

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM826814

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Mr. EMS System, Inc.		10/13/2021	Corporation:
RECEIVING PARTY DATA			
Name:	Embers Legacy, LLC		
Street Address:	2561 Territorial Road		
City:	St. Paul		
State/Country:	MINNESOTA		
Postal Code:	55114		
Entity Type:	Limited Liability Company: MINNESOTA		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	2302799	EMBERS AMERICA	
Registration Number:	3027292	EMBERS FAMILY RESTAURANTS	
Registration Number:	1640057	EMBERS	
Registration Number:	1242239	EMBERGER	
CORRESPONDENCE DATA			
Fax Number:			
<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>			
Email:	trademark.mpl@stinson.com		
Correspondent Name:	Joel D. Leviton, Stinson LLP		
Address Line 1:	50 South Sixth Street, Suite 2600		
Address Line 4:	Minneapolis, MINNESOTA 55402		
ATTORNEY DOCKET NUMBER:	3001153.0060		
NAME OF SUBMITTER:	Joel D. Leviton		
SIGNATURE:	/Joel D. Leviton/		
DATE SIGNED:	07/25/2023		
Total Attachments: 6			
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PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this "Agreement"), dated as of October 13, 2021, is entered into by and between Mr. EMS System, Inc. ("EMS"), a Minnesota corporation, and Embers Legacy, LLC, a Minnesota limited liability company ("Embers Legacy"). EMS wishes to sell to Embers Legacy, and Embers Legacy wishes to purchase from EMS, the rights of EMS to the Purchased Assets (defined below), subject to the terms and conditions set forth herein. In consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, EMS shall sell and deliver to Embers Legacy, and Embers Legacy shall purchase from EMS, EMS's trademarks, along with all the good will associated to such marks and business, outlined on Exhibit A ("Trademarks") and right, title, and interest under the Pepsi Contract attached hereto as Exhibit B ("Pepsi Rights") (together, the "Purchased Assets").
2. **Purchase Price.** The aggregate purchase price for the Purchased Asset shall be [REDACTED] (the "Purchase Price"). Embers Legacy shall pay the Purchase Price to EMS at the Closing (as defined herein) by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth on Exhibit C.
3. **Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place simultaneously with the execution of this Agreement on the date of this Agreement (the "Closing Date") remotely by the exchange of documents and signatures (or their electronic counterparts). The consummation of the transactions contemplated by this Agreement shall be deemed to occur at 12:01 a.m. on the Closing Date.
4. **Survival.** All covenants and agreements contained herein and all related rights to indemnification shall survive the Closing.
5. **Indemnification.** Each party hereto, agrees to defend, indemnify and hold harmless the other party, including the other party's affiliates and their respective stockholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements, arising from or relating to any breach or non-fulfillment of any agreement or obligation to be performed pursuant to this Agreement or any document to be delivered hereunder.
6. **Expenses.** All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.
7. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to the respective parties at the addresses set out on Exhibit C.
8. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
9. **Entire Agreement.** This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits, the statements in the body of this Agreement will control.

10. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

11. **Amendment and Modification.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

12. **Governing Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Minnesota and for all purposes it, plus any related or supplemental documents and notices, shall be construed in accordance with and governed by the laws of Minnesota, without regard to any conflict of laws principles. In respect of any action or claim relating to the terms of this Agreement, the parties hereby irrevocably submit to the jurisdiction of any Minnesota state court or federal court over any action or proceeding arising out of or related to this Agreement and the documents related hereto or executed in connection herewith.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Purchase Agreement to be executed as of the date first written above by their respective officers.

MR. EMS SYSTEM, INC.

By: 

Name: DAVID KRISTAL

Title: President

EMBERS LEGACY, LLC

By: 

Name: DANIEL KRISTAL

Title: Vice President

TRADEMARK

REEL: 008143 FRAME: 0936

EXHIBIT A

TRADEMARKS

Trademark 1:

Word Mark EMBERS AMERICA
Goods and Services IC 042. US 100 101. G & S: restaurant services. FIRST USE: 19980609. FIRST USE IN COMMERCE: 19980609
Mark Drawing Code (1) TYPED DRAWING
Serial Number 75445481
Filing Date March 5, 1998
Current Basis 1A
Original Filing Basis 1B
Published for Opposition January 19, 1999
Change In Registration CHANGE IN REGISTRATION HAS OCCURRED
Registration Number 2302799
Registration Date December 21, 1999
Owner (REGISTRANT) Mr Ems System, Inc. CORPORATION MINNESOTA 2561 Territorial Road St. Paul MINNESOTA 55114
Attorney of Record CONRAD A HANSEN
Prior Registrations 1640057;1770658
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "AMERICA" APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20191113.
Renewal 2ND RENEWAL 20191113
Live/Dead Indicator LIVE

Trademark 2:

Word Mark EMBERS FAMILY RESTAURANTS
Goods and Services IC 043. US 100 101. G & S: restaurant services. FIRST USE: 20031031. FIRST USE IN COMMERCE: 20031031
Mark Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code 01.05.01 - Sun, rising or setting (partially exposed or partially obstructed); Sunrise
25.03.05 - Backgrounds covered with dots; Dotted backgrounds
26.03.21 - Ovals that are completely or partially shaded
Serial Number 78431636
Filing Date June 8, 2004
Current Basis 1A
Original Filing Basis 1B
Published for Opposition September 20, 2005
Registration Number 3027292
Registration Date December 13, 2005
Owner (REGISTRANT) Mr. EMS System, Inc. CORPORATION MINNESOTA 2561 Territorial Road St. Paul MINNESOTA 55114

Attorney of Record Conrad A. Hansen
Prior Registrations 1770658;2235948;2302799
Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FAMILY RESTAURANTS"
APART FROM THE MARK AS SHOWN
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20160201.
Renewal 1ST RENEWAL 20160201
Live/Dead Indicator LIVE

Trademark 3:

Word Mark EMBERS
Goods and Services IC 042. US 100. G & S: restaurant services. FIRST USE: 19561008. FIRST USE IN
COMMERCE: 19640702
Mark Drawing Code (1) TYPED DRAWING
Serial Number 74057473
Filing Date May 9, 1990
Current Basis 1A
Original Filing Basis 1A
**Published for
Opposition** January 8, 1991
Registration Number 1640057
Registration Date April 2, 1991
Owner (REGISTRANT) Mr. Ems Systems, Inc. CORPORATION MINNESOTA 2561 Territorial Road
St. Paul MINNESOTA 55114
Attorney of Record Conrad A. Hansen
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20210522.
Renewal 3RD RENEWAL 20210522
Live/Dead Indicator LIVE

Trademark 4:

Word Mark EMBERGER
**Goods and
Services** IC 030. US 046. G & S: Prepared Sandwiches Featuring a Chopped Beef Steak Plus Toppings, for
Consumption On or Off the Premises. FIRST USE: 19571200. FIRST USE IN COMMERCE: 19721101
**Mark Drawing
Code** (1) TYPED DRAWING
Serial Number 73264374
Filing Date June 2, 1980
Current Basis 1A
**Original Filing
Basis** 1A
**Published for
Opposition** March 22, 1983
**Registration
Number** 1242239
Registration Date June 14, 1983

Owner (REGISTRANT) Mr. Ems System Inc. CORPORATION MINNESOTA 2561 Territorial Road St. Paul
MINNESOTA 55114

**Attorney of
Record** CONRAD A. HANSEN

**Type of Mark
Register** TRADEMARK
PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20130625.

Renewal 2ND RENEWAL 20130625

**Live/Dead
Indicator** LIVE