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Tulving Company, Inc.

FILED & ENTERED

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CLERK U.S. BANKRUPTCY COURT
Central District of California
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

In re:

THE TULVING COMPANY, INC., a California
corporation,

Debtor.

Case No.: 8:14-bk-11492-ES

Chapter 7

**ORDER (A) APPROVING ASSET
PURCHASE AGREEMENT;
(B) APPROVING SALE OF ESTATE'S
PROPERTY (DEBTOR'S CUSTOMER
LISTS, PHONE NUMBERS, WEB
ADDRESS, CERTAIN CUSTOMER
FILES, AND RELATED PERSONAL
PROPERTY) FREE AND CLEAR OF
ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS;
(C) APPROVING OMBUDSMAN'S
FEE APPLICATION AND
AUTHORIZING PAYMENT OF HIS
FEES/EXPENSES OUT OF SALE
PROCEEDS; AND (D) GRANTING
RELATED RELIEF**

Sale Hearing

Date: December 18, 2014

Time: 10:30 a.m.

Place: Courtroom 5A
411 West Fourth Street
Santa Ana, CA 92701

R. Todd Neilson, the duly appointed chapter 7 trustee (the "Trustee") for The Tulving
Company, Inc. (the "Debtor"), in the above-entitled chapter 7 case (the "Case"), having filed a

1 motion [Docket No. 186] (the “Motion”)¹ for entry of an order (a) authorizing the Trustee to sell
2 (the “Sale”) certain personal property of the bankruptcy estate of the Debtor (the “Estate”)
3 consisting of the following: customer lists, business-related telephone and fax number(s), a domain
4 name, certain customer sales journals, and other related personal property (as more specifically
5 described in the APA, the “Property”) to Greatcollections.com LLC d/b/a Great Collections (the
6 “Stalking Horse Bidder” or “Purchaser”) pursuant to that certain Asset Purchase Agreement and the
7 Addendum thereto (collectively, the “APA”) (substantially in the form attached to the Motion as
8 Exhibit A) or, alternatively, to the successful bidder (the “Successful Bidder”) pursuant to the
9 applicable agreement with such Successful Bidder, determined in accordance with those certain
10 sale and bid procedures approved by the Court’s *Order (1) Scheduling Auction and Sale Hearing in*
11 *Connection with Sale of Debtor’s Customer Lists, Phone Numbers, Web Address, Certain*
12 *Customer Files, and Related Personal Property of the Estate; (2) Approving Sale Procedures; (3)*
13 *Approving Break-Up Fee; (4) Approving Notice of Auction and Sale Hearing; and (5) Granting*
14 *Related Relief Including Approving Ombudsman Report* [Docket No. 198] (the “Sale Procedures
15 Order”), free and clear of all liens, claims, interests and encumbrances pursuant to sections 363(b),
16 (f) and (m) of the Bankruptcy Code, with all liens, claims, interests and encumbrances attaching to
17 the sale proceeds (“Sale Proceeds”) with the same validity (or invalidity), priority and perfection as
18 existed immediately prior to such Sale; (b) approving the APA or other applicable asset purchase
19 agreement with the Successful Bidder; (c) approving the requested fees and expenses of Wesley
20 Avery, the appointed consumer privacy ombudsman (“Ombudsman”) in connection with the Sale,
21 and authorizing the payment thereof at the closing of the Sale, out of the net Sale proceeds; and (d)
22 granting such other relief as further described in the Motion, and the Declaration of R. Todd
23 Neilson (the “Neilson Declaration”) in support thereof;

24 The Trustee, having filed and served the Notice of the Motion [Docket No. 186] and Notice
25 of Sale of Estate Property (LBR 6004-2) [Docket No. 197] (collectively, the “Notices”);

26 No objections or other responses to the Motion having been filed with the Court;

27
28 ¹ Any capitalized terms not defined herein shall have the meaning ascribed to such term in the Motion.

1 A stipulation between the Trustee and the U.S. Trustee having been filed with the Court
2 [Docket No. 165], stipulating to the appointment of an Ombudsman, which stipulation was
3 approved by the Court [Docket No. 171]; and thereafter, the U.S. Trustee having applied for the
4 appointment of Wesley Avery as the Ombudsman [Docket No. 181], which appointment was
5 approved by the Court [Docket No. 182];

6 On October 22, 2014, the Ombudsman having filed his report (the “Ombudsman Report”)
7 [Docket No. 184], in which the Ombudsman concluded, assuming that the buyer adopts the Privacy
8 Policy (as defined in the Motion), the Sale of the Property (i) is consistent with the Privacy Policy
9 in compliance with Bankruptcy Code section 363(b)(1)(A) and (ii) would not violate applicable
10 nonbankruptcy law in compliance with section 363(b)(1)(B);

11 As set forth in the APA, the Stalking Horse Bidder having agreed to abide by and adhere to
12 the Privacy Policy;

13 As set forth in the Sale Procedures Order, the Court having reviewed the Ombudsman
14 Report and finding that the Sale will be and is consistent with the Privacy Policy in compliance
15 with Bankruptcy Code section 363(b)(1)(A), and giving due consideration to the facts,
16 circumstances, and conditions of such Sale, no showing having been made that such Sale would
17 violate applicable nonbankruptcy law, in compliance with Bankruptcy Code section 363(b)(1)(B);
18 and the Court having approved the Ombudsman Report pursuant to the Sale Procedures Order;

19 A hearing to consider the Motion having been held before the Court on December 18, 2014
20 at 10:30 a.m. (the “Sale Hearing”);

21 The Court, having considered the Motion, the supporting declaration, and the Notices, and
22 the Court having been advised there were no Qualified Bidders for the Property other than the
23 Stalking Horse Bidder; and having considered all arguments, statements and representations of
24 counsel on the record at the Sale Hearing; and after due deliberation and good cause appearing
25 therefor;

26 **THE COURT HEREBY FINDS that:**

27 A. On March 10, 2014 (the “Petition Date”), the Debtor filed a voluntary petition for
28 relief under chapter 11 of the Bankruptcy Code, in the United States Bankruptcy Court for the

1 Central District of California, Santa Ana Division (the “Court”).

2 B. On March 18, 2014, the United States Trustee filed a *Stipulation Appointing*
3 *Chapter 11 Trustee* [Docket No. 15] (“Stipulation”), which was signed by both the Debtor and its
4 attorney. The Stipulation was approved by the Court on March 18, 2014 [Docket No. 16] and an
5 order was entered by the Court on March 21, 2014 approving the *U.S. Trustee’s Application for the*
6 *Appointment of a Chapter 11 Trustee*, appointing R. Todd Neilson as Trustee of the Debtor’s estate
7 [Docket No. 22]. Thereafter upon notice and hearing, the case was converted to a chapter 7 case
8 and R. Todd Neilson continues to serve as the chapter 7 Trustee [Docket 108].

9 C. This Court has jurisdiction over this case and the Motion pursuant to 28 U.S.C.
10 §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28
11 U.S.C. § 157(b)(2).

12 D. As evidenced by the affidavits of service on file with the Court, due and sufficient
13 notice of the Motion, the Sale (including the sale and transfer of any and all customer lists and
14 customer information comprising the Property), the objection period and the Sale Hearing have
15 been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, and Local Rules,
16 and no other or further notice is required.

17 E. There were no objections to the Motion or the relief requested therein filed with the
18 Court or otherwise stated on the record.

19 F. The requirements of Rules 2002 and 6004 of the Federal Rules of Bankruptcy
20 Procedure and Local Rule 6004 have been satisfied.

21 G. The terms of the APA and the transaction contemplated therewith have been
22 negotiated at arm’s-length, in good faith and are in the best interests of the Estate and its creditors.
23 The Trustee has demonstrated that it is an exercise of sound business judgment to enter into the
24 transaction contemplated by the APA and has appropriately exercised his duties and responsibilities
25 in maximizing the sale price for the Property.

26 H. The Stalking Horse Bidder was a Qualified Bidder in accordance with the terms of
27 the Motion and the Sale Procedures Order.

28 I. No other Qualified Bid or other bid was submitted to the Trustee in accordance with

1 the Sale Procedures Order. Thus, no Auction was conducted.

2 J. The Stalking Horse Bidder submitted the highest and best offer for the Property as
3 set forth in the APA.

4 K. None of the Trustee or the Purchaser or their respective representatives has engaged
5 in any conduct that would cause or permit the APA or the Sale to be avoided pursuant to
6 Bankruptcy Code section 363(n). Based on the foregoing and the record in this Case, the Purchaser
7 has acted in good faith and is therefore a good faith purchaser within the meaning of Bankruptcy
8 Code section 363(m) and, as such, the Purchaser is entitled to all of the protections afforded
9 thereby.

10 L. The Property was sufficiently marketed for sale by the Trustee and his agents.

11 M. The consideration being paid by Purchaser is fair and adequate consideration for the
12 Property. Purchaser's bid represents the highest and best offer and will achieve the highest and best
13 value to the Estate and its creditors.

14 N. Based on the Neilson Declaration and other evidence in the record, the Purchaser's
15 purchase offer is a fair and reasonable offer under all of the circumstances.

16 O. Purchaser is not an insider, as that term is defined by the Bankruptcy Code, of the
17 Debtor. Furthermore, no insiders of the Debtor are receiving or retaining any benefit, property or
18 payments in connection with the sale of the Property or other transactions contemplated by the
19 APA except to the extent such insiders have allowed claims against or equity interests in the Debtor
20 and, as a result, may participate in a distribution of sale proceeds subject to further Court order.

21 P. The transfer of the Property to Purchaser will not subject Purchaser to any liability
22 whatsoever (including any successor liability) with respect to the operation of the Debtor's business
23 prior to the closing of the Sale or by reason of such transfer.

24 Q. The Sale of the Property is permitted pursuant to one or more provisions of section
25 363(f)(1) – (5) of the Bankruptcy Code. Those non-debtor parties with liens, claims,
26 encumbrances and interests (if any) of any kind or nature whatsoever in the Property who did not
27 object to the Motion and the relief requested therein are deemed to have consented pursuant to
28 section 363(f)(2) of the Bankruptcy Code in accordance with section 365 of the Bankruptcy Code

1 and Rule 6006 of the Federal Rules of Bankruptcy Procedure.

2 R. All other findings of fact and conclusions of law stated by the Court orally on the
3 record at the Sale Hearing are incorporated herein by this reference.

4 **IT IS HEREBY ORDERED that:**

5 1. The Motion is granted, and the APA with the Purchaser (a copy of which is attached
6 hereto as Exhibit A) is hereby approved and incorporated herein by this reference. All findings and
7 conclusions set forth above and set forth by the Court on the record at the Sale Hearing are
8 incorporated by reference and made part of this Order.

9 2. Purchaser is a good faith purchaser entitled to the protections afforded a purchaser
10 pursuant to section 363(m) of the Bankruptcy Code. The sale of the Property is fair and reasonable,
11 and none of the Trustee or Purchaser or their respective representatives has engaged in any conduct
12 that would cause or permit the APA or Sale to be avoided pursuant to Bankruptcy Code section
13 363(n).

14 3. The Trustee is authorized to sell to the Purchaser, on the terms set forth in the
15 Motion and the APA, the Property. The Trustee is authorized to execute, deliver, fully perform
16 under, consummate and implement the APA together with all additional instruments and documents
17 that may be reasonably necessary or desirable to implement the transactions contemplated by the
18 APA.

19 4. Pursuant to sections 105(a) and 363(b) and (f) of the Bankruptcy Code, on and as of
20 the closing of the Sale (the "Closing"), Purchaser shall acquire all of the Debtor's and Estate's
21 right, title and interest in and to the Property, free and clear of: (a) all security interests, mortgages,
22 conditional sale or other title retention agreements, pledges, liens, judgments, demands,
23 encumbrances, restrictions, constructive or resulting trusts, rights of first refusal, or charges of any
24 kind or nature, if any, including, but not limited to, any restrictions on the use, voting, transfer,
25 receipt of income or other exercise of any attributes of ownership (collectively, "Interests"); and (b)
26 all debts, claims (as that term is defined in the Bankruptcy Code), obligations, demands, guaranties,
27 options, rights, contractual commitments, restrictions, interests and matters of any kind and nature,
28 and whether imposed by agreement, understanding, law, equity or otherwise, arising in any way in

1 connection with any acts, or failure to act, of any of the Debtor (collectively, “Claims”), whether
2 arising before or after the Petition Date, with all such Interests and Claims released, terminated and
3 discharged as to the Property. All such Interests and Claims, if any, shall attach to the proceeds of
4 sale of the Property paid to the Estate by Purchaser, to the same extent and with the same priority,
5 validity, force and effect as such Interests and Claims had against the Property immediately prior to
6 the Closing, subject to any rights, claims and defenses the Estate may possess as to such holder.

7 5. On the Closing, each of the Estate’s creditors and holders of Interests is authorized
8 and directed to execute such documents and take all other actions as may be necessary to release its
9 Interests in or Claims against the Property, if any, as such Interests or Claims may have been
10 recorded or may otherwise exist. If any person or entity that has filed financing statements or other
11 documents or agreements evidencing interests in or claims against the Property shall not have
12 delivered to the Trustee prior to the Closing, in proper form for filing and executed by the
13 appropriate parties, termination statements, instruments of satisfaction and releases of all Interests
14 or Claims which the person or entity has with respect to the Property, (a) the Trustee is hereby
15 authorized to execute and file such statements, instruments, releases and other documents on behalf
16 of the person or entity with respect to the Property, and (b) Purchaser is hereby authorized to file,
17 register or otherwise record a certified copy of this Order, which once filed, registered or otherwise
18 recorded, shall constitute conclusive evidence of the release of all Interests or Claims of any kind or
19 nature whatsoever in or against the Property. The foregoing notwithstanding, the provision of this
20 Order authorizing the sale of the Property free and clear of liens, claims, encumbrances and
21 interests shall be self-executing, and notwithstanding the failure of the Trustee, Purchaser, or any
22 other party to execute, file or obtain releases, termination statements, assignments, consents or
23 other instruments to effectuate, consummate and/or implement the provisions hereof or in the APA
24 with respect to the sale of the Property, all Interests in or Claims against the Property shall be
25 deemed unconditionally released, discharged, and divested. This Order is and shall be binding
26 upon and govern the acts of all entities including, without limitation, all filing agents, filing
27 officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of
28 deeds, registrars of patents, trademarks or other intellectual property, administrative agencies,

1 governmental departments, secretaries of state, federal, state, and local officials, and all other
2 persons and entities who may be required by operation of law, the duties of their office, or contract,
3 to accept, file, register or otherwise record or release any documents or instruments, or who may be
4 required to report or insure any title or state of title in or to any of the Property.

5 6. Each and every federal, state, and local governmental agency or department (as
6 applicable) is hereby directed to accept any and all documents and instruments necessary and
7 appropriate to consummate the transactions contemplated by the APA.

8 7. The Ombudsman's Application [Docket No. 190] (the "Ombudsman Application")
9 is hereby granted, and the fees and expenses requested therein (the "Ombudsman Fees/Expenses")
10 (specifically, fees in the total amount of \$11,447.50 and expenses in the total amount of \$3.49) are
11 hereby approved as reasonable, necessary and appropriate, on a final basis, pursuant to Bankruptcy
12 Code section 330. The Ombudsman Fees/Expenses shall be paid by the Estate out of the Sale
13 proceeds upon the Closing.

14 8. This Court shall retain jurisdiction to (a) interpret, enforce and implement the terms
15 and provisions of the APA, all exhibits and amendments thereto and any releases, waivers and
16 consents thereunder, and any agreements, transaction documents or other instruments executed in
17 connection therewith, (b) resolve any disputes arising under or related to the APA and the closing
18 requirements, except as otherwise provided therein, (c) compel delivery of the Property to
19 Purchaser and (d) interpret, implement and enforce the provisions of this Order.

20 9. The provisions of the APA and this Order and any actions taken pursuant thereto
21 shall survive entry of any order which may be entered dismissing the Case. Nothing contained in
22 any such order shall conflict with, or derogate from, the provisions of the APA or this Order (as
23 applicable).

24 10. The APA and any related agreements, documents or other instruments may be
25 modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and
26 in accordance with the terms thereof without further order of the Court, provided that any such
27 modification, amendment or supplement do not have a material adverse effect on the Estate.

28 11. The failure to specifically include any particular provision of the APA in this Order

1 shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that
2 the APA be authorized and approved in its entirety.

3 12. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 7062, this Order
4 shall be effective and enforceable immediately upon entry.


5 13. This Order shall bind the Debtor, the Estate, creditors and interest holders, all of
6 their respective officers, directors, and employees, and any successor, trustee or other responsible
7 person.

8 14. The provisions of this Order and the APA are nonseverable and mutually dependent.
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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
LOS ANGELES, CALIFORNIA

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24 Date: January 12, 2015


Erithe Smith
United States Bankruptcy Judge

ASSET PURCHASE AGREEMENT

August
1st This Asset Purchase Agreement (the "**Agreement**") is made and entered into as of this day of *July*, 2014 by and between R. Todd Neilson, solely in his capacity as chapter 7 trustee ("**Trustee**") for the estate of The Tuling Company, Inc., a California corporation ("**Debtor**") and Greatcollections.com LLC, a California limited liability company, d/b/a Great Collections ("**Purchaser**").

Seller confirms and acknowledges that:

A. On March 10, 2014, Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "**Bankruptcy Code**"), in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "**Bankruptcy Court**") bearing case number 14-11492 (the "**Case**"); and

B. On March 21, 2014, the Trustee was appointed as chapter 11 trustee of the Debtor's estate (the "**Estate**"), and on May 29, 2014, an order was entered by the Bankruptcy Court converting the Case to a chapter 7, and Notice of Appointment of the Trustee as the chapter 7 Trustee was filed on June 10, 2014; and

C. The Trustee, as representative of the Debtor's Estate (hereinafter, "**Seller**") desires to sell, transfer and assign to Buyer, and Buyer desires to acquire from Seller, pursuant to Section 363 of the Bankruptcy Code, the Property (as defined below in Section 1).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree that:

1. Sale of Property. Seller hereby sells, transfers, assigns, conveys and delivers to Buyer, all of Seller's right, title and interest in and to (i) the Debtor's customer lists that are in the Trustee's possession and more specifically described on Exhibit "A" hereto (the "**Customer Lists**"), (ii) certain customer sales journals in electronic format (QuickBooks) that are in the Trustee's possession and more specifically described on Exhibit "A" hereto (the "**Electronic Customer Files**"), (iii) the domain name more specifically identified on Exhibit "A" hereto (the "**Domain Name**") and any goodwill that may be symbolized thereby and any rights to sue for past infringement and to receive recoveries therefor, (iv) the business-related phone numbers more specifically identified on Exhibit "A" hereto (the "**Business Numbers**"), and (v) any rights relating to the foregoing items (i) through (iv) (together with preceding items (i) through (iv), the "**Property**"). The Customer Lists and Electronic Customer Files are in electronic format and shall be transferred to Buyer in such format.

2. Purchase Price. In consideration of the transfer of the Property to Buyer, Buyer has delivered a deposit ("**Buyer's Deposit**") to the Seller in the amount of Fifteen Thousand Dollars (\$15,000) to be applied against the purchase price of One Hundred Fifty Thousand Dollars (\$150,000) ("**Purchase Price**"), and upon close of sale, Buyer shall pay to Seller the remaining sum of One Hundred Thirty Five Thousand Dollars (\$135,000) in cash (the "**Cash Payment**").

3. Overbid. The sale of the Property to Buyer shall be subject to overbid at an auction, for which Seller shall seek an approval order from the Bankruptcy Court ("**Bid Procedures Order**") providing for the allowance of bid procedures, a break-up fee (payable by Seller solely from the proceeds of the sale of the Property to a Successful Bidder other than the Buyer), initial and subsequent minimum overbids, the selection of a winning bid ("**Successful Bid**") and a back-up bid, and providing that if no qualified competing bid is received, Buyer's bid shall be determined to be the Successful Bid for the purchase of the Property.

4. Bid Procedures Order. Seller shall request that the Bid Procedures Order include the following provisions: (a) the initial overbid for the Property must be at least \$15,000 in excess of the Purchase Price, (b) subsequent bid increments shall be set at \$10,000, (c) the return of Buyer's Deposit and payment of a break-up fee to Buyer in the amount of \$7,500 in the event that (i) Buyer is not in default under this Agreement, and (ii) the Property is thereafter sold to an alternate purchaser submitting the Successful Bid ("**Successful Bidder**") at the auction ("**Auction**") notwithstanding Buyer's willingness and ability to consummate the purchase of the Property, (d) the Estate shall retain the deposit(s) made by the Successful Bidder and/or the back-up bidder if either the Successful Bidder and/or the back-up bidder fails to close the sale within five (5) business days after entry of a Bankruptcy Court order approving the sale of the Property.

5. Back-Up Bidder Status. If an alternate sale transaction with a Successful Bidder other than Buyer is selected by Seller and approved by the Bankruptcy Court, this Agreement shall not automatically terminate, or if Buyer submitted another higher or otherwise better bid at the Auction that is accepted by Seller as the highest or otherwise best bid but is not ultimately the Successful Bid ("**Superseding Agreement**"), such Superseding Agreement between Seller and Buyer shall not terminate, and this Agreement or the Superseding Agreement, as the case may be, shall constitute a "back-up bid" which shall remain open for acceptance by Seller up to and including the earliest of: (i) the fourteenth (14th) day after the entry of the order of the Bankruptcy Court approving the alternate sale transaction, (ii) the date of the closing of the alternate sale transaction, or (iii) the date of the termination of the Agreement (or Superseding Agreement, if applicable) pursuant to Section 8 (the period in preceding clauses (i), (ii), or (iii), as applicable, the "**Back-Up Period**"). Buyer's designation as "back-up bidder" shall not modify any terms of this Agreement or the Superseding Agreement, as the case may be, subject to this Section 5. Upon the lapse of the Back-Up Period, if Seller does not elect to proceed with closing the transaction pursuant to this Agreement or the Superseding Agreement (as applicable), the Buyer's Deposit shall be promptly returned to Buyer.

6. Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher and better competing bids (each a "**Competing Bid**"). From the date hereon and until the completion of the auction or as otherwise directed by the Bankruptcy Court, Seller is permitted to cause his representatives to initiate contact with, solicit or encourage the submission of any inquiries, proposals or offers by any person, in addition to Buyer, in connection with any sale or other disposition of the Property, provided that such person enters into a non-disclosure agreement in favor of Seller and perform any other acts which are required under the Bankruptcy Code, including supplying information relating to the Property to prospective buyers.

7. Representations and Warranties.



(i) Seller. Seller represents and warrants to Buyer that: (a) to Seller's knowledge, the Estate has good and marketable title to the Property, free and clear of any and all covenants, conditions, restrictions, liens, charges, encumbrances, options and adverse claims or rights whatsoever; (b) Subject to the approval of the Bankruptcy Court, Seller has the full right, power and authority to enter into this Agreement and to transfer, convey and sell the Property to Buyer; (c) to Seller's knowledge, the Customer Lists, Electronic Customer Files, Domain Name and Business Numbers comprise the complete customer lists, electronic customer sales journals, domain names and business numbers, respectively, that were possessed by the Debtor and, in respect to the Customer Lists and Electronic Customer Files, that were seized by the Secret Service and the Department of Justice and turned over to the Trustee; and (d) Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer or otherwise dispose of any portion or portions of the Property (other than this Agreement). Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in this Section 7 hereof. Buyer acknowledges and agrees that, except for the representations and warranties contained herein, the Property is being transferred, as to condition, on an "AS IS" basis and "WITH ALL FAULTS." Without in any way limiting the foregoing, Seller hereby disclaim any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property.

(ii) Buyer. Buyer represents and warrants to Seller that: (a) Buyer has all requisite corporate power and authority to enter into the Agreement and to carry out its obligations hereunder; (b) On the date of this Agreement and the date of closing of the transactions contemplated under this Agreement, Buyer has and will have sufficient funds available to consummate such transactions; (c) there are no legal or other proceedings pending or, to the Buyer's knowledge, threatened in writing against Buyer, which, if adversely determined, would reasonably be expected to prohibit the consummation of the transactions contemplated by this Agreement or materially delay or impair the ability of Buyer to perform its obligations under this Agreement; and (d) Buyer has conducted its own independent review and analysis of the Property, and in entering into this Agreement, Buyer has relied solely upon such investigation and analysis, and Buyer acknowledges that neither Seller, the Trustee, the Debtor nor any of their respective agents make or have made any representation or warranty, either express or implied, relating to the Property, except for the representations and warranties contained in this Agreement (which are subject to the limitations and restrictions contained herein).

5. Termination. This Agreement may be terminated at any time before closing (i) by mutual written consent of Seller and Buyer; (ii) automatically and without any action or notice by Seller or Buyer, immediately upon Seller's bankruptcy case being dismissed or consummation of an alternate sale of the Property to a party other than Buyer; (iii) by Seller, if Seller is not in material breach of the Agreement and there has been a material violation or breach by Buyer of any representation, warranty, or covenant contained in the Agreement that has not been waived by Seller, and Buyer has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Seller; and (iv) by Buyer, if Buyer is not in material breach of the Agreement and there has been a material violation or breach by Seller of any representation, warranty, or covenant contained in the Agreement that has not been waived by Buyer, and Seller has failed to cure such violation or breach within ten (10) calendar days following receipt of notification thereof by Buyer.

6. Counterparts. This Agreement may be executed in any number of counterparts, and by the parties hereto on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument. Each counterpart may be delivered by facsimile transmission or portable data format (PDF), which transmission shall be deemed delivery of an originally executed document.

7. Successors and Assigns. This Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the Seller and Buyer.

8. Assignment. Neither this Agreement nor any rights and obligations hereunder may be transferred or assigned without the other party's prior written consent.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California, and, to the extent applicable, the Bankruptcy Code.

10. No Survival of Representations and Warranties. Seller and Buyer hereto agree that the covenants contained in this Agreement to be performed at or after the consummation of a sale shall survive, and Seller and Buyer shall be liable to the other after the date hereof for any breach thereof, but that no other representations and warranties shall survive.

11. Preservation of Records. Seller (or any subsequently appointed bankruptcy estate representative) and Buyer agree that each of them shall preserve and keep the records held by it or their respective affiliates relating to the Property prior to the date hereof until the earlier of (i) one (1) year from the date hereof or (ii) the date of entry of an order of the Bankruptcy Court closing or dismissing the Case, and shall make such records and personnel available to the other as may be reasonably required by such party in connection with, among other things, any estate claims or causes of action, any insurance claims by, legal proceedings or tax audits against or governmental investigations of Seller or Buyer or any of their affiliates or in order to enable Seller or Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Seller, on the one hand, or Buyer, on the other hand, wish to destroy such records after that time, such party shall first give ninety (90) days' prior written notice to the other and such other party shall have the right at its option and expense, upon prior written notice given to such party within that ninety (90) day period, to take possession of the records within one hundred and eighty (180) days after the date of such notice.

12. Bankruptcy Court Approval. Notwithstanding payment of the Buyer's Deposit or any other cash payment by Buyer, the sale, transfer, assignment, conveyance and delivery of the Property by Seller to Buyer and the Seller's obligations hereunder are subject to the approval of the Bankruptcy Court. In the event that the Bankruptcy Court does not approve this Agreement, Seller will return the Buyer's Deposit and any cash payment to Buyer.

13. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand (with written confirmation of receipt), (ii) when sent by facsimile (with written confirmation of transmission)

or electronic mail (and no notice of failure of delivery was received within a reasonable time after such message was sent) or (iii) one business day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses, facsimile numbers and e-mail addresses (or to such other address, facsimile number or e-mail address as a party hereto may have specified by notice given to the other party hereto pursuant to this provision):

If to Seller, to:

R. Todd Neilson, chapter 7 Trustee
c/o Berkeley Research Group, LLC
2049 Century Park East, Suite 2525
Los Angeles, California 90067
Telecopier: (310) 299-4750
E-mail: TNeilson@brg-expert.com

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

Pachulski Stang Ziehl & Jones LLP
10100 Santa Monica Boulevard, 11th Floor
Loa Angeles, CA 90067-4100
Attention: Linda F. Cantor
Telecopier: (310) 201-0760
E-mail: lcantor@pszjlaw.com

If to Buyer, to:

Great Collections
2030 Main Street, Suite 620
Irvine, CA 92614
Attn: Ian Russell
E-mail: ian@greatcollections.com

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

Armen R. Vartian
1601 N. Sepulveda Blvd. #581
Manhattan Beach, CA 90266
Telecopier: (866) 427-3820
E-mail: armen@vartianlaw.com

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IN WITNESS WHEREOF, Seller and Buyer have executed this Assignment as
of the date first written above.

SELLER:

R. Todd Neilson, solely in his capacity as
chapter 7 Trustee of the Estate of The
Tulving Company, Inc.

By: 

Name: R. Todd Neilson, chapter 7 Trustee

BUYER:

By: 

Name: Ian Russell

Its: Managing Member

ADDENDUM TO ASSET PURCHASE AGREEMENT

This Addendum to Asset Purchase Agreement (this "*Addendum*") is made and entered into as of this 26 day of October, 2014 by and between R. Todd Neilson, solely in his capacity as chapter 7 trustee ("*Trustee*") for the estate of The Tulving Company, Inc., a California corporation ("*Debtor*") and Greatcollections.com LLC, a California limited liability company, d/b/a Great Collections ("*Purchaser*" and together with the Trustee, the "*Parties*"). This Addendum modifies and supplements that certain Asset Purchase Agreement dated as of August 1, 2014 (the "*Original Agreement*" and as modified and supplemented by the Addendum, the "*Agreement*") by and between the Trustee and Purchaser. Capitalized terms used, but not specifically defined, in this Addendum are intended to have the meanings given to such terms in the Original Agreement.

The Parties acknowledge and agree that:

1. Customer Privacy Policy: The Trustee is informed that, during at least some periods and at least in some instances prior to the commencement of the Case pending before the Bankruptcy Court, the Debtor had posted on its business website a policy (the "*Privacy Policy*") that certain private information ("*Customer Information*") of the Debtor's prepetition customers ("*Customers*") would not be sold to third parties.
2. Purchaser's Customer Privacy Policy: Purchaser acknowledges and agrees that, in respect to any and all personally identifiable information (as defined in 11 U.S.C. § 101(41A)) of and relating to Customers that may be sold and transferred to Purchaser under the Agreement (subject to approval by the Bankruptcy Court), the Purchaser shall fully abide by and implement the Privacy Policy, as if the Purchaser were in the Debtor's capacity, solely in respect to the Customer Information. For the avoidance of doubt, subject to the Bankruptcy Court's approval of the Agreement, the Purchaser is not a third party for purposes of the Privacy Policy.
3. Effect of Addendum: To the extent of any inconsistency between the terms of this Addendum and those of the Original Agreement, the terms of this Addendum shall govern and control. Except to that extent, the Original Agreement and its terms shall be unchanged hereby and shall govern and control.
4. Counterparts: This Addendum may be executed in any number of counterparts, and by the parties hereto on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Addendum, but all the counterparts shall together constitute but one and the same instrument. Each counterpart may be delivered by facsimile transmission or portable data format (PDF), which transmission shall be deemed delivery of an originally executed document.
5. Bankruptcy Court Approval: This Addendum and the sale and transactions contemplated hereunder and under the Agreement are subject to the approval of the Bankruptcy Court.

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Handwritten signature and initials, possibly "RM", in the bottom right corner of the page.

IN WITNESS WHEREOF, Seller and Buyer have executed this Addendum as of the date first written above.

SELLER:

**R. Todd Neilson, solely in his capacity as
chapter 7 Trustee of the Estate of The
Tulving Company, Inc.**

By: 

Name: R. Todd Neilson, chapter 7 Trustee

BUYER:

**Greatcollections.com LLC, a California
limited liability company, d/b/a Great
Collections**

By: 

Name: Ian Russell

Its: Managing Member