regarding liens, encumbrances or claims of ownership of the proceeds held by the Auctioneer, unless mutual written instructions are received by the Auctioneer, the Auctioneer shall not be required to take any action, but may await any legal proceeding or at the Auctioneer's option and sole discretion, the Auctioneer may file legal proceedings and interplead all parties and deposit any money or things of value into the court and receive its court costs and reasonable attorney's fees.
12. Merger: The parties agree that all verbal or written discussions or agreements, negotiations between the parties prior to the execution of this Agreement have been merged into the terms of this Agreement, and no contrary matters survive.
13. Choice of Law: This Agreement shall be construed in accordance with the laws of the State of Colorado, and any legal action or proceeding concerning this agreement shall be brought in Boulder County, Colorado.
14. Survival: The terms of this Agreement shall survive completion of the transaction contemplated by this Agreement.
15. Heirs, Successors and Assigns: This Agreement shall be binding upon the heirs, successors, personal representatives, employees, agents and assigns of the undersigned parties.
16. Exclusive Right-to-Sell Listing: This Agreement is a binding contract between Seller and the Auctioneer. Seller acknowledges that the Auctioneer has advised Seller that this document has important legal consequences and has recommended consultation with legal, tax or other counsel, before signing this Agreement. The Auctioneer is a real estate brokerage firm and this Agreement shall be considered an exclusive right-to-sell listing contract. The Colorado Real Estate Commission has not approved the terms of this Agreement.
17. Agency: The Auctioneer is Seller's agent only, with all attendant fiduciary duties to Seller, express and implied, under the Colorado Brokerage Act.
18. Gender: As used herein, the singular includes the plural and vice versa, and any reference to a gender or a pronoun shall refer to all genders, all as the context may require.
19. Signage: Seller authorizes Auctioneer to place upon the Property all signage advertising the Auction deemed appropriate by the Auctioneer.
20. Time of Essence: Time is of the essence for all dates and deadlines contemplated by this Agreement.

- 21. Reserved.
- 22. Modification. This agreement may not be modified, interpreted, amended, waived or revoked orally, but only by a writing signed by all of the parties hereto.
- 23. This agreement may be executed in digital format and in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.

Dated the date of each signature and agreed to the date of full execution hereof.


Auctioneer: Aaron's Auctions, Inc.,
a Colorado corporation
d/b/a Pacific Auction & Realty

Seller(s)



Avalanche Funding, LLC by Fred Orr



DocuSigned by:

 58C8E09F5153430
 9/2/2022

By _____
 Butch Hagelstrom
 Broker/Auctioneer

Auctioneer's address - PO Box 152, Masonville, CO 80541.
Auctioneer's email address - ojpratt@pacificauction.com

Seller's address - 5040 Acoma Dr.
Denver Co 80216

Seller's email address -- fred@5040group.com
Phone 303-9181-215