

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

IN RE:	§	
	§	
NEXTSTEP DEVELOPMENT, INC.	§	CASE NO. 16-52019
	§	
BANDERA POINTE HOSPITALITY, LP.	§	CASE NO. 16-52021
	§	
Jointly Administered Debtor	§	CHAPTER 11 PROCEEDING
	§	(Jointly Administered Under
	§	16-52019)

**DEBTOR BANDERA POINTE HOSPITALITY LP.’S EXPEDITED MOTION (A) FOR
AUTHORITY TO SELL ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES; (B) TO ESTABLISH PROCEDURES WITH RESPECT TO SUCH
SALE; AND (C) TO CONSIDER APPROVAL OF BREAK UP FEE**

TO THE HONORABLE CRAIG A. GARGOTTA, UNITED STATES BANKRUPTCY JUDGE:

Now comes BANDERA POINTE HOSPITALITY, LP. (“Bandera”), and submit this Motion pursuant to Sections 105(a), 363(b), (f) and (m), and 365 of the Bankruptcy Code, and Bankruptcy Rules 6004, 6006, 9006 and 9007 and seek the following relief: (a) entry of an order shortening notice and scheduling an expedited hearing (the “Procedures Hearing”) to consider (i) approval of certain bid protections for the sale of substantially all of Bandera Pointe Hospitality, LP.’s assets (the “Real Property”); and (ii) scheduling an auction sale for said Real Property and establishing terms and conditions, including overbid procedures, for interested bidders to submit higher and better offers for the proposed sale of the Real Property, all as more fully set forth below; (b) following the conclusion of the Procedures Hearing, entry of an order (i) approving the proposed bid and procedures and scheduling the proposed auction sale; and (ii) scheduling a further hearing (the “Sale Hearing”) to consider approval of the bidder who shall have submitted the highest and best offer for the purchase of the Real Property (any such successful bidder being referred to herein as a “Purchaser”); and (c) following the conclusion of the Sale Hearing, entry of an order (i) approving the Agreement with the Purchaser; (ii) authorizing and approving the sale of Real Property to any such Purchaser free and clear of all liens, claims, interests and encumbrances; and (iii) waiving the automatic 10-day stay following entry if

such order under Bankruptcy Rules 6004(g) and 6006(d) in order to permit Bandera to immediately consummate the sale of the Real Property to Purchaser.

In support of this Motion, Bandera respectfully aver as follows:

Introduction

1. On September 6th, 2016 (the "Petition Date"), Debtor Bandera Pointe Hospitality, LP. ("Bandera") filed a voluntary petition pursuant to Chapter 11 of Title 11 of the United States Code (the "Code") with the United States Bankruptcy Court for the Western District of Texas, San Antonio Division. An order for relief was entered on the respective date of filing and on September 13th, 2016, this Court entered its order authorizing joint administration of Bandera proceeding and the case styled, *In re: Nextstep Development, Inc.* ("Nextstep"). Nextstep and Bandera are collectively referred to herein as the "Debtors". Debtors Nextstep and Bandera are each operating their respective businesses as a Debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed in this bankruptcy case. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors (the "Committee") was not appointed.

3. This Court has jurisdiction of this Motion pursuant to 28 U.S.C. Sections 157 and 1334. This is a core proceeding pursuant to 28 U. S.C. Sections 157(b)(2)(A), (N) and (O). Venue of Debtor' Chapter 11 cases and this Motion in this District is proper pursuant to 28 U.S.C. Sections 1408 and 1409. The statutory predicates for the relief sought herein are Sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007.

4. Bandera has determined that the best and most efficient exit strategy for their successful emergence from Chapter 11 will likely be through a sale of substantially all of its real property to a third party.

5. Bandera have moved expeditiously to initiate and implement a process to identify and communicate with parties who might be interested in acquiring the Real Property by employing Colglazier Properties as its real estate broker. Colglazier has solicited all offers to be submitted on or before November 22nd, 2016, unless extended by the Court (the "Bid Deadline"). In the course of that sale process, several parties have expressed interest in purchasing the Real

Property of the Business under 11 U.S.C. § 363.

6. Khersonsky Corporation (“Khersonsky”), the proposed purchaser identified in Exhibit “A” attached hereto wants to consummate the sale on or before December 31st, 2016. Bandera seek authority to sell the Real Property to a purchaser at the Sale Hearing, subject to Bandera right to withdraw this Motion, in whole or part, prior to said Sale Hearing.

7. By this Motion, Bandera seek the entry of an order following the conclusion of the Sale Hearing authorizing Bandera to sell the Real Property and consummate such other related and necessary transactions in connection therewith to the a purchaser approved by the Court with such asset to be transferred and conveyed free and clear of all liens, claims, interests and encumbrances.

Proposed Sale of Assets of Bandera Pointe Hospitality, LP. to Purchaser

8. As set forth in Exhibit “A” attached hereto, Bandera’s sale of the Real Property to Khersonsky (subject to higher bids) is for a purchase price of at least \$550,000.00 and on an “as is, where is basis”.

9. The sale of Real Property of Bandera Pointe Hospitality, LP. is to be free and clear of any and all liens, claims, interests and encumbrances.

Miscellaneous Provisions

10. Bandera seek authorization to take such action and to execute and deliver any approved asset purchase agreement and such other documents, agreements and instruments as may be necessary or advisable to effectuate the terms thereof or any other Court approved sale, provided that the Bandera may not agree to any material modification to an approved asset purchase agreement or ancillary documents without order of the Court.

Good Faith Purchaser Designation

11. As part of the relief sought by Bandera will ask the Court to designate any successful Purchaser as a good faith purchaser, as such term is utilized in Section 363(m) of the Bankruptcy Code. Such designation can be made by a Bankruptcy Court in the context of a sale of assets of a Bandera when it has been established that the proposed purchaser is an unrelated third party, not affiliated with or having any insider relationship with Bandera, and

when the proposed transaction is for fair value and is the result of arms length negotiations between the parties. See In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d Cir. 1986). As set forth in Exhibit “A” attached hereto, Khersonsky is the proposed purchaser of substantially all of Bandera’s assets. Khersonsky does not have any interest in Bandera and the negotiations between Khersonsky and Bandera have been on an “arms length” basis.

12. With respect to the proposed transactions, Bandera anticipates that any Purchaser proposed will meet the qualifications for designation as a good faith purchaser in that: (a) they will not be affiliated in any way with Bandera, and (b) they and their representatives will have negotiated in good faith and at arm’s length with Bandera management.

13. Bandera expects to receive additional bids for the purchase of some or all of the Real Property by the Bid Deadline. In any event, prior to the Auction Sale identified below, Bandera will identify the highest and best offer, and such highest and best offer will be subject to overbid at the auction, as described in more detail below.

14. Any entity who wishes to make an offer to acquire the Real Property was and is invited (subject to the provisions of a confidentiality and non-disclosure agreement which such entity must execute) to conduct due diligence, at their own expense, prior to the Sale Hearing. All bidders will be given an equal and fair opportunity to gather information which they feel is necessary to formulate a bid for the acquisition of the Real Property, subject to the execution of the above-described confidentiality agreement in form reasonably satisfactory to Bandera.

Best Interests Of The Estate

15. Bandera believes that the a sale of the Real Property as requested herein and set forth in detail in any agreement with a proposed Purchaser will provide a significantly greater realization for Real Property than the liquidation value that would be obtained if the Real Property were not sold expeditiously in the manner requested herein.

16. Section 363(b) of the Bankruptcy Code provides that a Bandera in possession “. . . after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Under the prevailing case law, a sale under Section 363(b) requires that the Court “expressly find from the evidence presented . . . a good business reason” to approve the

sale. Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983). Accord Stephens Industries, Inc. v. McClung, 789 F.2d 386, 389-90 (6th Cir. 1986); In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

17. Bandera believes, and therefore avers, that the present circumstances of this bankruptcy case warrant approval of the sale of the Real Property under the standard articulated in Lionel. Thus, a sale of Real Property is appropriate as such transaction shall represent the exercise of sound business judgment on the part of Bandera.

18. Section 363(f) of the Bankruptcy Code provides, in pertinent part, as follows:

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

(2) such entity consents ; or

* * *

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

11 U.S.C. Section 363(f)(2), (5).

19. Bandera believes that approval of the proposed sale of Real Property to a successful Purchaser comports with Section 363(f)(2) of the Bankruptcy Code in that all creditors asserting valid interests in and against Real Property will consent to the transaction. To the extent that any creditor asserting a valid interest in and against Real Property does not consent to the sale, Bandera believe that such creditor could be compelled to accept a money satisfaction of such interest in accordance with Section 363(f)(5) of the Bankruptcy Code.

20. In addition, Section 105(a) of the Bankruptcy Code authorizes the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of Section 105(a) is to insure a Bankruptcy Court’s power to take whatever action “is appropriate or necessary in aid of the exercise of its jurisdiction.” 2 Collier on Bankruptcy, 105.01, at 105-2 (15th ed. 1993). Thus, this Court may exercise its equitable powers to grant the relief requested in this Motion.

21. Finally, approval of a sale transaction as contemplated herein will help facilitate

Bandera's ability to seek approval of a plan of reorganization or a structured dismissal and to distribute the sale proceeds in accordance with the priorities delineated in the Bankruptcy Code.

22. In order to facilitate the sale process, Bandera will receive bids by the Bid Deadline, determine which offer is the highest and best offer, and proceed with the auction described below.

Breakup Fee To Initial Bidder

23. Khersonsky identified in Exhibit "A" has invested substantial time and effort in negotiating the material terms of an Agreement with Bandera. Khersonsky has also invested time and effort in connection with its investigation of Bandera and its due diligence review. It shall have incurred various legal and other professional costs and expenses, and will incur still further substantial additional fees and costs in its continuing due diligence investigations. Subject to the terms of the Agreement attached hereto as Exhibit "A" (the "Agreement"), if a closing occurs with respect to a sale of Real Property to a party other than Khersonsky with respect to such assets, and Khersonsky is ready, willing and able to close the transaction and is not in default under the Agreement, Bandera propose that Khersonsky be paid a "Breakup Fee" in an amount equal to no more than \$15,000.00. The Breakup Fee would be paid in the event of the closing of a sale of Real Property to a party other than Khersonsky for such assets, concurrently with said closing. Bandera's obligations to pay a Breakup Fee to Khersonsky would be allowed as an administrative expense claim in Bandera's Chapter 11 cases pursuant to 11 U.S.C. §§ 503(b) and 507(a)(1) as an actual, necessary expense to preserve the value of the bankruptcy estates.

24. Sellers of assets often employ buyer protections in order to encourage the making of other purchase offers. These protections are "important tools to encourage bidding and to maximize the value of Bandera's assets." In re Integrated Resources, Inc., 147 B.R. 650, 659 (S.D.N.Y. 1992). Bandera submits that the proposed Breakup Fee will not hamper or deter competitive bidding for the Real Property. Rather, it will encourage bidding by providing prospective purchasers with an incentive to bid for the Real Property and will likely serve as a magnet for other bids. Moreover, Bandera believes that the ability to provide a breakup fee will set a guaranteed floor price for the Real Property and motivate other potential bidders to

participate.

25. Bandera further requests that the Court require that any examination of the Real Property and other information relative to the transaction by a prospective bidder be conducted prior to the Sale Hearing at mutually convenient dates and times. Bandera may request that prospective bidders be required to execute a confidentiality agreement in form reasonably satisfactory to Bandera prior to conducting any due diligence or obtaining information considered confidential by Bandera. In addition, any bidder should be required, within twenty-four (24) hours after Bandera' request, to submit financial statements and other documents relating to its business activities and its ability to perform in the event that its bid is accepted. Furthermore, in order to ensure that Real Property's value is truly maximized, Bandera request that the Court approve the following bid procedures at the Procedures Hearing, so that competing offers for the Real Property shall be accepted only if they meet the following requirements.

(a) Persons or entities other than Khersonsky wishing to make a competing bid for any or all of the Real Property (a "Proposed Bid") shall submit bids in the form of the Agreement (the "Proposed Agreement") to Bandera through Bandera' attorney no later than the Bid Deadline (November 22nd, 2016 or such other date as approved by the Court), together with an earnest money deposit (the "Deposit") in an amount of equal to \$5,000.00 and must also provide proof of financial ability to close on the transactions described in the Proposed Agreement, including proof of financial ability to perform under the contract attached hereto as Exhibit "A". The Proposed Bid, including, without limitation, the Deposit and an original counterpart of the executed Proposed Agreement, should be delivered to William B. Kingman, Law Offices of William B. Kingman, P.C., 4040 Broadway, Suite 350, San Antonio, TX 78209.

(b) Any competitive bid must also conform to the following requirements:

(1) provide for a closing date on the sale which is no later than ten (10) days after the Court's approval of the sale:

(2) contain substantially the same (or more favorable) terms and conditions as those contained in the agreement attached hereto as Exhibit "A");

(3) not contain any due diligence conditions or a financing contingency;

(4) proffer a competing bid which is (i) greater than the purchase price contained in Khersonsky's Agreement by at least \$25,000.00; and

(5) by its terms, remain open for acceptance through the earlier of the closing of any transaction with a winning bidder or January 15, 2017;

(c) On or before the close of business on November 23rd, 2016 (or such other date as approved by the Court), Bandera shall review the Proposed Bids and Bandera shall notify the prospective competing bidders if their bids satisfy the criteria required to participate in an auction sale regarding the Real Property (each such bidder and Khersonsky being referred to herein as an "Eligible Bidder"). Bandera shall be entitled to extend the deadline for a prospective competitive bidder to comply with the eligibility requirements if it determines that such party is working in good faith to comply and appears to have the ability to do so.;

(d) All Eligible Bidders must attend an auction sale to be conducted by the Court and/or counsel for Bandera on such as approved by the Court) (the "Auction Sale"), at a location to be identified in the notice of the Sale Hearing to be served on interested parties;

(e) At the Auction Sale, bidding for Real Property will be conducted in minimum incremental bids of \$10,000.00 (or such smaller increment as Bandera deem appropriate under the circumstances). For the avoidance of doubt, Bandera shall have complete discretion to structure the auction and the bidding in a manner they deem necessary to maximize value for creditor constituencies;

(f) Following the conclusion of bidding and prior to the Sale Hearing, the Court shall determine which bid generates the greatest amount for Bandera's estate, and identify one or more proposed Purchasers and Agreements to recommend for approval by the Court at the Sale Hearing as constituting the highest and best offers; and

(g) At the Sale Hearing, Bandera shall seek Court approval for the sale of Real

Property the proposed purchaser on terms and conditions as set forth in any Agreement reached with such prospective purchaser, and Bandera shall also seek approval of one or more back-up bids.

26. Bandera also asks the Court to direct that offers made prior to or at the Sale Hearing may not be withdrawn after they are made and any entity's refusal or failure to comply with its offer after acceptance of same by Bandera and approval by the Court shall entitle Bandera to retain the Deposit.

27. Finally, Bandera reserves the right to reject any proposed higher and better offer which, in its discretion, is deemed inadequate or insufficient or which is contrary to the best interests of the estate. Bandera intends to submit any disputes which may arise in connection with the bidding process to the Bankruptcy Court for determination on an expedited basis.

28. Simultaneously herewith, Bandera has served a copy of this Motion, along with exhibits, on the Office of the United States Trustee, counsel for Khersonsky, counsel for all parties identified on the service list maintained in this case, and all parties, if any, believed by Bandera to assert a lien on the Real Property.

Notice - Expedited Consideration

29. Bandera has submitted herewith a proposed order providing notice of the proposed sale procedures and the Procedures Hearing scheduled to consider same, which Bandera will serve on the Office of the United States Trustee, all parties identified on the service list maintained in this case and all creditors asserting a security interest in the Real Property.

30. Federal Rule of Bankruptcy Procedure 6004 provides, in pertinent part, as follows:

- (a) Notice of Proposed Use, Sale, or Lease of Property. Notice of a proposed use, sale, or lease of property, other than cash collateral, not in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c)(1), (i), and (k)

Fed.R.Bankr.P. 6004.

Federal Rule of Bankruptcy Procedure 9007 provides, in pertinent part, as follows:

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the entities to whom, and the form and manner in which the notice shall be given.

Fed.R.Bankr.P. 9007.

31. Bandera contends that the forms of notice set forth above and the period for scheduling the hearing on the sale comport with Bankruptcy Rules 6004, 6006 and 9007, constitute good and sufficient notice of the relief sought herein and of all hearings and procedures contemplated hereby.

Waiver of 14-Day Stay on Closing

32. Bankruptcy Rules 6004(h) provide that an order authorizing the use, sale, or lease of property and an order authorizing the assumption and assignment of executory contracts or unexpired leases will be stayed for fourteen (14) days after entry of such approval orders unless the court orders otherwise. Because of the need to close the transactions contemplated herein as promptly as possible, Bandera request that the Court order and direct that the order approving this Motion shall not be automatically stayed for fourteen (14) days.

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

WHEREFORE, Bandera respectfully request that the Court grant this Motion and enter one or more orders providing relief as requested hereinabove, and granting such other and further relief as may be just and proper.

Respectfully submitted on November 17th, 2016,

LAW OFFICES OF WILLIAM B. KINGMAN, P.C.
4040 Broadway, Suite 350
San Antonio, Texas 78209
Telephone: (210) 829-1199
Facsimile: (210) 821-1114

By: /s/ William B. Kingman
William B. Kingman, State Bar No. 11476200
COUNSEL FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been transmitted pursuant to the applicable rules (via electronic transmittal and/or via US First Class Mail, postage prepaid) to the following parties in interest and to the parties on the attached Service List on November 17th, 2016.

Khersonsky Corporation
c/o Wade Hayden
7750 Broadway
San Antonio, TX 78209

/s/ William B. Kingman
William B. Kingman

Label Matrix for local noticing
 0542-5
 Case 16-52021-cag
 Western District of Texas
 San Antonio
 Thu Nov 17 10:33:21 CST 2016

Bandera Pointe Hospitality, LP
 8122 Floating View
 San Antonio, TX 78255-3305

U.S. BANKRUPTCY COURT
 615 E. HOUSTON STREET, ROOM 597
 SAN ANTONIO, TX 78205-2055

Addersley Investments Inc.
 8122 Floating View
 San Antonio, TX 78255-3305

Albert Uresti, M.P.A.
 Bexar County Tax Assessor
 233 N. Pecos La Trinidad
 Viste Verde Bldg 2nd Floor
 San Antonio, TX 78207-3177

Alpesh Patel
 8122 Floating View
 San Antonio, TX 78255-3305

Bexar County
 c/o Don Stecker
 711 Navarro, Suite 300
 San Antonio, TX 78205-1749

Hayden & Cunningham, PLLC
 c/o D. Wade Hayden
 7750 Broadway
 San Antonio, Texas 78209-3244

Internal Revenue Service
 Centralized Insolvency Operations
 P.O. Box 7346
 Philadelphia, PA 19101-7346

Michael J. Baucum
 1100 NW Loop 410, Ste. 260
 San Antonio, TX 78213-2200

Nextstep Development, Inc.
 12010 Lamar Bridge
 San Antonio, TX 78249-4165

Niraj Patel
 12010 Lamar Bridge
 San Antonio, TX 78249-4165

Ronald J. Johnson
 111 Soledad, Ste. 1350
 San Antonio, TX 78205-2276

(p)TEXAS COMPTROLLER OF PUBLIC ACCOUNTS
 REVENUE ACCOUNTING DIV - BANKRUPTCY SECTION
 PO BOX 13528
 AUSTIN TX 78711-3528

U.S. Trustee
 615 E. Houston, Rm 533
 San Antonio, TX 78295-1601

United States Trustee - SA12
 US Trustee's Office
 615 E Houston, Suite 533
 PO Box 1539
 San Antonio, TX 78295-1539

Weinritter Realty LP
 PO Box 782129
 San Antonio, TX 78278-2129

Weinritter Realty, L.P.
 C/O Ronald J. Johnson
 111 Soledad, Suite 1350
 San Antonio, Texas 78205-2276

William B. Kingman
 4040 Broadway, Suite 350
 San Antonio, TX 78209-6375

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Texas Comptroller of Public Accounts
 P.O. Box 13528
 Austin, TX 78711-3528

End of Label Matrix
 Mailable recipients 18
 Bypassed recipients 0
 Total 18

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement") is made to be effective as of the date described in Section 10.23 hereof (the "Effective Date"), by and between BANDERA POINTE HOSPITALITY, LP, a Texas limited partnership ("Seller"), and KHERSONSKY CORPORATION, a Texas corporation and/or assigns ("Purchaser").

W I T N E S S E T H:

ARTICLE I
PURCHASE AND SALE

1.1 Agreement of Purchase and Sale.

(a) Subject to the terms and conditions set forth herein and for the consideration stated herein, Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller that certain tract or parcel of land situated in Bexar County, Texas, more particularly described on Exhibit A attached hereto and made a part hereof for all purposes, together with any and all improvements situated thereon, together with all rights, tenements, hereditaments, easements, appendages, privileges and appurtenances pertaining thereto, including all sewer and wastewater discharge capacity allocated or reserved thereto, all potable water capacity allocated or reserved thereto, all other utility rights allocated or reserved thereto, all development rights with respect thereto, any right, title and interest of Seller in and to the adjacent streets, alleys, rights-of-way and any adjacent strips or gores of real estate and any right, title and interest of Seller in and to all rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances on or in the Property (collectively the "Property").

(b) Notwithstanding anything to the contrary contained in this Agreement, Purchase and Seller hereby acknowledge and agree as follows:

(i) Seller, as the "Debtor" in the bankruptcy case styled, *In re: Bandera Pointe Hospitality, LP*, assigned case number 16-52021 and being jointly administered under case number 16-52019 with the case styled, *In re: Nextstep Development, Inc.* (collectively, the "Bankruptcy Case"), and now pending before the United States Bankruptcy Court for the Western District of Texas, San Antonio Division (the "Court"), shall make an application (the "Application") to the Court in the Bankruptcy Case for approval of the transaction contemplated by this Agreement within three (3) business days after the Effective Date and shall seek an expedited hearing of the Application. The Application shall seek such approval with respect to the Property free and clear of any interest in the Property, including any and all liens, leases, claims or other encumbrances pursuant to 11 U.S.C. § 363. The Application shall include a request that the provisions regarding Bid Protections and the Break-up Fee, as set forth in Section 1.1(b)(ii) below, be approved and authorized as part of the Order Approving the Sale of the Property (or any "Sales Procedure Order" setting forth procedures for the sale of the Property, or any part thereof, that is the subject of this Agreement) pursuant to this Agreement. This

Agreement shall be valid only if the Court approves of, and approves by its Order, the provisions set forth below. The Application and the Court's Order Approving the Sale of the Property to Purchaser shall be subject to approval by Purchaser. Debtor, as Seller, understands and agrees that time is of the essence regarding all provisions set forth in Section 1.1(b) of this Agreement.

(ii) Bid Protections and Break-up Fee. The Debtor hereby is authorized to: (a) accept the offer by Purchaser subject to higher and better offers as set forth in the Application and (b) request the Court provide to Purchaser Bid Protections and a break-up fee in the amount of \$15,000.00 (the "Break-up Fee") as reimbursement for any and all expenses incurred or to be incurred by Purchaser as a result of this transaction, including but not limited to, those for attorney's fees, due diligence, in-house resources and other expenses, subject to the terms and conditions set forth herein. The Break-up Fee shall be fixed at the amount stated in the immediately preceding sentence regardless of whether Purchaser's actual expenses exceed or are less than such amount. Upon Court approval, the Break-up Fee allowed and approved shall constitute an administrative expense claim against the Debtor pursuant to section 503(b) and 507(a)(2) of the Bankruptcy Code. The Break-up Fee allowed and approved shall be paid, if at all, upon the date of consummation of any transaction proposed by a successful bidder, if the successful bidder is not Purchaser, and such payment shall be made from the proceeds of such transaction. The attendance and/or participation by Purchaser at any hearing concerning the sale of the Property that is the subject of the Agreement shall not be construed as a waiver or release of Purchaser's right to receive the Break-up Fee hereby allowed and approved.

(iii) Further, any Application filed by the Seller as Debtor in the Bankruptcy Case, and any Order approving the sale of the Property that is the subject of this Agreement shall contain the following provisions as requested findings, findings, requested decretal paragraphs and/or decretal paragraphs, together with such other provisions as Seller may require:

1. Pursuant to 11 U.S.C. § 363(b), the sale of the Property contemplated by the Agreement to Purchaser, is free and clear of all interests and encumbrances and the transactions contemplated thereby are approved in all respects.

2. Except as otherwise specifically provided in the Agreement, the Purchaser shall not be liable for any claims against the Debtor or any of its predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, whether known or unknown as of the Closing date, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtor or its business or assets or any obligations of or claims against the Debtor arising at any time, including, but not limited to, liabilities on account of any taxes (subject to Section 5.4 of this Agreement) arising, accruing, or payable under, out of, in connection with, or in any way relating to the Property prior to the Closing date.

3. The transactions contemplated by the Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein by this Order to consummate the Sale shall not affect the validity of the Sale to the Purchaser. Furthermore, the stay provided by the provisions of Bankruptcy Rule 6004(h) shall not apply to this Order and that, therefore, the sale of assets approved and authorized by this Order may proceed to closing and consummation *instanter*.

4. As a good faith purchaser of the Property, the Purchaser has not colluded with any of the other bidders, potential bidders or any other parties interested in the Property, and therefore neither the Debtor nor any successor in interest to the Debtor's estate shall be entitled to bring an action against the Purchaser, and the Sale may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

5. Sale and Transfer of Property.

(A) Pursuant to 11 U.S.C. § 363(b), the Debtor hereby is authorized to sell the Property to Purchaser and consummate the this sale in accordance with and subject to the terms and conditions of the Agreement, and to transfer and assign all right, title and interest (including common law rights) to all property, licenses and rights to be conveyed in accordance with and subject to the terms and conditions of the Agreement, and further is authorized and directed to execute and deliver, and are empowered to perform under, consummate and implement, the Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement, including without limitation the related documents, exhibits and schedules, and to take all further actions as may be reasonably requested by Purchaser for the purposes of assigning, transferring, granting, conveying and conferring to Purchaser or reducing to possession, the Property, or as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Agreement.

(B) Pursuant to 11 U.S.C. § 363 (b) and 363(f), the Property shall be transferred to the Purchaser upon consummation of the Agreement (the "Closing Date") free and clear of all interests and encumbrances (including any leases concerning the property that is the subject of the Agreement) of any kind or nature whatsoever including, but not limited to, interests or encumbrances in respect of the following: (i) any labor agreements; (ii) all mortgages, deeds of trust and security interests; (iii) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of any Debtor; (iv) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might

otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) state discrimination laws, (k) state unemployment compensation laws or any other similar state laws, or (l) any other state or federal benefits or claims relating to any employment with any of the Debtors or any of their respective predecessors; (v) any bulk sales or similar law; (vi) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (vii) any theories of successor or products liability; and (viii) any Environmental Health and Safety Laws (as defined in the Agreement). For purposes of clarification, any employee medical claims which are incurred prior to the Closing (regardless of when such claims are presented for payment) shall be claims against the bankruptcy estates of the Debtor, and not the Purchaser, and the Purchaser shall be responsible only for such claims which are incurred after the Closing. All such interests and encumbrances of any kind or nature whatsoever shall attach (effective upon the transfer of the Property to the Purchaser) to the proceeds of the Sale with the same force, validity, priority and effect, if any, as the claims, liens, encumbrances, and interests formerly had against the Property, if any, subject to the Debtor's right to challenge the extent, validity, priority and effect of the interests and subject to and as otherwise provided in any other order of this Court in this Chapter 11 Case.

(C) On the Closing Date, this Order shall be construed and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Property or a bill of sale transferring good and marketable title in such Property to the Purchaser.

(D) All entities who presently are, or on the Closing Date may be, in possession of some or all of the Property hereby are directed to surrender possession of the Property to the Purchaser on the Closing Date.

(E) Except as expressly permitted by the Agreement of Purchase and Sale or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade, products liability and other creditors, holding interests or encumbrances of any kind or nature whatsoever against or in the Debtors or the Property (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated now existing or hereinafter arising), arising under or out of, in connection with, or in any way relating to, the Debtor, the Property, or the transfer of the Property to the

Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting against the Purchaser, its successor or assign, its property, or the Property, such persons' or entities' interest or encumbrances.

(F) On the Closing Date of the Sale, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary to release its interests and encumbrances in the Property, if any, as such interests and encumbrances may have been recorded or otherwise exist.

(G) If any person or entity that has filed statements or other documents or agreements evidencing claims, liens, encumbrances, or interests in any of the Property does not deliver to the Debtor or the Purchaser prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all interests and other interests that the person or entity has or may assert with respect to any of the Property, the Debtor and/or the Purchaser hereby are authorized to execute and file such statements, instruments, releases and other documents on behalf of such persons or entity with respect to any of the Property.

(H) Subject to the terms and conditions of this Order and the Agreement, the transfer of the Property to the Purchaser pursuant to the Agreement constitutes a legal, valid, and effective transfer of the Property, and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Property free and clear of all interests and encumbrances of any kind or nature whatsoever.

1.2 Permitted Exceptions.

The Property shall be conveyed subject to the following matters (collectively the "Permitted Exceptions"):

(a) those matters deemed to be Permitted Exceptions pursuant to Section 2.3 hereof;

(b) building restrictions and zoning regulations previously or hereafter adopted by any municipal or other public authority relating to the Property, which individually or in the aggregate do not have a material adverse effect on Purchaser's ownership, operation, use, enjoyment, development or redevelopment of the Property;

(c) real property taxes for the year of Closing (as such term is defined in Section 5.1 hereof) (if such taxes are not yet due and payable) and subsequent years, which taxes shall be prorated at Closing; and

1.3 Purchase Price.

The purchase price for the Property shall be Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) (the "Purchase Price").

1.4 Payment of Purchase Price.

The Purchase Price shall be payable by Purchaser to Seller in cash or immediately available funds at Closing.

1.5 Earnest Money.

Within three (3) days after the Effective Date, Purchaser shall deposit with Presidio Title (the "Title Company"), having its office at 7373 Broadway, Suite 105, San Antonio, Texas 78209 (Attn: David McAllister) Five Thousand and No/100 Dollars (\$5,000.00) in cash (the "Earnest Money") to be held by the Title Company as earnest money in accordance with the terms and provisions of this Agreement which shall be held and disbursed by the Title Company in accordance with the terms this Section and Section 3.2 of this Agreement. The Title Company is hereby instructed to hold the Earnest Money, less the Independent Contract Consideration (as defined in Section 1.6 hereof) in an interest bearing account. All interest accruing on the Earnest Money, less the Independent Contract Consideration, shall become a part thereof and shall be delivered to the party entitled to receive the Earnest Money. If Purchaser fails to deposit the Earnest Money with the Title Company as provided for herein, this Agreement shall automatically terminate and neither party shall have any further rights, duties or obligations hereunder. If Purchaser terminates this Agreement pursuant to an express right granted to Purchaser pursuant to this Agreement, the Title Company shall and is hereby instructed to immediately return the Earnest Money, less the Independent Contract Consideration, to Purchaser.

1.6 Independent Contract Consideration.

Notwithstanding anything to the contrary contained in this Agreement, One Hundred and No/100 Dollars (\$100.00) of the Earnest Money (the "Independent Contract Consideration"), which amount Seller and Purchaser hereby acknowledge and agree has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement, shall be nonrefundable and shall be delivered to Seller by the Title Company promptly after the Title Company receives the Earnest Money. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided for herein, and is nonrefundable in all events. If Closing occurs, the Independent Contract Consideration shall be credited against the Purchase Price.

ARTICLE II
TITLE AND SURVEY

2.1 Commitment for Title Insurance.

Seller and Purchaser hereby instruct the Title Company to deliver to Purchaser, Seller and the Surveyor (as such term is defined in Section 2.2 hereof), within five (5) days after the

Effective Date, a Commitment for Title Insurance (the "Title Commitment") covering the Property, showing all matters affecting title to the Property and binding the Title Company to issue to Purchaser at Closing an Owner Policy of Title Insurance (the "Owner's Policy"), the Owner's Policy to be issued by an underwriter acceptable to Purchaser, on the standard form of policy prescribed by the Texas State Board of Insurance and in the full amount of the Purchase Price. Seller and Purchaser further instruct the Title Company to promptly deliver to Seller, Purchaser and the Surveyor legible copies of all instruments referred to on Schedules B or C of the Title Commitment.

2.2 Survey.

Seller shall, within ten (10) days after the Effective Date, delivered to Purchaser and the Title Company a copy of the Seller's most recent survey of the Property. If the existing survey is not acceptable to the title company, Seller, at Seller's expense, will obtain a new or updated survey acceptable to the title company and deliver the acceptable survey to Buyer and the title company within 20 days after Seller receives notice that the existing survey is not acceptable to the title company. The closing date will be extended daily up to 20 days if necessary for Seller to deliver an acceptable survey within the time required. Buyer will reimburse Seller \$1,500.00 of the cost of the new or updated survey at closing, if closing occurs. Unless otherwise agreed by Seller and Purchaser, the metes and bounds description contained in the Survey shall be the legal description contained in the documents employed to convey the Property from Seller to Purchaser.

2.3 Title Review Period.

Purchaser shall have ten (10) days (the "Title Review Period") after the receipt of the Title Commitment, legible copies of all instruments referred to on Schedules B or C of the Title Commitment and the Survey to provide Seller with written notice (the "Title Objection Letter") of such objections as Purchaser may have to anything contained in the Title Commitment or the Survey (collectively "Title Objections"). Except as set forth below, any item contained in the Title Commitment or the Survey to which Purchaser does not object pursuant to the Title Objection Letter shall be deemed a Permitted Exception. If Purchaser delivers to Seller a Title Objection Letter, Seller shall have ten (10) days, or such greater period of time as may be agreed upon in writing by Seller and Purchaser (the "Cure Period"), during which Seller shall have the right, but not the obligation, to cure or remove the Title Objections and shall cause the Title Company to deliver to Purchaser a revised Title Commitment or Survey evidencing such cure or removal; provided, however, that Purchaser shall be deemed to have objected to and Seller shall have the absolute obligation to cure or remove all liens of any kind against the Property (the same to automatically be considered Title Objections regardless of whether or not Purchaser delivers to Seller a Title Objection Letter), including, without limitation, (a) mortgage liens, (b) security interests, (c) tax liens, (d) abstracts of judgment, (e) environmental liens, and (f) materialmen's and mechanic's liens (collectively "Liens"). Promptly after the expiration of the Cure Period, Seller shall provide Purchaser with written notice (the "Title Response Letter") setting forth those Title Objections which Seller has cured or removed and those Title Objections which Seller is not required to cure or remove and is unable or unwilling to cure or remove. If Seller fails to either cure or remove all Title Objections to the reasonable satisfaction of Purchaser and the Title Company, Purchaser may, at its sole option which may be exercised at

any time within five (5) days after Purchaser's receipt of the Title Response Letter, either terminate this Agreement by written notice to Seller, in which event the Earnest Money, less the Independent Contract Consideration, shall be immediately returned to Purchaser, or waive all uncured Title Objections and accept such title as Seller is able to convey without any reduction in the Purchase Price; provided, however, that such election shall have no effect on Seller's obligation to cure or remove all Liens. Purchaser's failure to send written notice of the election available to it pursuant to the preceding sentence within five (5) days after Purchaser's receipt of the Title Response Letter shall be deemed an election by Purchaser to waive all uncured Title Objections and accept such title as Seller is able to convey without any reduction in the Purchase Price; provided, however, that such election shall have no effect on Seller's obligation to cure or remove all Liens.

2.4 Owner's Policy.

At Closing, Seller shall cause the Title Company to furnish to Purchaser, at Seller's sole cost and expense, the Owner's Policy, which shall be in the customary form prescribed by the Texas State Board of Insurance. The Owner's Policy may contain as exceptions the standard printed exceptions and the Permitted Exceptions; provided, however, (a) the standard exception for restrictions shall be deleted except for any restrictions that are Permitted Exceptions, (b) the exception for rights of parties in possession shall be deleted, (c) the standard exception for taxes shall be limited to the year in which Closing occurs (if such taxes are not yet due and payable) and for "rollback" taxes that arise as a result of Purchaser's change in use of the Property, (d) all arbitration provisions shall be deleted, (e) all matters set forth on Schedule C of the Title Commitment shall be deleted, and (f) if requested by Purchaser, the "survey exception" shall be modified to read "shortages in area," in which event Purchaser shall pay all fees and additional premiums charged by the Title Company in connection with such modification.

ARTICLE III DUE DILIGENCE MATERIALS

3.1 Delivery of Materials.

Within five (5) days after the Effective Date, Seller, at its sole cost and expense and to the extent that it has any of the following in its possession or control, shall deliver to Purchaser the following (collectively the "Due Diligence Materials"):

(a) statements of property taxes and assessed values with respect to the Property for 2015 and for 2016, if such figures for 2016 are in Seller's possession or control, and any and all tax documentation related to any agricultural property tax exemptions in existence with respect to the Property as a result of any agricultural leases covering the Property;

(b) copies of any inspection reports relating to the Property in Seller's possession or control, including, without limitation, any environmental inspection reports;

(c) copies of any inspection reports, correspondence or other documentation concerning the compliance of the Property with applicable rules, regulations, ordinances

and laws of all governmental authorities having jurisdiction, including, without limitation, any inspection reports, correspondence or documentation concerning the Property's compliance or noncompliance, as the case may be, with the Americans with Disabilities Act of 1990 (the "ADA");

(d) copies of any reports and correspondence relating to the availability of utilities and/or utility capacity, including, without limitation, water, sewer, gas, electricity, and surface water detention, at or near the Property;and

(e) such additional information relating to the Property in the possession or control of Seller as Purchaser may reasonably request.

To the best of Seller's actual knowledge, without additional inquiry, Seller represents and warrants that all materials, data and information to be delivered by Seller to Purchaser in connection with the transaction contemplated hereby will be complete, true and accurate in all material respects.

3.2 Rights of Termination.

Seller and Purchaser agree that if, on or before December 15, 2016, the Court fails to approve the Application and the sale of the Property to Purchaser and/or fails to approve all provisions of Section 1.1(b) of this Agreement with respect to Purchaser, Purchaser shall have the absolute and unconditional right thereafter to terminate this Agreement by sending a Notice of Termination to Seller. Upon receipt by Seller of a Notice of Termination as a result of the foregoing, this Agreement shall terminate, in which event neither party shall have any further rights, duties or obligations hereunder and the Earnest Money, less the Independent Contract Consideration, shall be immediately returned to Purchaser.

ARTICLE IV CONDITIONS PRECEDENT

4.1 Conditions Precedent to Seller's Obligations.

It shall be an express condition precedent to Seller's obligations under this Agreement that as of the date of Closing the following conditions have been satisfied or waived in writing by Seller, with any waiver to be effective only if the same is executed by an authorized officer of Seller, expressly waives a particular condition and expressly refers to this Section 4.1:

(a) All representations and warranties made by Purchaser pursuant to this Agreement shall be true and correct in all material respects; and

(b) All covenants and other obligations of Purchaser set forth in this Agreement which if not fully and timely performed would have a material adverse effect on Seller's rights under this Agreement shall have been fully and timely performed in all material respects.

If the above described conditions are not fully satisfied or waived by Seller in the manner specified above as of the date of Closing, Seller shall have the right, but not the obligation, to

terminate this Agreement in which event neither party shall have any further rights, duties or obligations hereunder and the Earnest Money, less the Independent Contract Consideration, shall be immediately returned to Purchaser; provided, however, that nothing contained in this Section 4.1 is intended to be or shall be construed as a limitation of any remedies available to Seller pursuant to Section 7.1 hereof if Purchaser defaults under this Agreement.

4.2 Conditions Precedent to Purchaser's Obligations.

It shall be an express condition precedent to Purchaser's obligations under this Agreement that as of the date of Closing the following conditions have been satisfied or waived in writing by Purchaser, with any waiver to be effective only if the same is executed by an authorized officer of Purchaser, expressly waives a particular condition and expressly refers to this Section 4.2:

(a) All representations and warranties made by Seller pursuant to this Agreement shall be true and correct in all material respects;

(b) All covenants and other obligations of Seller set forth in this Agreement which have not fully and timely been performed would have a material adverse effect on Purchaser's rights under this Agreement shall have been fully and timely performed in all material respects;

(c) Seller shall have delivered to Purchaser the Due Diligence Materials and all updates thereof required pursuant to Section 6.2(a) hereof;

(d) The Court shall have entered its order approving the sale to Purchaser with such order containing the provisions outlined in Section 1.1(b)(iii); and

(e) From the Effective Date until Closing, there shall have been no material adverse change to the Property or any part thereof.

If the above described conditions are not fully satisfied or waived by Purchaser in the manner specified above as of the date of Closing, Purchaser shall have the right, but not the obligation, to terminate this Agreement in which event neither party shall have any further rights, duties or obligations hereunder and the Earnest Money, less the Independent Contract Consideration, shall be immediately returned to Purchaser; provided, however, that nothing contained in this Section 4.2 is intended to be or shall be construed as a limitation of any remedies available to Purchaser pursuant to Section 7.2 hereof if Seller defaults under this Agreement.

**ARTICLE V
CLOSING**

5.1 Time and Place.

The closing of the transaction contemplated hereby (the "Closing") shall take place at the offices of the Title Company on or before the tenth (10th) day following Bankruptcy Court approval of the Application and the sale of the Property to Seller (or the nearest business day thereafter if such tenth (10th) day is on a Saturday, Sunday or legal holiday in Bexar County,

Texas) or on such other date and at such time as may be agreed upon in writing by Seller and Purchaser.

5.2 Seller's Obligations at Closing. At Closing, Seller shall:

(a) deliver to Purchaser a Special Warranty Deed (the "Deed") in the form of Exhibit B attached hereto and made a part hereof for all purposes, executed and acknowledged by Seller and in recordable form, conveying the Property to Purchaser on an "AS IS, WHERE IS" basis (subject to Seller's representations, warranties and covenants that survive Closing), free and clear of all encumbrances except the Permitted Exceptions; provided, however, if Purchaser elects to finance a portion of the Purchase Price with a third party lender, the Deed shall be revised to include a vendor's lien, if required by such third party lender;

(b) join with Purchaser in the execution and acknowledgement of any notice required by Section 50.301 of the Texas Water Code;

(c) deliver to Purchaser a FIRPTA Affidavit (the "FIRPTA Affidavit") in the form of Exhibit C attached hereto and made a part hereof for all purposes, duly executed by Seller, stating that Seller is not a "foreign person" as defined in the federal Foreign Investment in Real Property Tax Act of 1980 and the 1984 Tax Reform Act, and if Seller is unable or unwilling to deliver the FIRPTA Affidavit, in lieu thereof the funds payable to Seller shall be adjusted in such a manner as to comply with the withholding provisions of such statutes;

(d) cause the Title Company to deliver the Owner's Policy to Purchaser in the form required by Section 2.4 hereof;

(e) deliver to Purchaser possession and occupancy of the Property, subject to the Permitted Exceptions;

(f) deliver to Purchaser tax certificates furnished by the taxing authorities having jurisdiction over the Property indicating that all property taxes on the Property have been paid through 2016;

(g) file or cause to be filed, in a timely manner, all reports or returns required by Section 6045(e) of the Internal Revenue Code of 1986, as amended (the "Code"); and

(h) deliver to Purchaser such evidence as Purchaser and/or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Seller.

5.3 Purchaser's Obligations at Closing. At Closing, Purchaser shall:

(a) pay to Seller the Purchase Price in cash or readily available funds, it being agreed that the Earnest Money, less the Independent Contract Consideration, shall be delivered to Seller at Closing and applied towards payment of such amount and that the Independent Contract Consideration shall be credited towards payment of such amount;

(b) join with Seller in execution of the instruments described in Section 5.2(b);

(c) pay for any Mortgagee Policy of Title Insurance (the "Mortgagee Policy") if required by any third party lender financing all or a portion of the Purchase Price; provided, however, Purchaser shall request the simultaneous issuance of the Mortgagee Policy with the Owner's Policy and Purchaser shall only be required to pay the simultaneous issuance fee described in Rate Rule R-5 or any successor or substitute rule or regulation promulgated by the Texas State Board of Insurance; and

(d) deliver to Seller such evidence as Seller and/or the Title Company may reasonably require as to the authority of the person or persons executing documents on behalf of Purchaser.

5.4 Prorations.

(a) Real property taxes for the year of Closing shall be prorated, as of the date of Closing, with any apportionment of real property taxes to be made with respect to a tax year for which either the tax rate or assessed valuation or both have not yet been fixed, to be upon the basis of the tax rate and/or assessed valuation last fixed; provided that Seller and Purchaser agree that to the extent the actual taxes for the current year differ from the amount so apportioned at Closing, Seller and Purchaser will make all necessary adjustments by appropriate payments between themselves following Closing; and

(b) Seller shall receive the income from and be responsible for expenses incurred with regard to the Property prior to the date of Closing. Purchaser shall receive the income from and be responsible for expenses incurred with regard to the Property on and after the date of Closing. Seller shall pay at Closing any taxes and assessments assessed or to be assessed against the Property by any taxing authority for the year of Closing or prior years based on change in use or ownership by Seller. All such apportionments shall be subject to post-Closing adjustments as necessary to reflect later relevant information not available at Closing and to correct any errors made at Closing with respect to such apportionments and the party receiving more than it was entitled to hereunder shall reimburse the other party hereto in the amount of such overpayment within thirty (30) days after written demand therefor. Notwithstanding the foregoing, such apportionments shall be deemed final and not subject to further post-Closing adjustments if no such adjustments have been requested after a period of ninety (90) days from such time as all necessary information is available to make a complete and accurate determination of such apportionments.

The provisions of this Section 5.4 shall survive Closing.

5.5 Closing Costs.

Seller shall pay (a) the fees of any counsel representing Seller in connection with the transaction contemplated hereby, (b) the premium for the Owner's Policy (specifically excluding the fees and additional premiums charged by the Title Company in connection with the

modification of the "survey exception" and the Title Policy Endorsements), (c) the cost of the Survey, (d) the fees for recording the Deed and any other instruments used to convey the Property to Purchaser, (e) Seller's Broker's Commission and Purchaser's Broker's Commission (as such terms are defined in Section 9.1 hereof), and (f) one-half (1/2) of any escrow fees charged by the Title Company in connection with the transaction contemplated hereby. Purchaser shall pay (a) the fees of any counsel representing Purchaser in connection with the transaction contemplated hereby, (b) the simultaneous issuance fee if a Mortgagee Policy is requested by any third party lender financing all or a portion of the Purchase Price, (c) the additional premium charged by the Title Company in connection with the modification of the "survey exception" in the Owner's Policy, if such modification is requested by Purchaser, and (d) one-half (1/2) of any escrow fees charged by the Title Company in connection with the transaction contemplated hereby. All other costs and expenses incurred in connection with the transaction contemplated hereby shall be paid by the party incurring the same.

ARTICLE VI REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Representations and Warranties of Seller.

Seller hereby represents and warrants to Purchaser that:

(a) Seller is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Texas. Seller has complete and unrestricted power and authority to enter into this Agreement and, subject to Bankruptcy Court approval, all other agreements to be executed and delivered by Seller pursuant to the terms and provisions hereof, to perform its obligations hereunder and thereunder, and to consummate the transaction contemplated hereby;

(b) This Agreement has been duly executed and delivered by Seller. All other agreements contemplated hereby to be executed and delivered by Seller will be, prior to Closing, duly authorized, executed and ready in all respects to be delivered by Seller. This Agreement and all other agreements contemplated hereby shall, upon Bankruptcy Court approval, constitute legal, valid and binding obligations of Seller enforceable in accordance with their respective terms;

(c) The execution, delivery and performance of this Agreement and any other agreement contemplated hereby and the consummation of the transaction contemplated hereby or thereby do not, with or without the passage of time and/or the giving of notice, (i) conflict with, constitute a breach, violation or termination of any provision of any contract or other agreement to which Seller is a party or to which all or any part of the Property is bound, (ii) result in an acceleration or increase of any amounts due from Seller to any person or entity, (iii) conflict with or violate the organizational documents of Seller, (iv) result in the creation or imposition of any lien on all or any part of the Property, or (v) violate any law, statute, ordinance, regulation, judgment, writ, injunction, rule, decree, order or any other restriction of any kind or character applicable to Seller or all or any part of the Property;

(d) Seller now has and shall have at Closing good and indefeasible title to the Property in fee simple absolute, free and clear of all Liens (other than any Liens that will be released at or prior to Closing). No party other than Seller and Purchaser has any material rights in or to occupy all or any part of the Property. As of the Effective Date, no party other than Purchaser has any agreement to purchase, right of first refusal, option to purchase or any other right to acquire all or any part of the Property; however, Purchaser acknowledges that, as a result of the pending Bankruptcy Case, other parties have the right to offer to purchase the Property under the Sales Procedure Order;

(e) Except as provided in Section 1.1(b) of this Agreement, there are no actions, suits, claims, assessments, or proceedings pending or, to the best of Seller's knowledge, threatened that could materially adversely affect the ownership, operation, use, enjoyment, development or redevelopment of the Property or Seller's ability to perform hereunder;

(f) Seller has no information of and to the best of Seller's actual knowledge, without additional inquiry, there is not (i) any change contemplated in any applicable law, statute, ordinance, rule, regulation, order, or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), (ii) any law, ordinance, regulation, administrative ruling, restrictive covenant or deed restriction affecting all or any part of the Property, including without limitation, any applicable zoning ordinances, building codes, flood disaster laws, wetlands regulation, health law or environmental law, (iii) any action by adjacent landowners, (iv) any natural or artificial conditions on or about the Property, or (v) any significant adverse fact or condition relating to the Property or its use, that would prevent, limit, impede, or render more costly the ownership, operation, use, enjoyment, development or redevelopment of the Property;

(g) To the best of Seller's actual knowledge, without additional inquiry, the property is not within an area designated by the United States Secretary of Housing and Urban Development, the United States Army Corp of Engineers or any other local, state or federal organization or entity as having an increased likelihood of flooding;

(h) To the best of Seller's actual knowledge, without additional inquiry, no Hazardous Substances (as such term is hereinafter defined) have been incorporated, used, generated, manufactured, stored, or disposed of in, on, under, or about the Property or transferred to or from the Property and there are no claims, litigation, administrative or other proceedings, whether actual or threatened, or judgments or orders, relating to the use, generation, manufacture, storage or disposal of any Hazardous Substances in, on, under or about the Property. As used in this Agreement, the term "Hazardous Substances" means any and all substances, materials and wastes which are or become regulated under applicable local, state or federal Environmental Laws or that are classified as hazardous or toxic under local, state or federal Environmental Laws or regulations, including, without limitation, (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste," "pollutant" "contaminant" or words of similar import as such terms are defined by or listed in the Comprehensive Environmental Response Compensation and Liability

Act of 1980 (42 U.S.C. § 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.) ("EPCRA"), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 et seq.) ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, the Toxic Substance Control Act (15 U.S.C. § 2601 et seq.), the Federal Insecticide, Fungicide and Rodenticide Control Act (7 U.S.C. § 136 et seq.), the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the Federal Clean Air Act (42 U.S.C. § 7401 et seq.), and in the regulations promulgated pursuant to such laws, all as amended, (ii) those substances listed in the United States Department of Transportation Table (49 CFR 172.101) or 40 CFR Part 302, both as amended, (iii) any material, waste or substance which is (A) oil, gas or any petroleum or petroleum by-product, (B) asbestos, in any form, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1251 et seq.), as amended, (E) flammable explosives, or (F) radioactive materials, and (iv) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "pollutant," "contaminant," "hazardous waste," "industrial solid waste," "solid waste," "radioactive waste" or "special waste from health care facility" in the Texas Solid Waste Disposal Act (Tex. Health & Safety Code Ann ch. 361), the Texas Clean Air Act (Tex. Health & Safety Code ch 282), the Texas Pesticide Control Act (Tex. Agric. Code Ann. § 76.001 et seq.) and those substances included within the definitions of "hazardous substances," "regulated substances" or "petroleum products" in Subchapter I of the Texas Water Code (Tex. Water Code Ann ch 26, subch. I) and in the regulations promulgated pursuant to any of such laws, all as the same may be amended from time to time (collectively "Environmental Laws");

(i) The Property has unencumbered access to and from one or more publicly dedicated streets or highways accepted for maintenance and maintained by a municipality, county and/or the State of Texas;

(j) To the best of Seller's actual knowledge, without additional inquiry, any and all underground storage tanks previously removed from the Property by Seller were removed in accordance with all applicable laws, ordinances, regulations and administrative rulings and no underground storage tanks are presently situated in, on, under or about the Property;

(k) To the best of Seller's actual knowledge, without additional inquiry, the Property includes all sewer and wastewater discharge capacity, potable water capacity, other utility rights and development rights which were originally obtained with the Property by Seller, and no such capacity or rights have been previously been conveyed or transferred by Seller;

(l) The Property complies in all respects with the rules, regulations, ordinances and laws of all governmental authorities having jurisdiction;

(m) Seller is not in default under any of the agricultural leases covering the Property, and there is no event or fact which upon the passage of time or the giving of notice, or both, would constitute a default by Seller under any of the agricultural leases covering the Property;

(n) To the best of Seller's actual knowledge, without additional inquiry, the Due Diligence Materials are true, accurate and complete in all material respects.

All references in this Section 6.1 or elsewhere in this Agreement to "Seller's knowledge" or "Seller's actual knowledge" or the "best of Seller's knowledge" (i) shall refer solely to the actual knowledge (as opposed to constructive, deemed or imputed knowledge) of Alpesh Patel, (ii) shall not be construed to refer to the knowledge of any other employee, officer, director, shareholder or agent of Seller or any affiliate of Seller, (iii) shall not impose upon the foregoing individual(s) any duty to investigate the matter to which the actual knowledge, or the absence thereof, pertains and (iv) shall not impose any personal liability upon such person for the inaccuracy of such representation or warranty. Notwithstanding anything in this Agreement to the contrary, in the event that any of the Seller's representations or warranties in this Agreement becomes untrue or materially inaccurate between the Effective Date and the date of Closing, except as a result of Seller's intentional or willful action, Seller shall promptly notify Purchaser of same before Closing, whereupon Purchaser shall as its sole and exclusive alternative remedies have the right to either (i) terminate this Agreement within five (5) days of receipt of notice of such fact by giving written notice of termination to Seller within said period, whereupon the Earnest Money, less the Independent Contract Consideration, shall be promptly returned to Purchaser and the parties shall have no further obligations hereunder other than the obligations that expressly survive the termination of this Agreement, (ii) waive any claim or cause of action relating to such fact and proceed to Closing or (iii) extend the Closing for a period of time not to exceed ten (10) days in order that Seller may attempt to cure the default. Purchaser shall not have the right to make a claim under any particular representation or warranty of Seller to the extent that, prior to Closing, Purchaser becomes aware that the representation or warranty is not accurate and elects to proceed to close.

The representations and warranties contained in this Section 6.1 shall be deemed to be restated at Closing and shall survive Closing.

6.2 Covenants of Seller.

Seller hereby covenants with Purchaser, which covenants shall survive Closing, as follows:

(a) on or before the tenth (10th) day of each calendar month prior to Closing, Seller shall deliver to Purchaser any new or updated Due Diligence Materials in Seller's possession or control;

(b) subsequent to the Effective Date, Seller will not, unless otherwise ordered by the Bankruptcy Court or without the prior written consent of Purchaser, enter into any lease, license, employment agreement, management agreement, agreement of purchase and sale, earnest money contract, option agreement, right of first refusal, letter of intent or other agreement affecting the Property or otherwise market the Property for sale (or

permit Seller's affiliates or Seller's Broker or Seller's Broker's affiliates to market the Property for sale) to any other person or entity;

(c) subsequent to the Effective Date, Seller will (i) maintain and operate the Property in a good and businesslike manner and the same manner as Seller has previously maintained and operated the same, and (ii) not commit or permit to be committed any waste to the Property;

(d) Prior to Closing, Seller shall, at its sole cost and expense, terminate all contracts and agreements relating to the upkeep, repair, maintenance or operation of the Property and pay all accrued obligations arising out of the ownership, operation, use, enjoyment, development or redevelopment of the Property;

(e) Prior to Closing, Seller shall, at its sole cost and expense, terminate any and all leases covering any part of the Property (expressly excepting the Approved Agricultural Leases, which Seller shall maintain in effect through Closing), including, without limitation, written and/or oral residential leases covering any part of the Property and remove from the Property all property of any such residential or other tenants that may be kept, stored or otherwise located on the Property (expressly excepting any such property kept, stored or located on the Property pursuant to the Approved Agricultural Leases). Seller shall provide Purchaser on or before Closing documentation reasonably satisfactory to Purchaser evidencing the termination of such leases, including, without limitation, written termination agreements between Seller and any such tenants;

(f) Prior to Closing, Seller shall, at no out-of-pocket expense to Seller, reasonably cooperate with Purchaser to comply with any and all applicable subdivision regulations and similar ordinances necessary to allow for the conveyance of the Property from Seller to Purchaser; and

(g) Seller shall notify Purchaser immediately after the same occurs of any material change concerning the Property, these representations and warranties contained in Section 6.1 hereof, or any other information heretofore or hereafter furnished to Purchaser concerning the Property.

6.3 Representations and Warranties of Purchaser.

Purchaser hereby represents and warrants to Seller that:

(a) Purchaser is a corporation, duly organized and in good standing under the laws of the State of Texas. Purchaser is in good standing and authorized to do business in the State of Texas. Purchaser has complete power and authority to enter into this Agreement and all other agreements to be executed and delivered by Purchaser pursuant to the terms and provisions hereof, to perform its obligations hereunder and thereunder, and to consummate the transaction contemplated hereby;

(b) This Agreement has been duly executed and delivered by Purchaser. All other agreements contemplated hereby to be executed and delivered by Purchaser will be, prior to Closing, duly authorized, executed and ready in all respects to be delivered by

Purchaser. This Agreement and all other agreements contemplated hereby constitute legal, valid and binding obligations of Purchaser enforceable in accordance with their respective terms; and

(c) The execution, delivery and performance of this Agreement and any other agreement contemplated hereby and the consummation of the transaction contemplated hereby or thereby do not, with or without the passage of time and/or the giving of notice, (i) conflict with, constitute a breach, violation or termination of any provision of any contract or other agreement to which Purchaser is a party, (ii) conflict with or violate the organizational documents of Purchaser, or (iii) violate any law, statute, ordinance, regulation, judgment, writ, injunction, rule, decree, order or any other restriction of any kind or character applicable to Purchaser.

The representations and warranties contained in this Section 6.3 shall be deemed to be restated at Closing and shall survive Closing.

6.4 Disclaimers.

PURCHASER AGREES THAT PURCHASER IS PURCHASING THE PROPERTY WITHOUT RECOURSE (EVEN AS TO THE RETURN OF THE PURCHASE PRICE), REPRESENTATION OR WARRANTY (EXCEPT AS TO THE SPECIAL WARRANTY OF TITLE CONTAINED IN THE DEED AND THOSE EXPRESS WARRANTIES, COVENANTS AND REPRESENTATIONS OF SELLER THAT SURVIVE CLOSING AND THAT ARE CONTAINED IN THIS AGREEMENT) OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY AND SELLER IS SELLING THE PROPERTY AS IS, WHERE IS, AND WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS OR WARRANTY (ALL OF WHICH SELLER HEREBY DISCLAIMS, EXCEPT AS TO THE WARRANTIES, COVENANTS AND REPRESENTATIONS EXPRESSLY MADE IN THE DEED AND THOSE EXPRESS WARRANTIES, COVENANTS AND REPRESENTATIONS OF SELLER THAT SURVIVE CLOSING AND THAT ARE CONTAINED IN THIS AGREEMENT) AS TO FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY, DESIGN, QUALITY, LAYOUT, FOOTAGE, PHYSICAL CONDITION, OPERATION, COMPLIANCE WITH SPECIFICATIONS, ABSENCE OF LATENT DEFECTS, OR COMPLIANCE WITH LAWS AND REGULATIONS (INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO HEALTH, SAFETY AND THE ENVIRONMENT) OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY.

PURCHASER ACKNOWLEDGES THAT SELLER HAS (EXCEPT AS TO THE WARRANTIES, COVENANTS AND REPRESENTATIONS EXPRESSLY MADE IN THE DEED AND THOSE EXPRESS WARRANTIES, COVENANTS AND REPRESENTATIONS OF SELLER THAT SURVIVE CLOSING AND THAT ARE CONTAINED IN THIS AGREEMENT) NOT MADE AND SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES AS TO WATER, SOIL OR GEOLOGY OF THE PROPERTY AND AS TO INCOME TO BE DERIVED FROM THE PROPERTY. WITHOUT LIMITING THE FOREGOING (EXCEPT AS TO THE WARRANTIES, COVENANTS AND REPRESENTATIONS EXPRESSLY MADE IN THE DEED AND THOSE EXPRESS WARRANTIES, COVENANTS AND REPRESENTATIONS OF SELLER THAT SURVIVE

CLOSING AND THAT ARE CONTAINED IN THIS AGREEMENT), SELLER DOES NOT AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY REGARDING THE PRESENCE OR ABSENCE OF ANY HAZARDOUS SUBSTANCES (AS DEFINED IN SECTION 6.1(H) OF THE AGREEMENT) ON, UNDER OR ABOUT THE PROPERTY OR THE COMPLIANCE OR NONCOMPLIANCE OF THE PROPERTY WITH ANY ENVIRONMENTAL LAWS (AS DEFINED IN SECTION 6.1(H) OF THE AGREEMENT).

PURCHASER HEREBY FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS TO THE WARRANTIES, COVENANTS AND REPRESENTATIONS EXPRESSLY MADE IN THE DEED AND THOSE EXPRESS WARRANTIES, COVENANTS AND REPRESENTATIONS OF SELLER THAT SURVIVE CLOSING AND THAT ARE CONTAINED IN THIS AGREEMENT, PURCHASER IS RELYING SOLELY UPON THE INSPECTION, EXAMINATION, AND EVALUATION OF THE PROPERTY BY PURCHASER IN DETERMINING WHETHER TO PURCHASE THE PROPERTY. THE PURCHASE PRICE IS A NEGOTIATED PURCHASE PRICE REPRESENTING THE FACT THAT THE PROPERTY IS BEING PURCHASED BY PURCHASER ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS, EXCEPT AS TO THE WARRANTIES, COVENANTS AND REPRESENTATIONS EXPRESSLY MADE IN THE DEED AND THOSE EXPRESS WARRANTIES, COVENANTS AND REPRESENTATIONS OF SELLER THAT SURVIVE CLOSING AND THAT ARE CONTAINED IN THIS AGREEMENT.

PURCHASER HEREBY WAIVES AND RELINQUISHES ALL RIGHTS AND PRIVILEGES ARISING OUT OF, OR WITH RESPECT, OR IN RELATION TO, ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, WHICH MAY HAVE BEEN MADE OR GIVEN, OR WHICH MAY BE DEEMED TO HAVE BEEN MADE OR GIVEN, BY SELLER, OTHER THAN THE SPECIAL WARRANTIES IN THE DEED AND THOSE EXPRESS WARRANTIES, COVENANTS AND REPRESENTATIONS OF SELLER THAT SURVIVE CLOSING AND THAT ARE CONTAINED IN THIS AGREEMENT. SELLER SHALL NOT BE LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE PROPERTY FURNISHED BY ANY REAL ESTATE BROKER, AGENT, EMPLOYEE, SERVANT OR OTHER PERSON, UNLESS THE SAME ARE SPECIFICALLY SET FORTH OR REFERRED TO IN THIS AGREEMENT OR IN THE DEED. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATION TO REFLECT THAT THE PROPERTY IS SOLD BY SELLER SUBJECT TO THE FOREGOING PROVISIONS OF THIS SECTION 6.4.

THE PROVISIONS OF THIS SECTION 6.4 SHALL BE DEEMED RESTATED AT AND SHALL SURVIVE CLOSING.

ARTICLE VII DEFAULT

7.1 Default by Purchaser.

If Purchaser fails to consummate this Agreement for any reason, except Seller's default or the termination of this Agreement by either Seller or Purchaser as expressly provided for

herein, Seller shall be entitled, as its sole and exclusive remedies, to either (a) seek to enforce specific performance of this Agreement or (b) terminate this Agreement and receive the Earnest Money, as liquidated damages for the breach of this Agreement. Seller and Purchaser stipulate and agree that the damages to Seller if Purchaser defaults under this Agreement are difficult or impossible to accurately estimate and the amount of the Earnest Money is a reasonable forecast of just compensation for the harm that would be caused to Seller upon Purchaser's default.

7.2 Default by Seller.

If Seller fails to consummate this Agreement for any reason, except Purchaser's default, the Bankruptcy Court's failure to approve the Sale or the termination of this Agreement by either Seller or Purchaser as expressly provided for herein, Purchaser shall be entitled, as its sole and exclusive remedies, subject to Section 1.1(b) of this Agreement, to either (a) seek to enforce specific performance of this Agreement, or (b) the return of the Earnest Money, less the Independent Contract Consideration, which return shall operate to terminate this Agreement. Seller and Purchaser stipulate and agree that the damages to Purchaser if Seller defaults under this Agreement are difficult or impossible to accurately estimate and the amount of the Earnest Money is a reasonable forecast of just compensation for the harm that would be caused to Purchaser upon Seller's default.

ARTICLE VIII
CONDEMNATION

8.1 Condemnation.

If any condemnation or written threat of condemnation occurs with respect to all or any part of the Property prior to Closing, Purchaser may, at its sole option, either terminate this Agreement, whereupon the Earnest Money, less the Independent Contract Consideration, shall be immediately returned to Purchaser, or Purchaser may elect to consummate the transaction contemplated hereby, in which event Seller's right to all condemnation proceeds and other sums resulting from such condemnation shall be assigned in writing by Seller to Purchaser and delivered to Purchaser, after which Seller shall have no further obligation to Purchaser with regard to such condemnation.

ARTICLE IX
COMMISSIONS

9.1 Commissions.

Seller agrees to pay to Colglazier Properties, Inc. ("Seller's Broker") a commission if the transaction contemplated hereby is consummated, but not otherwise. Such commission shall be in the amount of six percent (6%) of the Purchase Price ("Seller's Broker's Commission"). Each party represents and warrants to the other there has been no broker, finder, real estate agent or similar agent other than Seller's Broker engaged in connection with the transaction contemplated hereby and each party agrees that should any claim be made for brokerage commissions or finder's fees by any broker, finder or agent (other than Seller's Broker) by, through or on account of any acts of the indemnifying party or its agents, employees or representatives, the indemnifying party will hold the other party free and harmless from and against any and all loss,

liability, cost, damage and expense (including, without limitation, attorneys' fees, accountants' fees, court costs and interest) in connection therewith. The provisions of this Section 9.1 shall survive Closing.

ARTICLE X
MISCELLANEOUS

10.1 Assignment.

Purchaser may assign or transfer its rights and obligations under this Agreement at any time to any wholly owned, controlled or affiliated entity or party without the consent of Seller, and this Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors, and assigns. Except as set forth above, Purchaser may not assign or transfer its rights or obligations under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld, delayed or conditioned. If Purchaser assigns its rights and obligations under this Agreement to a wholly owned, controlled or affiliated entity or party who fully assumes Purchaser's obligations and liabilities under this Agreement, Purchaser shall be automatically fully released from all of its obligations and liabilities hereunder. In such event, Seller agrees to and shall immediately upon request by Purchaser execute a written instrument in a form satisfactory to Purchaser evidencing and confirming such full release.

10.2 Discharge of Obligations.

The acceptance of the Deed by Purchaser at Closing shall be deemed to be a full performance and discharge of every agreement and obligation on the part of Seller to be performed pursuant to the provisions hereof, except those, if any, which pursuant to the express provisions of this Agreement survive Closing. The acceptance of the Purchase Price by Seller at Closing shall be deemed to be full performance and discharge of every agreement and obligation on the part of Purchaser to be performed pursuant to the provisions hereof, except those, if any, which pursuant to the express provisions of this Agreement survive Closing.

10.3 Expiration of Time Periods.

If any time period set forth in this Agreement ends or expires on a Saturday, Sunday or legal holiday in Bexar County, Texas, such time period shall end or expire on the nearest business day thereafter. Time periods set forth in this Agreement shall be calculated using calendar days unless business days are expressly provided for.

10.4 Title Policy or Abstract.

The Texas Real Estate License Act requires written notice to Purchaser that it should have an attorney examine an abstract of title to the property being purchased or obtain a title insurance policy. Notice to that effect is hereby given to Purchaser.

10.5 Notices.

Any notice pursuant hereto shall be given in writing by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, certified mail, return receipt requested, or (d) email, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of email transmission, upon receipt. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant hereto shall be as follows:

(i) If to Seller:

Bandera Pointe Hospitality, LP
8122 Floating View
San Antonio, Texas 78255
Attention: Alpesh Patel
Email Address-apateltx@gmail.com

with a copy thereof to:

Bill Kingman
Law Offices of William B. Kingman, P.C.
4040 Broadway, Suite 350
San Antonio, Texas 78209
Email address: bkingman@kingmanlaw.com

(ii) If to Purchaser:

Khersonsky Corporation
P.O. Box 691947
San Antonio, Texas 78269
Attention: Zig Khersonsky
Email Address: AlcoAc@aol.com

with a copy thereof to:

Wade Hayden
Hayden & Cunningham
7750 Broadway
San Antonio, Texas 78209
Email Address: whayden@7750law.com

10.6 Disbursements.

All disbursements of every kind made in connection with the transaction contemplated hereby shall be made at Closing by the Title Company and all such disbursements and their respective recipients shall be clearly set forth on the applicable settlement statement.

10.7 Modification.

This Agreement cannot under any circumstance be modified orally, and no agreement shall be effective to waive, change, modify or discharge this Agreement in whole or in part unless such agreement is in writing and is signed by both Seller and Purchaser.

10.8 Confidentiality.

Purchaser recognizes, understands and agrees that pursuant hereto it will become aware of certain information regarding the ownership and operation of the Property, including, specifically, without limitation, the Due Diligence Materials. Purchaser agrees that, except in connection with the Bankruptcy Case, a proceeding before a court of competent jurisdiction or other governmental or quasi-governmental body, it shall not disclose any such information to any third party or parties, except to agents, employees or independent contractors advising or assisting Purchaser with the transaction contemplated hereby, potential or actual investors, potential and actual lenders of all or a portion of the Purchase Price, regulators and rating agencies and as otherwise expressly allowed pursuant to the terms and provisions of this Agreement. Seller agrees that, except in connection with the Bankruptcy Case, a proceeding before a court of competent jurisdiction or other governmental or quasi-governmental body, it shall not disclose to any third party or parties the existence of this Agreement or the identity of Purchaser prior to Closing, except as expressly allowed pursuant to the terms and provisions of this Agreement. Seller agrees that it will not disseminate any press releases, media releases or other public announcements concerning the transaction contemplated by this Agreement either prior to or subsequent to Closing. The provisions of this Section 10.8 shall survive Closing.

10.9 Reporting Requirements.

The Title Company hereby agrees to serve as the real estate reporting person as that term is defined in Section 6045(e) of the Code. This Agreement shall constitute a designation agreement, the name and address of the transferor and transferee of the transaction contemplated hereby appear in Section 10.5 hereof and Purchaser and the Title Company each agrees to retain a copy of this Agreement for a period of four (4) years following the end of the calendar year in which Closing occurs. The provisions of this Section 10.9 shall survive Closing.

10.10 Time is of the Essence.

Seller and Purchaser agree that time is of the essence with regard to this Agreement.

10.11 Successors and Assigns.

The terms and provisions of this Agreement are to apply to and bind the successors and assigns of the parties hereto.

10.12 Exhibits and Schedules.

The following schedules or exhibits attached hereto (collectively the "Exhibits") shall be deemed to be an integral part of this Agreement:

- (a) Exhibit A--legal description of the Property;
- (b) Exhibit B--form of Deed; and
- (c) Exhibit C--form of FIRPTA Affidavit.

10.13 Entire Agreement.

This Agreement, including the Exhibits, contains the entire agreement between Seller and Purchaser pertaining to the transaction contemplated hereby and fully supersedes all prior agreements and understandings between Seller and Purchaser pertaining to such transaction.

10.14 Further Assurances.

Both Seller and Purchaser agree that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to Closing, as may be reasonably requested by the other party to consummate more effectively the transaction contemplated hereby. The provisions of this Section 10.14 shall survive Closing.

10.15 Fees and Expenses.

If any controversy, claim or dispute between Seller and Purchaser affecting or relating to the subject matter or performance of the rights, duties and obligations under this Agreement, the prevailing party shall be entitled to recover from the nonprevailing party all of the prevailing party's reasonable expenses, including, without limitation, attorneys' fees, accountants' fees, consultants' fees, court costs and interest.

10.16 Counterparts.

This Agreement may be executed in multiple counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one (1) such counterpart in proving the existence, validity or content of this Agreement.

10.17 Severability.

If any provision hereof is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

10.18 Section Headings.

Section headings contained herein are for convenience only and shall not be considered in interpreting or construing this Agreement.

10.19 Binding Effect.

This Agreement shall not be binding upon any party hereto unless and until both Seller and Purchaser have executed this Agreement.

10.20 Choice of Law.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without regard to the conflicts of laws principles thereof.

10.21 Joint Drafting.

Seller and Purchaser hereby agree that this Agreement and the Exhibits have been jointly drafted, negotiated and agreed upon by Seller and Purchaser and that any rule of contract interpretation that provides that ambiguity will be construed against the drafting party is inapplicable to this Agreement and the Exhibits and shall not be used in connection with the interpretation of this Agreement or the Exhibits.

10.22 No Third Party Beneficiary.

The provisions hereof and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser only and are not for the benefit of any third party. No third party shall have the right to enforce the provisions hereof or of the documents to be executed and delivered at Closing.

10.23 Effective Date of Agreement.

Purchaser's offer to acquire the Property as evidenced by Purchaser's execution of this Agreement and delivery thereof to Seller shall become void and of no effect unless accepted by Seller as evidenced by Seller's execution of this Agreement and delivery thereof to the Title Company on or before the date that is three (3) days after the date Purchaser executes this Agreement. The date of delivery of a fully executed counterpart of this Agreement by Seller and Purchaser to the Title Company (as evidenced by the Title Company's signature on the following page) shall be deemed the effective date of this Agreement (the "Effective Date").

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the Effective Date.

SELLER:

Executed by Seller this
11 day of November, 2016.

BANDERA POINTE HOSPITALITY, LP
a Texas limited partnership

By: Addersley Investments, Inc.
its general partner

By Alpesh Patel
Alpesh Patel,
President of the General Partner

PURCHASER:

Executed by Purchaser this
20th day of October, 2016.

KHERSONSKY CORPORATION
a Texas corporation
By Zigmund Khersonsky
Zigmund Khersonsky

The Title Company hereby agrees to perform its obligations under this Agreement and acknowledges receipt of a fully executed counterpart of this Agreement and the Earnest Money from Seller and Purchaser on the 14th day of November, 2016, which date shall be deemed the "Effective Date" of this Agreement.

TITLE COMPANY:

PRESIDIO TITLE

By Noelle Cheek
Name: NOELLE CHEEK
Title: ESCROW ASST

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective as of the Effective Date.

SELLER:

Executed by Seller this
___ day of _____, 2016.

BANDERA POINTE HOSPITALITY, LP
a Texas limited partnership

By: Addersley Investments, Inc.
its general partner

By _____
Alpesh Patel,
President of the General Partner

PURCHASER:

Executed by Purchaser this
29th day of OCTOBER, 2016.

KHERSONSKY CORPORATION
a Texas corporation
By _____
Zigmund Khersonsky

The Title Company hereby agrees to perform its obligations under this Agreement and acknowledges receipt of a fully executed counterpart of this Agreement and the Earnest Money from Seller and Purchaser on the 14th day of November, 2016, which date shall be deemed the "Effective Date" of this Agreement.

TITLE COMPANY:

PRESIDIO TITLE

By _____
Name: _____
Title: _____

EXHIBIT A

**LOT 1, BLOCK 1, NEW CITY BLOCK 19069, ADDERSLEY SUBDIVISION, CITY OF
SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF
RECORDED IN VOLUME 9577, PAGE 65 AND SAID PLAT BEING AMENDED AND
RECORDED IN VOLUME 9597, PAGE 94 OF THE DEED/MAP AND PLAT RECORDS
OF BEXAR COUNTY, TEXAS.**

EXHIBIT B

SPECIAL WARRANTY DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

THE STATE OF TEXAS

§

KNOW ALL PERSONS BY THESE PRESENTS:

§

COUNTY OF BEXAR

§

THAT Bandera Pointe Hospitality, LP, a Texas limited partnership ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by Khersonsky Corporation, a Texas corporation ("Grantee"), whose mailing address is P.O. Box 691947, San Antonio, TX 78269, the receipt and sufficiency of which consideration are hereby acknowledged, and upon and subject to the exceptions, encumbrances, terms and provisions hereinafter set forth and described, has GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does hereby GRANT, BARGAIN, SELL and CONVEY, unto Grantee that certain tract or parcel of real property situated in Bexar County, Texas, described on Exhibit A attached hereto and made a part hereof for all purposes, together with all and singular the rights, benefits, privileges, easements, tenements, hereditaments and appurtenances thereon or in anywise appertaining thereto, and together with all improvements situated thereon, all sewer and wastewater discharge capacity allocated or reserved thereto, all potable water capacity allocated or reserved thereto, all other utility rights allocated or reserved thereto, all development rights with respect thereto, any right, title and interest of Grantor in and to adjacent streets, alleys, rights-of-way and any adjacent strips or gores of real estate and any right, title and interest of Grantor in and to all rights, royalties and profits in connection with all minerals, oil and gas and other hydrocarbon substances on or in the Property (such land, rights, benefits, privileges, easements, tenements, hereditaments, appurtenances, improvements and interests being hereinafter referred to collectively as the "Property").

This conveyance is expressly made subject and subordinate to those encumbrances and exceptions (collectively the "Permitted Exceptions") set forth on Exhibit B attached hereto and made a part hereof for all purposes, but only to the extent that the same are valid and subsisting and affect or relate to the Property.

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, as aforesaid, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor, but not otherwise.

GRANTEE, BY ACCEPTANCE OF THIS SPECIAL WARRANTY DEED (THIS "DEED"), ACKNOWLEDGES THAT IT HAS INSPECTED AND ASSESSED THE PROPERTY AND HAS SATISFIED ITSELF AS TO THE CONDITION OF SAME AND THAT IT ACCEPTS THE PROPERTY "AS IS" AND "WHERE IS" AND WITH ALL FAULTS, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESSED, IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WITHOUT IMPLIED WARRANTY AS TO HABITABILITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR ANY PURPOSE, SAVE AND EXCEPT THE WARRANTIES OF TITLE CONTAINED HEREIN COVERING THE PROPERTY BETWEEN GRANTOR AND GRANTEE THAT EXPRESSLY SURVIVE CLOSING UNDER THE PURCHASE AGREEMENT.

By accepting this Deed, Grantee has agreed that and understands that Grantor shall not be responsible or liable to Grantee for any defects, errors, omissions, or on account of any other conditions affecting the Property, and because Grantee is purchasing the Property "AS IS, WHERE IS, and WITH ALL FAULTS," Grantee hereby fully, irrevocably and unconditionally releases and discharges the Grantor and, as applicable, its respective officers, directors, partners, trustees, agents, attorneys, employees and representatives (collectively, the "Grantor Parties") from, and Grantee hereby waives and relinquishes any claims that Grantee may ever have against the Grantor and Grantor Parties for, any cost, loss, liability, damage, and expense arising out of or related to any alleged representations or warranties, whether express or implied, which may have been made or given, or which may be deemed to have been given by Grantor Parties (Grantor having specifically disclaimed having made any such representations or warranties), or any defects or other conditions affecting the Property, subject to the terms of this Deed and the covenants, representations and warranties contained in the Purchase Agreement that expressly survive closing under the Purchase Agreement. THE RELEASE AND WAIVER CONTAINED IN THIS PARAGRAPH SHALL APPLY AND BE ENFORCEABLE AS A DEFENSE AGAINST ANY CLAIMS MADE BY GRANTEE (OR GRANTEE'S SUCCESSORS AND ASSIGNS), EXCEPT AS PROVIDED IN THIS DEED and such release and waiver shall be given full force and effect according to each of its express terms and provisions, whether the causes of action are in tort or breach of contract, choate or inchoate, or relating to unknown and suspected claims, damages or losses.

Grantor warrants payment of all property taxes on the Property through and including the year 2015. By acceptance of this Deed, Grantee assumes payment of all property taxes on the Property for the year 2016, which have been prorated, and subsequent years, but not subsequent taxes and assessments by authority for the current year or prior years due to change in land use or ownership by Grantor, which shall be paid by Grantor.

IN WITNESS WHEREOF, this Deed has been executed by Grantor on the date of the acknowledgement set forth below, to be effective for all purposes as of the __ day of _____, 2016.

BANDERA POINTE HOSPITALITY, LP,
a Texas limited partnership

By: Addersley Investments, Inc.,
its general partner

By _____
Alpesh Patel,
President of the General Partner

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This instrument was acknowledged before me on the ____ day of _____, 2016, by Alpesh Patel, in his capacity as President of Addersley Investments, Inc., general partner of Bandera Pointe Hospitality, LP, a Texas limited partnership, on behalf of the corporation and the limited partnership.

Notary Public in and for the
State of Texas

EXHIBIT A TO SPECIAL WARRANTY DEED

**LOT 1, BLOCK 1, NEW CITY BLOCK 19069, ADDERSLEY SUBDIVISION, CITY OF
SAN ANTONIO, BEXAR COUNTY, TEXAS, ACCORDING TO PLAT THEREOF
RECORDED IN VOLUME 9577, PAGE 65 AND SAID PLAT BEING AMENDED AND
RECORDED IN VOLUME 9597, PAGE 94 OF THE DEED/MAP AND PLAT RECORDS
OF BEXAR COUNTY, TEXAS.**

EXHIBIT B TO SPECIAL WARRANTY DEED

PERMITTED EXCEPTIONS

1. Outstanding ad valorem taxes for tax year 2016

2. All validly existing easements, rights-of-way, and prescriptive rights, whether of record or not or appearing on any survey, and all presently recorded and validly existing restrictions, reservations, covenants and conditions that affect the Property, including, but not limited to:
 - (a) Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.

 - (b) Any easements, rights-of-way, roadways, encroachments which a survey or physical inspection might disclose.

 - (c) Any portion of the subject property lying within the boundaries of dedicated or existing roadways or which may be used for road or street purposes.

 - (d) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that are or would be disclosed by an accurate and complete land survey of the land.

 - (e) All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Real Property Records of Bexar County, Texas or not. building restrictions and zoning regulations previously or hereafter adopted by any municipal or other public authority relating to the Property

 - (f) Any visible and apparent roadway or easement over, under or across the subject property, the existence of which does not appear of record.

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EXHIBIT C

FIRPTA AFFIDAVIT

THE STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform Khersonsky Corporation., a Texas corporation ("Transferee"), whose mailing address is P.O. Box 691947, San Antonio, Texas 78269, that withholding of tax is not required upon the disposition of a U.S. real property interest by Bandera Pointe Hospitality LP, a Texas limited partnership ("Transferor"), the undersigned hereby certifies as follows:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and the regulations promulgated thereunder);
2. Transferor's U.S. employer identification number is _____;
3. Transferor is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii); and
4. Transferor's office address is _____.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document.

EXECUTED effective as of the ___ day of _____, 2016.

BANDERA POINTE HOSPITALITY, LP,
a Texas limited partnership

By: Addersley Investments, Inc.,
its general partner

By _____
Alpesh Patel, President of the General Partner

SWORN TO AND SUBSCRIBED BEFORE ME this ___ day of _____, 2016.

**Notary Public in and for
the State of Texas**

32-81
1110 1612

1106

KHERSONSKY CORPORATION

10-28-16
Date

Pay to the order of PRESTON TITL \$ 5,000.00
FIVE THOUSAND AND NO/100 ~~00~~ dollars ~~and~~ cents



ANDREW PAUL HOSPITALITY TO
KHERSONSKY, INC

[Signature]

+ 000000000000 655621568 000000