

Terms of Service

Terms of Service

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KEY CONTENT-RELATED TERMS

“Content”

means text, graphics, images, music, software, audio, video, information or other materials.

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means Content that Concierge Auctions makes available through the Site or Services, including any Content licensed from a third party, but excluding User Content.

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means Content that a User posts, uploads, publishes, submits or transmits to be made available through the Site or Services.

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means, collectively, Concierge Auctions Content and User Content.

Certain areas of the Site (and your access to or use of certain Services or Collective Content) may have different terms and conditions posted or may require you to agree with and accept additional terms and conditions. If there is a conflict between these Terms and terms and conditions posted for a specific area of the Site, Services, or Collective Content, the latter terms and conditions will take precedence with respect to your use of or access to that area of the Site, Services or Collective Content, as applicable.

Please note that if you choose to place a bid on a property featured on the Site and Services, you will be required to register via the Site to become a “Member”. In order to become a Member and to place a bid, you will be presented with additional terms and conditions that govern the bidding functionality of the Site and Services, which you will be required to accept before placing a bid on any property featured on the Site and Services.

YOU ACKNOWLEDGE AND AGREE THAT, BY ACCESSING OR USING THE SITE OR SERVICES, OR BY DOWNLOADING OR POSTING ANY CONTENT FROM OR ON THE SITE OR THROUGH THE SERVICES, YOU ARE INDICATING THAT YOU HAVE READ, AND THAT YOU UNDERSTAND AND AGREE TO BE BOUND BY, THESE TERMS, WHETHER OR NOT YOU HAVE REGISTERED ON OR THROUGH THE SITE. IF YOU DO NOT AGREE TO THESE TERMS, THEN YOU HAVE NO RIGHT TO ACCESS OR USE THE SITE, SERVICES OR COLLECTIVE CONTENT. If you accept or agree to these Terms on behalf of a company or other legal entity, you represent and warrant that you have the authority to bind that company or other legal entity to these Terms and, in such event, “you” and “your” will refer and apply to that company or other legal entity.

Modification

Concierge Auctions reserves the right, at its sole discretion, to modify, discontinue or terminate the Site or Services or to modify these Terms, at any time and without prior notice. If we modify these Terms we will post the modification on the Site or provide you with notice of the modification. We will also update the “Last Updated Date” at the top of these Terms. By continuing to access or use the Site or Services after we have posted a modification on the Site or have provided you with notice of a modification, you are indicating that you agree to be bound by the modified Terms. If the modified Terms are not acceptable to you, your only recourse is to cease using the Site and Services.

Eligibility

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Concierge Auctions and to the rights in such User Content, as contemplated under these Terms; and (ii) neither the User Content nor your posting, uploading, publication, submission or transmittal of the User Content or Concierge Auctions' use of the User Content (or any portion thereof) on, through or by means of the Site or Services will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

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Post, upload, publish, submit or transmit any Content that: (i) infringes, misappropriates or violates a third party's patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances.

Use, display, mirror or frame the Site, or any individual element within the Site or Services, Concierge Auctions' name, any Concierge Auctions trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Concierge Auctions' express written consent;

Access, tamper with, or use non-public areas of the Site, Concierge Auctions' computer systems, or the technical delivery systems of Concierge Auctions' providers;

Attempt to probe, scan, or test the vulnerability of any Concierge Auctions system or network or breach any security or authentication measures;

Avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure implemented by Concierge Auctions or any of Concierge Auctions' providers or any other third party (including another user) to protect the Site, Services or Collective Content;

Attempt to access or search the Site, Services or Collective Content or download Collective Content from the Site or Services through the use of any engine, software,

tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Concierge Auctions or other generally available third party web browsers;

Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation;

Use any meta tags or other hidden text or metadata utilizing a Concierge Auctions trademark, logo URL or product name without Concierge Auctions' express written consent;

Use the Site, Services or Collective Content for any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms;

Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Site, Services or Collective Content to send altered, deceptive or false source-identifying information;

Attempt to decipher, decompile, disassemble or reverse engineer any of the software used to provide the Site, Services or Collective Content;

Interfere with, or attempt to interfere with, the access of any user, host or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Site or Services;

Collect or store any personally identifiable information from the Site or Services from other users of the Site or Services without their express permission;

Impersonate or misrepresent your affiliation with any person or entity;

Violate any applicable law or regulation; or

Encourage or enable any other individual to do any of the foregoing.

Concierge Auctions will have the right to investigate and prosecute violations of any of the above to the fullest extent of the law. Concierge Auctions may involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms. You acknowledge that Concierge Auctions has no obligation to monitor your access to or use of the Site, Services or Collective Content or to review or edit any Collective Content, but has the right to do so for the purpose of operating the Site and Services, to ensure your compliance with these Terms, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental body. Concierge Auctions reserves the right, at any time and without prior notice, to remove or disable access to any Collective Content that Concierge Auctions, at its sole discretion, considers to be in violation of these Terms or otherwise harmful to the Site or Services.

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If you breach any of these Terms, Concierge Auctions will have the right to suspend or disable your use of the Site and Services or terminate these Terms, at its sole discretion and without prior notice to you. Concierge Auctions reserves the right to revoke your access to and use of the Site, Services and Collective Content at any time, with or without cause.

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NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM CONCIERGE AUCTIONS OR THROUGH THE SITE, SERVICES OR COLLECTIVE CONTENT, WILL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN.

YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SITE AND SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE OR SERVICES. YOU UNDERSTAND THAT CONCIERGE AUCTIONS DOES NOT SCREEN OR INQUIRE INTO THE BACKGROUND OF ANY USERS OF THE SITE OR SERVICES, NOR DOES CONCIERGE AUCTIONS MAKE ANY ATTEMPT TO VERIFY THE STATEMENTS OF USERS OF THE SITE OR SERVICES. CONCIERGE AUCTIONS MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE CONDUCT OF USERS OF THE SITE OR SERVICES OR THEIR COMPATIBILITY WITH ANY CURRENT OR FUTURE USERS OF THE SITE OR SERVICES. YOU AGREE TO TAKE REASONABLE PRECAUTIONS IN ALL

COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SITE AND SERVICES AND WITH OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE OR SERVICES, PARTICULARLY IF YOU DECIDE TO MEET OFFLINE OR IN PERSON.

Indemnity

You agree to defend, indemnify, and hold Concierge Auctions, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with your access to or use of the Site, Services or Collective Content, or your violation of these Terms.

Limitation of Liability

YOU ACKNOWLEDGE AND AGREE THAT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF YOUR ACCESS TO AND USE OF THE SITE, SERVICES AND COLLECTIVE CONTENT REMAINS WITH YOU. NEITHER CONCIERGE AUCTIONS NOR ANY OTHER PERSON OR ENTITY INVOLVED IN CREATING, PRODUCING, OR DELIVERING THE SITE, SERVICES OR COLLECTIVE CONTENT WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR LOSS OF GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE PRODUCTS OR SERVICES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SITE, SERVICES OR COLLECTIVE CONTENT, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SITE OR SERVICES OR OTHER PERSONS WITH WHOM YOU COMMUNICATE OR INTERACT AS A RESULT OF YOUR USE OF THE SITE OR SERVICES WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT CONCIERGE AUCTIONS HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL CONCIERGE AUCTIONS' AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE SITE, SERVICES OR COLLECTIVE CONTENT EXCEED ONE HUNDRED DOLLARS (\$100). THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN CONCIERGE AUCTIONS AND YOU. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

Proprietary Rights Notices

All trademarks, service marks, logos, trade names and any other proprietary designations of Concierge Auctions used herein are trademarks or registered trademarks of Concierge Auctions. Any other trademarks, service marks, logos, trade names and any other proprietary designations are the trademarks or registered trademarks of their respective parties.

Controlling Law and Jurisdiction

These Terms and any action related thereto will be governed by the laws of the State of New York without regard to its conflict of laws provisions. The exclusive jurisdiction and venue of any action to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights will be the state and federal courts located in the Southern District of New York and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

ENTIRE AGREEMENT

These Terms and any additional terms and conditions presented to you governing the bidding functionality of the Site and Services constitute the entire and exclusive understanding and agreement between Concierge Auctions and you regarding the Site, Services and Collective Content, and these Terms supersede and replace any and all prior oral or written understandings or agreements between Concierge Auctions and you regarding the Site, Services and Collective Content.

Assignment

You may not assign or transfer these Terms, by operation of law or otherwise, without Concierge Auctions' prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Concierge Auctions may assign or transfer these Terms, at its sole discretion, without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors and permitted assigns.

Notices

Any notices or other communications permitted or required hereunder, including those regarding modifications to these Terms, will be in writing and given: (i) by Concierge Auctions via email (in each case to the address that you provide); or (ii) by posting to the Site. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

Dispute Resolution

You and Concierge Auctions agree that *any dispute, claim or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation or validity thereof or the use of the Site or Services (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right to bring an individual action in small claims court and the*

right to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights. **You acknowledge and agree that you and Concierge Auctions are each waiving the right to a trial by jury or to participate as a plaintiff or class User in any purported class action or representative proceeding.** Further, unless both you and Concierge Auctions otherwise agree in writing, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

Arbitration Rules and Governing Law. The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

Arbitration Process. A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a form Demand for Arbitration at www.adr.org/si.asp?id=3477 and a separate form for California residents at www.adr.org/si.asp?id=3485.) The arbitrator will be either a retired judge or an attorney licensed to practice law in the state of New York and will be selected by the parties from the AAA's roster of consumer dispute arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure. Unless you and Concierge Auctions otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely on the basis of documents you and Concierge Auctions submit to the arbitrator, unless you request a hearing or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision. The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and the amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration you will be entitled to an award of

attorneys' fees and expenses, to the extent provided under applicable law. Concierge Auctions will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.

Fees. Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Concierge Auctions will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes. Notwithstanding the provisions of the "Modification" section above, if Concierge Auctions changes this "Dispute Resolution" section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to notices@conciergeauctions.com) within 30 days of the date such change became effective, as indicated in the "Last Updated Date" above or in the date of Concierge Auctions' email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Concierge Auctions in accordance with the provisions of this "Dispute Resolution" section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

GENERAL

The failure of Concierge Auctions to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Concierge Auctions. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise. If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

CONTACTING CONCIERGE AUCTIONS

If you have any questions about these Terms, please contact Concierge Auctions at notices@conciergeauctions.com or 228 Park Avenue S, Suite 70835, New York, NY 10003