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COUNSEL FOR THE DEBTORS

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

In re:

**LUKE'S LOCKER INCORPORATED,
et al.,

Debtors.**

**Case No. 17-40126
(Jointly Administered)
Chapter 11**

**DEBTORS' EXPEDITED MOTION TO: (I) SELL SURPLUS ASSETS;
AND (II) EMPLOY ROSEN SYSTEMS, INC.**

Luke's Locker Incorporated ("LLI"), 2L Austin, LLC ("2LA"), and The Quality Lifestyle I, Ltd. ("TQL" and with LLI and 2LA, the "Debtors"), debtors and debtors-in possession in the above-captioned Chapter 11 cases, pending in the U.S. Bankruptcy Court for the Eastern District of Texas, Sherman Division, hereby file their *Motion to: (i) Sell Surplus Assets; and (ii) Employ Rosen Systems, Inc.* (the "Motion"), respectfully stating as follows:

I. Procedural Background

1. On January 24, 2017 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.*

(the “Bankruptcy Code”), commencing the bankruptcy cases (the “Bankruptcy Cases”). An order authorizing joint administration of the Bankruptcy Cases was entered on January 31, 2017.

2. The Debtors continue to operate and manage their businesses as “debtors in possession” pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the chapter 11 case (the “Chapter 11 Case”) pursuant to section 1104 of the Bankruptcy Code.

3. This Court has jurisdiction over the subject matter of the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of the Bankruptcy Case before this Court is appropriate under 28 U.S.C. §§ 1408 and 1409.

II. Factual Background

4. The Debtors operate retail stores throughout Texas, known as Luke’s Locker, that specialize in running and fitness apparel, footwear, and other related goods, with a particular focus on providing excellent customer service. They also provide training programs (running and walking) for their customers, and they help sponsor and host numerous running and walking events throughout the year, including everything from charitable 5Ks to free weekly social runs from the stores. Luke’s Locker is a recognized leader in its industry, having won numerous D Magazine Readers’ Choice and Best of Big D awards throughout the years.

5. Luke’s Locker’s origins go back as far as 1970, when Don Lucas was a Dallas attorney and running enthusiast. The problem then was that shoes specially designed for running were not generally available in Dallas. So Mr. Lucas contacted a company in Oregon called Blue Ribbon Sports. Blue Ribbon sold him shoes for his own use, and he, in turn, sold more of

their shoes to fellow Dallas runners out of the trunk of his car. Blue Ribbon Sports officially changed its name to Nike, Inc. in May 1971.

6. Mr. Lucas's shoe business moved from the trunk of his car, to his garage, and eventually into the first Luke's Locker on Oak Lawn in Dallas. In addition to running shoes, Luke's Locker carries workout gear, sportswear, cross training shoes, track and cross country spikes, tennis shoes, and a host of related accessories. At the time of its bankruptcy filing, Luke's Locker had locations in Austin, Dallas, Fort Worth, Highland Village, Houston, Katy, Plano, Southlake, White Rock Lake, and The Woodlands along with a corporate office and a central distribution warehouse in Dallas.

7. Unfortunately, as is the case with the brick-and-mortar retail business in general, Luke's Locker suffers from undercutting online competition, though it nevertheless has a fiercely loyal customer base. Luke's Locker also undertook an aggressive expansion campaign in recent years, opening numerous new stores. This led to the Debtors entering into various leases that, with the benefit of hindsight, are more burdensome than the Debtors anticipated.

8. These problems and others combined to create a serious liquidity crisis. Luke's Locker turns over inventory quickly and with good margins. But without adequate liquidity, Luke's Locker has had a harder and harder time acquiring inventory. And as Luke's began to fall behind with its principal vendors, those vendors began demanding cash in advance, further exacerbating the liquidity crisis. In spite of these problems, however, Luke's Locker still produced \$34 million in revenue during the last fiscal year. So the Debtors sought protection under chapter 11 in order to reorganize their financial affairs and reemerge from bankruptcy free of the burdens that led to their current predicament.

9. After the bankruptcy filing, the Debtors permanently closed their Austin, Highland Village, Houston, Katy, and Woodlands stores and ultimately rejected the store leases associated with those closed locations. The Debtors also closed their corporate office and will be rejecting their central distribution warehouse lease at the end of March 2017. The Debtors currently intend to continue operating only their Dallas, Fort Worth, Southlake, and Plano stores.

III. Proposed Sale

10. As a result of the closing of several store locations, the Debtors now hold surplus store fixtures, mannequins, supplies, and furniture and equipment, none of which are necessary to the Debtors' future business operations (the "Surplus Assets").¹ The Surplus Assets are currently stored in the Debtors' central distribution warehouse.

11. The Debtors recently met with Rosen Systems, Inc. ("Rosen") to evaluate the Surplus Assets, and based upon this meeting and Rosen's recommendations, the Debtors believe that there is value in the Surplus Assets that monetized through a sale for the benefit of the estate and all creditors.

12. Rosen is an industry leader in conducting auctions of personal property and equipment. After reviewing their options, the Debtors have determined that it is in the best interests of their bankruptcy estates to engage Rosen to sell the Surplus Assets.

13. Rosen has no known connections with the Debtors, any creditors, any other parties in interest, their respective attorneys and accountants, the United States Trustee, or any person employed by the United States Trustee. Accordingly, the Debtors believe that Rosen is a disinterested party. To the extent any such connections are discovered, they will be disclosed promptly.

¹ The Surplus Assets do not include fixtures that are not owned by the Debtors, and the Debtors will not be selling any fixtures or property owned by Nike or any other trade vendor.

14. Rosen's Seller Agreement-Online Auction Secured Creditor (the "Rosen Agreement"), is attached hereto as Exhibit A and incorporated herein. The Debtors seek authority to execute the same in substantially the same form as attached hereto.

15. Under the Rosen Agreement, Rosen will advertise the online auction both online and through print advertisement, prepare the assets for the online auction, conduct the auction on their website, manage the online bidding, and supervise the exchange with the buyers. The Debtors will grant Rosen access to their premises to allow Rosen to prepare for the sale and to give the buyers sufficient time to remove their purchases.

16. Rosen will conduct the auction and provide the other services in exchange for a buyer's premium of fifteen percent (15%), plus reimbursement of Rosen's actual expenses, which are estimated to be approximately \$4,500.00.

17. The Debtors' only secured creditor is Nike USA, Inc. ("Nike"). Nike has a lien against all of the Debtors' assets to secure payment of a promissory note in the principal amount of \$2 million. The Surplus Assets constitute Nike's collateral, and the Surplus assets may also be encumbered by liens of various taxing authorities. The Debtors propose that any such liens will attach to the proceeds of the auction without any change in priority. To the extent necessary, the Debtors request that Rosen's expenses be charged against the Surplus Assets under section 506(c) of the Bankruptcy Code.

18. In addition, to the extent that Nike, the Debtor, and the various taxing authorities are able to reach an agreement as to the allocation and distribution of any proceeds from the sale of the Surplus Assets, the Debtors request authority to disburse the proceeds to Nike and the various taxing authorities in accordance with any allocation agreement reached between the parties.

IV. DISCUSSION

A. **AUTHORITY TO SELL THE SURPLUS ASSETS**

19. This Court may authorize the sale of the Surplus Assets pursuant to section 363(b)(1) of the Bankruptcy Code. 11 U.S.C. § 363(b)(1) (2012). The sale of the assets of a debtor outside of the ordinary course of business may be approved by a bankruptcy court when: (i) there is a sound business reason for the sale; (ii) accurate and reasonable notice is provided to interested parties; (iii) the price is fair, reasonable, and adequate; and (iv) the sale is made to the purchaser in good faith. *See, e.g., In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Stroud Ford, Inc.*, 163 B.R. 730, 732 (Bankr. M.D. Pa. 1993); *In re Titusville Country Club*, 128 B.R. B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

20. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand.”); *Official Comm. of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the objective of bankruptcy rules and the [Debtor’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

i. **Debtor’s Business Judgment**

21. As recognized by the Fifth Circuit, the Debtors are entitled to use their business judgment in determining whether to sell assets outside of the ordinary course of business. *See*

Institutional Creditors of Cont'l Air Lines Inc. v. Cont'l Air Lines Inc. (In re Cont'l Air Lines Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986). Here, selling the Surplus Assets at auction is in the Debtors' and their creditors' best interests because, among other things:

- i. Rosen auctions are nationally and internationally advertised, and are likely to maximize the net sales proceeds;
- ii. The compensation and expense reimbursement payable to Rosen is fair, reasonable, and appropriate;
- iii. Selling the Surplus Assets will allow the Debtors to realize any equity in such Surplus Assets and immediately pay down the secured claims of its secured creditors, thereby reducing the amount of claims against the Debtors.
- iv. Selling the Surplus Assets will allow the Debtors to save costs associated with such Surplus Assets, including maintenance, insurance, and other costs associated therewith. The Debtors intend to vacate their central distribution warehouse by the end of March 2017 to prevent additional administrative rent claims from accruing and will be unable to do so unless the Surplus Assets are sold and removed from the facility by the end of March 2017.

ii. Notice of the Sale

22. The Debtors are serving this Motion, together with the Rosen Agreement, in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, and any applicable orders of the Court.

iii. Proposed Purchase Price

23. Because the purchase prices for the Surplus Assets will be determined by full, fair, open, and well-advertised auctions, the purchases prices will be the best that the Debtors can reasonably obtain.

iv. Good Faith of the Debtor and Proposed Buyers

24. Because the Surplus Assets would be sold at a full, fair, and open auction, each buyer will be bidding and buying in good faith, and will have no unfair advantage over any other

buyer. All buyers should therefore be entitled to the maximum protections of section 363(m) of the Bankruptcy Code.

B. AUTHORITY TO SELL FREE AND CLEAR

25. As noted above, the Surplus Assets are encumbered by liens held by Nike and various taxing authorities. The Debtors believe that Nike is in favor of selling the Surplus Assets through the Rosen auction. Since the proceeds from each item to be sold will be known and readily identifiable, it will not be difficult or burdensome for any lien creditor to know what the proceeds of the sale of its collateral are.

26. As stated above, the Debtors intend for any liens on the Surplus Assets to attach to the proceeds of the sale. The Debtors propose to deposit all net proceeds of the Surplus Assets into a separate account opened for the purpose of depositing such sale proceeds. Any and all remaining liens, claims, interests, and encumbrances against the Surplus Assets would attach to said proceeds, with the same extent, validity, and priority as otherwise exists, and to the extent that Nike, the Debtor, and the various taxing authorities are able to reach an agreement as to the allocation and distribution of any proceeds from the sale of the Surplus Assets, the Debtors request authority to disburse the proceeds to Nike and the various taxing authorities in accordance with any allocation agreement reached between the parties.

27. Section 363(f) of the Bankruptcy Code authorizes the Debtors to sell property outside of the ordinary course of business “free and clear of any interest in such property of an entity other than the estate, only if –

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than

the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.”

11 U.S.C. § 363(f).

28. The Debtors may sell property free and clear if any one of these five conditions is satisfied. *See Newport Acquisition Co. No. 1 L.L.C. v. Crossroads Capitals Partners L.L.C. (In re C-Power Prods. Inc.)*, 230 B.R. 800, 803 (Bankr. N.D. Tex. 1998); *see also Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002); *Citicorp Homeowners Servs. Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988). Here, Nike has consented to the sale, and the Debtors do not expect any taxing authority to contest the proposed sale. Therefore, the Debtors may sell the Surplus Assets free and clear of all liens, claims, interests, and encumbrances.

C. ADEQUATE PROTECTION

29. As noted, all liens, claims, interests, and encumbrances in and to the Surplus Assets will attach to the proceeds with the same validity, extent, and priority as exists, and the proceeds will be deposited into a segregated account opened by the Debtors for that purpose. The Bankruptcy Code expressly contemplates granting replacement liens as a form of adequate protection. 11 U.S.C. § 361. Thus, any creditor with a lien, claims, interest or encumbrance in and to the Surplus Assets will be adequately protected.

30. In addition, to the extent that Nike, the Debtor, and the various taxing authorities are able to reach an agreement as to the allocation and distribution of any proceeds from the sale of the Surplus Assets, the Debtors request authority to disburse the proceeds to Nike and the

various taxing authorities in accordance with any allocation agreement reached between the parties.

D. RETENTION OF ROSEN.

31. Section 327 of the Bankruptcy Code specifically empowers a debtor to retain one or more auctioneers, subject to the Court's authority. Section 328 of the Bankruptcy Code permits the payment of the fees and expenses of any such auctioneer on any reasonable terms. Here, neither Rosen nor any other reasonable auctioneer would work on anything other than a pre-approved basis that is not subject to the filing and approval of a formal fee application. Thus, the Debtors request that the Court approve Rosen, approve the Debtors' entry into the Rosen Agreement, and approve Rosen's compensation as provided for in the Rosen Agreement under section 328 of the Bankruptcy Code and not subject to any fee application, subject to filing with the Court a report of the auction under the Bankruptcy Rules at the appropriate time. With respect to Rosen's expenses, Rosen will provide notice of such expenses and subject them to approval under section 330(a) of the Bankruptcy Code and will comply with all applicable guidelines related to expenses in bankruptcy cases.

E. SURCHARGE

32. To the extent necessary, the Debtors request that the Court approve Rosen's expenses, as otherwise provided for in Rosen Agreement, as a surcharge against the Surplus Assets and their proceeds under section 506(c) of the Bankruptcy Code, which specifically provides for a surcharge against collateral for the costs of the disposition of such collateral.

V. No Stay of Order

33. Pursuant to Rule 6004(h) of the Bankruptcy Rules, the Debtors request that the Court waive the fourteen (14) day stay of any final order granting this Motion and order that the

final relief requested in this Motion be immediately available upon the entry of an order approving the Sale.

VI. Prayer

WHEREFORE, BASED UPON THE FOREGOING, the Debtors respectfully request the entry of an order: (i) granting this Motion in its entirety; (ii) authorizing the sale of the Surplus Assets at the referenced Rosen auction; (iii) authorizing such sale free and clear of all liens, claims, interests, and encumbrances, with all such liens, claims, interests, and encumbrances attaching to the net proceeds of such sale with the same validity, extent, and priority as otherwise exists; (iv) authorizing the Debtors to distribute the proceeds from the sale of the Surplus Assets to Nike and the various taxing authorities to the extent that the parties are able to reach an agreement as to the allocation and distribution of such proceeds; (v) ordering any entity or creditor in possession of a certificate of title with respect to the Surplus Assets to surrender the same to the Debtors or Rosen; (vi) approving the retention of Rosen and authorizing the payment of expenses and compensation to Rosen under section 328 of the Bankruptcy Code and as provided for in the Rosen Agreement; (vii) authorizing the Debtors to execute and to enter into the Rosen Agreement; (viii) authorizing a surcharge against the Surplus Assets and its proceeds as requested above; and (ix) granting the Debtors all such other and further relief, to which it may justly be entitled.

Dated: March 7, 2017.

Respectfully submitted,

FRANKLIN HAYWARD LLP

By: /s/ Melissa S. Hayward

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COUNSEL FOR THE DEBTORS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was sent either electronically by the clerk of court or via first class United States mail, postage prepaid, to all parties appearing on the attached service list no later than March 7, 2017.

/s/ Melissa S. Hayward

Melissa S. Hayward

SELLER AGREEMENT
(Online Auction Secured Creditor)

THIS SELLER AGREEMENT (ONLINE AUCTION) (this "Agreement"), is made and entered into this ___ day of March, 2017, by and between LUKE'S LOCKER, a Texas _____ ("Seller"), having its place of business at 1344 Crampton St, Dallas, Texas and ROSEN SYSTEMS, INC., a Texas corporation ("Auctioneer"), having its place of business at 2323 Langford St., Dallas, Texas 75208.

WITNESSETH:

WHEREAS, Auctioneer is engaged in the business of selling personal property at auction, has its principal place of business in Dallas, Dallas County, Texas, and is licensed by the State of Texas to perform auctioneering services;

WHEREAS, Seller desires to engage the services of the Auctioneer to sell at an online public auction (the "Auction") certain enumerated items of personal property on the terms and conditions herein;

WHEREAS, the Auction shall be conducted by the Auctioneer on the website having an internet URL address of <http://www.rosensystems.com> or as otherwise provided herein (the "Website");

NOW THEREFORE, for and in valuable consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Engagement of Services.

1.1 Seller hereby engages Auctioneer as its exclusive agent to publicize and sell the property (the "Property") generally described in Exhibit A, which is attached hereto and incorporated herein. When Auctioneer completes cataloging and allotting the Property, the final Auction catalog (which shall include a complete schedule of assets to be sold under this Agreement) shall be construed as part of Exhibit A and shall be incorporated herein for all purposes.

1.2 Exclusive Right to Sell. During the term of this Agreement, Auctioneer has the exclusive right to sell the Property. Seller hereby grants Auctioneer the authority as agent of Seller to execute such bills of sale or other conveyance instruments necessary or prudent to convey good and indefeasible title to Property sold at the Auction on behalf of Seller.

1.3 As Is. The sale of the Property to buyers shall be only on an "AS IS" and "WHERE IS" basis, without guarantee or warranty of any kind, whether express or implied. The warranties of merchantability and fitness for a particular purpose will be expressly disclaimed.

2. Distribution of Proceeds.

2.1 N/A

2.2 Buyer's Premium. Auctioneer shall collect and retain a fee from each buyer equal to fifteen percent (15%) of the gross purchase price of each item of the Property sold to the buyer.

2.3 Expenses. Seller shall pay Auctioneer for any costs and expenses incurred by Auctioneer in connection with the sale of said Property (the "Expenses"). Expenses shall include without limitation newspaper and trade journal advertising, brochures or other notices of sale, printing, mailing, postage, addressing, allotting, tagging, cleaning, clerking, invoicing, supervision of check-out process, travel and such other out-of-pocket expenses incurred by Auctioneer, as well as expenses and costs incurred by Auctioneer in connection with the hosting and conducting of the Auction on the Website.

2.4 Deductions from Proceeds. Auctioneer may deduct such fees, Expenses, taxes and other amounts payable by Seller from the proceeds of the Auction or other sales of the Property before submitting the remainder of the proceeds to Seller.

3. Time and Place of Auction. The Auction shall be conducted on or about the 23rd day of March, 2017, or such other dates mutually agreed upon between Seller and Auctioneer. The Auction shall be held online at the Website or such other website or online vehicle that Auctioneer shall select in its sole and absolute discretion. Unless otherwise agreed, Seller shall maintain possession of the Property prior to and during the Auction, and Seller shall cooperate with Auctioneer and the winning Auction bidder to provide access to facilitate the pickup or delivery of each item of the Property following the sale. Auctioneer shall establish, in its sole and absolute discretion, the rules, terms, and conditions concerning the Auction and the bidding on particular items constituting Property (including, without limitation, time periods for inspection of Property prior to the Auction), as well as the Website and the usage thereof.

4. Representations, Warranties and Covenants of Seller.

4.1 Seller hereby represents and warrants to Auctioneer and to all purchasers of the Property that (i) to the best of Seller's knowledge and belief, Seller has a security interest in the Property and the sales are to be conducted as a part of Seller's foreclosure on its security interest in the Property; (ii) the Auction of the Property has been duly authorized; (iii) the execution of this Agreement by Seller has been duly authorized; (iv) that it has complied or will comply with all legal requirements antecedent or necessary to the legal disposal and sale of the Property including the bulk sales laws, if applicable.

4.2 If there is an encumbrance or lien on any item of the Property, Seller shall obtain, prior to the Auction, written permission from the secured creditor to sell the item and shall secure from the secured creditor a release of secured creditor's lien on the item of the

Property. Seller must present the release of lien prior to or simultaneously with Auctioneer's payment to the secured creditor.

4.3 Seller hereby represents and warrants to Auctioneer that, to the best of Seller's knowledge and belief, following due inquiry, no "hazardous waste" or "hazardous substances" are located in or on the premises on which the Property has been stored or located (the "Premises"). Seller hereby indemnifies, defends and holds harmless Auctioneer, its directors, officers, owners, employees, attorneys and agents (collectively, the "Indemnitees") from and against any and all liabilities, loss, damage, claims, demands, suits, fines, and expenses, including court costs and attorney fees, of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Indemnitees at any time and from time to time, by reason of or arising out of contaminated or regulated substances.

4.4 Seller's representations, warranties, and covenants contained in this Section 4 shall survive the termination and performance of this Agreement.

5. Duties of Auctioneer.

5.1 Auctioneer has not and will not make any analysis, observation, inspection or study of any kind or character of the Property or the Premises. Auctioneer has not and will not take into consideration or account, the potential or possible presence of hazardous substances or waste on the Property or the Premises, including without limitation examination or investigation for the presence of asbestos, polychlorinated biphenyls, or any other substance which is regulated by law or poses a hazard to human health or the environment.

5.2 Auctioneer's standard of care for selling the Property is limited to the ordinary care and diligence required of an auctioneer by law. Auctioneer is not responsible for loss or damage caused by fire, frost, change of weather, riots, strikes, insurrections, earthquakes, inherent or perishable qualities of the Property, or other causes beyond Auctioneer's control. Auctioneer is not responsible for loss or damage of any kind or character, including but not limited to damage caused by leakage, pilferage, theft, vermin, or water. Auctioneer's failure to deliver any item of the Property to the buyer shall not constitute a conversion of the item, and when the non-delivery results from causes arising from strikes, lock-outs, work stoppages, restraints of labor or other causes beyond the reasonable control of Auctioneer, such failure shall not subject Auctioneer to any liability whatsoever. Auctioneer is not responsible for loss or damage occasioned by the misunderstanding of orders or instructions received or taken verbally or by telephone.

5.3 Auctioneer shall advertise the Property in a manner determined by Auctioneer in its sole and absolute discretion. Auctioneer shall sell the Property at public auction, and remit to the Seller, within fourteen (14) days after the completion of the check-out process and receipt of payment from the buyers, the proceeds of the sales less any deductions for fees, Expenses, taxes or other amounts deducted as provided herein. All

sales of the Property shall be for cash only and subject to the terms and conditions for purchase and payment as are specified on the Website.

6. Disputed Ownership. If any dispute should arise as to the ownership of any item of the Property, rights of possession, or right of Seller or Auctioneer to sell any item of the Property, Auctioneer may withdraw such Property from the Auction until such dispute is resolved. Furthermore, if such dispute is not timely resolved, Auctioneer is authorized to interplead any item of the Property, or any proceeds from the sale thereof, into the registry of a court of appropriate jurisdiction and venue in order that the court may resolve any such dispute. Seller hereby indemnifies, defends and holds harmless auctioneer, its officers, directors, shareholders, successors and assigns (the Indemnitees) from and against any and all liabilities, loss, damage, claims, demands, suits, fines, and expenses, including court costs and attorney fees, of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Indemnitees at any time and from time to time, by reason of or arising out of Auctioneer withdrawing such item of Property from the Auction, holding such item pending resolution of the dispute, insuring such item pending resolution of the dispute, or interpleading such item or any proceeds from the sale of such item into the registry of an appropriate court. This section shall survive the termination and performance of this Agreement.

7. Cancellation.

7.1 Seller may cancel the Auction after such Auction has been scheduled by Auctioneer by delivering to Auctioneer a written notice of such cancellation.

7.2 If Seller cancels the Auction by written notice actually received by Auctioneer twenty-one (21) or more days prior to the date of the scheduled Auction, Seller shall pay Auctioneer a cancellation fee of TWO THOUSAND and 00/100 dollars (\$2,000.00). If Seller cancels the Auction by written notice actually received by Auctioneer fewer than twenty-one (21) days prior to the date of the scheduled Auction, Seller shall pay Auctioneer a cancellation fee of FIVE THOUSAND and 00/100 dollars (\$5,000.00). The cancellation fee is due and payable upon cancellation of the Auction and constitutes liquidated damages for Seller's breach of this Agreement. The cancellation fee is not a penalty.

7.3 Immediately upon any cancellation of the Auction, irrespective of when such notice is received, Seller shall pay Auctioneer, simultaneously with the payment of the cancellation fee, all costs and expenses incurred by Auctioneer in the performance of its duties under this Agreement.

8. Indemnity. Seller hereby indemnifies, defends and holds harmless the Indemnitees from and against any and all liabilities, loss, damage, claims, demands, suits, fines, and expenses, including court costs and attorney fees, of any and every kind or character, known or unknown, fixed or contingent, asserted against or incurred by Indemnitees at any time and from time to time, by reason of or arising out of Auctioneer's agreeing to conduct or conducting of the Auction, Auctioneer's performance hereunder, the breach by Seller of any representations, warranties, covenants or agreements hereunder, or any default by Seller hereunder, including

without limitation claims by any other party claiming ownership of any item of the Property, competing liens, claimants, or others for any reason if related directly or indirectly to the Auction or Auctioneer's duties in this Agreement, as well as damage to the Property or injury to any person, unless such damage or injury is caused by the gross negligence or willful misconduct of Auctioneer. This section survives the termination and performance of this Agreement.

9. Limitation of Remedy and Liability.

9.1 **IN NO EVENT SHALL AUCTIONEER BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS AND DAMAGES RESULTING FROM LOSS OF USE OF SALE PROCEEDS, IRRESPECTIVE OF WHETHER EITHER PARTY HAS BEEN APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES. THIS SECTION 9 SHALL SURVIVE THE TERMINATION AND THE PERFORMANCE OF THIS AGREEMENT.**

9.2 Auctioneer shall not be liable for any damages, including lost profits, resulting from the inoperability of the Website (including any and all lost sales as result of or related thereto), or any internet connection/technical issues that may arise; however, Auctioneer will work to resolve such issues in a commercially reasonable manner.

10. Miscellaneous Provisions.

10.1 Notices. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed delivered, whether received or not, on the date of actual receipt if delivered by fax, in person, or by messenger with receipt of delivery, or shall be deemed delivered, whether received or not, on the date deposited with the United States Postal Service, registered or certified mail, postage prepaid, return receipt requested, addressed to the intended recipient, at the address set forth on the signature page of this Agreement or at such other address as a party hereto may specify by notice in compliance with the requirements of this subsection.

10.2 Assignment. Neither party may assign this Agreement without the prior written consent of the other party.

10.3 Attorney Fees. The prevailing party in any legal proceeding brought under or with relation to this Agreement or transaction shall be entitled to recover court costs, reasonable attorney fees, and all other litigation expenses from the non-prevailing parties.

10.4 Integration. This Agreement contains the complete agreement between the parties with respect to the Property and cannot be varied except by written agreement. The parties agree that there are no oral agreements, understanding, representations or warranties signed by the parties which are not expressly set forth herein.

10.5 Binding Effect. This Agreement shall inure to the benefit of and bind the parties hereto and their respective heirs, legal representatives, successors and assigns.

10.6 Time for Performance. Time is of the essence of this Agreement and each provision hereof. Strict compliance with the times for performance is required.

10.7 Invalidity. If any part of this Agreement for any reason is declared invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated.

10.8 Business Day. If any date of performance hereunder falls on a Saturday, Sunday or legal holiday, such date of performance shall be deferred to the next day which is not a Saturday, Sunday or legal holiday.

10.9 Venue. This Agreement shall be construed under the laws of the State of Texas and shall be fully enforceable and performable in Dallas, Dallas County, Texas. Exclusive venue for any action, suit or claim arising out of this Agreement shall be in Dallas County, Texas.

10.10 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision is severed and deleted from this Agreement.

10.11 Counterparts. This Agreement may be executed in a number of identical counterparts. Each such counterpart is deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement. Execution of a facsimile or email counterpart of this Agreement shall constitute the valid and binding obligation of such executing party.

10.12 Relationship between Parties. Each party will render all services to the other party in the capacity of independent contractor and not as an agent or employee of the other party. Nothing in this Agreement shall be construed as creating a partnership or any similar relationship between the parties hereto.

[remainder of page intentionally left blank]

EXECUTED by the parties hereto on the day and year first above written.

SELLER:

_____,
a _____

By: _____
Name: _____
Title: _____

AUCTIONEER:

ROSEN SYSTEMS, INC.,
a Texas corporation

Michael D. Rosen, President

The undersigned landlord of Seller, or owner of the premises on which the Property is located hereby grants permission to Seller to enter into this Agreement and asserts no claim to the Property.

LANDLORD:

_____,
a _____

By: _____
Name: _____
Title: _____

EXHIBIT A

Property

Store Fixtures
Mannequins
Supplies
Office Furniture & Equipment
Delivery Trucks
Etc.

*No Nike fixtures or other items owned by Nike will be sold at the auction