



AUCTION SALE TERMS

Name of Yacht: Cupcake

Make: Westship

Year: 2001

Length: 132'

HIN: WYTWM132J001

Current Berth/Mooring: Ft. Lauderdale, FL

Closing Location: Ft. Lauderdale, FL

Closing Date: Within thirty (30) calendar days following the conclusion of the Auction or such earlier date as agreed in writing between Seller and Buyer

WHEREAS, the Seller (hereinafter "Seller") of the above listed yacht (the "Yacht") consigned the Yacht to Boathouse Auctions, Inc. ("Auctioneer") for the purposes of engaging in an internet auction conducted, managed, and operated by Auctioneer. As part of participation in the auction, Seller and Bidder have agreed to these Auction Sale Terms (the "Sale Terms").

WHEREAS, Bidder (hereinafter "Buyer") was the successful bidder in the auction, and is hereby obligated to purchase the Yacht, on the Sale Terms which follow, at the highest successful bid price placed by Buyer (hereinafter "Purchase Price").

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree to the following Sale Terms:

Agreement. The "**Effective Date**" of the Sale Terms is the last date on which it has been electronically agreed to by both parties. "Yacht" includes all gear, machinery, equipment, furniture, fuel, consumables, and all registered or unregistered tenders, toys, articles and appurtenances on board the Yacht and/or included on the Yacht's listing specification except for items listed on the Exclusions List attached to these Sale Terms, which items are not included in the sale (collectively, the "**Inventory**"). Buyer will be deemed to have accepted the Exclusions List by participating in the auction. Listing Broker, representing the Seller, and Selling Broker, if involved, representing the Buyer, shall be referred to herein as the "**Brokers**."

Deposit, Escrow and Buyer's Premium. In addition to Bidder's deposit of USD \$100,000 (ONE HUNDRED THOUSAND U.S. DOLLARS, the "**Participation Fee**") submitted prior to the auction to Jaffa & Jaffa Limited, trading as Jaffa & Co, a law firm, ("JCo")^[1], Bidder shall deposit with JCo sufficient funds to bring the total deposit to ten percent (10%) of the Purchase Price (the "**Deposit**", together with the Participation Fee, the "**Escrow Funds**") and shall deliver to Auctioneer, as its Buyer's Premium, an amount equal to eight percent (8%) of the total Purchase Price of the Yacht (the "**Buyer's Premium**"). Buyer is aware and acknowledges that these funds are non-refundable and shall be wired for receipt no later than 5:00 p.m. ET on the second business day after the conclusion of the auction. If Buyer fails to wire the funds by this deadline, then Buyer will be considered in default and will forfeit its Participation Fee (as defined below). Buyer may, but is not required to, use JCO to "close" and record title in which case those services will be quoted and agreed to by and between Buyer and JCO. Or, should the Buyer elect to use an alternate title and/or closing agent, then JCo will, upon receipt of appropriate wiring instructions, signed by both Buyer and Seller, and wherein the Buyer, Seller and new closing/title agent acknowledge that the Deposits are non-refundable, transfer the Escrow Funds to the agreed upon alternate title/closing agent.

Escrow Funds. The parties acknowledge that (a) JCO will not be responsible for the Escrow Funds until the funds have cleared into the its account, (b) JCO shall hold the these in escrow once the funds have cleared and any other funds received by JCO from any party will be held in trust for that party, (c) the Listing Broker or Selling Broker may receive any commission due to the Brokers from the sale directly from JCO.

Duties of JCo. It is understood and agreed that the duties of JCo are purely ministerial in nature. It is further agreed that:

[1] Jaffa & Co is the trading name of Jaffa & Jaffa Limited, a company incorporated in England with offices in the UK, Monaco, and Ft. Lauderdale.

JCo acts only as a depository and is not a party to or bound by any agreement or undertaking other than the ones described in the Auctioneer's escrow agreement (the "**Escrow Agreement**") unless the agreement is in writing and signed by JCo. The parties hereto specifically acknowledge and agree that if the terms and conditions of the Escrow Agreement are in conflict with the terms and conditions of any other agreement between all of the parties, the terms and conditions set forth therein shall prevail.

JCo may conclusively rely on and shall be protected in acting on any statement, authorization, notice, request, draft, consent, order, or other document (including email) believed by it to be genuine and to have been signed or given by the proper party. JCo shall have no duty or liability to verify any such statement, authorization, notice, request, draft, consent, order, or other document, and its sole responsibility shall be to act only as expressly set forth in the Escrow Agreement. Upon the disbursement of the final payment in accordance with the Escrow Agreement, JCo shall have no further responsibility or liability with respect to the final payment so disbursed, and the Escrow Agreement shall terminate. Except in cases of JCo's gross negligence or willful misconduct, the Buyer and Seller jointly and severally, hereby agree to indemnify JCo and hold it harmless from any and all claims, liabilities, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees, or charges of any character or nature which JCo may incur or with which it may be threatened by reason of JCo's actions as escrow agent under the Escrow Agreement. JCo shall not be liable or responsible to any person for any consequential, punitive or special loss or damage (however caused) even if JCo is aware of the possibility of such loss or damage except to the extent resulting from JCo's gross negligence or willful misconduct.

If any parties, including JCo, disagree about the interpretation of the Escrow Agreement, or about the rights and obligations or the propriety of any action contemplated by JCo under the Escrow Agreement, or if JCo receives any conflicting demands or claims regarding any monies, instruments or documents delivered to JCo, JCo may, but shall not be required to, file an action in interpleader to resolve the controversy.

JCo shall not be liable or responsible to any person for any delay or failure by JCo's bankers, and of its correspondents or anyone else in receiving or executing any instructions given by JCo to them, any error in implementing such instructions or the default of such bankers, any of its correspondents or anyone else.

Acceptance of Yacht. To the fullest extent permitted by applicable law, Buyer accepts the Yacht and the Inventory in its "AS IS, WHERE IS, WITH ALL FAULTS" condition at the time of the auction. Buyer acknowledges that it has had the opportunity to conduct all due diligence and investigation of the Yacht (including but not limited to title, survey, seaworthiness, and physical condition) and the Inventory that Buyer desires prior to the auction. Buyer acknowledges that this transaction is not subject to any financing contingency or any other contingency, survey or due diligence or inspection rights and that Buyer waives all right to rescind or cancel the Agreement to the fullest extent allowed under applicable law.

Closing, Delivery and Possession. The closing of this sale will occur within 30 (thirty days) of the close of the auction. Unless otherwise agreed, the Yacht will be delivered at her current mooring/berth.

Taxes. The Buyer shall pay all closing costs and taxes related to its purchase of the Yacht including, but not limited to, all sales and use taxes, excise, customs and any VAT or similar tax related to the payment of the Buyer's Premium. Sales or use taxes and customs duties payable in connection with Buyer's purchase of the Yacht, if applicable, are Buyer's responsibility, and Buyer shall pay the taxes and customs duties due at Closing. Buyer hereby indemnifies and holds harmless Seller, the Brokers, and Auctioneer against and from any sales or use taxes and customs duties for which Buyer is responsible.

Brokers. The parties acknowledge that the Listing Broker and Selling Broker are the only brokers that procured these Sale Terms. If the Listing Broker and the Selling Broker are the same brokerage, the parties' consent to Broker acting as a dual agent in this transaction, i.e., representing both Buyer and Seller. If the Listing Broker and the Selling Broker are different, the Listing Broker will represent Seller only and owe no duties, fiduciary or otherwise, to Buyer, and the Selling Broker will represent Buyer only and owe no duties, fiduciary or otherwise, to Seller (though paid by Seller). The Brokers are obligated to perform only the duties expressly set forth herein and no implied duties or obligations may be read into these Sale Terms. Seller shall be solely responsible for payment of commission due to the Brokers in connection with the sale of the Yacht as set forth herein. Each party represents and warrants to the other that they have not employed or

dealt with any other broker, agent, or finder in carrying out the negotiations relating to the sale of the Yacht to Buyer and acknowledges that the Brokers are third-party beneficiaries to these Sale Terms.

Execution of Documents. Within seven (7) days after the conclusion of the auction, Buyer shall provide Seller with written notice of any documents or certificates that Buyer will require from Seller to consummate the sale or to register the Yacht in Buyer's name. Seller and Buyer shall execute and deliver all documents reasonably necessary to transfer the Yacht from Seller to Buyer or its assigns, including any documents timely requested by Buyer as provided above. Seller represents and warrants that it will transfer to Buyer good and marketable title, free and clear of all liens, claims and Encumbrances. Not less than two (2) business days before Closing, Seller shall deliver to Buyer (a) satisfactory evidence of such good and marketable title, (b) payoff or release letters for all encumbrances, (c) if Seller is an entity, a personal guaranty from Seller's beneficial owner(s) for Seller's representations and warranties, and (d) any additional documentation required to effect transfer of title, provided that such documentation (i) was requested by Buyer within the time frame stated above, (ii) is customary for transactions of this nature, and (iii) does not impose an unreasonable burden on Seller. Seller shall not be required to provide any document that is irrelevant to the transfer of ownership, not customary in yacht sales, or unreasonably burdensome to obtain. If Buyer fails to request a specific document within the 7-day period, Buyer waives the right to require that document at Closing. Seller shall cooperate fully to obtain any government authorizations required for the sale.

Default by Buyer. Notwithstanding anything herein to the contrary, if Closing is not consummated due to Buyer's non-performance, including, without limitation, Buyer's failure to pay the balance of the Purchase Price (the "**Balance**") or the Deposit, failure to satisfy Know Your Customer (KYC) requirements, or failure to execute all documents necessary for completion of the purchase by the Closing date, then: (i) the Escrow Funds shall be forfeited and retained by (or if the Deposit was not paid, Buyer shall pay a like amount to) Seller, Listing Broker, and Auctioneer as liquidated and agreed damages, as consideration for the execution of these Sale Terms, in full settlement of all claims between the parties, (ii) the Selling Broker shall return to Buyer any other funds received from Buyer, and (iii) the parties will be relieved of all obligations under the Sale Terms. Buyer and Seller agree that the Escrow Funds will be divided thirty-three and a third percent (33.3%) to each the Seller, Listing Broker, and Auctioneer. Buyer shall be responsible for the payment of any remaining Buyer's Premium to Auctioneer.

Default by Seller. If the Closing is not consummated due to Seller's non-performance, then the Escrow Funds, and any other money paid or deposited by Buyer, pursuant to these Sale Terms will be returned to Buyer upon demand. On Seller's default, Seller shall forthwith pay the Listing and Selling Brokers the same commission otherwise payable had the transaction closed and pay Auctioneer the same Buyer's Premium otherwise payable had the transaction closed.

Miscellaneous. These Sale Terms, including its exhibits and schedules, are the **entire agreement** between the Seller and Buyer pertaining to the subject matter hereof and **supersedes** all prior and contemporaneous negotiations, agreements, representations, warranties, and understandings pertaining thereto, be they in writing, oral, or otherwise. If a Broker, Auctioneer, or JCO becomes a party to any litigation involving these Sale Terms, they shall be reimbursed for their reasonable costs and attorney's fees, at all pretrial, trial and appellate levels, by the party or parties found to have breached these Sale Terms. If any term, condition, or provision of these Sale Terms is held to be unenforceable for any reason, the Sale Terms shall be interpreted to fully achieve the intent of the parties to these Sale Terms. In any event, all other terms, conditions and provisions of these Sale Terms shall be deemed valid and enforceable. There are no other duties, obligations, liabilities, or warranties, implied or otherwise, except as set forth herein. These Sale Terms may not be amended or modified, except in writing signed by Buyer and Seller. Notice and delivery given by or to the agent, attorney or Broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by personal delivery, overnight courier, email, or other electronic means, and shall be effective upon delivery with proof of delivery retained. Neither party may assign the Sale Terms without the other party's consent, which consent shall not be unreasonably withheld. No claim or right arising out of these Sale Terms can be waived or discharged by one party, in whole or in part, unless in writing, nor shall any waiver be applicable except in the specific instance for which it is given. Paragraph headings are informational and included only for convenience.

Governing Law and Dispute Resolution. This Agreement has been entered into and shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without regard to conflicts of law principles, and that for internet transaction purposes the auction shall be deemed to have been conducted at Fairfield, Connecticut. Any and all disputes involving these Sale Terms, the auction or the purchase and sale of the Yacht, shall be referred exclusively to a

binding arbitration before the International Yacht Arbitration Council ("**IYAC**"), which proceeding shall be conducted in Fort Lauderdale, Florida, unless otherwise agreed and shall constitute the sole and exclusive forum for the resolution and settlement of any dispute between any parties. The arbitration proceedings shall be conducted in accordance with the Commercial Rules and Procedures of the IYAC. An action may be brought in any court of competent jurisdiction to enforce any arbitral award or compel arbitration. The parties irrevocably submit to the exclusive jurisdiction of such court or arbitral forum, waive any objection they now or hereafter may have to venue or convenience of forum, agree that all claims relating to the proceeding will be decided only in such court or arbitral forum and, further, not to bring any claim relating to this Agreement in any other court or arbitral forum. THE PARTIES UNDERSTAND AND AGREE THAT, ABSENT THIS AGREEMENT, THEY WOULD HAVE THE RIGHT TO SUE EACH OTHER IN COURT, AND THE RIGHT TO A JURY TRIAL, BUT THEY GIVE UP THOSE RIGHTS VOLUNTARILY AND AGREE TO RESOLVE ANY AND ALL GRIEVANCES BY ARBITRATION IN ACCORDANCE WITH THIS SECTION.

By electronically agreeing to these Sale Terms, the Seller and Buyer acknowledges that they have carefully read, understand, and agree to be bound by the terms and conditions of these Sale Terms, including the Auctioneer's Terms of Service, the Escrow Agreement, any related documents, exhibits and addenda, all of which form these Sale Terms between the Seller and the Buyer. Both parties acknowledge that they have been given the opportunity to seek legal advice and to have these Sale Terms reviewed by an independent attorney of their choice.

Exclusions List: