

EXHIBIT "A" TO MOTION TO  
APPROVE SALE

## **ASSET PURCHASE AGREEMENT**

by and between

**MCMAGIC PARTNERS LP, OR ASSIGNS, as Buyer,**

and

**Richard J. Samson, in his capacity as Chapter 7 trustee of Vann's Inc., (which includes Vanns.com, Inc., Bigskycountry.com, LLC, and ON, LLC.Vann's Inc.), as Seller**

**October 29, 2012**

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2012, by and between MCMAGIC PARTNERS, LP, a Texas Limited Partnership, or its assign(s) (the "Buyer"), and Vann's Inc.<sup>1</sup>, a Montana corporation (the "Company") and Richard J. Samson, in his capacity as Chapter 7 Trustee of the Company ("Samson"; and together with the Company, the "Seller").

In consideration of the mutual covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE I**

#### **DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions. Unless otherwise defined herein, terms used herein shall have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference.

1.2 Rules of Construction. Unless the context otherwise clearly indicates, in this Agreement:

- (a) the singular includes the plural;
- (b) "includes" and "including" are not limiting;
- (c) "may not" is prohibitive and not permissive; and
- (d) "or" is not exclusive.

### **ARTICLE II**

#### **PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES**

2.1 Purchase and Sale of Assets.

(a) Subject to the terms and conditions set forth in this Agreement, for the consideration specified in Section 3.1, at the Closing, Acquisition of Assets, Buyer will purchase from Seller, except for the Excluded Assets (defined below), free and clear of all Liens, Claims and other interests and encumbrances (other than Permitted Liens), all of the tangible and intangible assets of the Company (collectively, the "Acquired Assets"), without exception and including, but not limited to:

- (i) all Inventory;
- (ii) all owned office supplies, production supplies, spare parts, other miscellaneous supplies, and other tangible property of any kind wherever located, including all

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<sup>1</sup> On July 24, 2012 ON LLC, BigSkyCountry.Com, Inc., and Vanns.com, Inc., all merged with Vann's Inc.

property of any kind located in any building, office or other space leased, owned or occupied by Seller or in any warehouse where any of Seller's properties and assets may be situated;

(iii) the right to receive and retain mail, notes and credit card receivables payments and other communications related to transactions Post Closing;

(iv) the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(v) all Books and Records;

(vi) all advertising, marketing and promotional materials;

(vii) all goodwill as a going concern and all other intangible properties;

(viii) all telephone numbers;

(ix) all of Seller's rights existing under the Assigned Leases and Contracts (for the avoidance of doubt, a list of such Assigned Leases and Contracts is set forth in Schedule 2.1(a)(ix)), as determined by Buyer, to the extent that such Assigned Leases and Contracts (A) have been entered into after the petition for the Chapter 11 Case, (B) have been assumed prior to the date of this Agreement pursuant to an Order of the Bankruptcy Court or (C) are assumed and assigned by Seller pursuant to Section 2.1(b) or Section 2.7.

(x) all Intellectual Property related to Vann's (including the Vann's tradename, Vann's.com URL, Big Sky Country (BSC).com URL and related intellectual property), along with all goodwill associated therewith and the business symbolized thereby, and any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property in Seller's possession or control;

(xi) all owned machinery, equipment (including all transportation and office equipment), vehicles and accessories, fixtures, trade fixtures, computer and information technology equipment and related data, telephone systems and furniture owned by Seller wherever located, including all such items which are located in any Facility;

(xii) all security deposits relating to Assigned Leases and Contracts; and,

(xiii) all stock, membership interests, partnership interests, and other securities or equity interests in incorporated or unincorporated businesses, excluding Vann's Homes, LLC.

(b) Notwithstanding anything in this Agreement to the contrary, but without limiting the Buyer's right to supplement Schedule 2.1(a)(ix) pursuant to Section 2.7, (i) Buyer may revise Schedule 2.1(a)(ix) to eliminate from or add to Schedule 2.1(a)(ix) any Contract or Lease and exclude from or include in, as applicable, the definition of Assigned Leases and Contracts by providing written notice to Seller up to three (3) business days prior to the Sale Hearing and (ii) in the case of any such revision, Seller shall give notice to the other parties to any such Lease or Contract within twenty-four hours of such addition or elimination, and Seller

shall use all reasonable efforts to obtain any necessary Bankruptcy Court approval for the assumption and assignment to Buyer of any such additional Assigned Lease or Contract.

## 2.2 Assumption of Liabilities.

(a) Subject to the terms and conditions set forth in this Agreement, including Section 2.4 hereto, Buyer shall only assume from Seller and thereafter be responsible for the payment, performance or discharge of the Liabilities and obligations of Seller under the Assigned Leases and Contracts to the extent such Liabilities and obligations are (i) applicable to and accrue with respect to periods subsequent to the Closing Date and (ii) accompanied by a correlated duty of performance or payment on the part of the other parties thereto (the "Assumed Obligations").

(b) Notwithstanding the foregoing provisions of Section 2.2(a), Buyer may, in its sole discretion, elect to assume all or any portion of the Post-Petition Accounts Payable or Post-Petition Employee Compensation by providing written notice to Seller at any time prior to the Closing, and any Post-Petition Accounts Payable or Post-Petition Employee Compensation that are so assumed shall become Assumed Obligations hereunder (such assumed portions of the Post-Petition Accounts Payable and Post-Petition Employee Compensation, collectively the "Assumed Post-Petition Obligations"). For the avoidance of doubt, (i) if Buyer does not elect to assume any of the Post-Petition Accounts Payable or the Post-Petition Employee Compensation by providing such notice to Seller, all Post-Petition Accounts Payable and Post-Petition Employee Compensation shall be Excluded Liabilities hereunder and shall be retained by Seller, and (ii) if Buyer elects to assume only a portion of the Post-Petition Accounts Payable or Post-Petition Employee Compensation, only the portions so assumed shall be Assumed Post-Petition Obligations and all other amounts of Post-Petition Accounts Payable or Post-Petition Employee Compensation shall be Excluded Liabilities and shall be retained by Seller.

(c) Section 2.2(a) shall not limit any claims or defenses Buyer may have against any party other than Seller. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any Third Party against Buyer or Seller.

2.3 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of Seller shall be retained by Seller and are not being sold or assigned to Buyer hereunder (all of the following are referred to collectively as the "Excluded Assets"):

(a) any and all rights of Seller under this Agreement;

(b) all Contracts and Leases other than the Assigned Leases and Contracts listed on Schedule 2.1(a)(ix) (taking into account any revisions to Schedule 2.1(a)(ix) made by Buyer pursuant to Section 2.1(b) and Section 2.7); and

(c) any asset set forth on Schedule 2.3(c), including without limitation:

(i) all billed and unbilled accounts, notes and credit card or internet Paypal receivables (whether current or noncurrent) and all causes of action specifically pertaining to the collection of the foregoing arising prior to Closing;

(ii) all credit protections generated prior to Closing;

(iii) all promotional allowances and vendor rebates and similar items issued prior to Closing;

(iv) all security and other deposits and advances and prepaid assets and other current assets, including any Tax receivables and Tax refunds that are related to activity that occurred prior to Closing;

(v) all claims, including Claims, deposits, prepayments, warranties, guarantees, refunds, reimbursements, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) that are related to activity that occurred prior to Closing, other than to the extent such claims relate to customer disputes, customer complaints and merchandise returns;

(vi) all of Seller's rights to be indemnified, except to the extent an indemnification right pertains to an Acquired Asset;

(vii) all rights to proceeds under insurance policies related to claims arising prior to Closing;

(viii) all cash (including checking account balances, certificates of deposit and other time deposits);

(ix) all Avoidance Actions pursuant to Chapter 5, Title 11, U.S.C.;

(x) all Owned Real Property; and

(xii) all of Seller's rights to recover any of the Acquired Assets from third parties.

2.4 No Other Liabilities Assumed. Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Buyer will not assume, or in any way be liable or responsible for, any Liability of Seller (including Liabilities relating to the pre-petition or post-petition operation of the Business, the Excluded Assets or to the Acquired Assets (and the use thereof) or any outstanding checks), whether relating to or arising out of the Business, the Excluded Assets or the Acquired Assets or otherwise, other than the Assumed Obligations. In furtherance and not in limitation of the foregoing, except as specifically set forth in Section 2.2, Buyer shall not assume, and shall not be deemed to have assumed, any Liability of any kind or nature whatsoever of Seller resulting from, arising out of, relating to, in the nature of, or caused by (a) Indebtedness (other than the Assigned Leases and Contracts), (b) Taxes or escheat obligations of any kind or nature, (d) any Claim arising out of facts, events, circumstances, actions or inactions occurring on or prior to the Closing, (e) any employee benefit plan, (f) any Environmental Liabilities, (g) any employees of Seller who are not Rehired Employees, any former employees or any retirees of Seller, or any dependents or beneficiaries thereof, (h) any breach of contract, breach of warranty, tort, infringement or other violation of the rights of another Person (including any Intellectual Property rights) or any lawsuits or violations of Law, (i) any other obligation of Seller or any predecessor of Seller whatsoever other than the Assumed Obligations, (j) any Liability or obligation with respect to gift cards, gift certificates or the like, (k) any Liability of Seller arising under the WARN Act (whether prior to or after Closing), if any, including any such Liabilities arising out of or resulting in connection with the Closing and/or the consummation of the transactions contemplated by this Agreement, or (l) any Post-

Petition Accounts Payable or Post-Petition Employee Compensation (unless expressly assumed by Buyer pursuant to Section 2.2(b) (collectively, any such obligations, the "Excluded Liabilities").

2.5 Deemed Consents. Seller shall request that by providing notice of its intent to assume and assign any Contract or Lease, that the Bankruptcy Court deem the non-debtor party to such Contract or Lease to have consented to the sale if, and to the extent that, pursuant to the Sale or other Order of the Bankruptcy Court, Seller is authorized to assume and assign to Buyer and Buyer is authorized to accept such Assigned Leases and Contracts pursuant to section 365 of the Bankruptcy Code.

2.6 Obligations in Respect of Assigned Leases and Contracts. To the extent that any Assigned Lease or Contract is subject to a cure pursuant to section 365 of the Bankruptcy Code, which relates to any time period on or before October 31, 2012, Seller shall be responsible for such cure and pay any amounts related to such cure obligations (the "Seller Cure Costs"). To the extent that any Assigned Lease or Contract is subject to a cure pursuant to section 365 of the Bankruptcy Code, which relates to any time period on or after November 1, 2012, Buyer shall be responsible for such cure and pay any amounts related to such cure obligations (the "Buyer Cure Costs").

2.7 Post-Closing Assignment of Leases or Contracts. With respect to any Lease or Contract which is not set forth on Schedule 2.1(a)(ix) and provided such Lease or Contract has not been rejected by Seller pursuant to section 365 of the Bankruptcy Code, upon written notice(s) from Buyer, as soon as practicable, Seller shall take all actions reasonably necessary to assume and assign to Buyer pursuant to section 365 of the Bankruptcy Code any Lease or Contract(s) set forth in Buyer's notice(s), and any applicable cure and other costs incurred subsequent to the Closing Date shall be borne by Buyer. The covenant set forth in this Section 2.7 shall survive the Closing. Notwithstanding anything in this Agreement to the contrary, on the date any Lease or Contract is assumed and assigned to Buyer pursuant to this Section 2.7, such Contract shall be deemed an Assigned Lease or Contract and deemed scheduled on Schedule 2.1(a)(ix) under the appropriate heading for all purposes under this Agreement. Seller agrees to provide not less than 20 business days' notice to the Buyer of Seller's intent to reject any such Lease or Contract.

### ARTICLE III

#### BASIC TRANSACTION

##### 3.1 Payment of Purchase Price.

(a) In consideration of the sale, transfer, conveyance and assignment of the Acquired Assets to Buyer at the Closing and the assumption and assignment to Buyer of the Assigned Leases and Contracts, Buyer shall pay the following purchase price, \$4,500,000.00, as follows:

- (i) \$375,000.00 upon execution of this Agreement (the "Earnest Money Deposit"); and
- (ii) Balance of Purchase Price at Closing.

(b) Payments shall be made by wire transfer to an account established by Seller at First Interstate Bank.

(c) Buyer and Seller agree that Buyer shall be entitled to a purchase price adjustment which shall be calculated by identifying the total cost of the inventory being purchased as of October 20, 2012 and subtracting the cost of the inventory as of the date of Closing and multiplying the difference by .82 (82%). Said amount shall be deducted from the Purchase Price.

3.2 Further Assurances. From time to time after the Closing and without further consideration, (a) upon the request of Buyer, Seller shall execute and deliver such documents and instruments of conveyance and transfer as Buyer may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Buyer title to the Acquired Assets transferred hereunder, or to otherwise more fully consummate the transactions contemplated by this Agreement, and (b) Buyer, upon the request of Seller, shall execute and deliver such documents and instruments of contract or lease assumption as Seller may reasonably request in order to confirm Buyer's Liability for the Assumed Obligations or otherwise to more fully consummate the transactions contemplated by this Agreement.

#### ARTICLE IV

#### REPRESENTATIONS AND WARRANTIES OF SELLER

4.1 Seller's Representations and Warranties. To the best of the Seller's Knowledge, no statement by the Seller contained in this Agreement, the Company Inventory List dated as of October 19, 2012, a copy of which is attached as Exhibit B, the Asset List attached as Exhibit C or the Closing Documents, and no statement in the Disclosure Schedule, contain any untrue statement of a material fact or omits to state a material fact necessary to make the statements herein or therein not misleading. Seller represents and warrants to Buyer to the best of Seller's Knowledge that the statements contained in this Article IV are correct and complete as of the Closing Date, except as expressly set forth in the schedules relating to this Article IV (the "Disclosure Schedules"). The information disclosed in any numbered part of the Disclosure Schedule shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered section in this Agreement and shall not be deemed to relate to or to qualify any other representation or warranty unless the applicability of such disclosure to such other representation or warranty is reasonably apparent on its face. The mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself).

4.2 Validity of Agreement. Subject to any necessary authorization from the Bankruptcy Court, Seller has full power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. All Transaction Documents to which Seller is a party have been duly executed and delivered by Seller, except such Transaction Documents as are required by the terms hereof to be executed and delivered by Seller after the date hereof, in which case such Transaction Documents will be duly executed and delivered by Seller at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents constitute, or will

constitute, as the case may be, the valid and binding agreements of Seller, enforceable against Seller in accordance with their terms.

4.3 Organization, Standing and Power. To the best of Seller's Knowledge and information, the Company is duly organized, validly existing and in good standing under the Laws of the State of Montana and is qualified to do business in every jurisdiction in which it is required to be qualified. To the best of Seller's Knowledge and information, subject to any necessary authorization from the Bankruptcy Court, Seller has all requisite corporate power and authority to own, lease and operate its properties, to carry on the Business as now being conducted, to execute and deliver the Transaction Documents, subject to Bankruptcy Court authorization and to perform its obligations thereunder, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time, and to general equitable principles.

4.4 No Conflicts. Subject to the approval of the Bankruptcy Court, including pursuant to the entry of an Order approving the sale, none of the execution, delivery or performance of this Agreement and the Transaction Documents by Seller will (a) result in the creation or imposition of any Lien upon any of the properties or assets of Seller or (b) result in a violation or breach of any term or provision of any Law or Order applicable to Seller, other than such violations or breaches which would not materially and adversely affect the validity or enforceability of this Agreement or the Transaction Documents.

4.5 No Consents. No consent, approval or action of, filing with or notice to any Governmental Authority is required to be obtained by Seller in connection with the execution, delivery and performance of this Agreement or any of the Transaction Documents, or the consummation of the transactions contemplated hereby or thereby, except (a) for consents, approvals or actions of and filings with or notice to the Bankruptcy Court and (b) where the failure to obtain any such consent, approval or action, to make any such filing or to give any such notice would not materially and adversely affect the ability of Seller to consummate the transactions contemplated by this Agreement or any of the Transaction Documents or to perform its obligations hereunder or thereunder or have a Material Adverse Effect on the condition of the Business.

4.6 Legal Proceedings. Except as set forth on Schedule 4.6 and except for Claims that will not attach to the Acquired Assets, by virtue of entry of the Sale Order:

(a) To the best of Seller's Knowledge and information, other than the Chapter 11 Case, there are no Proceedings pending or, to the Knowledge of Seller, threatened against, relating to, or affecting Seller with respect to the Business or any of the Acquired Assets which would (i) result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Transaction Documents, or (ii) have a Material Adverse Effect on the Business.

4.7 Title to Property. To the best of Seller's Knowledge and information, subject to receipt of the approval of the Bankruptcy Court pursuant to the Sale Order, Seller has, or at the Closing will have, the right to deliver to Buyer good and marketable title to, or a valid leasehold interest in, all of the Acquired Assets free and clear of all Liens, Claims and other interests and encumbrances (other than Permitted Liens).

4.8 Brokers. To the best of Seller's Knowledge and information, except as set forth on Schedule 4.8, Seller has not incurred any Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby.

4.9 Intellectual Property. (a) Seller owns and possesses all right, title and interest in and to (or has the right to use pursuant to a license or other permission) the Intellectual Property; (b) Seller has no obligation to compensate any Person for the right to use any of the Intellectual Property (except, in the case of Intellectual Property that is licensed, for obligations pursuant to the applicable license agreement); (c) Seller has not granted to any Person any license, option or other similar rights in or to any of the Intellectual Property; (d) Seller has not received any written notice from any Person that challenges the validity or enforceability of any of the Intellectual Property; (e) Seller has not received any notice from any Person challenging Seller's ownership of, or right to use, any of the Intellectual Property; and (f) to the Knowledge of Seller, no Person is infringing upon or has misappropriated any of the Intellectual Property.

4.10 Limitations. Except as expressly provided herein, in any other Transaction Document or in the Sale Order approving this Agreement, the Buyer agrees and acknowledges that all transfers of the Acquired Assets are "as is" and "where is", and acknowledges and agrees that Seller makes no representation of any kind whatsoever with respect to the Acquired Assets or otherwise, express or implied, including but not limited to any representation or warranty regarding the title or condition of the Acquired Assets, or the fitness, desirability, or the merchantability thereof or suitability thereof for any particular purpose, the current or future tax liability, assessment or valuation of any of the Acquired Assets, the compliance of any of the Acquired Assets in their current or future state with applicable laws or the actual projected income or operating expense of the business or Acquired Assets. The Buyer further acknowledges and represents that it has reviewed and inspected the Acquired Assets, has had the opportunity to inspect the books and records of Seller and the public filing records, and enters into this Agreement after independent investigation of the facts and circumstances relating to the Acquired Assets, the operations of the business and the transactions described herein.

4.11 Leases and Contracts. Seller has made available to Buyer a correct and complete copy of each Assigned Lease and Contract on Schedule 2.1(a)(ix). In addition, if any additional Leases or Contracts, that are not included on Schedule 2.1(a)(ix), are determined after the date hereof to constitute executory contracts or unexpired leases, Buyer shall have the right, in its sole discretion, to add such Leases or Contracts to Schedule 2.1(a)(ix).

4.12 Location of Personal Property. All Acquired Assets are located at the Facilities.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

5.1 Organization. Buyer is validly existing and in good standing under the Laws of the Jurisdiction in which it was formed and has the full power and authority to execute, deliver and perform this Agreement and to consummate all transactions contemplated hereby.

5.2 Authority. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Buyer and do not and will not violate any provisions of its organizational documents, any applicable Law or any agreement or instrument by which it is bound or Order binding upon it. This Agreement constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

5.3 No Conflicts or Violations. The execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by Buyer do not and shall not (a) conflict with or result in any breach of any of the terms, conditions or provisions of, (b) constitute a default under, (c) result in a violation of, (d) give any Third Party the right to modify, terminate or accelerate any obligation under, or (e) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or other Governmental Authority, under any agreement or instrument to which Buyer is bound or affected, or any Law to which Buyer is subject or any Order to which Buyer is subject.

5.4 Brokers. Buyer has incurred no Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby.

5.5 Investigation. The Buyer has or will make its own investigation concerning the physical condition of the Acquired Assets and the business, the condition of title or any other matter pertaining to the Acquired Assets; and, other than the specific representations made by Seller pursuant to this Agreement, and any other Transaction Document, the Buyer is not relying on any representations, warranties or inducements of Seller (or any agent of Seller) with respect to the physical condition of the Acquired Assets, the condition of title to the Acquired Assets or any other matter pertaining to the Acquired Assets or related business.

5.6 No Other Representations or Warranties. Except for the representations and warranties and covenants contained in this Agreement, Buyer does not make any other express or implied representation or warranty with respect to the transactions contemplated hereby, and Buyer disclaims any other representations or warranties, whether made by it or any of its Affiliates, officers, directors, employees, agents or representatives.

## ARTICLE VI

### COVENANTS OF SELLER; OTHER AGREEMENTS

#### 6.1 Consents and Approvals.

(a) Seller and the Buyer shall use commercially reasonable efforts (i) to obtain all necessary consents and approvals, as reasonably requested by Buyer, to consummate the purchase and sale of the Acquired Assets and the assumption and assignment of the Assigned Leases and Contracts, as well as assignment of the Assumed Obligations, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including obtaining the Sale Order, and approval of the Break-Up Fee provisions contemplated

hereby, (ii) to make, as reasonably requested by Buyer, all filings, applications, statements and reports to all authorities that are required to be made prior to the Closing Date by or on behalf of Seller or any of its Affiliates pursuant to any applicable Law in connection with this Agreement and the transactions contemplated hereby and (iii) to obtain, as requested by Buyer, all required consents and approvals (if any) necessary to assign and transfer Seller's Permits to Buyer at Closing and, to the extent that one or more of Seller's Permits are not transferable, to assist Buyer in obtaining replacements therefor. In the event that certain of Seller's Permits, or any Contract or other license or agreement necessary for the operation of the Business as presently conducted are not transferable or replacements therefor are not obtainable on or before the Closing, but such Permits, Contracts or other licenses or agreements are obtainable after the Closing, Seller shall continue to use such commercially reasonable efforts in cooperation with Buyer after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Permits, Contracts or other licenses or agreements after Closing and shall do all things necessary to give Buyer the benefits that would be obtained under such Permits, Contracts or other licenses or agreements, in each case at Seller's sole cost and expense.

(b) Each of the parties shall give any other notices to, make any other filings with, and use reasonable best efforts to obtain, any other authorizations, consents and approvals of any Governmental Authority in connection with the matters contemplated by this Agreement.

6.2 Access to Information and Facilities. Seller agrees that, prior to the Closing Date, Buyer and its representatives (including its accountants, advisors, consultants and legal counsel) shall, have access to the business operations of Seller during normal business hours and shall be entitled to make such reasonable investigation of the properties, businesses and operations of Seller (including any investigations or to conduct a physical inventory of the Inventory) and such examination of the Books and Records and financial condition of Seller as it reasonably requests and to make extracts and copies to the extent necessary of the Books and Records.

6.3 Conduct of the Business Pending the Closing. Except as otherwise expressly contemplated by this Agreement or as agreed to in writing by Buyer, from the date hereof until the Closing Date, Seller shall: (a) conduct the Business in the Ordinary Course of Business; (b) use commercially reasonable efforts to preserve intact the Business, to keep available the services of its current employees and agents and to maintain its relations and goodwill with its suppliers, customers, distributors and any others with whom or with which it has business relations; (c) maintain and operate the Acquired Assets in the Ordinary Course of Business and repair and continue normal maintenance, normal wear and tear excepted; (d) continue to operate the Business in compliance with all Laws applicable to Seller or the Business; (e) continue to (i) conduct the Business, (ii) operate the billing and collection policies and procedures with respect to the Business, (iii) maintain the books and records of the Business in the Ordinary Course of Business and (iv) maintain the employees of Seller unless Buyer consents in writing to termination of any employee by Seller; (f) promptly advise Buyer in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect; (g) not sell, lease transfer, mortgage, encumber, alienate, dispose of the Acquired Assets or create any Lien on any of the Acquired Assets; (h) not institute new methods of accounting that will vary materially from the methods used by Seller as of the date of this Agreement except as may be required by GAAP; (i) not enter into any Contract or purchase order not in the Ordinary Course of Business; (j) not sell Inventory (A) other than in the Ordinary Course of Business, (B) at a

discount other than discounts consistent with past practice, or (C) in bulk; and (k) not take any action inconsistent with this Agreement or with the consummation of the Closing; and (l) maintain casualty and general liability insurance with respect to the Acquired Assets in amounts not less than the amounts of the insurance coverage on the Acquired Assets on the date hereof.

#### 6.4 Notification of Certain Matters.

(a) Seller shall give notice to Buyer, within twenty-four (24) hours of Seller's Knowledge of the occurrence of the event giving rise to a notice obligation pursuant to this Section 6.4(a), of (i) the occurrence or nonoccurrence of any event that causes or would be likely to cause, directly or indirectly, any Material Adverse Effect on Seller, or (ii) any failure of Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 6.4(a) shall not (x) be deemed to amend or supplement any of the Disclosure Schedules, (y) be deemed to cure any breach of any representation, warranty covenant or agreement or to satisfy any condition or (z) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) Seller shall provide notice to Buyer and its counsel of all matters that are required to be served on Seller's creditors pursuant to the Bankruptcy Code and Rules.

6.5 Further Assurances. Buyer and Seller shall each execute all documents and take all actions as may be reasonably required to carry out the provisions of this Agreement and the transactions contemplated hereby. Buyer and Seller shall each use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Article VII and Article VIII, respectively, of this Agreement.

#### 6.6 Bankruptcy Actions.

(a) Seller shall file with the Bankruptcy Court a motion, in form and substance satisfactory to the Buyer, seeking to approve the transaction contemplated herein (the "Sale Motion"), which motion shall seek the Bankruptcy Court's approval of this Agreement, Seller's performance under this Agreement and the assumption and the assignment of the Assigned Leases and Contracts (and to the extent contested by a Contract counterparty, Buyer's providing evidence thereof), pursuant to section 365 of the Bankruptcy Code. Buyer shall take such actions as are reasonably requested by Seller to assist Seller in obtaining a finding by the Bankruptcy Court that the Buyer is deemed to have purchased the Acquired Assets in good faith pursuant to section 363(m) of the Bankruptcy Code and that it has the necessary qualifications to show adequate assurance of future performance with respect to the Assigned Leases and Contracts as required by section 365 of the Bankruptcy Code.

(b) A list of the Assigned Leases and Contracts (as set forth on Schedule 2.1(a)(ix)) shall be filed as an exhibit to the Sale Motion if required by the Bankruptcy Court and otherwise shall be described in sufficient detail to provide adequate notice to the non-debtor party to such contracts. Upon revision of Schedule 2.1(a)(ix) by Buyer pursuant to Section 2.1(b), Seller shall add any Assigned Leases and Contracts to the exhibit or remove Assigned Leases and Contracts from the exhibit, as applicable. Such exhibit shall set forth the amounts necessary to cure defaults under each of such Assigned Lease or Contract as determined

by Seller based on the Books and Records. In cases in which Seller is unable to establish that a default exists, the relevant cure amount shall be set at \$0.00.

(d) Prior to the hearing on the Sale Motion, Seller will provide Buyer with a reasonable opportunity to review and comment upon the proposed form of the Sale Order, which shall be in form and substance satisfactory to Buyer.

#### 6.7 Exclusivity; Solicitation.

(a) Buyer and Seller acknowledge that under the Bankruptcy Code the sale of Acquired Assets is subject to approval of the Bankruptcy Court. Buyer and Seller acknowledge that to obtain such approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest or best price possible for the Acquired Assets, including giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Acquired Assets as may be requested by interested parties and if presented, entertaining higher or better offers.

(b) Seller represents that this Agreement reflects the only transaction which would result in the ongoing operation of the Company in some form by a third party purchaser and no other Alternative Transaction is contemplated except as disclosed herein including:

(i) Buyer acknowledges and agrees that as a contingency plan and in the interim, commencing on October 29, 2012 and through November 1, 2012 at 5:00 p.m., Mountain Standard time, Seller will engage a liquidator and seek the approval of the Bankruptcy Court for Seller's retention thereof, so that in the event Buyer terminates this Agreement on or before November 1, 2012, at 5:00 p.m., Mountain Standard time, or otherwise fails to be prepared to obtain the approval of the Bankruptcy Court for this Agreement at a hearing to be scheduled on November 2, 2012, Seller may be in a position at the time of the hearing before the Court to obtain the Court's approval for the liquidation of the Debtor's assets and immediately commence a liquidation sale.

6.8 Confidentiality; Non-Disclosure. Seller acknowledges and agrees that any materials developed by Buyer or any of its representatives (including its accountants, advisors, environmental, labor, employee benefits and any other consultants, lenders and legal counsel) are the property of Buyer and are confidential, shall be maintained as confidential by Seller and shall not be disclosed to any other Person. In the event Seller is required to disclose any such confidential information by Law or regulation as advised by counsel, or as may be necessary or appropriate in connection with the Chapter 11 Case, Seller shall promptly notify Buyer in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and shall cooperate with Buyer to obtain a protection order and otherwise preserve the confidentiality of such information consistent with applicable Law. Information subject to the confidentiality obligations in this Section 6.8 does not include any information which (x) at the time of disclosure is generally available to or known by the public (other than as a result of its disclosure in breach of this Agreement) or (y) becomes available on a non-confidential basis from a Person who is not bound by a confidentiality agreement with the Buyer or its Affiliates or who is not otherwise prohibited from transmitting the information

6.9 Excluded Assets and Liabilities. Any damages and/or expenses incurred by the Buyer arising out of the Excluded Assets and Excluded Liabilities shall be an administrative expense priority obligation against Company's bankruptcy estate, pursuant to section 507(a)(2) of the Bankruptcy Code.

6.10 Taxes.

(a) On or prior to the Closing (or after the Closing when due and payable, to the extent such Taxes are due and payable after the Closing), Seller shall pay all sales taxes, use taxes, payroll taxes, and Taxes which will be owed by Seller and attributable to periods prior to the Closing, except as otherwise agreed in writing by Seller and Buyer or any other purchaser.

(b) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges due and which may be payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Obligations under this Agreement or the transactions contemplated herein shall be borne and timely paid by Seller, and Seller shall prepare and timely file all Tax Returns required to be filed in connection with such payments, except as otherwise agreed in writing by Seller and Buyer or any other purchaser.

6.11 Payments. Notwithstanding any indemnification provision herein by Seller, Seller will be permitted to make payments in the Ordinary Course of Business or as authorized by the Bankruptcy Court and the Buyer will have no right of recourse against such payments.

## ARTICLE VII

### CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are, at the sole option and discretion of Buyer, subject to satisfaction of the following conditions precedent on or before the Closing Date or as otherwise described below.

7.1 Warranties True as of Both Present Date and Closing Date; Covenants.

(a) All of the representations and warranties of Seller shall be true and correct in all material respects on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date) with the same force and effect as though made on and as of the Closing Date.

(b) Seller shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date.

(c) Buyer has completed all of its due diligence, except as it relates to confirmation of the inventory and asset lists attached as Exhibits B and C, respectively, and the assumption of the Leases for the Bozeman store, the Missoula Lolo distribution center, the Missoula store, the Kalispell store and the Hamilton store, and shall continue to negotiate in good faith with the Landlords to resolve those issues including a reduction in term and price. Buyer shall have completed all of its due diligence on or before 5:00 p.m. Mountain Time on November 1, 2012 and this condition shall be deemed to have been satisfied unless Buyer

terminates said Agreement consistent with Section 10.1(i) by 5:00 p.m. Mountain Time on November 1, 2012. Nothing herein shall be construed as limiting Buyer's ability to include additional Contracts and Leases on Schedule 2.1(a)(ix) under section 2.7.

**7.2 Bankruptcy Conditions.**

(a) [Reserved]

(b) The Sale Order shall have been entered, and the Sale Order shall, among other things, approve and authorize the assumption and assignment of the Assigned Leases and Contracts and the Assigned Leases and Contracts shall have been actually assumed and assigned to Buyer such that the Assigned Leases and Contracts will be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Buyer, among other things, defaults, breaches or claims (including, without limitation, cure claims under section 365 of the Bankruptcy Code, except as otherwise specifically provided in the Sale Order) existing as of the Closing or by reason of the Closing.

(c) [Reserved]

(d) Notwithstanding Sections 7.2(a) and 9.1, nothing in this Agreement shall preclude Buyer or Seller from consummating the transactions contemplated herein if Buyer, in its sole discretion, waives the requirement that the Sale Order or any other Order shall have become Final Orders. No notice of such waiver of this or any other condition to Closing need be given except to Buyer, any official committee appointed in the Chapter 11 Case, and the United States Trustee, it being the intention of the parties hereto that Buyer shall be entitled to, and is not waiving, the protection of section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of Law if the Closing occurs in the absence of Final Orders.

**7.3 Material Adverse Change.** There shall not have occurred a Material Adverse Change since the date of this Agreement.

**7.4 Litigation.** No Order shall have been entered that restrains or prohibits the consummation of the transactions contemplated by this Agreement.

**7.5 Approvals.** All authorizations, consents, filings and approvals necessary to permit Seller to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Buyer, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods (and any extension thereof) imposed by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

**ARTICLE VIII**

**CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER**

The obligations of Seller under this Agreement are, at the option of Seller, subject to the satisfaction of the following conditions precedent on or before the Closing Date.

**8.1 Warranties True as of Both Present Date and Closing Date.** The representations and warranties of Buyer contained herein shall be true and correct in all material respects on and as

of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects) with the same force and effect as though made by Buyer on and as of the Closing Date, except those qualified by materiality shall be true and correct in all respects. Buyer shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date.

8.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order.

## ARTICLE IX CLOSING

9.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement and further conditioned upon obtaining approval from the Bankruptcy Court for the approval of a sale to the Buyer, the closing of the transaction contemplated by this Agreement (the "Closing") will take place at the offices of Christian, Samson & Jones, PLLC, 310 W. Spruce, Missoula, MT 59802, on or before 2:00 p.m., Mountain Standard time on Monday, November 5, 2012 (the "Closing Date").

9.2 Deliveries by Seller. At the Closing, Seller shall deliver or procure delivery to Buyer of:

(a) one or more bills of sale, in form and substance reasonably satisfactory to Buyer, conveying in the aggregate all of the owned personal property of Seller included in the Acquired Assets, duly executed by Seller;

(b) one or more assignments of the Assigned Leases and Contracts and assumptions of the Assumed Obligations, in form and substance reasonably satisfactory to Buyer (collectively, the "Assignment and Assumption"), duly executed by Seller;

(c) duly executed Intellectual Property Assignments, in form and substance reasonably satisfactory to Buyer, each in recordable form to the extent necessary to duly assign such rights to Buyer;

(d) certificates of title and title transfer documents to all titled motor vehicles;

(e) an assignment and assumption agreement with respect to Seller's Permits and warranties in form and substance reasonably acceptable to Buyer, whereby Seller shall assign to Buyer all of their respective rights in and to any Permits and warranties relating (directly or indirectly) to the Acquired Assets or the Business, to the extent such Permits and warranties are assignable;

(f) all the Books and Records, and any data related to the Business;

(g) such other instruments, in form and substance, reasonably satisfactory to Buyer, as are necessary to vest in Buyer good and marketable title in and to the Acquired Assets in accordance with the provisions hereof;

(h) such documentation as may be necessary to change the authorized signatories on any bank accounts to be transferred hereby or powers of attorney relating (directly or indirectly) to the Acquired Assets or the Business; and

(i) a certified copy of the Sale Order and the Conversion Order; and

(j) an affidavit, as provided in Section 1445(b)(2) of the Code, stating under penalties of perjury that Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code.

9.3 Deliveries by Buyer. At the Closing, Buyer will deliver to Seller the Assignment and Assumption duly executed by Buyer.

9.4 Form of Instruments. To the extent that a form of any document to be delivered hereunder is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Buyer and Seller.

## ARTICLE X

### TERMINATION; TERMINATION PAYMENT

10.1 Termination. This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written agreement of Buyer and Seller;

(b) by either Buyer or Seller if there shall be in effect a Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(c) by either Buyer or Seller (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants or obligations set forth in this Agreement on the part of Seller, on the one hand, or the Buyer on the other hand, which breach would give rise to the failure of the conditions set forth in Section 7.1 or 8.1, as applicable, and such breach is not cured within two days following written notice to the party committing such breach or which breach, by its nature, cannot be cured prior to the Closing;

(d) by Buyer or Seller (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if it shall have reasonably determined that a material condition set forth in Article IV, Article VII and Article VIII for the benefit of the terminating party has not been or cannot be fulfilled or satisfied prior to the Termination Date and has not been waived by the terminating party, provided that the terminating party shall not be responsible for the failure of such condition to be satisfied;

(e) by Buyer if Seller seeks or supports Bankruptcy Court approval of an Alternative Transaction, (other than to or by Buyer), except as specifically provided for herein;

(f) by Buyer or Seller if the Bankruptcy Court enters an order approving any Alternative Transaction (other than the sale of the Business and the Acquired Assets to Buyer);

(g) by Buyer on any day on or after November 7, 2012 (the "Termination Date") if the Closing shall not have been consummated by such date (or by such later date as shall be mutually agreed to by Buyer and Seller in writing), unless the Closing has not occurred due to a material failure of Buyer to perform or observe its covenants or obligations as set forth in this Agreement required to be performed or observed by it on or before the Closing Date;

(h) by Buyer if there is any "Event of Default" as defined under any material Assigned Lease or Contract that cannot be cured within a reasonable time prior to the Termination Date.

(i) by Buyer in connection with the completion of due diligence under section 7.1(c).

(j) In the event that Buyer terminates this Agreement for any reason other than those set forth in Sections 10.1(a)-(i), the Earnest Money Deposit shall be retained by Seller and distributed to Seller's secured creditors, First Interstate Bank and GE CDF.

#### 10.2 Break-Up Fee.

(a) If this Agreement has not been otherwise terminated and Seller consummates an Alternative Transaction involving a sale of the Acquired Assets outside the ordinary course of business to any party other than Buyer, Seller shall immediately pay (in cash) to Buyer the Break-Up Fee, which shall be a super-priority administrative expense claim senior to all other administrative expense claims against Seller under section 364(c)(1) of the Bankruptcy Code. This provision shall be null and void if Buyer terminates this Agreement for any reason.

(b) If this Agreement is terminated pursuant to Sections 10.1 (b), (c) (if terminated by Buyer), (d), (e), (g) or (h), Seller shall immediately pay to Buyer the portion of the Break-Up Fee that is allocable to reimbursement of actual reasonable costs and expenses, which shall be a super-priority administrative expense claim senior to all other administrative expense claims against Seller under section 364(c)(1) of the Bankruptcy Code.

(c) Each of the parties' obligations to make payments pursuant to this Section 10.2 shall survive termination of this Agreement, other than in an instance in which this Agreement is terminated as a result of the Bankruptcy Court's failure to approve the Sale Order (for reasons other than Seller's breach of an obligation under this Agreement).

10.3 Effect of Termination or Breach. If the transactions contemplated hereby are not approved by the Bankruptcy Court on or before November 2, 2012, or by such further date agreed to by Buyer and Seller (a) this Agreement shall become null and void and of no further force and effect, except for (i) this Section 10.3 and (ii) the provisions of Sections 6.8, 10.2, 12.1, 12.2, 12.4, 12.7, 12.8, 12.9, 12.10, 12.11, and 12.12 hereof, each of provisions set forth in (i) and (ii) above to survive the termination of this Agreement; (b) the receipt by the Buyer of the Earnest Money Deposit which shall be payable in accordance with Section 10.1(j) and the Break-Up Fee which shall be payable in accordance with Section 10.2, shall be the Buyer's sole and exclusive remedy (as liquidated damages) other than for claims based on actual fraud, and the Buyer shall not be entitled to any other damages, losses, or payment from Seller, and Seller shall have no further obligation of Liability of any kind to the Buyer or its Affiliates on account of this Agreement; and (c) if this Agreement is terminated for any reason other than the termination of

this Agreement by Seller pursuant to Section 10.1(c), Seller shall not be entitled to any damages, losses, or payment from Buyer, and Buyer shall have no further obligation or Liability of any kind to Seller or any of its Affiliates on account of this Agreement.

## ARTICLE XI

### ADDITIONAL POST-CLOSING COVENANTS

#### 11.1 Employees.

(a) Buyer shall offer employment immediately prior to the Closing (but contingent on the occurrence of the Closing) to such employees of Seller actively employed or engaged principally in the Business as of the Closing Date as determined by Buyer in its sole discretion (such employees who accept such offer of employment, the "Rehired Employees") on terms and conditions as determined by Buyer in its sole discretion.

(b) Nothing contained in this Agreement shall confer upon any employee of Seller prior to the Closing or Rehired Employee any right with respect to continuance of employment by Buyer or any of its Affiliates, nor shall anything herein interfere with the right of Buyer or any of its Affiliates to terminate the employment of any employee, including any Rehired Employee, at any time, with or without notice and for any or no reason, or restrict Buyer or any of its Affiliates in modifying any of the terms or conditions of employment of any employee, including any Rehired Employee, after the Closing.

(c) Buyer shall be responsible for Post-Petition Employee Compensation commencing with the Closing Date.

11.2 Joint Post-Closing Covenants of Buyer and Seller. Buyer and Seller jointly covenant and agree that, from and after the Closing Date, Buyer and Seller will each use commercially reasonable efforts to cooperate with each other in connection with any action, suit, proceeding, investigation or audit of the other relating to (a) the preparation of an audit of any Tax Return of Seller or Buyer for all periods prior to or including the Closing Date and (b) any audit of Buyer and/or any audit of Seller with respect to the sales, transfer and similar Taxes imposed by the Laws of any state or political subdivision thereof, relating to the transactions contemplated by this Agreement. In furtherance hereof, Buyer and Seller further covenant and agree to promptly respond to all reasonable inquiries related to such matters and to provide, to the extent reasonably possible, substantiation of transactions and to make available and furnish appropriate documents and personnel in connection therewith. All costs and expenses incurred in connection with this Section 11.2 referred to herein shall be borne by the party who is subject to such action.

11.3 Certain Consents. If a consent of a Third Party which is required in order to assign any Acquired Asset (or Claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the Closing Date, or if an attempted assignment would be ineffective or would adversely affect the ability of Seller to convey Seller's interest in question to Buyer, Seller will cooperate with Buyer and use commercially reasonable efforts in any lawful arrangement to provide that Buyer shall receive the interests of Seller in the benefits of such Acquired Asset. If any consent or waiver is not obtained before the Closing Date and the Closing is nevertheless

consummated, Seller agrees to continue to use commercially reasonable efforts to obtain all such consents as have not been obtained prior to such date.

11.4 Post-Closing Operation of Seller. Provided the Agreement is approved, from and after the Closing, Seller except as provided herein will cease using the Acquired Assets.

11.5 Return Items Customer Disputes Post Closing. The Parties anticipate that post Closing, Buyer may have to address customer disputes, customer complaints and merchandise returns involving transactions that occurred prior to, or Pre- Closing. To address those issues, Seller will escrow \$250,000.00 out of the sale proceeds at First Interstate Bank for 120 days and funds from the escrow will be paid to Buyer in the amounts that correspond to the resolution of any customer dispute, complaint or merchandise return. At expiration of the 120 days, any amounts remaining in the account shall be paid to First Interstate Bank.

## ARTICLE XII

### MISCELLANEOUS

12.1 Survival. The representations and warranties contained in this Agreement shall not survive the Closing. Each of the covenants and obligations of Buyer and Seller in this Agreement and in the other Transaction Documents shall survive in accordance with their respective terms.

12.2 Expenses. Except as provided in Section 7.2(c) or 10.2 hereof, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby. Notwithstanding the foregoing, in the event of any action or proceeding to interpret or enforce this Agreement, the prevailing party in such action or proceeding (i.e., the party who, in light of the issues contested or determined in the action or proceeding, was more successful) shall be entitled to have and recover from the non-prevailing party such costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing party may incur in the pursuit or defense thereof.

12.3 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by Seller and Buyer.

12.4 Notices. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) on the date of transmission if sent by telex, telecopy, or other wire transmission (with answer back confirmation of such transmission, and, if sent by email, provided that a copy of such notice, request or instruction or other document be sent by overnight delivery), (c) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

To Seller:                      Richard J. Samson  
    Chapter 7 Trustee  
    Christian, Samson & Jones, PLLC  
    310 W. Spruce Street,  
    Missoula, MT 59802

With a copy to: Husch Blackwell LLP  
Attn: Marshall Turner  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105

Crowley Fleck PLLP  
Attn: Benjamin P. Hursh  
305 S. Fourth St. East, Suite 100  
Missoula, MT 59801

To Buyer: MCMAGIC PARTNERS LP  
1 East Broward Blvd  
Wells Fargo Tower  
Suite 1605  
Ft Lauderdale, Florida 33301

With a copy to: Kristin C. Wigness  
Katten Muchin Rosenman LLP  
575 Madison Avenue  
New York, NY 10022-2585

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

12.5 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing by Seller in the case of a waiver by Seller, or Buyer, in the case of any waiver by Buyer, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

12.6 Counterparts and Execution. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

12.7 SUBMISSION TO JURISDICTION. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT.

12.8 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Montana without regards to any conflict of Law principles as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

12.9 Binding Nature; Assignment. Subject to approval of the Bankruptcy Court, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other party (which shall not be unreasonably withheld or delayed); except that (a) Buyer may assign any of its rights and obligations hereunder to any Affiliate or Subsidiary of Buyer (whether wholly owned or otherwise) or to its lenders and, following the Closing, in whole or in part to any successor-in-interest to any Person acquiring all or any portion of the Business or the Acquired Assets; (b) the rights and interests of Seller hereunder may be assigned to a trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code; and (c) as otherwise provided in this Agreement. Seller hereby agrees that Buyer may grant a security interest in its rights and interests hereunder to its lenders, and Seller will sign a consent with respect thereto if so requested by Buyer or its lenders (upon approval by the Bankruptcy Court as necessary), and that the terms of this Agreement shall be binding upon any subsequent trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code.

12.10 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and permitted assigns and any Persons named as an indemnitee herein, any rights, remedies, obligations, Claims, or causes of action under or by reason of this Agreement.

12.11 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

12.12 Public Announcements. Except as required by this Agreement, Law or in connection with the Chapter 11 Case, neither Seller nor Buyer shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld, delayed or conditioned; provided, however, that nothing contained herein shall prohibit Buyer from marketing and or advertising the Acquired Assets and operation thereof. Prior to making any public disclosure required by applicable Law, Seller shall give Buyer a copy of the proposed disclosure and reasonable opportunity to comment on the same and shall use its best efforts to include Buyer's comments in such public disclosure. For purposes of clarity, the reference to "applicable Law" in the preceding sentence does not include filings in the Chapter 11 Case.

12.13 Entire Understanding. This Agreement, the other Transaction Documents and the Schedules set forth the entire agreement and understanding of the parties hereto in respect to the

transactions contemplated hereby and the Agreement and the Schedules supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other Person any rights or remedies hereunder.

12.14 Closing Actions. All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

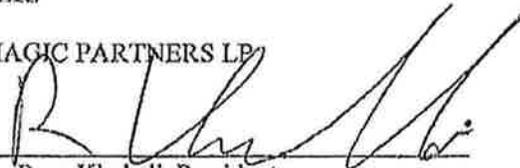
12.15 Conflict between Transaction Documents. The parties hereto agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of any other agreement or document referred to herein, this Agreement shall govern and control.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed and delivered on the date first above written.

**BUYER:**

MCMAGIC PARTNERS LP

By:   
Ross Khaledi, President

**SELLER:**

  
Richard J. Samson, in his capacity as Chapter 7 Trustee of  
Vann's Inc., a Montana corporation

## EXHIBIT A

### Definitions

“Acquired Assets” shall have the meaning set forth in Section 2.1(a) hereof.

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise.

“Affiliated Group” means an affiliated group as defined in section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which Seller is or has been a member.

“Agreement” means this Asset Purchase Agreement, including all the Schedules hereto, as the same may be amended, modified or waived from time to time in accordance with its terms.

“Allocation” shall have the meaning set forth in Section 11.7 hereof.

“Alternative Transaction” means any transaction occurring after the Sale Motion is filed involving the consummation of the sale pursuant to section 363(b) of the Bankruptcy Code of all or a material portion of the Business, or of an asset that is material to the Business, by Seller to a buyer or buyers other than the Buyer at any time during the pendency of the Case, except as disclosed herein.

“Assignment and Assumption” shall have the meaning set forth in Section 9.2(b) hereof.

“Assigned Leases and Contracts” (or “Assigned Lease or Contract”) means all Contracts and the Lease identified in Schedule 2.1(a)(ix), as the same may be modified in accordance with Section 2.1(b) and Section 2.7 hereof.

“Assumed Obligations” shall have the meaning set forth in Section 2.2(a) hereof.

“Assumed Post-Petition Obligations” shall have the meaning set forth in Section 2.2(b).

“Avoidance Actions” means all of Seller’s causes of action pursuant to Chapter 5 of the Bankruptcy Code.

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the District of Montana.

“Books and Records” means all records and lists of Seller including: (i) all merchandise, analysis reports, marketing reports and creative material pertaining to the Acquired Assets, the Facilities or the Business, (ii) all records relating to past or present customers, suppliers or personnel of Seller (including customer lists, mailing address lists, e-mail address lists, recipient lists, sales records, correspondence with customers, customer files and account histories, supply lists and records of purchases from and correspondence with suppliers and any other written or electronic identifiable data relating to past or present customers or suppliers of the Business or personnel of Seller which has been created by Seller or its representatives, agents or employees), all records relating to all product, business and marketing plans of Seller, and (iii) all books, ledgers, files, reports, plans, drawings and operating records of every kind of

Seller; provided, however, "Books and Records" shall not include any records exclusively related to the Excluded Assets or Seller's minute books, stock books and Tax Returns.

"Break-Up Fee" shall have mean Buyer's right to receive under the conditions identified herein \$250,000.00, along with reimbursement up to \$50,000.00 of its actual reasonable costs and expenses, if an Alternative Transaction is entered by the Seller.

"Business" means the business activities carried on by or on behalf of Seller.

"Buyer" shall have the meaning set forth in the preamble hereof.

"Chapter 11 Case" means the case No. 12-61281 filed by Seller in the Bankruptcy Court.

"Claim" shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

"Closing" shall have the meaning set forth in Section 9.1 hereof.

"Closing Date" shall have the meaning set forth in Section 9.1 hereof.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Company" means Vann's, Inc., a Montana limited liability company.

"Contract" means any agreement, contract, commitment, lease or other binding arrangement or understanding, whether written or oral, to which Seller is a party and which Seller is permitted under the Bankruptcy Code and applicable law to assume and assign other than an employee benefit plan.

"Copyright Assignment" means a copyright assignment in form and substance reasonably satisfactory to Buyer.

"Disclosure Schedules" shall have the meaning set forth in Section 4.1 hereof.

"Dollars" or "\$" means dollars of the United States of America.

"Excluded Assets" shall have the meaning set forth in Section 2.3 hereof.

"Excluded Contracts" shall have the meaning set forth in Section 2.3(b) hereof.

"Excluded Liabilities" shall have the meaning set forth in Section 2.4 hereof.

"Facilities" means collectively the premises at which Seller operates the Business, including: 3623 Brooks Street, Missoula, MT; 6418 Mormon Creek Road, Lolo, MT; 2019 Cromwell Dixon Lane, Helena MT; 3400 Laramie Drive, Bozeman MT; 2185 Highway 2 SE, Kalispell MT; 616 North 1st Street, Hamilton MT; 2647 King Avenue, Billings MT and ON Retail Location, Southgate Mall Missoula, MT.

"Final Order" means an Order as to which the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

"First Interstate Bank" means that bank located at 101 E. Front St., Missoula, MT, a secured creditor in the Case.

"GAAP" means, at a given time, United States generally accepted accounting principles, consistently applied.

“GE CDF” means General Electric Commercial Distribution Finance, a secured creditor in the Case.

“Governmental Authority” means any United States federal, state or local or any foreign government, governmental regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

“Highest or Best Bid” shall have the meaning set forth in Section 7.2(c)(ix) hereof.

“Indebtedness” with respect to any Person means any obligation of such Person for borrowed money, and in any event shall include (i) any obligation incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the Ordinary Course of Business, (ii) the face amount of all letters of credit issued for the account of such Person, (iii) obligations (whether or not such Person has assumed or become liable for the payment of such obligation) secured by Liens, (iv) capitalized lease obligations, (v) all guarantees and similar obligations of such Person, (vi) all accrued interest, fees and charges in respect of any indebtedness and (vii) all prepayment premiums and penalties, and any other fees, expenses, indemnities and other amounts payable as a result of the prepayment or discharge of any indebtedness.

“Intellectual Property” means all of the following in any jurisdiction throughout the world: (i) inventions (whether or not patentable or reduced to practice), all improvements thereto, and patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, reexaminations and counterparts thereof; (ii) trademarks, service marks, trade dress, logos, slogans, trade names, internet domain names, corporate names and all other indicia of origin, together with all translations, derivations and combinations thereof, and together with all goodwill associated therewith, and all applications, registrations and renewals in connection therewith; (iii) works of authorship (whether or not copyrightable), and copyrights, mask works and copyrightable works, and applications, registrations and renewals in connection therewith; (iv) trade secrets, know-how and other confidential, proprietary or business information (including ideas, research and development, formulas, compositions, manufacturing, production and other processes and techniques, methods, designs, technical and other data, charts, plans, diagrams, drawings and specifications, customer and supplier lists and business, marketing and other plans, studies and proposals); (v) computer software (including source code, executable code data, databases and documentation) and systems; (vi) copies and tangible embodiments of any of the foregoing in whatever form or medium; (vii) all other intellectual property and proprietary rights; and (viii) the right to sue and recover for any past, present or future infringement, misappropriation, dilution or any other causes of action, and to recover or collect any damages, proceeds, income, royalties or other payments in connection with or relating to any of the foregoing.

“Intellectual Property Assignments” means the Trademark Assignment and the Copyright Assignment.

“Inventory” means all inventory of any kind or nature owned by Seller, including all raw materials, work in process, semi-finished and finished products, replacement and spare parts, packaging materials, operating supplies, merchandise, gas and fuels and other and similar items.

“Knowledge of Seller” or “Seller’s Knowledge” shall mean the knowledge of Richard J. Samson, in his capacity as trustee.

“Law” means any law, statute, regulation, ruling, or Order of, administered or enforced by or on behalf of, any Governmental Authority, or common law.

“Lease” includes without limitation those certain leases entered by the Debtor with the following Lessors in connection with following properties, as follows:

<i>Entity/Landlord</i>	<i>Property</i>
JPEG LLC	1817 South Ave. Missoula, MT (Old Rex Appliance Building)
GMP LLC	6418 Mormon Creek Road, Lolo, MT (Lolo Warehouse)
Painted Sky LLC	2019 Cromwell Dixon Lane, Helena, MT
GMRP LLC	3400 Laramie Drive, Bozeman, MT
R. Pete Vann and Patricia Mae Vann	2185 Highway 2 SE, Kalispell MT
R. Pete Vann and Patricia Mae Vann	616 North 1st Street, Hamilton MT
R. Pete Vann and Patricia Mae Vann	3623 Brooks St., Missoula, MT
Southgate Mall Associates LLP	ON Retail Location (Southgate Mall Missoula)
Harland D. and Maxine Douglass	2647 King Avenue, Billings, MT

“Liability” means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including any liability for Taxes.

“Lien” or “Liens” means any lien (statutory or otherwise), hypothecation, encumbrance, Claim, Liability, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, Tax (including foreign, federal, state and local Tax), Order of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that Buyer is a successor, transferee or continuation of Seller or the Business, and (iv) any leasehold interest, license or other right, in favor of a Third Party or Seller, to use any portion of the Acquired Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

“Material Adverse Change” or “Material Adverse Effect” means any event, condition, development or effect that individually or in the aggregate with all other events, changes, conditions, developments and effects, is or is reasonably likely to be materially adverse to (i) the Acquired Assets and Assumed Obligations or (ii) the ability of Seller to perform its obligations under this Agreement, provided, however, that none of the following shall be deemed in and of itself, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Change or a Material Adverse Effect: (a) the filing of the Chapter 11 Case, (b) changes in economic conditions generally or in the industries in which Seller operates, except to the extent such changes have a disproportionate effect on Seller, (c) any change of Law, accounting standards or regulatory policy, and (d) any actions specifically required to be taken pursuant to this Agreement.

“Order” means any decree, order, injunction, rule, judgment, consent of or by any Governmental Authority.

“Ordinary Course of Business” means the operation of the Business by Seller in the usual and ordinary course in a manner substantially similar to the manner in which Seller operated, consistent with past practice prior to the date hereof, subject to any obligations as a debtor under the Bankruptcy Code or any order of the Bankruptcy Court.

“Permits” means licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, plans and the like.

“Permitted Liens” means easements, covenants, conditions, restrictions and other similar matters of record on real property, leasehold estates or personalty that do not in any material respect detract from the value thereof and do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto.

“Person” means any corporation, partnership, joint venture, limited liability company, organization, entity, authority or natural person.

“Petition Date” means the date the Chapter 11 Case is commenced.

“Post-Petition Accounts Payable” shall mean post-petition trade account payables incurred in the Ordinary Course of Business and other post-petition current Liabilities incurred in the Ordinary Course of Business. Post-Petition Accounts Payable shall not include Liabilities arising from breach of contract, tort, infringement or other violation of the rights of another Person (including any Intellectual Property rights), lawsuits or violation of Law.

“Post-Petition Employee Compensation” shall mean post-petition obligations with respect to any unpaid wages, salary, unused vacation or sick leave earned and accrued (to the extent not paid) with respect to the Rehired Employees.

“Proceeding” means any claim, charge, complaint, dispute, demand, action, investigation, inquiry, audit, suit in equity or at Law, administrative, regulatory or quasi-judicial proceeding, arbitration, account, contribution, and/or other causes of action of whatever kind or character.

“Purchase Price” shall have the meaning set forth in Section 3.1(a) hereof.

“Rehired Employees” shall have the meaning set forth in Section 11.1 hereof.

“Rule” or “Rules” means the Federal Rules of Bankruptcy Procedure.

“Sale Hearing” means the hearing of the Bankruptcy Court to approve this Agreement and the transactions contemplated herein.

“Sale Motion” shall have the meaning set forth in Section 6.6(b) hereof and shall seek approval, among other things, of the Break-Up Fee and all other payments to Buyer arising under this Agreement as being held in trust for the benefit of Buyer, and to the extent constituting obligations of Seller, having super-priority as administrative expenses under section 364(c)(1) of the Bankruptcy Code in the converted Chapter 7 Case.

“Sale Order” means the Final Order of the Bankruptcy Court, in form and substance acceptable to the Buyer and Seller and to be filed with the Bankruptcy Court on or before two (2) business days before the Sale Hearing, to be entered by the Bankruptcy Court pursuant to sections 363 and 365 of the Bankruptcy Code that is not subject to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure.

“Schedules” means the schedules attached hereto (including the Disclosure Schedules).

“Seller” shall have the meaning set forth in the preamble hereof.

“Subsidiary” means, with respect to any Person, any corporation a majority of the total voting power of shares of stock of which is entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or any partnership, limited liability company, association or other business entity a majority of the partnership or other similar ownership interest of which is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, limited liability company, association or other business entity or is or controls the managing director or general partner of such partnership, limited liability company, association or other business entity.

“Tax” and, with correlative meaning, “Taxes” mean with respect to any Person (i) all federal, state, local, county, foreign and other taxes, assessments or other government charges, including any income, alternative or add-on minimum tax, estimated gross income, gross receipts, sales, use, *ad valorem*, value added, transfer, capital stock franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, real property, personal property, unclaimed property, environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment, charge, or tax of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax (domestic or foreign) whether such Tax is disputed or not, (ii) Liability for the payment of any amounts of the type described in clause (i) above relating to any other Person as a result of being party to any agreement to indemnify such other Person, being a successor or transferee of such other Person, or being a member of the same affiliated, consolidated, combined, unitary or other group with such other Person, or (iii) Liability for the payment of any amounts of the type described in clause (i) arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

"Tax Return" means any report, return, declaration, claim for refund or other information or statement relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

"Third Party" means any Person other than Seller, Buyer or any of their respective Affiliates.

"Trademark Assignment" means the trademark assignment in form and substance reasonably satisfactory to Buyer.

"Transaction Documents" means this Agreement, and all other agreements, instruments, certificates and other documents to be entered into or delivered by any party in connection with the transactions contemplated to be consummated pursuant to this Agreement.

"WARN Act" means the Worker Adjustment and Retraining Notification Act, as amended.