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9 Attorneys for Receiver  
THOMAS C. HEBRANK

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

13  
14 SECURITIES AND EXCHANGE  
COMMISSION,

15 Plaintiff,

16 v.

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

20 Defendants.  
21

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

**RECEIVER'S NOTICE OF  
MOTION AND MOTION FOR  
APPROVAL OF (A) SALE OF  
REAL PROPERTY OWNED BY  
WESTERN (SILVER SPRINGS)  
AND (B) PAYMENT OF BROKER'S  
COMMISSION**

Date: July 15, 2016  
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 July 15, 2016, 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 approving (1) the sale of real property owned by  
10 Western (Silver Springs) and (2) payment of Broker's commission ("Motion").

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

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

22  
23 Dated: May 25, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

24  
25 By:           /s/ Edward Fates          

EDWARD G. FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

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

14 SECURITIES AND EXCHANGE  
COMMISSION,

15 Plaintiff,

16 v.

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

20 Defendants.

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RECEIVER'S MOTION FOR  
APPROVAL OF (A) SALE OF  
REAL PROPERTY OWNED BY  
WESTERN (SILVER SPRINGS)  
AND (B) PAYMENT OF BROKER'S  
COMMISSION**

Date: July 15, 2016  
Time: 1:30 p.m.  
Ctrm.: 2D  
Judge: Hon. Gonzalo P. Curiel

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

### 8 I. BACKGROUND FACTS

9 In his Forensic Accounting Report: Part One, the Receiver explained that  
10 before selling certain properties to the GPs, Western and Schooler stripped off  
11 certain parcels and retained them as Western assets. Dkt. No. 182, p. 9. In his  
12 Seventh Interim Report, the Receiver recommended and sought permission to list  
13 these Western properties for sale with licensed brokers. Dkt. No. 547. The Court  
14 approved the Receiver's recommendation ("Order"). Dkt. No. 549. Schooler then  
15 sought reconsideration of the Order, which was denied. Dkt. Nos. 560, 595.

16 Pursuant to the Order, the Receiver listed certain of the Western properties,  
17 including the property identified as "Silver Springs So." on Exhibit D to the Seventh  
18 Interim Report, with licensed brokers Andie Wilson and Brad Bonkowski of NAI  
19 Alliance Carson City ("Broker"). Declaration of Thomas Hebrank filed herewith  
20 ("Hebrank Decl."), ¶ 3. The Silver Springs So. property ("Property") is located in  
21 rural Lyon County, Nevada, is a total of 26.38 acres, and is adjacent to (but separate  
22 from) the GP properties known as Silver Springs North and Silver Springs South.  
23 *Id.* at 4. Based on the 2013 appraisals of the Silver Springs North (\$360,000) and  
24 Silver Springs South (\$300,000) properties, the Receiver estimated the value of the  
25 Property in 2014 to be \$131,900 (*i.e.*, \$5,000 per acre). *Id.*; Dkt. No. 547, Exh. D.

26 Broker began marketing the Property for sale in May 2014. Declaration of  
27 Andie Wilson filed herewith ("Wilson Decl."), ¶ 3. Although the estimated value  
28 was \$131,900, the list price was set at \$263,800 (*i.e.*, \$10,000 per acre) to ensure the

1 list price would not drive down any potential higher offers. Hebrank Decl., ¶ 5.  
2 Broker (a) listed the Property on LoopNet, a widely-used national online platform  
3 for listing real property, (b) emailed the listing to over 200 real estate agents in the  
4 Northern Nevada area, (c) installed signage on the property, (d) placed  
5 advertisements in local magazines and circulars, and (e) direct mailed the listing to  
6 over 1,800 property owners in Northern Nevada. Wilson Decl., ¶ 3.

7 In 2015, pursuant to the Court's orders, the Receiver obtained appraisals for  
8 the Silver Springs North and Silver Springs South properties. Hebrank Decl., ¶ 6.  
9 The Silver Springs North property was appraised at \$320,000 (\$3,500 per acre) and  
10 the Silver Springs South property was appraised at \$440,000 (\$3,200 per acre). *Id.*

11 Over the last two years, Broker has received a few, sporadic inquiries about  
12 the Property, but only one offer. Wilson Decl., ¶ 4. The offer came from Daniel  
13 and Julie Ann Leach ("Buyer") in the original amount of \$100,000, with \$20,000 in  
14 cash and \$80,000 in seller financing to be paid over 12 months. Hebrank Decl., ¶ 7.  
15 Broker discussed the offer with Geno Rodriguez of the Receiver's office, who is a  
16 licensed broker in California. *Id.*; Wilson Decl., ¶ 4. Buyer had made it clear to  
17 Broker that he could not purchase the property for all cash or with lender financing.  
18 Hebrank Decl., ¶ 7; Wilson Decl., ¶ 4. Accordingly, the Receiver issued a  
19 counteroffer at \$130,000, with \$26,000 in cash and \$104,000 in seller financing paid  
20 over 12 months. Hebrank Decl., ¶ 7. Buyer countered again at \$115,000, with  
21 \$26,000 in cash and \$89,000 in seller financing paid over 12 months. *Id.* The  
22 Receiver accepted these terms (which translate to \$4,359 per acre), subject to  
23 overbid and Court approval. *Id.*

24 The Receiver and Buyer then agreed on the terms of the promissory note and  
25 deed of trust for the seller financing, which Buyer has executed and delivered to  
26 escrow. *Id.* at ¶ 8. Buyer's earnest money deposit of \$10,000 has also been  
27 delivered to escrow. *Id.* The additional \$16,000 in cash will be delivered at closing.  
28

1 *Id.* Buyer has no known connection to the Receiver, his company, his counsel,  
2 Louis Schooler, Western, or the General Partnerships. *Id.*

3 In 2016, the investors represented by Gary Aguirre ("Aguirre Investors") and  
4 the investors represented by Timothy Dillon ("Dillon Investors") filed a report on  
5 the GP properties from Xpera Group ("Xpera"). Dkt. No. 1234-4. Xpera provided a  
6 value range for the Silver Springs North and Silver Springs South properties of  
7 \$7,500 to \$10,000 per acre. *Id.* at pp. 88-89. If this range were applied to the  
8 Property, the value range would be \$197,850 to \$263,800. The comparable listing  
9 which Xpera cites to in its report, however, is the NAI Alliance listing of the  
10 Property, which, as discussed above, was double the estimated value in order to  
11 ensure that the listing did not drive down potential higher offers. *Id.* The Xpera  
12 estimate is also based on holding the properties for 12 months while the construction  
13 of a nearby highway is completed. *Id.*

## 14 II. PROPOSED SALE

15 The proposed purchase and sale agreement and seller financing addendum  
16 ("Agreement") is attached to the Hebrank Declaration as Exhibit A. Its key terms  
17 are summarized as follows:

18 **Purchase Price.** The purchase price is \$115,000, with \$26,000 in cash and  
19 \$89,000 in seller financing paid in 12 monthly installments of principal and interest  
20 in the amount of \$7,598.69 (4.5% interest).

21 **Deposit.** The Buyer's earnest money deposit of \$10,000 has been delivered to  
22 escrow.

23 **Closing Date.** Closing shall occur upon Court approval.

24 **As Is.** The sale is on an "as is, where is" basis with no representations or  
25 warranties made by the Receiver.

26 **Broker Commission.** Pursuant to the Court-approved listing agreements for  
27 the properties, Broker will be paid a commission of 6% of the purchase price, or  
28 \$6,900.

### III. LEGAL STANDARD

1  
2 "The power of a district court to impose a receivership or grant other forms of  
3 ancillary relief does not in the first instance depend on a statutory grant of power  
4 from the securities laws. Rather, the authority derives from the inherent power of a  
5 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369  
6 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly  
7 and efficient administration of the estate by the district court for the benefit of  
8 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment  
9 of a receiver is authorized by the broad equitable powers of the court, any  
10 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,  
11 953 F.2d 1560, 1569 (11th Cir. 1992).

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

16 A district court's power to supervise an equity receivership  
17 and to determine the appropriate action to be taken in the  
18 administration of the receivership is extremely broad. The  
19 district court has broad powers and wide discretion to  
20 determine the appropriate relief in an equity receivership.  
21 The basis for this broad deference to the district court's  
22 supervisory role in equity receiverships arises out of the fact  
23 that most receiverships involve multiple parties and complex  
24 transactions. A district court's decision concerning the  
25 supervision of an equitable receivership is reviewed for  
26 abuse of discretion.

27 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115  
28 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,  
and 'we generally uphold reasonable procedures instituted by the district court that  
serve th[e] purpose' of orderly and efficient administration of the receivership for  
the benefit of creditors."). Accordingly, the Court has broad discretion in the  
administration of the receivership estate and the disposition of receivership assets.

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

2           It is widely accepted that a court of equity having custody and control of  
 3 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*  
 4 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers  
 5 and wide discretion to determine relief in an equity receivership). "The power of  
 6 sale necessarily follows the power to take possession and control of and to preserve  
 7 property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.  
 8 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*  
 9 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)  
 10 (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity  
 11 orders property in its custody to be sold, the court itself as vendor confirms the title  
 12 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law & Practice of  
 13 Receivers § 487 (3d ed. 1992).

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

22           Generally, when a court-appointed receiver is involved, the receiver, as agent  
 23 for the court, should conduct the sale of the receivership property. *Blakely Airport*  
 24 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156  
 25 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an  
 26 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing  
 27 Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491  
 28 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are

1 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d  
2 354, 357 (9th Cir. 1925).

3 **B. 28 U.S.C. § 2001**

4 28 U.S.C. § 2001 imposes specific requirements for public sales of real  
5 property under subsection (a) and specific requirements for private sales of real  
6 property under subsection (b). Although both involve unnecessary cost and delay,  
7 the cost and delay of a public sale are significantly less than those for a private sale.  
8 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at \*5 (N.D. Cal. 2013)  
9 ("Section 2001 sets out two possible courses of action: (1) property may be sold in  
10 public sale; or (2) property may be sold in a private sale, provided that three separate  
11 appraisals have been conducted, the terms are published in a circulated newspaper  
12 ten days prior to sale, and the sale price is no less than two-thirds of the valued  
13 price."). Therefore, by proceeding under Section 2001(a), the receivership estate  
14 can avoid the significant costs and delay of (a) the Court having to appoint three  
15 disinterested appraisers, and (b) obtaining three appraisals from such appraisers.

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

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

26 If such realty is situated in more than one county, state,  
27 district or circuit, such notice shall be published in one or  
28 more of the counties, states, or districts wherein it is  
situated, as the court directs. The notice shall be  
substantially in such form and contain such description of  
the property by reference or otherwise as the court

1 approves. The court may direct that the publication be  
2 made in other newspapers.

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

6 The notice of sale is sufficient if it describes the property and the time, place,  
7 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*  
8 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to  
9 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and  
10 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction  
11 of the Receiver, that it has the current ability to consummate the purchase of the  
12 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,  
13 2009 U.S. Dist. LEXIS 111381, at \*8 (E.D. Mo. 2009).

#### 14 IV. DISCUSSION

15 The Property has been listed and marketed for sale by Broker for two years.  
16 The list price has been \$236,800 the entire time. Although there were a few  
17 inquiries, the only offer received is from Buyer. Arm's length negotiations then took  
18 place, resulting in the proposed sale. The proposed purchase price translates to  
19 \$4,359 per acre, which exceeds the 2015 appraisals for the Silver Springs North and  
20 Silver Springs South properties by a substantial amount. If there were buyers out  
21 there willing to pay more, they would have contacted Broker at this point and made  
22 an offer. Therefore, the proposed purchase price is fair and reasonable and reflects  
23 the market value for the Property.

24 In this instance, the Receiver believes the Xpera valuation of Silver Springs  
25 North and Silver Springs South is above the current market value of the properties.  
26 Xpera appears to have relied on Broker's listing of the Property at \$10,000 per acre  
27 in estimating the values at \$7,500 to \$10,000 per acre. Dkt. No. 1234-4, p. 88-89  
28 (citing the listing of adjoining parcels by Broker twice). The Xpera valuation is also  
based on holding the property for 12 months, during which it believes a highway

1 extension will be completed. *Id.* Finally, Xpera examined the adjoining properties  
2 (Silver Springs North and Silver Springs South) owned by the GPs and not the  
3 specific Property at issue here, which is owned by Western. Accordingly, the Xpera  
4 report is not a basis on which to reject the proposed sale.

5 Moreover, the proposed sale is subject to overbid to further ensure the highest  
6 and best price is obtained. Broker has continued to market the property to interested  
7 persons. Wilson Decl., ¶ 5. The Receiver proposes to conduct a public auction  
8 consistent with the requirements of Section 2001(a). Specifically, the Receiver will  
9 publish the following notice of the sale once a week for four weeks in the Reno  
10 Gazette Journal, a newspaper of general circulation in the Reno area of Nevada:

11 In the action pending in U.S. District Court for the  
12 Southern District of California, Case No. 12-CV-2164-  
13 GPC-JMA, Securities and Exchange Commission v.  
14 Louis V. Schooler et al., notice is hereby given that the  
15 court-appointed receiver will conduct a public auction for  
16 the undeveloped real property with APNs: 018-434-01,  
17 018-434-02, 018-432-02, 018-432-03, 018-432-05,  
18 located in Silver Springs, Lyon County, Nevada. Sale is  
19 subject to Court approval after the auction is held.  
20 Minimum bid price is \$125,000. The auction will take  
21 place on June 30, 2016, at 1:00 p.m. in front of the  
22 entrance to the United States Courthouse, 221 W.  
23 Broadway, San Diego, California. To be allowed to  
24 participate in the auction, prospective purchasers must  
25 meet certain bid qualification requirements, including  
26 submitting a signed purchase and sale agreement, an  
27 earnest money deposit of 10% of the purchase price, and  
28 proof of funds. All bidders must be qualified by 5:00 p.m.  
PST on June 27, 2016, 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 Andie Wilson of NAI Alliance  
Carson City at (775) 721-2980 or  
brandie.llc@prodigy.net.

24 In order to conduct an orderly auction and provide sufficient time for the  
25 publication of notices discussed above, the Receiver will require bidders to complete  
26 the above steps by June 27, 2016 ("Bid Qualification Deadline") and conduct the  
27 live public auction on June 30, 2016, and immediately in front of the courthouse  
28

1 (221 West Broadway, San Diego, California 92101 - same address in notice text  
2 above).

3 Broker will inform all interested persons of the opportunity to overbid at the  
4 public auction, provided they qualify themselves to bid by the Bid Qualification  
5 Deadline by (a) signing a purchase and sale agreement for the properties on the  
6 same terms and conditions as Buyer, but with a purchase price of at least \$125,000,  
7 (b) providing the Receiver with an earnest money deposit of 10,000 of the purchase  
8 price, and (c) providing proof of funds necessary to close the sale transaction in the  
9 form of a current bank statement, cashier's check delivered to the Receiver, or other  
10 evidence deemed sufficient by the Receiver.

11 In the event one or more prospective purchasers qualify themselves to bid, the  
12 auction will be conducted by the Receiver as noted above and bids will be allowed  
13 in increments of \$5,000. The Receiver will then file a notice advising the Court of  
14 the result of the auction (*i.e.*, the highest bid) and seek entry of an order confirming  
15 the sale. Earnest money deposits provided by bidders who are unsuccessful will be  
16 promptly returned to them. In the event no prospective purchasers qualify  
17 themselves to bid by the Bid Qualification Deadline, the Receiver will notify the  
18 Court and seek entry of an order approving the sale to Buyer.

19 With respect to the proposed broker commission, the Receiver seeks authority  
20 to pay Broker \$6,900 directly from escrow. Industry standard broker commissions  
21 for sales of undeveloped land range from 6% to 10% of the purchase price,  
22 depending on the value of the property and the difficulties in selling it. Hebrank  
23 Decl., ¶ 9. Broker has worked diligently to market the properties, generate interest,  
24 promptly respond to interested parties, assist with negotiations with Buyer, and  
25 continue to market the properties to potential overbidders. Accordingly, the  
26 Receiver believes the proposed commission of \$6,900 is fair and reasonable. *Id.*

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**V. CONCLUSION**

For the reasons discussed above, the Receiver requests an order approving the sale of the Property to Buyer pursuant to the Agreement attached to the Hebrank Declaration as Exhibit A, authorizing the Receiver to take all steps necessary to close the sale, and authorizing the Receiver to pay Broker \$6,900 directly from escrow.

Dated: May 25, 2016

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

By:           /s/ Edward Fates            
EDWARD G. FATES  
Attorneys for Receiver  
THOMAS C. HEBRANK

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9 Attorneys for Receiver  
THOMAS C. HEBRANK

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

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14 SECURITIES AND EXCHANGE  
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19 FINANCIAL PLANNING  
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20 Defendants.  
21

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

**DECLARATION OF THOMAS C.  
HEBRANK IN SUPPORT OF  
MOTION FOR APPROVAL OF  
(A) SALE OF REAL PROPERTY  
OWNED BY WESTERN (SILVER  
SPRINGS) AND (B) PAYMENT OF  
BROKER'S COMMISSION**

Date: July 15, 2016  
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"), and 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 2. I make this declaration in support of my Motion for Approval of  
7 (A) Sale of Real Property Owned by Western (Silver Springs) and (B) Payment of  
8 Broker's Commission ("Motion"). I have personal knowledge of the facts stated  
9 herein, and if called upon to do so, I could and would personally and competently  
10 testify to them.

11 3. Pursuant to this Court's order approving my recommendation in my  
12 Seventh Interim Report to list certain Western properties for sale with licensed  
13 brokers ("Order") (Dkt. Nos. 549), I listed the Western properties, including the  
14 property identified as "Silver Springs So." ("Property") on Exhibit D to my Seventh  
15 Interim Report, with licensed brokers Andie Wilson and Brad Bonkowski of NAI  
16 Alliance Carson City ("Broker").

17 4. The Property is located in rural Lyon County, Nevada, is a total of  
18 26.38 acres, and is adjacent to (but separate from) the GP properties known as Silver  
19 Springs North and Silver Springs South. Based on the 2013 appraisals of the Silver  
20 Springs North (\$360,000) and Silver Springs South (\$300,000) properties, I  
21 estimated the value of the Property in 2014 to be \$131,900 (*i.e.*, \$5,000 per acre).

22 5. Although the estimated value was \$131,900, the list price was set at  
23 \$263,800 (*i.e.*, \$10,000 per acre) to ensure the list price would not drive down any  
24 potential higher offers.

25 6. In 2015, pursuant to this Court's orders, I obtained appraisals for the  
26 Silver Springs North and Silver Springs South properties. The Silver Springs North  
27 property was appraised at \$320,000 (\$3,500 per acre) and the Silver Springs South  
28 property was appraised at \$440,000 (\$3,200 per acre).

1           7.     The only offer received for the Property came from Daniel and Julie  
2 Ann Leach ("Buyer") in the original amount of \$100,000, with \$20,000 in cash and  
3 \$80,000 in seller financing to be paid over 12 months. Broker discussed the offer  
4 with Geno Rodriguez of my office, who is a licensed broker in California. Buyer  
5 had made it clear to Broker that he could not purchase the property for all cash or  
6 with lender financing. Accordingly, I issued a counteroffer at \$130,000, with  
7 \$26,000 in cash and \$104,000 in seller financing paid over 12 months. Buyer  
8 countered again at \$115,000, with \$26,000 in cash and \$89,000 in seller financing  
9 paid over 12 months. I accepted these terms (which translates to \$4,359 per acre),  
10 subject to overbid and Court approval. True and correct copies of the Land  
11 Purchase Agreement and Seller Financing Addendum are attached hereto as  
12 Exhibit A.

13           8.     Buyer and I then agreed on the terms of the promissory note and deed  
14 of trust for the seller financing, which Buyer has executed and delivered to escrow.  
15 Buyer's earnest money deposit of \$10,000 has also been delivered to escrow. The  
16 additional \$16,000 in cash will be delivered at closing. Buyer has no known  
17 connection to me, my company, my counsel, Louis Schooler, Western, or the  
18 General Partnerships.

19           9.     With respect to the proposed broker commission, I request authority to  
20 pay Broker \$6,900 directly from escrow. Industry standard broker commissions for  
21 sales of undeveloped land range from 6% to 10% of the purchase price, depending  
22 on the value of the property and the difficulties in selling it. Broker has worked  
23 diligently to market the properties, generate interest, promptly respond to interested  
24 parties, assist with negotiations with Buyer, and continue to market the properties to  
25 potential overbidders. Accordingly, I believe the proposed commission of \$6,900 is  
26 fair and reasonable.

27  
28

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

3 Executed this 24<sup>th</sup> day of May, 2016, at San Diego, California.

4   
5 THOMAS C. HEBRANK

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**EXHIBIT INDEX**

<b>EXHIBIT NO.</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
Exhibit A	Land Purchase Agreement and Seller Financing Addendum	6

# EXHIBIT A

# EXHIBIT A

**LAND PURCHASE AGREEMENT**

**DEFINITIONS**

**BROKER** includes cooperating broker and all sales persons. **DAYS** means calendar days, midnight to midnight, unless otherwise specified. **BUSINESS DAY** excludes Saturdays, Sundays and legal holidays. **DATE OF ACCEPTANCE** means the date Seller accepts the offer or the Buyer accepts the counter offer, and the written acceptance is put in the course of transmission to the other party. This rule also applies to the removal of contingencies. **DELIVERED** means personally delivered, transmitted electronically in accordance with applicable laws, by a nationally recognized overnight courier, or by first class mail, postage prepaid. In the event of mailing, the document will be deemed delivered three (3) business days after deposit; in the event of overnight courier, one (1) business day after deposit; and if electronically at the time of transmission provided that a transmission report is generated and retained by the sender reflecting the accurate transmission of the document. Unless otherwise provided in this Agreement or by law, delivery to the agent will constitute delivery to the principal. **DATE OF CLOSING** means the date title is transferred. **TERMINATING THE AGREEMENT** means that both parties are relieved of their obligations and all deposits will be returned to Buyer. **PROPERTY** means the real property and any personal property included in the sale.

**AGENCY RELATIONSHIP CONFIRMATION.** The following agency relationship is hereby confirmed for this transaction and supersedes any prior agency election:

LISTING AGENT: NAI Alliance Carson City by A. Wilson/B. Bonkowski is the agent of (check one):  
 (Print Firm Name) (Print Agent Name)  
 the Seller exclusively; or  both the Buyer and the Seller.  
 SELLING AGENT: \_\_\_\_\_ by \_\_\_\_\_ is the agent of (check one):  
 (Print Firm Name) (Print Agent Name)  
 the Buyer exclusively; or  the Seller exclusively; or  both the Buyer and the Seller.

Daniel D. and Julie Ann Leach hereinafter designated as BUYER, offers to purchase the real property situated in Silver Springs, County of Lyon, State of Nevada consisting of approximately 25.96  acres,  sq. ft. commonly known as Lyon County APNs # 018-432-05, 02, 03, and 018-434-02 and 01 FOR THE PURCHASE PRICE OF \$ 115,000.00 (One hundred fifteen thousand and NO/100\*\*\* dollars) on the following terms and conditions:

**1. FINANCING TERMS.**

- A. \$ 10,000.00 DEPOSIT evidenced by  check,  or other: to be collected upon acceptance held uncashed until acceptance and not later than three (3) business days thereafter deposited toward the purchase price with Ronda Plamondon - First Centennial Title Co.
- B. \$ --- ADDITIONAL CASH DEPOSIT to be placed in escrow within n/a days after acceptance, upon removal of all conditions
- C. \$ 16,000.00 BALANCE OF CASH PAYMENT needed to close, not including closing costs.
- D. \$ --- NEW FIRST LOAN:  FIXED RATE: For \_\_\_\_\_ years, interest not to exceed \_\_\_\_\_ %, payable at approximately \$ \_\_\_\_\_ per month (principal and interest only), with the balance due in not less than \_\_\_\_\_ years.  ARM: For \_\_\_\_\_ years, initial interest rate not to exceed \_\_\_\_\_ %, with initial monthly payments of \$ \_\_\_\_\_ and maximum lifetime rate not to exceed \_\_\_\_\_ %.  
 Buyer will pay loan fee or points not to exceed \_\_\_\_\_.  
 Lender to appraise property at no less than purchase price prior to loan contingency removal.
- E. \$ --- EXISTING FINANCING:  ASSUMPTION OF,  SUBJECT TO existing loan of record described as follows:
- F. \$ 89,000.00 SELLER FINANCING:  FIRST LOAN or  SECOND LOAN, secured by the property;  LAND SALES CONTRACT.  Seller Financing Addendum, is attached and made a part of this Agreement.
- G. \$ --- OTHER FINANCING TERMS: \_\_\_\_\_
- H. \$ 115,000.00 TOTAL PURCHASE PRICE (not including closing costs).

**2. LOAN APPROVAL.** (Please check one of the following):

- A.  CONTRACT IS NOT CONTINGENT upon Buyer obtaining a loan.
- B.  CONTRACT IS CONTINGENT upon Buyer's ability to obtain commitment for new financing, as set forth above, from a lender or mortgage broker of Buyer's choice, and/or consent to assumption of existing financing provided for in this Agreement, **within \_\_\_\_\_ days after acceptance.** Buyer will in good faith use his or her best efforts to qualify for and obtain the financing and will complete and submit a loan application within five (5) days after acceptance. Buyer  will,  will not provide a  prequalification letter, or  preapproval letter from lender or mortgage broker based on Buyer's application and credit report within \_\_\_\_\_ days after acceptance. In the event a loan commitment or consent is obtained but not timely honored without fault of Buyer, Buyer may terminate this Agreement.

Buyer [Signature] and Seller [Signature] have read this page.

Property Address: Lyon County APNs # 018-432-05, 02, 03, and 018-434-02 and 01

3. EXAMINATION OF TITLE. In addition to any encumbrances assumed or taken "subject to", Seller will convey title to the property subject only to: [1] real estate taxes not yet due; and [2] covenants, conditions, restrictions, rights of way and easements of record, if any, which do not materially affect the value or intended use of the property

Within three (3) days after acceptance, Buyer will order a Preliminary Title Report and copies of CC&Rs and other documents of record if applicable. Within five (5) days after receipt, Buyer will report to Seller in writing any valid objections to title contained in such report (other than monetary liens to be paid upon close of escrow). If Buyer objects to any exceptions to the title, Seller will use due diligence to remove such exceptions at his or her own expense before close of escrow. If such exceptions cannot be removed before close of escrow, this Agreement will terminate, unless Buyer elects to purchase the property subject to such exceptions. If Seller concludes he or she is in good faith unable to remove such objections, Seller will notify Buyer within ten (10) days after receipt of said objections. In that event Buyer may terminate this Agreement.

4. OPTIONAL CONDITIONS, Provisions 3-A through 3-E, if initialed below by Buyer, are included in this Agreement:

[ ] A. SOIL TESTS. Upon acceptance of this Agreement, Buyer will have the right to go on the property to conduct soil tests, including percolation tests, to ascertain whether the property is suitable for the improvements which Buyer proposes to make. All expenses of such tests will be borne by the [X] Buyer, [ ] Seller. Buyer will be responsible for the repair and restoration of any damage to the property which may be caused by such tests. If in the reasonable opinion of the soils engineer, employed by Buyer, the property is not suitable for the proposed development, Buyer may terminate this Agreement. Buyer will approve or disapprove the results of the tests in writing within days of acceptance.

[ ] B. SURVEY. Upon acceptance of this Agreement, the boundary lines of the property may be surveyed by a licensed surveyor at the expense of the [X] Buyer, [ ] Seller. The surveyor will set and flag all property lines, to be approved in writing by Buyer prior to close of escrow.

[ ] C. PRICE BASED ON AREA. The purchase price is based upon \$ n/a per acre, [ ] per square foot, and [ ] will, [ ] will not be adjusted in accordance with the area set forth in the survey under Provision 3-B.

[ ] D. WELL REPORT. Upon acceptance of this Agreement, Buyer will obtain a well report from a licensed well drilling contractor at the expense of [ ] Buyer, [ ] Seller. Buyer will approve or disapprove the results of the tests in writing within days of acceptance. In the event of disapproval, Buyer may terminate this Agreement.

[ ] E. TAX DEFERRED EXCHANGE (INVESTMENT PROPERTY). In the event Seller wishes to enter into a tax deferred exchange for the property, or Buyer wishes to enter into a tax deferred exchange with respect to property owned by him or her in connection with this transaction, each of the parties agrees to cooperate with the other party in connection with such exchange, including the execution of such documents as maybe reasonably necessary to complete the exchange, provided that: (a) the other party will not be obligated to delay the closing; (b) all additional costs in connection with the exchange will be borne by the party requesting the exchange; (c) the other party will not be obligated to execute any note, contract, deed or other document providing for any personal liability which would survive the exchange; and (d) the other party will not take title to any property other than the property described in this Agreement. The other party will be indemnified and held harmless against any liability which arises or is claimed to have arisen on account of the exchange.

5. BONDS AND ASSESSMENTS. All bonds and assessments which are part of or paid with the property tax bill will be assumed by the Buyer. In the event there are other bonds or assessments which have an outstanding principal balance and are a lien upon the property, the current installment will be prorated between Buyer and Seller as of the date of closing. Future installments will be assumed by Buyer WITHOUT CREDIT toward the purchase price, EXCEPT AS FOLLOWS:

This Agreement is conditioned upon both parties verifying and approving in writing the amount of any bond or assessment to be assumed or paid within ten (10) days after receipt of the preliminary title report or property tax bill, whichever is later. In the event of disapproval, the disapproving party may terminate this Agreement.

6. PRORATIONS. Rents, real estate taxes, interest, payments on bonds and assessments assumed by Buyer, and homeowners association fees will be prorated as of the date of recordation of the deed. Security deposits, advance rentals, or considerations involving future lease credits will be credited to Buyer

7. EVIDENCE OF TITLE will be in the form of a policy of Title Insurance, issued by First Centennial Title Co paid by 50/50 Buyer/Seller

TH CLOSING. Full purchase price to be paid, deed to be recorded, and physical possession of property to be delivered [ ] on or before [ ] or [X] within 90 days of acceptance. Both parties will deposit with an authorized escrow holder, to be selected by Buyer, all funds and instruments necessary to complete the sale in accordance with the terms of this Agreement. Where customary, signed escrow instructions will be delivered to escrow holder within 30 days of acceptance. Escrow fee (including any cancellation fee) to be paid by 50/50 Buyer/Seller. County/City Transfer Tax(es), if any, to be paid by 50/50 Buyer/Seller

TH THIS PURCHASE AGREEMENT TOGETHER WITH ANY ADDENDA WILL CONSTITUTE JOINT ESCROW INSTRUCTIONS TO THE ESCROW HOLDER.

9. VESTED TITLE. The manner of taking title may have significant legal and tax consequences. Buyer should obtain advice from his or her legal or tax counsel regarding this matter.

10. PROPERTY INVESTIGATIONS. This Agreement is contingent upon Buyer's independent investigation of the following conditions relating to the property.

- A. Zoning and land use designations and requirements.
- B. Availability of utilities and costs of development.

Buyer [Signature] and Seller [Signature] have read this page.

Property Address: LYNN COURT, 1111 N. 1ST ST., CARSON CITY, NV 89701

C. Toxic contamination.

Buyer will approve or disapprove in writing all inspection reports within fifteen (15) (or ~~XXI~~ 30) days after acceptance. In the event of Buyer's disapproval, Buyer may, within the time stated or mutually agreed upon extension, elect to terminate this Agreement.

11. **DEFAULT** - In the event Buyer defaults in the performance of this Agreement (unless Buyer and Seller have agreed to liquidated damages), Seller may, subject to any rights of the Broker, retain Buyer's deposit to the extent of damages sustained and may take such actions as he or she deems appropriate to collect such additional damages as may have been actually sustained. Buyer will have the right to take such action as he or she deems appropriate to recover such portion of the deposit as may be allowed by law. In the event that Buyer defaults (unless Buyer and Seller have agreed to liquidated damages) Buyer agrees to pay the Broker(s) any commission that would be payable by Seller in the absence of such default.

12. **ATTORNEY FEES.** In any action, arbitration, or other proceeding involving a dispute between Buyer and Seller arising out of the execution of this Agreement or the sale, whether for tort or for breach of contract, and whether or not brought to trial or final judgment, the prevailing party will be entitled to receive from the other party a reasonable attorney fee, expert witness fees, and costs to be determined by the court or arbitrator(s).

13. **SURVIVAL.** The omission from escrow instructions of any provision in this Agreement will not waive the right of any party. All representations or warranties will survive the close of escrow.

14. **EXPIRATION OF OFFER.** This offer will expire unless acceptance is delivered to Buyer or to NAI Alliance Carson City (Buyer's Broker) on or before (date) Monday March 10, 2016 (time) 5:00 a.m., ~~XX~~ p.m.

15. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which is deemed to be an original.

16. **TIME.** Time is of the essence of this Agreement; provided, however, that if either party fails to comply with any contingency in this Agreement within the time limit specified, this Agreement will not terminate until the other party delivers written notice to the defaulting party requiring compliance within 24 hours after receipt of notice. If the party receiving the notice fails to comply within the 24 hours, the non-defaulting party may terminate this Agreement without further notice.

17. **CONDITIONS SATISFIED/WAIVED IN WRITING.** Each condition or contingency, covenant, approval or disapproval will be satisfied according to its terms or waived by written notice delivered to the other party or his or her Broker.

18. **ENTIRE AGREEMENT/ASSIGNMENT PROHIBITED.** This document contains the entire agreement of the parties and supersedes all prior agreements or representations with respect to the property which are not expressly set forth. This Agreement may be modified only in writing signed and dated by both parties. Buyer may not assign any right under this agreement without the prior written consent of Seller. Any such assignment will be void and unenforceable.

19. **ADDITIONAL TERMS AND CONDITIONS.**

- 1.) Buyer shall have a 30-day due diligence period to conduct any and all inspections he wishes, at his expense.
- 2.) The property is currently under the authority of the Court. Notwithstanding any other provisions in this agreement, any disputes arising from this agreement will be heard in that venue. All references to Seller will mean Thomas C. Hebrank, solely in his capacity as Court Appointed Receiver. Broker's commission is subject to District Court approval and Broker agrees to accept as full compensation the amount approved and authorized to be paid by the District Court. The Receiver will request from the authority from the District Court to pay Broker the commission provided for in this Agreement. Broker shall inform any and all brokers and agents of the Buyer of the requirement of District Court approval of the commission to be paid and obtain their written acknowledgement.
- 3.) This sale is subject to court approval which could take 30 days or longer from the conclusion of Buyer's due diligence period approval. Buyer's due diligence period to be 30 days from acceptance. Closing date to be based upon court approval.

20. **ADDENDA.** The following addenda are attached and made a part of this Agreement:

- ADDENDUM TO LAND PURCHASE AGREEMENT
- SELLER FINANCING ADDENDUM AND DISCLOSURE STATEMENT

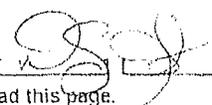
Both parties acknowledge that they have not relied on any statements of the real estate Agent or Broker which are not expressed in this Agreement.

**LIMITATION OF AGENCY:** A real estate broker or agent is qualified to advise on real estate. If you have any questions concerning the legal sufficiency, legal affect, insurance, or tax consequences of this document or the related transactions, consult with your attorney, accountant, or insurance broker.

The undersigned Buyer acknowledges that he or she has thoroughly read and approved each of the provisions of this offer and agrees to purchase the property for the price and on the terms and conditions specified. Buyer acknowledges receipt of a copy of this Offer.

Buyer (SEE ATTACHED SIGNATURE PAGE) \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_

Address \_\_\_\_\_

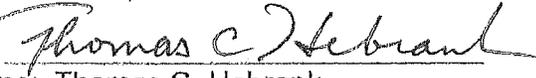
Buyer  and Seller   
have read this page.

**SELLER AND BUYER SIGNATURE PAGE**

This signature page is attached to that certain certain Land Purchase Agreement (the "**Agreement**") dated as of March \_\_, 2016 (the "**Effective Date**") by and between FIRST FINANCIAL PLANNING CORP., as "**Seller**," by and through Thomas C. Hebrank, solely in his capacity as Receiver, appointed by the United States District Court for the Southern District of California, and DANIEL D. AND JULIE ANN LEACH, as joint tenants, as "**Buyer**". The undersigned Buyer and Seller hereby agree to accept the Agreement and be bound by said Agreement as of the Effective Date.

**SELLER:**

FIRST FINANCIAL PLANNING CORP.,  
a Nevada corporation

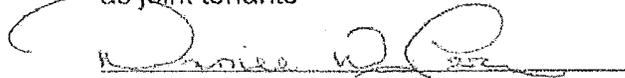
By: 

Name: Thomas C. Hebrank

Its: Receiver

**BUYER:**

DANIEL D. AND JULIE ANN LEACH,  
as joint tenants



Daniel D. Leach



Julie Ann Leach

## ADDENDUM TO LAND PURCHASE AGREEMENT

This Addendum to Land Purchase Agreement (this "**Addendum**") is attached to, and a part of, that certain Land Purchase Agreement (the "**Agreement**") dated as of March \_\_, 2016 (the "**Effective Date**") by and between FIRST FINANCIAL PLANNING CORP., as "**Seller**," by and through Thomas C. Hebrank, solely in his capacity as Receiver ("**Receiver**"), appointed by the United States District Court for the Southern District of California (the "**Court**"), and DANIEL D. AND JULIE ANN LEACH, as joint tenants, as "**Buyer**", with respect to that certain unimproved real property located in an unincorporated portion of Lyon County, Nevada, known as Silver Springs consisting of approximately 25.96 acres of land and referred to Lyon County Assessor Parcel Nos. 018-432-02, 018-432-03, 018-432-05, 018-434-01 and 018-434-02 (the "**Property**"). In the event of any conflict between the provisions of this Addendum and those of the Agreement, the provisions of this Addendum shall prevail. For convenience, all capitalized terms not otherwise defined in this Addendum have the same meaning ascribed to them in the Agreement. Furthermore, section references used in this Addendum correspond to the sections set forth in the Agreement.

### 10. Property Investigations

#### D. Right of Entry

(1) **Buyer's Right of Access.** Until the date upon which the closing of the Agreement occurs (the "**Closing Date**") or, if sooner, the date this Agreement is terminated, Buyer shall have a limited, non-exclusive license to enter upon the Property, at Buyer's sole cost and expense, in order to conduct inspections of the Property as Buyer deems necessary or desirable; 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 26.B below) of any such request giving the proposed time of entry, its approximate duration and a description of the specific 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 26.B 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 Property in connection with Buyer's or any activities of any other party in connection with any inspections conducted by or for Buyer ("**Consultants**") 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 10.D(1). 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 Property for purposes contemplated herein by Buyer or its representatives, employees, Consultants or designees; provided, however, that Buyer shall not pursuant to this Section 10.D(1) 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 Property or any improvements located thereon; or (iii) hazardous or toxic substances or industrial hygiene in violation of any and all applicable environmental laws not brought onto the Property by Buyer or its agents or representatives, except if and to the extent Buyer exacerbates or worsens the condition.

(2) As a prior condition to any entry onto the Property (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 \$3,000,000.00 property damage, bodily injury or death and (b) worker's compensation insurance for all of its employees in accordance with the law of the State of Nevada. Prior to Buyer's or its consultants' entry onto the Property, Buyer shall deliver to Seller certificates of insurance evidencing such coverage 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 deed for the Property.

**21. Amendment and Restatement of the Original Purchase Agreement.** Seller and Buyer previously entered into that certain Land Purchase Agreement dated as of February 1, 2016, as amended by that certain Counter Offer #1 dated as of February 15, 2016 and that certain Counter Offer #2 dated as of February 16, 2016 (collectively, the "**Original Agreement**") for the purchase of the Property. Buyer and Seller now desire to amend and restate the Original Agreement pursuant to the terms of this Agreement. Accordingly, Seller and Buyer hereby acknowledge and agree that this Agreement amends, restates and supersedes in its entirety the Original Agreement.

**22. As-Is Sale**

**A. 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.

**B. 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:

- (1) the value of the Property;
- (2) the income to be derived from the Property;
- (3) 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;
- (4) the habitability, merchantability, marketability, profitability or fitness for a particular purpose of the Property;
- (5) the manner, quality, state of repair, or lack of repair, of the Property;
- (6) the nature quality or condition of the Property including without limitation, the water, soil and geology;
- (7) 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;
- (8) the manner, condition, or quality of the construction or materials, if any, incorporated into the Property;
- (9) compliance with any environmental protection, pollution or land use laws, rules, regulation, orders or requirements, including but not limited to, the Endangered Species Act;
- (10) the presence or absence of hazardous or toxic substances at, on, under, or adjacent to the Property;

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

(12) 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;

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

(14) deficiency of any undershoring;

(15) deficiency of any drainage;

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

(17) deficiency of any access to the Property or any portion thereof; and

(18) 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 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.

**C. 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:

(1) BUYER ACKNOWLEDGES AND AGREES THAT RECEIVER IS ENTERING INTO THIS AGREEMENT SOLELY IN CONNECTION WITH HIS OR HER 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.

(2) 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.

**D. Survival.** The provisions of this Section 22 shall survive the closing of the Agreement.

### **23. Release and Indemnity**

**A. Release.** To the maximum extent permitted by law, Buyer, on behalf of itself and its past, present and future agents, representatives, partners, shareholders, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, directors, employees, predecessors, successors, heirs and executors and assigns (collectively, "**Buyer's Parties**"), hereby releases and forever discharges Seller, and each of their respective past, present and future agents (including Receiver and Broker), 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: (1) the use of the Property or any part thereof; (2) 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 Property or land adjacent to the Property, whether or not performed by an Indemnitee, and any surface and subsurface conditions; (3) the presence on the Property 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; (4) any act, omission or representation of Buyer or any of Buyer's Parties; (5) 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; (6) a violation or alleged violation by any Indemnitee, Buyer, or Buyer's Parties of any law now or hereinafter enacted; (7) a slope failure or surface or subsurface geologic or groundwater condition caused by or attributable to any Indemnitee, Buyer or Buyer's Parties; (8) 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; (9) 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; (10) 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 (11) 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, and Buyer, on behalf of itself and all of Buyer's Parties, hereby waives application of the California Civil Code Section 1542 which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH CREDITOR DOES NOT KNOW OR SUSPECT EXISTS IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Buyer understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 is that, even if Buyer or any of Buyer's Parties suffer future damages arising out of or resulting from any Released Claims, neither Buyer nor any of Buyer's Parties will be able to make any claim for those damages against Seller or any other Indemnitee. Furthermore, Buyer acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which Buyer does not know exist, and which, if known, would materially affect Buyer's decision to execute this Agreement, regardless of whether Buyer's lack of knowledge is the result of ignorance, oversight, error, negligence or any other cause.

  
Buyer's Initials

**B. Survival.** The provisions of this Section 23 shall survive the closing of the Agreement.

#### **24. Dispute Resolution**

**A. 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 (1) arising under this Agreement, including, without limitation, any present or future modification thereof, or (2) 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.

**B. 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.

#### **25. Default by Buyer**

**A. 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: (1) LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES; (2) WAIVE OR AFFECT BUYER'S INDEMNITY OBLIGATIONS AND SELLER'S RIGHTS TO SUCH INDEMNITY; OR (3) 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 WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389.

  
Buyer's initials

  
Seller's initials

**B. Default by Seller; Exculpation.** Subject to Section 22.C of this Addendum, above, 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 the deposit set forth in Section 1.A of the Agreement, or (ii) specifically enforce Seller's obligations to convey the Property and recover professional fees and costs. In no event shall Buyer seek or attempt to obtain any recovery or judgment against any of Seller's members, shareholders or partners (or

their constituent members, shareholders or partners) or any director, officer, employee or shareholder of any of the foregoing.

## 26. Miscellaneous Provisions

**A. 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 NAI Alliance Carson City ("**Broker**"), whose commission (if the Closing occurs) shall be paid pursuant to a separate agreement entered into by Seller and 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. Buyer shall indemnify, defend and hold Seller and Broker harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Buyer in connection with, this transaction, and Seller shall indemnify, defend and hold Buyer harmless from and against any liability, cost or expense arising out of or connected with any claim for any commission or compensation made by any person or entity claiming to have been retained or contacted by Seller in connection with this transaction. This indemnity provision shall survive the Closing or any earlier termination of this Agreement. Broker shall not be deemed a party or third party beneficiary of this Agreement. As a condition to Seller's obligation to pay the commission pursuant to this Section 26.A, Broker shall execute the signature page for Broker attached hereto solely for purposes of confirming the matters set forth therein; provided, however, that (1) 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 (2) the signature of Broker will not be necessary to amend any provision of this Agreement.

**B. Notices.** All notices, demands, requests and other communications required or permitted hereunder shall be in writing, and shall be (1) personally delivered with a written receipt of delivery; (2) sent by a nationally-recognized overnight delivery service requiring a written acknowledgement of receipt or providing a certification of delivery or attempted delivery; (3) sent by certified or registered mail, return receipt requested; or (4) sent by confirmed facsimile transmission with an original copy thereof transmitted to the recipient by one of the means described in subsections (1) through (3) 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:**

Geno Rodriguez  
E3 Advisors  
401 West "A" Street, Suite 1830  
San Diego, California 92101  
E-mail: grodriguez@ethreeadvisors.com  
Facsimile: (619) 567-7191

With a copy to:

Allen Matkins Leck Gamble Mallory & Natsis LLP  
501 West Broadway, 15<sup>th</sup> Floor  
San Diego, California 92101  
Email: tfates@allenmatkins.com  
Facsimile: (619) 233-1158  
Attention: Ted G. Fates, Esq.

**To Buyer:**

Daniel Leach  
Leach Drilling  
P.O. Box 599  
Silver Springs, Nevada 89429  
Telephone: (775) 577-9077

**C. 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: (1) employees, agents and attorneys of Seller or Buyer; (2) 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 (3) 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. The provisions of this Section 26.C shall survive the Closing or earlier termination of this Agreement.

**D. Bankruptcy.** Buyer agrees that in the event that: (1) 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; (2) Buyer makes an assignment for the benefit of creditors; (3) Buyer is adjudicated a bankruptcy; (4) 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; (5) 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 (6) 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.

**E. 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.

**F. No Recorded Memorandum.** Prior to the Closing Date, 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.

**G. Governing Law and Forum.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. The exclusive forum for resolving disputes arising from or related to this Agreement or closing of the sale shall be the Court.

**H. 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.

**I. 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.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

IN WITNESS THEREOF, this Addendum to Land Purchase Agreement is executed and delivered by Buyer and Seller as of the Effective Date.

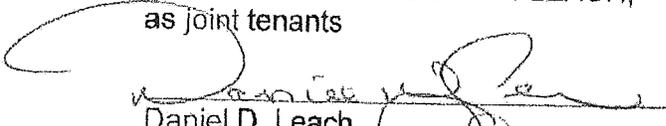
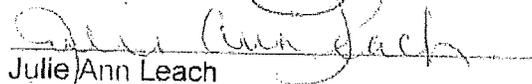
**SELLER:**

FIRST FINANCIAL PLANNING CORP.,  
a Nevada corporation

By:   
Name: Thomas C. Hebrank  
Its: Receiver

**BUYER:**

DANIEL D. AND JULIE ANN LEACH,  
as joint tenants

  
Daniel D. Leach  
  
Julie Ann Leach

**BROKER SIGNATURE PAGE**

The undersigned Broker hereby executes this Broker Signature Page solely to confirm the following: (a) Broker represents only the Seller in the transaction described in the Agreement to which this signature page is attached, (b) Broker acknowledges that the only compensation due to 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 Broker, and (c) Broker represents and warrants to Seller that 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 18 of the Agreement, acquires the Property at the closing) nor has Buyer granted (as of the Effective Date or the Closing Date) the Broker or any of its affiliates any right or option to acquire any direct or indirect legal, beneficial, economic or voting interest in Buyer.

**BROKER:**

NAI ALLIANCE CARSON CITY

By: 

Name: Brad Benkowski

Title: managing member

**SELLER FINANCING ADDENDUM AND DISCLOSURE STATEMENT**

To Agreement dated 02/17/16, between First Financial Planning Corp. Seller and Daniel Leach and / or Assignee Buyer, concerning property located at Lyon County APNs # 018-432-05, 02, 03, and 018-434-02 and 01 ("Property").

This ADDENDUM constitutes joint escrow instructions to the escrow holder and supersedes any inconsistent provisions in the Purchase Agreement.

**A. CREDIT DOCUMENTS AND TERMS:**

1. **Documents.** Extension of credit by Seller will be evidenced by  note and deed of trust,  all inclusive note and deed of trust,  installment land sale contract,  other \_\_\_\_\_
2. **Terms.**  Copies of the credit documents (e.g., note and deed of trust) referred to in Item 1 above are attached; **OR**  the terms of the credit documents will be:  fixed rate amortized loan  interest only loan  other  Fully amortized with an original principal balance of \$89,000.00. Initial payments of approximately \$ 7,598.69 per month not including taxes or insurance. Interest at 4.5% per annum fixed. Due 1 year (12 months) from close of escrow.
3. **Late Charge.** The credit documents  WILL NOT provide for a late charge, or  WILL provide for a late charge of 6% if payment is not received by 10 days after the due date.
4. **Prepayment Penalty.** The credit documents  WILL NOT provide for a prepayment penalty or  WILL provide for a prepayment penalty as follows: \_\_\_\_\_
5. **Due On Sale.** The credit documents  WILL,  WILL NOT provide for an acceleration and due on sale clause if any interest in the property securing the obligation to Seller is sold or otherwise transferred. Under such clause, Seller has the option to require immediate payment of the entire unpaid balance and accrued interest.
6. **Security.** The real property which will serve as security for this extension of credit is:  subject property, or  the real property commonly known as: (ADDRESS) \_\_\_\_\_ (CITY) \_\_\_\_\_ (STATE) \_\_\_\_\_

**CAUTION: It is understood that the Brokers have not and will not make any representations concerning the value of the property securing the seller financing.**

**B. DESCRIPTION OF SENIOR LIENS.** Insofar as available, the terms and conditions of liens which will be senior to the financing being arranged are as follows. ( Copies of senior lien documents attached)

	1st Loan	2nd Loan
1. Original Balance	\$ _____	\$ _____
2. Current Balance	\$ _____	\$ _____
3. Periodic Payment (e.g., monthly payment)	\$ _____	\$ _____
4. Amount of Balloon Payment	\$ _____	\$ _____
5. Date of Balloon Payment	_____	_____
6. Interest Rate (per annum)	_____	_____
7. Fixed or Variable Rate	_____	_____
8. Maturity Date	_____	_____
9. Is Payment Current?	_____	_____

Buyer [Signature] and Seller [Signature] have read this page.

Property Address APNs 018-432-05, 018-434-02

C. ADDITIONAL STATUTORY DISCLOSURES. PLEASE MARK (a) OR (b) OF THE FOLLOWING PARAGRAPHS:

1. Deferred Interest. ("Deferred interest" results when Buyer's periodic payments are less than the amount of interest due on the obligation, sometimes referred to as "negative amortization," or when the obligation does not require periodic payments. This accrued interest will be paid by Buyer at a later time and may result in Buyer owing more at the time of payoff than at the time the loan originated.)

- (a) [X] The credit documents WILL NOT provide for deferred interest; OR
(b) [ ] The credit documents WILL provide for deferred interest as follows: [ ] (1) All deferred interest will be due and payable with the principal at maturity (simple interest); or [ ] (2) the deferred interest will be added to the principal [ ] monthly, [ ] annually and thereafter will bear interest at the specified rate (compound interest); or [ ] (3) other

2. Cash Proceeds.

- (a) [X] Buyer WILL NOT receive cash proceeds from escrow; OR
(b) Buyer will receive approximately \$ from (payor). Buyer represents that the purpose for such cash disbursement is as follows:

3. Balloon Payment. CAUTION: If refinancing is required as a result of lack of full amortization under the terms of any existing or proposed loans, such refinancing might be difficult or impossible in the conventional mortgage marketplace. Each party acknowledges that he or she has not relied upon any representations by Broker or the other party regarding availability of funds, or rate of interest at which funds might be available, when the balloon payment becomes due.

- (a) [XX] The credit documents WILL NOT provide for a balloon payment; OR
(a) [ ] The credit documents WILL provide for a balloon payment.

4. Payment of Prior Liens.

- (a) [X] The credit documents WILL NOT involve an all-inclusive deed of trust or installment land sale contract; OR
(b) [ ] The credit documents WILL involve an [ ] all-inclusive deed of trust, or [ ] installment land sale contract which provides as follows:
(1) If a senior lien is accelerated, the responsibility for payment, or for legal defense will be with Buyer, [ ] Seller.
(2) If a senior lien is accelerated, the responsibilities and rights arising regarding refinancing, prepayment penalties, and any prepayment discounts are with [ ] Buyer, [ ] Seller.
(3) The credit documents provide that Buyer's periodic payments will be made to [ ] Seller, [X] Evergreen Note Servicing (designate third party). This person will be responsible for making the payments to the senior lienholder and to Seller. CAUTION: If this person is not a neutral third party, the parties are advised to consider designating a neutral third party such as a bank or savings and loan association for this purpose.

5. Buyer's Credit. CAUTION: Seller's rights in the event of a default by the Buyer in the financing by the Buyer are governed by Nevada Revised Statutes Chapter 107, and said Chapter provides for a deficiency judgment against Buyer under certain circumstances. It is recommended that Seller and Buyer consult with an attorney concerning foreclosure rights and remedies and Buyer's exposure to a deficiency judgment.

- (a) [ ] No representations as to the Buyer's credit-worthiness has been made; OR
(b) [X] Buyer will furnish Seller, within 7 days after acceptance, a customary financial statement for the sole purpose of credit approval. Buyer authorizes Seller to engage the services of a reputable credit reporting agency to obtain a credit report at Buyer's expense. Seller will notify Buyer, within 7 days after receipt of financial statement, of approval or disapproval of Buyer's credit. Approval will not be unreasonably withheld.

6. Insurance. CAUTION: Seller should consider securing adequate insurance on the property to protect Seller's interest.

- [X] The parties instruct the escrow holder to direct the insurance carrier to add a loss payee endorsement to the insurance on the property protecting the interests of Seller; OR
(a) [ ] No provision has been made for adding a loss payee clause to the property insurance protecting Seller.

7. Request for Notice.

- (a) [ ] A Request for Notice of Default will be recorded by the escrow holder, and paid for by [ ] Buyer, [ ] Seller; OR
(b) [X] No provision for recording a Request for Notice of Default has been made. Seller is advised to consider recording such a request.

Buyer [Signature] and Seller [Signature] have read this page.

Property Address APNs 018-432-05, 018-434-02

8. Title Insurance.

- (a)  A policy of title insurance will be obtained and paid for by Buyer and/or Seller insuring their respective interests; OR
- (b)  No provision for title insurance coverage for both parties has been made. The parties should consider obtaining a policy of title insurance. The parties are advised to discuss the types of title insurance policies available and their cost with the title insurance company.

9. Tax Service.

- (a)  A tax service will be retained to report to Seller if the property taxes have not been paid. The service will be paid for by  Buyer,  Seller; OR
- (b)  No provision has been made for a tax service. Seller should consider retaining a tax service or otherwise assure for himself or herself that the taxes on the property have been paid.

10. Recording.

- (a)  The security documents (e.g., deed of trust) WILL BE recorded by the escrow holder with the County Recorder where the property is located; OR
- (b)  The security documents WILL NOT be recorded with the County Recorder. The security of Seller may be subject to intervening liens or judgments which may occur after the note is executed and before any resort to security occurs if the security documents are not recorded.

D. OTHER TERMS OF SELLER FINANCING:

The cost of the set up and monthly fees for Evergreen Note Servicing shall be split equally between Buyer and Seller.

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ADVISORY: A real estate broker or agent is qualified to advise on real estate. If you have any questions concerning the legal sufficiency, legal effect, insurance, or tax consequences of this document or the related transactions, consult with your attorney, accountant, or insurance advisor.

Buyer and Seller should thoroughly check the actual credit documents once such documents have been prepared. When presented, Buyer and Seller should make sure the final documents reflect the amounts and terms as set forth above.

Buyer *Daniel Leach*  
Daniel Leach

Date 3-22-2016

Buyer *John C. Leach*

Date 3-22-2016

Seller *Thomas C Hebrant*

Date 3/23/16

Seller \_\_\_\_\_

Date \_\_\_\_\_



1 ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP  
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9 Attorneys for Receiver  
THOMAS C. HEBRANK

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

14 SECURITIES AND EXCHANGE  
COMMISSION,

15 Plaintiff,

16 v.

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

20 Defendants.

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

**DECLARATION OF ANDIE  
WILSON IN SUPPORT OF  
RECEIVER'S MOTION FOR  
APPROVAL OF (A) SALE OF  
REAL PROPERTY OWNED BY  
WESTERN (SILVER SPRINGS)  
AND (B) PAYMENT OF BROKER'S  
COMMISSION**

Date: July 15, 2016  
Time: 1:30 p.m.  
Ctrm.: 2D  
Judge: Hon. Gonzalo P. Curiel

1 I, Andie Wilson, declare:

2 1. I am a licensed real estate broker in the State of Nevada. My partner  
3 Brad Bonkowski and I work at NAI Alliance Carson City and were hired by the  
4 Receiver to market the real property known as Silver Springs So. ("Property").  
5 Hereinafter, I collectively refer to Brad Bonkowski and myself as Broker.

6 2. I make this declaration in support of the Receiver's Motion for  
7 Approval of (A) Sale of Real Property Owned by Western (Silver Springs) and  
8 (B) Payment of Broker's Commission ("Motion"). I have personal knowledge of the  
9 facts stated herein, and if called upon to do so, I could and would personally and  
10 competently testify to them.

11 3. Broker began marketing the Property for sale in May 2014. Broker  
12 (a) listed the Property on LoopNet, a widely-used national online platform for listing  
13 real property, (b) emailed the listing to over 200 real estate agents in the Northern  
14 Nevada area, (c) installed signage on the property, (d) placed advertisements in local  
15 magazines and circulars, and (e) direct mailed the listing to over 1,800 property  
16 owners in Northern Nevada.

17 4. Over the last two years, Broker has received a few, sporadic inquiries  
18 about the Property, but only one offer. Broker discussed the offer with Geno  
19 Rodriguez of the Receiver's office, who is a licensed broker in California. Buyer  
20 had made it clear to Broker that he could not purchase the property for all cash or  
21 with lender financing.

22 5. Since the offer from Buyer was received, Broker has continued to  
23 market the property to interested persons.

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

3 Executed this 24<sup>th</sup> day of May, 2016, at Carson City, Nevada.

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6 ANDIE WILSON  
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