

1 **REAL ESTATE AUCTION LISTING AGREEMENT**

2 (This is a legally binding contract. If you do not understand it, seek legal advice.)

3
4 **1. Parties to Agreement.** This agreement is made by and between _____,
5 hereinafter called Seller, and _____, hereinafter
6 called Auctioneer. Seller warrants that Seller is the owner of record of the property or has the
7 written authority, attached, to execute this agreement on behalf of the owner of record.
8

9 **2. Term of Agreement:** The term of this agreement begins on the _____ day of _____,
10 _____, and ends on the _____ day of _____, _____.
11

12 If a purchase agreement is prepared by Auctioneer and entered into by Seller as a result of the
13 auction during the term of this agreement, Auctioneer will be representing Seller through the closing
14 of the transaction and the termination thereof shall extend to and include the date of closing under
15 said purchase agreement as to the purchasers only.
16

17 **3. Right to Sell – Property Description - Terms.** In consideration of services to be performed by
18 Auctioneer, Seller authorizes and gives Auctioneer the exclusive irrevocable right and privilege to
19 sell at public auction the following real estate legally described as:
20

21 _____
22 _____
23 _____
24 _____

25 Also known as: _____
26 _____
27

28 On the following terms: _____
29 _____
30 _____
31 _____
32 _____
33 _____
34

35 **4. Date of Auction.** The date of auction will be determined by a written mutual agreement between
36 Seller and Auctioneer.
37

38 **5. Type of Auction Method.** Seller grants Auctioneer the authority to conduct the auction using
39 various types of auctions, sales methods and technology, including but not limited to live, online,
40 absentee, phone, sealed bid, negotiated, etc., in single type and/or any combination of types. Check
41 all that apply [] live only [] online only, OR combination of [] live, [] absentee, [] phone,
42 [] sealed bid, [] online bid.
43

44 **6. Buyer’s Premium.** Seller [] grants [] does not grant, Auctioneer the authority to charge a Buyer’s
45 Premium payable to Auctioneer unless otherwise agreed to in writing. The Buyer’s Premium on the
46 real estate described in this agreement is in the amount _____% or flat fee of _____
47 plus appropriate sales tax. A Buyer’s Premium is a flat fee amount or a percentage based on the high
48 bid which is added to the high bid amount to achieve the contract or sales price.
49

50 **7. Encumbrances.** Seller represents that the said property is free and clear of all encumbrances and
51 liens except as follows: (If none, write none.)

52	Real Estate	Address (Description)	Lienholder
53	A. _____	_____	_____
54	B. _____	_____	_____
55	C. _____	_____	_____

57 In the event of an undisclosed encumbrance that results in cancellation by successful bidder,
58 hereinafter called Buyer, discharge of Buyer from purchase price and/or assumption by Buyer who is
59 credited on the purchase price for the undisclosed encumbrances, liens, or cloud on title, Seller shall
60 be liable to Auctioneer for fee outlined in Section 16 as though contract of sale was not canceled.

62 **8. Reserves.** It is mutually agreed that all real estate will be sold to highest bidder unless Seller
63 authorizes a reserve. If a bid price or offer (including Buyer's premium, if any) equals or exceeds
64 the reserve price, or Seller authorizes Auctioneer to accept the bid price or offer, the commission and
65 fees agreed to in this agreement are earned by Auctioneer. Also when the sale price on reserved real
66 estate is above the reserve amount, Auctioneer can apply this excess monetary amount towards the
67 reduction of the reserve amount on other reserved real estate thus reducing the other real estate
68 reserve price. By initials, Seller, by initialing, authorizes Auctioneer to sell property
69 _____/_____ to the highest bidder at absolute auction without minimum or reserve.
70 _____/_____ with minimum or reserve.
71 Amount of reserve is _____.
72 Reserve will be determined at a later date ____ Yes ____ N/A

74 **9. Financing.** Financing terms on real estate will be [] All Cash [] Owner Financing.

76 **10. Possession.** Possession will take place [] At Closing [] Other _____
77 _____

79 **11. Title.** Seller agrees to furnish a marketable title and pay Auctioneer a commission if said real estate
80 is sold or otherwise disposed of by Auctioneer at a public auction, during the existence of this
81 agreement, or within _____ days after such public sale, said property is sold or otherwise disposed
82 of to any bidder at the public auction, or such bidder's agent, at a price less than or equal to the
83 highest bid submitted at auction. If this property is listed with another licensed real estate broker
84 after expiration of this listing, this contract shall be null and void in it entirety.

86 **12. Cancellation.** In the event of any cancellation of this auction by Seller, Seller shall reimburse
87 Auctioneer the no sale fee and costs as set forth in Section 16 of this Agreement within 30 days after
88 cancellation.

90 **13. Earnest Money.** Earnest money will be held in trust by _____.
91 Seller agrees that Auctioneer or Auctioneer's authorized closing agent may act as escrow agent for
92 all money, papers, and documents associated with this transaction.

94 **14. Lotting.** Seller grants Auctioneer the authority to lot, group and regroup parcels of real estate in a
95 manner which Auctioneer deems necessary to attain a higher sales price on behalf of Seller.

98 **15. Compensation.** Seller agrees that Auctioneer's commission fee, all expenses, and applicable sales
99 tax incurred for conducting the auction as agreed below (such as advertising, promotion, marketing,
100 signage, technology, labor {including travel time}, travel {including mileage, lodging, etc}, tent,

portable bathroom facilities, facility rental, dumpsters, hauling, etc.) shall be paid in cash at the time of the closing of said sale, or exchange of herein described property.

Auctioneer's Commission Fee: _____% with \$ _____ minimum fee and \$ _____ no sale fee

Buyer's Agent Commission Fee: _____%

Labor Fee Per Person Per Hour: \$ _____ Computer Operator Fee Per Person Per Hour: \$ _____

Travel: \$ _____ per mile; \$ _____ per hour; _____ lodging as billed; _____ other as billed to Auctioneer

Other expenses as billed to Auctioneer:

_____ advertising, promotion, marketing, signage

_____ tent and facility rental

_____ portable bathroom facilities

_____ other _____

16. Authorizations. Seller authorizes Auctioneer, by initials in the appropriate space, to:

cooperate with brokers who represent buyers. Yes _____/_____/_____ No _____/_____/_____

place a "For Sale" sign on property. Yes _____/_____/_____ No _____/_____/_____

advertise by computerized media Yes _____/_____/_____ No _____/_____/_____

request mortgagee to release information to Auctioneer. Yes _____/_____/_____ No _____/_____/_____

17. Seller's Property Condition Disclosure. Seller shall complete a property condition disclosure statement as required by SDCL 43-4-38 through 43-4-43.

18. Lead-Based Paint Disclosure. Seller shall complete a lead-based paint disclosure if property is residential and built prior to 1978 as required by federal regulation.

19. Release of Earnest Money in Unconsummated Transaction. If an accepted offer and agreement to purchase does not close and Auctioneer is in custody of any earnest money, both Seller and Buyer must agree in writing prior to release of earnest money in accordance with SDCL 36-21A-81. If the earnest money deposited by Buyer is forfeited, the earnest money, less expenses, will be divided between Auctioneer and Seller with _____% to Seller and _____% to Auctioneer. However, in no case may Auctioneer's share exceed the commission stated herein.

20. Parties Held Harmless. Seller agrees to indemnify and hold harmless Auctioneer and Auctioneer's agents and employees from any claim(s) arising out of misrepresented or incomplete disclosure statements made by Seller. Auctioneers are not responsible for accidents.

21. Potential Tax Liability. Seller acknowledges that there may be tax consequences arising out of the sale of this property and is advised to seek competent tax advice.

22. Reliance on Representation. Unless otherwise agreed in writing, Seller acknowledges that Auctioneer and Auctioneer's agents owe no duty to conduct an independent inspection of the property or to conduct an independent investigation of Seller's financial condition, and owe no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by Auctioneer and Auctioneer's agents to be reliable.

23. Fair Housing. This property is offered for sale regardless of race, color, creed, religion, sex, disability, familial status, country of national origin or any other category protected under federal, state or local law.

152 **24. Special instructions.** _____
153 _____
154 _____

155
156 **25. Miscellaneous.**
157 This Agreement shall be binding upon the parties hereto and their respective successors, heirs and
158 assigns.

159
160 Any party signing this Agreement on behalf of Seller must provide written proof of authorization to
161 Auctioneer.

162 Auctioneer is representing Seller in this transaction.

163 The laws of South Dakota govern this agreement.

164
165 Receipt of a copy of this contract by Seller has been acknowledged.
166

167
168
169 _____
170 Seller Date Seller Date

171
172
173 Auctioneer: _____
174 Date