

# REAL ESTATE AUCTION LISTING AGREEMENT

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

1. **Parties to Agreement.** This agreement is made by and between \_\_\_\_\_, hereinafter called Seller, and \_\_\_\_\_, hereinafter called Auctioneer. Seller warrants that Seller is the owner of record of the property or has the written authority, attached, to execute this agreement on behalf of the owner of record.

2. **Term of Agreement:** The term of this agreement begins on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and ends on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Also known as: \_\_\_\_\_  
\_\_\_\_\_

On the following terms: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

	Real Estate	Address (Description)	Lienholder
A.	_____	_____	_____
B.	_____	_____	_____
C.	_____	_____	_____

In the event of an undisclosed encumbrance that results in cancellation by successful bidder, hereinafter called Buyer, discharge of Buyer from purchase price and/or assumption by Buyer who is credited on the purchase price for the undisclosed encumbrances, liens, or cloud on title, Seller shall be liable to Auctioneer for fee outlined in Section 15 as though contract of sale was not canceled.

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

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

10. **Possession.** Possession will take place [ ] At Closing [ ] Other \_\_\_\_\_

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

12. **Cancellation.** In the event of any cancellation of this auction by Seller, Seller shall reimburse Auctioneer the no sale fee and costs as set forth in Section 15 of this Agreement within 30 days after cancellation.

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

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

15. **Compensation.** Seller agrees that Auctioneer's commission fee, all expenses, and applicable sales tax incurred for conducting the auction as agreed below (such as advertising, promotion, marketing, 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.

