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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

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| In re:<br><br>GOMEZ RENTALS, LLC | Case No. 18-40503-JDP<br><br>Chapter 11 |
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**MOTION FOR ORDERS PURSUANT TO 11 U.S.C. §§ 105(A) AND 363(B) AND FED. R. BANKR. P. 2002, 6004, AND 9014 (I) APPROVING (A) SALE PROCEDURES AND (B) THE FORM AND MANNER OF NOTICE OF THE SALE OF CERTAIN ASSETS; (II) APPROVING THE SALE OF CERTAIN ASSETS; (III) WAIVING THE 14-DAY STAY OF FED. R. BANKR. P. 6004(H); AND (IV) GRANTING RELATED RELIEF.**

**TABLE OF EXHIBITS**

| <b><u>Exhibit</u></b> | <b><u>Document</u></b>   |
|-----------------------|--|
| A.                    | Stalking Horse Asset Purchase Agreement, dated as of _____ by and between Debtor and the Purchaser |
| B.                    | Order Approving the Sale Procedures  |
| C.                    | Order Authorizing and Approving Sale   |
| D.                    | Sale Procedures  |
| E.                    | Notice of Sale   |

Gomez Rentals, LLC, as debtor and debtor in possession (the “Debtor”), by and through its counsel of record, Angstman Johnson, moves the Court for entry of orders, pursuant to 11 U.S.C. §§ 105(a), 363(b), 365 and Fed. R. Bankr. P. 2002, 6004, and 9014:

(a) approving (i) the transactions contemplated in the Asset Purchase Agreement dated \_\_\_\_\_, 2018, a copy of which (excluding exhibits) is attached hereto as **Exhibit A** (the “Stalking Horse APA”)<sup>1</sup> by and between Debtor and Sandton Credit Solutions Master Fund III., L.P. as successor-in interest to Wells Fargo Bank, a national banking association (“Sandton”) (the “Purchaser”); or (ii) the same transactions pursuant to a higher and better offer received by Debtor pursuant to the Sale Procedures (as described below) (collectively, the “Sale”).

(b) authorizing and approving as reasonable and necessary the sale procedures in connection with the Sale in the form attached as **Exhibit B** (the “Sale Procedures”), including without limitation approving the form of the Stalking Horse APA, the Breakup Fee (as defined in the Stalking Horse APA), and the Auction contemplated in the Sale Procedures;

- (c) scheduling a final hearing to consider approval of the Sale (the “Sale Hearing”);
- (d) establishing the form and manner of notices related thereto; and
- (e) waiving the fourteen-day stay imposed by Bankruptcy Rule 6004(h).

In support of this Motion, the Debtor respectfully represents as follows.

## **I. PRELIMINARY STATEMENT**

Debtor seeks approval to sell certain real property in Idaho and North Dakota, in separate transactions, pursuant to section 363 of the Bankruptcy Code, which may or may not include assumption and assignment of certain leases as more particularly described in the Stalking Horse

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<sup>1</sup> Unless otherwise defined in this Sale Motion, capitalized terms will have the meaning ascribed to them in the Purchase Agreement.

APA. The assets being sold are all of Debtor's assets, properties, rights and interests of any nature whatsoever, excluding those assets identified as "Excluded Assets" in the Stalking Horse APA (hereinafter collectively called "assets", and as more particularly described in the Stalking Horse APA, the "Purchased Assets").

The transactions proposed in this Sale Motion will result in a significant return to the Debtor's creditors. The major elements of the proposed transactions with the Purchase include the following:

- a. The Purchaser will pay to Debtor the Purchase Price of \$1,600,000 for the Twin Falls Property and \$2,700,000 for the North Dakota Property, as defined in and subject to the terms as set forth in the Stalking Horse APA, either by credit or by cash. The Purchaser's purchase price shall be sufficient to satisfy the Prior Lien Holders Farmer's National Bank on the Twin Falls Property, and Edward and Charlotte A. Schilke on the North Dakota Property and existing tax liens, if any, as defined and set forth in the Stalking Horse APA.
- b. The Purchaser will acquire the assets from Debtor free and clear of all liens, encumbrances and interests pursuant to section 363 of the Bankruptcy Code except for certain permitted exceptions, and with any such liens, encumbrances and interest attaching to the net proceeds of the sale received by the estate.
- c. The Purchaser may or may not assume the leases related to the Debtor's Twin Falls Property and Debtor's North Dakota Property, as defined and set forth in the Stalking Horse APA.

The Sale requires a purchaser that is adequately capitalized and is familiar with Debtor's business. Debtor believes that the universe of such purchasers is limited and that it has already approached these potential purchases. The Purchaser meets these requirements.

## **JURISDICTION**

Debtor is under pressure from its secured lender to resolve the reorganization of the Debtor, and the Purchaser wishes to close the transaction as quickly as practicable to allow a smooth transfer of operating assets without further depletion. As a result, Debtor is requesting an expedited schedule for approving the Sale Procedures.

This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief herein are sections 105(a), 363(b), and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9014.

## **II. BACKGROUND**

### **A. General Background**

Debtor is an Idaho limited liability company headquartered in Twin Falls, Idaho, and owns real property in Buhl and Twin Falls, Idaho, and in Watford City, North Dakota. The Debtor's principal lender is Sandton, who has declared a default under various guaranties, Mortgages, deeds of trust and related loan documents. Debtor has commenced this chapter 11 case as the only plausible mechanism to protect, to the greatest extent possible, Debtor's assets and creditors. By commencing this chapter 11 case, Debtor hopes to sell its real property located in Twin Falls, Idaho and Watford City, North Dakota and use remaining assets to pay remaining creditors.

**B. Entry into the Stalking Horse APA.**

After strategic analysis and negotiations, Debtor identified the Purchaser's bid for the assets as the proposal presenting the greatest benefit to the interests of Debtor's creditors. After extensive negotiations regarding the terms and conditions thereof, Debtor and the Purchaser have executed the Stalking Horse APA, which remains subject to this Court's approval.

**C. The Need for an Expedited Sale Process.**

The Sale is the only viable option that effectively addresses Debtor's financial situation. The Debtor is requesting relief for the following reasons: First, a non-expedited process allowing for a longer auction period would lend little to no net value to Debtor's estate and could indeed prove futile. The Debtor has already attempted to market the property, and the Stalking Horse Offer is a full-appraisal value offer. Also, the Purchaser made it clear to Debtor that unless the Debtor was willing, in the event the Purchaser was not the successful bidder, to reimburse the Purchaser for its out-of-pocket expenses and recognize the benefit to the estate obtained through the Purchaser's willingness to submit a stalking horse bid and initiate the sale process, the Purchaser would not have continued its efforts. For this reason, the Stalking Horse APA notes that the right to reimbursement of expenses was an integral part of the negotiations surrounding the Stalking Horse APA, and in the absence of Debtor's acceptance of such protections, the Purchaser would not have entered into the Stalking Horse APA, nor would the Purchaser be obligated to proceed to closing.

Therefore, an expedited process designed to consummate the Sale within 30–45 days, while also providing an opportunity for other bidders to participate and demonstrate their willingness to close on higher and better terms than the Purchaser, achieves the overarching objectives of Debtor: preserving the remaining assets for the benefit of its creditors.

### III. RELIEF REQUESTED

Debtor executed the Stalking Horse APA for the sale of the assets to the Purchaser. The Sale is subject to approval by this Court and additional competitive bidding pursuant to various sale procedures (the “Sale Procedures”). By this Motion, Debtor seeks entry of two orders as follows:

- a. Sale Procedures Order (substantially in the form annexed hereto as **Exhibit B**):
  - (i) Approving the Sale Procedures (which includes approval of the form of Stalking Horse APA and the Breakup Fee);
  - (ii) Approving the form and manner of the Notice of Sale;
  - (iii) Scheduling the sale hearing (the “Sale Hearing”) to take place not less than 20 days following the entry of the Sale Procedures Order; and
  - (iv) Granting related relief.
- b. “Sale Order” (substantially in the form annexed hereto as **Exhibit C**):
  - (v) Approving and confirming that the sale of the assets shall be free and clear of all interests as defined in the Bankruptcy Code, including Encumbrances;
  - (vi) Approving and confirming assumption by Purchaser of the Assigned leases (as defined in the Stalking Horse APA);
  - (vii) Waiving the 14-day stay incorporated by Bankruptcy Rules 6004(h) and 6006(d); and
  - (viii) Confirming that the Successful Bidder and Debtor may cause the closing to occur as soon as practicable after the entry of the Sale Order.

Debtor proposes the following timeline relative to the relief sought in this Motion:

| EVENT  | DATE  |
|--|---|
| Objection deadline for Sale Procedures portion of the Motion | 7 days after Motion filed                             |
| Hearing on Sale Procedures portion of the Motion             | 7 days after Motion filed                             |
| Deadline for competing bids                                  | 2 days before the Auction                             |
| Auction  | 20 - 25 days after entry of the Sale Procedures Order |
| Hearing on the remainder of the Sale Motion                  | Immediately following the Auction                     |

#### **IV. SALE OF ASSETS**

##### **A. Terms and Conditions of the Purchase Agreement<sup>2</sup>**

###### **1. Consideration**

The following highlights certain terms and conditions of the Stalking Horse APA, all of which are more fully explained in the Stalking Horse APA

- a. The Purchaser will pay to Debtor the Purchase Price of \$1,600,000 for the Twin Falls Property and \$2,700,000 for the North Dakota Property, cash or credit bid, as defined and set forth in the Stalking Horse APA.
- b. The Purchaser will acquire the Purchased Assets from Debtor free and clear of all interests pursuant to section 363 of the Bankruptcy Code, with the liens to attach to the proceeds received.
- c. Purchaser's purchase price shall be sufficient to satisfy the priority liens of Farmer's National Bank on the Twin Falls Property, and Edward and Charlotte A.

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<sup>2</sup> In the event of any inconsistencies between the terms of the Purchase Agreement and this Motion, the Purchase Agreement shall control

Schilke on the North Dakota Property, as defined and set forth in the Stalking Horse APA.

- d. The Purchaser may or may not assume the leases related to the Debtor's Twin Falls Property and Debtor's North Dakota Property, as defined and set forth in the Stalking Horse APA.

## **2. Closing Date and Closing Conditions.**

The Sale is subject to approval by the Court and competitive bidding pursuant to the Sale Procedures Order. Further, Debtor's and the Purchaser's obligations to consummate the Sale are jointly subject to certain closing conditions as set forth more fully in the Stalking Horse APA, such as the following: (i) the entry of the final Sale Order by the Court approving the Sale, unless such condition is waived, partially or entirely, by the Purchaser; and (ii) the absence of an injunction, restraining order, or other ruling prohibiting or limiting the Sale Order or the Sale. The Purchaser's and Debtor's obligations to consummate the Sale are also conditioned upon, among other things, the performance and compliance with the covenants and obligations set forth in the Stalking Horse APA, and the truth and accuracy of the representations and warranties set forth in the Purchaser Agreement. A complete explanation of the conditions to the parties' obligations to consummate the Sale is set forth in Article 9 of the Stalking Horse APA.

## **B. Sale Procedures.**

The proposed Sale Procedures are designed to allow other potential qualified organizations to bid for the right to complete the Sale in a competitive sale process. Debtor crafted the Sale Procedures to permit an expedited Sale necessitated by the imminent risks faced by Debtor, while simultaneously fostering an orderly and fair sale process. Debtor has determined that the Sale Procedures establish a framework that is most likely to maximize the value of the assets for the benefit of Debtor's estate, its creditors, and other interested parties.



The proposed Sale Procedures are attached hereto as **Exhibit D**. Interested parties should read the entire Sale Procedures.

**C. Notice Procedures.**

Debtor proposes that it will, within two days of the entry of the Sale Procedures Order on this Court's docket, serve a copy of each of the Motion, the proposed form of Sale Order, the Sale Procedures Order, and a copy of the Notice of Sale, substantially in the form annexed hereto as **Exhibit E** first-class mail, postage prepaid, upon the following parties: (i) all entities known to have expressed an interest in a transaction with respect to the sale of Debtor's assets; (ii) all parties to the Stalking Horse APA and all related agreements; (iii) the Office of the United States Trustee; (iv) all entities that have requested notice in accordance with Bankruptcy Rule 2002; (v) its secured creditors; (vi) all other known creditors of Debtor; and (vii) counsel to any official committee established in this chapter 11 case.

**V. ARGUMENT**

**A. The Assets Are Property of Debtor's Bankruptcy Estate.**

21. Section 541(a) of the Bankruptcy Code provides in relevant part:

The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

...

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

11 U.S.C. § 541. Congress intended that § 541 be interpreted broadly. *See, e.g., Weingarten Nostat, Inc. v. Serv. Merch. Co., Inc.*, 396 F.3d 737, 742 (6th Cir. 2005). The assets are property of Debtor's estate under section 541(a), and therefore are subject to the jurisdiction of

this Court pursuant to 28 U.S.C. § 157(b)(2)(M).

**B. The Sale Should be Approved as Fair, Reasonable, and in the Best Interest of Creditors.**

Bankruptcy Code section 363(b) and Bankruptcy Rule 6004 authorize a debtor to sell assets of the estate other than in the ordinary course of business, after notice and a hearing. *See, e.g., Quintex Entm't, Inc. v. Quintex Entm't, Inc. (In re Quintex Entm't, Inc.)*, 950 F.2d 1492, 1495 (9th Cir. 1991). In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside of the ordinary course of business may be by private sale or public auction. *See* FED. R. BANKR. P. 6004(f)(1). Here, Debtor believes that its ability to select the highest and best bidder at the Court-supervised Auction enhances and benefits the marketing process by providing a motivation for bidders to submit a Qualified Bid with a high market value.

Certain circumstances necessitate and allow for the sale of virtually all of the estate's property prior to confirmation of a plan. *Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983) ("There must be some articulated business justification . . . before the bankruptcy judge may order such disposition."). One of the most obvious business justifications in any sale of estate assets is the ultimate purpose of obtaining the highest price for the property sold. *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). "In approving any sale outside the ordinary course of business, the court must not only articulate a sufficient business reason for the sale, it must further find it is in the best interest of the estate, i.e. it is fair and reasonable, that it has been given adequate marketing, that it has been negotiated and proposed in good faith, that the purchaser is proceeding in good faith, and that it is an 'arms-length transaction.' *Id.*

In assessing the prudence of a section 363 sale, courts have examined (i) whether the proposed transaction has a valid business justification or good business reason; (ii) whether the

sale is the result of good faith negotiations; and (iii) whether the proposed purchase price is fair and reasonable. *See, e.g., 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (9th Cir. B.A.P. 1996); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986); *Travelers Ins. Co. v. Plaza Family P'Ship (In re Plaza Family P 'Ship)*, 95 B.R. 166 (Bankr. E.D. Cal. 1989); *Fearing v. Seror (In re Fearing)*, 143 Fed. Appx. 744 (9th Cir. 2005). All three factors are satisfied here.

**1. There is a Valid Business Justification and Good Business Reason to Support the Sale.**

The Ninth Circuit Bankruptcy Appellate Panel in *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 15-16 (B.A.P. 9th Cir. 1988), applied a flexible, case-by-case test to determine whether a sound business purpose justifies a proposed sale under section 363(b). Adopting the reasoning of the Fifth Circuit in *Institutional Creditors of Continental Air Lines, Inc. v. Continental Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986), and the Second Circuit in *In re Lionel Corp.*, 722 F.2d at 1071, the Panel noted that whether a proffered justification is sufficient will depend on the specifics of the case. This Court should consider all salient factors pertaining to the case and act to further the diverse interests of the debtor and creditors alike. *Id.*

The instant facts amply support Debtor's business judgment that the Sale is in the best interest of its creditors and Debtor's estate. As detailed above, an expedited Sale is Debtor's only viable opportunity to maximize the value of the assets for the benefit of its creditors and to create an opportunity for new employment for at least a portion of its employees who might otherwise necessarily have their employment terminated.

Moreover, the proposed Sale Procedures and the submission of a stalking horse bid afford assurance that the highest and best price will be realized in connection with the Sale. A Notice of

Sale will be provided to all persons Debtor believes may have an interest in the Sale. Debtor believes notice to such parties will provide appropriate encouragement of competitive bidding. In sum, the Sale achieves the greatest overall benefit for Debtor's estate. Debtor believe, in the exercise of its sound business judgment, that the Sale should be approved to provide the best, and for practical purposes, the only, means to salvage the assets of the Debtor.

Absent an expedited Sale, the Debtor will not remain viable. Sandton has already sought stay relief in order to foreclose on the relevant properties. In the event stay relief is granted, the Debtor will be left without significant assets to effectuate a plan that would pay all remaining creditors (including any deficiency claim by Sandton). By the terms of the APA, Sandton is agreeing to waive and release all remaining claims against the Debtor after receiving the sale proceeds. Accordingly, Debtor believes, in the exercise of its sound business judgment, that the Sale should be approved, pursuant to an expedited process, to provide the best, and for practical purposes, the only, means to salvage the assets of the Debtor.

The courts have long recognized that where a sale by a debtor is made in good faith and upon a reasonable basis—as the Sale is here—"[t]he court will not entertain objections to a trustee's [debtor in possession's] conduct of the estate." *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *see also In re S. Biotech., Inc.*, 37 B.R. 318, 322-23 (Bankr. M.D. Fla. 1983). This is because it is the "Trustee [debtor in possession], not the Court, [that] is selling [the] property." *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 516 (Bankr. N.D. Ala. 2002). In accordance with *Walters* and the foregoing cases, Debtor submits that there is valid business justification and good business reason for the Sale on the terms contained in the Stalking Horse APA and in the manner provided in the Sale Procedures. As such, Debtor believes this Court should approve the Sale and allow it to move forward expeditiously.

**2. The Sale Is in Good Faith and Thus the Purchaser or the Successful Bidder Should be Afforded the Protections of 11 U.S.C. § 363(m).**

Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to any entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

Although the Bankruptcy Code does not define “good faith,” courts have found that the good faith requirement focuses principally on the disclosure of all material sale terms and absence of fraud or collusion between bidders. *See, e.g., Abbotts Dairies*, 788 F.2d at 147-48; *see also In re Apex Oil Co.*, 92 B.R. 847, 869-71 (Bankr. E.D. Mo. 1988). It is typically only “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders” that leads to a determination that there was a lack of good faith in a sale proceeding. *T.C. Investors v. Joseph (In re M Capital Corp.)*, 290 B.R. 743, 748 (B.A.P. 9th Cir. 2003) (quoting *Cnty. Thrift & Loan v. Suchy (In re Suchy)*, 786 F.2d 900, 902 (9th Cir. 1985)).

While the Ninth Circuit does not require a finding of good faith to be made by a bankruptcy court at the time of the sale,<sup>3</sup> the Sale Motion (including the attached exhibits) demonstrate that the Sale is proposed in good faith. The Stalking Horse APA is a product of intensive arm’s-length negotiations between Debtor and the Purchaser, and does not contain special treatment for Debtor, Debtor’s estate, the Purchaser, or their respective affiliates or insiders. The Stalking Horse APA specifically provides for overbids at the Auction. Moreover,

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<sup>3</sup> *See Thomas v. Namba (In re Thomas)*, 287 B.R. 782, 785 (B.A.P. 9th Cir. 2002) (“[T]he Ninth Circuit does not require that a finding of ‘good faith’ be made at the time of sale” (internal citations omitted)).

Debtor submits that any asset purchase agreement reached as a result of the Sale Procedures will be an arm's-length, negotiated transaction entitled to the protections of section 363(m), and not the result of collusion with respect to the bidding or the sale. In addition, the terms of the Sale will be fully disclosed to creditors and other potential bidders pursuant to the Notice of Sale as described above.

Based on the foregoing, the Purchaser or the Successful Bidder, as the case may be, should be deemed a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code.

### **3. The Purchase Price Is Fair and Reasonable.**

An auction sale is generally considered to establish sufficient value for the assets being sold. *See, e.g., Abbotts Dairies*, 788 F.2d at 149. Debtor believes that the Sale process has been structured in a manner that will secure the highest purchase price for the assets being sold. Debtor has extensively marketed Debtor, an effort that has generated two current expressions of interest. Debtor will also provide a Notice of Sale to all known potential bidders, thereby maximizing the possibility that competing bidders will come forward to pay a higher price for the assets than offered by the Purchaser in the Stalking Horse APA. In essence, the Purchaser has set the floor for the bidding at the Auction. Just as the Ninth Circuit acknowledged in *Arnold & Baker*, the precise value of the assets being sold will only be recognized at—and as a result of—the sale of the assets. *Arnold & Baker Farms v. United States (In re Arnold & Baker Farms)*, 85 F.3d 1415, 1421 (9th Cir. 1996).

Finally, courts have recognized that a debtor is entitled to “‘great judicial deference’ in deciding which bid to accept as the best and highest bid.” *Gulf States Steel*, 28 B.R. at 516 (internal citation omitted). Here, too, Debtor is entitled to deference in determining not only the

manner in which the assets are to be sold, but how the value of those assets is to be maximized. Debtor believes that the Purchaser's offer (subject to overbid at the Auction) satisfies the requirement that the price paid for the assets be fair and reasonable.

**4. Adequate and Reasonable Notice Has Been Provided.**

Section 363 of the Bankruptcy Code requires that interested parties receive adequate notice of the sale. Full disclosure of the terms of the Sale will be provided pursuant to the Notice of Sale as described above. Such notice is reasonably calculated to provide timely and adequate notice to Debtor's major creditor constituencies, those parties most interested in this case, and those parties potentially interested in bidding on the assets.

**C. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(f) for the Sale of the Estate's Assets Free and Clear of Liens, Claims, and Encumbrances.**

Section 363(f) of the Bankruptcy Code permits debtors to sell assets free and clear of liens, claims, and encumbrances with interests in the property attaching to the net proceeds of the sale. Section 363(f) provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

Pursuant to the Stalking Horse APA, where Debtor represents and warrants that the assets are, or will be, “free and clear of all Encumbrances,”<sup>4</sup> Debtor requests that the assets be transferred to the Purchaser free and clear of all Encumbrances with interests in property attaching to the proceeds of the Sale of the assets. Debtor further represents that the following are claimed as encumbrances against the property being sold:

- a. Farmer’s National Bank claims a lien on the Twin Falls Property, as defined in the Stalking Horse APA, securing one debt in the approximate amount of \$527,588.40 pursuant to a Commercial Promissory Note secured by a Deed of Trust.
- b. Edward and Charlotte Schilke have a lien on the North Dakota Property, as defined in the Stalking Horse APA, securing one debt of approximately \$53,000.00 pursuant to a Lease Purchase Agreement recorded in McKenzie County, North Dakota.
- c. Sandton claims a blanket lien on the assets securing multiple debts of approximately \$6,906,985.56.
- d. Twin Falls County Treasurer claims a lien on multiple parcels comprising the Twin Falls Property, as defined in the Stalking Horse APA, securing property tax debt of approximately \$49,589.91.

**D. The Proposed Bidding Protections Are Reasonable and Necessary to Preserve the Sale Process and Enhance the Value of Debtor’s Estate.**

To preserve the Sale process, and the resources already expended by Debtor’s bankruptcy estate in favor of such process, Debtor seeks to approve certain bidding protections, including a minimum Initial Overbid and Successive Overbids and the Breakup Fee (collectively, the “Bidding Protections”). These Bidding Protections will ensure a competitive and efficient

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<sup>4</sup> See Purchase Agreement



bidding process which excludes disingenuous bidders while preserving the participation of a stalking-horse bidder.

The bidding requirements contained in the Sale Procedures, therefore, will function as an effective tool to identify only highly motivated bidders. An Initial Overbid requirement of \$50,000 will ensure both that the competing bidders are serious and that their overbids are meaningfully better for Debtor (notwithstanding the added cost of facilitating further diligence to new bidders under time and publicity constraints). Ultimately, the competing Qualified Bidders will ensure that the auction will generate a material benefit to Debtor's estate as a whole. Similarly, the required Overbids will function as an effective filtering tool in the pool of prospective bidders and ensure that competing bidders are seriously motivated to purchase the assets. Thus, the Overbids also provide a benefit to Debtor's estate.

Another Bidding Protection—meant to preserve the Sale process and ultimately preserve Debtor Estate resources already devoted to that Sale process—is the Breakup Fee. The Breakup Fee is intended to reimburse the Purchaser for its expenses incurred in connection with the sale process, up to the amount of the Breakup Fee, including its legal fees and other costs incurred in the negotiation of the Stalking Horse APA and conducting due diligence, and to recognize the benefit to the estate of the Purchaser's willingness to submit a stalking horse bid and allow the sale process to be initiated. Incentives such as the Breakup Fee encourage a potential purchaser to invest the requisite time, money, and effort to negotiate with a debtor and perform the necessary due diligence attendant to the acquisition of a debtor's assets, despite the inherent risks and uncertainties of the chapter 11 process. "Agreements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers." *In re S.N.A. Nut Co.*, 186

B.R. 98, 101 (Bankr. N.D. Ill. 1995).

The Purchaser has informed Debtor that it would not have continued discussions with Debtor or incurred such expenses without the prospect of the Breakup Fee, nor would the Purchaser have an incentive to continue the Sale process through closing. Without a stalking-horse, Debtor cannot move forward. Therefore, in order to ensure an effective and competitive Sale process (which requires a stalking-horse), Debtor seeks authority to pay the Breakup Fee if the Purchaser is not ultimately the Successful Bidder, to ensure the Purchaser's continued participation.

As noted above, the Purchaser has incurred expenses in documenting and negotiating the Sale and in conducting due diligence. The Breakup Fee, therefore, is directly related to the unreimbursed out-of-pocket amounts incurred by the Purchaser in relation to the Sale. Debtor believes that the Bidding Protections are reasonable, given the benefits to the estate of having a stalking horse and a definitive Stalking Horse APA, and the risk to the Purchaser that a third-party offer ultimately may be accepted, and necessary to preserve and enhance the value of Debtor's estate.

In the bankruptcy context, the test for determining whether a proposed break-up fee should be approved is whether it is in the best interests of the estate. *S.N.A. Nut Co.*, 186 B.R. at 104,106. There must be compelling circumstances "which clearly indicate that payment of the fee would be in the best interests of the estate." *S.N.A. Nut Co.*, 186 B.R. at 105. Accordingly, to be approved, bidding incentives must provide some benefit to the debtor's estate. *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 533 (3d Cir. 1999).

The proposed Bidding Protections satisfy this standard. The Stalking Horse APA and the

Bidding Protections are the product of extended good faith, arm's-length negotiations between Debtor and the Purchaser. They are fair and reasonable in amount, particularly in view of the Purchaser's full-appraisal offer, extensive efforts to date, the risk to the Purchaser of being used as a "stalking horse bidder," and the stabilizing effect that the execution of the Stalking Horse APA is expected to have (thereby preserving value for creditors and increasing the likelihood of additional bidding). Further, the Bidding Protections already have encouraged competitive bidding, in that the Purchaser would not have entered into the Stalking Horse APA without these provisions. The mere existence of the Bidding Protections permits Debtor to insist that competing bids for its assets be materially higher or otherwise better than the Stalking Horse APA, a clear benefit to Debtor's estate.

In sum, Debtor's ability to offer the Bidding Protections enables it to ensure the Sale to a contractually committed bidder at a price it believes to be fair, while at the same time providing it with the potential of even greater benefit to its estate. Thus, the Bidding Protections should be approved.

## **VI. Waiver of Rule 6004(h) and 6006(d)**

Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." FED. R. BANKR. P. 6004(h). Debtor requests that the stay imposed by Bankruptcy Rule 6004(h) be waived under the circumstances of this case. It is in the interest of Debtor's creditors and estate that the Sale be consummated as quickly as possible without any stay pending appeal.

Debtor has noticed the hearing on this Motion to all of its creditors, interest holders, and other parties-in-interest, and therefore any person having any objection to the Motion has been

afforded a reasonable opportunity to voice any objections or concerns. Accordingly, Debtor is aware of no prejudice that would be caused by the Court's waiver of Bankruptcy Rule 6004(h). Debtor requests that any order approving the Sale be effective immediately by providing that the fourteen-day stay is inapplicable.

## **VII. NOTICE**

Notice of this Motion will be provided to (i) all entities known to have expressed an interest in a transaction with respect to the sale of Debtor's assets; (ii) all parties to the Stalking Horse APA and all related agreements; (iii) the Office of the United States Trustee; (iv) all entities that have requested notice in accordance with Bankruptcy Rule 2002; (v) its secured creditors; (vi) all other known creditors of Debtor; and (vii) counsel to any official committee established in this chapter 11 case. In light of the nature of the relief requested herein, Debtor submits that no other or further notice is required.

## **VIII. CONCLUSION**

For all of the foregoing reasons, Debtor respectfully requests entry of an order granting the relief requested herein and such other and further relief as the Court deems just.

DATED this 26<sup>th</sup> day of October, 2018.

/s/ Chad R. Moody

CHAD R. MOODY  
Attorney for Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of October, 2018, I filed the foregoing MOTION TO APPROVE SALE, SALES PROCEDURES, AND NOTICE electronically through the CM/ECF system, which caused the following parties to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

|                        |                                |
|------------------------|--------------------------------|
| Brett R. Cahoon        | ustp.region18.bs.ecf@usdoj.gov |
| Matthew T. Christensen | mtc@angstman.com               |
| David A. Coleman       | david@crctflaw.com             |
| Randall A. Peterman    | rap@givenspursley.com          |
| U.S. Trustee           | ustp.region18.bs.ecf@usdoj.gov |

Any others as listed on the Court's ECF Notice.

I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Registered Participants via U.S. Mail, postage prepaid:

Attached Mailing Matrix.

/s/ Chad R. Moody  
\_\_\_\_\_  
Chad R. Moody

Label Matrix for local noticing  
0976-8  
Case 18-40503-JDP  
District of Idaho  
Twin Falls  
Fri Oct 26 13:04:17 MDT 2018

~~Brett R. Canoon~~  
~~OFFICE OF THE US TRUSTEE US DEPT~~  
~~720 Park Blvd., Ste. 220~~  
~~Boise, ID 83712-7785~~

~~Canyon Pawn~~  
~~261 Addison Ave. West~~  
~~Twin Falls, ID 83301-5049~~

Century Motorsports Marine  
299 Addison Ave. W  
Twin Falls, ID 83301-5049

~~Matthew Christensen~~  
~~Angstman Johnson & Associates, PLLC~~  
~~3649 N. Lakeharbor Lane~~  
~~Boise, ID 83703-6913~~

~~Matthew Todd Christensen~~  
~~Angstman Johnson, PLLC~~  
~~3649 N. Lakeharbor Lane~~  
~~Boise, ID 83703-6913~~

David A Coleman  
PO Box 525  
Twin Falls, ID 83303-0525

Daytona Dairy, LLC  
299 Addison Ave. West  
Twin Falls, ID 83301-5049

Edward and Charlotte Schilke  
P.O. Box 637  
Watford City, ND 58854-0637

~~Farmers Bank~~  
~~e/o David A. Coleman~~  
~~Coleman, Ritchie & Jacobson~~  
~~PO Box 525~~  
~~Twin Falls, ID 83303-0525~~

~~Farmers Bank~~  
~~PO Box 392~~  
~~Buhl, ID 83316-0392~~

~~Ferrellgas~~  
~~One Liberty Plaza~~  
~~Liberty, MO 64068-2971~~

Gomez Rentals, LLC  
299 W. Addison Ave. W.  
Twin Falls, ID 83301-5049

J C Customs, LLC  
12621 22nd Street NW  
Watford City, ND 58854-9206

Jack P. Dwyer  
3330 Fiechtner Drive  
Suite 102  
Fargo, ND 58103-2321

Melon Valley Dairy, LLC  
299 Addison Ave. West  
Twin Falls, ID 83301-5049

Metropolitan Life Insurance  
8717 W. 110th St. Ste. 700  
Overland Park, KS 66210-2127

~~Randall A Peterman~~  
~~Givens Pursley LLP~~  
~~601 W. Bannock St.~~  
~~P.O. Box 2720~~  
~~Boise, ID 83701-2720~~

~~Randall A. Peterman~~  
~~601 W. Bannock Street~~  
~~Boise, ID 83702-5919~~

~~Sandton Credit Solutions~~  
~~16 W. 46th Ave. 11th Floor~~  
~~New York, NY 10036-4503~~

~~Sandton Credit Solutions Master Fund III, L.~~  
~~Givens Pursley LLP~~  
~~e/o Randall A. Peterman~~  
~~601 W. Bannock St.~~  
~~P.O. Box 2720~~  
~~Boise, ID 83701-2720~~

~~Sandton Credit Solutions Master Fund III, L.~~  
~~e/o Randall A. Peterman~~  
~~Givens Pursley LLP~~  
~~601 W. Bannock St.~~  
~~Boise, ID 83702-5919~~

~~The Sprinkler Shop~~  
~~P.O. Box 599~~  
~~Paul, ID 83347-0599~~

~~Twin Falls County Treasurer~~  
~~PO Box 88~~  
~~Twin Falls, ID 83303-0088~~

US Trustee  
Washington Group Central Plaza  
720 Park Blvd, Ste 220  
Boise, ID 83712-7785

End of Label Matrix  
Mailable recipients 24  
Bypassed recipients 0  
Total 24

**STALKING HORSE ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**SANDTON CREDIT SOLUTIONS MASTER FUND III., L.P**

**as Purchaser**

**And**

**GOMEZ RENTALS, LLC.**

**as Seller**

**Dated as of [\_\_\_\_\_], 2018**

**ASSET PURCHASE AGREEMENT**

THIS STALKING HORSE ASSET PURCHASE AGREEMENT (as amended, supplemented or otherwise modified from time to time, this “Agreement” or Stalking Horse APA), dated as of the \_\_\_\_ of \_\_\_\_\_ 2018 (the “Agreement Date”), is entered into by and between **Gomez Rentals, LLC** (“Seller”), and **Sandton Credit Solutions Master Fund III., L.P.** as successor-in interest to Wells Fargo Bank, a national banking association (“Purchaser” or the “Bank”). **Annex I** to this Agreement contains definitions of certain capitalized terms used herein and also provides cross-references to certain capitalized terms defined elsewhere in this Agreement.

**RECITALS**

WHEREAS, Seller is a Debtor in a chapter 11 Bankruptcy Case, which is controlled by Debtor as Debtor in Possession in that certain bankruptcy case under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “Bankruptcy Code”), filed on June 11, 2018 (the “Petition Date”) in the United States Bankruptcy Court for the District of Idaho (the “Bankruptcy Court”) under bankruptcy case no. 18-40503-JDP (the “Bankruptcy Case”);

WHEREAS, Purchaser desires to purchase from Seller, and Seller desires to sell, transfer and assign to Purchaser, the Purchased Assets in accordance with this Agreement and in accordance with and subject to the Sale Order, pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code; and

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Purchaser and Seller hereby agree as follows:

### ARTICLE 1 PURCHASE AND SALE

#### 1.1 Purchase and Sale of Assets.

(a) *Purchased Assets.* Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions set forth in this Agreement and the Sale Order, at the Closing, Purchaser, in separate transactions for each Premises as defined in paragraph 1.1(b), shall purchase, acquire and accept from Seller, and Seller shall sell, transfer, assign, convey and deliver to Purchaser, all of Seller's right, title and interest in, to and under, free and clear of any and all Liens, Claims and Interests (1) Seller's interest in the real property described below), together with any and all appurtenances and water and water rights related to such real property—(collectively, the "Premises"); and (2) all fixtures currently located on the Premises (the "Fixtures"), but excluding those assets identified as "Excluded Assets" in Section 1.1(e) (collectively, the "Purchased Assets"). Any leases or executory contracts ("Leases") relative to the Premises (as defined below) shall be assumed or modified (including any modification referenced in this paragraph) or terminated by the Purchaser only if the Purchaser so advised the Seller in writing within 30 (thirty) days of the date of the final order approving the sale anticipated by this Agreement ("Seller's Lease Notification"). Both Seller and Purchaser agree that the Leases continue on a month-to-month basis, until such time as Purchaser gives the Seller and the other party to the lease ninety (90) days written notice of termination. In the event no Seller's Lease Notification is timely given to Seller, the Leases are rejected and the provisions of paragraph 1.1(d)(i) shall apply.

(b) *Premises.* The Premises consists of two properties, one located in Twin Falls County, Idaho, legally described in **Exhibit A-1** (the "Twin Falls Property"), and one located in McKenzie County, North Dakota, legally described in **Exhibit A-2** ("North Dakota Property").

(c) *Fixtures.* The fixtures attached to the real property are identified as follows:

- (1) All buildings, structures and other improvements of any kind, nature or description now erected, constructed, placed or located upon the Premises, as defined by state law in the state where the Premises are located.

(d) *Lease Assumption and Execution.* The Leases together with all liability relating thereto, shall be assumed or rejected as set forth above in paragraph 1.1(a).



- (1) For any lease that is deemed rejected under paragraph 1.1(a) the tenant may immediately vacate the premises or may continue in possession under the same terms as the existing lease on a month-to-month basis until either party give the other ninety (90) days' notice of termination. Refunds of security deposits shall be governed by the terms of the rejected lease(s) except as it pertains to the term of existing Leases.

(e) *Excluded Assets.* Notwithstanding anything to the contrary in this Agreement or any of the Ancillary Agreements, in no event shall Seller be deemed to sell, transfer, assign or convey, and Seller shall retain all of its right, title and interest in any personal property located on the Premises (collectively, the "Excluded Assets").

(f) *Free and Clear; Liens, Claims and Interests Shall Attach to Proceeds.* The purchase and sale of the Purchased Assets shall be free and clear of any and all Liens, Claims and Interests. All such Liens, Claims and Interests shall attach solely to the proceeds of sale, if any.

## **ARTICLE 2 CONSIDERATION**

2.1. Consideration. The purchase prices (subject to adjustment as set forth herein) for the purchase of the Purchased Assets for the Twin Falls Property and North Dakota Property is an amount in cash or credit bid equal to \$1,600,000 for the Twin Falls Property and \$2,700,000 for the North Dakota Property (collectively the "Purchase Price"), which amount includes consideration sufficient to fully satisfy all liens, including existing tax liens, if any, or priority lien holders for both the Twin Falls Property and the North Dakota Property. Purchaser is granted the unqualified right to make a credit bid for the Premises, and any of them, from the debt owed Purchaser by Seller on the date of the sale of the Premises.

2.2. Payment of Purchase Price. The Purchase Price shall be payable as follows:

(a) *Deposit.* Upon the execution of this Agreement, Purchaser shall, within two (2) Business Days following the date hereof, deposit with Seller or such other location as shall be directed by Seller, the sum of \$50,000 for the Twin Falls Property and \$50,000 for the North Dakota Property by wire transfer of immediately available funds (the "Escrow Amount"), to be released by Seller only in accordance with the provisions of this Agreement. The Escrow Amount shall be applied against the Purchase Price at Closing and released to Seller at Closing in accordance with the provisions of this Agreement.

(b) *Closing Date Payment.* On the Closing Date, Purchaser shall deliver to Seller, by wire transfer of immediately available funds, payment in an amount equal to the Purchase Price *minus* the Escrow Amount (the "Closing Date Payment").

2.3. Condition of Conveyance. Without limiting the provisions of this Agreement relating to sale, transfer, assignment, conveyance or delivery, the Purchased Assets shall be sold, transferred, assigned, conveyed and delivered by Seller to Purchaser by appropriate instruments

of transfer, deeds, bills of sale, endorsements, and assignments in recordable form as appropriate, and otherwise all in form and substance reasonably satisfactory to Purchaser, and free and clear of any and all Liens, Claims and Interests.

2.4. Withholding. If Purchaser is required by applicable Law to withhold or deduct any amount of Tax from the payment of the Purchase Price hereunder, then Purchaser shall be permitted to withhold or deduct (and, to the extent required by applicable Law, remit to the appropriate Governmental Bodies) the amount of any such Tax, and such withheld amount (to the extent remitted to the appropriate Governmental Body) shall be treated for all purposes of this Agreement as having been paid to Seller.

### ARTICLE 3 CLOSING AND TERMINATION

3.1. Closing. Subject to the satisfaction of the conditions set forth in Section 9.1, Section 9.2 and Section 9.3, or the waiver thereof by the party entitled to waive the applicable condition, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of **Angstman Johnson, 1191 E. Iron Eagle Dr. Ste 200 Eagle, Idaho 83616** (or at such other place as the parties may mutually designate in writing) on the date that is no later than the second (2nd) Business Day following the date on which all of the conditions set forth in Section 9.1, Section 9.2 and Section 9.3 are satisfied or waived by the party entitled to waive the applicable condition (other than conditions that by their nature are to be satisfied at the Closing). The date on which the Closing is held is referred to in this Agreement as the “Closing Date.”

3.2. Closing Deliveries by Seller. At the Closing, Seller shall deliver:

- (a) to Purchaser a warranty deed transferring all of Seller’s right title and interest in the Premises;
- (b) to Purchaser, a standard ATLA owner’s policy of title insurance insuring title to the Premises free and clear of all Liens, Claims and Interests;
- (c) to Purchaser, a duly executed bill of sale conveying the Purchased Assets (other than the Premises) to Purchaser (the “Bill of Sale”);
- (d) to Purchaser, all other previously undelivered Seller Ancillary Agreements required by this Agreement to be delivered by Seller at or prior to the Closing in connection with the transactions contemplated by this Agreement.

3.3. Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver:

- (a) to Seller and Seller’s agent, written instructions, duly executed by Purchaser, directing Seller’s agent to deliver the Escrow Amount (together with all accrued interest thereon, if any) to Seller;
- (b) to Seller, the Closing Date Payment, in accordance with Section 2.2;

(c) to Seller, the Bill of Sale, duly executed by Purchaser; and

(d) to Seller, the officer's certificates required to be delivered pursuant to Section 9.2(a).

3.4. Termination of Agreement. This Agreement may be terminated prior to Closing as follows:

(a) by the mutual written consent of Seller and Purchaser at any time prior to the Closing;

(b) by Purchaser or Seller, if the Closing shall not have been consummated on or prior to \_\_\_\_\_ (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 3.4(b) shall not be available to a party whose failure to take any action required to fulfill an obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to the Outside Date;

(c) by Purchaser or Seller, if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(d) by Purchaser, if the Sale Order does not provide that the sale is free and clear of all Liens, Claims and Interests;

(e) by Purchaser, if the Bankruptcy Case is dismissed;

(f) by Purchaser, if following entry of the Sale Order, the Sale Order shall (i) be the subject of a pending appeal, (ii) have been reversed or (iii) have been modified or amended in any manner materially adverse to Purchaser without the prior written consent of Purchaser;

(g) by Purchaser, (i) if Seller shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, or if any representation or warranty of Seller in this Agreement shall have become untrue, and (ii) any such breach, failure to perform or occurrence or the aggregate of all such breaches, failures to perform or occurrences referred to in clause (i) (A) would result in a failure of any condition set forth in Section 9.3(a) and (B) is not curable or able to be performed, or, if curable or able to be performed, is not cured or performed to the reasonable satisfaction of Purchaser prior to the earlier of (x) the Outside Date and (y) twenty (20) days after written notice of such breach, failure or occurrence is given to Seller by Purchaser;

(h) by Seller, (i) if Purchaser shall have breached or failed to perform any of its representations, warranties, covenants or other agreements contained in this Agreement, or if any representation or warranty of Purchaser in this Agreement shall have become untrue, and (ii) any such breach, failure to perform or occurrence or the aggregate of all such breaches, failures to perform or occurrences referred to in clause (i) (A) would result in a failure of a

condition set forth in Section 9.2(a) and (B) is not curable or able to be performed, or, if curable or able to be performed, is not cured or performed to the reasonable satisfaction of Seller prior to the earlier of (x) the Outside Date and (y) twenty (20) days after written notice of such breach, failure or occurrence is given to Purchaser by Seller;

(i) by Purchaser, if any of the Purchased Assets are damaged or destroyed by any event or casualty prior to the Closing in a manner that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(j) by Seller or Purchaser, if (i) Seller enters into a definitive agreement with respect to a Competing Bid, (ii) the Bankruptcy Court enters an order approving a Competing Bid, and (iii) the Person making the Competing Bid consummates the Competing Bid; and

(k) by Purchaser, at any time on or after the date that is six (6) Business Days following the Hearing, if the Purchaser is not accepted as the Successful Bidder or the Backup Bidder (each as defined in the Bidding Procedures).

3.5. Procedure Upon Termination. In the event of a termination of this Agreement by Purchaser or Seller, or both of them, pursuant to Section 3.4, (a) written notice of such termination shall be given promptly by the terminating party to the other party hereto, specifying the provision hereof pursuant to which such termination is made, and (b) except as set forth in Section 3.6, this Agreement shall thereupon terminate and become void and of no further force or effect, and the consummation of the transactions contemplated by this Agreement shall be abandoned without further action of the parties hereto; provided, however, notwithstanding anything contained in this Agreement to the contrary, such termination shall not relieve either party hereto from Liability for its breach of this Agreement prior to such termination. Any termination of this Agreement by Purchaser or Seller, or both of them, pursuant to Section 3.4 shall be effective on the date that written notice of such termination is given by the terminating party to the other party hereto.

3.6. Effect of Termination. If this Agreement is terminated pursuant to Section 3.4, this Agreement shall become void and of no further force or effect (except for the provisions of Section 3.7 (*Distribution of Escrow Amount on Termination*), Section 7.4 (*Breakup Fee*), Article 10 (*Miscellaneous*), and such portions of **Annex I** (*Definitions*) as are necessary to give effect to the foregoing, all of which shall continue in full force and effect), and Seller shall be free immediately to enjoy all rights of ownership of the Purchased Assets and to sell, transfer, encumber or otherwise dispose of the Purchased Assets to any party without any restriction under this Agreement.

3.7. Distribution of Escrow Amount on Termination. (i) If this Agreement is terminated pursuant to Section 3.4 (h), (A) the Escrow Amount (together with all accrued interest thereon, if any) shall be paid to Seller, and (B) Purchaser shall deliver written instructions, duly executed by Purchaser, to Seller and Seller's counsel directing Seller's agent to deliver the Escrow Amount (together with all accrued interest thereon, if any) to Seller; or (ii) if this Agreement is terminated pursuant to any other subsection of 3.4 the Escrow Amount (together with all accrued interest thereon, if any) shall be paid to Purchaser, and (y) Seller shall deliver

written instructions, duly executed by Seller, to Purchaser and Seller's agent directing Seller's agent to deliver the Escrow Amount (together with all accrued interest thereon, if any) to Purchaser.

#### **ARTICLE 4 PRIOR LIEN HOLDERS**

4.1. Prior Lien Holders. Seller and Purchaser acknowledge (a) Farmer's National Bank and the Twin Falls County Treasurer have prior liens against the Twin Falls Property; and (b) Edward and Charlotte Schilke have a prior lien against the North Dakota Property and are parties-in-interest in the Bankruptcy Case, and secured creditors in the Bankruptcy Case ("Prior Lien Holders").

4.2. Prior Lien Holders as a Party that May Make a Qualified Bid under the Bidding Procedures. Seller and Purchaser acknowledge that, should they elect to do so, and should they qualify to do so, the Prior Lien Holders may make a Qualified Bid under the Bidding Procedures.

4.3. Bankruptcy Code Section 363(k). Seller and Purchaser acknowledge that Bankruptcy Code Section 363(k) may, according to its terms, grant to Prior Lien Holders a right of setoff or a right of credit bid in the event it makes a Qualified Bid under the Bidding Procedures, should it qualify to do so.

4.4. Sale Pursuant to this Agreement is Free and Clear of Liens, Claims and Interests. Notwithstanding any provisions of this Agreement to the contrary, Seller and Purchaser acknowledge that any sale under this Agreement shall be free and clear of any and all Liens, Claims and Interests of Prior Lien Holders and their respective Liens, Claims and Interests shall attach to any proceeds from the sale of the Purchased Assets.

#### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby makes the representations and warranties in this Article 5 to Purchaser as of the Agreement Date and as of the Closing Date.

5.1. Authority Relative to This Agreement. Subject to entry of the Sale Order, Seller has all requisite power, authority and legal capacity to (a) execute and deliver this Agreement, and (b) perform its obligations hereunder, and to consummate the transactions contemplated hereby. This Agreement has been, and at or prior to the Closing, duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, and the entry of the Sale Order) this Agreement constitutes legal, valid and binding obligations of Seller, enforceable against Seller in accordance with its terms, subject to the Bankruptcy Exceptions.

5.2. Conflicts; Consents of Third Parties.

(a) Subject to entry of the Sale Order, neither the execution and delivery of this Agreement by Seller, nor the consummation of the transactions contemplated hereby, nor

compliance by Seller with any of the terms or provisions hereof or thereof, will conflict with or result in a breach of any Law applicable to Seller.

5.3. Title to Assets; Condition of Assets. Seller has good and marketable title, or a valid leasehold interest, as applicable, in and to each of the Purchased Assets owned or leased by it. Subject to entry of the Sale Order, Seller has, and at the Closing Purchaser shall receive, good, valid and marketable title, or valid leasehold interest in, as applicable, to the Purchased Assets, free and clear of all Liens, Claims and Interests.

5.4. Environmental, Health and Safety Matters.

(a) Seller (i) is not aware of any noncompliance with any applicable Environmental, Health and Safety Requirements, and (ii) to the best of Seller's knowledge has obtained all permits and licenses arising under Environmental, Health and Safety Requirements that are necessary for the conduct of the Business in compliance in all material respects with Environmental, Health and Safety Requirements;

(b) Seller has not received any unresolved written notice, report or other written communication regarding any actual or alleged violation of Environmental, Health and Safety Requirements or any unresolved actual or alleged Environmental Liabilities;

(c) To Seller's knowledge no material Release has occurred or is occurring at or from the Premises that requires notice to any Governmental Body, further investigation, any form of response action under applicable Environmental, Health and Safety Requirements, or that could reasonably be expected to form the basis of a material claim for damages or compensation by any Person;

(d) Seller has not agreed to, assumed or retained any material Environmental Liability under any lease, purchase agreement, sale agreement, joint venture agreement or other binding corporate or real estate document or agreement;

(e) Seller has made available to Purchaser all significant environmental reports, data, documents, studies, analyses, investigations, audits and reviews in Seller's possession or control as necessary to reasonably disclose to Purchaser any material Environmental Liabilities in relation to the Business or the Purchased Assets; and

(f) Seller agrees that the Purchased Assets shall be sold free and clear of any and all Liens, Claims and Interests under 11 U.S.C. 363(b) which shall include but not be limited to any and all Environmental Liabilities to the fullest extent allowed by law.

**ARTICLE 6**  
**REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby makes the representations and warranties in this Article 6 to Seller as of the Agreement Date and as of the Closing Date.



6.1. Entity Organization. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Idaho.

6.2. Authority Relative to This Agreement. Purchaser has all requisite entity power, authority and legal capacity to (a) execute and deliver this Agreement and (b) perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, have been duly authorized by all requisite action on the part of Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, and the entry of the Sale Order) this Agreement constitutes legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with its terms, subject to the Bankruptcy Exceptions.

6.3. Consents and Approvals; No Violation. Neither the execution and delivery of this Agreement by Purchaser, nor the consummation of the transactions contemplated hereby, nor compliance by Purchaser with any of the terms or provisions hereof, will (i) conflict with or result in a breach of any provision of the certificate of organization, operating agreement or other governing documents of Purchaser, (ii) conflict with or result in a breach of any Law applicable to Purchaser or (iii) conflict with, violate, result in the breach or default under any Contract to which Purchaser is a Party, except as in each case clauses (i) through (iii) above would not have a Material Adverse Effect. The execution, delivery and performance by Purchaser of this Agreement does not require Purchaser to make any filing with or give notice to, or obtain any consent or Permit from, any Governmental Body, other than the Sale Order and other than that which will have been made, given or obtained at or prior to the Closing.

6.4. Sufficiency of Funds. Purchaser has as of the Agreement Date, and shall have at the Closing, funds that are sufficient to pay the Purchase Price, and otherwise consummate all of the transactions contemplated hereunder.

## **ARTICLE 7 BANKRUPTCY COURT MATTERS**

7.1. Competing Bids. Seller and Purchaser acknowledge and are aware that the transactions contemplated by this Agreement are subject to any higher or better bids (each, a “Competing Bid”) as part of a sale process to be conducted in the Bankruptcy Case, as well as any objections by creditors and parties in interest, as set forth in the Bidding Procedures described in Section 7.2.

7.2. Sale Motion, Bidding Procedures and Sale Milestones. Seller shall take the following actions, or shall cause them to occur, by the following deadlines (collectively, the “Sale Milestones”):

(a) Within five (5) days after the mutual execution of this Agreement, Seller will file a motion (the “Sale Motion”), with the Bankruptcy Court, in form and substance approved by Purchaser, for entry of an order, in form and substance approved by Purchaser (the “Bidding Procedures Order”), approving the transactions contemplated hereby and the

procedures for selling the Purchased Assets and bidding at the Auction (as hereinafter defined) in the form attached as **Exhibit B**, incorporated by reference herein (the “Bidding Procedures”).

(b) Subject to availability of the Bankruptcy Court, on or before such date that is fourteen (14) days after filing of the Sale Motion, Seller will obtain entry by the Court of the Bidding Procedures Order.

(c) Seller shall require that any and all Qualified Bids (as defined in the Bidding Procedures) shall be submitted on or before the date that is twenty-one (21) days from entry of the Bidding Procedures Order (the “Bid Deadline”).

(d) In accordance with the Bidding Procedures Order and the Bidding Procedures approved pursuant thereto, in the event a Qualified Bid, other than the Stalking Horse Bid (as defined in the Bidding Procedures), is timely received prior to the Bid Deadline, Seller will conduct an auction (the “Auction”) within five (5) days from the Bid Deadline.

(e) If Purchaser is the Successful Bidder (as defined in the Bidding Procedures), Seller shall use its best efforts to obtain entry by the Bankruptcy Court of the Sale Order, as soon as reasonably possible.

(f) If Purchaser is the Successful Bidder (as defined in the Bidding Procedures), then Seller shall use its best efforts to cause the Closing to occur on or before fifteen (15) days of the date the Bankruptcy Court enters a Final Order approving the sale, so long as no timely appeal is filed, or such other later date as is mutually agreed by Purchaser and Seller in a writing. Provided, however, that Purchaser shall have the right but not the obligation to close despite the filing of a notice of appeal.

7.3. Bidding Procedures and Stalking Horse Protections Are Material Consideration to Purchaser. Each and every provision of the Bidding Procedures and Stalking Horse Protections (as described in the Bidding Procedures), including Purchaser’s right to Breakup Fee (as defined below) and Seller’s compliance with the Sale Milestones, constitute material consideration to Purchaser under this Agreement. The Parties acknowledge that Purchaser would not have entered into this Agreement without each and every provision within the attached Bidding Procedures, including the Stalking Horse Protections described therein. In the event the Court does not approve, or materially modifies, the Bidding Procedures, or Seller fails to comply with the Sale Milestones, Purchaser may terminate this Agreement pursuant to Section 3.4 hereof.

7.4. Breakup Fee / Expense Reimbursement. In consideration for the Purchaser’s expenditure of time, energy and resources in performing due diligence and formulating its offer for the Purchased Assets, and the benefit to the estate created by the Purchaser’s willingness to submit an offer that will enable Seller’s competitive sale process, the Purchaser shall, subject to approval of the Bankruptcy Court, be entitled to a compensatory payment in an amount not to exceed Fifty Thousand Dollars (\$50,000) (the “Breakup Fee”) in the event the Purchaser is not the Successful Bidder. In the event Seller becomes obligated to pay the Breakup Fee, the Breakup Fee shall be payable: (a) from the proceeds of a closing on a competing bid for the Purchased Assets and (b) from the forfeited Good Faith Deposit of a Successful Bidder (as



defined in the Bidding Procedures) if: (i) such Successful Bidder is not the Purchaser, (ii) such Successful Bidder does not close on a transaction for the Purchased Assets and forfeits its Good Faith Deposit under the terms of the Successful Bidder's Asset Purchase Agreement, and (iii) the Purchaser is not the Backup Bidder (as defined in the Bidding Procedures); provided, however, that if an approved Breakup Fee is not fully paid pursuant to (a) and (b), above, nothing herein shall prohibit the Purchaser from otherwise seeking payment of the Breakup Fee in the Bankruptcy Case. Each Party acknowledges that the agreements contained in this Section 7.4 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement, and that any amounts payable pursuant to this Section 7.4 do not constitute a penalty.

**7.5. Bankruptcy Filings.**

(a) Without limiting Seller's obligations under Section 7.2, (i) Seller shall undertake its best efforts to obtain approval of the Bidding Procedures and entry of the Sale Order, and (ii) Seller shall timely take all actions required by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, including without limitation, the extension of any time period under Section 365 of the Bankruptcy Code, necessary to permit the Seller to consummate the transactions contemplated herein by the Outside Date.

(b) Seller shall comply with all notice requirements (i) of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure or (ii) imposed by the Sale Order, in each case, in connection with any pleading, notice or motion to be filed in connection herewith. Seller shall comply with all agreements, stipulations, and Orders of the Bankruptcy Court, now existing or hereafter arising.

(c) Purchaser reserves the right to approve the form of any Sale Order submitted to the Bankruptcy Court; provided, however, at a minimum, the Sale Order shall, among other things, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code:

(i) approve this Agreement and all related transactions;

(ii) find that the transfer of the Purchased Assets is legal, valid and enforceable and vests Purchaser with valid title to the Purchased Assets, free and clear of all Liens, Claims and Interests;

(iii) authorize Purchaser to file, if desired in its discretion, terminations or cancellations of any recorded Encumbrances (except for Permitted Encumbrances) against the Purchased Assets, including without limitation UCC-3 termination statements, and require secured parties or lienholders, where required by applicable non-bankruptcy Law or requested by Purchaser, to execute documents of release, cancellation or satisfaction prepared by Purchaser, to be filed by Purchaser to clear any Liens, Claims and Interests of record (other than Permitted Encumbrances) from the Purchased Assets;

(iv) find that Purchaser is a good faith purchaser of the Purchased Assets and entitled to the protections of Section 363(m) of the Bankruptcy Code;

(v) [Intentionally Omitted]

(vi) find that Purchaser has not assumed, and has no responsibility or liability for any of Seller's Liabilities, whether known or unknown as of the Closing, whether fixed or contingent, or whether existing at the time of or arising after the Closing, including successor or vicarious Liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, alter ego, successor or transferee liability, employment or labor Law, *de facto* merger, mere or substantial continuation, and, for the avoidance of doubt, Purchaser shall have no successor liability under any collective bargaining agreement, Contract with any union or under any pension plan or other employee plan, including without limitation the Benefit Plans, under which Seller or any affiliate thereof is or was an obligor or a party or any Environmental Liability or Excluded Environmental Liability;

(vii) provide for the immediate effect of the sale after the Closing;

(viii) waive the 14-day appeal periods staying the sale contemplated by this Agreement and the assumption and assignment of the Assigned Contracts pursuant to Fed. R. Bankr. P. 6004(h) and 6006(d), respectively;

(ix) in the event an appeal is taken or a stay pending appeal is requested, from the Sale Order, Seller shall immediately notify Purchaser thereof and shall provide Purchaser with a copy of the related notice of appeal or request for stay. Seller shall use its commercially reasonable efforts to defend such appeal or stay request at its own cost and expense and obtain an expedited resolution thereof; and

(x) specifically reserve the Bankruptcy Court's jurisdiction to enforce the Sale Order and this Agreement.

## ARTICLE 8 COVENANTS AND AGREEMENTS

8.1. Conduct of Business. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 and the Closing Date, except (1) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (2) as required by applicable Law, the Bankruptcy Court or the Bankruptcy Code, (3) as occurring as a result of Seller being in bankruptcy under the Bankruptcy Code, (4) as otherwise expressly contemplated by this Agreement or (5) with the prior written consent of Purchaser not to be unreasonably withheld, delayed or conditioned, Seller shall:

(a) comply with all applicable Laws in all material respects;

(b) not sell, pledge, assign, lease, license, or cause, permit or suffer the imposition of any Encumbrance on, or otherwise dispose of, any Purchased Asset or asset that would, but for its sale, assignment, or disposition, would have been a Purchased Asset; and

(c) not expend any insurance proceeds, condemnation awards or other

compensation in respect of loss or damage to any Purchased Asset or asset that would, but for such loss or damage, have been a Purchased Asset, to the extent occurring after the Agreement Date but prior to the Closing Date.

8.2. Pre-Closing Access to Information.

Seller agrees that, between the Agreement Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 3.4, Purchaser and its members, managers, employees, counsel, professionals, advisors, accountants, agents, contractors and other representatives (collectively, the “Representatives”) of Purchaser, shall be entitled to have, and Seller shall afford, such access to, and make such investigation and examination of all Seller documents, the Books and Records, the Purchased Assets, as Purchaser or any of Purchaser’s Representatives may reasonably request. Any such investigations and examinations shall be conducted during regular business hours and upon reasonable advance notice to Seller and shall not unreasonably interfere with the operations of Seller.

8.3. Further Agreements. From and after the Closing Date, Seller shall refer all inquiries with respect to the Purchased Assets to Purchaser, and Purchaser shall refer all inquiries with respect to the Excluded Assets to Seller.

8.4. Publicity. Except as required by applicable Law or for any filings by Seller or Purchaser with the Bankruptcy Court, Seller and Purchaser shall not (and shall cause their respective affiliates not to) issue any press release or make any public statement concerning this Agreement or the transactions contemplated hereby without the other party’s consent, in each case not to be unreasonably withheld, conditioned or delayed.

8.5. Notification of Certain Matters. During the period from the Agreement Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 and the Closing Date, Seller shall promptly give written notice to Purchaser of (a) the occurrence or nonoccurrence of any event or circumstance that has resulted in, or would be reasonably likely to cause, any of the conditions in Article 9 not to be satisfied or that otherwise has had or would be reasonably likely to have a Material Adverse Effect or (b) upon becoming aware of any facts, events or conditions allegedly constituting an Excluded Environmental Liability. Notwithstanding the foregoing, the delivery of any notice pursuant to this Article 8 shall not (i) be deemed to amend or supplement this Agreement, or (ii) be deemed to cure any breach of any representation, warranty, covenant or agreement or to satisfy any condition.

8.6. Casualty and Condemnation. Until the Closing, all Purchased Assets shall remain at the sole risk of Seller. If any of the Purchased Assets are materially damaged or destroyed by any event or casualty or condemned prior to the Closing, Seller shall provide Purchaser with written notice thereof and shall either (a) repair or replace such Purchased Assets to substantially the same condition as such Purchased Assets existed before such event or casualty, (b) transfer and assign, at the Closing, all insurance or condemnation proceeds received in respect of such Purchased Assets (together with an assignment of the right to receive any proceeds not yet paid)

to Purchaser, or (c) agree to a reduction in the Purchase Price commensurate with the value of such condemned, damaged or destroyed Purchased Assets.

8.7. No Successor. Nothing in this Agreement or any Ancillary Agreement shall create any implication, covenant, or commitment that Purchaser is a successor or successor-in-interest to Seller or the Business.

8.8. Further Assurances.

(a) Subject to the terms and conditions of this Agreement and applicable Law, Seller and Purchaser shall use their respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to ensure that the conditions precedent to the other party's obligations hereunder set forth in this Agreement are satisfied and to consummate and make effective the transactions contemplated by this Agreement as soon as practicable.

(b) Subject to the terms and conditions of this Agreement, Seller and Purchaser shall not take any action or refrain from taking any action the effect of which would be to materially delay or impede the ability of Seller or Purchaser to consummate the transactions contemplated by this Agreement unless taking such action or refraining from taking such action is required by applicable Law.

(c) Subject to the terms and conditions of this Agreement, at and following the Closing, each of the parties shall execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and cooperate and take such further actions, as may be reasonably necessary or appropriate to transfer and assign fully to Purchaser and its successors and assigns, all of the Purchased Assets, and to otherwise make effective the transactions contemplated hereby. Nothing in this Article 8 shall obligate any party hereto to waive any right or condition under this Agreement.

(d) The obligations of Seller pursuant to this Article 8 shall be subject to any orders, approvals or authorizations granted or required by the Bankruptcy Court or under the Bankruptcy Code (including in connection with the Bankruptcy Case), and Seller's obligations as a debtor in possession to comply with any order of the Bankruptcy Court, and Seller's duty to the estate and its creditors including the duty to seek and obtain the highest or otherwise best price for the Purchased Assets in compliance with, and not in a manner inconsistent with, the Sale Procedures, as approved by the Sale Procedures Order

## **ARTICLE 9**

### **CONDITIONS TO CLOSING**

9.1. Conditions Precedent to the Obligations of Purchaser and Seller. The respective obligations of each party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction or written waiver, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Seller and Purchaser, in whole or in part, to the extent permitted by applicable Law):

(a) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the transactions contemplated hereby shall have been issued, nor shall there be any statute, rule, regulation, order or other Law promulgated, enacted, entered, or enforced which makes the consummation of the transactions contemplated by this Agreement illegal, void or rescinded;

(b) all authorizations, consents, orders or approvals of, or declarations or filings with, or expirations of waiting periods imposed by, any Governmental Body shall have been filed, occurred or been obtained; and

(c) the Bankruptcy Court shall have entered the Sale Order on the docket by the Clerk of the Bankruptcy Court, and such Sale Order (i) shall be in full force and effect, (ii) shall not be the subject of any stay, and (iii) if an appeal has been filed that challenges the Purchaser's good faith under Section 363(m) of the Bankruptcy Code or asserts that the transactions contemplated by this Agreement are avoidable pursuant to, or otherwise violate, Section 363(n) of the Bankruptcy Code, such appeal shall have been resolved so that the Sale Order is a Final Order in all respects.

(d) The Seller shall have executed and delivered to Purchaser, in a form reasonably acceptable to Purchaser, a written and executed and complete Waiver of All Claims, by which the Seller releases and waives any and all claims or causes of action against the Purchaser, its directors, officers, employees, agents, attorneys, consultants, and similar parties ("Released Parties").

(e) The Bank shall have executed and delivered to Seller, in a form reasonably acceptable to Seller, a written and executed and complete Waiver of All Claims, by which the Bank releases and waives any and all claims or causes of action against the Seller.

(f) The Seller acknowledges Purchaser reserves and preserves all rights to proceed against other parties, other than the Seller, for any claims whether they arose before or after this Bankruptcy Case.

(g) The Seller shall have executed and delivered to Purchaser, in a form reasonably acceptable to Purchaser, and written and executed and complete Written Acknowledgement, whereby (a) any and all loan balances (to include principal, interest, costs and fees ("Pay Off Figures")) on any promissory notes loan documents, guarantees, security agreements, mortgages or similar documents ("Loan Agreements") are confirmed as true and correct; and (b) any all Loan Agreements are reaffirmed by reference.

9.2. Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Seller, in whole or in part, to the extent permitted by applicable Law):

(a) (i) each of the representations and warranties of Purchaser contained in Article 6 that does not contain an express materiality qualification must be true and correct in all material respects as of the Closing with the same effect as though made at and as of the Closing (except those representations and warranties that address matters only as of a specified date, which must be true and correct in all material respects as of that specified date); (ii) each of the representations and warranties of Purchaser contained in Article 6 that does contain an express materiality qualification must be true and correct in all respects as of the Closing with the same effect as though made at and as of the Closing (except those representations and warranties that address matters only as of a specified date, which must be true and correct in all respects as of that specified date); (iii) Purchaser shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date; and (iv) Purchaser shall have delivered to Seller at Closing a certificate signed by an authorized officer of Purchaser, in form and substance reasonably satisfactory to Seller, confirming satisfaction of the conditions in clauses (i), (ii), and (iii) above; and

(b) Purchaser shall have delivered, or caused to be delivered, to Seller (or at the direction of Seller) or Seller's counsel, as applicable, all of the items set forth in Section 3.3.

9.3. Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Purchaser, in whole or in part, to the extent permitted by applicable Law):

(a) (i) each of the representations and warranties of Seller contained in Article 5 that does not contain an express materiality qualification must be true and correct in all material respects as of the Closing with the same effect as though made at and as of the Closing (except those representations and warranties that address matters only as of a specified date, which must be true and correct in all material respects as of that specified date); (ii) each of the representations and warranties of Seller contained in Article 5 that does contain an express materiality qualification must be true and correct in all respects as of the Closing with the same effect as though made at and as of the Closing (except those representations and warranties that address matters only as of a specified date, which must be true and correct in all respects as of that specified date); and (iii) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Seller on or prior to the Closing Date; and

(b) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 3.2.

## **ARTICLE 10 MISCELLANEOUS**

10.1. Payment of Expenses. Except as otherwise provided in this Agreement, each party hereto shall bear its own costs and expenses (including investment advisory and legal fees



and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

10.2. Survival of Representations and Warranties; Survival of Post-Closing Covenants. All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms. All other covenants and agreements contained herein, and all representations and warranties contained herein or in any certificated deliveries hereunder, shall not survive the Closing and shall thereupon terminate, including any Actions for damages in respect of any breach thereof.

10.3. Entire Agreement; Amendments and Waivers. This Agreement represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by each party hereto, or in the case of a waiver, by the party against whom the waiver is to be effective. No action taken pursuant to this Agreement, including, without limitation, any investigation by or on behalf of any party shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

10.4. Counterparts. For the convenience of the parties hereto, this Agreement may be executed and delivered (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

10.5. Governing Law. This Agreement is to be governed by and construed in accordance with federal bankruptcy Law, to the extent applicable, and where state Law is implicated, the Laws of the State of Idaho shall govern, without giving effect to the choice of law principles thereof, including all matters of construction, validity and performance.

10.6. Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.7. Notices. Unless otherwise set forth herein, any notice, request, instruction or other document to be given, provided or furnished hereunder by any party to the other parties shall be in writing and shall be deemed duly given, provided or furnished (i) upon delivery, when delivered personally, (ii) one (1) Business Day after being sent by overnight courier or when sent

by facsimile or e-mail transmission (with confirmation of transmission), and (iii) three (3) Business Days after being sent by registered or certified mail, postage prepaid, as follows:

If to Seller:

Counsel for the Seller

Matthew Christensen  
3649 N. Lakeharbor Lane  
Boise, Idaho 83703  
Email: mtc@angstman.com

If to Purchaser:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Email: \_\_\_\_\_

with copies (which shall not constitute effective notice) to:

Randall A. Peterman  
Givens Pursley LLP  
601 W. Bannock St.  
Boise, ID 83702  
Email: [rap@givenspursley.com](mailto:rap@givenspursley.com)

or to such other Persons, addresses or facsimile numbers as may be designated in writing by the party to receive such notice.

10.8. Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to entry of the Sale Order, Seller, and inure to the benefit of the parties and its respective successors and permitted assigns, including, without limitation, any trustee or estate representative appointed in the Bankruptcy Case. No assignment of this Agreement or of any rights or obligations hereunder may be made by Seller or Purchaser (by operation of Law or otherwise) without the prior written consent of the other party hereto and any attempted assignment without the required consents shall be void.



10.9. Severability. If any term, condition or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to either party. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

10.10. Injunctive Relief. The parties agree that damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement by the parties, and, accordingly, Seller and Purchaser shall be entitled to injunctive relief with respect to any such breach, including, without limitation, specific performance of such covenants, promises or agreements or an order enjoining the other party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement by such party, all without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting bond. The rights set forth in this Section 10.10 shall be in addition to any other rights which Seller or Purchaser may have at Law or in equity pursuant to this Agreement.

10.11. Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein express or implied shall give or be construed to give to any Person, other than the parties hereto and such permitted assigns, any legal or equitable rights hereunder.

10.12. Certain Interpretations.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) All references in this Agreement to Articles, Sections, clauses, parts and Schedules shall be deemed to refer to Articles, Sections, clauses, parts and Schedules to this Agreement unless otherwise specified.

(ii) All Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

(iii) The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(iv) The words "include," "includes" and "including," when used herein shall be deemed in each case to be followed by the words "without limitation" (regardless of whether such words or similar words actually appear).

(v) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day.

(vi) Any reference in this Agreement to “\$” or “dollars” shall mean U.S. dollars.

(vii) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(viii) The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(b) The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

[Signature page follows.]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed and delivered by their respective duly authorized officers effective as of the Agreement Date.

**SELLER:**

GOMEZ RENTALS, LLC

By: \_\_\_\_\_  
Name: John J. Gomez  
Title: Sole Member

**PURCHASER:**

\_\_\_\_\_

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

## **Annex I Definitions**

“Ancillary Agreements” means, collectively, each certificate, agreement or document (other than this Agreement) that the parties are required to execute and/or deliver in connection with this Agreement.

“Bankruptcy Exceptions” means any applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors’ rights and remedies generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity).

“Books and Records” means all documents used by Seller in connection with, or relating to, the Purchased Assets, or the Business, including all files, data, reports, plans, mailing lists, supplier lists, customer lists, price lists, marketing information and procedures, advertising and promotional materials, equipment records, warranty information, records of operations, standard forms of documents, manuals of operations or business procedures and other similar procedures (including all discs, tapes and other media-storage data containing such information) with respect to the Business.

“Business” means the business conducted by the Seller on the Premises or at any other location at any and all times prior to the Closing Date.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in Boise, Idaho are authorized or required by applicable Law to be closed.

“Contract” means any written or oral contract, indenture, note, bond, lease, license, commitment or instrument or other agreement or arrangement by which the party in question is bound or by which any asset of such party is encumbered.

“Encumbrance” means any lien, encumbrance, claim (as defined in Section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interest, restraint on title, hypothecation, easement, right of way, encroachment, right of first refusal, preemptive right, judgment, conditional sale or other title retention agreement.

“Environmental, Health and Safety Requirements” means all applicable Laws, permits, licenses, decrees, directives, legally binding judicial and administrative orders, in each case, concerning or relating to workplace health and safety or to pollution, preservation, remediation or the protection of the environment or natural resources or the emission of greenhouse gases or any cleanup, removal, containment or other remediation or response actions or the handling, discharge, transportation, storage, Release, or treatment of Hazardous Materials.

“Environmental Liabilities” means any Liability, whether known or unknown, arising under or relating to any Environmental, Health and Safety Requirements or any Release of Hazardous Materials, whether based on negligence, strict liability or otherwise, including costs and liabilities for investigation, removal, remediation, restoration, abatement, monitoring,

personal injury, property damage, natural resource damages, court costs, and reasonable attorneys' fees.

"Excluded Environmental Liabilities" means all Environmental Liabilities with respect to the past or current operations (including through the Closing), properties or facilities of the Seller, including any Environmental Liabilities relating to or arising from the Business or the Purchased Assets with respect to (i) the Premises, or any other real property used or operated by Seller or any of its affiliates or their respective predecessors in connection with the Business prior to the Closing; (ii) the offsite disposal or arrangement for offsite disposal of Hazardous Materials or wastes by Seller or any of its affiliates or their respective predecessors in connection with the Business (including any such materials, substances or wastes produced or generated for offsite disposal prior to the Closing in connection with operations upon the Premises); (iii) any fines, penalties or other sanctions imposed by a Governmental Body in connection with any actual or alleged violation of or failure to comply with Environmental, Health and Safety Requirements by Seller or its affiliates, or otherwise with respect to the Business or the Purchased Assets prior to the Closing.

"Final Order" means an order, ruling or judgment of the Bankruptcy Court (or other court of competent jurisdiction) entered by the Clerk of the Bankruptcy Court on the docket in the Bankruptcy Case (or by the clerk of such other court of competent jurisdiction on the docket of such court) that: (i) is in full force and effect; (ii) has not been stayed; and (iii) is no longer subject to review, reversal, modification or amendment, by appeal or writ of certiorari.

"Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature or any self-regulatory agency, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Hazardous Materials" means any substance, chemical, material or waste which is or will foreseeably be prohibited, limited or regulated by any Governmental Body, including (i) any chemical, material, or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," "medical waste," "toxic waste," "toxic pollutants," "contaminants," "pollutants," or "toxic substances" under any applicable Environmental, Health and Safety Requirement due to its dangerous or deleterious properties, (ii) any oil, petroleum, petroleum product, or petroleum-derived substance, (iii) asbestos containing materials, (iv) urea formaldehyde and polychlorinated biphenyls.

"Hearing" means the hearing to be held by the Bankruptcy Court to consider the Sale Order and the approval of the transactions contemplated hereby.

"Laws" means all federal, state, local or foreign laws, statutes, common law, rules, codes, regulations or ordinances issued, promulgated, enforced or entered by, any and all Governmental Bodies, or other requirement or rule of law, including without limitation all Environmental, Health and Safety Requirements.

“Liability” means, as to any Person, any debt, adverse claim, liability, obligation, commitment, assessment, cost, expense, loss, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, including all costs and expenses relating thereto which, as to Seller, shall include all Environmental Liabilities and Excluded Environmental Liabilities.

“Liens, Claims and Interests” shall be broadly construed to mean (a) any and all Liabilities and any and all Encumbrances of any kind or nature which relate or bear upon the Purchased Assets, including but not limited to (a) any and all Liabilities and Encumbrances of Sandton Credit Solutions Master Fund III., L.P. as successor-in interest to Wells Fargo Bank, a national banking association, and (b) any and all Environmental Liabilities or Encumbrances of any kind or nature. The term “Liens, Claims and Interests” of any party in interest in the Purchased Assets shall, upon the transfer of the Purchased Assets, attach to the proceeds from the sale of the Purchased Assets.

“Material Adverse Effect” means any change, effect, condition, circumstance or development that, individually or in the aggregate, is, or could reasonably likely be, material and adverse to the Business, operations, assets, liabilities, prospects, customer or distributor relationships, ability to deliver products or services, results of operations or condition (financial or otherwise) of the party in question, or the ability of such party to perform its obligations under the Agreement or any Ancillary Agreements or to timely consummate the transactions contemplated under hereunder and thereunder, in each case regardless of duration or whether or not foreseeable or a development relating to a known condition or circumstance.

“Permitted Encumbrances” means (i) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law that are not violated by the existing improvements on such real property or the present use by Seller of such real property (but not restrictions arising from a violation of any such Law); (ii) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the ordinary course of business for sums not yet due and payable and that do not result from a breach, default or violation by Seller of any Contract or Law; (iii) statutory liens for current Taxes, assessments or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings or the making of appropriate demands, notices or filings; (iv) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects with respect to any real property that do not or would not reasonably be expected to, individually or in the aggregate, adversely affect the value, occupancy or use of such real property in any material respect; (v) Encumbrances that will be and are discharged or released either prior to, or simultaneously with the Closing; and (vi) such other Encumbrances, title exceptions or imperfections of title as Purchaser may approve in writing in its sole discretion.

“Person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

“Release” means any discharge, emission, spilling, leaking, pumping, pouring, injecting, dumping, burying, leaching, migrating, abandoning, discarding or disposing into or through the environment of any Hazardous Materials including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials.

“Sale Order” means the order of the Bankruptcy Court, in form and substance satisfactory to Purchaser, which shall, among other things, (i) authorize the sale of the Purchased Assets to Purchaser pursuant to this Agreement free and clear of all Liens, Claims and Interests (other than Permitted Encumbrances) pursuant to Section 363(f) of the Bankruptcy Code; (ii) authorize the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements and all other transactions and agreements contemplated hereby or thereby; (iii) find that Purchaser is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code; (iv) confirm that Purchaser is acquiring the Purchased Assets free and clear of all Liens, Claims and Interests (other than Permitted Encumbrances) pursuant to Section 363(f) of the Bankruptcy Code; (v) retain jurisdiction of the Bankruptcy Court to interpret and enforce the terms and provisions of the Sale Order and this Agreement; and (vi) waives the fourteen-day stay of the Sale Order provided in Fed. R. Bankr. P. 6004(h) and 6006(d), making the Sale Order immediately effective.

“Tax” and “Taxes” mean (i) any and all federal, state, local or foreign taxes, charges, fees, imposts, levies or other assessments, including all income, gross income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, production, premium, disability, worker’s compensation, utility, windfall profit, environmental, registration, alternative, add-on minimum, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, in each case imposed by any Governmental Body; (ii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Body in connection with any item described in clause (i); and (iii) any Liability in respect of any items described in clauses (i) and/or (ii) payable by reason of Contract, assumption, transferee liability, operation of Law, Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise.



**EXHIBIT A-1**  
**Twin Falls Property Legal Description**  
Twin Falls County, Idaho

**PARCEL NO. 1**

Lot 1 **EXCEPT** the North 15 feet thereof, and all of Lots 7, 8, and 9, Block 1, **WOOD'S ADDITION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 4 of Plats, page 13, records of Twin Falls County, Idaho; **AND** a strip of land 25 feet in width and 151.71 feet in length being that portion of vacated Austin Avenue adjacent to Lots 7, 8, and 9, Block 1, of said Wood's Addition.

**AND**

Lots 1 and 2 in Block 2, and a strip of land 25 feet in width and 101.16 feet in length being that portion of vacated Austin Avenue adjacent to Lots 1 and 2, Block 2, all in **WOOD'S ADDITION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 4 of Plats, page 13, records of Twin Falls County, Idaho.

**AND**

Lot 3, Block 2, **WOOD'S ADDITION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 4 of Plats, page 13, records of Twin Falls County, Idaho; and a strip of land 25 feet in width and 50.58 feet in length, being that portion of vacated Austin Avenue adjacent to Lot 3, Block 2 of said Wood's Addition.

**PARCEL NO. 2**

Lots 5, 6, 10, 11, and 12, Block 1; and Lots 4, 5, 6, Block 2, **WOOD'S ADDITION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 4 of Plats, page 13, records of Twin Falls County, Idaho.

**AND**

That portion of Austin Avenue, now vacated, lying between Blocks 1 and 2 of said Wood's Addition more particularly described as:

BEGINNING at the Southeast corner of Lot 12, Block 1, of Wood's Addition;

THENCE Westerly 151.71 feet along the South boundary of Lots 10, 11, and 12 in said Block 1, to the Southwest corner of said Lot 10;

THENCE South 50 feet to the Northwest corner of Lot 4, Block 2, of said Wood's Addition;

THENCE Easterly 151.74 feet along the North boundary of Lots 4, 5, 6, Block 2, to the Northeast corner of said Lot 6;

THENCE North 50 feet to the POINT OF BEGINNING.

**AND**

That part of Lot 26, **DELONG ADDITION**, Twin Falls County, Idaho, according to the official plat thereof recorded in Book 1 of Plats, page 57, records of Twin Falls County, Idaho, described as:

BEGINNING at a point on the North line, 110 feet Westerly from the Northeast corner of the West half of Lot 26;

THENCE Southerly, parallel with the West line of said Lot, a distance of 299.55 feet to a point;

THENCE Easterly to a point 164.21 feet East of said West line a distance of 298.675 feet Southerly from the North line of said Lot;

THENCE Southerly to a point on the South line of said Lot 26, which is 164.275 feet Easterly from the Southwest corner thereof;

THENCE Westerly along the South line of said Lot 26, a distance of 14.275 feet to a point;

THENCE Northerly, parallel with the West line of said Lot, a distance of 161.967 feet to a point;

THENCE Westerly a distance of 150 feet to a point on the West line of said Lot 26 which is 162.275 feet North of the Southwest corner of said Lot;

THENCE Northerly along the West line of said Lot to the Northwest corner thereof;

THENCE Easterly along the North line of said Lot 26 to the POINT OF BEGINNING.



**EXCEPT**

A strip of land 10 feet wide lying situate between two lines 30 and 40 feet distance Southerly from and parallel to the centerline of Highway as surveyed and shown on the official plat of the Old Oregon Trail F-2361(1) Highway Survey on file in the office of the Department of Highways of the State of Idaho, and lying over and across Lots 5 and 6, Block 1, **WOOD'S ADDITION** to Twin Falls, Idaho, and the West 54.15 feet to the West half of Lot 26, DeLong Addition to Twin Falls, Idaho, and being the North 10 feet thereof exclusive of the 5 feet previously deeded to the City of Twin Falls for street purposes, all in Twin Falls, Twin Falls County, Idaho.

**EXHIBIT A-2**

**North Dakota Property Legal Description**

McKenzie County, North Dakota

Township 149 North, Range 99 West:

Section 12: SE1/4SE1/4

Subject to all easements, recorded and unrecorded.

Excepting and Reserving unto said Edward I. Schilke and Charlotte A. Schilke, husband and wife, as tenants in common, their heirs, personal representatives and assigns, all of the oil, gas, related hydrocarbons, uranium and other fissionable ores and all minerals of any nature whatsoever, as defined and indicated by Section 47-10-25 of the North Dakota Century Code as amended July 1, 1983.

**EXHIBIT B**  
**Bidding Procedures**  
(Attached)

[see Exhibit D to the Motion]

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

|                     |   |                        |
|---------------------|---|------------------------|
| In re:              | ) |                        |
|                     | ) | Case No.: 18-40503-JDP |
| GOMEZ RENTALS, LLC, | ) |                        |
|                     | ) | (Chapter 11)           |
| Debtor.             | ) |                        |
| _____               | ) |                        |

**ORDER (I) APPROVING THE FORM OF STALKING HORSE PURCHASE  
AGREEMENT, (II) SALE PROCEDURES; (III) NOTICE PROCEDURES, AND (IV)  
GRANTING OTHER RELATED RELIEF**

This matter came before the Court on \_\_\_\_\_, upon the motion [ECF Doc #\_\_]  
(sometimes referred to herein as the “Sale Motion”) filed by Gomez Rentals, LLC, as debtor and  
debtor in possession (the “Debtor”), requesting, among other things, entry of this order (the “Sale  
Procedures Order” or this “Order”).

This Court having considered the motion and the exhibits attached thereto; an interim  
hearing on the motion having been held before the Court to consider entry of this Sale  
Procedures Order, appearances being noted on the record; all objections to this Order were  
resolved, overruled, or withdrawn; and after due deliberation and consideration and sufficient  
cause appear therefor,

IT IS HEREBY FOUND AND CONCLUDED that:

A. This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334.  
Consideration of the sale motion constitutes a core proceeding within the meaning of 28 USC §  
157(b)(2). Venue is proper under 28 USC § 1408.

B. Due, sufficient, and adequate notice of the relief requested in the Sale Motion and  
granted herein, has been given to parties in interest.

C. In the Sale Motion and supporting papers, the Debtor has established good and sufficient reasons for (1) approving the form of the Purchase Agreement by and between the Debtor and Sandton Credit Solutions Master Fund III., L.P. as successor-in interest to Wells Fargo Bank, a national banking association (“Purchaser”) (the “Stalking Horse APA”), (2) approving and authorizing payment of a breakup fee to Purchaser pursuant and subject to the terms of the Stalking Horse APA, (3) approving the Sale Procedures attached to the Motion as **Exhibit B**, (4) fixing notice procedures and approving forms of notice, and (5) granting the other relief provided for herein. The Debtor has engaged in arm’s-length negotiations with Purchaser concerning the terms of the Stalking Horse APA. The proposed Sale Procedures, notice procedures and other relief granted in this Order are reasonable under the circumstances and in the best interests of the above bankruptcy estate, its creditors and other parties in interest.

D. The Sale Procedures are reasonably calculated to produce an arm’s-length bidding process for obtaining the highest and best bid available from a good faith purchaser. Any Successful Bidder (as defined below) that complies in good faith with the Sale Procedures shall be deemed by the Court at the Sale Hearing (as defined below) to be a good faith purchaser within the meaning of Bankruptcy Code § 363(m) and entitled to all of the protections thereof.

E. If Purchaser becomes entitled to the Breakup Fee pursuant to and as defined in the Stalking Horse APA, payment of the Break-Up Fee shall constitute (i) an actual and necessary cost and expense of preserving the Debtor’s estate, within the meaning of section 503(b) of the Bankruptcy Code, (ii) of substantial benefit to the Debtor’s estate, (iii) reasonable and appropriate considering, among other things, the size and nature of the proposed sale, the efforts that have been and will be expended by Purchaser notwithstanding that the proposed sale is subject to higher or better offers for the assets to be sold pursuant to the Stalking Horse APA (the

“Assets); (iv) necessary to ensure that Purchaser will continue to pursue its proposed acquisition of the Assets. Absent further order of this Court, no Qualified Bidder (as defined below) other than the Purchaser shall be entitled to the Breakup Fee.

F. The bid procedures and overbid protections afforded to Purchaser under the Stalking Horse APA and Sale Procedures are reasonable and appropriate and represent the best method for maximizing the return for the Assets. Based upon the foregoing findings and conclusions, and upon the record made before this Court at the interim hearing on the sale motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The form of the Stalking Horse APA is approved and shall serve as the template for any competing bid pursuant to which the bidder proposes to effectuate a purchase of the Assets (each, a “Competing APA”). A bid also must include a copy of a redline (a “Redline APA”) reflecting all changes to the Stalking Horse APA requested by the bidder, including those related to purchase price and to remove any provisions that apply only to the Purchaser.

2. The Sale Procedures are hereby approved and shall govern all bids and sale procedures relating to the sale contemplated by the motion (the “Sale”).

3. The notice of the Sale Hearing (the “Sale Notice”) is hereby approved as reasonably calculated to provide creditors and other parties in interest with proper notice of the Sale and Sale Procedures.

4. The Notice described in paragraph 3 above shall be good and sufficient, and no other or further notices shall be required, if given as follows:

- a. The Debtor files with the Court and serves through the Court's ECF system copies of the Sale Motion and the Sale Notice on all parties appearing electronically in this case, including without limitation, the United States Trustee;
- b. The Debtor serves, within \_\_\_\_\_ days after entry of this Order (the "Mailing Deadline"), by first-class mail, postage prepaid, or other method reasonably calculated to provide notice, copies of the Sale Notice on (i) all parties known to the Debtor who previously expressed an interest in purchasing the Debtor's assets, and (ii) each person identified on the master mailing list kept in this case, including without limitation all known creditors, and all persons requesting special notice under Bankruptcy Rule 2002(i); provided, them in the Purchase Agreement, however, that the Debtor shall not be required to separately mail copies of the Sale Notice to any party that receives electronic notice through the Court's ECF system;

5. The failure of any objecting person or entity to timely file a written objection to the Sale Motion shall be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, to the consummation and performance of the Sale, or the assumption and assignment of any executory contract or unexpired lease.

6. The Breakup Fee is approved pursuant to the terms of the Stalking Horse APA. Purchase shall be entitled to payment of the Breakup Fee in the event it is not declared the Successful Bidder under the Sale Procedures, regardless of whether the party declared the Successful Bidder closes on the Sale. The Breakup Fee will (i) reimburse Purchaser's reasonable and documented out-of-pocket costs, fees and expenses, including legal, financial, advisory, accounting, and other similar costs, fees and expenses, incurred, in each case, in connection with

the Stalking Horse APA and the transactions contemplated thereby. and (ii) recognize the economic benefit to the estate provided by Purchaser's submission of its offer, which is serving as the foundational bid for a sale process that is intended to maximize recovery for the creditors by generating the highest or otherwise best price available for the Assets.

7. The Debtor is authorized to take all actions necessary to effectuate the relief granted by this Order.

8. This Order shall be effective and enforceable immediately upon entry. Time is of the essence in obtaining the highest and best value for the bankruptcy estate's assets.

9. The provisions of this Order are non-severable and mutually dependent.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

//end of text//

Submitted by Chad R. Moody, Attorney for Debtor

APPROVED AS TO FORM AND CONTENT

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Randall A. Peterman  
Attorneys for Sandton Credit Solutions Master Fund III., L.P.



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO

In re: )  
 ) Case No.: 18-40503-JDP  
GOMEZ RENTALS, LLC, )  
 ) (Chapter 11)  
Debtor. )  
\_\_\_\_\_ )

**ORDER (I) APPROVING THE SALE OF CERTAIN ASSETS; (II) THE ASSIGNMENT  
AND ASSUMPTION OF LEASES; AND (III) GRANTING RELATED RELIEF**

Upon the Motion (the “Motion”)<sup>1</sup> of Gomez Rentals, LLC, as debtor and debtor in possession (“Debtor”), pursuant to Sections 105(a), 363(b), and 365 of title 11 of the United States Code (11 U.S.C. §§ 101, *et seq.*) (the “Bankruptcy Code”) and Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an Order authorizing and approving (I) the Sale of the Purchased Assets, free and clear of any and all pledges, options, charges, liabilities, liens, claims, encumbrances, or interests each as more fully described in the Purchase Agreement; (II) the assumption and assignment of the Assumed Leases, each as more fully described in the Asset Purchase Agreement (“Agreement” or “Stalking Horse APA”), but only as allowed under the Agreement; and (III) granting other related relief; and the Court having entered an order approving the Sale Procedures in connection with the sale [Doc. No. \_\_\_\_] (the “Sale Procedures Order”); and the Court having held a hearing on \_\_\_\_\_ (the “Sale Hearing”) to consider approval of the Sale of the Purchased Assets (as well as the transfer, assumption and assignment of the Assigned Contracts) to Sandton Credit Solutions Master Fund III., L.P. (“Sandton”) as successor-in

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<sup>1</sup> Motion for Orders Pursuant To 11 U.S.C. §§ 105(A) And 363(B) And Fed. R. Bankr. P.2002, 6004, And 9014 (I) Approving (A) Sale Procedures And (B) The Form And Manner Of Notice Of The Sale Of Certain Assets; (II) Approving The Sale Of Certain Assets; And (III) Granting Related Relief. (the “Motion”) [Doc. No. \_\_\_\_], Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or in the Asset Purchase Agreement appended thereto.

interest to Wells Fargo Bank, a national banking association (the “Purchaser”) pursuant to the terms and conditions of the Asset Purchase Agreement by and between Debtor and the Purchaser; and the Court having reviewed and considered the relief sought in the Motion, the Asset Purchase Agreement, all Objections, and the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and all parties in interest having been heard or having had the opportunity to be heard regarding the Sale and the relief requested in the Motion or granted pursuant to this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances of this Chapter 7 case and in accordance with the Sale Procedures Order; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of Debtor’s estate, its creditors and all other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon, it is hereby:

**FOUND, CONCLUDED AND DETERMINED THAT: <sup>2</sup>**

A. This Court has jurisdiction to hear and consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. The legal predicates for the relief requested in the Motion are Bankruptcy Code Sections 105, 363, and 365. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004 and 9014.

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<sup>2</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. This Order is the Sale Order contemplated by the Asset Purchase Agreement.

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

D. As evidenced by the certificates of service filed with this Court: (i) due, proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the transfer of the Purchased Assets, and a substantially similar form of this Order, have been provided in accordance with Bankruptcy Code Sections 102(1), 105(a), 363 and 365 and Bankruptcy Rules 2002, 6004, 6006 9007 and 9014; (ii) such notice was good, sufficient and appropriate under the circumstances, and reasonably calculated to reach and apprise all known holders of Interests (as hereinafter defined), and all other parties in interest about the Motion, the Sale Hearing, the transfer of the Purchased Assets, and the other relief granted herein; and (iii) no other or further notice of the Motion, the Sale Hearing, the transfer of the Purchased Assets, and the other relief granted herein is or shall be required.

E. A reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein has been afforded to all known interested persons and entities, including: (i) all of Debtor's creditors in this proceeding or whose claims are listed by Debtor in its schedules of liabilities; (ii) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in any of the Debtor's assets; (iii) any party to the Assumed Contracts; (iv) the Office of the United States Trustee for the District of Idaho; and (v) any other party entitled to notice pursuant to Bankruptcy Rule 2002.

F. As demonstrated by the testimony and/or other evidence proffered or adduced at the Sale Hearing or submitted by affidavit or declaration before the Sale Hearing, (1) Debtor has appropriately marketed the Purchased Assets under the circumstances; and (2) a full, fair and

reasonable opportunity has been given to any interested party to make a higher or better offer for the Purchased Assets.

G. The Sale Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Purchased Assets. Debtor conducted the sale process without collusion and in accordance with the Sale Procedures.

H. ALTERNATIVE LANGUAGE 1: 1. No Qualified Bids other than the Purchaser's Bid were submitted before the Bid deadline. Accordingly, no Auction was held.  
OR 2. One or more Qualified Bids other than the Purchaser's Bid were timely tendered, and on \_\_\_\_\_, \_\_\_\_\_, an Auction was conducted in accordance with the Sale Procedures Order. At the close of the Auction, Debtor determined that Purchaser had submitted the highest or best Bid.

I. The Purchaser (identified as -----) is the Successful Bidder, and the Asset Purchase Agreement is the Successful Bid, for the Purchased Assets in accordance with the Sale Procedures Order. The Purchaser has complied in all respects with the Sale Procedures Order and all other applicable orders of this Court in negotiation and entering into the Asset Purchase Agreement, and the Sale and the Asset Purchase Agreement likewise comply with the Sale Procedures Order and all other applicable orders of this Court.

J. The Purchaser (i) is purchasing the Purchased Assets in good faith and (ii) is a good faith purchaser for value within the meaning of section 363(m) of the Bankruptcy Code and therefore is entitled to the full protections of that provision and any other applicable or similar bankruptcy or non-bankruptcy law. The Purchaser otherwise has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (a) the

Purchaser recognized that Debtor was free to deal with any other party interested in acquiring the Purchased Assets; (b) the Purchaser was subjected to a bidding and auction process designed to solicit competitive bids; (c) all payments to be made by the Purchaser in connection with the Asset Purchase Agreement have been disclosed; (d) the Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction; and (e) the Asset Purchase Agreement was negotiated, proposed and entered into in good faith and from arm's-length bargaining positions with the parties represented by competent counsel of their choosing.

K. The total consideration provided by the Purchaser pursuant to the Asset Purchase Agreement, including the Purchase Price, is the highest or otherwise best offer received by Debtor, and the Purchase Price constitutes fair and adequate consideration under the Bankruptcy Code and under the laws of the United States, any state, territory or possession thereof or the District of Columbia (including the Uniform Fraudulent Transfer Act, Uniform Voidable Transactions Act, the Uniform Fraudulent Conveyance Act, as adopted, and all other applicable law). The Asset Purchase Agreement was not entered into, and neither Debtor nor the Purchaser has entered into the Asset Purchase Agreement or proposes to consummate the Sale, for the purpose of hindering, delaying or defrauding Debtor's present or future creditors.

L. Subject to the entry of this Order, Debtor has full power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby, and the Sale has been duly and validly authorized. No consents or approvals other than those provided for in the Asset Purchase Agreement are required for Debtor to consummate the Sale described therein.

M. The transfer of the Purchased Assets to the Purchaser shall be a legal, valid and effective transfer of the Purchased Assets and shall vest the Purchaser at Closing with all right, title and interest of Debtor in and to the Purchased Assets, free and clear of all claims (as

defined in Section 101(5) of the Bankruptcy Code, “Claims”), liens (as defined in Section 101(37) of the Bankruptcy Code, “Liens”), encumbrances and all other interests (collectively including each of the foregoing, “Interests”), except for the liabilities and leases assumed by Purchaser under the Asset Purchase Agreement (as defined in the Asset Purchase Agreement, the “Assumed Contracts”). Other than the Assumed Contracts, the Purchaser (and its successors and assigns) shall have no obligations with respect to any liabilities of Debtor. The transfer of the Purchased Assets to the Purchaser shall vest the Purchaser with valid, good and marketable title to the Purchased Assets.

N. The liens of Farmer’s National Bank, Edward and Charlotte Schilke, Twin Falls County Treasurer, and Sandton, or any other lien, claim or interest (including environmental liabilities or liens) shall attach to the sales proceeds in the order of the priority that existed at the time of the sale.

O. Debtor may sell the Purchased Assets to the Purchaser free and clear of all liens, claims and interests (including environmental liabilities or liens) (except Permitted Encumbrances) in accordance with, and to the extent permitted by, section 363(f) of the Bankruptcy Code because, in each case, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests against Debtor, its estate or any of the Purchased Assets who did not object, or who withdrew their objections, to the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code.

P. The Purchaser would not have entered into the Asset Purchase Agreement, would not have offered to pay the consideration contemplated in the Asset Purchase Agreement, and would not consummate the Sale, thus adversely affecting Debtor’s estate, its creditors and other

parties in interest, if the Sale of the Purchased Assets was not free and clear of all Interests, less and except the Assumed Contracts.

Q. The Purchaser has provided adequate assurance of future performance of and under the Assigned Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. The Purchaser's promise to perform the obligations under the Assigned Contracts after the Closing shall constitute adequate assurance of future performance under the Assigned Contracts being assigned to it within the meanings of sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

R. The Assumption and Assignment Notice, and any amendment(s) thereto, identifying all Assigned Contracts that may be assumed and assigned or otherwise transferred to the Purchaser was served upon all non-Debtor counterparties to such Assigned Contracts identified therein as per the affidavits or certificates of service filed in these cases. Such notice was good, sufficient and appropriate under the circumstances and no other or further notice need be provided in connection with the transfer, assumption and assignment of the Assigned Contracts and fixing of cure amounts related thereto.

S. To the extent any Assigned Contract is not an executory contract or unexpired lease subject to section 365 of the Bankruptcy Code, Debtor is authorized to transfer all of Debtor's rights and obligations under such Assigned Contract and the associated Purchased Assets to the Purchaser, pursuant to section 363 of the Bankruptcy Code.

T. The Assigned Contracts are transferrable and/or assignable notwithstanding any provisions contained therein to the contrary. Failure to object to the transfer, assumption and assignment of an Assigned Contract is deemed consent to the transfer, assumption and assignment.

U. Neither the Purchaser nor any of its affiliates, officers, directors, managers, shareholders, or any of their respective successors or assigns is an “insider” of Debtor, as that term is defined in section 101(31) of the Bankruptcy Code.

V. The Asset Purchase Agreement, including the form and total consideration to be realized by Debtor’s estate under the Asset Purchase Agreement, (i) constitutes the highest and best offer received by Debtor for the Purchased Assets; (ii) is fair and reasonable; and (iii) is in the best interests of Debtor’s estate, its creditors and all other parties in interest.

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

X. The Asset Purchase Agreement is a valid and binding contract between the Debtor and the Purchaser, which is and shall be enforceable against the Purchaser and Debtor according to its terms.

Y. Debtor has articulated good and sound business reasons for waiving the stay otherwise imposed by Bankruptcy Rules 6004 and 6006.

**THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:**

1. The Motion is granted as set forth herein.
2. For the reasons stated on the record at the Sale Hearing, any objections to the Motion, or any other relief granted in this Order, to the extent not resolved, waived, withdrawn or previously overruled, and all reservations of rights included therein, are hereby overruled on the merits and denied, with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief granted herein.



**Approval of Asset Purchase Agreement and Sale**

3. The Asset Purchase Agreement and all other documents contemplated hereby, all of the terms and conditions thereof, and the consummation of the Sale and any associated transactions therein, are authorized and approved in all respects. The failure to specifically include any particular provision of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, with it being this Court's intention that the Asset Purchase Agreement be authorized and approved in its entirety.

4. Pursuant to Bankruptcy Code Sections 105, 363 and 365, as well as the Asset Purchase Agreement, the Sale is hereby approved, and Debtor is authorized to enter into and perform the Asset Purchase Agreement. Pursuant to Bankruptcy Code Sections 105, 363 and 365, each of Debtor and the Purchaser is hereby authorized and directed to take any and all actions necessary or appropriate to: (i) consummate the Sale and the closing of the Sale in accordance with the Motion, the Asset Purchase Agreement and this Order; and (ii) perform, consummate, implement and close fully the Asset Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement. Debtor and the Purchaser shall have no obligation to close the Sale except as is contemplated by and provided for, and subject to the conditions set forth in, the Asset Purchase Agreement.

5. The Sale of the Purchased Assets to the Purchaser under the Asset Purchase Agreement constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and laws of all applicable jurisdictions, including, without limitation, the laws of each jurisdiction in which the Purchased Assets are located.

6. On the Closing Date, this Order shall be construed as, and shall for any and all purposes constitute: (a) a full and complete general assignment, conveyance and transfer of all of Debtor's estate's rights, title and interest in and to the Purchased Assets, and (b) a deed and a bill of sale transferring valid, good and marketable title in such Purchased Assets to the Purchaser on the Closing Date pursuant to the terms of the Asset Purchase Agreement, free and clear of any and all Interests, other than the Assumed Contracts.

7. The transfer of the Purchased Assets to the Purchaser shall vest the Purchaser with all right, title and interest of Debtor in and to the Purchased Assets, free and clear of all interests of any kind or nature whatsoever other than the Assumed Contracts and Permitted Encumbrances, with all such Interests attaching to the net cash proceeds of the sale in the order of their priority, with the same validity, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses Debtor or Debtor's estate may possess with respect thereto. All holders of Interests fall within one or more subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their interests attach to the net proceeds received by Debtor.

8. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Purchased Assets shall be transferred to the Purchaser, and upon the Closing the Purchaser shall take Debtor's title to and possession of the Purchased Assets immediately upon consummation of the Asset Purchase Agreement.

9. Upon the Closing of the Sale, each of Debtor's creditors and any other holder of an Interest is authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests in the Purchased Assets, if any, as such Interests may have been recorded or may otherwise exist.

10. If any person or entity that has filed financing statements, mortgages, lis pendens or other documents or agreements evidencing Interests in the Purchased Assets (except for Permitted Encumbrances) and has not delivered to Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction or releases of all Interests that the person or entity has with respect to the Purchased Assets, then: (a) the Purchaser is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets, and (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all Interests in the Purchased Assets of any kind or nature whatsoever. Each governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement.

11. This Order: (a) shall be effective as a determination that, at Closing, all Interests of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing have been unconditionally released, discharged and terminated as to the Purchased Assets being sold (but not, for the avoidance of doubt, released, discharged or terminated with respect to the net proceeds of those Purchased Assets), and that the conveyances described herein have been effected, and (b) shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or

insure any title or state of title in or to any of the Purchased Assets.

12. Except for the Assumed Contracts and Permitted Encumbrances, the sale, transfer, assignment and delivery of the Purchased Assets shall not be subject to any Interests, and Interests of any kind or nature whatsoever shall remain with, and continue to be obligations of, Debtor and its estate. Except for Permitted Encumbrances, all persons holding Interests against the Debtor or the Purchased Assets of any kind or nature whatsoever hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing such Interests of any kind or nature whatsoever against the Purchaser or its officers, directors, shareholders or partners, its property or its successors and assigns or the Purchased Assets, as an alleged successor, to the greatest extent allowable by applicable law, or otherwise, with respect to any Interest of any kind or nature whatsoever such person or entity had. All liens avoided herein shall attach to the proceeds of the sale

13. The Purchaser shall have no liability or responsibility for any liability or other obligation of Debtor or Debtor's estate arising under or related to the Purchased Assets. Without limiting the generality of the foregoing and except as otherwise specifically provided in the Asset Purchase Agreement, the Purchaser shall not be liable for any claims against Debtor or any of its predecessors or affiliates for any obligations of Debtor arising prior to the Closing.

14. None of the Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by any of Debtor, Debtor's estate, or any of their predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the Purchase Agreement, or the entry into and consummation of the Sale of the Purchased Assets, except as expressly provided in the Purchase Agreement and this Order.

15. Any person or entity that is currently, or on the Closing Date may be, in possession of some or all of the Purchased Assets is hereby directed to surrender possession of such Purchased Assets either to (a) Debtor before the Closing or (b) the Purchaser or its designee upon or after the Closing.

**Transfer of Assigned Contracts**

16. Debtor is hereby authorized in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code, as applicable, to (a) transfer, assume, assign and sell to the Purchaser, effective and conditioned upon the Closing, the Assigned Contracts, and (b) execute and deliver to Purchaser such documents or other instruments as the Purchaser deems necessary or appropriate to assign and transfer the Assigned Contracts to the Purchaser.

17. With respect to the Assigned Contracts:

a. the Assigned Contracts shall be transferred and assigned to and shall remain in full force and effect for the benefit of the Purchaser and its successors, assigns and designees, notwithstanding any provision in any such Assigned Contracts (including those of the type described in sections 365(b)(2) and 365(f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, except as expressly otherwise provided in the Purchase Agreement, Debtor's estate shall be relieved from any further liability with respect to Assigned Contracts and the associated Purchased Assets after such assumption by Debtor and assignment and sale to the Purchaser at Closing;

b. Purchaser may assume each of the Assigned Contracts, to the extent such Assigned Contracts are executory contracts or unexpired leases, in accordance with section 365 of the Bankruptcy Code at the Closing,

c. Debtor may assign and sell (at the Closing) each of the Assigned Contracts, regardless of whether any such Assigned Contract is an executory contract or unexpired lease, in accordance with sections 363 and/or 365 of the Bankruptcy Code, as applicable, and any provisions in any Assigned Contracts that prohibit or condition the assignment of such Assigned Contracts or allow the party to such Assigned Contracts to terminate, recapture, set off (if not exercised pre-petition), impose any penalty, condition renewal or extension or modify any term or condition upon the assignment of such Assigned Contracts, constitute unenforceable anti-assignment provisions, which are void and of no force and effect;

d. all other requirements and conditions under sections 363 and 365, to the extent applicable, of the Bankruptcy Code for the assumption by Debtor and sale and assignment to the Purchaser of each of the Assigned Contracts (including without limitation, the requirements under Section 365(c)(1)) have been satisfied; and

e. upon Closing, if any, in accordance with sections 363 and 365 of the Bankruptcy Code, as applicable, the Purchaser shall be fully and irrevocably vested in and with all of Debtor's right, title and interest under each of the Assigned Contracts.

18. Upon Debtor's transfer and assignment of the Assigned Contracts under this Order, no default shall exist under any of the Assigned Contracts and no counterparty thereto shall be permitted to declare or enforce against the Purchaser a default by Debtor or Debtor's estate or otherwise take any action against the Purchaser as a result thereof. All defaults or other obligations of Debtor under the Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code), are deemed satisfied with respect to each Assigned Contract, and which were satisfied, or shall be satisfied as soon as practicable, by the Purchaser or Debtor

(from sale proceeds), as the case may be, as provided in, and subject to, the Asset Purchase Agreement.

19. Each non-Debtor party to an Assigned Contract is hereby forever barred, estopped and permanently enjoined from asserting against the Purchaser or its successors, assigns or designees, or the Purchased Assets, any default arising prior to or existing as of the Closing, any indemnification claims or any counterclaim, setoff (if not exercised pre-petition) or any other Claim asserted or assertable against Debtor. The validity of such assumption, assignment, transfer and sale of the Assigned Contract shall not be affected by the pendency or resolution of any dispute between Debtor and any non-Debtor party to an Assigned Contract.

20. The failure of Debtor or the Purchaser to enforce at any time one or more terms or conditions of any of the Assigned Contracts shall not be a waiver of such terms or conditions, or of Debtor's and the Purchaser's rights to enforce every term and condition of the Assigned Contracts.

#### **Additional Provisions**

21. The consideration provided by the Purchaser for the Purchased Assets under the Asset Purchase Agreement, including the Purchase Price, is the highest or otherwise best offer received by Debtor, and the Purchase Price constitutes fair and adequate consideration under the Bankruptcy Code and other applicable law and may not be avoided.

22. The transactions evidenced by the Purchased Agreement, as authorized pursuant to this Order, are undertaken by the Purchaser without collusion and in good faith, in accordance with Bankruptcy Code sections 363(m) and 363(n). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the transactions shall not affect the validity of the sale and transfer of the Purchased Assets to the Purchaser, unless such

authorization is duly stayed pending such appeal. The Purchaser is a good faith purchaser of the Purchased Assets and is entitled to all of the benefits and protections afforded by Bankruptcy Code section 363(m) and other applicable law.

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

24. The failure specifically to include any particular provisions of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Asset Purchase Agreement is hereby authorized and approved in its entirety, as it may be amended or supplemented in accordance with its terms and this Order.

25. To the extent this Order is inconsistent with any prior order or pleading filed in this Chapter 11 case related to the Motion, the terms of this Order shall govern. To the extent there is an inconsistency between the terms of this Order and the terms of the Asset Purchase Agreement, the terms of this Order shall govern.

26. This Order and the Asset Purchase Agreement: (a) shall be binding in all respects upon all creditors of and holders of equity interests in Debtor (whether known or unknown), any holders of Interests or Permitted Encumbrances, all non-Debtor parties to any of the Assigned Contracts, the Purchaser and all successors and assigns of the Purchaser, the Debtor, Debtor's estate, and the Purchased Assets; and (b) shall not be subject to rejection.

27. Each and every federal, state and local governmental agency or department is



hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale.

28. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms of this Order and the Asset Purchase Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which Debtor is a party, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale; provided; however, that, in the event the Court abstains from exercising or declines to exercise such jurisdiction with respect to the Asset Purchase Agreement, the Sale Procedures Order or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect on, and shall not control, prohibit, or limit, the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Court retains jurisdiction to compel delivery of the Purchased Assets, to protect the Purchaser and its assets, including the Purchased Assets, against any Claims and successor and transferee liability and to enter orders, as appropriate, pursuant to Bankruptcy Code sections 105(a) or 363 (or other applicable provisions) necessary to transfer the Purchased Assets to the Purchaser, free and clear of all Interests other than Assumed Contracts.

29. The Purchaser shall not be required to seek or obtain relief from the automatic stay under Bankruptcy Code section 362 to give any notice permitted by the Asset Purchase Agreement or to enforce any of its remedies under the Asset Purchase Agreement or any other Sale-related document. The automatic stay imposed by Bankruptcy Code Section 362 is modified solely to the extent necessary to implement the preceding sentence; provided, however, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

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Submitted by Chad R. Moody, Attorney for Debtor

APPROVED AS TO FORM AND CONTENT

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Randall A. Peterman

Attorneys for Sandton Credit Solutions Master Fund III., L.P.

## SALE PROCEDURES

By Motion dated October 26, 2018 (the “Sale Motion”), **Gomez Rentals, LLC**, as debtor and debtor in possession (the “Debtor”), sought approval of, among other things, the procedures through which it will determine the highest or otherwise best offers to sell, in separate transactions, all of Debtor’s right, title and interest in certain income producing real properties located in (1) Twin Falls County, Idaho (“Twin Falls Property”) and (2) McKenzie County, North Dakota (“North Dakota Property”) (collectively the “Properties”), both of which are subject to commercial and/or ground leases with multiple tenants (“Leases”) (generally the “Purchased Assets”) to the party that submits, in Debtor’s business judgment, the highest or otherwise best offers for the Purchased Assets for the each property ( “Sale Transaction”). There shall be a separate and distinct Sale Transaction for the Twin Falls Property and the North Dakota Property. Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on June 11, 2018, in the United States Bankruptcy Court for the District of Idaho (the “Bankruptcy Court”). Debtor’s chapter 11 case is being administered under Case No. 18-40503-JDP (the “Bankruptcy Case”).

As referenced in the Sale Motion, an asset purchase agreement (collectively with all exhibits and schedules, the “Stalking Horse APA”), dated as of \_\_\_\_\_, 2018, has been entered into between Debtor and **Sandton Credit Solutions Master Fund III, L.P.** as successor-in interest to Wells Fargo Bank, a national banking association (the “Stalking Horse Bidder”). The Stalking Horse APA contemplates (i) a sale of Debtor’s right, title and interests in the Purchased Assets and (ii) a transfer, assumption and assignment of Debtor’s rights and obligations related to the Purchased Assets, which may or may not include the Leases to the Stalking Horse Bidder or its designees on the terms set forth in the Stalking Horse APA under sections 105, 363 and 365 of the Bankruptcy Code (the “Stalking Horse Bid”). A copy of the Stalking Horse APA is attached as an exhibit to the Sale Motion.

On \_\_\_\_\_, 2018, the Bankruptcy Court entered an order (the “Sale Procedures Order”) which, among other things, authorized Debtor to determine the highest or otherwise best offers for the Purchased Assets for each of the Properties through the process and procedures set forth below (these “Sale Procedures”).

### Access to Diligence Materials

To participate in the bidding process and to receive access to due diligence (the “Diligence Materials”), interested bidders should contact counsel to Debtor, Matthew T. Christensen, at (i) 3649 N. Lakeharbor Lane, Boise, Idaho 83703, (ii) phone no. 208-384-8588, and (iii) mtc@angstman.com. A party who qualifies for access to Diligence Materials shall be an “Interested Bidder.”

Debtor will afford any Interested Bidder the time and opportunity to conduct reasonable due diligence under the time constraints provided herein; provided, however, that Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline (as defined below). Debtor reserves the right to withhold any Diligence Materials that Debtor in

consultation with its advisors, determines are business-sensitive or otherwise not appropriate for disclosure to an Interested Bidder. Neither Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Interested Bidder.

Each Interested Bidder and Qualified Bidder (as defined below) shall comply with all reasonable requests for additional information by Debtor or its advisors regarding such Interested Bidder or Qualified Bidder, as applicable, and its contemplated transaction for the Purchased Assets. Failure by an Interested Bidder or Qualified Bidder to comply with requests for additional information may be a basis for Debtor to determine that any Bid (as defined below) submitted by such Interested Bidder or Qualified Bidder is not a Qualified Bid (as defined below). Bidders (as defined below) must complete all due diligence by no later than the Bid Deadline (as defined below).

### **Assets to Be Sold Free and Clear**

Except as otherwise provided in the asset purchase agreement submitted by a Successful Bidder (as defined below) (including any exhibits or schedules thereto), Debtor will, in separate transactions for each of the Properties, seek to sell all of Debtor's right, title and interest in and to the Purchased Assets free and clear of any and all claims, pledges, liabilities, interests, encumbrances, security interests, liens, financing statements, mortgages, mechanics' liens, lis pendens, or other interests in and/or claims against the Purchased Assets (defined as the "Liens, Claims, and Interests" in the Stalking Horse APA) (collectively, "Encumbrances") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds of the sale of the Purchased Assets with the same validity and priority as such Encumbrances applied against the Purchased Assets.

### **Bidding Process**

Debtor and its advisors shall (i) determine whether any person is a Qualified Bidder (as defined below), (ii) coordinate the efforts of Interested Bidders in conducting their due diligence investigations, (iii) receive offers from Bidders (as defined below), and (iv) negotiate any offers made to purchase the Purchased Assets.

#### ***Key Dates For Potential Competing Bidders***

**Bid Deadline (both Properties):** \_\_\_\_\_, \_\_\_\_\_ at 5:00 p.m. (MDT)

**Auction (both Properties)<sup>1</sup>:** \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_:00 a.m. (MDT)

**Sale Hearing (both Properties):** \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ (MDT)

**Return of Deposits (both Properties):** : \_\_\_\_\_, \_\_\_\_\_ (MDT)  
(other than for Successful Bidder and the Backup Bidder)

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<sup>1</sup> An auction will only be held if there is one or more Qualified Bidder for a property, other than the Stalking Horse Bidder.

***Bid Submission Process Sale Procedures***

To be eligible to be considered by the Debtor in the separate bid submission process for the Twin Fall Property and/or North Dakota Property, each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid (each, a “Bidder”), must be determined by Debtor, in consultation with its advisors, to satisfy each of the following conditions:

(a) Good Faith Deposit: A Bid must be accompanied by a deposit in the amount (as defined below), to an escrow account to be identified and established by Debtor (the “Good Faith Deposit”) as follows: \$50,000 for the Twin Falls Property and \$50,000 for the North Dakota Property. Each submitted Asset Purchase Agreement must provide a representation that the Good Faith Deposit shall be subject to all of the terms of these Sale Procedures

(b) Executed Agreement: A Bid must be based on the Stalking Horse APA<sup>2</sup> and must include binding, executed transaction documents, signed by an authorized representative of such Bidder, pursuant to which the Bidder proposes to effectuate a Sale Transaction (an “Asset Purchase Agreement”). A Bid also must include a copy of a redline (a “Redline APA”) reflecting which of the properties (the Twin Falls Property or the North Dakota Property) the Bid applies to, all of the changes to the Stalking Horse APA (including all exhibits and schedules thereto) requested by the Bidder, including those changes related to purchase price and to remove any provisions that apply only to the Stalking Horse Bidder, such as the Bidding Protections (described below), which shall not be in any Asset Purchase Agreement other than the Stalking Horse APA. **To be considered a Qualified Bid, such Bid must have a value that, in Debtor’s reasonable business judgment, is higher or otherwise better than (i) the Purchase Price provided for and defined in the Stalking Horse APA and (ii) the Assumed Contracts (defined in the Stalking Horse APA) and (iii) the Breakup Fee (as defined in the Stalking Horse APA). For the avoidance of doubt, the cash consideration of any Bid other than the Stalking Horse Bid must exceed the Stalking Horse Bid by no less than \$50,000 to be considered a Qualified Bid;**

(c) Same or Better Terms: Any Bid for the Purchased Assets must be on terms that Debtor, in its business judgment, determines are the same or better for the Debtor’s bankruptcy estate in the Bankruptcy Case (“the Estate”) than the terms of the Stalking Horse APA;

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(d) Designation of Contracts: A Bid must identify with particularity each and every contract or lease with respect to which the Bidder seeks assignment from Debtor (collectively, “Assigned Contracts”);

(e) Corporate Authority: A Bid must include written evidence reasonably acceptable to Debtor demonstrating appropriate corporate authorization to consummate the proposed Sale Transaction; provided that, if the Bidder is an entity specially formed

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<sup>2</sup> To obtain a Word copy of the Stalking Horse APA, contact counsel for Debtor.

for the purpose of effectuating the Sale Transaction, then the Bidder must furnish written evidence reasonably acceptable to Debtor of the approval of the Sale Transaction by the equity holder(s) of such Bidder;

(f) Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Purchased Assets, including any equity holders, in the case of a Bidder which is an entity specially formed for the purpose of effectuating the Sale Transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation, including any agreements, arrangements or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid. A Bid must also fully disclose any connections or agreements with Debtor, or any other known, potential or prospective Bidder or Qualified Bidder, and /or any officer, director or equity holder of Debtor.

(g) Proof of Financial Ability to Perform: A Bid must include written evidence that demonstrates, as determined by Debtor in consultation with its advisors, that the Bidder has the necessary financial ability to close the Sale Transaction and provide adequate assurance of future performance under all Assigned Contracts;

(h) Contact Information and Affiliates: The Bid must provide the identity and contact information for the Bidder and full disclosure of any affiliates of the Bidder; and

(i) No Contingencies. A Bid may not (i) contain representations and warranties, covenants or termination rights which Debtor, in its business judgment, determines to be more onerous than those set forth in the Stalking Horse APA (when considering all such provisions as a whole) or (ii) be conditioned on obtaining financing, any internal approvals or credit committee approvals, or on the outcome or review of unperformed due diligence.

(j) Regulatory and Third Party Approvals: A Bid must set forth each regulatory and third-party approval, if any, required for the Bidder to consummate the Sale Transaction and the time period within which the Bidder expects to receive such regulatory and third-party approvals. Additionally, a Bid must include evidence that Debtor concludes, in consultation with its advisors, demonstrates that the Bidder likely has the ability to obtain all regulatory and third-party approvals necessary to consummate the Sale Transaction.

(k) Irrevocable: A Bid must be irrevocable until five (5) business days after the Sale Hearing, provided that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Sale Procedures.

(l) Cooperation with Debtor: A Bidder submitting a Bid must have complied with reasonable requests for additional information from Debtor to the satisfaction of Debtor.

(m) Bidding Protections Exclusive; No Breakup Fees, Expense Reimbursements or Termination Fees for other Bidders: Other than with respect to the Stalking Horse

Bidder, the Bid must not entitle the Bidder to any of the Bidding Protections (defined below) or any other similar protections, including, without limitation, any breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Bidder further waives the right to pursue a substantial contribution claim under 11 U.S.C. § 503 related in any way to the submission of its Bid or participation in the Auction.

(n) Submission of Bids: The following parties must receive a Bid in writing (in both PDF and Word format), on or before the Bid Deadline: Counsel for Debtor, Matthew T. Christensen 3649 N. Lakeharbor Lane, Boise, Idaho 83703 (mtc@angstman.com).

(o) Cash Bids Only: Except as set forth in the Stalking Horse APA, all Bids must provide for an all cash purchase price.

(p) Bid Deadline: **Bids for both Properties must be submitted on or before \_\_\_\_\_, \_\_\_\_\_ at 5:00 p.m. (MST).**

A Bid received from a Bidder on or before the Bid Deadline that meets the requirements of paragraphs above, as determined by the Debtor after consultation with its advisors, shall constitute a “Qualified Bid,” and such Bidder shall constitute a “Qualified Bidder”; provided, that, if any Qualified Bidder fails to comply with reasonable requests for additional information from the Debtor to the satisfaction of Debtor, Debtor may, after consulting with its advisors, disqualify any Qualified Bidder and Qualified Bid, in Debtor’s discretion, and such Qualified Bidder shall not be entitled to attend or participate in the Auction. Debtor shall make a determination of which Bidders have been qualified as a Qualified Bidder no later than two (2) days after the Bid Deadline and shall immediately provide notice of the Qualified Bidders to the Stalking Horse Bidder and any other Qualified Bidder(s). Within one (1) day after determining the Qualified Bidders, Debtor shall provide the Stalking Horse Bidder and any other Qualified Bidder with a copy of such Qualified Bid.

For the avoidance of doubt, the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder for all purposes and requirements pursuant to the Sale Procedures.

Each Qualified Bidder, by submitting a Bid, shall be deemed to acknowledge and agree that it is not relying upon any written or oral statements, representations, promises, warranties or guarantees of any kind whether expressed or implied, by operation of law or otherwise, made by any person or party, including Debtor and its agents and representatives (other than as may be set forth in a definitive agreement executed by Debtor), regarding Debtor, the Purchased Assets, these Sale Procedures or any information provided in connection therewith.

Stalking Horse Bidder and all other parties holding claims collateralized by the real property in Idaho or the real property in North Dakota have reserved and preserved in all cases, and notwithstanding any provision in the sales documents or the Bankruptcy Code or case law, the right to credit bid as to either such parcel of real property.

The credit bid by the Stalking Horse Bidder, after making any cash bid to satisfy any



prior liens, claims or interest, shall be at least \$1,600,000 for the real property in Idaho and \$2,700,000 for the real property in North Dakota.

### **Bidding Protections**

Breakup Fee / Expense Reimbursement. Recognizing the Stalking Horse Bidder's expenditures in performing due diligence and formulating its offer for the Purchased Assets, and the benefit to the estate created by the Stalking Horse Bidder's willingness to submit an offer that will enable Trustee's competitive sale process, the Stalking Horse Bidder is entitled, on the terms and conditions contained herein and in the Sale Procedures, to receipt of a reimbursement payment in an amount not to exceed Fifty Thousand Dollars (\$50,000) (the "Breakup Fee") in the event the Stalking Horse Bidder is not the Successful Bidder. The Breakup Fee will (i) reimburse the Stalking Horse Bidder's reasonable and documented out-of-pocket costs, fees and expenses, including legal, financial, advisory, accounting, and other similar costs, fees and expenses, incurred, in each case, in connection with the Stalking Horse APA and the transactions contemplated thereby. The Breakup Fee shall be payable solely as follows: (a) from the proceeds of a closing on a competing bid for the Purchased Assets and (b) from the forfeited Good Faith Deposit of a Successful Bidder if: (i) such Successful Bidder is not the Stalking Horse Bidder, (ii) such Successful Bidder does not close on a transaction for the Purchased Assets and forfeits its Good Faith Deposit under the terms of the Successful Bidder's Asset Purchase Agreement, and (iii) the Stalking Horse Bidder is not the Backup Bidder (as defined herein).

Stalking Horse Bidder Right to Overbid. At and during the Auction (as defined below), the Stalking Horse Bidder shall have the right, but not the obligation, in its sole and absolute discretion, to Overbid (defined below) any other Qualified Bidder and all other exclusive rights, protections and privileges afforded to the Stalking Horse Bidder under these Sale Procedures and the Stalking Horse APA, the "Bidding Protections").

### **The Auction**

If at least one Qualified Bid other than that of the Stalking Horse Bidder is received by the Bid Deadline, Debtor will hold an auction to determine the highest or otherwise best Qualified Bid for the relevant property (the "Auction") on **Auction<sup>3</sup>**: \_\_\_\_\_, \_\_\_\_\_ **at** \_\_\_\_:00 a.m. (MDT) at the offices of Angstman Johnson, 1191 E. Iron Eagle Dr. Ste 200, Eagle, Idaho 83616. Only, the Stalking Horse Bidder, and any other Qualified Bidder, and their representatives and counsel may participate in the Auction. The Stalking Horse Bidder and all other Qualified Bidders at the Auction shall be deemed to have (a) consented to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to Debtor, the Estate, the Sale Procedures, the Stalking Horse APA, any Asset Purchase Agreement submitted by a Qualified Bidder, the Purchased Assets, the Auction, or the construction of any Qualified Bid or related documents and (b) waived any right to a jury trial in connection with any disputes relating to Debtor, the Estate, the Sale Procedures, the Stalking Horse APA, any Asset Purchase Agreement submitted by a Qualified Bidder, the Purchased Assets, the Auction, or the construction of any Qualified Bid or related documents.

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<sup>3</sup> An auction will only be held if there is one or more Qualified Bidder on a property, other than the Stalking Horse Bidder.



At the Auction, participants will be permitted to increase their bids and improve their terms. Bidding for the Purchased Assets will start at the purchase price and terms proposed in the Baseline Bid (as defined below).

The Baseline Bid. The Stalking Horse Bid shall serve as the starting point at the Auction (the “Baseline Bid”).

Overbids. An “Overbid” is any bid made at the Auction, in accordance with the requirements set forth herein. All bidding at the Auction is subject to the following terms:

(a) Initial Overbid. The initial Overbid, if any, shall provide for total consideration with a value that exceeds the value of the consideration in the Baseline Bid by an incremental amount that is not less than \$50,000.

(b) Successive Overbids. Each successive Overbid after the initial Overbid, if any, shall exceed the then-existing Overbid by an incremental amount of not less than \$10,000.

(c) Description of Consideration and Changes to Asset Purchase Agreement. Qualified Bidders, in connection with any Overbid, must describe all cash and non-cash consideration, as well as all other changes, if any, to the Asset Purchase Agreement the Qualified Bidder previously submitted with its Bid.

(d) Overbids Irrevocable. Any Overbid shall be irrevocable and shall remain open and binding upon the Qualified Bidder in accordance with the terms of these Sale Procedures.

(e) Proof of Financial Ability to Perform. At Debtor’s discretion, and to the extent not previously provided (which shall be determined by Debtor in consultation with its advisors), a Qualified Bidder submitting an Overbid must submit written evidence in a form acceptable to Debtor, demonstrating such Qualified Bidder’s ability to consummate the Sale Transaction proposed by such Overbid.

(f) Credit for Break-Up Fee. The Stalking Horse Bidder will be entitled to include a credit in the amount of the Breakup Fee.

Debtor, after consultation with its advisors, may at any time adopt rules for the Auction that Debtor reasonably determines to be appropriate to promote the goals of the sale process, provided that such rules are not in conflict with these Sale Procedures or the Bid Procedures Order and are disclosed to each Qualified Bidder participating in the Auction.

If Debtor does not receive any Qualified Bids other than the Stalking Horse Bid by the Bid Deadline: (a) Debtor will not hold an Auction; (b) the Stalking Horse Bid will be the Successful Bid (as defined below) and the Stalking Horse Bidder will be named the Successful Bidder (as defined below); and (c) Debtor will proceed to request at the Sale Hearing (as defined below) that the Court enter an order approving the Sale Transaction in accordance with the Stalking Horse APA.

### **Selection of a Successful Bid and a Backup Bid**

At the conclusion of the Auction, Debtor, after consultation with its advisors, will determine the highest or otherwise best Qualified Bid for the Purchased Assets for each of the Properties (the “Successful Bid,” and the Bidder submitting such Successful Bid, the “Successful Bidder”) and the next highest or best Qualified Bid for each of the Properties (the “Backup Bidder”). There shall only be one Backup Bidder for each of the Properties. This determination shall take into account any factors Debtor reasonably deems relevant to the value of the Qualified Bid to the Estate and may include, but are not limited to, the following: (a) the amount of the consideration and the resulting recovery to creditors; (b) the number, type and nature of any changes to the Stalking Horse APA requested by each Bidder; (c) the extent to which such modifications are likely to delay closing of the sale of the Purchased Assets and the cost to the Estate of such modifications or delay; (d) the total consideration to be received by the Estate, including the assumption of any liabilities of the Estate; (e) the Bidder’s ability to close a transaction and the timing thereof; and (f) the net benefit to the Estate (collectively, the “Bid Assessment Criteria”). Debtor shall not consider any Bids submitted after the conclusion of the Auction.

The Backup Bidder shall be required to keep its Bid (the “Backup Bid”) open and irrevocable until the earlier of: (i) the closing of the transaction with the Successful Bidder; or (ii) 30 days after the Sale Hearing.

Within twenty-four (24) hours after the close of the Auction, Debtor shall file with the Bankruptcy Court a notice of the Successful Bid and Successful Bidder and such Successful Bidder’s Asset Purchase Agreement.

Following the Sale Hearing, if the Successful Bidder fails to consummate the purchase of the Purchased Assets, Debtor may deem the Backup Bidder to have the new prevailing bid, and Debtor will be authorized, without further order of the Bankruptcy Court, to consummate the transaction with the Backup Bidder. In such case of a failure to consummate the purchase of the Purchased Assets on the part of such Successful Bidder (including any Backup Bidder designated as a Successful Bidder), the defaulting Successful Bidder’s Good Faith Deposit shall be forfeited to Debtor for the benefit of Debtor’s Estate, subject to payment of the Breakup Fee and the Expense Reimbursement on the terms described above. In addition, Debtor specifically reserves the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder) in accordance with the terms of the Sale Procedures.

### **Sale Is As Is/Where Is**

Except as otherwise set forth in the Asset Purchase Agreement of the Successful Bidder or an order of the Bankruptcy Court approving the Sale Transaction, the sale of the Purchased Assets pursuant to the Sale Procedures shall be on an “as is, where is” basis and without representations or warranties of any kind, nature or description by Debtor, its agents or the bankruptcy estate. By submitting a Bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the

Purchased Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its Bid, and that it 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 Purchased Assets, or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in these Sale Procedures or as set forth in the Asset Purchase Agreement of a Successful Bidder or the Sale Order. By submitting a Bid, each Qualified Bidder shall be deemed to be familiar with the Purchased Assets, be a knowledgeable, experienced and sophisticated investor in Debtor's business, and to understand and accept the risks inherent in ownership of the Purchased Assets.

### **Sale Hearing**

The Successful Bid and the Backup Bid will be subject to approval by the Bankruptcy Court. A hearing to approve the Successful Bid and any Backup Bid for both Properties (the "Sale Hearing") shall take place on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_:\_\_\_\_ a.m. (MDT) . The Sale Hearing may be adjourned by Debtor from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a notice on the docket of Debtor's Bankruptcy Case.

### **Return of Good Faith Deposits**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more escrow accounts by Debtor . Except as otherwise provided in the Stalking Horse APA, the Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearing. Except as otherwise provided in the Stalking Horse APA, the Good Faith Deposit of the Backup Bidder, if any, shall be returned to the Backup Bidder the earlier of: (i) two (2) business days after the closing of the transaction with the Successful Bidder; or (ii) forty-five (45) days after the Sale Hearing. If the Successful Bidder timely closes the Sale Transaction, its Good Faith Deposit shall be credited towards the purchase price, in accordance with the Successful Bidder's Asset Purchase Agreement.

### **Reservation of Rights of Debtor**

Except as otherwise provided in the Stalking Horse APA, the Sale Procedures or the Sale Procedures Order, Debtor reserves the right as it may reasonably determine to be in the best interest of the Estate, to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or best proposal and which is the next highest or best proposal; (d) reject any Bid that is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Sale Procedures or the requirements of the Bankruptcy Code or (3) contrary to the best interests of Debtor and the bankruptcy Estate; (e) waive non-compliance with any of the terms and conditions set forth herein as it determines to be in the best interests of Debtor and the bankruptcy Estate, its creditors, and other parties in interest; (f) impose additional terms and conditions with respect to all potential bidders; (g) extend the deadlines set forth herein; (h) continue or cancel the Sale Hearing in open court, or by

filing a notice on the docket of the Debtor's Bankruptcy Case, without further notice to creditors or other parties in interest; and (i) implement additional procedural rules that Debtor determines, in its business judgment, will better promote the goals of the bidding process and discharge Debtor's fiduciary duties; provided, however, that any modification or additions to the Sale Procedures shall not be materially inconsistent with the Sale Procedures Order or any other order of the Court, the Bankruptcy Code, or the Bankruptcy Rules, and shall be disclosed to each Qualified Bidder.

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UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

In re:

GOMEZ RENTALS, LLC

Debtor

Case No. 18-40503-JDP

Chapter 11

**NOTICE OF SALE, SALE HEARING AND DEADLINES FOR OBJECTIONS TO SALE**

**PLEASE TAKE NOTICE OF THE FOLLOWING**

**1. Sale Motion and Proposed Sale:** Gomez Rentals, LLC, as debtor and debtor in possession (the “Debtor”), filed a Motion for Orders Pursuant To 11 U.S.C. §§ 105(A) And 363(B) And Fed. R. Bankr. P. 2002, 6004, and 9014 (I) Approving (A) Sale Procedures And (B) The Form And Manner Of Notice Of The Sale Of Certain Assets And (II) Approving the Approving The Sale Of Certain Assets; And (III) Granting Related Relief (the “Sale Motion”). In the Sale Motion, the Debtor seeks, among other relief, authority to sell certain of the Debtor’s income producing real properties located in Twin Falls County, Idaho and McKenzie County, North Dakota, which may or may not be subject to commercial and/or ground leases with multiple tenants (“Property Assets”) to (i) Sandton Credit Solutions Master Fund III., L.P. as successor-in interest to Wells Fargo Bank, a national banking association (the “Purchaser”)

NOTICE OF SALE, SALE HEARING AND DEADLINES FOR OBJECTIONS TO SALE –

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pursuant to that certain Asset Purchase Agreement (as amended, the “Stalking Horse APA”), or (ii) Purchaser or another purchaser pursuant to a higher and better offer received pursuant to procedures approved by the United States Bankruptcy Court for the District of Idaho (the “Bankruptcy Court”). Pursuant to the terms of the Stalking Horse APA, Debtor proposes to sell its interests to the Property Assets to Purchaser free and clear of all interests pursuant to Sections 363(f)(2) and (3), and 363(k) of the Bankruptcy Code for at least \$1,600,000 for the Twin Falls Property and \$2,700,000 for the North Dakota Property in separate transactions. The liens shall attach to any proceeds. Copies of the Sale Motion, including the Stalking Horse APA, are available on the Bankruptcy Court’s electronic docket.

**2. Sale Procedures Order.** On \_\_\_\_\_, 2018, the Bankruptcy Court entered its Order (I) Approving The Form Of Stalking Horse Purchase Agreement, (II) Sale Procedures; (III) Notice Procedures, And (IV) Granting Other Related Relief (the “Sale Procedures Order”). A copy of the Sale Procedures Order is attached to this notice as **Exhibit A**.

Interested parties are invited to make competing offers to purchase the assets described in the Stalking Horse APA pursuant to and in accordance with the Sale Procedures Order. Terms not otherwise defined in this notice shall have the meanings ascribed to them in the Sale Procedures Order (including the Sale Procedures attached to the sale Procedures Order).

**3. Deadline for Submission of Alternative Qualified Bids; Auction.** Pursuant to the Sale Procedures Order, competing bids must be submitted to counsel for Debtor on or before \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ (MDT). If Debtor receives one or more Alternative Qualified Bids, as defined in the Sale Procedures Order, Debtor will conduct an auction on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_:\_\_\_\_ a.m. (MDT) at the offices of Angstman Johnson, 1191 E. Iron Eagle Dr. Ste 200, Eagle, Idaho 8316. If no Alternative Qualified Bids are received, Debtor

will not conduct an auction and will request the Bankruptcy Court to approve the transactions contemplated in the Stalking Horse APA with Purchaser.

**4. Notice of the Sale Hearing.** The Bankruptcy Court has scheduled a final hearing on the Sale Motion as follows:

(a) If no objection to the Sale Motion is timely filed and served, and the conduct of the Auction is not contested, the Bankruptcy Court will hold a hearing for the purpose of considering entry of an order approving the Sale and the Sale Motion on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_:\_\_\_\_ a.m. (MDT).

(b) If one or more objections to the Sale Motion or the Sale are filed with the Court and remain unresolved, or the conduct of the Auction is contested, the Bankruptcy Court will hold a hearing for the purpose of considering entry of an order approving the Sale and the Sale Motion, and such unresolved.

All hearings will be held in Courtroom No. \_\_\_\_\_ of the United States Bankruptcy Court, 550 W. Fort Street, Boise, Idaho 83724. At the hearing, the Court will, among other things, consider approval of the proposed sale to the Purchaser or, if an Auction under the Sale Procedures Order is conducted, to the Successful Bidder at the Auction.

**5. Objections to the Sale and/or Sale Motion.** Any party in interest wishing to object to any aspect of the Sale Motion must both (i) on or before \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_:\_\_\_\_ a.m. (MDT) file a written response stating the specific grounds for the objection and such party's relation to this case (other than objections to the conduct of the Auction, which objections may be asserted at any time prior to or at the Auction), and (ii) attend the final hearing on the Sale Motion. Any such objections must be filed in writing or electronically through the Bankruptcy Court's ECF system (other than objections to the conduct of the Auction, which

objections may be asserted at any time prior to or at the Auction). If filed in writing, such objection must be filed the clerk of the United States Bankruptcy Court, 550 W. Fort Street, 4th Floor, Boise, Idaho 83724. **The failure of any objecting party to timely file and serve its objection shall be a bar to the assertion by such party at the Sale Hearing or thereafter of any objection to the Sale Motion, the Sale, or Debtor's consummation and performance of the Stalking Horse APA,**

DATED this \_\_\_\_ day of October, 2018.

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CHAD R. MOODY  
Attorney for Debtor