

AGREEMENT

This Agreement is entered into as of _____ and between XXXX XXXXXXX XXXXXXXXXXXX XXX. dba XXX XXXXXXXXXXXX (“XXXX XXXXXXX XXXXXXXXXXXX XXX”), an XXX Auction Firm with a mailing address XXX XXXXX, XXXXXX, XX XXXX and _____.

A Partnership; Corporation; Sole Proprietorship; Individual; Limited Liability Corporation with a mailing address of: _____ (“Seller”).

XXXX XXXXXXX XXXXXXXXXXXX XXX and the Seller are sometimes hereinafter referred to as the “Parties.”

Recitals

XXXX XXXXXXX XXXXXXXXXXXX XXX operates an online auction site located at [xxx.xxxxxxxxxxxxxxxxxxxx.xxx](#) (“the “Site”); and Seller desires to engage XXXX XXXXXXX XXXXXXXXXXXX XXX to auction and/or sell the personal property described in either Exhibit “A” (attached) or photographed and described (catalogued) on the Site which is referenced collectively as the (“Property”), in accordance with the terms of this Agreement. The auction location is: _____

and the type of property to be sold is generally described as: _____.

In consideration of the mutual promises and covenants contained within this agreement, the parties agree as follows:

1. Grant of Rights. Seller grants to XXXX XXXXXXX XXXXXXXXXXXX XXX the exclusive right to market/advertise and facilitate the sale of the Property on the Site for a period of **180** days (“the “Term”), beginning on the date of this Agreement **with any reserves to be provided in writing** exclusive of taxes, expenses, the Commission (as hereinafter defined), fees associated with the advertisement and preparation of the Property for sale including, without limitation, advertising costs, fork lift expenses, dumpsters, Teletech fees, postage, local licenses, labor, lodging and per diem, credit card fees and signage. During the Term, Seller must preserve and protect the Property from theft, damage and spoliation and seller must not sell, otherwise offer for sale, transfer, lease or otherwise encumber the Property. The Parties acknowledge and agree XXXX XXXXXXX XXXXXXXXXXXX XXX cannot guarantee a specific sale price for the Property in an auction without reserve, nor can XXXX XXXXXXX XXXXXXXXXXXX XXX guarantee the Property will sell in an auction with or without reserve. The Seller grants XXXX XXXXXXX XXXXXXXXXXXX XXX a security interest in the Property and any and all proceeds from the sale of the Property to secure payment of the Commission and any Expenses as well as damages, losses and/or liabilities incurred by XXXX XXXXXXX XXXXXXXXXXXX XXX as a result of the Seller’s breach of this Agreement.

2. Seller’s Representations Warranties and Covenants. Seller represents and warrants to XXXX XXXXXXX XXXXXXXXXXXX XXX. that Seller owns all right, title and interest in the Property **except for those security interests stated in Exhibit A** and that Seller has full authority to sell and/or auction the Property. Seller agrees to transfer all right, title and interest in the Property to the purchaser free and clear of any and all liens and encumbrances upon XXXX XXXXXXX XXXXXXXXXXXX XXX’s receipt of payment for the Property. Seller agrees and acknowledges XXXX XXXXXXX XXXXXXXXXXXX XXX will expend valuable resources in preparing for and operating the auction and XXXX XXXXXXX XXXXXXXXXXXX XXX will be damaged if Seller cancels the auction for any reason, no reason or if Seller breaches this agreement in any way. In addition to any other remedy XXXX XXXXXXX XXXXXXXXXXXX XXX. may have, if Seller cancels the auction or otherwise breaches this Agreement, Seller must immediately pay to XXXX XXXXXXX XXXXXXXXXXXX XXX. liquidated damages in the amount of \$5,000.00 which constitutes liquidated damages and is not a penalty.

3. Sale/Auction. The Parties agree XXXX XXXXXXX XXXXXXXXXXXX XXX. has full control over the timing, method, location and type of auction to use in selling the Property including and without limitation, grouping and lotting items together or with other property for sale as well as the receipt of funds

from the sale. xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. may also purchase/bid on the Property and/or facilitate the sale of the Property to purchasers it contacts directly either before or after listing the Property on the Site including, without limitation xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX's employees, agents, or contractors. During the term, xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. may use and/or otherwise disclose Seller's name and/or trademarks to market and facilitate sale of the Property. Neither Seller, nor its principals, if any nor any other representative or agent shall bid on the Property. Such bidding is considered shall bidding and is strictly prohibited by this Agreement. Absentee bidding will not be permitted. No sale of property shall be considered complete until the purchaser has made final and full payment to xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. in cash, credit card, wire transfer, cashier's check or certified check and the Property has been shipped to the purchaser. If xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. is unable to collect payment from a purchaser, no payment will be made to Seller for the Property. Once xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. deems the sale proceeds unable to be collected, the Property may be relisted at xxxxx xxxxxxxx MANAGEMENT XXX's discretion for the remainder of the Term or offered to other bidders in the auction.

4. Absolute Auction/Reserve Auction. The auction shall be conducted as follows: (check one as appropriate)

_____ An **ABSOLUTE AUCTION**, which is an auction of real or personal property to which all the following apply: (a) the property is to be sold to the highest bidder without reserve; (b) the auction does not require a minimum bid; (c) the auction does not require competing bids of any type by the seller or agent of the seller; (d) the seller of the property cannot withdraw the property from auction after the auction is opened and there is a public solicitation or calling of bids. Seller represents that he/she has a bona fide intention to transfer the property regardless of the price or identity of the high bidder.

_____ A **RESERVE AUCTION**, which is an auction in which the seller or agent of the seller reserves the right to establish a stated minimum bid, the right to reject or accept any or all bids, or the right to withdraw the real or personal property at any time prior to the completion of the auction by the auctioneer. Reserve prices are noted in Exhibit A.

5. Commission; Expenses. In return for xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX's services, Seller agrees to pay xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. a commission equal to _____% of the gross sales price of the Property. xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. will deduct the Commission and any and all taxes and Expenses from the proceeds of the sale of the Property. For purposes of this Agreement, "Expenses" will mean all of the following expenses that are checked off: all advertising costs, transportation costs, disposal costs, Teletach or bank fees, postage, local licenses, labor, lodging and per diem, credit card fees, signage and the following other expenses **\$10.00 check processing fee and \$12.00 fee per reserve.** Within fifteen (15) business days after the scheduled auction removal date from warehouse at xxx xxxx xx Elyria, Oh 44035. For offsite locations payments will be made fifteen (15) business days after signed invoices have been returned to office (xxx xxxx xx xxxxxx, xx xxxxx). xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. will pay to Seller the net proceeds of the sale of the Property to the Seller.

6. Indemnity. Seller agrees to defend, indemnify and hold xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX and its officers, directors, shareholders, employees, agents, contractors, successors and assigns (collectively, the "Indemnified Parties") harmless from any claims, liabilities, damages and/or losses whatsoever which may be imposed upon the Indemnified Parties, or any of them, by virtue of any of the following: Seller's execution of this Agreement, any breach of this agreement by Seller, Seller's negligence and any Seller misrepresentation about the Property to any third party.

7. Non-competition. During the Term and for one year thereafter, Seller shall not without xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX's prior written consent, directly or indirectly own, operate or participate in the operation of an online auction anywhere in the United States. Also, during the Term and for one year thereafter, Seller shall not engage in or assist any business associates, spouses or members of his or her immediate family to engage in any business or become employed by, render any service to, or own more than a 5% equity interest in any other entity including an individual partnership, corporation or other business organization that competes with xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. During this Term and one year thereafter, Seller shall not directly or indirectly hire or attempt to hire any xxxxx xxxxxxxx

xxxxxxxxxxx XXX. employee or take any other action which would encourage any employee to leave the employment of xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. or interfere or attempt to interfere with any business enjoyed or solicited by xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. If any provision of this Section 6 is held invalid, illegal or unenforceable, the remaining provisions of the Agreement will continue in full force and effect. If any provision is held to be excessively broad, it will be construed to be enforceable to the maximum extent permitted by law.

8. Confidential Information. Seller acknowledges and agrees that during the Term it will be placed in a position of trust which will naturally expose Seller to certain confidential information, trade secrets as that term is defined in X XXXXX X 1333.61(D) and other proprietary information including but not limited to xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX 's technical data, special processes, methods, know-how, formulas, research, marketing data, marketing information, customer lists, supplier lists and related information, designs, patents, copyrights, trademarks, procedures, techniques, discoveries and technology, financial information, business plans and strategies which are critical to xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX's success and are the exclusive property of xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. Seller agrees that during the Term of this agreement and for twenty years after termination of the Agreement, it will not, without xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX's prior written consent, use the Confidential Information or disclose, divulge or disseminate the Confidential Information to any person, party or entity.

9. Limitation of Liability. IN NO EVENT WILL xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. BE LIABLE FOR ANY INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PROVIDED FOR HEREIN, EVEN IF xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND IN NO EVENT WILL xxxxx xxxxxxxx xxxxxxxxxxxxxx TOTAL LIABILITY TO SELLER EXCEED THE COMMISSION ACTUALLY RECEIVED BY xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. FROM SELLER.

10. Relationship of the Parties. Seller is a consignor and xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. is an independent contractor consignee and nothing in the Agreement shall be construed to render Seller an agent, partner, joint venture, employee or representative of xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX.

11. Force Majeure. Neither Party will be liable for or will be considered to be in breach of or default under this Agreement on account of any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

12. Notices. Any notice required or permitted to be given under this Agreement shall be deemed sufficiently given if mailed by certified mail, postage prepaid, addressed to the party to be notified at its address shown at the beginning of this Agreement or at such other address as may be furnished in writing by such party.

13. Licensure. xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. D.B.A. X xxxxx xxxxxxxxxxxxxx is an Auction Firm that is licensed by the xxxx XXXXXXXXXXXX XX XXXXXXXX. xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX. D.B.A. xxxxx xxxxxxxxxxxxxx Auction Firm is bonded in favor of the state of xxxx, or an aggrieved person may initiate a claim against the auction recovery fund created in section XXXX.XX of xxxx XXXXX XXXX as a result of the licensee's actions (whichever is applicable).

14. Miscellaneous. This agreement shall be governed in accordance with the laws of the State of xxxx without respect to conflicts of laws. Any dispute between the parties will be finally settled by arbitration conducted expeditiously in accordance with the American Arbitration Association Commercial Arbitration Rules. The Arbitration will be conducted in xxxxxx County, xxxx, U.S.A. by a single arbitrator to be chosen by the mutual agreement of the parties. The parties will share equally in the fees and costs charged by the arbitrator and will act in good faith to avoid unnecessary fees and costs. The parties specifically agree to

arbitrate such disputes in a joint proceeding with regard to all common issues and to permit pre-hearing discovery in the time and as provided by the then applicable Federal Rules of Civil Procedure under the laws of the United States of America. In the event one party prevails in the arbitration, the arbitrator may award the prevailing party an additional amount equal to such prevailing party's costs and expenses (including reasonable attorneys' fees) of such arbitration. Any award rendered in arbitration shall be limited to those remedies available to any xxxxx of competent jurisdiction. The award rendered through arbitration will be final and binding upon the parties and judgment thereon may be entered in any xxxxx of competent jurisdiction for execution in the United States. The provisions of this Agreement will be binding upon and will inure to the benefit of the Parties hereto, their heirs, administrators, successors and assigns. There are no third-party beneficiaries to this Agreement. Neither Party may assign this Agreement without the prior written consent of the other Party. No waiver by either Party of any default will be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement. If any term, clause or provision hereof is held invalid or unenforceable by a xxxxx of competent jurisdiction such invalidity will not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision will be deemed to be severed from the agreement. This Agreement constitutes the entire understanding of the Parties and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their agreement. This Agreement can only be amended in a writing signed by both Parties. The Parties expressly agree the Sections 5, 6, 7, and 8 will survive the expiration or the termination of the Agreement. Each Party has or had adequate opportunity to meet and discuss the terms of this Agreement with legal counsel and consequently each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement including, without limitation, any rule of law to the effect that any provision of the Agreement shall be interpreted or construed against the party whose counsel drafted that provision. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. This Agreement may also be executed via facsimile which shall be deemed an original.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused to be affixed hereto its or his hand and seal the day indicated.

xxxxx xxxxxxxx xxxxxxxxxxxxxx XXX.
DBA
xxxx xxxxx xxxxxxxxxxxxxx

Date

By: _____

Its: Contract xxxxxxxxxxxxxx

Seller Agent/Company (print)

Date

By: _____
(Sign)

(Print)

Title: _____

EXHIBIT A

List of Property With and/or Without Reserves (Attach)

Settlement Check Made to:
(Please Print)

Name: _____

Address: _____

City, St. Zip: _____

Phone No: _____

Fax: _____

Email: _____