

BOATHOUSE AUCTIONS, INC.

AUCTION PURCHASE AND SALE AGREEMENT

BUYER	YACHT
Name:	Yacht Name: Passing Wind
	Make: Vic Carpenter
SELLER	Year: 1992
Name: Mills LLC	Length: 62'
Listing Broker: Ashley Yachts	Official Number: 1307867
CLOSING	PURCHASE
Closing Date: No later than July 29, 2024	Purchase Price:
Delivery Location: Current location, Rhode Island	Less Deposit: \$ 20,000
Yacht Removal Date: Date of closing	Balance Due at Closing:

1. **Agreement.** Buyer agrees to purchase, and Seller agrees to sell, all rights, title and interest to and in the Yacht described above on the terms and conditions set forth in this Auction Purchase and Sale Agreement (“PSA”). Capitalized terms used in this PSA refer to the corresponding terms in the table above unless otherwise defined herein. The “**Effective Date**” of this PSA is the last date on which it has been signed by both parties. “Yacht” also 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 provided in the auction listing agreement and attached to this Agreement, 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**.” If Buyer fails to sign this PSA within 48 hours after the conclusion of the auction, the Buyer will be considered in default and will forfeit its Deposit (as defined below).

2. **Deposit, Escrow and Buyer’s Premium.** In addition to bidder’s deposit of USD \$20,000 (TWENTY THOUSAND U.S. DOLLARS) submitted prior to the auction to Yacht Registry Services Inc., an insured and independent yacht title agency incorporated under the laws of the State of Florida (“YRSI”)^[1], Buyer shall deposit sufficient funds to bring the total deposit to ten percent (10%) of the Purchase Price (the “**Deposit**”) and shall deliver, 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 to YRSI for receipt no later than 5:00 p.m. ET on the second business day after the conclusion of the auction. Buyer is required to place the bid deposit with YRSI as a pre-condition to participating in the auction. Buyer may, but is not required to, use YRSI to “close” (as per paragraph 4 below) and record title (as per paragraph 6 below), in which case, those services will be quoted and agreed to by and between Buyer and YRSI. Or, should the Buyer elect to use an alternate title and/or closing agent, then YRSI will, upon receipt of an appreciate wiring instruction, 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 deposit plus additional deposit to the agreed upon alternate title/closing agent.

^[1] Conducting business at the Bahia Mar Yachting Center, 801 Seabreeze Boulevard, Fort Lauderdale FL 33316 (954)527-1555.

3. **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 Closing. 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. Notwithstanding the foregoing, Seller represents and warrants that it now has and will have and convey at Closing, good and marketable title to the Yacht and that all taxes, VAT or otherwise, associated with the Yacht, have been paid.

4. **Closing.** The Closing will occur no later than 30 calendar days after the auction is completed (the "**Closing**"), unless agreed to in writing by both Seller and Buyer. (a) **Delivery Location.** Unless otherwise agreed, the delivery of the Yacht to Buyer will be at its current location at time of Closing. (b) **Possession.** The Yacht shall be, and remain, in the possession of the Seller until Closing. Pending Closing, the Seller shall hold and maintain in full force and effect all insurance policies or proceeds thereof relating to the Yacht (c) **Closing Costs.** 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 and any VAT or similar tax related to the payment of the Buyer's Premium.

5. **Brokers.** The parties acknowledge that the Listing Broker and Selling Broker are the only brokers that procured this PSA. 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 this PSA. 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 this PSA.

6. **Requirements for Closing.** Buyer and Seller agree to execute all documents considered necessary to convey the interest in the Yacht from the Seller to the Buyer or its assigns. Seller represents and warrants that it will transfer to Buyer good and marketable title to the Yacht, free and clear of all debts, claims, maritime or common law liens, security interests, encumbrances, excise taxes, and any other applicable taxes, customs' duties, or tariffs due to any state, country, regulatory and/or taxing authority of any kind whatsoever (collectively, "**Encumbrances**"). Not less than two (2) business days before Closing, Seller shall deliver to Buyer (a) satisfactory evidence of good and marketable title to the Yacht, (b) accurate payoff amounts for removal of all Encumbrances, (c) if Seller is a legal entity, a personal guaranty and indemnification from Seller's beneficial owner(s) guaranteeing Seller's representations and warranties in this Agreement, and (d) copies of any other documents necessary for transfer of good and marketable title to Buyer. Seller shall cooperate fully to obtain any authorization for sale required from any governing authority. Any party which is a legal entity will provide to the other prior to Closing (i) proof that it is in good standing under the laws of the State or other jurisdiction under which the entity has been formed, (ii) a consent action or resolution demonstrating the entity's duly authorized decision to purchase or sell the Yacht as well as the authority of the individual delivering or accepting the Yacht and/or executing this PSA and/or purchase and sales documents, (iii) as to Seller, its wire transfer information.

7. **Risk of Loss; Force Majeure.** Seller will bear the risk of loss of or damage to the Yacht prior to Closing. If the Yacht is damaged after the auction but prior to Closing and the necessary repairs will cost less than five percent (5%) of the Purchase Price, or if the necessary repairs are covered by insurance subject to any applicable deductible (which shall be paid by Buyer), and will require no more than 30 days to complete, then (a) Seller must repair the damage prior to Closing in accordance with sound marine practices to the standard of the Yacht immediately prior to the damage and Buyer may inspect such repair, (b) Buyer must pay the balance and take delivery of the Yacht as repaired, and (c) the Closing Date will be extended by the length of the repair period. If the Yacht is damaged to a greater extent after the auction but prior to Closing where no insurance or insufficient coverage exists (excluding any applicable deductible), either party may terminate this PSA with the same consequences as if Buyer had rejected the Yacht. Either party's obligation to perform will be suspended to the extent required to accommodate unforeseeable events beyond that party's reasonable control, including, without limitation, acts of God, acts of terrorism, strikes, lockouts, riots, war, fire, communication line failures, computer viruses, power or other utility failures, accidents, tropical storms, hurricanes,

earthquakes or other natural disasters, pandemics and epidemics ("**Force Majeure Events**"). If a Force Majeure Event occurs, the time periods referred to in this PSA, including, without limitation, the Closing, will be deemed extended by the time necessary to permit the affected party to perform in accordance with this PSA; provided, however, if the Force Majeure Event delays the Closing for a period of more than 90 days, either party may terminate this PSA with the same consequences as if Buyer had rejected the Yacht.

8. Default. Notwithstanding anything herein to the contrary, if Closing is not consummated due to Buyer's non-performance, including, without limitation, failure to pay the balance of the Purchase Price (the "**Balance**"), the Deposit, the Purchase Price or execute all documents necessary for completion of the purchase by the Closing: (i) the Deposit shall be forfeited and retained by (or if the Deposit was not paid, Buyer shall pay a like amount to) Seller, Listing Broker, and Boathouse as liquidated and agreed damages, as consideration for the execution of this PSA, 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 this PSA. Buyer and Seller agree that the Deposit will be divided thirty-three and a third percent (33.3%) to each the Seller, Listing Broker, and Boathouse. Buyer shall be responsible for the payment of any remaining Buyer's Premium to Boathouse.

If the Closing is not consummated due to Seller's non-performance, the Deposit, and any other money paid or deposited by Buyer, pursuant to this PSA will be returned to Buyer upon demand or Buyer will have the right of specific performance. Seller agrees that specific performance is reasonable in light of the uniqueness of the Yacht, difficulty of ascertaining damages, and the inconvenience or impossibility of otherwise obtaining an adequate remedy. On Seller's default, Seller shall forthwith pay the Listing and Selling Brokers the same commission otherwise payable had the transaction closed.

9. Sales and Use Taxes. Sales or use taxes payable in connection with Buyer's purchase of the Yacht, if applicable, are Buyer's responsibility, and Buyer shall pay the taxes due at Closing. Buyer hereby indemnifies and holds harmless Seller, the Brokers and Boathouse against and from any sales or use taxes for which Buyer is responsible.

10. REPRESENTATIONS AND WARRANTIES. SELLER AND THE BROKERS BELIEVE THAT ANY INFORMATION ANY OF THEM HAS PROVIDED ON THE YACHT IS GOOD AND CORRECT AND OFFER THE INFORMATION IN GOOD FAITH, BUT DO NOT AND CANNOT GUARANTEE THE ACCURACY OF SUCH INFORMATION. BUYER WARRANTS AND REPRESENTS, AS OF THE TIME OF CLOSING, THAT IT (A) WILL HAVE FULLY INSPECTED THE YACHT AND CONDUCTED ANY AND ALL NECESSARY DUE DILIGENCE AND INVESTIGATIONS, AND (B) IS NOT RELYING ON ANY ADVERTISEMENTS, PROMISES, DESCRIPTIONS, AFFIRMATIONS, OR REPRESENTATIONS (WHETHER ORAL OR WRITTEN, PRIOR TO OR CONTEMPORANEOUS WITH THIS PSA) PROVIDED BY THE SELLER OR BROKERS. UPON CLOSING, BUYER WILL BE DEEMED TO HAVE ACCEPTED THE YACHT IN ITS "**AS IS, WHERE IS, WITH ALL FAULTS**" CONDITION. SELLER AND THE BROKERS HAVE GIVEN NO WARRANTY, EITHER EXPRESSED OR IMPLIED, AND MAKE NO REPRESENTATION AS TO THE CONDITION OF THE VESSEL, ITS FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY, **ALL OF WHICH ARE DISCLAIMED.**

11. Financing. All auction sales are a cash transaction with no contingencies whatsoever, including, but not limited to, financing or due diligence. The Buyer may ultimately finance a portion of the Purchase Price, but the Buyer's obligation to proceed with the purchase is not contingent upon the buyer obtaining financing or the terms of any such financing. If the Buyer is unsuccessful in obtaining financing and is unable to close within the required time period, the Buyer will be deemed in default.

12. Counterparts; Execution. The parties may sign this PSA in any number of identical counterparts, each of which will be deemed an original (including signatures evidenced via email or other electronic means) as if the signatures were upon the same instrument.

13. Escrowed Funds. The parties acknowledge that (a) YRSI will not be responsible for the Deposit until the funds have cleared into the its account, (b) YRSI shall hold the Deposit in escrow once the funds have cleared and any other funds received by YRSI 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 YRSI, and (d) in any dispute involving any funds held by YRSI, Buyer and Seller will indemnify and hold harmless YRSI for any legal fees and/or court costs relating in any way to the dispute, including those incurred in any appeals (which obligation is secured by a lien on the escrowed funds) and those

relating to a claim for a commission, except where YRSI is found, in a final non-appealable judgment, to have engaged in willful misconduct or acted with gross negligence.

14. **Miscellaneous.** This PSA, including its exhibits and schedules, is the *entire agreement* between the parties 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 becomes a party to any litigation involving this PSA, the Broker 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 this PSA. In the event of any dispute between the parties hereto arising out of the subject matter of this PSA, the prevailing party shall be entitled to recover reasonable expenses, attorney's fees and costs for all pretrial, trial and appellate proceedings. If any term, condition, or provision of this PSA is held to be unenforceable for any reason, it shall be interpreted to achieve the intent of the parties to this PSA to the fullest extent possible rather than avoided. In any event, all other terms, conditions and provisions of this PSA shall be deemed valid and enforceable. There are no other duties, obligations, liabilities, or warranties, implied or otherwise, except as set forth herein. This PSA 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 this PSA without the other party's consent, which consent shall not be unreasonably withheld. No claim or right arising out of this PSA 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.

15. **Governing Law and Dispute Resolution. This PSA shall be governed by the laws of the State of Florida.** 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. Any and all disputes involving this Agreement, 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. If the amount in controversy, including counterclaims, is not more than USD \$1,000,000, the parties shall jointly select a single arbitrator from the list of arbitrators maintained by IYAC within twenty (20) days of the giving of notice of arbitration. If the parties are unable to agree upon the arbitrator, the IYAC shall have the power to make the appointment of the single arbitrator. If the amount in controversy is greater, the parties shall each appoint one arbitrator and the two arbitrators will jointly appoint a third arbitrator. If they cannot agree on the third arbitrator within 14 days, either party may request that the IYAC appoint the third arbitrator from the list of arbitrators maintained by the IYAC. The decision of the single arbitrator, or if a three-arbitrator panel, any two of them will be final and binding on the parties. 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 15.

_____ (Buyer's Initials)

_____ (Seller's initials)

By signing below, the parties acknowledge that they have carefully read, understand, and agree to be bound by the terms and conditions of this Agreement, any related documents, exhibits and addenda, all of which form the Agreement between the parties. The parties acknowledge that they have been given the opportunity to seek legal advice and to have this Agreement reviewed by an independent attorney of their choice prior to signing it.

BUYER:

NAME, TITLE (print):

SIGNATURE: _____ DATE: _____

SELLER:

NAME (print):

SIGNATURE: _____ DATE: _____

Exclusions List: