

1 Jeffrey J. Goodrich (SBN 107577)
 2 GOODRICH & ASSOCIATES
 3 336 Bon Air Center, Suite 335
 4 Greenbrae, CA 94904
 (415) 925-8630 VOICE
 (415) 925-1423 FAX

5 Counsel for Debtor in Possession

7 UNITED STATES BANKRUPTCY COURT
 8 EASTERN DISTRICT OF CALIFORNIA

12 In re
 13 UNITED CHARTER, LLC
 14 Debtor

CHAPTER 11

Case No. 17-22347

DC No. JJG-2

15 **AMENDED MOTION OF DEBTOR IN**
 16 **POSSESSION FOR ORDER APPROVING**
 17 **EMPLOYMENT OF AUCTIONEER AND**
 18 **SALE OF REAL PROPERTY BY**
 19 **AUCTION**

DATE: August 31, 2017

TIME: 10:30 a.m.

COURTROOM: 33

20 Honorable Ronald H. Sargis
 21 501 "I" Street, Sixth Floor
 22 Sacramento, CA

23 United Charter LLC, debtor and debtor in possession herein ("Debtor"), by and through its
 24 counsel of record, moves pursuant to 11 U.S.C. §363(b), (c) and (f) to sell all of its interest in real
 25 property by auction free and clear of liens on condition that all of the claims secured by such liens
 26 are paid in full from net sale proceeds ("Motion"). In addition, the Motion seeks approval of the
 27 employment of Ten-X LLC ("Ten-X") as auctioneer and of the sale procedures that Ten-X proposes
 28

1 to use in said auction. A separate application for approval of a Listing Broker, Mark Bello, will be
2 submitted ex parte prior to the hearing on this Motion.

3 In support of its Motion, the Debtor represents and alleges:

4 1. On April 7, 2017, Debtor filed a petition with this court for relief under the
5 Bankruptcy Code. Since the Petition Date, pursuant to Sections 1107 and 1108 of the Bankruptcy
6 Code, Debtor has retained possession of its assets and continued to operate and manage its business
7 as Debtor.

8 2. Among the assets of this estate is a fee simple interest in a 177,692 sq. ft. industrial
9 complex consisting of eighteen (18) contiguous parcels totaling 15.34 acres, located in Stockton,
10 California, and more particularly described as follows: 1904, 1908, 1912, 1916, 1920, 1928, and
11 1936 Weber Avenue; 1881 E. Market Street; 1617, 1555, 1531, and 1523 E. Main Street
12 (collectively, the "Subject Property").

13 3. The Debtor has scheduled the value of the Subject Property as approximately \$7.855
14 million. The Debtor's schedules identify total secured and unsecured claims against the estate of
15 less than \$5 million. As of August 3, 2017, the last day for filing proofs of claim in this case, the
16 total amount of all claims scheduled by the Debtor, including the higher amounts of all timely filed
17 proofs of claim, was less than \$5.3 million.

18 4. The Debtor desires to sell the Subject Property using an auction process. The Debtor
19 has solicited auction proposals from a number of real estate brokers and companies and believes that
20 Ten-X LLC is well qualified to market the Subject Property and conduct such an auction. As set
21 forth in the accompanying Declaration of Jimmie Russell, Based on information and belief, Ten-X
22 holds real estate brokerage licenses nationwide and operates and manages one of the leading online
23 real estate auction platforms in the country. Ten-X has over 1,000 employees and is headquartered in
24 Irvine, California, with offices in San Mateo, California, Austin and Plano, Texas, Miami, New
25 York, Atlanta, and Colorado. Ten-X combines innovative technology together with deep real estate
26 expertise to create a proven platform which allows parties to confidently buy and sell real estate
27 completely online. The Ten-X platform attracts buyers from around the world, and during 2016
28 yielded 21.3 million visitors and 141 million page views across more than one 137,000 listed

1 properties. During 2016 alone, the number of Ten-X accounts held by investors, consumers and
2 industry professionals grew by approximately 670,000. Declaration of Jimmie Russell in Support of
3 Motion for Order Approving Employment of Auctioneer and Sale of Real Property By Auction
4 (“Russell Dec”), ¶6.

5 5. The Debtor is informed and believes, and based thereon alleges, that Ten-X has been
6 approved as an auctioneer of real property in a number of Bankruptcy Courts around the country,
7 including the Middle District of Florida (In re Tracy, Case No. 6:15-bk-03736 (Doc. No. 27)); In re
8 Anderson, Case No. 8:14-bk-07378 (Doc. No. 29)); the Western District of North Carolina (In re
9 Badiak, Case No. 14-31252 (Doc. No. 18)); Middle District of Pennsylvania (In re Statuti, Case No.
10 15-00946) (Doc. No. 53))¹; Eastern District of Tennessee (In re D&E General Partnership, Case No.
11 3:16-bk-31625 (Doc. No. 111)); Northern District of Illinois (In Re: Pittsfield Development, LLC,
12 Case No. 19-9513 (Doc. No. 85)); Southern District of Florida (In re The Inverrary Resort Hotel
13 Condominium Association, Inc. et al.; Case No. 16-17792-JKO (Doc No. 296))²; and the (Wisconsin
14 state court) Fond du Lac County Circuit County Court (First-Citizens Bank & Trust v. North Main
15 Hospitality, et al.). Moreover, at least one federal district court has approved the retention of Ten-X
16 in a federal receivership case, Pennant Management, Inc. v. First Farmers Financial, LLC., Case No.
17 14-cv-7581 (E. D. Ill.) (Doc. Nos. 166 and 456). Russell Dec, ¶8.

18 6. Ten-X has reviewed the Debtor's list of creditors and conducted a conflicts check
19 through an examination of its business records. Id., ¶3. To the best of its knowledge, information
20 and belief, no one at the firm has any connections with, or any interest adverse to, this bankruptcy
21 estate, the debtor, its counsel, creditors, any other party in interest, their respective attorneys and
22 accountants, the United States Trustee or any person employed in the Office of the United States
23 Trustee. Id. Other than five potential connections the details of which are disclosed in the Russell
24 Declaration, Ten-X is unaware of any such relationship or connection with this bankruptcy estate,
25 the debtor, its counsel, creditors, any other party in interest, their respective attorneys or accounts,
26

27 _____
28 ¹ Each of the preceding bankruptcy cases are Chapter 7 cases.

² Each of the preceding bankruptcy cases are Chapter 11 cases.

1 the United States Trustee, or any person employed in the Office of the United States Trustee. Ten-X
2 represents that it believes it can represent the estate as auctioneer without conflict. Id. At ¶4.

3 7. Attached hereto as Exhibit "A" is a true and correct copy of the engagement
4 agreement between United Charter, LLC, debtor in possession, and Ten-X which is the subject of the
5 within Motion. Id., at ¶9. Included in Exhibit "A" is a Disclosure Regarding Real Estate Agency
6 Relationship signed by one of Ten-X's brokers, Vibhav Kapila. Id. As disclosed therein, Ten-X has
7 agreed to represent only the debtor in possession, United Charter LLC, as its broker in any sale
8 arising from the proposed auction. Also included in Exhibit "A" is a true and correct copy of the
9 auction Participation Terms which apply to all Ten-X conducted auctions, including any auction of
10 the assets of United Charter, LLC's bankruptcy estate.

11 8. The substantive terms of the Ten-X Marketing Agreement, including the Participation
12 Terms ("Agreement"), are as follows:

13 a. Although the Agreement contemplates up to a 150 day marketing period followed by
14 a "live bid" auction using the Ten-X auction platform, based upon the interest in the Subject
15 Property received to date, the auction is presently scheduled to commence on September 11 and run
16 through September 13, 2017. The actual date will depend upon circumstances and the advice of the
17 Debtor's counsel and broker.

18 b. The Starting Bid is presently \$2,500,000. This is not a Reserve Price. The Debtor is
19 only obligated to accept the highest bid once a bid meets or exceeds the stated "Minimum Price" of
20 \$7,800,000. The Debtor may, in its sole and absolute discretion, accept a lower price, subject to
21 approval of the Bankruptcy Court, so long as that price is sufficient to pay the monetary demands of
22 all creditors in full, including all costs of sale and administrative claims against the estate.

23 c. Any successful bidder will be required to submit its offer on Ten-X's standard
24 Purchase and Sale Agreement ("PSA"), a copy of which is attached hereto as Exhibit "B".

25 d. Escrow shall close within 30 days of execution of the PSA (or 60 days if buyer
26 finances the purchase).

27 e. Ten-X to receive a Transaction Fee at closing in the amount of 5% of the buyer's
28 offer price for any purchase and sale agreement for the Subject Property entered into by Debtor

1 during the Marketing Period, with such Transaction Fee obligation continuing for 150 day Tail
2 Period following the end of the Marketing Period.

3 f. Buyer’s broker to receive 1% of the buyer’s offer price (exclusive of any Transaction
4 Fee) from the Listing Broker, Mark Bello (“Bello”). Debtor is negotiating the terms of Bello’s
5 employment and anticipates that prior to the hearing on the Motion, the Debtor will be submitting a
6 separate Application to employ Bello as the Listing Broker, subject to the terms of the Ten-X
7 agreements submitted herewith.

8 g. Ten-X is obligated to pay a buyer’s broker commission of 1% to any broker
9 representing a successful bidder.

10 9. The Debtor requests that the Court approve the employment of Ten-X on the terms
11 and conditions set forth in Exhibit “A” hereto for an online live auction process and that the Court
12 approve the terms of sale described in Exhibit “B” hereto to any successful bidder whose offer
13 matches or exceeds the Minimum Price of \$7,800,000. In the event that the Debtor lowers its
14 reserve price during the auction and accepts a bid lower than the Minimum Price, the Debtor
15 requests that the Court schedule a prompt hearing to approve such a sale on shortened time following
16 acceptance of such a bid. As part of its request, the Debtor asks that the Court waive the fourteen
17 (14) day stay requirement of Fed. Rule of Bankr. Proc. 6004(h) so that any such sale may proceed
18 without delay.

19 DATED: August 17, 2017

GOODRICH & ASSOCIATES

20 /s/Jeffrey Goodrich
21 Jeffrey Goodrich
22 Attorneys for United Charter LLC
23 Debtor in Possession
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