5 6 7 8 9	ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP DAVID R. ZARO (BAR NO. 124334) 865 South Figueroa Street, Suite 2800 Los Angeles, California 90017-2543 Phone: (213) 622-5555 Fax: (213) 620-8816 E-Mail: dzaro@allenmatkins.com EDWARD G. FATES (BAR NO. 227809 501 West Broadway, 15th Floor San Diego, California 92101-3541 Phone: (619) 233-1155 Fax: (619) 233-1158 E-Mail: tfates@allenmatkins.com Attorneys for Receiver THOMAS C. HEBRANK	
11	UNITED STATES	DISTRICT COURT
12	SOUTHERN DISTRI	CT OF CALIFORNIA
13		
14	SECURITIES AND EXCHANGE	Case No. 3:12-cv-02164-GPC-JMA
15	COMMISSION,	EX PARTE APPLICATION FOR
16	Plaintiff,	AUTHORITY TO ENGAGE REAL ESTATE BROKERS FOR YUMA I,
17	V.	YUMA II, YUMA III, AND MINDEN PROPERTIES
	LOUIS V. SCHOOLER and FIRST	Date
18	FINANCIAL PLANNING CORPORATION d/b/a WESTERN	Time: 1:30 p.m.
19	FINANCIAL PLANNING CORPORATION,	Ctrm.: 2D Judge: Hon. Gonzalo P. Curiel
20	Defendants.	
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LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), and its subsidiaries and affiliates (collectively, "Receivership Entities"), submits this *ex parte* application ("Application") for authority to engage real estate brokers for the GP properties known as Yuma I, Yuma II, Yuma III and Minden (collectively "Properties").

I. INTRODUCTION

Pursuant the Court-approved Modified Orderly Sale Process, the Receiver has solicited proposed listing agreements from licensed real estate brokers for the Yuma I, Yuma III, and Minden properties. The three Yuma properties are located in a rural/remote area of Arizona. The Minden property is located in rural Nevada, with the closest metropolitan area being Reno. These properties are not included in the evaluation currently being done by CB Richard Ellis ("CBRE") --- Xpera Group recommended they be sold in their current condition without any entitlement work.

The proposed listing agreements represent the best terms and options available for marketing the properties and maximizing their values through sales. In the case of the Yuma properties, due to their very rural/remote location, the proposed listing agreements are the only listing agreements available as all other brokers contacted in the surrounding area have declined the listings. The Receiver, therefore, believes that the proposed listing agreements are in the best interests of the receivership estate and requests authority to engage the applicable brokers.

847287 01/SD

-1-

In analyzing the Yuma properties, Xpera Group recognized that these properties would be more difficult to sell and that a reasonable marketing timeline would be two to three years. Dkt. No. 1234-2, pp. 167-168 of 172.

II. PROPOSED BROKER LISTING AGREEMENTS

All of the following proposed listing agreements are from licensed brokers in the area surrounding each property and provide that the commission to be paid to the proposed broker upon completion of a sale is subject to Court approval.

A. Yuma I

847287 01/SD

The proposed broker for this property is CBRE and the proposed list price is \$350,000. The property was appraised in 2013 at \$265,000. The GPs did not have sufficient funds to obtain a 2015 appraisal, so the Receiver contacted several local brokers, but only one was willing to provide an opinion of value. The opinion of value was \$153,000. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$200,000 to \$250,000. Declaration of Thomas Hebrank filed herewith ("Hebrank Decl."), ¶ 2.

Although the proposed list price is higher than the appraisals and value estimates discussed above, the Receiver can reduce the list price if offers at that amount are not received. The Receiver will see what offers come in, consult with CBRE, and, if necessary, determine the appropriate times and amounts of reductions to the list price. Subject to Court approval, CBRE will be paid a commission of 10% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is attached the Hebrank Decl. as Exhibit A. As noted above, all other brokers contacted in the surrounding area declined the listing. Hebrank Decl. ¶ 3.

B. Yuma II

The proposed broker for this property is CBRE and the proposed list price is \$350,000. The property was appraised in 2013 at \$275,000. The GPs did not have sufficient funds to obtain a 2015 appraisal, so the Receiver contacted several local brokers, but only one was willing to provide an opinion of value. The opinion of value was \$195,000. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$190,000 to \$230,000. Hebrank Decl. ¶ 4.

-2-

Although the proposed list price is higher than the appraisals and value estimates discussed above, as noted above, the Receiver can reduce the list price if offers at that amount are not received. The Receiver will see what offers come in, consult with CBRE, and, if necessary, determine the appropriate times and amounts of reductions to the list price. Subject to Court approval, CBRE will be paid a commission of 10% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is attached to the Hebrank Decl. as Exhibit B. As noted above, all other brokers contacted in the surrounding area declined the listing. Hebrank Decl. ¶ 5.

C. Yuma III

847287 01/SD

The proposed broker for this property is CBRE and the proposed list price is \$350,000. The property was appraised in 2013 at \$141,000. The GPs did not have sufficient funds to obtain a 2015 appraisal, so the Receiver contacted several local brokers, but only one was willing to provide an opinion of value. The opinion of value was \$159,620. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$150,000 to \$170,000. Hebrank Decl. ¶ 6.

Although the proposed list price is higher than the appraisals and value estimates discussed above, as noted above, the Receiver can reduce the list price if offers at that amount are not received. The Receiver will see what offers come in, consult with CBRE, and, if necessary, determine the appropriate times and amounts of reductions to the list price. Subject to Court approval, CBRE will be paid a commission of 10% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is attached to the Hebrank Decl. as Exhibit C. As noted above, all other brokers contacted in the surrounding area declined the listing. Hebrank Decl. ¶ 7.

D. <u>Minden</u>

The proposed broker for the property is NAI Alliance Carson City ("NAI") and the proposed list price is \$2,715,857. The property was appraised in 2013 at

\$1,000,000 and in 2015 at \$1,800,000. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$1,828,860 to \$2,353,743.² Hebrank Decl. ¶ 8.

Although the proposed list price is higher than the appraisals and value estimates discussed above, as noted above, the Receiver can reduce the list price if offers at that amount are not received. The Receiver will see what offers come in, consult with NAI, and, if necessary, determine the appropriate times and amounts of reductions to the list price. Subject to Court approval, NAI will be paid a commission of 6% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is attached to the Hebrank Decl. as Exhibit D. Hebrank Decl. ¶ 9.

III. ARGUMENT

A. <u>Broad Equitable Powers of the Court</u>

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment of a receiver is authorized by the broad equitable powers of the court, any distribution of assets must also be done equitably and fairly. See *SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership.

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847287 01/SD

² Xpera Group also recommended that the water rights on the Minden property be preserved. Since his appointment, the Receiver has had local counsel in Nevada take the appropriate steps to preserve the water rights on the property and will continue to do so.

1	See SEC v. Capital Consultants, LLC, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
2	Circuit explained:
3	A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The
4	district court has broad powers and wide discretion to
5	determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the
7	fact that most receiverships involve multiple parties and complex transactions. A district court's decision
8	concerning the supervision of an equitable receivership is reviewed for abuse of discretion.
9	Id. (citations omitted); see also Commodities Futures Trading Comm'n. v. Topworth
10	Int'l, Ltd., 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference
11	to the court's supervisory role, and 'we generally uphold reasonable procedures
12	instituted by the district court that serve th[e] purpose' of orderly and efficient
13	administration of the receivership for the benefit of creditors."). Accordingly, the
14	Court has broad equitable powers and discretion in the administration of the
15	receivership estate and disposition of receivership assets.
16	Here, the Yuma I, Yuma II, Yuma III, and Minden properties are not the
17	subject of any recommended entitlement work by Xpera Group. In fact, Xpera
18	Group recommended that they be sold now in their current condition. Therefore,
19	there is no reason to delay listing them for sale. Hebrank Decl. ¶ 10.
20	The Receiver has followed the steps of the Court-approved Modified Orderly
21	Sale Process, including contacting licensed brokers in the areas surrounding each
22	property. As always, the goal with engaging a broker is to find someone (a) with
23	experience in selling real estate, knowledge of the local market and comparable
24	sales, and knowledge of potential buyers, and (b) who will be motivated to actively
25	market the Property and responsive to interested parties. Equally important
26	objectives in selecting a broker are to set a list price that will generate the highest

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-5-

and best offers for the Property and to minimize the costs of sale (including the

broker's commission). The Receiver has kept these objectives in mind in

interviewing and recommending potential brokers and believes the proposed brokers discussed above are the best available options for maximizing the net recovery from each property. Hebrank Decl. ¶ 11.

Accordingly, if this recommendation is approved and adopted by the Court, the Receiver will continue to follow the steps of the Modified Orderly Sale Process with respect to the applicable properties and will file motions seeking Court approval of each sale at such time as a purchase price has been agreed upon, a purchase and sale agreement signed, and the prospective purchaser has removed all contingencies. In addition to the motions being posted on the receivership website, email notice of the Receiver's sale motions will go to all investors who have provided their email addresses and who have not opted out of receiving such notices. Hebrank Decl. ¶ 12.

IV. EX PARTE NOTICE

Prior to filing this Application, the Receiver's counsel sent it to counsel for the Securities and Exchange Commission ("Commission") and counsel for Louis Schooler ("Schooler") and asked them to advise if their respective clients have any opposition. Counsel for the Commission advised that the Commission does not have any opposition. Counsel for Schooler had not responded as of the time of filing.

V. CONCLUSION

WHEREFORE, the Receiver requests an order authorizing him to engage the real estate brokers listed above to market the Yuma I, Yuma II, Yuma III, and Minden properties on the terms and conditions discussed herein and in the listing agreements attached to the Hebrank Declaration as Exhibits A through D.

Dated: October 27, 2016 ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES

Attorneys for Receiver

Attorneys for Receiver THOMAS C. HEBRANK

LAW OFFICES Allen Matkins Leck Gamble Mallory & Natsis LLP

4 5 6 7	ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP DAVID R. ZARO (BAR NO. 124334) 865 South Figueroa Street, Suite 2800 Los Angeles, California 90017-2543 Phone: (213) 622-5555 Fax: (213) 620-8816 E-Mail: dzaro@allenmatkins.com EDWARD G. FATES (BAR NO. 227809 501 West Broadway, 15th Floor San Diego, California 92101-3541 Phone: (619) 233-1155 Fax: (619) 233-1158 E-Mail: tfates@allenmatkins.com	
9 10	Attorneys for Receiver THOMAS C. HEBRANK	
11	UNITED STATES	DISTRICT COURT
12	SOUTHERN DISTR	ICT OF CALIFORNIA
13		
14	SECURITIES AND EXCHANGE	Case No. 3:12-cv-02164-GPC-JMA
15	COMMISSION, Plaintiff,	DECLARATION OF THOMAS C. HEBRANK IN SUPPORT OF
16	V.	EX PARTE APPLICATION FOR AUTHORITY TO ENGAGE REAL
17	LOUIS V. SCHOOLER and FIRST	ESTATE BROKERS FOR YUMA I, YUMA II, YUMA III, AND MINDEN
18	FINANCIAL PLANNING	PROPERTIES PROPERTIES
19	CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION,	Date: xx Time: 1:30 p.m.
20	Defendants.	Ctrm.: 2D Judge: Hon. Gonzalo P. Curiel
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LAW OFFICES

Allen Matkins Leck Gamble
Mallory & Natsis LLP

- I, Thomas C. Hebrank, declare:
- 1. I am the Court-appointed receiver for First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"). I make this declaration in support of my *Ex Parte* Application for Authority to Engage Real Estate Brokers for Yuma I, Yuma II, Yuma III, and Minden Properties ("Application"). I have personal knowledge of the facts stated herein, and if called upon to do so, I could and would personally and competently testify to them.
- 2. Pursuant to the Court-approved Modified Orderly Sale Process, I have contacted brokers in areas surrounding properties that are (a) not already listed with an approved broker, and (b) not the subject of the evaluation being performed by CB Richard Ellis ("CBRE") of the Xpera Group recommendations.

A. Yuma I

- 3. The proposed broker for this property is CBRE and the proposed list price is \$350,000. The property was appraised in 2013 at \$265,000. The GPs did not have sufficient funds to obtain a 2015 appraisal, so Geno Rodriguez of my firm contacted several local brokers, but only one was willing to provide an opinion of value. The opinion of value was \$153,000. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$200,000 to \$250,000.
- 4. Although the proposed list price is higher than the appraisals and value estimates discussed above, I can reduce the list price if offers at that amount are not received. I will see what offers come in, consult with CBRE, and, if necessary, determine the appropriate times and amounts of reductions to the list price. Subject to Court approval, CBRE will be paid a commission of 10% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is

847405 01/SD

attached hereto as Exhibit A. As noted above, all other brokers contacted in the surrounding area declined the listing.

B. Yuma II

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- 5. The proposed broker for this property is CBRE and the proposed list price is \$350,000. The property was appraised in 2013 at \$275,000. The GPs did not have sufficient funds to obtain a 2015 appraisal, so Mr. Rodriguez contacted several local brokers, but only one was willing to provide an opinion of value. The opinion of value was \$195,000. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$190,000 to \$230,000.
- 6. Although the proposed list price is higher than the appraisals and value estimates discussed above, as noted above, I can reduce the list price if offers at that amount are not received. I will see what offers come in, consult with CBRE, and, if necessary, determine the appropriate times and amounts of reductions to the list price. Subject to Court approval, CBRE will be paid a commission of 10% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is attached hereto Exhibit B. As noted above, all other brokers contacted in the surrounding area declined the listing.

C. Yuma III

- 7. The proposed broker for this property is CBRE and the proposed list price is \$350,000. The property was appraised in 2013 at \$141,000. The GPs did not have sufficient funds to obtain a 2015 appraisal, so Mr. Rodriguez contacted several local brokers, but only one was willing to provide an opinion of value. The opinion of value was \$159,620. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$150,000 to \$170,000.
- 8. Although the proposed list price is higher than the appraisals and value estimates discussed above, as noted above, I can reduce the list price if offers at that amount are not received. I will see what offers come in, consult with CBRE, and, if necessary, determine the appropriate times and amounts of reductions to the list

price. Subject to Court approval, CBRE will be paid a commission of 10% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is attached hereto as Exhibit C. As noted above, all other brokers contacted in the surrounding area declined the listing.

D. Minden

- 9. The proposed broker for the property is NAI Alliance Carson City ("NAI") and the proposed list price is \$2,715,857. The property was appraised in 2013 at \$1,000,000 and in 2015 at \$1,800,000. The Xpera Group's analysis of the property in 2016 put an estimated value range on the property of \$1,828,860 to \$2,353,743.¹
- 10. Although the proposed list price is higher than the appraisals and value estimates discussed above, as noted above, I can reduce the list price if offers at that amount are not received. I will see what offers come in, consult with NAI, and, if necessary, determine the appropriate times and amounts of reductions to the list price. Subject to Court approval, NAI will be paid a commission of 6% of the purchase price (to be split with the buyer's broker, if applicable). The proposed listing agreement is attached hereto as Exhibit D.
- 11. As noted above, the Yuma I, Yuma II, Yuma III, and Minden properties are not the subject of any recommended entitlement work by Xpera Group. In fact, Xpera Group recommended that they be sold now in their current condition. Therefore, there is no reason to delay listing them for sale.
- 12. As always, the goal with engaging a broker is to find someone (a) with experience in selling real estate, knowledge of the local market and comparable sales, and knowledge of potential buyers, and (b) who will be motivated to actively market the Property and responsive to interested parties. Equally important

847405 01/SD

¹ Xpera Group also recommended that the water rights on the Minden property be preserved. Since my appointment, I have had local counsel in Nevada take the appropriate steps to preserve the water rights on the property and will continue to do so.

objectives in selecting a broker are to set a list price that will generate the highest and best offers for the Property and to minimize the costs of sale (including the broker's commission). I have kept these objectives in mind in interviewing and recommending potential brokers and believe the proposed brokers discussed above are the best available options for maximizing the net recovery from each property. 5 6 13. Accordingly, if this recommendation is approved and adopted by the Court, I will continue to follow the steps of the Modified Orderly Sale Process with respect to the applicable properties and will file motions seeking Court approval of each sale at such time as a purchase price has been agreed upon, a purchase and sale agreement signed, and the prospective purchaser has removed all contingencies. In 10 addition to the motions being posted on the receivership website, email notice of my 11 sale motions will go to all investors who have provided their email addresses and 12 who have not opted out of receiving such notices. 13 14 I declare under penalty of perjury under the laws of the State of California 15 that the foregoing is true and correct. 16 Executed this 24 day of October 2016, at San Diego, California. 17 THOMAS C. HEBRANK 18 19 20 21

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SEC v. Louis v. Schooler and First Financial Planning Corporation United States District Court, Southern District of California Case No. 3:12-cv-02164-GPC-JMA

Table of Contents of Exhibits to Declaration of Thomas C. Hebrank

Exhibit	Description	Page
A	Yuma I Proposed Listing Agreement	7
В	Yuma II Proposed Listing Agreement	13
С	Yuma III Proposed Listing Agreement	19
D	Minden Properties Proposed Listing Agreement	25

EXHIBIT A



September 30, 2016

BY ELECTRONIC MAIL

Mr. Geno Rodriguez Managing Director E3 Advisors 401 West "A" Street, Suite 1830 San Diego, CA 92101

Re: Exclusive Sales Listing Agreement

Yuma I - (Gila View CA GP & Painted Desert CA GP & Snow Bird CA GP)

Parcels: 187-31-001, 2, 3, 4, 6, 7, 9 & 10, Located In Yuma County, Arizona ("Property")

Dear Mr. Rodriguez:

Thank you for selecting CBRE, Inc. ("CBRE") to represent Thomas Hebrank in his capacity as District Court-appointed Receiver (referred to herein as "you"). The terms of our engagement are contained in this agreement ("Agreement"), subject to approval by the United States District Court for the Southern District of California ("District Court").

- 1. This Agreement shall terminate one year after the above date on September 30, 2017 ("Term").
- During the Term, you appoint us your exclusive agent with the right to list and market the Property for sale and to negotiate agreements for the sale of the Property (which includes portions thereof). If, during the Term, the Property is removed from the market because escrow is opened or an offer to purchase the Property is accepted, and if the sale is not consummated for any reason, then the Term will be extended by the longer of the number of days that (i) escrow was open or (ii) the Property was removed from the market, but in no event more than 180 calendar days in the aggregate.
- 3. We will commit the appropriate number of qualified and licensed professionals to this engagement. Your "Listing Team" is comprised of Matt Marschall/Dave Headstream/Jason Hyams/Mike Ratliff. We will have the right to change members of the Listing Team as necessary and appropriate. The Listing Team shall owe you duties of trust, confidence and loyalty.
- 4. We will offer the Property at an initial listing price of \$350,000. However, it is your right to: (a) approve, modify, reject or disapprove any and all proposals and offers as well as any prospective purchasers for the Property and (b) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's listing price.
- 5. We will work with you to create and implement a sales strategy for the Property, including preparation of appropriate and customary marketing materials (such as an offering brochure). In developing the strategy, we will rely on (without requirement to verify) any information provided to us by you, your agents, affiliates and/or any of the Property's managers. However, we will not issue any written marketing materials without your prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate.

- 6. The success of this engagement relies, in part, on cooperation and communication between us. Therefore, you agree to: (i) provide us with all available information to assist us in marketing the Property; (ii) immediately refer to us all purchase inquiries for the Property; and (iii) conduct all negotiations with prospective purchasers exclusively through us.
- 7. You represent that you either are the fee owner of or otherwise have control over the Property. You further represent that, subject to approval by the District Court, you have full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.
- 8. We will present all offers to you and assist you in developing and negotiating counteroffers until a purchase and sale agreement ("PSA") is signed and all contingencies are satisfied or waived. You agree that you and/or your legal counsel are solely responsible for determining the legal sufficiency of the documents related to this engagement and the tax consequences of any transaction. You are also responsible for evaluating any offers and determining with whom you will negotiate or enter into a transaction. While we may assist you in gathering reasonably available information, we cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a PSA. All final business and legal decisions shall be made solely by you. Notwithstanding any designation of us as "agent" in this Agreement, we will have no right, power, or authority to enter into any agreement with any prospective purchaser, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon you.
- 9. We will earn (and you agree to pay, subject to approval by the District Court) a commission in accordance with this Agreement and the attached Commission Schedule (Exhibit "A") if either of the following occur:
 - during the Term, you enter into an agreement to sell the Property to a purchaser, whether procured by us, you or anyone else, and the sale of the Property subsequently closes (whether during or after the Term); or
 - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the "Post-Term"), the Property is sold to, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to any person or entity with whom, CBRE negotiated (either directly or through another broker or agent) or to whom the Property was submitted during the Term, or to any such person's or entity's successors, assigns, or affiliates ("Existing Prospect"), or you enter into an agreement to sell the Property to an Existing Prospect and the sale of the Property subsequently closes (whether during or after the Post-Term). You agree that CBRE is authorized to continue negotiations with Existing Prospects, and we will submit to you a list of such Existing Prospects no later than fifteen (15) business days following the expiration or termination of the Term; provided, however, that if a written offer has been submitted prior to said expiration or termination date, then it shall not be necessary to include the offeror's name on the list.
 - (c) the obligation to pay a commission in accordance with this Agreement shall be solely that of the receivership estate that holds the Property, subject to approval by the District Court. Thomas Hebrank, in his personal capacity, is not a party to this Agreement and shall have no duties or obligations to CBRE under this Agreement.
- 10. You agree that we are authorized to cooperate with and, if appropriate, share our commission with "Cooperating Brokers" (such as a broker representing a purchaser). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to us prior to the execution of the transaction; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement. Market conditions may exist whereby the Cooperating Broker receives an above-standard fee and/or broker bonus. If so, our

commission shall be increased by (and you agree to pay) an amount such that we receive no less than 50% of the total fee in accordance with the Commission Schedule.

- 11. The Listing Team are your designated agents to the exclusion of all of CBRE's other licensees. All other CBRE licensees shall be referred to as "Non-Listing Team Agents" and shall be considered Cooperating Brokers. You acknowledge that we are an international brokerage firm and that we may represent prospective purchasers. You hereby consent to our representation of such prospective purchasers by Non-Listing Team Agents. You acknowledge that Non-Listing Team Agents owe duties of trust, confidence and loyalty exclusively to their clients. In the event that the Listing Team, or any member thereof, has a potential conflict of interest (such as a Listing Team member proposing to act for a potential purchaser), then we will disclose the conflict to you and obtain your written consent to the conflict in advance of any negotiations with that potential purchaser. The Listing Team and Non-Listing Team Agents shall not disclose the confidential information of one principal to the other.
- 12. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform, and has not made any investigation of the physical conditions or zoning issues relating to the Property. You agree to disclose to us and allow us to disclose to prospective purchasers everything you know (after reasonable inquiry by you) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
- 13. If the Property becomes the subject of foreclosure proceedings before the expiration of the Term, then in our sole and absolute discretion we may: (a) suspend this Agreement until we may elect to reinstate it or (b) terminate this Agreement and enter into a listing agreement with any receiver, party initiating foreclosure, party purchasing the Property at a foreclosure sale, or any other third party.
- While we are confident that our relationship will be mutually satisfactory, if there is a dispute between us, then we agree to resolve it subject to the following:
 - (a) If either party institutes a legal proceeding against the other party relating to this Agreement, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses. All past due amounts shall bear interest at twelve percent (12%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages;
 - (b) WHERE PERMITTED BY LAW, WE EACH KNOWINGLY AGREE TO WAIVE ANY AND ALL RIGHTS TO HAVE A DISPUTE ON ANY MATTER RELATING TO, OR ARISING FROM THIS AGREEMENT DETERMINED BY A JURY; AND.
 - (c) All disputes relating to this Agreement shall be resolved by the District Court in the pending action in which you were appointed Receiver and shall be subject to the exclusive jurisdiction of the District Court.
- 15. You and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders. Further, we both acknowledge that: (a) it is illegal to refuse to display or lease or sell to or from any person because of one's membership in a protected class, *e.g.*: race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status or any other class protected by applicable law and (b) the Property will be offered in compliance with all applicable anti-discrimination laws.

16. This Agreement is our entire agreement and supersedes all prior understandings between us regarding this engagement and is governed by the laws of the state where the Property is located, without regard to its conflict of laws principles. This Agreement will be binding and inure to the benefit of our lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both you and CBRE. Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of our rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. We each agree that we have both participated in the negotiation and drafting of this Agreement. You acknowledge that the person signing this Agreement on your behalf has your full authority to execute it. This Agreement will be binding whether signatures are exchanged electronically or by hand, by mail, by fax, by electronic transfer or image, by photocopy or in counterparts.

Thank you again for this opportunity. We look forward to working with you.

Very truly yours,

CBRE, Inc. Licensed Real Estate Broker

By:	
Manager Man Constanting	

Name: Mr. Craig Henig Title: Designated Broker

AGREED:

THOMAS HEBRANK, RECEIVER

Name: Geno Rodriguez
Title: Managing Director, E3 Advisors
401 West "A" Street, Suite 1830
San Diego, CA 92101
(619)567-7223
(619)807-9867

grodriguez@ethreeadvisors.com
CA Bureau of Real Estate # 01841759

EXHIBIT A – Commission Schedule

- A. Sale. As to sales of real property, CBRE's commission shall be Ten percent (10.0%) of the gross sales price. Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities. CBRE acknowledges that its commission is subject to approval by the District Court and agrees to accept such amount as the District Court shall approve as full and complete compensations for its services. CBRE agrees not to seek any further commission or compensation from the Receiver or the receivership estate. In the event this sale is in connection with a "build to suit" transaction, the commission shall be calculated on the gross sales price plus the gross construction cost of the building to be constructed on the Property. The commission shall be earned and paid on the date title to the Property is transferred to the purchaser; provided, however, that if the transaction involves an installment contract, then payment shall be made upon execution of such contract. In the event you contribute or convey the Property or any interest therein to a corporation, joint venture, partnership, or other business entity, the commission shall be calculated on the fair market value of the Property or the portion thereof that is so transferred, and shall be earned and paid at the time of the contribution or transfer. If you are a partnership, corporation, or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid at the time of the transfer.
 - 1. *Definitions.* Under this Agreement the terms "sell," "sale" or "sold" shall mean: (a) an exchange of the Property; (b) the granting of an option to purchase the Property; or (c) any other transfer, conveyance or contribution of a controlling interest in the Property or in the entity which owns the Property, including, but not limited to, situations where you are a corporation, partnership or other business entity and a controlling interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property.
 - 2. Option to Purchase. If you grant an option to purchase the Property, you agree to pay us a commission in accordance with this Commission Schedule, on the price paid for the option and for any extensions when you receive payment for any such option and/or extensions. If the option is exercised, whether during the Term or after, we will earn a further commission in accordance with this Agreement. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by you to us on account of the option payments will be credited against the commission payable to us on account of the exercise of the option.

EXHIBIT B



September 30, 2016

BY ELECTRONIC MAIL

Mr. Geno Rodriguez Managing Director E3 Advisors 401 West "A" Street, Suite 1830 San Diego, CA 92101

Re: Exclusive Sales Listing Agreement

Yuma II - (Desert View CA GENERAL PTNR & Sonora View CA GENERAL PTNR &

Mesa View CA GENERAL PTNR & Road Runner CA GENERAL PTNR)
Parcels: 188-22-010; 188-23-009; 188-26-007, 8, 11, 12; 1 88-27-002, 3, 4, 5, 8

Located In Yuma County, Arizona ("Property")

Dear Mr. Rodriguez:

Thank you for selecting CBRE, Inc. ("CBRE") to represent Thomas Hebrank in his capacity as District Court-appointed Receiver (referred to herein as "you"). The terms of our engagement are contained in this agreement ("Agreement"), subject to approval by the United States District Court for the Southern District of California ("District Court").

- 1. This Agreement shall terminate one year after the above date on September 30, 2017 ("Term").
- During the Term, you appoint us your exclusive agent with the right to list and market the Property for sale and to negotiate agreements for the sale of the Property (which includes portions thereof). If, during the Term, the Property is removed from the market because escrow is opened or an offer to purchase the Property is accepted, and if the sale is not consummated for any reason, then the Term will be extended by the longer of the number of days that (i) escrow was open or (ii) the Property was removed from the market, but in no event more than 180 calendar days in the aggregate.
- 3. We will commit the appropriate number of qualified and licensed professionals to this engagement. Your "Listing Team" is comprised of Matt Marschall/Dave Headstream/Jason Hyams/Mike Ratliff. We will have the right to change members of the Listing Team as necessary and appropriate. The Listing Team shall owe you duties of trust, confidence and loyalty.
- 4. We will offer the Property at an initial listing price of \$350,000. However, it is your right to: (a) approve, modify, reject or disapprove any and all proposals and offers as well as any prospective purchasers for the Property and (b) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's listing price.
- 5. We will work with you to create and implement a sales strategy for the Property, including preparation of appropriate and customary marketing materials (such as an offering brochure). In developing the strategy, we will rely on (without requirement to verify) any information provided to us by you, your agents, affiliates and/or any of the Property's managers. However, we will not issue any written marketing materials without your prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate.

- 6. The success of this engagement relies, in part, on cooperation and communication between us. Therefore, you agree to: (i) provide us with all available information to assist us in marketing the Property; (ii) immediately refer to us all purchase inquiries for the Property; and (iii) conduct all negotiations with prospective purchasers exclusively through us.
- 7. You represent that you either are the fee owner of or otherwise have control over the Property. You further represent, subject to approval by the District Court, that you have full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.
- 8. We will present all offers to you and assist you in developing and negotiating counteroffers until a purchase and sale agreement ("PSA") is signed and all contingencies are satisfied or waived. You agree that you and/or your legal counsel are solely responsible for determining the legal sufficiency of the documents related to this engagement and the tax consequences of any transaction. You are also responsible for evaluating any offers and determining with whom you will negotiate or enter into a transaction. While we may assist you in gathering reasonably available information, we cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a PSA. All final business and legal decisions shall be made solely by you. Notwithstanding any designation of us as "agent" in this Agreement, we will have no right, power, or authority to enter into any agreement with any prospective purchaser, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon you.
- 9. We will earn (and you agree to pay, subject to approval by the District Court) a commission in accordance with this Agreement and the attached Commission Schedule (Exhibit "A") if either of the following occur:
 - during the Term, you enter into an agreement to sell the Property to a purchaser, whether procured by us, you or anyone else, and the sale of the Property subsequently closes (whether during or after the Term); or
 - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the "Post-Term"), the Property is sold to, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to any person or entity with whom, CBRE negotiated (either directly or through another broker or agent) or to whom the Property was submitted during the Term, or to any such person's or entity's successors, assigns, or affiliates ("Existing Prospect"), or you enter into an agreement to sell the Property to an Existing Prospect and the sale of the Property subsequently closes (whether during or after the Post-Term). You agree that CBRE is authorized to continue negotiations with Existing Prospects, and we will submit to you a list of such Existing Prospects no later than fifteen (15) business days following the expiration or termination of the Term; provided, however, that if a written offer has been submitted prior to said expiration or termination date, then it shall not be necessary to include the offeror's name on the list.
 - (c) the obligation to pay a commission in accordance with this Agreement shall be solely that of the receivership estate that holds the Property, subject to approval by the District Court. Thomas Hebrank, in his personal capacity, is not a party to this Agreement and shall have no duties or obligations to CBRE under this Agreement.
- 10. You agree that we are authorized to cooperate with and, if appropriate, share our commission with "Cooperating Brokers" (such as a broker representing a purchaser). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to us prior to the execution of the transaction; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement. Market conditions may exist whereby the Cooperating Broker receives an above-standard fee and/or broker bonus. If so, our

commission shall be increased by (and you agree to pay) an amount such that we receive no less than 50% of the total fee in accordance with the Commission Schedule.

- 11. The Listing Team are your designated agents to the exclusion of all of CBRE's other licensees. All other CBRE licensees shall be referred to as "Non-Listing Team Agents" and shall be considered Cooperating Brokers. You acknowledge that we are an international brokerage firm and that we may represent prospective purchasers. You hereby consent to our representation of such prospective purchasers by Non-Listing Team Agents. You acknowledge that Non-Listing Team Agents owe duties of trust, confidence and loyalty exclusively to their clients. In the event that the Listing Team, or any member thereof, has a potential conflict of interest (such as a Listing Team member proposing to act for a potential purchaser), then we will disclose the conflict to you and obtain your written consent to the conflict in advance of any negotiations with that potential purchaser. The Listing Team and Non-Listing Team Agents shall not disclose the confidential information of one principal to the other.
- 12. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform, and has not made any investigation of the physical conditions or zoning issues relating to the Property. You agree to disclose to us and allow us to disclose to prospective purchasers everything you know (after reasonable inquiry by you) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
- 13. If the Property becomes the subject of foreclosure proceedings before the expiration of the Term, then in our sole and absolute discretion we may: (a) suspend this Agreement until we may elect to reinstate it or (b) terminate this Agreement and enter into a listing agreement with any receiver, party initiating foreclosure, party purchasing the Property at a foreclosure sale, or any other third party.
- While we are confident that our relationship will be mutually satisfactory, if there is a dispute between us, then we agree to resolve it subject to the following:
 - (a) If either party institutes a legal proceeding against the other party relating to this Agreement, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses. All past due amounts shall bear interest at twelve percent (12%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages;
 - (b) WHERE PERMITTED BY LAW, WE EACH KNOWINGLY AGREE TO WAIVE ANY AND ALL RIGHTS TO HAVE A DISPUTE ON ANY MATTER RELATING TO, OR ARISING FROM THIS AGREEMENT DETERMINED BY A JURY; AND
- 15. You and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders. Further, we both acknowledge that: (a) it is illegal to refuse to display or lease or sell to or from any person because of one's membership in a protected class, *e.g.*: race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status or any other class protected by applicable law and (b) the Property will be offered in compliance with all applicable anti-discrimination laws.
- 16. This Agreement is our entire agreement and supersedes all prior understandings between us regarding this engagement and is governed by the laws of the state where the Property is located, without regard to its conflict of laws principles. This Agreement will be binding and inure to the benefit of our lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both you and CBRE. Neither party's failure to

exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of our rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. We each agree that we have both participated in the negotiation and drafting of this Agreement. You acknowledge that the person signing this Agreement on your behalf has your full authority to execute it. This Agreement will be binding whether signatures are exchanged electronically or by hand, by mail, by fax, by electronic transfer or image, by photocopy or in counterparts.

Thank you again for this opportunity. We look forward to working with you.

Very truly yours,

CBRE, Inc. **Licensed Real Estate Broker**

By:

Name: Mr. Craig Henig Title: Designated Broker

AGREED:

THOMAS HEBRANK, RECEIVER E3 ADVISORS FOR YUMA II - (DESERT VIEW CA GENERAL PTNR & SONORA VIEW CA GENERAL PTNR & MESA VIEW CA GENERAL PTNR &ROAD RUNNER CA GENERAL PTNR

By:

Name: Geno Rodriguez

Title: Managing Director, E3 Advisors 401 West "A" Street, Suite 1830 San Diego, CA 92101 (619)567-7223 (619)807-9867 grodriguez@ethreeadvisors.com

CA Bureau of Real Estate # 01841759

EXHIBIT A - Commission Schedule

- A. Sale. As to sales of real property, CBRE's commission shall be Ten percent (10.0%) of the gross sales price. Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities. CBRE acknowledges that its commission is subject to approval by the District Court and agrees to accept such amount as the District Court shall approve as full and complete compensations for its services. CBRE agrees not to seek any further commission or compensation from the Receiver or the receivership estate. In the event this sale is in connection with a "build to suit" transaction, the commission shall be calculated on the gross sales price plus the gross construction cost of the building to be constructed on the Property. The commission shall be earned and paid on the date title to the Property is transferred to the purchaser; provided, however, that if the transaction involves an installment contract, then payment shall be made upon execution of such contract. In the event you contribute or convey the Property or any interest therein to a corporation, joint venture, partnership, or other business entity, the commission shall be calculated on the fair market value of the Property or the portion thereof that is so transferred, and shall be earned and paid at the time of the contribution or transfer. If you are a partnership, corporation, or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid at the time of the transfer.
 - 1. *Definitions.* Under this Agreement the terms "sell," "sale" or "sold" shall mean: (a) an exchange of the Property; (b) the granting of an option to purchase the Property; or (c) any other transfer, conveyance or contribution of a controlling interest in the Property or in the entity which owns the Property, including, but not limited to, situations where you are a corporation, partnership or other business entity and a controlling interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property.
 - 2. Option to Purchase. If you grant an option to purchase the Property, you agree to pay us a commission in accordance with this Commission Schedule, on the price paid for the option and for any extensions when you receive payment for any such option and/or extensions. If the option is exercised, whether during the Term or after, we will earn a further commission in accordance with this Agreement. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by you to us on account of the option payments will be credited against the commission payable to us on account of the exercise of the option.

EXHIBIT C



September 30, 2016

BY ELECTRONIC MAIL

Mr. Geno Rodriguez Managing Director E3 Advisors 401 West "A" Street, Suite 1830 San Diego, CA 92101

Re: Exclusive Sales Listing Agreement

Yuma III - (Mountain View ET AL, Ocotillo, Cactus Ridge, Mohawk Mountain)

Parcels: 188-14-001, 4, 5; 200-08-009

Located In Yuma County, Arizona ("Property")

Dear Mr. Rodriguez:

Thank you for selecting CBRE, Inc. ("CBRE") to represent Thomas Hebrank in his capacity as District Court-appointed Receiver (referred to herein as "you"). The terms of our engagement are contained in this agreement ("Agreement").

- 1. This Agreement shall terminate one year after the above date on September 30, 2017 ("Term").
- 2. During the Term, you appoint us your exclusive agent with the right to list and market the Property for sale and to negotiate agreements for the sale of the Property (which includes portions thereof). If, during the Term, the Property is removed from the market because escrow is opened or an offer to purchase the Property is accepted, and if the sale is not consummated for any reason, then the Term will be extended by the longer of the number of days that (i) escrow was open or (ii) the Property was removed from the market, but in no event more than 180 calendar days in the aggregate.
- 3. We will commit the appropriate number of qualified and licensed professionals to this engagement. Your "Listing Team" is comprised of Matt Marschall/Dave Headstream/Jason Hyams/Mike Ratliff. We will have the right to change members of the Listing Team as necessary and appropriate. The Listing Team shall owe you duties of trust, confidence and loyalty.
- 4. We will offer the Property at an initial listing price of \$350,000. However, it is your right to: (a) approve, modify, reject or disapprove any and all proposals and offers as well as any prospective purchasers for the Property and (b) adjust the terms and conditions of any offer made, including but not limited to, adjusting the Property's listing price.
- 5. We will work with you to create and implement a sales strategy for the Property, including preparation of appropriate and customary marketing materials (such as an offering brochure). In developing the strategy, we will rely on (without requirement to verify) any information provided to us by you, your agents, affiliates and/or any of the Property's managers. However, we will not issue any written marketing materials without your prior written approval. Further, you authorize us to place one or more signs on the Property as we deem appropriate.
- 6. The success of this engagement relies, in part, on cooperation and communication between us. Therefore, you agree to: (i) provide us with all available information to assist us in marketing the

- Property; (ii) immediately refer to us all purchase inquiries for the Property; and (iii) conduct all negotiations with prospective purchasers exclusively through us.
- 7. You represent that you either are the fee owner of or otherwise have control over the Property. You further represent that, subject to approval by the District Court, you have full authority to enter into this Agreement without violating anyone else's rights, or any other agreements or contractual obligations.
- 8. We will present all offers to you and assist you in developing and negotiating counteroffers until a purchase and sale agreement ("PSA") is signed and all contingencies are satisfied or waived. You agree that you and/or your legal counsel are solely responsible for determining the legal sufficiency of the documents related to this engagement and the tax consequences of any transaction. You are also responsible for evaluating any offers and determining with whom you will negotiate or enter into a transaction. While we may assist you in gathering reasonably available information, we cannot represent or warrant the creditworthiness of any prospect and/or their ability to satisfy their obligations under a PSA. All final business and legal decisions shall be made solely by you. Notwithstanding any designation of us as "agent" in this Agreement, we will have no right, power, or authority to enter into any agreement with any prospective purchaser, real estate broker, or any other person in the name of, on behalf of, or otherwise binding upon you.
- 9. We will earn (and you agree to pay, subject to approval by the District Court) a commission in accordance with this Agreement and the attached Commission Schedule (Exhibit "A") if either of the following occur:
 - during the Term, you enter into an agreement to sell the Property to a purchaser, whether procured by us, you or anyone else, and the sale of the Property subsequently closes (whether during or after the Term); or
 - (b) within one hundred twenty (120) days after the expiration of the Term or after the Agreement otherwise terminates (the "Post-Term"), the Property is sold to, or negotiations continue, resume or commence and thereafter continue leading to a sale of the Property to any person or entity with whom, CBRE negotiated (either directly or through another broker or agent) or to whom the Property was submitted during the Term, or to any such person's or entity's successors, assigns, or affiliates ("Existing Prospect"), or you enter into an agreement to sell the Property to an Existing Prospect and the sale of the Property subsequently closes (whether during or after the Post-Term). You agree that CBRE is authorized to continue negotiations with Existing Prospects, and we will submit to you a list of such Existing Prospects no later than fifteen (15) business days following the expiration or termination of the Term; provided, however, that if a written offer has been submitted prior to said expiration or termination date, then it shall not be necessary to include the offeror's name on the list.
 - (c) the obligation to pay a commission in accordance with this Agreement shall be solely that of the receivership estate that holds the Property, subject to approval by the District Court. Thomas Hebrank, in his personal capacity, is not a party to this Agreement and shall have no duties or obligations to CBRE under this Agreement.
- 10. You agree that we are authorized to cooperate with and, if appropriate, share our commission with "Cooperating Brokers" (such as a broker representing a purchaser). We will be responsible for paying the fee or commission due to the Cooperating Broker (if any) provided the Cooperating Broker: (i) represents the prospective purchaser pursuant to a written agreement, a copy of which is furnished to us prior to the execution of the transaction; (ii) is properly licensed; and (iii) executes and delivers to us an acceptable cooperating brokerage agreement. Market conditions may exist whereby the Cooperating Broker receives an above-standard fee and/or broker bonus. If so, our commission shall be increased by (and you agree to pay) an amount such that we receive no less than 50% of the total fee in accordance with the Commission Schedule.

- 11. The Listing Team are your designated agents to the exclusion of all of CBRE's other licensees. All other CBRE licensees shall be referred to as "Non-Listing Team Agents" and shall be considered Cooperating Brokers. You acknowledge that we are an international brokerage firm and that we may represent prospective purchasers. You hereby consent to our representation of such prospective purchasers by Non-Listing Team Agents. You acknowledge that Non-Listing Team Agents owe duties of trust, confidence and loyalty exclusively to their clients. In the event that the Listing Team, or any member thereof, has a potential conflict of interest (such as a Listing Team member proposing to act for a potential purchaser), then we will disclose the conflict to you and obtain your written consent to the conflict in advance of any negotiations with that potential purchaser. The Listing Team and Non-Listing Team Agents shall not disclose the confidential information of one principal to the other.
- 12. Questions regarding environmental and zoning issues may arise during the course of our representation. CBRE is not obligated to perform, and has not made any investigation of the physical conditions or zoning issues relating to the Property. You agree to disclose to us and allow us to disclose to prospective purchasers everything you know (after reasonable inquiry by you) regarding present and future property issues including, but not limited to, structural, mechanical, hazardous materials, zoning and environmental matters affecting the Property and/or the Property's condition.
- 13. If the Property becomes the subject of foreclosure proceedings before the expiration of the Term, then in our sole and absolute discretion we may: (a) suspend this Agreement until we may elect to reinstate it or (b) terminate this Agreement and enter into a listing agreement with any receiver, party initiating foreclosure, party purchasing the Property at a foreclosure sale, or any other third party.
- While we are confident that our relationship will be mutually satisfactory, if there is a dispute between us, then we agree to resolve it subject to the following:
 - (a) If either party institutes a legal proceeding against the other party relating to this Agreement, the prevailing party shall recover from the non-prevailing party all of its (i) reasonable attorneys' fees and costs, (ii) expert-related fees and costs and (iii) other related expenses. All past due amounts shall bear interest at twelve percent (12%) per annum or the maximum rate permitted in the state in which the Property is located. No party will be entitled to punitive, special and/or consequential damages, and we each waive all rights to and claims for relief other than for compensatory damages;
 - (b) WHERE PERMITTED BY LAW, WE EACH KNOWINGLY AGREE TO WAIVE ANY AND ALL RIGHTS TO HAVE A DISPUTE ON ANY MATTER RELATING TO, OR ARISING FROM THIS AGREEMENT DETERMINED BY A JURY; AND.
 - (c) All disputes relating to this Agreement shall be resolved by the District Court in the pending action in which you were appointed Receiver and shall be subject to the exclusive jurisdiction of the District Court.
- 15. You and CBRE agree to comply with all applicable laws, regulations, codes, ordinances and administrative orders. Further, we both acknowledge that: (a) it is illegal to refuse to display or lease or sell to or from any person because of one's membership in a protected class, *e.g.*: race, color, religion, national origin, sex, ancestry, age, marital status, physical or mental handicap, familial status or any other class protected by applicable law and (b) the Property will be offered in compliance with all applicable anti-discrimination laws.
- 16. This Agreement is our entire agreement and supersedes all prior understandings between us regarding this engagement and is governed by the laws of the state where the Property is located, without regard to its conflict of laws principles. This Agreement will be binding and inure to the

benefit of our lawful representatives, heirs, successors, designees and assignees. It may not be altered or terminated except in a writing signed by both you and CBRE. Neither party's failure to exercise any of its rights under this Agreement will relieve the other party of its obligations hereunder. Nothing herein is or may be deemed a waiver or full statement of any of our rights or remedies, whether at law or in equity, all of which are expressly reserved. If any provision of this Agreement is unenforceable or void under applicable law, the remaining provisions will continue to be binding. This Agreement and the rights, interests or obligations created hereunder will not be assigned by either of the parties without the prior written consent of the other party. We each agree that we have both participated in the negotiation and drafting of this Agreement. You acknowledge that the person signing this Agreement on your behalf has your full authority to execute it. This Agreement will be binding whether signatures are exchanged electronically or by hand, by mail, by fax, by electronic transfer or image, by photocopy or in counterparts.

Thank you again for this opportunity. We look forward to working with you.

Very truly yours,

CBRE, Inc. Licensed Real Estate Broker

By:		
-		

Name: Mr. Craig Henig Title: Designated Broker

AGREED:

THOMAS HEBRANK, RECEIVER

By: _____

Name: Geno Rodriguez

Title: Managing Director, E3 Advisors 401 West "A" Street, Suite 1830 San Diego, CA 92101

(619)567-7223 (619)807-9867

grodriguez@ethreeadvisors.com

CA Bureau of Real Estate # 01841759

EXHIBIT A – Commission Schedule

- A. Sale. As to sales of real property, CBRE's commission shall be Ten percent (10.0%) of the gross sales price. Gross sales price shall include any and all consideration received or receivable, in whatever form, including but not limited to assumption or release of existing liabilities. CBRE acknowledges that its commission is subject to approval by the District Court and agrees to accept such amount as the District Court shall approve as full and complete compensations for its services. CBRE agrees not to seek any further commission or compensation from the Receiver or the receivership estate. In the event this sale is in connection with a "build to suit" transaction, the commission shall be calculated on the gross sales price plus the gross construction cost of the building to be constructed on the Property. The commission shall be earned and paid on the date title to the Property is transferred to the purchaser; provided, however, that if the transaction involves an installment contract, then payment shall be made upon execution of such contract. In the event you contribute or convey the Property or any interest therein to a corporation, joint venture, partnership, or other business entity, the commission shall be calculated on the fair market value of the Property or the portion thereof that is so transferred, and shall be earned and paid at the time of the contribution or transfer. If you are a partnership, corporation, or other business entity, and an interest in the partnership, corporation or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property, and applicable law does not prohibit the payment of a commission in connection with such sale or transfer, the commission shall be calculated on the fair market value of the Property, rather than the gross sales price, multiplied by the percentage of interest so transferred, and shall be paid at the time of the transfer.
 - 1. *Definitions.* Under this Agreement the terms "sell," "sale" or "sold" shall mean: (a) an exchange of the Property; (b) the granting of an option to purchase the Property; or (c) any other transfer, conveyance or contribution of a controlling interest in the Property or in the entity which owns the Property, including, but not limited to, situations where you are a corporation, partnership or other business entity and a controlling interest in such corporation, partnership or other business entity is transferred, whether by merger, outright purchase or otherwise, in lieu of a sale of the Property.
 - 2. Option to Purchase. If you grant an option to purchase the Property, you agree to pay us a commission in accordance with this Commission Schedule, on the price paid for the option and for any extensions when you receive payment for any such option and/or extensions. If the option is exercised, whether during the Term or after, we will earn a further commission in accordance with this Agreement. Notwithstanding the foregoing, to the extent that all or part of the price paid for the option or any extension thereof is applied to the sales price of the Property, then any commission previously paid by you to us on account of the option payments will be credited against the commission payable to us on account of the exercise of the option.

EXHIBIT D



THIS AGREEMENT made by and between First Financial Planning Corp. & NAI ALLIANCE CARSON CITY, hereinafter collectively referred to as "Owner," and "Broker."

Recitals:

- 1. Owner is the owner of that certain real property situated in Gardnerville, State of Nevada, commonly known as 1100 Sawmill Rd., and hereinafter referred to as the "Property."
- 2. Owner has been placed into receivership by the United States District Court for the Southern District of California ("Court") pursuant to orders entered in the case entitled Securities and Exchange Commission v. Louis V. Schooler, Case No. 12-CV-02164-GPC ("SEC Action"). Thomas Hebrank ("Receiver") is the Court-appointed Receiver for Owner and has been authorized by the Court to list the Properties for sale with a licensed broker.
- 3. Owner desires to sell the Property and, accordingly, Owner desires to grant to Broker the exclusive right to sell the Property in accordance with the provisions of this Agreement. Broker is a licensed for both businesses and real estate sales in the State of Nevada, and desires to have the exclusive authority to sell the Property in accordance with the provisions of and for the compensation provided for in this Agreement.

THEREFORE, Owner and Broker agree as follows:

- 1. Grant of Right. Owner hereby grants to Broker the exclusive right, commencing on Oct. 6, 2016 and expiring at Midnight on Oct. 5, 2017 to sell the Property. Either party shall have the right to terminate this agreement upon written notice to the other party if the terminating party is unsatisfied with the performance of the other party.
- 2. Owner shall provide to Broker all applicable information regarding the Property which they have within their possession within ten (10) days of the listing of the Property.
- 3. Terms of Sale: The offering price for the Property shall be \$0.75/SF, or \$2,715,857.00 for the 83.13 acre parcel.
- 4. Exclusive Right to Sell Listing. This Agreement is commonly known in the trade as an exclusive right to sell listing and if, during the period of this Agreement the sale of the Property is consummated through the efforts of Broker or through the efforts of other agents, or of anyone else, including Owner, compensation shall be paid to Broker as set forth in this Agreement.
- 5. Compensation of Broker. Law does not fix the amount or rate of real estate commissions. They are set by each Broker individually and may be negotiable between the Owner and Broker. Owner agrees to pay Broker as compensation for services rendered a fee of six (6%) per cent of the sales price, which shall be payable upon the close of escrow and entry of a Court order in the SEC Action authorizing the Receiver to pay such a fee.

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Initials			

- 6. Subject to Court approval, compensation to Broker shall be due in the event that an agreement to sell the Property is made by Owner within ninety (90) days after the termination of this Agreement to persons with whom Broker had shared the property information with during the listing period; provided that the names of such persons are submitted in writing to Owner within fourteen (14) days of termination of this Agreement.
- 7. Cooperation of Owner. Owner agrees to make available to Broker and prospective lessees all data, records, and documents pertaining to the Property, to allow Broker, or any other broker with whom Broker chooses to cooperate, to show the Property at reasonable times and upon reasonable notice, and to place an "Available" sign upon the vacant portion of the Property. Owner agrees to commit no act which might tend to obstruct the Broker's performance hereunder.
- 8. Owner's Representations. Owner warrants the accuracy of the information furnished herein with respect to the above-described Property and agrees to hold the Broker harmless from any liabilities or damages arising out of incorrect or undisclosed information. Owner agrees to notify Broker within seven (7) days of any changes in rentals and/or expenses of the Property. The undersigned Owner warrants further that he is the owner of record of the Property or has the authority to execute this Agreement.
- 9. Broker Indemnified. If suit is brought to collect the compensation of Broker, or if Broker successfully defends any action brought against Broker by Owner relating to this authorization or under any lease agreement relating to said Property, Owner agrees to pay all costs incurred by Broker in connection with such action, including a reasonable attorney's fee.
- 10. Owner understands and acknowledges that Broker will submit the Property's listing information to various internet databases and website to advertise the property which Broker participates in unless Seller instructs Broker to exclude the listing. Seller further understands that this listing information will be disseminated to internet sites as well as online providers and that such sites are generally available to the public, some of which provide a commentary/review section (or blog) or an Automated Valuation Model, neither of which Broker has any control over. Broker shall not guarantee the accuracy of the information contained in these websites.

In consideration of the execution hereof, the undersigned Broker agrees to use diligence in effecting a sale of the Property.

Dated:	
Signed:	
Andie Wilson, CCIM and Brad Bonkowski, CCIM	
NAI ALLIANCE CARSON CITY	
504 E. Musser #202, Carson City NV 89701	
(775) 721-2980 / e-mail: Brandie.LLC@prodigy.net	
Owner_	
Thomas C. Hebrank, Receiver	Date Date
First Financial Planning Corp., 401 W. A Street, Suite 1830, S	an Diego, CA 92103

619-567-7223, grodriguez@ethreeadvisors.com

DUTIES OWED BY A NEVADA REAL ESTATE LICENSEE

This form does not constitute a contract for services nor an agreement to pay compensation

In Nevada, a real estate licensee is required to provide a form setting forth the duties owed by the licensee to:

- a) Each party for whom the licensee is acting as an agent in the real estate transaction, and
- b) Each unrepresented party to the real estate transaction, if any.

Licensee: The licensee in the real estate transaction is Andie Wilson & Brad Bonkowski							
Whose license number is 144325/1001356 . The licensee is acting for: Thomas C. Hebrank, Receiver, First Financial Planning Corp.							
who is/are the X Seller/Landlord; Buyer/Tenant.							
Broker: The Broker is Brad Bonkowski ,							
whose Company is NAI ALLIANCE CARSON CITY							

Licensee's Duties Owed to All Parties:

- 1. Not deal with any party to a real estate transaction in a manner which is deceitful, fraudulent or dishonest.
- 2. Exercise reasonable skill and care with respect to all parties to the real estate transaction.
- 3. Disclose to each party to the real estate transaction as soon as practicable:
 - a) Any material and relevant facts, data or information which licensee knows, or with reasonable care and diligence the licensee should know, about the property.
 - b) Each source from which licensee will receive compensation.
- 4. Abide by all other duties, responsibilities and obligations required of the licensee in law or regulations.

Licensee's Duties Owed to the Client:

- A. Nevada real estate licensee shall:
 - 1. Exercise reasonable skill and care to carry out the terms of the brokerage agreement and the licensee's duties in the brokerage agreement.
 - 2. Not disclose, except to the broker, confidential information relating to a client for 1 year after the revocation or termination of the brokerage agreement, unless Licensee is required to do so by court order or the client gives written permission.
 - 3. Seek a sale, purchase, option, rental or lease of real property at the price and terms stated in the brokerage agreement or at a price acceptable to the client;
 - 4. Present all offers made to, or by the client as soon as practicable, unless the client chooses to waive the duty of the licensee to present all offers and signs a waiver of the duty on a form prescribed by the Division;
 - 5. Disclose to the client material facts of which the licensee has knowledge concerning the real estate transaction;
 - 6. Advise the client to obtain advice from an expert relating to matters which are beyond the expertise of the Licensee; and
 - 7. Account for all money and property licensee receives in which the client may have an interest.

Duties Owed By a broker who assigns different licensees affiliated with the brokerage to separate parties.

Each licensee shall not disclose, except to the real estate broker, confidential information relating to client.

Licensee Acting for Both Parties:	You understand that the licensee _		may	or	may	not,	in the	e future	act
		(Client in	nit)		(Client init)				

for two or more parties who have interests adverse to each other. In acting for these parties, the licensee has a conflict of interest. Before a licensee may act for two or more parties, the licensee must give you a "Consent To Act" form to sign.

I/We acknowledge receipt of a copy of this list of licensee duties, and have read and understand this disclosure						
	<u>Date</u>	Time	Buyer / Tenant	Date	Тіте	
Seller / Landlord	Date	Time	Buyer / Tenant	Date	Time	

Approved Nevada Real Estate Division Replaces all previous versions

Page 1 of 1

525 Revised 10/25/07