

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
865 South Figueroa Street, Suite 2800
3 Los Angeles, California 90017-2543
Phone: (213) 622-5555
4 Fax: (213) 620-8816
E-Mail: dzaro@allenmatkins.com

5 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
6 EDWARD G. FATES (BAR NO. 227809)
One America Plaza
7 600 West Broadway, 27th Floor
8 San Diego, California 92101-0903
Phone: (619) 233-1155
9 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

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

**RECEIVER'S NOTICE OF
MOTION AND MOTION FOR
(A) APPROVAL OF SALE OF
DAYTON II PROPERTY AND
(B) AUTHORITY TO PAY
BROKER'S COMMISSION**

Date: May 4, 2018
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **NOTICE IS HEREBY GIVEN** that on May 4, 2018, at 1:30 p.m. in
 3 Courtroom 2D of the United States District Court, Southern District of California,
 4 located at 221 West Broadway, San Diego, California 92101, Thomas C. Hebrank
 5 ("Receiver"), the Court-appointed receiver for First Financial Planning Corporation
 6 d/b/a Western Financial Planning Corporation ("Western"), its subsidiaries and the
 7 General Partnerships listed in Schedule 1 to the Preliminary Injunction Order
 8 entered on March 13, 2013 (collectively, "Receivership Entities"), will, and hereby
 9 does, move this Court for an order (a) approving the sale of the receivership
 10 property known as Dayton II and (B) authorizing payment of the broker's
 11 commission ("Motion").

12 This Motion is based upon this notice, the accompanying Memorandum of
 13 Points and Authorities and Declaration of Thomas C. Hebrank, all pleadings and
 14 papers on file in this action, and upon such other matters as may be presented to the
 15 Court at the time of hearing.

16 **Procedural Requirements:** If you oppose the Motion, you are required to
 17 file your written opposition with the Office of the Clerk, United States District
 18 Court, Southern District of California, 333 West Broadway, Suite 420, San Diego,
 19 California 92101, and serve the same on the undersigned no later than 14 calendar
 20 days prior to the hearing date. An opposing party's failure to file an opposition to
 21 any motion may be construed as consent to the granting of the motion pursuant to
 22 Civil Local Rule 7.1(f)(3)(c).

23
 24 Dated: March 7, 2018

ALLEN MATKINS LECK GAMBLE
 MALLORY & NATSIS LLP

25 By: /s/ Edward Fates

26 EDWARD G. FATES
 27 Attorneys for Receiver
 28 THOMAS C. HEBRANK

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
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865 South Figueroa Street, Suite 2800
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8 San Diego, California 92101-0903
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9 Fax: (619) 233-1158
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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.
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Case No. 3:12-cv-02164-GPC-JMA

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR
(A) APPROVAL OF SALE OF
DAYTON II PROPERTY AND
(B) AUTHORITY TO PAY
BROKER'S COMMISSION**

Date: May 4, 2018
Time: 1:30 p.m.
Ctrm.: 2D
Judge: Hon. Gonzalo P. Curiel

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

8 I. BACKGROUND FACTS

9 The properties in the receivership include approximately 640.80 acres of
10 undeveloped land known as the Dayton II property, which is located in Lyon
11 County and Storey County, Nevada ("Property"). The Property is held by four
12 General Partnerships that are included in the receivership – Storey County Partners,
13 Comstock Partners, Silver City Partners, and Nevada View Partners. Declaration
14 of Thomas C. Hebrank ("Hebrank Decl.") filed herewith, ¶ 2.

15 On December 11, 2017, the Receiver recommended that the Dayton II
16 property be listed for sale with CBRE, a licensed broker located in the Reno area
17 ("Broker"). Dkt. No. 1564. On January 23, 2018, the Court approved the
18 Receiver's recommendation. Dkt. No. 1581. Broker promptly listed and advertised
19 the Dayton II property for sale and marketed it to interested parties. Hebrank Decl.,
20 ¶ 3.

21 Since the Receiver was appointed, several valuations of the Property have
22 been done. In 2013, with the Court's authorization, the Receiver obtained an
23 appraisal of the Property estimating the value to be \$100,000. Dkt. No. 1405,
24 Ex. A. Two years later, in 2015, with the Court's authorization, the Receiver
25 obtained an appraisal of the Property estimating the value to be \$190,000. *Id.* In
26 early 2016, Xpera Group valued the property between \$224,280 - \$320,400, along
27 with the recommendation that "it may be some time before these properties show
28

significant appreciation" and recommended that the property be marked for sale.
Id.

Shortly after CBRE listed the Property, the Receiver received an all cash offer to purchase the Property for \$305,000 from Orion 01 LLC ("Buyer"). The offer is higher than both the 2013 and 2015 appraisals and the list price suggested by CBRE (\$300,000). Additionally, the offer is also in line with the Xpera Group valuation range (\$224,280 - \$320,400). The Receiver gave notice of the offer to investors and entered into negotiations with Buyer. Receiver and Buyer then executed a Purchase and Sale Agreement and Joint Escrow Instructions ("Agreement"), subject to overbid and Court approval. Buyer conducted its due diligence and removed all contingencies (other than Court approval) on March 5, 2018. Hebrank Decl., ¶ 4.

Therefore, in accordance with the Court-approved Modified Orderly Sale Procedures, the Receiver hereby requests approval of the sale to Buyer, pursuant to the Agreement, which is attached to the Hebrank Declaration as Exhibit A. The Receiver will follow the publication of notice, qualification of bidders, and public auction steps outlined below in advance of the hearing date. In the event one or more prospective purchasers qualify themselves to bid, the auction will be conducted by the Receiver and he will then file a notice advising the Court of the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming the sale. In the event no prospective purchasers qualify themselves to bid, the Receiver will notify the Court and seek entry of an order approving the sale to Buyer.

Hebrank Decl., ¶ 5.

II. PROPOSED SALE

The key terms of the proposed Purchase and Sale Agreement, including amendments thereto ("Agreement"), a copy of which is attached to the Hebrank Declaration as Exhibit A, are summarized as follows:

1 **Purchase Price.** The purchase price is \$305,000, which is to be paid in all
2 cash. Of that amount, \$5,000 is to be paid directly to Buyer's broker.

3 **Deposit.** Buyer has deposited \$10,000 into escrow.

4 **Closing Date.** Closing shall occur within 10 days of entry of the Court order
5 approving the sale.

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

7 **Broker's Commission.** Pursuant to the Court-approved listing agreement,
8 Broker is to be paid a commission of 6% of the gross sales price. In the proposed
9 sale, the commission would be \$18,300.

10 **III. INVESTOR FEEDBACK**

11 As noted above, pursuant to the Modified Orderly Sale Procedures (Dkt.
12 No. 1309), the Receiver provided notice of the offer from Buyer to investors via
13 email shortly after it was received. No substantive responses were received.
14 Hebrank Decl., ¶ 6.

15 **IV. LEGAL STANDARD**

16 "The power of a district court to impose a receivership or grant other forms
17 of ancillary relief does not in the first instance depend on a statutory grant of power
18 from the securities laws. Rather, the authority derives from the inherent power of a
19 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
20 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
21 and efficient administration of the estate by the district court for the benefit of
22 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
23 of a receiver is authorized by the broad equitable powers of the court, any
24 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
25 953 F.2d 1560, 1569 (11th Cir. 1992).

26 District courts have the broad power of a court of equity to determine the
27 appropriate action in the administration and supervision of an equity receivership.
28

1 See *SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The
2 Ninth Circuit explained:

3 A district court's power to supervise an equity receivership
4 and to determine the appropriate action to be taken in the
5 administration of the receivership is extremely broad. The
6 district court has broad powers and wide discretion to
7 determine the appropriate relief in an equity receivership.
8 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.

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

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

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

1 "A court of equity, under proper circumstances, has the power to order a
2 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
3 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
4 Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992). To that end, a
5 federal court is not limited or deprived of any of its equity powers by state statute.
6 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
7 (state statute allowing time to redeem property after a foreclosure sale not
8 applicable in a receivership sale).

9 Generally, when a court-appointed receiver is involved, the receiver, as agent
10 for the court, should conduct the sale of the receivership property. *Blakely Airport*
11 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
12 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
13 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
14 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491
15 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
16 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d
17 354, 357 (9th Cir. 1925).

18 **B. 28 U.S.C. § 2001**

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

1 estate can avoid the significant costs and delay of (a) the Court having to appoint
2 three disinterested appraisers, and (b) obtaining three appraisals from such
3 appraisers.

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

10 A public sale of realty or interest therein under any order,
11 judgment or decree of any court of the United States shall not
12 be made without notice published once a week for at least
13 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.

14 If such realty is situated in more than one county, state,
15 district or circuit, such notice shall be published in one or
16 more of the counties, states, or districts wherein it is situated,
17 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.

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

20 The notice of sale is sufficient if it describes the property and the time, place,
21 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
22 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
23 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
24 binding offer to purchase the [property]; and (ii) demonstrate . . ., to the satisfaction
25 of the Receiver, that it has the current ability to consummate the purchase of the
26 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
27 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

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V. DISCUSSION

The proposed sale to Buyer pursuant to the Agreement is in the best interests of the estate. Accordingly, the Dayton II property should be sold to Buyer pursuant to the Agreement. The proposed purchase price exceeds both the 2013 and 2015 appraised values of the property (\$100,000 and \$190,000), is toward the high end of the Xpera Group valuation range (\$224,280 - \$320,400). Hebrank Decl., ¶ 7; Dkt. No. 1405, Exh. A.

Moreover, the proposed sale is subject to overbid to further ensure the highest and best price is obtained. The Receiver proposes to conduct a public auction consistent with the requirements of Section 2001(a). Specifically, the Receiver will publish the following notice of the sale once a week for four weeks in the Reno Journal-Gazette, a newspaper of general circulation in Lyon and Storey Counties, Nevada:

In the action pending in U.S. District Court for the Southern District of California, Case No. 12-CV-2164-GPC-JMA, Securities and Exchange Commission v. Louis V. Schooler et al., notice is hereby given that the court-appointed receiver will conduct a public auction for the undeveloped real property with APN 016-011-03 located in Lyon County and APN 004-291-15 located in Storey County, Nevada. Sale is subject to Court confirmation after the auction is held. Minimum bid price is \$330,000. The auction will take place on April 5, 2018, at 1:30 p.m. in front of the entrance to the United States Courthouse, 221 W. 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 \$11,000, and proof of funds. All bidders must be qualified by 5:00 p.m. PT on April 3, 2018, 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.

In order to conduct an orderly auction and provide sufficient time for the publication of notices discussed above, the Receiver will require bidders to complete the above steps by April 3, 2018 ("Bid Qualification Deadline"), and

1 conduct the live public auction on April 5, 2018, immediately in front of the
2 courthouse.

3 The Receiver will inform all interested persons, including the initial offeror
4 discussed above, of the opportunity to overbid at the public auction, provided they
5 qualify themselves to bid by the Bid Qualification Deadline by (a) signing a
6 purchase and sale agreement for the properties on the same terms and conditions as
7 Buyer, but with a purchase price of at least \$330,000, (b) providing the Receiver
8 with an earnest money deposit of \$11,000, and (c) providing proof of funds
9 necessary to close the sale transaction in the form of a current bank statement,
10 cashier's check delivered to the Receiver, or other evidence deemed sufficient by
11 the Receiver.¹

12 In the event one or more prospective purchasers qualify themselves to bid,
13 the auction will be conducted by the Receiver as noted above and bids will be
14 allowed in increments of \$25,000. The Receiver will then file a notice advising the
15 Court of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
16 confirming the sale. Earnest money deposits provided by bidders who are
17 unsuccessful will be promptly returned to them. In the event no prospective
18 purchasers qualify themselves to bid by the Bid Qualification Deadline, the
19 Receiver will notify the Court and seek entry of an order approving the sale to
20 Buyer.

21 With respect to Broker's commission, Broker has worked diligently to
22 broadly advertise the Property for sale and market the Property to prospective
23 purchasers, including to potential overbidders after the Agreement was signed. The
24 listing agreement was approved as being consistent with industry standards for
25 commissions paid to brokers for sales of undeveloped land. Accordingly, the
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27 ¹ 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 Receiver should be authorized to pay Broker the commission amount in accordance
2 with the listing agreement. Hebrank Decl., ¶ 8.

3 **VI. CONCLUSION**

4 For the reasons discussed above, the Receiver requests (a) approval of the
5 sale of the Property to Buyer pursuant to the Agreement attached to the Hebrank
6 Declaration as Exhibit A, and (b) authority to take all steps necessary to close the
7 sale, and (c) authority to pay Broker's commission as described above.

8
9 Dated: March 7, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Edward Fates

EDWARD G. FATES
Attorneys for Receiver
THOMAS C. HEBRANK

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

**DECLARATION OF THOMAS C.
HEBRANK IN SUPPORT OF
RECEIVER'S MOTION FOR
(A) APPROVAL OF SALE OF
DAYTON II PROPERTY AND
(B) AUTHORITY TO PAY
BROKER'S COMMISSION**

Date: May 4, 2018
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 (A) Approval of Sale of
7 Dayton II Property and (B) Authority to Pay Broker's Commission ("Motion"). I
8 have personal knowledge of the facts stated herein, and if called upon to do so, I
9 could and would personally and competently testify to them.

10 2. The properties in the receivership include approximately 640.80 acres
11 of undeveloped land known as the Dayton II Property, which is located in Lyon
12 County and Storey County, Nevada ("Property"). The Property is held by four
13 General Partnerships that are included in the receivership – Storey County Partners,
14 Comstock Partners, Silver City Partners, and Nevada View Partners.

15 3. On December 11, 2017, I recommended that the Property be listed for
16 sale with CBRE, a licensed broker located in the Reno area ("Broker"). Dkt.
17 No. 1564. On January 23, 2018, the Court approved my recommendation. Dkt.
18 No. 1581. Broker promptly listed and advertised the Property for sale and
19 marketed it to interested parties.

20 4. Shortly after CBRE listed the Property, I received an all cash offer to
21 purchase the Property for \$305,000 from Orion 01 LLC ("Buyer"). The offer is
22 higher than both the 2013 and 2015 appraisals and the list price suggested by
23 CBRE (\$300,000). Additionally, the offer is also in line with the Xpera Group
24 valuation range (\$224,280 - \$320,400). I gave notice of the offer to investors and
25 entered into negotiations with Buyer. Buyer and I then executed a Purchase and
26 Sale Agreement and Joint Escrow Instructions ("Agreement"), subject to overbid
27 and Court approval. Buyer conducted its due diligence and removed all
28 contingencies (other than Court approval) on March 5, 2018.

1 5. Therefore, in accordance with the Court-approved Modified Orderly
2 Sale Procedures, I hereby request approval of the sale to Buyer, pursuant to the
3 Agreement, which is attached hereto as Exhibit A. I will follow the publication of
4 notice, qualification of bidders, and public auction steps outlined in the Motion in
5 advance of the hearing date. In the event one or more prospective purchasers
6 qualify themselves to bid, I will conduct the auction and will then file a notice
7 advising the Court of the result of the auction (*i.e.*, the highest bid) and seek entry
8 of an order confirming the sale. In the event no prospective purchasers qualify
9 themselves to bid, I will notify the Court and seek entry of an order approving the
10 sale to Buyer.

11 6. As noted above, pursuant to the Modified Orderly Sale Procedures
12 (Dkt. No. 1309), I provided notice of the offer from Buyer to investors via email
13 shortly after it was received. No substantive responses were received.

14 7. The proposed sale to Buyer pursuant to the Agreement is in the best
15 interests of the estate. Accordingly, the Property should be sold to Buyer pursuant
16 to the Agreement. The proposed purchase price exceeds both the 2013 and 2015
17 appraised values of the property (\$100,000 and \$190,000), is toward the high end
18 of the Xpera Group valuation range (\$224,280 - \$320,400).

19 8. With respect to Broker's commission, Broker has worked diligently to
20 broadly advertise the Property for sale and market the Property to prospective
21 purchasers, including to potential overbidders after the Agreement was signed. The
22 listing agreement was approved as being consistent with industry standards for
23 commissions paid to brokers for sales of undeveloped land. Accordingly, I should
24 be authorized to pay Broker the commission amount in accordance with the listing
25 agreement.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.

3 Executed this 7th day of March, 2018, at San Diego, California.

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5 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 February 14, 2018 (the "**Effective Date**") by and between ORION 01 LLC, a Delaware limited liability company ("**Buyer**"), and WFP RECEIVERSHIP QSF TRUST ("**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 I 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 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 640.80 acres of undeveloped land, located in an unincorporated portion of Lyon County, Nevada, referred to as Assessor Parcel No. 016-011-03 and in an unincorporated portion of Storey County, Nevada, referred to as Assessor Parcel No. 004-291-15, and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (collectively, 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, mineral 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.

1.3 Opening of Escrow. Buyer and Seller have opened an escrow with Western Title Company, Attention: Amy Gutierrez (the "**Escrow Holder**") under Escrow No. 093441-AMG ("**Escrow**"). 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 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 ten (10) days following the Court Approval Date (as defined below) (the "**Closing Date**"). 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 Three Hundred Five Thousand Dollars (\$305,000.00) (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) business 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 Ten Thousand Dollars (\$10,000.00) (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 Seller's default under this Agreement, as set forth in Section 6.3(a)(ii), 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; or (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. 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, plus accrued interest thereon, upon Escrow Holder's receipt of written notice of Buyer's disapproval of the condition of the Property, or (iv) in the event Seller is not the High Bidder or the Court otherwise fails to approve the sale of the Property to Buyer. 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, other than those reasonable and customary additional escrow instructions in the usual form of Escrow Holder, as provided in Section 6.2 below. 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 (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 deeds to Buyer.

ARTICLE 3 CONDITION OF TITLE

3.1 Review and Approval of Title.

(a) Seller shall deliver the Title Documents (as hereinafter defined) to Buyer within three (3) days after the Effective Date. As used herein, "Title Documents" shall mean

collectively that certain preliminary title report for the Land dated as of November 17, 2017 and bearing Title Order No. 093441-AMG (the "**Title Report**") prepared by Western Title Company (the "**Title Company**") together with legible copies of all exception documents referred to in Schedule B of the Title Report.

(b) On or before the Contingency Date (as defined below), 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. Following Buyer's review of the Title Documents, Buyer, by means of the Title Objection Notice, may, at its option, either (x) accept such title as Buyer shall determine and Seller can deliver in which case the parties shall proceed with Closing and all exceptions to title set forth in the Title Documents, or (y) terminate this Agreement by notice in writing to Seller, in which event neither party shall have any further rights, duties or obligations hereunder, except for provisions of this Agreement which expressly survive termination of this Agreement. Seller agrees to reasonably cooperate with Buyer to remove exceptions identified in the Title Objection Notice or to otherwise provide such affidavits and information necessary for such removal; provided, however, that Seller shall not have any obligation to cure any title objections identified in the Title Objection Notice and such efforts to "reasonably cooperate" shall be determined by Seller in Seller's sole but good faith discretion based upon the customary actions of a receiver in the context of a receivership purchase and sale transaction. 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. Either a CLTA or ALTA Owner's Title Insurance Policy with extended coverage (the "**Title Policy**") shall be issued by the Title Company as of the Closing Date. The Title Policy shall be a CLTA Owner's Title Insurance Policy unless Buyer elects, by appropriate escrow instructions to the Title Company, to cause the Title Company to issue an ALTA Owner's Title Insurance Policy with extended coverage in place of the CLTA Title Policy. If Buyer elects to have an ALTA policy issued, Buyer shall pay the premium for said ALTA Policy in excess of the costs and premium that would have been incurred for a CLTA Policy, and such election shall in no event extend the Closing Date. In addition, Buyer shall obtain at its sole cost any survey required in connection with the ALTA 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 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 Seller is only in possession of the Land and does not and have not at any time owned title to the Land). Buyer is relying solely upon the Title Report, the Title Policy and the grant deeds 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 fifteen (15) 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. Buyer acknowledges that to facilitate Buyer's Inspections, Seller has, for informational purposes only and without any representation or warranty of any kind, provided Buyer all additional information related to the Property in Seller's possession (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. In the event of Buyer's disapproval under this Section 4.1(a), (i) this Agreement shall be deemed terminated, (ii) Seller shall promptly thereafter instruct Escrow Holder to return the Earnest Money Deposit, plus any interest accrued thereon, to Buyer, 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 deeds for the Property.

(c) **Property Contracts.** Seller hereby acknowledges that, to Seller's actual knowledge as of the Effective Date, there are not currently any 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 (the "**Property Contracts**"). If Buyer desires to obtain any services provided by any form of Property Contract, then Buyer shall be required to take all steps necessary to arrange for entering into any such Property Contract following the Closing. Buyer shall indemnify, hold harmless and, if requested by Seller (in Seller's sole discretion), defend (with counsel reasonably approved by Seller) Seller from and against any and all losses arising from or related to Buyer's failure to obtain any such contracts.

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, 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, the 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 naming Seller as an additional insured, with limits of not less than \$2,000,000.00 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 and further evidencing that such coverage may only be terminated or modified upon not less than thirty (30) days prior written notice to Seller. 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 deeds 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 and any reports, studies or other information prepared, obtained or compiled for Buyer by any Consultant or other third-party in connection with Buyer's investigation and analysis of the Property ("**Third-Party Reports**") and, upon written request of Seller, Buyer shall assign to Seller, AS-IS 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 the Third Party Reports 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.

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) 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; and

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

(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. If Buyer so terminates in connection with the condition set forth in Section 6.3(a)(iii), above (only), then Buyer shall be entitled as its sole and exclusive remedy to the return of the Earnest Money Deposit. If Seller so terminates, Seller shall be entitled to retain the Earnest Money Deposit.

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) A title affidavit (or at Buyer's option an indemnity) pertaining to Buyer's activity on the Property prior to Closing, in the customary form reasonably acceptable to Buyer, to enable Title Company to delete the standard exceptions to the title insurance policy set forth in this Agreement to be issued pursuant to the Title Report;

(c) 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;

(d) A closing statement executed by Buyer;

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

(f) 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

(g) 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) One (1) fully executed and acknowledged grant deed for that certain portion of the Property located in Lyon County, and one (1) fully executed and acknowledged grant deed for that certain portion of the Property located in Storey County, which deeds shall be 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;
- (d) A copy of the Auction Confirmation Order; and
- (e) Such other documents and instruments as may be required herein or reasonably requested by the Escrow Holder in order to consummate this transaction.

6.6 Prorations.

(a) **General.** All normal and customarily prorable 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 for the county in which the applicable portion of the Property is located.

(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.** 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 deeds to Buyer.

6.7 Closing Costs. Seller shall pay: (a) the premium for a standard CLTA Owner's Policy of Title Insurance; (b) all County documentary transfer taxes; and (c) one-half (1/2) of all Closing Costs. Buyer shall pay: (i) any additional premium for an ALTA Policy of Title Insurance, 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 for the county in which the applicable portion of the Property is located. For purposes of this Agreement, "Closing Costs" shall mean escrow fees, city documentary transfer taxes, document preparation charges and acknowledgment 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 any Third-Party Reports; and (iii) unless otherwise specifically provided elsewhere, the Buyer shall pay 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 OF BUYER

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 Brokers.** The Brokers and their 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 Brokers or any of their 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.

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 fault line 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 AND INDEMNITY

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 Seller's 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, "**Indemnitees**"), 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 (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 an Indemnitee, 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 Indemnitees, Buyer or Buyer's Parties on or about the Property; (f) a violation or alleged violation by any Indemnitee, 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 Indemnitee, 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 Indemnitee, 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 Indemnitee from an event which arises from a pre-existing relationship or claim between the Buyer and such Indemnitee.

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 Indemnitees.

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, 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 case 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," 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.

(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.

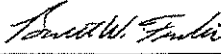
(d) Whether or not the sale of the Property is consummated hereunder, all rights to insurance claims or proceeds with respect to any damage to or destruction of any improvements occurring prior to the Close of Escrow shall belong to Seller.

12.3 Definition of Material. As used in this Article 12, "Material" shall mean any taking, condemnation, 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. UPON DEFAULT BY BUYER, 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 DEPOSIT TO SELLER, AND SELLER SHALL BE ENTITLED TO RECEIVE AND RETAIN THE 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 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 \$10,000.00) 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 CBRE, Inc. ("**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 Alder Properties ("**Buyer's Broker**," and collectively with Seller's Broker, the "**Brokers**"). 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 other than such Brokers 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 other than such Brokers 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. The Brokers shall not be deemed parties or third party beneficiaries of this Agreement. As a condition to Seller's obligation to pay any commission to the Brokers, Broker shall execute the signature page for Broker attached hereto solely for purposes of confirming the matters set forth therein; provided, however, that (a) Broker'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 (b) the signature of 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 confirmed facsimile transmission with an original copy thereof transmitted to the recipient by one of the means described in subsections (a) through (c) no later than three (3) business days thereafter. 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
Facsimile: (619) 567 – 7191

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP
501 West Broadway, 15th Floor
San Diego, California 92101
Email: tfates@allenmatkins.com
Facsimile: (619) 233-1158

Attention: Ted G. Fates, Esq.

To Buyer:

Orion 01 LLC
3515 Airway Drive, Suite 202B
Reno, Nevada 89511
Email: bwfranklin@ara-us.com
Attention: Barrett W. Franklin

With a copy to:
Sheehan Phinney Bass & Green PA
255 State Street, 5th Floor
Boston, Massachusetts 02109
Email: apyle@sheehan.com
Facsimile: (603) 641-2383
Attention: Alexander H. Pyle, Esq.

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 (as defined in Section 15.3, below) 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. Notwithstanding the foregoing, Seller's consent shall be deemed

granted in connection with an assignment of this Agreement by Buyer to an Affiliate (defined below) of Buyer, provided that Buyer notifies Seller in writing of such assignment and delivers to Seller the proposed written assignment agreement pursuant to which such Affiliate assignee will assume all of Buyer's obligations under this Agreement and such other information with respect to such Affiliate reasonably requested by Seller, at least five (5) business days in advance of such assignment. "Affiliate" shall mean an entity which is controlled by, controls, or is under common control with, Buyer. "Control," as used in this Section 14.4, shall mean the ownership, directly or indirectly, of at least fifty-one percent (51%) of the voting securities of, or possession of the right to vote, in the ordinary direction of its affairs, of at least fifty-one percent (51%) of the voting interest in, any person or entity. Any permitted assignee shall succeed to all of Buyer's rights and remedies hereunder, provided that no such assignment shall relieve Buyer from its liability under this Agreement.

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 deeds 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 Intentionally Omitted.

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) business 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 Three Hundred Thirty Thousand Dollars (\$330,000.00). Only Qualified Bidders (as defined below) may make bids at the Auction. All bids are subject to overbids in increments of Twenty-Five Thousand Dollars (\$25,000.00). 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 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 ("**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 Eleven Thousand Dollars (\$11,000.00) 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; and (iii) provide proof of funds in such form as shall be required by Receiver. 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 Deeds, "*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.

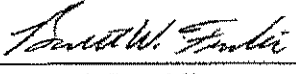
SELLER:

WFP RECEIVERSHIP OF SF TRUST

By: 
Name: THOMAS C. HEBRANK
Its: TRUSTEE

BUYER:

ORION 01 LLC,
a Delaware limited liability company

By: 
Name: Barrett W. Franklin
Title: President

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 February ____, 2018 as the date of opening of escrow and designates _____ as the escrow number assigned to this escrow

Dated: February ____, 2018

WESTERN TITLE COMPANY

By _____
Authorized Representative

BUYER'S BROKER SIGNATURE PAGE

The undersigned Buyer's Broker hereby executes this 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:

ALDER PROPERTIES

By: _____

Name: _____

Title: _____

SELLER'S BROKER SIGNATURE PAGE

The undersigned Seller's Broker hereby executes this 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:

CBRE, INC.

By: _____
Name: _____
Title: _____

EXHIBIT LIST

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

EXHIBIT A

LEGAL DESCRIPTION

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

The Southeast 1/4 of the Southeast 1/4 of Section 15, Township 17 North, Range 22 East, M.D.B.&M.

EXCEPTING THEREFROM all that portion of said land lying within Storey County, Nevada.

APN: 016-011-03

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

All of Section 15, Township 17 North, Range 22 East, M.D.B.&M.

EXCEPTING THEREFROM all that portion of said land lying within Lyon County, Nevada.

APN: 004-291-15

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 ORION 01 LLC, a Delaware limited liability company (“**Buyer**”) as of _____, 2018 (the “**Effective Date**”).

Seller and Buyer have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of _____, 2018 (“**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 Nevada.
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:

WFP RECEIVERSHIP QSF TRUST

By: _____

Name: _____

Its: _____

Buyer:

ORION 01 LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF GRANT DEEDS

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, WFP RECEIVERSHIP QSF TRUST (“**Grantor**”), hereby grants to ORION 01 LLC, a Delaware limited liability company, that certain real property located in the County of [MODIFY AS APPLICABLE: [Lyon] [Storey]], 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, and any rights, privileges and easements appurtenant to the Land, including, without limitation, development rights, air rights, mineral rights and water rights, if any, 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 _____
_____, 2018.

GRANTOR:

WFP RECEIVERSHIP QSF TRUST

By: _____

Name: _____

Its: _____

EXHIBIT "A" TO GRANT DEED

LEGAL DESCRIPTION

[TO BE INSERTED AS APPLICABLE]

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 _____

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "ORION 01 LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FOURTEENTH DAY OF FEBRUARY, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "ORION 01 LLC" WAS FORMED ON THE THIRTEENTH DAY OF FEBRUARY, A.D. 2018.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN ASSESSED TO DATE.



6754856 8300

SR# 20180992817

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 202150538

Date: 02-14-18