

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

<b>IN RE:</b>	)	
	)	
<b>KRISHNA ASSOCIATES, LLC</b>	)	<b>CASE NO. 15-50148</b>
	)	<b>CHAPTER 11</b>
	)	
<b>DEBTOR</b>	)	

**DEBTOR’S MOTION FOR ORDER AUTHORIZING AND APPROVING  
SALE OF REAL PROPERTY, FURNITURE, FIXTURES AND EQUIPMENT  
FREE AND CLEAR OF LIENS**

**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THE PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.**

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

Krishna Associates, LLC (“Debtor”), files this Motion For Order Authorizing and Approving Sale of Real Property, Furniture, Fixtures and Equipment Free and Clear of Liens, (the "Sale Motion"). In support of the Sale Motion, Debtor respectfully states as follows:

**I. JURISDICTION AND PROCEDURAL BACKGROUND**

1. On November 3, 2015 (the "Petition Date"), Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code.

2. This Court has jurisdiction over this Sale Motion pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Venue of this Chapter 11 case and this Sale Motion is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.

The statutory predicates for the relief sought herein are Section 363 of Title 11, United States Code (the "Bankruptcy Code"), and Bankruptcy Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule of Bankruptcy Procedure 6004.

## **II. SUMMARY OF REQUESTED FOR RELIEF**

3. Debtor requests the entry of an Order providing the following relief:
  - a. Approving the sale of the following real and personal property under 11 U.S.C. §363(f)(2) and/or (3):
    - (i) Lot Numbered One (1) in Block Numbered Two (2) of WAGGONER CREEK CROSSING SOUTH, a subdivision located in the City of Texarkana, Texas, being a portion of the George Brinlee Headright Survey, Abstract No. 18 and the Thomas Price Headright Survey, Abstract No. 466, Bowie County, Texas, according to the map or plat of said Addition, Recorded in Volume 5776, Page 90, Real Property Records of Bowie County, Texas, also known as 1918 University Avenue, Texarkana, Texas 75503 (the "Real Property"), and
    - (ii) All furniture, fixtures and related personal property utilized in connection with the operations of the Real Property (together, the "FF&E") (specifically, excluding however, Debtor's franchise and license agreement with Country Inn & Suites, which agreement is not assigned).
  - b. Authorizing Debtor to execute, deliver and close under the terms of the Asset Purchase Agreement dated November 23, 2016 between Debtor and James J. Naples, or his permitted assigns ("Buyer"), a copy of which agreement is attached hereto as Exhibit "A" (the "APA");
  - c. Authorizing Debtor to execute and deliver at closing any and all documents necessary to consummate a sale of the Real Property and FF&E at Closing; and
  - d. Authorizing Debtor and any closing agent to disburse the sums described herein to (i) MidSouth Bank, N.A. ("MidSouth"), (ii) allowed ad valorem taxing authorities' claims secured by the Real Property or the FF&E, (iii) to pay all costs of closing, and (iv) the IOLTA account of Debtor's counsel, Bill Payne.
4. Attached to this Motion as Exhibit "B" is a proposed form of order providing for the above relief (the "Sale Order").

### **III. STATEMENT OF FACTS**

#### **A. Background**

6. Debtor is a Texas limited liability company formed in 2007, the only two (2) members of which are Hiren Patel (“Hiren”), who owns 95% of Debtor’s membership interests, and Dineschandra Patel (“Dinesh”) who owns 5% of the membership interests. Debtor owns and operates the Real Property.

7. The Real Property is a state of the art franchised hotel located off Interstate Highway 30, with 81 rooms and 25 suites.

8. On May 5, 2010, Debtor signed and delivered to Peoples State Bank (the predecessor-in-interest to MidSouth Bank, N.A., (“MidSouth”)) a promissory note in the original principal amount of \$3,139,837.00 (the “Hotel Note”). The unpaid balance of the Hotel Note on the Petition Date was \$2,838,557.13 in principal, interest and late charges, plus whatever amount may be rightfully claimed by MidSouth to be owed for pre-bankruptcy attorneys’ fees and costs associated with efforts to collect the Hotel Note and to enforce MidSouth’s liens. The Hotel Note is secured by, among other things, the Country Inn & Suites, the FF&E and virtually all of the other assets of Debtor.

9. The Real Property and the FF&E additionally secure the payment of a promissory note dated June 2, 2011 in the original principal amount of \$1,900,000.00 (the “Second Lien Note”) executed by Debtor and payable to the order of the Ark-Tex Regional Development Company, Inc., CDC (the “CDC”), which note is also guaranteed by the Small Business Administration. Debtor also conveyed security interests in the FF&E to the CDC for the purpose of securing the Second Lien Note. The unpaid balance of this Second Lien Note on the Petition Date was \$1,792,804.49.

10. For purposes of this Motion, the Real Property and the FF&E are referred to as the “Sale Assets.”

11. It is imperative that assets of Debtor's estate be sold immediately since the Sale Assets are subject to decline or loss. It is clear to Debtor that unless Debtor proceeds with this sale, Debtor may not be able to rely upon the financial support of MidSouth for many more weeks.

**B. The Asset Purchase Agreement**

12. Debtor, with the consent of MidSouth Bank, the holder of a first-priority lien on the Sale Assets (as defined below) has concluded that a sale of the Sale Assets to Buyer is in the best interest of Debtor’s estate and the creditors of this estate.

13. Debtor received an offer to purchase the Sale Assets from Buyer for the sum of \$2,900,000.00. The offer to purchase is contained in the APA. The APA provides for, among other things, the sale of all of Debtor’s right, title and interest in, to and under the Sale Assets free and clear of all liens, claims, encumbrances, and other interests. Other essential terms contained in the APA include:

- a. **Parties**. The parties to the APA are Debtor as seller, and James J. Naples, or his permitted successors and assigns (the “Buyer”).
- b. **Sale Assets**. The assets of Debtor's estate to be purchased and sold under the APA consist of all of the Debtor's right, title, and interest in the following assets of the Debtor's estate: the Real Property and the FF&E.
- c. **Excluded Assets**. The Sale Assets of the Seller do not include the following assets of the Debtor's estate (collectively, the “Excluded Assets”):
  - i. All cash, cash deposits or cash equivalents of the Debtor's estate;
  - ii. Debtor’s franchise agreement;
  - iii. All right, title, and interest of the Debtor's estate in and to its accounts and other receivables (other than accounts and

receivables attributable to operations at the Real Property after the Closing Date);

- iv. All claims and causes of action of the Debtor's estate, including any and all claims owned by, through, or under the Debtor or the Debtor's estate (including, without limitation, any litigation or arbitration claims and any refunds and deposits), rights, rights of offset or causes of action that the Debtor's estate may have against or from any person or entity relating to (A) any of the Excluded Assets; (B) those arising under and relating to the Bankruptcy Code, including under Chapter 5 of the Bankruptcy Code; (C) any rights under any insurance policy, any and all claims and causes of action belonging to the Debtor's estate; and (D) the Debtor's former employees, officers, or directors;
  - v. All claims and causes of action of the Debtor's estate, including any and all claims owned by, through, or under the Debtor or the Debtor's estate that may be asserted against the Buyer, including any claims to the extent of the Buyer's failure to close such transactions hereunder or any documents delivered in connection herewith;
  - vi. Originals of all corporate, financial and tax records of Debtor's estate, including, without limitation, the Debtor's organizational documents, and other documents and instruments relating solely to the organization, maintenance and existence of the Debtor as a limited liability company (and the Buyer may obtain copies of all such records at its own expense); and
  - vii. Any tax refunds, overpayments for utility charges, and insurance premium refunds due the Debtor's estate.<sup>1</sup>
- d. **Purchase Price.** \$2,900,000.00 in cash.
  - e. **Deposit.** \$145,000.00.
  - f. **Title Policy.** Buyer is responsible for the cost of any title insurance policy premium and/or endorsement(s).
  - g. **Closing.** Consummation of the transactions contemplated by the APA (the "Closing") shall occur at the offices of the Seller's counsel, Bill F. Payne, Attorney at Law, 12770 Coit Road, Suite 541, Dallas, Texas 75251, within five

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<sup>1</sup> All of such assets are subject to the first-priority liens of MidSouth, and following the Closing Agent's receipts of such amounts, the Closing Agent shall promptly remit all such amounts to MidSouth, as provided for in the Sale Order.

(5) business days following the date on which the Sale Order becomes a Final Order (the "Closing Date").

**C. Marketing/Bidding Process**

14. Since the filing of bankruptcy, numerous parties contacted the Debtor and Debtor's counsel, expressing interest in purchasing the property should the hotel and FF&E be liquidated.

After determining that an operating plan was not confirmable, Debtor submitted a Liquidating Plan [Doc No. 99] presently set for January 3, 2017.

Given the high interest by prospective bidders/purchasers, Debtor conducted an informal process of marketing with notices sent to interested purchasers on October 25, 2016. Seventeen (17) parties were notified.

Of those, six (6) Asset Purchase Agreements/Offerings were delivered to Debtor's counsel on or before November 25, 2016.

After additional negotiations, the high offer of \$2,900,000.00 was received from the Buyer herein. Evidence of ability to close was delivered to Debtor's counsel.

As a part of the process, interested purchasers were provided with sufficient financials to complete their due diligence. Interested parties were also given access to the property for inspection.

15. The criteria reviewed by Debtor with respect to the bidders for the Sale Assets included the following:

- a. The terms of any proposed purchase agreement;
- b. The proposed purchase price;
- c. The proposed closing date and the likelihood, extent and impact of any potential delays in closing;

- d. The ability of the bidder to close and whether or not any proposed sale would be conditioned on obtaining financing or any internal approval, or on the outcome of due diligence that has not been satisfied as of the time of the APA;
- e. The bidder's tender of the earnest money; and
- f. The bidder's readiness, willingness and ability to retain all or some of Debtor's employees.
- g. Any tax consequences applicable to the Debtor's estate;
- h. The consideration provided to the Debtor's estate on a post-closing basis, if any;
- i. If any bid is less than what would be necessary to pay the MidSouth secured claim in full, the decision of MidSouth Bank to consent or its refusal to consent to a sale in the amount of the Bid;
- j. The ability to pay all ad valorem tax claims secured by the Sale Assets at closing; and
- k. Any other factors that make one bid more advantageous to the Debtor's estate than any other bid (collectively the "Bid Assessment Criteria").

**IV. BASIS FOR APPROVAL OF THE AGREEMENT AND RELATED TRANSACTIONS**

**A. Sale of the Sale Assets is Authorized Pursuant to Section 363 of the Bankruptcy Code**

16. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts have uniformly held that approval of a proposed sale of property pursuant to Section 363(b) of the Bankruptcy Code is appropriate if a court finds that the transaction represents a reasonable business judgment on the part of the debtor. *See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("for the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.")

(citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *Pension Benefit Guaranty Corp. v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 700 F.2d 935, 940 (5th Cir. 1983); *Sullivan Cent. Plaza I Ltd., v. Bancboston Real Estate Capital Corp.*, 106 B.R. 934, 938 (N.D. Tex. 1989) (approving the *Abbots Dairies* fairness standard for the sale of assets); *In re Property Co. of Am. Joint Venture*, 110 B.R. 244, 247 n.5 (Bankr. N.D. Tex. 1990) ("a judge determining a §363 application must expressly find that the evidence presents a good business reason to grant the application"); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith").

17. Debtor believes that, for the reasons set forth herein, the sale of the Sale Assets pursuant to the APA represents a prudent and proper exercise of Debtor's business judgment and is supported by articulated business reasons.

**B. Sale of the Sale Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests Should be Authorized**

18. Debtor requests authority to transfer the Sale Assets free and clear of any and all liens, claims, encumbrances, and other interests. Section 363(f) of the Bankruptcy Code permits such sales if one of the following conditions is satisfied:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. 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;
- d. such interest is in bona fide dispute; and
- e. 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). The ad valorem taxing authorities will be paid in full. It is believed that MidSouth will consent to the sale of the Sale Assets. If CDC or any other lienholder does not expressly consent to the sale of the Sale Assets, but also does not oppose the sale by filing a timely response or objection to this Motion then pursuant to Bankruptcy Rules of Procedure, Local Rules of Bankruptcy Procedure, and/or applicable law then the failure to file such a timely response or objection shall or should be considered such lienholder's consent to the sale of the Sale Assets as requested herein.

19. The Sale Order to be entered will provide that, except to the extent paid and released at the Closing, all liens, claims, encumbrances, and other interests (other than those assumed by Successful Bidder) will attach to the proceeds of the sale transaction with the same force and effect as such liens previously had on the Sale Assets, with MidSouth receiving all net proceeds from the sale of the Sale Assets after a) the payment of ad valorem taxes secured by the Sale Assets, b) setting aside appropriate carve-outs for the payment of U.S. Trustee's fees and some of Debtor's administrative costs, and c) any other agreed "carve-outs" for other creditors and/or junior lienholders to which MidSouth consents. Accordingly, Debtor submits that the transfer of the Sale Assets free and clear of any liens, claims, encumbrances and other interests satisfies the statutory prerequisites of Section 363(f).

20. Debtor is hereby providing adequate notice of this Sale Motion to MidSouth, all ad valorem taxing jurisdictions, the CDC, the Small Business Administration and all other parties in interest and creditors in this case. Notice is hereby given that the failure to object to this Sale Motion shall be deemed the consent of a creditor or other party in interest to the sale of the Sale Assets on the terms and provisions set out in this Motion.

**C. A Finding of Buyer's Good Faith is Warranted**

21. Pursuant to Section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value and in good faith. Debtor submits that the marketing/bidding process was fair, reasonable, transparent, and designed to maximize value of such assets from a pool of prospective bidders. The sales process resulted in a final APA with Buyer that was negotiated in good faith and at arm's length with Debtor. Accordingly, sales on the terms set out in the APA have been proposed in good faith and the good faith finding provided for in Bankruptcy Code Section 363(m) is appropriate in this case.

**D. Waiver of Bankruptcy Rule 6004(g)**

22. Debtor requests that the Court direct that the Sale Order become effective *immediately* upon its entry, notwithstanding the automatic stay provisions set forth in Rules 6004(g) of the Bankruptcy Rules, such that the stay provisions will not apply to the Bid Procedures Order.

**V. CONCLUSION**

23. Debtor believes that the relief requested herein will maximize the value of the Sale Assets in an expedited manner that best accomplishes under the circumstances the Debtor's goal of ensuring that the highest and best cash price is obtained for the Sale Assets. Accordingly, based upon the foregoing, Debtor respectfully submits that approval of this Sale Motion pursuant to Section 363(b) of the Bankruptcy Code and in accordance with the Agreement is in the best interest of the Debtor's estate and its creditors.

**WHEREFORE**, Debtor respectfully requests that this Court grant this Sale Motion and order other and further relief as this Court may deem just and proper.

**DATED:** December 19, 2016

Respectfully submitted,

/s/ Bill F. Payne  
BILL F. PAYNE, SBN 15649500  
12770 Coit Road, Suite 541  
Dallas, TX 75251  
Tel 972-628-4901  
Fax 972-628-4905  
Email: [bill@wpaynelaw.com](mailto:bill@wpaynelaw.com)

**COUNSEL FOR THE DEBTOR**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the above and foregoing pleading was mailed by first class mail, postage prepaid, to the parties listed on the service list attached hereto on this \_\_\_\_\_ day of December, 2016.

\_\_\_\_\_  
Bill F. Payne

Andrew F. Baka  
Special Assistant US Atty  
US Small Business Administration  
4300 Amon Carter Blvd. Ste. 114  
Ft. Worth, TX 76155-2652

Ark-Tex Regional Development Company  
4808 Elizabeth Street  
Texarkana, TX 75503-2910

Attorney General of Texas  
Box 12548, Capital Station  
Austin, Texas 78711-2548

Booking.com  
Corporate Offices  
800 Connecticut Ave.  
Norwalk, CT 06854-1631

Bowie Central Appraisal District  
c/o Lee Gordon  
P.O. Box 1269  
Round Rock, TX 78680-1269

Bowie County Tax A/R  
710 James Bowie Drive  
New Boston, Texas 75570-2328

Christopher M Sylvia  
Midsouth Bank  
880 San Antonio Ave.  
Many, LA 71449-3141

Country Inn & Suites by Carlson  
701 Carlson Parkway  
MS 8277  
Minnetonka, MN 55305-5240

Don Edward & Company  
P O Box 5540  
Woodridge, IL 60517-0540

Donna Burnett  
Young, Hoy and Burnett  
201 College Dr.  
Texarkana, TX 75503-3702

Internal Revenue Service  
P. O. Box 7346  
Philadelphia, Pennsylvania 19101-7346

Krishna Associates, LLC  
2910 Harrisburg Lane  
Texarkana, TX 75503-4501

Mid South Bank  
P. O. Box 31021  
Tampa, FL 33631-3021

Mid South Bank, N.A.  
P. O. Box 3745  
Lafayette, LA 70502-3745

MidSouth Bank, N.A.  
c/o Scott A. Ritcheson  
Ritcheson, Lauffer & Vincent, P.C.  
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Tyler, Texas 75701-9779

North East Texas Economic Development  
Di  
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Texarkana, Texas 75505-5307

Robert S. McGinnis, Jr.  
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Texarkana, Texas 75503-2732

Tax Accessor/Collector  
PO Box 6527  
Texarkana, TX 75505-6527

Texas Comptroller of Public Accounts  
Revenue Accounting Div - Bankruptcy  
PO Box 13528  
Austin TX 78711-3528

Texas Workforce Commission  
TWC Bldg - Tax Dept.  
Austin, Texas 78778-0001

US Small Business Administration  
c/o Steve Park  
2120 Riverfront DR  
Little Rock, AR 72202-1794

Wells Fargo  
P O Box 6995  
Portland, OR 97228-6995

**EXHIBIT "A"**

**ASSET PURCHASE AGREEMENT**

**[see attached]**



**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this "Agreement"), made as of November 23, 2016, by and between Krishna Associates, LLC (the "Seller/Debtor"), and JAMES J. NAPLES (the "Buyer"). (Seller and Buyer may be collectively referred to herein as the "Parties").

**RECITALS**

A. On November 3, 2015, Krishna Associates, LLC filed its voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (the "Bankruptcy Court"), in Bankruptcy Case No. 15-50148.

B. The Buyer wishes to purchase all of the Sale Assets (as defined in Section 1(b) below) on the terms and conditions set forth herein and subject to a Final Order of the Bankruptcy Court approving such sale.

**WITNESSETH:**

In consideration of the foregoing recitals and the mutual promises, representations, covenants, payments and actions herein provided, the Parties each intending to be legally bound hereby, agree to the above Recitals and as follows:

1. Sale of Sale Assets.

(a) At the Closing (as such term is defined below in Section 3(a)) of the transaction contemplated hereby, the Seller shall sell, assign, transfer and deliver to the Buyer, and the Buyer shall purchase and accept from the Seller, the Sale Assets, free and clear of any pledge, lien, license, option, sublease, security interest, claim, charge, or encumbrance of any kind whatsoever (except for ad valorem, real and personal property taxes and interests owned by third parties that do not constitute "property of the estate" under Section 541 of the Bankruptcy Code), for the purchase price set forth in Section 2 below (the "Purchase Price").

(b) Sale Assets. The assets of the Debtor's estate to be purchased and sold under this Agreement consist of all of the Debtor's right, title, and interest in the following assets of the Debtor's estate (collectively, the "Sale Assets"):

(i) Lot Numbered One (1) in Block Numbered Two (2) of WAGGONER CREEK CROSSING SOUTH, a subdivision located in the City of Texarkana, Texas, being a portion of the George Brinlee Headright Survey, Abstract No. 18 and the Thomas Price Headright Survey, Abstract No. 466, Bowie County, Texas, according to the map or plat of said Addition, Recorded in Volume 5776, Page 90, Real Property Records of Bowie County, Texas, also known as 1918 University Avenue, Texarkana, Texas 75503 (the "Country Inn & Suites").

(ii) All furniture, fixtures and related personal property utilized in connection with the operations of the County Inn & Suites (together the "FF&E").



2. Payment of Purchase Price.

*JA*  
*Nine*  
*Gal*

(a) Purchase Price. The Purchase Price to be paid by the Buyer to the Seller for the transfer of the Sale Assets shall consist of cash in the amount of Two Million ~~Three~~ Hundred Thousand and 00/100 Dollars (\$2,300,000.00). The Purchase Price shall be paid at Closing by the Buyer to the Seller, as provided below.

*JA Gal*

(b) Payment of the Purchase Price. At Closing, Buyer shall pay the purchase price to Seller in same-day funds as set forth in Section 2(c), with credit to be given for the Earnest Money Deposit (as defined in Section 2(c) below).

*Forty-Five*

*Gal*  
*\$145,000.00*  
*Gal*

(c) Adjustments to Purchase Price. The Purchase Price shall not be adjusted, except that the sum of One Hundred ~~Fifteen~~ Thousand Dollars (\$145,000.00) constituting the "Earnest Money Deposit", which has been paid by the Buyer on or before November 25, 2016, at 12:00 noon (Central time) shall be applied in reduction of the Purchase Price. The Buyer shall have delivered the Earnest Money Deposit to the Seller, in care of the Debtor's counsel, Bill F. Payne, by wire transfer of funds into Bill F. Payne's trust account, and thereafter the Seller's counsel shall transfer such funds to the Seller upon the entry of the Final Order (as defined in Section 9(a) below).

In the event the Closing does not occur because of the material breach of this Agreement by the Seller, or a failure of the Conditions Precedent to the Buyer's obligations (specified in Section 9 hereof) to be satisfied, and the Earnest Money Deposit is otherwise due and payable to the Buyer pursuant to Section 20, the Seller shall return the Earnest Money Deposit promptly to the Buyer.

(d) "As-Is, Where-Is". THE BUYER ACKNOWLEDGES THAT EXCEPT FOR ANY EXPRESS WARRANTIES AND REPRESENTATIONS CONTAINED IN THIS AGREEMENT, THE BUYER IS NOT RELYING ON ANY WRITTEN, ORAL, IMPLIED OR OTHER REPRESENTATIONS, STATEMENTS OR WARRANTIES BY THE SELLER, OR THE DEBTOR'S ESTATE. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SELLER OR THE DEBTOR'S ESTATE SHALL HAVE NO LIABILITY TO THE BUYER, AND BUYER HEREBY RELEASES, AND AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE SELLER OR THE DEBTOR'S ESTATE AND EACH OF THEIR RESPECTIVE AGENTS, EMPLOYEES, REPRESENTATIVES AND ATTORNEYS, FROM ANY LIABILITY ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT, EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE (WHETHER ACTIVE, PASSIVE, CONCURRENT, OR OTHERWISE), STRICT LIABILITY, OR OTHER LEGAL FAULT OF ANY. EXCEPT AS EXPRESSLY PROVIDED HEREIN IN SECTION 7, NEITHER THE SELLER OR THE DEBTOR'S ESTATE HAVE MADE, AND THE BUYER DOES EXPRESSLY DISCLAIM, ANY WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, AS TO THE MERCHANTABILITY, HABITABILITY, QUANTITY, QUALITY, VALUE OR ENVIRONMENTAL CONDITION OF THE SALE ASSETS, THE SALE ASSETS' SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE. THE BUYER HEREBY

*Gal*  
*12/17/16*



ACCEPTS THE SALE ASSETS IN THEIR PRESENT CONDITION ON AN "AS IS", "WHERE IS" AND "WITH ALL FAULTS" BASIS AND ACKNOWLEDGES THAT (i) WITHOUT THIS ACCEPTANCE, THIS SALE WOULD NOT BE MADE, AND (ii) NO MEMBER OF THE SELLER GROUP SHALL BE UNDER ANY OBLIGATION WHATSOEVER TO UNDERTAKE ANY REPAIR, ALTERATION, REMEDIATION OR OTHER WORK OF ANY KIND WITH RESPECT TO ANY PORTION OF THE SALE ASSETS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING.

(e) Additional Disclaimers; Release; Indemnification. AS A MATERIAL INDUCEMENT TO SELLER TO ENTER INTO THIS AGREEMENT AND TO CONVEY THE PROPERTY TO BUYER, BUYER HEREBY ACKNOWLEDGES AND AGREES THAT EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE DOCUMENTS TO BE EXECUTED AND DELIVERED BY SELLER TO BUYER AT THE CLOSING PURSUANT TO THE TERMS OF THIS AGREEMENT (THE "CLOSING DOCUMENTS"):

(i) INFORMATION SUPPLIED BY SELLER. EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, BUYER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER HAS MADE, IS MAKING, AND SHALL MAKE, NO REPRESENTATION OR WARRANTY OF ANY NATURE CONCERNING THE ACCURACY OR COMPLETENESS OF SELLER'S DOCUMENTS, OR THE AUTHENTICITY, SOURCE, ACCURACY OR COMPLETENESS OF ANY INFORMATION CONTAINED IN SUCH SELLER'S DOCUMENTS OR ANY OTHER DOCUMENTS PREVIOUSLY OR HEREAFTER FURNISHED BY OR ON BEHALF OF SELLER TO BUYER, INCLUDING WITHOUT LIMITATION THE VARIOUS STUDIES, INSPECTIONS, REPORTS AND EXHIBITS AND CORRESPONDENCE RELATING THERETO. BUYER SHALL BE RESPONSIBLE FOR DEALING DIRECTLY WITH THE ISSUER OR PREPARER OF ANY DOCUMENTS, ASSESSMENTS, STUDIES, INSPECTIONS, OR REPORTS TO THE EXTENT THAT BUYER DESIRES ANY EXPRESS RIGHT OF RELYING THEREON. BUYER FURTHER ACKNOWLEDGES THAT SELLER HAS NOT REVIEWED AND IS UNDER NO OBLIGATION TO REVIEW ANY FILES IN SELLER'S POSSESSION OR WHICH MAY BE AVAILABLE TO SELLER. AS TO CERTAIN OF THE MATERIALS MADE AVAILABLE TO BUYER IN SELLER'S DOCUMENTS, BUYER SPECIFICALLY ACKNOWLEDGES THAT THEY HAVE BEEN PREPARED BY THIRD PARTIES WITH WHOM BUYER HAS NO PRIVACY AND BUYER ACKNOWLEDGES AND AGREES THAT NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, HAS BEEN MADE, NOR SHALL ANY BE DEEMED TO HAVE BEEN MADE, TO BUYER WITH RESPECT THERETO, EITHER BY SELLER OR BY ANY THIRD PARTIES THAT PREPARED THE SAME. EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT OR THE CLOSING DOCUMENTS, BUYER WAIVES ANY CLAIM OF ANY NATURE AGAINST SELLER SHOULD ANY INFORMATION, CONCLUSION, PROJECTION, OR OTHER STATEMENT OF ANY NATURE CONTAINED IN ANY OF SUCH



*10/17/16*



MATERIALS PROVE NOT TO BE TRUE OR ACCURATE FOR ANY REASON. BUYER REPRESENTS AND WARRANTS THAT IT HAS BEEN AFFORDED AN OPPORTUNITY TO REVIEW FILES AND RECORDS RELATING THERETO, AND, AT CLOSING, BUYER SHALL BE DEEMED TO HAVE KNOWLEDGE OF THE STATE AND CONTENTS THEREOF.

(ii) NEGOTIATED PURCHASE PRICE. BUYER REPRESENTS AND WARRANTS TO SELLER THAT BUYER IS SPECIFICALLY FAMILIAR WITH THE PROPERTY AND THAT BUYER HAS INSPECTED AND EXAMINED, OR WILL INSPECT AND EXAMINE, ALL ASPECTS OF THE PROPERTY AND ITS CURRENT CONDITION THAT BUYER BELIEVES TO BE RELEVANT TO ITS DECISION TO PURCHASE THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE PURCHASE PRICE NEGOTIATED BY SELLER AND BUYER REFLECTS THE KNOWN AND UNKNOWN RISKS AND LIABILITIES ASSUMED BY BUYER UNDER THE AGREEMENT, SELLER'S UNWILLINGNESS TO CONDUCT ANY INVESTIGATION OR DUE DILIGENCE WITH RESPECT TO THE PROPERTY ON BEHALF OF BUYER, AND SELLER'S DESIRE TO RECEIVE AN ABSOLUTELY NET, FIXED AMOUNT AS CONSIDERATION FOR THE SALE OF THE PROPERTY REGARDLESS OF ANY FACTS KNOWN OR DISCOVERED BEFORE OR FOLLOWING THE CLOSING WHICH MIGHT RESULT IN A DIMINUTION IN VALUE OF THE PROPERTY, EXCEPT FOR ANY LIABILITY SELLER MAY HAVE FOR ANY BREACH BY SELLER OF ANY EXPRESS WARRANTIES, REPRESENTATIONS OR COVENANTS IN THIS AGREEMENT OR IN THE CLOSING DOCUMENTS.

3. Closing and Delivery of Possession.

(a) Closing. Subject to satisfaction of the conditions precedent set forth in Section 10 below, the date (the "Closing Date") of closing and consummation of the sale pursuant to the terms of this Agreement (the "Closing") shall take place at the offices of the Seller's counsel, Bill F. Payne, 12770 Coit Road, Suite 541, Dallas, Texas 75251, at \_\_\_\_\_ local time on the later to occur of:

- (i) [ \_\_\_\_\_ ] 2016, or
- (ii) the first business day immediately following the entry of the Sale Order (as defined below),

or at such other time and place as the parties hereto shall mutually agree in writing, but in no event later than December 31, 2016, time being of the essence.

(b) Possession. Possession of the Sale Assets shall be delivered to the Buyer following the Closing on the Closing Date.

Handwritten signatures of the parties involved in the agreement, including a large signature on the left and a smaller one on the right.



4. Documents at Closing.

At the Closing, the documents, statements, and other items listed below will be delivered:

(a) Warranty Deed, Assignment and Bill of Sale for Sale Assets. The Seller shall deliver a General Warranty Deed, an Assignment and Bill of Sale for the Sale Assets. The Sale Assets shall be purchased "as is, where is", and without warranty of any kind, including warranties of merchantability or fitness, with the exception of the real property which Seller will warrant clear title free and clear of all mortgages, liens, charges and encumbrances.

(b) Closing Statement. The Parties shall execute a Closing Statement and Schedule of Disbursements detailing the Purchase Price, adjustments and prorations, receipts and disbursements of this transaction.

(c) Purchase Price. The Buyer will deliver the cash portion of the Purchase Price (as adjusted under Section 2(c) above) to the Debtor pursuant to Section 2(b) above.

(d) Tax Affidavit. Seller will deliver to Buyer a certificate, duly executed by Seller.

(e) Closing Documents. The Seller will deliver to the Buyer such other closing documents as the Buyer or its counsel may reasonably request in writing not later than the day prior to the Closing.

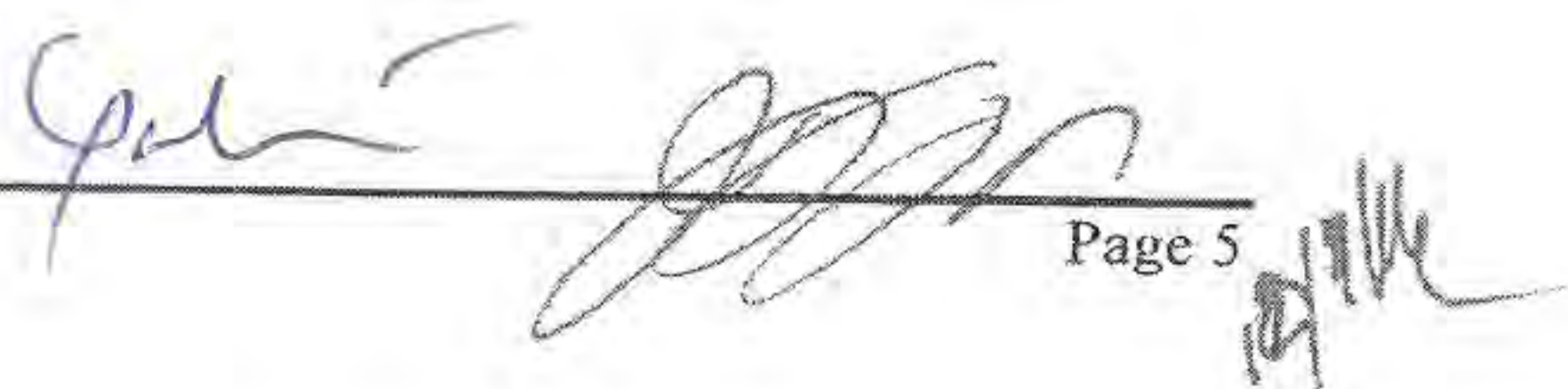
5. No Assumption of Liabilities of the Debtor or the Debtor's Estate, Except as Provided Herein.

Buyer shall not assume, and the Buyer shall not have been deemed to have assumed, any debts, liabilities, or obligations of the Seller, or the Debtor's estate or of the Debtor's officers, members, employees, or agents of any nature, known or unknown, fixed or contingent, including, but not limited to, pre-petition or post-petition debts, liabilities, or obligations with regard or in any way relating to any contracts, trade payables, or tax liabilities. Disclosure of any obligation or liability on any schedule to this Agreement shall not create an assumed obligation or other liability of the Buyer, except where such disclosed obligation has been expressly assumed by the Buyer as an assumed obligation in accordance with the provisions hereof.

6. Representations of the Seller.

The Seller hereby represents to the Buyer, to the best of Seller's knowledge, as follows, and that all such representations shall be true and correct at and as of the time of Closing and shall survive the Closing hereunder:

Organization of the Debtor. Krishna Associates, LLC is a Texas limited liability company duly organized under the laws of the State of Texas.





(b) Power to Sell Sale Assets. The Bankruptcy Court shall enter, or have entered, an order (the "Sale Order") approving the sale of the Sale Assets under the terms of this Agreement, and stating that (i) the Seller is the rightful owner of all right, title, and interest in and to the Sale Assets, (ii) the Seller has the full right and power to sell, transfer, assume, assign and deliver the Sale Assets pursuant to the terms and conditions of this Agreement, (iii) the Seller has all requisite power and authority to enter into and be bound by the terms and conditions of this Agreement and all other agreements and documents to be executed or delivered by the Seller in connection herewith, and (iv) the Seller's execution, delivery and performance of this Agreement have been duly authorized by all necessary action and no further action of the Seller is necessary other than the Sale Order.

(c) Title to Sale Assets. The Sale Order will further provide that (i) the Seller has the full power and authority to take any and all actions as provided for in this Agreement, and (ii) all right, title, and interest of the Seller in and to the Sale Assets will vest in the Buyer all right, title and interest to all of the Sale Assets to be sold under this Agreement, free and clear of all mortgages, liens, charges and encumbrances created by or on account of the Debtor, the Debtor's estate, or the Debtor (except for the ad valorem real and personal property taxes as provided in Section 1(a) above, and excluding any rights and interests of third parties that would not be property of the Debtor's estate under Section 541 of the Bankruptcy Code).

(d) FF&E. All FF&E currently located on the Country Inn & Suites property shall be conveyed.

7. Representations and Warranties of the Buyer.

The Buyer represents and warrants to the Seller as follows and all such representations and warranties shall be true and correct at and as of the time of Closing and shall survive the sale hereunder:

(a) No Violation of Other Agreements. Neither the execution and delivery of this Agreement nor compliance with the terms and conditions of this Agreement by the Buyer will breach or conflict with any of the terms, conditions or provisions of any agreement or instrument to which the Buyer is a party or by which the Buyer is or may be bound or constitute a default thereunder or result in a termination of any such agreement or instrument.

(b) Approval. The execution and delivery of this Agreement, on behalf of the Buyer, has been approved by the applicable governing authority of the Buyer, and no further corporate action is required on behalf of the Buyer to approve the execution and delivery of this Agreement or compliance by the Buyer herewith.

8. Conditions Precedent to Buyer's Obligations.

All obligations of Buyer under this Agreement are subject to fulfillment, at or prior to the Closing, of each of the following conditions:

 The signature area contains a large, stylized handwritten signature, possibly 'John', followed by initials 'JL' and 'WTL'. The initials 'WTL' are written vertically to the right of the signature.



(a) Bankruptcy Court Approval. The Seller shall present testimony or make an offer of proof at the hearing on the motion seeking the Sale Order, if necessary, to enable the Bankruptcy Court to make the requisite findings of adequacy of notice and to enter the Sale Order. The Bankruptcy Court shall have entered the Sale Order, which order the Parties anticipate will be signed and entered by [ ] p.m., Central time, [ ], 2016, and which shall be a final order (in form acceptable to Buyer and Seller) (a "Final Order"), not subject to appeal, or, if an appeal of the Sale Order is pending, the appeal shall not have stayed the effect of the Sale Order, nor shall the Sale Order be subject to stay, by an order of the Bankruptcy Court or any other court having jurisdiction to issue such stay. The Sale Order will provide that:

(i) the notice of sale contemplated herein is in all aspects adequate, proper and sufficient, with a specific recitation as to the creditors which were noticed of the proposed transactions (as well as the notice procedure that was followed);

(ii) a description of the proposed transactions, the parties involved, and the value of the consideration being paid by the Buyer for the Sale Assets;

(iii) a statement that the transfers to be made pursuant to this Agreement are free and clear of all liens, claims, encumbrances, and other interests, with such liens, claims, encumbrances, and other interests to attach solely to the net proceeds received by the Seller from the sale of the Sale Assets in the same order of priority and with the same effectiveness as existed prior to the sale;

(iv) the Buyer is a good faith purchaser and is entitled to all of the protections of 11 U.S.C. §363(m); and (b) Rule 6004(b) of the Federal Rules of Bankruptcy Procedure are waived;

(v) the Purchase Price and all other aspects of the transactions contemplated hereby are in good faith, were negotiated at arm's length, and provide the Debtor's estate with reasonably equivalent value;

(vi) the Bankruptcy Court finds that the Seller, on behalf of the Debtor's estate, is the owner of all right, title, and interest in and to the Sale Assets and is authorizing and directing the Seller to execute this Agreement, for and on behalf of the Debtor's estate, and to do and to execute any and all other actions in connection with the consummation of the transactions provided under this Agreement; and

(vii) upon the Bankruptcy Court's approval of such transactions, all of the terms and conditions are valid and enforceable obligations of the Seller, for and on behalf of the Debtor's estate.

(b) Documents of Transfer. The Seller shall have delivered to the Buyer documents of transfer in form reasonably acceptable to the Buyer, which are sufficient to transfer good title to all of the Sale Assets consistent with the terms hereof.



(c) Notice of Sale. The Sale Order shall provide that the notice of the sale was proper and sufficient for all purposes.

(d) Filing of Motion. The Debtor shall pursue the entry of the Sale Order consistent with the terms and conditions of Bid Procedures.

9. Conditions Precedent to the Seller's Obligations. All obligations of the Seller under this Agreement are subject to fulfillment at or prior to the Closing, of each of the following conditions:

(a) Representations True at Closing. All representations of the Buyer contained herein shall be true and correct at and as of the time of the Closing as though such representations and warranties were made at and as of such time and the Buyer shall have performed and complied with all of its obligations under this Agreement and under the law which are to be complied with and performed by it prior to or at the time of the Closing.

(b) Payment of Purchase Price. The Buyer shall have paid and delivered to the Seller the Purchase Price (as adjusted under Section 2(c) above).

10. Covenants of the Seller and Buyer.

(a) Conditions Precedent. The Debtor agrees to use its commercially reasonable efforts to provide that the conditions precedent to the Buyer's obligation to consummate the transaction contemplated by this Agreement are satisfied at the times required by this Agreement.

(b) Buyer's Qualification. The Buyer shall provide to Seller all cash flow projections, pro forma financial statements, capitalization information, financial commitments, and other loan documentation necessary for the determination as to the qualification of the Buyer as a bona fide purchaser of the Sale Assets, consistent with the terms of the Bid Procedures.

(c) Hearing Date on Sale Motion. The Debtor will seek a hearing date on the Sale Motion consistent with the terms of the Bid Procedures.

11. Expenses.

(a) Expenses of the Seller. The Seller shall pay for the following:

(i) attorneys' fees incurred by the Seller and all other fees of professionals providing services to the Debtor's estate; and

(ii) any other expense agreed herein to be paid by the Seller.

(b) Expenses of the Buyer. The Buyer shall pay for:

(i) attorneys' fees incurred by the Buyer;

Handwritten signatures and date. There are two signatures, one on the left and one on the right, both in black ink. To the right of the second signature is the date "12/16".



- (ii) any other expense agreed herein to be paid by the Buyer; and
- (iii) sales, use or similar taxes, recording fees and charges, transfer taxes, mortgages taxes, and similar fees, costs, and taxes arising on account of the transactions contemplated herein.

12. Prorations.

(a) Ad Valorem Taxes. Ad valorem real estate and personal property taxes for the year in which the Closing occurs shall be prorated at Closing, in each case based upon applicable exemptions, and post-Closing obligations to the taxing authorities shall be assumed by the Buyer upon the Closing without the necessity of further action. Although the ad valorem real and personal property liens shall continue to attach to the Sale Assets in accordance with their priorities, nonetheless the pre-Closing ad valorem real estate and personal property tax obligations shall be paid by the Seller out of the proceeds of the sale.

(b) Utilities. Utility obligations, if any, shall be determined by the utility providers through the day before Closing, and the amounts so determined owed by the Seller will be paid by the Buyer at Closing. The Buyer shall establish new accounts and post new deposits, if required, with the utility provider. If any bill for utility service or for any other expense of the Oil and Gas Properties prior to the Closing is received by the Buyer after the Closing, the Buyer shall, upon demand by the Debtor, reimburse the Debtor for the expense or pay such bill directly to the billing party before delinquency.

13. Effective Date.

The date of this Agreement (the "Effective Date") for purposes of performance shall be the date when the Sale Order becomes a Final Order; provided, however, notwithstanding the foregoing, the Buyer's agreement to perform its obligations under this Agreement shall remain irrevocable through the Closing Date pursuant to the terms and conditions of this Agreement.

14. Assignment.

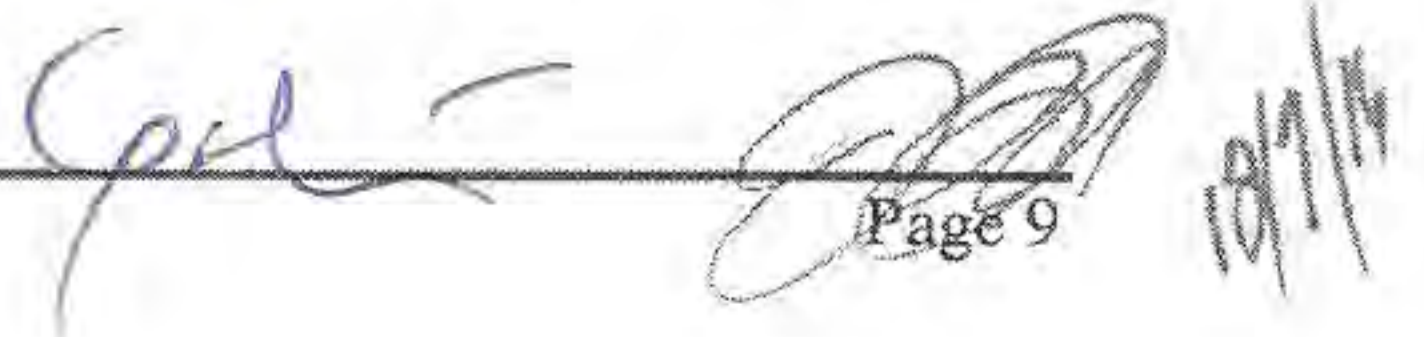
This Agreement may be assigned by the Buyer to any assignee of the Buyer, which shall be a U.S. corporation or limited liability company sufficiently capitalized to satisfy its obligations hereunder as determined by the Seller. After any such assignment, the Buyer shall have no further liability under this Agreement.

15. Time Is of the Essence.

Time is of the essence as to all material terms of this Agreement.

16. Broker.

The Buyer and the Seller each represents and warrants to the other that no broker or finder has been engaged by it in connection with this transaction. If a claim for brokerage commission or other compensation in connection with this transaction is made by any broker,

Handwritten signatures and a date '12/1/16' are present at the bottom right of the page.



salesman or finder claiming to have dealt through or on behalf of one of the parties hereto, Buyer shall indemnify, defend and hold harmless the Seller, the Debtor's estate, and their respective officers, directors, agents and representatives, from all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorneys' fees and court costs at trial and all appellate levels) with respect to said claim for brokerage. Likewise, if the Seller's conduct results in a claim being made against the Buyer for payment of a commission or other compensation in connection with this transaction, the Debtor's estate shall indemnify, defend and hold harmless the Buyer, and the Buyer's officers, directors, agents and representatives, from all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorneys' fees and court costs at trial and all appellate levels) with respect to said claim for brokerage fee caused by the Seller's conduct.

#### 17. Notices.

Any notices required or permitted to be given under this Agreement shall either be (a) delivered by hand, (b) mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, (c) sent by a nationally recognized overnight delivery service (such as Federal Express), or (d) sent by telecopy. Notices shall be addressed as described below (subject to the right of a party to designate a different address for itself by notice similarly given). Notices shall be deemed given upon receipt or refusal of delivery.

Notices to the Seller:

Bill F. Payne, Counsel for Debtor  
12770 Coit Road, Suite 541  
Dallas, Texas 75251  
Tel.: (972) 628-4901  
[bill@wpaynelaw.com](mailto:bill@wpaynelaw.com)

Notices to the Buyer:

Kyle B. Davis, Counsel for Buyer  
P.O. Box 1221  
New Boston, Texas 75570  
Tel.: (903) 628-5571  
[kdavis@ldatty.com](mailto:kdavis@ldatty.com)

#### 18. Sale of Sale Assets.

The Buyer and the Seller acknowledge and agree that this transaction is a purchase and sale of Sale Assets only and that the Buyer is not purchasing the Debtor, the Debtor's business, or any interest in the Debtor's estate. Except as may be expressly set forth in this Agreement, the Buyer does not assume liability or responsibility for claims incurred by or existing against the Debtor or the Debtor's estate.



## 19. Remedies.

(a) Default by Buyer. If, after (i) all conditions precedent to the Buyer's obligations hereunder (as set forth in Section 9 above) have been met or waived and (ii) the Seller has fully performed or tendered performance of all of the Seller's obligations and covenants contained in this Agreement, the Buyer thereafter fails to pay the Purchase Price provided in Section 2 above, or to otherwise conclude this transaction, then the Seller may upon forty-eight (48) hours prior written notice to the Buyer (during which time the Buyer may cure such default by complying with such obligations) terminate this Agreement and shall thereupon be entitled to retain the Earnest Money Deposit as reasonable, agreed liquidated damages for breach of this Agreement by the Buyer; the parties hereto agree that said amount is a reasonable amount for such liquidated damages and that from the nature of the subject matter it would be extremely difficult and impractical to fix that actual damage. Upon termination of this Agreement, the retention of the Earnest Money Deposit shall then be the sole remedy available to the Seller for breach of this Agreement by the Buyer.

(b) Default by Seller. If, after (i) all conditions precedent to the Seller's obligations hereunder (as set forth in Section 10 above) have been met or waived, and (ii) the Buyer has fully performed or tendered performance of all of the Buyer's obligations and covenants contained in this Agreement, the Seller thereafter fails to transfer the Sale Assets as provided in Section 3 above, or to otherwise conclude this transaction, the Buyer may upon forty-eight (48) hours prior written notice to the Seller (during which time the Seller may cure such default by complying with such obligations) either:

(i) terminate this Agreement and the Buyer shall thereupon be entitled to the immediate payment of an amount equal to the Earnest Money Deposit as reasonable, agreed liquidated damages for breach of this Agreement by the Seller, payable as provided above; the parties hereto agree that said amount is a reasonable amount for such liquidated damages and that from the nature of the subject matter it would be extremely difficult and impractical to fix that actual damage; or

(ii) at its own discretion grant an extension of time to the Seller to cure the impediment to closing this sale.

(c) Indemnity for Misrepresentation and Breach of Warranty. Each party shall indemnify, defend and hold the other party (and, with respect to Seller, Seller Group) harmless from and against all actual damages, costs, losses or expenses incurred by the indemnified party as the direct result of any actual misrepresentation made by the indemnifying party and contained herein or any actual breach by the indemnifying party of any warranty or covenant contained herein (EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE, PASSIVE, OR OTHERWISE), STRICT LIABILITY, OR OTHER LEGAL FAULT OF THE INDEMNIFIED PARTY); provided, however, that the Seller shall only be liable for any actual damages, costs, losses or expenses incurred by the Buyer as a



direct result of an actual misrepresentation or breach of warranty made by the Seller above, subject to the limitations in this Section. The Bankruptcy Court retains jurisdiction to resolve any disputes under this Section 20, and in connection with the subject matter of this Agreement. Buyer's obligations under its representations and warranties, and this Section 20(c) shall survive the Closing without time limit. Sellers' obligations under its representations and warranties hereunder and this Section 20(c) shall survive the Closing for a period of three (3) months (provided that there shall be no termination of a bona fide claim made by Buyer prior to the end of such period). Each Party's sole and exclusive remedy for breach of the other party's representations and warranties hereunder is as expressly set forth in this agreement, and any remedy not expressly set forth is hereby waived for all purposes.

## 20. Waivers.

The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

## 21. No Third Party Beneficiaries.

This Agreement is solely for the benefit of the parties hereto and their respective affiliates and (other than provisions that expressly accrue to the benefit of Seller Group) no provision of this Agreement shall be deemed to confer upon third parties any remedy, claim, liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.

22. Access. The Buyer shall have full access to all properties and premises of the Seller upon reasonable notice to the Seller, which shall be presumed to be one (1) day's notice, subject to the provisions of Section 5 above.

## 23. General.

(a) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without giving effect to principles of conflicts of law.

(b) Further Assurances. The parties hereto shall execute and deliver any and all papers and documents which may be necessary to carry out the terms of this Agreement.

(c) Exhibits and Schedules. All of the exhibits and schedules attached to this Agreement are hereby incorporated herein and made a part hereof. Matters contained in a schedule or exhibit for one purpose shall be deemed to be contained in each schedule and exhibit.



(d) Entire Agreement. This Agreement and the related documents referenced herein set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby; and the Agreement and such related documents supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and is not intended to confer upon any other person any rights or remedies hereunder. There have been no representations or statements, oral or written, that have been relied on by any party hereto, except those expressly set forth in this Agreement or in any such related document.

(e) Amendment. This Agreement may not be amended or revised except by a writing signed by all parties hereto.

(f) Survival. Except as set forth in Section 20(c), all representations made in this Agreement will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. All statements contained in any schedule, certificate or other writing delivered in connection with this Agreement or the transactions contemplated hereby will constitute representations under this Agreement.

(g) Binding Effect. The terms and conditions of this Agreement shall be binding upon the successors, permitted assigns, distributees, administrators, executors and legal representatives of the parties hereto.

(h) Waiver of Terms and Conditions. Either party thereto may waive in writing any terms or conditions, including conditions precedent, provided in this Agreement for its benefit.

(i) Execution in Counterparts; Facsimile Execution. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile, and the production of a facsimile counterpart shall have the same force and effect as production of an originally executed counterpart for all purposes.

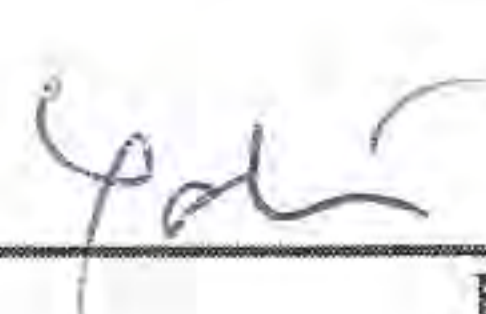

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**SELLER:**

Date Signed: 12-15-, 2016

KRISHNA ASSOCIATES, LLC

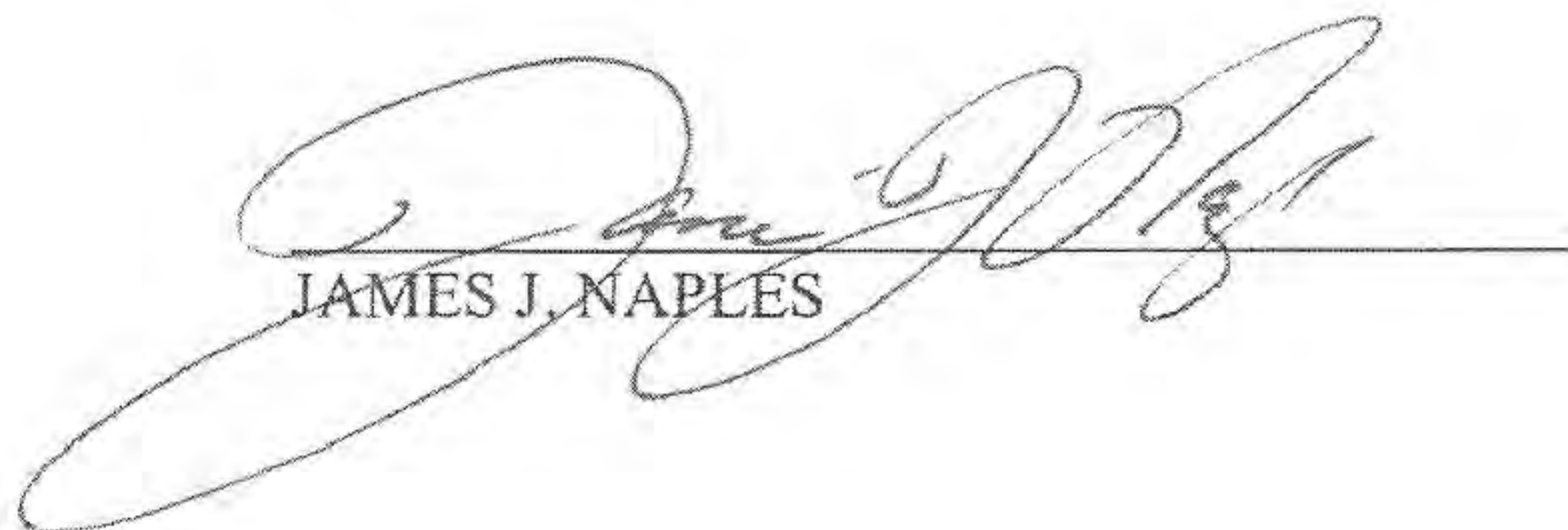
By:   
Name: Hiren Patel  
Title: Managing Member



Date Signed: November 23, 2016

**BUYER:**



JAMES J. NAPLES

