

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**IN RE:** §  
§ **CASE NO. 16-10740**  
**JOHN J. GORMAN, IV** §  
§ **CHAPTER 11**  
**Debtor** §

---

**MOTION FOR AN ORDER APPROVING THE SALE OF THE DEBTOR’S INTERESTS  
IN ECOTURISMO LA ESCONDIDA, LTD., AND ECOTURISMO LA ESCONDIDA  
MANAGEMENT, LLC. FREE AND CLEAR OF LIENS,  
CLAIMS, ENCUMBRANCES, AND INTERESTS**

**This pleading requests relief that may be adverse to your interests.**

**If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.**

**A timely filed response is necessary for a hearing to be held.**

**TO THE HONORABLE TONY M. DAVIS, UNITED STATES BANKRUPTCY JUDGE:**

NOW COMES Richard Schmidt, Chapter 11 Trustee, through the undersigned counsel, and Motion for an Order Approving the Sale of the Debtor’s Interests in Ecoturismo La Escondida, Ltd., and Ecoturismo La Escondida Management, LLC. Free and Clear of Liens, Claims, Encumbrances, and Interests and in support thereof would respectfully show as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105, 363, 503, 1106 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004 and 9014 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Western District of Texas (the “Local Rules”).

## **BACKGROUND**

3. John J. Gorman, IV (“Debtor”) filed for chapter 11 relief on June 27, 2016.

4. On October 12, 2016 the Court entered an order appointing Richard Schmidt as to serve as the Chapter 11 Trustee (“Trustee”). The Court approved the Trustee’s retention of counsel by order entered on October 21, 2016. Dkt. No. 117.

5. The Debtor’s Amended Schedules (“Amended Schedules”) as question 22 allege ownership of an “interest in Ecoturismo La Escondida Mgt, LLC” in a Roth IRA. Dkt. No. 28. According to the Debtor’s testimony, Ecoturismo La Escondida Mgt, LLC owns a large undeveloped ranch located in Mexico. The Debtor asserts that his interest in this asset is exempt on Schedule C included in his Amended Schedules.

6. The Trustee has discovered that the interests in the Mexican Ranch are actually owned through two entities, Ecoturismo La Escondida Mgt, LLC and Ecoturismo La Escondida, Ltd. (“Escondida Mgt.” and “Escondida Ltd.” respectively and collectively “Escondida”) Escondida Mgt is the general partner of Escondida Ltd. The Debtor owns a 25 percent interest in each of the Escondida entities. Escondida Mgt owns a 1% interests in Escondida Ltd. Contrary to the Debtor’s claims that his interests are held in his Roth IRA, the certificates issued by Escondida Ltd. are in the Debtor’s individual name. A true and correct copy of the certificates issued to

limited partners of Escondida Ltd. are attached to this Motion as Exhibit A. These certificates reflect that ownership of Escondida Ltd. is held in The Debtor's name and not in a Roth IRA.

7. The Trustee has offered the Estate's interests in Escondida to the other equity interest holders and has negotiated a sale of the Estate's interest for \$80,000. The Debtor valued his interest in Escondida at \$60,000 in his Amended Schedules. The offer received by the Trustee is significantly in excess of the Debtor's valuation.

8. The Trustee has not broadly marketed the interests in Escondida because the Certificate indicates that there are restrictions limiting the sale of the interests in Escondida Ltd. Moreover, the universe of potential buyers for minority interests in a closely held partnership is normally very small and typical limited existing equity interest holders.

#### **RELIEF REQUESTED**

9. By this Motion, the Trustee requests that the court enter an Order, authorizing the Debtor to sell its member interest in Escondida Mgt. pursuant to the Assignment of Membership Interests of Ecoturismo La Escondida Management, L.L.C .and its limited partnership interest in Escondida Ltd. pursuant to the Assignment of Limited Partnership Interests of Ecoturismo La Escondida, Ltd. (attached as Exhibits B and C respectively and collectively referred to as the "Purchase Agreements") free and clear of all liens, claims, and interests to Dave G. Kveton ("Purchaser") in consideration for payment of \$80,000 in cash paid at closing ("Purchase Price").

10. The Purchase Agreements contemplate the sale of the all of the Debtor's member and partnership interests in the Escondida entities (the "Interests") to the Purchaser, subject to higher and better offers in an amount not less than \$2,500 greater than the Purchase Price received on or before the date the Court enters an order granting this motion. The proposed sale is "as is,

where is". The Trustee believes the sale of the Interests is in the best interest of Debtor's estate, its creditors and partners. Accordingly, Trustee seeks approval of the sale of the Interests to the Purchaser and the Interests Purchase Agreement.

**A. The Interests Purchase Agreement**

11. Pursuant to the Purchase Agreements, the Debtor's Estate will (i) sell the Interests free and clear of all liens, claims, interests, and encumbrances.

12. The Purchase Agreements were negotiated at arm's length and in good faith by the Trustee and the Purchaser. The Trustee exercising his business judgment believes that the Purchase Price being paid under the Purchase Agreements represents the best value proposition for the Estate.

13. The Purchase Agreements generally provide the following:

- a. Property. The Debtor will convey any and all interest in the Interests to the Purchaser.
- b. Purchase Price. Upon entry of the Sale Order which is no longer subject to a stay or appeal, will pay \$80,000 to the Trustee in cash.
- c. Sale Free and Clear. The Interests are to be transferred free and clear of all liens, interests, claims, or encumbrances in the Interests pursuant to section 363(f) of the Bankruptcy Code.
- d. Conditions to Closing. The Purchase Agreements do not contain any financing or due diligence conditions. The closing conditions in the Purchase Agreements are limited and include, among other things the entry of an order approving the sale which shall become a final order.

This summary of the Purchase Agreement is intended to be for convenience only. To the extent the summary differs from the actual terms of the Purchase Agreement, the terms of the Purchase Agreements shall be controlling.

**B. Notice of Sale Hearing**

14. The Debtor proposes to serve notice of the this Motion and any hearing thereon upon (i) the Office of the United States Trustee; (ii) counsel for the Purchaser; (iii) all federal, state, and local regulatory or taxing authorities or recording offices that have a known interest in the Interests; (iv) and (v) all other entities that have filed requests for notices pursuant to Bankruptcy Rule 2002.

### **APPLICABLE AUTHORITY**

#### **A. The Sale Is Within Trustee's Sound Business Judgment.**

15. Bankruptcy Code section 363(b)(1) provides, in relevant part: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." Bankruptcy Code section 105(a) provides in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

16. The Fifth Circuit has set forth the standard for the authorization of sales pursuant to section 363 in *International Creditors of Continental Air Lines, Inc. v. Continental Airlines Inc. (In re Continental Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986). The assets to be sold must be property of the debtor's estate. *Continental Air Lines, Inc.*, 780 F.2d at 1226. Additionally, there must exist a valid "business justification" for the sale. *Id.* In determining whether there is sufficient business justification for the sale, the court

should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and,

most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

*Id.* (quoting *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d. Cir. 1983).; *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 145–47 (3d Cir. 1986) (adding “good faith” requirement to Lionel’s test).

17. The Trustee believes the Sale is the best way to maximize the value of Debtor’s estate for the benefit of Debtor’s creditors and other parties in interest.

**B. The Sale of the Property Satisfies the Sound Business Purpose Test.**

18. As set forth above, Debtor believes the proposed sale to the Purchase maximizes recovery to the estate. See *In re Tempo Technology Corp.*, 202 B.R. 363 (D. Del. 1996), *aff’d*, 141 F.3d 1155 (3d Cir. 1998) (sale of substantially all of a chapter 11 debtor’s assets pursuant to a section 363(b) motion where the debtor “faced a severe cash shortfall and had no readily available source of investment capital or loans,” and would shortly have run out of cash absent the debtor-in-possession financing provided by the prospective Purchaser); see also, *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 177 (D. Del. 1991) (affirming bankruptcy court’s approval of sale of substantially all assets where debtor would have been “in liquidation mode if required to delay a sale until after filing a disclosure statement and obtaining approval for a reorganization plan”); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396 (Bankr. W.D. Pa. 1991) (bankruptcy court granted expedited hearing on 363(b) motion based on “deterioration” of debtor’s assets); *Coastal Indus., Inc. v. IRS (In re Coastal Indus., Inc.)*, 63 B.R. 361, 366–69 (Bankr. N.D. Ohio 1986) (approving expedited 363(b) sale five weeks postpetition to buyer with “the name recognition required by [the debtor’s] customers” where debtor was suffering operating losses and lacked financing to continue its operations).

19. The Debtor's estate lacks liquidity to pay accruing administrative expenses. Contrary to the Debtor's claims, the Interests do not appear to be subject to valid claims of exemption. The asset is not integral to the reorganization of the Debtor's estate and accordingly, monetizing the asset is in the best interest of the Debtor's estate and its creditors. Accordingly, well-articulated business reasons exist for approving the Purchase Agreements, such that the "business purpose" test under Bankruptcy Code section 363 is met. *See Lionel*, 722 F.2d at 1071 ("[M]ost important [] perhaps, [is] whether the asset is increasing or decreasing in value.").

**C. The Consideration Offered by Purchaser is Fair and Reasonable.**

20. Debtor submits that a sale of the Interests pursuant to the Purchase Agreements will provide fair and reasonable consideration to Debtor's estate. The \$80,000 purchase price to be paid by the Purchaser for the Interests is both fair and reasonable. The existing holders of equity interests in Escondida are the logical purchasers of the Interests. The Purchase Price exceeds the Debtor's valuation of the Interests. The consideration to be paid for the Property is both fair and reasonable and should be deemed to have satisfied the requirements of Bankruptcy Code section 363(n).

**D. The Purchase Agreements Were Negotiated in Good Faith.**

21. The Purchase Agreements are the product of arm's length negotiations between the Purchaser and the Trustee. The Purchase Agreements reflect give-and-take and compromises by both sides.

22. Section 363(m) of the Bankruptcy Code provides that "[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith. . . ." 11 U.S.C. § 363(m) (emphasis added).

23. To demonstrate a lack of good faith there must be a showing of fraud or collusion between the purchaser and the debtor or trustee. *Bleaufontaine, Inc. v. Roland Int'l (In re Bleaufontaine, Inc.)*, 634 F.2d 1383, 1388 n. 7 (5th Cir. 1981) (“[t]ypically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”). No such facts exist here. Accordingly, the Debtor requests that the Court make a finding that the Purchaser is entitled to the protections of Section 363(m) of the Bankruptcy Code.

**E. Adequate Notice of the Asset Sale is Being Provided.**

24. The final element for the approval of a sale under Bankruptcy Code section 363 is the requirement that interested parties receive adequate notice. The Trustee’s proposed service of this Motion satisfies the notice requirements of section 363.

25. The Trustee submits that such notice is reasonable and appropriate pursuant to Bankruptcy Rule

**F. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and Clear of Liens, Encumbrances, and Interests.**

26. Under Bankruptcy Code section 363(f), a debtor in possession may sell property of the estate free and clear of any lien or interest of an entity in such property if, among other things:

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

11 U.S.C. § 363(f).

27. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice as justification to approve the sale of the Property free and clear of liens and other interests (collectively, the “Liens”). See 11 U.S.C. § 363(f); *Mich. Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343 (E.D. Pa. 1988) (same).

28. The Debtor is unaware of any Liens on the Interests. Accordingly, the Debtor submits that one or more of the subsections of Bankruptcy Code section 363(f) applies, and that any liens will be adequately protected by having those liens attach to the net proceeds of the sale, subject to any claims and defenses the Debtor’s Estate may possess with respect thereto. Further, any Liens which may be asserted by any party in the Interests are subject to bona fide dispute.

29. Accordingly, the sale should be approved under Bankruptcy Code section 363(f).

## CONCLUSION

WHEREFORE, Debtor respectfully requests that this Court enter an order (a) approving the Purchase Agreements; (b) authorizing the Trustee to sell the Interests free and clear of all liens, encumbrances, claims and interests to the Purchaser, provided no higher and better offers are received as set forth herein; (c) finding that the Purchaser is a good faith purchaser under Section 363(m); and (e).granting such other and further relief as is just and proper.

Respectfully submitted January 15, 2017.

By: /s/ Ray Battaglia

Raymond W. Battaglia

Texas Bar No. 01918055

Law Offices of Ray Battaglia, PLLC

66 Granburg Circle San

Antonio, Texas 78218

Tel.: (210) 601-9405

Fax: (210) 855-0126

[rbattagliaw@outlook.com](mailto:rbattagliaw@outlook.com)

*Counsel to Richard Schmidt, Chapter 11 Trustee*

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing document was filed with the Court and served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF system, as set forth below. I further certify that it has been transmitted by first class mail to the parties listed in the attached service list.

/s/ Ray Battaglia

Ray Battaglia

**ASSIGNMENT OF MEMBERSHIP INTERESTS OF  
ECOTURISMO LA ESCONDIDA MANAGEMENT, L.L.C.**

This Agreement for the Assignment of Membership Interests of Ecoturismo La Escondida Management, L.L.C. is made and entered into effective as of January \_\_, 2017, by and between Richard Schmidt, Chapter 11 Trustee for the Bankruptcy Estate of John J. Gorman (the "Assignor") and Dave G. Kveton (the "Assignee").

**WITNESSETH:**

**WHEREAS**, John J. Gorman, IV ("Debtor") filed for chapter 11 relief on June 27, 2016 in the United States Bankruptcy Court for the Western District of Texas, Austin Division ("Court").

**WHEREAS**, On October 12, 2016 the Court entered an order appointing Richard Schmidt as to serve as the Chapter 11 Trustee ("Trustee"). The Trustee has the power to convey the assets of the Debtor's bankruptcy estate, subject to approval by the Court;

**WHEREAS**, Assignor is a member of Ecoturismo La Escondida Management, L.L.C., a Texas limited liability company (the "Company") with twenty five percent (25%) of the membership interests in the Company (the "Membership Interests"); and

**WHEREAS**, Assignor agreed to sell and Assignee agreed to purchase the Membership Interests and assume the liabilities, obligations and responsibilities, originating or arising after the sale of Membership Interests hereunder, of Assignor, allocable to the Membership Interests.

**NOW, THEREFORE**, based on the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Membership Interests. Assignor hereby sells to Assignee, and Assignee hereby buys from Assignor, the Membership Interests including, but not limited to, the right, title and interest of Assignor in and to the properties (real and personal), capital, cash flow distributions and profits and losses of the Company, which are allocable to the Membership Interests.

2. Effective Date. The assignment herein is effective as of January \_\_, 2017, and from and after that date that portion of the net profits or net losses of the Company allocable to the Membership Interest shall be credited or charged, as the case may be, to Assignee, and not to Assignor.

3. Consideration. The consideration for the Membership Interests is One Thousand and NO/100 Dollars (\$1,000.00), and other good and valuable consideration including the assumption by Assignee of, and indemnification of Assignee for, the liabilities, obligations and responsibilities of the Company related to the Membership Interests.

4. Investment Representation. Assignee represents that the purchase of the Membership Interests by Assignee hereunder is being made for the account of Assignee, for investment and not with a view to the sale or distribution thereof.

5. Future Cooperation on Subsequent Documents. Assignor and Assignee mutually agree to cooperate at all times from and after the date hereof with respect to the supplying of any information requested by the other regarding any of the matters described in this Agreement, and each agrees to execute such further deeds, mortgages, bills of sale, assignments, Company amendments, releases or other documents as may be reasonably requested for the purpose of giving effect to, evidencing or giving notice of the transactions described herein. Assignor shall make available to Assignee all books and records of the Company which are in the possession of Assignor or under the control of Assignor.

6. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

7. Survival of Representations. The representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the execution hereof.

8. Bankruptcy Court Approval. Assignor's and Assignee's obligations under this Agreement are subject to the Bankruptcy Court having entered an order approving the sale of the Membership Interests free and clear of liens, claims and interests, which order is not the subject of a stay or appeal as of the closing date, or, in the event a stay is in effect, the Sale Order shall have become final. Within five (5) business days of the date hereof, the Trustee shall file a motion with the Court seeking authority to sell the Membership Interests under the terms of this Agreement.

9. Modification and Waiver. No supplement, modification, waiver or termination of this Agreement or any provision hereof shall be binding unless executed in writing by the parties to be bound thereby. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

Any dispute, controversy or claims related to this Agreement must be resolved through binding arbitration. The arbitration must be carried out using the procedural rules established by the American Arbitration Association, through a sole arbitrator designated by the American Arbitration Association. The arbitration, including the issuance of the respective arbitral award, must be carried out in the city of Waco, State of Texas, United States of America. The arbitration will be carried out in the English language. The arbitrators must apply and interpret the Agreement in accordance with the applicable laws of the State of Texas.

The arbitral award may be enforced through any competent tribunal.

IN WITNESS WHEREOF, this Agreement is executed as of the day and year above written.

**ASSIGNOR:**

---

Richard Schmidt, Chapter 11 Trustee for  
John J. Gorman

**ASSIGNEE:**

---

Dave G. Kveton

**ASSIGNMENT OF LIMITED PARTNERSHIP INTERESTS OF  
ECOTURISMO LA ESCONDIDA, LTD.**

This Agreement for the Assignment of Limited Partnership Interests of Ecoturismo La Escondida, Ltd. is made and entered into effective as of January \_\_, 2017 by and between Richard Schmidt, Chapter 11 Trustee for the Bankruptcy Estate of John J. Gorman (the "Assignor") and Dave G. Kveton (the "Assignee").

**W I T N E S S E T H:**

**WHEREAS**, John J. Gorman, IV ("Debtor") filed for chapter 11 relief on June 27, 2016 in the United States Bankruptcy Court for the Western District of Texas, Austin Division ("Court").

**WHEREAS**, On October 12, 2016 the Court entered an order appointing Richard Schmidt as to serve as the Chapter 11 Trustee ("Trustee"). The Trustee has the power to convey the assets of the Debtor's bankruptcy estate, subject to approval by the Court:

**WHEREAS**, Assignor is a Limited Partner of Ecoturismo La Escondida, Ltd., a Texas Limited Partnership (the "Partnership"); and

**WHEREAS**, Assignor agreed to sell and Assignee agreed to purchase the partnership units of Assignor's interests in the Partnership (the "Partnership Interests") and assume the liabilities, obligations and responsibilities, originating or arising after the sale of Partnership Interests hereunder, of Assignor, allocable to the Partnership Interests;

**NOW, THEREFORE**, in consideration of the premises, warranties and mutual covenants set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Partnership Interests. Assignor hereby sells to Assignee, and Assignee hereby buys from Assignor, the Partnership Interests including, but not limited to, the right, title and interest of Assignor in and to the properties (real and personal), capital, cash flow distributions and profits and losses of the Partnership, which are allocable to the Partnership Interests.

2. Effective Date. The assignment herein is effective as of January \_\_, 2017, **[PLEASE CONFIRM]**, and from and after that date that portion of the net profits or net losses of the Partnership allocable to the Partnership Interest shall be credited or charged, as the case may be, to Assignee, and not to Assignor.

3. Consideration. The consideration for the Partnership Interests is Seventy Nine Thousand and No/100 Dollars (\$79,000.00), and other good and valuable consideration including

the assumption by Assignee of, and indemnification of Assignee for, the liabilities, obligations and responsibilities of the Partnership related to the Partnership Interests, all as more particularly set forth in the Separation Agreement.

4. Investment Representation. Assignee represents that the purchase of the Partnership Interests by Assignee hereunder is being made for the account of Assignee, for investment and not with a view to the sale or distribution thereof.

5. Future Cooperation on Subsequent Documents. Assignor and Assignee mutually agree to cooperate at all times from and after the date hereof with respect to the supplying of any information requested by the other regarding any of the matters described in this Agreement, and each agrees to execute such further deeds, mortgages, bills of sale, assignments, Partnership amendments, releases or other documents as may be reasonably requested for the purpose of giving effect to, evidencing or giving notice of the transactions described herein. Assignor shall make available to Assignee all books and records of the Partnership which are in the possession of Assignor or under the control of Assignor.

6. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and assigns.

7. Survival of Representations. The representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the execution hereof.

8. Bankruptcy Court Approval. Assignor's and Assignee's obligations under this Agreement are subject to the Bankruptcy Court having entered an order approving the sale of the Membership Interests free and clear of liens, claims and interests, which order is not the subject of a stay or appeal as of the closing date, or, in the event a stay is in effect, the Sale Order shall have become final. Within five (5) business days of the date hereof, the Trustee shall file a motion with the Court seeking authority to sell the Membership Interests under the terms of this Agreement.

9. Modification and Waiver. No supplement, modification, waiver or termination of this Agreement or any provision hereof shall be binding unless executed in writing by the parties to be bound thereby. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas.

IN WITNESS WHEREOF, this Agreement is executed as of the day and year above written.

**ASSIGNOR:**

---

Richard Schmidt, Chapter 11 Trustee for  
John J. Gorman

**ASSIGNEE:**

---

Dave G. Kveton