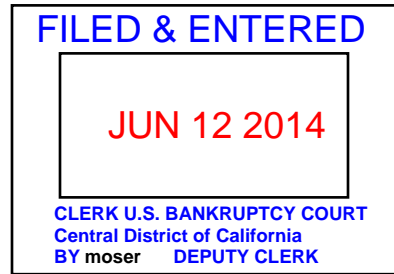


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7 Attorneys for The Club At Shenandoah Springs Village, Inc., Debtor and Debtor in
Possession

CHANGES MADE BY COURT

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

11 In re
12 THE CLUB AT SHENANDOAH SPRINGS
VILLAGE, INC., a California corporation,
13 Debtor.

Case No. 6:12-bk-36723-MH

Chapter 11

**ORDER, AFTER HEARING, GRANTING
MOTION OF DEBTOR AND DEBTOR IN
POSSESSION FOR ORDER (1)
AUTHORIZING SALE OF
SUBSTANTIALLY ALL ASSETS OF
ESTATE FREE AND CLEAR OF LIENS,
CLAIMS AND INTERESTS; (2)
CONFIRMING SALE TO THIRD PARTY;
(3) DETERMINING THAT BUYER IS A
GOOD FAITH PURCHASER; (4)
WAIVING THE FOURTEEN (14) DAY
STAY PRESCRIBED BY RULE 6004(h)
OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE; AND (5)
AUTHORIZING ASSUMPTION AND
ASSIGNMENT OF UNEXPIRED
EXECUTORY CONTRACTS
DESIGNATED BY BUYER**

Date: May 6, 2014
Time: 2:00 p.m.
Place: Courtroom "303"

[RELATES TO DOCKET NO. 289]

26 On May 6, 2014, the Court, the Honorable Mark D. Houle, United States
27 Bankruptcy Judge, presiding, considered the "Motion of Debtor and Debtor in Possession
28 for Order (1) Authorizing Sale of Substantially All Assets of Estate Free and Clear of

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1 Liens, Claims and Interests; (2) Confirming Sale To Third Party; (3) Determining That
2 Buyer is a Good Faith Purchaser; (4) Waiving the Fourteen (14) Day Stay Prescribed By
3 Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and (5) Authorizing
4 Assumption and Assignment of Unexpired Executory Contracts Designated By Buyer;
5 Memorandum of Points and Authorities; Declarations of Ronald Safren and Matthew B.
6 Venturi In Support Thereof" (the "Motion") [Docket No. 289] filed by The Club At
7 Shenandoah Springs Village, Inc., a California corporation (the "Debtor"), the debtor and
8 debtor in possession herein. The Debtor appeared by and through Victor A. Sahn and
9 Daniel A. Lev, **SulmeyerKupetz**, A Professional Corporation. General Electric Capital
10 Corporation appeared by and through Joshua D. Wayser, Katten Muchin Rosenman,
11 LLP. Tri Palm Unified Owners Association appeared by and through William A. Bramley,
12 Law Offices of William A. Bramley, P.C, and Rian W. Jones, Epstein Grinnell & Howell, A
13 Professional Corporation. Follettusa, Inc., Laguna Lakeside LLC, Granite Bay Capital
14 Group, LLC, and Granite Bay Tartan West, LLC appeared by and through Matthew
15 Eason, Eason & Tambomini, A Law Corporation. Brixton Capital AC, LLC appeared by
16 and through Aron M. Oliner, Duane Morris, LLP. Kort & Scott Financial Group, LLC
17 appeared by and through Alex Segal, its duly authorized representative. The County of
18 Riverside appeared by and through Ronak N. Patel, Deputy County Counsel. Other
19 appearances were as reflected on the record of the hearing on the Motion.

20 Based on the "Notice of Motion of Debtor and Debtor in Possession for
21 Order (1) Authorizing Sale of Substantially All Assets of Estate Free and Clear of Liens,
22 Claims and Interests; (2) Confirming Sale To Third Party; (3) Determining That Buyer is a
23 Good Faith Purchaser; (4) Waiving the Fourteen (14) Day Stay Prescribed By Rule
24 6004(h) of the Federal Rules of Bankruptcy Procedure; and (5) Authorizing Assumption
25 and Assignment of Unexpired Executory Contracts Designated By Buyer" (the "Notice")
26 [Docket No. 290], the "Notice of Sale of Estate Property" [Docket No. 291], the Motion
27 and the declarations of Ronald Safren and Matthew B. Venturi, memorandum of points
28 and authorities, exhibits and documents in support thereof, the "Tri Palm Unified Owners

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1 Association's Statement In Support of Noticed Private Sale To Inspire; and Objection To
2 Unnoticed Public Sale To Brixton Capital and/or Others" [Docket No. 310] filed by Tri
3 Palm Unified Owners Association (the "TPUOA"), the "Supplemental Brief of Debtor and
4 Debtor in Possession Re Proposed Bidding Procedures Re Motion of Debtor and Debtor
5 in Possession for Order (1) Authorizing Sale of Substantially All Assets of Estate Free
6 and Clear of Liens, Claims and Interests; (2) Confirming Sale To Third Party; (3)
7 Determining That Buyer is a Good Faith Purchaser; (4) Waiving the Fourteen (14) Day
8 Stay Prescribed By Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and (5)
9 Authorizing Assumption and Assignment of Unexpired Executory Contracts Designated
10 By Buyer" [Docket No. 313] filed by the Debtor, the "Inspire Communities Statement In
11 Support of Noticed Private Sale, and Objection To Public Sale" [Docket No. 314] filed by
12 Follettusa, Inc., Laguna Lakeside LLC, Granite Bay Capital Group, LLC, and Granite Bay
13 Tartan West, LLC (Follettusa, Inc., Laguna Lakeside LLC, Granite Bay Capital Group,
14 LLC, and Granite Bay Tartan West, LLC are collectively referred to herein as "Inspire
15 Communities"), the "Reply of Debtor and Debtor in Possession To Tri Palm Unified
16 Owners Association's Statement In Support of Noticed Private Sale To Inspire; and
17 Objection To Unnoticed Public Sale To Brixton Capital and/or Others" [Docket No. 316]
18 filed by the Debtor, the record in this case, all judicially noticeable facts, and the
19 statements and arguments of counsel at the hearing, the Court hereby finds and
20 determines that:

- 21 1. This Court has jurisdiction to hear and determine the Motion and to
22 grant the relief set forth therein pursuant to 28 U.S.C. §§ 157 and 1334;
- 23 2. Venue of this case in this district is proper pursuant to 28 U.S.C. §§
24 1408 and 1409(a);
- 25 3. The Order constitutes a final and appealable order within the
26 meaning of 28 U.S.C. § 158(a). Notwithstanding Rules 6004(h) and 6006 of the Federal
27 Rules of Bankruptcy Procedure, and to any extent necessary under Rules 9014 of the
28 Federal Rules of Bankruptcy Procedure and Rule 54(b) of the Federal Rules of Civil

1 Procedure, as made applicable by Rule 7054 of the Federal Rules of Bankruptcy

2 Procedure, the Court expressly directs entry of judgment as set forth herein;

3 4. The statutory predicates for the relief requested herein are 11 U.S.C.
4 §§ 105(a), 363, 365 and Rules 2002, 4001(c), 6004, 6006, 9014 of the Federal Rules of
5 Bankruptcy Procedure, and applicable Local Rules for the United States Bankruptcy
6 Court for the Central District of California;

7 5. Determination of the Motion is a core proceeding pursuant to 28
8 U.S.C. § 157(b)(2)(A), (M), and (N);

9 6. Proper, timely, adequate and sufficient notice of the Motion and the
10 relief granted herein has been provided in accordance with 11 U.S.C. §§ 102(1) and 363
11 and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure and no
12 other or further notice of the Motion or the relief granted herein is required;

13 7. The Debtor has demonstrated that the approval of the Motion and
14 the transactions contemplated thereby is in the best interests of the Debtor, the Debtor's
15 estate and its creditors;

16 8. The Debtor has advanced good and sufficient business justification
17 supporting the sale of the Purchased Assets (as defined in the Motion) pursuant to 11
18 U.S.C. § 363(b) and it is a reasonable exercise of the Debtor's business judgment to
19 enter into the Purchase Agreement (as defined herein), and to execute, deliver, and
20 perform all obligations provided for thereunder;

21 9. The objections to the Motion or the proposed bidding procedures to
22 be implemented in connection with the Motion filed by Inspire Communities have been
23 withdrawn or are otherwise overruled;

24 10. The objections to the Motion or the proposed bidding procedures to
25 be implemented in connection with the Motion filed by the TPUOA have been withdrawn
26 and consented to as more particularly described in finding no. 24 hereinbelow;

27 11. Subject to the findings contained in paragraph 24 hereinbelow, the
28 recorded covenants, conditions, and restrictions against the Debtor's real property are

1 not executory contracts under 11 U.S.C. § 365 which must be assumed and assigned as
2 part of the sale;

3 12. It is a reasonable exercise of the Debtor's business judgment to
4 assume and assign the executory contracts and unexpired leases set forth in the Motion
5 subject to the Purchase Agreement (as defined herein) pursuant to 11 U.S.C. § 365(b);

6 13. The bidding procedures as implemented by the Court at the hearing
7 are reasonable and in the best interests of the Debtor's estate;

8 14. Inspire Communities and all qualified overbidders have been
9 provided the opportunity to participate in the sale process;

10 15. Kort & Scott Financial Group, LLC and Brixton Financial AC, LLC
11 qualified as overbidders, and Kort & Scott Financial Group, LLC and Brixton Financial
12 AC, LLC agreed to be bound by the terms, conditions, and obligations of that certain
13 "Settlement and Release Agreement" (the "Inspire Settlement Agreement") dated April
14 16, 2014, by and between the TPUOA, on the one hand, and Inspire Communities, on
15 the other hand;

16 16. Inspire Communities reserves the right to petition the Court for a
17 break-up fee in the maximum amount of \$450,000, provided, however, that the Debtor
18 and all parties in interest reserve the right to object to the requested break-up fee;

19 17. The purchase price of \$18,025,000 to be paid by Kort & Scott
20 Financial Group, LLC, as the successful purchaser, is the highest and best price offered
21 for the Purchased Assets (as defined in the Motion) and the consideration to be paid for
22 the Purchased Assets (as defined in the Motion) constitutes adequate and fair value for
23 the Purchased Assets (as defined in the Motion);

24 18. Based on the concurrently filed declaration of Lee Kort, Kort & Scott
25 Financial Group, LLC, the successful purchaser, is a good faith purchaser entitled to all of
26 the protections afforded by 11 U.S.C. § 363(m);

27 19. The Debtor has (i) full corporate power and authority to execute the
28 Purchase Agreement (as defined herein), (ii) all of the corporate power and authority

1 necessary to consummate the sale, and (iii) taken all corporate power and authority
2 necessary to authorize and approve the Purchase Agreement (as defined herein), and no
3 consents or approvals, other than those expressly provided for in the Purchase
4 Agreement (as defined herein), are required to consummate the sale, other than the
5 consent of the TPUOA referred to in finding no. 24 hereinbelow which already has been
6 granted;

7 20. The assets to be purchased under this Order, the Motion, and the
8 Purchase Agreement (as defined herein) constitute property of the estate pursuant to 11
9 U.S.C. § 541(a), and the Debtor may sell the real property and all personal property
10 attendant to it as described in the Purchase Agreement (as defined herein) free and clear
11 of all liens, encumbrances, pledges, mortgages, deeds of trust, security interests, claims,
12 leases, charges, options, rights of first refusal, easements, servitudes, proxies, voting
13 trusts or agreements, and transfer restrictions under any agreement, whether known or
14 unknown, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded,
15 perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated
16 or unliquidated, matured or unmatured, material or non-material, disputed or undisputed
17 and adverse claims, specifically excluding, however, the CC&R's more particularly
18 referred to in section 2 below, which CC&R's shall continue to run with the land, because
19 one or more of the standards of 11 U.S.C. § 363(f)(1)-(5) have been satisfied with regard
20 to each such interest or adverse claim;

21 21. The transfer of the real property and related personal property
22 described in the Purchase Agreement (as defined herein) on the Closing Date (as
23 defined in the Purchase Agreement) will be a valid, legal, binding and effective transfer of
24 the real property and related personal property described in the Purchase Agreement (as
25 defined herein) and will vest with the purchaser all right, title and interests of the Debtor in
26 the assets to be purchased which are described in the Purchase Agreement (as defined
27 herein);

28 22. Those holders of liens, claims, encumbrances or interests in, to or

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1 against the assets to be purchased as described in the Purchase Agreement (as defined
2 herein) who did not object, or who withdrew their objections to the sale and the Motion
3 are deemed to have consented thereto pursuant to 11 U.S.C. § 363(f), and any such
4 holders of liens, claims, encumbrances or interests in, to or against the assets to be
5 purchased as described in the Purchase Agreement (as defined herein) and those
6 holders of liens, claims, encumbrances or interests in, to, or against the assets to be
7 purchased as described in the Purchase Agreement (as defined herein) are adequately
8 protected by having their liens, claims, encumbrances, or interests, as necessary or at all,
9 attach to the proceeds of sale ultimately attributable to the assets to be purchased in the
10 same order of priority, with the same validity, force and effect that such creditor had prior
11 to the sale, subject to any claims or defenses the Debtor or its bankruptcy estate may
12 possess with respect thereto;

13 23. The successful bidder at the sale would not have submitted its bid(s)
14 and would not be entering into the Purchase Agreement (as defined herein) if the assets
15 being purchased thereunder were not being purchased free and clear of all liens, claims,
16 or interests of any kind or nature whatsoever (except for the CC&R's more particularly
17 referred to in section 2 below, which CC&R's shall continue to run with the land), or if the
18 successful bidder would, or in the future could, be held liable for any of the lens, claims,
19 or interests; and

20 24. The TPUOA has taken the position in the Motion and throughout the
21 course of this case that, among other things, (i) the homeowners payment obligations
22 alluded to in section 2(v) below are executory contracts that could not be assumed
23 without first satisfying the deficiencies asserted by the TPUOA concerning the condition
24 of the real property portion of the Purchased Assets (as defined in the Motion) being sold,
25 (ii) a sale to any third party could not be approved by the Court unless (a) the TPUOA
26 consented to the sale, or (b) the cure and adequate future performance mandates of 11
27 U.S.C. § 365 was ordered by the Court, positions which the Debtor disputed. Prior to the
28 hearing on the Motion, the TPUOA consented to the Debtor's proposed sale to Inspire

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1 Communities which was predicated, in part, on Inspire Communities' agreement to the
2 terms and conditions of the Inspire Settlement Agreement which addressed the
3 deficiencies alleged by the TPUOA concerning the condition of the real property portion
4 of the Purchased Assets (as defined in the Motion) and other related matters. The Court
5 approved K&S as the successful bidder at the hearing on the Motion in lieu of Inspire
6 Communities, in part, based on K&S' agreement on the record in open court to the terms
7 and conditions of the Inspire Settlement Agreement. Subsequent to the hearing on the
8 Motion, the TPUOA and K&S met and agreed upon the form and substance of a new
9 settlement agreement (the "K&S Settlement Agreement") by, among other things,
10 inserting the identity of K&S in lieu of Inspire Communities. The K&S Settlement
11 Agreement was thereafter signed by the parties, and the parties also agreed to the form
12 of a Memorandum of Settlement Agreement (the "Memorandum") which would be
13 recorded with the Riverside County Recorder's Office as of the Closing Date (as defined
14 herein). But for the agreement by K&S to the K&S Settlement Agreement, the TPUOA
15 takes the position that it would not have consented to the sale of the Purchased Assets
16 (as defined herein) free and clear of liens, claims, and/or interests of any kind.

17 **NOW THEREFORE, FOR GOOD CAUSE APPEARING THEREFOR, IT IS**
18 **HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

- 19 1. The Motion is granted;
- 20 2. The Debtor is authorized to sell the estate's interest in and to (i) that
21 certain real property as located at the north east corner of Monterey
22 Avenue and Varner Road, North of the I-10 Freeway in Thousand
23 Palms, Riverside County, California (the "Real Property"), as more
24 fully set forth in Exhibit A attached to the "Purchase and Sale
25 Agreement and Joint Escrow Instructions" (the "Purchase
26 Agreement") dated May 6, 2014, by and between the Debtor, as
27 seller, and Kort & Scott Financial Group, LLC, a California limited
28 liability company ("K&S" or the "Buyer"), as buyer; (ii) the rights,

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1 privileges and easements appurtenant to the Real Property,
2 including, without limitation, all minerals, oil, gas and other
3 hydrocarbon substances on and under the Real Property, as well as
4 all governmental and other approvals, permits, licenses,
5 development rights and entitlements, air rights, water, water rights,
6 water stock, and any other easements, rights-of-way or
7 appurtenances used in connection with the beneficial use and
8 enjoyment of the Real Property (collectively, the "Appurtenances"),
9 as more fully set forth in the Purchase Agreement; (iii) the easement
10 rights granted to the Debtor with respect to seven (7) holes used in
11 connection with the golf course located on or within the Real
12 Property pursuant to that certain "Exclusive Easement Agreement
13 (Golf Course)" (the "Golf Course Easement") by and between
14 Andrew E. Stevens, as Trustee of The Andrew E. Stevens Trust
15 dated February 26, 2000, and the Debtor; (iv) the improvements and
16 fixtures located on the Real Property, including, without limitation,
17 any buildings and structures presently located on the Real Property
18 (collectively, the "Improvements"); (v) the payment obligations due
19 and owing in connection to the Debtor (the "Club Revenues") which
20 arise from and after the Closing Date (as defined in the Purchase
21 Agreement and this Order) from the ownership and use of the golf
22 course, club facilities, and 1,818 previously-sold fee simple homes
23 located on the Real Property as reflected in connection with those
24 certain "Declarations of Restrictions and Charges", as more fully set
25 forth in Exhibit B attached to the Purchase Agreement, as such may
26 be modified from time to time (collectively, the "CC&R's"), which
27 CC&R's shall continue to run with the land; (vi) all of the Debtor's
28 right, title and interest in and to the following (collectively, the

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"Personal Property"): (a) the tangible assets involved in the operation of the Real Property including the golf course and adjoining resort development that includes a golf club and club recreation facilities (the "Business") as of the Closing Date (as defined in the Purchase Agreement and this Order), including, without limitation, all equipment, inventory, furniture and fixtures (collectively, the "Tangible Assets"), (b) all executory leases and other executory contracts as designated on Schedule 1(b)(2) attached to the Purchase Agreement (the "Assigned Contracts"), and (c) all other intangible assets and rights used in connection with the ownership and operation of the Real Property and the Business (collectively, the "Intangible Assets"), on the terms and conditions stated in the Purchase Agreement, a true and correct copy of which is attached as Exhibit "A" to the "Exhibit A in Support of Order, After Hearing, Granting, Motion of Debtor and Debtor in Possession for Order (1) Authorizing Sale of Substantially All Assets of Estate Free and Clear of Liens, Claims and Interests; (2) Confirming Sale To Third Party; (3) Determining That Buyer is a Good Faith Purchaser; (4) Waiving the Fourteen (14) Day Stay Prescribed By Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and (5) Authorizing Assumption and Assignment of Unexpired Executory Contracts Designated By Buyer" [Docket No. 343] and incorporated herein by reference, for the total purchase price of \$18,025,000 (the "Purchase Price");

3. The taxes and assessments, general and special, or lien for defaulted taxes for APN No. 693-061-012-4 in the present amount of \$10,510.94, or such other amount due and owing, will be paid from the sale proceeds;

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- 1 4. The taxes and assessments, general and special, or lien for
- 2 defaulted taxes for APN No. 693-275-037-8 in the present amount of
- 3 \$12,805.84, or such other amount due and owing, will be paid from
- 4 the sale proceeds;
- 5 5. The taxes and assessments, general and special, or lien for
- 6 defaulted taxes, for APN No. 693-282-030-3 in the present amount of
- 7 \$3,645.75, or such other amount due and owing, will be paid from
- 8 the sale proceeds;
- 9 6. The taxes and assessments, general and special, or lien for
- 10 defaulted taxes, for APN No. 693-061-011-3 in the present amount of
- 11 \$4,106.02, or such other amount due and owing, will be paid from
- 12 the sale proceeds;
- 13 7. The taxes and assessments, general and special, or lien for
- 14 defaulted taxes, for APN No. 693-082-007-5 in the present amount of
- 15 \$11,070.44, or such other amount due and owing, will be paid from
- 16 the sale proceeds;
- 17 8. The taxes and assessments, general and special, or lien for
- 18 defaulted taxes, for APN No. 693-112-001-1 in the present amount of
- 19 \$12,082.00, or such other amount due and owing, will be paid from
- 20 the sale proceeds;
- 21 9. The taxes and assessments, general and special, or lien for
- 22 defaulted taxes, for APN No. 693-076-001-0 in the present amount of
- 23 \$6,685.58, or such other amount due and owing, will be paid from
- 24 the sale proceeds;
- 25 10. The taxes and assessments, general and special, or lien for
- 26 defaulted taxes, for APN No. 693-093-001-3 in the present amount of
- 27 \$4,142.07, or such other amount due and owing, will be paid from
- 28 the sale proceeds;

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11. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-111-001-8 in the present amount of \$6,483.33, or such other amount due and owing, will be paid from the sale proceeds;
12. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-120-001-6 in the present amount of \$14,485.15, or such other amount due and owing, will be paid from the sale proceeds;
13. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-160-001-0 in the present amount of \$17,609.30, or such other amount due and owing, will be paid from the sale proceeds;
14. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-230-003-8 in the present amount of \$26,771.13, or such other amount due and owing, will be paid from the sale proceeds;
15. The taxes and assessments, general and special, or lien for defaulted taxes, APN No. 693-152-065-3 in the present amount of \$9,547.98, or such other amount due and owing, will be paid from the sale proceeds;
16. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-172-082-0 in the present amount of \$12,453.74, or such other amount due and owing, will be paid from the sale proceeds;
17. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-262-068-6 in the present amount of \$14,682.39, or such other amount due and owing, will be paid from the sale proceeds;

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- 1 18. The taxes and assessments, general and special, or lien for
- 2 defaulted taxes, for APN No. 693-230-002-7 in the present amount of
- 3 \$20,128.58, or such other amount due and owing, will be paid from
- 4 the sale proceeds;
- 5 19. The taxes and assessments, general and special, or lien for
- 6 defaulted taxes, for APN No. 693-135-001-2 in the present amount of
- 7 \$1,098.31, or such other amount due and owing, will be paid from
- 8 the sale proceeds;
- 9 20. The taxes and assessments, general and special, or lien for
- 10 defaulted taxes, for APN No. 693-101-013-8 in the present amount of
- 11 \$141.90, or such other amount due and owing, will be paid from the
- 12 sale proceeds;
- 13 21. The taxes and assessments, general and special, or lien for
- 14 defaulted taxes, for APN No. 693-202-001-9 in the present amount of
- 15 \$21.66, or such other amount due and owing, will be paid from the
- 16 sale proceeds;
- 17 22. The taxes and assessments, general and special, or lien for
- 18 defaulted taxes, for APN No. 693-221-010-6 in the present amount of
- 19 \$65.90, or such other amount due and owing, will be paid from the
- 20 sale proceeds;
- 21 23. The taxes and assessments, general and special, or lien for
- 22 defaulted taxes, for APN No. 693-153-001-8 in the present amount of
- 23 \$45.47, or such other amount due and owing, will be paid from the
- 24 sale proceeds;
- 25 24. The taxes and assessments, general and special, or lien for
- 26 defaulted taxes, for APN No. 693-152-001-5 in the present amount of
- 27 \$1,126.60, or such other amount due and owing, will be paid from
- 28 the sale proceeds;

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25. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-180-002-3 in the present amount of \$331.10, or such other amount due and owing, will be paid from the sale proceeds;
26. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 694-060-022-7 in the present amount of \$15,291.17, or such other amount due and owing, will be paid from the sale proceeds;
27. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-230-012-6 in the present amount of \$985.92, or such other amount due and owing, will be paid from the sale proceeds;
28. The taxes and assessments, general and special, or lien for defaulted taxes, for APN No. 693-230-013-7 in the present amount of \$37,770.12, or such other amount due and owing, will be paid from the sale proceeds;
29. The approved commissions and fees due and owing to Venturi & Company LLC will be paid from the sale proceeds upon further order of the Court after the filing of a final application for compensation of fees and reimbursement of costs;
30. The normal, reasonable, and ordinary fees and costs of sale and escrow chargeable to the Debtor will be paid from the sale proceeds;
31. The deed of trust in favor of General Electric Capital Corporation ("General Electric") recorded on August 15, 2007, bearing Instrument No. 2007-0395413, in the original principal amount of \$15,000,000 will be paid from the sale proceeds, provided, however, that in the event there is a dispute regarding the interest demanded by General Electric, the disputed interest portion of said loan shall not be paid

- 1 from escrow, but General Electric's lien shall attach to the net
2 proceeds of the sale received by the Debtor in the same manner and
3 with the same effect, if any, under applicable federal and state law;
- 4 32. The abstract of judgment recorded on June 21, 2012, bearing
5 Instrument No. 2012-0287116, in favor of the TPUOA in the original
6 principal amount of \$365,648.88, plus interest, is allowed and will be
7 paid from the sale proceeds;
- 8 33. The notice of lien in favor of the Employment Development
9 Department of the State of California recorded on May 18, 2010,
10 bearing Instrument No. 2010-0228171, in the original principal
11 amount of \$1,078.47, or such other amount due and owing, will be
12 paid from the sale proceeds;
- 13 34. The notice of lien in favor of the Employment Development
14 Department of the State of California recorded on July 19, 2010,
15 bearing Instrument No. 2010-0337017, in the original principal
16 amount of \$10,845.65, or such other amount due and owing, will be
17 paid from the sale proceeds;
- 18 35. The net proceeds from the sale will not be disbursed by the Debtor
19 without further order of the Court;
- 20 36. Except as set forth in the Purchase Agreement or this Order, the
21 Real Property shall be sold free and clear of all liens, claims,
22 encumbrances, and interests pursuant to 11 U.S.C. § 363(f),
23 including, without limitation, (i) the lien in favor of Mercantile National
24 Bank recorded on September 15, 1999, bearing Instrument No.
25 1999-412532, in the original principal amount of \$3,000,000, (ii) the
26 abstract of judgment in favor of J.R. Simplot Company dba Simplot
27 Partners recorded on September 9, 2009, bearing Instrument No.
28 2009-0469493, in the original principal amount of \$171,662.69, and

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(iii) any unknown encumbrances, liens, claims, or interests, with said encumbrances, liens, claims, or interests attaching to the net sales proceeds in the same manner and with the same effect, if any, under applicable federal and state law, subject to further order of the Court, or such other court of competent jurisdiction, except for the CC&R's which shall continue to run with the land;

37. K&S is a qualified bidder and is a good faith purchaser entitled to the protections under 11 U.S.C. § 363(m);

38. K&S shall consummate the transaction set forth in the Purchase Agreement and approved by this Order by no later than May 30, 2014 (the "Closing Date"), provided, however, that the Closing Date may be extended by the Court, or other court of competent jurisdiction, for cause shown, after notice and an opportunity to be heard;

39. In the event K&S does not consummate the transaction set forth in the Purchase Agreement pursuant to the terms of this Order, then Brixton Financial AC, LLC, a Delaware limited liability company ("Brixton") is designated the back-up purchaser at the purchase price of \$18,000,000, provided, however, that Brixton shall consummate the transaction set forth in the separate purchase agreement to be executed by and between the Debtor and Brixton (the "Brixton Purchase Agreement") and approved by this Order by no later than June 20, 2014 (the "Back-Up Closing Date"), provided further, however, that the Back-Up Closing Date may be extended by the Court, or other court of competent jurisdiction, for cause shown, after notice and an opportunity to be heard;

40. The Debtor shall be authorized to retain the good faith deposit of \$1,000,000 paid by K&S if K&S is unable or unwilling to consummate

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1 the sale in accordance with the terms and conditions of the Purchase
2 Agreement and this Order, provided, however, that K&S shall be
3 entitled to a return of its good faith deposit if the Debtor materially
4 breaches the Purchase Agreement and this Order or is unable to
5 deliver good title free and clear of all liens, claims, and interests as
6 provided herein to K&S;

- 7 41. In the event K&S does not consummate the transaction set forth in
8 the Purchase Agreement pursuant to the terms of this Order, and
9 Brixton is designated the back-up purchaser, the Debtor shall be
10 authorized to retain the good faith deposit of \$1,000,000 paid by
11 Brixton if Brixton is unable or unwilling to consummate the sale in
12 accordance with the terms and conditions of the Brixton Purchase
13 Agreement and this Order, provided, however, that Brixton shall be
14 entitled to a return of its good faith deposit if the Debtor materially
15 breaches the Brixton Purchase Agreement and this Order or is
16 unable to deliver good title free and clear of all liens, claims, and
17 interests as provided herein to Brixton;
- 18 42. If K&S closes on the sale transaction contemplated by the Motion,
19 the Purchase Agreement and this Order, then Brixton shall be
20 entitled to a return of its good faith deposit within five (5) days after;
- 21 43. The fourteen (14) day stay prescribed by Rule 6004(h) of the Federal
22 Rules of Bankruptcy Procedure shall be waived;
- 23 44. This Order is and shall be effective as a determination that, upon and
24 subject to the occurrence of the closing of the sale, all affected liens,
25 claims, and interests have been and hereby are adjudged and
26 declared to be unconditionally released as to the Real Property and
27 such other assets transferred, sold, delivered, conveyed, and
28 assigned pursuant to the Purchase Agreement and this Order;

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- 1 45. Except for the Assigned Contracts (as defined in the Purchase
2 Agreement), K&S shall have no liability to the Debtor other than as
3 expressly set forth in the Purchase Agreement, and by entering into
4 the Purchase Agreement and closing the sale, K&S is not assuming
5 or acquiring any of the Debtor's or the Debtor's estate's liabilities;
- 6 46. Except for the Assigned Contracts (as defined in the Purchase
7 Agreement), no other executory contracts or unexpired leases of the
8 Debtor are being assumed and assigned by this Order or in
9 connection with the Purchase Agreement and after the Closing Date
10 the Debtor shall file a motion to reject, effective as of the Closing
11 Date, all executory contracts or unexpired leases not identified as
12 Assigned Contracts;
- 13 47. The Debtor and each other person having duties or responsibilities
14 under the Purchase Agreement or any related agreements or this
15 Order (and their respective directors, officers, partners, members,
16 agents, representatives and attorneys), are authorized, ordered,
17 instructed, and empowered (a) to carry out all of the provisions of the
18 Purchase Agreement and other related agreements; (b) to issue,
19 execute, deliver, file and record, as appropriate, the documents
20 evidencing and consummating the Purchase Agreement and other
21 related agreements; (c) to take any and all actions contemplated by
22 the Purchase Agreement, other related agreements and this Order;
23 and (d) to perform such other acts and execute and deliver such
24 other documents as are consistent with and necessary or
25 appropriate to implement, effectuate and consummate the intent of
26 the parties entering into the Purchase Agreement and other related
27 agreements to sell, assign and transfer the assets from the Debtor to
28 K&S, including making any non-material modifications, amendments

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1 or corrections of those agreements, made with the consent of K&S
2 (with such consent not to be unreasonably withheld) that may be
3 required so that they more fully reflect such intent, this Order and the
4 transactions contemplated thereby and hereby, all without further
5 application to, or order of, the Court or further action by the
6 respective directors, stockholders, partners or members of such
7 entities;

8 48. This Order shall constitute all approvals and consents, if any,
9 required by the laws of the state of incorporation of the Debtor and
10 all other applicable business corporation, trust and other laws of the
11 applicable governmental units with respect to the implementation
12 and consummation of the Purchase Agreement, other related
13 agreements and this Order and the transactions contemplated
14 thereby and hereby;

15 49. On the Closing Date, this Order shall be construed and constitute for
16 any and all purposes a full and complete conveyance, general
17 assignment, bill of sale, and transfer of the assets, thereby
18 transferring good and marketable title in the assets to K&S;

19 50. ~~Each and every federal, state, and local governmental agency or~~
20 ~~department is hereby directed to accept for filing and/or recording,~~
21 ~~and approve as necessary, any and all documents and instruments~~
22 ~~necessary and appropriate to consummate the transactions~~
23 ~~contemplated by the Purchase Agreement;~~

24 51. If any person or entity that has filed financing statements, mortgages,
25 mechanic's liens, lis pendens, or other documents or agreements
26 evidencing interests with respect to all or any part of assets shall not
27 have delivered to the Debtor prior to the Closing Date, in proper form
28 for filing and executed by the appropriate parties, termination

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1 statements, instruments of satisfaction, releases of all interests that
2 the person or entity has with respect to the assets or otherwise, then
3 (a) the Debtor is hereby authorized to execute and file such
4 statements, instruments, releases, and other documents on behalf of
5 the person or entity with respect to the Real Property and such other
6 assets transferred, sold, delivered, conveyed, and assigned pursuant
7 to the Purchase Agreement and this Order, and (b) K&S is hereby
8 authorized to file, register, or otherwise record a certified copy of this
9 Order, which, once filed, registered, or otherwise recorded, shall
10 constitute conclusive evidence of the release of all interests in and
11 against the assets whatsoever, except for the CC&R's which shall
12 continue to run with the land;

13 52. The failure specifically to include any particular provision of the
14 Purchase Agreement in this Order shall not diminish or impair the
15 effectiveness of such provision, it being the intent of the Court that
16 the Purchase Agreement be authorized and approved in its entirety;
17 and

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2 53. This Court, or such other court of competent jurisdiction, shall retain
3 jurisdiction to interpret, enforce, and implement the terms of this
4 Order, provided, however, that if any dispute arises between the
5 TPUOA and K&S in the future, the enforcement mechanisms
6 integrated into the K&S Settlement Agreement shall control.

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24 Date: June 12, 2014



25 Mark Houle
26 United States Bankruptcy Judge
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