

Sel-Equity Auction

ABSOLUTE AUCTION PURCHASE AND SALE AGREEMENT

Date: April 5, 2008

1. **AGREEMENT.** Buyer agrees to buy, and the undersigned Seller agrees to sell, the "Property", defined below, on the terms and conditions set forth in this Auction Purchase and Sale Agreement (the "Agreement").
2. **DEFINED TERMS.**

Seller. "Seller" is Make-A-Wish Foundation of Idaho, Inc.

Buyer. "Buyer" is _____

Property. The "Property" is the following legally described real property:

Lot 4 Blk 7 Eagle Hills West No 4, State Parcel # E05350070040 in the County of Ada, State of Idaho, commonly known as 599 Pebble Beach Way, Eagle, Idaho 83616,

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

Dates and Deadlines. "Closing" shall occur within thirty (30) days of the auction at which the Property is sold, as provided herein, except that only Seller shall have the right to extend Closing fifteen (15) days after such date, if necessary, only for the purpose of taking such steps necessary to deliver clear and marketable title to Purchaser. Possession shall be transferred by 5:00 p.m. local time on the date of Closing, as extended by Seller.

- e. **"NOT APPLICABLE DEFINED:"** The letters "n/a," "N/A," "n.a.," and "N.A.," as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

3. **PROPERTY INFORMATION PACKET.** Attached hereto are the documents describing the state and condition of the Property provided to Buyer before Buyer was registered to participate in the auction for the Property. These documents are collectively referred to herein as the "Property Information Packet." The "Purchase Price", defined below, includes and excludes those items listed as "Inclusions" and "Exclusions", respectively, in the Property Information Packet provided to Buyer, attached hereto and made a part hereof. For purposes of this Agreement, all Inclusions noted in the Property Information Packet shall be deemed included in and will be collectively referred to as the Property.

Waiver of Right of Rescission. Regardless of whether the Buyer pre-registers to participate in the auction at any time less than seventy-two (72) hours prior to the commencement of the auction for the property, as a condition to Buyer's participation in the auction, Buyer agrees and represents it has waived any right of rescission based upon Idaho Code Section 55-2515 of Buyer's purchase of the Property at auction.

4. METHOD OF SALE. Seller agreed to offer the Property at an auction, supervised by Broker.

The auction was held at 599 Pebble Beach Way, Eagle, Idaho on the 5th day of April, 2008 at 12:01 p.m.

Absolute Auction. The type of this auction was ABSOLUTE and the Property was sold without a reserve or a minimum.

The Buyer, at auction, offered the winning bid for the Property (the "Highest Bid Price") in the amount of \$ _____.

5. PURCHASE PRICE AND TERMS. The "Purchase Price" shall be the sum of the Highest Bid Price at auction of the Property and the "Buyer's Premium" as defined in this Section 5. The Purchase Price shall be payable in U.S. Dollars by Buyer, and shall be calculated as follows:

| Item No. | Reference | Item | Purchase Price | Funds from Buyer |
|----------|-----------|-------------------|----------------|------------------|
| 1 | § 4(c) | Highest Bid Price | \$ | |
| 2 | § 5(a) | Buyer's Premium | \$ | |
| 3 | § 5(b) | Earnest Money | | \$ |
| 4 | § 5(c) | Cash at Closing | | \$ |
| | | TOTAL | \$ | \$ |

Buyer's Premium. Buyer agrees to pay a premium of (ten) 10 % of the highest bid price at the time of Closing. Buyer acknowledges that this premium shall be paid to Seller, who shall pay an equivalent amount to Broker as Broker's commission. Payment of the Buyer's Premium does not create an agency relationship between Buyer and the listing broker for Seller. Buyer acknowledges it agreed to pay said Buyer's Premium prior to participating in the auction for the purchase of the Property.

Earnest Money. \$ _____ has been paid by Buyer in the form of a _____, as a non-refundable earnest money deposit (the "Earnest Money") and part payment of the Purchase Price. The Earnest Money was paid to and held by Sel Equity Real Estate (the "Earnest Money Holder") before Buyer was permitted to participate in the auction. The Earnest Money is to be deposited upon acceptance. The balance of the Purchase Price less the Earnest Money shall be paid by Buyer to Seller at Closing. The responsible Broker is Sel Equity Real Estate.

Cash at Closing. Buyer shall pay at Closing the Buyer's closing costs, Buyer's Highest Bid Price, the Homeowners' Association Transfer Fee (as defined below in Section 7), any sales and use tax arising out of the transaction, the Buyer's Premium, less any Earnest Money already paid and any other costs required under the terms of this Agreement (the "Cash at Closing"). Cash at Closing shall be in funds that may include cash, electronic transfer funds, certified check, savings and loan teller's check, or cashier's check.

6. NO FINANCING CONTINGENCY. This contract is NOT contingent upon Buyer obtaining financing.

7. CLOSING MATTERS.

Evidence of Title and Title. Seller shall furnish to Buyer before Closing, at Seller's expense, a current commitment for a standard owner's title insurance policy. Buyer will be responsible for obtaining and will pay all costs at Closing associated with additional, premium title insurance coverage, as desired by Buyer. To the extent such were not previously provided to Buyer as part of the Property Information Packet, Seller, by Closing, shall deliver to Buyer true copies of all relevant title materials, leases, improvement location certificates, and surveys in Seller's possession pertaining to the state of title of the Property (the "Title Documents"), and shall disclose to Buyer all easements, liens, or other encumbrances, if any, not shown by the public records of which Seller has actual knowledge without requirement of independent investigation.

Buyer acknowledges receipt of the Property Information Packet (attached hereto) prior to Buyer's participation in the auction for the Property. Buyer acknowledges it had the right to inspect the Property before participating in the auction for the Property to view the physical condition of the Property and determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Buyer's participation in the auction for purchase of the Property constitutes agreement that it will close according to the terms of this Agreement notwithstanding the results of Buyer's inspection of the Property, and any failure to close due to the result of said inspection shall be a breach of this Agreement.

Transfer of Title. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient general warranty deed to Buyer at Closing, conveying the Property free and clear of all taxes and encumbrances except: (1) the general taxes for the year of Closing; (2) special assessments not yet due and payable, if any; (3) distribution utility easements (including cable TV); (4) those matters reflected by the Title Documents; (5) those rights, if any, of third parties in the Property not shown by the public records; (6) taxes as a result of the inclusion of the Property within any special taxing district; and (7) any penalties due to non-compliance with building, zoning, subdivision and other land use laws, code, ordinances, and regulations.

Title Company. The parties agree that Title One Corporation located at 868 E. Riverside Dr., Ste. 100, Eagle, ID 83616 shall provide the title policy and preliminary title report of commitment.

Payment of Encumbrances. All monetary encumbrances (such as mortgages, deeds of trust, liens, and financing statements) shall be paid by Seller before Closing and released except as Seller and Buyer may otherwise agree in writing. Existing monetary encumbrances are as follows:

Closing Costs, Documents and Services. Buyer and Seller shall pay all their respective costs and items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing.

Closing Costs. All costs related to Closing shall be paid at Closing by **Buyer**

Status Letter. Any fees incident to the issuance of a statement of assessments from the applicable

homeowners' association (the "Status Letter") shall be paid by **Seller**.

Transfer Fee. Any fees incident to the transfer of the Property from Seller to Buyer that are assessed by the applicable homeowners' association (the "Homeowners' Association Transfer Fee") shall be paid by **Buyer**.

Sales and Use Tax. Any sales and use tax that may accrue as a result of this transaction shall be paid when due by **Buyer**.

Prorations. The following shall be prorated to the date of **Closing**, except as otherwise provided:

Taxes. Personal property taxes, if any, and general real estate taxes for the year of Closing, based on the most recent mill levy and most recent assessment.

Association Assessments. Current regular homeowners' association assessments and association dues. Homeowners' association assessments paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular homeowners' association assessments for deferred maintenance by the homeowners' association shall not be credited to Seller except as may be otherwise provided by the restrictive covenants, bylaws, or other documents governing the subdivision in which the Property is located (the "Governing Documents"). Any special assessment by the homeowners' association for improvements that have been installed as of the date of Buyer's signature hereon shall be the obligation of Seller. Any other special assessment assessed by the homeowners' association prior to or after Closing shall be the obligation of Buyer.

Seller represents that the amount of the regular homeowners' association assessment is currently payable at \$_____ per _____ and that there are no unpaid regular or special assessments against the Property with the exception of the current regular assessments and: _____

Such assessments are subject to change as provided in the Governing Documents. Seller agrees to request of the homeowners' association that it delivers to Buyer before Closing a current Status Letter or other statement of assessments against the Property.

Other Prorations. All water and sewer charges.

Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.

Government Liens. If the Property has been or will be subject to any governmental liens for special improvements installed at any time before the signing of this Agreement, Seller shall be responsible for payment of same, unless otherwise agreed.

Possession. Possession of the Property shall be delivered to Buyer at Closing, subject to leases and tenancies as described in this Section.

8. LEAD-BASED PAINT. Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, this Agreement shall be void unless a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensees, which signing must occur prior to the parties' signing of this Agreement.

9. INSPECTION. Seller has provided Buyer with a Property Information Packet that includes a Seller's Property Disclosure Form completed by Seller to the best of Seller's current actual

knowledge without requirement of independent investigation. Buyer acknowledges that Buyer was responsible for making a thorough inspection of the Property at its own expense, as well as thoroughly researching any information available about the Property and its surroundings, including that information provided in the Property Information Packet, prior to participating in the auction for the Property. Buyer acknowledges that Buyer or any designee of Buyer was afforded by Seller the right to inspect the physical condition of the Property, at Buyer's expense.

In no event shall this Agreement be deemed contingent upon inspection by Buyer. As noted above in Section 7(a) of this Agreement, any failure of Buyer to close due to the results of any inspection of the Property shall be a breach of this Agreement.

10. CONDITION OF, DAMAGE TO PROPERTY. Except as otherwise provided in this Agreement, the Property shall be delivered in the condition existing as of the date of this Agreement, ordinary wear and tear excepted. In the event the Property is damaged by fire or other casualty such that the value of the Property is reduced by an amount equal to not more than ten percent (10%) of the Purchase Price, Seller may, but shall not be obligated to, repair the same before Closing. In the event such damage or failure is not repaired or replaced or Buyer is not given an equivalent credit (less insurance proceeds received by Buyer covering such repair or replacement), or if the damages exceed ten percent (10%) of the Purchase Price, then this Agreement may be terminated at the option of Buyer. Should Buyer elect to carry out this Agreement despite such damage or failure, Buyer shall be entitled to credit for all the insurance proceeds resulting from such damage or failure to the Property, with such credit not to exceed the total Purchase Price.

11. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or check due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

If Buyer is in Default: Seller shall have the option of (1) accepting the Earnest Money as liquidated damages, or (2) pursuing any other lawful right or remedy to which Seller may be entitled. Seller and Buyer specifically acknowledge and agree that if Seller elects to accept the Earnest Money as liquidated damages, such shall be Seller's sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If Seller elects to proceed under (2), the Earnest Money Holder shall be entitled to pay the costs incurred by Seller's Broker on behalf of Seller and Buyer related to the transaction, including, without limitation, the costs of brokerage fees, title insurance, escrow fees, appraisals, credit report fees, inspection fees and attorney fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If Seller is in Default: Buyer may (1) elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned, or (2) Buyer may elect to treat this Agreement as being in full force and effect and Buyer shall have the right to seek specific performance of this Agreement.

Costs and Expenses. In the event of any arbitration, mediation or litigation relating to this Agreement, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

d. **Disclaimer.** Either party shall in no event, hold broker responsible for any actions of Seller that are in violation of the terms of this Agreement.

12. DISPUTE RESOLUTION.

Arbitration. The parties hereby agree to submit all controversies, claims and matters of difference to arbitration in the state in which the Property is located. This submission and agreement to arbitrate shall be specifically enforceable. Without limiting the generality of the foregoing, the following shall be considered controversies for this purpose: (a) all questions relating to the breach of any obligation, warranty, or condition hereunder; (b) all questions relating to representations, negotiations, and other proceedings leading to the execution hereof; (c) the denial by any party of, or the failure of any party to deny or reject, a claim or demand of any other party; and (d) all questions as to whether the right to arbitrate any question exists. Arbitration may proceed in the absence of any party if notice of the proceedings has been given to such party. The parties agree to abide by all awards rendered in such proceedings. Such awards shall be final and binding on all parties. All awards may be filed with the clerk of one or more courts, state or federal, having jurisdiction over the party against whom such an award is rendered or his property, as a basis of judgment and of the issuance of execution for its collection. No party shall be considered in default hereunder during the pendency of arbitration proceedings relating to such default.

Earnest Money Dispute. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Agreement), Earnest Money Holder shall not be required to take any action in favor of any party to such a dispute. Earnest Money Holder may await any proceeding, or at its option and sole discretion, petition a court of competent jurisdiction to interplead all parties and deposit any money or things of value with said court. In such case, Earnest Money Holder shall recover court costs and reasonable attorney and legal fees.

13. AGENCY REPRESENTATION. Buyer and Seller understand and agree that _____ is involved in this transaction on behalf of Buyer and that Sel Equity Real Estate is involved in this transaction on behalf of Seller, and that no other broker or agent was the procuring cause of the transaction contemplated by this Agreement.

REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 below and one (1) box in Section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT NONAGENT for the BUYER(S), and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. The broker working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the SELLER(S) is acting as LIMITED DUAL AGENT for the SELLER(S), and has an ASSIGNED AGENT acting solely on behalf of SELLER(S).
- D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he or she has received, read and understood the Agency Disclosure brochure and has elected the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review.

EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

Listing Agency: Sel Equity Real Estate
Office Phone: 208-429-9000 Fax: 208-429-9877

Listing Agent: John Ballard
E-mail: auction@selequity.com Phone: 208-860-1940

Selling _____ Agency:

Office Phone: _____ Fax: _____

Selling Agent: _____

E-mail: _____ Phone: _____

14. MISCELLANEOUS.

Entire Agreement. This Agreement contains the entire agreement of the parties regarding the subject matter hereof and any prior agreements, whether oral or written, have been merged and integrated into this Agreement.

Property "As-Is". Buyer is acquiring the Property in its current condition, "AS IS" and "WITH ALL FAULTS". This provision does not limit Buyer's rights of inspection under Section 9 of the Agreement, nor does it limit Buyer's ability to bring claims for any misrepresentations contained in the Seller's Property Disclosure form or for non-disclosure or concealment of adverse material facts that Seller was legally obligated to disclose.

Recommendation of Legal and Tax Counsel. By signing this document, Buyer and Seller acknowledge that their respective brokers have advised that this document has important legal

consequences and have recommended examination of title and consultation with legal and tax or other counsel before signing this Agreement.

Modification, Survival. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Agreement that, by its terms, is intended to be performed after termination or Closing shall survive the same.

Notice, Delivery and Choice of Law.

Physical Delivery. Except as provided below, any notice to the other party to this Agreement must be in writing, and is effective upon receipt.

Electronic Delivery. As an alternative to physical delivery, any signed document and written notice may be delivered in electronic form by the following indicated methods only:

- _____ Facsimile
- _____ E-mail
- _____ None

Documents with original signatures shall be provided upon request of any party. In the event this form is received by electronic transmission, including facsimile and/or e-mail, the parties hereto acknowledge that they have not changed or altered, nor will they change or alter, the content of this form template Agreement.

Choice of Law. This Agreement and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the state in which the Property is located.

Counterparts. If more than one person is named as a Seller herein, this Agreement may be executed by each Seller, separately, and, when so executed, such copies, taken together with one executed by Broker and Agent, shall be deemed to be a full and complete contract between the parties.

Copy of Contract. Seller acknowledges receipt of a copy of this Agreement signed by Broker, including all attachments.

