

WTBOA CONDITIONS OF SALE

IMPORTANT AND LEGALLY BINDING RULES APPLICABLE TO THIS SALE. PLEASE READ

Tuesday, August 18, 2015

All parties take notice

this sale is conducted in accordance with, and all acts of interested parties and/or claims by them shall be governed by the following:

BIDDERS TAKE NOTE

This sale is conducted by the Washington Thoroughbred Breeders and Owners Association (hereinafter called the WTBOA) in accordance with all the following Conditions of Sale. All consignors, prospective bidders/buyers, and all other interested parties are fully bound by all the terms and conditions of said Conditions of Sale. Each prospective bidder/buyer is encouraged to read said conditions prior to bidding on any horse. All acts, transactions or claims of any kind whatsoever, which arise directly or indirectly out of or are related to this sale shall be governed by said conditions.

The presence of exogenous anabolic steroids revealed by a post-sale positive test for which rescission is allowed are ONLY as set forth in Condition of Sale, 8. Conditions revealed by post-sale laryngoscopic examination for which rescission is allowed are ONLY as set forth in Condition of Sale, 9. There are other conditions which may be revealed by those or other examinations which may affect the desirability of purchasing the animal, but which are not grounds for rescission of sale.

CONDITIONS OF SALE

FIRST — APPLICABLE LAW: All horses are offered for sale according to the laws of the state of Washington.

Privacy Notice: Buyers, consignors, bidders and all attendees at the sale each authorize the WTBOA to use in WTBOA's advertising or promotions, his or her name, photograph, likeness and related information or the name, photograph, likeness and related information of any horse offered or purchased, without further authorization or compensation.

There is no warranty, express or implied, by the WTBOA or consignor (including owner or their representatives), except as set forth herein, as to the merchantability or fitness for any particular purpose of any animal offered in this sale. All sales are made on an "as-is" basis, with all faults.

SECOND — BIDDING PROCEDURE: There will be a \$1,000 upset price on any WTBOA summer session yearling going through the sales ring. There is no upset price on any WTBOA mixed session horse or stallion share going through the sales ring. If an opening bid on any horse is not immediately forthcoming to the auctioneer's call, the horse shall be passed out of the ring as unsold and returned to the consignor for the minimum commission charge as determined in the Consignor's Agreement. The right to bid is reserved for all consignors unless otherwise announced. To be eligible to bid a person must be at least 18 years of age. All potential buyers shall be prepared to present written proof of age and identity. The buyer shall immediately sign the Purchase Contract. Upon signing the Purchase Contract the buyer thereby authorizes the WTBOA to make public his/her name, address and telephone number(s). In the event that the consignor (or his/her agent) bids on his/her own horse, then the WTBOA shall be so notified within 30 minutes of the conclusion of that sales session.

THIRD — THE HIGHEST BIDDER IS TO BE THE BUYER: All sales hereunder shall be final at the fall of the auctioneer's hammer and each horse or stallion share shall be sold to the person from whom the auctioneer recognized the last bid. Should any dispute arise between or among two or more bidders, the auctioneer shall adjudicate the dispute, and his decision shall be absolute, final, and binding on all parties. Bids received after the fall of the hammer are not grounds for dispute. Bids acknowledged by bid spotters employed by the WTBOA are recognized as if tendered to the auctioneer, but in the case of dispute the bidding on the horse or share shall be reopened for advance bids, and if there is no advance, the horse or share is sold to the person from whom the auctioneer recognized the last bid. In case of any dispute, advance bidding shall be restricted to the contending parties, but should the recognized bid be reduced below the bid at commencement of the dispute, then the bidding is reopened to all bidders, regardless of whether or not the final bid exceeds the bid which was disputed. The auctioneer reserves the right to reject any or all bids. Right of purchase of the

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successful bidder, as determined by the auctioneer, is not impaired in case of signing of Purchase Contract by another bidder.

FOURTH — TITLE, RISK AND DELIVERY: Title passes to the purchaser at the fall of the auctioneer's hammer, at which time the purchaser shall assume all responsibility for and risk of injury to said horse. Any injury to said horse or change in said horse's condition occurring after the fall of the hammer, but before making final settlement or taking delivery as set forth herein shall not be grounds for rescission of the sale by the purchaser. The purchaser or his/her agent may take care, custody, and/or control of the horse immediately at the fall of the hammer, but such taking shall not constitute delivery of the horse. Delivery shall be made only after the purchaser presents himself/herself to the cashier of the WTBOA and makes settlement by tendering the purchase price in full, or only after a purchaser has been extended billing credit by the WTBOA. Any purchaser who makes such final settlement or who has established billing credit with the WTBOA, shall be tendered delivery in the form of a "stable release" for the horse, which shall allow the purchaser and/or his/her agent to remove said horse from the sales grounds. After delivery, purchasers shall remove horse(s) from the stable area within 24 hours or be subject to stable charges as determined by the WTBOA should they fail to do so. **Purchasers are cautioned not to lose these stable releases.**

FIFTH — TERMS OF SETTLEMENT: All purchasers must make settlement with the cashier of the WTBOA. Any payment to others, including consignors or their agents, is not recognized as settlement. Purchasers shall make settlement within 30 minutes after the conclusion of the sales session in which the horse(s) is sold for the full purchase price, plus any appropriate sales tax. Such settlement shall be in U.S. funds, either in currency, approved bank check, cashier's check, certified check, money order or travelers' check, unless billing credit has been approved in advance by the cashier of the WTBOA. Bidders are cautioned that approval of application for billing for prior sales does not establish credit for purchases at this sale. To avoid any misunderstanding, purchasers must re-establish billing credit prior to bidding. **Purchasers to whom billing credit is extended must pay for their purchases in full within 15 days of sale. In the event of their failure to do so the WTBOA may, in its sole and absolute discretion, declare the purchaser in default by placing in the United States mail by registered or certified mail, a letter addressed to the purchaser at the address as stated to the WTBOA at the time of sale notifying him/her that said sale shall be declared in default in the event full tender of the purchase price is not made to the WTBOA within 15 days of the receipt of said letter by purchaser. Any horse(s) not paid for in full within 15 days after the sale shall be subject to a finance charge of 1 1/2 percent per month (18 percent per annum) plus a \$150 collection charge per horse beginning on the date of sale on all amounts owing at 15 days until such horse(s) has been paid for in full. Interest shall be paid to consignor. The certificate of registration for any horse(s) which is unpaid and on which interest is assessed, will be held in the offices of the WTBOA until the said interest is paid in full.**

SIXTH — DEFAULTERS: A purchaser whose purchase has been declared in default pursuant to Condition of Sale, 5. Terms of Settlement, shall immediately tender delivery of said horse(s) to the consignor or the WTBOA on demand at any location designated by either of them. Said horse(s) may be resold by the WTBOA at public or private sale without any notice to said defaulting purchaser. Any and all costs of such resale shall be borne by the defaulter and in the event said resale shall fail to satisfy the defaulter's account in full, the defaulting purchaser shall pay to the WTBOA any difference between the original defaulted purchase price and the subsequent resale price. In the event said defaulting purchaser fails to pay this difference, the WTBOA and/or the consignor may bring suit against the defaulter to collect this difference. **Any defaulting purchaser shall further be liable to the WTBOA and/or the consignor for any damages of any kind (including but not limited to those damages resulting from injury to said horse[s] after the defaulting purchaser takes delivery) which affect the value, racing soundness or breeding soundness, which is sustained by the WTBOA and/or the consignor as a direct or indirect result of said default.**

SEVENTH — LIMITATION OF WARRANTIES: Other than those limited warranties expressly stated in these conditions of sale, or unless otherwise expressly announced from the auctioneer's stand at the time of sale, there is no guarantee or warranty of any kind, express or implied, of merchantability or of

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fitness for use or purpose as to the soundness, condition, wind or other quality of any horse(s) sold in this sale and **all horses are sold "as-is"**, except those which i) possess any deviation from the norm in the eyes, or ii) are "cribbers," or iii) is a "wobblor" (defined as a horse which suffers from a neurological disease caused by compression of the spinal cord and resulting in lack of balance and coordination), or as set forth (iv) in **Conditions of Sale, 8. Exogenous Anabolic Steroids in Weanlings, Yearlings and Horses of Racing Age and Conditions of Sale, 9. Upper Respiratory Laryngoscopic Evaluations**, must be so announced at time of sale. Any horse whose condition is as aforesaid and is not so announced at time of sale will be subject to return to consignor with refund of purchase price, provided the WTBOA is so notified in writing and by veterinary certificate within 48 hours of the end of the session at which the horse in question was sold, except in the case of cribbers, seven (7) days from the day of the sale will be allowed to return a horse for cribbing, which must be so certified in writing by an equine veterinarian. Other than failure to satisfy any of the aforementioned expressly warranted conditions, no other defects shall constitute a nonconformity, substantial or otherwise, with the terms of contract. In addition, any horse sold as a horse of racing age which is nerved, is a "bleeder," or is currently on the starter's, steward's, or veterinarian's list in the state of Washington, must be so announced.

Any horse sold in this sale on or after July 1 of his yearling year which is i) described at the time of sale as a colt and does not have both testicles palpable in the entirety below the external inguinal ring, or ii) is described at the time of sale as a gelding and is at such time a colt or cryptorchid (ridgeling), or iii) is described at the time of sale as a cryptorchid (ridgeling) and is at such time a gelding, shall be subject to return to the consignor as provided in **Condition of Sale, 14. Right of Return**.

Warranties with respect to certain defects pertaining to racing prospects, sold after July 1 of her/his yearling year, as provided in **Conditions of Sale, 7, 8, 9, 14, or 15** herein, shall not apply to any horse(s) described at time of sale as a broodmare, broodmare prospect, stallion or stallion prospect.

EIGHTH — EXOGENOUS ANABOLIC STEROIDS IN WEANLINGS, YEARLINGS AND HORSES OF RACING AGE: Limited Warranties and Post-sale Testing: Consignor warrants that any weanling, yearling and horse of racing age entered in this sale shall not have been administered any exogenous anabolic steroids ("EAS") within 45 days of the date of sale.

In order for purchaser to avail himself of this limited warranty he must check the appropriate box on the Purchase Contract directing WTBOA to have a blood sample taken. Purchaser agrees to pay the WTBOA the fees to cover direct costs and administrative expenses in regard to testing the blood sample. WTBOA will then arrange for a blood sample to be taken by a veterinarian selected by WTBOA prior to the horse leaving the sales grounds, which sample shall be sent to a laboratory selected by WTBOA for testing for EAS. Consignor hereby consents to a blood sample being taken. Should the post-sale test reveal the presence of EAS at such level as is deemed by the testing laboratory to show that EAS has/have entered the system of the horse within 45 days prior to sale of the horse ("Positive Test"), purchaser shall have the right to rescind the sale which right must be exercised by purchaser giving written notice to WTBOA within 24 hours of purchaser's receipt of the results indicating a Positive Test. In the event purchaser elects to rescind the sale, consignor shall refund any sales proceeds paid to consignor by WTBOA and pay purchaser or WTBOA all proper expenses and legal fees incurred by either of them, including interest thereon at the rate of 12% per annum, from the time of sale until the return of the horse to the consignor. Proper expenses include, but are not limited to, such items as the testing fee (charged at current rate), veterinarian charges, vanning and boarding. Purchaser's right to rescind sale shall be unequivocal, provided, however, purchaser shall be required to exercise due care during the rescission period in maintaining and boarding the horse. In the event of a Positive Test, risk of loss shall remain with purchaser from the fall of the hammer until consignor has been notified of purchaser's election to rescind the sale at which time risk of loss passes back to consignor. Further, purchaser shall not cause the horse to be materially altered during the rescission period. WTBOA will give notice of the results of such tests to consignor and purchaser as soon as practicable after receipt of the results from the testing laboratory which is anticipated to be within 10 days from date of sale.

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No other testing by purchaser shall be allowed to support any claim by purchaser concerning the presence of EAS. In addition, neither purchaser nor consignor shall have the right, nor shall WTBOA have any obligation, to conduct testing of a split sample. WTBOA's decision concerning whether there is a Positive Test, as long as same is supported by the testing laboratory selected by WTBOA, shall, absent fraud or bad faith, be fully binding upon consignor, purchaser and all other interested parties. In the event that any party challenges the WTBOA's exercise of discretion, the party that is nonprevailing shall be liable for all of WTBOA's reasonable expenses, including, without limitation, attorneys' fees incurred in defending the challenge.

NINTH — UPPER RESPIRATORY LARYNGOSCOPIC EVALUATIONS (exclusive of the trachea):

1. Post Sale Endoscopic Examination. Notwithstanding any other provision of these Conditions of Sale and notwithstanding any prior custom and usage of the trade, horses which have not raced and which are being sold as racing prospects in this sale after July 1 of her/his yearling year, at the election of buyer, shall be subject to a post-sale upper respiratory laryngoscopic evaluation (excluding the trachea) through an equine veterinarian of the buyer's choosing within 24 hours from the end of the session in which the horse in question was auctioned and **prior to the horse leaving the sale's grounds.**

2. Negative/Positive Certificate. If the buyer's veterinarian is of the opinion that the horse has (i) laryngeal hemiplegia (inability to fully abduct the arytenoid cartilage), (ii) rostral displacement of the palatopharyngeal arch, (iii) epiglottic entrapment, (iv) permanent dorsal displacement of the soft palate, (v) chondroma or severe arytenoid chondritis, (vi) subepiglottic cyst(s) or (vii) cleft palate ("Negative Certificate"), then buyer shall so notify the WTBOA, in writing, within 48 hours from the fall of the hammer on the horse in question and shall further furnish the WTBOA within that time period with a copy of the Negative Certificate. The WTBOA shall, as soon as practicable thereafter, notify the consignor. Consignor shall either accept rescission of the sale or deliver to the WTBOA his/her veterinarian's certificate contrary to that of buyer's ("Positive Certificate"). Upon receipt of a Positive Certificate, which must be received by the WTBOA within 48 hours of the consignor's receipt of the Negative Certificate, consignor and buyer or their representatives shall meet, for the purposes of selecting a panel of three veterinarians. The WTBOA shall provide the parties with a list of not less than 5 (five) veterinarians. Consignor shall have the first strike of the veterinarian deemed most unacceptable to him/her and buyer shall have the second strike, and they shall alternate thereafter until 3 (three) veterinarians remain on the list. The WTBOA shall then determine if all three veterinarians can serve on the panel and if not, the WTBOA shall canvas the other veterinarians struck in reverse order until three are found who will serve. If three are not found, the parties shall repeat the process under such conditions as the WTBOA shall determine until three veterinarians are found who will serve.

The panel shall determine, based upon such examination(s) that each panel member determines appropriate to support their respective decisions, whether the horse has one or more of the conditions set forth herein, and in that event the sale shall be rescinded, ab initio. Otherwise, the sale shall stand. The decision of the panel shall be **final, binding and conclusive** on all parties, absent fraud or bad faith. If the decision of the panel is not unanimous, a majority vote shall be determinative.

For all arbitration as provided in these Conditions of Sale, expenses of the panel or third party veterinarian, as applicable, shall be the responsibility of the nonprevailing party. Consignor shall be solely responsible for the expenses incurred by him, including his veterinarian, and buyer shall be solely responsible for expenses incurred by him, including his veterinarian, during the period of determining whether the sale shall be rescinded, the horse shall be at the risk of the party who does not prevail. Boarding of horse during this period shall be arranged by the WTBOA with the cost of the same to be borne by the nonprevailing party.

Time is of the essence for all matters set forth in this and all other Conditions of Sale.

The parties acknowledge that only the conditions set forth in **Condition of Sale, 7. Limitation of Warranties; Condition of Sale, 8. Exogenous Anabolic Steroids in Weanlings, Yearlings and Horses of Racing Age;** and **Condition of Sale, 9. Upper Respiratory Laryngoscopic Evaluations** will allow

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rescission of sale and that rescission hereunder shall be the buyer's sole and exclusive remedy. In all other respects the **as is** nature of the sale remains in full force and effect.

TENTH — BROODMARES OR BROODMARE PROSPECTS: Each broodmare or broodmare prospect in this sale will be offered with a veterinary certificate provided by the consignor and satisfactory to the WTBOA showing her to be either (i) in foal, in the opinion of the examining veterinarian, based on manual examination within 14 days prior to the date of sale; or (ii) barren, and apparently free of infectious vaginal disease and in sound breeding condition, in the opinion of the examining veterinarian, based on manual and speculum examination within 14 days prior to the date of sale. Any purchaser of a broodmare or broodmare prospect sold in this sale may have her examined within 24 hours after the date of sale and prior to removal from the sales grounds, by a veterinarian acceptable to the WTBOA. Any broodmare or broodmare prospect so examined whose pregnancy status or breeding status is determined by the WTBOA not to be as represented at the time of sale may be returned to the consignor as unsold at the sole and absolute discretion of the WTBOA without liability of any kind whatsoever to the consignor and/or WTBOA. Said consignor shall further pay the veterinarian fee for said examination.

ELEVENTH — BREEDING CONTRACTS: Any contractual agreement between owners and/or consignors of broodmares in this sale and owners of stallions to which these mares may have been bred does not follow the mare unless so announced at the time of sale. The possible return to any stallion or possible refund of any stud fee does not go with any broodmare unless so announced at the time of sale.

TWELVETH — STALLION SHARES: Sale of stallion shares is subject to the terms and conditions of individual stallion syndicate agreements. In the event of a stallion's death, after the fall of the hammer prior to the end of the polling period and consistent with the terms and conditions of the syndicate agreement, the sale becomes null and void.

THIRTEENTH — RIGHT TO INSPECTION: Prior to bidding, all prospective bidders shall have the right and duty to inspect each horse upon which they may bid. The inspection shall be by veterinary examination or otherwise. The WTBOA has not given a physical examination to any horse entered in this sale.

FOURTEENTH — RIGHT OF RETURN: Any horse sold in this sale whose condition must be announced from the auctioneer's stand prior to the sale of the horse as provided in **Conditions of Sale, 7, 8, 9 and/or 10** and is not so announced, shall at the sole and absolute discretion of the WTBOA be subject to return to the consignor together with a refund of the purchase price to the purchaser, plus reimbursement for all legitimate expenses incurred on behalf of the horse from the fall of the hammer, provided that immediately upon learning of such defect and/or other condition(s) for rescission the purchaser shall notify the WTBOA in writing within 48 hours of the start of the session at which the animal in question was sold as to defect and/or other condition for rescission claimed as evidenced by a veterinary certificate based on examination by the certifying veterinarian, that such a condition exists and the same existed at the time of sale, such times being of the essence. **All warranties and/or other conditions for rescission provided in Conditions of Sale, 7, 8, 9 and/or 10 and/or any other kind of warranty whatsoever, express or implied, will terminate 48 hours after the end of session at which the animal in question was sold, after which purchaser shall have no right of return of any horse(s) for any reason whatsoever except as relates to cribbers the buyer has seven (7) days from the date of the sale to notify the WTBOA of said condition in writing and with a veterinary certificate of said condition.** In addition, all warranties on any horse of racing age shall terminate immediately upon such horse starting in a race, whether or not 48 hours have elapsed from the end of the session at which the animal in question was sold; except that the warranty on "bleeders" shall remain in effect for the duration of that race only. Further, any use of any horse of racing age "under tack" by purchaser or his/her agent after learning of any condition of such horse which would permit its return to the consignor as approved herein, shall void all right of return and ratify and make final the sale of such horse; provided, that if a purchaser elects to rescind a sale within the designated 48 hour period for any reason whatsoever, then in that event said purchaser shall have the duty and obligation to return said animal in the same physical condition as said animal was in at the time of purchase.

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FIFTEENTH — RESPONSIBILITY AREA: The auctioneer and WTBOA are not responsible or liable to any purchaser for any statements in this catalog concerning horses listed herein for sale, nor for any warranties concerning these horses. The auctioneer and WTBOA will endeavor to have all pedigrees and engagements correctly stated, but are not responsible or liable to any purchaser for any error or omission with respect to any horse's identity, foaling date, engagements, pregnancy status, cover date(s), and/or produce record, or for any defects as listed in **Conditions of Sale, 7, 8, 9, 10, 11 and 12** herein, or as announced at the time of sale. The purchaser's sole remedy is from the consignor as provided in **Condition of Sale, 14. Right of Return.**

SIXTEENTH — REGISTRATION CERTIFICATES: The Jockey Club certificate of registration for each animal consigned shall be furnished by the consignor to the WTBOA. The WTBOA will withhold settlement for any sale until a certificate of registration has been delivered to the WTBOA for that particular horse. Certificates of registration not in possession of the WTBOA at time of sale shall be guaranteed by the consignor and/or his/her agent and shall be delivered to the purchaser when received and upon completion of all other requirements.

SEVENTEENTH — The auctioneer and WTBOA act as agents for the consignor and not the purchaser.

EIGHTEENTH — No bids will be honored from bidders who have defaulted payment on any purchase at any previous sale conducted by the WTBOA, nor will consignments be accepted from anyone who has, to the knowledge of the WTBOA, at any time misrepresented a consignment at this or any other sale.

NINETEENTH – BINDING ARBITRATION: In the event of any dispute or controversy arising from the purchase herein, the consignor and the purchaser agree to submit the matter to **binding arbitration** under authority of RCW 7.04A and agree that any action or suit shall occur in Auburn, Washington, and the laws of the State of Washington shall be applied to resolve all disputes and controversies. In order to commence arbitration the commencing party shall serve the other party with a notice of arbitration. Notice of arbitration under these Conditions of Sale shall be in writing and effective when delivered either in person or by placing in the U.S. Mail by regular first class, certified or registered mail to the consignor or to purchaser, as the case may be, at his address stated to the WTBOA at the time of the sale. A single arbitrator shall be selected by agreement of the parties or in the alternative by the presiding judge of the King County Superior Court. In the notice of arbitration, the commencing party shall include the name of their selection of arbitrator who shall be a knowledgeable horseperson that is a lawyer or retired judge. If within ten (10) days of the notice of arbitration by a party, there is no response from the non-commencing party, then the commencing parties selection of an arbitrator shall be accepted. If within ten (10) days of the notice of arbitration, and the non-commencing party responds but does not agree with the commencing party's arbitrator choice, the non-commencing party shall submit his choice of arbitrator. If the commencing and non-commencing party cannot agree on the selection of an arbitrator then the presiding judge of the King County Superior Court shall appoint an arbitrator. The arbitration hearing shall be held within thirty (30) days of the agreement or appointment of an arbitrator, and a decision made within ten (10) days of such hearing, except for good cause shown.

TWENTIETH — ACKNOWLEDGEMENT OF NEGOTIATION: The purchaser hereby acknowledges that no horse has been given a physical examination by anyone, whatsoever, including a veterinarian. The purchaser acknowledges that he/she has specifically negotiated with the WTBOA any and all disclaimer provisions as set forth by the WTBOA in the sales catalog and is in agreement therewith.

ATTENTION BIDDERS

Unless otherwise announced, all horses are offered with reserves. Sellers, through their agents or otherwise, have reserved the right and liberty to bid in this sale. All bidders are therefore put on notice that the bidding process on any horse may include by-bidding, or other bids on behalf of the seller, through the auctioneer or otherwise. This announcement makes it known to all bidders before they bid that liberty for such bidding is reserved.