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**PROPOSED ATTORNEYS FOR DEBTOR**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	
	§	<b>Case No. 17-34117</b>
<b>BO EX VENTURES, LLC,<sup>1</sup></b>	§	
	§	<b>CHAPTER 11 CASE</b>
<b>Debtor.</b>	§	
	§	
	§	

**EMERGENCY MOTION OF THE DEBTOR FOR ENTRY OF  
ORDERS: (I) ESTABLISHING BIDDING AND SALE PROCEDURES; APPROVING  
THE SALE OF ASSETS; AND (II) GRANTING RELATED RELIEF**

COMES NOW Bo Ex Ventures, LLC, the above-captioned debtor (the “**Debtor**”), and hereby moves the Court, pursuant to sections 105, 363, 365, 503(b) and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and local rules and guidelines (the “**Local Rules**”) of the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”), for the entry of an order (the “**Bidding Procedures Order**”), substantially in the form attached hereto as **Exhibit A**:

- (i) authorizing and approving bid procedures set forth in Annex 1 to the Bidding Procedures Order (the “**Bid Procedures**”)<sup>2</sup> to be employed in connection with the proposed sale (the “**Sale**”) of substantially all of the

<sup>1</sup> The Debtor’s federal tax number is 27-0625863.

<sup>2</sup> Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Bid Procedures

assets of the Debtor, wherever located, relating to the Debtor's operations in the State of Texas (the "**Assets**");

- (ii) authorizing the Debtor to enter into one or more asset purchase agreement (any such agreement, an "**Asset Purchase Agreement**") with one or more potential "stalking horse" bidders (each a "**Stalking Horse Bidder**") and to provide certain bid protections (the "**Bid Protections**") to any Stalking Horse Bidder in connection therewith;
- (iii) scheduling an auction (the "**Auction**") and a hearing (the "**Sale Hearing**") to consider approval of the Sale;
- (iv) authorizing and approving procedures (the "**Assignment Procedures**") to be employed in connection with the identification and assumption of certain contracts and leases (collectively, the "**Assumed Contracts**") and assignment of the such Assumed Contracts in connection with the Sale; and
- (v) approving the manner and form of notice of the Auction, the Sale Hearing, and the Assignment Procedures, substantially in the forms attached hereto as **Exhibit B** (the "**Sale Notice**") and **Exhibit C** (the "**Assumption Notice**").

The Debtor also moves the Court, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 6006 and the Local Rules for the entry of an order in the form attached hereto as **Exhibit D** and as it may be modified by the Successful Bidder(s) (as defined below) (the "**Sale Order**"):

- (i) approving the Sale of the Assets, or any combination thereof, to one or more Successful Bidders free and clear of liens, claims, interests and encumbrances;
- (ii) approving the assumption and assignment by the Debtor of the Assumed Contracts to the Successful Bidder(s); and
- (iii) granting certain related relief.

In support of this Motion, the Debtor would respectfully state as follows:

### **Background**

1. On November 3, 2017 (the "**Petition Date**"), the Debtor commenced a case under chapter 11 of the Bankruptcy Code. This Court has jurisdiction to consider this matter pursuant

to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

2. Formed in July 2009, the Debtor is in the business of providing IT management solutions to clients throughout Dallas, Houston and Austin, Texas. While the Debtor maintains several locations, it is headquartered in Dallas, Texas. The Debtor currently has 14 employees and an outside consultant.

3. Starting in September 2016, the Debtor became involved in a dispute with a former member of the Debtor who, in breach of his covenants and agreements, attempted to steal the customers and employees of the Debtor to form a competing business. In October 2016, the Debtor filed suit against this former business partner, and in February 2017, the Debtor obtained a temporary restraining order against this former business partner, which TRO was subsequently converted to a temporary injunction. Not perturbed by the Debtor's suit, the former member filed a separate suit against the Debtor in Houston, Texas.

4. The dispute with the Debtor's former member has caused substantial disruption to the Debtor's business for a several reasons. First, because the former business partner had contacted the Debtor's customers and told them that the Debtor was going out of business, the Debtor's management and personnel were forced to spend a fair amount of time addressing the misinformation being disseminated and addressing new concerns raised by the Debtor's customers. Second, the Debtor lost employees and customers as a result of the former member's interruption in the Debtor's business, which impact hurt the Debtor's revenues substantially. Third, the Debtor has been forced to expend a substantial amount of time and legal expenses in litigating with its former member in two forums, Dallas and Houston.

5. As a result of the dispute with the Debtor's former business partner, the Debtor's

gross annual revenues have fallen approximately \$1.75 million from the prior year. The Debtor has now been forced to seek bankruptcy protection to preserve its chances of remaining a going concern.

***The Need for a Timely Sale Process***

6. The Debtor has commenced these chapter 11 cases to effectuate a prompt sale of the Assets on a going concern basis. The Debtor believes that the proposed sale represents the best strategy to maximize value for the Debtor's various stakeholders.

7. The Debtor has faced increasing financial challenges as a result of its current dispute with its former business partner. Under these conditions, the Debtor has struggled to meet its liquidity needs.

8. In order to preserve the going concern value of its business, including preserving the jobs of its employees and the collateral of its prepetition lenders, the Debtor has sought a strategic partner to purchase the assets of the Debtor. The problem the Debtor continues to run into, however, is that interested parties do not wish to purchase the Debtor outside of a bankruptcy sale process.

9. Because of the Debtor's diminishing liquidity, which does not include any post-petition financing, the Debtor is in urgent need to commence a bankruptcy sale process before it runs out of cash. Accordingly, the Debtor believes that the auction process and time periods set forth in the Bid Procedures are reasonable. The Debtor also believes that the process will provide parties with sufficient time and information necessary to formulate a bid to purchase the Assets. In formulating the procedures and time periods, the Debtor balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to quickly and efficiently sell the Assets while it still has realizable value and can be maintained as

a going concern business. Given that parties that have expressed an interest in the Debtor's Assets are already familiar with such assets and the Debtor's business, the Debtor believes that any party that may have an interest in bidding at the Auction will not be starting from scratch in formulating their bids.

10. Completion of the sale process in a timely manner will also maximize the value of the Assets and value available to unsecured creditors. The time periods set forth in the Bid Procedures were negotiated with the stalking horse bidder, and failure to adhere to such time periods could jeopardize the closing of the Sale, which the Debtor believes is the best means of maximizing the value to be achieved for the Assets and unsecured creditors. Thus, the Debtor has determined that pursuing the Sale in the manner and with the procedures proposed is in the best interest of the Debtor's estates and will provide all interested parties with sufficient opportunity to participate.

### ***The Bid Procedures***

11. The Bid Procedures are designed to maximize value for the Debtor's estates and will enable the Debtor to review, analyze and compare all bids received to determine which bid is in the best interests of the Debtor's estates and creditors. The Bid Procedures describe, among other things, the manner in which bidders and bids become "qualified," the receipt of bids received, the conduct of any auction, the selection and approval of any ultimately successful bidder, and the deadlines with respect to the foregoing Bid Procedures. The Debtor submits that the Bid Procedures affords the Debtor a sufficient opportunity to pursue a sale process that will maximize the value of its estate.

12. Certain of the key terms of the Bid Procedures are as follows:<sup>3</sup>

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<sup>3</sup> The brief description of the Bid Procedures described herein is for the convenience of the Court and parties

**Qualified Bids.** Each bidder other than the stalking horse bidder shall, on or before five (5 p.m.) pm CDT on November 20, 2017 (the “**Bid Deadline**”), deliver to the Debtor’s counsel, Mr. H. Joseph Acosta, [joseph.acosta@fisherbroyles.com](mailto:joseph.acosta@fisherbroyles.com), via email, in order to be eligible to participate in the Auction of the Purchased Assets, a bid, which bid unless otherwise decided by the Debtor in its reasonable discretion shall only be considered a qualified bid (a “**Qualified Bid**”) if the bidder complies with the Bid Requirements set forth below.

**Bid Requirements.** Each Qualified Bid must contain the following:

- An executed confidentiality agreement in a form reasonably satisfactory to the Debtor (the “**Confidentiality Agreement**”);
- \$25,000.00 as a nonrefundable earnest money (the “**Earnest Money**”);
- An executed asset purchase agreement (the “**Overbid APA**”) on substantially the same terms of, or on terms more favorable to the Debtor than, those set forth in the Asset Purchase Agreement with a stalking horse bidder (the “**Stalking Horse APA**”), which is attached hereto as Exhibit A. The Overbid APA shall (a) specify the amount of cash or other form of consideration offered by the bidder for the Purchased Assets, with a minimum initial bid comprised of four components (the “**Minimum Overbid**”): (i) a cash bid of at least \$637,695.07 (computed as the secured debt of the Debtor, plus the Earnest Money, plus the Stalking Horse Bidder’s breakup fee, plus an overbid increment); (ii) cash equivalent to \$395,959.21.00 in Assumed Liabilities, and (iii) cash equivalent to any cure amount for the Seller’s Contracts assumed by a buyer and (iv) cash or other consideration bid that the Debtor in its reasonable discretion considers to equal sufficient consideration to improve upon the bid of the Stalking Horse Bidder or any subsequent over-bidder; (b) constitute an irrevocable offer by such the bidder to complete its proposed purchase upon the terms set forth therein, and must be irrevocable until closing of the Sale of the Purchased Assets, (c) include a copy of a board resolution or similar document demonstrating the authority of the bidder to submit an offer to purchase the Purchased Assets on the terms proposed by such the bidder and identifies the officer(s) or authorized agent(s) appearing on behalf of the bidder, and (d) include information demonstrating to the Debtor that the bidder has the financial wherewithal to close the transaction;

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in interest. The full copy of the Bid Procedures should be reviewed in its entirety and will control in the event of any inconsistency or ambiguity in any descriptions of them herein. Capitalized terms used in this summary and not otherwise defined herein have the meanings given to them in the Bid Procedures attached as Annex 1 to the Bidding Procedures Order.

- A disclaimer of any right of the bidder to receive a fee analogous to a break-up fee or to compensation under Section 503(b) of the Bankruptcy Code for making a substantial contribution'
- Such other information reasonably requested by the Debtor.

**Qualified Bidders.** The Debtor shall determine whether a bid qualifies as a Qualified Bid. Unless otherwise decided by the Debtor in its reasonable discretion, only those persons other than Purchaser who have submitted a Qualified Bid in compliance with this Bid Procedures Order shall be a Qualified Bidder. Buyer is a Qualified Bidder.

**Due Diligence.** Upon execution of the Confidentiality Agreement, any prospective bidder that wishes to conduct due diligence on the Debtor or its assets shall be granted access to all material information that has been or will be provided to other prospective bidders, subject, in all cases, to the terms and conditions of the Confidentiality Agreement, applicable law or other restrictions the Debtor may deem necessary or appropriate to protect the proprietary of the information of the Debtor. The due diligence period for bidders will end at five o'clock p.m. (5 p.m.) CDT one business day prior to the Bid Deadline. The Debtor shall coordinate all reasonable requests for additional information and due diligence access from potential bidders. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline. The Purchased Assets shall be sold on an "as is, where is" basis and by submitting a bid, each potential bidder acknowledges such.

**No Bids/One Qualified Bid.** In the event the Debtor does not receive a Qualified Bid in addition to a Stalking horse Bidder's bid, the Debtor shall request at the Sale Hearing that the Bankruptcy Court approve the Sale of the Purchased Assets to the Stalking Horse through the Sale Order and rule that the Sale Order be immediately effective upon entry.

**The Auction.** In the event the Debtor receives more than one Qualified Bid, an Auction shall commence in at 9:00 a.m. (prevailing Central Time) on November 22, 2017, at the offices of Debtor's counsel in Dallas, Texas. Each Qualified Bidder shall be invited to attend the Auction which must be attended in person. The following rules shall govern the Auction:

- Subject to the limitations set forth in these Bid Procedures, the opening price at such Auction shall be the highest and/or best offer of a Qualified Bidder selected and announced by the Debtor at the commencement of the Auction;
- Only Qualified Bidders may bid at the Auction. If multiple Qualified Bids are received, each Qualified Bidder shall have the right to continue to improve its Qualified Bid at the Auction;

- Each subsequent overbid must provide an incremental amount of at least \$50,000.00 of value to the Debtor over the Minimum Overbid, or any bid subsequent to the Minimum Overbid that qualifies as a superior bid during the Auction, or such other amount as designated by the Debtor from time to time;
- Each bidder will be permitted a fair, but limited, amount of time to respond to the previous bid at the Auction;
- The Auction shall be conducted openly and each bidder will be informed of the terms of the previous bid determined by the Debtor to have been the highest and otherwise best bid;
- At the conclusion of the Auction and subject to Court approval following the Auction, the Debtor shall announce as the highest or otherwise best bid for the Purchased Assets the Successful Bidder as well as the second highest or otherwise best bid for the Purchased Assets, the Backup Bidder;
- The Auction may be adjourned by the Debtor from time to time without further notice other than an announcement of such adjournment by the Debtor at the Auction;and
- Upon the conclusion of the Auction, the Debtor will request that the Court enter the Sale Order approving the sale of the Purchased Assets to the Successful Bidder, or, should the Successful Bidder fail to close the sale, the Backup Bidder, free and clear of all liens, claims and encumbrances to the fullest extent allowed under section 363(f) of the Bankruptcy Code;

provided that, notwithstanding the foregoing, the Debtor may promulgate such additional rules for the Auction as the Debtor, in its reasonable discretion, deems to be in the best interests of the Debtor's estate.

**Successful Bidder.** The Debtor shall select the highest and best bid as the Successful Bidder. The Debtor may (a) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures or the terms and conditions of sale, or (iii) contrary to the best interests of Debtor, its estate and creditors, and/or (b) refuse to consider any bid that fails to comply with the Bid Procedures. After the determination of the Successful Bidder, the Debtor shall promptly execute the asset purchase agreement previously executed and submitted by such Successful Bidder, together with any changes thereto necessitated by the parties' actions at the Auction.

**Backup Bidder.** If the Successful Bidder fails to consummate the sale, breaches the asset purchase agreement executed by the Successful Bidder or otherwise fails to perform, (a) the Debtor may consummate the proposed sale with the next highest or



best bidder at the Auction (i.e., the Backup Bidder), without the need for further Court approval, (b) the Debtor will retain the Earnest Money of such bidder, and (c) the Debtor will maintain the right to pursue all available remedies against the Successful and Backup Bidders.

**Break-Up Fee.** In the event the Stalking Horse Bidder is not the Successful Bidder, the break-up fee owed to the Stalking Horse Bidder shall be paid to such bidder from the sale proceeds within 10 days after the closing of the sale with the Successful Bidder. In the event the Successful Bidder is not the Stalking Horse Bidder, the Successful Bidder irrevocably agrees to be liable for the break-up fees, and the Stalking Horse Bidder's recourse to such fee is limited solely against the Successful Bidder.

**Credit Bidding.** Any secured prepetition lender of the Debtor will be allowed to credit bid the full amount due of the prepetition secured indebtedness owed by the Debtor.

**Fees and Expenses.** All bidders submitting bids shall bear their own fees and expenses in connection with the bid, the bid process, the Auction and the proposed sale, whether or not such sale is ultimately approved, unless otherwise agreed to by the Debtor and approved by the Court.

#### ***Ability to Select a Stalking Horse Bidder***

13. To incentivize potential bidders and thereby maximize the potential value of the Assets, the Debtor requests that it be authorized, upon its receipt of any bid (or bids, if for less than substantially all assets for sale) that the Debtor deem, in an exercise of its sound business judgment to be acceptable, to designate one or more Qualified Bids as a stalking horse bid (each, a "**Stalking Horse Bid**") and to execute an Asset Purchase Agreement with such Stalking Horse Bidder in connection with the proposed sale of the Assets, at any time before the commencement of the Auction. No bid may be a Stalking Horse Bid if it does not constitute a Qualified Bid.

14. Upon execution of an Asset Purchase Agreement with any Stalking Horse Bidder, such Asset Purchase Agreement will be a Qualified Bid and Leading Bid, and the Debtor will provide notice of such Stalking Horse Bidder and Asset Purchase Agreement as outlined above and in the Bid Procedures.

#### ***Assignment Procedures***

15. Additionally, the Debtor, as part of the Sale, may assume and assign the Assumed Contracts. The Debtor proposes that the following Assignment Procedures govern the assumption and assignment of the Assumed Contracts in connection with the Sale of the Assets to the Successful Bidder:

- Not later than two (2) days after the entry of the Bidding Procedures Order, the Debtor shall file with the Bankruptcy Court a list identifying the Assumed Contracts and the amounts necessary to cure defaults and/or to provide compensation or adequate assurance of compensation for actual pecuniary loss resulting from a default prior to the Petition Date under each of such Assumed Contract (such amounts, “**Cure Payment Liability**”).
- If the Debtor identifies additional executory contracts or unexpired leases that might be assumed by the Debtor and assigned in connection with the Sale not set forth in the original Assumption Notice, the Debtor shall promptly send a supplemental notice (a “**Supplemental Assumption Notice**”) to the applicable counterparties to such additional executory contracts and unexpired leases.
- The Debtor shall serve all counterparties to all Assumed Contracts with the Assumption Notice, specifically stating that the Debtor is or may be seeking the sale, assumption, and assignment of the Assumed Contracts and notifying such parties of the deadlines for (i) objecting (a “**Cure/Assignment Objection**”) to the amount of any Cure Payment Liability related to such Assumed Contracts, which deadline shall be no less than three (3) days prior to the Bid Deadline (the “**Cure/Assignment Objection Deadline**”) and (ii) objecting to the ability of the Successful Bidder to provide adequate assurance of future performance of an Assumed Contract or Assumed Lease (an “**Adequate Assurance Objection**”), which deadline shall be no less than two (2) days prior to the Sale Hearing (the “**Adequate Assurance Objection Deadline**” and collectively, the “**Cure/Adequate Assurance Objection Deadlines**”).
- A Cure/Assignment Objection and/or Adequate Assurance Objection must be filed with the Bankruptcy Court and served on the Notice Parties so as to be received no later than the applicable Cure/Adequate Assurance Objection Deadline.

Failure to file and serve an objection in accordance with this paragraph will forever bar the non-debtor counterparty from objecting to the Cure Payment Liability or provision of adequate assurance of future performance and from asserting any additional cure or other amounts with respect to the Assumed Contracts and the Debtor shall be entitled to rely solely upon the Cure Payment Liability.

- If the Assumed Contract was identified as an asset to be purchased pursuant to the Sale, the non-debtor counterparty will be deemed to have consented to the assumption, assignment, transfer, and/or sale of such Assumed Contract and will be forever barred and estopped from asserting or claiming against the Debtor or the Successful Bidder (or any other assignee of the relevant contract, lease or right) that any additional amounts are due or defaults exist, or conditions to assumption, assignment, transfer, and/or sale must be satisfied, under such contract, lease or right.
- If a Cure/Assignment Objection challenges a Cure Payment Liability, the objection must set forth the cure amount being claimed by the objecting party (the “**Claimed Cure Amount**”) with appropriate documentation in support thereof. Upon receipt of a Cure/Assignment Objection, the Successful Bidder (on behalf of the Debtor’s estates) may hold an amount equal to the Claimed Cure Amount in reserve pending further order of the Court or agreement between the Successful Bidder and the objecting party, and the Successful Bidder shall have the right to litigate any dispute about the Claimed Cure Amount on behalf of the Debtor’s estate. So long as the Successful Bidder holds the Claimed Cure Amount in reserve, the Debtor shall seek authority to assume, assign, transfer, and/or sell the Assumed Contract that is the subject of an objection without further delay.
- In cases in which the Debtor is unable to establish that a default exists, the relevant Cure Payment Liability shall be set at \$0.00 in the Assumption Notice.
- Unless the applicable agreement provides otherwise, a Qualified Bidder may, from time to time, exclude any Assumed Contract in its sole and absolute discretion until the Closing. The non-debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within three (3) business days of such determination.

16. The Debtor shall serve within two (2) business days (by first class mail, postage

prepaid) after entry of the Bidding Procedures Order (the “**Mailing Deadline**”), the Sale Notice upon the following parties: (a) the Office of the United States Trustee for the Northern District of Texas; (b) the applicable state and local taxing authorities; (c) the Internal Revenue Service; (d) each of the non-Debtor counterparties to the Assumed Contracts; (e) the Debtor’s prepetition secured lenders; (f) all entities who are known to possess an unsecured claim against the Debtor; and (g) any parties to lawsuits involving the Debtor as a party.

17. Within one business day after the conclusion of the Auction, the Debtor will file a notice identifying the Successful Bidder(s) (the “**Notice Of Successful Bidder**”).

18. The Debtor submits that the proposed Sale Notice and Notice of Successful Bidder, and providing notice of this Motion, the Auction and the Sale Hearing as described herein, complies fully with Bankruptcy Rule 2002 and the Local Rules and constitutes good and adequate notice of the Sale and the proceedings with respect thereto. Therefore, the Debtor respectfully requests that this Court approve the form of the Sale Notice and the notice procedures proposed above.

### **Legal Basis for Relief Requested**

#### ***The Bid Procedures Are Fair, Appropriate and Are Designed to Maximize the Value Received for the Assets***

19. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Debtor submits that the Bid Procedures are appropriate, consistent with procedures routinely approved by courts in this district, ensure that the bidding process is fair and reasonable and will yield the maximum value for their estates and creditors. The Bid Procedures proposed herein are designed to maximize the value received for the Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to

participate and submit competing bids. The Bid Procedures provide potential bidders with sufficient notice and an opportunity to acquire information necessary to submit a timely and informed bid. Thus, the Debtor and all parties in interest can be assured that the consideration for the Assets will be fair and reasonable. At the same time, the Bid Procedures provide the Debtor with an adequate opportunity to consider all competing offers and to select, in its reasonable business judgment, the highest and best offer for the Assets. Accordingly, the Debtor submits that the Court should approve the Bid Procedures.

***Approval of the Entry into an Asset Purchase Agreement and the Provision of Bid Protections***

20. To the extent the Debtor enters into an Asset Purchase Agreement with a Stalking Horse Bidder prior to the commencement of the Auction, it is appropriate to provide the Stalking Horse Bidder with the proposed Bid Protections. The proposed Bid Protections are appropriate in these cases because the Debtor will only enter into an Asset Purchase Agreement with a Stalking Horse Bidder if it believes it will maximize the ultimate sale price for the Assets. Moreover, the Debtor intends to negotiate any Asset Purchase Agreement at arms' length and in good faith. Thus, the authorization for the Debtor to provide the Bid Protections to a Stalking Horse Bidder is justified, if entering into an Asset Purchase Agreement allows the Debtor to maximize the potential sale value of the Assets at the Auction.

21. Courts have recognized that fees may be used to protect bidders in connection with a sale of assets pursuant to section 363 of the Bankruptcy Code and that such fees can be "important tools to encourage bidding and to maximize the value of the [d]ebtors' assets." *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993). Such protections enable a debtor to assure a sale to a contractually-committed bidder at a price the

debtor believes is fair and reasonable, while providing the debtor with the opportunity of obtaining even greater benefits for the estate through an auction process. *See In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (stating that bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking.”) (citation omitted).

***Approval of the Sale Is Warranted Under Section 363 of the Bankruptcy Code***

22. Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., Institutional Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986); *In re Martin*, 91 F.3d 389 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

23. Courts typically consider the following factors in determining whether a proposed sale meets this standard:

- (a) whether a sound business justification exists for the sale;
- (b) whether adequate and reasonable notice of the sale was given to interested parties;
- (c) whether the sale will produce a fair and reasonable price for the property; and
- (d) whether the parties have acted in good faith.

*In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991).

24. The Debtor possesses ample and sound business reasons for selling the Assets at this time. As discussed above, the Debtor has determined that the comprehensive sale process

will maximize the return to its creditors. Furthermore, the administrative and economic costs of maintaining such assets for an uncertain period of time would not be in the best interest of the estate. The Sale (in whatever form that ultimately results) represents the highest and best use for the Debtor's assets. Under these circumstances, sound business reasons exist that justify the sale of the Assets outside of the ordinary course of business.

25. The Debtor also meets the additional requirements necessary to approve a sale under section 363 of the Bankruptcy Code. As stated herein, the Debtor will provide adequate notice of the Sale to interested parties, and the Debtor submits that the aforementioned notice procedures are reasonable and adequate under the circumstances. In addition, the Debtor will continue to market the Assets up until the Bid Deadline in order to maximize the number of participants who may participate as buyer at the Auction. Accordingly, the Debtor is confident that its sale process will maximize the value to be achieved from the Sale and that the sale price is fair and reasonable.

***The Proposed Sale Transaction Satisfies the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and Clear***

26. The Debtor requests approval to sell the Assets free and clear of any and all liens, claims, interests and encumbrances (except for any assumed liabilities) in accordance with section 363(f) of the Bankruptcy Code. Pursuant to section 363(f), a debtor in possession may sell estate property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is

to be sold is greater than the aggregate value of all liens on such property;

- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a “free and clear” sale even if only one of the subsections is met).

27. Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *see In re Trans World Airlines, Inc.*, 2001 WL 1820325, at \*3, 6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of claims] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

28. The Debtor submits that the Sale will satisfy the requirements of section 363(f) of the Bankruptcy Code. To the extent a party objects to Sale on the basis that it does hold a lien or encumbrance on the Assets, the Debtor believes that any such party could be compelled to accept a monetary satisfaction of such claims or that such lien is in bona fide dispute. In addition, to the extent the Debtor discovers any party may hold a lien on all, or a portion of, the Assets, the Debtor will provide such party with notice of, and an opportunity to object to, the Sale. Absent objection, each such party will be deemed to have consented to the sale of the Assets.

29. Accordingly, the Debtor believes that the Sale (i) will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code and (ii) should be approved free and clear



of all liens, claims, interests and encumbrances.

***A Successful Bidder Should Be Entitled to the Protections of Bankruptcy Code Section 363(m)***

30. While the Bankruptcy Code does not define “good faith,” the court in *In re Sullivan Central Plaza I, Ltd.*, 106 B.R. 934 (Bankr. N.D. Tex. 1998) stated that: “[t]he type of conduct of a [b]uyer which would destroy its good faith status under § 363(m) involves fraud, collusion between the [b]uyer and other bidders of the trustee, or an attempt to take grossly unfair advantages of other bidders.” 106 B.R. at 938 (citing *Matter of Bleaufontaine, Inc.*, 634 F.2d 1383, 1388 (5th Cir. 1981)); *see also In re Abbotts Dairies*, 788 F.2d 143, 147 (3d Cir. 1986) (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders).

31. In other words, a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. *See Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”); *see also In re Angelika Films, 57th, Inc.*, 1997 WL 283412, at \*7 (S.D.N.Y. May 29, 1997); *In re Balcalis*, 220 B.R. 525, 537 (Bankr. E.D.N.Y. 1998). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the “integrity of [an actor’s] conduct in the course of the sale proceedings.” *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1998 (7th Cir. 1978)).

32. The Debtor submits that, based on the evidence that the Debtor will present at the Sale Hearing, any successful bidder arising from the Auction will be a “good faith purchaser” within the meaning of section 363(m) of the Bankruptcy Code, and any purchase agreement will be a good faith agreement on arm’s-length terms entitled to the protections of section 363(m) of the Bankruptcy Code.

***Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized***

33. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985); *see also In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice).

34. The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co., (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of the debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. *See Richmond Leasing*, 762 F.2d at 1311. Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must

“cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

35. Once an executory contract is assumed, the trustee or debtor in possession may elect to assign such contract. *See In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate.”).

36. Section 365(f) of the Bankruptcy Code provides that the “trustee may assign an executory contract . . . only if the trustee assumes such contract . . . and adequate assurance of future performance is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at \*23 (D. Del. May 20, 2002) (“[A]dequate assurance falls short of an absolute guarantee of payment.”).

37. The Debtor requests approval under section 365 of the Bankruptcy Code of the Debtor’s assumption and assignment of the Assumed Contracts in connection with the Sale. The Debtor further requests that the Sale Order provide that the Assumed Contracts will be transferred to, and remain in full force and effect for the benefit of, the Successful Bidder notwithstanding any provisions in the Assumed Contracts, including those described in sections 365(b)(2) and (f)(1) and (f)(3) of the Bankruptcy Code that prohibit such assignment.

38. To the extent necessary, the Debtor will present facts at the Sale Hearing to show the financial credibility, willingness and ability of the Successful Bidder to perform under the Assumed Contracts. The Sale Hearing will afford the Court and other interested parties the opportunity to evaluate the ability of the Successful Bidder to provide adequate assurance of

future performance under the Assumed Contracts, as required under Bankruptcy Code section 365(b)(1)(C). Further, as set forth above, the Debtor will give notice to all parties to the Assumed Contracts. This notice will include the amounts the Debtor believes are necessary to cure any defaults in accordance with section 365(b) of the Bankruptcy Code. Accordingly, the Debtor submits that implementation of the proposed Assignment Procedures is appropriate in these cases.

### **Requests for Immediate Relief & Waiver of Stay**

39. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Similarly, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” The Debtor requests that the Bidding Procedures Order and Sale Order be effective immediately upon their entry by providing that the fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d) is waived.

40. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen (14) day stay period, Collier on Bankruptcy suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy, ¶ 6004.11 (L. King, 16th rev. ed. 2011). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to

appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

41. Accordingly, the Debtor hereby requests that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

**Notice**

42. Notice of this motion has been given to: (i) the Office of the United States Trustee for the Northern District of Texas; (ii) all of the Debtor's secured and unsecured creditors; and (iii) each of the non-Debtor counterparties to the Assumed Contracts that have been identified; (iv) all parties entitled to notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

**No Prior Request**

43. No prior request for the relief sought herein has been made to this Court or any other Court.

WHEREFORE, the Debtor respectfully request that the Court (i) enter the Bidding Procedures Order, in substantially the form attached hereto as **Exhibit A**, (ii) grant the other relief requested herein pending a Sale; (iii) enter the Sale Order, and (iv) grant such other and further relief to the Debtor as the Court may deem proper.

Dated: November 6, 2017

Respectfully Submitted,

**FISHERBROYLES, LLP,**

By /s/ H. Joseph Acosta  
H. Joseph Acosta  
State Bar No. 24006731  
Highland Park Place  
4514 Cole Avenue, Suite 600  
Dallas, Texas 75205  
Tel: 214-614-8939  
Fax: 214-614-8992  
[joseph.acosta@fisherbroyles.com](mailto:joseph.acosta@fisherbroyles.com)

**PROPOSED COUNSEL TO DEBTOR**

**CERTIFICATE OF SERVICE**

The undersigned certifies that on November 6, 2017, he served the foregoing Motion to Establish Bidding Procedures and Sell Substantially All Assets *via* U.S. federal express on the parties listed in the attached service list.

/s/ H. Joseph Acosta  
H. Joseph Acosta

500 CENTURY PLAZA, L.P.  
8827 W. SAM HOUSTON PKWY N  
SUITE 200  
HOUSTON, TX 77040

ACTION GYPSUM SUPPLY, LP  
9635 W. LITTLE YORK  
HOUSTON, TX 77040

ALEX VANTARAKIS  
17766 PRESTON RD.  
DALLAS, TX 75252

ALT BENTLEY YATES  
PO BOX 520  
EULESS, TX 76039

AMERICAN EXPRESS PLUM  
PO BOX 650448  
DALLAS, TX 75265

ASSET MANAGEMENT ADVISORS, INC.  
2929 ALLEN PARKWAY #2850  
HOUSTON, TX 77019

AUSTEX FENCE  
7213 MCNEIL ROAD  
AUSTIN, TX 78729

BBVA COMPASS BANK  
PO BOX 11830  
BIRMINGHAM, AL 35202

BANDWIDTH  
75 REMITTANCE DRIVE  
DEPT. 6647  
CHICAGO, IL 60675-6647

BLUECROSS BLUESHIELD OF TEXAS  
PO BOX 731428  
DALLAS, TX 75373

CED DALLAS  
10860 SANDEN DRIVE  
DALLAS, TX 75238

CARL KEEF  
10500 LUKE CT.  
AUSTIN, TX 78750

CISCO OPEN DNS LLC  
444 TOWNSEND STREET  
SAN FRANCISCO, CA 94107

CITY OF LEANDER  
200 W. WILLIS STREET  
LEANDER, TX 78646

COMCAST  
PO BOX 731428  
DALLAS, TX 75373

CONNECTWISE  
4110 GEORGE RD.  
SUITE 200  
TAMPA, FL 33634

DFW TRUCK & TRAILER REPAIR  
7016 E STATE HIGHWAY 114  
HASLETT, TX 76052

DPIS ENGINEERING, LLC  
1600 EAST HUFSMITH ROAD  
TOMBALL, TX 77375



DATTO  
PO BOX 844550  
BOSTON, MA 02284-4550

DIGIUM  
445 JAN DAVIS DRIVE NW  
HUNTSVILLE, AL 35806

DRILLING STRUCTURES INTERNATIONAL, INC.  
2431 KELLY LANE  
HOUSTON, TX 77066

EQD  
1828 L STREET NW SUITE 1070  
WASHINGTON, DC 20036

ENGINEERED WALL SYSTEMS TEXAS  
2553 GRAVEL ROAD  
FORT WORTH, TX

FF-VANKARA MASTER LLC  
20525 CYPRESSWOOD DRIVE  
CYPRESS, TX 77433

GENSYS  
2001 JUNIPERO SERRA BLVD  
DALY CITY, CA 94014

GRABLE MARTIN FULTON  
5570 FM 423  
SUITE 250  
FRISCO, TX 75034

HAVEN AT AUGUSTA WOODS VILLAGE, LP  
7617 AUGUSTA PINES DRIVE  
SPRING, TX 77389

INGRAM MICRO  
1759 WEHRLE DRIVE  
BUFFALO, NY 14221

INTERFACING COMPANY OF TEXAS  
PO BOX 131835  
THE WOODLANDS, TX 77393-1835

IRELAN HARGIS, PLLC  
440 LOUISIANA STREET  
SUITE 1800  
HOUSTON, TX 77002

LANDA PROPERTY MANAGEMENT  
2215 WESTLAKE DRIVE  
SUITE 300  
AUSTIN, TX 78746

LESSLEY SERVICES LLC  
500 CENTURY PLAZA  
SUITE 150  
HOUSTON, TX 77073

MARATHON BINDERY SERVICES, INC.  
7511 LANGTRY STREET  
HOUSTON, TX 77040

METROPLEX GENERAL CONTRACTORS  
7160 DALLAS PARKWAY  
SUITE 150  
DALLAS, TX 75229

NETRIO  
116 N. TENNESSEE  
SUITE 200  
MCKINNEY, TX 75069

OPENDNS  
135 BLUXOME STREET  
SAN FRANCISCO, CA 94107

ROBERT YATES  
7855 DAYLILY WAY  
FRISCO, TX 75033

SAGORA SENIOR LIVING, INC.  
801 CHERRY STREET  
SUITE 2400  
FORT WORTH, TX 76102

SEGWAY  
11022 SANTA MONICA BLVD. SUITE 290  
LOS ANGELES, CA 90025

SHIPLEY HOLDING CO.  
5200 N. MAIN  
HOUSTON, TX 77009

SPECTRUM BUSINESS  
3301 W. ROYAL LANE  
IRVING, TX 75063

SYNNEX CORPORATION  
5845 COLLECTIONS CENTER DRIVE  
CHICAGO, IL 60693

TEXAS COMPTROLLER OF PUBLIC  
ACCOUNTS  
DALLAS WEST AUDIT OFFICE  
2655 VILLA CREEK DRIVE, SUITE 270  
DALLAS, TX 75234

THE DEMO COMPANY, LLC 2342  
FABENS ROAD  
SUITE 200  
DALLAS, TX 75229

THE VANT GROUP, INC. 17766  
PRESTON RD.  
DALLAS, TX 75252

TIERPOINT  
12444 POWERSCOURT DRIVE  
SUITE 450  
SAINT LOUIS, MO 63131

UNITED OFFICE INTERIOR RESOURCES, INC.  
8200 LOVETT AVE.  
DALLAS, TX 75227

VELOCE SOLUTIONS  
PO BOX 60462  
KING OF PRUSSIA, PA 19406

VERIZON  
PO BOX 401  
ACWORTH, GA 30101

WATERSIDE AT MASON, LP  
1901 WATERSIDE VILLAGE RD.  
RICHMOND, TX 77406

YMA TECHNOLOGY, INC.  
5900 S. LAKE FOREST DRIVE SUITE 120  
MCKINNEY, TX 75070

EFOLDER  
PO BOX 912993  
DENVER, CO 80291-2993

**EXHIBIT A**

**BIDDING PROCEDURES ORDER**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>  <b>BO EX VENTURES, LLC,<sup>1</sup></b>  <b>Debtor.</b>	§ § § § § § §	<b>Case No. _____</b>  <b>CHAPTER 11 CASE</b>
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**ORDER (A) AUTHORIZING AND APPROVING BID PROCEDURES TO BE  
EMPLOYED IN CONNECTION WITH THE SALE OF CERTAIN ASSETS OF THE  
DEBTOR; (B) APPROVING CERTAIN BID PROTECTIONS; (C) SCHEDULING AN  
AUCTION AND SALE HEARING; (D) AUTHORIZING AND APPROVING  
ASSIGNMENT PROCEDURES TO BE EMPLOYED IN CONNECTION WITH THE  
IDENTIFICATION AND ASSUMPTION OF CERTAIN PRE-PETITION CONTRACTS;  
AND (E) APPROVING THE MANNER AND FORM OF NOTICE OF THE AUCTION,  
SALE HEARING, AND ASSIGNMENT PROCEDURES**

THIS MATTER having come before the Court upon the motion (the “**Motion**”)<sup>2</sup> filed by Bo Ex Ventures, LLC, the debtor and debtor in possession (collectively, the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Cases**”) for entry of (i) an order pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the local rules and guidelines of this Court (the “**Local Rules**”): (a) authorizing and approving bid procedures set forth in Annex 1 hereto (the “Bid Procedures”) to be employed in connection with a potential sale (the “**Sale**”) of substantially all of the assets of the Debtor, wherever located, relating to the Debtor’s business and operations in the State of Texas (the “**Assets**”) pursuant to an auction process; (b) scheduling an auction (the “**Auction**”) and a hearing (the “**Sale Hearing**”) to consider approval of the Sale; (c) authorizing and

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<sup>1</sup> The Debtor’s federal tax number is 27-0625863.

<sup>2</sup> Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Motion.

approving procedures (the “**Assignment Procedures**”) to be employed in connection with the identification and assumption of certain contracts and leases (the “**Assumed Contracts**”); and (d) approving the manner and form of notice of the Auction, the Sale Hearing, and the Assignment Procedures, substantially in the forms attached hereto as **Exhibit 1** (the “**Sale Notice**”) and **Exhibit 2** (the “**Assumption Notice**”); and (ii) an order (the “**Sale Order**”) pursuant to sections 105, 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007 and 9008, and the Local Rules substantially in the form attached to the Motion as **Exhibit D**; and it appearing that the Bankruptcy Court has jurisdiction over this matter; and it appearing that due notice of the Motion as set forth therein is sufficient under the circumstances, and that no other or further notice need be provided; and it further appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate and creditors; and upon all of the proceedings had before the Bankruptcy Court; and after due deliberation and sufficient cause appearing therefor,

NOW, THEREFORE, THE COURT HEREBY FINDS AND CONCLUDES THAT:<sup>3</sup>

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) (A), (N), and (O).

Venue is proper in this District and this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the Auction and Sale Hearing. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. The Debtor has articulated good and sufficient reasons for, and the best interests

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052.

of the estates, creditors, employees, and other parties in interest and stakeholders will be served by, this Court granting certain of the relief requested in the Motion, including approval of (1) the Bid Procedures, (2) the Assignment Procedures, and (3) the form, timing, and manner of notice of the proposed Sale, the Bid Procedures, the Assignment Procedures, and the other matters described herein, including the Sale Notice and the Assumption Notice.

E. Under the circumstances, the Bid Procedures are reasonably designed to maximize the value to be achieved for the Assets.

F. The Sale Notice is reasonably calculated to provide parties in interest, including, without limitation, creditors, customers, suppliers, and current and former employees, with proper notice of the potential sale of the Assets, the related Bid Procedures and the Sale Hearing.

G. The Assumption Notice is reasonably calculated to provide all counterparties to the Assumed Contracts with proper notice of the potential assumption, assignment, transfer, and/or sale of their executory contracts or unexpired leases, and Cure Payment Liabilities relating thereto and the Assignment Procedures.

H. Publication of the Sale Notice as set forth herein is reasonably calculated to provide all potential claimants and all unknown creditors and parties not otherwise required to be served with a copy of the Sale Notice pursuant to this Order with proper notice of the potential sale of the Assets, the related Bid Procedures, and the Sale Hearing.

I. The Motion and this Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

J. Due, sufficient, and adequate notice of the relief granted herein has been given to parties in interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:



1. The Motion is GRANTED as set forth herein.
2. All objections to the entry of the Bid Procedures Order not otherwise withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.
3. The Bid Procedures are hereby approved and shall govern the bidding and the Auction with respect to the Sale of the Debtor's Assets.
4. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale. All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of each Qualified Bidder's contemplated transaction documents, as applicable.
5. Providing the proposed Bid Protections to any Stalking Horse Bidder, substantially as proposed in the Motion, is hereby approved in all respects. If any obligations with respect to a topping fee become due and owing, such amounts shall be paid from the proceeds of the sale of the applicable Assets to the applicable Successful Bidder at the closing of the sale transaction, and satisfied as a super-priority administrative expense, and subject to typical conditions and limitations.
6. The Auction will be conducted openly. Bidding at the Auction may be transcribed or videotaped, as provided in the Bidding Procedures. Absent irregularities in the conduct of the Auction, or reasonable and material confusion during the bidding, the Court will not consider bids made after the Auction has been closed.
7. The Sale Hearing shall be held on November\_\_\_\_\_, 2017 at \_:00 \_\_\_\_m. before

the Honorable \_\_\_\_\_, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Dallas, Texas 75242. The Sale Hearing may be adjourned from time to time as permitted by the Bid Procedures without further notice other than an announcement by the Debtor in the Bankruptcy Court of such adjournment on the date scheduled for the Sale Hearing.

8. The form of Sale Notice substantially in the form annexed hereto as **Exhibit 1** is hereby approved. The Debtor shall serve within two (2) business days (by first class mail, postage prepaid) after entry of this Bid Procedures Order (the “Mailing Deadline”), the Sale Notice upon the following parties: (a) the Office of the United States Trustee for the Northern District of Texas; (b) the applicable state and local taxing authorities; (c) each of the non-Debtor counterparties to the Assumed Contracts that have been identified; (d) all of the Debtor’s secured and unsecured creditors; and all parties entitled to notice pursuant to Bankruptcy Rule 2002.

9. Notice as set forth in the preceding paragraph shall constitute good and sufficient notice of the Motion as it relates to the Debtor’s request for entry of the Sale Order, the Auction, and the Sale Hearing, and no other or further notice of the Motion, the Auction, and/or the Sale Hearing shall be necessary or required.

10. Responses or objections, if any, to the entry of the Sale Order (except for the limited exceptions described below) shall be filed with this Bankruptcy Court and served, so as to be actually received no later than November 15, 2017 at 4:00 p.m. (prevailing Central time) on (a) counsel to the Debtor, FisherBroyles, LLP (Attn: H. Joseph Acosta), 4514 Cole Avenue, Suite 600, Dallas, TX 75205; (b) counsel to any official committee of unsecured creditors; and (c) the Office of the United States Trustee for the Northern District of Texas, Earle Cabell Federal Building, 110 Commerce Street, Room 976, Dallas, TX 75242 (collectively, the “**Notice**

**Parties’’).**

11. Responses or objections, if any, related solely to (a) the Successful Bidder or (b) the ability of the Successful Bidder to provide adequate assurance of future performance of an Assumed Contract shall be filed with this Bankruptcy Court and served, so as to be actually received no later than November 15, 2017 at 4:00 p.m. (prevailing Central time) on the Notice Parties.

12. The Debtor is authorized and empowered to take such steps, incur and pay such costs and expenses, and do such things as may be reasonably necessary to fulfill the notice requirements established by this Bid Procedures Order.

13. The Assignment Procedures set forth in Paragraph 15 of the Motion are hereby approved and shall govern the assumption and assignment of the Assumed Contracts in connection with the Sale of assets to the Successful Bidder.

14. The form of notice of the Assignment Procedures, as set forth in this Order, substantially in the form annexed hereto as **Exhibit 2**, is hereby approved in all respects. The notice referenced in the Assignment Procedures of (i) the Assumed Contracts and the amounts necessary to cure defaults under each of such Assumed Contracts determined by the Debtor and (ii) the deadline for objecting to the proposed Cure Payment Liabilities shall constitute adequate and sufficient notice and no additional notice need be provided.

15. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and the Bid Procedures Order shall be effective immediately upon its entry.

16. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Bid Procedures Order.

###END OF ORDER###

**ANNEX 1**  
**BID PROCEDURES**

## **Bid Procedures**

The following Bid Procedures shall govern the bidding and the Auction, if any, with respect to the Sale of the Purchased Assets:<sup>1</sup>

- a. **Qualified Bids.** Each bidder other than Buyer shall, on or before five (5 p.m.) pm CDT on November 20, 2017 (the “**Bid Deadline**”), deliver to the Debtor’s counsel, Mr. H. Joseph Acosta, [joseph.acosta@fisherbroyles.com](mailto:joseph.acosta@fisherbroyles.com), via email, in order to be eligible to participate in the Auction of the Purchased Assets, a bid, which bid unless otherwise decided by the Debtor in its reasonable discretion shall only be considered a qualified bid (a “**Qualified Bid**”) if the bidder (a “**Qualified Bidder**”) complies with, and such Qualified Bid contains all of, the following:
  - i. An executed confidentiality agreement in a form reasonably satisfactory to the Debtor, which shall include appropriate and customary protections associated with confidential and proprietary information and inure to the benefit of the Successful Bidder (as defined below);
  - ii. \$25,000.00 as a nonrefundable earnest money (the “**Earnest Money**”). The Earnest Money shall not be refundable for any reason as consideration for the Seller’s expenses and activities in connection with the transactions contemplated by this Agreement. The Earnest Money shall be part of the payment of the Purchase Price;
  - iii. An executed asset purchase agreement (the “**Overbid APA**”) on substantially the same terms of, or on terms more favorable to the Debtor than, those set forth in the Asset Purchase Agreement with the Buyer (the “**Stalking Horse APA**”). The Overbid APA shall (a) specify the amount of cash or other form of consideration offered by the bidder for the Purchased Assets, with a minimum initial bid comprised of four components (the “**Minimum Overbid**”): (i) a cash bid of at least \$637,695.07 (computed as all of the Debtor’s prepetition secured debt, plus the Earnest Money, plus the Stalking Horse Bidder’s breakup fee of \$25,000, plus a \$50,000.00 overbid increment; (ii) cash equivalent to

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<sup>1</sup> Terms not otherwise defined herein have the same meaning ascribed to them in the Buyer’s Asset Purchase Agreement.

\$395,959.21.00 in Assumed Liabilities, and (iii) cash equivalent to any cure amount for the Seller's Contracts assumed by Buyer and (iv) cash or other consideration bid that the Debtor in its reasonable discretion considers to equal sufficient consideration to improve upon the bid of the Stalking Horse Bidder or any subsequent over-bidder; (b) constitute an irrevocable offer by such the bidder to complete its proposed purchase upon the terms set forth therein, and must be irrevocable until closing of the Sale of the Purchased Assets, (c) include a copy of a board resolution or similar document demonstrating the authority of the bidder to submit an offer to purchase the Purchased Assets on the terms proposed by such the bidder and identifies the officer(s) or authorized agent(s) appearing on behalf of the bidder, and (d) include information demonstrating to the Debtor that the bidder has the financial wherewithal to close the transaction;

- iv. A disclaimer of any right of the bidder to receive a fee analogous to a break-up fee or to compensation under section 503(b) of the Bankruptcy Code for making a substantial contribution; and
- v. Such other information reasonably requested by the Debtor.
- vi. The Debtor shall provide copies of all bids that it considers to be Qualified Bids to each Qualified Bidder upon receipt.

- b. **Qualified Bidders.** The Debtor shall determine whether a bid qualifies as a Qualified Bid. Unless otherwise decided by the Debtor in its reasonable discretion, only those persons other than Purchaser who have submitted a Qualified Bid in compliance with this Bid Procedures Order shall be a Qualified Bidder. Buyer is a Qualified Bidder.
- c. **Due Diligence.** Upon execution of the Confidentiality Agreement, any prospective bidder that wishes to conduct due diligence on the Debtor or its assets shall be granted access to all material information that has been or will be provided to other prospective bidders, subject, in all cases, to the terms and conditions of the Confidentiality Agreement, applicable law or other restrictions the Debtor may deem necessary or appropriate to protect the proprietary of the information of the Debtor. The due diligence period for bidders will end at five o'clock p.m. (5 p.m.) CDT one business day prior to the Bid Deadline. The Debtor shall coordinate all reasonable requests for additional information and due diligence access from potential bidders. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline. The Purchased Assets shall be sold on an "as is, where is" basis and by submitting a bid, each potential bidder acknowledges such.

- d. **No Bids/One Qualified Bid.** In the event the Debtor does not receive a Qualified Bid in addition to Buyer's bid, the Debtor shall request at the Sale Hearing that the Bankruptcy Court approve the Sale of the Purchased Assets to Buyer through the Sale Order and rule that the Sale Order be immediately effective upon entry.
- e. **The Auction.** In the event the Debtor receives more than one Qualified Bid, an Auction shall commence in at 9:00 a.m. (prevailing Central Time) on November 22, 2017, at the offices of Debtor's counsel in Dallas, Texas. Each Qualified Bidder shall be invited to attend the Auction which must be attended in person. The following rules shall govern the Auction:
  - i. Subject to the limitations set forth in these Bid Procedures, the opening price at such Auction shall be the highest and/or best offer of a Qualified Bidder selected and announced by the Debtor at the commencement of the Auction;
  - ii. Only Qualified Bidders may bid at the Auction. If multiple Qualified Bids are received, each Qualified Bidder shall have the right to continue to improve its Qualified Bid at the Auction;
  - iii. Each subsequent overbid must provide an incremental amount of at least \$50,000.00 of value to the Debtor over the Minimum Overbid, or any bid subsequent to the Minimum Overbid that qualifies as a superior bid during the Auction, or such other amount as designated by the Debtor from time to time;
  - iv. Each bidder will be permitted a fair, but limited, amount of time to respond to the previous bid at the Auction;
  - v. The Auction shall be conducted openly and each bidder will be informed of the terms of the previous bid determined by the Debtor to have been the highest and otherwise best bid;
  - vi. At the conclusion of the Auction and subject to Court approval following the Auction, the Debtor shall announce as the highest or otherwise best bid for the Purchased Assets the Successful Bidder as well as the second highest or otherwise best bid for the Purchased Assets, the Backup Bidder;
  - vii. The Auction may be adjourned by the Debtor from time to time without further notice other than an announcement of such adjournment by the Debtor at the Auction;
  - viii. Upon the conclusion of the Auction, the Debtor will request that the Court enter the Sale Order approving the sale of the Purchased

Assets to the Successful Bidder, or, should the Successful Bidder fail to close the sale, the Backup Bidder; free and clear of all liens, claims and encumbrances to the fullest extent allowed under section 363(f) of the Bankruptcy Code; and

- ix. At the Debtor's discretion or at the sole cost of any Qualified Bidder, the actual bidding at the Auction shall be transcribed or otherwise recorded;

provided that, notwithstanding the foregoing, the Debtor may promulgate such additional rules for the Auction as the Debtor, in its reasonable discretion, deems to be in the best interests of the Debtor's estate.

- f. **Successful Bidder.** The Debtor shall select the highest and best bid as the Successful Bidder. The Debtor may (a) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures or the terms and conditions of sale, or (iii) contrary to the best interests of Debtor, its estate and creditors, and/or (b) refuse to consider any bid that fails to comply with the Bid Procedures. After the determination of the Successful Bidder, the Debtor shall promptly execute the asset purchase agreement previously executed and submitted by such Successful Bidder, together with any changes thereto necessitated by the parties' actions at the Auction.
- g. **Backup Bidder.** If the Successful Bidder fails to consummate the sale, breaches the asset purchase agreement executed by the Successful Bidder or otherwise fails to perform, (a) the Debtor may consummate the proposed sale with the next highest or best bidder at the Auction (i.e., the Backup Bidder), without the need for further Court approval, (b) the Debtor will retain the Earnest Money of such bidder, and (c) the Debtor will maintain the right to pursue all available remedies against the Successful and Backup Bidders.
- h. **Break-Up Fee.** In the event the Buyer is not the Successful Bidder, the break-up fee owed to Buyer shall be paid to the Buyer from the sale proceeds within 10 days after closing the sale with the Successful Bidder. In the event the Successful Bidder is not the Buyer, the Successful Bidder irrevocably agrees to be liable for the break-up fees and Buyer's recourse to such fee is limited solely against the Successful Bidder.
- i. **Credit Bidding.** Buyer will be allowed to credit bid the full amount due of the prepetition secured indebtedness owed to Buyer by the Seller.
- j. **Fees and Expenses.** All bidders submitting bids shall bear their own fees and expenses in connection with the bid, the bid process, the



Auction and the proposed sale, whether or not such sale is ultimately approved, unless otherwise agreed to by the Debtor and approved by the Court.

**EXHIBIT 1**

Sale Notice

[SEE EXHIBIT “B” TO SALE MOTION FOR COPY]

**EXHIBIT 2**

Assumption Notice

[SEE EXHIBIT "C" TO SALE MOTION FOR COPY]

**EXHIBIT B**

**SALE NOTICE**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**BO EX VENTURES, LLC,<sup>1</sup>**

**Debtor.**

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**Case No. \_\_\_\_\_**

**CHAPTER 11 CASE**

**NOTICE OF (I) PROPOSED SALE OF CERTAIN ASSETS OF BO EX  
VENTURES, LLC FREE AND CLEAR OF LIENS, CLAIMS,  
ENCUMBRANCES, AND INTERESTS; AUCTION; AND  
(II) FINAL SALE HEARING RELATED THERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On November 3, 2017 (the “**Petition Date**”), Bo Ex Ventures, LLC, a debtor and debtor in possession in the above-captioned case (the “**Debtor**”), filed a voluntary petition under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**Bankruptcy Court**”). On the Petition Date, the Debtor filed with the Bankruptcy Court a motion [Docket No. \_\_\_\_] (the “**Sale Motion**”) seeking, among other things, (a) authority to sell substantially all of the assets of the Debtor, wherever located, relating to the Debtor’s operations in the State of Texas (the “**Assets**”) free and clear of all liens, claims, encumbrances, and interests (the “**Sale**”); (b) approval of certain procedures (the “**Bid Procedures**”) for the solicitation of bids with respect to the Sale (the “**Bid Procedures Relief**”); (c) approval of certain procedures (the “**Assignment Procedures**”) in connection with the identification and assumption of certain contracts and leases in connection with the Sale; and (d) scheduling of a final hearing with the Bankruptcy Court for approval of the Sale (the “**Sale Hearing**”).

2. A hearing on the Bid Procedures Relief was held before the Bankruptcy Court on November \_\_\_\_, 2017, and thereafter the Bankruptcy Court entered an order, among other things, approving the Bid Procedures Relief [Docket No. \_\_\_\_] (the “**Bid Procedures Order**”). The Bid Procedures Order establishes the Bid Procedures that govern the manner in which the Assets are to be sold. All bids must comply with the Bid Procedures and be submitted so as to be received not later than 4:00 p.m. (prevailing Central time) on November 20, 2017.

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<sup>1</sup> The Debtor’s federal tax number is 27-0625863.

3. Pursuant to the Bid Procedures, the Debtor intends to market the Assets for sale. Each Qualified Bidder (as defined in the Bid Procedures) shall be invited to participate in an auction (the “**Auction**”) at the offices of FisherBroyles, LLP, 4514 Cole Avenue, Suite 600, Dallas, TX 75205, which Auction must be attended in person and which shall commence at 10:00a.m. (prevailing Central time) on November 22, 2017. Any party interested in submitting a bid should contact the parties set forth in the Bid Procedures attached as Annex 1 to the Bid Procedures Order.

4. The Sale Hearing currently is scheduled to be conducted on November\_\_\_\_, 2017 at \_\_:0 \_\_m. (prevailing Central time) at the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, 1100 Commerce Street, Dallas, Texas 75242, before the Honorable United States Bankruptcy Judge, to consider the approval of the sale of the Assets to the prevailing Qualified Bidder at the Auction (the “**Successful Bidder**”). The Debtor shall seek entry of an order approving the Sale substantially in the form of the order attached to the Sale Motion as **Exhibit D** (the “**Sale Order**”), with such changes as may be required to reflect the results of the Auction. The Sale Hearing may be adjourned or rescheduled from time to time as permitted by the Bid Procedures without further notice other than an announcement by the Debtor in the Bankruptcy Court of such adjournment on the date scheduled for the Sale Hearing.

5. A copy of the Bid Procedures Order and the Sale Motion (including the proposed Sale Order) may be obtained by sending a written request to counsel to the Debtor, FisherBroyles, LLP, 4514 Cole Avenue, Suite 600, Dallas, TX 75205 (Attn: H. Joseph Acosta).

6. **THE HEARING DATE ON SUCH SALE IS SET FOR NOVEMBER\_\_\_\_, 2017. NO OBJECTION TO SUCH SALE WILL BE CONSIDERED UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT BY THE OBJECTION DEADLINES (AS DEFINED BELOW). OBJECTIONS TO THE RELIEF REQUESTED IN THE SALE MOTION, INCLUDING THE DEBTOR’S REQUEST TO APPROVE THE SALE OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS TO THE SUCCESSFUL BIDDER (EACH, A “SALE OBJECTION”), MUST BE MADE IN WRITING, FILED, AND SERVED SO AS TO BE ACTUALLY RECEIVED BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON NOVEMBER 15, 2015. OBJECTIONS RELATED SOLELY TO THE DEBTOR’S SELECTION OF THE SUCCESSFUL BIDDER OR THE SUCCESSFUL BIDDERS’ PROVISION OF ADEQUATE ASSURANCE OF FUTURE PERFORMANCE UNDER ANY ASSUMED CONTRACT OR ASSUMED LEASE (EACH, A “SUCCESSFUL BIDDER OBJECTION, AND TOGETHER WITH THE SALE OBJECTIONS, AN “OBJECTION”) MUST BE MADE IN WRITING, FILED, AND SERVED SO AS TO BE ACTUALLY RECEIVED BY 4:00 P.M. (PREVAILING CENTRAL TIME) ON NOVEMBER 15, 2017 (COLLECTIVELY, THE “OBJECTION DEADLINES”). IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.**

7. **ANY OBJECTION MUST BE SERVED IN ACCORDANCE WITH THE**

**PRECEDING PARAGRAPH ON EACH OF THE FOLLOWING PARTIES:** (a) counsel to the Debtor, FisherBroyles, LLP (Attn: H. Joseph Acosta), 4514 Cole Avenue, Suite 600, Dallas, TX 75205; (b) counsel to any official committee of unsecured creditors; and (c) the Office of the United States Trustee for the Northern District of Texas, Earle Cabell Federal Building, 110 Commerce Street, Room 976, Dallas, TX 75242.

8. The Bid Procedures Order approves the Assignment Procedures, which set forth the (i) manner in which the Debtor will (a) identify the Assumed Contracts (as defined in the Bidding Procedures Order) and (b) identify amounts the Debtor believe are necessary to cure defaults under each of such Assumed Contracts as determined by the Debtor; and (ii) procedures to be followed by any party that wishes to object to the proposed assumption and assignment of any Assumed Contract or the Cure Payment Liability proposed by the Debtor in respect thereof or the ability of the Successful Bidder to provide adequate assurance of future performance. An additional notice setting forth the specific Assumed Contracts to be assumed by the Debtor and the proposed Cure Payment Liability for such contracts will be served upon all counterparties to the Assumed Contracts.

9. The failure of any person or entity to file an Objection on or before the applicable Objection Deadline shall be deemed a consent to the Sale of the assets to the Successful Bidder and the other relief requested in the Sale Motion, and be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Auction, the sale of assets, the Debtor's consummation and performance of a purchase agreement with the Successful Bidder (including, without limitation, the transfer of the assets purchased at the Sale free and clear of all liens, claims, encumbrances and interests).

10. This Notice is subject to the full terms and conditions of the Sale Motion, the Bid Procedures Order, and the Bid Procedures, which shall control in the event of any conflict. The Debtor encourages parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

**EXHIBIT C**  
**TO SALE MOTION**

Assumption Notice



**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>  <b>BO EX VENTURES, LLC,<sup>1</sup></b>  <b>Debtor.</b>	§ § § § § § §	<b>Case No. _____</b>  <b>CHAPTER 11 CASE</b>
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**NOTICE OF DEBTOR'S INTENT TO ASSUME, ASSIGN, TRANSFER,  
AND/OR SELL CERTAIN EXECUTORY CONTRACTS, AND LEASES**

PLEASE TAKE NOTICE THAT, on November 3, 2017 (the “**Petition Date**”), Bo Ex Ventures, LLC, a debtor and debtor in possession in the above-captioned case (the “**Debtor**”), filed a voluntary petition under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the “**Bankruptcy Court**”). The Debtor continues to operate its business and manage its property as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE THAT, on the Petition Date, the Debtor filed a motion [Docket No.\_\_\_\_] (the “**Sale Procedures Motion**”)<sup>2</sup> with the Bankruptcy Court seeking, among other things, approval of certain procedures (the “**Assignment Procedures**”) applicable to the identification and assumption of certain contracts (the “**Assumed Contracts**”), and certain leases (the “**Assumed Leases**”) and assignment thereof, in connection with the Sale by which the Debtor intends to sell certain of its assets.

PLEASE TAKE FURTHER NOTICE THAT, on November\_\_\_\_, 2017, the Bankruptcy Court entered an order [Docket No.\_\_\_\_] (the “**Bid Procedures Order**”) granting the Sale Procedures Motion and approving the procedures for the assumption and assignment of the Assumed Contracts.

PLEASE TAKE FURTHER NOTICE THAT the Debtor intends to assume, assign, transfer, and/or sell to the Successful Bidder (together with its subsidiaries and any successors or assigns) the Assumed Contracts listed on **Schedule 1** annexed hereto, pursuant to sections 363 and 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE THAT the Debtor has set forth on **Schedule 1** hereto the amounts necessary to cure defaults and/or to provide compensation or adequate assurance of compensation for actual pecuniary loss resulting from a default prior to the Petition

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<sup>1</sup> The Debtor's federal tax number is 27-0625863.

<sup>2</sup> Where the context requires, each capitalized term used but not otherwise defined herein shall have the meaning ascribed to such term in the Sale Procedures Motion.

Date (the “Cure Payment Liabilities”). The Bankruptcy Code requires that the Cure Payment Liabilities (which include any amounts owing on account of the Debtor’s prepetition obligations under the Assumed Contracts) be paid (or that adequate assurance of payment be provided) to the parties owed such amounts upon the Debtor’s assumption of the Assumed Contracts.

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY SEEKING TO ASSERT AN OBJECTION TO THE ASSUMPTION BY THE DEBTOR AND ASSIGNMENT, TRANSFER, AND/OR SALE TO THE SUCCESSFUL OF CONTRACT OR LEASE INCLUDING TO THE VALIDITY OF ANY CURE PAYMENT LIABILITIES AS DETERMINED BY THE DEBTOR OR TO OTHERWISE ASSERT THAT ANY OTHER AMOUNTS, DEFAULTS, CONDITIONS, OR PECUNIARY LOSSES MUST BE CURED OR SATISFIED UNDER THE ASSUMED CONTRACTS AND ASSUMED LEASES MUST FILE AND SERVE ITS OBJECTION (ANY SUCH OBJECTION, AN “ASSUMPTION OBJECTION”) SETTING FORTH WITH SPECIFICITY ANY AND ALL CURE OBLIGATIONS OR OTHER CONDITIONS WHICH SUCH PARTY ASSERTS MUST BE CURED OR SATISFIED WITH RESPECT TO SUCH CONTRACT OR LEASE WITH APPROPRIATE DOCUMENTATION IN SUPPORT THEREOF, SO THAT SUCH ASSUMPTION OBJECTION IS ACTUALLY RECEIVED BY: (a) counsel to the Debtor, FisherBroyles, LLP (Attn: H. Joseph Acosta), 4514 Cole Avenue, Suite 600, Dallas, TX 75205; (b) counsel to any official committee of unsecured creditors; and (c) the Office of the United States Trustee for the Northern District of Texas, Earle Cabell Federal Building, 110 Commerce Street, Room 976, Dallas, TX 75242. (collectively, the “Notice Parties”) BY 4:00 P.M. ON NOVEMBER 15, 2017 (THE “OBJECTION DEADLINE”).**

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY SEEKING TO ASSERT AN OBJECTION TO THE ABILITY OF THE SUCCESSFUL BIDDER TO PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE OF AN ASSUMED CONTRACT OR ASSUMED LEASE MUST FILE AND SERVE ITS OBJECTION (ANY SUCH OBJECTION, AN “ADEQUATE ASSURANCE OBJECTION”), SO THAT SUCH OBJECTION IS ACTUALLY RECEIVED BY THE NOTICE PARTIES BY 4:00 P.M. ON NOVEMBER 15, 2017 (THE “ADEQUATE ASSURANCE OBJECTION DEADLINE”).**

**PLEASE TAKE FURTHER NOTICE THAT, EXCEPT AS LIMITED BY THE NEXT PARAGRAPH, UNLESS AN ASSUMPTION OBJECTION OR ADEQUATE ASSURANCE OBJECTION, AS APPLICABLE, IS FILED AND SERVED BY A PARTY TO AN ASSUMED CONTRACT OR ASSUMED LEASE OR A PARTY INTERESTED IN AN ASSUMED CONTRACT OR ASSUMED LEASE BY THE APPLICABLE OBJECTION DEADLINE, ALL PARTIES WHO HAVE RECEIVED ACTUAL OR CONSTRUCTIVE NOTICE HEREOF SHALL BE DEEMED TO HAVE WAIVED AND RELEASED ANY RIGHT TO ASSERT AN ASSUMPTION OBLIGATION OR ADEQUATE ASSURANCE OBJECTION, AS APPLICABLE, AND TO HAVE OTHERWISE CONSENTED TO THE ASSUMPTION, ASSIGNMENT, TRANSFER, AND/OR SALE, AND SHALL BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE DEBTOR, THE SUCCESSFUL BIDDER, OR ANY OTHER ASSIGNEE OF THE RELEVANT ASSUMED CONTRACT OR**

**ASSUMED LEASE THAT ANY ADDITIONAL AMOUNTS ARE DUE OR DEFAULTS EXIST, OR CONDITIONS TO ASSUMPTION OR ASSIGNMENT MUST BE SATISFIED, UNDER SUCH ASSUMED CONTRACT OR ASSUMED LEASE.**

PLEASE TAKE FURTHER NOTICE THAT Assumption Objections must set forth the cure amount or other obligation the objecting party asserts is due, the specific types and dates of the alleged defaults, pecuniary losses, and conditions to assignment and the support therefor, if any. Upon receipt of a Cure/Assignment Objection, the Successful Bidder (on behalf of the Debtor's estates) may hold an amount equal to the Claimed Cure Amount in reserve pending further order of the Court or agreement between the Successful Bidder and the objecting party, and the Successful Bidder shall have the right to litigate any dispute about the Claimed Cure Amount on behalf of the Debtor's estates. So long as the Successful Bidder holds the Claimed Cure Amount in reserve, the Debtor shall seek authority to assume, assign, transfer, and/or sell the Assumed Contract that is the subject of an objection without further delay.

PLEASE TAKE FURTHER NOTICE THAT if, as to any Assumed Contract no Assumption Objection is received by the Objection Deadline, such Assumed Contract shall be deemed assumed by the Debtor and assigned, transferred, and/or sold to the Successful Bidder without further order of the Bankruptcy Court, effective as of the later of (i) the entry of the Sale Order approving, among other things, the Asset Purchase Agreement with the Successful Bidder (the "Agreement") or (ii) the payment of the applicable Cure Payment Liability, if any, set forth in Schedule 1 hereto. If an Assumption Objection is received by the Objection Deadline and the Debtor and the Successful Bidder are unable to resolve such objection consensually, the proposed assumption and assignment which is the subject of such Assumption Objection shall be subject to further order of the Bankruptcy Court, and the Debtor shall promptly schedule a hearing to consider such Assumption Objection.

PLEASE TAKE FURTHER NOTICE THAT, subject to the terms of the Agreement, notwithstanding anything herein to the contrary, the Successful Bidder may, from time to time, exclude any Assumed Contract or Assumed Lease in its sole and absolute discretion until the Closing. The non-debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within three (3) business days of such determination.

PLEASE TAKE FURTHER NOTICE THAT hearings with respect to Assumption Objections shall be held on such date as the Bankruptcy Court may designate.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU AGREE WITH THE CURE PAYMENT LIABILITIES SET FORTH ON SCHEDULE 1 AND DO NOT OTHERWISE OBJECT TO THE DEBTOR'S ASSUMPTION, ASSIGNMENT, TRANSFER, AND/OR SALE OF YOUR CONTRACT OR LEASE YOU NEED NOT TAKE ANY FURTHER ACTION.**

PLEASE TAKE FURTHER NOTICE THAT a complete copy of the Sale Motion may be obtained by counsel to the Debtor, FisherBroyles, LLP, 4514 Cole Avenue, Suite 600, Dallas, TX 75205 (Attn: H. Joseph Acosta). The Debtor encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

**Schedule 1**

List of Assumed Contracts and Cure Payment Liabilities

**EXHIBIT D**

Proposed Sale Order

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**In re:**

**BO EX VENTURES, LLC,<sup>1</sup>**

**Debtor.**

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**Case No. \_\_\_\_\_**

**CHAPTER 11 CASE**

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT AMONG THE DEBTOR AND THE PURCHASER; (II) APPROVING SALE OF CERTAIN OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES, CLAIMS, LIENS, AND OTHER INTERESTS PURSUANT TO BANKRUPTCY CODE SECTIONS 105, 363(B), 363(F), AND 363(M); (III) APPROVING ASSUMPTION, ASSIGNMENT, TRANSFER, AND/OR SALE OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES FREE AND CLEAR OF ALL ENCUMBRANCES, CLAIMS, LIENS, AND OTHER INTERESTS PURSUANT TO BANKRUPTCY CODE SECTIONS 363 AND 365; (IV) DETERMINING THE AMOUNTS NECESSARY TO CURE SUCH EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (V) GRANTING RELATED RELIEF**

This matter coming before the Court on the Motion of the Debtor for Entry of Orders (I) Establishing Bidding and Sale Procedures; (II) Approving the Sale of Assets; and (III) Granting Related Relief (the “**Sale Motion**”), filed by the above-captioned debtor (the “**Debtor**”) in the above-captioned case (“**Bankruptcy Case**”), whereby the Debtor sought, among other things, pursuant to sections 105, 363, 365, 503(b) and 507 of title 11 of the United States Code (as amended, the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and the local rules and guidelines of the United States Bankruptcy Court for the Northern District of Texas (the “**Local Rules**”), entry of an order: (i) approving the sale of certain of the Debtor’s assets free and clear of all Encumbrances (as defined below) in accordance with the terms and conditions contained in this Order and in that certain Asset Purchase Agreement, dated November [\_\_\_\_], 2017 (the “**Asset**

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<sup>1</sup> The Debtor’s federal tax number is 27-0625863.

**Purchase Agreement**)<sup>2</sup>, by and among the Debtor and [\_\_\_\_\_] (the “**Purchaser**”), subject to higher and better offers, (ii) providing for the sale by the Debtor to the Purchaser of the Purchased Assets, including the assumption, assignment, transfer, and/or sale to the Purchaser of the Assumed Contracts and Leases, respectively (collectively, the “**Assumed Contracts**”), free and clear of all Encumbrances in accordance with the terms and conditions contained in this Order and in the Asset Purchase Agreement, and (iii) authorizing the consummation of the transactions contemplated by the Asset Purchase Agreement (collectively, the “**Sale Transaction**”); the Court having reviewed the Motion and evidence at a hearing duly-noticed and conducted; and this Court having entered an order on November [\_\_\_\_\_] [Docket No. [\_\_]] (as amended, supplemented, or otherwise modified, the “**Bid Procedures Order**”) approving, among other things, the dates, deadlines, and bidding procedures (the “**Bid Procedures**”) with respect to, and notice of, the Sale Transaction; and an auction having been set for November [22], 2017 (the “**Auction**”), in accordance with the Bid Procedures Order; and the Debtor, having determined that the Asset Purchase Agreement represents the highest or otherwise best bid for the Purchased Assets; and a hearing having been held on November [\_\_\_\_], 2017 (the “**Sale Hearing**”) to consider approval of the Asset Purchase Agreement; and it appearing that the relief requested in the Sale Motion is in the best interest of the Debtor’s estate, its creditors, and other parties in interest; and reasonable, adequate, and sufficient notice of the Sale Motion and the Sale Hearing having been given to all parties in interest in this case; and all such parties having been afforded due process and an opportunity to be heard with respect to the Sale Motion and all relief requested therein; and the Court having reviewed and considered: (i) the Sale Motion; the objections to the Sale Motion, if any; (iii) the Record (as defined below); and (iv) the arguments

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<sup>2</sup> A true and correct copy of the Asset Purchase Agreement (without schedules or exhibits) is attached hereto as **Exhibit A**. Capitalized terms used herein, but not defined herein, have the meanings ascribed to such terms in the Asset Purchase Agreement.

of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and after due deliberation and sufficient cause appearing;

**IT HEREBY IS FOUND, DETERMINED AND CONCLUDED THAT:**

A. Any of the findings of fact contained herein shall constitute a finding of fact even if it is stated as a conclusion of law, and any conclusion of law contained herein shall constitute a conclusion of law even if it is stated as a finding of fact. The Court's findings shall also include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing.

B. The following record (the "**Record**") was established to support the Sale:

- (i) The Sale Motion;
- (ii) Notice of (I) Proposed Sale of Certain Assets of Bo Ex Ventures, LLC Free and Clear of Liens, Claims, Encumbrances, and Interests; (II) Auction; and (III) Final Sale Hearing Related Thereto;
- (iii) Order (A) Authorizing and Approving Bid Procedures to be Employed in Connection with the Sale of Certain Assets of the Debtor (B) Approving Certain Bid Protections; (C) Scheduling an Auction and Sale Hearing; (D) Authorizing and Approving Assignment Procedures to be Employed in Connection with the Identification and Assumption of Certain Pre-Petition Contracts; and (E) Approving the Manner and Form of Notice of the Auction, Sale Hearing, and Assignment Procedures [Docket No. \_\_\_\_\_];
- (iv) Notice of Debtor's Intent to Assume, Assign, Transfer, and/or Sell Certain Executory Contracts and Leases;
- (v) Notice of Successful Bidder [Docket No. \_\_\_\_\_]; and
- (vi) Declaration of [\_\_\_\_\_], if any.

C. The Court has jurisdiction over this matter, over the property of the Debtor's estate, including the Purchased Assets to be sold, transferred, or conveyed pursuant to the Asset Purchase Agreement, and over the Debtor's estate, pursuant to 28 U.S.C. §§ 157 and 1334. This



matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this Bankruptcy Case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

D. The statutory and other bases for the relief sought in the Sale Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9014, and 9019, and the Local Rules.

E. Due, proper, timely, adequate, and sufficient notice of the Bid Procedures, the Auction, the Sale Hearing, and the Sale Motion and the relief requested therein, has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Bid Procedures Order, and the Asset Purchase Agreement. Such notice was good, sufficient, and appropriate under the circumstances. No other or further notice of the Bid Procedures, the Auction, the Sale Hearing, the Asset Purchase Agreement, the Sale Transaction, or the Sale Motion is or shall be required.

F. Actual written notice of, and a reasonable opportunity to object and to be heard with respect to, the Sale Motion has been given, in light of the circumstances, to all interested persons and entities, including, without limitation, to (i) the Office of the United States Trustee for the Northern District of Texas; (ii) the applicable state and local taxing authorities; the Internal Revenue Service; (iii) each of the non-Debtor counterparties to the Assumed Contracts; and (ix) all entities who are known to possess or assert a claim against the Debtor.

G. As demonstrated by (i) the Record; (ii) the evidence adduced at and prior to the Sale Hearing; and (iii) the representations of counsel made on the record at the Sale Hearing, the Debtor has conducted a fair and open sale process in a manner reasonably calculated to produce the highest and otherwise best offer for the Purchased Assets in compliance with the Bid Procedures Order. The Bid Procedures were substantively and procedurally fair to all parties, and

were the result of arms' length negotiations. The sale process, Bid Procedures, and Auction were non-collusive, duly noticed, and afforded a full, fair, and reasonable opportunity for any party or Person to make a higher and otherwise better offer to purchase all or any of the Purchased Assets. The bidding and related procedures established by the Bid Procedures Order have been complied with in all material respects by the Debtor, the Purchaser, and its respective counsel and other advisors. The Bid Procedures obtained the highest value for the Purchased Assets for the Debtor and its estates, and any other transaction would not have yielded as favorable an economic result.

H. Notice of the Debtor's assumption, assignment, transfer, and/or sale to the Purchaser of the Assumed Contracts has been provided to each non-debtor party thereto, together with a statement therein from the Debtor with respect to the amount, if any, to be paid to such non-debtor party under section 365(b) of the Bankruptcy Code as a condition to assumption and assignment. Any default, if any, under the Assumed Contract has been cured, in full compliance with the requirements of section 365(b)(1)(A) and (B) of the Bankruptcy Code. Each of the non-Debtor parties to the Assumed Contract have had an opportunity to object to the Cure Amounts set forth in the respective notice. In addition, the Purchaser has provided adequate assurance of its ability to perform its obligations under each of the Assumed Contracts within the meaning of section 365(f)(2)(B) of the Bankruptcy Code. Therefore, the Assumed Contracts may be assumed by the Debtor and assigned and sold to the Purchaser.

I. The disclosures made by the Debtor concerning the Asset Purchase Agreement, Auction, Sale Transaction, Sale Hearing, and the assumption, assignment, transfer, and/or sale of the Assumed Contracts were good, complete, and adequate.

J. The Purchased Assets constitute property of the Debtor's estate and title thereto is

vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor has all right, title, and interest in the Purchased Assets required to transfer and convey the Purchased Assets to the Purchaser. The Debtor has taken all corporate or other entity action necessary to authorize and approve the Asset Purchase Agreement and the consummation of the Sale Transaction, and the Debtor's sale of the Purchased Assets to the Purchaser has been duly and validly authorized by all necessary corporate or other entity action. Upon entry of this Sale Order, the Debtor shall have full authority to consummate the Asset Purchase Agreement and transactions contemplated by the Asset Purchase Agreement.

K. Approval of the Asset Purchase Agreement and consummation of the Sale Transaction is in the best interests of the Debtor, its estates, creditors, and other parties in interest. The Debtor has demonstrated good, sufficient, and sound business purposes and justifications for the sale to the Purchaser pursuant to section 363(b) of the Bankruptcy Code. Such business purposes and justifications include, but are not limited to, the following: (i) the Sale Transaction is the only viable alternative to liquidation; and (ii) the Asset Purchase Agreement and the closing thereon will present the best opportunity to realize the value of the Purchased Assets on a going concern basis and avoid decline and devaluation of the Purchased Assets.

L. The Asset Purchase Agreement was negotiated, proposed, and entered into by the Debtor and the Purchaser without collusion, in good faith, and from arms' length bargaining positions.

M. The sale price in respect of the Purchased Assets was not controlled by any agreement among potential bidders at such sale and neither the Debtor nor the Purchaser engaged in collusion or any other conduct that would cause or permit the Asset Purchase Agreement or

Sale Transaction to be avoidable under section 363(n) of the Bankruptcy Code. Accordingly, neither the Asset Purchase Agreement nor the Sale Transaction may be avoided and no party shall be entitled to any damages or other recovery pursuant to section 363(n).

N. The Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. The Purchaser is acting in good faith within the meaning of section 363(m) in consummating the Sale Transaction. The Purchaser has proceeded in good faith in all respects in that, among other things, (i) the Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Purchaser complied with the provisions of the Bid Procedures Order; (iii) the Purchaser's bid was subjected to the competitive bid procedures set forth in the Bid Procedures Order; and (iv) all payments to be made by the Purchaser and all other material agreements or arrangements entered into by the Purchaser and the Debtor in connection with the Sale Transaction have been disclosed and are appropriate.

O. The consideration to be provided by the Purchaser pursuant to the Asset Purchase Agreement: (i) is fair and reasonable; (ii) is the highest or otherwise best offer for the Purchased Assets; (iii) will provide a greater recovery for the Debtor's creditors than would be provided by any other practically available alternative; and (iv) constitutes reasonably equivalent value and fair consideration. In reaching this determination, the Court has taken into account both the consideration to be realized directly by the Debtor's estate and the indirect benefits of the Sale Transaction for the Debtor's employees, landlords, vendors and suppliers, and the public served, directly and indirectly, by the functions performed by the Debtor's employees and the Debtor. The Debtor's determination that the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets is a result of due deliberation by the Debtor and

constitutes a valid and sound exercise of the Debtor's business judgment consistent with its fiduciary duty. Entry of an order approving the Sale Motion, the Asset Purchase Agreement, and the Sale Transaction is a necessary condition precedent to the Purchaser consummating the Sale Transaction.

P. Subject paragraph 33 of this Order, the transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and will vest the Purchaser with all right, title, and interest of the Debtor to the Purchased Assets free and clear of all claims and interests (the "**Encumbrances**"), including liens, to the fullest extent permitted by section 363(f) of the Bankruptcy Code.

Q. The Purchaser would not have entered into the Asset Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtor, its estate, and its creditors, if the transfer of the Purchased Assets to the Purchaser and the assumption, assignment, and sale of the Assumed Contracts to the Purchaser were not free and clear of all Encumbrances, or if the Purchaser would, or in the future could, be liable for any such Encumbrances. A sale of the Purchased Assets other than one free and clear of such Encumbrances would adversely impact the Debtor's estate, and would yield substantially less value for the Debtor's estate, with less certainty than the Sale Transaction.

R. The Debtor may sell the Purchased Assets free and clear of all Encumbrances because, in each case, one or more of the standards set forth in section 363(f)(1) through (5) of the Bankruptcy Code have been satisfied. Each entity with an Encumbrance on or in the Purchased Assets to be transferred on the Closing Date (i) has, subject to the terms and conditions of this Sale Order, consented to the Sale Transaction or is deemed to have consented; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such

Encumbrance; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of Encumbrances who did not object to the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

S. The transfer of the Purchased Assets to the Purchaser, including the assumption by the Debtor and assignment, transfer, and/or sale to the Purchaser of the Assumed Contracts, will not subject the Purchaser to any liability whatsoever (including any successor liability or fraudulent transfer) with respect to the operation of the Debtor's business prior to the Closing or by reason of such transfer, except that the Purchaser shall remain liable for the Assumed Liabilities. The Purchaser (i) is not, and shall not be, considered a successor to the Debtor; (ii) has not, *de facto* or otherwise, merged with or into the Debtor; (iii) is not a continuation or substantial continuation of the Debtor; (iv) does not have a common identity of incorporators, directors, or equity holders with the Debtor; and (v) is not holding itself out to the public as a continuation of the Debtor.

T. The Asset Purchase Agreement is a valid and binding contract between the Debtor and the Purchaser, which is and shall be enforceable according to its terms. The Asset Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither the Debtor nor the Purchaser is entering into the Sale Transaction fraudulently.

U. The assumption, assignment, and/or transfer of the Assumed Contracts pursuant to the terms of this Sale Order is integral to the Asset Purchase Agreement and is in the best interests of the Debtor and its estates, creditors, and other parties in interest, and constitutes a valid and sound exercise of the Debtor's business judgment consistent with their fiduciary duties.

V. Pursuant to section 365 of the Bankruptcy Code, upon payment of any Cure Amounts or reservation of the claimed Cure Amount by the Purchaser, the Debtor or the Purchaser, as applicable, shall have: (i) cured and/or provided adequate assurance of cure of any monetary default existing prior to the Petition Date under any of the Assumed Contracts; and (ii) provided compensation or adequate assurance of compensation to any party for actual pecuniary loss to such party resulting from a default prior to the Petition Date under any of the Assumed Contracts.

W. Other than claims arising under the Asset Purchase Agreement, the Debtor agrees and acknowledges that it has no claims against the Purchaser.

X. The Sale Transaction must be approved and consummated promptly in order to preserve the viability of the business and maximize the value of the Debtor's estates. Time is of the essence in consummating the Sale Transaction. Cause has been shown as to why this Sale Order should not be subject to any stay provided by Bankruptcy Rules 6004(h) and 6006(d).

Y. The Sale Transaction does not constitute a de facto plan of reorganization or liquidation or an element of such a plan for the Debtor, as it does not and does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtor; (ii) impair or circumvent voting rights with respect to any future plan proposed by the Debtor; (iii) circumvent chapter 11 plan safeguards, such as those set forth in sections 1125 and 1129 of the Bankruptcy Code; or (iv) classify claims or equity interests or extend debt maturities.

Z. The consummation of the Sale Transaction is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Sale

Transactions.

AA. There is other good and sufficient cause to grant the relief requested in the Sale Motion and approve the Asset Purchase Agreement and the Sale Transaction.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Sale Motion is GRANTED.
2. Any objections to the Sale Motion or the entry of this Sale Order that have not been withdrawn, resolved, waived, or settled, and all reservations of rights included therein, are DENIED and OVERRULED on the merits and with prejudice. All withdrawn objections are deemed withdrawn with prejudice.
3. The Asset Purchase Agreement and all of its other terms and conditions and all other ancillary documents, and the Sale Transaction are APPROVED in all respects.
4. Pursuant to sections 363 and 365 of the Bankruptcy Code, the Debtor is authorized to (i) execute, deliver, and perform under, consummate, and implement the Asset Purchase Agreement and the Sale Transaction together with all additional instruments and documents that are requested by the Purchaser and may be reasonably necessary or desirable to implement the Asset Purchase Agreement, (ii) take any and all actions as the Debtor deems necessary, appropriate, or advisable for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to Purchaser's possession, the Purchased Assets, or as may be necessary or appropriate to the performance of the obligations as contemplated by the Asset Purchase Agreement, including, without limitation, any and all actions reasonably requested by the Purchaser which are consistent with the Asset Purchase Agreement; and (iii) take all other and further acts or actions as may be



reasonably necessary to implement the Sale Transaction.

5. Pursuant to sections 105(a), 363(f), and 365(b) of the Bankruptcy Code, and subject to paragraph 33 of this Order and the terms of the Asset Purchase Agreement, upon the Closing: (i) the transfer of the Purchased Assets to the Purchaser pursuant to the Asset Purchase Agreement shall constitute a legal, valid, and effective transfer of the Purchased Assets and shall vest the Purchaser with all right, title, and interest in and to the Purchased Assets; (ii) the Purchased Assets shall be transferred to the Purchaser free and clear of all Encumbrances (including Encumbrances of any Governmental Authority) to the fullest extent permitted by section 363(f) of the Bankruptcy Code, and (iii) the Assumed Contracts shall be deemed assumed by the Debtor and assigned, transferred, and/or sold to the Purchaser.

6. Upon the occurrence of the Closing, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets acquired under the Asset Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in all the Purchased Assets to the Purchaser.

7. This Sale Order is and shall be effective as a determination that all Encumbrances shall be and are, without further action by any Person, forever released with respect to the Purchased Assets as of the Closing Date. Following the Closing, no holder of any Encumbrances may interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such Encumbrance, or any actions that the Debtor may take in its Bankruptcy Case, and no party may take any action to prevent, interfere with, impair, or otherwise enjoin consummation of the Sale Transaction. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the

Debtor to sell and transfer the Purchased Assets to the Purchaser in accordance with the terms of the Asset Purchase Agreement and this Sale Order. Further, following the Closing, no person or entity, including, without limitation, any governmental unit, shall interfere with the Purchaser's right and ability to operate the Purchased Assets or the business related thereto in the manner that such Purchased Assets and business are being operated as of the Closing Date, including, without limitation, any such interference resulting from any ordinance, rule or regulation enacted or created on or after the Closing Date.

8. The Purchaser and its affiliates, successors, and assigns shall not be deemed or considered a successor to the Debtor or the Debtor's estate by reason of any theory of law or equity and the Purchaser has not assumed nor is it in any way responsible for any liability or obligation of the Debtor or the Debtor's estates, except as otherwise expressly provided in the Asset Purchase Agreement. Without limitation, the Purchaser and its affiliates, successors, and assigns shall have no successor, transferee, or vicarious liability of any kind or character, including, without limitation, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee or transferee liability, labor, product liability, employment, de facto merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtor, the business, or any obligations of the Debtor arising prior to the Closing Date, including, without limitation, liabilities on account of any taxes or other governmental authority fees, contributions, or surcharges, in each case arising, accruing, or payable under, out of, in connection with, or in any way relating to, the ownership and operation of the Purchased Assets prior to the Closing Date or arising based on actions of the

Debtor taken after the Closing Date.

9. Except to the extent expressly included in the Assumed Liabilities or to enforce the Asset Purchase Agreement, pursuant to sections 105 and 363 of the Bankruptcy Code, all persons and entities, including, without limitation, the Debtor, any official committee of unsecured creditors, a trustee, all debt security holders, all equity security holders, the Debtor's employees or former employees, governmental, tax, and regulatory or investigatory authorities of any sort, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding any Encumbrances against, in or with respect to the Debtor, its business, or all or any part of the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtor, all or any part of the Purchased Assets, the operation of the Debtor's business prior to the Closing Date, or the transfer of the Purchased Assets to the Purchaser shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Encumbrances, whether by payment, setoff, or otherwise, directly or indirectly, against the Purchaser or any affiliate, successor, or assign thereof, or against the Purchased Assets.

10. Pursuant to section 365 of the Bankruptcy Code, the Debtor is authorized to assume the Assumed Contracts and assign, transfer, and/or sell the Assumed Contracts to the Purchaser. The Purchaser shall pay the Cure Amounts set forth on **Exhibit B** hereto promptly after the Closing of the Sale Transaction; *provided, however*, that the Purchaser may direct the removal of any such contract or lease from the list of Assumed Contracts set forth in the Asset Purchase Agreement in accordance with the Asset Purchase Agreement, in which case such contract or lease shall not constitute an Assumed Contract and Purchaser shall have no obligation

to pay any Cure Amount with respect thereto.

11. The Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Contract (including those of the type described in section 365(b)(2) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. Pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assumed Contracts after such assignment and sale to the Purchaser.

12. All defaults or other obligations of the Debtor under each Assumed Contract arising or accruing prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured and any pecuniary loss arising therefrom deemed compensated, upon payment of the Cure Amount with respect thereto, if any, and the Purchaser shall have no liability or obligation arising or accruing in respect of the Assumed Contracts on or prior to the Closing. The non-debtor parties to the Assumed Contracts are barred from asserting against the Debtor, the Purchaser, and their respective successors and assigns, any default or unpaid obligation allegedly arising or accruing before the Closing, any pecuniary loss resulting from such default, or any other obligation under the Assumed Contracts arising or incurred prior to the Closing, other than the Cure Amounts. Any provisions in any Assumed Contract that prohibit or condition the assignment of such Assumed Contract or allow the non-debtor party to such Assumed Contract to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Contract, shall constitute unenforceable anti-assignment provisions that are void and of no force and effect. Any portion of any Assumed

Contract that purports to permit a landlord thereunder to cancel the remaining term of such Assumed Contract if the Debtor discontinues its use or operation of the leased premises is void and of no force and effect, and shall not be enforceable against the Purchaser, its assignees, and any sublessees; and the landlords under any such Assumed Contract shall not have the right to cancel or otherwise modify such Assumed Contract or increase the rent, assert any claim, or impose any penalty by reason of such discontinuation, the Debtor's cessation of operations, the assignment of such Assumed Contract to the Purchaser, or the interruption of business activities at any of the leased premises.

13. To the extent a counterparty to an Assumed Contract failed to timely object to a Cure Amount, such Cure Amount shall be deemed to be finally determined and any such counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Amount at any time.

14. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions or of the right of the Debtor or the Purchaser, as the case may be, to enforce every term and condition of the Assumed Contracts. The validity of the assumption, assignment, and sale of the Assumed Contracts to the Purchaser shall not be affected by any existing dispute between any of the Debtor and any non-debtor party to such Assumed Contract other than with respect to the allowance and payment of any Cure Amount as provided in this Sale Order and in the Asset Purchase Agreement. Any party that may have had the right to consent to the assignment of any Assumed Contract is deemed to have consented for the purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code.

15. There shall be no rent accelerations, assignment fees, increases, or any other fees

charged to the Purchaser or the Debtor as a result of the assumption, assignment, transfer, and/or sale of the Assumed Contracts. The failure of the Debtor or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Contract shall not be a waiver of such terms or conditions, or of the Debtor's and Purchaser's rights to enforce every term and condition of the Assumed Contracts.

16. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all non- Debtor parties to the Assumed Contracts are forever barred and permanently enjoined from raising or asserting against the Debtor or the Purchaser any assignment fee, default, breach, or claim or pecuniary loss arising under or related to the Assumed Contracts existing as of the Petition Date or any assignment fee or condition to assignment arising by reason of the Closing other than with respect to the allowance and payment of any Cure Amount as provided in this Sale Order and in the Asset Purchase Agreement.

17. The consideration provided by the Purchaser for the Purchased Assets under the Asset Purchase Agreement and the portion of the consideration that consists of the assumption of the Assumed Liabilities, is fair and reasonable and constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia.

18. The Asset Purchase Agreement and Sale Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) in respect of the Asset Purchase Agreement or the Sale Transaction.

19. The Asset Purchase Agreement and the Sale Transaction are undertaken by the Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Asset Purchase Agreement and the Sale Transaction shall not affect the validity of the sale of the Purchased Assets to the Purchaser, unless this Sale Order is duly stayed pending such appeal. The Purchaser is a good faith purchaser of the Purchased Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Debtor and the Purchaser will be acting in good faith if they proceed to consummate the Sale Transaction at any time after the entry of this Sale Order.

20. All persons and entities that are in possession of some or all of the Purchased Assets as of or after the Closing are hereby ordered to surrender possession of such Purchased Assets to the Purchaser as of the Closing or at such time thereafter as the Purchaser may request. The Debtor agrees to exercise commercially reasonable efforts to assist the Purchaser in assuring that all persons or entities that are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets in which the Debtor holds an interest will surrender possession of the Purchased Assets to either (i) the Debtor before the Closing Date, or (ii) the Purchaser on or after the Closing Date.

21. This Sale Order is and shall be binding on and shall govern acts of all entities including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of fees, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities, who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments

that reflect that the Purchaser is the assignee and owner of the Purchased Assets free and clear of all Encumbrances (all such entities being referred to as “**Recording Officers**”). All Recording Officers are authorized and specifically directed to strike or void recorded Encumbrances against the Purchased Assets recorded prior to the date of this Sale Order. A certified copy of this Sale Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded Encumbrances against the Purchased Assets recorded prior to the date of this Sale Order.

22. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transactions authorized herein, including the Asset Purchase Agreement and the Sale Transaction.

23. To the greatest extent available under applicable law and to the extent provided for under the Asset Purchase Agreement, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtor with respect to the Purchased Assets, and, to the greatest extent available under applicable law and to the extent provided for under the Asset Purchase Agreement, all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to the Purchaser as of the Closing Date. To the extent any license or permit necessary for the operation of the business at those locations assumed by the Debtor and assigned to the Purchaser is not an assumable and assignable executory contract, Purchaser shall make commercially reasonable efforts to apply for and obtain any such license or permit promptly after the Closing Date, and Debtor shall cooperate reasonably with Purchaser in those efforts. All existing licenses or permits applicable to the Debtor and its business shall remain in place for Purchaser’s benefit until either new licenses and permits are obtained or existing



licenses and permits are transferred in accordance with applicable administrative procedures.

24. The terms and provisions of the Asset Purchase Agreement, the ancillary agreements, and this Sale Order shall be binding in all respects on, and shall inure to the benefit of, the Debtor, the Purchaser, and its respective affiliates, successors and assigns, and any other affected third parties, notwithstanding the dismissal of the Bankruptcy Case or any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code or conversion of the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code, as to which trustee(s) such terms and provisions likewise shall be binding and not subject to rejection or avoidance. The Asset Purchase Agreement, the Sale Transaction, and this Sale Order shall be enforceable against and binding on, and shall not be subject to rejection or avoidance by, any chapter 7 or chapter 11 trustee appointed in the Bankruptcy Case.

25. Nothing contained in any chapter 11 plan confirmed in the Bankruptcy Case, in any order confirming any such plan, or in any other order of any type or kind entered in the Bankruptcy Case (including, without limitation, any order entered after any conversion of the Bankruptcy Case to cases under chapter 7 of the Bankruptcy Code) or in any related proceeding shall alter, conflict with, or derogate from the provisions of the Asset Purchase Agreement or the terms of this Sale Order.

26. The Asset Purchase Agreement and any related agreements, documents, or other instruments may be amended by the parties in a writing signed by such parties without further order of the Court, provided that any such amendment does not have a material adverse effect on the Debtor or the Debtor's estate.

27. The failure to include specifically any particular provision of the Asset Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such

provision, it being the intent of the Court that the Asset Purchase Agreement be and is authorized and approved in its entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order prior to Closing.

28. To the extent of any inconsistency between the provisions of this Sale Order, the Asset Purchase Agreement, and any documents executed in connection therewith, the provisions contained in the Sale Order, the Asset Purchase Agreement, and any documents executed in connection therewith shall govern, in that order.

29. The provisions of this Sale Order authorizing the sale and assignment of the Purchased Assets free and clear of all Encumbrances shall be self-executing, and notwithstanding the failure of the Debtor, the Purchaser, or any other party to execute, file, or obtain releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, or implement the provisions hereof, all Encumbrances on or against such Purchased Assets shall be deemed released, discharged, and terminated in all respects. To the extent the Purchaser deems it necessary or appropriate, if, upon consummation of the transactions set forth in the Asset Purchase Agreement, any Person or entity which has filed statements or other documents or agreements evidencing Encumbrances on or in all or any portion of the Purchased Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary or desirable to the Purchaser for the purpose of documenting the release of all such Encumbrances against the Purchased Assets, the Purchaser is hereby authorized (but not required) to execute and file such statements, instruments, releases, and other documents on behalf of such Person or entity solely with respect to the Purchased Assets.

30. From time to time, as and when requested by any Party, each Party to the Asset Purchase Agreement shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other acts or actions as such other party may reasonably deem necessary or desirable to consummate the Sale Transaction, including such acts or actions as may be necessary to vest, perfect, or confirm, of record or otherwise, in Purchaser its right, title, and interest in and to all the Purchased Assets.

31. To the extent applicable, the automatic stay pursuant to section 362(a) of the Bankruptcy Code is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Court (i) to allow the Purchaser to give the Debtor any notice under the Asset Purchase Agreement, and (ii) to allow the Purchaser to take any and all acts or actions in accordance with the Asset Purchase Agreement.

32. Any amounts that become payable by the Debtor to the Purchaser pursuant to the Asset Purchase Agreement (or any related agreements executed in connection therewith) (i) shall constitute allowed administrative expenses of the Debtor's estate under sections 503(b) and 507(a)(2) of the Bankruptcy Code, and (ii) shall be paid by the Debtor or any other party in the time and manner provided for in the Asset Purchase Agreement (and such related agreements) without further Court order.

33. For the avoidance of doubt, all cash and other proceeds of the Sale Transaction shall be paid on the Closing Date to the two secured prepetition creditors of the Debtor (as set forth in the Debtor's Bankruptcy Schedule D) and as otherwise provided in the Asset Purchase Agreement. To the extent such proceeds are not paid, any pre-petition liens on the Debtor's assets shall attach to such sale proceeds, in the amount and order of their priority and with the same validity, force and effect which they now have against the Purchased Assets without any

defense or counterclaim of any kind or nature whatsoever.

34. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), or 7062, this Sale Order shall be effective and enforceable immediately and shall not be stayed. Time is of the essence in closing the Sale Transaction and the Debtor and the Purchaser intend to close the Sale Transaction as soon as practicable. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being dismissed as moot.

35. This Court shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or related to this Sale Order, the Asset Purchase Agreement, or any related agreements, including, without limitation: (i) any actual or alleged breach or violation of this Sale Order, the Asset Purchase Agreement, or any related agreements; (ii) the enforcement of any relief granted in this Sale Order; or (iii) as otherwise set forth in the Asset Purchase Agreement.

### END OF ORDER ###