

1 MICHAEL ST. JAMES (S.B. No. 95653)  
2 **ST. JAMES LAW, P.C.**

22 Battery Street, Suite 888  
San Francisco, California 94111  
3 Telephone: (415) 391-7566  
4 Facsimile: (415) 391-7568

5 Counsel for Debtor Wrap Media, LLC

6 TOBIAS S. KELLER (S.B. No. 151445)  
7 KEITH A. MCDANIELS (S.B. No. 189213)  
8 DARA L. SILVEIRA (S.B. No. 274923)

9 **KELLER & BENVENUTTI LLP**  
650 California Street, Suite 1900  
San Francisco, California 94108  
10 Telephone: (415) 484-6098  
Facsimile: (650) 636-9251

11 Counsel for the Official Committee of Unsecured  
12 Creditors of Wrap Media, LLC

13 **UNITED STATES BANKRUPTCY COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

17 In re:  
18 WRAP MEDIA, LLC,  
19 Debtor.

Case No. 16-31325 HLB

Chapter 11

**JOINT MOTION TO APPROVE SALE OF  
ASSETS FREE AND CLEAR OF LIENS  
AND INTERESTS**

**Other Interest Holders  
(none)**

**Potential Undisclosed Lienholders  
(none)**

25 Date: June 27, 2017  
26 Time: 10:00 a.m.  
27 Judge: Hon. Hannah L. Blumenstiel  
28 Place: 450 Golden Gate Avenue  
Courtroom 19  
San Francisco, CA 94102

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1 **MOTION**

2 The above-captioned debtor and debtor in possession (the “Debtor”) and the Official  
3 Committee of Unsecured Creditors of Wrap Media, LLC (the “Committee”) hereby move this  
4 Court (the “Motion”) pursuant to sections 105, 363 and 365 of title 11 of the United States Code  
5 (the “Bankruptcy Code”), Rules 2002 , 6004 , 6006 , 9014 and 9018 of the Federal Rules of  
6 Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 9018-1-2 of the Local  
7 Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the  
8 Northern District of California (the “Local Rules”), for entry of an order: (a) approving the  
9 Debtor’s entry into the Asset Purchase Agreement dated as of June 16, 2017 by and among the  
10 Debtor as seller and BrunoCo, Inc. as buyer (the “Buyer”), a copy of which is attached hereto as  
11 Exhibit A (the “Agreement”)<sup>1</sup>, (b) approving the sale and bidding process employed by the  
12 Debtor and the Committee in advance of and at the auction to be held on June 27, 2017 (the  
13 “Bidding Procedures”), including the Notice of Auction Date and Sale Hearing filed on June 2,  
14 2017 [Docket No. 158], a copy of which is attached hereto as Exhibit B (the “Initial Sale  
15 Notice”), (c) authorizing and approving (i) the sale of the Debtor’s right, title and interest in  
16 substantially all of its assets (the “Assets”), free and clear of all liens, claims, encumbrances, and  
17 interests, pursuant to section 363 of the Bankruptcy Code, as set forth in the Agreement (the  
18 “Sale”) and (ii) the assumption and assignment of certain executory contracts and unexpired  
19 leases (as defined in the Agreement, each, an “Assumed Contract”) pursuant to section 365 of  
20 the Bankruptcy Code, and (d) granting such other and further relief as the Court deems just and  
21 proper.

22 This Motion is based on the Points and Authorities set forth below, the exhibits attached  
23 hereto, the Declarations of Keith McDaniels (the “McDaniels Declaration”) and Eric Greenberg  
24 (the “Greenberg Declaration”), both of which are filed concurrently herewith and incorporated  
25 for all purposes herein by reference, and the papers and pleadings on file with this Court, judicial  
26 notice of which is respectfully requested.

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms used but not defined in this Motion have the definitions ascribed to them in the Agreement.  
To the extent that there are inconsistencies between the summary description of the Agreement contained herein  
and the terms and conditions of the Agreement, the terms and conditions of the Agreement control.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 **A. The Debtor’s Chapter 11 Case**

4 1. On December 10, 2016 (the “Petition Date”), the Debtor filed a voluntary petition  
5 for relief under chapter 11 of the Bankruptcy Code. Affiliated debtor Wrap Media, Inc. (the  
6 “Holding Company Debtor”) also filed for chapter 11 relief on the Petition Date. The Court  
7 entered an order jointly administering the two cases [Docket No. 39], but vacated this order upon  
8 the Debtor’s oral motion on April 7, 2017 [Docket No. 141].

9 2. The Debtor continues to operate its businesses and manage its properties as a  
10 debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee  
11 or examiner has been appointed. On January 31, 2017, the Office of the United States Trustee  
12 appointed the four-member Committee.

13 3. The events leading up to the filing of the Debtor’s bankruptcy case, the  
14 developments during the first two months of the bankruptcy case, and the grounds for the  
15 Debtor’s conclusion that it should conduct a prompt sale of the Assets are set forth in the  
16 Greenberg Declaration.

17 4. At a hearing held on April 6, 2017, the Court granted the Debtor’s oral motion to  
18 convert the case and thereafter issued its Order to Show Cause in that regard [Docket No. 138].  
19 The Debtor requested that the Court defer conversion until it completed arranging for an orderly  
20 shut-down, at which time it offered to upload a proposed order converting the case. The Debtor  
21 has completed an orderly shutdown of its operations. Greenberg Declaration at ¶27. All  
22 employees have been laid off and final payroll has been funded. *Id.* All customers have been  
23 alerted to the imminent cessation of operations and have been instructed to retrieve essential  
24 information. *Id.* at ¶26. With the exception of professional fees, the only Chapter 11 expenses  
25 that currently are being accrued are charges by Amazon Web Services and EAmune for  
26 services to keep the Debtor’s website operational. *Id.* at ¶27. However, the Debtor no longer  
27 believes that conversion is in the best interests of its estate or its creditors.

28 **B. Attempts to Finance and Market the Business**

1           5.       The Debtor initially aimed to solicit a recapitalization through which one or more  
2 investors would fund what was effectively a new “Series A” round of financing. Greenberg  
3 Declaration at ¶14. The Debtor believed that this approach would preserve value for the existing  
4 convertible debt and for existing investors’ equity by issuing new equity in the recapitalized  
5 venture. *Id.* The Debtor sought to raise Debtor-in-Possession financing in order to maintain  
6 business operations and preserve value as a going concern; the Debtor’s principal, Eric  
7 Greenberg, agreed to provide initial funding of up to \$500,000, with the expectation that  
8 additional funding could be obtained from other lenders. *Id.* at ¶15. However, the uncertainties  
9 inherent in an open-ended chapter 11 process with an unclear exit timetable and the potential for  
10 litigation delays and expenses prevented such additional funding or investment. *Id.* at ¶19. As a  
11 result, the Debtor concluded that the only viable exit strategy was through an asset sale. *Id.* at ¶  
12 ¶20.

13           6.       In considering a sale, the Debtor concluded that their principal asset was their  
14 technology. Principal components of the Debtor’s technology included its issued patents,  
15 combined with the company’s software. *Id.* at ¶21. The Debtor attempted to preserve its core  
16 operations while seeking to engage an investment banker to market its business for sale. *Id.* at  
17 ¶22. Although the Court authorized the Debtor to engage an investment banker, the engagement  
18 was never implemented. *Id.*

19           7.       The Debtor was contacted in April by Ahmed Fattouh of InterPrivate, expressing  
20 interest in a transaction, which would be viable only if the Debtors remained in Chapter 11 and  
21 were not converted. *Id.* at ¶28. Later in the month, the Debtor was contacted by Kathleen and  
22 Christopher Bruno, who expressed interest in a sale transaction, which was also apparently  
23 dependent on the Debtors remaining in Chapter 11. *Id.*

24           8.       The Debtor introduced the two parties who had expressed interest in a transaction  
25 with the Debtor (collectively, the “Potential Purchasers”) to counsel to the Committee. *Id.* at  
26 ¶29. After the Potential Purchasers provided the Committee with term sheets for possible  
27 transactions. The Committee advised the Debtor that a potential transaction with one or both  
28 parties would be preferable to conversion. *Id.* at ¶30.

1                   **C.     The Agreement**

2                   9.       After extensive arm’s length, good faith negotiations among the Debtor, the  
3                   Committee, the Buyer, and their respective advisors, the Debtor and the Committee determined  
4                   that the Agreement, substantially in the form attached hereto, represents the best opportunity for  
5                   the Debtor to maximize the value of the Assets and to serve as a basis for conducting an auction  
6                   to seek higher and/or better offers. Pursuant to the Agreement, the Buyer will acquire the Assets  
7                   for a purchase price of \$1,652,700 on the terms and conditions specified therein. The Sale is  
8                   subject to competitive bidding as set forth herein and in the Bidding Procedures described in  
9                   section II(B) below.

10                  10.       In parallel to the Sale, the Buyer has agreed in principal and intends on entering  
11                  into a license agreement (the “License Agreement”) with Matthew Lockett and certain affiliates  
12                  of Landmark Advisors LLC, through which the Debtor will grant a license to the Holding  
13                  Company Debtor to use certain software applications and modules, including the Debtor’s  
14                  mobile engagement and messaging platform and related tools, which allow users to author and  
15                  deliver electronic media and services (the “Licensed Technology”). The License Agreement  
16                  does not grant the Holding Company Debtor the right to take possession of the source code for  
17                  the software applications included in the Licensed Technology

18                   **II.     II.     RELIEF REQUESTED**

19                  11.       The Debtor and the Committee request entry of an order, in substantially the form  
20                  attached hereto as Exhibit C, (a) approving the Debtor’s entry into the Agreement,  
21                  (b) approving the Bidding Procedures and the Initial Sale Notice, (c) authorizing and approving  
22                  (i) the sale of the Debtor’s right, title and interest in the Assets and (ii) the assumption and  
23                  assignment of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code, and (d)  
24                  granting such other and further relief as the Court deems just and proper.

25                   **A.     Assets to be Sold**

26                  12.       The Assets to be acquired by Buyer, subject to higher or better offers, include:  
27                  (a) the Business, (b) the goodwill and the going concern value of the Business, (c) all of the  
28                  assets, properties and rights utilized in the Business, excluding only the Retained Assets, (d) the  
                  Assumed Contracts, (e) all prepayments made under the Assumed Contracts, (f) all amounts due



1 to the Debtor under Assumed Contracts by the counterparties thereto; (g) the Books and Records,  
2 (h) all of Seller’s Intellectual Property Rights, (i) the Plans, (j) the Web Assets, and (k) all assets  
3 specifically listed on Exhibit A to the Agreement. “Business” in the Agreement means the  
4 Debtor’s business of developing, designing and producing software applications and modules,  
5 including mobile engagement and messaging platforms and related tools which allow users to  
6 author and deliver electronic media and services.

7 **B. Sale and Auction Process**

8 13. In order to ensure that the Debtor’s estate receives the maximum value for the  
9 Assets, the Agreement will serve as the Starting Bid (defined below), subject to higher and better  
10 offers. The Bidding Procedures pursuant to which the Debtor and Committee have conducted a  
11 process (the “Bidding Process”) to sell and, if necessary, auction the Assets are as follows:

12 **i. Diligence**

13 14. Any person or entity wishing to conduct diligence with respect to the Assets has  
14 been advised to contact the Committee. McDaniels Declaration at ¶5. Parties requesting to view  
15 confidential information (each, a “Diligence Party”) have been asked to execute a confidentiality  
16 agreement (it being understood that any person or entity who previously signed a confidentiality  
17 agreement with the Debtor in connection with the sale of the Assets shall not be required to  
18 execute a new confidentiality agreement). *Id.* The Committee and the Debtor shall afford any  
19 Diligence Party the opportunity to conduct diligence prior to the Bid Deadline (defined below),  
20 provided, however, that the Successful Bidder(s) and the Back-Up Bidder(s) (defined below)  
21 shall be permitted to continue to conduct due diligence until the closing(s) of the sale of the  
22 Assets.

23 **ii. Qualifications for Bidding**

24 15. To participate in the Bidding Process, the Committee has asked that any person or  
25 entity who desires to submit an offer for some or all of the Assets (each, a “Bidder”) must do so  
26 in writing (via facsimile or email) (a “Bid”) by no later than **12:00 pm (Pacific Time) on June**  
27 **26, 2017** (the “Bid Deadline”) to Keller & Benvenuti LLP, 650 California Street, Suite 1900,  
28 San Francisco, CA 94108, Attn.: Keith McDaniels, Esq., telephone: (415) 484-6098, facsimile:

1 (650) 636-9251, email: kmcdaniels@kellerbenvenuti.com. The Committee has asked that a  
2 Bidder's Bid, at a minimum, include the following:

- 3 a. An executed letter of intent, which will include (i) a description of the  
4 asset subject to the Bid; and (ii) a proposed purchase price equal to or  
5 greater than \$1,652,700;
- 6 b. Sufficient information, as determined by the Committee, which may  
7 include current audited financial statements and latest unaudited financial  
8 statements of the Bidder, or, if the Bidder is an entity formed for the  
9 purpose of acquiring the Assets (or any portion thereof), current audited  
10 financial statements and latest unaudited financial statements of the equity  
11 holders of the Bidder who will guarantee the obligations of the Bidder, or  
12 such other form of financial disclosure and credit-quality support or  
13 enhancement that will allow the Committee to make a reasonable  
14 determination as to the Bidder's financial and other capabilities to  
15 consummate the transaction;
- 16 c. A written acknowledgement that the Bid (i) is not subject to any financing  
17 contingency, (ii) is not conditioned on the payment in any circumstances  
18 of a break-up fee, expense reimbursement or similar type of payment to  
19 the bidder, (iii) is irrevocable until the conclusion of the relevant Auction  
20 (unless it is selected as the Successful Bid or Back-Up Bid, in which case  
21 it shall remaining binding as set forth below), will not require any  
22 indemnity or similar obligation by the Debtor, and (iv) is not subject to  
23 any approvals, consents or conditions except as specified therein (other  
24 than consents to assignments of contracts, if required);
- 25 d. A written acknowledgement by the Bidder that it will abide by all of the  
26 terms for sale set forth in this Motion and that the offer constitutes a good  
27 faith bona fide offer to purchase the Assets identified in its Bid;
- 28 e. Evidence or a statement indicating that the Bidder has obtained  
authorization and approval from its board of directors (or comparable  
governing body) with respect to the submission and consummation of its  
bid and acceptance of the terms of sale in this Motion, or a representation  
that no such authorization or approval is required and that any and all  
consents required in connection with the submission and consummation of  
the bid have been obtained and that no other consents are required;
- f. Full disclosure of the identity of each person or entity that will be bidding  
for or purchasing the relevant Assets or otherwise participating in  
connection with such Bid, and the complete terms of any such  
participation, including any agreements, arrangement or understandings  
concerning a collaborative or joint bid or any other combination  
concerning the proposed bid;
- g. A statement that the Bidder consents to the jurisdiction of the Court; and



- 1 c. The Auction shall be managed and conducted by the Committee in any  
2 manner and upon any terms and conditions satisfactory to the Court. Any  
3 overbids at the Auction may have to meet or exceed minimal increments as  
4 determined by the Committee.
- 5 d. The Debtor shall recuse itself from all non-public Auction deliberations.  
6 The Committee shall consult with the Debtor and its counsel as  
7 appropriate.
- 8 e. A representative from the Office of the United States Trustee shall be  
9 present at the Auction and shall monitor the proceedings to ensure their  
10 impartiality.
- 11 f. Bidding at the Auction will begin with the purchase price laid out in the  
12 Agreement (the “Starting Bid”). Bidding will continue, in one or more  
13 rounds of bidding, so long as during each round at least one subsequent bid  
14 is submitted by a Qualified Bidder that: (i) improves upon such Qualified  
15 Bidder’s immediately prior bid (a “Subsequent Bid”) and (ii) the  
16 Committee determines, in consultation with its advisors, that such  
17 Subsequent Bid is (A) for the first round, a higher or otherwise better offer  
18 than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise  
19 better offer than the Leading Bid (as defined below). All bids shall be non-  
20 revocable. Each incremental bid at the Auction shall provide net value to  
21 the estate of at least \$50,000 over the Starting Bid or the Leading Bid (as  
22 defined below), as the case may be, provided that the Committee shall  
23 retain the right to modify the increment requirements at the Auction after  
24 informing each participating Qualified Bidder. After the first round of  
25 bidding and between each subsequent round of bidding, the Committee  
26 shall announce the bid or combination of bids (and the value of such bid(s))  
27 that it believes to be the highest or otherwise better offer (the “Leading  
28 Bid”). A round of bidding will conclude after each participating Qualified  
Bidder has had the opportunity to submit a Subsequent Bid with full  
knowledge of the Leading Bid.
- g. The Auction shall continue until there is only one bid the Committee  
determines, subject to Court approval, is the highest and otherwise best  
offer for the Assets (such bid, the “Successful Bid” and the bidder making  
such bid, the “Successful Bidder”). After identification of the Successful  
Bid, the Committee will communicate to Buyer and the other Qualified  
Bidders the identity of the Successful Bidder, the Back-Up Bidder (as  
defined below), if any, and the details of the Successful Bid and Back-Up  
Bid (as defined below), if any. The determination of the Successful Bid  
and Back-Up Bid by the Committee at the conclusion of the Auction shall  
be final subject to approval by the Court.
- h. The next highest or otherwise best bid for the Assets will be the “Back-Up  
Bid” and, such bidder, the “Back-Up Bidder.” The presentation to the  
Court of the Successful Bid and, if applicable, the Back-Up Bid will not

1 constitute acceptance of either of such bids, which acceptance will only  
2 occur upon the approval of such bids by the Court at the Sale Hearing (as  
3 defined below). Following approval of the Sale to the Successful Bidder, if  
4 the Successful Bidder fails to consummate the Sale for any reason, then the  
5 Back-Up Bid will be deemed to be the Successful Bid and the Debtor will  
6 be authorized, but not directed, to effectuate a Sale to the Back-Up Bidder  
7 subject to the terms of the Back-Up Bid of such Back-Up Bidder without  
8 further order of the Court. The Back-Up Bid shall remain open until the  
9 earlier of (i) the tenth (10th) calendar day following the conclusion of the  
10 Auction, unless, prior to such date, the Committee has delivered written  
11 notice to the Back-Up Bidder that the transaction contemplated by the  
12 Successful Bid will not occur and the Debtor intends to consummate the  
13 transaction contemplated by the Back-Up Bid, in which case the terms of  
14 the Back-Up Bid shall be enforceable and shall govern or (ii) the  
15 consummation of the Sale to the Successful Bidder (the “Back-Up Bid  
16 Expiration Date”).

- 17 i. All the Qualified Bids other than the Successful Bid and the Back-Up Bid  
18 shall be deemed rejected on and as of the date of approval of the Successful  
19 Bid and the Back-Up Bid by the Court.

20 20. The Committee reserves the right to, in consultation with the Debtor, modify or  
21 supplement any of the bidding or auction procedures described herein at any time before or  
22 during the Auction, including, without limitation, to adjourn or reschedule the Auction.

23 **iv. Sale Hearing**

24 21. A hearing to approve the Sale subject to the Successful Bid (or, under certain  
25 circumstances described herein, the Back-Up Bid) will be held by telephone immediately after  
26 the conclusion of the Auction before the Honorable Hannah Blumenstiel, United States  
27 Bankruptcy Judge for the Northern District of California (the “Sale Hearing”).

28 **C. Sale Free and Clear of All Liens, Claims, Encumbrances, and Interests**

29 22. At the Sale Hearing, the Debtor will seek Court approval of the Sale to the  
30 Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to  
31 section 363 of the Bankruptcy Code, with all liens, claims, interests, and encumbrances to attach  
32 to the Sale proceeds with the same validity and in the same order of priority as they attached to  
33 the Assets prior to the Sale, including the assumption by the Debtor and assignment to the  
34 Successful Bidder(s) of the Assumed Contracts pursuant to Bankruptcy Code section 365. The  
35 Debtor and the Committee will submit and present additional evidence, as necessary, at the Sale

1 Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtor's  
2 estate and all interested parties.

3 **D. Procedures for Assumption and Assignment of the Assumed Contracts**

4 23. At the Sale Hearing, the Debtor will seek to assume the Assumed Contracts and to  
5 assign them to the Buyer or the Successful Bidder. Attached hereto as Exhibit D is a schedule  
6 (the "Cure Schedule") setting forth a good faith estimate as of the date of the Agreement of all  
7 the amounts, if any, that the Debtor believes are owed to each counterparty to an Assumed  
8 Contract in order to cure any defaults that exist under such contract (each, a "Cure Amount").  
9 The Agreement provides that, on the Closing Date, Seller will pay each Cure Amount up to, but  
10 not exceeding \$10,000 in the aggregate, with the Buyer paying any amounts in excess of \$10,000  
11 in the aggregate (for the avoidance of doubt, in addition to the Purchase Price).

12 24. On today's date, the Debtor is serving upon each counterparty to the Assumed  
13 Contracts the Notice to Counterparties to Executory Contracts and Unexpired Leases of the  
14 Debtor That May Be Assumed and Assigned (the "Cure Notice"), substantially in the form  
15 attached hereto as Exhibit E, along with a copy of this Motion. The Cure Notice states the Cure  
16 Amount, the date, time and place of the Sale Hearing, and the date by which any objection to the  
17 assumption and assignment of Assumed Contracts (including to the Cure Amount) must be filed  
18 and served. To the extent there is a contract added to the list of contracts to be assumed by the  
19 Successful Bidder pursuant to the Successful Bidder's Purchase Agreement selected at the  
20 Auction, this Motion constitutes a separate motion to assume and assign that contract to the  
21 Successful Bidder pursuant to section 365 of the Bankruptcy Code; each such contract will be  
22 listed on an exhibit to the Successful Bidder's Purchase Agreement, and will be given a separate  
23 Cure Notice filed and served by overnight delivery within three (3) business days of the  
24 conclusion of the Auction and announcement of the Successful Bidder or as otherwise ordered  
25 by this Court.

26 25. The inclusion of a contract, lease, or other agreement on the Cure Schedule and  
27 Cure Notice shall not constitute or be deemed a determination or admission by the Debtor and its  
28 estate or any other party in interest that such contract, lease, or other agreement is, in fact, an

1 executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and  
2 all rights with respect thereto shall be reserved.

3 26. If a contract is assumed and assigned pursuant to order of this Court, then unless  
4 the Assumed Contract counterparty properly files and serves an objection to the Cure Amount  
5 contained in the Cure Notice by the Assumption Objection Deadline (defined below), the  
6 Assumed Contract counterparty will receive at the time of the assumption and assignment (as  
7 specified below) the Cure Amount as set forth in the Cure Notice, if any. If an objection is filed  
8 by a counterparty to an Assumed Contract, the Debtor proposes that such objection must set forth  
9 a specific default in the executory contract or unexpired lease, claim a specific monetary amount  
10 that differs from the amount, if any, specified by the Debtor in the Cure Notice, and set forth any  
11 reason why the counterparty believes the executory contract or unexpired lease cannot be  
12 assumed and assigned to the Successful Bidder.

13 27. If any counterparty objects for any reason to the assumption and assignment of an  
14 Assumed Contract (including to a Cure Amount) (an “Assumption Objection”), the Debtor and  
15 the Committee propose that the counterparty must file the objection and serve it so as to be  
16 actually received on or before the Assumption Objection Deadline (defined below), upon the  
17 Debtor and the Committee by no later than (i) **12:00 p.m. (Pacific Time) on June 26, 2017** or  
18 (ii) the date otherwise specified in the Cure Notice (the “Assumption Objection Deadline”),  
19 provided, however, as to any Successful Bidder who is not the Buyer, any counterparty may raise  
20 at the Sale Hearing an objection to the assumption and assignment of the Assumed Contract  
21 solely with respect to the Successful Bidder’s ability to provide adequate assurance of future  
22 performance under the Assumed Contract. After receipt of an Assumption Objection, the Debtor  
23 will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection  
24 with the counterparty. In the event that the Debtor and the counterparty cannot resolve an  
25 Assumption Objection, and the Court does not otherwise make a determination at the Sale  
26 Hearing regarding an Assumption Objection related to a Cure Amount, such Assumed Contract  
27 will not be assumed and assigned until the Court makes a determination as to Cure Amount.

28



1           28.     The Successful Bidder(s) shall be responsible for paying any Cure Amount for an  
2 Assumed Contract that is assumed and assigned and for satisfying any requirements regarding  
3 adequate assurance of future performance that may be imposed under section 365(b) of the  
4 Bankruptcy Code in connection with the proposed assignment of any Assumed Contract. The  
5 failure to provide adequate assurance of future performance to any counterparty to any Assumed  
6 Contract shall not excuse the Successful Bidder(s) from performance of any and all of its  
7 obligations pursuant to the Successful Bidder's Purchase Agreement. The Debtor and the  
8 Committee propose that the Court make its determinations concerning adequate assurance of  
9 future performance under the Assumed Contracts pursuant to section 365(b) of the Bankruptcy  
10 Code at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the  
11 Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

12           29.     The Debtor seeks authorization and approval to assume and assign the Assumed  
13 Contracts at Closing. However, if the Cure Amount for any Assumed Contract is in dispute as of  
14 the Closing Date, then such contract will not be assumed and assigned until after the Court  
15 determines the Cure Amount. If the Court determines the Cure Amount for such contract to be  
16 less than or equal to the amount set forth in the Cure Schedule, then the Debtor seeks, by this  
17 Motion, authorization and approval to assume and assign such contract on the date of such  
18 determination by the Court, if not stayed. If the Cure Amount for such contract is determined by  
19 the Court to be greater than the amount set forth in the Cure Schedule, then Buyer shall have five  
20 business days to decide whether to have such contract assumed and assigned, and in such event,  
21 the Debtor seeks authorization and approval to assume and assign such contract only upon, and  
22 at the time of, Buyer's written declaration that such Contract is an Assumed Contract.

23           30.     Except to the extent otherwise provided in the Successful Bidder's Purchase  
24 Agreement, the Debtor and the Debtor's estate shall be relieved of all liability accruing or arising  
25 after the assumption and assignment of the Assumed Contracts pursuant to Section 365(k) of the  
26 Bankruptcy Code.

27           31.     Pursuant to Section 365(f) of the Bankruptcy Code, the Debtor seeks  
28 authorization and approval to assume and assign the Assumed Contracts notwithstanding any



1 provision to the contrary in the Assumed Contracts, or in applicable non-bankruptcy law, that  
2 prohibits, restricts, or conditions the assignment.

3 32. Upon assumption of the Assumed Contracts by the Debtor and assignment to the  
4 Successful Bidder, the Assumed Contracts shall be deemed valid and binding, in full force and  
5 effect in accordance with their terms, subject to the provisions of the Sale Order.

6 **E. Notice of Auction Process and Sale Hearing**

7 33. At a hearing before this Court on May 24, 2017, the Debtor and Committee  
8 proposed a time schedule for filing and hearing the Motion to sell the Assets. The Court  
9 tentatively authorized, subject to the filing of a motion for order shortening time, to hear the  
10 Motion at the Sale Hearing, which was scheduled to take place immediately after an Auction of  
11 the Assets, if necessary, provided that parties in interest had until 12:00 p.m. (Pacific Time) on  
12 June 26, 2017 to file objections to the Motion, if any.

13 34. The Committee prepared and served Initial Sale Notice on parties in interest on  
14 May 31, 2017, using information compiled by Eric Greenberg (Greenberg Declaration at ¶31)  
15 who is knowledgeable about the industry and who had lead all marketing efforts to date.  
16 McDaniels Declaration at ¶6. With Mr. Greenberg's guidance, the Committee served the Initial  
17 Sale Notice on potential bidders, including strategic partners, financial buyers, intellectual  
18 property attorneys, and intellectual property brokers, among others, (collectively, the "Potential  
19 Bidders"). *Id.* In addition, the Committee filed the Initial Sale Notice with the Court on June 2,  
20 2017 and served it on: (a) the U.S. Trustee; (b) the Debtor and its affiliate; (c) any parties  
21 requesting special notice pursuant to Bankruptcy Rule 2002; (d) all known secured creditors of  
22 the Debtor (collectively, the "Service Parties," and along with the Potential Bidders, the "Notice  
23 Parties"). *Id.* at ¶7.

24 35. In addition, the Debtor and the Committee prepared and filed the notice of this  
25 Motion (the "Sale Motion Notice"), a copy of which is attached hereto as Exhibit F, on June 16,  
26 2017, and served it on the Notice Parties. Both the Initial Sale Notice and the Sale Motion  
27 Notice advised the Notice Parties about the deadline for submitting a competing offer for the  
28

1 Assets and contact information for interested parties to obtain more information about the  
2 Bidding Process and Bidding Procedures, including copies of this Motion and its exhibits.

3 36. The Debtor and the Committee submit that the foregoing notices comply fully  
4 with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice  
5 of the Auction and the Bidding Procedures for the Assets, including, without limitation,  
6 deadlines for submitting competing offers and objections to the Motion and the time and place  
7 for the proposed Auction and Sale Hearing. Based on the foregoing, the Debtor and Committee  
8 submit that the proposed notices are adequate and reasonable under the circumstances.

### 9 **III. III. LEGAL BASIS FOR RELIEF REQUESTED**

#### 10 **A. The Sale Is a Product of the Debtor's Reasonable Business Judgment**

11 37. Sales of property rights outside the ordinary course of business may be made by  
12 private sale or public auction. Fed. R. Bankr. P. 6004. The Debtor and the Committee have  
13 determined that the sale of the Assets by public auction will enable them to obtain the highest  
14 and best offer for these assets, thereby maximizing the value of the estate; as a result, the Sale is  
15 in the best interests of the Debtor's creditors. In particular, the Agreement is the result of  
16 comprehensive arms'-length negotiations, and the Sale, subject to higher or otherwise better  
17 offers at the Auction, will provide a greater recovery for creditors than would be provided by any  
18 other existing alternative.

19 38. The Bankruptcy Code provides that "the Trustee, after notice and a hearing, may  
20 use, sell, or lease, other than in the ordinary course of business, property of the estate."  
21 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides in relevant part that  
22 "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry  
23 out the provisions of this title."

24 39. Courts generally hold that approval of a proposed sale of assets of a debtor under  
25 section 363 of the Bankruptcy Code outside the ordinary course of business and prior to the  
26 confirmation of a plan of reorganization is appropriate if a court finds that the transaction  
27 represents a reasonable business judgment by the debtor-in-possession. *See, e.g., Fin. Assoc. v.*  
28 *Loeffler (In re Equity Funding Corp. of Am.)*, 492 F.2d 793 (9th Cir. 1974), cert. denied, 419

1 U.S. 964 (1974) (sale of assets approved for “cause shown”); *240 N. Brand Partners, Ltd. v.*  
2 *Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th  
3 Cir. 1996) (“debtors who wish to utilize § 363(b) to dispose of property of the estate must  
4 demonstrate that such disposition has a valid business justification”).

5 40. The paramount goal in any sale under section 363 of the Bankruptcy Code is to  
6 maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d  
7 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to  
8 enhance the value of the estate at hand”). As long as the sale appears to enhance a debtor’s  
9 estate, court approval should only be withheld if the debtor’s judgment is clearly erroneous, too  
10 speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v.*  
11 *Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282,  
12 289 (9th Cir. B.A.P. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991) (“The trustee  
13 has ample discretion to administer the estate, including authority to conduct public or private  
14 sales of estate property. Courts have much discretion on whether to approve proposed sales, but  
15 the trustee’s business judgment is subject to great judicial deference.”).

16 41. The Debtor and the Committee submit that the Agreement is a sound exercise of  
17 the Debtor’s business judgment given the circumstances of this case. As discussed above and in  
18 the Greenberg Declaration, in the months preceding the Petition Date and continuing post-  
19 petition, the Debtor explored various strategic alternatives with respect to both the sale of the  
20 Assets and going concern transactions involving the Debtor’s entire business. The Debtor  
21 ultimately determined that a sale of the Assets would maximize the recovery available to  
22 creditors. The Sale to the Buyer represents the highest offer received to date; however,  
23 potentially interested parties will have until the Bid Deadline to submit alternative offers. If such  
24 offers are received, the Auction will be held on June 27, 2017. The Debtor’s determination to  
25 sell the Assets pursuant to the Agreement—subject to higher or better offers—is a valid and  
26 sound exercise of its business judgment.

27 **A. The Bidding Procedures Are Appropriate and Will Maximize the Value**  
28 **Received for the Assets**

1           42.     Courts recognize that procedures intended to enhance competitive bidding are  
2 consistent with the goal of maximizing the value received by the estate and therefore are  
3 appropriate in the context of bankruptcy sales. *See, e.g., In re Fin'l News Network, Inc.*, 126  
4 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . .  
5 [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and  
6 efficient resolution of bankrupt estates”).

7           43.     The Debtor and the Committee believe that the Bidding Procedures establish  
8 sound parameters under which the value of the Assets will be tested at the Auction. The Bidding  
9 Procedures will increase the likelihood that creditors will receive the greatest possible  
10 consideration for their assets because they will ensure a competitive and fair bidding process.  
11 They also allow the Committee to undertake an auction in as expeditious and efficient manner as  
12 possible, which the Debtor and the Committee believe is essential to maximizing the value of the  
13 Debtor’s estate for distribution to its creditors. The Debtor and the Committee also believe that  
14 the Bidding Procedures promote active bidding from seriously interested parties and dispel any  
15 doubt as to the best and highest offer reasonably available for the Assets. In particular, the  
16 Bidding Procedures will allow the Committee to conduct the Auction in a controlled, fair, and  
17 open fashion that will encourage participation by financially capable bidders who demonstrate  
18 the ability to close a transaction. Further, the Bidding Procedures provide the Committee with  
19 the opportunity to consider all bids from Qualified Bidders and to select, in its reasonable  
20 business judgment, the highest and best offer(s) for the Assets.

21           44.     In sum, the Debtor and the Committee believe that the Bidding Procedures will  
22 encourage bidding for the Assets and are consistent with the relevant standards governing  
23 auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the  
24 proposed Bidding Procedures are reasonable, appropriate, and within the Debtor’s sound  
25 business judgment.

26           **B.     Notice of the Proposed Sale Is Reasonable Under the Circumstances**

27           45.     The Debtor submits that the Initial Sale Notice and the Sale Motion Notice are  
28 appropriate and reasonably calculated to provide all interested parties with timely and proper

1 notice of the Bidding Procedures, the Auction (if necessary) and the Sale Hearing. Bankruptcy  
2 Rules 2002(a) and (c) require a debtor to notify creditors of the proposed sale of its assets,  
3 including a disclosure of the time and place of an auction, the terms and conditions of a sale, and  
4 the deadline for filing any objections. The Debtor and the Committee submit that the Initial Sale  
5 Notice and the Sale Motion Notice fully comply with Bankruptcy Rule 2002 and are reasonably  
6 calculated to provide timely and adequate notice of the Auction and Sale Hearing to the Notice  
7 Parties.

8 **C. The Sale Should Be Free and Clear of Liens, Claims, Encumbrances, and**  
9 **Interests**

10 46. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor seeks authority to  
11 sell and transfer the its right, interest and title in the Assets to the Buyer or the Successful Bidder  
12 free and clear of all liens, claims, encumbrances, and interests, except as set forth in the  
13 Agreement, with such liens, claims, encumbrances, and interests, to attach to the proceeds of the  
14 sale of the Assets, subject to any rights and defenses of the Debtor and other parties in interest  
15 with respect thereto.

16 47. Section 363(f) of the Bankruptcy Code provides, in pertinent part:

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

20 (1) applicable nonbankruptcy law permits sale of such property free and  
21 clear of such interest;

22 (2) such entity consents;

23 (3) such interest is a lien and the price at which such property is to be sold  
24 is greater than the aggregate value of all liens on such property;

25 (4) such interest is in bona fide dispute; or

26 (5) such entity could be compelled, in a legal or equitable proceeding, to  
27 accept a money satisfaction of such interest.

28 11 U.S.C. § 363(f). *See also In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that section  
363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the  
requirements is met).

1           48.     With respect to each creditor asserting a lien, claim, encumbrance, or interest, one  
2 or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been  
3 satisfied. Those holders of liens, claims, encumbrances, or interests who did not object or who  
4 withdraw their objections to the Sale or the Motion are deemed to have consented to the Motion  
5 and Sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of liens, claims,  
6 encumbrances, or interests who do object fall within one or more of the other subsections of  
7 Bankruptcy Code Section 363(f).

8           49.     Local Rule 6004-1 requires that lien and interest holders potentially affected by a  
9 sale of the debtor's assets be identified by name. The Debtor and the Committee are not aware  
10 of any party who may be entitled to assert a lien against the Assets other than the DIP Lender  
11 and Silicon Valley Bank, or who would have grounds to assert a claim against the Buyer for  
12 successor liability. The Committee has searched the records of the Delaware Secretary of State,  
13 and no UCC or judgment lien filing has been made against the Debtor. McDaniels Declaration  
14 at ¶8. The Debtor is not a defendant in any litigation, and, as a result, no creditor has a basis to  
15 assert liens or attachments through state law judgment enforcement procedures. *Id.* at ¶9.  
16 Furthermore, the Debtor is current on its tax obligations, with one exception, and has not  
17 received any delinquency notices from any taxing authority. The exception is the 2016 Gross  
18 Receipts and Payroll Tax owed to the City and County of San Francisco in the approximate  
19 amount of \$50,000 to \$60,000. Greenberg Declaration at ¶10.

20           50.     In spite of the above, it is possible that a creditor with a basis to assert a lien  
21 against the Assets might not yet have asserted the lien or recorded notice of the lien in order to  
22 perfect such rights. The Debtor cannot specifically name such a hypothetical creditor. It would  
23 be unjust to allow such a creditor to obtain greater rights against the Buyer by asserting that the  
24 Assets remain subject to its purported lien rights, especially since such an unperfected lien would  
25 be avoidable under Bankruptcy Code section 544(a). Accordingly, the Debtor submits that the  
26 information disclosed in paragraph 34 above is sufficient to comply with Local Rule 6004-1, and  
27 that any order this Court may make granting free and clear relief should be binding upon any  
28 creditor identified by name or category that is actually served with notice of this Motion.

1           51.     A sale free and clear of liens, claims, encumbrances, or interests is necessary to  
2 maximize the value of the Assets. The Buyer would not have entered into the Agreement and  
3 would not consummate the transaction contemplated thereunder if the Sale were not free and  
4 clear of all liens, claims, encumbrances, or interests, or if the Buyer would, or in the future could,  
5 be liable for any of such lien, claim, encumbrance, or interest. A sale of the Assets other than  
6 one free and clear of all liens, claims, encumbrances, or interests would yield substantially less  
7 value for the Debtor’s estate, with less certainty than the transaction contemplated in the  
8 Agreement. Therefore, the Sale is in the best interests of the Debtor, its estate and creditors, and  
9 all other parties in interest.

10           **D.     The Assumption and Assignment of the Assumed Contracts and the**  
11           **Procedures for Assumption and Assignment Should Be Authorized**

12           52.     A debtor, “subject to the court’s approval, may assume or reject any executory  
13 contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Bankruptcy Code section  
14 365(b)(1), lays out the requirements for such an assumption:

15           (b) (1) If there has been a default in an executory contract or unexpired lease  
16 of the debtor, the trustee may not assume Such contract or lease unless, at the  
17 time of assumption of Such contract or lease, the trustee -

18                   (A) cures, or provides adequate assurance that the trustee will promptly  
19 cure, such default. . . ;

20                   (B) compensates, or provides adequate assurance that the trustee will  
21 promptly compensate, a party other than the debtor to such contract or  
22 lease, for any actual pecuniary loss to such party resulting from such  
23 default; and

24                   (C) provides adequate assurance of future performance under such  
25 contract or lease.

26           11 U.S.C. § 365(b)(1). Bankruptcy Code section 365(f)(2) of the provides for the debtor’s  
27 assignment of assumed contracts:

28                   The trustee may assign an executory contract or unexpired lease of the  
debtor only if

                  (A) the trustee assumes such contract or lease in accordance with the  
provisions of this section; and



1 (B) adequate assurance of future performance by the assignee of such  
2 contract or lease is provided, whether or not there has been a default in  
such contract or lease.

3 11 U.S.C. S 365(f)(2).

4 53. The definition of “adequate assurance of future performance” depends on the  
5 facts and circumstances of each case, but should be given “practical, pragmatic construction.”  
6 *EBG Midtown S. Corp. v. McLaren/Hart Envtl. Eng’g Corp. (In re Sanshoe Worldwide Corp.)*,  
7 139 B.R. 585, 593 (S.D.N.Y. 1992); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr.  
8 S.D. Fla. 1994); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538  
9 (Bankr. D.N.J. 1988). Among other things, adequate assurance may be provided by  
10 demonstrating the assignee’s financial health and experience in managing the type of enterprise  
11 or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986)  
12 (finding adequate assurance of future performance present when prospective assignee of lease  
13 from debtor has financial resources and has expressed willingness to devote sufficient funding to  
14 business in order to give it strong likelihood of succeeding).

15 54. To the extent any defaults exist under any Assumed Contract, any such default  
16 will be promptly cured or adequate assurance that such default will be cured will be provided  
17 prior to the assumption and assignment. If necessary, the Debtor will submit facts prior to or at  
18 the Sale Hearing to show the financial credibility of the Successful Bidder and willingness and  
19 ability to perform under the Assumed Contracts. The Sale Hearing therefore will provide the  
20 Court and other interested parties the opportunity to evaluate and, if necessary, to challenge the  
21 ability of the Successful Bidder to provide adequate assurance of future performance under the  
22 Assumed Contracts), as required under Bankruptcy Code section 365(b)(1)(C).

23 55. In addition, the Debtor submits that it is an exercise of its sound business  
24 judgment to assume and assign the Assumed Contracts to Buyer in connection with the Sale, and  
25 the assumption, assignment, and sale of the Assumed Contracts to Buyer are in the best interests  
26 of the Debtor, its estates, its creditors, and all parties in interest. The Assumed Contracts being  
27 assigned to Buyer is an integral part of the Assumed Contracts being purchased by Buyer, and  
28 accordingly, such assumption, assignment, and Sale are reasonable and enhance the value of the



1 Debtor's estate. The Court should therefore authorize the Debtor to assume and assign the  
2 Assumed Contracts as set forth herein.

3 56. The Debtor submits that the cure procedures set forth herein are appropriate,  
4 reasonably calculated to provide notice to any affected party, and afford the affected party to  
5 opportunity to exercise any rights affected by the Motion, and consistent with section 365 of the  
6 Bankruptcy Code. To the extent that any defaults exist under any Assumed Contracts, any such  
7 defaults will be cured pursuant to the Successful Bidder's Purchase Agreement. Accordingly,  
8 the Debtor submits that the cure procedures for effectuating the assumption and assignment of  
9 the Assumed Contracts as set forth herein are appropriate and should be approved.

10 **E. Waiver of the Automatic Fourteen-Day Stay Under Bankruptcy Rule**  
11 **6004(h) Is Appropriate**

12 57. Unless the Court orders otherwise, all orders authorizing the sale of property  
13 pursuant to Bankruptcy Code section 363 automatically are stayed for fourteen days following  
14 entry of the order. Fed. R. Bankr. P. 6004(h). This rule aims to provide sufficient time for an  
15 objecting party to request a stay pending appeal before the order can be implemented. *See*  
16 *Advisory Committee Notes to Fed. R. Bankr. P. 6004(h)*. Commentators agree that the 14-day  
17 stay period should be eliminated to allow a sale or other transaction to close immediately where  
18 there has been no objection to the procedure. *See generally Collier on Bankruptcy* P 6004.11  
19 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, if an objection is filed and  
20 overruled, and the objecting party informs the court of its intent to appeal, the stay may be  
21 reduced to the amount of time necessary to file such appeal. *Id.* Pursuant to the Agreement, and  
22 because of the potentially diminishing value of the Assets, the Debtors must close this sale  
23 promptly after all closing conditions have been met or waived. Thus, waiver of any applicable  
24 stays is appropriate in this circumstance.

25 WHEREFORE, the Debtor respectfully requests that the Court enter an order:

26 (a) approving the Debtor's entry into the Agreement, (b) approving the Bidding Procedures and  
27 the Initial Sale Notice, (c) authorizing and approving (i) the sale of the Debtor's right, title and  
28 interest in the Assets and (ii) the assumption and assignment of the Assumed Contracts, and (d)  
granting such other and further relief as the Court deems just and proper.



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**IV. SCHEDULE OF EXHIBITS**

- A. Exhibit A Asset Purchase Agreement**
- B. Exhibit B Notice of Auction Date and Sale Hearing**
- C. Exhibit C [Proposed] Order Approving Sale of Assets Free and Clear of Liens and Interests**
- D. Exhibit D Cure Schedule**
- E. Exhibit E Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor that May be Assumed and Assigned**
- F. Exhibit F Notice of Sale Motion**

**EXHIBIT A**  
**Asset Purchase Agreement**

*[Attached]*

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (hereinafter, together with the Exhibits annexed hereto the “**Agreement**”) is entered into as of June 17, 2017, by and between **BRUNOCO, INC.**, a Delaware corporation (“**Purchaser**”), and **WRAP MEDIA, LLC**, a Delaware limited liability company (“**Seller**”).

### RECITALS

A. Seller owns and previously operated a business (the “**Business**”) of developing, designing and producing software applications and modules, including mobile engagement and messaging platforms and related tools which allow users to author and deliver electronic media and services.

B. Seller filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (as hereinafter defined) on December 10, 2016 (the “**Petition Date**”), in the United States Bankruptcy Court for the Northern District of California (“**Bankruptcy Court**”) thereby commencing the case captioned *In re Wrap Media, LLC*, Case Number 16-31325 (the “**Case**”).

C. Seller wishes to sell and deliver to Purchaser, in accordance with Sections 363 and 365 and other applicable provisions of the Bankruptcy Code, all of the Purchased Assets (as hereinafter defined), together with the Assumed Liabilities (as hereinafter defined), upon the terms and subject to the conditions set forth in this Agreement.

D. Purchaser wishes to purchase and take delivery of such Purchased Assets and Assumed Liabilities upon the terms and subject to the conditions set forth in this Agreement.

E. The Purchased Assets will be sold pursuant to a Sale Approval Order (as hereinafter defined) which will approve such sale under Section 363 of the Bankruptcy Code and the assumption and assignment of certain executory contracts and leases under Section 365 of the Bankruptcy Code and other applicable provisions of the Bankruptcy Code and the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the purchase and sale of the assets and the mutual promises, covenants and conditions hereinafter set forth, Purchaser and Seller hereby agree as follows:

### ARTICLE I DEFINITIONS

As used herein, the following terms shall have the meanings set forth below, and where said meanings are intended, said terms shall be capitalized:

“**Affiliate**” means with respect to a corporation, limited liability company, partnership, trust or other legal entity any other Person directly or indirectly controlling, controlled by or under common control with such legal entity, where “control” means the possession, directly or

indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” shall have meanings correlative to the foregoing.

“**Agreement**” has the meaning set forth in the Preamble.

“**Assignment Agreement**” has the meaning set forth in Section 3.1(d).

“**Assumed Contracts**” means all of the Seller’s right, title and interest in and to those contracts and agreements which relate to the Business or the Purchased Assets being purchased hereunder and which are listed on *Exhibit C* attached hereto. Subject to Section 2.1(b), Purchaser may add contracts to or delete contracts from *Exhibit C* from and after the date of this Agreement and through the Effective Time with no effect on the Purchase Price.

“**Assumed Liabilities**” means those Liabilities specifically stated on *Exhibit D*, and no others.

“**Assumption Agreement**” has the meaning set forth in Section 3.1(c).

“**Bankruptcy Code**” means the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended, or any successor thereto, and any rules and regulations promulgated thereunder.

“**Bankruptcy Court**” has the meaning set forth in the Recitals.

“**Bill of Sale**” has the meaning set forth in Section 3.1(b).

“**Books and Records**” means all of Seller’s books and records for the Business (other than Seller’s tax returns, minute books and other corporate records) including data on Seller’s computers and on memory sticks or other storage devices (including printouts or other tangible representations of such data); lists of customers and suppliers; customer files; market studies and market data; records with respect to pricing, volume, payment history, cost, inventory, machinery and equipment, sales, purchasing and materials; mailing lists; and distribution and customer lists.

“**Business**” has the meaning set forth in the Recitals.

“**Case**” has the meaning set forth in the Recitals.

“**Claim**” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

“**Closing Date**” means the date on which the Closing hereunder is held. The Closing shall be held at the offices of Gray, Plant, Mooty, Mooty & Bennett, P.A. in Minneapolis, Minnesota, at 9:00 a.m., then current Central time, on June 28, 2017, or at such other place, time or date as the parties may mutually agree in writing, unless delayed by a party for failure to satisfy conditions precedent to said party’s obligations hereunder, in which case the Closing shall

be held as soon as practicable after such conditions are satisfied. The Closing will be effective as of the Effective Time.

“**Customer Information**” means all: (i) lists of customers and prospective customers, including all associated contact information and contextual communications; (ii) lists of customers and prospective customers used in marketing campaigns using Marketo or any other marketing automation solution; (iii) identifying and other information relating to customers and prospective customers, including all customer and prospective customer information maintained using the Salesforce customer relationship management system; (iv) copies of all contracts with customers, whether such contracts are expired, terminated, rejected under Section 365 of the Bankruptcy Code, or otherwise no longer in effect, and whether entered into by Seller prior to, on or after the Petition Date; (v) customer-facing and internal presentations relating to customers or prospective customers; (vi) proposals made to customers or prospective customers; (vii) enquiries, requests for product or proposals from customers or prospective customers; and (viii) other information of every type or nature relating to customers or prospective customers of Seller.

“**Disclosure Schedule**” has the meaning set forth in Article IV.

“**Effective Time**” means 11:59 PM on the Closing Date.

“**Governmental Authority**” means any federal, state, local or foreign government or any subdivision, agency, instrumentality, authority, department, commission, board or bureau thereof or any federal, state, local or foreign court, tribunal or arbitrator (including the Bankruptcy Court).

“**Intellectual Property Rights**” means intellectual property and other similar proprietary rights, whether owned or held for use under license, whether registered or unregistered, consisting of all: (i) trademarks, trade dress, service marks, certification marks, logos and trade names, and the goodwill associated with the foregoing; (ii) inventions (whether patentable or unpatentable and whether or not reduced to practice) and all improvements; (iii) patents and patent applications, and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, re-examinations, and extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, certificates of invention, certificates of registration, inventions, discoveries and improvements, whether or not patentable, and like rights; (iv) writings and other works of authorship; (v) authoring tools, including the Wrap Authoring Tool and all related code bases; (vi) graphic designs, including product designs, roadmaps, wrap templates, sample wraps, customer wraps, demo wraps, wrap cards, and all other wraps created by or under the control of Seller; (vii) wrap Picker (sales and marketing console) and all related data bases, designs and roadmaps; (viii) wrap Insight analytics programs and all related data bases, designs and roadmaps; (ix) Atlassian/Confluence internal system for collaboration and all related data, contents and assets; (x) GitHub and all related content, assets and code bases; (xi) PostgreSQL databases, content, assets and wrap IDs; (xii) Atlassian/Jira and Slack and all related data, content and assets; (xiii) trade secrets, non-public and confidential business, technical and know-how information and rights to limit the use or disclosure thereof by any Person, including ideas, research and development, know-how, formulas, compositions,

manufacturing and production processes and techniques, technical data, designs, drawings, specifications, supplier lists, pricing and cost information, and business and marketing plans and proposals; (xiv) software, including data files, code (including source code, object code, enhancements, modifications and all related documentation), firmware, application programming interfaces, databases, meta-data and other software-related specifications, documentation (including standardized subroutines, command structures, algorithms, processes, design, all files, all interfaces, navigational devices, menus, menu structures or arrangements, icons, help and other operational instructions and related documentation), and all other deliverables and other materials, regardless of whether existing in or on paper, electronic or other form or media, upon creation and at all stages of development and upon completion (collectively, “**Software**”); (xv) registered domain names and uniform resource locators; (xvi) mask works and applications, registrations and renewals thereof; (xvii) all other proprietary rights; and (xviii) claims, causes of action and defenses relating to the enforcement of any of the foregoing; in each case including any registrations of, applications to register, and renewals and extensions of, any of the foregoing with or by any Governmental Authority in any jurisdiction.

“**IP Assignments**” has the meaning set forth in Section 3.1(e).

“**Knowledge**,” “**To the Knowledge of Seller**” or phrases of similar import mean to the reasonable knowledge of Eric Greenberg, provided that he will only be deemed to have Knowledge of a particular fact or other matter if and solely to the extent that he is actually aware of that fact or matter.

“**Laws**” means common law and any federal, state, local or foreign constitution, law, code, statute, rule, regulation, ordinance, order, determination, writ, injunction, ruling, judgment, decree, charge, or restriction of any Governmental Authority, including the Bankruptcy Code, each as amended and in effect as of the time of determination, whether as of the date hereof or as of a past time.

“**Licensed Software**” has the meaning set forth in Section 4.7(b).

“**Liens**” means all title defects or objections, mortgages, liens, Claims, interests, charges, pledges, rights of setoff, or other encumbrances of any nature whatsoever, including licenses, leases, chattel or other mortgages, collateral security arrangements, pledges, security interests, equity interests, conditional and installment sales agreements, equitable interest, option, warrant, right of first refusal, easements, profit, servitude, right of way, covenant, encroachments, zoning or other restrictions, of any kind and other title or interest retention arrangements, reservations or limitations of any nature, other than Permitted Liens.

“**Material Adverse Effect**” means, with respect to any business or Person, any event or condition that, individually or in the aggregate, has had or is reasonably likely to have a materially adverse effect on such business or the business of such Person, except that none of the following will be deemed to constitute, and none of the following will be taken into account in determining the occurrence of a Material Adverse Effect: (i) any event or condition generally affecting any of the industries in which such business or such Person operates or the United States economy as a whole; (ii) any national or international political or social event or



condition, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States or any of its territories, possessions or personnel; (iii) any event or condition generally affecting any financial, banking or securities market (including any disruption thereof or any decline in the price of any security or any market index); (iv) compliance with any term of, or the taking of any action required by, this Agreement; (v) any change in GAAP or other accounting requirement or principle or any change in applicable Law or the interpretation thereof; (vi) any failure of such business or such Person to meet projections (provided that the underlying reasons for any such failure may be taken into account in determining the occurrence of a Material Adverse Effect); or (vii) the announcement of the transactions contemplated by this Agreement; provided that with respect to clauses (i), (ii), (iii) or (v), the changes or conditions do not have a materially disproportionate effect on such business or Person (relative to other participants in the same industries).

“**Off-the-Shelf Software**” means software that is readily available on standard license terms and conditions for a license fee of less than \$5,000.

“**Open Source Materials**” has the meaning set forth in Section 4.7(f).

“**Permitted Lien**” means any Lien that is listed on *Exhibit E* to this Agreement.

“**Person**” means any natural person, partnership, corporation, limited liability company, trustee or trust or any other legal entity or any Governmental Authority.

“**Petition Date**” has the meaning set forth in the Preamble.

“**Plans**” means all plans, bills of material, blueprints, designs, processes, programmer’s notes, computer programs and related documents, formulae, process sheets, engineering drawings, instructions, machine manuals, any non-expired warranties and guarantees, and similar items used or required by the Business.

“**Purchased Assets**” means the Business, the goodwill and the going concern value of the Business, and all of the assets, properties and rights utilized in the Business, excluding only the Retained Assets. The Purchased Assets include the Assumed Contracts, the Books and Records, the Customer Information, all of Seller’s Intellectual Property Rights, the Plans, the Web Assets and all assets specifically listed on *Exhibit A*. Purchaser may add assets, other than assets designated as Retained Assets as of the date of this Agreement, to or delete assets from the Purchased Assets, including to or from *Exhibit A*, from and after the date of this Agreement and through the Effective Time with no effect on the Purchase Price.

“**Purchaser**” has the meaning set forth in the Preamble.

“**Purchase Price**” has the meaning set forth in Section 2.2(a).

“**Retained Assets**” means those assets of Seller which are to be retained by Seller, and shall consist only of cash and cash equivalents, deposit accounts, and the other items specifically

listed on *Exhibit B*. Purchaser may add assets to the Retained Assets from and after the date of this Agreement and through the Effective Time with no effect on the Purchase Price.

“**Sale Approval Order**” means the order (in form and substance reasonably satisfactory to Purchaser) to be entered by the Bankruptcy Court approving: (i) the sale of the Purchased Assets and the assignment of the Assumed Contracts to the Purchaser free and clear of all Liens and Claims, except only the Permitted Liens and Assumed Liabilities; (ii) determining that Purchaser is purchasing the Purchased Assets in good faith and is entitled to the protections provided by Section 363(m) of the Bankruptcy Code; and (iii) the consummation of all other transactions contemplated by this Agreement under Sections 105(a), 363 and 365 of the Bankruptcy Code.

“**Seller**” has the meaning set forth in the Preamble.

“**Seller Debt**” means, for Seller: (i) any indebtedness for borrowed money or issued in substitution of or exchange for indebtedness for borrowed money; (ii) any indebtedness evidenced by any note, bond, debenture or other debt security and any contingent reimbursement obligation with respect to any letter of credit; (iii) the aggregate amount of capitalized lease obligations; (iv) any indebtedness for borrowed money to the extent guaranteed in any manner by Seller (including guarantees in the form of an agreement to repurchase or reimburse) and any other indebtedness to the extent that Seller is indirectly liable as guarantor, surety or otherwise; and (v) all interest, premiums, penalties, charges, fees, expenses and other amounts due in connection with the payment and satisfaction in full of the obligations described in the foregoing clauses (i) through (iv) of this definition.

“**Software**” has the meaning set forth in the definition of Intellectual Property Rights.

“**Tax**” and “**Taxes**” means all federal, state, county, local, foreign and other taxes or assessments including income, estimated income, business, occupation, franchise, property (real and personal), sales, use, employment, social security, social welfare, pension, medical, VAT, gross receipts, transfer, ad valorem, profits, license, capital, payroll, employee withholding, unemployment, excise, goods and services, severance, stamp and including interest, penalties and additions in connection therewith.

“**Taxing Authority**” means any Governmental Authority responsible for the administration or imposition of any Tax.

“**Tax Return**” means any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Laws relating to any Tax.

“**Web Assets**” means all of Seller’s website domain names and URLs, Seller’s web server host and all associated administrative usernames and passwords.

## ARTICLE II PURCHASE AND SALE

### 2.1 Basic Transaction.

(a) On the terms and subject to the conditions of this Agreement, Seller shall sell, assign, transfer, convey and deliver to Purchaser, at the Closing, all of Seller's right, title and interest in and to the Purchased Assets free and clear of all Claims and Liens, except only Assumed Liabilities and Permitted Liens. Purchaser expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any Retained Assets, and all such Retained Assets are excluded from the Purchased Assets.

(b) Seller shall use reasonable efforts to obtain any necessary Bankruptcy Court approval for the assumption and assignment of the Assumed Contracts. On the Closing Date, all defaults by Seller under the Assumed Contracts as of the date the Sale Approval Order is entered shall be cured by paying to the counter-parties to those Assumed Contracts the cure amounts relating to those Assumed Contracts as determined by the Bankruptcy Court in the Sale Approval Order. Seller shall pay up to, but not exceeding, an aggregate amount of Ten Thousand and 00/100 Dollars (\$10,000.00) of the cure amounts relating to the Assumed Contracts as determined by the Bankruptcy Court, and Purchaser shall pay any additional cure amounts in excess of that amount (which amounts, for the avoidance of doubt, shall be in addition to the Purchase Price).

(c) Subject to the terms and conditions set forth herein, Purchaser will assume and agree to pay, perform and discharge when due all of the Assumed Liabilities, and no other Claims or obligations. Other than the Assumed Liabilities, Purchaser will not assume and will not be responsible to pay, perform or discharge any Claims against or obligations of Seller or any Affiliate of Seller of any kind, whether or not related to the operation of the Business.

### 2.2 Purchase Price; Payment of Purchase Price.

(a) On the Closing Date, subject to the terms and conditions set forth in this Agreement, Seller will sell and convey to Purchaser, and Purchaser will purchase, the Purchased Assets for an amount equal to ONE MILLION SIX HUNDRED FIFTY-TWO THOUSAND SEVEN HUNDRED AND 00/100 DOLLARS (\$1,652,700.00) (the "**Purchase Price**").

(b) The Purchase Price shall be paid at the Closing by wire transfer of immediately available funds to an account designated by Seller.

2.3 Limited Assumption of Liabilities. Purchaser shall not assume or become liable for any Claims against Seller, including any Seller Debt, except only for the Assumed Liabilities.

2.4 Transaction Taxes. Sales Taxes or transfer Taxes, if any, imposed in connection with the transactions contemplated hereby shall be paid by Seller.

### **ARTICLE III DELIVERIES BY SELLER**

3.1 Seller's Deliveries. On the Closing Date, subject to the terms and conditions set forth in this Agreement, Seller shall make the following deliveries, duly and validly executed:

- (a) the Sale Approval Order;
- (b) a bill of sale in form satisfactory to Purchaser (the "**Bill of Sale**") and other instruments of conveyance reasonably requested by Purchaser assigning and conveying all of the Purchased Assets to Purchaser;
- (c) an assignment and assumption agreement in form satisfactory to Purchaser (the "**Assumption Agreement**") assigning the Assumed Liabilities to Purchaser;
- (d) an assignment and assumption agreement in form satisfactory to Purchaser (the "**Assignment Agreement**") assigning all of the Assumed Contracts to Purchaser; and
- (e) assignments in form satisfactory to Purchaser for all Intellectual Property Rights, including the Web Assets (collectively, the "**IP Assignments**").

3.2 Purchaser's Deliveries. On the Closing Date, subject to the terms and conditions set forth in this Agreement, Purchaser shall make the following deliveries, duly and validly executed:

- (a) Payment of the Purchase Price in accordance with Section 2.2(b);
- (b) the Assumption Agreement;
- (c) the Assignment Agreement; and
- (d) the IP Assignments (as applicable).

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

Seller represents and warrants to Purchaser that, except as specifically set forth on a Disclosure Schedule to be provided by Seller no later than six (6) business days after the date of this Agreement (the "**Disclosure Schedule**"), the following statements are true and correct as of the date of this Agreement and will be true and correct in all material respects on the Closing Date as if made on said Closing Date. Each disclosure made on the Disclosure Schedule shall be made with reasonable specificity, and shall designate the Section or Sections of this Article IV to which the disclosure applies; provided, however, that any disclosure that makes its relevance to one or more other Section or Sections of this Article IV reasonably apparent on the face of such disclosure will be deemed to designate such other Section(s) of this Article IV with respect to such disclosure.

4.1 Seller. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Subject to the entry of the Sale Approval Order by the Bankruptcy Court, Seller has full power and authority to enter into this Agreement and carry out its obligations hereunder. This Agreement has been duly and validly executed and delivered by Seller and, subject to the entry of the Sale Approval Order by the Bankruptcy Court, constitutes a valid and binding obligation of Seller enforceable in accordance with its terms.

4.2 Title. Except as set forth on Section 4.2 of the Disclosure Schedule, Seller has good and marketable title to the Purchased Assets, free and clear of any Liens of any kind or nature whatsoever, other than Permitted Liens. At the Closing, Seller will convey good and marketable title to the Purchased Assets to be sold hereunder, free and clear of any and all Claims and Liens of any kind or nature whatsoever, other than Assumed Liabilities and Permitted Liens.

4.3 No Conflict. Except as set forth on Section 4.3 of the Disclosure Schedule, to the Knowledge of Seller the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Seller will not (a) violate any material order, writ, injunction or decree of any court, administrative agency or Governmental Authority; or (b) conflict with or result in the breach of the terms, conditions or provisions of the organizational and governing documents of Seller.

4.4 No Third-Party Interests. Except as set forth on Section 4.4 of the Disclosure Schedule, none of the Purchased Assets are leased to any third party or provided to any third party under any arrangement, other than to customers in the ordinary course of business.

4.5 Litigation. Other than the Case, to the Knowledge of Seller there are no claims, actions, suits, proceedings or investigations (whether or not purportedly on behalf of Seller) pending or threatened against or affecting Seller, the Business or the Purchased Assets, at law or in equity or before or by any federal, state, municipal or other Governmental Authority, commission, board, agency or instrumentality, domestic or foreign, nor has any such action, suit, proceeding or investigation been pending during the 12-month period preceding the date hereof; and Seller is not operating under or subject to, or in default with respect to, any order, writ, injunction or decree of any court or federal, state, municipal or other Governmental Authority.

4.6 Intellectual Property Rights. Except as set forth on Section 4.6 of the Disclosure Schedule, to the Knowledge of Seller:

(a) Seller owns or has the right to use pursuant to license, sublicense, agreement or permission all Intellectual Property Rights used in the operation of the Business as conducted on the Petition Date;

(b) all such Intellectual Property Rights (including Seller's rights under any such license, sublicense, agreement or permission) are being conveyed to Purchaser pursuant to this Agreement;

(c) Seller has properly maintained the registrations of all Intellectual Property Rights which are registered;

(d) each of the Intellectual Property Rights is owned by Seller, free and clear of any Lien, license or other restriction, or limitation regarding use or disclosure;

(e) each of the Intellectual Property Rights owned or used by Seller immediately before the Closing will be owned or available for use by Purchaser on identical terms and conditions immediately after the Closing; and

(f) to the Knowledge of Seller, the Purchased Assets and the conduct by Seller of the Business as currently conducted, do not infringe on the rights of any third party, no proceeding is pending to such effect and no such proceeding is threatened.

#### 4.7 Software.

(a) Section 4.7 of the Disclosure Schedule, to the Knowledge of Seller, contains a complete and accurate list of all Software utilized in the Business of Seller (including software utilized in the websites of Seller) which is proprietary (that is, software that was developed either by Seller or by third parties for Seller and specific to Seller).

(b) Except for Off-the-Shelf Software, Section 4.7 of the Disclosure Schedule contains a complete and accurate list of all Software utilized in the Business of Seller (including software utilized in the websites of Seller) as of the Petition Date under which Seller is a licensee, lessee, or otherwise has obtained the right to use such Software (the “**Licensed Software**”).

(c) All license agreements relating to the Licensed Software are listed on Section 4.7 of the Disclosure Schedule, and true, current, correct and complete copies of such license agreements have been made available to Purchaser.

(d) No Software, computer software, or process of Seller has manifested significant operating problems, other than such problems that have been adequately corrected or are correctable in the ordinary course of business. Seller has not used any software license reviewed and approved by the Open Source Initiative (<http://www.opensource.org/about>) as complying with the definition of “open source” (“**Open Source Materials**”) so as to require any Software to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making modifications or derivative works or (iii) re-distributable at no or minimal charge.

(e) Except for contracts for Off-the-Shelf Software, there are no licenses granted to Seller or any other agreements to which it is a party, which relate, in whole or in part, to the Intellectual Property Rights; and

(f) There have been no material losses or alterations of any of component of the Software constituting a portion of the Purchased Assets since the Petition Date.

4.8 Plans. To the Knowledge of Seller, the Purchased Assets include in written or electronic form Plans which were used to produce, diagnose and repair all of the products sold by Seller and which were sufficient to enable qualified personnel to produce, diagnose and repair all of the products sold by Seller.

4.9 Customer Contracts. Section 4.9 of the Disclosure Schedule contains a complete and accurate list of (a) all customer contracts that were in effect on the Petition Date and (b) all customer contracts that were entered into by Seller from and after the Petition Date.

4.10 Material Change. Since April 21, 2017, there has been no material adverse change in the condition of the Purchased Assets, except changes occurring in the ordinary course of business, other than the risk of website shutdown, that create a Material Adverse Effect.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES BY PURCHASER**

Purchaser represents and warrants to Seller that the following statements are true and correct as of the date of this Agreement, and will be true and correct in all material respects on the Closing Date as if made on said date:

5.1 Organization and Standing. Purchaser is a corporation duly organized, existing and in good standing under the Laws of the State of Delaware. Purchaser has full power and authority to purchase the Purchased Assets as herein provided. This Agreement has been duly and validly executed and delivered by Purchaser and constitutes a valid and binding obligation of Purchaser enforceable in accordance with its terms.

5.2 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not (a) violate any material order, writ, injunction or decree of any court, administrative agency or Governmental Authority, or (b) conflict with or result in the breach of the terms, conditions or provisions of the articles of incorporation or by-laws of Purchaser.

5.3 Adequate Assurances Regarding Assumed Contracts. As of the Closing Date, Purchaser will be capable of satisfying the conditions contained in Section 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts.

## **ARTICLE VI NATURE AND SURVIVAL OF REPRESENTATIONS**

All statements contained in any certificate or other instrument delivered by or on behalf of Seller or Purchaser pursuant to this Agreement or in connection with the transactions contemplated hereby shall be deemed representations and warranties by Seller or Purchaser hereunder. All representations and warranties made by Seller or Purchaser in this Agreement or



pursuant hereto shall not survive the Closing hereunder. Purchaser confirms that Seller shall have no liability after the Closing with respect to the representations and warranties herein and that Purchaser's sole and exclusive remedy for the breach of any representations and warranties made under this Agreement (subject to Section 13.9) shall be to terminate this Agreement pursuant to Article XI below.

## **ARTICLE VII COVENANTS OF THE PARTIES**

7.1 Further Assurances. On the Closing Date, and from time to time thereafter, at the request of the other party, each party will execute and deliver to the other party all such assignments, endorsements and other documents, and take such other action as the other party may reasonably request in order more effectively to transfer and assign to Purchaser the Purchased Assets, to confirm the title of Purchaser thereto, to assist Purchaser in exercising its rights with respect thereto and under this Agreement and to carry out any purpose of this Agreement.

7.2 Phone Numbers and Mail. At or promptly after Closing, Seller will transfer the phone number(s) and fax telephone number(s) utilized in the Business to Purchaser to maximize the effectiveness of the transition of the Business to Purchaser. Appropriate arrangements will be made to ensure that calls and faxes made to the transferred numbers which do not relate to the purchased Business are forwarded to Seller. Seller will forward any mail (including email) which Seller receives which relates to the purchased Business to Purchaser, as promptly as practicable.

7.3 Inspection of the Purchased Assets. From and after the date they shall have been relocated to a conference room, which date shall be on or before June 20, 2017, through the Effective Time, Seller will grant reasonable access to all of the Purchased Assets to Purchaser and its representatives during regular business hours to allow Purchaser to review and investigate the existence and condition of the Purchased Assets. Purchaser agrees that the documents so reviewed shall be treated as "confidential," unless such documents are otherwise publicly available, pursuant to the Non-Disclosure Agreement Purchaser has previously executed and that Purchaser's review shall not result in a waiver of any privilege that otherwise might be applicable to such documents.

## **ARTICLE VIII NO BROKERS OR FINDERS**

Each of Seller and Purchaser represent and warrant to each other that each did not directly or indirectly engage any Person to bring about the consummation of the transactions contemplated herein; and that no Person is entitled to a broker's commission, finder's fee or any similar compensation upon the consummation of the transactions contemplated herein.

## **ARTICLE IX CONDITIONS PRECEDENT OF PURCHASER**



The obligations of Purchaser hereunder are subject to the conditions that, on or before the Closing Date:

9.1 Representations and Warranties True at Closing. The representations and warranties of Seller contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification) on and as of the Closing Date as though such representations and warranties were made at and as of such date.

9.2 Compliance with the Agreement. Seller shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing Date.

9.3 Deliveries. The documents required under Article III hereof shall be tendered by Seller for delivery to Purchaser at the Closing.

9.4 Injunction. On the Closing Date, there shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued by a court of competent jurisdiction directing that the transactions provided for herein or any of them not be consummated as herein provided.

9.5 Adverse Development. There shall have been no developments with respect to the Purchased Assets which could reasonably be anticipated to have a Material Adverse Effect on the Purchased Assets.

9.6 Consents to Assignments. Seller shall deliver to Purchaser appropriate consents to the Assumed Contracts specifically identified on *Exhibit C* as Assumed Contracts requiring counter-party consent, in form and substance reasonably satisfactory to Purchaser and its counsel.

## **ARTICLE X CONDITIONS PRECEDENT OF SELLER**

The obligations of the Seller hereunder are subject to the conditions that, on or before the Closing Date:

10.1 Representations and Warranties True at Closing. The representations and warranties of Purchaser contained in this Agreement or in any certificate or document delivered pursuant to the provisions hereof or in connection with the transactions contemplated hereby, shall be true and correct in all respects (in the case of any representation or warranty containing any materiality qualification) or in all material respects (in the case of any representation or warranty without any materiality qualification) on and as of the Closing Date as though such representations and warranties were made at and as of such date.

10.2 Purchaser's Compliance with the Agreement. Purchaser shall have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing Date.

10.3 Deliveries. The payments and documents required under Article III hereof shall be tendered by Purchaser for delivery to Seller at the Closing.

10.4 Injunction. There shall be no effective injunction, restraining order or order of any nature issued by a court of competent jurisdiction which shall direct that this Agreement, or any of the transactions provided for herein, not be consummated as herein provided.

## **ARTICLE XI TERMINATION**

11.1 **Termination of Agreement.** The sole and exclusive rights to terminate this Agreement before Closing are as follows:

- (a) by mutual written consent of the parties;
- (b) by Purchaser or Seller, if the Closing has not occurred on or before June 30, 2017;
- (c) by Purchaser or Seller, if a Governmental Authority shall have issued an order, decree or ruling or taken any other action (which order, decree, ruling or other action the parties hereto shall use their reasonable best efforts to lift), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable;
- (d) by Purchaser, if any condition in Article IX becomes incapable of fulfillment at Closing, provided that Purchaser has not waived such condition;
- (e) by Seller, if any condition in Article X becomes incapable of fulfillment at Closing; provided that Seller has not waived such condition;
- (f) by Purchaser, if Seller has not timely delivered to Purchaser the Disclosure Schedule, complete and accurate in all material respects, required under Article IV;
- (g) by Purchaser, if (i) Seller commits a material breach of any term of this Agreement (other than the timely delivery of the Disclosure Schedule as referenced in Section 11.1(f)) and (ii) such breach is not cured within three (3) days after the date on which Purchaser gives Seller written notice of such breach, provided that Purchaser has not waived such breach;
- (h) by Seller, if (i) Purchaser commits a material breach of any term of this Agreement and (ii) such breach is not cured within three (3) days after the date on which Seller

gives to Purchaser written notice of such breach, provided that Seller has not waived such condition;

(i) by Purchaser if (i) the Disclosure Schedule discloses changes to the existence or condition of any of the Purchased Assets that have occurred since the Petition Date that, individually or collectively, constitute a Material Adverse Effect, or (ii) Purchaser's investigation of the Purchased Assets pursuant to Section 7.3 discloses changes to the existence or condition of any of the Purchased Assets that have occurred since the Petition Date that, individually or collectively, constitute a Material Adverse Effect; or

(j) by Purchaser or Seller, if Seller accepts or selects and the Bankruptcy Court approves the bid or bids of any Person or Persons other than Purchaser to purchase all or a substantial portion of the Purchased Assets (whether or not any transaction contemplated by any such bid or bids shall be consummated).

Notwithstanding the foregoing, a party will not have the right to terminate this Agreement (except by mutual written consent) if the failure to satisfy any condition to Closing or consummate the transactions contemplated herein results in any material respect from the breach by such party of any of its representations, warranties, covenants or agreements herein.

**11.2 Effect of Termination.** If this Agreement is terminated pursuant to Section 11.1, then this Agreement will be of no further force or effect, except for the terms of Section 13.2 (Expenses), Section 13.4 (Governing Law; Waiver of Jury Trial) and this Section 11.2. Upon any termination pursuant to Section 11.1, no party will have any further obligation or other liability whatsoever hereunder, except pursuant to a Section listed in the immediately preceding sentence.

## **ARTICLE XII NOTICES**

All notices, requests, demands, claims, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) at the time of delivery if physically delivered, (b) at the time of transmission if transmitted by email, (c) five (5) business days after having been deposited in the United States Mail, as certified or registered mail (with return receipt requested and with first class postage pre-paid), or (d) one (1) business day after having been transmitted to a third party providing delivery services in the ordinary course of business which guarantees delivery on the next business day after such transmittal (e.g., via Federal Express), all of which notices or other communications shall be addressed to the recipient as follows:

(a) To the Seller:

Wrap Media, LLC

\_\_\_\_\_

Attn: \_\_\_\_\_

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

with a copy thereof to:

St. James Law, P.C.  
22 Battery Street  
San Francisco, CA 94111  
Attn: Michael St. James  
Email: michael@stjames-law.com

(b) To Purchaser:

BrunoCo, Inc.  
~~345 Lorton Ave # 205, Burlingame, CA 94010~~  
\_\_\_\_\_  
Attn: Christopher Bruno  
Email: email@chrisbruno.com

with a copy thereof to:

Gray, Plant, Mooty, Mooty & Bennett, P.A.  
500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402  
Attn: Phillip Bohl  
Email: phillip.bohl@gpmlaw.com

or to such other address or to such other Person as Purchaser or Seller shall have last designated by notice to the other.

### **ARTICLE XIII MISCELLANEOUS**

13.1 Modification. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated herein and shall not be modified or amended except by an instrument in writing signed by or on behalf of the parties hereto.

13.2 Expenses. Whether or not the transactions contemplated hereby are consummated, each of the parties hereto shall pay its own expenses incurred in connection with the authorization, preparation, execution or performance of this Agreement and all transactions contemplated hereby, including without limitation all fees and expenses of agents, representatives, counsel and accountants.

13.3 Assignment. This Agreement shall not be assignable by any party hereto without the prior written consent of the other party, except that Purchaser may assign this Agreement to an Affiliate of Purchaser, but such an assignment shall not relieve Purchaser of its obligations hereunder.

13.4 Governing Law; Waiver of Jury Trial. This Agreement shall be governed by and construed and enforced in accordance with the Laws of the State of California. The exclusive venue for any dispute arising under or in connection with this Agreement shall be the Bankruptcy Court. Each party waives any objection to such venue. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

13.5 Counterparts. This Agreement may be executed in any number of counterparts (including by facsimile or other electronic transmission), each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

13.6 No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights upon any Person other than the parties and their respective successors and permitted assigns.

13.7 Change of Name by Seller. Promptly after the closing hereunder, Seller will change its legal name to a name which does not include the word “Wrap” or “Media” or any variant of either, and which in any event is not similar to Seller’s current corporate name.

13.8 Access to Books and Records. Under the terms of this Agreement, Purchaser is receiving some of the books and records which relate to Seller’s business relating to the Purchased Assets, while Seller is retaining other records. Each party agrees that for a period of one (1) year from the Closing Date, said party shall preserve any books and records relating to the Purchased Assets and the related Business, and that during such period it will afford to the other party access to all such books and records at reasonable business hours and upon reasonable notice. After the termination of said one-year period each party shall be free to dispose of any such records in such form as it pleases, unless the other party has requested said records. If the other party has made such a request, the party receiving the request either shall give to the requesting party the originals or copies of such records, or may retain such records subject to the requesting party’s continuing right to inspect the same.

13.9 No Implied Representations; Non-Reliance. The parties hereto acknowledge that, except as expressly provided in this Agreement, none of the parties to this Agreement, and none of the Affiliates of any party to this Agreement, has made or is making any representations or warranties whatsoever, implied or otherwise. EXCEPT AS SET FORTH EXPRESSLY IN THIS AGREEMENT, SELLER DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY RELATING TO ANY ASSET (TANGIBLE, INTANGIBLE OR MIXED) OF SELLER, INCLUDING IMPLIED WARRANTIES OF FITNESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Purchaser further acknowledges that, upon the Closing, Purchaser shall acquire the Purchased Assets in an “as-is”

condition and on a “where-is” basis, without any representations or warranties of any kind, expressed or implied. Except as expressly provided in this Agreement, each party hereby disclaims any reliance upon any information or document given or made available (or not given or made available) to such party by or on behalf of the other party in contemplation of the transactions contemplated by this Agreement or any other agreement or document contemplated hereby.

13.10 Interpretation. When a reference is made in this Agreement to a Section, Article, Exhibit or Schedule, such reference is to a Section, Article, Exhibit or Schedule of this Agreement unless otherwise indicated. The headings contained in this Agreement or in any Exhibit or Schedule are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein shall have the meaning as defined in this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth herein. The word “including” and words of similar import when used in this Agreement will mean “including, without limitation,” unless otherwise specified. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to the Agreement as a whole and not to any particular provision in this Agreement. The term “or” is not exclusive. The word “will” shall be construed to have the same meaning and effect as the word “shall.” References to days mean calendar days unless otherwise specified.

**(Signature page to Asset Purchase Agreement)**

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date first above written.

**PURCHASER:**

**BRUNOCO, INC.**

DocuSigned by:  
*Christopher Bruno*  
By: \_\_\_\_\_  
Its: CEO \_\_\_\_\_

**SELLER:**

**WRAP MEDIA, LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
A	Purchased Assets
B	Retained Assets
C	Assumed Contracts
D	Assumed Liabilities
E	Permitted Liens

### **Disclosure Schedule\***

\*To be delivered by Seller no later than six (6) business days after the date of this Agreement.

**EXHIBIT A**  
**“PURCHASED ASSETS”**

The Purchased Assets include, but are not limited to:

1. All prepayments and deposits made under Assumed Contracts.
2. All amounts due Seller under Assumed Contracts by the counterparties thereto.
3. All corporate email accounts of Seller.



## **EXHIBIT B**

### **“RETAINED ASSETS”**

The Retained Assets include, but are not limited to:

1. All contracts that are not Assumed Contracts.
2. All cash on hand or in deposit accounts, prepayments, except prepayments made under Assumed Contracts, refunds, including Tax and insurance refunds, and security and like deposits, including the security deposit held by American Express, except such security and like deposits made under Assumed Contracts.
3. All accounts receivable, including intercompany accounts receivable, and other amounts due Seller, except amounts due Seller under Assumed Contracts by the counterparties thereto.
4. All policies of insurance of every type and nature, and all proceeds related thereto.
5. All rights, claims and causes of action arising under Chapter 5 of the Bankruptcy Code and all proceeds thereof, and all claims and causes of action related to the Retained Assets or this Agreement.
6. All losses, loss carry forwards and rights to receive refunds, credits and loss carry forwards with respect to any and all Taxes of Seller incurred or accrued on or prior to the Closing Date, including interest receivable with respect thereto.

**EXHIBIT C**

**“ASSUMED CONTRACTS”**

1. Online contract between Seller and Amazon Web Services.
2. Contract between Seller and Twillio.

**EXHIBIT D**

**“ASSUMED LIABILITIES”**

1. Liabilities arising from and after the Effective Time under all Assumed Contracts.

**EXHIBIT E**  
**“PERMITTED LIENS”**

1. None

**EXHIBIT B**

**Notice of Auction Date and Sale Hearing**

*[Attached]*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CALIFORNIA  
NORTHERN DIVISION**

In re

**WRAP MEDIA LLC,**

Debtor.

Chapter 11

Case No. 16-31325 HLB

**NOTICE OF AUCTION DATE AND SALE HEARING**

**PLEASE TAKE NOTICE** that substantially all assets related to the business of the above-captioned debtor and debtor in possession (the “Debtor”) are being offered for sale. A general description of the assets for sale is attached as **Appendix A**. Any person or entity who desires to submit an offer for some or all of the Debtor’s assets (a “Bidder”) must do so in writing (via facsimile or email) by no later than **12:00 pm (Pacific Time) on June 26, 2017**, at the address listed below.

**PLEASE TAKE FURTHER NOTICE** that if more than one offer has been received by the deadline above, then an auction (the “Auction”) to select the Successful Bid (as defined below) will take place at the **United States Bankruptcy Court, 450 Golden Gate Street, 16<sup>th</sup> Floor, Courtroom 19, San Francisco, California, beginning at 10:00 am (Pacific Time) on June 27, 2017**, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction may be transcribed or recorded. The sale process and Auction shall be managed and conducted by the Official Committee of Unsecured Creditors appointed in the Debtor’s case (the “Creditors’ Committee”) in any manner and upon any terms and conditions satisfactory to the Bankruptcy Court. Any overbids at the Auction may have to meet or exceed minimal increments as determined by the Creditors’ Committee. At the conclusion of the Auction, the Creditors’ Committee shall submit the Successful Bid to the Bankruptcy Court at the Sale Hearing (as defined below), for entry of an order approving the sale.

**PLEASE TAKE FURTHER NOTICE** that prior to the conclusion of the Auction, the Creditors’ Committee will (a) review and evaluate any and all bids, (b) identify the highest or otherwise best offer received at the Auction (such bid, the “Successful Bid” and the bidder making such bid, the “Successful Bidder”), and (c) communicate to the Successful Bidder and any and all competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. A hearing to approve the sale of the assets subject to the Successful Bid will be held either immediately after the Auction’s completion or at a later date communicated to the parties attending the Auction, before the Honorable Hannah Blumenstiel, United States Bankruptcy Court for the Northern District of California (the “Sale Hearing”).

**PLEASE TAKE FURTHER NOTICE** that on or about June 16, 2017, the Creditors’ Committee anticipates that a form of asset purchase agreement for the


acquisition of substantially all the Debtor's assets will be filed with the Bankruptcy Court. Parties interested in receiving a copy of the asset purchase agreement along with other motion papers seeking approval of the sale at the Sale Hearing should contact counsel for the Creditors' Committee at the address below.

**PLEASE TAKE FURTHER NOTICE** that all bids and questions about conducting diligence, the contents needed for a bid, the sale process and procedures, the Auction or any other issue related to this Notice should be directed to counsel for the Creditors' Committee: Keller & Benvenuti LLP, 650 California Street, Suite 1900, San Francisco, CA 94108, attn.: Keith McDaniels, Esq., telephone: (415) 484-6098, email: [kmcdaniels@kellerbenvenuti.com](mailto:kmcdaniels@kellerbenvenuti.com).

Dated: May 31, 2017  
San Francisco, California

Respectfully submitted,

**KELLER & BENVENUTTI LLP**

By:   
Keith A. McDaniels (SBN 189213)  
Dara L. Silveira (SBN 274923)  
650 California Street, Suite 1900  
San Francisco, CA 94108  
Tel: (415) 484-6098  
Fax: (650) 636-9251  
Email: [kmcdaniels@kellerbenvenuti.com](mailto:kmcdaniels@kellerbenvenuti.com)  
[dsilveira@kellerbenvenuti.com](mailto:dsilveira@kellerbenvenuti.com)

Counsel for the Official Committee of  
Unsecured Creditors of the Debtor

## **APPENDIX A**

### **Description of Assets**

Below is a general description of the assets for sale. The Creditors' Committee, however, makes no representations or warranties as to its accuracy or completeness. All interested parties are advised to contact counsel to arrange for conducting due diligence.

#### **Wrap Media LLC (“Wrap Media”)**

- Wrap Media is the Mobile Engagement & Messaging Platform that Supercharges Marketing, Sales & Customer Service
- The Wrap Media platform consists of the following components:
  - Design Platform. Web-based authoring tool which is developed in JavaScript, Node and Ruby on Rails. Operational data is stored in an RDS based Postgresql DB.Runtime Platform. Various microservices for the personalization, serving and analytics.
  - Developed in Scala, Akka and using a Kafka-based messaging backbone. Wraps are stored in compressed/encrypted format in Cassandra.
- 12 US Patents Issued, 9 Allowed, 22 expedited, and over 50 on file



**EXHIBIT C**

**[Proposed] Order Approving Sale of Assets  
Free and Clear of Liens and Interests**

*[Attached]*

1 MICHAEL ST. JAMES (S.B. No. 95653)  
2 **ST. JAMES LAW, P.C.**

2 22 Battery Street, Suite 888  
San Francisco, California 94111  
3 Telephone: (415) 391-7566  
4 Facsimile: (415) 391-7568

5 Counsel for Debtor Wrap Media, LLC

6 TOBIAS S. KELLER (S.B. No. 151445)  
7 KEITH A. MCDANIELS (S.B. No. 189213)  
8 DARA L. SILVEIRA (S.B. No. 274923)

8 **KELLER & BENVENUTTI LLP**

8 650 California Street, Suite 1900  
9 San Francisco, California 94108  
Telephone: (415) 484-6098  
10 Facsimile: (650) 636-9251

11 Counsel for the Official Committee of Unsecured  
12 Creditors of Wrap Media, LLC

13 **UNITED STATES BANKRUPTCY COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

17 In re:  
18 WRAP MEDIA, LLC,  
19 Debtor.

Case No. 16-31325 HLB  
Chapter 11

**[PROPOSED] ORDER APPROVING  
SALE OF ASSETS FREE AND CLEAR OF  
LIENS AND INTERESTS**

22 Upon consideration of the motion (the "Sale Motion")<sup>1</sup> of the above-captioned debtor and  
23 debtor in possession (the "Debtor") and the Official Committee of Unsecured Creditors of Wrap  
24 Media, LLC (the "Committee") pursuant to sections 105, 363 and 365 of title 11 of the United  
25 States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9014 and 9018 of the Federal  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale  
Motion or the Agreement, as applicable.

1 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 9018-1-2 of the  
2 Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the  
3 Northern District of California (the “Local Rules”), for entry of an order (the “Order”):

4 (a) approving the Debtor’s entry into the Asset Purchase Agreement dated as of June \_\_\_, 2017  
5 by and among the Debtor as seller and BrunoCo, Inc. as buyer (the “Buyer”), a copy of which is  
6 attached hereto as Exhibit [ ] (the “Agreement”), (b) approving the sale and bidding process  
7 employed by the Debtor and the Committee in advance of and at the Auction (the “Bidding  
8 Procedures”), including the Initial Sale Notice, (c) authorizing and approving (i) the sale of the  
9 Debtor’s right, title and interest in substantially all of its assets (the “Assets”), free and clear of  
10 all liens, claims, encumbrances, and interests, pursuant to section 363 of the Bankruptcy Code, as  
11 set forth in the Agreement (the “Sale”) and (ii) the assumption and assignment of certain  
12 executory contracts and unexpired leases (as defined in the Agreement, each, an “Assumed  
13 Contract”) pursuant to section 365 of the Bankruptcy Code, and (d) granting related relief; and  
14 the Court having established the date of the Sale Hearing; and the Bankruptcy Court having  
15 jurisdiction to consider the Sale Motion and the relief requested therein in accordance with  
16 28 U.S.C. §§ 157(b)(2) and 1334; and the appearance of all interested parties and all responses  
17 and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and  
18 upon the record of the Sale Hearing, and all other pleadings and proceedings in this chapter 11  
19 case, including the Sale Motion; and it appearing that the relief requested in the Sale Motion is in  
20 the best interests of the Debtor, its estates, creditors and all other parties in interest; and after due  
21 deliberation and sufficient cause appearing therefor;

22 IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:<sup>2</sup>

23 A. The findings and conclusions set forth herein constitute the Court’s findings of  
24 fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this  
25 proceeding pursuant to Bankruptcy Rule 9014.

26  
27  
28 <sup>2</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale  
Motion are hereby incorporated herein to the extent not inconsistent herewith.

1 B. To the extent any of the following findings of fact constitute conclusions of law,  
2 they are adopted as such. To the extent any of the following conclusions of law constitute  
3 findings of fact, they are adopted as such.

4 C. The Court has jurisdiction over this matter and over the property of the Debtor's  
5 estate, including the Assets to be sold, transferred or conveyed pursuant to the Agreement, and  
6 its estate pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to  
7 28 U.S.C. § 157(b)(2). Venue of this chapter 11 case and the Sale Motion in this district is  
8 proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9 D. The Assets constitute property of the Debtor's estate, and title thereto is vested in  
10 the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code.

11 E. The statutory predicates for the relief sought in the Sale Motion and the basis for  
12 the approvals and authorizations herein are: (i) sections 105(a), 363, and 365 of the Bankruptcy  
13 Code, (ii) Bankruptcy Rules 2002, 6004, 6006, 9007 and 9008, and (iii) Local Rules 6004-1 and  
14 9018-1-2.

15 F. On December 10, 2016 (the "Petition Date"), the Debtor filed a voluntary petition  
16 for relief under chapter 11 of the Bankruptcy Code. Affiliated debtor Wrap Media, Inc. also  
17 filed for chapter 11 relief on the Petition Date. The Court entered an order jointly administering  
18 the two cases [Docket No. 39], but vacated this order upon the Debtor's oral motion on April 7,  
19 2017 [Docket No. 141].

20 G. Since the Petition Date, the Debtor has continued to operate its businesses and  
21 manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the  
22 Bankruptcy Code. No trustee or examiner has been appointed. On January 31, 2017, the Office  
23 of the United States Trustee appointed the four-member Committee.

24 **Proper Notice and Opportunity to Object**

25 H. As evidenced by the affidavits of service filed with the Court, proper, timely,  
26 adequate, and sufficient notice of the Sale Motion, the Auction, and the Sale Hearing have been  
27 provided in accordance with section 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002,  
28 6004, 9006, 9007, 9008 and 9014, and the Local Rules.

1 I. The Debtor provided proper, timely, adequate, and sufficient notice to the  
2 counterparties to the Assumed Contracts of the assumption and assignment of the Assumed  
3 Contracts in accordance with sections 365 of the Bankruptcy Code, Bankruptcy Rules 2002,  
4 6006, 9006, 9007, and 9014, and the Local Rules, and in compliance with the procedures relating  
5 to assumption and assignment set forth in the Sale Motion and the Agreement. Specifically, on  
6 June 16, 2017, the Debtor filed the *Notice to Counterparties to Executory Contracts and*  
7 *Unexpired Leases of the Debtor That May Be Assumed and Assigned* [Docket No. \_\_\_\_] (the  
8 “Cure Notice”) with the Court and served the Cure Notice upon the counterparties to the  
9 contracts listed thereon.

10 J. The Affidavit of Service at Docket No. [##] indicates that, on June 16, 2017, the  
11 Committee mailed notice of the Sale Motion to, among others, (i) the Potential Bidders, (ii) the  
12 U.S. Trustee; (iii) the Debtor and its affiliate; (iv) any parties requesting special notice pursuant  
13 to Bankruptcy Rule 2002, and (v) all known secured creditors of the Debtor.

14 K. Such notice was sufficient and appropriate under the particular circumstances. No  
15 other or further notice of the Sale Motion, the Auction, the Sale Hearing, the assumption and  
16 assignment of the Assumed Contracts, or of the entry of this Order is necessary or shall be  
17 required.

18 L. A reasonable opportunity to object or be heard regarding the requested relief in  
19 the Sale Motion and the Order has been afforded to all interested persons and entities, including,  
20 without limitation, the Notice Parties. Other parties interested in bidding on the Assets were  
21 provided, upon request, sufficient information to make an informed judgment regarding whether  
22 to bid on the Assets.

23 **Good Faith**

24 M. The Debtor has demonstrated a sufficient basis and compelling circumstances  
25 requiring it to enter into the Agreement and sell the Assets under sections 363 and 365 of the  
26 Bankruptcy Code prior to confirmation of a plan of reorganization under section 1129 of the  
27 Bankruptcy Code. Such actions are appropriate exercises of the Debtor’s business judgment and  
28 is in the best interests of the Debtor, its estate, and its creditors.

1 N. As demonstrated by testimony and other evidence proffered at the Sale Hearing or  
2 submitted by declaration at or prior to the Sale Hearing and the representations of counsel made  
3 on the record at the Sale Hearing, through marketing efforts and a competitive sale process  
4 conducted prepetition, the Debtor (i) afforded interested potential purchasers a full, fair and  
5 reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to  
6 purchase all of the Assets; (ii) provided potential purchasers, upon request, sufficient information  
7 to enable them to make an informed judgment on whether to bid on the Assets; and  
8 (iii) considered all Qualified Bids submitted on or before the Bid Deadline.

9 O. The offer of the Buyer, upon the terms and conditions set forth in the Agreement,  
10 including the form and total consideration to be realized by the Debtor pursuant to the  
11 Agreement, (i) is the highest or otherwise best offer received by the Debtor; (ii) is fair and  
12 reasonable; (iii) is in the best interests of the Debtor's creditors and estate; and (iv) constitutes  
13 full and adequate consideration and reasonably equivalent value for the Assets.

14 P. The Buyer is a buyer in good faith, as that term is used in the Bankruptcy Code  
15 and the decisions thereunder, and thus is entitled to the protections of Bankruptcy Code  
16 section 363(m) with respect to the Assets and the relief provided for in the Order. The  
17 Agreement was negotiated at arm's length and entered into in good faith and without collusion or  
18 fraud of any kind. The Buyer has not engaged in collusion or any conduct that would otherwise  
19 control or tend to control the sale price as between or among potential bidders and, therefore, has  
20 not violated section 363(n) of the Bankruptcy Code. Neither the Seller nor the Buyer has  
21 engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy  
22 Code; or cause the application of or implicate section 363(n) of the Bankruptcy Code to the  
23 Agreement or to the consummation of the Sale and transfer of the Assets to the Buyer. The  
24 Buyer is entitled to all of the protections and immunities of section 363(m) of the Bankruptcy  
25 Code.

26 Q. The Seller has full corporate power and authority to execute the Agreement and  
27 all other documents contemplated thereby, and the Sale of the Assets has been duly and validly  
28 authorized by all necessary corporate authority by the Seller to consummate the transactions

1 contemplated by the Agreement. No consents or approvals, other than as may be expressly  
2 provided for in the Agreement, are required by the Seller to consummate the Sale.

3 R. The Debtor has advanced sound business reasons for seeking to enter into the  
4 Agreement, as more fully set forth in the Sale Motion and as demonstrated at or before the Sale  
5 Hearing, and it is a reasonable exercise of the Debtor's business judgment to sell the Assets and  
6 to consummate the transactions contemplated by the Agreement. Notwithstanding any  
7 requirement for approval or consent by any person, the transfer of the Assets to the Buyer and  
8 the assumption and assignment of the Assumed Contracts is a legal, valid and effective transfer  
9 of the Assets.

10 S. The terms and conditions of the Agreement, including the consideration to be  
11 realized by the Debtor pursuant to the Agreement, are fair and reasonable, and the transactions  
12 contemplated by the Agreement are in the best interests of the Debtor's estate.

13 T. The total consideration provided by the Buyer for the Assets is the highest and  
14 best offer received by the Debtor, and the Purchase Price constitutes (i) reasonably equivalent  
15 value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair  
16 consideration under the Uniform Fraudulent Transfer Act and (iii) reasonably equivalent value,  
17 fair consideration and fair value under any other applicable laws of the United States, any state,  
18 territory or possession, or the District of Columbia, for the Assets.

19 **Transfer Free and Clear**

20 U. Except with respect to Assumed Liabilities as expressly provided in the  
21 Agreement or this Order, upon Closing, the Assets shall be sold free and clear of all mortgages,  
22 restrictions, hypothecations, charges, indentures, loan agreements, instruments, leases, licenses,  
23 options, deeds of trust, security interests, conditional sale or other title retention agreements,  
24 pledges, liens (including, without limitation, mechanics', materialmens' and other consensual  
25 and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first  
26 refusal, offsets, set-offs (except set-offs validly exercised prior to the Petition Date), contracts,  
27 rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products  
28 liability, alter-ego, environmental, pension, or tax liabilities, decrees of any court or foreign or

1 domestic governmental entity, or charges or interests of any kind or nature, if any, including, but  
2 not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of  
3 any attributes of ownership, debts arising in any way in connection with any agreements, acts, or  
4 failures to act, of the Debtor or the Debtor's predecessors or affiliates, claims (as that term is  
5 used in the Bankruptcy Code), reclamation claims, obligations, liabilities, demands, guaranties,  
6 options, contractual or other commitments, restrictions, interests and matters of any kind and  
7 nature, whether known or unknown, choate or inchoate, filed or unfilled, scheduled or  
8 unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or  
9 disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured,  
10 material or non-material, disputed or undisputed, whether arising prior to or subsequent to the  
11 commencement of the chapter 11 case, and whether imposed by agreement, understanding, law,  
12 equity or otherwise, including claims arising under any doctrines of successor liability or alter-  
13 ego (collectively, "Liens, Claims, Interests and Encumbrances"), with such Liens, Claims,  
14 Interests and Encumbrances, upon Closing, to attach to the proceeds of the Sale to be received by  
15 the Debtor in accordance with the Agreement in the same priority and subject to the same  
16 defenses and avoidability, if any, as before the Closing, and the Buyer would not enter into the  
17 Agreement to purchase the Assets otherwise.

18 V. The transfer of the Assets to the Buyer is a legal, valid and effective transfer of  
19 the Assets, and, except as may otherwise be provided in the Agreement or Order, shall vest, upon  
20 Closing, the Buyer with all rights, titles and interests to the Assets free and clear of any and all  
21 Liens, Claims, Interests and Encumbrances (other than Permitted Liens and Assumed  
22 Liabilities). Except as specifically provided in the Agreement or this Order, the Buyer shall not  
23 assume or become liable for any Liens, Claims, Interests and Encumbrances relating to the  
24 Assets being sold by the Debtor.

25 W. The Debtor may sell the Assets free and clear of all Liens, Claims, Interests and  
26 Encumbrances of any kind or nature whatsoever, other than the Permitted Liens and Assumed  
27 Liabilities, because, in each case, one or more of the standards set forth in section 363(f) of the  
28 Bankruptcy Code has been satisfied. Those holders of Liens, Claims, Interests and



1 Encumbrances and who did not object, or who withdrew their objections, to the Sale of the  
2 Assets and the Sale Motion, are deemed to have consented pursuant to section 363(f)(2) of the  
3 Bankruptcy Code. All objections to the Sale Motion have been waived, overruled or resolved by  
4 agreement of the parties or as set forth in this Order. Those holders of Liens, Claims, Interests  
5 and Encumbrances who did object fall within one or more of the other subsections of  
6 section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens,  
7 Claims, Interests and Encumbrances, if any, attach to the proceeds of the Sale of the Assets, if  
8 any, ultimately attributable to the property against or in which they claim or may claim any  
9 Liens, Claims, Interests and Encumbrances, and with such Liens, Claims, Interests and  
10 Encumbrances being subject to treatment by separate order of the Bankruptcy Court.

11 X. The Buyer would not have entered into the Agreement if the Sale was not free and  
12 clear of all Liens, Claims, Interests and Encumbrances of any kind or nature whatsoever, other  
13 than the Permitted Liens and Assumed Liabilities, as set forth in the Agreement and herein, or if  
14 the Buyer would, or in the future could, be liable for any such Liens, Claims, Interests and  
15 Encumbrances.

16 **Assumption and Assignment of Assumed Contracts**

17 Y. The Debtor and the Buyer have, to the extent necessary, satisfied the requirements  
18 of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A) and (B) and 365(f), in  
19 connection with the Sale and the assumption and assignment of the Assumed Contracts. The  
20 Buyer has demonstrated adequate assurance of future performance with respect to the Assumed  
21 Contracts pursuant to section 365(b)(1)(C) of the Bankruptcy Code. The Assumed Contracts are  
22 assignable notwithstanding any provisions contained therein to the contrary and no section of  
23 any Assumed Contract that purports to prohibit, restrict, or condition the use, transfer or  
24 assignment of any such Assumed Contracts in connection with the proposed Sale to the Buyer  
25 shall have any force or effect. The Debtor has indicated that it will pay any Cure Amounts at  
26 Closing and, therefore, has sufficiently provided for the cure payments required to assume and  
27 assign the Assumed Contracts to the Buyer. The assumption and assignment of the Assumed  
28 Contracts pursuant to the terms of this Order is integral to the Agreement and is in the best

1 interests of the Debtor, its estates, its creditors and other parties in interest, and represents the  
2 exercise of sound and prudent business judgment by the Debtor.

3 **No Successor Liability**

4 Z. The Sale does not amount to a consolidation, merger, or *de facto* merger of the  
5 Buyer and the Debtor and/or the Debtor's estates, there is not substantial continuity between the  
6 Buyer and the Debtor, there is no common identity between the Debtor and the Buyer, there is no  
7 continuity of enterprise between the Debtor and the Buyer, the Buyer is not a mere continuation  
8 of the Debtor or its estates, and the Buyer does not constitute a successor to the Debtor or its  
9 estate. Other than the Assumed Liabilities, the Buyer shall have no obligations with respect to  
10 any liabilities of the Debtor. This Order hereby releases and forever discharges the Buyer and  
11 any of its affiliates, successors, and assigns from any and all claims, causes of action,  
12 obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature  
13 whatsoever, known or unknown, fixed or contingent, relating to the Sale, except for the liabilities  
14 and obligations under the Agreement

15 **Other Provisions**

16 AA. The Sale of the Assets outside of a plan of reorganization pursuant to the  
17 Agreement neither impermissibly restructures the rights of the Debtor's creditors nor  
18 impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The Sale  
19 does not constitute a *sub rosa* chapter 11 plan.

20 BB. Time is of the essence in consummating the Sale. In order to maximize the value  
21 of the Assets, it is essential that the Sale occur within the time constraints set forth in the  
22 Agreement. The Buyer is acting in good faith, pursuant to section 363(m) of the Bankruptcy  
23 Code, in Closing the transactions contemplated by the Agreement at any time on or after the  
24 entry of this Order. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rule  
25 6004.

26 NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY  
27 ORDERED, ADJUDGED AND DECREED THAT:

28 1. The relief requested in the Sale Motion is granted as set forth herein. The Sale  
Motion complies with all aspects of Local Rule 6004-1.

1           2.       To the extent any objection, response or request for continuance was not  
2 otherwise withdrawn, waived, or settled, it, and all reservations of rights contained therein, is  
3 overruled and denied, unless otherwise set forth herein.

4           3.       Notice of the Sale Hearing was fair and equitable under the circumstances and  
5 complied in all respects with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and  
6 6004 and 6006, the Local Rules, and the orders of this Court.

7       **Approval of Sale**

8           4.       The Sale, the terms and conditions of the Agreement (including all schedules and  
9 exhibits affixed thereto), and the transactions contemplated thereby hereby are authorized and  
10 approved in all respects.

11          5.       The Sale and the consideration provided by the Buyer under the Agreement are  
12 fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably  
13 equivalent value and fair consideration under the Bankruptcy Code and any other applicable law.

14          6.       The Buyer is hereby granted and is entitled to all of the protections provided to a  
15 good faith buyer under section 363(m) of the Bankruptcy Code.

16          7.       Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions  
17 of this Order are hereafter reversed, modified, or vacated by a subsequent order of this Court or  
18 any other court, such reversal, modification, or vacatur shall not affect the validity and  
19 enforceability of any transfer under the Agreement or obligation or right granted pursuant to the  
20 terms of this Order (unless stayed pending appeal).

21          8.       The Debtor and the Buyer are hereby authorized to fully assume, perform under,  
22 consummate and implement the terms of the Agreement together with any and all additional  
23 instruments and documents that may be reasonably necessary or desirable to implement and  
24 effectuate the terms of the Agreement, this Order and the Sale of the Assets contemplated  
25 thereby including, without limitation, deeds, assignments, stock powers and other instruments of  
26 transfer, and to take all further actions as may reasonably be requested by the Buyer for the  
27 purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing  
28 to possession any or all of the Assets or Assumed Liabilities, as may be necessary or appropriate

1 to the performance of the Debtor's obligations as contemplated by the Agreement, without any  
2 further corporate action or orders of this Court. The Buyer shall have no obligation to proceed  
3 with the Closing of the Agreement until all conditions precedent to its obligations to do so have  
4 been met, satisfied or waived.

5           9. The Debtor, the Buyer and each other person or entity having duties or  
6 responsibilities under the Agreement, any agreements related thereto or this Order, and each such  
7 person or entity's respective directors, officers, employees, members, agents, representatives,  
8 and attorneys, are authorized and empowered, subject to the terms and conditions contained in  
9 the Agreement, to carry out all of the provisions of the Agreement and any related agreements; to  
10 issue, execute, deliver, file, and record, as appropriate, the documents evidencing and  
11 consummating the Agreement, and any related agreements; to take any and all actions  
12 contemplated by the Agreement, any related agreements or this Order; and to issue, execute,  
13 deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures,  
14 mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to  
15 perform such other acts and execute and deliver such other documents, as are consistent with,  
16 and necessary or appropriate to implement, effectuate, and consummate, the Agreement, any  
17 related agreements and this Order and the transactions contemplated thereby and hereby, all  
18 without further application to, or order of, the Court or further action by its respective directors,  
19 officers, employees, members, agents, representatives, and attorneys, and with like effect as if  
20 such actions had been approved by actions taken by the Seller's respective directors, officers,  
21 employees, members, agents, representatives, and attorneys of such entities consistent with the  
22 Seller's applicable organizational documents.

23           10. The Debtor is further authorized and empowered to cause to be filed with the  
24 secretary of state of any state or other applicable officials of any applicable governmental units,  
25 any and all certificates, agreements, or amendments necessary or appropriate to effectuate the  
26 transactions contemplated by the Agreement, any related agreements and this Order, including  
27 amended and restated certificates or articles of incorporation and by-laws or certificates or  
28 articles of amendment, and all such other actions, filings, or recordings as may be required under

1 appropriate provisions of the applicable laws of all applicable governmental units or as any of  
2 the officers of the Debtor may determine are necessary or appropriate. The execution of any  
3 such document or the taking of any such action shall be, and hereby is, deemed conclusive  
4 evidence of the authority of such person to so act. Without limiting the generality of the  
5 foregoing, this Order shall constitute all approvals and consents, if any, required by the  
6 corporation laws of the State of Delaware, and all other applicable business corporation, trust,  
7 and other laws of the applicable governmental units with respect to the implementation and  
8 consummation of the Agreement, any related agreements and this Order, and the transactions  
9 contemplated thereby and hereby.

10 **Transfer of Assets**

11 11. Except as otherwise set forth in this Order, effective as of the Closing, the Sale of  
12 the Assets by the Debtor to the Buyer shall constitute a legal, valid and effective transfer of the  
13 Assets notwithstanding any requirement for approval or consent by any person and vests the  
14 Buyer with all the Debtor's rights, titles and interests in and to the Assets, free and clear of all  
15 Liens, Claims, Interests and Encumbrances of any kind, other than Permitted Liens, pursuant to  
16 section 363(f) of the Bankruptcy Code. The assumption of any Assumed Liability by the Buyer  
17 constitutes a legal, valid and effective delegation of any Assumed Liabilities to the Buyer and  
18 divests the Debtor of all liability with respect to any Assumed Liabilities.

19 12. Except to the extent specifically provided in the Agreement or this Order, upon  
20 the Closing, the Debtor shall be, and hereby is, authorized, empowered, and directed, pursuant to  
21 sections 105, 363(b), 363(f) and 365 of the Bankruptcy Code, to sell the Assets to the Buyer.  
22 Except to the extent specifically provided in the Agreement or this Order, upon Closing, the Sale  
23 of the Assets vests the Buyer with all right, title and interest of the Debtor to the Assets free and  
24 clear of any and all Liens, Claims, Interests and Encumbrances (other than Assumed Liabilities)  
25 and other liabilities and claims, whether secured or unsecured, choate or inchoate, filed or  
26 unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or  
27 non-contingent, liquidated or unliquidated, matured or unmatured, disputed or undisputed, or  
28 known or unknown, whether arising prior to or subsequent to the Petition Date, whether imposed

1 by agreement, understanding, law, equity or otherwise. All such Liens, Claims, Interests and  
2 Encumbrances are to attach only to the proceeds of the Sale with the same priority, validity,  
3 force, and effect, if any, as they now have in or against the Assets, subject to all claims and  
4 defenses the Debtor may possess with respect thereto. The Sale Motion shall be deemed to  
5 provide sufficient notice as to the Sale of the Assets free and clear of Liens, Claims, Interests and  
6 Encumbrances in accordance with Local Rule 6004-1. Following the Closing Date and upon the  
7 occurrence of the Closing, no holder of any Liens, Claims, Interests and Encumbrances, other  
8 than Permitted Liens or Permitted Encumbrances, in the Assets may interfere with the Buyer's  
9 use and enjoyment of the Assets based on or related to such Liens, Claims, Interests and  
10 Encumbrances, or any actions that the Debtor may take in its chapter 11 case and no person may  
11 take any action to prevent, interfere with or otherwise enjoin consummation of the transactions  
12 contemplated in or by the Agreement or this Order.

13       13. The provisions of this Order authorizing the Sale of the Assets free and clear of  
14 Liens, Claims, Interests and Encumbrances (other than Assumed Liabilities and Permitted  
15 Liens), shall be self-executing, and neither the Seller nor the Buyer shall be required to execute  
16 or file releases, termination statements, assignments, consents, or other instruments in order to  
17 effectuate, consummate and implement the provisions of this Order. All such Liens, Claims,  
18 Interests and Encumbrances are to attach to the proceeds of the Sale, if any.

19       14. On, before or after the Closing Date, the Debtor's creditors are authorized and  
20 directed to execute such documents and take all other actions as may be necessary to release any  
21 Liens, Claims, Interests and Encumbrances of any kind against the Assets (other than Assumed  
22 Liabilities and Permitted Liens), as such Liens, Claims, Interests and Encumbrances may have  
23 been recorded or may otherwise exist. If any person or entity that has filed financing statements  
24 or other documents or agreements evidencing any Liens, Claims, Interests and Encumbrances in  
25 or against the Assets that are not Permitted Liens or Assumed Liabilities shall not have delivered  
26 to the Debtor prior to, at or after the Closing after request therefor, in proper form for filing and  
27 executed by the appropriate parties, termination statements, instruments of satisfaction, or  
28 releases of all such Liens, Claims, Interests and Encumbrances that the person or entity has with

1 respect to the Assets, the Debtor or the Buyer, may, in its sole option and at its sole discretion,  
2 execute and file on behalf and in the stead of such creditor any such document as may be  
3 necessary to evidence the discharge on any Lien, Claim or Encumbrance. Nothing herein is  
4 intended to affect or limit the provisions of paragraph 11 of this Order. Each filing office,  
5 recording office or other registry where Liens, Claims, Interests and Encumbrances are filed or  
6 recorded is authorized and directed to release such Liens, Claims, Interests and Encumbrances  
7 based upon the filing of a certified copy of this Order.

8 15. To the greatest extent available under applicable law and Section 365(c)(1) of the  
9 Bankruptcy Code, the Buyer shall be authorized, as of the Closing Date and upon the occurrence  
10 of Closing, to operate under any transferred license, permit, registration and governmental  
11 authorization or approval of the Debtor with respect to the Assets, and all such licenses, permits,  
12 registrations and governmental authorizations and approvals are deemed to have been, and  
13 hereby are, directed to be transferred to the Buyer as of the Closing Date.

14 16. Except as otherwise set forth in this Order, all of the Debtor's interests in the  
15 Assets to be acquired by the Buyer under the Agreement shall be, as of the Closing Date and  
16 upon the occurrence of the Closing, transferred to and vested in the Buyer free and clear of all  
17 Liens, Claims, Interests and Encumbrances (other than Assumed Liabilities). Upon the  
18 occurrence of the Closing, this Order shall be considered and constitute for any and all purposes  
19 a full and complete general assignment, conveyance and transfer of the Assets acquired by the  
20 Buyer under the Agreement and/or a bill of sale or assignment transferring all the Debtor's title  
21 and interest in the Assets to the Buyer.

22 17. Except as otherwise expressly provided in the Agreement or this Order, all  
23 persons or entities, presently or on or after the Closing Date, in possession of some or all of the  
24 Assets are directed to surrender possession of the Assets to the Buyer on the Closing Date or at  
25 such time thereafter as the Buyer may request.

26 **Assumed Contracts**

27 18. Subject to the terms of the Agreement and this Order and the occurrence of the  
28 Closing Date, the assumption by the Debtor of the Assumed Contracts, and the assignment of



1 such Contracts to the Buyer, as provided for or contemplated by the Agreement and the Sale  
2 Motion, hereby is authorized and approved pursuant to sections 363 and 365 of the Bankruptcy  
3 Code.

4 19. Upon the payment of the Cure Amounts, in accordance with sections 363 and 365  
5 of the Bankruptcy Code, the Buyer shall be fully and irrevocably vested in all right, title and  
6 interest of each Assumed Contract. The Debtor shall cooperate with, and take all actions  
7 reasonably requested by, the Buyer to effectuate the foregoing.

8 20. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as  
9 otherwise provided in this Order, on the Closing Date, Seller will pay each Cure Amount up to,  
10 but not exceeding \$10,000 in the aggregate, with the Buyer paying any amounts in excess of  
11 \$10,000 (for the avoidance of doubt, in addition to the Purchase Price).

12 21. The Cure Amounts are hereby fixed at the amounts set forth in the Cure Notice or  
13 the amounts determined on the record of the Sale Hearing or at such later hearing date set by the  
14 Court as the case may be, and the non-Debtor counterparties to the Assumed Contracts are  
15 forever bound by such Cure Amounts and are hereby precluded from objecting to the Cure  
16 Amounts (if any) relating to and the assumption and assignment of any Assumed Contract and,  
17 upon payment in full of any due and owing Cure Amounts, shall be enjoined from taking any  
18 action against the Buyer or the Assets with respect to any claim for cure, or any other or related  
19 pre-Closing claim, under any Assumed Contract.

20 22. All defaults, actual pecuniary losses (as defined in section 365(b)(1)(B) of the  
21 Bankruptcy Code) or other obligations under the Assumed Contracts arising prior to the Closing  
22 and under the shall be deemed cured by payment of the Cure Amounts, and the non-Debtor  
23 counterparties to such Contracts shall be forever barred and estopped from asserting or claiming  
24 against the Debtor or the Buyer that any additional amounts are due or other defaults exist.

25 23. Any provision in any Assumed Contract that purports to declare a breach, default  
26 or payment right as a result of an assignment or a change of control in respect of the Debtor is  
27 unenforceable, and all Assumed Contracts shall remain in full force and effect, subject only to  
28 payment of the appropriate Cure Amount, if any. No sections or provisions of any Assumed



1 Contract that purports to provide for additional payments, penalties, charges, or other financial  
2 accommodations in favor of a non-Debtor third party to the Assumed Contracts shall have any  
3 force and effect with respect to the transactions contemplated by the Agreement and assignments  
4 authorized by this Order, and such provisions constitute unenforceable anti-assignment  
5 provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable  
6 under section 365(e) of the Bankruptcy Code. No assignment of any Assumed Contract pursuant  
7 to the terms of the Agreement in any respect constitutes a default under any Assumed Contract.  
8 The non-Debtor counterparty to each Assumed Contract shall be deemed to have consented to  
9 such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Buyer shall enjoy  
10 all of the rights and benefits under each such Assumed Contract as of the applicable date of  
11 assumption without the necessity of obtaining such non-Debtor counterparty's written consent to  
12 the assumption or assignment thereof.

13         24. The Buyer has satisfied all requirements under sections 365(b)(1) and 365(f)(2) of  
14 the Bankruptcy Code to provide adequate assurance of future performance under the Assumed  
15 Contracts.

16         25. The Debtor and its estates shall be relieved of any liability for any breach of any  
17 of the Assumed Contracts occurring on and after Closing.

18         26. The non-Debtor counterparties to the Assumed Contracts shall be prohibited from  
19 charging any rent acceleration, assignment fees, increases or other fees to the Buyer as a result of  
20 the assumption and assignment of the Assumed Contracts.

21 **Other Provisions**

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1           27.     The Purchase Price shall be paid at the Closing by wire transfer of immediately  
2 available funds as follows: (a) to the Lead Lender in full satisfaction of the Postpetition  
3 Indebtedness, as each term is defined in the Amended Interim Order (I) Authorizing Debtors to  
4 Obtain Postpetition Financing, *et seq.* (Docket No. 81) entered by the Bankruptcy Court on  
5 January 20, 2017 (“DIP Order”); (b) to Silicon Valley Bank (“SVB”) in full satisfaction of its  
6 replacement lien granted in the DIP Order, as agreed to by Seller, the Committee and SVB or as  
7 otherwise determined; and (c) to an account designated by Seller.

8           28.     Except with respect to Assumed Liabilities, all persons and entities, including, but  
9 not limited to, all debt security holders, equity security holders, governmental, tax and regulatory  
10 authorities, lenders, trade creditors, litigation claimants and other creditors, holding Liens,  
11 Claims, Interests and Encumbrances of any kind or nature whatsoever against or in all or any  
12 portion of the Assets (whether legal or equitable, secured or unsecured, matured or unmatured,  
13 contingent or non-contingent, liquidated or unliquidated or subordinate), arising under or out of,  
14 in connection with, or in any way relating to the Seller, the Assets, the operation of the Seller’s  
15 Businesses prior to the Closing Date or the transfer of the Assets to the Buyer, hereby are forever  
16 barred, estopped and permanently enjoined from asserting, against the Buyer, any of its affiliates,  
17 its successors or assigns, its property or the Assets, such persons’ or entities’ Liens, Claims,  
18 Interests and Encumbrances, other than Permitted Liens and Assumed Liabilities, in and to the  
19 Assets, including, without limitation, the following actions: (i) commencing or continuing in any  
20 manner any action or other proceeding against the Buyer, any of its affiliates, successors, assets  
21 or properties; (ii) enforcing, attaching, collecting or recovering in any manner any judgment,  
22 award, decree or order against the Buyer, any of its affiliates, successors, assets or properties;  
23 (iii) creating, perfecting or enforcing any Lien or other Claim against the Buyer, any of its  
24 affiliates, successors, assets or properties; (iv) asserting any set-off (except set-offs validly  
25 exercised prior to the Petition Date), or right of subrogation of any kind against any obligation  
26 due Buyer, any of its affiliates or successors; or (v) commencing or continuing any action, in any  
27 manner or place, that does not comply or is inconsistent with the Provisions of this Order or  
28 other orders of the Court, or the agreements or actions contemplated or taken in respect thereof.

1           29.     The Agreement and any related agreements are authorized and approved in their  
2 entirety with such amendments thereto as may be made by the parties in accordance with this  
3 Order prior to the Closing. The failure specifically to include any particular provisions of the  
4 Agreement or any related agreements in this Order shall not diminish or impair the effectiveness  
5 of such provision. No bulk sale law or any similar law of any state or other jurisdiction shall  
6 apply in any way to the sale and transactions contemplated by the Agreement.

7           30.     To the extent any provisions of this Order conflict with the terms and conditions  
8 of the Agreement, this Order shall govern and control.

9           31.     This Order and the Agreement shall be binding upon and govern the acts of all  
10 persons and entities, including without limitation, the Seller and the Buyer, their respective  
11 successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter  
12 appointed for the Debtor's estates or any trustee appointed in any applicable chapter 7 case if this  
13 chapter 11 case is converted from chapter 11, all creditors of the Seller (whether known or  
14 unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, and  
15 all other persons and entities who may be required by operation of law, the duties of its office or  
16 contract, to accept, file, register, or otherwise record or release any documents or instruments or  
17 who may be required to report or insure any title in or to the Assets.

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

19           33.     Nothing in any order of this Court or contained in any plan of reorganization or  
20 liquidation confirmed in the chapter 11 case, or in any subsequent or converted cases of the  
21 Debtor under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate  
22 from the provisions of the Agreement or the terms of this Order.

23           34.     Notwithstanding Bankruptcy Rules 6003, 6004, 6006 and 7062, this Order shall  
24 be effective and enforceable immediately upon entry and its provisions shall be self-executing.  
25 In the absence of any person or entity obtaining a stay pending appeal, the Seller and the Buyer  
26 are free to close under the Agreement at any time, subject to the terms of the Agreement. In the  
27 absence of any person or entity obtaining a stay pending appeal, if the Seller and the Buyer close  
28 under the Agreement, the Buyer shall be deemed to be acting in "good faith" and shall be entitled

1 to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions  
2 under and pursuant to the Agreement if this Order or any authorization contained herein is  
3 reversed or modified on appeal.

4 35. This Court shall retain exclusive jurisdiction to enforce the terms and provisions  
5 of this Order and the Agreement in all respects and to decide any disputes concerning this Order  
6 and the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues  
7 relating to the Agreement and this Order including, but not limited to, the interpretation of the  
8 terms, conditions and provisions hereof and thereof, the status, nature and extent of the Assets,  
9 disputes with any third parties related to the Assets, and all issues and disputes arising in  
10 connection with the relief authorized herein, inclusive of those concerning the transfer of the  
11 assets free and clear of all Liens, Claims, Interests and Encumbrances, and the attachment of  
12 such Liens, Claims, Interests and Encumbrances to the proceeds of the Sale, if any.

13 END OF ORDER  
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**EXHIBIT D**  
**Cure Schedule**

<i>Contract Party</i>	<i>Proposed Cure Amount</i>
Amazon Web Services, Inc.	None
Twilio	None

**EXHIBIT E**

**Notice to Counterparties to Executory Contracts and Unexpired  
Leases of the Debtor that May be Assumed and Assigned**

*[Attached]*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CALIFORNIA  
NORTHERN DIVISION**

In re

**WRAP MEDIA, LLC,**

Debtor.

Chapter 11

Case No. 16-31325 HLB

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES OF THE DEBTOR THAT MAY BE ASSUMED AND ASSIGNED**

**PLEASE TAKE NOTICE** that on June 16, 2017, Wrap Media, LLC, the above-captioned debtor and debtor in possession (the “Debtor”) and the Official Committee of Unsecured Creditors of Wrap Media, LLC (the “Committee”) filed the Joint Motion to Approve Sale of Assets Free and Clear of Liens and Interests (the “Sale Motion”).<sup>1</sup> Through the Sale Motion, the Debtor and the Committee seek approval of, among other things, the sale of substantially all of the Debtor’s assets (the “Assets”) to BrunoCo, Inc. (the “Buyer”), including the assumption by the Debtor and assignment to the Buyer of certain executory contracts and unexpired leases (the “Assumed Contracts”) pursuant to section 365 of the Bankruptcy Code, with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale with the same priority, validity and enforceability as they had prior to such Sale.

**PLEASE TAKE FURTHER NOTICE** that the Sale Motion includes a form of asset purchase agreement for the acquisition of the Assets (the “Agreement”). The Debtor and the Committee encourage parties in interest to review the Sale Motion and the Agreement in their entirety. Any party that has not received a copy of the Motion, its supporting papers, or the Agreement that wishes to do so may make such a request in writing to Keller & Benvenuti LLP, Attn: Dara L. Silveira, Esq., 650 California Street, Suite 1900, San Francisco, CA 94108, dsilveira@kellerbenvenuti.com.

**PLEASE TAKE FURTHER NOTICE** that if more than one offer for the Assets has been received by 12:00 p.m. (Pacific Time) on June 26, 2017, then an auction (the “Auction”) to select the Successful Bid (as defined below) will take place at the **United States Bankruptcy Court, 450 Golden Gate Street, 16<sup>th</sup> Floor, Courtroom 19, San Francisco, California, beginning at 10:00 am (Pacific Time) on June 27, 2017**, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction may be transcribed or recorded. The sale process and Auction shall be managed and conducted by Committee in any manner and upon any terms and conditions satisfactory to the Bankruptcy Court. Any overbids at the Auction may have to meet or exceed minimal increments as determined by the Committee. At the conclusion of the Auction, the Committee shall submit the Successful Bid to the Bankruptcy Court at the Sale Hearing (as defined below), for entry of an order approving the sale.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or the Agreement, as applicable.

**PLEASE TAKE FURTHER NOTICE** that prior to the conclusion of the Auction, the Committee will (a) review and evaluate any and all bids, (b) identify the highest or otherwise best offer received at the Auction (such bid, the “Successful Bid” and the bidder making such bid, the “Successful Bidder”), and (c) communicate to the Successful Bidder and any and all competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. A hearing to approve the sale of the assets subject to the Successful Bid will be held either immediately after the Auction’s completion or at a later date communicated to the parties attending the Auction, before the Honorable Hannah Blumenstiel, United States Bankruptcy Court for the Northern District of California (the “Sale Hearing”).

**PLEASE TAKE FURTHER NOTICE** that the Debtor may seek to assume an executory contract or unexpired lease to which you may be a party. The Assumed Contract(s) are described on Exhibit A attached to this Notice. The amount shown on Exhibit A hereto as the “Cure Amount” is the amount, if any, which the Debtor asserts is owed to cure any defaults existing under the Assumed Contract.

**PLEASE TAKE FURTHER NOTICE** that if you disagree for any reason to the assumption and assignment of an Assumed Contract (including an objection to a Cure Amount or an objection based on adequate assurance of future performance by the Buyer under the Assumed Contract to which you may be a party), you must file an objection (an “Assumption Objection”) with the United States Bankruptcy Court for the Northern District of California and serve it upon the Debtor and the Committee by no later than **June 26, 2017 at 12:00 p.m. (Pacific Time)**. Any Assumption Objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an Assumption Objection to the Cure Amount contained in this Notice, you will receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set forth herein, if any. Any counterparty to an Assumed Contract that fails to timely file and serve an Assumption Objection shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached Exhibit A.

**PLEASE TAKE FURTHER NOTICE** that if any Successful Bidder is not the Buyer, any counterparty to an Assumed Contract may raise an objection to the assumption and assignment of the Assumed Contract solely with respect to such Successful Bidder’s ability to provide adequate assurance of future performance under the Assumed Contract within **seven days** from the date of notice as established by the Court at the Sale Hearing. Any counterparty to an Assumed Contract who receives a Cure Notice and wishes to receive evidence of Buyer’s ability to provide adequate assurance of future performance under section 365 of the Bankruptcy Code may make such a request in writing (an “Adequate Assurance Notice Request”) to Keller & Benvenuti LLP, Attn: Dara L. Silveira, Esq., 650 California Street, Suite 1900, San Francisco, CA 94108, or by e-mailing dsilveira@kellerbenvenuti.com, by **4:00 p.m. (Pacific Time) on June 23, 2017**. Within 24 hours of the determination that Potential Bids are Qualified Bids, and in any case by no later than close of business (Pacific Time) on **June 26, 2017**] the Committee shall send, by e-mail, the evidence submitted by Qualified Bidders in their Qualified Bids of their ability to provide adequate



assurance of future performance to any counterparty that has submitted a timely Adequate Assurance Notice Request.

**PLEASE TAKE FURTHER NOTICE** that the Successful Bidder(s) shall be responsible satisfying any requirements regarding adequate assurance of future performance that may be imposed under sections 365(b) and (f) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

**PLEASE TAKE FURTHER NOTICE** that, in the event that the Debtor and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, such Assumed Contract will not be assumed and assigned until after the Court has made its determination as to Cure Amount.

**PLEASE TAKE FURTHER NOTICE** that, except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder(s), pursuant to Section 365(k) of the Bankruptcy Code, the Debtors and their estates shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Purchased Contracts or Designation Rights Contracts.

**PLEASE TAKE FURTHER NOTICE** that nothing contained herein shall obligate the Debtor or the Successful Bidder(s) to assume any Assumed Contracts or to pay any Cure Amount.

**PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN ASSUMPTION OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.**

**ANY COUNTERPARTY TO ANY ASSUMED CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.**

Dated: June 16, 2017

**ST. JAMES LAW, P.C.**

By: /s/ Michael St. James .  
Michael St. James  
*Counsel for Debtor Wrap Media, LLC*

**EXHIBIT A**

<u>Counterparty</u>	<u>Cure Amount</u>
Amazon Web Services	-0-
Twilio	-0-

**EXHIBIT F**

**Notice of Sale Motion**

*[Attached]*

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CALIFORNIA  
NORTHERN DIVISION**

In re

**WRAP MEDIA, LLC,**

Debtor.

Chapter 11

Case No. 16-31325 HLB

**NOTICE OF SALE MOTION**

**PLEASE TAKE NOTICE** that on June 16, 2017, Wrap Media, LLC, the above-captioned debtor and debtor in possession (the “Debtor”) and the Official Committee of Unsecured Creditors of Wrap Media, LLC (the “Committee”) filed the Joint Motion to Approve Sale of Assets Free and Clear of Liens and Interests [Docket No. \_\_\_] (the “Sale Motion”). Through the Sale Motion, the Debtor and the Committee seek approval of, among other things, the sale of substantially all of the Debtor’s assets (the “Assets”) to BrunoCo, Inc. (the “Buyer”).

**PLEASE TAKE FURTHER NOTICE** that the Sale Motion includes a form of asset purchase agreement for the acquisition of the Assets (the “Agreement”). The Debtor and the Committee encourage parties in interest to review the Sale Motion and the Agreement in their entirety. Any party that has not received a copy of the Motion, its supporting papers, or the Agreement that wishes to do so may make such a request in writing to Keller & Benvenuti LLP, Attn: Dara L. Silveira, Esq., 650 California Street, Suite 1900, San Francisco, CA 94108, dsilveira@kellerbenvenuti.com.

**PLEASE TAKE FURTHER NOTICE** that any person or entity who desires to submit an offer for some or all of the Assets (a “Bidder”) must do so in writing by no later than **12:00 pm (Pacific Time) on June 26, 2017** to Keller & Benvenuti LLP, Attn.: Keith McDaniels, Esq., 650 California Street, Suite 1900, San Francisco, CA 94108, kmcdaniels@kellerbenvenuti.com.

**PLEASE TAKE FURTHER NOTICE** that if more than one offer has been received by the deadline above, then an auction (the “Auction”) to select the Successful Bid (as defined below) will take place at the **United States Bankruptcy Court, 450 Golden Gate Street, 16<sup>th</sup> Floor, Courtroom 19, San Francisco, California, beginning at 10:00 am (Pacific Time) on June 27, 2017**, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction may be transcribed or recorded. The sale process and Auction shall be managed and conducted by Committee in any manner and upon any terms and conditions satisfactory to the Bankruptcy Court. Any overbids at the Auction may have to meet or exceed minimal increments as determined by the Committee. At the conclusion of the Auction, the Committee shall submit the Successful Bid to the Bankruptcy Court at the Sale Hearing (as defined below), for entry of an order approving the sale.

**PLEASE TAKE FURTHER NOTICE** that prior to the conclusion of the Auction, the Committee will (a) review and evaluate any and all bids, (b) identify the highest or otherwise best offer received at the Auction (such bid, the “Successful Bid” and the bidder making such bid, the “Successful Bidder”), and (c) communicate to the Successful Bidder and any and all competing Bidders the identity of the Successful Bidder and the details of the Successful Bid. A hearing to approve the sale of the assets subject to the Successful Bid will be held either immediately after the Auction’s completion or at a later date communicated to the parties attending the Auction, before the Honorable Hannah Blumenstiel, United States Bankruptcy Court for the Northern District of California (the “Sale Hearing”).

**PLEASE TAKE FURTHER NOTICE** that objections to the Sale Motion must state the legal and factual basis of such objection and may be orally supplemented at the Sale Hearing. Any and all written objections to the Sale Motion, as well as all written objections and responses, and all supporting authorities, that any party wishes to have heard at the Sale Hearing, must be (a) in writing, (b) signed by counsel or attested to by the objecting or responding party, (c) in conformity with the Bankruptcy Rules and the Local Rules, (d) filed with the Court, and (e) be served in accordance with the Local Rules so as to be received on or before **12:00 pm (Pacific Time) on June 26, 2017** (the “Sale Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that counterparties to contracts that may be assumed and assigned to the Successful Bidder will receive a separate notice regarding cure amounts and adequate assurance of future performance.

**PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY FAILING TO TIMELY MAKE AN OBJECTION TO THE SALE MOTION ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THIS NOTICE SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS.**

**PLEASE TAKE FURTHER NOTICE** that all bids, questions about conducting diligence, the contents needed for a bid, the sale process and procedures, the Auction or any other issue related to this Notice should be directed to Keller & Benvenuti LLP, Attn.: Keith McDaniels, Esq., 650 California Street, Suite 1900, San Francisco, CA 94108, (415) 484-6098, kmcdaniels@kellerbenvenuti.com.

Dated: June 16, 2017

**ST. JAMES LAW, P.C.**

By: \_\_\_\_\_

Michael St. James  
*Counsel for Debtor Wrap Media,  
LLC*

1 MICHAEL ST. JAMES (S.B. No. 95653)  
2 **ST. JAMES LAW, P.C.**

22 Battery Street, Suite 888  
San Francisco, California 94111  
3 Telephone: (415) 391-7566  
4 Facsimile: (415) 391-7568

5 Counsel for Debtor Wrap Media, LLC

6 TOBIAS S. KELLER (S.B. No. 151445)  
7 KEITH A. MCDANIELS (S.B. No. 189213)  
8 DARA L. SILVEIRA (S.B. No. 274923)

**KELLER & BENVENUTTI LLP**

650 California Street, Suite 1900  
9 San Francisco, California 94108  
10 Telephone: (415) 484-6098  
11 Facsimile: (650) 636-9251

11 Counsel for the Official Committee of Unsecured  
12 Creditors of Wrap Media, LLC

13 **UNITED STATES BANKRUPTCY COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

17 In re:  
18 WRAP MEDIA, LLC,  
19 Debtor.

Case No. 16-31325 HLB

Chapter 11

**DECLARATION OF KEITH A.  
MCDANIELS IN SUPPORT OF JOINT  
MOTION TO APPROVE SALE OF  
ASSETS FREE AND CLEAR OF LIENS  
AND INTERESTS**

23 Date: June 27, 2017  
24 Time: 10:00 a.m.  
25 Judge: Hon. Hannah L. Blumenstiel  
26 Place: 450 Golden Gate Avenue  
Courtroom 19  
San Francisco, CA 94102

1 I, Keith A. McDaniels, do hereby declare as follows:

2 1. I am an attorney licensed to practice by the State of California and admitted to  
3 practice before this Court. I am an attorney at the firm of Keller & Benvenuti LLP, counsel to  
4 the Official Committee of Unsecured Creditors (the “Committee”) of Wrap Media, LLC, the  
5 debtor and debtor-in-possession in the above-captioned proceeding (the “Debtor”).

6 2. I submit this declaration in support of the Joint Motion to Approve the Sale of the  
7 Debtor’s Assets (the “Sale Motion”),<sup>1</sup> filed concurrently herewith.

8 3. The facts set forth in this Declaration are personally known to me, and, if called  
9 as a witness, I could and would testify thereto.

10 4. Any person or entity wishing to conduct diligence with respect to the Assets has  
11 been advised to contact me. At least ten parties have contacted me, asking for more information  
12 about the Debtor and the Assets. Several parties have also requested to conduct more extensive  
13 diligence.

14 5. I have requested that each Diligence Party wishing to view the Debtor’s  
15 confidential information execute a confidentiality agreement. I have communicated to all  
16 Diligence Parties that any person or entity who previously signed a confidentiality agreement  
17 with the Debtor in connection with the Sale will not be required to execute a new confidentiality  
18 agreement.

19 6. On May 31, 2017, I prepared the Initial Sale Notice and caused it to be served on  
20 approximately 122 potential bidders, including strategic partners, financial buyers, intellectual  
21 property attorneys, and intellectual property brokers, among others; to generate this service list, I  
22 used information compiled by Eric Greenberg, who is knowledgeable about the industry and who  
23 had lead all marketing efforts to date.

24 7. On June 2, 2017, I filed the Initial Sale Notice with the Court and caused it to be  
25 served on: (a) the U.S. Trustee; (b) the Debtor and its affiliate; (c) any parties requesting special  
26 notice pursuant to Bankruptcy Rule 2002; (d) all known secured creditors of the Debtor.

27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms used in this Declaration but not otherwise defined herein shall have the meanings ascribed to  
them in the Sale Motion or the Agreement, as applicable.

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8. I searched the records of the Delaware Secretary of State, and no UCC or judgment lien filing has been made against the Debtor.

9. To the best of my knowledge, the Debtor is not a defendant in any litigation, and, as a result, no creditor has a basis to assert liens or attachments through state law judgment enforcement procedures.

10. I have conferred with the members of the Committee, who believe that consummating the Sale contemplated by the Agreement is in the best interests of the Debtor's creditors, and that the Sale represents the best of the strategic options available to the Debtor.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this sixteenth day of June, 2017, in San Francisco, California.

By:                     /s/                      
                    Keith A. McDaniels



1 Michael St. James, CSB No. 95653  
ST. JAMES LAW, P.C.  
2 22 Battery Street, Suite 888  
San Francisco, California 94111  
3 (415) 391-7566 Telephone  
(415) 391-7568 Facsimile  
4 michael@stjames-law.com

5 Counsel for Debtors

6  
7 **UNITED STATES BANKRUPTCY COURT**  
8 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
9

10 In re ) Case No. 16-31325  
11 WRAP MEDIA, LLC ) Chapter 11  
12 Debtor. )  
13 \_\_\_\_\_ )

14 In re ) Case No. 16-31326  
15 WRAP MEDIA, INC. ) Chapter 11  
16 Debtor. )  
17 \_\_\_\_\_ )

18  Affects LLC )  
19  Affects Inc. )  
 Affects BOTH DEBTORS )  
20 \_\_\_\_\_ )

DATE: June 27, 2017  
TIME: 10:00 a.m.  
JUDGE: Hon. Hannah L. Blumenstiel  
COURT: 17

21  
22 **DECLARATION OF ERIC GREENBERG IN SUPPORT OF**  
23 **SALE MOTION**  
24

25 I, Eric Greenberg, declare under penalty of perjury:

26 1. I am the founder of Wrap Media, LLC (“Wrap Media” or the “Debtor”) and Wrap Media,  
27 Inc. (collectively, the “Debtors”). I make this Declaration of my own personal knowledge, and if called  
28 as a witness I could and would competently testify as follows.



1 *Capital Structure*

2 9. Wrap Media is an operating company which provided software as a service. Wrap Media  
3 holds all of the assets of the enterprise, employs all of its personnel and conducts all of its operations.

4 10. Wrap Media, LLC owes approximately \$2 million to Silicon Valley Bank (“SVB”)  
5 secured by a lien encumbering substantially all of the Debtor's assets *other than* its intellectual property  
6 (“SVB’s Collateral”). SVB's Collateral consists of cash as of the Petition Date in the approximate  
7 amount of \$300,000 held in various bank accounts (exclusive of restricted funds subject to a senior  
8 pledge to other creditors), accounts receivable, furniture and equipment, and other miscellaneous assets.  
9 Since it appears that SVB is substantially undersecured, it has been appointed to the Committee.

10 Wrap Media, LLC owes approximately \$437,000 to trade creditors, two of whom sit on the Committee.  
11 As of the commencement of the case, Wrap Media, LLC also owed approximately \$85,000 to current  
12 and former employees, principally on account of accrued but unused PTO and other employee benefits.  
13 It is my understanding and belief that, with one exception, the Debtor is current on all of its taxes. The  
14 exception is the 2016 Gross Receipts and Payroll Tax owed to the City and County of San Francisco in  
15 the approximate amount of \$50,000 to \$60,000.

16 11. Wrap Media, Inc.'s sole asset is an approximately 60% equity interest in Wrap Media,  
17 LLC. Wrap Media, Inc. was the financing vehicle for the enterprise, raising several rounds of equity  
18 and obtaining \$9.5 million of convertible debt financing. Specifically,

19 a. It obtained a “seed money” investment of about \$2.5 million from my company,  
20 Innovation Investments, LLC;

21 b. It obtained a Series A investment in December of 2014 of \$3.5 million, based on a  
22 pre-money valuation of \$16.5 million, from Founders Fund Angel, Raine Ventures, Innovation  
23 Investments and Transmedia Ventures and other smaller investors;

24 c. It obtained a Series B investment in July of 2015 of \$12.7 million, based on a pre-  
25 money valuation of \$60 million, from Raine Ventures, ProSieben, Dream Incubator (Japan),  
26 Salesforce Ventures, Island Capital and Transmedia Ventures and other smaller investors; and  
27  
28

1 d. It obtained debt financing, convertible into the next round of equity, of \$4 million  
2 from Dream Incubator in December of 2015; \$2.5 million from Salesforce in February of 2016  
3 and \$3 million from my company, Innovation Investments, in August of 2016. Dream Incubator  
4 is the final member of the Committee (based on a relatively small claim against Wrap Media of  
5 less than \$15,000) that it holds under a foreign distributorship agreement).

6  
7 12. Wrap Media, Inc. has four creditors consisting of the foregoing three convertible note  
8 holders owed an aggregate of approximately \$10 million and joint liability on the secured debt held by  
9 Silicon Valley Bank. Wrap Media, Inc. conducts no operations.

10 *The Demise of the Original Plan*

11 13. When it commenced its Chapter 11 case, the Debtor's principal objective was to solicit a  
12 recapitalization through which one or more investors would fund what was effectively a new "Series A"  
13 round of financing, preserving value for the existing convertible debt and potentially existing investors'  
14 equity through the issuance new equity in the recapitalized venture.

15 14. The Debtor was virtually out of cash when it commenced its case, and at the time  
16 generated negative monthly cash flow of approximately \$500,000. In order to maintain business  
17 operations and sustain a going concern so as to maximize the recovery from a recapitalization or a sale,  
18 the Debtor sought to raise Debtor in Possession financing ("DIP Financing") secured by a first priority  
19 lien on the Debtor's intellectual property, subject to a limited "adequate protection" subordination in  
20 favor of SVB.

21 15. Although the Debtor expected the DIP Financing to be provided by multiple lenders in  
22 multiple tranches, I agreed to provide the initial funding of up to \$500,000 (of which \$350,000 was  
23 needed on an emergency basis before year-end), in the expectation that additional funding for the DIP  
24 Financing could be obtained from other lenders in order to operate in January and thereafter.

25 16. After the Court approved the DIP Financing on an interim basis on December 14, 2016, I  
26 dedicated substantial efforts to raising additional DIP Financing and to seeking investors who would  
27 fund a recapitalization of the Debtor. I also spoke with several parties who had expressed an interest in  
28 potentially acquiring the Debtor in an effort to encourage that interest.





1 these potential transactions might be preferable to conversion and that the Committee wished that  
2 conversion be deferred while it explored the transactions.

3 29. At a hearing on May 24, 2017, attended by representatives of the two interested parties,  
4 the Committee and the U.S. Trustee, the Court agreed tentatively to schedule a hearing on June 27,  
5 2017 for an auction and sale, subject to subsequent entry of an Order Shortening Time for good cause  
6 shown, provided that the Debtor filed a Sale Motion and sought the Order Shortening Time not later  
7 than June 16, 2017.

8 30. The Committee indicated that it wished promptly to give notice of the tentative auction  
9 and sale hearing to all persons who might be likely to submit a competitive bid. I complied and  
10 transmitted to the Committee's counsel a list of more than approximately 100 potentially interested  
11 parties, most of whom had previously been identified or contacted as prospective buyers or investors by  
12 the Debtor.

13 I declare under penalty of perjury according to the laws of the United States of America that the  
14 foregoing is true and correct and that this Declaration was executed in London, England on June 16,  
15 2017.

16  
17 /s/ Eric Greenberg .  
18 Eric Greenberg  
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## WRAP PATENT STATUS: JANUARY 3, 2017

### Issued Cases:

	<b>BLG Docket No.</b>	<b>Application No.</b>	<b>Title</b>	<b>Filed</b>	<b>Subject Matter</b>	<b>Inventor(s)</b>	<b>Notes</b>
1.	WRAPP005C1US  <b>ISSUED</b>	14/678,316  <b>Patent No. 9,285,977</b>	CARD BASED PACKAGE FOR DISTRIBUTING ELECTRONIC MEDIA AND SERVICES	4 /3 /2015	Use of a wrap descriptor to define a wrap package. The wrap descriptor includes a plurality of card descriptors, each defining components, styles, behaviors, and/or other attributes for each card respectively	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS	
2.	WRAPP005C2US  <b>ISSUED</b>	14/678,330  <b>Patent No. 9,330,192</b>	CARD BASED PACKAGE FOR DISTRIBUTING ELECTRONIC MEDIA AND SERVICES	4 /3 /2015	Using JSON a JSON wrap descriptor to define a wrap package, a wrap identifier to identify the wrap, and generating a runtime instance of the wrap from an object graph of the JSON wrap descriptor and a document object model from the object graph.	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS	
3.	WRAPP028A  <b>ISSUED</b>	14/996,582  <b>Patent No. 9,412,208</b>	GENERATING AND DELIVERING A WRAP PACKAGE OF CARDS INCLUDING CUSTOM CONTENT AND/OR SERVICES IN RESPONSE TO A VEHICLE DIAGNOSTIC SYSTEM TRIGGERED EVENT	01/15/2016	Covers the creation and delivery of a wrap package, with custom content, in response to an onboard diagnostic system on a vehicle sensing a trigger event.	Eric H. GREENBERG John M. GARRIS Kunal K. BHASIN Peter M. FOSTER	



	<b>BLG Docket No.</b>	<b>Application No.</b>	<b>Title</b>	<b>Filed</b>	<b>Subject Matter</b>	<b>Inventor(s)</b>	<b>Notes</b>
4.	WRAPP016H  <b>ISSUED</b>	<b>14/993,487</b>  <b>Patent No. 9,418,056</b>	AUTHORING TOOL FOR THE AUTHORIZING OF WRAP PACKAGES OF CARDS	1/12/2016	Wrap package authoring tool	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS Eric J. WICKS	
5.	WRAPP028B  <b>ISSUED</b>	<b>14/997,076</b>  <b>Patent No. 9,424,608</b>	GENERATING AND DELIVERING A WRAP PACKAGE OF CARDS INCLUDING CUSTOM CONTENT AND/OR SERVICES IN RESPONSE TO A VEHICLE DIAGNOSTIC SYSTEM TRIGGERED EVENT	01/15/2016	Covers the creation and delivery of a wrap package for initiating an insurance claim in response to an onboard diagnostic system detecting a vehicle has been involved in an accident.	Eric H. GREENBERG John M. GARRIS Kunal K. BHASIN Peter M. FOSTER	
6.	WRAPP028C  <b>ISSUED</b>	<b>14/997,087</b>  <b>Patent No. 9,460,228</b>	GENERATING AND DELIVERING A WRAP PACKAGE OF CARDS INCLUDING CUSTOM CONTENT AND/OR SERVICES IN RESPONSE TO A TRIGGERED EVENT	01/15/2016	Generically covers the creation and delivery of a wrap, with custom content, in response to a Thing among the Internet of Things sensing a trigger event or condition.	Eric H. GREENBERG John M. GARRIS Kunal K. BHASIN Peter M. FOSTER	
7.	WRAPP016I  <b>ISSUED</b>	<b>14/993,829</b>  <b>Patent No. 9,465,788</b>	AUTHORING TOOL FOR THE AUTHORIZING OF WRAP PACKAGES OF CARDS	1/12/2016	Wrap package authoring tool	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS Eric J. WICKS	

	<b>BLG Docket No.</b>	<b>Application No.</b>	<b>Title</b>	<b>Filed</b>	<b>Subject Matter</b>	<b>Inventor(s)</b>	<b>Notes</b>
8.	WRAPP003US  <b>ISSUED</b>	<b>14/859,260</b>  <b>Patent No. 9,489,684</b>	DELIVERING WRAPPED PACKAGES IN RESPONSE TO THE SELECTION OF ADVERTISEMENTS	9/19/2015	Delivery of a wrap package of cards in response to the selection of an ad appearing in a web site	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN	
9.	WRAPP016G  <b>ISSUED</b>	<b>14/993,385</b>  <b>Patent No. 9,448,988</b>	AUTHORING TOOL FOR THE AUTHORING OF WRAP PACKAGES OF CARDS	1/12/2016	Wrap package authoring tool	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS Eric J. WICKS	
10.	WRAPP023AUS  <b>ISSUED</b>	<b>14/852,138</b>  <b>Patent No. 9,442,906</b>	WRAP DESCRIPTOR FOR DEFINING A WRAP PACKAGE OF CARDS INCLUDING A GLOBAL COMPONENT	9/11/2015	A wrap package with a global component descriptor included or associated with two or more card descriptors.	Eric H. GREENBERG Francis C. LI Dana A. LEVINE	
11.	WRAPP027  <b>ISSUED</b>	<b>14/945,148</b>  <b>Patent No. 9,448,972</b>	WRAP PACKAGE OF CARDS SUPPORTING TRANSACTIONAL ADVERTISING	11/18/2015	A wrap package that enables the purchase of a product/service appearing in the wrap without ever having to leave the wrap.	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS Eric J. WICKS Sylvio DRUIN Francis LI	
12.	WRAPP003C1  <b>ISSUED</b>	<b>15/000,250</b>  <b>Patent No. 9,449,335</b>	DELIVERING WRAPPED PACKAGES IN RESPONSE TO THE SELECTION OF ADVERTISEMENTS	01/19/2016	Delivery of a wrap package of cards in response to the selection of an ad appearing in a web site	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN	

## Allowed Cases:

	<b>BLG Docket No.</b>	<b>Application No.</b>	<b>Title</b>	<b>Filed</b>	<b>Subject Matter</b>	<b>Inventor(s)</b>	<b>Notes</b>
1.	WRAPP016F	14/993,264 <b>ALLOWED</b>	AUTHORING TOOL FOR THE AUTHORING OF WRAP PACKAGES OF CARDS	1/12/2016	Wrap package authoring tool	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS Eric J. WICKS	Allowed, waiting to pay Issue Fee
2.	WRAPP016E	14/851,362 <b>ALLOWED</b>	AUTHORING TOOL FOR THE AUTHORING OF WRAP PACKAGES OF CARDS	09/11/2015	Wrap package authoring tool	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS Eric J. WICKS	Allowed, waiting to pay Issue Fee
3.	WRAPP018C1	15/235,671 <b>ALLOWED</b>	INTEGRATION OF SOCIAL MEDIA WITH CARD PACKAGES	08/12/2016	Selection and delivery of a wrap package appearing in a social media feed	Eric H. GREENBERG Ian MCFARLAND	Allowed, waiting to pay Issue Fee
4	WRAPP020C2US	15/239,052	AUTHORING AND DELIVERING WRAP PACKAGES OF CARDS WITH CUSTOM CONTENT TO TARGET INDIVIDUALS	8/17/2016	Generating wrap packages with custom content specific to target individuals.	Eric H. GREENBERG John M. GARRIS Mark E. ROLSTON Jared L. FICKLIN Kunal K. BHASIN	Allowed, waiting to pay Issue Fee
5	WRAPP034	15/140,230	AUTHORING TOOL FOR THE MIXING OF CARDS OF WRAP PACKAGES	April 27, 2016	Authoring tool for mixing of cards from one wrap into another wrap	Eric H. GREENBERG Mark E. ROLSTON Jared L. FICKLIN John M. GARRIS Matthew J. SANTONE	Allowed, waiting to pay Issue Fee

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6.	WRAPP003C2	15/268,209	DELIVERING WRAPPED PACKAGES IN RESPONSE TO THE SELECTION OF ADVERTISEMENTS	9/16/2016	The delivery of a JSON document descriptor that defines a gallery of items navigable in a vertical direction and including two or more horizontally navigable components.	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN	Allowed, waiting to pay Issue Fee
7.	WRAPP0027C1	15/228,551	WRAP PACKAGE OF CARDS SUPPORTING TRANSACTIONAL ADVERTISING	8/4/2016	The iu	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS Eric J. WICKS Sylvio DRUIN Francis LI	Allowed, waiting to pay Issue Fee
8.	WRAPP025	15/157,829	MOBILE-FIRST AUTHORING TOOL FOR THE AUTHORING OF WRAP PACKAGES	5/18/2016	Mobile authoring tool	Eric H. GREENBERG John M. GARRIS Kunal K. BHASIN Jared L. FICKLIN Mark E. ROLSTON Mathew J. SANTONE Peter PETRAS	Allowed, waiting to pay Issue Fee
9.	WRAPP005US	14/669,395	CARD BASED PACKAGE FOR DISTRIBUTING ELECTRONIC MEDIA AND SERVICES	3 /26/2015	Use of a wrap descriptor to define a wrap package. The wrap descriptor specifying a set of cards of the wrap package and the content, structure and layout of each of the cards.	Eric H. GREENBERG John M. GARRIS Ian MCFARLAND Mark E. ROLSTON Jared L. FICKLIN Mathew J. SANTONE Jon STEVENS	Allowed, waiting to pay Issue Fee