

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

SYDELL, INC. D/B/A SPA SYDELL,

Debtor.

CHAPTER 11

CASE NO. 16-64647-pwb

**NOTICE OF HEARING ON DEBTOR'S MOTION FOR AUTHORITY TO SELL PROPERTY
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND FOR APPROVAL OF
ITS ASSET PURCHASE AGREEMENT WITH ADVANCED DERMAL SCIENCES, LLC**

PLEASE TAKE NOTICE that the above-named debtor in possession (the "Debtor") has filed the following Debtor's Motion for Authority to Sell Property Free and Clear of Liens, Claims and Encumbrances and for Approval of its Asset Purchase Agreement with Advanced Dermal Sciences, LLC (the "Motion") with the Court seeking an order granting the relief stated therein:

PLEASE TAKE FURTHER NOTICE THAT the Court will hold a hearing on this Motion in **Courtroom 1401** of the Richard Russell Federal Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303 on **Thursday, September 7, 2017 at 10:00 a.m.**, to consider the Motion.

Your rights may be affected by the court's ruling on this Motion. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in these pleadings or if you want the court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk before the hearing. The address of the Clerk's office is: Clerk, U.S. Bankruptcy Court, Suite 1340, 75 Ted Turner Drive SW, Atlanta, Georgia 30303. You must also mail a copy of your response to the undersigned at the address stated below.

This 16th day of August, 2017.

150 S. Perry Street, Suite 208
Lawrenceville, GA 30046
T: (678) 765-1745
F: (678) 606-5031
E: mlevengood@levengoodlaw.com

Respectfully submitted,
/s/ J. Michael Levengood
JOHN MICHAEL LEVENGOOD
Georgia Bar No. 447934
LAW OFFICE OF J. MICHAEL LEVENGOOD, LLC
Counsel for the Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

SYDELL, INC. D/B/A SPA SYDELL,

Debtor.

CHAPTER 11

CASE NO. 16-64647

DEBTOR'S MOTION FOR AUTHORITY TO SELL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND FOR APPROVAL OF ITS ASSET PURCHASE AGREEMENT WITH ADVANCED DERMAL SCIENCES, LLC

COMES NOW Sydell, Inc. d/b/a Spa Sydell, debtor and debtor-in-possession (the "Debtor") in the above-styled case (the "Case"), by and through the undersigned counsel, and files this Motion, respectfully showing the Court as follows:

Relief Requested

1.

By this Motion, the Debtor requests entry of an order authorizing the Debtor to sell substantially all of its assets to Advanced Dermal Sciences, LLC pursuant to an Asset Purchase Agreement attached hereto as Exhibit "A" (the "Agreement") with such sale being free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. § 363(f) and to assign its leases for its corporate office and its remaining spa locations pursuant to 11 U.S.C. § 365, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure.

Jurisdiction

2.

This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this

proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

3.

On August 22, 2016, (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtor is authorized to operate its businesses as a debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4.

The Debtor previously has been a debtor in possession. The Debtor’s prior bankruptcy case was filed on September 3, 2009 and was assigned Chapter 11 Case No. 09-83407 in this Court. The prior bankruptcy case was assigned to Chief Judge C. Ray Mullins. After confirmation and substantial consummation of a plan of reorganization, the Court entered an Order Granting Application for Final Decree and closed that bankruptcy case on February 17, 2012.

5.

The Agreement is subject to Bankruptcy Court approval and provides for the sale of substantially all of the assets of the Debtor for a cash purchase price of \$263,000.00, the assumption of certain employee wage claims accruing thirty days before the closing of the proposed transaction and the assumption by the Buyer of the Debtor’s gift card obligations. The Agreement is contingent on the Debtor’s assignment of the leases for its spas at the Forum and in Cumming, with the Buyer being responsible only for performance of such leases from and after the Closing Date.

6.

Advanced Dermal Sciences, LLC (the “**Buyer**”) and the Debtor have negotiated the

Agreement in good faith and the Debtor respectfully submits that the sale price of \$263,000.00 together with the assumption of certain employee wage obligations and its gift card obligations is reasonably equivalent to the fair market value of its assets. Moreover, the Debtor is advised that the proposed Buyer intends to continue to employ most of the Debtor's employees and contractors.

7.

The Debtor discloses that the Buyer is currently negotiating with Reina Bermudez, the Debtor's sole stockholder, CEO and a member of its board of directors, to consult with the Buyer for a period of six months following the Closing Date at a rate of \$10,000 per month.

BASIS FOR RELIEF

Transactions Outside Ordinary Course of Business

8.

In general, a debtor or trustee may engage in transactions outside the ordinary course of its business where the transaction represents an exercise of the debtor's sound business judgment. See, e.g., In re Friedman's, Inc., 336 B.R. 891, 895 (Bankr. S.D. Ga. 2005). In determining whether to approve a transaction, the Court should consider the following: (a) whether the parties have acted in good faith; (b) whether the transaction will produce a fair and reasonable price for the property; (c) whether accurate and reasonable notice of the transaction was given to interested parties; and (d) whether a sound business justification exists for the transaction. See In re Gulf States Steel, Inc. of Alabama, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002).

9.

Courts generally conclude that parties have acted in good faith with respect to a proposed transaction if the consideration is adequate and reasonable and the terms of the transaction are

fully disclosed. See In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 149-50 (3d Cir. 1986).

10.

The Debtor has attempted to sell its assets as a going concern both before filing this case and during the past eleven months that this case has been pending. The Agreement is the best and only offer that the Debtor has received. If this asset sale is not approved, then the Debtor will have no alternative but to cease operations and to liquidate its assets. The Debtor believes that the consideration is a fair and reasonable price for the assets.

11.

The Debtor will provide notice of this Motion to those creditors and parties in interest in who are listed on the Debtor's Master Service List [Docket 228] and to the extent not listed therein to those creditors who are parties to contracts or leases that the Debtor seeks to assign to Buyer. Such parties will have an opportunity to object to the sale and to the assumption and assignment of any assigned leases or contracts.

12.

There is a sound business justification for the sale of the Assets and the assumption and assignment of the leases and any contracts pursuant to the Agreement. A sale of the Assets and assumption and assignment of the leases and any contracts will generate a much higher return for the bankruptcy estate than the cessation of the Debtor's operations.

Sale Free and Clear of Claims and Liens

13.

The Debtor proposes to sell the Assets free and clear of any and all liens, security interests, claims and encumbrances, with all properly perfected and unavoidable liens and security interests to attach to the proceeds of the sale with the same validity, extent and priority

as existed with respect to the property sold. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another person's interest in the property if (a) applicable non-bankruptcy law permits such a free and clear sale, (b) the holder of the interest consents, (c) the interest is a lien and the sales price of the property exceeds the value of all liens on the property, (d) the interest is in bona fide dispute or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest.

14.

The Assets may be sold pursuant to the Agreement if any liens, interests, and encumbrances (the "Liens") asserted by third parties in the Assets are capable of monetary satisfaction or the holders of these Liens consent to the sale. The requirements of Section 363(f) of the Bankruptcy Code will be satisfied for the proposed sale of the Assets free and clear of Liens. Any Liens on the Assets will attach to the proceeds of the sale, subject to any claims or defenses the Debtor may have in response to such Lien.

15.

The Debtor requests that the Court find and determine that (i) the Final Agreement embodies a fair and reasonable offer to acquire the Assets and was negotiated, proposed and entered into by the Debtor and the Buyer without collusion, in good faith, and from arm's length bargaining positions; (ii) neither the Debtor nor the Buyer has engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code; (iii) the Agreement reflects the exercise of the Debtor's sound business judgment and the Debtor has demonstrated good, sufficient and sound business purpose and justification for the sale of the Assets to the Buyer, and (iv) the Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby.

Assumption and Assignment of Assigned Contracts

16.

Section 365 of the Bankruptcy Code specifies the conditions under which a trustee or debtor may assume and assign executory contracts and unexpired leases. The standard used by the courts in determining whether an executory contract should be assumed or rejected is the trustee's or debtor's business judgment as to whether assumption or rejection is in the best interests of the estate. E.g., N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984); In re Gardinier, 831 F.2d 974, 975 (11th Cir. 1987); In re Diamond Manufacturing Co., 164 B.R.189, 199 (Bankr. S.D. Ga. 1994). The assumption and assignment of certain executory contracts and leases is in the best interests of the Debtor's estate. Without the ability to assign these agreements, the value of the Assets would decrease significantly.

17.

As set forth in Section 365(f)(2), for an executing contract to be assigned, there must be "adequate assurance of future performance by the assignee of such contract. ..." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" under Section 365(f)(2) depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." EBG Midtown South Corp. v. McLaren/Hart Env. Engineering Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 593 (S.D.N.Y. 1992); In re Prime Motor Inns Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) ("[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance"); Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988). Adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph,

Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance present when prospective assignee of lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding).

18.

The Debtor will provide evidence at the Hearing to demonstrate the Buyer's financial credibility and willingness and ability to perform under the contracts and leases to be assumed and assigned.

NOTICE AND NO PRIOR RELIEF

19.

The Debtor will provide notice of this Motion to those creditors and parties in interest in who are listed on the Debtor's Master Service List [Docket 228] and to the extent not listed therein to those creditors who are parties to contracts or leases that the Debtor seeks to assign to Buyer. The Debtor asserts that no further or other notice is required.

20.

No prior request for the relief sought in this Motion has been made by the Debtor to this or any other court.

WHEREFORE, the Debtor requests that after notice and a hearing this Court approve the Agreement between the Debtor and the Buyer, authorize the sale of the Debtor's assets in accordance with the Agreement, authorize the assignment and assumption of leases and contracts, and grant the Debtor such other and further relief as may be just and proper.

This 16th day of August, 2017.

Respectfully submitted,

150 S. Perry Street, Suite 208
Lawrenceville, GA 30046
T: (678) 765-1745
F: (678) 606-5031
E: mlevengood@levengoodlaw.com

/s/ J. Michael Levengood
JOHN MICHAEL LEVENGOOD
Georgia Bar No. 447934
LAW OFFICE OF J. MICHAEL LEVENGOOD, LLC
Counsel for the Debtor

EXHIBIT "A"

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of this ___ day of August, 2017, by and between Advanced Dermal Sciences LLC or its assigns (the "Buyer"), on the one hand, and Sydell, Inc., d/b/a Spa Sydell, debtor and debtor-in-possession (the "Seller"), on the other hand. The Buyer and Seller may be referenced collectively as the "Parties" or individually, a "Party."

WHEREAS, the Seller filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), on August 22, 2016 in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court"). The case is Case No.16-64647 (the "Case").

WHEREAS, subject to the approval and order of the Bankruptcy Court in a form acceptable to the Buyer, the Buyer desires to purchase from Seller and Seller desires to sell to Buyer the assets (as defined below) upon and subject to the terms and conditions set forth herein and pursuant to, inter alia, Section 363 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the promises, and the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows.

ARTICLE 1 PURCHASE AND SALE OF ASSETS; NO ASSUMED LIABILITIES

On the terms and subject to the conditions contained herein and subject to the approval of the Bankruptcy Court pursuant to Sections 105 and 363 of the Bankruptcy Code, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, free and clear of all liens, claims, interests, pledges, option, charge, hypothecation, easement, security interest, defect of title, restriction on transferability, restriction on use or other encumbrance ("Liens"), all of Seller's right, title and interest in and to *all* of the assets of the Seller, including, but not limited to, all real and personal property, inventory, equipment, furniture, fixtures, cash and cash equivalents, accounts and notes receivable, choses in action, customer lists, intellectual property including all trademarks and tradenames (including, specifically, the trade name "Spa Sydell" and all trademarks and tradenames associated with the trade name "Spa Sydell"), intangibles, general intangibles and goodwill and all documents related thereto (the "Assets"); provided only, however, that the Seller may retain up to and no more than Twenty Six Thousand Dollars (\$26,000) in cash on hand on the Closing Date. Buyer does not and will not assume any liability or obligation of Seller whatsoever, whether fixed or contingent, known or unknown, disclosed or undisclosed under this Agreement, except for the identified liabilities listed on Exhibit A.

MS / B
8/16/2017

ARTICLE 2
PURCHASE PRICE

The aggregate purchase price for the identified Assets is Two Hundred Sixty Three Thousand Dollars (\$263,000) (the "Purchase Price").

Prior to or concurrently with the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the "Execution Date"), Buyer shall deposit with counsel for Seller (the "Escrow Agent") cash in an amount equal to Ten Thousand Dollars (\$10,000.00) of the purchase price by wire transfer of immediately available federal funds to an account designated by counsel for Seller (the "Good Faith Deposit"). The Good Faith Deposit shall be held in escrow and shall be fully refundable in the event that the Closing does not occur by the Closing Date (as defined below) due to the fault of the Seller. The Escrow Agent shall return to Buyer the Deposit upon the earlier of (i) Buyer's termination of this Agreement under Section 5.1 as a result of the failure of a condition to Buyer's obligations (a "Seller Default Termination"), (ii) Buyer's or Seller's termination of this Agreement at its election under Section 5.1, (iii) at the Outside Date and no Closing or Buyer Default Termination has occurred as of such date, (iv) upon closing of a sale of the Property to a third-party overbidder at the Auction, or (v) mutual termination of this Agreement under Section 5.1. The Escrow Agent shall deliver the Good Faith Deposit to Seller upon the earlier of (A) Seller's termination of this Agreement under Section 5.1 as a result of the failure of a condition to Seller's obligations (a "Buyer Default Termination") or (B) at the Closing of the sale to Buyer, to be credited to the Purchase Price. The Escrow Agent's escrow fees and charges shall be paid by Buyer.

On the Closing Date, Buyer shall (i) pay and deliver to Seller, by wire transfer in Good Funds, the Purchase Price less the Good Faith Deposit and (ii) instruct the Escrow Agent to deliver the Good Faith Deposit to Seller, by wire transfer of Good Funds. The Closing Date shall be no later than September 6, 2017, or sooner, if practicable (the "Closing Date"). The Parties shall co-operate and shall enter into all other necessary documents that are necessary to evidence transfer of title to the Assets to Buyer or its designee.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

Section 3.1 Seller represent and warrant to Buyer as follows.

A. Authority. To the extent necessary, the Approval Order shall grant to the Seller all requisite power and authority to execute and deliver this Agreement and to perform the transactions contemplated hereby and thereby.

B. Title. The Approval Order shall convey to the Buyer good and valid legal and beneficial title in and to the Assets, free and clear of all Liens.

C. Personal Property Taxes. Seller shall satisfy all personal property taxes required to have been paid, or which has been claimed, assessed or demanded by any municipality to be payable by Seller with respect to the Assets. The entry of the Approval Order authorizing the transfer of beneficial title in and to the Assets to the Buyer, free and clear of all Liens, shall be deemed to satisfy this representation.

D. Conduct of Business Prior to Closing. Prior to the Closing Date, the Debtor will operate its business in the same ordinary course of business in which it is currently operating and shall continue to operate both the Cumming and Forum locations. Should either of these locations cease business before Closing, the Buyer shall have no obligation to close this transaction.

E. Payment of Utilities and Wages. Prior to the Closing Date, the Debtor will pay all post-petition utility expenses regarding its new corporate office and its currently open spa locations, including the Cumming and Forum spas, and wages due to employees and payments due to independent contractors who are working at the corporate office and/or at such spa locations which customarily would be paid prior to the Closing Date (the "Covered Utilities and Payrolls"). For the avoidance of doubt, Buyer assumes the liability for payrolls that become due following the Closing Date for employees and independent contractors who are working at the corporate office and its currently open spa locations as of the Closing Date so long as the period to which the payroll relates was for wages earned or services rendered within the thirty day period before the Closing Date, and as such those payrolls are not included within the definition of Covered Utilities and Payrolls. Should the Seller fail to pay such expenses and payrolls, the Buyer shall have no obligation to close this transaction; provided, however, that the Buyer shall have the option of closing this transaction and deducting the amount of unpaid Covered Utilities and Payrolls from the Purchase Price.

F. Post-Closing Use of Name: Following the Closing Date, the Seller shall cease to use the name "Spa Sydell" except only in the caption of its Chapter 11 case. Within ten business days following the Closing Date, the Seller shall, at its own expense, file such documents as may be necessary to formally and legally change the name of its legal entity to a name of its choosing which does not contain the words "Spa" or "Sydell".

Section 3.2. Buyer represents and warrants to Seller as follows.

A. Authority. All action on the part of Buyer necessary for the authorization, execution, delivery and performance of this Agreement by Buyer, including, but not limited to, the performance of Buyer's obligations hereunder, has been duly taken. This Agreement, when executed and delivered by Buyer, shall constitute the valid and binding obligation of Buyer enforceable in accordance with its terms.

B. Organization, Standing and Power. Buyer is a corporation duly organized,

validly existing and in good standing under its jurisdiction of organization. Buyer has all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

C. No Conflicts or Violations. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the articles of incorporation or by-laws of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

D. Financing. Buyer has sufficient funds available to consummate the transactions contemplated hereby.

ARTICLE 4 **COVENANTS**

Buyer and Seller agree as follows with respect to the period between the execution of this Agreement and the Closing Date:

Section 4.1 General. Subject to the terms of this Agreement, and, in the case of Seller, approval of the Bankruptcy Court, Buyer and Seller will each use commercially reasonable efforts to take all actions and to do all things necessary, proper, or advisable in order to consummate and make effective the transactions contemplated by this Agreement.

Section 4.2 Notices. Seller will use commercially reasonable efforts to give all necessary notices to third parties required under this Agreement, including all notices required in order to obtain the Approval Order.

Section 4.3 Transfer Taxes. To the extent the transaction contemplated by the Agreement is not tax exempt pursuant to Section 1146 of the Bankruptcy Code, the Buyer shall make all required payment of taxes, transfer taxes, fees, stamp taxes or other similar taxes or fees that are to be made in connection with the transfer of beneficial title (the "Transfer Taxes"), in the Assets. Buyer shall pay such Transfer Taxes and shall file all necessary documentation and returns with respect to such Transfer Taxes when due, and shall promptly, following the filing thereof, furnish a copy of such return or other filing and a copy of a receipt showing payment of any such transfer tax to Seller.

Section 4.4 Approval Order. The Buyer's obligations to proceed with the transaction contemplated by this Agreement are subject to and conditioned upon the Bankruptcy Court having entered the Approval Order.

MB / B
08/15/2017

ARTICLE 5
TERMINATION

Section 5.1 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing Date:

- A. By the mutual written consent of Seller and Buyer;
- B. By either Buyer or Seller if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling or taken any other action, in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or
- C. By Buyer if the Bankruptcy Court has not entered the Approval Order within thirty (30) days after the date of this Agreement, or
- D. By Buyer if Seller fail to perform its obligations under this Agreement.

ARTICLE 6
MISCELLANEOUS PROVISIONS

Section 6.1 Expenses. Except as specifically provided in this Agreement, all costs and expenses incurred by Seller (including any broker fees) shall be paid by Seller and all costs and expenses incurred by Buyer shall be paid by Buyer (including any broker fees).

Section 6.2 Effect of Headings. The subject headings of the Articles and Sections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of the provisions hereof.

Section 6.3 Entire Agreement; Modification. This Agreement, together with all of the schedules and exhibits furnished hereunder and the Order, constitute the sole and entire agreement among the parties pertaining to the subject matter contained herein, and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties.

Section 6.4 Waiver. Any party hereto may waive, in writing, compliance by the other party of any of the covenants or conditions contained in this Agreement, except those conditions imposed by law. No act, failure to act, practice or custom shall constitute an implied waiver of full compliance with any of the provisions hereof. The granting of a written waiver pursuant to this Section shall apply, unless expressly set forth therein to the

MB/ [Signature]
05/15/2017

contrary, only to the specific incident of noncompliance with the specific provisions of this Agreement set forth therein.

Section 6.5 Counterparts. This Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A party may execute this Agreement and transmit its signature electronically, which shall be fully binding, and the party taking such actions shall deliver a manually signed original as soon as is practicable.

Section 6.6 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than Buyer and the parties to this Agreement and their respective successors and assigns, or is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement. None of the provisions hereof shall be deemed to give any third persons any right of subrogation or action over or against any party to this Agreement.

Section 6.7 Binding Effect. This Agreement shall be binding on, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

Section 6.8 Successors and Assigns. Neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party. Any assignment in violation of the foregoing shall be null and void.

Section 6.9 Notices. Any notices, consent, approval or other communications given pursuant to the provisions of this Agreement shall be in writing and shall be: (A) mailed by certified mail or registered mail, return receipt requested, postage prepaid, or (B) delivered by a nationally recognized overnight courier, U.S. Post Office Express Mail, or similar overnight courier which delivers only upon signed receipt of the addressee, or (C) delivered by facsimile or hand delivered and addressed as follows:

If to Seller:

Sydell, Inc.
313 Creekstone Ridge
Woodstock GA 30188
ATTN: Reina Bermudez

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

J. Michael Levengood, Esq.
Law Office of J. Michael Levengood, LLC
150 S. Perry St., Suite 208

MB/R
5/15/2017

Lawrenceville, GA 30046

If to Buyer:

Advanced Dermal Sciences, LLC
(Notice Address to Be Provided pursuant to the terms of this Agreement.)

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

Henry F. Sewell, Jr., Esq.
Law Offices of Henry F. Sewell, Jr., LLC
Suite 555
2964 Peachtree Road, NW
Atlanta, Georgia 30305

The time of giving of any notice shall be the time of receipt thereof by the addressee or any agent of the addressee, except that in the event the addressee or such agent of the addressee shall refuse to receive any notice given by registered mail or certified mail as above provided or there shall be no person available at the time of the delivery thereof to receive such notice, the time of the giving of such notice shall be the time of such refusal or the time of such delivery, as the case may be. Any party hereto may, by giving five (5) days written notice to the other party hereto, designate any other address in substitution of the foregoing address to which notice shall be given.

Section 6.10 Definitions. All terms defined in this Agreement shall have such defined meanings when used in any exhibit, schedule, or any certificate or other document made or delivered pursuant thereto or thereto, unless otherwise defined therein.

Section 6.11 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to any choice of law or conflict provision or rule, whether of the State of Georgia (or any other jurisdiction) that would cause the laws of any jurisdiction other than the State of Georgia to be applied. In furtherance of the foregoing, the internal law of the State of Georgia will control the interpretation and construction of this Agreement, even if under such jurisdiction's choice of law or conflict of law or analysis, the substantive law of some other jurisdiction would ordinarily apply.

Section 6.12 Bankruptcy Court Jurisdiction. BUYER AND SELLER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING; TO (i) THE INTERPRETATION

AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT HERETO; AND/OR (ii) THE PROPERTY AND/OR ASSUMED LIABILITIES, AND BUYER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION.

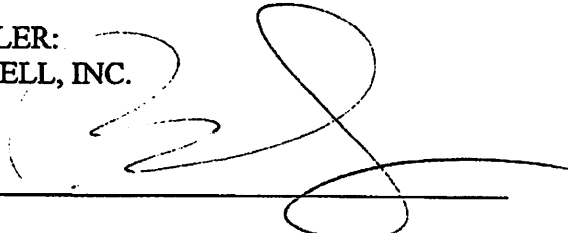
IN WITNESS WHEREOF, each of the parties hereto have signed this Agreement or has caused the same to be signed by its duly authorized officer as of the date first above written.

BUYER:
ADVANCED DERMAL SCIENCES, LLC

By: Matthew Bine

Its: President

SELLER:
SYDELL, INC.

By: 


Its: CEO

MB
08/05/2017

EXHIBIT A

Buyer shall not assume any of the liabilities of the Debtor, excepting only for those liabilities or contracts it expressly agrees to assume in writing. Buyer shall assume *only* the following existing liabilities of the Debtor which shall be specifically itemized at closing.

- Leases for Cumming location and Forum location, provided, however, that Seller shall not be required to pay as a condition of this agreement any pre-petition cure amount to the landlord of the Forum location and Buyer shall be responsible only for payment of rent and other charges arising under such leases beginning September 1, 2017; provided, however, that if the Closing Date occurs after September 1, 2017, (i) rent shall be pro-rated between the parties and the Buyer shall be permitted to deduct the pro-rated portion of rent accruing prior to the Closing Date from the Purchase Price and (ii) accounts receivable accruing after September 1, 2017, shall be pro-rated between the parties and the Seller shall be permitted to retain the pro-rated portion of accounts receivable accruing prior to the Closing Date.
- Validly issued and outstanding gift cards and gift certificates.
- Equipment and Software licenses and similar agreements necessary to manage the business of the Debtor to be designated by the Buyer five business days prior to the Closing Date.
- Any other contracts or agreements, including but not limited to the corporate headquarters lease, which the Buyer, in its sole and absolute discretion may designate in writing five days prior to the Closing Date.
- Payroll for employees or independent contractors of the Debtor that first become due after the Closing Date and relate to services performed by such employees and independent contractors of the Debtor during the thirty day period before the Closing Date.

MB / 
08/15/2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that he has served a true and correct of the foregoing “*NOTICE OF HEARING ON DEBTOR’S MOTION FOR AUTHORITY TO SELL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND FOR APPROVAL OF ITS ASSET PURCHASE AGREEMENT WITH ADVANCED DERMAL SCIENCES, LLC*” and the “*DEBTOR’S MOTION FOR AUTHORITY TO SELL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES AND FOR APPROVAL OF ITS ASSET PURCHASE AGREEMENT WITH ADVANCED DERMAL SCIENCES, LLC*” via the Court’s ECF system, if such party is registered, or via first class U.S. Mail, with adequate postage prepaid, on the following persons or entities at the addresses stated in the attached Exhibit “A” who consist of the persons listed in the Debtor’s Master Service List [Docket 228] and to the extent not listed therein to those creditors who are parties to contracts or leases that the Debtor seeks to assign to Buyer.

Dated: August 16, 2017.

Respectfully submitted,

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