

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE:

Case No. 17-18864-PGH
Chapter 7

AA FLORIDA BRIDAL RETAIL
COMPANY, LLC, *et al.*,

(Jointly Administered)

Debtors.

**TRUSTEE'S MOTION TO APPROVE CARVE-OUT AND
SHARING AGREEMENT WITH CARDCONNECT, LLC**

Margaret J. Smith, the Chapter 7 Trustee (the “**Trustee**”), for the bankruptcy estates of AA Florida Bridal Retail Company, LLC (“**Alfred Angelo**”) and Alfred Angelo – The Bride's Studio No. 3, Inc.; AA Bridal, LLC; AA Bridal Northeast, LLC; AA Bridal Midwest, LLC; AA Bridal Nebraska, LLC; Alfred Angelo Newco, Inc.; Alfred Angelo Investment China I; Alfred Angelo Investment China III; Alfred Angelo Investment Company, Limited (Hong Kong); BridesMart, LP; DJ Fashions, LLC; Hacienda Brides; and Zhuhai Haiping Wedding DRESS Design LTD (collectively, the “**Affiliated Debtors**”) files her *Motion to Approve Carve-out and Sharing Agreement with CardConnect, LLC Inc.* (the “**Motion**”) pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rule(s)**”), Local Rules 9013-1(D) and 9019-1, and Section 105(a) of Title 11 of the United States Code (the “**Bankruptcy Code**”), and state:

INTRODUCTION

1. The Trustee seeks approval of a carve-out and sharing agreement (the “**Agreement**”) reached with CardConnect, LLC (“**CardConnect**”), a senior secured creditor

who has asserted liens on all of the Remaining Assets¹ of the Estates. As discussed more fully below, the Agreement will enable the Trustee to pay her professionals and continue to pursue significant causes of action and the recovery of other assets for the benefit of the Estates.

2. For the reasons stated herein, the relief requested in this Motion should be granted because the terms of the Settlement satisfy the *Justice Oaks* standards and are in the best interests of the Debtors' creditors and the Estates.

3. Based upon the Trustee's evaluation of: (i) the Estates' and CardConnect's arguments as to certain lien rights, including those granted by this Court through various orders authorizing the Trustee's use of CardConnects' collateral; (ii) the anticipated costs that will be incurred in connection with that dispute; (iii) the estimated amount of allowed claims against the Estates and the recovery to same which the Agreement permits; and (iv) the costs and risks to the Estates associated with continued litigation at both the trial and appellate levels, the Trustee believes that the Agreement should be approved.

FACTS SUPPORTING RELIEF REQUESTED

A. Background & Procedural History

4. On July 14, 2017, Alfred Angelo filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code (the "**Petition Date**") in the United States Bankruptcy Court for the Southern District of Florida (the "**Bankruptcy Court**"). On the same date, the Affiliated Debtors each filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in the Bankruptcy Court.

5. Pursuant to Bankruptcy Court Order dated July 19, 2017, the Alfred Angelo Chapter 7 case and Affiliated Debtors' Chapter 7 cases are being jointly administered.

¹ Capitalized terms used but not specifically defined herein shall have the respective meanings ascribed to them in the Agreement.

6. Margaret J. Smith is the duly appointed Chapter 7 Trustee of the Debtors.

7. Prior to the Petition Date, the Debtors were collectively in the business of purchasing and re-selling bridal dresses, bride's maid dresses, flower girl dresses and various related items and accessories (the "**Inventory**") through both wholesale and retail operations.

8. Prior to the Petition Date, on or about October 2, 2012, CardConnect, Alfred Angelo and certain of the Debtor Affiliates, entered into a merchant services arrangement through which CardConnect provided credit card processing services for the Debtors. Pursuant to the terms of the arrangement, as memorialized through that certain Merchant Processing Application, dated as of October 11, 2012 (as superseded on June 20, 2016 pursuant to that certain Merchant Application and Agreement, a copy of which was filed with this Court (ECF No. 200), CardConnect processed credit card charges for the Debtors in exchange for fees.

9. Pursuant to the terms of the Merchant Application and Agreement and in return for the Debtors' undertaking the obligations therein, CardConnect agreed to process bankcard payments ("**Card Transactions**") in connection with the sale of the Debtors' Inventory prior to the Petition Date.

10. On September 12, 2014, the Debtors and CardConnect entered into that certain Security Agreement granting CardConnect a security interest in, among other things, and as further described in the Security Agreement, substantially all of the Debtors' existing and after-acquired assets, including, but not limited to inventory, accounts, general intangibles and rights to payment (the "**Security Interest**"). The Security Interest secures the performance and discharge of the Debtors' "Obligations," up to an amount of \$5,000,000, including the Debtors' obligations to "pay the Charge Backs, adjustments, fees and other charges and amounts and any

other obligations or liabilities of the Debtors to [CardConnect]” (Security Agreement, §2(a)).

11. Contemporaneously with CardConnect’s and the Debtors’ entry into the Security Agreement, the Debtors, CardConnect, and FSJC V, LLC (the Debtors’ other secured lender) (“**FSJC**”), entered into that certain Intercreditor Agreement (the “**Intercreditor Agreement**”). Pursuant to the Intercreditor Agreement, FSJC agreed to fully subordinate any and all of its security interests in the Debtors’ domestic assets to CardConnect. (*See* Intercreditor Agreement, § 1). Additionally, pursuant to the Intercreditor Agreement, CardConnect is granted the “sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Collateral of the [Debtors], other than any sale . . . in the ordinary course of business.” (Id., § 5).

12. CardConnect perfected its Security Interest by filing appropriate “UCC-1” forms in relevant jurisdictions. Copies of all of CardConnect's loan and security documents are attached as Exhibits to the Joint Motion for Relief from Stay to Allow CardConnect to Apply Funds in its Reserve Account to Satisfy, in part, its Secured Claim [ECF NO. 200].

13. In light of the volume of credit card charges processed for, among other things, customer deposits received by the Debtors until only days before the commencement of the Chapter 7 Cases, CardConnect was required to, and has reimbursed various parties in excess of \$2.31 million related to Chargebacks (as defined in the Merchant Application and Agreement) and is further required to reimburse additional claims that may be asserted by Credit Card Issuers against the Debtors (when ultimately liquidated, the “**CardConnect Chargeback Claim**”).

14. CardConnect has filed a proof of claim in the Debtors' bankruptcy cases asserting a secured claim against all of the Debtors' assets for the CardConnect Chargeback Obligations.

15. On six (6) separate occasions, the Bankruptcy Court has previously authorized the Trustee to utilize the Debtors' assets, which include, in addition to the Inventory, funds in various bank accounts and receivables ("**Cash Collateral**"), all of which were subject to liens in favor of CardConnect (the "**Cash Collateral Orders**").

16. As a condition for use of the Cash Collateral and entry of the Cash Collateral Orders, the Bankruptcy Court provided to CardConnect "valid, perfected, and enforceable security interests (the "**Replacement Liens**") in and upon all assets of the Debtors located in the United States, including any after-acquired property and the proceeds thereof, up to the amount of Cash Collateral utilized, plus super priority administrative expense claims allowed under Sections 507(a)(2), 507(b) and 726 (a)(1) of the Bankruptcy Code (the "**Super Priority Claims**") based on the use of Cash Collateral in an aggregate amount of at least \$800,000.

17. By Order December 4, 2017, the Bankruptcy Court authorized CardConnect to withdraw and apply the sum of \$1,039,398.60 held in a "Reserve Account" in the name of the Debtors with such payment reducing CardConnect's aggregate claims against the Debtors, but not as a reduction of CardConnect's super priority administrative claims and Replacement Liens on any after acquired property or the proceeds thereof.

18. As of the date of this Agreement, and after payment of various administrative expenses approved by the Bankruptcy Court through the Cash Collateral Orders, the Trustee currently holds the aggregate sum of approximately \$460,000 which is derived from the liquidation of the Debtors' assets subject to the Replacement Liens and Super Priority Claims of CardConnect (the "**Cash on Hand**").

19. As of the date of this Agreement, the Trustee has utilized the sum of no less than \$467,000 of CardConnect's Cash Collateral to fund administrative expenses as allowed from the Cash Collateral Orders.

20. The Trustee will continue to need to utilize Cash Collateral to fund certain administrative expense claims which are incurred in these cases.

21. The remaining assets left to be administered by the Trustee include: 1) the Cash on Hand; 2) receivables (the "**Receivables**"); 3) sale of various general intangibles (the "**Intangibles**"); 4) a claim against a customs agent for the recovery of a \$300,000 Customs Bond (the "**Customs Bond Claim**"); 5) potential claims against former Insiders of the Debtors, including former officers, directors and equity holders ("**Insider Claims**"); and 6) avoidance actions to be pursued by the Trustee under various provisions of Chapter 5 of the Bankruptcy Code (the "**Avoidance Actions**") (collectively the "**Remaining Assets**").

22. CardConnect asserts its Replacement Liens and Superpriority Claims against the Remaining Assets. CardConnect also asserts its Security Interest as a first priority lien claim against the Remaining Assets for the balance of the CardConnect Chargeback Claim, which CardConnect asserts would result, absent the settlement, CardConnect receiving at least the first \$800,000 of distributable assets of the Debtors' estates.

23. The Trustee does not dispute CardConnect's Replacement Liens and Super Priority Claims against the Remaining Assets, nor does the Trustee dispute CardConnect's Security Interest in the Cash on Hand (subject to any carve-outs previously approved by the Bankruptcy Court), Receivables, Intangibles, and Customs Bond Claim; however, the Trustee does dispute that CardConnect's Security Interest extends to the Insider Claims or Avoidance Actions other than through the previous relevant orders entered by this Court.

24. The Trustee continues to need to utilize the Cash on Hand and other recoveries which would otherwise constitute Cash Collateral to fund the administrative expenses of the Debtors' Estates set forth on the budget attached to the Motion to approve this Agreement, as well as professional fees incurred by the Trustee's general counsel, Akerman LLP, the Trustee's financial advisors, Glass Ratner, LLC, the expenses of the Trustee's Special Counsel, Bast Amron, P.A., and the Trustee's tax preparation accountants, Marks Paneth, LLC.

B. The Dispute Concerning Insider Claims

25. During negotiations with CardConnect, the Trustee asserted that CardConnect did not have a lien on either the director and officer liability policies or potential Insider Claims. More specifically, the Trustee asserted that the CardConnect did not have a lien on the potential recovery, or proceeds of Insider Claims because the merchant processing documents do not sufficiently describe or identify the Insider Claims, proceeds of Insider Claims and/or commercial tort claims as part of the CardConnect's collateral with the specificity required by the Uniform Commercial Code.

26. Undercutting this argument for the Trustee, however, is recent case law from a Florida federal district court holding that the parties' understanding is the paramount concern in secured transactions. *See Gravitas Leasing, LLC v. LDB Media, LLC (In re LDB Media, LLC)*, case no. 8:14-cv-00417-MSS (M.D. Fla. Feb. 13, 2015) (reversing bankruptcy court decision on UCC description issue because "Courts in this district have held that where the parties to a security agreement understood and intended certain items to be pledged as collateral, a third party or trustee in bankruptcy may not challenge the validity of the underlying security interest based on the insufficiency of the description of the collateral.") (citing *In re Michelle's Hallmark Cards & Gifts, Inc.*, 219 B.R. 316, 320 (Bankr. M.D. Fla. 1998) ("If the parties to the agreement

understand what collateral was pledged, the security interest created by the agreement cannot be challenged on the basis of an insufficient description of the collateral”) and (*In re Florida Bay Trading Co.*, 177 B.R. 374, 381 (Bankr. M.D. Fla. 1994)).

27. CardConnect has taken the position that it has a lien on (i) the director and officer liability policies, (ii) the Insider Claims, and (iii) all cash or other property recovered in connection with any Chapter 5 Avoidance Actions because once a settlement is made with the Trustee, the obligation to pay the Estates (settlement proceeds, as opposed to policy proceeds) becomes a payment intangible/general intangible and would then be subject to CardConnect's prepetition blanket lien (citing official comment to UCC § 9-109, which states that "once a claim arising in tort has been settled and reduced to a contractual obligation to pay (as in, but not limited to, a settlement) the right to payment becomes a payment intangible and ceases to be a claim arising in tort." (UCC § 9-109, Comment 15)). Payment intangibles are included within the UCC's definition of general intangibles. (UCC § 9-102(42)). Thus, CardConnect has asserted that because it had a lien on the Debtors' general intangibles, then it would have a lien on the Debtors' right to payment once the Insider Claims are settled.

28. The Trustee recognizes the arguments on both sides of this issue. Although the law regarding the validity of liens attaching to the proceeds of Insider Claims is sparse, in addition to the above, CardConnect has cited other several cases that support its lien claim. *See Arnot v. Endersen (In re Endersen)*, 548 B.R. 258, 270 (9th Cir. B.A.P. 2016) (holding that settlement proceeds are "proceeds" for the purposes of 552(b)(1), such that a pre-petition lien will attach to settlement proceeds, even when the proceeds come into existence after the petition date). The facts in our case are very similar to the facts in *Reed, et al. v. Heller Healthcare Finance, Inc., et al. (In re. East Texas Healthcare, Inc., et al.)*, case no. 98-bk-38547, at *10

(Bankr. N.D. Tex. Mar. 11, 2003) (holding that "when the insurance proceeds [of director and officer liability claims] became settlement proceeds, [the creditor's] lien attached to the settlement proceeds."); *Wischan v. Adler (In re Wischan)*, 77 F.3d 875 (5th Cir. 1996) ("The fact that [pre-petition] causes of action may have borne fruit in settlement or judgment after commencement of the bankruptcy case does not transform them into post-petition property"); *Tignor v. Parkinson*, 729 F.2d 977, 980 (4th Cir. 1984); *Sierra Switchboard Co., v. Westinghouse Electric Corp.*, 789 F.2d 705, 709 (9th Cir. 1986) ("regardless of whether a personal injury claim is transferable or assignable under state law, such claims become part of the bankruptcy estate under § 541."); *In re Richards*, 57 B.R. 662, 663 (Bankr. D. Nev. 1986).

C. The Agreement

29. The salient terms of the Settlement are as follows²:

- **Bankruptcy Court Approval and Retention of Jurisdiction.** The Trustee and CardConnect agree that this Agreement is subject to the Bankruptcy Court's entry of a final order approving this Agreement (the "**Approval Order**"). Both the Trustee and CardConnect shall use their best efforts to seek entry of the Approval Order. All disputes relating to, or arising from, this Agreement, including without limitation, whether any asset is a Remaining Asset or otherwise constitutes Cash Collateral, shall be heard and adjudicated solely by the Bankruptcy Court.
- **Allowance of CardConnect Claim.** Subject to the terms set forth below, CardConnect shall have an allowed secured claim against the Debtors' Estates in the total amount of \$1,669,201.15 (the "**Allowed CardConnect Claim**") which includes the amount of the CardConnect Chargeback Claim, certain interest and fees CardConnect asserts as an over-secured creditor, less the \$1,039,398.60 CardConnect received from the Reserve Account and \$100,789.85 received from the Florida Inventory Sale. The Allowed CardConnect Claim shall not accrue any additional interest or attorney's fees and shall be withdrawn, disallowed and/or deemed satisfied in its entirety upon payment in full, including the 10% interest which accrues on the \$160,000 of cash to be utilized by the Trustee for continued Cash Collateral purposes as set forth below.

² The attached Settlement Agreement is attached hereto as Exhibit B.

- **Carve-Out and Sharing Agreement Related to Cash on Hand and Remaining Assets.** Subject to Bankruptcy Court approval as set forth above, the Trustee and CardConnect shall share in the Cash on Hand and Remaining Assets as follows:
 - **Cash on Hand.** Within three (3) days of the Effective Date, the Trustee shall tender the sums of \$100,000 to Akerman, LLP and \$100,000 to Glass Ratner, LLC, as partial payments of fees after the filing of a fee application and approval by the Bankruptcy Court, and \$100,000 to CardConnect as a paydown on the CardConnect Claim. The remaining balance of the Cash on Hand, which is projected to be approximately \$160,000, shall be held by the Trustee in the Trustee's Accounts and CardConnect shall allow the Trustee to utilize such funds to pay any administrative expenses or costs of the Trustee's special counsel, Bast Amron, P.A. in pursuit of Insider/Affiliate Claims or Avoidance Actions or other administrative and/or priority expenses, subject to Bankruptcy Court approval, if applicable. CardConnect shall be entitled to the payment of simple interest at 10% per annum (accruing interest daily) on any remaining funds from the Cash on Hand, which is projected to be approximately \$160,000, and such interest shall increase the Allowed CardConnect Claim on a dollar for dollar basis.
 - **Customs Bond Claim.** CardConnect shall share the proceeds from any recovery on the Customs Bond Claim, such that the Trustee shall receive 50% of such proceeds and CardConnect shall receive 50% of such proceeds. The Trustee shall be authorized to distribute CardConnect's portion of such proceeds as a paydown on the Allowed CardConnect Claim without further approval by the Bankruptcy Court and otherwise to deposit the Trustee's portion of such proceeds in the Trustee's Accounts. The Trustee shall be authorized to deposit its 50% share of funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to the Allowed CardConnect Claim as allowed by the Bankruptcy Court or otherwise in accordance with the Bankruptcy Code. The Trustee shall be required to remit to CardConnect its portion of the Custom Bonds Claim recovery immediately upon the receipt thereof.
 - **Receivables.** The Parties shall share the proceeds from any recovery on the Receivables, such that the Trustee shall receive 50% of such proceeds and CardConnect shall receive 50% of such proceeds. The Trustee shall be authorized to distribute CardConnect's portion of such proceeds as a paydown on the Allowed CardConnect Claim without further order of the Bankruptcy Court and otherwise to deposit the Trustee's 50% portion in the Trustee's Accounts. The Trustee shall be authorized to deposit its 50% share of funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to

the Allowed CardConnect Claim as allowed by the Bankruptcy Court or otherwise in accordance with the Bankruptcy Code. The Trustee shall remit to CardConnect its portion of the Receivables recoveries immediately upon the receipt thereof.

- **Sale or Liquidation of Intangibles.** The Parties shall share the proceeds from any recovery on any liquidation or sale of the Intangibles, such that the Trustee shall receive 50% of such proceeds and CardConnect shall receive 50% of such proceeds. The Trustee shall be authorized to distribute CardConnect's portion of such recovery as a paydown on the Allowed Card Connect Claim without further order of the Bankruptcy Court and otherwise to deposit the Trustee's portion in the Trustee's Accounts. The Trustee shall be authorized to utilize such funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to the Allowed CardConnect Claim as allowed by the Bankruptcy Court or otherwise in accordance with the Bankruptcy Code. The Trustee shall remit to CardConnect its portion of the Intangibles proceeds immediately upon the receipt thereof.

- **Insider/Affiliate Claims.**
 - (i) The Parties shall share the proceeds from any "Net Recoveries" (defined below) from the Insider/Affiliate Claims pursuant to the waterfall below. "Net Recoveries" are defined as any and all sums awarded and/or provided through insurance, settlement, litigation or any cause of action that are related to any obligations, rights, suits, damages, judgments, remedies, demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims, contribution claims, or any other claims whatsoever, in each case held by any Debtor, whether known or unknown, matured or unmatured, fixed or contingent, liquidated or unliquidated, disputed or undisputed, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law, equity, or otherwise after payment only of Bast Amron, P.A.'s court approved fees and expenses.

 - (ii) The Trustee shall receive 50% of the first \$600,000 of Net Recoveries, 60% of Net Recoveries from \$600,000 to \$1 million, 100% of Net Recoveries from \$1 million to \$1.3 million, and 60% of Net Recoveries in excess of \$1.5 million, and CardConnect shall receive 50% of the first \$600,000 of Net Recoveries, 40% of Net Recoveries from \$600,000 to \$1 million, 100% of Net Recoveries from \$1.3 million to \$1.5 million, and 40% of Net Recoveries in excess of \$1.5 million. The net difference shall benefit the

implied from any other action, inaction, or acquiescence by CardConnect or its respective representatives.

- **Reporting.** Until the Allowed CardConnect Claim has been satisfied in full pursuant to the terms of this Agreement, the Trustee shall provide monthly, written reports to Card Connect with respect to the disposition of Remaining Assets.
- **Abandonment of Remaining Assets.** The Trustee may abandon any portion of the Remaining Assets that she determines in the exercise of her business judgment, is burdensome on the Debtors' Estates and/or has inconsequential value to the Debtors' Estates, but shall consult with CardConnect in advance of such abandonment.

30. The Agreement is a negotiated resolution of competing positions and was made pursuant to the Trustee's business judgment, taking into account the costs, expenses, and uncertainties of litigation, which would have been extremely costly for the Estates, and could have significantly diminished the funds available for distribution. The Trustee also considered CardConnect's cooperation and willingness to fund the continued wind-down of the Debtors in order to give all creditors the possibility of a recovery in these cases.

31. The Trustee believes that the results of this settlement, if approved, would be more favorable to all parties – including administrative and unsecured creditors and CardConnect – because it would avoid a protracted, expensive lien dispute.

32. In addition, if the Trustee were to litigate the lien issues and lose, administrative and unsecured creditors would suffer significantly: administrative expenses would be substantial, and all funds recovered from the Insider Claims would likely inure to the benefit of CardConnect and, possibly, administrative creditors, and none would be available for general unsecured creditors. This is simply a risk the Trustee is not willing to take. Indeed, the Trustee believes that litigating this dispute with the CardConnect would be a breach of her fiduciary duties to creditors and the Estates.

REQUEST FOR APPROVAL OF SETTLEMENT

A. Settlement Approval Standards in the Eleventh Circuit

33. Bankruptcy Rule 9019(a) provides:

On motion by the Debtor and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States Debtor, debtor, and indenture Debtors as provided in Rule 2002 and to any other entity as the court may direct.

34. Rule 9019(a) gives the Court broad authority in approving compromises or settlements. *See In re Bicoastal Corp.*, 164 B.R. 1009, 1016 (Bankr. M.D. Fla. 1993) (*citing In re Charter Co.*, 72 B.R. 70 (Bankr. M.D. Fla. 1987)). The determination of whether to approve a compromise is a matter committed to the sound discretion of the bankruptcy judge. *See River City v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602-603 (5th Cir.1980). In exercising this discretion, the court should approve the proposed settlement if it is in the best interests of the estate. *Id.*

35. In determining whether a proposed compromise is in the best interests of the estate, the Bankruptcy Court should consider the following factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interests of the creditors and a proper deference to their reasonable views in the premises. *See In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir.1990), *cert. denied*, 498 U.S. 959 (1990). A court considering the approval of a settlement need only determine whether the settlement falls below the lowest point of the range of reasonableness. *See In re Arrow Air, Inc.*, 85 B.R. 886 (Bankr. S.D. Fla. 1988); *In re Martin*, 91 F.3d 389 (3d Cir. 1996).

B. Each Factor Is Satisfied by the Agreement

- *The First Factor – The probability of success in the litigation*

36. Although the Trustee strongly believes in her ability to prevail on the lien dispute, she also recognizes that the Estates' arguments involve material factual and legal disputes. The Trustee also recognizes that CardConnect has advised of, and demonstrated, the intention to vigorously prosecute its arguments through trial, and at all available appellate levels, if a settlement could not be reached. The Agreement addresses the risks and uncertainty of litigation in connection with the claimed lien by preserving the best possible recovery, in any scenario, for the benefit of the Estates and their creditors.

- *The Second Factor – The difficulties, if any, to be encountered in the matter of collection*

37. The Agreement funds the Trustee's continued administration of the Estates, as well as a guaranteed payment to administrative creditors. Without such a resolution, the Trustee would not have any source of funds to administer the Estates.

- *The Third Factor – The complexity of the litigation involved, and the expense, inconvenience and delay necessarily involved*

38. Litigation involving the lien dispute would be both complex and expensive to pursue because it would require, among other tasks, significant legal research and hearing expense to the Estates. Further, the Trustee believes that regardless of the outcome at the trial level, there is a high probability the matter would be appealed. The costs associated with litigating these issues through the appellate levels would be significant and would necessarily result in significant delay to the administration of the Estates and ultimate closure of these cases.

- *The Fourth Factor – The paramount interest of the creditors' reasonable views*

39. This key factor weighs heavily in favor of the settlement with CardConnect. The Agreement provides the Estates with an opportunity to efficiently settle significant disputes on

favorable terms, without the need for potentially costly and protracted litigation through trial and exhaustion of appellate remedies. It would also provide the general unsecured creditors with the best chance of recovery, under any circumstances, by a substantial margin. As such, the Agreement serves the paramount interest of creditors.

40. The settlement, as set forth in the Agreement, meets the *Justice Oaks* standards for approval of compromises and, therefore, approval is proper pursuant to Bankruptcy Rule 9019.

**CONCLUSION AND
PRAYER FOR RELIEF**

WHEREFORE, the Trustee respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**, approving the Agreement as described above, and granting the relief requested herein and such other relief as the Court deems appropriate.

Dated: September 26, 2018

Respectfully submitted,

/s/ D. Brett Marks

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on September 26, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day by transmission of Notices of Electronic Filing generated by CM/ECF to those parties registered to receive electronic notices of filing in this case as listed in the attached service list.

/s/ D. Brett Marks
Attorney

SERVICE LIST

17-18864-PGH Notice will be electronically mailed to:

Joaquin J Alemany on behalf of Creditor Brixmor Property Group
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Patricia A Redmond on behalf of Debtor Alfred Angelo Investment China I
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H Elizabeth Weller on behalf of Creditor Dallas County
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Steven R Wirth on behalf of Trustee Margaret J. Smith
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17-18864-PGH Notice will not be electronically mailed to:

Carol L Fox
GlassRatner
200 E. Broward Blvd, #1010
Ft. Lauderdale, FL 33301

David L Pollack, Esq on behalf of
Creditor Brixmor Property Group
1736 Market St 51 fl
Philadelphia, PA 19103

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

IN RE:

AA FLORIDA BRIDAL RETAIL
COMPANY, LLC, *et al.*,

Debtors.

Case No. 17-18864-PGH
Chapter 7
(Jointly Administered)

**ORDER GRANTING TRUSTEE'S MOTION TO APPROVE CARVE-OUT
AND SHARING AGREEMENT WITH CARDCONNECT, LLC**

Upon the *Trustee's Motion to Approve Carve-Out and Sharing Agreement with CardConnect, LLC* (ECF No. ____) (the "**Motion**") and the Court having reviewed the Motion, arguments of counsel, and the record in these cases; and the Court finding that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) notice of the Motion was sufficient under the circumstances and no other or further notice need be given; and (iv) the Court having determined

that there is just cause for the relief granted herein, and the objections to the relief requested in the Motion having been withdrawn or overruled;

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**, as set forth herein.
2. The Agreement¹ set forth and memorialized in the Motion, as amended on the record at the hearing, satisfies the standards set forth in *In re Justice Oaks II, Ltd.*, 898 F.2d 1544, 1549 (11th Cir. 1990), for approval of settlements under Bankruptcy Rule 9019.
3. The Agreement is approved. The compromise between the Trustee and CardConnect, LLC does not fall below the lowest point in the range of reasonableness, is fair, reasonable, and in the best interests of the Debtors' Estates and their creditors, and is approved pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 9019(a).
4. The Trustee and CardConnect, LLC are hereby ordered to comply with the terms of the compromise and are authorized to take any and all actions, and to execute any and all documents, necessary and appropriate to implement and effectuate the terms of the Agreement.
5. The Court takes notice of the certificate of service appended to the Motion (ECF No. ____). The Court finds that good and sufficient notice of the Motion and the Agreement was provided to all creditors and parties in interest and due process was conferred upon those parties affected by this Order.
6. This Order shall not constitute an adjudication of any factual or legal issues which were raised or which could have been raised in the Motion, including, but not limited to, the issues of whether (i) the director and officer liability policies or their proceeds constitute property of the Debtors' Estates, or (ii) CardConnect has a lien on the director and officer

¹ Capitalized terms used but not specifically defined herein shall have the respective meanings ascribed to them in the Motion.

liability policies, the Insider Claims or the proceeds recovered in connection with Chapter 5 Avoidance Actions.

7. The Court reserves exclusive jurisdiction to enforce the terms of the compromise approved by this Order.

#

Submitted by:

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350 East Las Olas Boulevard

Fort Lauderdale, FL 33301-2999

Phone: (954) 463-2700

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Counsel to the Chapter 7 Trustee

(Attorney Marks shall serve a copy of the signed order on all required parties and file with the court a certificate of service conforming with Local Rule 2002-1(F)).

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

IN RE:

Case No. 17-18864-PGH
Chapter 7

AA FLORIDA BRIDAL RETAIL
COMPANY, LLC, *et al.*,

(Jointly Administered)

Debtors.

CARVE-OUT AND SHARING AGREEMENT

Margaret J. Smith, the Chapter 7 Trustee (the "**Trustee**"), for the bankruptcy estates of AA Florida Bridal Retail Company, LLC ("**Alfred Angelo**") and Alfred Angelo – The Bride's Studio No. 3, Inc.; AA Bridal, LLC; AA Bridal Northeast, LLC; AA Bridal Midwest, LLC; AA Bridal Nebraska, LLC; Alfred Angelo Newco, Inc.; Alfred Angelo Investment China I; Alfred Angelo Investment China III; Alfred Angelo Investment Company, Limited (Hong Kong); BridesMart, LP; DJ Fashions, LLC; Hacienda Brides; and Zhuhai Haiping Wedding DRESS Design LTD (collectively with Alfred Angelo, the "**Debtors**") and CardConnect, LLC ("**CardConnect**," and together with the Trustee, the "**Parties**"), hereby enter into this Carve-Out and Sharing Agreement (the "Agreement"), and stipulate and agree as follows:

RECITALS

WHEREAS, on or about October 2, 2012, CardConnect, Alfred Angelo and the Affiliated Debtors entered into a merchant services arrangement through which CardConnect provided credit card processing services for the Debtors. Pursuant to the terms of the arrangement, as memorialized through that certain Merchant Processing Application, dated as of October 11, 2012, CardConnect processed credit card charges for the Debtors in exchange for fees;

WHEREAS, pursuant to the terms of the Merchant Application and Agreement and in return for the Debtors' undertaking the obligations therein, CardConnect agreed to process bankcard payments ("**Card Transactions**") in connection with the sale of the Debtors' Inventory;

WHEREAS, on September 12, 2014, the Debtors and CardConnect entered into that certain Security Agreement granting CardConnect a security interest in, among other things, and as further described in the Security Agreement, substantially all of the Debtors' existing and after-acquired assets, including, but not limited to, inventory, accounts, general intangibles and rights to payment (the "**Security Interest**"). The Security Interest secures the performance and discharge of the Debtors' "Obligations," up to an amount of \$5,000,000, including the Debtors'

obligations to “pay the Charge Backs, adjustments, fees and other charges and amounts and any other obligations or liabilities of the Debtors to [CardConnect]” (Security Agreement, §2(a));

WHEREAS, contemporaneously with CardConnect’s and the Debtors’ entry into the Security Agreement, the Debtors, CardConnect, and FSJC V, LLC (the Debtors’ other key lender) (“**FSJC**”), entered into that certain Intercreditor Agreement (the “**Intercreditor Agreement**”). Pursuant to the Intercreditor Agreement, FSJC agreed to fully subordinate any and all of its security interests in the Debtors’ domestic assets to CardConnect. (*See* Intercreditor Agreement, § 1). Additionally, pursuant to the Intercreditor Agreement, CardConnect is granted the “sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Collateral of the [Debtors], other than any sale . . . in the ordinary course of business.” (Id., § 5);

WHEREAS, CardConnect perfected its Security Interest by timely filing appropriate “UCC-1” forms in relevant jurisdictions;

WHEREAS, on July 14, 2017, the Debtors filed voluntary petitions for relief under Chapter 7 of the Bankruptcy Code (the “**Petition Date**”) in the United States Bankruptcy Court for the Southern District of Florida (the “**Bankruptcy Court**”);

WHEREAS, prior to the Petition Date, the Debtors were collectively in the business of purchasing and re-selling bridal dresses, bridesmaid dresses, flower girl dresses and various related items and accessories (the “**Inventory**”) through both wholesale and retail operations;

WHEREAS, on November 27, 2017, CardConnect filed proof of claim number 442-1, which asserts, among other things, a \$3,154,803 claim for “Chargeback” liability (the “**CardConnect Claim**”) and consists of the following components: (i) a first-priority, secured claim of at least \$2.316 million based upon, among other things, Chargebacks that CardConnect has reimbursed and obligations that could be incurred in the future (the “**CardConnect Chargeback Claim**”) and (ii) a superpriority administrative expense claim of at least \$825,000 for the use of Cash Collateral (the “**CardConnect Cash Collateral Claim**”).

WHEREAS, the Bankruptcy Court has previously entered orders authorizing the Trustee to utilize the Debtors' assets, which include, in addition to the Inventory, funds in various bank accounts and receivables (“**Cash Collateral**”), all of which were subject to first-priority liens in favor of CardConnect. *See* [ECF Nos. 46, 68, 77, 167, 190, 244, 264] (the “**Cash Collateral Orders**”);

WHEREAS, as a condition for use of the Cash Collateral and entry of the Cash Collateral Orders, the Bankruptcy Court provided to CardConnect a “valid, perfected, and enforceable security interests (the “**Replacement Liens**”) in and upon all assets of the Debtors located in the United States, including any after-acquired property and the proceeds thereof, up to the” amount of Cash Collateral utilized, plus superpriority administrative expense claims allowed under Sections 507(a)(2), 507(b) and 726 (a)(1) of the Bankruptcy Code (the “**Super Priority Claims**”) based on the use of Cash Collateral;

WHEREAS, the Bankruptcy Court entered various orders [ECF Nos. 191, 194, 198] authorizing the sale of certain Inventory and other assets owned by the Estates in Florida (the “**Florida Inventory Sale**”) and granted CardConnect superpriority administrative expense claims and replacement liens on all current and/or future assets of the Debtors, including the proceeds of the sale, and authorizing the Trustee to distribute the sum of \$100,789.85 from the proceeds of the Florida Inventory Sale to CardConnect;

WHEREAS, on December 4, 2017, the Bankruptcy Court entered an order [ECF No. 218] authorizing CardConnect to withdraw and apply the sum of \$1,039,398.60 held in a “Reserve Account” by CardConnect, with such payment reducing CardConnect’s aggregate claims against the Debtors, but not as a reduction of CardConnect’s super priority administrative claims and Replacement Liens on any after acquired property or the proceeds thereof;

WHEREAS, as of the date of this Agreement, and after payment of various administrative expenses approved by the Bankruptcy Court through the Cash Collateral Orders, the Trustee currently holds the aggregate sum of approximately \$460,000, which is derived from the liquidation of the Debtors’ assets subject to the Replacement Liens and Super Priority Claims of CardConnect (the “**Cash on Hand**”);

WHEREAS, as of the date of this Agreement, the Trustee has utilized at least \$467,000 of CardConnect’s Cash Collateral to fund administrative expenses pursuant to the Cash Collateral Orders, and will continue to need to utilize Cash Collateral to fund certain administrative expenses that will be incurred in these Cases;

WHEREAS, as of the date of this Agreement, the Trustee currently holds the accounts receivable of the Debtors (the “**Receivables**”), such that CardConnect asserts a first lien security in any recovery;

WHEREAS, as of the date of this Agreement, the Trustee currently holds various general intangibles of the Debtors (the “**Intangibles**”), such that CardConnect asserts a first lien security in the proceeds of any sale of the Intangibles;

WHEREAS, as of the date of this Agreement, the Trustee currently holds a claim against a customs agent for the recovery of a Customs Bond (the “**Customs Bond Claim**), such that CardConnect asserts a first lien security in any recovery;

WHEREAS, as of the date of this Agreement, the Trustee, on behalf of the Debtors, currently holds claims against former Insiders and other parties affiliated with the Debtors, including, without limitation, former officers, directors, and all holders of equity at relevant times (the “**Insider/Affiliate Claims**”), such that CardConnect asserts a first lien security in any recovery, including on account of its Super Priority Claims;

WHEREAS, as of the date of this Agreement, the Trustee has various avoidance actions it may pursue under various provisions of Chapter 5 of the Bankruptcy Code, such that

CardConnect asserts a first lien security in any recovery, including on account of its Super Priority Claims;

WHEREAS, CardConnect asserts its Replacement Liens and Superpriority Claims against the Cash on Hand, Receivables, Intangibles, Customs Bond Claim, Insider/Affiliate Claims, and Avoidance Actions (collectively, the “**Remaining Assets**”);

WHEREAS, CardConnect also asserts its Security Interest as a first priority lien claim against the Remaining Assets for the balance of the CardConnect Chargeback Claim;

WHEREAS, the Trustee does not dispute CardConnect’s Replacement Liens and Super Priority Claims against the Remaining Assets, nor does the Trustee dispute CardConnect’s Security Interest in the Cash on Hand (subject to the carve-outs previously approved by the Bankruptcy Court), Receivables, Intangibles, and Customs Bond Claim; however, the Trustee does dispute that CardConnect’s Security Interest extends to the Insider/Affiliate Claims or Avoidance Actions and/or whether CardConnect may assert administrative claims and/or be subrogated to priority claimholders on account of Chargebacks satisfying such claims after the Petition Date;

WHEREAS, the Trustee continues to need to utilize the Cash on Hand and other recoveries that would otherwise constitute Cash Collateral to fund the administrative expenses of the Debtors’ Estates set forth on the budget attached to the Motion to approve this Agreement, as well as professional fees incurred by the Trustee’s general counsel, Akerman, LLP, the Trustee’s financial advisors, Glass Ratner, LLC, the expenses of the Trustee’s Special Counsel, Bast Amron, P.A., and the Trustee’s tax accountants, Marks Paneth, LLC;

WHEREAS, the Parties have engaged in good faith negotiations to resolve the Parties’ disputes with respect to the CardConnect Claim and the priority of the amount asserted therein;

WHEREAS, as set forth herein, the Parties have reached an agreement concerning the liquidation of the Remaining Assets, the sharing of funds derived from the liquidation of the Remaining Assets, the amount of the CardConnect Chargeback Claim, and the payment and treatment of the CardConnect Chargeback Claim in these Chapter 7 cases, which the Trustee believes, in the exercise of her business judgment, is in the best interests of these Chapter 7 Estates and its creditors;

NOW THEREFORE, the Parties hereto, in consideration of the foregoing and for other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** Each of the foregoing Recitals are incorporated as if fully set forth herein.

2. **Effective Date.** This Agreement shall only become effective and binding on the Parties as of the first date on which each of the following has occurred (the “**Effective Date**”): (a) this Agreement has been executed by the Trustee and CardConnect; and (b) this Agreement has been approved by the Bankruptcy Court. Notwithstanding the foregoing, the obligations of the Parties set forth herein shall become effective immediately upon the first date on which this Settlement Agreement has been executed by the Trustee and CardConnect. In the event that the Bankruptcy Court enters a final, non-appealable order denying the approval of this Agreement with prejudice, this Agreement shall be deemed voided, nullified, and of no further force or effect.

3. **Bankruptcy Court Approval and Retention of Jurisdiction.** The Parties agree that this Agreement is subject to the Bankruptcy Court’s entry of a final order approving this Agreement (the “**Approval Order**”). Both the Trustee and CardConnect shall take all necessary and appropriate steps to secure entry of the Approval Order. All disputes relating to, or arising from, this Agreement, including without limitation, whether any asset is a Remaining Asset or otherwise constitutes Cash Collateral, shall be heard and adjudicated solely by the Bankruptcy Court.

3. **Allowance of CardConnect Claim.** The CardConnect Claim shall be “Allowed” subject to the priorities and terms set forth below against the Debtors’ Estates in the aggregate amount of \$1,699,201.15 (the “**Allowed CardConnect Claim**”), which amount liquidates and settles the CardConnect Chargeback Claim, interest and fees CardConnect asserts, less (1) the \$1,039,398.60 CardConnect received from the Reserve Account and (2) \$100,789.85 received from the Florida Inventory Sale. The Allowed CardConnect Claim shall not accrue with interest (except the 10% interest which accrues on the \$160,000 of cash to be utilized by the Trustee for continued Cash Collateral purposes as set forth below) or fees, and the Allowed CardConnect Claim shall be withdrawn, disallowed and/or deemed satisfied in its entirety upon payment in full.

4. **Carve-Out and Sharing Agreement Related to Cash on Hand and Remaining Assets.** The Parties shall share in the Cash on Hand and Remaining Assets as follows:

A. **Cash on Hand.** Upon entry of an order from the Bankruptcy Court approving fee and/or costs applications of the Trustee's professionals [ECF No.'s 302, 305 and 307] and, as it relates to the payment to CardConnect set forth below, approval of this Agreement by the Bankruptcy Court, the Trustee shall be authorized to distribute the sums of \$100,000 to Akerman, LLP and \$100,000 to Glass Ratner, LLC, as partial payments of fees after approval of their filed fee applications and \$100,000 to CardConnect as a paydown on the CardConnect Claim. The remaining balance of the Cash on Hand, which is projected to be approximately \$160,000, shall be held by the Trustee in the Trustee’s Accounts and CardConnect shall allow the Trustee to utilize such funds to pay any administrative expenses or costs of the Trustee’s special counsel, Bast Amron, P.A. in pursuit of Insider/Affiliate Claims or Avoidance Actions or other administrative and/or priority expenses, subject to Bankruptcy Court approval, if applicable. CardConnect shall be entitled to the payment of simple interest at 10% per annum (accruing interest daily) on any remaining funds from the Cash on Hand, which is projected to be

approximately \$160,000, and such interest shall increase the Allowed CardConnect Claim on a dollar for dollar basis.

B. **Customs Bond Claim.** CardConnect shall share the proceeds from any recovery on the Customs Bond Claim, such that the Trustee shall receive 50% of such proceeds and CardConnect shall receive 50% of such proceeds. The Trustee shall be authorized to distribute CardConnect's portion of such proceeds as a paydown on the Allowed CardConnect Claim without further approval by the Bankruptcy Court and otherwise to deposit the Trustee's portion of such proceeds in the Trustee's Accounts. The Trustee shall be authorized to deposit its 50% share of funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to the Allowed CardConnect Claim as allowed by the Bankruptcy Court or otherwise in accordance with the Bankruptcy Code. The Trustee shall be required to remit to CardConnect its portion of the Custom Bonds Claim recovery immediately upon the receipt thereof.

C. **Receivables.** The Parties shall share the proceeds from any recovery on the Receivables, such that the Trustee shall receive 50% of such proceeds and CardConnect shall receive 50% of such proceeds. The Trustee shall be authorized to distribute CardConnect's portion of such proceeds as a paydown on the Allowed CardConnect Claim without further order of the Bankruptcy Court and otherwise to deposit the Trustee's 50% portion in the Trustee's Accounts. The Trustee shall be authorized to deposit its 50% share of funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to the Allowed CardConnect Claim as allowed by the Bankruptcy Court or otherwise in accordance with the Bankruptcy Code. The Trustee shall remit to CardConnect its portion of the Receivables recoveries immediately upon the receipt thereof.

D. **Sale or Liquidation of Intangibles.** The Parties shall share the proceeds from any recovery on any liquidation or sale of the Intangibles, such that the Trustee shall receive 50% of such proceeds and CardConnect shall receive 50% of such proceeds. The Trustee shall be authorized to distribute CardConnect's portion of such recovery as a paydown on the Allowed Card Connect Claim without further order of the Bankruptcy Court and otherwise to deposit the Trustee's portion in the Trustee's Accounts. The Trustee shall be authorized to utilize such funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to the Allowed CardConnect Claim as allowed by the Bankruptcy Court or otherwise in accordance with the Bankruptcy Code. The Trustee shall remit to CardConnect its portion of the Intangibles proceeds immediately upon the receipt thereof.

E. **Insider/Affiliate Claims.**

(i) The Parties shall share the proceeds from any "Net Recoveries" (defined below) from the Insider/Affiliate Claims pursuant to the waterfall below. "Net Recoveries" are defined as any and all sums awarded and/or provided through insurance, settlement, litigation or any cause of action that are related to any obligations, rights, suits, damages, judgments, remedies, demands, setoffs, defenses, recoupments, crossclaims, counterclaims, third-party claims, indemnity claims, contribution claims, or any other claims whatsoever, in each case held by any Debtor, whether known or unknown, matured or unmatured, fixed or contingent, liquidated or unliquidated,

disputed or undisputed, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, in law, equity, or otherwise after payment only of Bast Amron, P.A.'s court approved fees and expenses.

(ii) The Trustee shall receive 50% of the first \$600,000 of Net Recoveries, 60% of Net Recoveries from \$600,000 to \$1 million, 100% of Net Recoveries from \$1 million to \$1.3 million, and 60% of Net Recoveries in excess of \$1.5 million, and CardConnect shall receive 50% of the first \$600,000 of Net Recoveries, 40% of Net Recoveries from \$600,000 to \$1 million, 100% of Net Recoveries from \$1.3 million to \$1.5 million, and 40% of Net Recoveries in excess of \$1.5 million. The net difference shall benefit the Debtors' estates and shall not be remitted by one party to the other party.

(iii) The Trustee shall be authorized to make distributions to CardConnect pursuant to the terms of this Agreement without further order of the Bankruptcy Court and may otherwise deposit the Trustee's portion in the Trustee's Accounts. The Trustee shall be authorized to utilize such funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to the Allowed CardConnect Claim as allowed by the Bankruptcy Court. The Trustee shall be required to remit CardConnect's portion of such proceeds after the Trustee obtains Bankruptcy Court approval of any settlement of an Insider Claim and immediately upon receipt of such settlement funds or immediately after the Trustee obtains a judgement on any Insider Claim and recovers any funds based on enforcement of the judgement.

F. **Avoidance Actions.** To the extent that the Allowed CardConnect Claim is not paid in full by the Cash on Hand, Receivables, Intangibles and the Insider/Affiliate Claims and/or their respective proceeds, the Parties shall share the proceeds from any Net Recoveries (as defined in paragraph E above) from Avoidance Actions, such that the Trustee shall receive 70% of any Net Recoveries and CardConnect shall receive 30% of any Net Recoveries. The Trustee shall be authorized to distribute CardConnect's portion of any recovery from the Avoidance Actions as a paydown on the Allowed Card Connect Claim without further order of the Bankruptcy Court and otherwise to deposit the Trustee's portion in the Trustee's Accounts. The Trustee shall be authorized to utilize such funds in the Trustee's Accounts to pay allowed administrative expense claims and other claims against the Debtors' Estate unrelated to the Allowed CardConnect Claim as allowed by the Bankruptcy Court. The Trustee shall remit CardConnect's portion of such proceeds after the Trustee obtains Bankruptcy Court approval of any settlement of an Avoidance Action and immediately upon receipt of such settlement funds or immediately after the Trustee obtains a judgement on any Insider Claim and recovers any funds based on enforcement of the judgement.

For the avoidance of doubt, no costs or expenses of administration which have been or may be incurred by the Trustee or any party retained by the Trustee or the Debtors' estates the costs and/or expenses of which shall be paid by the Trustee shall be charged pursuant to sections 506(c) or 105(a) of the Bankruptcy Code against CardConnect, the Allowed CardConnect Claim, the Remaining Assets or the proceeds of the Remaining Assets to be distributed on account of the Allowed CardConnect Claim without the prior written consent of CardConnect, and no such

consent shall be implied from any other action, inaction, or acquiescence by CardConnect or its respective representatives.

5. **Release.** The U.S. Trustee releases CardConnect from any and all claims, causes of action, demands and rights it may have against CardConnect.

6. **Representations, Warranties, and Acknowledgements.** The Trustee represents, warrants and acknowledges to CardConnect that, as of the Effective Date, she is authorized to enter into this Agreement.

7. **Trustee's Account.** For the purposes of this Agreement, the term "Trustee's Account" shall mean one or more interest bearing accountants maintained by the Trustee from which distributions to administrative, priority and unsecured creditors (including, without limitation, Chapter 7 Administrative Creditors) will be made in accordance with the priorities established by law or otherwise ordered by the Bankruptcy Court.

6. **Reporting.** Until the Allowed CardConnect Claim has been satisfied in full pursuant to the terms of this Agreement, the Trustee shall provide monthly, written reports to Card Connect with respect to the disposition of Remaining Assets.

7. **Abandonment of Remaining Assets.** The Trustee may abandon any portion of the Remaining Assets that she determines in the exercise of her business judgment, is burdensome on the Debtors' Estates and/or has inconsequential value to the Debtors' Estates, but shall consult with CardConnect in advance of such abandonment.

8. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between and among the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the Parties hereto. The Parties hereto acknowledge that each Party has not executed this Agreement in reliance on any such promise, representation, or warranty not expressly contained in the Agreement.

9. **Amendment.** This Agreement may be amended, assigned, modified or supplemented only by written agreement executed by each of the Parties hereto.

10. **Binding on Successors, Assigns and Others.** This Agreement and the covenants and conditions contained herein shall apply to, be binding upon, and inure to the heirs, executors, administrators, conservators, agents, legal representatives of the Parties hereto.

11. **Construction.** To the fullest extent possible, any provision of this Agreement to which a court of competent jurisdiction holds as invalid or unenforceable shall be narrowed or revised by such court in a manner consistent with the apparent intent and purpose of such provision so as to make it enforceable. Otherwise, it shall be struck from this Agreement. In any event, the remaining provisions of this Agreement and any partially invalid or unenforceable provisions to the extent valid and enforceable, shall nevertheless be binding, valid and

enforceable. This Agreement was prepared and negotiated by all of the Parties, with the assistance of their respective counsel, and it shall not be construed against any one of the Parties.

12. **Advice of Counsel.** The Parties acknowledge that they have been (or have had the opportunity to be) represented by counsel of their own choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had the opportunity to receive an explanation from legal counsel regarding the legal nature and effect of this Agreement, and each Party understands the terms and provisions of this Agreement and its nature and effect. Each Party further represents that they are entering into this Agreement freely and voluntarily, relying solely upon the advice of their own counsel if applicable, and not relying on representation of any other Party or of counsel for any other Party.

13. **Counterparts, Facsimiles and Adobe PDF Duplicates.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement. Any signature in any counterpart of this Agreement provided via facsimile or e-mail Adobe PDF format document shall be deemed an original signature.

14. **Further Assurances.** The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the purpose and provisions of this Agreement.

15. **Meaning of Pronouns and Effect of Headings.** As used in this Agreement and attached exhibits, the masculine, feminine and/or neuter gender, in the singular or plural, shall be deemed to include the others whenever the text so requires. The captions and paragraph headings in this Agreement are inserted solely for convenience or reference and shall not restrict, limit, or otherwise affect the meaning of the Parties' agreement.

16. **Attorneys' Fees and Costs.** Except as set forth above, the Parties understand and agree that each Party shall bear its own respective attorneys' fees, costs, and expenses incurred in connection with the negotiation, execution and delivery of this Agreement and any of the disputes settled, resolved or satisfied pursuant to this Agreement, and that neither Party shall have any further monetary claims against the other in connection with the negotiation of this Agreement, except as otherwise provided herein.

17. **Miscellaneous.**

(a) All disputes relating to or arising out of this Agreement shall be governed by the laws of the State of Florida, excluding its choice-of-law rules.

(b) This Agreement shall not create any third party beneficiary rights in any person and shall not confer any rights or remedies upon any person other than the parties and their respective successors and permitted assigns.

(c) This Agreement is a settlement of disputed claims and other matters. In

executing this Agreement, no Party is admitting any liability with respect to any of the claims against it released in this Agreement or any other claims or matters.

IN WITNESS WHEREOF, the Parties, have each caused this Settlement Agreement to be executed by themselves or by their duly authorized representatives on the dates set forth below with a full and complete understanding of the terms hereof.

MARGARAT J. SMITH, TRUSTEE

CARDCONNECT, LLC

By: _____

By: _____

Title: _____

Dated: September ____, 2018