



The Winners Circle
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WV Lic: # 1886



ONLINE LIVESTOCK AUCTION AGREEMENT

This agreement made this _____ day of _____, _____ by and between

_____ of _____
(seller) (street)

_____ (city) (zip) (phone)

hereafter called "Seller", whether one or more, and **The Winners Circle**, hereafter called "Auctioneer".

WHEREAS, Seller is the owner of livestock described below (or on separate lists which may be attached hereto and made a part hereof), which Seller desires to sell at public online auction, and **WHEREAS**, Seller wishes to employ Auctioneer to effect the sale of said livestock, **NOW, THEREFORE, IN CONSIDERATION** of the mutual promises herein contained, it is agreed as follows:

1. **Right to sell:** Seller grants to Auctioneer the exclusive right to sell said livestock as is and where is for cash or other consideration as agreed to by the parties. Seller relinquishes his/her right to sell same. Seller agrees to deliver photographs and accurate descriptions of said livestock and sell at public online auction the livestock listed or described on attached [or list(s)]. Seller further agrees not to remove any livestock from the auction without mutual written agreement between the Auctioneer and Seller.
2. **Auction Service:** Auctioneer agrees to use their professional skill, knowledge, experience, and online sales site to the best advantage in conducting the auction.
3. **Commission:** Auctioneer shall receive as compensation for promoting, advertising and conducting said online auction sale 5% of gross sales if auction total exceeds \$100,000.00 USD, 6% of gross sales if auction total exceeds \$50,000.00 USD but does not reach \$100,000.00 USD, or 7% of total gross sales if auction total does not reach \$50,000.00 USD in receipts resulting from auction, which fee may be deducted from the gross sales receipts, all sellers must pay a \$250.00 minimum USD sale set-up fee at the time of contract agreement. This fee will then be deducted from gross sales receipts at the final sale tally.

4. **Time and Place of Sale:** Seller hereby employs Auctioneer to sell the aforesaid livestock at public auction by means of an online auction on the _____ day of _____, 20__ at _____ o'clock __ M. to the highest bidder without.
5. **Said auction to be held at:**
- The Winners Circle website and place of business located at 4789 Brush Country Road Marlinton, WV 24954
6. **Advertising:** It is understood and agreed that Auctioneer will set up and arrange at auctioneers discretion timely advertising, which will be at the seller's expense and will be paid out of the proceeds of the sale. Final advertising will be at auctioneer's discretion.
7. **Property:** Livestock to be sold at auction, include the following and listed,
- _____
- _____
- _____
- _____
8. **Further seller's expenses:**
- _____
- _____
- _____
- IF NONE WRITE NONE
9. **Warranty:** The Seller (whether one or more), warrants, conveys and agrees that he/she/they/it has good title and right to sell said livestock and said livestock is free from all encumbrances except as follows:
- | ITEM | LIEN HOLDER | ADDRESS | APPROX. UNPAID BALANCE |
|-------|-------------|---------|------------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
- If none, write none, _____. If said property or any part thereof is encumbered, Seller agrees that the sale proceeds from such property be paid jointly to said lien holder and Seller.
10. **Merchantable Title:** Seller warrants and agrees to provide merchantable title or registrations to all livestock sold, to deliver good title/registrations to purchasers if applicable.
11. **Seller agrees** that once said auction begins, Auctioneer is in charge until auction is completed.
12. **Seller acknowledges** that Auctioneer and /or his agent(s) cannot accurately predict the price the property will bring at online auction and Seller further acknowledges that Auctioneer and/or his agent(s) have not made any such assurances or predictions of price to the Seller or his/her agent(s).
13. **The Parties agree** that the exclusive course of action in any litigation or dispute concerning the enforcement of this agreement shall be by binding arbitration with the County of Pocahontas, State of West Virginia, and the West Virginia law shall govern.

14. **The prevailing Party** (s) in any dispute arising out of the relationship undertaken through this agreement shall be entitled to an award of reasonable cost, arbitration, and fees incurred.
15. **Auctioneer will have 15 business** days from the conclusion of the auction to make settlement with proprietors of sale. Final settlement will be less all auction expenses such as auctioneers fee, advertising, permit fee, bad checks, set up charges, lien surveys, etc....
16. **Cancellation:** If seller cancels auction after 24 hrs. of booking, seller agrees to pay auctioneer all marketing and setup expenses incurred and a commission rate equal to that of the commission agreed upon. (Auctioneer will assess the auction value)
17. **The Parties agree** that this agreement shall be binding on their heirs, personal representatives, successors and/or assigns and that any changes to this agreement, in order to be effective, shall be in writing and signed by all parties.
18. **Privacy Information Act:** Auctioneer will not release the names and information of the buyers to any seller or other buyers.
19. **Seller and Auctioneer** agree that they have had the opportunity to review this Agreement and have had an opportunity to be advised as to its contents, requirements and liabilities, and have signed this Service Agreement fully understanding their respective rights, responsibilities and obligations as set forth herein.

20. The Winners Circle Online Sales Terms and Conditions

Terms and Conditions

“Seller” shall mean the party who is placing the lot(s) or merchandise for sale.

“Bidder” shall mean the party submitting an offer to purchase the lot(s) or merchandise for sale.

“Auctioneer” shall mean Benjamin M. Wilfong DBA The Winners Circle.

“Buyer” shall mean “Bidder” who has submitted the successful offer to purchase the lot(s) or merchandise for sale.

By registering for a bidder’s number, Bidder agrees that the following terms and conditions shall govern all The Winners Circle auctions.

Bidder acknowledges that all sales conducted through The Winners Circle are conducted electronically and the Bidder, Buyer, Seller and Auctioneer rely on hardware and software that may malfunction without warning.

Eligibility & Information

The Winners Circle services are available only to individuals who can enter into legally binding contracts and are over eighteen (18) years of age. All bidders on The Winners Circle website must be at least 18 years of age, or using The Winners Circle services in conjunction with a parent or legal guardian; In the event a minor or a person who is unable to enter a legally binding contract is using The Winners Circle services in conjunction with a parent or legal guardian, the bid shall be considered submitted and binding by the parent or legal guardian. If registering for or as a business entity, Bidder acknowledges that he/she has the legal authority to bind that entity to this Agreement; In the event the Bidder does not have the requisite legal authority to enter into a legal contract and bind the entity, the Bidder shall be bound to the bid submitted in his/her individual

capacity. Those who do not meet eligibility requirements should not register as a Bidder.

All information provided by the Bidder during online registration shall be accurate, current and complete. If any of the Bidder's information changes, the Bidder is solely responsible for updating his/her or it's the Winner Circle account. The Winner Circle will not be responsible for lost, delayed or misdirected notices in the event a Bidder does not update his/her or its information in a timely manner. Personally identifying information provided by the Bidder will be protected per The Winners Circle Privacy Policy, outlined below.

Representations and Warranties.

User content ("User Content") includes all data, content and information submitted to The Winners Circle.

User Content includes without limitation all photographs, images, graphics, video recordings, tours, drawings, written descriptions, remarks, and narratives submitted by Users to The Winners Circle.

Users hereby grant to THE WINNERS CIRCLE a non-exclusive, irrevocable worldwide, royalty free license to use, copy, distribute, sublicense, publish, reproduce, prepare derivative works, and display the User Content submitted to The Winners Circle. You acknowledge and agree that THE WINNERS CIRCLE may license, or otherwise grant rights in or to the User Content to any third party for any lawful purpose deemed appropriate by THE WINNERS CIRCLE. You represent and warrant to THE WINNERS CIRCLE that the User Content, and the license of rights in and to the User Content to THE WINNERS CIRCLE, do not infringe or violate any copyrights, trade secrets, or other intellectual property rights of any third party. Users represent and warrant the following to THE WINNERS CIRCLE:

1. The User represents and warrants that User has all rights, title and interest, or has taken the appropriate action to acquire the necessary rights, to all copyright rights and other intellectual property rights, in and to the User Content submitted to The Winners Circle.
2. Users shall not knowingly submit any User Content, including graphics, photographs, text, or offers of commission, that is offensive, disparaging, false or misleading, or in violation of any law.
3. Users shall not use their User account to breach the security of The Winners Circle website or gain access to the account of any other User.
4. If any User Content includes images of any persons, or the likeness or image of any person, User represents and warrants that User has obtained the written consent of each such person to the display of such likeness or image, and will deliver a copy of such consent to THE WINNERS CIRCLE upon request.
5. Any intentional manipulation of the Website by User is prohibited. If any manipulation by User occurs, the license granted in these Terms of Use shall immediately terminate. THE WINNERS CIRCLE may immediately remove any User Content from The Winners Circle.

The Winners Circle makes no warranty, express or implied, as to the information used to describe lots or any other merchandise sold on this site. All auction lots and merchandise are presented as described by the Seller. LOTS ARE SOLD AS IS, WHERE IS AND WITH ALL FAULTS. Bidder acknowledges that all lots were available for inspection prior to the auction and, by these terms, it is the Bidder's responsibility to personally inspect all lots that he/she or it may purchase. Failure on part of the Bidder to inspect lots, or otherwise be fully informed as to the nature, quality and condition of lots purchased, will not constitute grounds for any type of refund or termination of the sale agreement between the Buyer and Seller. All lots and merchandise sold become the property of Buyer at the conclusion of the auction. Auctioneer is not responsible for the condition or health of lots sold and purchased, either at the time of sale or time of delivery.

Limitations on Use.

The contents of this Website are protected by copyright. They may not be reproduced, distributed or published in any way without the consent of THE WINNERS CIRCLE. All rights are reserved.

Except with the express prior written consent of THE WINNERS CIRCLE, you may only access, view, download and print individual pages from The Winners Circle for personal use. Other commercial uses of The Winners Circle are prohibited. Except as expressly provided under these Terms of Use, you may not modify, copy, distribute, transmit, display, perform, reproduce, publish, upload, post, license, frame in another Website, use on any other Website, create derivative works of, transfer, sell, and/or exploit for commercial use, any

information, software, or other lists, products or services provided through or obtained from The Winners Circle, including by email or other electronic means, without the prior written consent of THE WINNERS CIRCLE. The systematic retrieval of any of the User Content to create or compile a separate database without the written permission of THE WINNERS CIRCLE is prohibited.

You agree not to use The Winners Circle or any content or information you may access from The Winners Circle to engage in any unauthorized or inappropriate activities or for any unlawful purpose. This limitation includes any conduct that is unlawful, untruthful, misleading, tortuous or that is harmful to THE WINNERS CIRCLE or any other person or entity. You agree not to post or upload any content that is hateful, threatening, pornographic, or inappropriate in the sole judgment of THE WINNERS CIRCLE.

You agree not to use any extraction tool, or any manual, computerized, or automated mechanism to access, compile, download, circumvent any login or security devices, or extract any content or information from The Winners Circle. This prohibition includes use of any data mining tools, spiders, robots, scrapers, algorithms, or other automated devices or methodologies, or similar tools or technologies.

THE WINNERS CIRCLE prohibits the use of, and you agree not to use, The Winners Circle or any information or content on The Winners Circle to harvest or collect information about The Winners Circle's Users, or to transmit, distribute, or deliver any unsolicited bulk commercial email ("SPAM"). You may not send SPAM to any The Winners Circle User, or other person and you may not authorize others to do so.

Bidding & Payment

All bidding and payments are in U.S. currency. Bidding is done in increments, which may vary by both specie and individual lot(s) for each sale. A Bidder may be outbid at any time before the close of an auction. Bidders will NOT automatically receive notification if they have been outbid; thus, careful monitoring of the auction is encouraged when bidding. Unless otherwise indicated, lots and merchandise offered on The Winners Circle auction site will sell subject to a reserve price established by the Seller. Both the Seller and Auctioneer may bid on the Seller's behalf in an amount not to exceed the reserve price. Seller is under no obligation to sell lots or merchandise if a bid does not meet the minimum acceptable price set by Seller.

Bidder is responsible for any bids placed under his/her or its bidding number, account and password. The security of a bidding number and password is the sole responsibility of the Bidder. If at anytime a Bidder's number and/or account password is compromised for any reason, the Bidder shall notify The Winners Circle immediately to have the bidder's number and/or account password changed.

Placing a bid represents a valid offer between the Bidder and Seller. Once a bid is submitted and confirmed by the Bidder, it cannot be retracted. If a Bidder places the winning bid, the offer then becomes a binding contract to purchase the lot(s) or merchandise, and the Bidder is obligated to buy the lot(s) or merchandise at the final bidding price. Fraudulent bids can and will be pursued in a court of law. The Seller and Auctioneer reserve the right to accept or reject any and all bids unless otherwise stated.

In the case of a software malfunction on the part of the Auctioneer, the sale will be stopped and all Bidders notified. Handling of the situation thereafter will be at the sole discretion of the Auctioneer. In the event the auction is cancelled, The Winners Circle shall not charge any party for any fees and all bids shall be considered cancelled.

When bidding ends, all auctions shall be considered final and the Bidder who submitted the highest bid shall then become the Buyer of the lot(s). All lots purchased by a Buyer through The Winners Circle must be paid within 7 days from the auction close. Accepted forms of payment include personal or farm check, certified check, money order or credit card, payable to The Winners Circle at: 4789 Brush Country Road Marlinton, WV 24954. The Winners Circle does not accept any personal or farm checks from outside the U.S. A 4% processing and handling fee will be applied on all credit card transactions. A \$50 fee will be assessed on all returned checks. Failure to pay within the allotted time frame will result in a 15% finance charge, and the registered Bidder may be banned from all future The Winner Circle auctions. The Winner Circle reserves the right to process a Buyer's credit card for any lot(s) purchased if payment has not been made within 30 days of the

auction close. If a Bidder cannot pay for his/her or its purchases immediately following the auction, he/she or it should not place bids on the lot(s).

An invoice with payment instructions for lot(s) purchased will be e-mailed to the Buyer immediately following the auction close. This correspondence will be sent to the Buyer's e-mail address on file. If the Buyer does not receive an invoice within one (1) business day, Buyer shall contact The Winners Circle immediately to request an invoice. Failure to complete payment according to the terms above shall result in all applicable fees, finance charges and potential ban from all future The Winner Circle auctions.

Auction Close

All auctions hosted by The Winners Circle are conducted with the horserace-style closing format. If there is any bidding activity in the last 5 minutes of an auction, that auction will enter into extended bidding. Extended bidding increments will start at 5 minutes, however, the Seller may shorten that time duration at any point during extended bidding. Extended bidding will continue until there has been no bidding activity for the duration of the set extended bidding time increment. At that time, the auction will close and all lots will be declared sold to the highest bidder. Both the Auctioneer and Seller reserve the right to extend or end bidding at any time.

DELIVERY OF ANIMALS/ EMBRYOS/SEMEN AND FEES

Each buyer is responsible to coordinate delivery and buyer is to cover all cost of delivery. Arrangements need to be made prior to or immediately after purchase. No animals will be delivered until payment has been made. All animals must be picked up within 10 days after the auction. Delivery fees may be charged by the seller if necessary. Purchases may be picked up at the farms any time after the conclusion of the auction and full payment is received. Call the seller to schedule an appointment.

HEALTH PAPERS

Furnished upon request for each individual lot. Special testing or export health testing will be at the buyers expense. Please call your state vet office for permits, requirements etc.

GUARANTEE

The Winners Circle is not responsible for injury or accidents. All animals become property of the buyer at the conclusion of the auction. Sellers cannot be held responsible for the health or condition of animals after the conclusion of the auction.

SEMEN Guarantee

All semen is guaranteed to be of acceptable quality but no guarantee is made as to conception rate. However, in all cases, the buyer will be responsible for all shipping arrangements, shipping tanks, and expenses. Storage fees may apply if the semen is not picked up or shipped within 30 days of the auction. Buyer is responsible to contact the Seller to arrange shipment.

Standard Breeding Guarantee and Genetic Defect Disclaimer

We require that each consignor agree to the "Standard Breeding Guarantee and Genetic Defect Policies" endorsed by each breed association. Should a defective calf result, buyer is responsible for reporting the defect and following through each of the breed association's steps and protocol or other breed registry standards. If an animal is verified to be defective by the Breed Association, buyer must submit a written copy of the verification to the Seller and The Winners Circle within 60 days of purchase. Seller is responsible for refunding the

purchase price in total or making an adjustment to the purchase price. This guarantee applies only to calves at birth that show signs of a genetic defect recognized by the breed association as there is not a test to determine if some genetic lines are carriers for a defect but do not show signs as an individual at birth. Unless an animal is listed on the individual breed association "genetic defect status list" the breed, breeder, and The Winners Circle makes no representation of any kind as to whether an animal has a genetic defect. Consult with each breed association for more information. All transactions are between buyer and seller.

SHIPMENT OF SEMEN

Shipment of semen is at the buyers expense and risk in cooperation with the seller. The Winners Circle claims no liability or guarantees on any genetics, products, or services purchased or sold through this site. Buyer will pay shipping costs to and from destinations to the shipper company. The buyer will pay for purchases with a credit card, cashiers check, or money order. Semen will be held until the funds clear the bank. The transfer of registration certificates or artificial insemination certificates is the responsibility of the seller.

It is the sellers responsibility to ship sold semen by a reasonably qualified shipping source. The Winners Circle will provide the seller with a complete shipping address, instructions, and insurance information if needed from a buyer. The buyer will be responsible for providing a shipping tank and is responsible for the accuracy and quality of the tank. Buyer assumes all responsibility during the shipping process and is encouraged to buy insurance for the tank and genetics. **BUYER MUST MAKE ARRANGEMENTS FOR PICK UP/DELIVERY OF SEMEN WITHIN 6 MONTHS OF PURCHASE DATE OR THE SEMEN WILL BE FORFEITED.**

THE RIGHT TO FLUSH

All lots described as a "The Right to Flush" will carry the following guarantee. In all cases, a minimum of six (6) grade one, transferable embryos is guaranteed to the buyer. If the animal produces more than six transferable embryos, ALL embryos will be the property of the buyer unless otherwise stated in the individual lot terms and notes. In the event of any cow failing to produce the minimum number of embryos (6), the buyer will have the option of flushing the animal again until the minimum, and only the minimum (6), number of embryos is fulfilled, or the buyer may elect to have their money returned to them based upon a prorated price per embryo as determined by the auction price of the flush. In all cases, the buyer will assume all the expenses associated with the embryo flush, unless otherwise stated. The location of and the technician used for the flushing procedure will be the choice of the seller and in most cases will be indicated at the auction. Unless stated otherwise, the buyer will have the right to flush the female as soon as she is available.

The entire payment 100% is due in full at the completion of the auction. In order to assure both the consignor and buyer that each will receive what is due them, the following enclosures are outlined as a standard flush agreement.

A. The Winners Circle recommends the buyer and seller to establish a written agreement to be signed by both consignor and buyer after the sale that clearly defines and guarantees the terms of a flush purchase.

B. Flush consignor must identify the time period within which the buyer may schedule the donor for a flush. (I.e. Donor is available between January 1 and March 31, 2017). Should the flush not be achieved within the time period specified, consignor must be able to refund the purchase price paid.

C. Because the buyer is RESERVING the female for his use during the specified time period, entire 100% payment is due upon purchase. Consignor will retain control of the embryos until full payment is made. The Winners Circle will assist consignor in completing or negotiating the final transaction to satisfy both parties. All transactions are between buyer and seller.

Flush schedule, flush minimums, terms, and technicians may be specified in the catalog listing. Please contact each individual consignor on specific terms as each flush might have different terms.

PREGNANT RECIPIENTS

In the case of already realized pregnancies (i.e. embryos that have been implanted and confirmed pregnant) the buyer will pay 100% of the purchase price auction day. Each of these recipient females has been examined for

pregnancy by a qualified technician and is fully guaranteed to be carrying the mating described in each lot. These cattle will sell without further guarantee. In the case of unrealized pregnancies, the seller will provide the buyer with a pregnant recipient female that is fully guaranteed to be carrying the mating described in its respective lot on or about the time agreed upon by the buyer and the seller. Buyer must take delivery of and make full settlement for their pregnancy purchase within 30 days of confirmation of the pregnancy and notification by the seller. All sexed pregnancies are fully guaranteed to be carrying the calf sex as determined in this auction or as selected by the buyer. No guarantee, expressed or implied, is made as to a live calf, calf quality, or recipient value. In all cases transportation will be the responsibility of the buyer in cooperation with the seller.

EMBRYO PACKAGES

All embryos are Grade One or Grade Two and are fully guaranteed to consist of their respective mating described herein. Due to the nature of this event and the wide range and geographical locations of buyers and sellers involved, no guarantee can be made as to conception rate realized when using these embryos. However, if the buyer uses an embryo technician that is agreed upon by the seller and the buyer informs the seller of his intentions in writing or personal phone call prior to implanting the embryos, at least one pregnancy will be guaranteed per three embryos sold. In all cases, the buyer will be responsible for all shipping arrangements, shipping tanks, and expense. Storage fees might apply if embryos are not picked up or shipped within 30 days of the auction. Consult terms and details under each lot for more details or specific conditions.

CONDITIONS: Any person placing bids on items in this auction agrees to these terms and conditions and understands that, by placing bids, they are entering into a binding contract between themselves and the seller(s) and that they will be held financially responsible for their actions. The Winners Circle serves only as an agent between buyer and seller and may not be held responsible for any livestock or merchandise. It is to be clearly understood that The Winners Circle and representatives act only as a means between buyer and seller, and may not be held liable, financially or otherwise, for any failure on the part of the same to fulfill any obligations set forth in this sale or for the truth of any warranties expressed or implied. This catalog of offering has been prepared by the auctioneer from information provided by the seller(s) and is assumed accurate as presented to us. However, The Winners Circle will in no way guarantee age, pedigree, or reproductive status of the animals selling. All agreements and adjustments made are between buyer and seller.

We are not responsible for injury or accidents. All animals become property of the buyer at the conclusion of the auction. Sellers cannot be held responsible for the health or condition of animals after the conclusion of the auction.

All auctions conducted By Benjamin Wilfong DBA The Winners Circle, WV Auctioneer License #1886

Signed and Agreed Upon By:

Benjamin m. Wilfong The Winners Circle

Seller _____ Date _____

Seller _____ Date _____

The Winners Circle Authorized Representative/Date