

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM536234

<b>SUBMISSION TYPE:</b>	RESUBMISSION		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>RESUBMIT DOCUMENT ID:</b>	900504253		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
AS Beauty LLC		02/06/2019	Limited Liability Company: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	CBotans LLC		
<b>Street Address:</b>	81 Pondfield Road, #263		
<b>City:</b>	Bronxville		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	10708		
<b>Entity Type:</b>	Limited Liability Company: NEW YORK		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	3138777	CLARK'S BOTANICALS	
<b>Serial Number:</b>	88111086	CLARK'S BOTANICALS	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2129537201		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	(212) 415-9200		
<b>Email:</b>	ny.trademark@dorsey.com		
<b>Correspondent Name:</b>	Sarah M. Robertson, Dorsey & Whitney LLP		
<b>Address Line 1:</b>	51 West 52nd Street		
<b>Address Line 4:</b>	New York, NEW YORK 10019-6119		
<b>ATTORNEY DOCKET NUMBER:</b>	509454-00001		
<b>NAME OF SUBMITTER:</b>	Sarah M. Robertson		
<b>SIGNATURE:</b>	/smr/		
<b>DATE SIGNED:</b>	08/12/2019		
<b>Total Attachments: 14</b>			
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**ASSET PURCHASE AGREEMENT**

BY AND AMONG

AS BEAUTY LLC

AS SELLER

– and –

CBOTANS LLC

AS PURCHASER

Dated as of February 6, 2019

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the “Agreement”), dated as of February 6, 2019, is by and between AS Beauty LLC, a Delaware limited liability company (the “Seller”) and CBotans LLC, a New York limited liability company (“Purchaser”). The Purchaser, together with the Seller, the “Parties”.

### RECITALS:

A. On or about February 1, 2019, the entered an order attached hereto as Exhibit D (the “Order”), which approved the sale of substantially of the assets of Clark’s Botanicals, Inc., a New York corporation (“CBI”) to Seller pursuant to the Asset Purchase Agreement dated of as December 19, 2018 attached hereto as Exhibit E (the “Original Purchase Agreement”) pursuant to the Sale Order of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

B. Pursuant to the Sale order, Seller closed its acquisition of substantially all of the assets of CBI on February 6, 2019.

C. The Seller desires to sell the assets of CBI upon the terms and subject to the conditions contained in this Agreement.

D. Among other things, the Sale Order granted protections to Seller pursuant to Section 363(m) of the Bankruptcy Code in form and substance satisfactory to Seller. No stay of the Sale order was granted by the Bankruptcy Court or by any other court of competent jurisdiction prior to the closing of Seller’s acquisition of the assets of CBI.

E. NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

### ARTICLE I. DEFINITIONS

**Section 1.1. Recitals.** The recitals set forth above are incorporated by reference and are expressly made part of this Agreement.

**Section 1.2. Definitions.** The following definitions shall apply to and constitute part of this Agreement, the Disclosure Letter, the Purchaser Schedule and all Exhibits attached hereto:

“**Accounts Receivable**” means any and all accounts receivable, notes receivable, checks, similar instruments and other amounts receivable purchased by Seller from CBI for goods delivered or services rendered in the operation of the business of CBI, or any of them, together with all security or other collateral therefor and any interest for unpaid financing charges accrued thereon, in each case with respect to an Assumed Contract, excluding any intercompany receivable from any Affiliate of CBI.

computer and computer-related hardware, software and firmware, files, documents, network and internet- and information technology systems-related equipment, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies, maintenance equipment, tools, signs and signage, and other tangible and intangible property.

**“Excluded Agreements”** shall mean, collectively, the Excluded Leases and the Contracts (other than the Assumed Contracts).

**“Excluded Assets”** shall have the meaning set forth in Section 2.2(a).

**“Excluded Leases”** shall mean Leases other than the Assumed Leases, including all options to renew, purchase, expand or lease (including rights of first refusal, first negotiation and first offer), all credit for the prepaid rent associated therewith, and all security deposits and other deposits made in connection with such Leases.

**“Excluded Liabilities”** shall have the meaning set forth in Section 2.6(a).

**“GAAP”** shall mean generally accepted accounting principles of the United States of America consistently applied.

**“Governmental Authority”** shall mean any domestic, foreign, federal, state, provincial or local authority, legislative body, court, government, regulatory agency, self-regulatory organization (including any securities exchange), commission, board, arbitral or other tribunal, or any political or other subdivision, department or branch of any of the foregoing.

**“Intellectual Property Rights”** shall mean all of the following acquired from Seller from CBI which were : (i) patents and patent applications, including continuations, divisional, continuations-in-part, renewals and reissues, (ii) trademarks (registered and unregistered), service marks, trade dress, logos, domain names and registrations and applications for registration thereof together with all of the goodwill associated therewith, (iii) copyrights (registered or unregistered) and registrations and applications for registration thereof, and copyrightable subject matter, including copyrights in software, and (iv) trade secrets including all product formulations.

**“IRC”** or **“Code”** shall mean the Internal Revenue Code of 1986, as amended.

**“Knowledge”** shall mean, with respect to the Seller, as of any date, the actual knowledge of Alan Shamah, Joseph Shamah and Victor Azrak as of such date, from the diligence provided to them by CBI.

**“Laws”** shall mean all statutes, laws (including common law), regulations, rules, ordinances, codes and other requirements of any Governmental Authority, including any Orders.

**“Leases”** shall mean any agreements to lease, leases, renewals of leases, subtenancy agreements and other rights (including licenses) granted by or on behalf of, or to, Seller or any of their respective predecessors in title, or any of the foregoing under which any Seller has any rights or obligations, together with all security, guarantees and indemnities relating thereto.

Agreement shall be paid by wire transfer of immediately available funds to an account designated in advance by the Party entitled to receive such payment.

**Section 1.4. Interpretation.** The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof will arise favoring or disfavoring any Party hereto because of the authorship of any provision of this Agreement.

**Section 1.5. Time.** Except as expressly set out in this Agreement, the computation of any period of time referred to in this Agreement shall exclude the first day and include the last day of such period. If the time limited for the performance or completion of any matter under this Agreement expires or falls on a day that is not a Business Day, the time so limited shall extend to the next following Business Day. The time limited for performing or completing any matter under this Agreement may be extended or abridged by an agreement in writing by the Parties. All references herein to time are references to New York City time, unless otherwise specified herein.

## **ARTICLE II. AGREEMENT OF PURCHASE AND SALE**

**Section 2.1. Purchase and Sale of Assets.** The Seller hereby agrees to sell, transfer, assign, convey and deliver to Purchaser at the Closing, and Purchaser hereby agrees to purchase, acquire and assume from the Seller at the Closing, upon the terms and subject to the conditions of this Agreement, all right, title and interest of the Seller of any nature whatsoever in the following Purchased Assets, free and clear of any and all Encumbrances of any and every kind, at law or equity, including those arising under statutory or case law premised on the doctrines of successor, transferee, assignee, derivative, vicarious, de facto merger or continuity liability, or any other legal or equitable principle that would impose liability on the Purchaser, based on, in respect of, as result of, or arising from, in any way, an act, omission, or liability of the Seller, the Seller's operation of its business, the Seller's ownership, control, or use of the Purchased Assets, the sale, or the Purchaser's acquisition of the Purchased Assets, whether asserted or unasserted, known or unknown, fixed or contingent, liquidated or unliquidated nature and description, other than Permitted Encumbrances and Assumed Liabilities:

- (a) the Assumed Contracts and all rights thereunder;
- (b) the Assumed Leases and all rights thereunder, including all options to renew, purchase, expand or lease (including rights of first refusal, first negotiation and first offer), all credit for the prepaid rent associated therewith (other than Excluded Leases);
- (c) all Accounts Receivable of CBI;
- (d) all Equipment set forth in Schedule 2.1(d) hereto;
- (e) all advertising, marketing and promotional materials and all other printed or written materials acquired by Seller from CBI;
- (f) all Books and Records acquired by Seller from CBI;

- (g) all Intellectual Property Rights (the “Purchased Intellectual Property”);
- (h) all goodwill acquired by Seller from CBI that is associated with the business of CBI;
- (i) any and all insurance proceeds, condemnation awards or other compensation in respect of loss or damage to any Purchased Asset to the extent occurring after the date hereof but prior to the Closing, and all right and claim of CBI to any such insurance proceeds, condemnation awards or other compensation not paid by the Closing;
- (j) all inventory (including consigned inventory), and rights used or held exclusively for use by CBI in connection with the business of CBI that was acquired by Seller from CBI; and
- (k) all rights, claims, actions, refunds, causes of action, choses in action, actions, suits or proceedings, rights of recovery, rights of set off, rights of recoupment, rights of indemnity or contribution and other similar rights (known and unknown, matured and unmatured, accrued or contingent, regardless of whether such rights are currently exercisable) against any Person, including all warranties, representations, guarantees, indemnities and other contractual claims (express, implied or otherwise) to the extent solely and directly related to the Purchased Assets or the Assumed Liabilities.

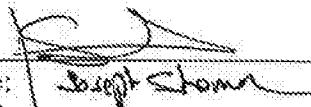
**Section 2.2. Excluded Assets.**

- (a) Nothing herein contained shall be deemed to sell, transfer, assign, convey or deliver the Excluded Assets to the Purchaser or any Affiliate of the Purchaser, and the Seller shall retain all right, title and interest to, in and under the Excluded Assets and neither the Purchaser nor any Affiliate of the Purchaser shall have any Liability therefor. “Excluded Assets” shall mean the following assets, properties and rights of the Seller:
  - (i) Any and all rights that Seller has to any property or assets other than Purchased Assets including, but not limited to any assets not related to the business conducted by CBI.
  - (ii) any and all rights of the Seller under this Agreement;
  - (iii) the Excluded Agreements and any and all rights thereunder and prepaid assets related thereto;
  - (iv) any prepaid Property Tax attributable to Pre-Closing Tax Periods, and any refund of Taxes that are not Assumed Liabilities;
  - (v) any cash or cash equivalents and all bank accounts of the Seller (including, for this purpose, all collected funds (including checks)), at or prior to 12:01 a.m., New York City time on the Closing Date received by the Seller (including in a lockbox of any Seller);

IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be executed as of the day and year first above written.

**SELLER:**  
AS BEAUTY LLC

**PURCHASER:**  
CBOTANS LLC

By:   
Name: Joseph Stom  
Title: MANAGER

By: \_\_\_\_\_  
Name: Francesco Clark  
Title: \_\_\_\_\_



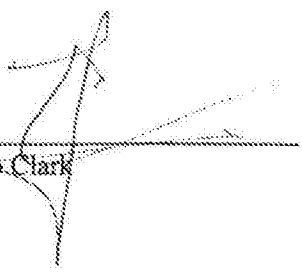
IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be executed as of the day and year first above written.

**SELLER:**  
AS BEAUTY LLC

**PURCHASER:**  
CBOTANS LLC

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: Francesco Clark  
Title:



**Exhibit B**

**Assignment of Intellectual Property**

(see attached)

## INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement (this “Intellectual Property Assignment Agreement”) is made and entered into as of February 6, 2019 (the “Effective Date”) by and between CBotans LLC, a New York limited liability company (the “Assignee”), and AS Beauty LLC, a Delaware limited liability company (“Assignor”) (the Assignee and the Assignor are collectively referred to as the “Parties”).

WHEREAS, other than the Assumed Contract and Assumed Leases, Assignor is the owner of all right, title, and interest in and to its respective Purchased Intellectual Property (as defined in that certain Asset Purchase Agreement, dated as of February 6, 2019 by and between the Assignee and the Assignor (the “Purchase Agreement”), including but not limited to the Intellectual Property Rights set forth on Schedule A hereto (Purchased Intellectual Property, together with the Intellectual Property Rights set forth on Schedule A, the “Assigned IP”); and

WHEREAS, pursuant to the Purchase Agreement, among other things, Assignor agreed to assign, sell, convey, and transfer, and desires to assign, sell, convey, and transfer all of Assignor’s right, title, and interest in and to the Assigned IP to the Assignee, whether such Assignor shall hold such right, title, and interest as of the Closing Date or in the future, and the Assignee desires to receive all right, title, and interest in and to the Assigned IP.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions. Capitalized terms used in this Intellectual Property Assignment Agreement that are not defined in the body of this Intellectual Property Assignment Agreement have the meanings given to them in the Purchase Agreement.

2. Assignment. Other than the Assumed Contract and Assumed Leases, Assignor agrees to sell, convey, transfer, assign, and deliver and hereby does irrevocably sell, convey, transfer, assign, and deliver to Assignee, its successors and assigns, and the Assignee purchases and accepts from each Assignor, all of Assignor’s right, title, and interest, whether existing as of the Closing Date or in the future, in and to (a) the Assigned IP, (b) any and all royalties, fees, income, payments, and other proceeds now or hereafter due or payable with respect to any and all of the foregoing, and (c) any and all claims and causes of action with respect to any of the foregoing, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal and equitable relief for past, present, and future infringement, dilution, misappropriation, violation, misuse, breach, or default, with the right but no obligation to sue for such legal and equitable relief and to collect, or otherwise recover, any such damages.

3. Further Assurances. Assignor agrees to execute, at any time and from time to time upon the request and expense of the Assignee, such additional documents as the Assignee reasonably requests to register and otherwise give full effect to the rights of the Assignee under this Intellectual Property Assignment Agreement in and to the Assigned IP, including all documents necessary to record in the name of the Assignee the assignment of the Assigned IP with

the United States Patent and Trademark Office, United States Copyright Office, or similar foreign offices.

4. Assignability; Beneficiaries. Nothing in this Intellectual Property Assignment Agreement is intended to, or shall, confer any third party beneficiary or other rights or remedies upon any Person other than the parties hereto. This Intellectual Property Assignment Agreement and any rights hereunder may not be assigned (including by operation of law), except as provided in the Purchase Agreement.

5. Amendment, Waiver and Termination. This Intellectual Property Assignment Agreement may not be amended or modified and no provision hereof may be waived, except by a writing signed by each of the parties hereto. No course of dealing between or among any Persons having any interest herein will be deemed effective to modify, amend or discharge any part hereof or any rights or obligations of any Person under or by reason of this Intellectual Property Assignment Agreement. No waiver of any of the provisions of this Intellectual Property Assignment Agreement shall be deemed or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver.

6. Subject to Purchase Agreement. In the event of any conflict or other difference between the Purchase Agreement and this Intellectual Property Assignment Agreement, the provisions of the Purchase Agreement shall govern and control.

7. No Modifications. This Intellectual Property Assignment Agreement may not be supplemented, altered or modified in any manner except by a writing signed by both parties hereto.

8. Severability. If any term or provision contained in this Intellectual Property Assignment Agreement is held by a court of competent jurisdiction or other authority to be invalid, void, unenforceable or against its regulatory policy, the remainder of the terms and provisions contained in this Intellectual Property Assignment Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and this Intellectual Property Assignment Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable term or provision or any portion thereof had been replaced by an enforceable term, provision, covenant or restriction most nearly reflecting the intent of the parties.

9. Counterparts. This Intellectual Property Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. Signed counterparts of this Intellectual Property Assignment Agreement may be delivered by facsimile and by scanned portable document format image and shall be as effective as delivery of a manually executed counterpart hereof and shall be considered to have the same binding legal effect as if it were the original signed version hereof delivered in person.

10. Governing Law. This Intellectual Property Assignment Agreement shall be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any principles of conflicts of law. The Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York and any appellate court thereof for the resolution of any claim or dispute

arising out of or in connection with this Agreement or any of the documents executed hereunder or in connection herewith. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. In the event any such action, suit or proceeding is commenced, the Parties hereby agree and consent that service of process may be made, and personal jurisdiction over any Party hereto in any such action, suit or proceeding may be obtained, by service of a copy of the summons, complaint and other pleadings required to commence such action, suit or proceeding upon the Party at the address of such Party set forth in Section 9.4 of the Purchase Agreement, unless another address has been designated by such Party in a notice given to the other Parties in accordance with the provisions of Section 9.4 thereto.

*[Remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the undersigned have duly executed this Intellectual Property Assignment Agreement as of the date first written above.

ASSIGNEE:

CBOTANS LLC

By: \_\_\_\_\_

Name: Francesco Clark  
Title: Manager

ASSIGNOR:

AS BEAUTY LLC

By: \_\_\_\_\_

Name:  
Title:

IN WITNESS WHEREOF, the undersigned have duly executed this Intellectual Property Assignment Agreement as of the date first written above.

ASSIGNEE:

CBOTANS LLC

By: \_\_\_\_\_  
Name: Francesco Clark  
Title: Manager

ASSIGNOR:

AS BEAUTY LLC

By: \_\_\_\_\_  
Name: Joseph Stamba  
Title: MEMBER

SCHEDULE A

<b>Mark</b>	<b>Country</b>	<b>App./Reg. No.</b>	<b>Filing/Reg. Date</b>	<b>Status</b>
CLARKS BOTANICALS	United States	3138777	9/5/2006	Registered
CLARKS BOTANICALS	United States	88/111,086	9/10/2018	Registered
CLARKS BOTANICALS	Australia	1420686	8/2/2018	Pending
CLARKS BOTANICALS	Canada	1920894	9/19/2018	Pending
CLARKS BOTANICALS	European Union	1420686	8/2/2018	Pending
CLARKS BOTANICALS	WIPO	1420686	8/2/2018	Registered
CLARKS BOTANICALS	United Kingdom	1420686	8/2/2018	Pending