

LISTING AGREEMENT FOR SALE OF NEW YORK REAL PROPERTY [#080115NY]

1. By this agreement, **Homer Central School District, (the "Seller")**, owner of real property known as **the Hartnett Elementary School, located at 6337 Academy Street, Town of Truxton, Cortland County, New York [Parcel ID's: SWIS CODE 114400 Section-Block-Lot: 39.12-01-02.000 (the "Property")]**, (attach fact sheet or addendum) employs **ABSOLUTE AUCTIONS & REALTY, Inc.** / Susan A. Doyle, Auctioneer/Broker (hereafter AAR, Inc. and Auctioneer/Broker respectively) to sell the Property.
2. This agreement conveys to Auctioneer/Broker the exclusive right to sell the Property at auction; prior to auction; or for six (6) months following auction date listed in Section 5 below, whether the auction occurs or is postponed to a later date. By signing this agreement, Seller acknowledges that the Auctioneer/Broker shall have earned and is entitled to receive a commission only if, as and when a sale of the Property shall have been consummated (e.g., after execution, delivery and recordation of a deed and receipt of the purchase price by Seller in accordance with the terms and conditions set forth in this agreement), whether a sale is obtained by Auctioneer/Broker, Seller, or any other person or entity, and even in the event that the Seller or anyone working on Seller's behalf deliberately prevents a sale by refusing to perform a legal contract or deliberately frustrating or impeding the conditions set forth in the contract. Seller represents to Auctioneer/Broker that the Property is not currently listed with any other Auctioneer/Broker.
3. If sale occurs through the auction method, Auctioneer/Broker shall be compensated by the Buyer. Same shall occur by adding 10% to the auction strikedown price, and shall be paid in accord with the contract of sale and terms and conditions.
4. If sale occurs outside of auction, Seller shall compensate Auctioneer/Broker by payment of a 10% commission from the sale proceeds. The obligation to do so shall remain in effect from the date of this document is signed, such that, any sale that is brought about prior to or after the auction shall invoke Auctioneer/Broker's right to commission. In the event of a sale, lease, mortgage option or ANY other change or transfer of all or any part of Seller's interest in the Property is made within six (6) months after this agreement terminates, to any person or entity to whom the Auctioneer/Broker introduced, negotiated or showed the Property by any means of communication, and through any real or apparent agent of the Seller, Seller agrees to pay all commissions due Auctioneer/Broker.
5. An auction conducted by Auctioneer/Broker or its agents, employees or assigns shall take place. The auction shall occur on or about **October XX, 2015**, at approximately **1:01 PM/EST**. The auction shall principally occur at the following location: **Internet-only auction hosted at AAR Auction Center, 45 South Ave., Pleasant Valley, NY.** Price determination: At auction, the price shall be determined by competitive bidding by conference-call or Internet participation.
6. The properties shall be sold **(A)** "Absolute" to the highest bidder regardless of price, or, **(B)** Subject to the confirmation and acceptance by Seller. (Select one) **"B"**. If "B" is selected, Seller agrees to place **\$5,000.00 per property** in Auctioneer/Broker escrow account, which shall be retained as the cost of the auction in the event of a non-sale upon rejection of an offer by Seller, or refunded at closing to Seller if sale is confirmed. If "B" is selected, the minimum acceptable bid at auction will be: **\$N/A**. Auctioneer/Broker is granted the right to bid on behalf of the Seller to any amount below the minimum acceptable bid price indicated herein. In no event shall such bid be construed as an offer to purchase by the Auctioneer/Broker.
7. Within three (3) days of the execution of this Agreement by both parties, Seller shall provide the sum set forth in Section 6 to the Auctioneer/Broker, to be deposited in escrow, at a bank designated by the Auctioneer/Broker. Seller acknowledges that Auctioneer/Broker does not guarantee any performance by any bidder.
8. Auctioneer/Broker agrees to use best effort to obtain the highest available bid at auction and Seller agrees its cooperation in respect to such.
9. If the highest bidder at auction forfeits a down payment and has not paid the Auctioneer/Broker the 10% Buyer's Premium, said down payment shall be equally divided between Seller and Auctioneer/Broker to the extent of Broker's commission. This remedy is not exclusive.
10. The Seller agrees, for the duration of the term of this agreement to maintain full fire insurance on any improvements, timber, or crops on the Property. Auctioneer/Broker's commission shall not be reduced in the event of

the destruction of any improvements, timber or crops, following execution of a contract by buyer or in the event of an auction, following the fall of the auctioneer's gavel.

11. In the event that Seller rejects an offer pursuant to Section 6(b), Auctioneer/Broker's sole remedy shall be the \$5,000.00 placed in Auctioneer/Broker's escrow account in accordance with Section 6. The foregoing is not designed as a penalty clause but rather as a precise calculation of the damages Auctioneer/Broker would suffer by virtue of Seller's failure to compensate as set forth in Section 4.

12. In order to participate in this event, Seller agrees to pay up to **\$4,000.00** entry/advertising fee payable to "Absolute Auctions & Realty, Inc." upon the signing of this listing agreement. Although Auctioneer/Broker will accept all marketing suggestions, Auctioneer/Broker shall, in his/her discretion, and upon advice of the auctioneer, determine the duration and mode of advertising and marketing. Additional advertising and marketing expenses agreed upon in writing by Auctioneer/Broker and Seller shall be paid upon demand. The advertising fee contained herein, or any additional amount agreed to and authorized by Seller is non-refundable. See the "PROPERTY AD SCHEDULER - ADDENDUM "B" when attached to this listing agreement. [PLEASE PROVIDE PRIOR TO EXECUTION.]

13. Seller shall supply the following documents if available to Auctioneer/Broker: Deeds, certificates of occupancy, building permits, survey or County tax maps, tax information, site plans, photographs, restrictions and covenants, information relative to any and all liens upon the Property, and any other documents reasonably calculated to provide the Auctioneer/Broker with sufficient information to properly market and ultimately sell the Property. Additionally, Seller will cooperate fully in respect to showing the Property to prospective purchasers upon at least twenty-four (24) hour advance written notice and the development of facts necessary to provide for quality advertising. Seller agrees to place customary advertising signs on the Property during the term of this agreement and allow the posting of sold signs until closing.

14. Seller agrees that Auctioneer/Broker may enter into co-Broker or referral agreements, utilize Multiple Listing Service marketing and employ the services of a co-Broker or referral agency at Auctioneer/Broker's discretion to service this listing for the duration of this listing agreement and without need for additional Seller acknowledgement of said activities.

15. If suit is brought to collect any amount due broker or against the Auctioneer/Broker relative to Auctioneer/Broker's authority to sell the Property, Seller agrees, upon a successful outcome, to pay Auctioneer/Broker's actual costs. If there is more than one Seller, the obligations of this agreement shall be joint and several. Any litigation initiated shall take place in Cortland County, NY.

16. It is agreed that any payments made by or on behalf of Seller and Buyer prior to closing will be deposited in an escrow account in a bank designated by the selling Auctioneer/Broker.

17. Each person signing warrants the authority and legal capacity to do so, and the truth and accuracy of all statements made by Seller and contained herein: and further, guarantees that Seller has marketable title and the authority and legal capacity to convey insurable title by Bargain & Sale deed. Any corporate Seller shall deliver a duly executed Bargain & Sale deed and corporate resolution authorizing the sale of the Property. Any person signing this agreement, authorized by a corporation, any Seller, or any attorney or legal representative of an estate, or partner in a partnership, personally guarantees all sums due Auctioneer/Broker under this agreement, and agree(s) to hold harmless and indemnify Auctioneer/Broker from any liability arising out of any sale including but not limited to incorrect or undisclosed information or statements, misrepresentations of Seller, regardless of when made, even where the Property is sold by sale of corporation stock or partnership interest.

18. In the event there is a closing, the funds on deposit shall first be applied to the brokerage fee, and the balance shall be payable to Seller, unless the forfeiture provisions herein shall apply or a written agreement is entered providing for a contrary distribution of said funds, executed by all parties including the Auctioneer/Broker. In the event Buyer fails to perform, all payments are subject to forfeiture and any and all other non-exclusive available remedies including but not limited to specific performance of the contract or a separate action by the Auctioneer/Broker to enforce Auctioneer/Broker's right to a Buyer's Premium. Buyer is also responsible for resale expenses. Interest earned on any downpayment shall remain the property of AAR, Inc. This agreement shall be interpreted under New York Law, and shall be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns. It constitutes the entire agreement. There are no understandings or agreements not set forth herein. Changes shall be reduced to writing and signed by both parties. Seller acknowledges that Auctioneer/Broker has recommended that Seller's attorney be consulted on this contract. In the event any single provision of this agreement is determined invalid or unenforceable, it shall not affect the validity of the remainder of the agreement. This agreement is legally binding. A signed facsimile of this document will represent a fully executed

contract. Enforceability of this agreement shall not be impacted if otherwise executed by any blanks based upon information not yet included, in any paragraphs calling for information.

19. Notwithstanding anything stated herein to the contrary, it is understood that while the Auctioneer/Broker is considered Seller's agent for purposes of marketing and negotiating the sale of the Property, the Auctioneer/Broker is not granted any right or authority to assume or create any obligation or liability or make any representation, warranty or agreement (express or implied) on Seller's behalf or to bind Seller in any manner whatsoever.

20. Except as otherwise provided in Section 6 and 11 herein, if for any reason whatsoever the sale of the Property is not consummated, including, without limitation, because (a) title to the Property is uninsurable, or (b) there is a willful or other default by the Buyer in the performance of any of the terms, covenants and conditions of a purchase contract, then, in any such event, (i) the Seller shall not be obligated to resort to any legal remedy for the enforcement of the Buyer's obligations under the purchase contract, and (ii) Broker/Auctioneer shall not have or make any claim for, nor shall Broker/Auctioneer be entitled to, any buyer's premium, brokerage fees, commissions or other compensation of any kind from any of the Seller for any services rendered or expenses paid or incurred by Broker/Auctioneer or otherwise, whether as a broker, finder, employee or otherwise, or on a "quantum meruit" basis, with respect to the proposed transaction, except for the entry/ advertising costs set forth above in Section 12.

21. Broker/Auctioneer represents and warrants to Seller that Broker/Auctioneer is a duly licensed real estate broker and auctioneer in the State of New York and will use its best efforts to effectuate a sale of the Property upon terms and conditions satisfactory to Seller in accordance with this agreement.

Explanation: An 'exclusive right to sell' listing means that if you, the owner of the Property, find a buyer for your house, or another broker finds a buyer, you must pay the agreed commission to the present Auctioneer/Broker. An 'exclusive agency' listing means that if you, the owner of the Property, find a buyer, you will not have to pay a commission to the broker. However, if another broker finds a buyer, you will owe a commission to both the selling broker and your present Auctioneer/Broker.

Do you understand what an "exclusive right to sell" means? Please initial your response: YES_____ NO_____

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, each of the parties hereto has caused its duly authorized representative to execute this agreement as of the date listed below.

Date:	Date:
Seller: Homer Central School District	Broker: Absolute Auctions & Reality, Inc.
By: _____ Name: _____ Title: _____	By: _____ Name: Susan A. Doyle Title: Auctioneer/Broker
EIN:	
Contact Phone: ()	
E-mail: mfalls@homerschools.org	
Seller's Attorney: Kevin L. Overton, Esq. (Harris Beach PLLC)	
Address: 99 Garnsey Road, Pittsford, NY 14534	
Phone: (585) 419-8800	
E-mail: koverton@harrisbeach.com	