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**ATTORNEY FOR
JASON RAE, CHAPTER 11 TRUSTEE**

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

IN RE:	§	
	§	Case No. 18-32805-SGJ-11
DIVINE DINING, LLC,	§	
	§	Chapter 11
DEBTOR.	§	
	§	Hearing Date: January 7, 2019
	§	Hearing Time: 1:30 p.m.
	§	

MOTION TO APPROVE (A) SALE AND ASSIGNMENT PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH SALE OF ASSETS AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (B) NOTICE PROCEDURES AND SETTING DATE FOR AUCTION AND SALE HEARING, AND (C) THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND INTERESTS, AND (D) RELATED RELIEF

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW Jason Rae, the duly appointed Chapter 11 trustee (the “**Trustee**”) in the above-captioned case (the “**Bankruptcy Case**”), and files this *Motion to Approve (A) Sale and Assignment Procedures and Bid Protections in Connection with Sale of Assets and Assumption and Assignment of Executory Contracts and Unexpired Leases, (B) Notice Procedures and Setting Date for Auction and Sale Hearing, (C) the Sale of Assets Free and Clear of all Liens, Claims and Interests, and (D) Related Relief* (the “**Sale Motion**”).

Through this Sale Motion, the Trustee initially seeks an interim order approving (i) the

procedures for the bidding on, and sale of, all or substantially all of the estate's assets and the assumption and assignment of unexpired leases and executory contracts, and (ii) scheduling the auction and a final sale hearing ("**Sale Hearing**") for approval of the sale. At the Sale Hearing, the Trustee is seeking a final order on the Sale Motion authorizing the Trustee to sell the Divine Dining Assets (defined hereinbelow) to the highest bidder free and clear of all liens, claims, interests and encumbrances and the assumption and assignment of all designated executory contracts. In support of the Motion, the Trustee would respectfully show the following.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 363 and 365. Consideration of this action is a core proceeding pursuant to 28 U.S.C. § 157(b).

II. FACTUAL AND PROCEDURAL BACKGROUND

2. On August 27, 2018 (the "**Petition Date**"), Divine Dining, LLC (the "**Debtor**")¹ commenced this Bankruptcy Case by filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the "**Bankruptcy Code**").

3. On August 31, 2018, the Court entered its Order for Appointment of a Chapter 11 Trustee in the Bankruptcy Case. The U.S. Trustee thereafter appointed Jason Rae to act in that capacity and the Court approved the appointment.

4. The Trustee is authorized to manage the Debtor's assets and operations and to sell the Divine Dining Assets and assume and assign all executory contracts related thereto subject to this Court's approval.

5. The Debtor's principal place of business is located at 1311 W. Airport Freeway,

¹ The voluntary petition was filed by the receiver appointed in Cause No. 18-03705/18-04074 by agreement among the Debtor's owners, landlord and franchisor.

Irving, Texas, subject to a nonresidential real property lease dated November 30, 2011 between the Debtor, as tenant, and Adelphi Group, Ltd., a Texas limited partnership, as landlord (the “**Landlord**”)(the lease, together with all amendments and addendum thereto are collectively referred to as the “**Lease**”). The Debtor is also a party to that certain Franchise Agreement dated October 4, 2011 (“**Franchise Agreement**”) under which the business is operated as a Taco Casa franchisee for Mr. Roy Upshaw (the “**Franchisor**”). In addition to its rights under the Franchise Agreement and Lease, the Trustee is in possession, and the estate owns, certain inventory, furniture and equipment and related personal property that is utilized in the operation of the business, as well as general intangibles, including accounts receivable, customer lists, and business goodwill (collectively, all such assets of the estate except for the “Excluded Assets,” shall constitute the “**Divine Dining Assets**”).

6. The assets which are not being offered for sale during this process include (i) cash on hand at the time of closing, (ii) accounts receivable as of the date of closing only to the extent such accounts are comprised of merchant credit card receipts necessary to cover the amount of accrued and unpaid expenses for the business operations and the costs of administration for the Bankruptcy Case as of the closing date, (iii) estate claims and causes of action against third parties including claims and actions under Chapter 5 of the Bankruptcy Code, and (iv) any and all executory contracts or leases not expressly assumed or assigned or rejected as of the date of Closing (the “**Excluded Assets**”).

7. Prior to the filing of the Bankruptcy Case, the Debtor, acting by and through the Receiver, entered into that certain Asset Purchase Agreement dated August 27, 2018 with North Texas Taco Casa, LLC (“**Purchaser**”), which provided for the sale of the Divine Dining Assets and assignment of certain executory contracts through a sale in the Bankruptcy Case pursuant to

Bankruptcy Code Sections 363 and 365. According to the Receiver, she contacted the Franchisor, the prior owners of the Debtor, the Landlord and numerous other franchisees of Taco Casa restaurants in an attempt to identify potential purchasers of the Divine Dining Assets who would have the financial wherewithal and realistically qualify as a franchisee. In connection with those efforts, the Purchaser was the only party at that point willing to make an offer and negotiate with the Receiver.

8. Subsequent to his appointment, the Trustee negotiated with Purchaser to secure the proposed purchase of the Divine Dining Assets on terms providing for more clarity on the sale and a more favorable outcome for all parties and memorialized such terms in an Amendment to the Purchase Agreement dated November 1, 2018 (the original Asset Purchase Agreement with Purchaser, together with the foregoing Amendment to the Purchase Agreement are collectively referred to herein as the “**Purchase Agreement**”). The Purchaser is not an insider of the Debtor and has no prior relationship with the Trustee. The Trustee and Purchaser engaged in arms-length negotiations and the proposed sale under the Purchase Agreement is a good faith offer for the Divine Dining Assets in the opinion of the Trustee based on his business judgment.

9. The Trustee believes, in his reasonable business judgment that an immediate sale to the Purchaser pursuant to the Purchase Agreement, or to a qualified bidder on more favorable terms, is in the best interest of the Estate and its creditors.

III. RELIEF REQUESTED

10. Pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, and Rules 2002, 6004, 6006, and 9007 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Trustee is initially requesting approval of procedures to govern (A) an expeditious and efficient bidding, auction and sale process for the Divine Dining Assets, and (B) the assumption and assignment of the Franchise Agreement and Lease and any other relevant

executory contracts and unexpired leases designated as part of the sale (collectively, the “Restaurant Contracts”) to the successful bidder and on terms approved by the Court, including, without limitation, the fixing of required cure amounts for the Restaurant Contracts in accordance with Section 365(b) of the Bankruptcy Code. The Trustee believes that the procedures proposed herein will maximize the value of the Divine Dining Assets and ensure an effective and efficient process that will culminate in the sale of all, or substantially all, of the Divine Dining Assets and the assumption and assignment of the Restaurant Contracts (the “Sale”). At the closing of the Sale, all net sale proceeds shall be deposited into an account maintained by the Trustee for the benefit of the estate, and all valid prepetition liens and/or security interests against the Divine Dining Assets, if any, shall attach to such sale proceeds in the same priority as they attached against the Divine Dining Assets with the exception of any valid and enforceable liens of the Landlord against personal property fixtures and secured debt assumed by the Purchaser and identified as part of the Sale. The sale proceeds shall only be distributed upon further order of the Bankruptcy Court except for funds required to pay the normal and necessary costs incurred by the Trustee in the operation of any remaining assets for the estate and administration of the Bankruptcy Case.

11. For purposes of the initial hearing, the Trustee requests that the Court enter an Order approving (a) the form and manner of the notice of the sale in the form attached hereto as **Exhibit “A”** (the “Sale Notice”), which includes the respective dates, times and places for an auction of the Divine Dining Assets (the “Auction”) and the Sale Hearing, and (b) the details, requirements and deadlines related to the qualification of bids and bidders, the assumption and assignment of the Restaurant Contracts, and the procedures for the bidding and auction for the sale of the Divine Dining Assets, substantially in the form attached hereto as **Exhibit “A-1”** (the “Sale Procedures”).

A. Sale and Contract Assignment Notice

12. Bankruptcy Rule 2002(a) provides, in relevant part, that all creditors must be given at least twenty-one (21) days' notice by mail of a proposed use, sale or lease of property of the estate other than in the ordinary course of business. Further, Bankruptcy Rule 2002(c) sets forth that such notices must include the time and place of any sale, the terms and conditions of such sale, and the time fixed for filing objections.

13. The Sale Notice (a) contains the type of information required under Bankruptcy Rule 2002; (b) includes the applicable procedures for the Sale; and (c) is reasonably calculated to provide due, adequate and timely notice to all creditors and interested parties of (i) the auction of the Divine Dining Assets, (ii) the Sale Procedures, (iii) the terms and authority under which the Trustee can assume and assign the Restaurant Contracts, (iv) the deadlines to object to the Sale and assumption and assignment of the Restaurant Contracts, and (v) the date and time of the Sale Hearing. Accordingly, the Trustee requests that this Court approve the form and content of the Sale Notice.

14. Within three (3) business days after the Court enters an Order approving the Sale Procedures under this Motion, the Trustee shall serve the Sale Notice by (a) first class United States mail, postage prepaid on (i) the parties identified upon the Master Creditor Matrix for this Bankruptcy Case (who do not receive electronic notice) at the addresses set forth therein, (ii) the parties that have filed a proof of claim or Notice of Appearance in this Bankruptcy Case at the addresses set forth in the respective filing, and (iii) any other parties who have expressed an interest in acquiring any of the Divine Dining Assets; and (b) the Court's ECF notification system upon those parties receiving electronic notice by such system. Service of such Sale Notice is proper, due, timely, good, and sufficient notice of, among other things, the Sale Procedures, the Auction,

the Assumption and Assignment of the Restaurant Contracts, the proposed Sale, and the procedure and requirements for objecting thereto.

15. In accordance with Bankruptcy Rules 2002 and 6006, the Trustee must provide notice of (a) the potential assumption and assignment of executory contracts and unexpired leases, (b) the maximum amount that the Trustee may cause a potential purchaser to pay to cure all defaults, if any, and to pay all losses that have resulted from defaults, under executory contracts and unexpired leases that the Trustee proposes to assume and assign (collectively, the “**Cure Amounts**”), and (c) the deadline to file objections to such assumption and assignment, the maximum Cure Amounts related to existing defaults and the ability of the purchaser to provide adequate assurance of the future performance.

16. Pursuant to the Purchase Agreement, the Trustee is proposing to assume and assign the Lease and Franchise Agreement to the Purchaser as part of the Sale. At this time, the Trustee is not aware of any other executory contracts that will be assumed and assigned to the Purchaser or any party offering a higher and better price for the Divine Dining Assets. If potential purchasers identify other executory contracts, further notice will be provided to the parties to those contracts with the proposed cure amounts and time periods for objections. The Lease and Franchise Agreement, along with the maximum Cure Amounts required to be paid by any purchaser, are set forth in the schedule attached hereto as **Exhibit “B.”**

B. Objections to the Sale and Assumption and Assignment of the Restaurant Contracts

17. The Trustee requests that the following procedures be approved with respect to the Sale, assumption and assignment of the Restaurant Contracts and the relief related thereto:

18. Objections, if any, to the Sale and/or the proposed assumption and assignment of the Restaurant Contracts, including but not limited to objections relating to any Cure Amounts

and/or adequate assurances of future performance, must (i) be in writing, state with specificity the nature of such objection, (iii) if concerning a Cure Amount, set forth a specific default in the Restaurant Contract and claim a specific monetary amount that differs from the Cure Amount (if any) specified by the Trustee in **Exhibit B** hereto (with appropriate documentation in support thereof), (iv) comply with the Federal Rules of Bankruptcy Procedure, and (v) be filed with this Court on or before the objection deadlines stated in the Sale Notice and Sale Procedures (the “**Objection Deadlines**”) and served upon the following parties (collectively, the “**Notice Parties**”):

- i. Jason Rae, Chapter 11 Trustee
Lain, Faulkner & Co, P.C.
400 N. St. Paul, Suite 600
Dallas, TX 75201
jrae@lainfaulkner.com
- ii. Joe E. Marshall
Marshall Law
3131 McKinney Ave, Suite 600
Dallas, TX 75204
jmarshall@marshalllaw.net
- iii. Office of the United States Trustee
c/o Stephen McKitt
1100 Commerce Street, Room 976
Dallas, TX 75242
Stephen.McKitt@usdoj.gov
- iv. Mark Stromberg
Stromberg Strock
8750 North Central Expressway
Suite 625
Dallas, TX 75231
Mark@StrombergStrock.com

19. The Trustee requests authorization to supplement the list of contracts and cure amounts on **Exhibit B** prior to the Sale Hearing if any additional contract is designated by a proposed purchaser for assumption and assignment as a condition to the Sale. If the Trustee is

required to supplement the schedule, an additional notice will be provided to those contract parties and the Trustee shall use commercially reasonable efforts to effectuate the assumption and assignment of such Restaurant Contract in accordance with the Bankruptcy Code and Bankruptcy Rules or request additional relief from the Bankruptcy Court to establish any required expedited schedule.

20. The sufficiency of the notice proposed hereunder supports a finding and determination from this Court that any person failing to timely file an objection to the Sale and/or the assumption and assignment of any Restaurant Contract (including the establishment of the maximum Cure Amount and the authority to assign the contract over any contractually required consent or other restriction) will be deemed to have consented to the Sale and assumption and assignment of the Restaurant Contracts in all respects and shall be forever barred from objecting to the approval or closing of the Sale, including the vesting or transferring of the Divine Dining Assets free and clear of any and all liens, claims, encumbrances and other interests except as otherwise set forth in the Order approving the Sale or the approved asset purchase agreement.

21. Where a counterparty to a Restaurant Contract files a timely objection asserting a higher cure amount than the maximum Cure Amount set forth in **Exhibit B** hereto, and the parties are unable to consensually resolve the dispute, the amount to be paid with respect to such objection will be determined at a separate hearing prior to the Sale Hearing or such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of the Restaurant Contracts will be heard at the Sale Hearing.

22. The combination of this Sale Motion, the Sale Notice and the Sale Procedures (a) contains the type of information required under Bankruptcy Rule 6006 that is currently known to the Trustee, and (b) is reasonably calculated to provide due, adequate and timely notice to all

interested parties of (i) the Sale and the transfer of the Divine Dining Assets free and clear of all liens, claims, interests and encumbrances, (ii) the assumption and assignment of the Restaurant Contracts, (iii) the maximum amount and manner offered to satisfy the Cure Amounts, and (iv) the deadline to file objections to the Sale, the assumption and assignment of the Restaurant Contracts, the maximum Cure Amounts, and/or the satisfaction of the requirements for adequate assurance of future performance.

C. **Stalking Horse Bid Protections and Sales Procedures**

23. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or auction. The Trustee has received an offer from Purchaser that it wishes to accept as a “stalking horse” bid and proposes to designate Purchaser as the “Stalking Horse Bidder”. The proposed bid is reflected in the Purchase Agreement attached hereto as **Exhibit “A-2”**. The Purchaser has no prior interest in the Debtor and, based on the Trustee’s information and belief, has negotiated and submitted its offer under the Purchase Agreement in good faith. The Purchaser has further demonstrated its commitment to proceed with the Sale by submitting a \$25,000.00 deposit and executing the Purchase Agreement on terms acceptable to the Trustee. Additionally, as an existing approved franchisee for other Taco Casa locations, Purchaser has demonstrated its ability to complete and close the sale on the terms set forth in the Purchase Agreement.

24. The Trustee believes that good cause exists to expose the Divine Dining Assets to sale at auction to test the market value of the consideration under the Purchase Agreement. An auction conducted substantially in accordance with the Sale Procedures will enable the Trustee to obtain the highest and best offer for the Divine Dining Assets, thereby maximizing their value for the benefit of the bankruptcy estate. The Trustee believes that the Sale Procedures are designed to

allow any other prospective bidder for the Divine Dining Assets to submit competitive bids and participate in the auction and sale process. In that regard, The Trustee believes that the Purchase Agreement entered into with the Purchaser enhances the success of the auction by setting a minimum price for competing bids and providing additional certainty of closing ahead of an auction. As a result, the Trustee requests authority to pay to such Stalking Horse Bidder the amount of \$25,000.00 (the "**Break-Up Fee**") if the conditions set forth in the Sales Procedures are satisfied. The Trustee proposes that the Break-Up Fee constitutes an administrative expense claim against the estate under section 503(b) of the Bankruptcy Code. The Break-Up Fee would be an actual and necessary cost of preserving the bankruptcy estate and would, in the Trustee's view, be commensurate to the real and substantial benefit conferred upon the estate by such Stalking Horse Bidder. The Break-Up Fee is also reasonable and appropriate considering, among other things, the (i) purchase price and nature of the Sale and comparable transactions, (ii) substantial efforts that have been and are likely to be expended by the Stalking Horse Bidder, (iii) likely benefits the Stalking Horse Bidder will provide to the estate, its creditors, and other parties in interest, and (iv) its necessity to induce the Stalking Horse Bidder to commit to a Sale for an acceptable price.

25. The grant, allowance, and payment of the Break-Up Fee are in the best interest of the estate and creditors. The Break-Up Fee has induced the Stalking Horse Bidder to submit a bid that will serve as a minimum sales price on which the Trustee and other bidders may rely. As such, the Stalking Horse Bidder will provide a material benefit to the sale process by increasing the likelihood that the best possible price for the Divine Dining Assets will be received by promoting more competitive bidding. Accordingly, the Break-Up Fee is fair, reasonable, and appropriate as it will maximize the value for the benefit of the estate.

26. The payment of a break-up fee is normal and customary in transactions of this

nature. Such fees frequently have been approved in connection with transactions in other chapter 11 cases. Break-up fees are a vital means to manage value maximization risk and weighs heavily in favor of approving the Break-Up Fee. Moreover, without prompt approval of the Break-Up Fee, the sale and liquidation process would be substantially hampered. Such fees encourage an initial bidder to invest the time, effort, and money necessary to consummate the transaction, despite the possibility that such bidder may not ultimately effectuate the transaction. A break-up fee is an important tool to be used to encourage bidding. Court approval of the Break-Up Fee is necessary, reasonable, and in the best interest of the estate and its creditors.

27. The Sales Procedures provide for receipt of “qualified bids” by “qualified bidders” and set forth the specific requirements for potential bidders. In addition to relying on other key parties in the case, including the Franchisor, the Trustee will also be contacting other existing franchisees of Taco Restaurants throughout the State of Texas to determine if they have an interest in participating in the sale process. The Sale Notice and Sale Procedures will provide an appropriate framework for obtaining offers for the Sale and will enable the Trustee to review, analyze, and compare all bids received to determine which bid is in the best interest of the estate and its creditors and should be presented to the Court for approval at the Sale Hearing. Similarly, the Sale Notice and Sale Procedures provide adequate notice of the assumption and assignment of executory contracts and assure compliance with the Bankruptcy Code and Bankruptcy Rules to provide contract parties with a fair and reasonable opportunity to protect their rights and interests. Therefore, the Trustee respectfully requests that this Court approve the Sale Notice and Sale Procedures at the initial hearing on this Sale Motion.

28. At the final hearing on this Sale Motion, the Trustee will present the highest and best offer to the Court for approval and request that a final order be entered approving the Sale and

the assumption and assignment of the Restaurant Contracts.

WHEREFORE, PREMISES CONSIDERED, the Trustee respectfully requests that the Court enter an order approving (a) the designation of the Purchaser as the “Stalking Horse Bidder” and the authorization to pay the Break-Up Fee subject to the conditions in the Sale Procedures, (b) the form and manner of notice as set forth in the proposed Sale Notice and the respective dates, times and places for the Auction and the Sale Hearing and the deadlines for objecting to the Sale and assumption and assignment of the Restaurant Contracts; (c) the form and manner of the Sale Procedures; and, at the final Sale Hearing (d) approval of the Sale and assumption and assignment of the Restaurant Contracts to the Successful Bidder; and (e) such other relief, both at law and in equity, to which the Trustee may be justly entitled.

Dated: December 12, 2018.

Respectfully submitted,

/s/ Joe E. Marshall
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Texas State Bar No. 13031100
Marshall Law
3131 McKinney Ave., Suite 600
Dallas, Texas 75204
(214) 579-9173
Jmarshall@marshalllaw.net

Attorney for Jason Rae,
Chapter 11 Trustee

CERTIFICATE OF SERVICE

The undersigned certifies that, on December 12, 2018, a true and correct copy of the foregoing Sale Motion was served on all parties listed on the attached service list by first-class mail, postage prepaid, and via the Court’s CM/ECF system upon any additional parties accepting such service.

/s/ Joe E. Marshall
Joe E. Marshall

EXHIBIT A

Joe E. Marshall
Texas Bar No. 13031100
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Dallas, Texas 75204
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**ATTORNEY FOR
JASON RAE, CHAPTER 11 TRUSTEE**

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

IN RE:	§	
	§	Case No. 18-32805-SGJ-11
DIVINE DINING, LLC,	§	
	§	Chapter 11
DEBTOR.	§	
	§	

NOTICE OF AUCTION AND SALE

**PLEASE READ THIS NOTICE CAREFULLY AS YOUR RIGHTS
WILL BE AFFECTED AS SET FORTH HEREIN.**

On August 27, 2018, Divine Dining, LLC (the “**Debtor**”) filed a voluntary petition under Chapter 11 of the United States Code (the “**Bankruptcy Code**”) commencing Bankruptcy No. 18-32805-11 (the “**Bankruptcy Case**”) in the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”). Jason Rae has been appointed as the Chapter 11 Trustee for the Debtor’s estate and is authorized to operate and manage the Debtor’s assets.

On December 12, 2018, the Trustee filed his *Motion to Approve (A) Sale and Assignment Procedures and Bid Protections in Connection with Sale of Assets and Assumption and Assignment of Executory Contracts and Unexpired Leases; (B) Notice Procedures and Setting Date for Auction and Sale Hearing, and (C) Sale of Assets Free and Clear of all Liens, Claims and Interests, and (D) Other Related Relief* [Docket No. ____] (the “**Sale Motion**”) seeking initial approval of (i) procedures for the submission of bids and an auction to sell all or substantially all of the estate’s assets and the assumption and assignment of unexpired leases and executory contracts, and (ii) approval of the proposed “Stalking Horse Bidder” and a break-up fee. Through this sale process, the Trustee seeks the highest and best offer for the sale of certain of the estate’s assets free and

clear of any and all liens, claims, rights, interests, and encumbrances in accordance with Section 363(f) of the Bankruptcy Code and the assumption and assignment of certain executory contracts related to the operation of the business pursuant to Section 365 of the Bankruptcy Code. The sale process is subject to, and all offers must be in accordance with, the sale procedures approved by the Bankruptcy Court, which are attached hereto as **EXHIBIT “1”** (the “**Sale Procedures**”).

On January __, 2019, the Bankruptcy Court entered its *Order Approving (A) Sale and Assignment Procedures and Bid Protections in Connection with Sale of Assets and Assignment of Executory Contracts and Unexpired Leases; (B) Notice Procedures and Setting Date for Auction and Sale Hearing; and (C) Other Related Relief* [Docket No. __](the “**Sale Procedures Order**”) in which it, among other things, (a) approved the Sale Procedures and the form and manner of notice of the Auction and Sale and the applicable dates and deadlines, and (b) established procedures for objecting to, and determining cure amounts in connection with, the assumption of executory contracts and unexpired leases and the approval of the sale free and clear of all liens, interests, claims and encumbrances, and (c) granted other relief.

Any party desiring to make an offer to purchase the assets identified in the Sale Procedures (the “**Divine Dining Assets**”) and any party objecting to any such sale, and the assumption and assignment of certain designated executory contracts and leases (the “**Restaurant Contracts**”), must comply with the Sale Procedures and the deadlines set forth herein as well as the Sale Procedures Order.

In the event the Trustee receives one or more timely and conforming Qualified Bids by the Bid Deadline, the Trustee shall conduct an Auction for the sale of the Divine Dining Assets at the time and location set forth in the Sale Procedures, or at such other location as may be timely disclosed by the Trustee to Qualified Bidders, which Auction shall commence on **January 28, 2018, at 10:00 a.m.**, Central Daylight Time (the “**Auction Date**”).

Creditors or Parties filing any objections or other pleadings required under, or related to, this Notice, the Sale Motion and/or the Sale Procedures must serve a copy of such objection or pleading on the following parties (collectively, the “**Notice Parties**”):

(a) Jason Rae, Chapter 11 Trustee
Lain, Faulkner & Co., P.C.
400 N. St. Paul Street, Suite 600
Dallas, Texas 75201
Jrae@lainfaulkner.com

(b) Joe Marshall
Marshall Law
3131 McKinney Ave., Suite 600
Dallas, Texas 75204
Jmarshall@marshalllaw.net

(c) Office of the United States Trustee
c/o Stephen McKitt
1100 Commerce Street, Room 976
Dallas, Texas 75242
Stephen.McKitt@usdoj.gov

(d) Mark Stromberg
Stromberg Strock
8750 North Central Expressway
Suite 625
Dallas, TX 75231
Mark@StrombergStrock.com

The Restaurant Contracts to be assumed and assigned under the proposed sale are identified on Exhibit B to the Sale Motion along with the maximum amount necessary for the Successful Bidder to pay to cure all existing prepetition defaults under the applicable contract (“**Cure Claims**”). Any party to a Restaurant Contract (including the Franchisor and the Landlord) are required to file any objections to the Cure Claims on or before **January 17, 2018** (“**Cure Claim Objection Deadline**”) and serve a copy on the Notice Parties. Any party to a Restaurant Contract who fails to file a timely objection to the Cure Claims prior to the Cure Claim Objection shall be forever barred from contesting the amount of the Cure Claim as the maximum amount due and owing to cure all prepetition defaults.¹

The Sale Hearing is currently scheduled for **February __, 2019 at ____ p.m.** before the Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, in Courtroom #1 on the 14th Floor of the Earl Cabell Federal Building, 1100 Commerce St., Dallas, Texas 75242 at which the Trustee will request the Bankruptcy Court to approve the sale of the Divine Dining Assets and assumption and assignment of all designated Restaurant Contracts to the Successful Bidder. The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court or by the Trustee with the approval of the Successful Bidder and without further notice to creditors and parties in interest other than by announcement by the Trustee of the adjourned date at the Sale Hearing.

Objections, if any, to the proposed sale of the Divine Dining Assets and the assumption and assignment of the Restaurant Contracts to the Successful Bidder shall be filed with the Bankruptcy Court no later than **February 5, 2018**, or such other date approved by the Bankruptcy Court (the “**Sale Objection Deadline**”) and a copy of such objection must be served on the Notice Parties. Any person failing to timely file an objection to the sale or the assumption and assignment of the Restaurant Contracts prior to the Sale Objection Deadline shall be forever

¹ The Trustee’s proposed Cure Claims in Exhibit B to the Sale Motion represents the maximum amount to be paid to cure all prepetition defaults and is without waiver of the Trustee’s right to object to such claims.

barred from objecting to the sale of the Divine Dining Assets free and clear of any and all liens, claims, interests and encumbrances and the assumption and assignment of the Restaurant Contracts to the Successful Bidder.

Dated: January __, 2018

Respectfully submitted,

/s/ Joe E. Marshall
Joe E. Marshall
Texas State Bar No. 13031100
Marshall Law
3131 McKinney Ave., Suite 600
Dallas, Texas 75204
(214) 579-9173
Jmarshall@marshalllaw.net

Attorney for Jason Rae,
Chapter 11 Trustee

EXHIBIT A-1

SALE PROCEDURES

On August 27, 2018, Divine Dining, LLC (the “**Debtor**”) filed a voluntary petition under Chapter 11 of the United States Code (the “**Bankruptcy Code**”) commencing Bankruptcy Case No. 18-32805 (the “**Bankruptcy Case**”) pending in the Dallas Division of the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”). Jason Rae has been appointed as the Chapter 11 Trustee for the Debtor’s estate and is authorized to operate and manage the Debtor’s assets.

These Sale Procedures have been approved and authorized pursuant to the *Order Approving (A) Sale and Assignment Procedures and Bid Protections in Connection with Sale of Assets and Assignment of Executory Contracts and Unexpired Leases; (B) Notice Procedures and Setting Date for Auction and Sale Hearing; and (C) Other Related Relief* [Docket No. ____] (the “**Sale Procedures Order**”), entered by the Bankruptcy Court on January __, 2019.

A. Assets to be Sold and Contracts to be Assumed and Assigned

The Trustee seeks to sell substantially all of the Debtor’s estate assets, including, without limitation, inventory, certain furniture and equipment and related personal property that is utilized in the operation of the business, as well as general intangibles, including accounts receivable, customer lists, and business goodwill (collectively, all such assets of the estate except for the “Excluded Assets,” shall constitute the “**Divine Dining Assets**”). The assets excluded from the sale include (i) cash on hand at the time of closing, (ii) accounts receivable as of the date of closing only to the extent such accounts are comprised of merchant credit card receipts necessary to cover the amount of accrued and unpaid expenses for the business operations and the costs of administration for the Bankruptcy Case as of the closing date, (iii) estate claims and causes of action against third parties including claims and actions under Chapter 5 of the Bankruptcy Code, and (iv) any and all executory contracts or leases not expressly assumed or assigned or rejected as of the date of Closing (the “**Excluded Assets**”).

The Debtor is a party to unexpired leases and executory contracts, including the nonresidential real property lease for the principal place of business dated November 30, 2011 between the Debtor and Adelpia Group, Ltd. (together with all amendments and addendum thereto being collectively referred to as the “**Lease**”) and a franchise agreement dated October 4, 2011 (the “**Franchise Agreement**”) authorizing the operation of the business as a “Taco Casa” restaurant (collectively, the “**Restaurant Contracts**”). In connection with the sale of the Divine Dining Assets to a purchaser submitting the highest and best bid and approved by the Bankruptcy Court (the “**Successful Bidder**”), the Trustee intends to assume and assign the Lease and Franchise Agreement and any other Restaurant Contracts as requested by the Successful Bidder subject to that party’s cure of any and all defaults under the assumed contract and providing adequate assurance of future performance as required by the Bankruptcy Code. Except as otherwise provided under the agreement entered into with the Successful Bidder, or by order of the Bankruptcy Court, the Divine Dining Assets shall be sold free and clear of all liens, claims, encumbrances, and interests.

At the auction contemplated by these Sale Procedures, the Trustee shall consider bids from one or more bidders for the Divine Dining Assets, provided that multiple bidders may not act together pursuant to a collusive agreement between or among them and the bid must be a “Qualified Bid” as defined under Paragraph E below.

B. Due Diligence

In order to participate in the sale process and receive due diligence information, a potential purchaser must comply with these Sale Procedures and deliver to the Trustee an executed confidentiality agreement (the “**Confidentiality Agreement**”) in form and substance satisfactory to the Trustee. Through and including the Bid Deadline (as hereinafter defined), the Trustee will afford potential purchasers the opportunity to conduct their due diligence investigation regarding the Divine Dining Assets in a reasonable and appropriate manner subject to the business judgment of the Trustee. Upon execution of a Confidentiality Agreement, a potential purchaser will be provided with access to financial, operating, and legal information about the Divine Dining Assets and the Restaurant Contracts as previously maintained and provided by the Trustee to other bidders. The Trustee does not warrant or represent the accuracy of the operational and financial information from the Debtor’s books and records. All potential bidders are encouraged to review the documents filed in the Bankruptcy Case, including, without limitation, the Debtor’s Schedules of Assets and Claims, the Statement of Financial Affairs and the Monthly Operating Reports all of which provides certain information regarding the assets, claims and prior operations.

Notwithstanding the foregoing, the Trustee is not required to provide confidential or proprietary information to a competitor if the Trustee reasonably believes that such disclosure would be detrimental to the interests of the estate and/or ultimate sale of the Divine Dining Assets.

C. Stalking Horse Bid and Protections

The Trustee received a bid from North Texas Taco Casa, LLC (the “**Stalking Horse Bidder**”), which the Trustee has designated as a “stalking horse” bid (the “**Stalking Horse Bid**”). The Stalking Horse Bid is reflected in the *Asset Purchase Agreement dated August 25, 2018 and the Amendment to Asset Purchase Agreement dated November 1, 2018* (collectively the “**Asset Purchase Agreement**”) attached as **Exhibit “2”** to the Sale Notice. With the designation of its bid as the Stalking Horse Bid, the Stalking Horse Bidder shall be entitled to the following bidding protections:

- i. in the event the Stalking Horse Bidder is not the Successful Bidder and the conditions stated below have been satisfied, it shall be entitled to a break-up fee in the amount of \$25,000.00 (the “**Break-Up Fee**”). The Break-Up Fee shall be an obligation of the estate and shall be payable as an allowed administrative expense pursuant to section 503(b) of the Bankruptcy Code. The Break-Up Fee shall be payable in cash at the closing of the Sale or promptly thereafter from the sale proceeds thereof in accordance with the Asset Purchase Agreement and the Sale Procedures Order. The Break-Up Fee shall be paid without need for any further motion, application, notice, approval or order of the Bankruptcy Court if (i) the

Stalking Horse Bidder is not in default and has not previously terminated its bid, (ii) the Stalking Horse Bidder's bid remains outstanding until closing of the Sale, and (iii) the Stalking Horse Bidder is not an "insider" of the Debtor, as such term is defined in Section 101(31) of the Bankruptcy Code; and

- ii. any other potential purchaser desiring to participate in the Auction must submit a Qualified Bid (defined hereinbelow) of no less than \$30,000 more than the amount of the Stalking Horse Bid.

D. Submission of Bids by Potential Purchasers

Any potential purchaser desiring to participate in the auction scheduled and administered by the Trustee for the Divine Dining Assets (the "**Auction**") shall deliver its Qualified Bid in writing to Jason Rae, Chapter 11 Trustee, Lain, Faulkner & Co., P.C., 400 N. St. Paul Street, Suite 600, Dallas, Texas 75201, such that the Qualified Bid is received no later than **January 22, 2019 at 5:00 p.m.** (the "**Bid Deadline**").

If any Qualified Bid is to include the assumption and assignment of any Restaurant Contracts, then on or before the Bid Deadline, the bidder shall also designate the Restaurant Contracts that it expects to request the Trustee assume and assign to it and, separately with its Qualified Bid, provide information and documentation satisfactorily evidencing the bidder's ability to cure any and all defaults under such contracts and provide adequate assurance of future performance of such contracts or leases in accordance with the Bankruptcy Code (an "**Adequate Assurance Package**"). Any required Cure Amount shall be in addition to the amount paid for the Divine Dining Assets. All Adequate Assurance Packages must be submitted in writing so that they are received as part of the Qualified Bid.

E. Determination of Qualified Bids

To be a "**Qualified Bid**," for purposes of affording a potential purchaser the right to participate in the Auction, the bid must be in writing and fully comply with the following:

- i. be received by the Trustee on or before the Bid Deadline;
- ii. be on terms that confirm that the party can close the sale without conditions on or before **February 25, 2019** pursuant to a stand-alone Asset Purchase Agreement approved at the Sale Hearing;
- iii. be accompanied by a duly executed version of the Asset Purchase Agreement and a marked-up version of the Asset Purchase Agreement reflecting variations from the Stalking Horse Bidder's Asset Purchase Agreement, and that clearly specifies the total consideration that the potential purchaser is willing to pay at Closing;
- iv. be accompanied by reasonably satisfactory evidence of committed financing or other ability to perform the transaction and provide an earnest money deposit of **\$25,000** (the "**Earnest Money Deposit**") in the form of a certified check or wire

transfer to the Trustee, such Earnest Money Deposit being refundable by the date contained within the Sale Procedures Order, unless such bidder is selected as the Back-up Bidder (as defined below) and is required to close;

- v. provide that such bidder's offer is irrevocable until the closing of the purchase of the Divine Dining Assets if such bidder is the Successful Bidder or Back-up Bidder;
- vi. provide sufficient indicia that such bidder, or its representative, is legally empowered, by power of attorney or otherwise, and financially capable to (i) bid on behalf of such bidder; and (ii) complete and sign, on behalf of such bidder, a binding and enforceable purchase and sale agreement; and (iii) agree that the bid will contain no contingencies to the validity, effectiveness, and/or binding nature of the offer including, without limitation, contingencies for financing, due diligence, or inspection;
- vii. identify the previously designated Restaurant Contracts to be assumed and assigned in connection with the purchase of the Divine Dining Assets and provide evidence of the bidder's ability to cure any and all defaults under such contracts and to provide adequate assurance of future performance under such Restaurant Contracts; and
- viii. meet all other requirements of these Sale Procedures and the Sale Procedures Order.

F. Determination of Qualified Bidders

In order for a bidder to qualify as a "**Qualified Bidder**" and be permitted to bid on the Divine Dining Assets, such potential purchaser must, in the Trustee's absolute and sole discretion:

- i. have been deemed "financially qualified" by the Trustee, which at a minimum shall require any such bidder to (i) provide documentation establishing that such person has sufficient cash on hand or a binding financial commitment from an established and financially sound financial institution to ensure such bidder's ability to meet its commitment pursuant to its bid and to close the transaction within the time frame established, and (ii) demonstrate to the Trustee's satisfaction that it has the legal capacity to complete the sale it is proposing and to satisfy the conditions under the Purchase Agreement;
- ii. have delivered to the Trustee a Qualified Bid; and
- iii. meet all other requirements of the Sale Procedures and the Sale Procedures Order.

No bidder will be a Qualified Bidder and have its bid considered by the Trustee unless such party has met the above requirements as determined in the sole and absolute judgment of the Trustee. The Trustee shall promptly notify all bidders who are selected as Qualified Bidders of such selection.

G. The Auction and Selection of the Successful Bid

In the event the Trustee receives one or more timely and conforming Qualified Bids by the Bid Deadline and, in the business judgment of the Trustee, are superior to the Stalking Horse Bid, the Trustee shall conduct an Auction for the sale of the Divine Dining Assets at the offices of Lain, Faulkner & Co., P.C., 400 N. St. Paul Street, Suite 600, Dallas, Texas, or at such other location as may be timely disclosed by the Trustee to the Qualified Bidders. The Auction shall commence on **January 28, 2019 at 10:00 a.m.** No persons other than representatives of the Trustee and each Qualified Bidder may participate in the Auction.

All Qualified Bidders must appear in person at the Auction, or through a duly authorized representative present in person. Prior to the Auction, the Trustee shall select one Qualified Bid that, in his business judgment, reflects the highest or otherwise best value for the estate as the starting bid (the "**Starting Bid**") and advise all participants in the Auction of the terms of the Starting Bid.

If multiple Qualified Bids satisfying all Auction requirements are received and the Trustee determines to proceed with an Auction as set forth above, each party shall have the right to continue to improve its bid at the applicable Auction.

With respect to each round of bidding at the Auction, following the Starting Bid, each successive bid must be at least \$10,000 in cash or other ascertainable value (the "**Overbid Increment**") in excess of the aggregate consideration contained in the then highest standing Qualified Bid. The Trustee retains the sole and absolute discretion to modify the Overbid Increment during the course of the Auction if necessary to facilitate an efficient auction process. In addition, the Trustee, in its business judgment, will determine whether any revised bid satisfies the Overbid Increment. By making a Qualified Bid at the Auction, a Qualified Bidder shall be deemed to have agreed to keep its final Qualified Bid open through Closing as stated in the Sale Procedures Order.

The Auction shall conclude as determined by the Trustee. At the conclusion of the Auction, and subject to Court approval following the Auction, the highest standing Qualified Bid shall be determined and announced by the Trustee (the "**Winning Bid**").

The Successful Bidder shall complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which such Winning Bid was made.

After selecting the Successful Bidder, the Trustee shall file and serve a notice of selection identifying (i) the Successful Bidder, and (ii) the Winning Bid.

The Trustee may adjourn, continue, re-open, or terminate the Auction, subject to any required approval of the Bankruptcy Court, and reserves the right to adopt other and further rules and procedures for the Auction that, in his business judgment, will better promote the goals of the Auction.

H. Assumption and Assignment of Restaurant Contracts

The Trustee intends to Assume and Assign the Lease and Franchise Agreement to the Successful Bidder along with any other Restaurant Contract which it designates as part of its Qualified Bid. The Sale Motion identified the parties to the Lease and Franchise Agreement (“**Contract Party**”) and the maximum amount that the Trustee believes necessary to cure any defaults under those agreements by the Successful Bidder for purposes of section 365(b)(1)(A) of the Bankruptcy Code (the “**Cure Amount**”). In the event a Contract Party disputes the Cure Amount, such Contract Party must file with the Bankruptcy Court and serve on the Notice Parties identified in the Sale Procedures Order an objection (“**Cure Claim Objection**”) no later than **January 17, 2019** (the “**Cure Claim Objection Deadline**”). The Cure Claim Objection must (i) state the legal and factual bases of the objection, (ii) state the amount the Contract Party believes constitutes its Cure Amount, (iii) contain an itemization of all claimed defaults under the respective contract, and (iv) identify the specific contractual provision in the Contract Party’s contract and/or the applicable law that forms the basis of the amount of any and all defaults that are required to be cured. If a Cure Claim Objection is not filed on or before the Cure Claim Objection Deadline, then such Contract Party shall be deemed to (i) consent and agree to the Cure Amount, and (ii) waive any and all objections to such amounts that might otherwise be asserted at the Sale Hearing.

Additionally, following the Auction and identification of the Successful Bidder, any Contract Party who contests the Trustee’s right to assume and assign their respective Restaurant Contract to the Successful Bidder shall file with the Bankruptcy Court and serve on all Notice Parties under the Sale Procedures Order an objection to such assumption and assignment (“**Assignment Objection**”) on or before **February 5, 2019** (“**Sale Objection Deadline**”).

If no Assumption Objection is filed and served before the Sale Objection Deadline by a Contract Party, then such party shall be deemed to (i) consent and agree to the assumption and assignment of their designated Restaurant Contracts under section 365 of the Bankruptcy Code, (ii) have consented and agreed to such Cure Amounts, and (iii) waive any and all objections to the assumption and assignment of their respective Restaurant Contracts by the Trustee to the Successful Bidder. If an Assumption Objection is timely filed prior to the Sale Objection Deadline, the Bankruptcy Court will consider the objection in conjunction with the Sale Hearing (as identified below) or as otherwise scheduled by the Bankruptcy Court for resolution.

I. Objections to the Sale

Any and all other objection(s) to the sale of the Divine Dining Assets shall be (i) set forth in writing and specify with particularity the legal and factual grounds for such objections or other statements of position, and (ii) filed with the Court and served on the Notice Parties on or before the Sale Objection Deadline of **February 5, 2019**, pursuant to the Sale Procedures Order or as otherwise established by any subsequent notice and Order of the Court.

J. Court Approval

The Sale Hearing at which the Trustee will request the Bankruptcy Court to approve the Sale of the Divine Dining Assets and assumption and assignment of Restaurant Contracts (the

“**Sale Hearing**”) will be held before the Honorable Stacey G. C. Jernigan, United States Bankruptcy Judge, on **February __, at ____ p.m.** in Courtroom #1 on the 14th Floor of the Earl Cabell Federal Building, 1100 Commerce St., Dallas, Texas 75242. The Sale Hearing may be adjourned or rescheduled as ordered by the Bankruptcy Court or by the Trustee with the approval of the Successful Bidder and without further notice to creditors and parties in interest other than by announcement by Trustee of the adjourned date at the Sale Hearing.

The Trustee’s presentation to the Bankruptcy Court for approval of the Winning Bid does not constitute the Trustee’s obligation to close on the Winning Bid. The Trustee will be obligated to close on the Winning Bid only when the bid and applicable Asset Purchase Agreement has been approved by Order of the Bankruptcy Court.

K. Closing

The closing of the sale of the Divine Dining Assets and assignment of the Restaurant Contracts shall occur no later than **February 25, 2019** (the “**Closing Deadline**”); provided, however, that this requirement may be waived upon the agreement of the Trustee with the Successful Bidder.

L. Failure to Consummate Purchase

If the Successful Bidder fails to consummate the purchase of the Divine Dining Assets and assignment of any Restaurant Contracts, and such failure to consummate the purchase is the result of a breach by that Successful Bidder, the Earnest Money Deposit of the Successful Bidder shall be forfeited to the Trustee.

M. Back-Up Bidders

If the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of that Successful Bidder, the Qualified Bidder that had submitted the next highest or otherwise best Qualified Bid at the Auction (the “**Back-Up Bidder**”) will be deemed to be the Successful Bidder, and the Trustee will be authorized to consummate the Sale of the Divine Dining Assets with such Back-Up Bidder without further order of the Bankruptcy Court and such Qualified Bid shall thereupon be deemed the Winning Bid. If any Qualified Bidder fails to consummate a Sale because of a breach or failure to perform for any reason within seven (7) days after being deemed the Back-Up Bidder pursuant to this section of the Sale Procedures, the process described above may continue as determined by Trustee until a Qualified Bidder shall consummate the Sale.

N. Return of Earnest Money Deposit

The Earnest Money Deposit of all Qualified Bidders (other than the Successful Bidder and the Back-Up Bidder) will be returned without interest to each such Qualified Bidder.

The Earnest Money Deposit of the Successful Bidder will be distributed pursuant to and in accordance with its Asset Purchase Agreement. The Earnest Money Deposit of the Back-up Bidder

will be returned without interest to the Back-Up Bidder by the deadline as set forth on the Sale Procedures Order, unless the Successful Bidder shall have failed to complete the purchase of the Divine Dining Assets by such date.

O. Reservation of Rights

1. Determination of Successful Bid. The Trustee reserves the right to (i) determine in its reasonable discretion whether any Qualified Bid is a Winning Bid and (ii) reject, at any time prior to the entry of the Sale Order by the Bankruptcy Court, without liability, any bid that the Trustee, in its reasonable discretion, determines to be (a) inadequate or insufficient, (b) not in conformity with the Sale Procedures Order or the Bankruptcy Code, or (c) contrary to the best interests of the estate.

2. Modification of Bidding Procedures. The Trustee reserves the right to modify the Sale Procedures in a nonmaterial manner to provide for a more efficient and effective sale process without the need for any further order of the Bankruptcy Court, including, without limitation (i) extending the deadlines set forth in these Sale Procedures, (ii) rescheduling the Auction and/or continuing the Sale Hearing, and (iii) withdrawing any of the Divine Dining Assets from the sale process at any time prior to or during the Auction.

3. Preservation of Trustee's Business Judgment. Nothing contained in these Sale Procedures, shall limit, restrict, alter, modify, waive or otherwise impair the Trustee's reasonable business judgment in relation to the sale process contemplated by these Sale Procedures.

P. As Is, Where Is

The sale of the Divine Dining Assets shall be on an “**as is, where is**” basis and without representations or warranties of any kind, nature, or description by the Trustee, its estate, or its agents and representatives. Except as otherwise expressly provided in these (a) Sale Procedures, (b) the Stalking Horse Bid, or (c) any court approved Asset Purchase Agreement, by submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it (i) has had an opportunity to conduct any and all reasonable due diligence regarding the Divine Dining Assets and Restaurant Contracts prior to making its bid, (ii) has relied solely upon its own independent review, investigation and/or inspection of any and all documents and/or the Divine Dining Assets in making its bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Divine Dining Assets or Restaurant Contracts, or the completeness of any information provided in connection therewith.



ASSET PURCHASE AGREEMENT

by and between

NORTH TEXAS TACO CASA, LLC,

as Purchaser

And

DIVINE DINING, LLC,

as Seller

August 23, 2018

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated August 23, 2018, is by and between North Texas Taco Casa, LLC, a Texas limited liability company ("Purchaser"), or its permitted designee, and Divine Dining, LLC, a Texas limited liability company, as debtor in possession in the below referenced Bankruptcy Case ("Seller" or the "Debtor").

RECITALS

WHEREAS, Seller is in the business of operating a Taco Casa restaurant located at 1311 W. Airport Freeway, Irving, Dallas, County, Texas (as defined below, the "Restaurant");

WHEREAS, Purchaser desires to purchase certain Assets (as defined below) and assume the Assumed Liabilities (as defined below) of Debtor and the Estate, and Seller desires to sell the Assets to Purchaser pursuant to the terms and conditions of this Agreement, Bankruptcy Code Section 363, and the Sale Motion (as defined below) (the "Purchase");

WHEREAS, it is contemplated that on a date to be determined (the "Petition Date"), Seller (the "Debtor") will commenced a voluntary case (the "Bankruptcy Case") 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"); and

WHEREAS, it is further contemplated that the Debtor shall file a Motion for Order Pursuant to 11 U.S.C. §§ 105, 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, and 9014 Approving: (A) Sale of Substantially All Assets of Debtor and Related Sale Procedures; (B) Assumption and Assignment of Executory Contracts and Unexpired Leases; and (C) Granting Related Relief (the "Sale Motion") approving the Purchase.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms shall have the following meanings, unless the context otherwise indicates, both for purposes of this Agreement and all Schedules referenced herein:

1.1. "Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with the first Person. For the purposes of this definition, "control," when used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing. With respect to any natural Person, "Affiliate" will include such Person's parents, any descendants of such Person's parents, such Person's spouse, the parents of such Person's spouse, and any descendants of the parents of such Person's spouse (in each case, whether by blood, adoption, or marriage).

1.2. "Ancillary Documents" shall mean any certificate, exhibit, schedule, and all instruments or other documents furnished, executed or delivered pursuant to the express provisions of this Agreement.

1.3. "Assignment and Assumption of Lease Agreement" shall mean that certain Assignment and Assumption of Lease Agreement, dated as of the Closing Date prepared in form and substance satisfactory to the Debtor.

1.4. "Bill of Sale and Assignment and Assumption Agreement" shall mean that certain Bill of Sale and Assignment and Assumption Agreement, dated as of the Closing Date, by and between Purchaser and Seller, prepared in form and substance satisfactory to the Debtor.

1.5. "Business" shall mean the business of owning, operating and managing the Restaurant.

1.6. "Business Day" shall mean any day other than a Saturday, Sunday, or other day on which federally chartered commercial banks in Dallas, Texas are authorized by law to close.

1.7. "Closing Date" shall mean the date on which the Closing occurs.

1.8. "Contemplated Transactions" shall mean the transactions contemplated and described in this Agreement to occur at the Closing.

1.9. "Damages" shall mean all losses, claims, obligations, demands, assessments, penalties, liabilities, damages, and costs, including reasonable attorneys' fees and expenses.

1.10. "Encumbrance" shall mean any charge, claim, community property interest, condition, equitable interest, lien, encumbrance, option, pledge, security interest, mortgage, interest (including, without limitation, "interest" as such term is defined in Section 363(f) of the Bankruptcy Code), right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, but excluding any restriction imposed by any lease to which an asset is subject.

1.11. "GAAP" means United States generally accepted accounting principles consistently applied.

1.12. "Governing Documents" means in the case of a partnership, the limited partnership agreement and the certificate of limited partnership and in the case of a limited liability company, the limited liability company agreement and the certificate of formation.

1.13. "Governmental Body" shall mean any federal, state, local, or municipal government or governmental authority of any nature (including any governmental agency, branch, department, official or entity, and any court or other tribunal).

1.14. "Knowledge" shall mean the current actual knowledge of a natural person or, for an entity, the current actual knowledge of the officers and directors and Persons performing similar functions for such entity.

1.15. "Law" or "Laws" shall mean any and all statutes, laws, ordinances, regulations, published requirements, orders, decrees, and rules of any Governmental Body, other than any franchise Law of any jurisdiction.

1.16. "Legal Requirement" means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

1.17. "Material Adverse Change" means a material adverse change which has occurred or could reasonably be expected to occur (whether or not such change arises from any fact, circumstance, result, change, event, violation or occurrence that (i) was foreseeable or known as of the date of this Agreement or the Closing Date or (ii) covered by insurance) to the Business, the ability of Seller to consummate the Contemplated.

1.18. "Ordinary Course of Business" shall mean an action taken by a Person that is consistent with the past practices of such Person, both as to type and amount, and is typically taken in the ordinary course of the normal operations of such Person.

1.19. "Parties" shall mean the parties to this Agreement, and "Party" shall mean any Person that is a party to this Agreement.

1.20. "Person" shall mean a corporation, an association, a partnership, a limited liability company or other entity, an individual, or a government (or political subdivision thereof) or a Governmental Body.

1.21. "Petition Date" shall have the same meaning as used to such term in the recitals.

1.22. "Proceeding" shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

1.23. "Receiver" shall mean Elizabeth C. Brandon, as Receiver appointed pursuant to that Agreed Order Appointing Receiver (the "Receivership Order") dated April 9, 2018 entered in *Mantas v. Johnson, et al.*, Cause No. DC-18-03705, and *Johnson v. Divine Dining et al.*, Cause No. DC-18-04074 (collectively, the "Receivership Case"), in the 116th Judicial District Court, Dallas County, Texas (the "Receivership Court").

1.24. "Restaurant" shall mean the Taco Casa restaurant located at 1311 West Airport Freeway, Irving, Dallas County, Texas.

1.25. "Tax" and "Taxes" shall mean any federal, state, or local or other tax, assessment, or charge of any nature whatsoever, together with any penalties, additions to tax, fines, and interest thereon or related thereto.

2. **SALE AND PURCHASE**

2.1. Purchase and Sale of Assets

(a) *Assets to be Purchased.* Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Purchaser shall purchase from Seller, and Seller shall sell, assign, transfer, convey, and deliver to Purchaser, free and clear of any Encumbrance, all of Seller's right, title, and interest in and to:

(i) all of the assets that are used in connection with the Business and that are associated with the Business, including without limitation all kitchen equipment, furniture, fixtures, operating supplies and food and beverage inventory (collectively, the "Personal Property");

(ii) all right, title, and interest of Seller in, to, and under the following contracts (collectively, the "Assumed Contracts");

(1) *Restaurant Lease.* The Commercial Lease dated effective November 30, 2011 by and between Seller and Adelphi Group Ltd. ("Landlord") related to the real property associated with the Restaurant, as amended by (a) the Commercial Lease Addendum dated November 30, 2011 by and between the Seller and Landlord; and (b) the Lease Addendum dated April 17, 2012 by and between the Seller and Landlord (as amended, the "Restaurant Lease"); and as may subsequently be amended according to the conditions precedent set forth in Section 6 below; and

(2) *Franchise Agreement.* The Taco Casa Franchise Agreement (the "Franchise Agreement") dated October 4, 2011 with Roy Upshaw, individually d/b/a Taco Casa ("Franchisor"); and as may subsequently be amended according to the conditions precedent set forth in Section 6 below;

(iii) to the extent assignable or transferable by law or their terms, all manufacturer's, merchant's, repairmen's, vendor's, and other third-party warranties, guaranties, and service or replacement programs relating to the Personal Property (the "Warranties");

(iv) all customer lists, sales records, customer payment histories, quality or warranty claims, and related commercial information or documents related to the Business (the "Customer Information"); and

(v) all permits or licenses necessary to operate the Business to the extent transferable (the "Permits").

The Personal Property, the Assumed Contracts, the Warranties, the Customer Information and the Permits are collectively referred to in this Agreement as the "Assets."

(b) *Assignment and Assumption of Contracts.* Seller shall assign all of its right, title, and interest in and to, Purchaser, and Purchaser shall assume, and timely perform and discharge, all of Seller's obligations under the Assumed Contracts from and after the Closing Date.

(c) *Excluded Assets.* Seller shall, and hereby does, expressly retain all of Seller's right, title and interest in and to the assets, properties, rights, and interests of Seller that follow (collectively, the "Excluded Assets"):

(i) cash;

(ii) accounts receivable;

(i) actions under Chapter 5 of the Bankruptcy Code including, without limitation, all causes of action (whether derivative or otherwise) held by the Debtor as of the Petition Date;

(iii) any and all executory contracts or leases not expressly assumed or assigned in this Agreement.

(d) *Assumed Liabilities.* All Assets shall be sold free and clear of all liens, claims, Encumbrances, and interests of any party. Purchaser agrees to assume the following liabilities:

(i) All rents due under the Restaurant Lease accruing from and after the Closing Date; and

(ii) All obligations due under the Franchise Agreement accruing from and after the Closing Date;

(iii) All prepetition and postpetition obligations to the food vendors Bassham Foods and Cardona Food Inc.;

(iv) All unpaid payroll and sales tax liabilities existing at the Closing Date.

(e) *Consents.* To the extent that the conveyance or assignment of any Asset or the assumption and assignment of any Assumed Contract requires that notice be given to or that a consent, approval, or waiver be obtained from any third party, any Governmental Body, or the Bankruptcy Court (a "Consent"), Seller, at Seller's expense, shall use its commercially reasonable best efforts to give such notice or obtain such Consent before the Closing Date or as soon after the Closing Date as is reasonably possible.

(f) *Cure Obligations.* Purchaser shall pay any cure obligations owed under the Restaurant Lease and Franchise Agreement at Closing.

2.2. Purchase Price.

(a) *Payment.* As full payment for the Assets, on or before the Closing Date Purchaser shall pay the total of (1) an amount as may be necessary to cure all defaults under the Restaurant Lease and the Franchise Agreement; plus (2) \$50,000 (collectively, the "Purchase Price") to Seller by:

(i) Contemporaneously with the execution hereof, and as a condition precedent to Seller's obligations under this Agreement, Purchaser shall deposit the sum of \$25,000 (the "Earnest Money") by wire transfer of immediately available funds into an account designated by the Seller (or other form of payment acceptable to Seller), which shall be refunded to Purchaser only in the event of a sale of substantially all of the assets, and assignment of the executory contracts and unexpired leases of the Seller to a party other than Purchaser for an amount in excess of the Purchase Price. It is specifically contemplated and agreed that the Earnest Money may be immediately utilized to fund expenses in the Receivership Case and Bankruptcy Case; and

(ii) At Closing, the sum of \$25,000 by wire transfer of immediately available funds into an account designated by Seller (or other form of payment acceptable to Seller).

(b) *Purchase Price Allocation.* The Purchase Price shall be allocated among the Acquired Assets as agreed by the parties at Closing. Such allocation shall be used by the Parties for all tax purposes and filings, including IRS Form 8594 and similar forms that may be promulgated in the future.

2.3. Employees. Purchaser shall hire a sufficient number of Debtor's employees on the Closing Date to avoid any liability under the United States Worker Adjustment and Retraining Notification Act, as amended ("WARN") and of any equivalent law of the State of Texas. Any of Debtor's employees that are employed by Purchaser shall be employed by Purchaser solely in accordance with Purchaser's hiring and other employment policies and procedures, which may differ from Debtor's employment policies and procedures.

(b) The Closing. Unless otherwise agreed to by Purchaser and Seller in writing, the closing of the Contemplated Transactions (the "Closing"), shall take place at the offices of Receiver on the date that is two (2) Business Days after the satisfaction of all conditions precedent to Purchaser's obligations as set forth in Article 6.

2.4. Closing Deliveries

(a) At the Closing, subject to the terms and conditions hereof, each of the Parties (as applicable) shall execute and/or deliver the following items, documents, agreements and instruments:

(i) Purchase Price, subject to any adjustment for prorations and other credits provided for herein and net of any pre-Petition cure obligations owed under the Restaurant Lease and Franchise Agreement;

(ii) the Bill of Sale and Assignment and Assumption Agreement;

(iii) for the Restaurant Lease, an Assignment and Assumption of Lease in the form set forth as prepared in form and substance satisfactory to the Debtor;

(iv) for the Franchise Agreement, an Assignment and Assumption of Franchise Agreement in the form set forth as prepared in form and substance satisfactory to the Debtor;

(v) any Consents required under Section 2.1(e) or 3.4;

(vi) Closing certificates executed by each of the parties certifying the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing Date and as to their compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing; and

(vii) Seller shall deliver a release and termination agreement in form and substance acceptable to Purchaser releasing, waiving and terminating all rights and interest that Seller, the Debtor, and the Estate may have under the IP License Agreement;

(b) All ad valorem taxes levied on or charged to the Assets for the year of the Closing and any rents for the month of the Closing shall be prorated as of the Closing Date between Seller and Purchaser, and the Purchase Price will be adjusted up or down as necessary.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

As an inducement to Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser as follows:

3.1. Existence and Good Standing. Seller is a limited partnership duly organized, and validly existing and in good standing under the laws of the State of Texas.

3.2. Power and Authority; Authorization. Subject only to approval of this Agreement and the Contemplated Transactions by the Bankruptcy Court, Seller has the absolute and requisite right, power, and authority to execute and deliver this Agreement, the Ancillary Documents and each of the other agreements and instruments contemplated hereby to which it is or is to be a party, and no further action on the part of Seller is necessary to fully authorize such execution, delivery, and performance and to carry out its obligations hereunder. This Agreement, the Ancillary Documents, and each of the other agreements and instruments contemplated hereby to which Seller is a party, have been, or when executed will be, duly executed and delivered by it and are or will be the legal, valid, and binding obligations of such party, enforceable against it in accordance with the terms hereof and thereof, except as may be (a) limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar Laws affecting the enforcement of creditors' rights generally and (b) subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

3.3. No Conflict with Other Instruments. The execution and delivery by Seller of this Agreement, the Ancillary Documents, and each of the other agreements and instruments

contemplated hereby to which Seller is a party, and the consummation of the Contemplated Transactions will not (a) to the Knowledge of Seller, violate any provision of any Law to which Debtor or any of its Affiliates are subject; or (b) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets.

3.4. Consents and Approvals. Subject only to the approval of this Agreement and the Contemplated Transactions by the Bankruptcy Court, no Consent, authorization, approval, or other consent, permit or license of, or filing with, any Governmental Body, any lender or lessor or any other Person is required to be made or obtained by or with respect to Seller in connection with the execution, delivery and performance of this Agreement, including consummation of the Contemplated Transaction and assumption of the Assumed Contracts, or any of the Ancillary Documents on the part of Seller.

3.5. Title to Assets. As of the Closing Date, Seller will have conveyed to Purchaser, and Purchaser will own, all of the interest of Seller, Debtor, and the Estate in the assets of the estate used or useful in the conduct of, the Business as conducted by Debtor and/or Seller immediately before the Closing Date.

3.6. No Undisclosed Liabilities. Neither Seller nor any of its Affiliates has incurred any obligation, liability or commitment (absolute, accrued, contingent or otherwise) on behalf of Debtor that is not fully reflected on the bankruptcy schedules filed with the Court, incurred in the Ordinary Course of Business, pursuant to the Assumed Contracts, or reflected on the books and records of Debtor.

4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Seller to enter into this Agreement, Purchaser represents and warrants to Seller as follows:

4.1. Organization. Purchaser is a limited liability company duly formed and validly existing under the laws of the State of Texas.

4.2. Power and Authority; Authorization. Subject only to approval of this Agreement and the Contemplated Transactions by the Bankruptcy Court, Purchaser has the absolute and requisite power and legal capacity to execute, deliver, and perform this Agreement, the Ancillary Documents and each of the other agreements and instruments contemplated hereby to which it is a party. This Agreement, the Ancillary Documents, and each of the other agreements and instruments contemplated hereby to which Purchaser is a party, have been, or when executed will be, duly executed and delivered by it and are or will be the legal, valid, and binding obligations of Purchaser, enforceable against it in accordance with the terms hereof and thereof, except as may be (a) limited by any applicable bankruptcy, insolvency, reorganization, moratorium, or similar Laws affecting the enforcement of creditors' rights generally and (b) subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at Law).

4.3. No Conflict with Other Instruments. The execution and delivery by Purchaser of this Agreement, the Ancillary Documents, and each of the other agreements and instruments contemplated hereby to which Purchaser is a party, and the consummation of the Contemplated

Transactions will not (a) result in a breach or violation of, or constitute a default under, any indenture, mortgage, note, lease, loan agreement, or other agreement or instrument to which Purchaser is a party or by which it or any of its properties is bound or subject; (b) to the Knowledge of Purchaser, violate any provision of any Law to which Purchaser or any of its Affiliates are subject; or (c) contravene, conflict with or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify, any agreement.

4.4. Consents and Approvals. Subject only to approval of this Agreement and the Contemplated Transactions by the Bankruptcy Court, no authorization, consent, approval, permit or license of, or filing with, any Governmental Body, any lender or lessor or any other Person is required to be made or obtained by or with respect to Purchaser in connection with the execution, delivery, and performance of this Agreement or any of the Ancillary Documents by Purchaser.

5. ADDITIONAL COVENANTS

5.1. [Reserved.]

5.2. Cooperation and Access. Between the date of this Agreement and the Closing, Seller shall afford the authorized representatives and agents of Purchaser reasonable access to and the right to inspect the Assets and the books and records of Seller and Debtor relating to the Assets, and will furnish Purchaser with such additional data and other information relating to the Assets as Purchaser may from time to time reasonably request, subject to Purchaser signing a mutually acceptable non-disclosure agreement.

5.3. Operation of Business. Between the date of this Agreement and the Closing, Seller shall (i) conduct and operate the Business only in the Ordinary Course of Business; (ii) except as otherwise directed by Purchaser in writing, and without making any commitment on Purchaser's behalf, use its reasonable best efforts to preserve intact the Debtor's current business organization, keep available the services of key employees and make maintain its relations and good will with customers; (iii) confer with Purchaser prior to implementing operational decisions of a material nature; (iv) report periodically to Purchaser concerning the status of the Business operations and finances; (v) make no material changes in management personnel or key employees without prior consultation with Purchaser; (vi) maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Business; (vii) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably necessary or desirable in the opinion of Purchaser to consummate the Contemplated Transactions, all without further consideration; and (viii) maintain all books and records relating to the Business in the Ordinary Course of Business.

5.4. Negative Covenant. Except as otherwise expressly permitted herein, between the date of this Agreement and the Closing Date, Seller shall not, without written consent of Purchaser, (a) take any affirmative action or fail to take any reasonable action within its control, which would lead to a material adverse change in the Business whether or not performed within the Ordinary Course of Business; (b) make any modification to any material Contract or Governmental Authorization; (c) allow the levels of food and beverage inventory necessary for the operation of the Business to vary materially from the levels customarily maintained; or (d)

enter into any compromise or settlement of any litigation, proceeding or governmental investigation relating to the Assets, the Business or the Assumed Liabilities.

5.5. Required Approvals. As promptly as practicable following the date of this Agreement, Seller shall make all filings under the Legal Requirements that it is required to make to consummate the Contemplated Transactions. Seller shall also cooperate with Purchaser with respect to all filings that Purchaser elects to make or is required to make pursuant to the Legal Requirements. Seller shall also cooperate with Purchaser in obtaining all Material Consents.

5.6. Notification. Between the date of this Agreement and the Closing, Seller shall promptly notify Purchaser in writing if it becomes aware of (a) any fact or condition that causes or constitutes a breach of any of Seller's representations and warranties made as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller's discovery of, such fact or condition. During the same period, Seller also shall promptly notify Buyer of the occurrence of any breach of any covenant of Seller in this Article 5 or of the occurrence of any event that may make the satisfaction of the conditions in Article 7 impossible or unlikely.

6. **CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS TO CLOSE**

Purchaser's obligation to purchase the Assets and to take the other actions required to be taken by Purchaser at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Purchaser in whole or in part):

6.1. Accuracy of Representations. All of Seller's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement, and shall be accurate in all material respects as of the time of the Closing.

6.2. Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with in all material respects.

6.3. No Conflict. Neither the consummation nor the performance of any of the contemplated transactions will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause Purchaser or any Affiliate of Purchaser to suffer any adverse consequence under (a) any applicable Legal Requirement or Order or (b) any Legal Requirement or Order that has been published, introduced or otherwise proposed by or before any Governmental Body, excluding Bulk Sales Laws.

6.4. Bankruptcy Court Order. The Bankruptcy Court shall have entered an order, in form and substance acceptable to Purchaser, approving this Agreement and the Contemplated Transactions in their entirety (the "Sale Order"), such Sale Order shall have been entered on the docket of the Bankruptcy Court and such Sale Order, unless waived in writing by Purchaser, shall have become a Final Order. As used in this Agreement, the term "Final Order" shall mean any order of the Bankruptcy Court as to which (i) there is no stay or other limitation on the terms

or effectiveness, (ii) no appeal is pending, and (iii) the time to file an appeal has expired. The Sale Order shall not be submitted to the Bankruptcy Court prior to approval as to the form and substance of the Sale Order by Purchaser.

6.5. Bankruptcy Sale Motion. Seller shall have filed or otherwise pursued a motion (and related notices and proposed orders) with the Bankruptcy Court seeking entry of the Sale Order and any ancillary or related orders reasonably necessary or advisable to effect the provisions of this Agreement and the Contemplated Transactions. Seller shall use commercially reasonable efforts to prosecute such motion or motions and to ensure that the Sale Order is entered and approved, and to request that the Sale Order provides that it shall become effective immediately and that the provisions of Federal Rules of Bankruptcy Procedure 6004(g) shall be waived for cause.

6.6. No Material Adverse Change. There being no Material Adverse Change in the Business between the date of this Agreement and the Closing Date.

7. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS TO CLOSE

7.1. Bankruptcy Court Order. The Sale Order in form and substance acceptable to Seller shall have become a Final Order.

7.2. Accuracy of Representation. All of Purchaser's representations and warranties in this Agreement, considered collectively and individually, shall have been accurate in all material respects as of the signing of this Agreements and shall be accurate in all material respects as of the Closing Date as if then made.

7.3. Purchaser's Performance. All of the covenants and obligations that Purchaser is required to perform or to comply with pursuant to this Agreement at of prior to the Closing Date, considered both collectively and individually, shall have been performed and complied with in all material respects.

7.4. Consents and Approvals. All Consents necessary for Purchaser to assume the Assumed Contracts shall have been obtained.

8. TERMINATION

8.1. Termination Events. By notice given prior to or at the Closing, subject to Section 8.2, this Agreement may be terminated as follows:

(a) by Purchaser if a material breach of any provision of this Agreement has been committed by Seller and such breach has not been waived by Purchaser;

(b) by Seller if a material breach of any provision of this Agreement has been committed by Purchaser and such breach has not been waived by Seller;

(c) by Purchaser if any condition in Article 6 has not been satisfied as of the Closing Date or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement), and Purchaser has not waived such condition on or before such date;

(d) by Seller if any condition in Article 7 has not been satisfied as of the Closing Date or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Seller to comply with their obligations under this Agreement), and Seller has not waived such condition on or before such date;

(e) by mutual consent of Purchaser and Seller;

(f) by Purchaser if the Closing has not occurred on or before [forty-five (45)] days after the signing of this Agreement, or such later date as the parties may agree upon, unless Purchaser is in material breach of this Agreement; or

(g) by Purchaser or Seller, upon written notice to the other, if the Bankruptcy Court enters an order authorizing and approving an alternate sale or disposition of any of the Assets to any Person other than Purchaser (an "Alternative Transaction").

8.2. Effect of Termination. In the event of the termination of this Agreement by either Purchaser or Seller as provided in Section 8.1 of this Agreement, this Agreement shall forthwith become void and there shall be no liability or obligation hereunder on the part of Purchaser or Seller; provided, however, if this Agreement is terminated pursuant to Section 8.1(g), Seller shall pay Purchaser the Earnest Money. The Earnest Money Refund shall be paid at the closing of an Alternative Transaction. The Parties agree and acknowledge that the Earnest Money Refund shall be allowed and paid as an administrative expense claim of Purchaser after the closing of the Alternative Transaction under Section 503(b)(1) of the Bankruptcy Code in consideration of Purchaser's due diligence, good faith negotiations of and entering into this Agreement, and in recognition of Purchaser's work in: (i) establishing a bid standard; (ii) placing Estate property in a position of attracting other potential bidders; and (iii) serving by its expressed interest, as a catalyst for other potential bidders.

9. MISCELLANEOUS

9.1. Notices. Unless otherwise set forth hereunder, all notices permitted or required to be delivered pursuant to the provisions of this Agreement shall be in writing. All notices permitted or required to be delivered pursuant to the provisions of this Agreement shall be deemed so delivered upon receipt (or refusal of receipt) (a) if personally delivered against written receipt, (b) if sent by facsimile (with confirmation of transmission) to the facsimile number set forth below or (c) if sent with a nationally recognized overnight courier service, prepaid, and addressed to the Party as follows:

If to Seller, to:

Elizabeth C. Brandon, Receiver
Barnes & Thornburg LLP
2100 McKinney Avenue, Suite 1250, Dallas, TX 75201-6908
Direct: (214) 258-4115
Notice shall include notice via email to jwelton@btlaw.com and ebrandon@bttlaw.com

With copy to:

Richard G. Grant
CULHANE MEADOWS, PLLC
100 Crescent Court, Suite 700
Dallas, Texas 75201
214-210-2929
Notice shall include notice via email to rgrant@culhanemeadows.com

If to Purchaser, to:

Sami N. Ebrahim
Forest Central II
11551 Forest Central Dr., Suite 230
Dallas, TX 75243
214-319-9100 (t)
214-319-9102 (f)
sami@dfwoilenergy.com

or to such other address and to the attention of such other person(s) as Purchaser or Seller, as applicable, may designate by written notice. Any notice mailed shall be deemed to have been given and received on the third Business Day following the day of mailing.

9.2. Assignment. No Party to this Agreement may sell, transfer, assign, pledge, or hypothecate its rights, interests or obligations under this Agreement without the consent of the other Parties.

9.3. Successors. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by the Parties and their respective successors, personal representatives, heirs, and permitted assigns.

9.4. Entire Agreement. This Agreement and the Ancillary Documents constitute the entire agreement and understanding between the Parties relating to the subject matter hereof and thereof and supersede all prior representations, endorsements, premises, agreements, memoranda, communications, negotiations, discussions, understandings, and arrangements, whether oral, written or inferred, between the Parties relating to the subject matter hereof.

9.5. Further Acts. Each Party shall, from time to time after the Closing Date, at the request of any other Party and at such requesting Party's expense, (a) execute and deliver or cause to be executed and delivered such further instruments and shall take or cause to be taken such other action as reasonably requested, as may be necessary to effectively vest title to the Assets in Purchaser and to implement and carry into effect the Contemplated Transactions and (b) use commercially reasonable efforts to obtain consents with respect to any agreement assigned to Purchaser for which a consent by a third party was required.

9.6. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ALL RESPECTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO THE CONFLICTS OF LAWS

PRINCIPLES THEREOF. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN DALLAS COUNTY, TEXAS, FOR THE PURPOSES OF ANY ACTION ARISING OUT OF THIS AGREEMENT OR ITS SUBJECT MATTER, BROUGHT BY ANY OTHER PARTY.

9.7. Modification, Amendment and Waiver. This Agreement may not be modified unless such modification is in writing and signed by the Parties. No waiver of any term of this Agreement shall be enforceable unless in writing and signed by the Party against which it is sought to be enforced. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by such other Party.

9.8. Severability. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability shall not render such provision prohibited or unenforceable in any other jurisdiction.

9.9. No Third Party Beneficiaries. Any agreement contained, expressed, or implied in this Agreement shall be only for the benefit of the Parties and their respective legal representatives, successors, heirs, and permitted assigns, it being the intention of the Parties that no Person shall be deemed a third party beneficiary of this Agreement, except to the extent a third party is expressly given rights herein.

9.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.11. Headings. The headings of the Articles, Sections, and Subsections of this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof or affect in any way the meaning or interpretation of this Agreement.

9.12. Expenses and Taxes. Each Party will be responsible for paying its own fees, costs, and expenses in connection with negotiating and performing due diligence and transactions set forth in this Agreement. All ad valorem and other taxes (all such taxes, real and personal, collectively, "Taxes") levied on or charged against the Assets in the year of the Closing Date shall be prorated between Seller and Purchaser. Seller shall be responsible for its pro rata share of the Taxes from the Petition Date up to the Closing Date and Purchaser shall be responsible for all taxes accrued after and including the Closing Date.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

PURCHASER:

North Texas Taco Casa, LLC

By: 

Name: Sami N Ebrahim

Title: Managing Partner

Date Signed: August 23, 2018

SELLER:

DIVINE DINING, LLC,
a Texas Limited Liability Company

By: 

Elizabeth C. Brandon, as Receiver

AMENDMENT TO ASSET PURCHASE AGREEMENT

by and between

NORTH TEXAS TACO CASA, LLC,

as Purchaser

And

DIVINE DINING, LLC,

as Seller

November ^{5th} 2018

AMENDMENT TO ASSET PURCHASE AGREEMENT

This Amendment (“Amendment”) dated November 7, 2018, is by and between North Texas Taco Casa, LLC, a Texas limited liability company (“Purchaser”), or its permitted designee, and Jason Rae, the duly appointed Chapter 11 Trustee (“Trustee”) for the bankruptcy estate of Divine Dining, LLC, a Texas limited liability company (“Seller”).

RECITALS

WHEREAS on or about August 23, 2018, Purchaser entered into that certain Asset Purchase Agreement (“Agreement”) with Divine Dining, LLC, a Texas limited liability company (“Debtor”);

WHEREAS pursuant to the Agreement, Purchaser agreed to purchase the Assets¹ and assume the Assumed Liabilities of Debtor and the Estate and Debtor agreed to sell the Assets to Purchaser pursuant to Bankruptcy Code Section 363;

WHEREAS Debtor filed a voluntary petition on August 27, 2018 under Chapter 11 of the Bankruptcy Code thereby initiating case no. 18-32805-SGJ-11 (“Bankruptcy Case”) in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (“Bankruptcy Court”);

WHEREAS pursuant to the Unopposed Order Directing the Appointment of a Chapter 11 Trustee entered by the Bankruptcy Court on August 31, 2018 (“Trustee Order”), the United States Trustee appointed Jason Rae as the Trustee in the Bankruptcy Case;

WHEREAS the Trustee is now the designated representative of the Debtor’s Estate with the authority to operate the Debtor’s business, manage the Estate’s assets and affairs and complete the sale of the Assets as set forth in the Agreement on behalf of the Seller; and

WHEREAS the Trustee and Purchaser have now agreed to proceed with the sale of the Assets pursuant to the terms of the Agreement as modified by this Amendment.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby covenant and agree as follows:

- A. Ratification of Agreement. The Seller, by and through the Trustee, and the Purchaser by its Managing Partner, hereby ratify and confirm the terms and provisions of sale as set forth in the Agreement subject to the Bankruptcy Court’s approval of the sale pursuant to Sections 363 and 365 of the Bankruptcy Code, and the terms and provisions of the Agreement are hereby incorporated herein by reference for all purposes subject only to the specific amendments to the following provisions and terms in the Agreement as set forth hereinbelow which shall be deemed to amend and replace the original numbered provisions of the Agreement:
- B. Except as to the definition in 1.23, the term “Receiver” shall be replaced throughout by “Trustee.”

¹ Unless otherwise defined herein, all capitalized terms shall have the same meaning ascribed to them in the Agreement, which is incorporated herein for all purposes.

2.1 Purchase and Sale of Assets

(c) *Excluded Assets*. Seller shall, and hereby does, expressly retain all of Seller's right, title and interest in and to the assets, properties, rights, and interests of Seller that follow (collectively, the "Excluded Assets"):

(i) all cash on hand in the Debtor's possession and accounts as of the date of Closing

(ii) accounts receivable as of the date of Closing only to the extent such accounts are comprised of merchant credit card receipts necessary to cover the amount of accrued and unpaid expenses for the business operations and the costs of administration for the Bankruptcy Case as of the Closing Date (the "Operating Shortfall");

(iii) all claims and causes of action arising under Chapter 5 of the Bankruptcy Code, including, without limitation, all causes of action (whether derivative or otherwise) held by the Debtor as of the Petition Date; and

(iv) any and all executory contracts or leases not expressly assumed or assigned in this Agreement or rejected as of the date of Closing.

(d) *Assumed Liabilities*. All Assets shall be sold free and clear of all liens, claims, Encumbrances, and interest of any party. Purchaser agrees to assume the following liabilities:

(i) all obligations under the Restaurant Lease arising from and after the Closing Date and any cure claim under the Restaurant Lease to the extent allowed by the Bankruptcy Court or agreed to between Purchaser and landlord;

(ii) all obligations under the Franchise Agreement arising from and after the Closing Date and any cure claim under the Franchise Agreement to the extent allowed by the Bankruptcy Court or agreed to between Purchaser and franchisor;

(iii) (not amended)

(iv) (not amended)

(e) *Consents*. To the extent that the conveyance or assignment of any Asset or the assumption and assignment of any Assumed Contract requires that notice be given to or that a consent, approval, or waiver be obtained from any third party, any Governmental Body, or the Bankruptcy Court, and such requirement is enforceable under the Bankruptcy Code by the counterparty to the contract, consent or waiver (a "Consent"), Seller, at Seller's expense, shall use its commercially reasonable best efforts to give such notice or obtain such Consent before the Closing Date or as soon after the Closing Date as is reasonably possible

2.2 Purchase Price.

(a) *Payment*. As full payment for the Assets, on or before the Closing Date Purchaser shall pay the total of (1) an amount as may be necessary to cure all defaults under the Restaurant Lease and the Franchise Agreement; plus (2) the Operating Shortfall; plus (3) \$50,000 (collectively, the "Purchase Price") to Seller by:

(i) not amended

(ii) At Closing, the sum of \$25,000 plus the Operating Shortfall by wire transfer of immediately available funds into an account designated by Seller (or other form of payment acceptable to Seller).

2.4 Closing Deliveries

(a) At the Closing, subject to the terms and conditions hereof, each of the Parties (as applicable) shall execute and/or deliver the following items, documents, agreements and instruments:

(i) Purchase Price, subject to any adjustment for prorations and other credits provided for herein, plus any pre-petition cure obligations owed under the Restaurant Lease and Franchise Agreement;

(ii) – (vi) not amended

(vii) omitted

(b) All ad valorem taxes levied on or charged to the Assets for the year of the Closing shall be prorated as of the Closing Date between Seller and Purchaser, and the Purchase Price will be adjusted up or down as necessary.

5.3 Operation of Business. Between the date of this Agreement and the Closing, Seller shall (i) conduct and operate the Business only in the Ordinary Course of Business; (ii) use its reasonable best efforts to preserve intact the Debtor's current business organization, keep available the services of key employees and make maintain its relations and good will with customers; (iii) confer with Purchaser prior to implementing operational decisions of a material nature; (iv) report periodically to Purchaser concerning the status of the Business operations and finances; (v) make no material changes in management personnel or key employees without prior consultation with Purchaser; (vi) maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Business; (vii) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably necessary or desirable in the opinion of Purchaser to consummate the Contemplated Transactions, all without further consideration; and (viii) maintain all books and records relating to the Business in the Ordinary Course of Business.

6.5 Bankruptcy Sale Motions. Seller shall have filed or otherwise pursued motions (and related notices and proposed orders) with the Bankruptcy Court seeking entry of (i) a Sale Procedures Order in form acceptable to Purchaser and which provides for a breakup fee to Purchaser in the amount of \$25,000.00 and other typical procedural requirements for competitive bidding including an initial bid increment of at least \$40,000.00 over and above the Purchase Price, and (ii) a Sale Order and any ancillary or related orders in form acceptable to Purchaser and reasonably necessary or advisable to effect the provisions of this Agreement and the Contemplated Transactions. Seller shall use commercially reasonable efforts to prosecute such motion or motions and to ensure that the Sale Order is entered and approved, and to request that the Sale Order provides that it shall become effective immediately and that the provisions of Federal Rules of Bankruptcy Procedure 6004(g) shall be waived for cause.

8.1 Termination Events. By notice given prior to or at the Closing, subject to Section 8.2, this Agreement may be terminated as follows:

(a) – (e) not amended

(f) by Purchaser if the Closing has not occurred on or before sixty (90) days after the signing of this Amendment, or such later date as the parties may agree upon, unless Purchaser is in material breach of this Agreement; or

(g) if the Bankruptcy Court enters an order authorizing and approving an alternative sale or disposition of the Assets to any Person other than Purchaser (an “Alternative Transaction”).

8.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability or obligation hereunder on the part of Purchaser or Seller; provided, however, if this Agreement is terminated pursuant to Section 8.1(g) and Purchaser is not in default and otherwise ready, willing and able to close the Contemplated Transactions, Seller shall pay Purchaser the Earnest Money and, to the extent applicable in the case of an overbid under the Sale Procedures Order, the Breakup Fee. The Earnest Money refund and the Breakup Fee shall be paid at the closing of an Alternative Transaction or at such date ordered by the Court. The Parties agree and acknowledge that the Earnest Money refund and Breakup Fee shall be allowed and paid as an administrative expense claim of the Purchaser under Section 503(b)(1) of the Bankruptcy Code in consideration of Purchaser’s due diligence, good faith negotiations of and entering into this Agreement, and in recognition of Purchaser’s work in: (i) establishing a bid standard; (ii) placing Estate property in a position of attracting other potential bidders; and (iii) serving by its expressed interest, as a catalyst for other potential bidders.

9.1 Notices.

If to Seller, to:

Jason Rae, Chapter 11 Trustee
Lain, Faulkner & Co., P.C.
400 N. Saint Paul, Suite 600
Dallas, Texas 75201
jrae@lainfaulkner.com
(214) 777-0271

With copy to:

Joe E. Marshall
Marshall Law
3131 McKinney Ave., Suite 600
Dallas, Texas 75204
jmarshall@marshalllaw.net
(214) 579-9173

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the date first above written.

PURCHASER:

North Texas Taco Casa, LLC

By:  _____

Name: Sami N. Ebrahim

Title: Managing Partner

Date Signed: 11/1/2018

SELLER:

Divine Dining, LLC,
A Texas Limited Liability Company

By:  _____

Name: Jason Rae

Title: Chapter 11 Trustee

Date Signed: 12/5/2018

EXHIBIT B

RESTAURANT CONTRACTS

EXECUTORY CONTRACT	MAXIMUM CURE AMOUNT**
Commercial Lease dated November 30, 2011 between Adelpia Group, Ltd. as landlord, and Divine Dining, LLC, as tenant, along with all written amendments and addendums thereto	\$373,865.10
Franchise Agreement dated October 4, 2011 between Roy Upshaw d/b/a Taco Casa, as franchisor, and Divine Dining, LLC, as franchisee, along with all written amendments and addendums thereto	\$180,000.00

** The Cure Amount represents the maximum amount necessary to cure all prepetition defaults under the applicable contract and does not include any postpetition obligations of the estate.