

**Schrader & Robertson Commercial Auctioneers, LLC**  
**P.O. Box 21793**  
**Lexington, KY 40522-1793**  
**Phone (859) 288-5008**

**AUCTION LISTING CONTRACT**

THIS AUCTION LISTING CONTRACT (hereinafter "Contract") is made and entered into this the \_\_\_\_ day of \_\_\_\_, 2011, by and between Lexington Fayette Urban County Government (LFUCG) (hereinafter "Seller") and Schrader & Robertson Commercial Auctioneers, LLC., duly licensed by the Commonwealth of Kentucky as auctioneers, 175 E. Main Street, Suite 325, Lexington, Fayette County, Kentucky 40507 (herein "Agents"), (mailing address, P.O. Box 21793, Lexington, KY 40522-1793).

**W I T N E S S E T H:**

WHEREAS, Seller desires to have the Properties sold by Agents at an Absolute Auction in accordance with the Rules and Regulations applicable thereto as set forth in Exhibit "A" hereto, which Rules and Regulations Seller acknowledge and agree to abide by; and

WHEREAS, Seller desires to grant to Agents the exclusive right to sell the hereinafter-described property at Absolute Auction on \_\_\_\_\_2011 at 12:00 P.M..

NOW THEREFORE, for and in consideration of the mutual premises and covenants contained in this contract, the parties hereto agree as follows:

1. Statement of Employment: Seller does hereby employ Agent as independent contractors to sell the Property, together with all of the improvements

thereon and appurtenances thereto, at an Absolute Auction to be conducted in accordance with the terms and conditions of this Contract and with any applicable statutes and regulations of the Commonwealth of Kentucky. Seller specifically acknowledges and agrees that the Property shall be sold and transferred to the highest bidder regardless of the amount of the highest and last bid.

The Agents hereby agree to sell the property at Absolute Auction and to perform the services described within this contract to the best of their ability and in accordance with standards generally accepted by auctioneers and real estate brokers in the area. Provided, however, Agents shall have no obligation to pre-qualify or "screen" any prospective purchasers of the Property and shall have no liability to Seller for any checks or other forms of payment received as a result of the auction which may be returned by reason of insufficient funds. However, Agents agree to exert every possible effort to help collect any bid accepted.

2. Time, Place, and Nature of Sale: The Property shall be sold at Absolute Auction on \_\_\_\_\_ 2011, at 12:00 P.M. at 101 E. Vine St. in the Phoenix Conference Room located on the 3rd floor. Property shall be sold be without reserve and Seller specifically acknowledges and agrees that the Seller, or anyone acting on behalf of the Seller, may not and shall not bid at the auction or otherwise participate in the bidding process. The following terms and conditions shall apply to the sale of the Property and, where possible, shall be included in all advertising: The buyer(s) (herein "Purchaser", whether one or more) shall be required to execute an Auction Purchase Contract upon completion of the sale and, at that time, pay to LFUCG an amount equal to fifteen percent (15%) of the

gross purchase price in cash, certified funds, bank check or other such funds as are acceptable to Agents. The Auction Purchase Contract shall call for the balance of the purchase price to be paid by Purchaser to Seller and the sale closed within thirty days (30) days or less of the auction sale date, time being of the essence.

3. Commission to Agents: For their services rendered pursuant to this Contract, Agents shall receive a commission of 10 percent (10%) of the gross selling price at closing.

4. Advertising and Promotion: Agents shall manage any and all advertising and promotions related to this sale. Advertising shall include, but not be limited to, the Lexington Herald-Leader, Loopnet, Costar, Email blasts, website of Schrader Commercial and Schrader & Robertson Commercial Auctioneers, and other means available to Agents. The budget for advertising and preparation of sales materials is expected to approximate \$2,500 and a formal budget will be prepared for review and approval by all parties within 15 business days upon execution of this contract. The cost of advertising will be paid by Seller from proceeds from the sale and is not to exceed \$2,500.00.

5. General Availability of Agents: During regular business hours, Agents shall be reasonably available to prospective buyers, both personally and for telephone consultation, for the purpose of disseminating information regarding the Property and for the purpose of conducting private showings of the Property, and Seller agree to make the Property freely available for such purposes.

6. Written Information: Agents agree to respond to all reasonable requests, both oral and written, from prospective buyers for written materials and information concerning the Property.

7. Day of Auction: Agents shall employ all persons reasonably necessary or required to conduct the auction and to effectuate the sale of the Property, including, but not limited to, auctioneers, bid spotters and clerks. Any person employed by Agents shall be solely and exclusively the employee and agent of Agents and shall not be considered for any purposes to be the employee or agent of Seller.

8. Statement of Terms and Conditions of Sale and Auction Purchase Contract: Agents shall make available to Seller at least ten (10) days prior to the auction sale a Statement of Terms and Conditions of Sale together with a sample of the Auction Purchase Contract to be signed by the successful Purchaser at the conclusion of the auction sale. Agents understand that this sale is an "As Is" sale and the Seller makes no warranties or representations or guarantees regarding the condition of the property or regarding the property's suitability for any use.

Neither the Statement of the Terms of Conditions of the Sale or the Auction Purchase Contract shall contain any provisions which are inconsistent to this contract or to any applicable laws. Said Terms and Conditions of Sale and the Auction Purchase Contract shall be deemed to have been provided by Seller for the purposes of this paragraph 8.

9. Maintenance of the Property: Seller shall continue to maintain the Property including, but not limited to, mowing the grass and making repairs, if

any, to fences, building and other improvements on the Property if there are funds in the estate from which to pay for such maintenance or repairs. Agent understands that Seller must obtain court approval before any funds of the estate can be spent on maintenance or repairs.

10. Insurance: Agents shall, at their own expense and prior to the auction date, purchase liability insurance in the amount of One Million Dollars (\$1,000,000.00). It is understood and agreed by the parties hereto that this insurance coverage is intended to cover all risks and claims for personal injury or property damage arising out of any of the services to be provided by Agents in accordance with this Contract, but shall not provide any coverage to Seller or their agents or employees, by reason of any act or omission of such parties. Agents shall further have no liability for any theft or casualty loss of any portion of the Property.

11. Seller' Representations and Agreements: Seller represents that it now owns the Property and has the approval and authority to sell the property. Seller agrees to convey the subject property in fee simple by Special Warranty Deed to in accordance with this Contract, subject only to easements and restrictions of record, planning and zoning and/or other governmental regulations applicable thereto and current taxes and assessments for the said property which are to be prorated at the time of the closing.

12. Warranties: Agents are prohibited from and have no authority whatsoever to give any warranty, including a warranty as to performance, quality or fitness concerning the Property to any prospective buyer. Provided, however,

nothing herein shall prohibit Agents from informing prospective buyers that the Property shall be conveyed in fee simple by means of a Trustee Deed.

13. Severability: Should any provision of this Contract prove unenforceable under any applicable law, then that provision shall be deleted without affecting the validity of the remaining provisions.

15. Applicable Law: This Contract shall be governed by the laws of the Commonwealth of Kentucky.

16. Entire Agreement: This Contract represents the complete understanding between the parties hereto and may be modified only in writing executed by all of the parties hereto. All prior contemporaneous communications shall be of no force or effect.

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We the undersigned have read this Contract and fully understand the contents therein, and understand that this is the complete content of said Contract and acknowledge the receipt of same. Further, we acknowledge that we are not relying on any verbal statements or representations by either the SELLER or AGENTS.

IN WITNESS WHEREOF, the parties have hereunto set their hands this the day, month and year first above written.

SELLER:

Lexington Fayette Urban County Government

By: \_\_\_\_\_

Jim Gray, Mayor

AGENT:

Schrader & Robertson Commercial Auctioneers, LLC

By:\_\_\_\_\_

Title;\_\_\_\_\_

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## **EXHIBIT "A"**

### **REGULATIONS APPLICABLE TO ABSOLUTE AUCTIONS**

#### **ABSOLUTE AUCTION REGULATION 201 KAR 3:080**

Relates to KRS 330.110

Pursuant to KRS subsections 2, 3, 8, 10 and 11

**NECESSITY and FUNCTION:** To prohibit misrepresentation and fraudulent advertising designed to bait the public and then not sell at true absolute auction.

Section 1: No auction shall be advertised as "absolute" nor shall any advertising contain the words "absolute auction" or the word "absolute" or words with similar meaning nor shall licensee offer or sell any "goods" as defined in KRS 330.020 (4) at "absolute auction" unless:

(1) There are no liens or encumbrances on the goods (excepting current tax obligations, easements or restrictions of record) in favor of any person, firm or corporation other than the seller, or unless each and every such holder of each and every such lien and encumbrance, by execution of the auction listing contract, or otherwise furnishing to the auctioneer written evidence of a binding commitment therefore, shall have agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the highest bidder; or, alternatively, that a financially responsible person, firm or corporation, by execution of the auction listing contract or by otherwise furnishing to the auctioneer written evidence of a binding commitment therefore, shall have absolutely guaranteed the forthwith and complete discharge and satisfaction of any and all such liens and encumbrances immediately after the sale, without regard to the amount of the highest bid received or the identity of the high bidder.

(2) There is a bona fide intent at the time of the advertising and at the time of the auction sale, to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the high bidder, such intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods would not be transferred to the high bidder.

(3) The auction listing contract contains a bidding requirement that the sale be conducted without reserve, by specific inclusion of an

acknowledgment by the seller that the seller, or anyone acting on the behalf of the seller, may not and shall not bid at the auction, or otherwise participate in the bidding process.

Section 2: Compliance with this regulation shall not prohibit

(1) A secured party or other lienholder not the seller from bidding at the auction sale, providing that such bidding does not constitute, nor is that amount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer.

(2) Any individual party to the dissolution of any marriage, partnership or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to such dissolution.

(3) The inclusion of non-misleading advertising or certain goods to be sold at "absolute auction" and the non-misleading advertising of certain goods to be sold at auction with reserve, within the same advertisement, or for sale at the same date and place, providing said advertisement shall make clearly apparent, through equal or appropriate emphasis, which goods are being sold by each method.

Section 3: Violation of any section or sections of this regulation shall constitute a violation of one or more subsections 2, 3, 8, 10 and 11 of KRS 330.110.

Effective: August 5, 1988