



House Auction Company

885 Marshallberg Road / P.O. Box 220
Marshallberg, North Carolina 28553
Office: 252-729-1162 / Fax: 252-729-7611
NCAL # 7435 & # 7889 NCREB # 226462

AUCTION LISTING CONTRACT WITH EXCLUSIVE RIGHT TO SELL

This EXCLUSIVE RIGHT TO SELL AUCTION LISTING CONTRACT made and entered into this 14th day of December, 2021, between the following parties: Town of Morehead City, their heirs, assigns, or however their interest may appear in ownership, hereinafter called “**Seller**” (the term “Seller” to include neuter, masculine, and feminine genders, the singular and the plural) of that certain Real Property more particularly described below in Paragraph Three (3) (hereinafter called “**Property**” or “**Properties**”), and HOUSE AUCTION COMPANY, 885 Marshallberg Road, P.O. Box 220, Marshallberg, NC 28553, a licensed North Carolina real estate broker and auctioneer, hereinafter called “**Auctioneer/Broker**”.

- 1. Statement of Employment:** Seller hereby employs and authorizes Auctioneer/Broker, acting as agent for the Seller, to sell the Property named below at public auction under the terms and conditions set forth in this contract. Seller has been advised and understands that Auctioneer/Broker will be working as a Seller’s agent in this transaction. Seller has received the “Working with Real Estate Agents” publication which has been reviewed and explained by Auctioneer/Broker.
- 2. Exclusive Right to Sell:** Seller grants Auctioneer/Broker the Exclusive Right to Sell and the Exclusive Listing to Sell the Property during the term of this contract. This contract shall commence when Seller and Auctioneer/Broker have signed this contract and shall continue through and include auction sale date., provided that, in the event the Property is not sold on the scheduled auction day, Seller agrees to grant Auctioneer/Broker the sole, exclusive and irrevocable right to sell the Property until midnight on August 15, 2022 at private treaty sale for a list price to be agreed upon by the parties hereto immediately after the scheduled auction sale, and the parties shall exercise a good faith effort to reach such agreed upon price at said time. This period is irrevocable and any sales of all or portion of the Property made during this period, whether said sale is made by the Seller, or any of its agents or employees, shall entitle Auctioneer/Broker to a commission for that sale, based upon the commission schedule as established in this contract. Any offer to purchase received by the Town from a person or entity that is not the highest bidder at the auction sale shall be subject to publication and upset bids as required by N.C.G.S. 160A-269.
- 3. Real Property:** The Real Property that is the subject of this contract is located in Town of Morehead City, Carteret County, State of North Carolina, and is known more particularly and described as:
(a) Street Address: 706 Arendell Street, Morehead City, NC 28557 .
Legal Description: Being all of Lot 4 and 5, Block 10 as described and shown in Map Book 1, Page 139, Carteret County Registry, and further described and shown in Deed Book 558, Page 115, Carteret County Registry.
PIN ID (Parcel): 638619713496000 DEED REF: Book 558, Page 115 MAP REF: Map Book 1, Page 139
- 4. Date and Location/Venue of Auction Sale:** The Auction of these Properties shall be conducted over multiple days, and shall be conducted as an **ONLINE AUCTION** via Auctioneer/Broker’s Online Bidding Platform on Auctioneer/Broker’s website and/or any other MarkNet Alliance websites as selected by Auctioneer/Broker to be most advantageous for the auction sale. The auction will occur on February 15, 2022 with bidding ending at 4:00 PM, subject to the extension of the bidding period based on bidding activity at the closing of the Online Bidding.

Seller’s Initials _____; Auctioneer/Broker’s Initials _____

5. **Method of Sale:** The selling price shall be determined by competitive bidding at the auction sale. The auction sale of all properties described in Paragraph 3 shall be conducted as an Auction with Reserve, also known as an auction subject to Seller confirmation. Seller reserves the right to accept or reject the final high bids on these properties. Purchasers of all properties will be required to pay a 15% (fifteen percent) earnest money deposit on Auction day with the balance due and payable at closing, on or before 30 days.

6. **Compensation of Auctioneer/Broker:** Seller authorizes and agrees that Auctioneer/Broker shall be compensated in the form of a 10% (ten percent) Buyer's Premium, which will be added to the buyer's bid price to determine the Total Contract Purchase Price. Seller also agrees to pay the advertising and promotional costs and any other costs set forth hereinafter, an amount not to exceed \$5,300.00. It is expressly agreed that Auctioneer/Broker may deduct their fees and unpaid costs from the total sales proceeds at closing whether the Purchaser is secured by the Auctioneer/Broker, by the Seller, by the Auction, or by any other person or means. If the Property is sold by means other than auction during the exclusive listing period described in Paragraph 2 above, then the purchase price stated in the pertinent sales and purchase agreement shall be inclusive of a 10% commission to be paid to Auctioneer/Broker from the sales proceeds.

7. **General Commissions Provisions:** Commissions as set forth in Paragraph 6 shall be deemed earned by Auctioneer/Broker if the Property is sold, exchanged, conveyed or transferred, or the Seller agrees to sell, exchange, convey or transfer the Property at any price and upon any terms whatsoever, during the term of this contract.

8. **Advertising and Promotional Costs:** Seller shall be responsible for said advertising and promotional expenses up to the amount of \$5,300.00 payable within seven (7) days after the execution of this contract. This is the total costs of advertising and promotional expense that the Seller will pay for the auction from the beginning to the end.

9. **Duties and Obligations of Auctioneer/Broker:** Auctioneer/Broker shall use its professional skill, knowledge and experience to obtain the highest bid available for said property at the auction sale and to endeavor to have the high bidder submit a written offer in the form of a deposit receipt conforming to the high bid. It is expressly agreed and understood, however, that Auctioneer/Broker does not guarantee performance by the high bidder and therefore shall not be responsible if, for any reason, the high bidder shall refuse to submit a written offer conforming to the bidding at the auction sale, nor shall Auctioneer/Broker be responsible if the high bidder should fail to perform his agreement to purchase or comply with any memorandum of sale or sales contract that may thereafter be executed.

10. Seller Warranties:

(a) Seller warrants that they have done nothing to impair such title as Seller received, that they will defend the title against the lawful claims of all persons claiming by, under or through Seller, and that Seller has the right to sell said properties. Seller's warranty is subject to: (i) zoning ordinance affecting the Property, and (ii) general utility easements serving said property .

(b) Seller shall execute any and all consent or authorizations as required by Auctioneer/Broker authorizing and requesting the above lien holder(s), if any, to release information to Auctioneer/Broker concerning the above liens. Seller agrees to indemnify and hold Auctioneer/Broker harmless in the event of any legal action as a result of any undisclosed liens, encumbrances or title defects.

(c) Seller further agrees to convey to the Purchaser(s) fee simple title by Special Warranty Deed, free and clear of all liens and encumbrances except those put on or assumed by the Purchaser(s) as part of the purchase price. Seller agrees to hold Auctioneer/Broker harmless in the event or Seller's inability to perform.

(d) If Seller is a corporation, limited liability company, partnership, or other form of entity other than an individual, the undersigned as agents of the Seller hereby warrant and guarantee that they are authorized and empowered by the above named Seller to execute this contract on behalf of the Seller.

Seller's Initials _____; Auctioneer/Broker's Initials _____

11. **Representation of Seller:** Seller shall maintain liability insurance on said property and hold Auctioneer/Broker and agents harmless from any action. Seller agrees that the auction is conducted under the complete control of Auctioneer/Broker, and Seller will not, in any way, interfere with the conduct of the auction or commit any act that may hinder, or in any way diminish, the effectiveness or success of the auction sale. Should the Seller interfere with the conduct of the auction in such a way as to diminish the effectiveness or success of the auction resulting in the loss of the sale of all or part of the property, then and in that event, Seller shall nonetheless be responsible to pay Auctioneer/Broker a commission in accordance with Paragraph six (6) of this agreement and cost of expenses based upon the highest bid received for the property which was lost due to actions of the Seller. Seller shall furnish all documents requested by Auctioneer/Broker, including but not limited to: appraisals, deeds, or any other documents that would be of assistance in helping Auctioneer/Broker prepare for the auction. Seller will sign all Contracts, Deeds, closing statements, and any other documents necessary to close this transaction.

12. Default:

(a) If for any reason Seller defaults under the terms of this contract or any memorandum of sale, sales contract or listing contract executed hereunder, the Auctioneer/Broker's compensation as defined above and all unpaid advertising and promotional expenses advanced by Auctioneer/Broker will be due and payable to Auctioneer/Broker on demand calculated at either the minimum listed price, sales memorandum price, or the sales contract price, whichever is applicable.

(b) In the event Purchaser(s) default under the terms of any memorandum of sale, sales contract or other obligation to purchase the property obtained hereunder, Auctioneer/Broker shall receive one half of any and all earnest money forfeited, (however, the amount received hereunder by Auctioneer/Broker shall not exceed the full amount had the transaction closed); and Seller shall receive the balance of said forfeited earnest money. Likewise, the sum paid to Auctioneer/Broker because of a buyer's default shall not decrease the commission payable to Auctioneer/Broker as a result of the subsequent sale of the Property.

13. Authority of Auctioneer/Broker:

(a) Auctioneer/Broker is authorized to collect on behalf of Seller, an earnest money deposit of 15% (fifteen percent) of the total purchase price from the sale of any and all said Property on auction day, or any other day said Property is sold during the term of this contract. Deposits shall be held in the escrow trust account of Auctioneer/Broker, who is authorized to accept, give receipt for, and hold all moneys paid or deposited. Earnest money deposits paid toward the purchase price shall be made payable to Auctioneer/Broker as agent of the Seller and held in the Real Estate Trust Account of Auctioneer/Broker until the consummation or termination of the transaction.

(b) In the event of any escrow deposit dispute, and the Auctioneer/Broker is in doubt as to the disbursement of escrow funds, Auctioneer/Broker shall have the right to release the money to a Court of competent jurisdiction, which shall determine the rights of the parties involved in the dispute, but in no case will the action waive the Seller's responsibility of the payment of the Auctioneer/Broker's compensation to the Auctioneer/Broker.

(c) Auctioneer/Broker is authorized to place auction advertising in such media as Auctioneer/Broker selects, and provide necessary support, promotional assistance, supplies and materials as the Auctioneer/Broker, in its sole discretion, shall deem necessary to obtain the highest available bid for the property, and to install lawful auction signs on the listed property.

(d) Seller grants Auctioneer/Broker custodial rights to the Property on auction day or any open house / inspection date for the purpose of evicting and arresting trespassers, or any persons disrupting the auction or inspection.

Seller's Initials _____; Auctioneer/Broker's Initials _____

14. **Limitation of Liability:** Seller understands that by this contract, Auctioneer/Broker does not guarantee the sale of the Property, but Auctioneer/Broker will make a sincere and honest effort to procure a sale for the Seller's described Property. In consideration of the efforts and expenditures by Auctioneer/Broker, Seller shall indemnify and hold harmless the Auctioneer/Broker against all liability, loss and expenses, including reasonable attorney's fees and Court costs that the Auctioneer/Broker may incur as a result of any claim or suit against the Auctioneer/Broker by any person from personal injury or property damage sustained by such person while on or about the herein described premises, due to the condition of said premises or Seller's negligence.

15. **Condition of the Property:** The Property is to be sold "AS-IS, WHERE-IS", with the Seller and Auctioneer/Broker making no guarantee as to the condition of the property. Seller shall completely disclose the true state of affairs with respect to the condition of the property using the attached Property Disclosure Statement and seller authorizes Auctioneer/Broker to disclose this condition to prospective purchasers.

16. **Inquiries:** Seller agrees to refer to Auctioneer/Broker **ALL** inquiries from Brokers and/or others interested in the Property. Seller grants Auctioneer/Broker unencumbered and free access to said Property during the term of this contract. Seller gives Auctioneer/Broker the sole and exclusive control of the sale of said Property from this date, and further binds themselves not to interfere in the sale of the Property during the term of this contract.

17. **Special Terms and Stipulations:** Seller expressly authorizes Auctioneer/Broker to include in this auction marketing campaign and sale any other real properties and/or personal property which belong to other sellers, at Auctioneer/Broker's sole discretion.

18. **Seller's Closing Costs:** Seller shall pay the following costs at closing: Preparation of Deed(s), Documentary/Deed Stamps.

19. **Miscellaneous:** The parties to this contract expressly agree that the laws of the State of North Carolina shall govern the validity, construction, interpretation, and effect of this contract. This writing constitutes the entire agreement between the parties and no modifications or changes in this contract shall be valid or binding upon the parties involved, unless it is in writing and executed by the parties. Upon settlement or expiration of this agreement, whichever occurs first, Auctioneer/Broker is hereby released from any liability which may be alleged from the terms and conditions of this Agreement, and such settlement or expiration of this Agreement shall be an accord and satisfaction of this Agreement between the parties. Any litigation or dispute arising out of this agreement shall first be mediated before any lawsuit or legal proceeding is filed. The parties shall in good faith agree on a third party neutral mediator. The mediator shall set guidelines. The parties shall in good faith mediate the dispute and divide the cost of said mediator. All mediation shall be conducted in the County of Carteret, North Carolina and shall be subject to the mediation guidelines of the State of North Carolina. If mediation is unsuccessful then all litigation arising out of this agreement shall be adjudicated in a court of competent jurisdiction within the County of Carteret, State of North Carolina. All parties expressly agree to submit to this venue and hereby expressly waive any grounds for any alternate venue.

20. **Non-discrimination Provision:** The Auctioneer/Broker (aka Broker) shall conduct all brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any party or prospective party.

21. **Execution of Contract:** This Contract may be executed in counterparts and when assembled will constitute a complete binding contract.

Seller's Initials _____; Auctioneer/Broker's Initials _____

In witness whereof, the parties have executed this contract on the day and year first above written.

Seller: Town of Morehead City.

By: _____

Address: 1100 Bridges Street, Morehead City, NC 28557

Phone: (Office) 252-726-6848

Email: _____

Auctioneer/Broker

House Auction Company

By: _____

Walter L. House - Owner NCREB # 226462
Auctioneer/Broker-in-Charge

Email: walter@houseauctioncompany.com

Seller's Initials _____; Auctioneer/Broker's Initials _____