

THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	
)	Chapter 11
)	
CHARMING CHARLIE HOLDINGS INC., <i>et al.</i> , ¹)	Case No. 19-11534 (CSS)
)	
)	(Jointly Administered)
Debtors.)	
)	Obj. Deadline: Aug. 27, 2019 at 4:00 p.m. (ET)
)	Hearing Date: Sept. 12, 2019 at 1:00 p.m. (ET)

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER, PURSUANT TO
SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE, (I) AUTHORIZING
THE SALE OF CERTAIN INTELLECTUAL PROPERTY FREE
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,
AND OTHER INTERESTS AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) in these jointly administered chapter 11 cases hereby submit this motion (this “Motion”) for the entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to sections 105(a) and 363 of title 11 of the Bankruptcy Code and rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the sale (the “Sale”) of certain intellectual property (the “Intellectual Property”), on an “as is, where is” basis, free and clear of all liens, claims, encumbrances, and interests, to the entity or entities (each, a “Purchaser”) that submit the highest or otherwise best offer for the Intellectual Property as determined by the Debtors in their business judgment pursuant to the solicitation and auction

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Charming Charlie Canada LLC (0693); Charming Charlie Holdings Inc. (6139); Charming Charlie International LLC (5887); Charming Charlie LLC (0263); Charming Charlie Manhattan LLC (7408); Charming Charlie USA, Inc. (3973); and Poseidon Partners CMS, Inc. (3302). The location of the Debtors’ headquarters is: 6001 Savoy Drive, Suite 600, Houston, Texas 77036.

process described below and (ii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:²

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over these chapter 11 cases, the Debtors, property of the Debtors’ estates and this matter under 28 U.S.C. § 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b).

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory and legal bases for the relief requested herein are sections 105(a) and 363 of the Bankruptcy Code, along with Bankruptcy Rules 2002, 6004, and 9014.

² A detailed description of the Debtors and their business, and the facts and circumstances supporting the Debtors’ chapter 11 cases are set forth in greater detail in the *Declaration of Alvaro Bellon, Chief Financial Officer of Charming Charlie Holdings Inc., in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on July 11, 2019 (the “Petition Date”). Capitalized terms used but not otherwise defined in this motion shall have the meanings ascribed thereto in the First Day Declaration.

BACKGROUND

I. The Store Closing Sales.

5. As further detailed in the First Day Declaration, the Debtors commenced these chapter 11 cases once they concluded that the alternative sources of financing on which they were working were no longer viable. Accordingly, the Debtors determined that the best way to maximize value for the benefit of all interested parties was a prompt and orderly wind-down of their business through the implementation of store-closing sales (collectively, the “Store Closing Sales”) and related liquidation initiatives. As more fully discussed in the First Day Declaration, the conclusion to liquidate was reached following a lengthy process in which the Debtors considered and explored all reasonable strategic alternatives.

6. Accordingly, on the Petition Date, the Debtors filed the *Debtors’ Motion Seeking Entry of Interim and Final Orders (i) Authorizing the Debtors to Assume the Consulting Agreement, (ii) Approving Procedures for Store Closing Sales, (iii) Approving the Implementation of Customary Store Bonus Program and Payments to Non-Insiders Thereunder, and (iv) Granting Relief* [Docket No. 12] (the “GOB Motion”), which was approved by an interim order [Docket No. 87] on July 12, 2019.³ A hearing to consider the GOB Motion on a final basis is set for August 14, 2019, at 2:00 p.m. (ET).

II. The Sale of Intellectual Property.

7. In connection with their retail operations, the Debtors have developed and utilized the Intellectual Property, which consists of trademarks, domain names including charmingcharlie.com, customer files and related transaction data, and social-media assets.

³ The Debtors and the Consultant thereafter entered into a First Amendment to Letter Agreement Governing Inventory Disposition. [Docket No. 152].

8. As referenced above and more fully described in the GOB Motion and First Day Declaration, the Debtors commenced the Store Closing Sales at all of their retail locations on or about July 12, 2019. The Debtors ceased selling inventory on their websites shortly before the Petition Date and currently do not intend to restart online sales. Nevertheless, the Debtors still maintain an online presence.

9. On July 29, 2019, the Debtors entered into an agreement with Hilco IP Services, LLC d/b/a Hilco Streambank (“Hilco Streambank”) to market and sell the Debtors’ Intellectual Property assets. Since that time, Hilco Streambank, with the assistance and oversight of the Debtors’ management and advisors, has been actively engaged in the process of marketing the Debtors’ Intellectual Property assets for sale. After consultation with Hilco Streambank and their other advisors, the Debtors have determined that in order to maximize value, the Sale of their Intellectual Property needs to occur on an expedited timeline.

10. Although the Debtors are no longer selling merchandise online, the Debtors believe that to maximize the value of the Debtors’ Intellectual Property, it is in the best interest of the Debtors and parties in interest to sell the Intellectual Property while the Debtors still maintain an online presence. By contrast, the Debtors and their advisors believe that if the Debtors were to conduct the Sale process while not maintaining the e-commerce site the Sale process would not realize the maximum value for that Intellectual Property. Finally, it is anticipated that the Store Closing Sales will be completed on or before August 31, 2019, at which point many of the Debtors’ employees will no longer be with the company. It is, thus, urgent that the Debtors commence the Sale process with respect to the Intellectual Property immediately to ensure that name recognition in the marketplace remains and there are still employees available to assist with diligence requests from prospective purchasers.

11. Accordingly, the Debtors believe it is prudent at this time and in the best interests of their estates and creditors to implement the sale procedures (the “Sale Procedures”) summarized below and, accordingly, intend to employ the Sale Procedures prior to a hearing on this Motion.

III. The Proposed Sale Procedures.

12. The Debtors propose to sell the Intellectual Property assets either in whole or part through one or more sale transactions pursuant to the terms of a purchase agreement (or agreements) to be negotiated by and between the Debtors and proposed purchaser(s) and executed upon completion of one or more auctions for the Intellectual Property (each, an “Auction”). In conjunction with the Auction(s), the Debtors propose to implement the Sale Procedures described below in an effort to maximize the realizable value of the Intellectual Property for the benefit of the Debtors’ estates, creditors, and other interested parties. The Sale Procedures contemplate an Auction process pursuant to which bids for the Intellectual Property will be subject to higher or better offers. The Debtors are not seeking approval of Court-sanctioned bidding procedures in advance but, rather, propose conducting the Auction(s) in connection with the proposed Sale Procedures prior to the hearing on this Motion (the “Sale Hearing”), so as to derive maximum value for such assets. The Debtors will present evidence with respect to the sale process and the winning bid(s) at the Sale Hearing.⁴ As described more fully below, only bidders who timely submit Qualified Bids (as defined below) may be eligible to participate in the Auction(s).

⁴ In the event that the Debtors do secure a binding stalking horse agreement at any time during the sale process, the Debtors will, in consultation with the Committee, promptly seek Court approval of appropriate bid protections and advise all interested parties of the terms of such stalking horse bid.

13. Specifically, the Debtors will implement the following Sale Procedures, on substantially the terms set forth below, for the Sale of the Intellectual Property and conduct the Auction(s) in accordance therewith:

- a) **Bid Deadline. September 5, 2019, at 5:00 p.m. (prevailing Eastern Time).**⁵
- b) **Qualified Bid.** The Debtors will require a qualified bid (a “Qualified Bid”) to meet the following requirements: (i) enclose a proposed purchase agreement (the “Purchase Agreement”) that specifically identifies the Intellectual Property proposed to be purchased, which may be all or a portion of the Intellectual Property, and the proposed consideration, and a blackline against the form purchase agreement annexed hereto as **Exhibit B**; (ii) confirm that the offer shall remain open and irrevocable until the closing of a Sale to the Successful Bidder or the Next Highest Bidder (as defined herein); (iii) be accompanied by a certified or bank check or wire transfer in an amount equal to 10 percent of the purchase price identified in the Purchase Agreement as a minimum good-faith deposit (the “Minimum Deposit”), which Minimum Deposit shall be used to fund a portion of the purchase price provided for in the bid; (iv) not be conditioned on obtaining financing or the outcome of any due diligence by the bidder; and (v) fully disclose the identity of each entity that will be bidding for the Intellectual Property or otherwise participating in connection with such bid, and the complete terms of any such participation.
- c) **Auction(s).** If the Debtors receive more than one Qualified Bid for the Intellectual Property (or certain subset of the Intellectual Property), the Auction(s) with respect to the Sale will commence at the office of Debtors’ counsel, Paul Hastings, 200 Park Avenue, New York, New York 10166, on September 9, 2019, at 10:00 a.m. (prevailing Eastern Time), or such later time and place as the Debtors may provide so long as such change is communicated reasonably in advance by the Debtors to all bidders, and other invitees.
- d) **Auction Rules.** If one or more Auctions are held, the following rules for the Auction’s conduct will be observed: (i) only a bidder who has submitted a Qualified Bid by the Bid Deadline (a “Qualified Bidder”) will be eligible to participate at the Auction; (ii) a minimum Qualified Bid amount for the Intellectual Property may be announced and/or posted prior to the Auction. Such minimum Qualified Bid amounts may be established

⁵ Interested parties wishing to bid on the Intellectual Property should contact David Peress (dperess@hilcoglobal.com) and Richelle Kalnit (rkalnit@hilcoglobal.com) at Hilco Streambank.

based upon a variety of factors, including, but not limited to, the highest bids received prior to the Auction; (iii) at the Auction, Qualified Bidders will be permitted to increase their bids, and bidding at the Auction will continue until such time as the highest or otherwise best offer is determined in accordance with these Sale Procedures or until such Auction is adjourned by the Debtors. Reasonable notice of the time and place for the resumption of the Auction will be given to all Qualified Bidders and counsel to any statutory committee appointed in these chapter 11 cases; (iv) immediately prior to concluding the Auction, the Debtors shall (a) review each Qualified Bid on the basis of its financial and contractual terms and the factors relevant to the Sale process and the best interests of the Debtors' estates and creditors; (b) determine and identify the highest or otherwise best Qualified Bid (the "Successful Bid") and the Qualified Bidder submitting such bid (the "Successful Bidder"); (c) determine and identify the next highest or otherwise best Qualified Bid after the Successful Bid (the "Next Highest Bid") and the Qualified Bidder submitting such bid (the "Next Highest Bidder"); and (d) have the right to reject any and all bids; and (e) within one business day of the completion of the Auction, the Successful Bidder shall complete and execute all agreements, instruments, or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

- e) Acceptance of Successful Bid. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid on the record at the Auction and (ii) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Court of the Successful Bid and the entry of an Order approving the Sale and such Successful Bid.
- f) Notice of Successful Bid(s). As soon as reasonably practicable following the conclusion of the Auction(s), the Debtors shall file a Notice of Successful Bid(s). The Notice of Successful Bid(s) shall identify the identity of the Successful Bidder(s), the amount of the Successful Bid(s), and shall include a substantially final version of the Purchase Agreement.
- g) **Sale Hearing. September 12, 2019, at 2:00 p.m. (prevailing Eastern Time).**
- h) Reservation of Rights. The Debtors reserve the right to seek approval of the Sale of portions of the Intellectual Property through separate Purchase Agreements with different purchasers in the event that the combination of such Sales is determined by the Debtors to obtain the highest value for the Intellectual Property. The Debtors further reserve the right as they may reasonably determine to be in the best interests of their estates to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best

proposal, (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Sale Procedures or the requirements of the Bankruptcy Code, or (c) contrary to the best interests of the Debtors and their estates; (v) remove some or all of the Intellectual Property from the Auction(s); (vi) enter into one or more stalking horse agreements; (vii) waive terms and conditions set forth in these Sale Procedures with respect to all potential bidders; (viii) impose additional terms and conditions with respect to all potential bidders; (ix) extend the deadlines set forth herein; (x) adjourn or cancel the Auction(s) and/or Sale Hearing in open court without further notice; and (xi) modify the Sale Procedures as they may determine to be in the best interests of their estates or to withdraw this Motion at any time with or without prejudice.

14. The Debtors believe that the process contemplated hereby will foster a competitive bidding atmosphere that will generate significant value for their estates.

IV. No Consumer Privacy Ombudsman Required.

15. A consumer privacy ombudsman is not required because the Debtors' customers were on explicit notice that their data could be transferred.⁶

RELIEF REQUESTED

16. By this Motion, the Debtors seek entry of an order (i) authorizing the Sale of the Debtors' Intellectual Property free and clear of liens, claims, encumbrances, and interests, pursuant to one or more Purchase Agreements executed by and between the Debtors and the Purchaser(s) and (ii) granting related relief.

⁶ The Debtors' privacy policy provides in pertinent part:

Business Transactions: As we develop our business, we might sell, buy, restructure or reorganize businesses or assets. In the event of a merger, consolidation, sale, liquidation or transfer of assets, Charming Charlie may, in its sole and absolute discretion, transfer, sell or assign information collected, including without limitation, information you have provided to us and information we have automatically collected about you, to one or more affiliated or unaffiliated third parties.

See <https://www.charmingcharlie.com/privacy-policy.html#use-of-personal>.

BASIS FOR RELIEF REQUESTED

17. For the reasons explained below and throughout this Motion, the Debtors' decision to sell the Intellectual Property is a sound exercise of the Debtors' business judgment. Indeed, the Debtors are confident that the aforementioned process will generate the highest value for the Intellectual Property because (a) the Debtors and Hilco Streambank are actively marketing, and will continue to market, the Intellectual Property to all known and likely potential purchasers, (b) the Auction(s) will foster a competitive bidding process through which the highest or otherwise best offer will be generated, and (c) the Sale Procedures offer maximum flexibility and security to the Debtors in conjunction with selling the Intellectual Property in an expeditious and value-maximizing manner.

I. Sales of the Intellectual Property Should Be Approved.

18. Section 363(b)(1) of the Bankruptcy Code provides: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Section 105(a) of the Bankruptcy Code provides: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Bankruptcy Rule 6004(f)(1) states that, "all sales not in the ordinary course of business may be by private sale or by public auction." With respect to the notice required in connection with a sale, Bankruptcy Rule 2002(c)(1) states:

the notice of a proposed use, sale or lease of property . . . shall include the time and place of any public sale, the terms and conditions of any private sale and the deadline for filing objections. The notice of a proposed use, sale or lease of property, including real estate, is sufficient if it generally describes the property.

19. To approve the use, sale, or lease of property outside the ordinary course of business, the Court must find "some articulated business justification" for the proposed action. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 145–47 (3d Cir. 1986) (implicitly adopting

the “articulated business justification” and good-faith tests of *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983)); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test in *Abbotts Dairies*); *Titusville Country Club v. PennBank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc.*, 77 B.R. 15, 19 (Bankr. E.D. Pa. 1987).

20. Generally, courts have applied four factors in determining whether a sale of a debtor’s assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. *See Lionel*, 722 F.2d at 1071 (setting forth the “sound business purpose” test); *Abbotts Dairies*, 788 F.2d at 145–57 (implicitly adopting the articulated business justification test and adding the “good faith” requirement); *Del. & Hudson Ry.*, 124 B.R. at 176 (“Once a court is satisfied that there is a sound business reason or an emergency justifying the pre-confirmation sale the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the purchaser is proceeding in good faith.”).⁷

21. Here, the Sale of the Intellectual Property meets these requirements and, accordingly, the Debtors submit it should be approved. Moreover, it is essential that the

⁷ Even if the proposed Sale is deemed to be private, rather than public, this fundamental analysis does not change. *See, e.g., In re Ancor Exploration Co.*, 30 B.R. 802, 808 (Bankr. N.D. Okla. 1983) (“[T]he bankruptcy court should have wide latitude in approving even a private sale of all or substantially all of the estate assets not in the ordinary course of business under § 363(b).”). The bankruptcy court “has ample discretion to administer the estate, including authority to conduct public or private sales of estate property.” *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), *vacated on other grounds*, 165 B.R. 1 (D.P.R. 1992); *accord In re Canyon Partnership*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

Intellectual Property be sold promptly in order to avoid deterioration in its value and the incurrence of additional administrative expenses. The Debtors submit that implementation of the Sale Procedures and Auction process as outlined herein will generate maximum interest in the Intellectual Property, thereby yielding the highest or otherwise best bids for such assets. Accordingly, the Debtors submit that the proposed Sale will be the culmination of a thorough and exhaustive marketing process, and that the decision to sell the Intellectual Property to the Purchaser(s) is adequately informed, reasonable, and in the best interests of the Debtors, their estates, and other stakeholders.

A. The Sale Process Is a Sound Exercise of the Debtors' Business Judgment.

22. There is more than ample business justification to sell the Intellectual Property as set forth herein, and as such, an order granting the relief requested is a matter within the discretion of the Court and would be consistent with the provisions of the Bankruptcy Code. *See* 11 U.S.C. § 105(a). Subject to the Purchaser's willingness to provide fair and reasonable consideration, the Debtors' estates and creditors will benefit from the approval of the Sale without the added costs in terms of time and expenses associated with a Court-approved sale process.

23. Due to the diminishing inventory and the cost of maintaining the e-commerce site, as well as the timeline contemplated for the Store Closing Sales, the Debtors will be forced to take down their e-commerce site in the near term, resulting in a significant loss of value to the Debtors' estates. Prior to such time, it is imperative that interested parties have an opportunity to evaluate the Intellectual Property while it is still viewable because a key component of the value to be derived at the Auction will necessarily reflect the assessment of these potential purchasers of the go-forward utility of the Debtors' Intellectual Property. The actual transfer of title to certain Intellectual Property such as trademarks and domain names, as well as the transmission

of customer lists and related data, will occur upon Court approval of the Sale, and the value of the Intellectual Property will be substantially diminished if the Purchaser(s) are unable to take possession of the Intellectual Property until after it is no longer in commercial use. Thus, the Debtors believe that the proposed Sale process is in the best interests of the Debtors, their estates, and creditors and should go forward as soon as is practicable.

24. Simply put, in the Debtors' business judgment, selling the Intellectual Property through the aforementioned Sale process is the best option for maximizing the overall value of these assets for the benefit of all stakeholders.

B. The Proposed Sale Procedures Are Fair and Reasonable.

25. The Sale Procedures are designed to maximize the value received for the Intellectual Property and will allow for a timely Auction process while providing bidders and consultants with ample time and information to submit a timely Qualified Bid. The Sale Procedures are designed to ensure that the Intellectual Property will be sold for the highest or otherwise best possible purchase price under the circumstances of these chapter 11 cases. The Debtors shall continue to subject the value of the Intellectual Property to market testing, and by permitting prospective purchasers to bid on the Intellectual Property, the Debtors shall ensure that the ultimate Sale price is an accurate reflection of the Intellectual Property's true value. Similar procedures, pursuant to which liquidating chapter 11 debtors solicit bids and implement an auction process without first seeking court approval thereof, have been implemented in other chapter 11 cases in this district and others. *See e.g. In re The Wet Seal LLC*, Case No. 17-10229 (CSS); *In re Anchor Blue Holding Corp.*, Case No. 11-10110 (PJW) (Bankr. D. Del. 2010); *In re Kid Brands, Inc.*, Case No. 14-22582 (Bankr. D.N.J. 2014). Accordingly, the Debtors and all parties in interest can be assured that the consideration received for the Intellectual Property will be fair and reasonable, and the third prong of the *Abbotts Dairies* standard is satisfied. As

discussed below, the “good faith” prong of the *Abbotts Dairies* standard is also satisfied in this instance.

26. The Debtors will analyze the Qualified Bids and pursue the Sale at the Sale Hearing only if the Debtors conclude that such Sale will maximize the value of the Intellectual Property. As explained above, the Debtors and Hilco Streambank will market the Intellectual Property in an appropriate and cost-efficient manner given the value of the Intellectual Property and the associated exigencies. In light of the marketing efforts and the nature of the assets, the Debtors believe that the Sale will provide fair and reasonable value for the Intellectual Property.

C. The Sale Is Proposed in Good Faith.

27. The Sale is being proposed in good faith. The Sale will be the product of good-faith, arm’s-length negotiations between the Debtors, on the one hand, and the Purchaser(s), on the other. The Debtors believe that the Sale of the Intellectual Property to the Purchaser(s) will not be the product of collusion or bad faith. No evidence exists to suggest that the Sale will be anything but the product of arm’s-length negotiations between the Debtors and the Purchaser(s), conducted under the purview of one or more Auction(s).

28. The Purchase Agreement(s) ultimately executed by and between the Debtors and the Purchaser(s) and subject to Court approval will be the culmination of a fair and open solicitation and negotiation process. The Sale Procedures are designed to ensure that no party is able to exert undue influence over the process. Under the circumstances, the Debtors intend to ask the Court to find that the Successful Bidder (or Next Highest Bidder) be afforded the protections that section 363(m) of the Bankruptcy Code provides to a good-faith purchaser. Furthermore, the Sale Procedures are designed to prevent the Debtors or the Successful Bidder (or Next Highest Bidder) from engaging in any conduct that would cause or permit the Purchase

Agreement(s), or the Sale of the Intellectual Property to the Successful Bidder (or Next Highest Bidder), to be avoided under section 363(n) of the Bankruptcy Code.

D. Adequate and Reasonable Notice of the Sale Will Be Provided.

29. The Debtors will provide adequate notice of this Motion to parties in interest, as required by the applicable procedural rules. *See* Fed. R. Bankr. P. 2002(c)(1) (notice must contain “the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections.”); *see also Del. & Hudson Ry.*, 124 B.R. at 180 (the disclosures necessary in such a sale notice need only include the terms of the sale and the reasons why such a sale is in the best interests of the estate and do not need to include the functional equivalent of a disclosure statement).

30. Numerous potential Qualified Bidders have already received information regarding the Intellectual Property Sale process from Hilco Streambank. In addition, the Debtors will serve this Motion on all parties that have expressed interest, or the Debtors believe may have an interest, in purchasing the Intellectual Property. Those parties will be alerted to the Auction, have an opportunity to participate in the Auction, and can submit other or additional offers prior to the Bid Deadline. Consistent with their fiduciary duties to their estates, the Debtors will consider all such offers.

31. To summarize, in the Debtors’ informed business judgment, the Debtors will continue to market the Intellectual Property, conduct one or more Auctions prior to the Sale Hearing with respect thereto, and complete the disposition of the Intellectual Property in a manner best-tailored to generate value for the Debtors’ estates while simultaneously limiting the deterioration in value of the Intellectual Property and the Debtors’ exposure to burdensome and unnecessary administrative expenses. For these reasons, the Debtors’ submit that the Court

should approve the sale of the Intellectual Property to the Purchaser(s) selected by the Debtors pursuant to the Sale Procedures.

II. The Sales Satisfies the Requirements of Section 363(f) of the Bankruptcy Code.

32. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims, or interests in such property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a *bona fide* dispute; or (v) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that section 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met).

33. Because the Debtors expect that they will satisfy the second and fifth of these requirements, if not others as well, approving the sale of the Intellectual Property free and clear of all adverse interests is warranted. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325 at *3, 6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987).

Waiver of Stay under Bankruptcy Rule 6004(h)

34. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth throughout this Motion, an inability to

sell the Intellectual Property while the Debtors' ecommerce site is visible would impair the Debtors' ability to maximize the value received for their Intellectual Property, to the detriment of the Debtors, their creditors, and estates.

35. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable.

Notice

36. The Debtors will provide notice of this motion to: (a) the office of the United States Trustee for the District of Delaware; (b) counsel to the Official Committee of Unsecured Creditors; (c) counsel to the DIP Agents and the Prepetition ABL Agents; (d) counsel to the Prepetition Term Loan Agent and the Prepetition Vendor Financing Agent; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the state attorneys general for all states in which the Debtors conduct business; and (i) any party that requests service pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as is just and proper.

Dated: August 13, 2019
Wilmington, Delaware

/s/ Sally E. Veghte

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:)	Chapter 11	
)		
CHARMING CHARLIE HOLDINGS INC., <i>et al.</i> , ¹)	Case No. 19-11534 (CSS)	
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Debtors.)	(Jointly Administered)	
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)	Obj. Deadline: August 27, 2019 at 4:00 p.m. (ET)	
)	Hearing Date: Sept. 12, 2019 at 1:00 p.m. (ET)	

**NOTICE OF DEBTORS’ MOTION FOR ENTRY
OF AN ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY
CODE, (I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL PROPERTY
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER
INTERESTS AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on August 13, 2019, the above-captioned debtors and debtors-in-possession (the “Debtors”), filed the *Debtors’ Motion for Entry of an Order, Pursuant to Sections 105 and 363 of the Bankruptcy Code, (i) Authorizing the Sale of Certain Intellectual Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests and (ii) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware.

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing and filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Third Floor, Wilmington, Delaware 19801, and served upon the undersigned, so as to be received **on or before August 27, 2019, by 4:00 p.m. (prevailing Eastern Time)**.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Charming Charlie Canada LLC (0693); Charming Charlie Holdings Inc. (6139); Charming Charlie International LLC (5887); Charming Charlie LLC (0263); Charming Charlie Manhattan LLC (7408); Charming Charlie USA, Inc. (3973); and Poseidon Partners CMS, Inc. (3302). The location of the Debtors’ headquarters is: 6001 Savoy Drive, Ste. 600, Houston, Texas 77036.

PLEASE TAKE FURTHER NOTICE that in accordance with Rule 9006-1 of the Local Bankruptcy Rules for the District of Delaware, any objections to the Motion must be in writing and filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Third Floor, Wilmington Delaware 19801. Objections, if any, must be served upon each of the following parties on or before **August 27, 2019, by 4:00 p.m. (prevailing Eastern Time)**: (a) the Debtors, 6001 Savoy Drive, Ste. 600, Houston, Texas 77036, Attn: Alvaro Bellon; (b) proposed counsel to the Debtors, Paul Hastings LLP, 71 South Wacker Drive, Suite 4500, Chicago, Illinois 60606, Attn: Matthew Murphy, Nathan Gimpel, and Matthew Smart; (c) proposed co-counsel to the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti, Michael W. Yurkewicz, and Sally E. Veghte; (d) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Linda Richenderfer, Esq.; (e) proposed counsel to the Official Committee of Unsecured Creditors, Cooley LLP, 55 Hudson Yards, New York, New York 10001, Attn: Seth Van Aalten, Sarah A. Carnes, and Summer M. McKee and Cooley LLP, 1299 Pennsylvania Ave, NW, Suite 700, Washington, DC 20004, Attn: Cullen Drescher Speckhart and Potter Anderson Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, Delaware 19801, Attn: Christopher M. Samis, L. Katherine Good, and Aaron H. Stulman; (f) counsel to the Prepetition ABL Agents and DIP Agents, Choate, Hall & Stewart, LLP, Two International Place, Boston, Massachusetts 02110, Attn: John F. Ventola and Jonathan D. Marshall, and Richards, Layton & Finger, P.A., 920 N. King. St., Wilmington, Delaware 19801, Attn: Mark D. Collins and John H. Knight; and (g) counsel to the Prepetition Vendor Financing Agent and Prepetition Term Loan Agent, Winston & Strawn LLP, 200 Park Avenue, New York, New York 10166, Attn: Gregory M. Gartland.

PLEASE TAKE FURTHER NOTICE THAT IF AN OBJECTION IS PROPERLY FILED AND SERVED IN ACCORDANCE WITH THE ABOVE PROCEDURES AND NOT RESOLVED BETWEEN THE DEBTORS AND OBJECTING PARTY, A HEARING WILL BE HELD WITH RESPECT TO THE MOTION ON **SEPTEMBER 12, 2019, AT 1:00 P.M. PREVAILING EASTERN TIME BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, CHIEF UNITED STATES BANKRUPTCY JUDGE FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, COURTROOM #6, 5TH FLOOR, WILMINGTON DELAWARE 19801. ONLY OBJECTIONS MADE IN WRITING AND TIMELY FILED WILL BE CONSIDERED BY THE BANKRUPTCY COURT AT SUCH HEARING. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

[Remainder of Page Intentionally Left Blank]

Dated: August 13, 2019
Wilmington, Delaware

/s/ Sally E. Veghte

Domenic E. Pacitti (DE Bar No. 3989)
Michael W. Yurkewicz (DE Bar No. 4165)
Sally E. Veghte (DE Bar No. 4762)
KLEHR HARRISON HARVEY BRANZBURG LLP
919 N. Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193

- and -

Matthew M. Murphy (admitted *pro hac vice*)
Nathan S. Gimpel (admitted *pro hac vice*)
Matthew Smart (admitted *pro hac vice*)
PAUL HASTINGS LLP
71 South Wacker Drive, Suite 4500
Chicago, Illinois 60606
Telephone: (312) 499-6000
Facsimile: (312) 499-6100

Proposed Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Order

**THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

)	
In re:)	Chapter 11
)	
CHARMING CHARLIE HOLDINGS INC., <i>et al.</i> , ¹)	Case No. 19-11534 (CSS)
)	
Debtors.)	(Jointly Administered)
)	Re: Docket No. _____

ORDER, PURSUANT TO SECTIONS 105 AND 363 OF THE BANKRUPTCY CODE, (I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS AND (II) GRANTING RELATED RELIEF

Upon consideration of the motion (the “Motion”)² the above-captioned debtors and debtors and possession (collectively, the “Debtors”) for entry of an order, pursuant to pursuant to 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (i) authorizing the Sale of the Intellectual Property on an “as is, where is” basis, free and clear of all liens, claims, encumbrances, and interests, to the purchaser (the “Purchaser”) identified in the Purchase Agreement, dated [____], 2019, annexed hereto as **Exhibits[s] 1** [and __] and (ii) granting related relief; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and due and adequate notice of the Motion having been given under

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Charming Charlie Canada LLC (0693); Charming Charlie Holdings Inc. (6139); Charming Charlie International LLC (5887); Charming Charlie LLC (0263); Charming Charlie Manhattan LLC (7408); Charming Charlie USA, Inc. (3973); and Poseidon Partners CMS, Inc. (3302). The location of the Debtors’ headquarters is: 6001 Savoy Drive, Houston, Texas 77036.

² Capitalized terms not defined herein shall have the meanings provided to them in the Motion.

the circumstances; and upon the entire record in these chapter 11 cases; and after due deliberation thereon, and good and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. This is a core matter pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution. Venue of these chapter 11 cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief sought in the Motion are sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014.

D. Due and adequate notice of the Motion, the proposed Sale, the Sale Hearing, and the subject matter thereof has been provided to all parties in interest herein, and no other or further notice is necessary. A reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all interested persons and entities.

E. The relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief requested in the Motion.

F. The Sale was negotiated and proposed in good faith, from arm's-length bargaining positions, and without collusion. The Purchaser is a good-faith purchaser within the

meaning of section 363(m) of the Bankruptcy Code and is entitled to the protection thereof. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the sale of the Intellectual Property to the Purchaser to be avoided under section 363(n) of the Bankruptcy Code.

G. The consideration provided by the Purchaser to the Debtors for the Intellectual Property (i) is fair and reasonable, (ii) is the highest or best offer for the Intellectual Property, (iii) will provide a greater recovery for the Debtors' creditors than would be provided by any other available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession.

H. The Debtors are authorized to sell the Intellectual Property to the Purchaser free and clear of all liens, claims, interests, and encumbrances of any kind or nature whatsoever, with such liens, claims, interests, and encumbrances transferring and attaching to the proceeds of the Sale with the same validity and priority as such interests had in the Intellectual Property immediately prior to the consummation of the Sale, because one or more of the standards set forth in sections 363(f)(1)–(5) of the Bankruptcy Code have been satisfied. Those holders of liens, claims, interests, and encumbrances who did not object to the Motion or the relief requested therein, or who interposed and then withdrew their objections, are deemed to have consented to the Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of liens, claims, interests, and encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their interests, if any, attach to the proceeds of the Sale of the Intellectual Property.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.

2. All objections to the Motion or relief provided herein that have not been withdrawn, waived, or settled are hereby overruled and denied on the merits.

3. Pursuant to sections 105 and 363 of the Bankruptcy Code and the terms of the Purchase Agreement annexed hereto as Exhibit[s] 1 [and ___], the Debtors are hereby authorized to sell, transfer, and convey the Intellectual Property to the Purchaser.

4. The Intellectual Property sold pursuant to the Purchase Agreement to the Purchaser is being sold “AS IS-WHERE IS,” without any representations or warranties from the Debtors as to the quality or fitness of such assets for either their intended or any other purposes.

5. The Intellectual Property shall be sold free and clear of all liens, mortgages, leases, or other rights or claims of right to use or occupancy, encumbrances, security interests, claims, charges, or other legal or equitable encumbrances and any other matter affecting title (collectively, “Liens”), with any Liens in such Intellectual Property, or the proceeds thereof, to attach to the proceeds of such sale with the same validity, priority, and effect as they have against the Intellectual Property.

6. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors and the Purchaser, as well as their officers, employees, and agents, shall be, and hereby are, authorized to take any and all actions and/or execute any and all documents as may be necessary or desirable to consummate the transactions contemplated by the Purchase Agreement. Any actions taken by the Debtors and the Purchaser necessary or desirable to consummate such transaction prior to the entry of this Order are hereby ratified.

7. The Court shall retain exclusive jurisdiction to resolve any dispute arising from or relating to the Sales or this Order.

EXHIBIT 1

Purchase Agreement

[to be provided]

EXHIBIT B

Form Purchase Agreement

**INTELLECTUAL PROPERTY
ASSET PURCHASE AGREEMENT¹
BY AND AMONG**

**AND
CHARMING CHARLIE LLC**

Dated as of [•], 2019

¹ THIS FORM OF AGREEMENT SHALL BE KEPT CONFIDENTIAL PURSUANT TO THE TERMS OF THE CONFIDENTIALITY AGREEMENT ENTERED INTO BY THE RECIPIENT HEREOF WITH RESPECT TO THE SUBJECT MATTER HEREOF. CIRCULATION OF THIS DRAFT WILL NOT GIVE RISE TO ANY DUTY TO NEGOTIATE OR CREATE OR IMPLY ANY OTHER LEGAL OBLIGATION. NO LEGAL OBLIGATION OF ANY KIND WILL ARISE UNLESS AND UNTIL A DEFINITIVE WRITTEN AGREEMENT IS EXECUTED AND DELIVERED BY ALL PARTIES.

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EXHIBITS

Exhibit A	Escrow Agreement
Exhibit B	Form of Sale Order

INTELLECTUAL PROPERTY ASSET PURCHASE AGREEMENT

THIS INTELLECTUAL PROPERTY ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of [•], 2019 (the “Effective Date”), by and between _____, a _____ (“Buyer”)², and CHARMING CHARLIE LLC, a Delaware limited liability company (“Seller”). Capitalized terms used herein and not otherwise defined herein have the meaning set forth in Article I.

RECITALS

WHEREAS, Seller is a specialty retailer focused on colorful fashion jewelry, handbags, apparel, gifts and beauty products;

WHEREAS, on July 11, 2019, Seller filed a voluntary petition for relief (the “Filing”) commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”);

WHEREAS, Buyer has delivered to _____ (the “Escrow Agent”) an amount in cash (such amount, as it may be adjusted pursuant hereto, the “Minimum Deposit”) in immediately available funds pursuant to the terms of an escrow agreement, attached hereto as Exhibit A (the “Escrow Agreement”), by and between the Escrow Agent and Seller;

WHEREAS, Seller believes, following consultation with Seller’s financial advisors and retained consultants, and consideration of available alternatives, that, in light of the current circumstances, a sale of certain of Seller’s intellectual property assets as provided herein is necessary to preserve and maximize value, and is in the best interest of Seller, Seller’s creditors, and stakeholders;

WHEREAS, Seller desires to sell to Buyer all of the Acquired Assets (defined below) and transfer to Buyer the Assumed Liabilities (defined below), and Buyer desires to purchase from Seller all of the Acquired Assets and assume all of the Assumed Liabilities, in each case on the terms and subject to the conditions hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement and Seller’s ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order under, *inter alia*, Sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

² **Note to Draft:** If Buyer is formed for the purpose of this transaction, or is otherwise thinly capitalized, a Parent Guarantee provision will be added to this Agreement.

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the meaning specified or referenced below.

“Acquired Assets” shall have the meaning set forth in Section 2.1.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such other Person. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Agreement” shall have the meaning set forth in the Preamble.

“Allocation Schedule” shall have the meaning set forth in Section 3.5(a).

“Alternative Transaction” means a transaction or series of related transactions (whether by asset sale, equity purchase, merger or otherwise) pursuant to which Seller enters into an agreement to sell all of the Acquired Assets or any group of assets that includes all or any material portion of the Acquired Assets to a Third Party, at the highest or best offer.

“Assumed Liabilities” shall have the meaning set forth in Section 2.3.

“Available Assets” shall mean the assets in the schedule annexed to the Sale Motion.

“Auction” shall mean the auction of the Acquired Assets.

“Avoidance Actions” means any and all claims for relief of Seller under chapter 5 of the Bankruptcy Code, or state fraudulent conveyance, fraudulent transfer or other similar state laws.

“Bankruptcy Case” means, collectively, the bankruptcy cases commenced by Seller under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court in the Filing.

“Bankruptcy Code” means Title 11 of the United States Code, Section 101 et seq.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Business Day” means any day of the year, other than a Saturday or Sunday, on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized by Law to close.

“Buyer” shall have the meaning set forth in the Preamble.

“Buyer Termination Notice” shall have the meaning set forth in Section 11.1(c)(i).

“Cash Consideration” means \$ _____.

“Claims” means all claims, causes of action, rights of recovery and rights of set-off of Seller, in each case, of whatever kind or description against any Third Party.

“Closing” shall have the meaning set forth in Section 4.1.

“Closing Date” shall have the meaning set forth in Section 4.1.

“Closing Date Cash Payment” shall have the meaning set forth in Section 3.3.

“Closing Legal Impediment” shall have the meaning set forth in Section 9.3.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means any contract, agreement, undertaking, license, sublicense, sales order, purchase order or other commitment, whether written or oral (including commitments to enter into any of such), that is binding on any Person or any part of its property under applicable Law.

“Copyrights” means: (a) works of authorship whether or not copyrightable; and (b) any other copyrights and works, together with all common law rights, and any applications and registrations therefor.

“Documents” means all books, records, files, invoices, inventory records, product specifications, customer lists and other customer-related information, cost and pricing information, supplier lists, business plans, personnel records, catalogs, customer literature, quality control records and manuals and credit records of customers relating to any Intellectual Property, including all data and other information stored on hard drives (including those located on remote servers, whether operated by Seller or by Third Party providers), discs, tapes or other media, in each case, solely to the extent owned by Seller and specific to those customers set forth on Schedule 2.1(b).

“Effective Date” shall have the meaning set forth in the Preamble.

“Encumbrance” means any charge, lien, claim, mortgage, lease, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind.

“Escrow Agent” shall have the meaning set forth in the Recitals.

“Escrow Agreement” shall have the meaning set forth in the Recitals.

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Excluded Liabilities” shall have the meaning set forth in Section 2.3.

“Filing” shall have the meaning set forth in the Recitals.

“Governmental Authority” means any United States federal, state, municipal or local or any foreign government, governmental agency or authority, or regulatory or administrative authority, or any court, tribunal or judicial body having jurisdiction, including the Bankruptcy Court.

“Governmental Authorization” means any approval, consent, license, permit, waiver or other authorization issued granted or otherwise made available by or under the authority of any Governmental Authority.

“Intellectual Property” means, collectively, all Copyrights, Patents, Trademarks and Online Properties set forth on Schedule 2.1(a). For the avoidance of doubt, any Copyrights, Patents, Trademarks or Online Properties that are not set forth on Schedule 2.1(a) are not and shall not be deemed to be Intellectual Property.

“Knowledge” means, with respect to any matter in question, in the case of Seller, the actual knowledge of each of _____, _____, and _____, with respect to such matter.

“Law” means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction or decree by any Governmental Authority.

“Liability” means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Material Adverse Effect” means any effect, change, condition, circumstance, development or event that, individually or in the aggregate with all other effects, changes, conditions, circumstances, developments and events has had, or would reasonably be expected to have, a material adverse effect on the Intellectual Property or any other Acquired Assets, taken as a whole, excluding any effect, change, condition, circumstance, development or event that results from or arises out of: (i) the execution and delivery of this Agreement or the announcement thereof or the pendency or consummation of the transactions contemplated hereby; (ii) geopolitical conditions or any outbreak or escalation of hostilities or acts of terrorism or war or any effect, change or event that is otherwise generally applicable to the industries and markets in which Seller operate; (iii) changes in (or proposals to change) Laws or accounting regulations or principles; (iv) the Bankruptcy Case, including, without limitation, the Auction and any announced liquidation of Seller or any of Seller’s respective assets; or (v) any action expressly contemplated by this Agreement or taken at the written request of Buyer.

“Minimum Deposit” shall have the meaning set forth in the Recitals.

“Next Highest Bidder” means the Person submitting a bid at the Auction that is the highest bid immediately before submission of the bid submitted by the Successful Bidder.

“Online Properties” means any domain names, uniform resource locators and social media accounts.

“Order” means any award, writ, injunction, judgment, order or decree entered, issued, made or rendered by any Governmental Authority.

“Outside Date” shall have the meaning set forth in Section 11.1(b)(ii).

“Party” or “Parties” means, individually or collectively, Buyer and Seller.

“Patents” means (a) any patent, (b) any patent applications, (c) any continuation, continuation-in-part and divisional patent applications based on any of the foregoing, and (d) any patents issuing from any of the items reference in the foregoing clauses (a)–(c).

“Permitted Encumbrances” means (a) Encumbrances that do not materially impair the value of or interfere with the use of the assets to which they relate, (b) non-exclusive outbound licenses of Intellectual Property, and (c) Encumbrances set forth on Schedule 1.1(a).

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization or other entity or Governmental Authority.

“Pre-Closing Covenants” shall have the meaning set forth in Section 12.13.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, other than an Avoidance Action.

“Purchase Price” has the meaning set forth in Section 3.1.

“Qualified Bid” shall have the meaning set forth in the Sale Procedures.

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“Sale Motion” shall mean the motion filed by the Seller seeking approval of the sale of the Available Assets.

“Sale Order” means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby, which Order shall be substantially in the form attached hereto as Exhibit B, with such changes as are not adverse to Buyer or as the Parties may mutually agree.

“Sale Procedures” shall mean those sale procedures for the Auction as set forth in the Sale Motion.

“Seller” shall have the meaning set forth in the Preamble.

“Seller Termination Notice” shall have the meaning set forth in Section 11.1(d)(i).

“Subsidiary” means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors or similar managing body.

“Successful Bidder” means the Person submitting the bid determined to be the highest or best offer at the Auction.

“Tax” or “Taxes” means any federal, state, provincial, local, municipal, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the Code), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof (including all interest and penalties thereon and additions thereto), in each case imposed by any Governmental Authority.

“Tax Return” means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed with or required to be filed with any Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

“Third Party” means a Person who or which is neither a Party nor an Affiliate of a Party.

“Trademarks” means all trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations and applications therefor, and all goodwill appurtenant to any or all of the foregoing.

“Transaction Documents” means this Agreement, the Escrow Agreement, and any other agreements, instruments or documents entered into pursuant to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 8.1(a).

Section 1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(i) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Any reference in this Agreement to \$ means U.S. dollars.

(iii) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. No reference to or disclosure of any item or other matter in the Exhibits and Schedules shall be construed as an admission or indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in the Exhibits and Schedules. No disclosure in the Exhibits and Schedules relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Any information, item or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent from the facts specified in such disclosure. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(iv) Any reference in this Agreement to gender includes all genders, and words importing the singular number also include the plural and vice versa.

(v) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section,” “Article,” “Schedule,” or “Exhibit” are to the corresponding Section, Article, Schedule, or Exhibit of or to this Agreement unless otherwise specified.

(vi) Words such as “herein,” “hereof” and “hereunder” refer to this Agreement as whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

(vii) The word “including” or any variation thereof means “including, without limitation,” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(b) No Strict Construction. Buyer, on the one hand, and Seller, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Seller, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, in consideration of payment of the Purchase Price and assumption of the Assumed Liabilities by Buyer, Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase, assume and accept from Seller, all right, title and interest of Seller in, to, or under the following (collectively, the “Acquired Assets”):

- (a) the Intellectual Property;
- (b) the Documents;
- (c) all goodwill associated with the Intellectual Property;
- (d) all Claims of Seller (other than warranty claims and Avoidance Actions) to the extent arising out of, or relating to, the Intellectual Property or the Documents; and
- (e) all transferrable rights of Seller under non-disclosure or confidentiality, non-compete, or non-solicitation Contracts relating to the Intellectual Property or the Documents.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Buyer shall not acquire any right, title or interest in or to any assets, properties, rights, interests, or claims of any kind or description of Seller or its Affiliates other than the Acquired Assets (collectively, the “Excluded Assets”).

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, contemporaneously with the sale, assignment and transfer of the Acquired Assets to Buyer, Buyer shall assume and agree to pay, perform and discharge, as and when due (in accordance with the respective terms and subject to the respective conditions thereof) all Liabilities arising from the ownership of the Acquired Assets and the use thereof by Buyer from and after the Closing (collectively, the “Assumed Liabilities”).

Section 2.4 Excluded Liabilities. Buyer shall not assume or be obliged to pay, perform or otherwise discharge, and Seller shall be solely and exclusively liable with respect to, any Liability of Seller that is not an Assumed Liability (such Liabilities, collectively, the “Excluded Liabilities”).

Section 2.5 Further Assurances. Following the Closing, Seller, on the one hand, and Buyer, on the other hand, shall use their respective commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things reasonably necessary under applicable Law, and execute and deliver such instruments and documents and to take such other actions, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing; provided that nothing in this Section 2.5 shall prohibit Seller from ceasing operations or winding up Seller’s affairs following the Closing. In furtherance and

not in limitation of the foregoing, in the event that any of the Acquired Assets shall not have been conveyed at Closing, Seller shall use commercially reasonable efforts to convey such Acquired Assets to Buyer as promptly as practicable after the Closing.

ARTICLE III

PURCHASE PRICE

Section 3.1 Purchase Price. In consideration for the purchase, sale, assignment and conveyance of the Acquired Assets, Buyer shall pay to Seller cash in the amount of the Cash Consideration (the "Purchase Price") and assume the Assumed Liabilities.

Section 3.2 Minimum Deposit. Buyer has delivered to the Escrow Agent the Minimum Deposit in immediately available funds pursuant to the Escrow Agreement. The Minimum Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of Seller or Buyer. The Minimum Deposit shall be retained by Seller at the Closing (and deducted from the Purchase Price due and payable at the Closing), or if this Agreement is terminated, treated in the manner set forth in Section 11.2. All costs and expenses of the Escrow Agent and otherwise associated with the Escrow Agreement shall be borne by Buyer.

Section 3.3 Closing Date Payments. At the Closing, (a) Buyer shall pay to Seller cash by wire transfer of immediately available funds in an amount equal to the Cash Consideration minus the Minimum Deposit (the "Closing Date Cash Payment") and (b) Buyer and Seller shall direct the Escrow Agent to indefeasibly transfer the Minimum Deposit to an account designated by Seller.

Section 3.4 Discharge of Assumed Liabilities After Closing. Following the Closing, Buyer shall pay, perform and satisfy, or cause to be paid, performed and satisfied, the Assumed Liabilities from time to time as and when such Assumed Liabilities become due and payable or are required to be performed or satisfied in accordance with their respective terms.

Section 3.5 Allocation of Purchase Price.

(a) No later than ten (10) days following the Closing Date, Buyer shall deliver to Seller an allocation schedule(s) allocating the Purchase Price (as may be adjusted pursuant to the terms of this Agreement) among the Acquired Assets of Seller, including the Assumed Liabilities to the extent such Liabilities are required to be treated as part of the purchase price for Tax purposes in accordance with Section 1060 of the Code (the "Allocation Schedule"). Such Allocation Schedule shall become final, binding and conclusive upon Seller and Buyer on the 30th day following Seller's receipt of such statement, unless prior to such 30th day Seller delivers to Buyer a written notice disputing such Allocation Schedule that sets forth what Seller believes represent the proper allocation of the Purchase Price and Assumed Liabilities among the Acquired Assets. If Seller delivers such a dispute notice, then Buyer and Seller shall seek in good faith to agree upon the proper allocation under Section 1060 of the Code during the ten-day period beginning on the date Buyer receives such dispute notice. If such an agreement cannot be reached during such ten-day period, then, within ten (10) days thereafter, Buyer, on the one hand,

and Seller, on the other hand, shall jointly engage and submit the unresolved dispute to a nationally recognized independent registered public accounting firm appointed by mutual agreement of Buyer and Seller, or, if they are unable to agree, selected by the Bankruptcy Court. Buyer and Seller shall use their respective reasonable best efforts to cause such firm to issue such firm's written determination regarding the proper allocation under Section 1060, as applicable, to the terms of this Agreement within fifteen (15) days after such dispute is submitted to the firm. During the foregoing review period, each Party shall use their respective commercially reasonable efforts to furnish to such firm such work papers and other documents and information as such firm may reasonably request. The determination of such firm shall be final, binding and conclusive upon Buyer and Seller absent manifest error. The Allocation Schedule shall be revised in accordance with Section 1060 of the Code to appropriately take into account any additional payments made under this Agreement following the foregoing determination.

(b) In administering any Proceeding, the Bankruptcy Court shall not be required to apply the Allocation Schedule(s) in determining the manner in which the Purchase Price should be allocated as between Seller and Seller's estates. Buyer and Seller will each file all Tax Returns (including IRS Forms 8594) consistent with the Allocation Schedule(s) established in accordance with this Section 3.5. Seller, on the one hand, and Buyer, on the other hand, each agree to provide the other promptly with any other information required to complete IRS Forms 8594. Neither Buyer nor Seller shall take any Tax position inconsistent with such Allocation Schedule, and neither Buyer nor Seller shall agree to any proposed adjustment based upon or arising out of Allocation Schedule by any Governmental Authority without first giving the other Party prior written notice; provided, however, that nothing contained herein shall prevent Buyer or Seller from settling any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of the Allocation Schedule, and neither Buyer nor Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of such Allocation Schedule.

ARTICLE IV

CLOSING

Section 4.1 Closing Date. On the terms and subject to the conditions set forth in this Agreement, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place at the offices of Paul Hastings LLP, 200 Park Avenue, New York, New York 10166, no later than the first (1st) Business Day following the date on which the conditions set forth in Article IX and Article X have been satisfied or (if permissible) waived (other than the conditions that by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Buyer and Seller may mutually agree upon in writing. The date and time at which the Closing actually occurs is referred to herein as the "Closing Date."

Section 4.2 Buyer's Deliveries. At the Closing, Buyer shall deliver to Seller each of the following:

(a) the Closing Date Cash Payment in accordance with clause (a) of Section 3.3;

(b) each other Transaction Document not previously executed to which Buyer is a party, duly executed by Buyer;

(c) the certificates of Buyer to be received by Seller pursuant to Sections 10.1 and 10.2; and

(d) such assignments and other good and sufficient instruments of assumption and transfer, each in form reasonably satisfactory to Seller, as Seller may reasonably request to transfer and assign the Acquired Assets and Assumed Liabilities to Buyer.

Section 4.3 Seller's Deliveries. At the Closing, Seller shall deliver to Buyer each of the following:

(a) each other Transaction Document to which Seller is a party, duly executed by Seller;

(b) a copy of the Sale Order entered by the Bankruptcy Court;

(c) the certificates of Seller to be received by Buyer pursuant to Sections 9.1 and 9.2; and

(d) such bills of sale, deeds, endorsements, assignments (including requisite assignments of Patents, Copyrights, Trademarks and Online Properties to the extent constituting Intellectual Property), UCC terminations and other filings and other good and sufficient instruments, each in form reasonably satisfactory to Buyer, which are necessary to vest in Buyer all the right, title and interest of Seller in, to or under any or all of the Acquired Assets free and clear of Encumbrances other than Permitted Encumbrances.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Schedules, Seller hereby represents and warrants to Buyer that the following statements contained in this Article V are true and correct:

Section 5.1 Organization and Good Standing. Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of Seller's organization. Subject to the limitations imposed on Seller as a result of the Filing, Seller has the requisite limited liability company power and authority to own or lease and to operate and use Seller's properties.

Section 5.2 Authority; Validity; Consents. Seller has, subject to requisite Bankruptcy Court approval, as applicable, the requisite limited liability company power and authority necessary to enter into and perform Seller's obligations under this Agreement and the other Transaction Documents to which Seller is a party and to consummate the transactions

contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Seller and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to requisite Bankruptcy Court approval, as applicable, this Agreement and the other Transaction Documents constitute, with respect to Seller, the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to, and after giving effect to, requisite Bankruptcy Court approval (including, without limitation, the Sale Order), as applicable, and except (a) for entry of the Sale Order and (b) for notices, filings and consents required in connection with the Bankruptcy Case, Seller is not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby and thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, have a Material Adverse Effect.

Section 5.3 Title to Acquired Assets. Immediately prior to Closing, Seller will have and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 4.3, and subject to the terms of the Sale Order, Seller will thereby transfer to Buyer, title to or, a valid contractual interest in, all of the Acquired Assets free and clear of all Encumbrances, except (i) as set forth on Schedule 5.3 and (ii) for Permitted Encumbrances; provided, that, the foregoing representation and warranty is not and shall not be deemed to be a representation or warranty of any kind regarding the infringement, misappropriation, or other violation of any intellectual property rights of any third party.

Section 5.4 Taxes. There are no Encumbrances for Taxes on any of the Acquired Assets other than Permitted Encumbrances.

Section 5.5 Legal Proceedings. As of the date hereof, except for the Bankruptcy Case and as set forth on Schedule 5.5, there is no Proceeding or Order pending, outstanding or, to Seller's Knowledge, threatened against Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby or (b) would have, individually or in the aggregate, a Material Adverse Effect.

Section 5.6 Brokers or Finders. Except as set forth on Schedule 5.6 hereof, Seller has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment owed in connection with this Agreement, the other Transaction Documents to which it is a party or the transactions contemplated hereby or thereby, in all cases for which Buyer is or will become liable following the Closing.

Section 5.7 Intellectual Property.

(a) The issued Patents, registered Trademarks and registered Copyrights included in the Acquired Assets are subsisting and, to Seller's Knowledge, valid and enforceable. Seller owns and possesses, free and clear of all Encumbrances (other than Permitted

Encumbrances), all right, title, and interest in and to, or, in the case of Online Properties, a valid contractual interest in, the Intellectual Property included in the Acquired Assets, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) To Seller's Knowledge, no third party is infringing or misappropriating any Intellectual Property included in the Acquired Assets in a material manner.

Section 5.8 No Other Representations or Warranties; No Survival. Buyer acknowledges, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in this Article V, none of Seller, Seller's Affiliates or any other Person on behalf of Seller or Seller's Affiliates makes any express or implied representation or warranty with respect to Seller, the Acquired Assets, the Assume Liabilities or with respect to any information provided by or on behalf of Seller or its Affiliates to Buyer. Without limiting the generality of the foregoing, Seller expressly disclaims any representations or warranties regarding accuracy, sufficiency, fitness for a particular purpose, merchantability, and non-infringement of third party rights. The representations and warranties of Seller will expire upon the earlier of the Closing Date or the termination of this Agreement.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the following statements contained in this Article VI are true and correct:

Section 6.1 Organization and Good Standing. Buyer is a _____, duly organized, validly existing and in good standing under the laws of the jurisdiction of Buyer's organization. Buyer has the requisite power and authority to own or lease and to operate and use Buyer's properties and to carry on Buyer's business as now conducted.

Section 6.2 Authority; Validity; Consents. Buyer has the requisite power and authority necessary to enter into and perform Buyer's obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to requisite Bankruptcy Court approval, as applicable, Buyer is not and will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 6.3 No Conflict. When the consents and other actions described in Section 6.2 have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the certificate of incorporation of Buyer, (c) any Order or (d) any Law.

Section 6.4 Availability of Funds; Solvency. Buyer³ has and will have at the Closing sufficient cash in immediately available funds to pay the Purchase Price and any other costs, fees and expenses required to be paid by it under this Agreement and the other Transaction Documents. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer will not, assuming that the representations and warranties made by Seller in Article V of this Agreement are accurate in all material respects, (i) be insolvent (either because Buyer's financial condition is such that the sum of Buyer's debts is greater than the fair value of Buyer's assets or because the present fair value of Buyer's assets will be less than the amount required to pay Buyer's probable Liability on Buyer's debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in Buyer's business, or (iii) have incurred or plan to incur debts beyond Buyer's ability to repay such debts as they become absolute and matured.

Section 6.5 Litigation. There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform Buyer's obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Section 6.6 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which Seller is or will become liable, and Buyer shall hold harmless and indemnify Seller from any claims with respect to any such fees or commissions.

Section 6.7 Condition of Acquired Assets; Representations. Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly made by Seller in Article V (subject to the disclosures set forth on the Schedules), and Buyer acknowledges and agrees that, except for the representations and warranties contained in Article V, the Acquired Assets are being transferred on a "where is" and, as to condition, "as is" basis. Buyer acknowledges that it has conducted to Buyer's satisfaction Buyer's own independent investigation of Seller's business (including the Acquired Assets and Assumed Liabilities) and, in making the determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of Buyer's own independent investigation. In connection with Buyer's investigation, Buyer has received or may receive from Seller certain

³ **Note to Draft:** If Buyer is formed for the purpose of this transaction, or is otherwise thinly capitalized, a Parent Guarantee provision will be added to this Agreement.

projections, forward-looking statements and other forecasts and certain business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making Buyer's own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to Buyer (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Buyer shall have no claim against anyone with respect thereto. Accordingly, Buyer acknowledges that Seller makes no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

ARTICLE VII

ACTIONS PRIOR TO THE CLOSING DATE

Section 7.1 Operations Prior to the Closing Date. Seller covenants and agrees that, except (i) as expressly contemplated by this Agreement, (ii) as disclosed in Schedule 7.1, (iii) with the prior written consent of Buyer (which consent, other than with respect to Section 7.1(b)(ii), shall not be unreasonably withheld or delayed), (iv) as required by the Bankruptcy Court or (v) as otherwise required by Law, after the Effective Date and prior to the Closing Date:

(a) Seller shall use commercially reasonable efforts, taking into account Seller's status as debtors-in-possession in the Bankruptcy Case, to maintain and preserve the Acquired Assets in their present condition in all material respects and, without limiting the generality of the foregoing,

(b) Seller shall not:

(i) sell, lease (as lessor), transfer or otherwise dispose of, or mortgage or pledge, or voluntarily impose or suffer to be imposed any Encumbrance (other than Assumed Liabilities and Permitted Encumbrances) on, any Acquired Asset; or

(ii) cancel or compromise any material claim or waive or release any material right, in each case, that is a claim or right related to an Acquired Asset; or enter into any agreement or commitment to take any action prohibited by this Section 7.1.

Section 7.2 Bankruptcy Court Filings and Approval.

(a) Seller shall use Seller's commercially reasonable efforts to obtain entry of the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Order and, consistent with Section 2.5, a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(b) Seller and Buyer acknowledge that this Agreement and the sale of the Acquired Assets are subject to Bankruptcy Court approval. Seller and Buyer acknowledge that to obtain such approval, Seller must demonstrate that they have taken reasonable steps to obtain the highest or otherwise best offer possible for the Acquired Assets and Buyer hereby agrees to provide all appropriate assurances thereof necessary in order to obtain the foregoing approvals.

(c) Seller shall give all notices required to be given by applicable Law, to all Persons entitled thereto, of all motions (including the motions seeking entry of the Sale Order), orders, hearings and other proceedings relating to this Agreement and the transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court or as Buyer may reasonably request.

(d) After entry of the Sale Order, Seller shall not take any action that is intended to, or fail to take any action the intent of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order.

ARTICLE VIII

ADDITIONAL AGREEMENTS

Section 8.1 Taxes.

(a) Any sales, use, property transfer or gains, documentary, stamp, registration, recording or similar Tax (including, for certainty, goods and services tax, harmonized sales tax and land transfer tax) payable in connection with the sale or transfer of the Acquired Assets ("Transfer Taxes") shall be borne by Buyer and, to the extent Seller is required by applicable Law to pay Transfer Taxes, such Transfer Taxes shall be paid by Buyer to Seller at Closing. Seller and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes. Seller shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Buyer, Seller shall prepare and deliver to Buyer a copy of such Tax Return at least three (3) Business Days before the due date thereof, and Buyer shall promptly execute such Tax Return and deliver it to Seller, which shall cause it to be filed.

(b) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets (including access to the Documents) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit or proceeding relating to any Tax; provided, however, that (other than as required pursuant to this Section 8.1(b)) neither Buyer nor Seller shall be required to disclose the contents of its income tax returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(b) shall be borne by the Party requesting it.

(c) Notwithstanding any other provisions in this Agreement, Buyer and Seller hereby waive compliance with all “bulk sales,” “bulk transfer” and similar laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Buyer.

Section 8.2 Payments Received. Seller, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using each of their best efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

Section 8.3 Confidentiality. The terms of any confidentiality agreement to which Buyer (or an Affiliate of Buyer) is party in respect of Seller (or any Affiliate of Seller) shall continue in full force and effect until the Closing, at which time Buyer’s obligations under any such confidentiality agreement shall terminate only insofar as they pertain to the Acquired Assets, and shall otherwise remain in full force and effect in accordance with the terms thereof.

Section 8.4 Preservation of Books and Records. For a period of seven (7) years after the Closing Date, Buyer shall preserve and retain all business records and other accounting, legal, auditing, and other books and records of the Seller included in the Acquired Assets (including any documents relating to any governmental or non-governmental claims, Proceedings, or investigations with respect to the Acquired Assets) relating to the ownership of the Acquired Assets prior to the Closing Date.

ARTICLE IX

CONDITIONS PRECEDENT TO THE OBLIGATION OF BUYER TO CLOSE

Buyer’s obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Buyer (to the extent waivable), at or prior to the Closing, of each of the following conditions:

Section 9.1 Accuracy of Representations. The representations and warranties of Seller contained in Article V shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); provided, however, that the condition in this Section 9.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to “materiality” or “Material Adverse Effect” set forth therein), individually or in the aggregate, (a) has not had and would not reasonably be expected to have a Material Adverse Effect or (b) was not the result of changes or developments contemplated by the terms of this Agreement, resulting from any transaction consented to by Buyer, or resulting from the transactions contemplated by this Agreement. At the Closing, Buyer shall receive a certificate of Seller, signed by a duly authorized officer of Seller, to that effect.

Section 9.2 Seller’s Performance. Seller shall have performed and complied in all material respects with the covenants and agreements that Seller is required to perform or comply

with pursuant to this Agreement at or prior to the Closing. At the Closing, Buyer shall receive a certificate of Seller, signed by a duly authorized officer of Seller, to that effect.

Section 9.3 No Order. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a “Closing Legal Impediment”); provided, however, that prior to asserting this condition Buyer shall have taken all actions required by Section 7.2 to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 9.4 Governmental Authorizations. Any applicable waiting period under any applicable material antitrust or competition Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 9.5 Seller’s Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

Section 9.6 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay pending appeal.

ARTICLE X

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

Seller’s obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Seller (to the extent waivable), at or prior to the Closing, of each of the following conditions:

Section 10.1 Accuracy of Representations. The representations and warranties of Buyer contained in Article VI shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties which address matters only as of a particular date need only be true and correct as of such date); provided, however, that the condition in this Section 10.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to “materiality” or “material adverse effect” set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement. At the Closing, Seller shall receive a certificate of Buyer, signed by a duly authorized officer of Buyer, to that effect.

Section 10.2 Buyer’s Performance. Buyer shall have performed and complied in all material respects with the covenants and agreements that Buyer is required to perform or comply with pursuant to this Agreement at or prior to the Closing. At the Closing, Seller shall receive a certificate of Buyer, signed by a duly authorized officer of Buyer, to that effect.

Section 10.3 No Order. No Closing Legal Impediment shall be in effect, provided, however, that prior to asserting this condition Seller shall have taken all actions required by Section 7.2 to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 10.4 Governmental Authorizations. Any applicable waiting period under any material applicable antitrust or competition Law shall have expired or been terminated and any other material approval under any applicable antitrust or competition Law shall have been received.

Section 10.5 Buyer's Deliveries. Each of the deliveries required to be made to Seller pursuant to Section 4.2 shall have been so delivered.

Section 10.6 Sale Order in Effect. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay pending appeal.

ARTICLE XI

TERMINATION

Section 11.1 Termination Events. Notwithstanding anything contained in this Agreement to the contrary (other than as provided in the last sentence of this Section 11.1), this Agreement may be terminated at any time prior to the Closing Date:

- (a) by mutual written consent of Seller and Buyer; or
- (b) by either Seller or Buyer:

- (i) if the Bankruptcy Court does not approve this Agreement for any reason or if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(b)(i) shall not be available to any Party whose breach of any of its representations, warranties, covenants or agreements contained herein results in such failure to approve, such ruling or Order;

- (ii) if the Closing shall not have occurred by the close of business on September 19, 2019 (the "Outside Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 11.1(b)(ii) shall not be available to any Party whose breach of any of such Party's representations, warranties, covenants, or agreements contained herein results in the failure of the Closing to be consummated by such time; provided, further, that if as of the Outside Date, all of the conditions precedent to the Closing other than the conditions set forth in Sections 9.4 and 10.4 (and other than those conditions that by their terms are to be satisfied at the Closing or on the Closing Date) shall have been satisfied as of the Outside Date, then Seller shall be entitled to extend the Outside Date until September 26, 2019, upon written notice to the Buyer, in which case the Outside Date shall be deemed for all purposes to be September 26, 2019;

(iii) if (A) the Sale Hearing is not held on or before September 12, 2019; provided, however, if the Sale Hearing is delayed due to the Bankruptcy Court's unavailability, the next Business Day on which the Bankruptcy Court is available, or (B) the Bankruptcy Court has not entered the Sale Order on or before September 13, 2019; provided, however, if approval of the Sale Order is delayed due to the Bankruptcy Court's unavailability, the next Business Day on which the Bankruptcy Court is available;

(iv) if the Sale Order is vacated; or

(v) if Seller enters into a definitive agreement with respect to an Alternative Transaction because Buyer is not the Successful Bidder at the Auction; provided, however, that if Buyer is the Next Highest Bidder, then Buyer may not terminate this Agreement or withdraw its irrevocable offer unless and until such Alternative Transaction has closed; or

(c) Seller (A) files any stand-alone plan of reorganization or liquidation that does not contemplate, the implementation or consummation of, the transactions provided for in this Agreement or (B) consummates an Alternative Transaction; or by Buyer:

(i) in the event of any breach by Seller of any of Seller's agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Article IX to be satisfied, and the failure of Seller to cure such breach by the earlier of (A) the Outside Date and (B) the date that is 15 days after receipt of the Buyer Termination Notice; provided, however, that (1) Buyer is not in breach of any of Buyer's representations, warranties, covenants or agreements contained herein in a manner that would result in the failure of a condition set forth in Article X to be satisfied, (2) Buyer notifies Seller in writing (the "Buyer Termination Notice") of Buyer's intention to exercise Buyer's rights under this Section 11.1(c)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant or agreement contained herein of which Seller is allegedly in breach;

(ii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement; or

(iii) if any conditions to the obligations of Buyer set forth in Article IX shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement; or

(d) by Seller:

(i) except as provided in Section 11.1(d)(iii), in the event of any breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Article X to be satisfied, and the failure of Buyer to cure such breach by the earlier of (A) the Outside Date and (B) the date that is 15 days after receipt of the

Seller Termination Notice; provided, however, that Seller (1) is not itself in material breach of any of Seller's representations, warranties, covenants or agreements contained herein, (2) notify Buyer in writing (the "Seller Termination Notice") of Seller's intention to exercise Seller's rights under this Section 11.1(d)(i) as a result of the breach, and (3) specify in the Seller Termination Notice the representation, warranty, covenant or agreement contained herein of which Buyer is allegedly in breach;

(ii) if Seller consummates a sale, transfer or other disposition of any portion of the Acquired Assets in a transaction or series of transactions with one or more Persons other than Buyer; or

(iii) if the Sale Order with respect to the transactions contemplated by this Agreement has been entered and is not subject to any stay on enforcement and (A) Seller has provided Buyer with written notice that Seller is prepared to consummate the transactions contemplated by this Agreement, (B) the conditions to Closing in Article IX have been satisfied (or waived by Buyer), other than those conditions that by their nature can only be satisfied at Closing, and (C) the Closing Date does not occur within one (1) Business Day of Seller providing Buyer with such notice.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Seller determines, in Seller's reasonable discretion, that the last overbid submitted by Buyer is better than all other Qualified Bids as such Qualified Bids may be amended by an overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, Sellers and Buyer shall enter into an amendment to this Agreement to reflect Buyer's last overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer's having submitted the winning bid at the Auction.

Section 11.2 Effect of Termination. If this Agreement is terminated pursuant to Section 11.1(d)(i) or Section 11.1(d)(iii), the Minimum Deposit shall be retained by Seller for Seller's own account as damages specifically; provided that Seller specifically reserves the right to seek additional damages and remedies against Buyer in any respect of any claim against Buyer arising under this Agreement or otherwise. If this Agreement is terminated pursuant to any provision of Section 11.1 other than either Section 11.1(d)(i) or Section 11.1(d)(iii), Seller shall promptly (but in any event within two (2) Business Days of such termination) instruct the Escrow Agent to return the Minimum Deposit to Buyer by wire transfer of immediately available funds, and the return thereof shall constitute the sole and exclusive remedy of Buyer in the event of such a termination hereunder.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be delivered (a) in person, (b) by a nationally recognized courier for overnight delivery service, or (c) by email or other electronic

means, confirmed by telephone or return email (including an automated return receipt), to the persons indicated below. A notice or communication shall be deemed to have been effectively given (i) if in person, upon personal delivery to the Party to whom the notice is directed, (ii) if by nationally recognized courier, one Business Day after delivery to such courier, and (iii) if by email or other electronic means, when sent and confirmed by telephone or return email. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

(a) If to Seller, then to:

Charming Charlie LLC
6001 Savoy Drive, Suite 600
Houston, Texas 77036
Attention: Al Bellon

with a copy (which shall not constitute notice) to:

Paul Hastings LLP
71 S. Wacker Drive, 45th Floor
Chicago, Illinois 60606
Attention: Matthew M. Murphy; Tyler J. Born; and Nathan S. Gimpel
Phone: 312-499-6000
Email: mattmurphy@paulhastings.com;
tylerborn@paulhastings.com;
nathangimpel@paulhastings.com

If to Buyer, then to:

[•]

with a copy (which shall not constitute notice) to:

[•]

Section 12.2 Amendment; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge or waiver is sought and such amendment, modification, discharge or waiver is delivered substantially contemporaneously to each other Party. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of

such provisions, rights or privileges hereunder. No course of dealing between or among the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights to payment of any Party under or by reason of this Agreement.

Section 12.3 Entire Agreement. This Agreement (including the Schedules and the Exhibits) and the other Transaction Documents contain all of the terms, conditions and representations and warranties agreed to by the Parties relating to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings, negotiations, correspondence, undertakings and communications of the Parties or their representatives, oral or written, respecting such subject matter. The representations, warranties, covenants and agreements contained in this Agreement (including the Schedules and the Exhibits) and the other Transaction Documents are intended, among other things, to allocate the economic cost and the risks inherent in the transactions contemplated hereby and thereby, including risks associated with matters as to which the party making such representations and warranties has no knowledge or only incomplete knowledge, and such representations and warranties may be qualified by disclosures contained in the Schedules. Consequently, Persons other than the Parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 12.4 No Presumption as to Drafting. Each of the parties acknowledges that it has been represented by legal counsel in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement or the Transaction Documents against the drafting party has no application and is expressly waived.

Section 12.5 Assignment. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent maybe granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Seller, to assign all or part of Buyer's rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of Buyer's obligations under this Agreement.

Section 12.6 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

Section 12.7 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and all claims or causes of action (whether in contract, tort or otherwise)

that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; provided, however, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in a Delaware state court or a federal court sitting in the State of Delaware, and the Parties hereby (a) irrevocably and unconditionally submit to the exclusive jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or in the event (but only in the event) that such court does not have subject matter jurisdiction over such Proceeding in the United States District Court for the District of Delaware) with respect to all Proceedings arising out of or relating to this Agreement and the transaction contemplated hereby (whether based on contract, tort or other theory); (b) agree that all claims with respect to any such Proceeding shall be heard and determined in such courts and agrees not to commence any Proceeding relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or other theory) except in such courts; (c) irrevocably and unconditionally waive any objection to the laying of venue of any Proceeding arising out of this Agreement or the transactions contemplated hereby and irrevocably and unconditionally waives the defense of an inconvenient forum; and (d) agree that a final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. The Parties agree that any violation of this Section 12.7(b) shall constitute a material breach of this Agreement and shall constitute irreparable harm.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.7.

Section 12.8 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or other electronic transmission in portable document format (pdf)) with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. This Agreement shall become effective when, and only when, each Party shall have received a counterpart hereof signed by the other Party. Delivery of an executed counterpart hereof by means of facsimile or electronic transmission in portable document format (pdf) shall have the same effect as delivery of a physically executed counterpart in person.

Section 12.9 Parties in Interest; No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights, benefits, remedies, obligations, liabilities or claims hereunder upon any Person not a Party or a permitted assignee of a Party.

Section 12.10 Non-Recourse. All claims, obligations, liabilities or causes of action (whether in contract or in tort, in law or in equity or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with or relate in any manner to this Agreement, the negotiation, execution or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as Parties to this Agreement. No other Person, including any of their Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to, any of the foregoing shall have any liabilities (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with, or related in any manner to, this Agreement or based on, in respect of, or by reason of, this Agreement or its negotiation, execution, performance or breach.

Section 12.11 Schedules; Materiality. The inclusion of any matter in any Schedule shall be deemed to be an inclusion for all purposes of this Agreement, to the extent that such disclosure is sufficient to identify the Section to which such disclosure is responsive, but inclusion therein shall not be deemed to constitute an admission, or otherwise imply, that any such matter is material or creates a measure for materiality for purposes of this Agreement. The disclosure of any particular fact or item in any Schedule shall not be deemed an admission as to whether the fact or item is “material” or would constitute a “Material Adverse Effect.”

Section 12.12 Specific Performance. The Parties acknowledge and agree that (a) irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. If any Proceeding is brought by the non-breaching Party or Parties to enforce this Agreement, the Party in breach shall waive the defense that there is an adequate remedy at law.

Section 12.13 No Survival. None of the (a) representations and warranties or (b) covenants which require performance prior to the Closing (“Pre-Closing Covenants”), in each case contained in this Agreement, any Transaction Document or in any certificate or schedule

delivered pursuant to hereto or thereto shall survive the Closing. In furtherance, not limitation, of the foregoing, the Parties, intending to contractually shorten any otherwise applicable statute of limitations, hereby agree that: (i) the representations and warranties herein are intended solely to facilitate disclosure and to give effect to the closing conditions set forth in Article IX and Article X, (ii) the Pre-Closing Covenants are intended solely to serve as the closing conditions set forth in Article IX and Article X and (iii) no claim of any kind based on the failure of any representation or warranty to have been true and correct, or based on the failure of any Pre-Closing Covenant to have been performed or complied with, may be brought at any time after the Closing. All covenants and agreements contained herein that by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall survive the Closing in accordance with their terms.

Section 12.14 Publicity. Neither Party nor any of their respective representatives may make any press release or other public disclosure regarding the existence of this Agreement or the other Transaction Documents, its or their contents, or the transactions contemplated by this Agreement or the other Transaction Documents without the written consent of the other Party, in any case, as to the form, content, and timing and manner of distribution or publication of such press release or other public disclosure (which consent may not be unreasonably withheld, conditioned, or delayed). Each Party shall hold confidential the terms and provisions of this Agreement and the other Transaction Documents and the terms of the transactions contemplated by this Agreement and the other Transaction Documents. Notwithstanding the foregoing, nothing in this Section 12.14 will prevent either Party or its representatives from making any press release or other disclosure required by Law (including in connection with the Bankruptcy Case or Sale Motion) or the rules of any stock exchange, in which case the Party required to make such press release or other disclosure shall use commercially reasonable efforts to allow the other Party reasonable time to review and comment on such release or disclosure in advance of its issuance.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

[BUYER]

By: _____
Name:
Title:

[Signature Page to Intellectual Property Asset Purchase Agreement]

CHARMING CHARLIE LLC

By: _____
Name:
Title:

[Signature Page to Intellectual Property Asset Purchase Agreement]

EXHIBIT A

Escrow Agreement

EXHIBIT B

Sale Order