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10 Attorneys for Receiver
11 THOMAS C. HEBRANK

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14
15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 LOUIS V. SCHOOLER and FIRST
19 FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
20 FINANCIAL PLANNING
CORPORATION,

21 Defendants.
22

Case No. 3:12-cv-02164-GPC-JMA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
APPROVAL OF SALE OF
LV KADE PROPERTY AND
AUTHORITY TO PAY BROKER'S
COMMISSION**

Date: October 20, 2017
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 Thomas C. Hebrank ("Receiver"), Court-appointed receiver for First Financial
2 Planning Corporation d/b/a Western Financial Planning Corporation ("Western"), its
3 subsidiaries and the General Partnerships listed in Schedule 1 to the Preliminary
4 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities"),
5 submits this Memorandum of Points and Authorities in Support of his concurrently-
6 filed Motion for Approval of Sale of LV Kade Property and Authority to Pay
7 Broker's Commission ("Motion").

8 **I. BACKGROUND FACTS**

9 The properties in the receivership include approximately 57 acres of
10 undeveloped land known as the LV Kade property, which is located in the City of
11 North Las Vegas, Clark County, Nevada ("Property"). The Property is held by four
12 General Partnerships which are included in the receivership – Hollywood Partners,
13 BLA Partners, Checkered Flag Partners, and Victory Lap Partners, all California
14 general partnerships. Declaration of Thomas Hebrank filed herewith ("Hebrank
15 Decl."), ¶ 2.

16 Since the Receiver was appointed, several valuations of the Property have
17 been done. In 2013, with the Court's authorization, the Receiver obtained an
18 appraisal of the Property estimating the value to be \$4,110,000. Dkt. No. 1405,
19 Ex. A. Two years later, in 2015, the Broker Opinion of Value (BOV)¹ obtained by
20 the Receiver for the Property was \$8,260,000. *Id.* In early 2016, Xpera Group
21 valued the property between \$8,690,220 and \$11,173,140. *Id.* Later in 2016, a
22 consultant engaged by the Receiver with the Court's authorization, CBRE, estimated
23 the value to be between \$7,450,000 and \$9,310,000. *Id.*

24 On January 8, 2016, with the four General Partnerships unable to pay the
25 expenses of holding the Property, including property taxes which had already
26

27 ¹ At the time that 2015 appraisals were being obtained, the General Partnerships
28 that hold title to the Property did not have sufficient funds to pay for an
appraisal, so, with the Court's permission, the Receiver obtained a BOV in lieu of
an appraisal. Dkt. Nos. 1014, 1017.

1 become delinquent, the Receiver recommended the Property be listed for sale with
2 Colliers International, a licensed broker located in Las Vegas, Nevada ("Broker").
3 Dkt. No. 1166. On January 14, 2016, the Court approved the Receiver's
4 recommendation. Dkt. No. 1168.

5 Broker promptly took steps to market the Property to potential buyers,
6 including listing the Property on widely used property listing services, LoopNet and
7 PropertyLine, starting on or about February 4, 2016. Broker also sent the listing to
8 approximately 2,400 broker and buyer contacts in the California and Nevada
9 commercial/industrial real estate markets and followed up with such contacts with
10 several reminder email blasts. Broker also made direct calls regarding the Property
11 to land owners, developers, and investors it knows in the Las Vegas area. Hebrank
12 Decl., ¶ 3.

13 In October 2016, Broker sent out a second marketing flyer to the same list of
14 broker/buyer contacts, along with a call for offers. In December 2016, the Receiver
15 received two offers for the Property, one for \$8,250,000 and one for \$8,500,000.
16 Pursuant to the Modified Orderly Sale Process, the Receiver sent notice of the offers
17 to investors, consulted with Broker, and asked the offerors to submit a best and final
18 offer. After further offers were submitted from the two offerors, the highest and
19 best offer was determined to be \$8,750,000. No substantive responses to the notice
20 to investors were received. Hebrank Decl., ¶ 4.

21 Negotiations with the offeror at \$8,750,000 ensued, but the parties did not
22 agree on terms of a purchase and sale agreement. While such negotiations were
23 taking place, the Receiver received an offer from Prologis L.P. ("Buyer") in the
24 amount of \$8,825,000. When negotiations with the initial offeror stalled, the
25 Receiver entered into negotiations with Buyer. When the Receiver and Buyer were
26 close to executing a purchase and sale agreement, the initial offeror increased its
27 offer to \$9,500,000. Because the Receiver had agreed on terms of a purchase and
28 sale agreement with Buyer, but had been unable to agree on terms with the initial

1 offeror, he gave Buyer the opportunity to match the \$9,500,000 offer and sign the
2 purchase and sale agreement at that amount. Buyer agreed to do so and the parties
3 executed the Purchase and Sale Agreement and Joint Escrow Instructions attached
4 to the Hebrank Declaration as Exhibit A ("Agreement"). The Receiver also advised
5 the initial offeror that the sale is subject to overbid and that it would have the
6 opportunity to participate in the overbid/auction process. After three extensions of
7 the contingency removal deadline in the Agreement and certain amendments to the
8 Agreement, Buyer removed contingencies. Hebrank Decl., ¶ 5.

9 Therefore, in accordance with the Court-approved Modified Orderly Sale
10 Process, the Receiver hereby requests approval of the sale to Buyer, pursuant to the
11 Agreement. The Receiver will follow the publication of notice, qualification of
12 bidders, and public auction steps outlined below in advance of the hearing date. In
13 the event one or more prospective purchasers qualify themselves to bid, the auction
14 will be conducted by the Receiver and he will then file a notice advising the Court
15 of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
16 confirming the sale. In the event no prospective purchasers qualify themselves to
17 bid, the Receiver will notify the Court and seek entry of an order approving the sale
18 to Buyer. Hebrank Decl., ¶ 6.

19 II. PROPOSED SALE

20 The key terms of the proposed purchase and sale agreement ("Agreement")
21 are summarized as follows:

22 **Purchase Price.** The purchase price is \$9,500,000, which is to be paid in all
23 cash.

24 **Deposit.** Buyer has deposited \$2,000,000 into escrow.

25 **Closing Date.** Closing shall occur within 65 days of entry of the Court order
26 approving the sale.

27 **As Is.** The sale is on an "as is, where is" basis.
28

1 **Broker's Commission.** Pursuant to the Court-approved listing agreement,
2 Broker is to be paid a commission of 6% of the purchase price, which is to be split
3 with Buyer's broker. If the sale to Buyer is approved, the commission owed will be
4 \$570,000. If an overbid is received and an auction takes place, the commission
5 would be adjusted to 6% of the final purchase price.

6 **III. INVESTOR FEEDBACK**

7 As noted above, pursuant to the Modified Orderly Sale Procedures (Dkt.
8 No. 1309), the Receiver provided notice of the offer from the initial offeror to
9 investors via email shortly after it was received. No substantive responses were
10 received. Hebrank Decl., ¶ 7.

11 **IV. LEGAL STANDARD**

12 "The power of a district court to impose a receivership or grant other forms of
13 ancillary relief does not in the first instance depend on a statutory grant of power
14 from the securities laws. Rather, the authority derives from the inherent power of a
15 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
16 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
17 and efficient administration of the estate by the district court for the benefit of
18 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
19 of a receiver is authorized by the broad equitable powers of the court, any
20 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
21 953 F.2d 1560, 1569 (11th Cir. 1992).

22 District courts have the broad power of a court of equity to determine the
23 appropriate action in the administration and supervision of an equity receivership.
24 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
25 Circuit explained:

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1 A district court's power to supervise an equity
2 receivership and to determine the appropriate action to be
3 taken in the administration of the receivership is
4 extremely broad. The district court has broad powers and
5 wide discretion to determine the appropriate relief in an
6 equity receivership. The basis for this broad deference to
the district court's supervisory role in equity
receiverships arises out of the fact that most receiverships
involve multiple parties and complex transactions. A
district court's decision concerning the supervision of an
equitable receivership is reviewed for abuse of discretion.

7 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
8 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
9 and 'we generally uphold reasonable procedures instituted by the district court that
10 serve th[e] purpose' of orderly and efficient administration of the receivership for
11 the benefit of creditors."). Accordingly, the Court has broad discretion in the
12 administration of the receivership estate and the disposition of receivership assets.

13 **A. The Court's Authority to Approve Sale**

14 It is widely accepted that a court of equity having custody and control of
15 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*
16 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
17 and wide discretion to determine relief in an equity receivership). "The power of
18 sale necessarily follows the power to take possession and control of and to preserve
19 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
20 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*
21 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
22 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of equity
23 orders property in its custody to be sold, the court itself as vendor confirms the title
24 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of
25 Receivers § 487 (3d ed. 1992).

26 "A court of equity, under proper circumstances, has the power to order a
27 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
28 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing

1 Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a
2 federal court is not limited or deprived of any of its equity powers by state statute.
3 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
4 (state statute allowing time to redeem property after a foreclosure sale not applicable
5 in a receivership sale).

6 Generally, when a court-appointed receiver is involved, the receiver, as agent
7 for the court, should conduct the sale of the receivership property. *Blakely Airport*
8 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
9 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
10 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
11 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491
12 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
13 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d
14 354, 357 (9th Cir. 1925).

15 **B. 28 U.S.C. § 2001**

16 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
17 real property under subsection (a) and specific requirements for private sales of real
18 property under subsection (b). Although both involve unnecessary cost and delay,
19 the cost and delay of a public sale are significantly less than those for a private sale.
20 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)
21 ("Section 2001 sets out two possible courses of action: (1) property may be sold in
22 public sale; or (2) property may be sold in a private sale, provided that three separate
23 appraisals have been conducted, the terms are published in a circulated newspaper
24 ten days prior to sale, and the sale price is no less than two-thirds of the valued
25 price."). Therefore, by proceeding under Section 2001(a), the receivership estate
26 can avoid the significant costs and delay of (a) the Court having to appoint three
27 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

28

1 The requirements of a public sale under Section 2001(a) are that notice of the
2 sale be published as proscribed by Section 2002 and a public auction be held at the
3 courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*
4 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015); *SEC v.*
5 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007). In terms of
6 publication of notice, Section 2002 provides:

7 A public sale of realty or interest therein under any order,
8 judgment or decree of any court of the United States shall
9 not be made without notice published once a week for at
10 least four weeks prior to the sale in at least one newspaper
regularly issued and of general circulation in the county,
state, or judicial district of the United States wherein the
realty is situated.

11 If such realty is situated in more than one county, state,
12 district or circuit, such notice shall be published in one or
13 more of the counties, states, or districts wherein it is
14 situated, as the court directs. The notice shall be
substantially in such form and contain such description of
the property by reference or otherwise as the court
approves. The court may direct that the publication be
made in other newspapers.

15 This section shall not apply to sales and proceedings under
16 Title 11 or by receivers or conservators of banks appointed
17 by the Comptroller of the Currency.

18 The notice of sale is sufficient if it describes the property and the time, place,
19 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
20 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
21 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
22 binding offer to purchase the [property]; and (ii) demonstrate . . ., to the satisfaction
23 of the Receiver, that it has the current ability to consummate the purchase of the
24 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
25 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

26 **V. DISCUSSION**

27 The proposed sale to Buyer pursuant to the Agreement is in the best interests
28 of the receivership estate. With the assistance of Broker, the Property has been fully

1 exposed to the market. The proposed purchase price exceeds the 2015 appraised
2 value of the Property (\$8,260,000) by a significant margin, is consistent with the
3 Xpera Group valuation range (\$8,690,220 to \$11,173,140), and exceeds the CBRE
4 valuation range (\$7,450,000 to \$9,310,000). Dkt. No. 1405, Exh. A.

5 Moreover, the proposed sale is subject to overbid to further ensure the highest
6 and best price is obtained. The Receiver proposes to conduct a public auction
7 consistent with the requirements of Section 2001(a). Specifically, the Receiver will
8 publish the following notice of the sale once a week for four weeks in the Las Vegas
9 Review-Journal:

10 In the action pending in U.S. District Court for the Southern
11 District of California, Case No. 12-CV-2164-GPC-JMA,
12 Securities and Exchange Commission v. Louis V. Schooler et
13 al., notice is hereby given that the court-appointed receiver will
14 conduct a public auction for the undeveloped real property with
15 APN 123-34-601-001, located in the City of North Las Vegas,
16 Clark County, Nevada. Sale is subject to Court confirmation
17 after the auction is held. Minimum bid price is \$9,600,000.
18 The auction will take place on August 31, 2017, at 1:30 p.m. in
19 front of the entrance to the United States Courthouse, 221 W.
20 Broadway, San Diego, California. To be allowed to participate
in the auction, prospective purchasers must meet certain bid
qualification requirements, including submitting a signed
purchase and sale agreement, an earnest money deposit of
\$2,000,000, and proof of funds. All bidders must be qualified
by 5:00 p.m. PST on August 28, 2017, by submitting the
required materials to the receiver at 401 W. A Street,
Suite 1830, San Diego, California, 92101. If interested in
qualifying as a bidder, please contact Geno Rodriguez at
(619) 567-7223 or grodriguez@ethreadvisors.com or
Thomas C. Hebrank, at thebrank@ethreadvisors.com.

21 In order to conduct an orderly auction and provide sufficient time for the
22 publication of notices discussed above, the Receiver will require bidders to complete
23 the above steps by August 28, 2017 ("Bid Qualification Deadline"), and conduct the
24 live public auction on August 31, 2017, immediately in front of the courthouse.

25 The Receiver will inform all interested persons, including the initial offeror
26 discussed above, of the opportunity to overbid at the public auction, provided they
27 qualify themselves to bid by the Bid Qualification Deadline by (a) signing a
28 purchase and sale agreement for the properties on the same terms and conditions as

1 Buyer, but with a purchase price of at least \$9,600,000, (b) providing the Receiver
2 with an earnest money deposit of \$2,000,000, and (c) providing proof of funds
3 necessary to close the sale transaction in the form of a current bank statement,
4 cashier's check delivered to the Receiver, or other evidence deemed sufficient by the
5 Receiver.²

6 In the event one or more prospective purchasers qualify themselves to bid, the
7 auction will be conducted by the Receiver as noted above and bids will be allowed
8 in increments of \$50,000. The Receiver will then file a notice advising the Court of
9 the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming
10 the sale. Earnest money deposits provided by bidders who are unsuccessful will be
11 promptly returned to them. In the event no prospective purchasers qualify
12 themselves to bid by the Bid Qualification Deadline, the Receiver will notify the
13 Court and seek entry of an order approving the sale to Buyer.

14 To assist in the closing of the transaction and in Buyer obtaining the title
15 insurance policy provided for the Agreement, the Receiver requests that the sale
16 order specifically provide that any claims or interests the GPs or investors have with
17 respect to the Property be transferred to the proceeds of the sale at closing. Such
18 relief is consistent with the Court's order approving the One Pot Approach, the
19 pooling of receivership estate assets, and the *pro rata* distribution of all receivership
20 estate assets, including the proceeds from sales of all properties, to all investors with
21 allowed claims. Dkt. Nos. 1181-1, 1304. As a result of those rulings, GPs and their
22 investors have claims to the receivership estate as a whole, but no individual
23 properties or assets. Moreover, District Courts have discretion to order that
24 encumbrances or interests in receivership real property be transferred to the sale
25
26

27 ² In the event an investor or group of investors seeks to qualify to overbid, the
28 Receiver will allow the investor(s) to include their projected distributions under
the approved One Pot Approach in their bid.

1 proceeds in connection with approval of sales. *See SEC v. American Capital*
2 *Investments, Inc.*, 98 F.3d 1133, 1138, 1146 (9th Cir. 1996).

3 Finally, with respect to Broker's commission, Broker has worked diligently to
4 broadly advertise the Property for sale and market the Property to prospective
5 purchasers, including to potential overbidders after the Agreement was signed. The
6 listing agreement was approved as being consistent with industry standards for
7 commissions paid to brokers for sales of undeveloped land. Accordingly, the
8 Receiver should be authorized to pay Broker the commission amount in accordance
9 with the listing agreement. Hebrank Decl., ¶ 8.

10 **VI. CONCLUSION**

11 For the reasons discussed above, the Receiver requests (a) approval of the sale
12 of the Property to Buyer pursuant to the Agreement attached to the Hebrank
13 Declaration as Exhibit A, including amendments thereto, (b) authority to take all
14 steps necessary to close the sale, and (c) authority to pay Broker's commission as
15 described above.

16
17 Dated: August 18, 2017

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

18
19 By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS C. HEBRANK

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10 Attorneys for Receiver
11 THOMAS C. HEBRANK

12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

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15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

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18 LOUIS V. SCHOOLER and FIRST
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CORPORATION d/b/a WESTERN
20 FINANCIAL PLANNING
CORPORATION,

21 Defendants.
22

Case No. 3:12-cv-02164-GPC-JMA

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
MOTION FOR APPROVAL OF
SALE OF LV KADE PROPERTY
AND AUTHORITY TO PAY
BROKER'S COMMISSION**

Date: October 20, 2017
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 I, Thomas C. Hebrank, declare:

2 1. I am the Court-appointed receiver for First Financial Planning
3 Corporation d/b/a Western Financial Planning Corporation ("Western"), its
4 subsidiaries, and the General Partnerships listed on Schedule 1 to the Preliminary
5 Injunction Order entered on March 13, 2013 (collectively, "Receivership Entities").
6 I make this declaration in support of my Motion for Approval of Sale of LV Kade
7 Property and Authority to Pay Broker's Commission ("Motion"). I have personal
8 knowledge of the facts stated herein, and if called upon to do so, I could and would
9 personally and competently testify to them.

10 2. The properties in the receivership include approximately 57 acres of
11 undeveloped land known as the LV Kade property, which is located in the City of
12 North Las Vegas, Clark County, Nevada ("Property"). The Property is held by four
13 General Partnerships which are included in the receivership – Hollywood Partners,
14 BLA Partners, Checkered Flag Partners, and Victory Lap Partners, all California
15 general partnerships.

16 3. With authorization from the Court, I engaged Colliers International
17 ("Broker") to market the Property for sale. Broker promptly took steps to market
18 the Property to potential buyers, including listing the Property on widely used
19 property listing services, LoopNet and PropertyLine, starting on or about
20 February 4, 2016. Broker also sent the listing to approximately 2,400 broker and
21 buyer contacts in the California and Nevada commercial/industrial real estate
22 markets and followed up with such contacts with several reminder email blasts.
23 Broker also made direct calls regarding the Property to land owners, developers, and
24 investors it knows in the Las Vegas area.

25 4. In October 2016, Broker sent out a second marketing flyer to the same
26 list of broker/buyer contacts, along with a call for offers. In December 2016, I
27 received two offers for the Property, one for \$8,250,000 and one for \$8,500,000.
28 Pursuant to the Modified Orderly Sale Process, I sent notice of the offers to

1 investors, consulted with Broker, and asked the offerors to submit a best and final
2 offer. After further offers were submitted from the two offerors, the highest and
3 best offer was determined to be \$8,750,000. No substantive responses to the notice
4 to investors were received.

5 5. Negotiations with the offeror at \$8,750,000 ensued, but the parties did
6 not agree on terms of a purchase and sale agreement. While such negotiations were
7 taking place, the Receiver received an offer from Prologis L.P. ("Buyer") in the
8 amount of \$8,825,000. When negotiations with the initial offeror stalled, I entered
9 into negotiations with Buyer. When the Buyer and I were close to executing a
10 purchase and sale agreement, the initial offeror increased its offer to \$9,500,000.
11 Because I had agreed on terms of a purchase and sale agreement with Buyer, but had
12 been unable to agree on terms with the initial offeror, I gave Buyer the opportunity
13 to match the \$9,500,000 offer and sign the purchase and sale agreement at that
14 amount. Buyer agreed to do so and we executed the Purchase and Sale Agreement
15 and Joint Escrow Instructions attached hereto as Exhibit A ("Agreement"). I also
16 advised the initial offeror that the sale is subject to overbid and that it would have
17 the opportunity to participate in the overbid/auction process. After three extensions
18 of the contingency removal deadline in the Agreement and certain amendments to
19 the Agreement, Buyer removed contingencies.

20 6. In accordance with the Court-approved Modified Orderly Sale Process,
21 I hereby request approval of the sale to Buyer, pursuant to the Agreement. I will
22 follow the publication of notice, qualification of bidders, and public auction steps
23 outlined in the Motion in advance of the hearing date. In the event one or more
24 prospective purchasers qualify themselves to bid, I will conduct an auction and will
25 file a notice advising the Court of the result of the auction (*i.e.*, the highest bid) and
26 seek entry of an order confirming the sale. In the event no prospective purchasers
27 qualify themselves to bid, I will notify the Court and seek entry of an order
28 approving the sale to Buyer.

1 7. As noted above, I provided notice of the offer from the initial offeror to
2 investors via email shortly after it was received. No substantive responses were
3 received.

4 8. With respect to Broker's commission, Broker has worked diligently to
5 broadly advertise the Property for sale and market the Property to prospective
6 purchasers, including to potential overbidders after the Agreement was signed. The
7 listing agreement was approved as being consistent with industry standards for
8 commissions paid to brokers for sales of undeveloped land. Accordingly, I request
9 authorization to pay Broker the commission amount in accordance with the listing
10 agreement.

11 I declare under penalty of perjury under the laws of the United States that the
12 foregoing is true and correct.

13 Executed this 18th day of August 2017, at San Diego, California.

14 
15 _____
16 THOMAS C. HEBRANK

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EXHIBIT INDEX

Exhibit A	Purchase and Sale Agreement and Joint Escrow Instructions	6
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EXHIBIT A

EXHIBIT A

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "**Agreement**") is entered into as of May 2, 2017 (the "**Effective Date**") by and between PROLOGIS, L.P., a Delaware limited partnership ("**Buyer**") and HOLLYWOOD PARTNERS, a California general partnership, BLA PARTNERS, a California general partnership, CHECKERED FLAG PARTNERS, a California general partnership, and VICTORY LAP PARTNERS, a California general partnership, (collectively, "**Seller**"), by and through Thomas C. Hebrank ("**Receiver**"), solely in his capacity as Receiver in the case entitled *Securities and Exchange Commission v. Louis V. Schooler and First Financial Planning Corporation d/b/a Western Financial Planning Corporation*, United States District Court for the Southern District of California (the "**Court**"), Case No. 3:12-CV-02164-GPC-JMA (the "**Receivership Action**").

**ARTICLE 1
PURCHASE AND SALE**

1.1 Agreement of Purchase and Sale. Pursuant to that certain Temporary Restraining Order and Orders (1) Freezing Assets, (2) Appointing a Temporary Receiver Over Western and the Entities that it Controls, (3) Prohibiting the Destruction of Documents, (4) Granting Expedited Recovery, and (5) Requiring Accountings, and an Order to Show Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver (the "**TRO**") entered on September 6, 2012 by the Court with respect to the Receivership Action, Receiver was appointed temporary receiver for Louis V. Schooler and First Financial Planning Corporation d/b/a Western Financial Planning Corporation, as "Defendants," and Seller and certain other entities managed by or in the possession of or control of the Defendants (collectively, the "**Receivership Entities**"). On March 13, 2013, the Court entered a Preliminary Injunction Order (the "**Preliminary Injunction**"), which included appointment of the Receiver on a permanent basis. Hereinafter, the TRO and the Preliminary Injunction shall be collectively referred to as the "**Orders**." Seller, as four (4) of the Receivership Entities, agrees to sell the Property (as defined below) to Buyer, and Buyer agrees to purchase the Property from Seller, subject to the terms and conditions set forth in this Agreement.

1.2 Property. For purposes of this Agreement, the "**Property**" shall mean and include in its present "AS-IS", "WHERE IS" condition, all of Seller's right, title and interest in and to the following:

(i) that certain land containing approximately 57 acres located at the southwestern corner of Las Vegas Boulevard and East Howdy Wells Avenue in an unincorporated portion of Clark County, Nevada, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Land**");

(ii) any and all rights, privileges and easements appurtenant to the Land and owned by Seller, including, without limitation, development rights, air rights, water, water rights, riparian rights and water stock relating to the Land and rights-of-way or other appurtenances used exclusively in connection with the beneficial use and enjoyment of the Land (collectively, the "**Appurtenances**");

(iii) subject to all improvements, fixtures, buildings and structures located on the Land and all on-site parking structures or spaces, if any (collectively, the "Improvements" and together with the Land, the "Real Property");

(iv) all accounts receivables, if any, which become due and payable after the Closing (defined below);

(v) all permits, licenses, registrations, certificates, variances, consents, authorizations, governmental approvals and other entitlements necessary for the ownership, use, operation or maintenance of the Real Property or otherwise relating in any way to the Real Property (the "Permits") to the extent such Permits are transferrable under applicable law; and

(vi) any warranty or guaranty rights relating to the Real Property (the "Warranties").

As used herein, "Property" does not include any of Seller's liabilities of any kind whatsoever (other than those specifically listed) including but not limited to: Seller's liabilities and obligations arising out of or resulting from the ownership of any of the Property before the Closing, including without limitation, all trade accounts payable incurred in the course of Seller's business prior to the Closing; Seller's liabilities and obligations for prorated taxes; Seller's liabilities and obligations arising out of or resulting from any failure by Seller to comply with any applicable law, judgment, or order; Seller's liabilities and obligations arising out of or resulting from any legal proceeding; Seller's liabilities and obligations to any of Seller's employees or consultants through the close of business on the Closing Date, whether or not the employee or consultants are hired by Buyer; Seller's liabilities and obligations to any current or former partner or officer of Seller or of any affiliate of Seller; Seller's liabilities and obligations under this Agreement; and Seller's liabilities and obligations arising out of or resulting from any act or omission of Seller after the Closing.

Receiver hereby discloses to Buyer that Receiver intends to enter into a Purchase and Sale Agreement and Joint Escrow Instructions with the City of Las Vegas (the "City") following the Effective Date but prior to the Close of Escrow (the "City Easement Agreement"), pursuant to which Seller shall grant certain rights to the City for the construction and use of a drainage and utility easement located over a portion of the Property (the "Easement"). Seller and Buyer hereby acknowledge and agree that the City Easement Agreement will provide, among other things, that (i) Seller shall receive certain consideration from the City for the Easement, which consideration shall remain the sole property of Seller, (ii) the Easement will permit the construction of certain public utilities at the Property for the benefit of the Property and other properties located in the vicinity of the Property, and (iii) the Easement shall be recorded against the Property and all of the terms and provisions thereof shall be binding upon and inure to the benefit of Buyer and its successors and permitted assigns. Notwithstanding anything to the contrary contained in this Agreement, Receiver shall be permitted to enter into the City Easement Agreement prior to the Close of Escrow upon such terms and conditions as may be deemed acceptable by Receiver. Further notwithstanding anything to the contrary contained in this Agreement, in no event shall Buyer have any right to terminate this Agreement after the Contingency Date (as defined below), or be entitled to the recovery from Seller of any costs, loss, liability, damage, expense, demand,

action or cause of action, in connection with or arising from the City Easement Agreement and/or the Easement.

1.3 Opening of Escrow. Promptly following the Effective Date, Buyer and Seller shall open an escrow ("**Escrow**") with First American Title Insurance Company, Attention: Heather Kucala, 101 Mission Street, Suite 1600, San Francisco, California (the "**Escrow Holder**"). Escrow Holder shall execute the Escrow Holder Signature Page attached hereto and return one fully executed original of this Agreement and the Escrow Holder Signature Page and the Broker Signature Page to each of Seller and Buyer. The purchase and sale of the Property shall be consummated through the Escrow in accordance with the instructions contained in this Agreement.

1.4 Closing Date. The closing of the purchase and sale of the Property (the "**Closing**" or "**Close of Escrow**") shall occur on or before five (5) days following the Court Approval Date (as defined below) (the "**Closing Date**"); provided, however, if there is a reasonable possibility for a timely appeal of the Auction Confirmation Order (as defined below), as shall be determined by the Title Company (as defined below) no later than two (2) business days prior to such scheduled Closing Date and confirmed by written notice from the Title Company to Buyer and Seller of the Title Company's refusal to issue the Title Policy (as defined below) without exception for the Auction Confirmation Order (e.g., for open appeals period, etc.) until expiration of the sixty (60) day appeal period post-Auction Confirmation Order, then the Closing Date shall be automatically extended until the date which is sixty-five (65) days after the Court Approval Date to allow for the expiration of such 60-day appeal period. On the Closing Date, TIME SHALL BE DEEMED OF THE ESSENCE with respect to Buyer's obligation to close. For purposes hereof, the "**Court Approval Date**" shall be the date the Court enters the Auction Confirmation Order.

ARTICLE 2 PURCHASE PRICE

2.1 Purchase Price. The purchase price for the Property shall be Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) (the "**Purchase Price**") which shall be subject to an Auction (as defined below) pursuant to Section 15 hereof.

2.2 Payment of the Purchase Price. Buyer shall pay the Purchase Price to Seller as follows:

(a) No later than two (2) days after the Effective Date, Buyer shall deposit with Escrow Holder, in cash, certified or bank cashier's check made payable to Escrow Holder, or by a confirmed Federal Reserve wire transfer of funds (hereinafter referred to as "**Immediately Available Funds**"), the sum of Five Hundred and Fifty Thousand Dollars (\$550,000.00) (with all interest earned thereon, the "**Earnest Money Deposit**") into Escrow. The Earnest Money Deposit shall be nonrefundable to Buyer except in the event: (i) of a failure of a condition to closing, as set forth in Section 6.3, below; (ii) of Buyer's timely termination or deemed termination of this Agreement on or prior to the Contingency Date as set forth in Article 4 below; (iii) Buyer is not the High Bidder (as defined in Section 15.5, below) or the Court otherwise fails to approve the sale of the Property to Buyer, (iv) in the event of a Material Taking or Material Casualty as set forth in Sections 12.1(a) or 12.2(a) below, or (v) in the event Buyer terminates this Agreement

pursuant to Section 13.2. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account pursuant to the provisions of Section 2.3(a) below.

(b) In the event the Closing under this Agreement occurs, then the Earnest Money Deposit shall be credited against the Purchase Price at Closing. In the event the Closing under this Agreement shall fail to occur, then the Earnest Money Deposit shall be nonrefundable except as expressly set forth in Section 2.2(a) above.

(c) At least one (1) business day prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder, in Immediately Available Funds, the balance of the Purchase Price and all other amounts payable by Buyer pursuant to this Agreement into Escrow.

2.3 Escrow Provisions Regarding Earnest Money Deposit.

(a) Escrow Holder shall hold the Earnest Money Deposit and make delivery of the Earnest Money Deposit to the party entitled thereto under the terms of this Agreement. Escrow Holder shall invest the Earnest Money Deposit in an interest-bearing account maintained at a federally insured bank or savings and loan association as approved by Seller and Buyer, and all interest and income thereon shall become part of the Earnest Money Deposit and shall be remitted to the party entitled to the Earnest Money Deposit pursuant to this Agreement.

(b) Escrow Holder shall hold the Earnest Money Deposit until the earlier occurrence of (i) the Closing Date, at which time the Earnest Money Deposit shall be applied against the Purchase Price, (ii) Buyer's failure to close the transaction contemplated hereby or breach of its obligations hereunder, in which event Seller may terminate this Agreement and Escrow Holder shall disburse the Earnest Money Deposit to Seller, plus accrued interest thereon, upon Escrow Holder's receipt of written notice from Seller confirming such failure to close or breach by Buyer, (iii) Buyer's timely termination or deemed termination of this Agreement on or prior to the Contingency Date as set forth in Article 4, below, in which event Escrow Holder shall disburse the Earnest Money Deposit to Buyer upon Escrow Holder's receipt of written notice of Buyer's disapproval of the condition of the Property, (iv) in the event Buyer is not the High Bidder or the Court otherwise fails to approve the sale of the Property to Buyer, in which event Escrow Holder shall disburse the Earnest Money Deposit to Buyer upon receipt of notice of the Court's failure to approve the sale to Buyer, (v) in the event of Buyer's timely termination of this Agreement following a Material Taking or Material Casualty under Sections 12.1(a) or 12.2(a), in which event Escrow Holder shall disburse the Earnest Money Deposit to Buyer upon Escrow Holder's receipt of written notice of Buyer's termination, (vi) in the event of a termination of this Agreement for failure of a condition to closing as set forth in Section 6.3, in which event Escrow Holder shall disburse the Earnest Money Deposit to Buyer upon Escrow Holder's receipt of written notice of such termination, or (vii) upon Buyer's termination of this Agreement under Section 13.2, in which event Escrow Holder shall disburse the Earnest Money Deposit to Buyer upon Escrow Holder's receipt of written notice of Seller's termination. The tax identification numbers of the parties shall be furnished to Escrow Holder upon request.

(c) Intentionally Omitted.

(d) The parties acknowledge that Escrow Holder is acting solely as a stakeholder at their request and for their convenience, and that Escrow Holder shall not be deemed to be the agent of either of the parties for any act or omission on its part unless taken or suffered in bad faith in willful disregard of this Agreement or involving gross negligence. Seller and Buyer jointly and severally release Escrow Holder from any and all liability for costs, claims and expenses, including reasonable attorney's fees, incurred in connection with the performance of Escrow Holder's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Holder in bad faith, in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Holder.

(e) The parties shall deliver to Escrow Holder an executed copy of this Agreement, which shall constitute the sole instructions to Escrow Holder. Escrow Holder shall execute the signature page for Escrow Holder attached hereto with respect to the provisions of this Section 2.3; provided, however, that (i) Escrow Holder's signature hereon shall not be a prerequisite to the binding nature of this Agreement on Buyer and Seller, and the same shall become fully effective upon execution by Buyer and Seller, and (ii) the signature of Escrow Holder will not be necessary to amend any provision of this Agreement other than this Section 2.3.

(f) Escrow Holder, as the person responsible for closing the transaction within the meaning of Section 6045(e)(2)(A) of the Internal Revenue Code of 1986, as amended (the "**Code**"), shall file all necessary information, reports, returns, and statements regarding the transaction required by the Code including, but not limited to, the tax reports required pursuant to Section 6045 of the Code. Further, Escrow Holder agrees to indemnify and hold Buyer, Seller, and their respective attorneys and brokers and Broker (as defined in Section 14.1 below) harmless from and against any losses resulting from Escrow Holder's failure to file the reports Escrow Holder is required to file pursuant to this section.

(g) The provisions of this Section 2.3 shall survive the termination of this Agreement, and if not so terminated, the Closing and delivery of the grant deed to Buyer.

ARTICLE 3 CONDITION OF TITLE AND SURVEY

3.1 Review and Approval of Title and Survey.

(a) Promptly following the Effective Date, Buyer shall obtain a preliminary title report (the "**Title Report**") with accompanying exception documents for the Land (collectively, the "**Title Documents**") from First American Title Insurance Company (the "**Title Company**").

(b) On or before fifteen (15) days prior to the Contingency Date, Buyer shall have the right to review and approve or disapprove by written notice to Seller (the "**Title Objection Notice**"), in Buyer's sole and absolute discretion, the Title Documents and Survey (as defined below). Within ten (10) days after Seller's receipt of Buyer's Title Objection Notice, Seller will notify Buyer which objections ("**Objections**"), if any, Seller will cure prior to the Closing and which Objections Seller will not cure prior to the Closing (herein called a "**Seller's Notice**"). Seller shall have no obligation to cure any Objections except any liens of an ascertainable amount,

which liens Seller shall cause to be released at the Closing. Seller further agrees to remove any exceptions or encumbrances to title that are created by, under or through Seller after the Effective Date without Buyer's consent. If Seller fails to timely deliver a Seller's Notice, Seller shall be deemed to have elected not to cure any Objections. If Seller's Notice specifies Objections which will not be cured by Seller prior to the Closing, or if Seller fails to timely deliver a Seller's Notice then Buyer may, on or before the Contingency Date accept the Objections (in which event such Objections will constitute "**Permitted Encumbrances**" hereunder) or Buyer may terminate this Agreement, in which event Escrow Holder will return the Earnest Money Deposit to Buyer not later than the second business day after such termination and the parties will be released from further liability hereunder. Buyer's failure to provide a Title Objection Notice to Seller on or before the Contingency Date shall be deemed Buyer's approval of the Title Documents.

3.2 Title Policy. An ALTA Extended Coverage Owner's Title Insurance Policy (the "**Title Policy**") shall be issued by the Title Company as of the Closing Date. In addition, Buyer shall obtain at its sole cost any survey or update to Seller's survey (the "**Survey**") required in connection with the Title Policy and any endorsements requested by Buyer, and Buyer shall be solely responsible for the Title Company's acceptance of such Survey. The Title Policy shall be in the amount of the Purchase Price and shall insure fee simple title to the Land in Buyer.

3.3 Disclaimer of Title, Warranty. Nothing in this Agreement shall be construed as a warranty or representation by Seller, either express or implied, concerning Seller's title to the Land, and Seller makes no such warranty or representation (and Buyer acknowledges that Receiver is only in possession of the Land and does not and has not at any time owned title to the Land). Buyer is relying solely upon the Title Report, the Title Policy and the grant deed from Seller to Buyer recorded at closing and Buyer's own Inspections (as defined in Section 4.1(a) below) respecting title to the Land.

ARTICLE 4 BUYER'S DUE DILIGENCE

4.1 Due Diligence Investigations.

(a) **Contingency Date.** Buyer's obligations under this Agreement are subject to Buyer's approval or disapproval provided to Seller by written notice on or before sixty (60) days after the Effective Date (the "**Contingency Date**") of the condition of the Property. In connection with Buyer's approval or disapproval of the condition of the Property, Buyer and Buyer's agents, contractors, engineers, surveyors, attorneys, and employees or any other party in connection with any inspections conducted by or for Buyer ("**Consultants**") shall have the opportunity, at their sole cost and risk, to inspect the Property (including the environmental and other aspects of the physical condition of the Land) and investigate and study the operations of the Property and the feasibility of acquiring and developing the Property (such investigations collectively hereinafter referred to as "**Inspections**") prior to the Contingency Date. Promptly following the Effective Date, Receiver shall deliver to Buyer, for informational purposes only and without any representation or warranty of any kind (and in any event only to the extent that the following are in Receiver's actual possession), the following information related to the Property: (i) copies of any and all easements, contracts, documents and drawings and agreements including consulting, management, maintenance, repair, service, supply and contracts or agreements of any kind or

nature affecting the Property (including any and all leases, licenses, work letters, inducement letters, copies of letters of credit and guaranties); (ii) any and all documentation which is owned by or in possession of Receiver in connection with the environmental condition of the Property (including any Phase I environmental assessment or additional, more extensive environmental assessments), all recorded documents and agreements affecting the Property, and existing title reports on the Property; and (iii) copies of any and all surveys, plans and specifications (including any architectural, engineering, landscaping or interiors plans), construction documents, electronic files, engineering reports, governmental entitlements/approvals and similar documents in the possession of Receiver (collectively, the "**Materials**"). Buyer's approval or disapproval pursuant to this Section 4.1(a) may be made at Buyer's sole and absolute discretion, which approval (if any) shall be made by Buyer pursuant to written notice timely provided to Seller on or before the Contingency Date. In the event of Buyer's disapproval or deemed disapproval under this Section 4.1(a), (i) this Agreement shall automatically terminate and be deemed terminated, (ii) Escrow Holder shall return the Earnest Money Deposit to Buyer in accordance with Section 2.3(b), and (iii) other than those matters which expressly survive the termination hereof, neither party shall have any further rights or obligations hereunder. Buyer's failure to provide written notice to Seller prior to the Contingency Date regarding Buyer's approval or disapproval of the Property shall be deemed Buyer's disapproval of the Property.

(b) **Mechanic's Liens.** Buyer shall not permit any mechanic's or materialmen's liens or any other liens to attach to the Property by reason of the performance of any work or the purchase of any materials by Buyer and its Consultants. The provisions of this paragraph shall survive the termination of this Agreement, and if not so terminated, shall survive the closing of the Agreement and delivery of grant deed for the Property.

(c) **Property Contracts.** Effective as of the Closing Date, Seller shall terminate all contracts, agreements, equipment leases, purchase orders, maintenance, service and similar contracts, which relate to the ownership, management, maintenance, construction or repair and/or operation of the Property, whether or not assignable by their terms (the "**Property Contracts**"). If Buyer desires to obtain any services provided by such Property Contracts, then Buyer shall be required to take all steps necessary to arrange for securing replacement contracts thereto on or before the Closing for a term effective as of a date commencing after the Closing Date.

4.2 Right of Entry.

(a) **Buyer's Right of Access.** Until the Closing Date or, if sooner, the date this Agreement is terminated, Buyer shall have a limited, non-exclusive license to enter upon the Land, at Buyer's sole cost and expense, in order to conduct such Inspections of the Property as Buyer deems necessary or desirable (including, without limitation, Phase I and Phase II environmental site assessments); provided, however, that Buyer shall restore any damage done to the Property in connection with any such Inspections performed by or on behalf of Buyer. Buyer's right of entry shall be subject to Seller's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed, following Seller's receipt of written notice from Buyer by e-mail or fax (at the e-mail address or facsimile numbers listed in Section 14.2 below) of any such request giving the proposed time of entry, its approximate duration and the nature of the entry, test, investigation or other matter, together with the parties that will be present. Seller's written approval may be

evidenced by an e-mail or fax back to Buyer (at the e-mail address or facsimile number listed in Section 14.2 below) approving the request. Buyer shall permit Seller to have a representative present during all Inspections conducted with respect to the Property. Buyer shall use best efforts to minimize disruption to any person or entity entitled to occupy any portion of the Land and Improvements in connection with Buyer's or its Consultant's activities pursuant to this Agreement. No consent by Seller to any such activity shall be deemed to constitute a waiver by Seller or assumption of liability or risk by Seller. Buyer hereby agrees to restore, at Buyer's sole cost and expense, the Property to the same condition existing immediately prior to Buyer's exercise of its rights pursuant to this Section 4.2(a). Buyer shall comply with all applicable laws and governmental regulations applicable to the Property and shall indemnify, defend, protect and hold harmless Seller and the Property from any and all claims (known or unknown), liabilities, damages and costs, including, without limitation, attorneys' fees and costs, arising out of any entry onto the Land for purposes contemplated herein by Buyer or its representatives, employees, Consultants or designees; provided, however, that Buyer shall not pursuant to this Section 4.2(a) be obligated to indemnify, defend, protect or hold harmless Seller or the Property from claims, liabilities, damages or costs arising out of any: (i) acts or omissions of Seller, its agents or representatives; (ii) latent defects in the Land or Improvements; or (iii) hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws not brought onto the Land by Buyer or its agents or representatives, except if and to the extent Buyer exacerbates or worsens the condition. Such indemnity of Buyer shall survive until (i) if this Agreement is terminated, the date that is one (1) year after the effective date of such termination, or (ii) if this Agreement is not terminated, that date that is one (1) year after the Closing Date.

(b) **Insurance Requirements.** As a prior condition to any entry onto the Land (and for purposes hereof, any environmental inspections or soils tests shall not be considered routine inspections), Buyer shall maintain and cause its agents and Consultants to maintain and keep in effect (a) commercial general liability insurance including Seller as an additional insured, with limits of not less than \$3,000,000.00 property damage, bodily injury or death and (b) worker's compensation insurance for all of its employees in accordance with the law of the State of Nevada. Prior to Buyer's or its Consultants' entry onto the Property, Buyer shall deliver to Seller certificates of insurance evidencing such coverage. The provisions of this paragraph shall survive the termination of this Agreement, and if not so terminated, shall survive the closing of this Agreement and delivery of grant deed for the Property.

4.3 Documents. In the event this Agreement is terminated for any reason (including due to either party's default), Buyer shall immediately deliver to Seller, at no cost to Seller, the originals (or copies if the originals are not available) of all studies, tests, surveys, applications, maps, agreements, plans and other documents related to the Property in Buyer's possession or control, whether previously delivered to Buyer by Seller as a part of the Materials or reports and information and Materials provided to Buyer and any reports, studies or other information prepared or compiled for Buyer by any Consultant or other third-party in connection with Buyer's investigation of the Property ("**Third-Party Reports**") obtained by Buyer in connection with its investigation and analysis of the Property upon Seller's reimbursement of Buyer's out-of-pocket costs for such Third-Party Reports, and, upon written request of Seller, Buyer shall assign to Seller, AS-IS, at no cost to Buyer, and without representation or warranty as to accuracy or completeness, and subject to the proprietary rights of any third party consultants and any limitations imposed by them, all right, title and interest of Buyer in and to all or any portion of such documents as specified

by Seller; provided, however, that this Section 4.3 shall not apply to: (a) confidential information; (b) any information subject to a legal privilege (including, without limitation, legal memoranda); or (c) accounting and financial information (including, without limitation, financial models regarding the Property). The provisions of this Section 4.3 shall survive any termination of this Agreement.

4.4 Escrow Cancellation Charges. In the event the Escrow shall fail to close by reason of a party's default, the defaulting party shall be liable for all Escrow cancellation charges, including but not limited to the costs of the title examination, Title Commitment and escrow fee. In the event the Escrow shall fail to close due to the failure of a Closing condition set forth in Section 6.3 that is not caused by a default of one of the parties, each party shall pay one-half (1/2) of any Escrow cancellation charges.

ARTICLE 5 SELLER'S OBLIGATIONS

5.1 General Operation of the Property. Seller shall operate the Property or cause the Property to be operated after the Effective Date in Seller's reasonable discretion in its capacity as Receiver. Buyer hereby acknowledges and agrees that such general operation of the Property shall include Receiver entering into the City Easement Agreement and, if possible, closing under such agreement prior to the Close of Escrow.

5.2 New Contracts or Leases. Except for the Easement and the City Easement Agreement, during the pendency of this Agreement, Seller will not enter into any contract or agreement (including any leases or amendments thereto) that will be an obligation affecting the Property subsequent to the Closing without the prior written consent of Buyer, which may be withheld in Buyer's sole and absolute discretion.

5.3 Listings and Other Offers. Except in connection with any Prospective Bidders (as defined in Section 15.3) and the Auction under Section 15, Seller agrees not to market or show the Property to any prospective purchasers during the term of this Agreement. In addition, except in connection with any Prospective Bidders and the Auction, Seller will not list the Property with any broker or otherwise solicit or make or accept any offers to sell the Property, engage in any discussions or negotiations with any third party with respect to the sale or other disposition of the Property, or enter into any contracts or agreements (whether binding or not) regarding any disposition of the Property. Buyer hereby acknowledges and agrees that, notwithstanding the foregoing, Seller's Broker (as defined in Section 14.1) shall be permitted to continue to maintain an active listing for the Property during the term of this Agreement, provided that any such listing shall state that the Property is currently under contract, and Receiver may respond to inquiries from Prospective Bidders regarding the Property.

5.4 Notices. Seller shall promptly furnish to Buyer copies of any written notices hereafter received by Seller of (i) any suit, judgment or other proceeding filed, entered or threatened with respect to the Property or Seller's use or ownership thereof, (ii) any actual or contemplated changes in zoning of the Property or any other legal requirement which would adversely affect the use, ownership, maintenance or leasing of the Property, and (iii) any default

by any other party or notice or claim of default by Seller made by any other party under the agreements affecting the Property.

ARTICLE 6 CLOSING

6.1 Escrow. The Closing of the purchase and sale of the Property shall be consummated through Escrow in accordance with the provisions of this Article 6.

6.2 Escrow Instructions for Closing. This Agreement shall constitute joint instructions to Escrow Holder. The parties agree to execute and deliver to the Escrow Holder reasonable and customary additional escrow instructions in the usual form of Escrow Holder for the purpose of consummating the purchase and sale contemplated by this Agreement; provided, however, that standard extension provisions in such escrow instructions shall not apply; and provided, further, that in the event of any conflict between this Agreement and any escrow instructions, the provisions of this Agreement shall control. Escrow Holder shall perform all customary functions of an escrow holder to consummate this transaction, including among other duties the calculation of the prorations and Closing Costs (as defined in Section 6.7 below) required by this Agreement, as well as serving as depository for all funds, instruments, and documents needed for the Close of Escrow. Upon the Closing, Escrow Holder is hereby instructed to remit all sales proceeds from the sale of the Property to an interest-bearing account maintained at a federally insured bank or savings and loan association established by Seller, which sales proceeds shall be held and distributed in the manner set forth in the Order Approving the Sale (as defined below). For the sake of clarity, Escrow Holder's remittance of all sales proceeds from the sale of the Property pursuant to the manner set forth in the foregoing sentence shall mean that such sales proceeds shall be remitted to Receiver.

6.3 Closing Conditions.

(a) Buyer's obligation to Close is subject to satisfaction of the following conditions, which are for the benefit of Buyer and may be waived by Buyer in its sole discretion:

(i) Buyer shall have completed its due diligence investigation of the Property and approved of the Property, or be deemed to have approved of the Property, on or prior to the Contingency Date;

(ii) Seller shall not, as of the Closing Date, be in material default in the performance of its obligations under this Agreement;

(iii) All representations and warranties made by Seller in this Agreement shall be true when made and shall be true as of the Closing Date, without any material adverse change, except for any material adverse change of which Seller has notified Buyer and which Buyer has accepted; and

(iv) All of the documents required to be delivered by Seller to Buyer or Escrow Holder (as the case may be) at the Closing pursuant to the terms and conditions hereof shall have been delivered.

(b) Seller's obligation to Close is subject to satisfaction of the following conditions, which are for the benefit of Seller and may be waived by Seller in its sole discretion:

(i) All representations and warranties made by Buyer in this Agreement shall be true when made and shall be true as of the Closing Date, without any material adverse change, except for any material adverse change of which Buyer has notified Seller and which Seller has accepted;

(ii) All of the documents and funds required to be delivered by Buyer to Seller or Escrow Holder (as the case may be) at the Closing pursuant to the terms and conditions hereof shall have been delivered;

(iii) Seller shall have received all consents, documentation and approvals necessary to consummate and facilitate the transactions contemplated hereby, including, without limitation, approval of the sale of the Property to Buyer from the Court and as may be required by law;

(iv) Buyer shall not, as of the Closing Date, be in default in the performance of its obligations under this Agreement; and

(v) The Court shall have approved the transaction contemplated herein (the "Court Approval").

(c) If the purchase and sale fails to Close by the Closing Date due to a failure of a condition, the party for whose benefit the condition is set forth may terminate this Agreement at any time thereafter until the Closing occurs, so long as the failure of condition is not caused by such party's breach of its obligations under this Agreement, in which event Escrow Holder will return the Earnest Money Deposit to Buyer not later than the second business day after such termination and the parties will be released from further liability hereunder. If Buyer so terminates in connection with the conditions set forth in Section 6.3(a)(ii)(iii) or (iv), then Buyer shall be entitled to the remedies set forth in Section 13.2.

6.4 Buyer's Deliveries. No later than one (1) business day prior to the Closing Date, Buyer shall deliver to Escrow Holder:

(a) The difference between the Purchase Price and the Earnest Money Deposit, and all costs and fees required to be paid by Buyer pursuant to Sections 6.6 and 6.7 below, all in Immediately Available Funds;

(b) Any declaration or other statement which may be required to be submitted to the local assessor with respect to the terms of the sale of the Property;

(c) A closing statement executed by Buyer;

(d) A countersigned counterpart of a General Assignment in the form attached as Exhibit "B" (the "General Assignment");

(e) Resolutions, certificates of good standing, and such other organizational documents, in form acceptable to the Title Company, authorizing the execution, delivery and performance by Buyer of this Agreement and designating one or more members to execute documents on Buyer's behalf in connection with this transaction; and

(f) Such other documents and instruments as may be reasonably requested by Seller or by the Escrow Holder in order to consummate this transaction.

6.5 Seller's Deliveries. No later than one (1) business day prior to the Closing Date, Seller shall deliver to Escrow Holder:

(a) A fully executed and acknowledged grant deed in the form attached as Exhibit "C" conveying the Land to Buyer;

(b) A closing statement executed by Seller;

(c) A countersigned counterpart of the General Assignment; and

(d) Such other documents and instruments as may be required herein or reasonably requested by the Escrow Holder in order to consummate this transaction including without limitation an owner's affidavit and gap indemnity.

6.6 Prorations.

(a) **General.** All normal and customarily proratable items, including, without limitation, collected rents, operating expenses, all current installments of real estate taxes, assessments, bonds and personal property or use taxes, if any, shall be prorated as of the Closing Date. If, however, subsequent to the Close of Escrow, by reason of any change in assessment or change in rate or any other reason, the real estate taxes for the fiscal year covered by such apportionment should be determined to vary from those apportioned, the amount of any refund received by, or payment due from, Buyer shall be apportioned between Seller and Buyer as of the Closing Date at the request of either party. Escrow Agent shall prepare and deliver to Seller and Buyer a proration schedule (the "**Proration Schedule**") of the adjustments described in this Section 6.6 no later than two (2) days prior to Closing. Such adjustments shall be paid by Buyer to Seller (if the prorations result in a net credit to Seller) or by Seller to Buyer (if the prorations result in a net credit to Buyer), by increasing or reducing the cash to be paid by Buyer at Closing. Any apportionments and prorations which are not expressly provided for below shall be made in accordance with customary practice in Clark County, Nevada.

(b) **Operating Expenses.** All of the operating, maintenance, taxes (other than real estate taxes, such as rental taxes), and other expenses incurred in operating the Property that Seller customarily pays, and any other costs incurred in the ordinary course of business for the management and operation of the Property, shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue prior to Closing and Buyer shall pay all such expenses that accrue from and after the Closing Date.

(c) **Utilities.** The final readings and final billings for utilities will be made if possible as of the Closing Date, in which case Seller shall pay all such bills as of the Closing Date

and no proration shall be made at the Closing with respect to utility bills. Otherwise, a proration shall be made based upon the parties' reasonable good faith estimate and a readjustment made within thirty (30) days after the Closing, if necessary. Seller shall be entitled to the return of any deposit(s) posted by it with any utility company, and Seller shall notify each utility company serving the Property to terminate Seller's account, effective as of noon on the Closing Date.

(d) **Real Estate Taxes.** Any real estate ad valorem or similar taxes for the Property, or any installment of assessments payable in installments which installment is payable in the calendar year of Closing, shall be prorated to the date of Closing, based upon actual days involved. The proration of real property taxes or installments of assessments shall be based upon the assessed valuation and tax rate figures (assuming payment at the earliest time to allow for the maximum possible discount) for the year in which the Closing occurs to the extent the same are available; provided, however, that in the event that actual figures (whether for the assessed value of the Property or for the tax rate) for the year of Closing are not available at the Closing Date, the proration shall be made using figures from the preceding year (assuming payment at the earliest time to allow for the maximum possible discount). The proration of real property taxes or installments of assessments shall be final and not subject to re-adjustment after Closing.

(e) **Intentionally Omitted.**

(f) **Insurance Premiums.** No proration shall be made in relation to insurance premiums and insurance policies will not be assigned to Buyer.

(g) **No Post-Closing Adjustments.** Except as set forth in Section 6.6(a), Buyer and Seller hereby acknowledge and agree that neither Buyer nor Seller shall have any right to re-adjust any item on the Proration Schedule (or any item omitted therefrom) after the Closing. The provisions of this Section 6.6 shall survive the Closing and delivery of the grant deed to Buyer.

6.7 Closing Costs. Seller shall pay: (a) the standard portion of the premium for the Title Policy; (b) all sales, gross receipts, compensating, stamp, excise, documentary, transfer, deed or similar taxes and fees imposed in connection with this transaction; and (c) one-half (1/2) of all Closing Costs. Buyer shall pay: (i) the portion of the premium for the Title Policy attributable to extended coverage, if Buyer elects to receive same and the cost of any Survey and/or title endorsements desired by Buyer; and (ii) one-half (1/2) of Closing Costs. Any other costs or expenses of the Escrow shall be borne by the parties in accordance with customary practice in Clark County, Nevada. For purposes of this Agreement, "Closing Costs" shall mean escrow fees, and recording costs, but shall not include any attorneys' fees or other such costs and expenses incurred separately by Buyer or Seller.

6.8 Possession Upon Close of Escrow. Seller shall deliver possession of the Property to Buyer upon the Close of Escrow.

6.9 Termination of this Agreement. In the event this Agreement is terminated in accordance with the provisions of Sections 6.3(c), 12.1(a), 12.2(a), 14.5 or 15, (i) any documents deposited with Escrow Holder shall be returned to the party depositing the same; (ii) Buyer shall return to Seller all documents delivered by Seller to Buyer pursuant to this Agreement and subject to Section 4.3, any Third-Party Reports; and (iii) unless otherwise specifically provided elsewhere,

the Buyer and Seller shall each pay one-half the cost all Escrow, title, and other costs, if any, incurred in connection with cancellation of the Escrow. If this Agreement is not so terminated, Buyer shall go forward with the acquisition of the Property as provided in this Agreement and the Deposit shall be non-refundable, except in the event of Seller's default prior to the Close of Escrow.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of Buyer. Buyer represents and warrants as follows:

(a) **Authority.** The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized and approved by all requisite action of Buyer, and no other authorizations or approvals, whether of governmental bodies or otherwise, will be necessary in order to enable Buyer to enter into or to comply with the terms of this Agreement.

(b) **Binding Effect of Documents.** This Agreement and the other documents to be executed by Buyer hereunder, upon execution and delivery thereof by Buyer, will have been duly entered into by Buyer, and will constitute legal, valid and binding obligations of Buyer. Neither this Agreement nor anything provided to be done under this Agreement violates or shall violate any contract, document, understanding, agreement or instrument to which Buyer is a party or by which it is bound.

(c) **Representation Regarding Broker.** The Broker and its affiliates do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to Section 14.4, acquires the Property at the Closing), nor has Buyer or any affiliate of Buyer granted (as of the Effective Date or the Closing Date) the Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

(d) **No Pending or Threatened Litigation.** No pending or threatened litigation exists which if determined adversely would restrain the consummation of the transactions contemplated by this Agreement or would declare illegal, invalid or non-binding any of Buyer's obligations or covenants to Seller.

(e) **Survival of Buyer's Representations and Warranties.** All warranties and representations of Buyer set forth in this Agreement shall survive for a period of six (6) months following the Closing Date and any claim with respect to a breach of any representation or warranty made or given by Buyer shall be initiated in accordance with the provisions of Article 10 within six (6) months of the Closing Date or such claim shall be forever barred.

7.2 Representations and Warranties of Seller. Seller represents and warrants as follows:

(a) **Authority.** The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, have been duly authorized and approved by all requisite action of Seller, and no other authorizations or approvals, whether of governmental

bodies or otherwise, other than Court Approval will be necessary in order to enable Seller to enter into or to comply with the terms of this Agreement.

(b) **Conflicts and Pending Actions or Proceedings.** Except in connection with the partnership agreements of the Receivership Entities, there is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. Except for the Receivership Action, there is no action or proceeding pending or, to Seller's knowledge, threatened against Seller or relating to the Property, including, without limitation, any condemnation proceedings, which challenges or impairs Seller's ability to execute or perform its obligations under this Agreement.

(c) **No Leases or Other Occupancy Agreements.** There are no leases or other agreements affecting the development, possession or occupancy of the Property.

(d) **Compliance with Law.** To Seller's knowledge, Seller has not received any written notice, addressed specifically to Seller and sent by any governmental authority or agency having jurisdiction over the Property, that the Property or its use is in material violation of any law, ordinance or regulation, including any applicable Environmental Laws. Seller has no knowledge of the presence or release of Hazardous Materials on or from the Property. Seller has no knowledge of any underground storage tanks located on the Property. The term "**Environmental Laws**" includes without limitation the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation and Liability Act and other federal laws governing the environment as in effect on the Effective Date together with their implementing regulations and guidelines as of the Effective Date, and all state, regional, county, municipal and other local laws, regulations and ordinances that are equivalent or similar to the federal laws recited above or that purport to regulate Hazardous Materials (as hereinafter defined). The term "**Hazardous Materials**" includes petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel (or mixtures of natural gas or such synthetic gas), asbestos and asbestos containing materials and any substance, material waste, pollutant or contaminant listed or defined as hazardous or toxic under any Environmental Law.

(e) **Outside Agreements.** To Seller's knowledge, there is no other agreement, understanding or restriction with or for the benefit of any person or entity, whether private, public or quasi-public, that will be binding upon Buyer after Closing and which may prevent or limit in any way the current use, or Buyer's intended use, of the Property or for any uses allowed by current zoning regulations.

"Seller's knowledge," as used in this Agreement means the current actual knowledge of Receiver, without any duty of inquiry or investigation and without personal liability whatsoever.

ARTICLE 8 "AS IS" SALE

8.1 Independent Investigation. Buyer shall have independently investigated, analyzed and appraised the value, profitability and condition of the Property, including, without limitation, the geological and soil condition of the Property, the fitness or suitability of the Property

for Buyer's intended use of the Property and all environmental matters relating to the Property (including, but not limited to, the presence or absence of hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws), without relying on any representations of any kind (whether oral or written, express or implied) made by Seller to Buyer. Buyer is purchasing the Property in its "AS IS, WHERE IS" condition as of the Effective Date solely in reliance upon Buyer's own investigations and evaluation thereof and without any representation or warranty by Seller as to the condition of the Property.

8.2 AS-IS Purchase; No Side Agreements Or Representations. Buyer acknowledges and agrees that Buyer has independently and personally inspected the Property, and the improvements, entitlements, plans and specifications related to the Property, Buyer has elected to go forward with the purchase of the Property on the basis of such personal examinations and inspections as Buyer has deemed appropriate to make. Buyer agrees that **AS A MATERIAL INDUCEMENT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT BY SELLER, BUYER IS PURCHASING THE PROPERTY IN AN "AS IS" AND "WHERE IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR, WITH ALL FAULTS.** No person acting on behalf of Seller is authorized to make, and by execution hereof Buyer acknowledges and agrees that, except as specifically provided in this agreement, Seller has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of and to, concerning or with respect to:

- (i) the value of the Property;
- (ii) the income to be derived from the Property;
- (iii) the suitability of the Property for any and all activities and uses which Buyer may conduct thereon, including without limitation any development of the Property;
- (iv) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
- (v) the manner, quality, state of repair, or lack of repair, of the Property;
- (vi) the nature quality or condition of the Property including without limitation, the water, soil and geology;
- (vii) the compliance of or by the Property or the operation of the Property with any laws, rules, ordinances, or regulations of any applicable governmental authority or body;
- (viii) the manner, condition, or quality of the construction or materials, if any, incorporated into the Property;
- (ix) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, the Endangered Species Act, Title III of the Americans With Disabilities Act of 1990, and any other law, rule or regulation governing access by disabled persons;

(x) the presence or absence of hazardous or toxic substances at, on, under, or adjacent to the Land;

(xi) the content, completeness or accuracy of the due diligence materials, including any informational package, document list or other materials prepared by Seller;

(xii) the conformity of the improvements to any plans or specifications for the Property, including any plans and specifications that may have been or may be provided to Buyer;

(xiii) the conformity of the Property to past, current or future applicable zoning or building requirements;

(xiv) deficiency of any undershoring;

(xv) deficiency of any drainage;

(xvi) the fact that all or a portion of the Property may be located on or near an earthquake faultline or located in an Alquist-Priolo Special Study Zone;

(xvii) the existence of land use zoning or building entitlements affecting the Property;

(xviii) deficiency of any access to the Land and Improvements; and

(xix) with respect to any other matter concerning the Property, except as may be otherwise expressly stated herein, including any and all such matters referenced discussed or disclosed in any documents delivered by Seller to Buyer, in any public records of any governmental agency, entity or utility company, or in any other documents available to Buyer.

Buyer acknowledges and agrees that the opportunity to inspect the Property and review information and documentation respecting the Property (including that disclosed in the Acknowledgment) as provided in this Agreement is sufficient to allow the Buyer to make an adequate investigation of the Property and that Buyer is relying solely on its own investigation of the Property and review of such information and documentation, and not, on any information provided or to, be provided by Seller. Buyer further acknowledges and agrees that any information made available to Buyer or provided or to be provided by or on behalf of Seller with respect to the Property was obtained from a variety of sources and that Seller has not made any independent investigation or verification of such information and make no representations as to the accuracy or completeness of such information except as may otherwise be provided herein. Buyer agrees to fully and irrevocably release all such sources of information and preparers of information and documentation to the extent such sources or preparers are Seller, or its employees, members, officers directors, representatives, agents, servants, attorneys, affiliates, parent companies, subsidiaries, successors or assigns, from any and all claims that it may now have or hereafter acquire against such sources and preparers of information for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Seller is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property or the operation thereof furnished by any of the foregoing

entities and individuals or any other individual or entity. Buyer further acknowledges and agrees that to the maximum extent permitted by law, the sale of the Property as provided for herein is made on an "AS-IS" condition and basis, with all faults, and that Seller has no obligations to make repairs, replacements or improvements.

8.3 NO LIABILITY TO RECEIVER. WITHOUT LIMITATION OF THE FOREGOING, AS AN ESSENTIAL INDUCEMENT TO RECEIVER TO ENTER INTO THIS AGREEMENT, AND AS PART OF THE DETERMINATION OF THE CONSIDERATION GIVEN HEREUNDER, BUYER ACKNOWLEDGES, UNDERSTANDS AND AGREES AS FOLLOWS:

(a) BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HIS DUTIES AS RECEIVER PURSUANT TO THE ORDERS. IN NO EVENT SHALL RECEIVER BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY RECEIVER, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCE WHATSOEVER, EXCEPT IF THE RESULT OF RECEIVER'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. RECEIVER SHALL NOT BE PERSONALLY LIABLE IN CONNECTION WITH ANY DUTIES PERFORMED BY RECEIVER PURSUANT TO THE ORDERS.

(b) NO PROVISION OF THIS AGREEMENT SHALL OPERATE TO PLACE ANY OBLIGATION OR LIABILITY FOR THE CONTROL, CARE, MANAGEMENT OR REPAIR OF THE PROPERTY UPON RECEIVER NOR SHALL IT OPERATE TO MAKE RECEIVER RESPONSIBLE OR LIABLE FOR ANY WASTE COMMITTED ON THE PROPERTY BY ANY PERSON OR FOR ANY DANGEROUS OR DEFECTIVE CONDITION OF THE PROPERTY OR FOR ANY NEGLIGENCE IN MANAGEMENT, UPKEEP, REPAIR OR CONTROL OF THE PROPERTY RESULTING IN LOSS OR INJURY OR DEATH TO ANY PERSON.

8.4 Survival. The provisions of this Article 8 shall survive the Close of Escrow.

ARTICLE 9 RELEASE

9.1 Release. To the maximum extent permitted by law, Buyer, on behalf of itself and its past, present and future agents, representatives, partners, shareholders, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs and executors and assigns (collectively, "**Buyer's Parties**"), hereby releases and forever discharges Seller, and each of their respective past, present and future agents (including Receiver and Broker (as defined in Section 14.1)), representatives, partners, attorneys', shareholders, principals, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs, executors and assigns (collectively, "**Released Parties**"), from and against all claims, rights, remedies, recourse or other basis for recovery, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever incurred by Buyer (including, without limitation, attorneys' fees and costs) ("**Claims**"), whether direct or indirect, known or unknown, foreseen, whether before or after the Closing Date, including without limitation any loss, damage, injury, illness, death or other claim

attributable to: (a) the use of the Property or any part thereof; (b) a defect in the design or construction of any improvements on or about the Property or the physical condition of the Property, including without limitation the grading of the Land or land adjacent to the Land, whether or not performed by a Released Party, and any surface and subsurface conditions; (c) the presence on the Land of any threatened or endangered species, or any archaeological sites, artifacts or other matters of archaeological significance, or any hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws including, without limitation, all claims in tort or contract and any claim for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.) or any similar federal, state or local statute, rule or ordinance relating to liability of property owners for environmental matters; (d) any act, omission or representation of Buyer or any of Buyer's Parties; (e) any accident or casualty on the Property caused by or attributable to the acts or omissions of any Released Parties, Buyer or Buyer's Parties on or about the Property; (f) a violation or alleged violation by any Released Parties, Buyer, or Buyer's Parties of any law now or hereinafter enacted; (g) a slope failure or surface or subsurface geologic or groundwater condition caused by or attributable to any Released Parties, Buyer or Buyer's Parties; (h) the design, construction, engineering or other, work with respect to the Property provided or performed by or caused by or attributable to any Released Parties, Buyer or Buyer's Parties, whether before or after the Closing Date; (i) any other cause whatsoever in connection with Buyer's use of the Property or Buyer's performance under the Agreement or any of the instruments executed and delivered at Closing in connection herewith; (j) any breach by Buyer in the performance of its obligations under this Agreement or the other instruments executed and delivered at Closing in connection herewith; or (k) the application of the principles of strict liability in connection with the Property (collectively, the "**Released Claims**"). Notwithstanding the foregoing, the Buyer shall not be required to or be deemed to have waived any Claims against any particular Released Party from an event which arises from a pre-existing relationship or claim between the Buyer and such Released Party.

With respect to this release and discharge, Buyer, on behalf of itself and all of Buyer's Parties, hereby acknowledges that the Released Claims may include Claims of which Buyer is presently unaware, or which Buyer does not presently suspect to exist, or which may not yet have accrued or become manifest, and which, if known by Buyer on the Effective Date or the Closing Date would materially affect Buyer's release and discharge of Seller and the other Released Parties; provided however, that this release and discharge shall not be construed to affect the liabilities of the parties to third parties.

9.2 Survival. The provisions of this Article 9 shall survive the Close of Escrow.

ARTICLE 10 DISPUTE RESOLUTION

10.1 Court Trial. Each party to this Agreement hereby expressly waives any right to trial by jury with respect to any claim, demand, action or cause of action (a) arising under this Agreement, including, without limitation, any present or future modification thereof, or (b) in any way connected with or related or incidental to the dealings of the parties hereto or any of them with respect to this Agreement (as now or hereafter modified) or any other instrument, document or agreement executed or delivered in connection herewith, or the transactions related hereto or

thereto, in each case whether such claim, demand, action or cause of action is now existing or hereafter arising, and whether sounding in contract or tort or otherwise; and each party hereby agrees and consents that any such claim, demand or cause of action shall be decided by court trial without a jury, and that any party to this Agreement may file an original counterpart or a copy of this section with any court as written evidence of the consent of the parties hereto to the waiver of any right they might otherwise have to trial by jury. The parties shall be entitled to recover only their actual damages, and no party shall be entitled to recover any consequential damages, punitive damages, or any other damages that are not actual damages.

10.2 Venue. Any action shall be commenced and maintained in the Court. The parties irrevocably consent to jurisdiction and venue in such Court and agree not to seek transfer or removal of any action commenced in accordance with the terms of this article.

**ARTICLE 11
NATURAL HAZARDS**

Buyer acknowledges that: (a) it is a sophisticated and experienced purchaser of real property; (b) Buyer and Seller are parties of equal bargaining strength; (c) this Agreement is not a contract of adhesion but has been expressly negotiated between the parties; and (d) this Agreement concerns a transaction that is private in nature. Buyer further acknowledges that it has the opportunity to make, has made or will make its own independent investigations, as provided in this Agreement, and that the opportunity for investigation provided herein allows the Buyer to determine, among other issues, whether the Land is located in any natural hazard areas.

**ARTICLE 12
CONDEMNATION AND DESTRUCTION**

12.1 Eminent Domain or Taking. If proceedings under a power of eminent domain relating to the Land or any part thereof are commenced prior to Close of Escrow, Seller shall promptly notify Buyer in writing and the following terms shall apply:

(a) If such proceedings involve the taking of title to all or a Material (as defined in Section 12.3 below) portion of the Land (a “**Material Taking**”), Buyer may elect to terminate this Agreement by written notice given within ten days of Seller’s written notice to Buyer advising of such proceedings, in which event Escrow Holder shall disburse the Earnest Money Deposit to Buyer upon Escrow Holder’s receipt of written notice of Buyer’s termination and neither party shall have any further rights or obligations hereunder, except for those which are expressly stated to survive termination of this Agreement or which are contained in Section 6.9.

(b) If the proceedings do not involve the taking of title to all or a Material portion of the Land, or if Buyer does not elect to terminate this Agreement, this transaction shall be consummated as described herein and any award or settlement payable with respect to such proceeding shall be paid or assigned to Buyer upon Close of Escrow.

(c) If the purchase and sale of the Property is not consummated for any reason, any condemnation award or settlement shall belong solely to Seller.

12.2 Damage or Destruction. Except as provided in this Section 12.2, prior to the Close of Escrow, the entire risk of loss of damage by earthquake, landslide, fire or other casualty shall be borne and assumed solely by Seller. If, prior to the Close of Escrow any part of the Land or improvements thereon is damaged or destroyed by earthquake, landslide, fire or other casualty, Seller shall promptly inform Buyer of such fact in writing and advise Buyer as to the extent of the damage and whether it is, in Seller's reasonable opinion, "Material" or "not Material." The following terms shall apply:

(a) If such damage or destruction is "Material" (a "Material Casualty"), Buyer shall have the option to terminate this Agreement upon written notice to Seller given not later than ten days after receipt of Seller's written notice to Buyer advising of such damage or destruction, in which event Escrow Holder shall disburse the Earnest Money Deposit to Buyer upon Escrow Holder's receipt of written notice of Buyer's termination.

(b) If Buyer does not elect to terminate this Agreement, or if the damage or destruction is not "Material," Seller shall reduce the Purchase Price by the value reasonably estimated by Seller to repair or restore the damaged portion of such Land or improvements, less any sums expended by Seller to make emergency repairs to such Land or improvements or to otherwise protect the physical condition of such Land or improvements, and this transaction shall close pursuant to the terms of this Agreement.

(c) If the damage is not "Material," Seller's notice to Buyer of the damage or destruction shall also set forth Seller's reduced Purchase Price and Seller's allocation of value to the damaged portion of such improvements. If Buyer does not accept Seller's reduced Purchase Price, Seller may elect to repair or restore the damaged portion of such improvements. If Seller elects to repair or restore the damage, then Buyer shall proceed to Closing. If Seller does not elect to repair or restore the damage, and Buyer does not accept Seller's reduced Purchase Price Buyer's sole remedy shall be to terminate this Agreement. If Buyer elects to terminate the Agreement pursuant to Section 12.2(c), provisions of Section 6.9 shall apply.


(d) Whether or not the sale of the Property is consummated hereunder, all rights to insurance claims or proceeds with respect to any damage to or destruction of any improvements occurring prior to the Close of Escrow shall belong to Seller.


12.3 Definition of Material. As used in this Article 12, "Material" shall mean (i) any taking, or condemnation of ten percent (10%) or more of the Land; or (ii) damage or destruction to or of the Land, as applicable, which causes the temporary closing of the Property for a period of five (5) days or more and costs more than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) to repair.

ARTICLE 13 DEFAULT BY BUYER

13.1 DEFAULT BY BUYER. IN THE EVENT THE CLOSING DOES NOT OCCUR BECAUSE OF BUYER'S DEFAULT, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO BUYER AND THE ESCROW HOLDER. IN SUCH EVENT, ESCROW HOLDER SHALL RELEASE THE

EARNEST MONEY DEPOSIT TO SELLER, AND SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE EARNEST MONEY DEPOSIT AS LIQUIDATED DAMAGES AND, EXCEPT FOR BUYER'S INDEMNITY AND OTHER SPECIFIC OBLIGATIONS REFERRED TO HEREIN WHICH MAY BE ENFORCED BY SELLER, NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER. IN THE EVENT THE CLOSING DOES NOT OCCUR BECAUSE OF BUYER'S DEFAULT, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY SELLER AS A RESULT OF BUYER'S FAILURE TO COMPLETE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH SELLER WILL INCUR AS A RESULT OF SUCH DEFAULT; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT: (A) LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES; (B) WAIVE OR AFFECT BUYER'S INDEMNITY OBLIGATIONS AND SELLER'S RIGHTS TO SUCH INDEMNITY; OR (C) WAIVE OR AFFECT BUYER'S OBLIGATIONS TO RETURN OR PROVIDE TO SELLER DOCUMENTS, REPORTS OR OTHER INFORMATION PROVIDED TO OR PREPARED BY OR FOR BUYER PURSUANT TO APPLICABLE PROVISIONS OF THIS AGREEMENT. THEREFORE, BUYER AND SELLER DO HEREBY AGREE THAT AS OF THE EFFECTIVE DATE, A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AN AMOUNT EQUAL TO THE EARNEST MONEY DEPOSIT (WHICH INCLUDES ANY ACCRUED INTEREST THEREON). SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER.



Buyer's initials


Seller's initials

13.2 Default by Seller; Unsuccessful Bidder. Subject to Section 8.3, if the sale of the Property is not consummated because of a material default by Seller under this Agreement, Buyer's sole remedy shall be to (i) terminate this Agreement and recover (a) the Earnest Money Deposit and interest accrued thereon and (b) Buyer's actual out of pocket third party costs incurred (but not to exceed \$50,000.00) in conducting its due diligence investigations or (ii) specifically enforce Seller's obligations to convey the Property and recover professional fees and costs. If Buyer is not the High Bidder (as defined below) at the Auction, Buyer shall be entitled to the Earnest Money Deposit and interest accrued thereon, but shall not be entitled to specifically enforce Seller's obligation to convey the Property, or recover any out of pocket costs, professional fees and costs, or other amounts.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Brokerage Commissions. Seller represents and warrants to Buyer that Seller has not engaged any broker or finder in connection with the transaction contemplated by this Agreement other than Colliers International ("**Seller's Broker**"), whose commission (if the Closing occurs) shall be paid pursuant to a separate agreement entered into by Seller and Seller's Broker. Buyer represents and warrants to Seller that Buyer has not engaged any broker or finder in connection with the transaction contemplated by this Agreement other than CBRE ("**Buyer's Broker**"), whose commission (if the Closing occurs) shall be paid by Seller pursuant to a separate agreement between Seller's Broker and Buyer's Broker. Buyer shall indemnify, defend and hold Seller harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Buyer in connection with, this transaction, and Seller shall indemnify, defend and hold Buyer harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Seller in connection with this transaction. This indemnity provision shall survive the Closing or any earlier termination of this Agreement. Seller's Broker and Buyer's Broker shall not be deemed parties or third party beneficiaries of this Agreement. As a condition to Seller's obligation to pay the commission pursuant to this Section 14.1, each of Seller's Broker and Buyer's Broker shall execute the respective signature page for each such broker attached hereto solely for purposes of confirming the matters set forth therein; provided, however, that (a) such signatures hereon of Seller's Broker and Buyer's Broker shall not be a prerequisite to the binding nature of this Agreement on Buyer and Seller, and the same shall become fully effective upon execution by Buyer and Seller, and (b) the signature of Seller's Broker and Buyer's Broker will not be necessary to amend any provision of this Agreement.

14.2 Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (a) personally delivered with a written receipt of delivery; (b) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (c) sent by certified or registered mail, return receipt requested; or (d) sent by email, with written confirmation by overnight or first class mail, in which case notice shall be deemed delivered upon receipt of confirmation of transmission of such email notice. All notices shall be deemed effective when actually delivered as documented in a delivery receipt; provided, however, that if the notice was sent by overnight courier or mail as aforesaid and is affirmatively refused or cannot be delivered during customary business hours by reason of the absence of a signatory to acknowledge receipt, or by reason of a change of address with respect to which the addressor did not have either knowledge or written notice delivered in accordance with this paragraph, then the first attempted delivery shall be deemed to constitute delivery. Each party shall be entitled to change its address for notices from time to time by delivering to the other party notice thereof in the manner herein provided for the delivery of notices. All notices shall be sent to the addressee at its address set forth following its name below:

To Seller/Receiver:

Thomas C. Hebrank
E3 Advisors
401 West "A" Street, Suite 1830
San Diego, California 92101
E-mail: thebrank@ethreadvisors.com
Telephone: (619) 567-7223

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, California 92101
Email: tfates@allenmatkins.com
Telephone: (619) 235-1527
Attention: Ted G. Fates, Esq.

To Buyer:

Prologis, L.P.
c/o Prologis, Inc.
17777 Center Court Drive N., Suite 100
Cerritos, California 90703
Attention: Fritz Wyler, Senior Vice President, Investment Officer
Telephone/Email: (562)345-9214 / fwyler@prologis.com

With a copy to:

Prologis, Inc.
Attn: Megan Robert, Matt Stoddard, Jake Ross, Esq. and Michael Drummy
4545 Airport Way
Denver, Colorado 80239
Telephone/Email (MR): (303)567-5613 / mrobert@prologis.com
Telephone/Email (MS): (303) 567-5422 / mstoddard@prologis.com
Telephone/Email (JR): (303)567-5985 / jross@prologis.com
Telephone/Email (MD): (303)567-5690 / mdrummy@prologis.com

14.3 Confidentiality. Unless otherwise agreed to in writing by Seller and Buyer, each party shall keep confidential all documents, contracts, prices, plans specifications, strategies, marketing programs, financial statements, reports or other information provided to, or generated by the other party relating to the Property and shall not disclose any such information to any person other than: (a) employees, agents and attorneys of Seller or Buyer; (b) those who are actively and directly participating in the evaluation of the Property, or the appraisal, investigation or financing of the purchase or construction of the Property; and (c) governmental, administrative, regulatory or judicial authorities in the investigation of the compliance of the Property with applicable legal requirements. Buyer agrees to provide this confidentiality provision to any consultant, contractor

or employee to whom confidential information may be disclosed and shall require any such consultant, contractor or employee to be bound by this confidentiality provision. Buyer expressly covenants and agrees that it shall not disclose any code compliance, environmental or other regulatory matters to governmental or other authorities without the express prior written approval by Seller unless required by law, in which case Buyer shall immediately notify Seller thereof. Upon any termination of this Agreement for any reason, Buyer shall promptly return to Seller copies of all documents or other information pertaining to the Property provided to Buyer by Seller including, without limitation, the Materials described in Exhibit "D" attached hereto. Notwithstanding anything to the contrary contained herein, Buyer hereby acknowledges that a copy of this Agreement shall be provided to Prospective Bidders in connection with the Auction, in accordance with and subject to the terms and conditions of Article 15, below, and that in no event shall any such provision of this Agreement to Prospective Bidders be considered a violation of the confidentiality requirements set forth herein. Buyer also acknowledges that a copy of this Agreement shall be filed with the Court in connection with the Receiver's motion for Court approval of the sale. The provisions of this Section 14.3 shall survive the Closing or earlier termination of this Agreement.

14.4 Assignment. Buyer shall not assign this Agreement without obtaining Seller's prior written consent, which consent may be withheld by Seller in its sole and absolute discretion for any reason whatsoever; provided, however, Buyer may assign this Agreement without Seller's consent to an Affiliate (as hereinafter defined) and either party may assign this Agreement without the other's consent to effect an Exchange pursuant to Section 14.20. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs and devisees of the parties. For the purposes of this Section, the term "**Affiliate**" means (a) an entity that directly or indirectly controls, is controlled by or is under common control with the Buyer, or (b) an entity at least a majority of whose economic interest is owned by Buyer; and the term "control" means the power to direct the management of such entity through voting rights, ownership or contractual obligations.

14.5 Bankruptcy. Buyer agrees that in the event that: (a) all or substantially all of Buyer's assets are placed in the hands of a receiver or trustee, and such receivership or trusteeship continues for a period of thirty (30) days; (b) Buyer makes an assignment for the benefit of creditors; (c) Buyer is adjudicated a bankruptcy; (d) Buyer institutes any proceeding under any law relating to bankruptcy wherein Buyer seeks to be adjudicated a bankrupt, or to be discharged of its debts, or to effect a plan of liquidation, composition or reorganization; (e) an involuntary proceeding is filed against Buyer under any bankruptcy laws and Buyer consents thereto or acquiesces therein by pleading or default or such involuntary proceeding is not dismissed within ninety (90) days; or (f) substantially all of Buyer's assets are attached or seized by judicial order where such seizure is not discharged within thirty (30) days then: (i) Buyer shall be deemed to be in default hereunder, (ii) this Agreement, including without limitation the rights granted herein, shall not become an asset in any of such proceedings; (iii) in addition to all other available remedies it shall be lawful for Seller to declare this Agreement terminated; and (iv) Buyer shall have no further claim on the Property hereunder or otherwise, and no right to return of its Deposit or any other payments or expenses incurred pursuant to this Agreement.

14.6 Not an Offer; Last Date for Submission. Seller's delivery of unsigned copies of this Agreement is solely for the purpose of review by the party to whom delivered, and neither the

delivery nor any prior communications between the parties, whether oral or written, shall in any way be construed as an offer by Seller, nor in any way imply that Seller is under any obligation to enter the transaction which is the subject of this Agreement. The signing of this Agreement by Buyer constitutes an offer which shall not be deemed accepted by Seller unless and until Seller has signed this Agreement and delivered a duplicate original to Buyer.

14.7 Modification. This Agreement may not be modified or amended except by a written agreement executed by Seller and Buyer, and only to the extent set forth therein.

14.8 Attorneys' Fees. In the event any legal or equitable action is commenced in connection with this Agreement or the Property, whether in contract or in tort, the prevailing party (as determined by the court) shall be entitled to recover from the losing party all reasonable costs and expenses incurred, including but not limited to reasonable attorneys' fees, in addition to all other relief and remedies to which the prevailing party may be entitled.

14.9 Successors and Assigns. Subject to the limitations on Buyer's right to assign, this Agreement shall be binding on, and shall inure to the benefit of, the successors and assigns of the parties.

14.10 Duplicate Counterparts. This Agreement may be executed in duplicate counterparts, all of which together shall constitute a single instrument, and each of which shall be deemed an original of this Agreement for all purposes, notwithstanding that less than all signatures appear on any one counterpart.

14.11 Section Headings. The various section headings in this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

14.12 Survival of Covenants, etc. Except as otherwise expressly provided herein, all agreements, conditions, acknowledgments, representations, and other obligations set forth in this Agreement shall merge with the grant deed and shall not survive the Close of Escrow.

14.13 Days/Holidays. All references to days herein shall refer to calendar days unless otherwise noted. When performance of an obligation or satisfaction of a condition set forth in this Agreement is required on or by a date that is a Saturday, Sunday or legal holiday, such performance or satisfaction shall instead be required on or by the next business day following that Saturday, Sunday or holiday, notwithstanding any other provisions of this Agreement.

14.14 No Recorded Memorandum. Prior to Close of Escrow, neither this Agreement nor any memorandum hereof or reference hereto shall be filed in any place of public record. Failure of Buyer to comply with this Section shall be a material default by Buyer under this Agreement and, at the election of Seller, shall automatically and immediately terminate all of Buyer's rights under this Agreement, and thereafter Buyer shall not have any right, title, or interest in or to the Property whatsoever.

14.15 Exhibits. All Exhibits attached to, and to which reference is made in, this Agreement are incorporated into, and shall be deemed a part of, this Agreement.

14.16 Entire Agreement. This Agreement is the entire agreement of Seller and Buyer with respect to the Property, containing all of the terms and conditions to which Seller and Buyer have agreed. This Agreement supersedes and replaces entirely all previous oral and written understandings, offers, counter offers, acceptances, if any, of Seller and Buyer respecting the Property.

14.17 Time. Time is of the essence in this Agreement and each and every provision of this Agreement.

14.18 Governing Law and Forum. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Nevada. The exclusive forum for resolving disputes arising from or related to this Agreement, the Auction (defined below) or closing of the sale shall be the Court in the Case.

14.19 Severability. If any term, provision, covenant or condition of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Agreement shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

14.20 Section 1031 Exchange. Each party may consummate the purchase and sale of all or a portion of the Property as part of a so-called like kind exchange (the “**Exchange**”) pursuant to Section 1031 of the Code, provided that: (a) the Closing shall not be delayed or affected by reason of the Exchange nor shall the consummation or accomplishment of the Exchange be a condition precedent or condition subsequent to the exchanging party’s obligations under this Agreement; (b) the exchanging party shall effect the Exchange through an assignment of all or a portion of this Agreement, or its rights under this Agreement, to a qualified intermediary; (c) the non-exchanging party shall not be required to take an assignment of the purchase agreement for the relinquished property or be required to acquire or hold title to any real property for purposes of consummating the Exchange; and (d) the exchanging party shall pay any additional costs that would not otherwise have been incurred by either party had the exchanging party not consummated its purchase through the Exchange. The non-exchanging party shall not by this agreement or acquiescence to the Exchange (x) have its rights under this Agreement affected or diminished in any manner, or (y) be responsible for compliance with or be deemed to have warranted to the exchanging party that the Exchange in fact complies with Section 1031 of the Code.

14.21 Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Buyer and Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

14.22 Intentionally Omitted.

14.23 Signer's Warranty. Each individual executing and delivering this Agreement on behalf of a party hereby warrants and represents to the other party that he or she has been duly authorized and empowered to do so.

14.24 Multiple Buyers. As used in this Agreement, the term "Buyer" means all entities acquiring any interest in the Property at the Closing, including, without limitation, any assignee(s) of the original Buyer pursuant to Section 14.24 of this Agreement. In the event that "Buyer" has any obligations or makes any covenants, representations or warranties under this Agreement, the same shall be made jointly and severally by all entities being a Buyer hereunder. In the event that Seller receives notice from any entity being a Buyer hereunder, the same shall be deemed to constitute notice from all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder takes any action, breaches any obligation or otherwise acts pursuant to the terms of this Agreement, the same shall be deemed to be the action of the other entity(ies) being a Buyer hereunder and the action of "Buyer" under this Agreement. In the event that Seller is required to give notice or take action with respect to Buyer under this Agreement, notice to any entity being a Buyer hereunder or action with respect to any entity being a Buyer hereunder shall be a notice or action to all entities being a Buyer hereunder. In the event that any entity being a Buyer hereunder desires to bring an action or arbitration against Seller, such action must be joined by all entities being a Buyer hereunder in order to be effective. In the event that there is any agreement by Seller to pay any amount pursuant to this Agreement to Buyer under any circumstance, that amount shall be deemed maximum aggregate amount to be paid to all parties being a Buyer hereunder and not an amount that can be paid to each party being a Buyer hereunder. In the event that Seller is required to return the Deposit or other amount to Buyer, Seller shall return the same to any entity being a Buyer hereunder and, upon such return, shall have no further liability to any other entity being a Buyer hereunder for such amount. The foregoing provisions also shall apply to any documents to be executed pursuant to the provisions of this Agreement.

ARTICLE 15 SALE PROCEDURES FOR AUCTION

15.1 The Auction. The parties acknowledge it is a condition precedent to the Closing that Receiver obtain the Court Approval and the Receiver shall seek such approval from the Court. In the event of Buyer's approval, or failure to disapprove this Agreement, on or prior to the Contingency Date, as set forth in Section 4.1(a) above, Receiver shall, within seven (7) days after the Contingency Date, request a hearing date from the Court for the sale motion (the "**Hearing Date**"). Receiver will propose to the Court that the sale of the Property be subject to an auction (the "**Auction**") conducted by the Receiver.

15.2 Overbids and Bid Increments. The minimum overbid shall be Nine Million Six Hundred Thousand and No/100 Dollars (\$9,600,000.00). Only Qualified Bidders (as defined below) may make bids at the Auction. All bids are subject to overbids in increments of Fifty Thousand and No/100 Dollars (\$50,000.00). The Court may reject any and all bids following conclusion of the Auction.

15.3 Due Diligence Information. All prospective bidders ("**Prospective Bidders**") shall have had the opportunity to inspect the Property and any documentation relating thereto prior to the Auction. Prospective Bidders may also request access to information about the Property ("**Due Diligence Information**") and obtain a form purchase and sale agreement.

15.4 No Representations and Warranties for Due Diligence Information. Any Due Diligence Information provided to Prospective Bidders is for informational purposes only and

provided without any warranty, guaranty or representation by Receiver, or Seller's Broker. All Prospective Bidders shall conduct their own independent investigation and analysis regarding the condition of the Property and its suitability for Prospective Bidders' intended use. Neither the Receiver, nor the Seller's Broker has made any representations, express or implied, regarding the completeness or accuracy of the Due Diligence Information.

15.5 Qualified Bidder. To be determined a qualified bidder (the "**Qualified Bidder**"), one must: (i) provide a fully executed purchase and sale agreement for the Property in form substantially similar to this Agreement (without a Contingency Date or period for Inspections) ("**Qualified Bid PSA**"), acceptable to the Receiver, (ii) provide an earnest money deposit (the "**Bid Deposit**") by wire transfer or cashier's check in the amount of Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) payable to the Receiver, which amount shall be *non-refundable* to the Qualified Bidder with the highest bid at the Auction (the "**High Bidder**") if for any reason (a) the High Bidder fails to finally close the sale such that title transfers by no later than the Closing Date or (b) the High Bidder fails to provide the balance of the purchase price to the Receiver one day prior to the Closing Date. Each Qualified Bidder must provide the Qualified Bid PSA and Bid Deposit to the Receiver no later than five (5) business days prior to the Auction. The Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative. The High Bidder's Bid Deposit shall be applied to the purchase price, if the sale is approved by the Court.

15.6 Consent to Court Jurisdiction and Waiver of Jury Trial. All Qualified Bidders appearing at the Auction shall have deemed to have consented to the Court's jurisdiction and waived any right to jury trial in connection with any disputes related to the Auction, or the closing of the sale. The Court shall be the exclusive forum for any such disputes.

15.7 Receiver's Right to Determine Conduct of Auction. The Receiver reserves the right to deny any person admittance to the Auction, to postpone or cancel the Auction, to withdraw the Property from the Auction, and to change any terms or procedures of the Auction or the particular conditions of sale, as necessary, upon notice to Buyer, and any Qualified Bidders, prior to or at the Auction, without further Court order.

15.8 No Contingencies for Qualified Bidder. The sale to any Qualified Bidder of the Property shall *not* be contingent upon the validity, effectiveness, and or binding nature of the Qualified Bidder's offer, including without limitation, contingencies for financing, due diligence or inspection.

15.9 No Conditions Precedent for Qualified Bidder. The sale to any Qualified Bidder of the Property shall not be subject to any conditions precedent to the Qualified Bidder's obligation to timely consummate the sale transaction, and to pay the remainder of the purchase price.

15.10 Auction Confirmation Order. The only authorized condition subsequent to the Auction for the Qualified Bidder is entry of a Court order confirming the sale to the Qualified Bidder (the "**Auction Confirmation Order**").

15.11 Conditions to Consummation of Sale Transaction Prior to and Following Auction. The closing of any sale to a Qualified Bidder shall be subject to the following conditions:

(i) Receiver's review and acceptance of the highest bid received from a Qualified Bidder, (ii) entry of the Auction Confirmation Order, (iii) receipt of full payment on or before the date which is three (3) business days after the date upon which the Court enters the Auction Confirmation Order such that the Property transfer can occur promptly thereafter, and (iv) prior to Auction, waiver and release of all claims against the Receiver. If any of these foregoing conditions are not satisfied, (a) the sale to the Qualified Bidder shall not be consummated, and (b) any obligations of the Receiver shall also be terminated, including any obligations under the Qualified Bid PSA.

15.12 Transfer of Title to Property Following Auction. Following the Auction, title to the Property shall be transferred by Grant Deed, "*AS-IS*", *WITHOUT REPRESENTATIONS AND WARRANTIES*, to the High Bidder.

15.13 Court Approval if No Qualified Bids are Received. In the event no Qualified Bids are provided to the Receiver, the Receiver will notify the Court that no Auction will take place and ask the Court to approve the sale to Buyer pursuant to this Agreement.

IN WITNESS WHEREOF, this Purchase and Sale Agreement and Joint Escrow Instructions is executed and delivered by the parties as of the Effective Date.


SELLER:


THOMAS C. HEBRANK, as Receiver

BUYER:

PROLOGIS, L.P., a Delaware limited partnership

By: PROLOGIS, INC., a Maryland corporation,
its general partner

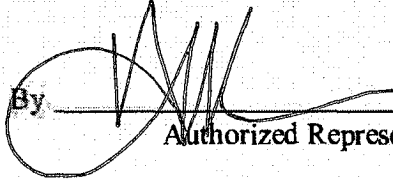
By: 
Name: Jason Best
Title: VP

ESCROW HOLDER SIGNATURE PAGE

The undersigned Escrow Holder hereby agrees to: (i) accept the foregoing Agreement; (ii) be Escrow Holder under said Agreement; and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder, and hereby establishes May 3, 2017 as the date of opening of escrow and designates NCS-848136 as the escrow number assigned to this escrow

Dated: May 3, 2017

FIRST AMERICAN TITLE INSURANCE
COMPANY


By  _____
Authorized Representative

SELLER'S BROKER SIGNATURE PAGE

The undersigned Seller's Broker hereby executes this Seller's Broker Signature Page solely to confirm the following: (a) Seller's Broker represents only the Seller in the transaction described in the Agreement to which this signature page is attached, (b) Seller's Broker acknowledges that the only compensation due to Seller's Broker in connection with the Closing of the transaction described in the Agreement to which this signature page is attached is as set forth in a separate agreement between Seller and Seller's Broker, and (c) Seller's Broker represents and warrants to Seller that Seller's Broker and its affiliates has not and will not receive any compensation (cash or otherwise) from or on behalf of Buyer or any affiliate thereof in connection with the transaction, and do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to Section 14.4 of the Agreement, acquires the Property at the Closing) nor has Buyer granted (as of the Effective Date or the Closing Date) Seller's Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

SELLER'S BROKER:

COLLIERS INTERNATIONAL

By: 
Name: Mike Mixer
Title: Managing Partner

BUYER'S BROKER SIGNATURE PAGE

The undersigned Buyer's Broker hereby executes this Buyer's Broker Signature Page solely to confirm the following: (a) Buyer's Broker represents only the Buyer in the transaction described in the Agreement to which this signature page is attached, (b) Buyer's Broker acknowledges that the only compensation due to Buyer's Broker in connection with the Closing of the transaction described in the Agreement to which this signature page is attached is as set forth in a separate agreement between Seller's Broker and Buyer's Broker, and (c) Buyer's Broker represents and warrants to Seller that Buyer's Broker and its affiliates has not and will not receive any compensation (cash or otherwise) from or on behalf of Buyer or any affiliate thereof in connection with the transaction, and do not, and will not at the Closing, have any direct or indirect legal, beneficial, economic or voting interest in Buyer (or in an assignee of Buyer, which pursuant to Section 14.4 of the Agreement, acquires the Property at the Closing) nor has Buyer granted (as of the Effective Date or the Closing Date) Buyer's Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

BUYER'S BROKER:

CBRE


By: 
Name: MICHAEL NEWMAN
Title: MANAGING DIRECTOR

EXHIBIT LIST

Exhibit "A" Legal Description of the Land
Exhibit "B" Form of General Assignment
Exhibit "C" Form of Grant Deed

EXHIBIT A

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN IS SITUATED IN CLARK COUNTY, NEVADA, AND IS DESCRIBED AS FOLLOWS:

The South Half(S 1/2) of the Northeast Quarter(NE 1/4) of Section 34, Township 19 South, Range 62 East, M.D.B.& M., Clark County, Nevada.

Excepting therefrom any portion lying Southeast of the Northwesterly right of way line of U.S. Highway No. 91.

Assessor's Parcel Number: 123-34-601-001

EXHIBIT B

FORM OF GENERAL ASSIGNMENT

GENERAL ASSIGNMENT AND ASSUMPTION

This General Assignment and Assumption (this “**Assignment**”) is executed by Thomas C. Hebrank, Receiver, appointed by the United States District Court for the Southern District of California, in favor of _____ (“**Buyer**”) as of _____, 2017 (the “**Effective Date**”).

Seller and Buyer have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of _____, 20__ (“**Agreement**”), in which Seller has agreed to sell and Buyer has agreed to purchase the real property described in Exhibit A attached thereto and the improvements located thereon (collectively, the “**Project**”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

Pursuant to the Agreement, Seller has agreed to assign, without recourse or warranty, to Buyer all of Seller’s right, title and interest, if any, in and to the Miscellaneous Property Assets and the Permits.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Assignment.** As of the Effective Date, Seller hereby assigns, sells and transfers, without recourse or warranty, to Buyer all of Seller’s right, title and interest, if any, in and to the Miscellaneous Property Assets and the Permits.

2. **Assumption.** As of the Effective Date, Buyer expressly agrees to assume and hereby assumes all liabilities and obligations of the Seller in connection with the Miscellaneous Property Assets and the Permits.

3. **Counterparts.** This Assignment may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument.

4. **Attorneys’ Fees.** If any action or proceeding is commenced by either party to enforce its rights under this Assignment, the prevailing party in such action or proceeding shall be awarded all reasonable costs and expenses incurred in such action or proceeding, including reasonable attorneys’ fees and costs (including the cost of in-house counsel and appeals), in addition to any other relief awarded by the court.

5. **Applicable Law.** This Assignment shall be governed by and interpreted in accordance with the laws of the State of _____.

6. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, successors, and assigns.

WITH RESPECT TO ALL MATTERS TRANSFERRED, WHETHER TANGIBLE OR INTANGIBLE, PERSONAL OR REAL, SELLER EXPRESSLY DISCLAIMS A WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS FOR A PARTICULAR USE OR ANY OTHER WARRANTY EXPRESSED OR IMPLIED THAT MAY ARISE BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE FOR THE STATE IN WHICH THE PROPERTY IS LOCATED (OR ANY OTHER STATE).

[Remainder of Page Intentionally Left Blank]

WITNESS the signatures of the undersigned.

Dated: _____, 20__

Seller:

Thomas C. Hebrank, as Receiver

Buyer:

a _____

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT C

FORM OF GRANT DEED

Recording Requested by,
When Recorded Return to and
Mail Tax Statements to:

SPACE ABOVE THIS LINE FOR RECORDING USE

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Thomas C. Hebrank, Receiver, appointed by the United States District Court for the Southern District of California (“Grantor”), hereby grants to _____, a _____, that certain real property located in the County of Clark, State of Nevada, more particularly described in Exhibit “A” attached hereto (the “Land”), together with all right, title and interest in and to all buildings and improvements now located or hereafter constructed on the Land, subject to the following:

1. nondelinquent general, special and supplemental real property taxes and assessments, and
2. all other covenants, agreements, conditions, restrictions, reservations, rights, rights-of-way, dedications, offers of dedication and easements of record.

[Signatures on following page]

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of _____
____, 20__.

GRANTOR:

Thomas C. Hebrank, as Receiver

EXHIBIT "A" TO GRANT DEED

LEGAL DESCRIPTION

The South Half (S 1/2) of the Northeast Quarter (NE 1/4) of Section 34, Township 19 South, Range 62 East, M.D.B. & M., Clark County, Nevada.

Excepting therefrom any portion lying Southeast of the Northwesterly right of way line of U.S. Highway No. 91.

Assessor's Parcel Number: 123-34-601-001

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF _____)
COUNTY OF _____)

On _____, 20__, before me, _____, the undersigned, a Notary Public in and for said State, personally appeared:

Name of Signer(s)

Who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

**FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**First Amendment**") is made as of June 14, 2017, by and between PROLOGIS, L.P., a Delaware limited partnership ("**Buyer**") and HOLLYWOOD PARTNERS, a California general partnership, BLA PARTNERS, a California general partnership, CHECKERED FLAG PARTNERS, a California general partnership, and VICTORY LAP PARTNERS, a California general partnership (collectively, "**Seller**"), by and through Thomas C. Hebrank ("**Receiver**"), solely in his capacity as Receiver in the case entitled *Securities and Exchange Commission v. Louis V. Schooler and First Financial Planning Corporation d/b/a Western Financial Planning Corporation*, United States District Court for the Southern District of California, Case No. 3:12-CV-02164-GPC-JMA.

RECITALS

A. Seller and Buyer entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of March 2, 2017 (the "**Agreement**"), for the sale of certain property containing approximately 57 acres of undeveloped land located at the southwestern corner of Las Vegas Boulevard and East Howdy Wells Avenue in an unincorporated portion of Clark County, Nevada, as more particularly described in the Agreement.

B. Seller and Buyer desire to amend the Agreement as provided herein.

C. All capitalized terms not otherwise defined in this First Amendment shall have the same meanings as set forth in the Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby amend the Agreement in the following respects:

1. City. Notwithstanding anything to the contrary contained in the Agreement, all references in the Agreement to the "City of Las Vegas" shall mean and refer to the City of North Las Vegas (the "**City**").

2. Conflict. In the event of a conflict between the terms and conditions of this First Amendment and the terms and conditions of the Agreement, the terms and conditions of this First Amendment shall control.

3. No Further Modifications. Except as set forth in this First Amendment, all other terms and provisions of the Agreement shall be and remain unmodified and in full force and effect. Effective as of the date hereof, all references in the Agreement to the "Agreement" will refer to the Agreement as amended by this First Amendment.

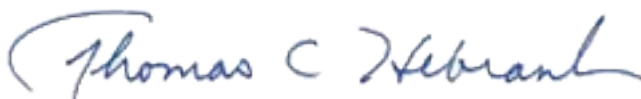
4. Counterparts and Fax/Email Signatures. This First Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken

together, shall constitute one agreement. This First Amendment may be executed by a party's signature transmitted by facsimile ("fax") or email and copies of this First Amendment executed and delivered by means of faxed or emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or emailed signatures as if such signatures were originals. Any party executing and delivering this First Amendment by fax or email shall promptly thereafter deliver a counterpart signature page of this First Amendment containing said party's original signature. All parties hereto agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this First Amendment as if it were an original signature page.

5. Severability. If any term, provision, covenant or condition of this First Amendment is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the First Amendment shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

IN WITNESS WHEREOF, Seller and Buyer have executed this First Amendment as of the date set forth above.

SELLER:

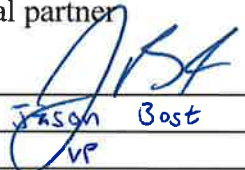


THOMAS C. HEBRANK, as Receiver

BUYER:

PROLOGIS, L.P.,
a Delaware limited partnership

By: PROLOGIS, INC., a Maryland corporation,
its general partner

By: 
Name: Jason Bost
Title: VP

SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This instrument (this "Amendment"), dated effective as of June 29, 2017, is by and between by and between Prologis, L.P., a Delaware limited partnership ("Buyer") and Hollywood Partners, a California general partnership; B.L.A. Partners, a California general partnership; Checkered Flag Partners, a California general partnership; and Victory Lap Partners, a California general partnership (collectively, "Seller"), by and through Thomas C. Hebrank ("Receiver"), solely in his capacity as Receiver in the case entitled *Securities and Exchange Commission v. Louis V. Schooler and First Financial Planning Corporation d/b/a Western Financial Planning Corporation*, United States District Court for the Southern District of California, Case No. 3:12-CV-02164-GPC-JMA, relative to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated effective 2 May 2017, as amended by that certain First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions (together, the "Agreement") concerning the real property more fully defined in the Agreement (the "Property").

IN CONSIDERATION of \$10.00 in hand paid, the covenants and conditions contained herein, and for other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree to amend the Agreement as follows:

1. Section 4.1(a). Section 4.1(a) shall be modified by extending the Contingency Date to July 21, 2017.

2. Miscellaneous.

a. Except to the extent the Agreement is modified by this Amendment, the remaining terms and conditions of the Agreement shall remain unmodified and in full force and effect, and is hereby ratified by Buyer and Seller. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

b. This Amendment may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties shall be deemed an original, but all of which when taken together shall constitute one agreement. Executed copies hereof may be delivered by email and shall be deemed originals and binding upon the parties hereto.

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

BUYER: Prologis, L.P., a Delaware limited partnership

By: Prologis, Inc., its general partner

By: [Signature]
Name: Jason Bost
Title: VP

SELLER:

[Signature: Thomas C. Hebrank]
Thomas C. Hebrank
Receiver

**THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS**

This instrument (this "Amendment"), dated effective as of July 20, 2017, is by and between by and between Prologis, L.P., a Delaware limited partnership ("Buyer") and Hollywood Partners, a California general partnership; B.L.A. Partners, a California general partnership; Checkered Flag Partners, a California general partnership; and Victory Lap Partners, a California general partnership (collectively, "Seller"), by and through Thomas C. Hebrank ("Receiver"), solely in his capacity as Receiver in the case entitled *Securities and Exchange Commission v. Louis V. Schooler and First Financial Planning Corporation d/b/a Western Financial Planning Corporation*, United States District Court for the Southern District of California, Case No. 3:12-CV-02164-GPC-JMA, relative to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated effective 2 May 2017, as amended by that certain First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of June 14, 2017, and as amended by that certain Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of June 29, 2017 (together, the "Agreement") concerning the real property more fully defined in the Agreement (the "Property").

IN CONSIDERATION of \$10.00 in hand paid, the covenants and conditions contained herein, and for other good and valuable mutual consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree to amend the Agreement as follows:

1. Section 4.1(a). Section 4.1(a) shall be modified by extending the Contingency Date to August 3, 2017.

2. Miscellaneous.

a. Except to the extent the Agreement is modified by this Amendment, the remaining terms and conditions of the Agreement shall remain unmodified and in full force and effect, and is hereby ratified by Buyer and Seller. Capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.

b. This Amendment may be executed in counterparts, each of which (or any combination of which) when signed by all of the parties shall be deemed an original, but all of which when taken together shall constitute one agreement. Executed copies hereof may be delivered by email and shall be deemed originals and binding upon the parties hereto.

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

BUYER: Prologis, L.P., a Delaware limited partnership

By: Prologis, Inc., its general partner

By: Meagan Robert
Name: Meagan Robert
Title: Senior VP

SELLER:

Thomas C Hebrank
Thomas C. Hebrank
Receiver

FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS FOURTH AMENDMENT TO PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS ("**Fourth Amendment**") is made as of August 3, 2017, by and between PROLOGIS, L.P., a Delaware limited partnership ("**Buyer**") and HOLLYWOOD PARTNERS, a California general partnership, BLA PARTNERS, a California general partnership, CHECKERED FLAG PARTNERS, a California general partnership, and VICTORY LAP PARTNERS, a California general partnership (collectively, "**Seller**"), by and through Thomas C. Hebrank ("**Receiver**"), solely in his capacity as Receiver in the case entitled *Securities and Exchange Commission v. Louis V. Schooler and First Financial Planning Corporation d/b/a Western Financial Planning Corporation*, United States District Court for the Southern District of California, Case No. 3:12-CV-02164-GPC-JMA.

RECITALS

A. Seller and Buyer entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of May 2, 2017 (the "**Original Agreement**"), as amended by that certain First Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of June 14, 2017, as further amended by that certain Second Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of June 29, 2017, and as further amended by that certain Third Amendment to Purchase and Sale Agreement and Joint Escrow Instructions dated as of July 20, 2017 (collectively, the "**Agreement**"), for the sale of certain property containing approximately 57 acres of undeveloped land located at the southwestern corner of Las Vegas Boulevard and East Howdy Wells Avenue in an unincorporated portion of Clark County, Nevada, as more particularly described in the Agreement.

B. Seller and Buyer desire to amend the Agreement as provided herein.

C. All capitalized terms not otherwise defined in this Fourth Amendment shall have the same meanings as set forth in the Agreement

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby amend the Agreement in the following respects:

1. Due Diligence Approval. Buyer hereby approves the condition of the Property and waives Buyer's right to terminate the Agreement pursuant to Section 4.1(a) of the Original Agreement.

2. Title Policy.

(a) The first sentence of Section 3.2 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"An ALTA Extended Coverage Owner's Title Insurance Policy (the "**Title Policy**") shall be issued by the Title Company as of the Closing Date without any title exception specifically relating to the Receivership Action (*i.e.*, a standard exclusion for claims or litigation matters shall not be considered to specifically relate to the Receivership Action) ("**Receivership Title Exception**"). In the event the Title Company provides written notice to Seller and Buyer confirming that the Title Company is unable to issue the Title Policy without any such Receivership Title Exception, Buyer may by written notice to Seller and the Escrow Holder terminate this Agreement at any time thereafter until the Closing occurs, so long as such failure to issue the Title Policy is not caused by Buyer's breach of its obligations under this Agreement. Following such termination, Escrow Holder will return the Earnest Money Deposit to Buyer not later than the second business day after such termination and the parties will be released from further liability hereunder (except for those obligations which shall expressly survive the termination of the Agreement as set forth herein)."

(b) The last sentence of Section 3.2 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"The Title Policy shall be in the amount of the Purchase Price together with the estimated cost of Buyer's intended building investment and shall insure fee simple title to the Land in Buyer."

(c) Subsections (a) and (i) of Section 6.7 of the Original Agreement are hereby deleted in their entirety and replaced with the following:

"(a) the standard portion of the premium for the Title Policy as such premium would be calculated based upon coverage in the amount of the Purchase Price;"

"(i) the portion of the premium for the Title Policy attributable to extended coverage and all costs of the Title Policy that are in excess of the cost that would be payable for standard coverage in the amount of the Purchase Price (excluding endorsements), and the cost of any Survey and/or title endorsements desired by Buyer;"

Accordingly, Buyer hereby acknowledges that Buyer shall be obligated to pay for all costs of the Title Policy related to the additional cost for the value of Buyer's intended building investment as set forth in Section 2(b) above.

3. Closing Date. Section 1.4 of the Original Agreement is deleted and replaced with the following language: "The closing of the purchase and sale of the Property (the "**Closing**" or "**Close of Escrow**") shall occur sixty-five days (65) after service of the Auction Confirmation Order on the four General Partners (as defined below) and their investors, provided however, that if the time to appeal the Auction Confirmation Order is extended by order of the Court or by operation of law, the date of Closing shall be extended to a date that is five (5) after the expiration of any such extension.

4. Earnest Money Deposit.

(a) Additional Earnest Money Deposit. Buyer has previously deposited with Escrow Holder an Earnest Money Deposit equal to Five Hundred Fifty Thousand and No/100 Dollars (\$550,000.00) (the "**Original Earnest Money Deposit**"). Within two (2) business days after the full execution and delivery of this Fourth Amendment, Buyer shall deposit with Escrow Holder, in the manner set forth in Section 2.2(a) of the Original Agreement, an amount equal to One Million Four Hundred Fifty Thousand and No/100 Dollars (\$1,450,000.00) (the "**Additional Earnest Money Deposit**"). Escrow Holder shall hold the Additional Earnest Money Deposit, together with the Original Earnest Money Deposit, as the "**Earnest Money Deposit**" under the Agreement in the total amount of Two Million and No/100 Dollars (\$2,000,000.00).

(b) Increased Bid Deposit. In accordance with Buyer's deposit of the Additional Earnest Money Deposit as set forth above, Subsection (ii) of Section 15.5 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"(ii) provide an earnest money deposit (the "**Bid Deposit**") by wire transfer or cashier's check in the amount of Two Million and No/100 Dollars (\$2,000,000.00) payable to the Receiver, which amount shall be *non-refundable* to the Qualified Bidder with the highest bid at the Auction (the "**High Bidder**") if for any reason (a) the High Bidder fails to finally close the sale such that title transfers by no later than the Closing Date or (b) the High Bidder fails to provide the balance of the purchase price to the Receiver one day prior to the Closing Date."

5. Representations and Warranties of Seller. Section 7.2 of the Original Agreement is hereby amended to add the following representations and warranties of the Seller to such section:

"(f) **Receivership Action Proceedings.** With respect to the Receivership Action, the Receiver represents and warrants the following:

(i) to the extent the District Court issued orders in the Receivership Action proscribing the manner in which notice must be provided to the general partnerships included in the receivership and their investors/general partners, the Receiver provided notice, in the manner ordered by the District Court, to each of the four general partnerships that comprise the Seller (the "**General Partnerships**") and their investors/general partners, prior to the Court's consideration and entry of each of the following Orders: Preliminary Injunction Order (filed March 13, 2013, Dkt. No. 174); Order Keeping General Partners Under Receivership (filed March 4, 2015, Dkt. No. 1003); Order Granting in Part and Denying in Part Receiver's Motion for Order Authorizing the Receiver to Conducting an Order Sale of General Partnership Properties, et al. (dated March 25, 2016, Dkt. No. 1304); and Order Approving Receiver's Court-Ordered Proposal Regarding Modified Orderly Sales Process et al. (filed August 30, 2016, Dkt No. 1359).

(iii) the Receiver shall provide notice in the manner and to the extent ordered by the District Court, to the four (4) General Partnerships that comprise Seller and their investors/general partners of the motion to confirm the

sale of the Property and any motion for an order approving the interim distribution of any proceeds from the sale of the Property; and

(iv) at least one general partner for each of the General Partnerships has appeared in the Receivership Action and is among the investors who have been represented by attorney Gary Aguirre; (v) in the Receivership Action, there is no appeal pending before the Ninth Circuit, nor is there any motion, opposition or objection pending before the District Court, which challenges, in whole or in part, the Receiver's authority to manage or sell the Property or the District Court's authority to direct the Receiver to do so or that, if determined adversely would declare illegal, invalid, void or non-binding the Receiver's ability to convey legal title of the Property to Buyer;

(vi) in connection with its motion to approve the sale of the Property, the Receiver shall seek an order transferring any and all interests and claims to the Property of the investors/general partners of the four General Partnerships to the proceeds of the sale; and,

(vii) in connection with its motion to approve the sale of the Property, the Receiver shall submit a proposed order to the Court in substantially the same form and content as the proposed order attached as Exhibit A hereto and shall include in the memorandum of points and authorities filed with the motion all factual allegations in the order specific to the marketing and sale of the Property, with appropriate citations to the declaration(s) supporting the motion."

6. Survival of Seller's Representations. The Representations and Warranties set forth in the prior paragraph shall survive the Closing Date and shall extend to the date in which all proceeds of the sale of the Property have been distributed to investors in the Receivership Action.

7. Effect of Subsequent Opposition, Objection of Appeal. It shall be deemed a material breach of the Seller's Representations and Warranties if, prior to the date in which at least seventy (70%) percent of the net proceeds of the sale of the Property have been distributed to investors with allowed claims in the Receivership Action, any investor/general partner in any of the four general partnerships that comprise the Seller, files or makes any motion, opposition, objection, or other pleading in the District Court (including, but not limited to, any opposition to a motion to confirm the sale of the Property), or files any appeal to the Ninth Circuit, which challenges, in whole or in part, the Receiver's authority to manage or sell the Property or the District Court's authority to direct the Receiver to do so or, that if determined adversely would declare illegal, invalid, void or non-binding the Receiver's ability to convey legal title of the Property to Seller ("Covered Appeal"). In the event such a motion, opposition, objection, pleading, or appeal is made, Buyer shall have the right to declare the sale of the Property void, and to obtain reimbursement from Seller of all amounts paid by the Buyer and received by Seller pursuant to the terms of the Agreement. This shall be Buyer's sole recourse against the Receiver; it shall have no right to seek or recover any amount against the Receiver above or beyond the net sale proceeds Seller has received pursuant to the terms of the Agreement. If a Covered Appeal is filed after the sale has closed but before at least seventy (70%) percent of the net proceeds of the sale of the Property have been distributed to investors with allowed claims in the Receivership Action, the

Receiver shall provide notice of each such Covered Appeal to Buyer as provided in Section 8. below and Buyer, within fifteen (15) business days of receiving such notice, shall notify the Receiver whether it will exercise its right to declare the sale void. If Buyer fails to timely provide such notice, then the right to declare the sale void in connection with that Covered Appeal shall immediately be automatically and permanently waived with no further action required by Seller or the Receiver.

8. Receiver to Provide Notice of Receivership Proceedings. The Receiver shall provide Buyer with notice of any motion or petition it may bring in the Receivership Action to either: (a) approve or direct the sale of the Property; (b) approve or direct the distribution of any proceeds from the sale of the Property; and (c) wind-up, dissolve or otherwise terminate the Receivership Action (collectively, "**Further Receivership Motions**"). The Receiver shall also provide Buyer with notice of any opposition or objection made to any such Further Receivership Motion and shall provide to Buyer copies of any Court Order issued pursuant to any such Further Receivership Motion. The Receiver shall also provide Buyer with notice of any subsequent appeals that may be filed for any purpose in connection with the sale of the Property or distribution of the sale proceeds. Notwithstanding the requirements of Section 14.2 of the Original Agreement, any notice from Seller or the Receiver required under this Section 8 shall be deemed to comply with the notice requirements of the Agreement if Seller or the Receiver provides such notice to Buyer by electronic mail to following email addresses: jross@prologis.com and mmcnaughton@hansonbridgett.com. The obligation to provide such notices shall survive the Closing Date and shall extend to the date at which the time to appeal the final orders entered in the Receivership Action has expired.

9. Conflict. In the event of a conflict between the terms and conditions of this Fourth Amendment and the terms and conditions of the Agreement, the terms and conditions of this Fourth Amendment shall control.

10. No Further Modifications. Except as set forth in this Fourth Amendment, all other terms and provisions of the Agreement shall be and remain unmodified and in full force and effect. Effective as of the date hereof, all references in the Agreement to the "Agreement" will refer to the Agreement as amended by this Fourth Amendment.

11. Counterparts and Fax/Email Signatures. This Fourth Amendment may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement. This Fourth Amendment may be executed by a party's signature transmitted by facsimile ("**fax**") or email and copies of this Fourth Amendment executed and delivered by means of faxed or emailed signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties hereto may rely upon faxed or emailed signatures as if such signatures were originals. Any party executing and delivering this Fourth Amendment by fax or email shall promptly thereafter deliver a counterpart signature page of this Fourth Amendment containing said party's original signature. All parties hereto agree that a faxed or emailed signature page may be introduced into evidence in any proceeding arising out of or related to this Fourth Amendment as if it were an original signature page.

12. Severability. If any term, provision, covenant or condition of this Fourth Amendment is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Fourth Amendment shall continue in full force and effect and shall in no way be affected, impaired, or invalidated.

IN WITNESS WHEREOF, Seller and Buyer have executed this Fourth Amendment as of the date set forth above.

SELLER:

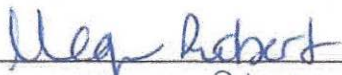


THOMAS C. HEBRANK, as Receiver

BUYER:

PROLOGIS, L.P.,
a Delaware limited partnership

By: PROLOGIS, INC., a Maryland corporation,
its general partner

By: 

Name: Megan Robert
Title: Senior VP

EXHIBIT A

PROPOSED FORM OF SALE ORDER

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

LOUIS V. SCHOOLER and FIRST
FINANCIAL PLANNING
CORPORATION d/b/a WESTERN
FINANCIAL PLANNING
CORPORATION,

Defendants.

Case No. 3:12-cv-02164-GPC-JMA

**ORDER APPROVING SALE OF
LV KADE PROPERTY AND
AUTHORIZING RECEIVER TO
PAY BROKER'S COMMISSION**

Date:
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 Before the Court is the Receiver's Motion for Approval of Sale of the
2 LV Kade Property ("Motion"). Based upon a review of the moving papers and the
3 applicable law, the Court **GRANTS** the Receiver's motion.

4 **BACKGROUND**

5 **A. The SEC Enforcement Action**

6 On January 21, 2016, the Court granted the SEC's motion for final judgment
7 against Defendant Louis V. Schooler. ECF No. 1170. The SEC had initiated this
8 civil action against Defendant Schooler and Western Financial Planning Corporation
9 ("Western") four years earlier, on account of their practice of defrauding investors
10 into purchasing unregistered securities. *Id.* (citing Second Summary Judgment
11 Order, ECF No. 1081). To carry out the scheme, Defendant Western bought
12 undeveloped real estate, with cash or through financing, and simultaneously formed
13 one or more General Partnerships ("GPs") to own the land. First Summary
14 Judgment Order, ECF No. 1074 at 10. Western then sold General Partnership units
15 to investors and sold the undeveloped real estate to the General Partnerships. *Id.* at
16 10. In total, Western raised approximately \$153 million from almost 3,400
17 investors through implementing this scheme. *Id.*

18 **B. The Receivership Over the General Partnerships**

19 On March 13, 2013, the Court issued its Preliminary Injunction Order and
20 Order Appointing Thomas C. Hebrank Permanent Receiver (Injunction Order").
21 (ECF No. 174.). The Injunction Order provides that Mr. Hebrank be appointed over
22 defendants Western, the entities it controls and the GPs. On March 4, 2015, after
23 due notice and an opportunity to be heard was given to the GPs and their investors,
24 the Court Ordered that each of the GPs and their assets are to remain in the
25 Receivership. (ECF No. 1003.)

26 **C. The Decline of the General Partnership Assets**

27 In 2013, the Court-appointed Receiver engaged licensed appraisers to value
28 the 23 properties owned by the General Partnerships. ECF No. 203 at 2. Those

1 professionals determined that the land was worth \$16,328,000 and that the net
2 appraised value (appraised value less outstanding balances on all mortgages) of the
3 properties was \$12,860,661. *Id.* The net appraised value represented just 8.41% of
4 the total funds that the general partners had invested in the land. *Id.* The Receiver
5 further estimated that, based on the then-current appraised values of the land, the
6 average GP investor would suffer an 88.40% loss if the GP properties were sold in
7 2013. *Id.*

8 Three years later, soon after final judgment was entered, the Receiver moved
9 for authority to conduct an Orderly Sale of the General Partnership Properties
10 ("Orderly Sale"). Motion for Orderly Sale, ECF No. 1181-1. In the Motion, the
11 Receiver indicated that the aggregate value in the GP accounts had been steadily
12 decreasing while litigation was ongoing. *See id.* In September 2012, the
13 Receivership had aggregate cash balances of \$6.6 million. *Id.* at 1. By the end of
14 2015, the balances had dropped to \$3.5 million, and the Receiver had reason to
15 believe that the funds in the Receivership accounts would continue to drastically
16 decrease through the end of 2016.¹ This decline, he noted, was due to three main
17 factors: (1) 14 of the 23 properties were not appreciating in value; (2) the properties
18 were not worth enough to cover the costs of the GPs carrying the properties; and
19 (3) low levels of investor contributions to pay GP administrator fees, tax preparation
20 fees, property taxes, property insurance premiums, and notes owed to Western. *See*
21 *id.* at 1-2. In other words, the Receiver concluded, because the money being spent
22 to hold the GP properties was disproportionately high in relation to the value of the

23
24
25 ¹ The Receiver provided the Court with projections that the cash balances held by
26 the Receivership would further decline to \$1.8 million by the end of 2016.
27 Indeed, the Receiver's projection has since proved to be accurate. The Eighteenth
28 Interim Status Report submitted by the Receiver indicates that the Receivership's
current cash balance is \$1,546,447. ECF No. 1441 at 20. By way of example, the
Receiver notes that the value of these 14 properties in 2016, \$3,732,815, was
about \$400,000 less than their value in 2013, \$4,137,000. *Id.* at 2.

1 GP's real estate assets, the funds held by the receivership were in a steady decline.
2 *Id.*

3 In order to prevent the value of the Receivership from falling into further
4 decline, the Receiver proposed that the GP properties be sold in accordance with
5 Court-approved orderly sale procedures. *Id.* The Receiver's proposal explained that
6 the best way to maximize the value of all of the GP assets for the benefit of all
7 investors, irrespective of any given investors' direct property interest, was to initiate
8 an orderly sale of the GP properties. *Id.* The Receiver estimated that the
9 receivership estate, after conducting sales of the GP properties, Western's properties
10 and asset recovery, would be able to distribute approximately \$21,804,826 to
11 investors. *Id.* at 16.

12 **D. The Receiver's Motion for Orderly Sale**

13 On May 20, 2016, the Court held a hearing on the Receiver's Motion for
14 Orderly Sale, at which time the Court heard from the SEC, Defendant, the Receiver,
15 and the investor-intervenors — that is, those investors who were granted permission
16 under Rule 23 to intervene to oppose the Receiver's Motion. *See* ECF No. 1298. A
17 short time thereafter, on May 25, 2016, the Court approved, in part, the Receiver's
18 Orderly Sale process. ECF No. 1304.

19 The Court directed the Receiver to file a Modified Orderly Sale Process that
20 incorporated the public sale process consistent with the requirement of 28 U.S.C. §
21 2001. ECF No. 1304. The Receiver filed a modified proposal on June 8, 2016 (ECF
22 No. 1309) and the Court approved the modified proposal on August 30, 2016 (ECF
23 No. 1359).

24 In approving the Orderly Sale, the Court addressed and evaluated the
25 concerns expressed by the Receiver, the SEC, and myriad investors, all of whom
26 held differing positions on whether the Orderly Sale would benefit the Receivership
27 estate. *See generally* ECF Nos. 1181 (Motion for Orderly Sale), 1232 (SEC
28 Response), 1234 (Dillon Investors' Response), 1235 (Graham Investors' Response);

1 *see also, e.g.*, ECF Nos. 1240, 1242, 1244, 1249-1257 (Letters from Investors). The
2 Court also took into consideration the recommendations of the investors' experts, as
3 set forth in the Xpera Report. *See* ECF No. 1304 at 16. The Xpera Report, the
4 Court noted, substantially agreed with the Receiver on how to maximize the value of
5 the receivership estate and, for the most part, agreed on the appraised value of the
6 various GP properties. *Id.* As such, the Court directed the Receiver, where feasible,
7 to incorporate the recommendations of the Xpera Report into his ultimate Orderly
8 Sale proposal. *Id.* at 19.

9 On July 22, 2016, the Receiver moved for permission to engage CBRE, a real
10 estate brokerage firm, as a consultant in order to weigh the pros and the cons of the
11 Xpera Report. ECF No. 1341-1. The Court granted the Receiver's motion on
12 August 30, 2016. ECF No. 1359. CBRE presented its findings on the GP properties
13 on October 24, 2016. ECF No. 1419 (filed under seal). On November 22, 2016, the
14 Receiver submitted a report evaluating the Xpera Report recommendations. ECF
15 No. 1405. The Court reviewed the Receiver's report and adopted the
16 recommendations contained therein on December 12, 2016. ECF No. 1423.

17 **E. LV Kade Property**

18 The LV Kade property consists of approximately 57 acres located in an
19 unincorporated area of Clark County, Nevada. It is owned by four of the GPs which
20 are part of the receivership: Hollywood Partners, BLA Partners, Checkered Flag
21 Partners, and Victory Lap, all California general partnerships.

22 Since the Receiver was appointed, several valuations of the Property have
23 been done. In 2013, the Receiver obtained an appraisal estimating the value of the
24 Property at \$4,110,000. ECF No. 1405, Ex. A. Two years later, in 2015, the Broker
25 Opinion Value (BOV) the Receiver obtained for the Property was \$8,260,000. *Id.*
26 In 2016, the Xpera Report valued the property between \$8,690,220 and \$11,173,140
27 and CBRE estimated the value to be between \$7,450,000 and \$9,310,000. ECF
28 No. 1405, Exhibit A.

1 On January 14, 2016, the Court authorized the Receiver to engage a broker to
2 list the LV Kade property for sale. ECF No. 1167, 1168. In accordance therewith,
3 the Receiver engaged Collier's International ("Broker"), as broker to list the LV
4 Kade property for sale.

5 Subsequently, Broker took steps to market the property, including listing the
6 Property on LoopNet and PropertyLine starting on or around February 4, 2016.
7 Broker also sent the listing to approximately 2,400 broker and buyer contacts in the
8 California and Nevada commercial/industrial real estate markets and followed up
9 with several reminder email blasts to the same list. Broker also made direct calls
10 regarding the property to land owners, developers, and investors it knows in the Las
11 Vegas area.

12 In October 2016, Broker sent out a second marketing flyer to the same list of
13 broker/buyer contacts, along with a call for offers. In December 2016, the Receiver
14 received an offer to buy the LV Kade property for \$8.25 million. Declaration of
15 Thomas Hebrank in Support of the Motion ("Hebrank Decl."), ¶ ___. Pursuant to the
16 Modified Orderly Sale Process, the Receiver notified investors regarding the offer,
17 consulted with Broker, and countered the offer at \$8.750,000. *Id.* Negotiations with
18 the offeror ensued, but the parties did not agree on terms of a purchase and sale
19 agreement. *Id.*

20 While such negotiations were taking place, the Receiver received an offer
21 from Prologis L.P. ("Buyer") in the amount of \$8,825,000. *Id.* When negotiations
22 with the initial offeror stalled, the Receiver entered into negotiations with Buyer. *Id.*
23 When the Receiver and Buyer were close to executing a purchase and sale
24 agreement, the initial offeror increased its offer to \$9,500,000. *Id.* Because the
25 Receiver had agreed on terms of a purchase and sale agreement with Buyer, he gave
26 Buyer the opportunity to match the \$9,500,000 offer and sign the purchase and sale
27 agreement at that amount. *Id.* Buyer agreed to do so and the parties executed the
28 Purchase and Sale Agreement and Joint Escrow Instructions attached to the Hebrank

1 Decl. as Exhibit A ("Agreement"). *Id.* The Receiver also advised the initial offeror
2 that the sale is subject to overbid and that it would have the opportunity to
3 participate in the overbid/auction process. *Id.*

4 After three extensions of the contingency removal deadline in the Agreement
5 and certain amendments to the Agreement, Buyer removed contingencies. The
6 Receiver received no offers for a proposed purchase price in excess of that of Buyer.

7 In accordance with the Court-approved modified Orderly Sale procedures, *see*
8 *generally* ECF No. 1309, 1359, the Receiver sent notice of the offer to investors in
9 accordance with the Court's previous orders. No substantive responses were
10 received. ECF No. _____.

11 [After executing the purchase agreement, the Receiver conducted an auction
12 and laid out a timeline for the submission of qualified overbids, all pursuant to and
13 in accordance with the Modified Orderly Sale procedures. *Id.* at _____. The
14 auction was held at __[location]_____. On _____, the Receiver
15 notified the Court that no qualified overbids had been received for the LV Kade
16 property. ECF No. _____.]

17 **F. Conclusion**

18 The Court finds that the purchase price of \$9,500,000 is reasonable in light of
19 the Receiver's 2015 appraisal of the LV Kade property, the Xpera Report, the CBRE
20 value estimate. The BOV value obtained by the Receiver estimated that the
21 property was worth \$8,260,000, which is \$_____ less than the purchase price.

22 The Court finds that the Receiver has complied with the Modified Orderly
23 Sale procedures and that the Receiver's notice of the sale adhered to the Modified
24 Orderly Sale procedures, which require that notice of the sale be published "in the
25 county, state, or judicial district of the United States *wherein the realty is situated.*"
26 28 U.S.C. § 2002 (emphasis added), by publishing notice in the _____
27 and by providing notice to the investors. Accordingly, and given that no opposition
28

1 to the present Motion has been filed or raised and that no qualified overbid was
2 received, the Court **GRANTS** Receiver's motion for approval of sale.

3 **ORDER**

4 The Receiver's Motion for Approval of Sale of LV Kade Property and
5 Authority to Pay Broker's Commission ("Motion") of Thomas C. Hebrank
6 ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation
7 d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the
8 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order
9 entered on March 13, 2013 (collectively, "Receivership Entities"), having been
10 reviewed and considered by this Court, the Receiver having notified the Court that
11 no qualified overbids were received (ECF No. _____), and for good cause
12 appearing therefore,

13 Accordingly, the Court makes the following findings and orders:

- 14 1. The Motion is granted;
- 15 2. This Court has subject matter jurisdiction over all matters related to this
16 Motion;
- 17 3. On March 4, 2015, after due notice and an opportunity to be heard was
18 given to the Receivership Entities, including Hollywood Partners, BLA Partners,
19 Checkered Flag Partners, and Victory Lap, and their investors, this Court ordered
20 that each of the Receivership Entities and their assets are to remain within the
21 Receivership. ECF No. 1003.
- 22 4. This Court further ordered, after due notice and an opportunity to be
23 heard was given to the Receivership Entities, including the Hollywood Partners,
24 BLA Partners, Checkered Flag Partners, and Victory Lap Partners and their
25 investors, that the Receiver was authorized to conduct a Modified Orderly Sales
26 Process with respect to certain properties owned by Receivership Entities, including
27 the LV Kade property. ECF No. 1304, 1359 (the "Modified Orderly Sale Process").

28

1 5. The Receiver has complied with the terms of the Modified Orderly
2 Sales Process with respect to the LV Kade property, including the retention of a
3 qualified licensed broker in connection with the marketing of the property. Broker
4 made commercially reasonable efforts to market the property to potential buyers.

5 6. The Receiver's notice of the sale complies with 28 U.S.C. § 2002
6 requiring that notice of the sale be published "in the county, state, or judicial district
7 of the United States where in the realty is situated" and adhered to the requirement
8 in the Modified Orderly Sale Process that notice be provided to the investors of the
9 Receivership Entities.

10 7. Due Notice of this Motion and an opportunity to be heard was given to
11 each of the Receivership Entities and their investors.

12 8. The sale of the Property known as the LV Kade property, as described
13 on Exhibit A to the Declaration of Thomas C. Hebrank in support of the Motion
14 ("Property"), by Thomas C. Hebrank, as receiver for Hollywood Partners, BLA
15 Partners, Checkered Flag Partners, and Victory Lap Partners, to Prologis, L.P. is
16 authorized, confirmed and approved;

17 9. The purchase price of \$9,500,000 for the LV Kade property is
18 reasonable, confirmed and approved;

19 10. The Receiver is immediately authorized to complete the sale
20 transaction, including executing any and all documents as may be necessary and
21 appropriate to do so; and

22 11. The Receiver is authorized to immediately pay, upon closing of the
23 sale, a commission of ___% of the final purchase price to Broker _____, and,

24 12. Any and all interests and claims to the LV Kade property that the GPs
25 and any of their investors may have are transferred to the proceeds of the sale of the
26 LV Kade property.

27
28

Dated: _____

Hon. Gonzalo P. Curiel
Judge, United States District Court

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