

EFiled: Feb 08 2016 05:06PM EST
Transaction ID 58543681
Case No. 11968-



EXHIBIT A

**TRUST AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS
OF SIMON WORLDWIDE, INC.**

THIS TRUST AND AGREEMENT AND ASSIGNMENT FOR THE BENEFIT OF CREDITORS (“Trust Agreement”) is made and entered into this 5th day of February, 2016, by and between SIMON WORLDWIDE, INC., a Delaware corporation, located at 19852 MACARTHUR BOULEVARD, IRVINE, CALIFORNIA 92612 (hereinafter referred to as “SIMON”), and DEVELOPMENT SPECIALISTS, INC., an Illinois corporation with offices located at 70 WEST MADISON STREET, SUITE 2300, CHICAGO, ILLINOIS 60602 (hereinafter referred to as the “Trustee-Assignee”).

W I T N E S S E T H:

WHEREAS, SIMON is indebted to various persons, corporations and other entities, including without limitation through its wholly owned subsidiary Simon Marketing, Inc., the debts of which entity are debts of SIMON and the creditors of which entity are creditors of SIMON; and

WHEREAS, SIMON is unable to pay its debts in full, and has decided to discontinue its business, and is desirous of transferring its property and assets to an assignee for the benefit of its creditors so that the property and assets so transferred may be expeditiously liquidated and the proceeds thereof be fairly distributed to its creditors without any preference or priority, except such preference or priority as is established and permitted by applicable law;

NOW, THEREFORE, in consideration of SIMON’s existing indebtedness to its creditors, the express undertakings of the Trustee-Assignee and the mutual covenants contained herein, it is hereby AGREED:

1. **Creation and Object of Trust.** There is hereby created a trust (the “Trust”) the name of which is the “**SIMON Trust**” and the object of which is be the orderly liquidation of the property and assets of **SIMON**, and the distribution of the proceeds therefrom to creditors of **SIMON**, in accordance with applicable law. **SIMON** hereby nominates and appoints Development Specialists, Inc. as Trustee-Assignee to carry out the purpose of this Trust in accordance with its terms and conditions. The Trustee-Assignee shall have the powers and duties hereinafter set forth, and shall receive reasonable compensation for its services and reimbursement of its expenses, including, but not limited to reimbursement of its attorneys’ fees and costs. The Trustee-Assignee may serve without bond, except to the extent a bond is required by law.

2. **Transfer of Assets.** **SIMON** does hereby grant, convey, assign, transfer and set over to the Trustee-Assignee all property and assets of **SIMON**, whatsoever and wheresoever situated. The property and assets transferred shall include, without limitation, if any such exists, all real and personal property, tangible and intangible, including, without limitation, all cash on hand, bonds, bank accounts, all accounts receivable, all furniture, fixtures, machinery, equipment, leasehold improvements, inventory, general intangibles, patents, insurance policies, insurance premium and/or policy refunds, trade names, trademarks, franchises, service marks, and causes of action. Title to the property and assets of **SIMON** shall immediately vest in the Trustee-Assignee for the use and purpose hereinafter set forth.

3. **Powers and Duties of Trustee-Assignee.** The Trustee-Assignee shall have, inter alia, the following powers, rights and duties:

(a) To collect any and all accounts receivable and other amounts owing to **SIMON**, including, without limitation, insurance premium and/or policy refunds, owing to **SIMON**.

(b) To sell, or otherwise dispose of, if such exists, all real property of **SIMON** (including leasehold improvements and fixtures) in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute any and all documents necessary to effectuate a sale of said real property and to convey title to same.

(c) To sell, or otherwise dispose of, if such exists, all tangible and intangible personal property of **SIMON**, including, but not limited to, all of its all cash on hand, bonds, bank accounts, all accounts receivable, all furniture, fixtures, machinery, equipment, leasehold improvements, inventory, general intangibles, patents, insurance policies, insurance premium and/or policy refunds, trade names, trademarks, franchises, service marks, and causes of action, at private or public sale upon such notice and upon such terms as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to employ an auctioneer to conduct such a sale and to advertise such sale in such manner as the Trustee-Assignee deems best. The Trustee-Assignee shall have the power to execute bills of sale and any other documents necessary to convey title to **SIMON**'s personal property. The Trustee-Assignee shall have the power to enter into an agreement with any party to participate in a liquidation sale with the Trustee-Assignee hereunder for the benefit of creditors sharing in the profits from such sale.

(d) To employ attorneys, accountants, appraisers, auctioneers and such additional personnel to whatever extent may be necessary to handle the administrative details of this Trust.

(e) To require all creditors of **SIMON** to whom a balance is now owing to submit verified statements of their accounts.

(f) To settle any and all claims against or in favor of **SIMON** with full power to compromise, or in the discretion of the Trustee-Assignee, to sue or be sued, and to prosecute or defend any claim or claims of any nature whatsoever existing against or in favor of **SIMON**.

(g) To pay the creditors of **SIMON** out of the monies which shall come into his hands as Trustee-Assignee, according to the following priorities:

- (1) First, all costs for the preservation of the Trust assets, including the maintenance and insurance thereon, the expenses of operation, and such other administrative expenses as shall be reasonably be incurred;
- (2) Second, all costs and expenses incidental to the administration of the Trust, including the remuneration of the Trustee-Assignee, the payment of reasonable compensation for the services of attorneys for the Trustee-Assignee and the cost of any required bond. These costs and expenses shall include those incidental to the preparation and execution of this Trust Agreement. The Trustee-Assignee shall also have the right to pay an accountant reasonable compensation for services performed in connection with the administration of this Trust and the attorneys for **SIMON** for such services as shall be rendered in aid of the administration of this Trust and its property;
- (3) Third, to the extent that such debts are entitled to priority payments under applicable law, all debts owing to the United States of America as of the date of this Trust Agreement, including, but not limited to, federal withholding tax, federal unemployment tax and other federal income, excise, property and employment taxes;
- (4) Fourth, to the extent that such debts are entitled to priority payment under applicable law, all debts owing to any state as of the date of this Trust Agreement, including, but not limited to, state employment, property and income taxes;

- (5) Fifth, all other debts owing as of the date of this Trust Agreement that are entitled to priority treatment and payment under applicable law;
- (6) Sixth, to debts owed to persons not set forth above (“other creditors”). All distributions to other creditors shall be, within each class, pro rata in accordance with the terms of each creditor’s indebtedness, until all such debts are paid in full. The Trustee-Assignee shall make interim distributions to other creditors whenever the Trustee-Assignee accumulates sufficient funds to enable it to make a reasonable distribution. No distribution to other creditors shall be in an amount less than \$100,000, except the final distribution to other creditors; and
- (7) Seventh, the surplus, if any, of the Trust’s funds, when all debts of the Trust shall have been paid in full, shall be paid and transferred to **SIMON** by the Trustee-Assignee, unless **SIMON** is dissolved and if so, the Trustee-Assignee shall, to the extent the Trustee-Assignee determines it practicable (taking into account the costs of distribution), distribute the remaining proceeds in accordance with applicable law.

Notwithstanding any of the foregoing, to the extent applicable law requires payment of certain claims or class of claims in a priority other than as set forth above (including, without limitation, the claims of any taxing authority and the claims of any secured creditors), such claims shall be paid in accordance with applicable law, and not in the priority set forth above.

(h) To do and perform any and all other acts necessary and proper for the orderly liquidation or other disposition, including, but not limited to, abandonment, of the property and assets of **SIMON** and the distribution of the proceeds derived therefrom to the creditors of **SIMON**.

4. **Employment of Counsel of Trustee-Assignee.** It is hereby represented, consented, and agreed by the parties that Eric D. Schwartz, of the law firm of Morris Nichols Arsht & Tunnell, LLP, located at 1201 North Market Street, 18th Floor, Wilmington, DE 19801, shall be employed to act as attorney for the Trustee-Assignee, and shall render such legal services, along with other attorneys from that firm, as the Trustee-Assignee requires during

the existence of this Trust. Additional special counsel may be retained by the Trustee-Assignee should he deem the same necessary to prosecute or defend any legal or equitable action or to perform such other duties as may be required in the circumstances.

5. **Dissolution of SIMON.** The Board of Directors and stockholders of SIMON have approved the dissolution of SIMON, and have authorized Terrence Wallock, any other officer of SIMON, or any such party's designee to determine when to effect the dissolution by filing a certificate of dissolution with the Secretary of State of the State of Delaware. Mr. Wallock, any other officer of SIMON, or any such party's designee is also authorized to take any action advisable to dissolve SIMON or to otherwise assist the Trustee-Assignee with its duties hereunder. In exchange for any services provided to the Trustee-Assignee, the Trustee-Assignee will provide such party with reasonable compensation as agreed between the Trustee-Assignee and such party.

6. **Rights of Creditors.** All rights and remedies of the creditors against any surety or sureties for SIMON are hereby expressly reserved and nothing herein contained shall prevent the creditors or any of them from suing any third parties or persons who may be liable to any of the creditors for all or any part of their claims against SIMON, or from enforcing or otherwise obtaining the full benefit of any mortgage, charge, pledge, lien or other security which they now hold on any property, creditors or effects of SIMON.

7. **Administration of Trust.** This Trust shall be administered out of court, except to the extent otherwise required by Delaware law or other state law. The Trustee-Assignee shall, however, have the right to ask any court of competent jurisdiction for a

declaratory judgment or such other relief as the Trustee-Assignee may deem necessary, if, in his opinion, said action is desirable in connection with any dispute or claim arising hereunder.

8. **Liability of Trustee-Assignee.** It is understood and agreed that the Trustee-Assignee is to assume no personal liability or responsibility for any of his acts as Trustee-Assignee herein, but his obligation shall be limited to the performance of the terms and conditions of the Trust Agreement, in good faith and in the exercise of his best judgment.

9. **Warranties of SIMON.** SIMON hereby warrants and agrees as follows:

(a) The list of creditors delivered concurrently herewith to the Trustee-Assignee is complete and correct as reflected by the books and records of SIMON, or through its officers and directors, as to names of said creditors, their addresses and the amounts due them.

(b) SIMON, through its officers and directors, shall perform any and all acts reasonably necessary and proper to assist the Trustee-Assignee in the orderly liquidation of SIMON's assets and the collection of monies owing to SIMON, and in the distribution of said monies and the proceeds of asset sales to SIMON's creditors; provided, however, the officers and directors of SIMON shall only provide such assistance to the Trustee-Assignee to the extent, and on the condition that, they are reasonably compensated for such services.

10. **Acceptance by Trustee-Assignee.** The Trustee-Assignee does hereby accept the Trust herein created and agrees to faithfully perform the same according to the best of the Trustee-Assignee's skill, knowledge and ability. It is understood that the Trustee-Assignee shall receive reasonable compensation for his services rendered in connection with this Trust.

[Signature Pages to Follow]

ACCEPTANCE

I, Steven L. Victor hereinabove named, do hereby accept the Trust herein set forth, not individually, but as Trustee-Assinee, subject to the conditions set forth above.

Steven L. Victor

Steven L. Victor
Development Specialists, Inc.

At Chicago, Illinois, this 8th day of February 20 16

Subscribed and Sworn to
before me this 8th day
of February 20 16



Benjamin J. Davies
NOTARY PUBLIC

This instrument prepared by:

9738778

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

SIMON WORLDWIDE, INC.

By: *T Wallock*
Its: Terrence WALLOCK, SECRETARY

At Orange County, California, this 4th day of February 2016.

Subscribed and Sworn to

before me this 4th day

of February 2016.

Zach Scales
NOTARY PUBLIC

