Ogonna M. Brown, Esq.
Nevada Bar No. 7589
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169-5996
Phone: (702) 474-2622
Fax: (702) 949-8298
Email: OBrown@lrrc.com

E-filed on September 21, 2018

Attorneys for Kavita Gupta, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re CALVARY COMMUNITY ASSEMBLY OF GOD, INC., Debtor.	Case No.: BK-S-17-13475-MKN Chapter 11 **MOTION FOR ORDER AUTHORIZING PRIVATE SALE OF REAL PROPERTY TO CLARK COUNTY FREE AND CLEAR OF ALL LIENS - PROPERTY ADDRESS: 2900 NORTH TORREY PINES DRIVE, LAS VEGAS, NEVADA, 89108, ASSESSOR PARCEL NUMBERS 13814-601-005, 13814-601-006, 13814-601-013, 13814-601-014** Date of Hearing: October 24, 2018 Time of Hearing: 9:30 a.m. Place: Courtroom No. 2, Third Floor Foley Federal Building 300 Las Vegas Boulevard South Las Vegas, NV 89101 Judge: Hon. Mike K. Nakagawa

Kavita Gupta ("Trustee"), solely in her capacity as the Chapter 11 Trustee for the Estate (the "Estate") of Calvary Community Assembly of God, Inc. ("Debtor"), by and through her counsel, Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP, hereby files this *Motion for Order Authorizing Private Sale of Real Property to Clark County Free and Clear of All Liens for the real property located at 2900 North Torrey Pines Drive, Las Vegas, Nevada, 89108, and*

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

identified as located in the City of Las Vegas, County of Clark, Nevada, Assessor Parcel Numbers 13814-601-005, 13814-601-006, 13814-601-013, and 13814-601-014 ("Motion"), and seeks the entry of an order approving this Motion pursuant to Sections 105(a), 363(b), 363(f), and 363(m) of Title 11 of the United States Code, 11 U.S.C. §§101-1532 (as amended, the "Bankruptcy Code") and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (a) authorizing the sale of real property located at 2900 North Torrey Pines Drive, Las Vegas, Nevada, 89108, and identified as located in the City of Las Vegas, County of Clark, Nevada, Assessor Parcel Numbers 13814-601-005, 13814-601-006, 13814-601-013, and 13814-601-014, consisting of three (3) buildings totaling ±50,552 square feet located on four (4) contiguous parcels of developed and vacant land totaling ±11.220 acres (the "Property"), to Clark County, a Political Subdivision of the State of Nevada (the "Purchaser" or alternatively, the "County" or "Clark County"), free and clear of all claims, liens, interests, and encumbrances, pursuant to Bankruptcy Code §§ 363(b) and 363(f); (b) finding that notice of this Motion complied with Bankruptcy Rules 2002, 2014, 6004, and 9014 and Rules 2002, 2014, 6004, and 9014 of the Local Rules of Bankruptcy Practice (the "Local Rules"); (c) finding that the Purchaser of the Property is a good faith purchaser entitled to the protections of Bankruptcy Code § 363(m); and (d) granting such other relief as appropriate in the best interests of the estate.

The Trustee seeks Court authorization to sell the Property to Clark County for the sale price of $7,750,000.00 based upon the following grounds and the following reasons: (1) the Trustee believes that the proposed sale to the County for $7,750,000.00 is a fair and reasonable offer that will maximize the Estate and inure to the benefit of its secured and unsecured creditors, as the proposed sale price is sufficient to satisfy the secured claims against the Property, and most likely to satisfy all administrative priority claims and unsecured creditors' claims asserted against the Estate; (2) the County timely made its earnest money deposit in the amount of $50,000 with Fidelity National Title Group ("Fidelity") on September 4, 2018; (3) one of the conditions of closing under the Purchase Agreement (defined below) is Bankruptcy Court approval of the proposed sale; (4) the due diligence period under the Purchase Agreement ends on December 26, 2018 ("Due Diligence Period"), which is one hundred twenty (120) calendar days from the date of execution of the Purchase Agreement; (5) the deadline for the close of escrow is January 10, 2019, but in no event later than fifteen (15) days after the Due Diligence Period expires; and (6) the County is the only interested party that has submitted a formal offer to purchase the Property since the Property has been listed, and the Clark County Board of Commissioners approved the proposed sale unanimously during their meeting on August 21, 2018. A true and correct copy of the Purchase Agreement (defined below) is attached to the Gupta Declaration as **Exhibit "1"**. A true and correct copy of the proposed Sale Order is attached hereto as **Exhibit "A"**.

This Motion is supported by the Declaration of Kavita Gupta, Chapter 11 Trustee, ("Gupta Decl."), and the Declaration of Thomas K. Olson ("Olson Decl."), Managing Director of Brokerage Services for Douglas Wilson Companies ("DWC"), the real estate broker retained by the Trustee to market and sell the Property, filed concurrently herewith, the papers and pleadings on file in this Case, judicial notice of which the Trustee respectfully requests this Court take pursuant to Fed. R. Evid. 201(b) and (c)(2) and Fed. R. Evid. 1101(a) and (b); the Memorandum of Points and Authorities herein; and any oral argument the Court entertains at hearing on the Motion.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

MEMORANDUM OF POINTS AND AUTHORITIES

I. JURISDICTION

This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, 28 U.S.C. § 157, and LR 1001(b)(1). The Application is a contested matter under Rule 9014 of the Federal Rules of Bankruptcy Procedure. This is a core proceeding under 28 U.S.C. § 157(b)(2)(N). The statutory predicates for the relief sought herein are Bankruptcy Code §§ 105(a) and 363(b), (f)(2), (f)(5) & (m); Bankruptcy Rules 2002(a)(2), (c)(1), (i) and (j), 6004(a) and (c) and 9014; and Local Rules 2002, 6004, and 9014.

Venue in the District of Nevada is appropriate pursuant to 28 U.S.C. §§ 1408 and 1409. The Trustee consents to the entry of final order(s) or judgment(s) by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders for judgment consistent with Article III of the United States Constitution.

II. INTRODUCTION

Prior to the bankruptcy filing, Debtor's operations consisted of a church, a church-affiliated school with grades kindergarten through eighth grade, and a church-affiliated day care facility for pre-school children. In 2016, Debtor defaulted under a loan in the amount of $3,403,500.00 from the Lender, prompting Debtor to file for bankruptcy in 2017 to avoid the Lender's foreclosure of the Property while Debtor attempted to reorganize. Ultimately, Debtor failed in its reorganization efforts, and in 2018, a Chapter 11 Trustee was appointed over Debtor's Estate.

The Trustee retained a realtor to market and sell the Property, and in July 2013, the Trustee received from Clark County a written Conditional Offer to Purchase Real Property for $7,750,000.00. After negotiating the terms of the initial proposal submitted by the County, the Trustee and the County agreed upon the Conditional Offer to Purchase Real Property dated August 21, 2018, and the Addendum to Conditional Offer to Purchase Offer to Purchase Real Property dated August 21, 2018, which the Clark County Board of Commissioners unanimously approved on August 21, 2018. On September 4, 2018, the County made its earnest money deposit of $50,000.00 with Fidelity. The Due Diligence Period expires on December 26, 2018, and the deadline for the close of escrow is January 10, 2019, but no later than fifteen (15) days after the Due Diligence Period expires. The County is currently reviewing the appraisals and conducting due diligence on site with a team of inspectors in connection with the Property, including environmental testing on the Property, which could result in the reduction of the purchase price in the event the inspection and environmental due diligence warrant such a downward adjustment.

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

There is ample justification for the Trustee's sale of the Property under the terms of the proposed Purchase Agreement, which are fair and reasonable, and were extensively negotiated in good faith between counsel for the Trustee and the County. The sale of the Property maximizes value for the creditors of the Estate. To the best of the Trustee's knowledge, the sale proceeds of the proposed sale of the Property to the County will be sufficient to satisfy in full all of the existing liens encumbering the Property, including the Lender's Deed of Trust against the Property, the first DIP Loan, the second DIP Loan, and the third DIP Loan. In the event this Court approves the proposed sale to the County, and in the event the County closes on the sale of the Property, the Trustee will use the sale proceeds to fund a liquidating plan of reorganization for an orderly administration of the case. Accordingly, the Trustee seeks an order authorizing the proposed sale of the Property to the County free and clear of all liens and encumbrances.

The Trustee, therefore, moves this Court to: (a) approve the Purchase Agreement and allow the sale of the Property to the County in the amount of $7,750,000.00, subject to any adjustments based upon due diligence findings; (b) order that the Property shall be transferred to the County as the Court-Approved Purchaser free and clear of all liens, claims and encumbrances; and (c) grant such other and further relief as appropriate in the best interests of the Estate.

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

III. STATEMENT OF RELEVANT FACTS

<u>THE DEBTOR</u>

1. On June 28, 2017 ("<u>Petition Date</u>"), Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court, District of Nevada, before Judge Mike K. Nakagawa ("<u>Bankruptcy Case</u>") (ECF No. 1).

2. The Debtor's scheduled assets and liabilities totaled $11,043,805 and $3,532,500, respectively (ECF No. 1).

3. On March 12, 2018, the Court entered an Order approving the appointment of Kavita Gupta as the Chapter 11 Trustee of the Estate (ECF No. 312).

4. On March 19, 2018, the Trustee filed a notice accepting her appointment (ECF. No. 115).

5. Pre-petition, Debtor's operations consisted of a church, a church-affiliated school with grades kindergarten through eighth grade, and a church-affiliated day care facility for pre-school children. *See* Gupta Decl.

6. On October 8, 2010, Debtor borrowed $3,403,500.00 (the "Pre-Petition Loan") from Assemblies of God Loan Fund, a Missouri nonprofit corporation ("Lender"). The Pre-Petition Loan was memorialized by an Adjustable Rate Secured Note dated October 8, 2010, in the stated principal amount of $3,403,500. *See* Gupta Decl.

7. Repayment of the Prepetition Loan was secured by a Deed of Trust, Assignment of Leases and Rents, and Security Agreement ("Deed of Trust") encumbering Debtor's real Property, which Deed of Trust was recorded in the Official Records of Clark County, Nevada on October 8, 2010, as Instrument Number 20101200880003371. *See* Gupta Decl.

8. Debtor defaulted on its obligations under the Prepetition Loan in or about 2016 which, among other things, led to the above-captioned bankruptcy. *See* Gupta Decl.

9. Debtor has relatively few creditors. The deadline for filing proofs of claims has passed, and there are only ten (10) claims which have been filed, including the Prepetition Lender's claim. (See Claims Register).

10. In addition to the Deed of Trust held by the Lender, Debtor also encumbered the Property in favor of Assemblies of God, a Northern California and Nevada District Council, Inc., a California Non-Profit Corporation, in the amount of $303,836.00, which Deed of Trust was initially recorded on July 27, 1995, as Book 950727, Instrument No. 01144, with the Clark County Recorder's Office. On October 8, 2010, Assemblies of God recorded an agreement to subordinate its First Deed of Trust position to the Lender, and now holds a Second Deed of Trust position, as evidenced in the agreement recorded with the Clark County Recorder's as Document No. 201010080003371. A list of all lien holders with an

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

interest in the Property is set forth in the Preliminary Title Report, a true and correct copy of which is attached to the Gupta Decl. as **Exhibit "2"**.

11. On July 19, 2018, the City of Las Vegas, Nevada, certified that the Notice and Order to abate "Nuisance" conditions were abated. As a result, the City released its lien against the Property relating to APN # 138-14-601-005, as evidenced in the Releases of Nuisance Notice and Order to Comply ("Releases of Liens"). The Releases of Liens were recorded with the Clark County Recorder's Office as Instrument Numbers 20180720-0001892, 20180720-0001917, and 20180720-0001943. True and correct copies of the Releases of Liens are attached to the Gupta Decl. as **Exhibit "3"**.

DIP LOAN NECESSARY TO PRESERVE PROPERTY FOR SALE

12. Since the Trustee's appointment in March 2018, and based upon the Trustee's ongoing investigation of the Estate's assets and operations, the Trustee has determined that the best course of action remains to preserve and sell the assets of the Estate, consisting primarily of the real property located in the City of Las Vegas, County of Clark, Nevada, Assessor's Parcel Number ("APN") 138-14-601-005, 006, 013 & 014, commonly known as 2900 North Torrey Pines Drive, Las Vegas, Nevada 89108, consisting of three (3) commercial buildings totaling in excess of 50,000 square feet situated on 11 acres of land, including all improvements and fixtures permanently installed thereon, other than such fixtures that may be leased from a third party (collectively, the "Property"). *See* Gupta Decl.

THREE DIP LOANS

13. The Trustee sought and obtained final orders authorizing the Estate to obtain post-petition financing from the Lender for two loans in the principal amounts of $75,000 ("First DIP Loan") and $101,802 ("Second DIP Loan"), both of which were due and payable on September 30, 2018 (ECF Nos. 215, 216).

14. On September 17, 2018, the Trustee filed a Motion for Final Order Authorizing Estate to Obtain Additional Post-Petition Financing; Granting Liens ("Third Motion for Post-Petition

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

Financing") (ECF No. 265).

15. The Trustee sought the additional $325,000.00 in the Third Motion for Post-Petition Financing to be used in part to pay down the First DIP Loan and the Second DIP Loan, which payments were due on September 30, 2018, and for the Trustee to fund the continued preservation of the Estate's primary asset, the Property, during the course of the County's due diligence in connection with the sale of the Property.

16. In the Third Motion for Post-Petition Financing, the proposed Loan is secured by a super-priority lien on all assets of the Estate, excluding any avoidance actions or any other causes of action owned by the Estate, which will be prior and senior to all other liens and security interests including those securing the prepetition loan by the Lender to Debtor as noted in the Term Sheet. *See* Exhibit "1" to Gupta Declaration in Support of Third Motion for Post-Petition Financing (ECF No. 266-1).

TRUSTEE RETAINED REALTOR TO MARKET AND SELL PROPERTY

17. On June 15, 2018, the Trustee filed an Application of Chapter 11 Trustee for Entry of an Order Authorizing Employment and Retention of Douglas Wilson Companies as Real Estate Agent as of May 18, 2018 *Nunc Pro Tunc* (ECF No. 191), to market and list the Property for sale in accordance with the *Exclusive Authorization and Right to Sell Real Property Pursuant to Brokerage Listing Agreement* (the "Listing Agreement"), entered into between the Trustee and Douglas Wilson Companies ("DWC").

18. On July 18, 2018, the Bankruptcy Court entered an Order Granting Application by Chapter 11 Trustee for Authorization to Employ Douglas Wilson Companies as the Estate's Real Estate Agent as of May 18, 2018 *Nunc Pro Tunc* ("Order Employing Realtor) (ECF No. 229).

PROPOSED SALE OF PROPERTY TO COUNTY FOR $7,750,000.00

19. As set forth in greater detail in the Gupta Declaration, the Trustee seeks authorization from this Court to sell the Property to Clark County for the purchase price of $7,750,000.00 ("Sale

Proceeds"), subject to any discounts necessary to facilitate the sale in the event the due diligence results warrant any downward adjustment.

20. DWC began preparing marketing materials and informally marketing the Property on or about May 14, 2018. The formal marketing campaign commenced on June 6, 2018.

21. The Trustee, through the realtor, listed the Property for sale at a list price of $7,750,000.00.

22. DWC coordinated the initial showing of the Property on May 18, 2018. The showing was conducted by the Local Market resource.

23. Numerous interested buyers visited the Property starting in May, 2018.

24. In July 2018, the County presented the Trustee with the Conditional Offer to Purchase Real Property. *See* Gupta Decl.

25. The Trustee, along with her counsel, has been in negotiations with the County regarding the terms of the Conditional Offer to Purchase Real Property since mid-July 2018.

26. Ultimately, the County and the Trustee agreed that the Conditional Offer to Purchase Real Property and Addendum to Conditional Offer to Purchase Real Property would be contingent upon, *inter alia*, the following to occur prior to the expiration of the Due Diligence Period:

> (a) County obtaining an appraisal report completed by a Nevada licensed appraiser that states the fair market value of the Property is equal to or greater than the Purchase Price. If the appraised value is less than the Purchase Price, then Seller and County may mutually agree to a new Purchase Price, or either Seller or County may cancel this transaction in writing to the other and County will receive an immediate refund of its EMD from Fidelity National Title without a requirement for the Seller's written approval for the release of funds. If either Seller or County cancels this transaction due to appraised value being less than the Purchase Price then Seller and County are not responsible for any legal fees or costs incurred by the other party;
>
> (b) County obtaining a Preliminary Title Report and any exceptions;
>
> (c) Seller allowing County to enter the Property to perform inspections and due diligence on the Property as set forth in greater detail in the Addendum under Section 2 (Physical Inspection Contingency) and Section 3 (Document Inspection Contingency);
>
> (d) Seller providing County with the Diligence Documents (as defined in Section 3 of the Addendum) within three (3) business days of the Effective Date as set forth in greater detail in the Addendum under Section 3 (Document Inspection Contingency).

> (e) Seller obtaining a final order by the Bankruptcy Court in the Bankruptcy Case authorizing the sale of the Property with the Property being sold free and clear of liens, claims and encumbrances, except for Permitted Liens, and finding that County is a good faith purchaser, all in accordance with 11 U.S.C. §§ 363(b), (f) and (m) and 365, among other sections of the Bankruptcy Code prior to the expiration of the Due Diligence Period.

See Conditional Offer, pp. 2-3, § 6, **Exhibit "1"** to Gupta Decl.

27. After finalizing negotiations and revisions to the Purchase Agreement and Addendum, and memorializing the terms of the proposed sale with the County, the Director of the Department of Real Property Management, on behalf of the County, presented the Conditional Offer to Purchase Real Property dated August 21, 2018 ("Conditional Offer"), and the Addendum to Conditional Offer to Purchase Offer to Purchase Real Property ("Addendum")[1] to be placed as a Clark County Board of Commissioners Agenda Item for consideration and approval for the August 21, 2018 Agenda. *See* Gupta Decl.

28. On August 21, 2018, the Clark County Commissioners unanimously approved the Purchase Agreement, and authorized the Director of the Department of Real Property Management, on behalf of the County, to execute the Purchase Agreement for submission to the Trustee and the Bankruptcy Court for final approval. *See* Gupta Decl.

29. On September 17, 2018, the County confirmed with the Trustee that the County completed its review of the appraisals and that based upon the conclusions reached, the purchase price of the Property would remain at $7,750,000.00 as set forth in the Purchase Agreement, subject to any adjustments in the event the due diligence findings warrant any downward departure as provided by Section 6(c) of the Purchase Agreement. *See* Gupta Decl.

30. To date, the County has made the only formal offer to the Trustee for the purchase of the Property, offering to purchase the Property in the amount of $7,750,000.00, as set forth in the Purchase Agreement and Addendum. *See* Gupta Decl.

31. The County opened escrow with Fidelity National Title Group ("Fidelity") on August 27, 2018 ("Escrow"), made its earnest money deposit of $50,000.00. A true and correct copy of the Timeline provided by Fidelity dated September 4, 2018, and Escrow Receipt are attached to the Gupta Decl. as

[1] The Conditional Offer and the Addendum shall collectively be referred to as the "Purchase Agreement" hereafter.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Exhibit "4" and **Exhibit "5"**, respectively.

32. Pursuant to the Purchase Agreement, the County is entitled to receive a full refund of its earnest money deposit from Fidelity in the event the County unilaterally elects to cancel the purchase transaction relating to the Property for any reason during the Due Diligence Period. Section 5 of the Purchase Agreement sets for that in the event of a timely cancellation by the County, the County shall be entitled to receive a full refund without the need for the Trustee's approval . *See* Purchase Agreement, p. 2, § 5, **Exhibit "1"** to Gupta Decl.

33. The Due Diligence Period under the Purchase Agreement expires on December 26, 2018, and the deadline for the close of Escrow is January 10, 2019, but no later than fifteen (15) days after the Due Diligence Period expires. *See* Gupta Decl.

34. The Sale Proceeds will be the source of funding for a liquidating plan of reorganization. *See* Gupta Decl.

35. The Trustee believes that the proposed sale to the County for $7,750,000.00 is a fair and reasonable offer that will maximize the Estate and inure to the benefit of its secured and unsecured creditors, as the proposed sale price is sufficient to satisfy the secured claims against the Property, and most likely to satisfy all administrative priority claims, and unsecured creditors' claims asserted against the Estate. *See* Gupta Decl.

36. Therefore, the Trustee seeks to obtain final approval from this Court of the sale of the Property to the County as proposed in the Purchase Agreement, attached as **Exhibit "1"** to the Gupta Declaration.

37. For avoidance of doubt, notwithstanding anything in the Purchase Agreement, the Trustee and County intend that the Trustee is not acting in her personal capacity, and that none of her agents, attorneys, representatives or accountants are acting in their personal capacity. *See* Gupta Decl.

IV. LEGAL ARGUMENT

A. <u>Standard for Sale of Property Under 11 U.S.C. § 363.</u>

The Trustee seeks Bankruptcy Court approval to sell the Property to the County free and clear of all liens pursuant to 11 U.S.C. § 363. Section 363(b)(1) of the Bankruptcy Code governs the sale of

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

property of a bankruptcy estate, and provides, in pertinent part, as follows: "[t]he trustee, after notice and hearing may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1). The Court may authorize a sale pursuant to section 363(b) upon the Trustee's showing that the sale has a valid business justification. *See, e.g., 240 North Brand Partners, Ltd. v. Colony GFP Partners (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988). "Ordinarily, the position of the [debtor in possession] is afforded deference, particularly where business judgment is entailed in the analysis . . . ." *Fridman v. Anderson (In re Fridman)*, No. BAP CC-15-1151-FKIKU, 2016 WL 3961303, at *8 (B.A.P. 9th Cir. July 15, 2016) (internal quotation marks omitted). Nevertheless, "the requirement of court approval means that the responsibility ultimately is the court's." *Id.* (internal quotation marks omitted).

A sound business purpose for the sale of the Estate's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors, or interest holders. *See, e.g., In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3d Cir. 1986); *see, e.g., In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983). In fact, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code, [is] to enhance the value of the estate at hand[]"); *see In re Integrated Res., Inc.*, 147 B.R.at 659 ("It is a well-established principle of bankruptcy law that the . . . [Trustee's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate[,]" (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988))).

Courts consider a wide range of factors in approving a sale outside of the ordinary course of business, including, but not limited to, the following:

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

a. Whether a sufficient business reason exists for the sale;

b. Whether the proposed sale is in the best interest of the estate, which considers the following factors:

i. Whether terms of the sale are fair and reasonable;

ii. Whether the proposed sale has been adequately marketed;

iii. Whether the proposed sales terms have been properly negotiated and proposed in good faith; and

iv. Whether notice of the sale was sufficient.

See, e.g., Fridman, 2016 WL 3961303, at *8; *In re Walter*, 83 B.R. at 19-20. This list is not exclusive. Instead, courts "should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors, and equity holders, alike." *In re Walter*, 83 B.R. at 20 (quoting *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986)). The Trustee submits that the sale of the Property satisfies 11 U.S.C. § 363(b). Examination of all pertinent factors compels deference to the Trustee's decision to sell the Property to the County under the terms proposed under the Purchase Agreement.

B. Procedural Requirements - Rules 6004(f) and 2002(c)(1).

FED. R. BANKR. P. 6004(f) provides in relevant part that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." Fed. R. Bankr. P. 2002(c)(1) begins with:

> Subject to Rule 6004, the notice of a proposed use, sale, or lease of property… shall include the time and place of any public sale, the terms and conditions of any private sale, and the time fixed for filing objections.

A trustee is entitled to broad discretion in determining the manner of a sale, including whether to sell property by public or private sale. *See In re Frezzo*, 217 B.R. 985, 989 (Bankr. M.D. Pa. 1988), citing *In re Canyon P'ship*, 55 B.R. 520, 524 (Bankr. S.D. Cal. 1985).

C. Sales "Free and Clear" Pursuant to 11 U.S.C. § 363(f).

11 U.S.C. § 363(f) provides:

> The trustee may sell property under subsection (b) or (c) of this section free and clear of any interests in such property of an entity other than the estate, only if—
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money judgment of such interest.

11 U.S.C. § 363(f) is written in the disjunctive. Thus, satisfaction of any one of the five conditions is sufficient to sell property free and clear of interest. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens[,]" citing *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988)); *see also In re Dundee Equity Corp.*, 1992 WL 53743, *4 (Bankr. S.D.N.Y. Mar. 6, 1992) ("Section 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met"); *see also Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147, n.24 (6th Cir. 1991) (holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met). The purpose of 11 U.S.C. § 363(f)(4) is to permit property of the estate to be sold free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate's assets need not be delayed while such disputes are being litigated." *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 171 (B.A.P. 9th Cir. 2001).

D. Bankruptcy Court's Authorization Under 11 U.S.C. § 105.

11 U.S.C. § 105(a) provides as follows:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte,

taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

E. Trustee Meets Requirements for Order Approving Proposed Sale.

1. Ample Business Justification for the Sale Exists

As set forth above, the Property – which is a specialty use property that has a very limited subset of potential buyers – is currently vacant and requires maintenance, insurance, and security expenses that the Trustee is required to incur until the Property is sold. DWC began preparing marketing materials and informally marketing the Property on or about May 14, 2018. The Trustee, through the realtor, listed the Property for sale at a list price of $7,750,000.00. DWC coordinated the initial showing of the Property on May 18, 2018. The showing was conducted by the Local Market resource. Numerous interested buyers visited the Property starting in May, 2018. The formal marketing campaign commenced on June 6, 2018. The Property has been formally listed since June 2018, and numerous interested buyers have physically toured the Property and inquired about the Property.

Approximately 1,700 interested buyers have reviewed information about the Property. Notwithstanding, the Trustee's received only one formal, written offer for the Property from the County. The Trustee believes that the County's offer is the highest and best that the Trustee will receive. On August 27, 2018, the County opened escrow with Fidelity, and on September 4, 2018, the County funded the earnest money deposit into the escrow account with Fidelity. Upon closing, the County will fund the balance of the purchase price of $7,700,000.00 without the need for any financing for the sale to close, provided escrow closes timely. *See* Gupta Decl.

2. The Sale Is in The Best Interest Of The Estate

a. The Sale Terms Are Fair and Reasonable

The Trustee seeks Bankruptcy Court approval to sell the Property for $7,750,000.00 in cash, minus customary closing costs. The Trustee posits that the proposed sale to the County is fair and reasonable. As noted above, the Property is currently vacant and not operating, and 24/7 security is therefore necessary to preserve the Property during the Due Diligence Period prior to the close of the sale. The Trustee has not received any other offers for the purchase of the Property. The

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

encumbrances against the Property are less than the purchase price offered by the County, and after the DIP lender and lienholders are paid in full, sufficient funds will most likely be available to satisfy all administrative priority claims, and unsecured creditors' claims asserted against the Estate. Based upon the proposed sale price and the liabilities of the Estate, the Trustee believes that sale terms as set forth in the Purchase Agreement are fair and reasonable. *See* Gupta Decl.

b. The Property Has Been Adequately Marketed

As set forth in greater detail in the Olson Declaration, in order to adequately market the Property for sale, the Trustee obtained Bankruptcy Court authorization to employ and retain Douglas Wilson Companies as the Estate's real estate agent as of May 18, 2018. *See* Order Employing Realtor (ECF No. 229). DWC, through its experienced marketing directors and advisors, designed and implemented a professional marketing program to include, without limitation, the development of marketing materials and an online due diligence website (the "Marketing Materials"). The marketing program was highlighted by an intensely managed process utilizing all forms of information dissemination and the Marketing Materials were of the highest quality. The Marketing Materials were disseminated to the broadest range of qualified purchasers. To ensure the broadest dissemination of the Marketing Materials, DWC retained Real Capital Markets ("RCM") to distribute the DWC Marketing Materials to its categorized buyer database, which database is considered to be the largest in the world. DWC retained a Nevada licensed real estate agent (the "Local Market Resource") to assist DWC with its marketing and the physical showing of the Property. DWC launched marketing efforts internationally as well as nationally and locally. DWC marketed the Property to all appropriate third-party brokers. DWC also listed the property on, without limitation, Costar and Loopnet, and the Property was also listed on Douglas Wilson Companies website. *See* Olson Decl.

In terms of DWC's initial outreach to market the Property, DWC initiated personal telephone calls to the acquisition officers of all targeted buyers to determine the level of interest for the Property, to present all of the benefits of the Property, and to create a sense of exclusivity and urgency among the potential buyers. The package of materials was forwarded to interested parties. On June 6, 2018, RCM disseminated an email blast to 5,539 recipients consisting of RCM's buyer database, and 1,663 of the recipients opened the email from RCM and viewed the flyer. On June 6, 2018, RCM also

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

disseminated a follow up email blast directed to Nevada and California commercial real estate brokers. DWC ran an advertisement in the Wall Street Journal on Wednesday, June 13, 2018, in the southwestern regional edition. Additionally, the Local Market Resource contacted every major Nevada church in his database and disseminated information regarding the sale of the Property to approximately 360 churches nationwide. *See* Olson Decl.

DWC also prepared an electronic Charter School Outreach email to every charter school in Nevada, along with the four (4) relevant sponsoring agencies, to include copies of the flyer and sales package disseminated to each school/agency 2018. The due diligence materials were made available online to qualified purchasers interested in buying the Property. Access to the due diligence site were controlled and monitored by DWC's marketing team. All potential buyers contemplating making an offer were asked to review all of the due diligence materials before making an offer in order to eliminate or limit any potential conditions and contingencies that may be contained in their respective offers to purchase the Property. *See* Olson Decl.

The Trustee, through the DWC, formally listed the Property on June 6, 2010, and the Local Market Resource was on site to show the Property to any and all potential purchasers. In response to the above referenced marketing efforts, DWC had its initial showings of the Property on May 18, 2018. Since the Property has been listed, numerous interested buyers have visited the Property on at least fourteen (14) separate occasions, and over 1,700 interested buyers have reviewed Property sales information. *See* Olson Decl.

On July 13, 2018, the County was the first and only potential buyer to submit a formal written offer to the Trustee to purchase the Property. To date, the County has been the only potential buyer to submit a formal written offer to the Trustee. Based upon the high level of interest in the viewings attendant with the Property, and the offer currently before this Court for approval in the amount of $7,750,000.00 cash offer submitted by the County, the Trustee believes that the Property has been adequately marketed. *See* Gupta Decl.

c. The Sale Terms Have Been Properly Negotiated

The Trustee and the County properly negotiated the terms of the Purchase Agreement, both with the assistance of respective counsel. The Purchaser has agreed to purchase the Property "as is" pursuant to the Purchase Agreement, without the need to procure any third-party financing, and pay the Purchase Price in full upon closing. The Trustee extensively negotiated a number of terms initially proposed by the County in the initial Purchase Agreement, and after about a month of negotiations, the Trustee and the County agreed upon all of the terms in the Purchase Agreement. The heavily negotiated and revised Purchase Agreement was ultimately submitted to the Clark County Board of Commissioners in order to authorize the Director of the Department of Real Property Management, on behalf of the County, to execute the revised Purchase Agreement, which consisted of the Conditional Offer to Purchase Real Property and the Addendum thereto.

The Trustee negotiated with the County the duration of the Due Diligence Period, which ends on December 26, 2018 under the proposed Purchase Agreement, which is one hundred twenty (120) calendar days from the date of execution of the Purchase Agreement. The Trustee also negotiated with the County the outside date for the deadline for the County to close Escrow, which is January 10, 2019. Notwithstanding the substantial size of the Property consisting of three (3) buildings totaling +50,552 square feet located on four (4) contiguous parcels of developed and vacant land totaling +11.220 acres, the Trustee was able to negotiate an abridged due diligence period with the County to facilitate the most expeditious closing possible, given the extremely high 24/7 security costs demanded by the Property approximating $20,000.00 per month. Thus, the Trustee believes that the proposed terms of the Purchase Agreement for a purchase price of $7,750,000.00 and the 120-day due diligence period are favorable to the Estate and were properly negotiated by the parties. *See* Gupta Decl.

d. The Sale Has Been Sufficiently Noticed

Copies of the Motion and its related pleadings have been served on the Office of the United States Trustee, secured creditors and/or their counsel, certain holders of the liens (the "Lienholders") and/or their counsel, and the parties that have filed requests for special notice in Debtor's bankruptcy case. The Notice of Hearing on the Motion will be served on the master mailing matrix. Attached hereto as **Exhibit "B"** is a chart summarizing the information contained in this Motion that is required to be disclosed pursuant to Local Rule 6004(b). The Trustee submits that the notice described above complies with the Local Rules and therefore suffices.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

F. The Parties Have Entered Into the Purchase Agreement in Good Faith and for Value.

Section 363(m) of the Bankruptcy Code governs the good faith component for a buyer involved in the sale process before a Bankruptcy Court, and provides as follows:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m) (emphasis added); *see also In re Onouli-Kona Land Co.*, 846 F.2d 1170 (9th Cir. 1988).

Section 363(m) serves the important purposes of both encouraging good faith transactions and preserving the finality of the bankruptcy court's orders unless stayed pending appeal is granted. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986). If purchasers at court-approved section 363 sales cannot rely upon the validity of the purchase agreement and transfer documents, it will be difficult to maximize values at bankruptcy sales. "A good faith buyer is one who buys in good faith and for value." *Palladiano v. E & B Natural Res. Mgmt. Corp. (In re S. Coast Oil Corp.)*, 566 F. App'x 594, 595 (9th Cir. 2014) (quoting *Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570, 577 (9th Cir. 1998)). "Absence of good faith is typically shown by fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *Adeli v. Barclay (In re Berkeley Delaware Court, LLC)*, No. 14-55854, 2016 WL 4437616, at *4 (9th Cir. Aug. 23, 2016) (quoting *In re Filtercorp*, 163 F.3d at 577).

In the present instance, the County proposes to purchase the Property in good faith and for value. The $7,750,000.00 Purchase Price is the highest and best offer received by the Trustee, and to date is the only written formal offer received by the Trustee. The Trustee and the County are strangers, with no acquaintance of each other before their entry into the Purchase Agreement. There was no collusion between the County and the Trustee, nor any effort to take advantage of other prospective purchasers. *See* Gupta Declaration. The Court should find the County to be a good faith buyer.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

G. The Property Can Be Sold Free and Clear of All Liens Under Section 363(f)(2) & (3).

Pursuant to section 363(f) of the Bankruptcy Code, the Court may authorize the sale of assets free and clear of existing liens, claims, interests, and encumbrances if: (1) applicable non-bankruptcy law permits the sale of such property free and clear of such interest; (2) the entity holding the lien, claim or encumbrance consents to the proposed sale; (3) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest. *See* 11 U.S.C. § 363(f).

Because section 363(f) of the Bankruptcy Code is written in the disjunctive, any one of these five conditions provides authority to sell the Property free and clear of liens. *See Sec. & Exch. Comm'n v. Capital Cove Bancorp LLC*, No. SACV15980JLSJCX, 2015 WL 9701154, at *4 (C.D. Cal. Oct. 13, 2015); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988). Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e,g., In re Trans World Airlines, Inc.*, No. 01-0056(PJW), 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001), *aff'd*, 322 F.3d 283 (3d Cir. 2003); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R 944, 948 (Bankr. N.D. Ohio 1987).

Here, the proposed sale of the Property to the County satisfies at least two separate conditions, Section 363(f)(2), which governs consent of a lienholder, and Section 363(f)(3), because the proceeds to be paid by the County under the proposed Purchase Agreement will exceed the existing liens against the Property. Depending on any disputes with potential lien holders, Section 363(f)(4) may also apply in the event a bona fide dispute exists. To the extent any bona fide dispute exists, the Property may be sold to the County free and clear of any other lien, so long as the lien attaches to proceeds of the sale of the Property.

Under Section 363(f)(2) of the Bankruptcy Code, a Trustee may sell estate property free and clear of liens, claims, interests, and encumbrances if the entity asserting the interest consents. 11 U.S.C. § 363(f)(2). Additionally, to the extent any party asserting an interest in the Property receives notice of this Motion and does not file a written objection hereto, such party should be deemed to have consented to the proposed sale of the Assets free and clear of its asserted interest. *See FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002) ("lack of objection . . .counts as consent" under section 363(f)(2)); *In re Christ Hosp.*, No. CIV.A. 14-472 ES, 2014 WL 4613316, at *14 (D.N.J. Sept. 12, 2014) ("Silence by affected claim holders may constitute consent for purposes of section 363(f)(2)"); *Elliot*, 94 B.R. at 345.

The Preliminary Title Report lists the Liens. *See* Preliminary Title Report, **Exhibit "2"** to Gupta Decl. The Trustee seeks the entry of an order from this Court allowing the Trustee to sell the Property free and clear of all liens pursuant to Section 363 of the Bankruptcy Court and as set forth in the proposed Order. Additionally, the Trustee has served this Motion on certain of the lienholders and/or their counsel. If they fail to object, they should be deemed to consent to the sale of the Property free and clear of the Liens.

Moreover, Section 363(f)(4) of the Bankruptcy Code provides that property may be sold free of all interests "in bona fide dispute." 11 U.S.C. § 363(f)(4). Because the Property was purchased free and clear of the Purported Liens pursuant to the 363 Order, the Purported Liens are in bona fide dispute, justifying the sale of the Property free and clear of them. Finally, Section 363(f)(3) of the Bankruptcy Code provides that assets may be sold free and clear of liens if "the price at which such property is to be sold is greater than the aggregate value of all liens on such property." 11 U.S.C. § 363(f)(3).

The Property is encumbered by the following valid liens, claims, and other interests: (i) the Lender's First Deed of Trust position in the amount of approximately $3.403,500.00; (ii) the Assemblies of God's Second Deed of Trust, which subordinated to the Lender's First Deed of Trust, in the amount of $303,836.00; (iii) the $75,000.00 first DIP Loan to the Lender and the $101,802.00 second DIP Loan to the Lender, as set forth in the Preliminary Title Report, which the Trustee will pay in full upon plan confirmation after the closing of the sale of the Property after receipt of the Purchase Price. Because the Property is being sold for a Purchase Price far in excess of the Liens against the Property, the Property may be sold free and clear under Section 363(f)(3). Accordingly, the Trustee requests that the Property be sold free and clear of all liens, claims, and encumbrances pursuant to 11 U.S.C. § 363(f).

Lewis Roca ROTHGERBER CHRISTIE 3993 Howard Hughes Pkwy, Suite 600 Las Vegas, NV 89169-5996

H. <u>The Form Notice of Hearing and Sale Should be Approved.</u>

Pursuant to FED. R. BANKR. P. 2002(a) and (c), the Trustee is required to notify creditors of the proposed sale of the Property, including a disclosure of the time and place of the hearing on the Motion to approve the proposed sale of the Property, the terms and conditions of the proposed sale, and the deadline for filing objections. The Trustee submits that the notice procedures fully comply with Fed. R. Bankr. P. 2002 and are reasonably calculated to provide timely and adequate notice of the proposed sale of the Property to the Estate's creditors and all other parties-in-interest that are entitled to notice. Based upon the foregoing, the Trustee respectfully requests that the Court approve the notice procedure proposed above.

V. CONCLUSION

Based upon the forgoing, the Trustee respectfully requests that the Court enter an Order in the form attached hereto as **Exhibit "A"**, (i) authorizing the Trustee's sale of the Property to the Purchaser under the terms of the Purchase Agreement, free and clear of all claims, liens, interests, and encumbrances; (ii) finding that the Purchaser is a good faith buyer; (iii) finding that Notice of the Motion was appropriate and sufficient; and (iv) granting such other relief as the Court deems necessary, just, and proper.

DATED this 21st day of September, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: <u>/s/ Ogonna M. Brown</u>
Ogonna M. Brown, Esq.
Nevada Bar No. 7589
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169-5996
Phone: (702) 474-2622
Fax: (702) 949-8298
Email: OBrown@lrrc.com

Attorneys for Kavita Gupta, Chapter 11 Trustee

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on the 21st day of September, 2018, I caused to be served a true and correct copy of the **MOTION FOR ORDER AUTHORIZING PRIVATE SALE OF REAL PROPERTY TO CLARK COUNTY FREE AND CLEAR OF ALL LIENS FOR THE REAL PROPERTY LOCATED AT 2900 NORTH TORREY PINES DRIVE, LAS VEGAS, NEVADA, 89108, AND IDENTIFIED AS LOCATED IN THE CITY OF LAS VEGAS, COUNTY OF CLARK, NEVADA, ASSESSOR PARCEL NUMBERS 13814-601-005, 13814-601-006, 13814-601-013, AND 13814-601-014** in the following manner:

☒ (ELECTRONIC SERVICE) Under Administrative Order 02-1 (Rev. 8-31-04) of the United States Bankruptcy Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

☐ (UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada, to the parties listed on the attached Service List, at their last known mailing addresses, on the date above written.

☐ (OVERNIGHT COURIER) By depositing a true and correct copy of the above-referenced document for overnight delivery via Federal Express, at a collection facility maintained for such purpose, addressed to the parties on the attached service list, at their last known delivery address, on the date above written.

☐ (FACSIMILE) That I served a true and correct copy of the above-referenced document via facsimile, to the facsimile numbers indicated, to those persons listed on the attached service list, on the date above written.

/s/ Callie M. Bird
Callie M. Bird, an employee of
Lewis Roca Rothgerber Christie LLP

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

EXHIBIT A

[PROPOSED ORDER]

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
LEWIS ROCA ROTHGERBER CHRISTIE, LLP
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169-5996
Phone: (702) 474-2622
Fax: (702) 494-8298
Email: OBrown@lrrc.com

Attorneys for Kavita Gupta, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re: CALVARY COMMUNITY ASSEMBLY OF GOD, INC., Debtor.	Case No. BK-S-17-13475-MKN Chapter 11 **ORDER GRANTING MOTION FOR ORDER AUTHORIZING PRIVATE SALE OF REAL PROPERTY TO CLARK COUNTY FREE AND CLEAR OF ALL LIENS** **PROPERTY ADDRESS: 2900 NORTH TORREY PINES DRIVE, LAS VEGAS, NEVADA, 89108 ASSESSOR PARCEL NUMBERS 13814-601-005, 13814-601-006, 13814-601-013, 13814-601-014** Date of Hearing: Time of Hearing: Place: Courtroom 2, Third Floor Foley Federal Building 300 Las Vegas Boulevard South Las Vegas, NV 89101 Judge: Hon. Mike K. Nakagawa

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

The Court having presided over hearing on _______________, 2018, (the "Hearing"), on the Trustee's Motion for Order Authorizing Private Sale of Real Property to Clark County Free and Clear of All Liens for the real property located at 2900 North Torrey Pines Drive, Las Vegas, Nevada, 89108, and identified as located in the City of Las Vegas, County of Clark, Nevada, Assessor Parcel Numbers 13814-601-005, 13814-601-006, 13814-601-013, and 13814-601-014 (the "Motion") [ECF No. _____], filed on _______________, by Ogonna M. Brown, Esq. of the law firm of Lewis Roca Rothgerber Christie LLP, on behalf of Kavita Gupta, Chapter 11 Trustee (the "Trustee"). Ogonna M. Brown, Esq. appeared at the Hearing on behalf of Trustee, and Robert Kinas, Esq. appeared at the Hearing on behalf of Assemblies of God Loan fund, a Missouri nonprofit corporation ("Secured Creditor"); other appearances were noted on the record at Hearing.

The Court having reviewed the Motion and related pleadings and papers on file herein and having read and reviewed and overruled any objection lodged to the Motion, based upon the findings of fact and conclusions of law placed on the record at the Hearing and incorporated herein pursuant to FED. R. BANKR. P. 9014(a) and (c) and 7052, and good cause appearing:

IT IS ORDERED that the Trustee's Motion to Sell Real Property is **GRANTED** in its entirety; and

IT IS FURTHER ORDERED that the real property commonly known as **2900 North Torrey Pines Drive, Las Vegas, Nevada, 89108, and identified as located in the City of Las Vegas, County of Clark, Nevada, Assessor Parcel Numbers 13814-601-005, 13814-601-006, 13814-601-013, and 13814-601-014,** including all improvements and fixtures permanently installed thereon other than such fixtures that may be leased from a third party (altogether, the "Property"), shall be, pursuant to the terms of this Order, sold by the Trustee on behalf of the chapter 11 bankruptcy estate to purchaser Clark County, a Political Subdivision of the State of Nevada ("Court-Approved Purchaser") for the total amount of $7,750,000.00 ("Purchase Price"), as set forth more completely in **Exhibit "A"** hereto, the ("Purchase and Sale Agreement") (altogether, the "Sale").

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996
Lewis Roca
ROTHGERBER CHRISTIE

IT IS FURTHER ORDERED that the Trustee has articulated good and sufficient reasons and sufficient and adequate business justification for the Court to grant the relief requested in the Motion.

IT IS FURTHER ORDERED that Trustee has demonstrated that the relief sought by way of the Motion is in the best interests of the chapter 11 estate, creditors, and other parties-in-interest, and that the chapter 11 estate, creditors, and other parties-in-interest will be served by this Court granting the relief requested in the Motion.

IT IS FURTHER ORDERED that Trustee has demonstrated both: (i) good, sufficient, and sound business purposes and justifications for the Sale; and (ii) compelling circumstances for the Sale other than in the ordinary course of business under 11 U.S.C. § 363(b) before the confirmation of, and outside the confirmation of, a chapter 11 plan of reorganization in that, among other things, the immediate consummation of the Sale is necessary and appropriate to maximize the value of the chapter 11 estate; entry of an order approving the Sale is a necessary condition precedent to consummating the Sale.

IT IS FURTHER ORDERED that the Agreement was negotiated, proposed, and entered into by Trustee and the Court-Approved Purchaser without collusion, in good faith, and from an arm's-length bargaining position. Neither Trustee nor the Court-Approved Purchaser engaged in any conduct that would cause or permit the Agreement to be avoided under 11 U.S.C. § 363(n); specifically, the Court-Approved Purchaser has not acted in a collusive manner with any person, and the Purchase Price was not controlled by any agreement with any other person.

IT IS FURTHER ORDERED that the Agreement was negotiated, proposed, and entered into by Trustee and the Court-Approved Purchaser in good faith, without collusion, and from an arm's-length bargaining position. The Court-Approved Purchaser has proceeded in good faith in all respects in connection with this proceeding, is a "good faith purchaser" within the meaning of 11 U.S.C. § 363(m) and, as such, is entitled to all the protections afforded thereby.

IT IS FURTHER ORDERED that the Sale is a sale of the Property in good faith under 11 U.S.C. § 363(m).

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

IT IS FURTHER ORDERED that the Court-Approved Purchaser (i) is not a successor to the Trustee; (ii) has not, de facto or otherwise, merged with or into the Trustee or the chapter 11 estate; (iii) is not a continuation or substantial continuation of the Trustee or the chapter 11 estate or any enterprise of the Trustee; (iv) does not have a common identity of incorporators, directors, or equity holders with the Trustee or the chapter 11 estate; and (v) is not holding itself out to the public as a continuation of the Trustee or the chapter 11 estate.

IT IS FURTHER ORDERED that, except as otherwise specifically provided for in the Purchase Agreement or in this Order, pursuant to 11 U.S.C. §§ 105(a) and 363 the Trustee is authorized to transfer the Property to the Court-Approved Purchaser, and, as of the closing date identified in the Purchase and Sale Agreement ("Closing Date"), the Court-Approved Purchaser shall take title to and possession of the Property free and clear of all liens or claims of any kind or nature whatsoever ("Claims"), with all such Claims to attach to the cash proceeds received by the chapter 11 estate that are ultimately attributable to the Property against or in which such Claims are asserted subject to the terms of such Claims with the same validity, force, and effect, and in the same order of priority such Claims now have against the Property or its proceeds, if any, subject to any rights, claims, and defenses the Trustee or the chapter 11 estate may possess with respect thereto.

IT IS FURTHER ORDERED that, as of the Closing Date: (i) the Sale to the Court-Approved Purchaser effects a legal, valid, enforceable, and effective sale and transfer of the Property to the Court-Approved Purchaser and shall vest the Court-Approved Purchaser with all right, title, and interest to such Property free and clear of all Claims; (ii) the Purchase Agreement and the instruments contemplated thereby shall be enforceable against and binding upon the Court-Approved Purchaser and the Trustee and not subject to rejection or avoidance by the Trustee or her successors or assigns; and (iii) the Sale to the Court-Approved Purchaser pursuant to the Purchase Agreement shall be free and clear of all Claims, with all such Claims to attach to the proceeds of the Sale in the order of their priority and with the same validity, force, and effect which they now have against the Property, subject to any rights, claims, and defenses the Trustee or its estate may possess with respect thereto.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

IT IS FURTHER ORDERED that this Order shall be effective as a determination that, as of the Closing Date, (i) no Claims relating to the Property shall be asserted against the Court-Approved Purchaser, its affiliates, successors, or assigns, or any of their respective Property (including the Property); (ii) the Property shall have been transferred to the Court-Approved Purchaser free and clear of all Claims; (iii) the conveyances and transfers described herein and contemplated by the Purchase Agreement have been effectuated; (iv) for any and all purposes, a full and complete general assignment, conveyance, and transfer to the Court-Approved Purchaser of the chapter 11 estate's interests in the Property has lawfully occurred; (v) all Claims of any kind or nature whatsoever existing as to the Property prior to the Closing Date have been unconditionally released, discharged, and terminated, and hereby are forever barred, estopped, and permanently enjoined from commencing, prosecuting, or continuing in any manner any action or other proceeding of any kind against the Court-Approved Purchaser, its property, its successors and assigns, its affiliates regarding or against themselves or their assets (including the Property).

IT IS FURTHER ORDERED that neither the Court-Approved Purchaser nor its affiliates, successors, or assigns, shall be deemed, as a result of any action taken in connection with the Sale of the Property, to: (i) be a successor to the Trustee or the chapter 11 estate; (ii) have, de facto or otherwise, merged or consolidated with or into the chapter 11 estate (or the Trustee); or (iii) be a continuation or substantial continuation of the chapter 11 estate or any enterprise thereof. Transfer of the Property to the Court-Approved Purchaser shall not result in (i) the Court-Approved Purchaser, its affiliates, members, or shareholders or the Property, having any liability or responsibility for any claim against the Trustee or the chapter 11 estate; (ii) the Court-Approved Purchaser, its affiliates, members, or shareholders or the Property, having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff, or otherwise, directly or indirectly, any Claim; or (iii) the Court-Approved Purchaser, its affiliates, members, or shareholders or the Property, having any liability or responsibility to the Trustee or the chapter 11 estate except as is expressly set forth in the Purchase Agreement and this Order.

IT IS FURTHER ORDERED that, to the extent provided by 11 U.S.C. § 525, no governmental unit may revoke or suspend any permit or license relating to the operation of the Property sold, transferred, or conveyed to the Court-Approved Purchaser on account of the filing or pendency of the Bankruptcy Case or the consummation of the Sale contemplated by the Purchase Agreement.

IT IS FURTHER ORDERED that any and all valid and perfected Claims in or to the Property shall attach to any cash proceeds of such Property immediately upon receipt of such proceeds by the Trustee, or any party acting on the Trustee's behalf, in the order of priority, and with the same validity, force, and effect which they now have against such Property, if any, subject to any rights, claims, and defenses the Trustee or the chapter 11 estate may possess with respect thereto, and in addition to any limitations on the use of such cash proceeds pursuant to any provision of this Order. **Subject to the Claims attaching to the cash proceeds of the Sale as provided pursuant to the terms of this Order**, as of the occurrence of the closing of the Sale, any and each of the chapter 11 estate's secured creditors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release Claims, if any.

IT IS FURTHER ORDERED that the terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon the chapter 11 estate; all creditors of the chapter 11 estate (whether known or unknown); the Court-Approved Purchaser and its respective affiliates, successors, and assigns; and any affected third parties including but not limited to all persons asserting Claims in the Property. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision(s), it being the intent of the Court that the Purchase Agreement be authorized and approved in its entirety; provided, however, that the terms of this Order shall govern if there is any inconsistency between the Purchase Agreement and this Order.

IT IS FURTHER ORDERED that the terms and conditions of this Order are immediately effective and enforceable upon its entry, notwithstanding FED. R. BANKR. P. 6004, 7062, or 9014.

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

IT IS FURTHER ORDERED that the Court shall retain jurisdiction to hear and decide any and all disputes arising out of or related to this Order including the Sale and to enforce the terms and provisions of this Order, the Purchase Agreement, any and all amendments to the Purchase Agreement including but not limited to the enforcement and effectuation of all terms thereof.

IT IS SO ORDERED.

Prepared and submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

____

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169-5996
Email: OBrown@lrrc.com
Phone: (702) 474-2622

Attorneys for Kavita Gupta, Chapter 11 Trustee

RULE 9021 CERTIFICATE

In accordance with Local Rules of Bankruptcy Practice of the United States District Court for the District of Nevada ("LR") 9021, counsel submitting this document certifies that the foregoing **ORDER GRANTING MOTION FOR ORDER AUTHORIZING PRIVATE SALE OF REAL PROPERTY TO CLARK COUNTY FREE AND CLEAR OF ALL LIENS - PROPERTY ADDRESS: 2900 NORTH TORREY PINES DRIVE, LAS VEGAS, NEVADA, 89108 ASSESSOR PARCEL NUMBERS 13814-601-005, 13814-601-006, 13814-601-013, 13814-601-014** accurately reflects the Court's ruling and that (check one):

☐ The Court has waived the requirements set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

____

Ogonna M. Brown, Esq.
Nevada Bar No. 7589
3993 Howard Hughes Pkwy., Suite 600
Las Vegas, NV 89169-5996
Email: OBrown@lrrc.com
Phone: (702) 474-2622

Attorneys for Kavita Gupta, Chapter 11 Trustee

# # #

EXHIBIT A

August 21, 2018

Kavita Gupta
Chapter 11 Trustee for the Bankruptcy Estate of Calvary Community Assembly of God, Inc.
1300 Bristol Street North, Suite 100
Newport Beach, CA 92660

RE: CONDITIONAL OFFER TO PURCHASE REAL PROPERTY
(2900 North Torrey Pines Drive, Las Vegas, NV 89108)
ASSESSOR'S PARCEL NUMBERS 138-14-601-005/006/013/014

Dear Ms. Gupta:

Please consider this Clark County's Conditional Offer to Purchase Real Property (this "Conditional Offer") with respect to the above referenced property, subject to the following terms and conditions. This Conditional Offer shall include the terms and conditions of the Addendum, attached hereto (the "Addendum").

1. **PARTIES:**

This Conditional Offer is made by Clark County, a Political Subdivision of the State of Nevada ("County" or "Buyer") to the Bankruptcy Estate of Calvary Community Assembly of God, Inc., a Nevada nonprofit corporation ("Seller") (each a "Party" and collectively, the "Parties").

2. **LOCATION AND DESCRIPTION:**

The Property for which this Conditional Offer is being made consists of four (4) contiguous parcels of land containing Three (3) separate buildings comprising +/-50,554 square feet of church, school, office and gymnasium buildings on approximately 11.220 acres of mostly developed land (APNs 138-14-601-005/006/013/014) located on the Southeast corner of West Brooks Avenue and North Torrey Pines Drive, Las Vegas, NV 89108, Clark County as further described in Exhibit A (the "Property") attached hereto and incorporated herein by reference.

3. **INTEREST TO BE ACQUIRED:**

Upon the terms and subject to the conditions of the Addendum, and subject to Bankruptcy Court approval, Seller agrees to sell and convey to Buyer in accordance with, and with all of the protections afforded by, Sections 105 and 363 of the Bankruptcy Code; and Buyer agrees to buy from Seller, for the consideration and upon the terms and conditions stated herein, the Property on a "where is", "as is" basis, and together with all faults in its present physical condition, free and clear of all liens, encumbrances, and interests, except for Permitted Liens without any representations or warranties of any kind, nature or description by Seller, the Trustee, the Trustee's professionals and/or agents, whether express, implied, by operation of law or otherwise, concerning the Property including any due diligence materials provided by the Trustee and/or her professionals. County shall independently confirm and verify all information related to the Property deemed relevant for County's purposes. Nothing herein shall limit Section 1.A. of the Addendum. "Permitted Liens" shall mean all matters of public record (other than mortgages and deeds of trust or liens for loans secured by the Property), assessments for taxes and other charges ("Permitted Encumbrances').

4. **AMOUNT OF OFFER:**

On behalf of County, the sale and purchase price for the Property shall be a cash offer of Seven Million Seven Hundred Fifty Thousand Dollars ($7,750,000) ("Purchase Price"). On or before close of escrow, Buyer shall deliver to the Escrow Agent the balance of the Purchase Price (estimated to be Seven Million Seven Hundred Thousand Dollars ($7,700,000), as may be increased or decreased by such sums as are required to take into account any additional deposits, prorations, credits, or other adjustments required by this Addendum) in immediately available funds.

5. **DUE DILIGENCE PERIOD:**

County will open escrow ("Escrow Opening") with Fidelity National Title (in its capacity as "Title Company" and "Escrow Agent"), attention Chancey White and Michele Seibold, as detailed herein. The date of the execution by all parties of this Conditional Offer will be the start of County's due diligence. The time period of one hundred twenty (120) calendar days from the date of execution of this Conditional Offer by all parties is defined as the "Due Diligence Period". The Due Diligence Period is for the County to perform its non-destructive testing/analysis and investigation on the suitability of the Property for County purposes. This may include, but is not limited to, (1) the right to conduct geotechnical, biological and cultural resource investigations; (2) the right to conduct a Phase I environmental investigation; (3) boundary survey and utility location; (4) the right to perform a property analysis inclusive of any building inspections (structural, mechanical, plumbing, electrical, etc.). County shall also have the right to conduct Phase II environmental investigations and other invasive inspection with the Seller's consent pursuant to the terms set forth in the Addendum under Section 2 (Physical Inspection Contingency). The County shall submit a request ("Request") in writing to the Trustee and her counsel for any invasive inspection. The Trustee shall respond within five (5) business days of receipt of the Request.

County shall have reasonable access to the Property to perform any inspection, investigation and/or testing as set forth in greater detail in the Addendum under Section 2 (Physical Inspection Contingency) and Section 3 (Document Inspection Contingency).

The County may unilaterally elect to cancel this transaction for any reason during the Due Diligence Period and receive a full refund of its Earnest Money Deposit ("EMD") from Fidelity National Title without the need for Seller's written approval.

6. **TERMS:**

This Conditional Offer is made on behalf of County. The escrow period shall begin upon execution of this Conditional Offer for a total of One Hundred Thirty Five (135) calendar days inclusive of a Due Diligence Period of one hundred twenty (120) calendar days (the "Escrow Period"), and the Sale must close no later than Fifteen (15) days after the Due Diligence Period expires. The County shall have the right to complete the purchase ("Close of Escrow") any time during the Escrow Period. If the last day of the Escrow Period ends on a holiday or weekend day, then it shall automatically be moved to the next business day.

This Conditional Offer is contingent upon, but not limited to, the following to occur prior to the expiration of the Due Diligence Period:

(a) County obtaining an appraisal report completed by a Nevada licensed appraiser that states the fair market value of the Property is equal to or greater than the Purchase Price. If the appraised value is less than the Purchase Price, then Seller and County may mutually agree to a new Purchase Price, or either Seller or County may cancel this transaction in writing to the other and County will receive an immediate refund of its EMD from Fidelity National Title without a requirement for the Seller's written approval for the release of funds. If either Seller or County cancels this transaction due to appraised value being less than the Purchase Price then Seller and County are not responsible for any legal fees or costs incurred by the other party;

(b) County obtaining a Preliminary Title Report and any exceptions;

(c) Seller allowing County to enter the Property to perform inspections and due diligence on the Property as set forth in greater detail in the Addendum under Section 2 (Physical Inspection Contingency) and Section 3 (Document Inspection Contingency);

(d) Seller providing County with the Diligence Documents (as defined in Section 3 of the Addendum) within three (3) business days of the Effective Date as set forth in greater detail in the Addendum under Section 3 (Document Inspection Contingency).

(e) Seller obtaining a final order by the Bankruptcy Court in the Bankruptcy Case authorizing the sale of the Property with the Property being sold free and clear of liens, claims and encumbrances, except for Permitted Liens, and finding that County is a good faith purchaser, all in accordance with 11 U.S.C. §§ 363(b), (f) and (m) and 365, among other sections of the Bankruptcy Code (the "Sale Order") prior to the expiration of the Due Diligence Period.

As stated above, the County may unilaterally elect to cancel this transaction for any reason during the Due Diligence Period and receive a full refund of its EMD from Fidelity National Title without the need for Seller's written approval. Seller may unilaterally elect to cancel this transaction upon the failure of the Bankruptcy Court to issue the Sale Order without the need for Buyer's approval, at which time this Conditional Offer and the Addendum shall terminate, the EMD shall be returned to the Buyer, and neither party shall have any further obligations to the other. The contingencies listed above are for informational purposes and do not limit the County's ability to cancel for any reason and without penalty whatsoever during the Due Diligence Period.

7. **EARNEST MONEY DEPOSIT:**

Upon acceptance of this Conditional Offer by Seller, the County shall open escrow and deposit a Fifty Thousand Dollar ($50,000) EMD with Fidelity National Title within ten (10) business days. The EMD will be fully refundable to the County during the one hundred twenty (120) calendar day Due Diligence Period. If the County exercises its unilateral right to cancel this transaction during the Due Diligence Period for any reason including, but not limited to, the BCC not approving this Agreement, as detailed above, then County will send written notification to Fidelity National Title for the immediate release of the EMD to the County without a requirement for the Seller's written approval for the release of funds. If the County does not exercise its unilateral right to cancel during the Due Diligence Period and BCC approves this Agreement, then the EMD shall be applied toward the Purchase Price and become non-refundable to the County, except as otherwise outlined in this Agreement, unless Seller breaches this Agreement.

8. **SELLER PROPERTY INFORMATION:**

The Seller shall provide the Diligence Documents within three (3) business days of the Effective Date, as set forth in greater detail in the Addendum under Section 3 (Document Inspection Contingency).

9. **BROKER COMMISSIONS:**

Seller has retained Douglas Wilson Companies as its real estate agent pursuant to an order from the Bankruptcy Court entered on July 18, 2018, as Docket No. 229 as set forth in the Order Granting

Application by Chapter 11 Trustee for Authorization to Employ Douglas Wilson Companies as the Estate's Real Estate Agent Effective May 18, 2018 *Nunc Pro Tunc* and the Estate is solely responsible for the payment of any commission due Douglas Wilson Companies pursuant to the terms of such court order. County shall not pay or be responsible for payment of any commission(s), Finder's Fee, or other compensation to real estate agents/brokers or others for this Agreement.

10. **ESCROW REQUIREMENTS:**

This Conditional Offer shall be consummated through an escrow established with Title Company, which will handle monetary disbursement and document processing at the Close of Escrow. County shall open escrow and deposit EMD within Ten (10) business days of acceptance of this Conditional Offer. Close of Escrow shall occur within Fifteen (15) calendar days after the Due Diligence period expires or sooner if all conditions have been satisfied by the Parties and the County has elected not to cancel during the Due Diligence Period. In the event Seller does not provide Title Company necessary information and documentation in order to facilitate a timely closing of this transaction and Close Of Escrow does not occur by the end of the Escrow Period, then County shall be entitled to an immediate full refund and return of its EMD without written approval from Seller. If escrow fails to close within One Hundred Thirty Five (135) calendar days from the date of the execution of this Conditional Offer, it shall only be extended per the Parties mutual agreement in writing to extend the Escrow Period. The Parties agree to execute and deliver to Title Company such additional and supplemental instructions as Title Company may require providing clarification of Title Company's duties under this Agreement. At Close of Escrow, Seller shall execute and deliver to County, a good and sufficient Grant, Bargain and Sale Deed as set forth in greater detail in the Addendum under Section 15 (Deed) and Exhibit "B" thereto.

11. **TITLE POLICY:**

Within Ten (10) business days of Close of Escrow, Title Company will provide the County with a CLTA standard coverage owner's policy of title insurance ("Title Policy") insuring County's ownership interest in the Property in the amount of the Purchase Price, subject to only standard policy printed form exceptions and the Permitted Liens. At County's discretion and expense, it may elect to acquire Title Policy endorsements and/or ALTA extended coverage title insurance.

12. **CLOSING COSTS:**

The Seller shall pay for the CLTA Owner's Title Policy and ½ of escrow fees. County shall pay the costs associated with obtaining an ALTA extended title insurance policy, any title policy endorsement, ½ of escrow fees, the real property transfer tax and normal recording fees. Seller will pay for any reconveyance and lien release fees or unpaid real property taxes or other items as may be necessary to clear monetary encumbrances against the Property. The following items to be prorated as of the Close of Escrow: property taxes, sewer, water, power, gas, and trash. Rents or other deposits to be further addressed in escrow documents.

13. **GOVERNING LAW:**

THIS AGREEMENT SHALL BE CONSTRUCTED AS IF PREPARED BY BOTH PARTIES. THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF, CONNECTED WITH, OR RELATING TO THIS LETTER, OR THE PERFORMANCE, BREACH, VALIDITY, INTERPRETATION, APPLICATION, OR TERMINATION HEREOF THAT THE PARTIES ARE UNABLE TO RESOLVE AMICABLY AMONG THEMSELVES, SHALL BE CONSTRUED, INTERPRETED AND GOVERNED BY THE LAWS OF THE STATE OF NEVADA. ALL SUCH DISPUTES, CLAIMS, AND/OR CONTROVERSIES SHALL BE

RESOLVED BY THE BANKRUPTCY COURT, AND EACH PARTY HEREBY SUBMITS TO THE JURISDICTION OF SUCH COURT.

No remedy set forth herein shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. If it is determined by a court of competent jurisdiction that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms. No modification of, or amendment to, this Agreement (including any implied waiver) shall be effective unless in writing signed by all parties hereto. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and merges all prior or contemporaneous agreements and understandings (whether written, verbal or implied) of the parties with respect thereto.

14. **DEFAULT/REMEDIES:**

The following remedies shall apply in the event of default under this Agreement:

(a) BUYER DEFAULT. IF BUYER DEFAULTS IN ITS OBLIGATION TO PURCHASE THE PROPERTY AFTER THE DUE DILIGENCE PERIOD HAS EXPIRED, SELLER WILL BE DAMAGED BUT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE EXTENT OF SELLER'S ACTUAL DAMAGE WHICH WOULD BE BASED ON OPINIONS OF VALUES WHICH COULD VARY SIGNIFICANTLY. THE PARTIES AGREE THAT IN THE EVENT OF SUCH DEFAULT, SELLER SHALL RECEIVE, AS SELLER'S SOLE REMEDY, BUYER'S EMD, AS LIQUIDATED DAMAGES WHICH REPRESENTS THE PARTIES' FAIR AND REASONABLE BEST ESTIMATE OF THE SELLER'S ACTUAL DAMAGES IN SUCH EVENT OF DEFAULT. CANCELLATION OF THIS AGREEMENT DURING THE DUE DILIGENCE PERIOD BY COUNTY FOR ANY REASON SHALL NOT BE CONSIDERED A DEFAULT OF THIS AGREEMENT.

(b) SELLER'S DEFAULT. IF SELLER IS IN DEFAULT OF SELLER'S COVENANT TO SELL THE PROPERTY TO BUYER, CONDITIONED UPON RECEIPT OF AND PURSUANT TO THE SALE ORDER, BUYER'S SOLE REMEDY SHALL BE LIMITED TO EITHER (1) TERMINATE THIS AGREEMENT, IN WHICH CASE THE EMD SHALL BE RETURNED TO BUYER, OR (2) INITIATE AN ACTION FOR SPECIFIC PERFORMANCE TO BE FILED WITH THE BANKRUPTY COURT.

15. **NOTICES:**

No notice, request, demand, instruction, or other document to be given hereunder to any Party shall be effective for any purpose unless (1) personally delivered to the person at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery), (2) delivered by air courier next-day delivery (e.g. Federal Express), (3) delivered by mail, sent by registered or certified mail, return receipt requested; or (4) tele-copied, as follows:

If to Seller:

Kavita Gupta
Chapter 11 Trustee for the Bankruptcy Estate of
Calvary Community Assembly of God, Inc.
1300 Bristol Street North, Suite 100
Newport Beach, CA 92660
Tel: (949) 387-4470
Fax: (949) 258-9786

Email: kgupta@guptaferrer.com

With a copy to:

Lewis Roca Rothgerber Christie LLP
Attn: Ogonna M. Brown, Esq.
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 474.2622
Fax: (702) 949-8398
Email: obrown@lrrc.com

<u>If to Buyer</u>:

Clark County Real Property Management
Attention: Director
c/o Robert Tomiyasu
Real Estate Administrator
500 South Grand Central Pkwy., 4th Floor
Las Vegas, NV 89155-1825
Phone: (702) 455-4616
Tel: (702) 455-0110
Fax: (702) 455-5817
Email: Robert.tomiyasu@clarkcountynv.gov

With a copy to:

Mary-Anne Miller, Esq.
County Counsel
Civil Division
500 South Grand Central Pkwy., 5th Floor
Tel: (702) 455-4761
Email:maryanne.miller@clarkcountyda.com

Broker:

Thomas Olson
Douglas Wilson Companies
1620 Fifth Ave., Suite 400
San Diego, CA 92101
Email: tolson@douglaswilson.com

<u>If to Title:</u>

Fidelity National Title
Attn: Michele Seibold
Tel: (702) 952-8297
Fax: (702) 952-0473
Email: Michele.seibold@fnf.com

Notices delivered by air courier shall be deemed to have been given the next business day after deposit with the courier and notices mailed shall be deemed to have been given on the fourth business day following deposit of same in any United States Post Office mailbox in the state to which the notice is addressed or on the fifth business day following deposit in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth above. Notices tele-copied shall be deemed delivered the same business day received. The addresses, addressees, and telecopy number for the purpose of this Section, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address and addressee and telecopy number stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed to continue in effect for all purposes hereunder.

16. **TIME IS OF THE ESSENCE:**

Time is of the essence for this Conditional Offer as it will expire on August 31, 2018 at 5:00 p.m., and become null and void if the Seller does not respond. All Parties shall perform their obligations under this Agreement strictly within the required time frames.

This Conditional Offer and the Addendum confirms the mutual understanding of the Parties with respect to the matters contained herein. Please confirm your acceptance of the Conditional Offer and the Addendum by signing and returning the same. If the County does not receive a fully executed original of the Conditional Offer and the Addendum letter by August 31, 2018 at 5:00 p.m., this Conditional Offer and the Addendum will be deemed withdrawn and be of no further force or effect. If you have any questions, concerning any aspects of this Conditional Offer or the Addendum, please contact Bob Tomiyasu at (702) 455-0110.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Conditional Offer to Purchase 2900 North Torrey Pines Drive, Las Vegas, NV 89108

This Conditional Offer is contingent upon the mutual and concurrent execution and delivery by the parties of the Addendum.

Respectfully,

Clark County, a Political Subdivision of the State of Nevada

By: Lisa Kremer

Lisa Kremer, Director
Real Property Management

Approved as to form:

Mary Anne Miller
County Counsel for District Attorney

ACCEPTANCE:

The undersigned accepts Clark County's Conditional Offer and the Addendum pursuant to all terms and conditions herein and therein.

Bankruptcy Estate of Calvary Community Assembly of God, Inc.,
a Nevada nonprofit corporation

By: Kavita Gupta, Trustee

Kavita Gupta, solely in her capacity as the Chapter 11 Trustee for the Bankruptcy Estate of Calvary Community Assembly of God, Inc., and not individually

Date: 8/27/2018

Cc: Randall J. Tarr, Assistant County Manager
Krynn Williams, Property Acquisition Administrator
Mary Anne Miller, County Counsel for District Attorney
Bob Tomiyasu, Real Estate Administrator

EXHIBIT "A"
DESCRIPTION OF THE PROPERTY

APNs 138-14-601-005, 006, 013 and 014

Legal description to be attached by Escrow Agent


Exhibit A
2900 North Torrey Pines Drive
Las Vegas, NV 89108
APNs 138-14-601-005/006/013/014
Three (3) buildings totaling +/-50,554 Square feet
Four (4) parcels of land totaling +/-11.220 acres
N Torrey Pines Dr
Peak Dr

ADDENDUM TO CONDITIONAL OFFER TO PURCHASE REAL PROPERTY

This ADDENDUM TO CONDITIONAL OFFER TO PURCHASE REAL PROPERTY (this "Addendum"), dated August 21, 2018 (the "Effective Date"), is made by and between THE BANKRUPTCY ESTATE OF CALVARY COMMUNITY ASSEMBLY OF GOD, INC., a Nevada nonprofit corporation (the "Estate"), in *In Re Calvary Community Assembly Of God, Inc.*, Case No. BK-S-17-13475-MKN (the "Bankruptcy Case"), pending in the United States Bankruptcy Court For The District Of Nevada (the "Bankruptcy Court"), as the seller ("Seller"), by and through Kavita Gupta, solely in her capacity as the Chapter 11 Trustee ("Bankruptcy Trustee") of the Estate and not individually, and Clark County, a Political Subdivision of the State of Nevada, through the Department of Real Property Management, Property Management and Acquisition Division (the "Buyer"), as of the date this Addendum is fully executed by all the parties hereto (the "Effective Date"), and is made as part of that certain Conditional Offer to Purchase Real Property dated August 21, 2018 (the "Conditional Offer" and together with this Addendum, this "Agreement"), in connection with the Property. All capitalized terms used herein and not otherwise defined in this Addendum shall have the respective meanings described in the Conditional Offer.

1. **BANKRUPTCY MATTERS:**

   A. Bankruptcy Actions.

      i. As promptly as practicable following the date of the Clark County Board of County Commissioner's (the "BCC") approval of the Agreement, Seller shall file and serve a motion (together with supporting papers, the "Sale Motion") seeking the Bankruptcy Court's entry of the Sale Order (as defined in the Conditional Offer) in the form attached hereto as Exhibit C, which order shall not be subject to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure and which shall not have been reversed, vacated or stayed, and the time to file an appeal or a motion to reconsider shall have expired and not be stayed, or with respect to which any appeal has been finally decided and no further appeal or petition for certiorari can be taken or granted ("Final Order") approving (i) the Agreement; and (ii) Seller's performance under the Agreement, including the sale of the Property to Buyer pursuant to Section 363 of the Bankruptcy Code. The Seller shall seek a hearing on the Sale Motion in the Bankruptcy Court and shall use its commercially reasonable efforts to obtain the Bankruptcy Court's entry of the Sale Order as soon as possible after such hearing.
      ii. Seller shall give notice under the Bankruptcy Code of the requests for the relief specified in the Sale Motion to any person as to whom Seller has received notice that such person has or may have, and to any person who to Seller's knowledge might assert a claim against or with respect to, or interest in, any of the Property, and other appropriate notice, including such additional notice as the Bankruptcy Court shall direct and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, orders, hearings, or other proceedings relating to the Agreement or the transactions contemplated hereby.
      iii. Seller agrees that it will promptly take such actions as are reasonably requested by Buyer to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by Seller of its obligations under the Agreement and demonstrating the Buyer is a good faith buyer under Section 363(m) of the Bankruptcy Code.
      iv. Notice of the hearing or a motion to issue the Sale Order and the objection deadline relating thereto shall be served by Seller in accordance with Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure and any applicable local rules of the Bankruptcy Court, as applicable, on all persons required to receive notice in the Bankruptcy Case under such rules, including, but not limited to all persons that have asserted liens, encumbrances or other interests in the Property, and the Office of the United States Trustee.

B. Seller's Obligations Conditional upon Bankruptcy Court Approval. Seller's obligations to perform the transfer of the Property are conditional upon each of the following conditions precedent being fulfilled: i) Buyer's offer shall have been accepted by Seller as the highest and best offer for the Property; ii) the Sale Order shall have been entered by the Bankruptcy Court; iii) the Sale Order shall be a Final Order and not reversed or stayed or modified in any material respect, and (iv) the Seller shall own the Property.

2. **PHYSICAL INSPECTION CONTINGENCY:** Upon three (3) business days' written request to the Trustee and Seller's brokers, Buyer shall be provided access to the Property during reasonable times for physical inspection of the Property to conduct Buyer's due diligence. Buyer represents to Seller that it is self-insured and it shall provide Trustee and her counsel evidence of such self-insurance promptly upon request from Trustee. Three (3) business days prior to any entry on the Property, the Buyer's vendor(s) shall provide Trustee and her counsel with evidence of commercial general liability insurance and workers compensation insurance in a form acceptable to Seller and which covers any and all liability of such vendor(s) and its agents and consultants and Seller with respect to any due diligence conducted by Buyer. The vendor(s) shall also provide Seller and Trustee with an insurance declaration which names the Seller and Trustee as additional insureds on each policy. Buyer releases any claims against Seller that Buyer, its officers or employees may have for any damage caused by the inspection of the Property by Buyer and its agents and consultants. Buyer shall be responsible and hold Seller harmless for any mechanic's liens up to $50,000 asserted against the Property as a result of the Buyer's inspection or investigation of the Property. Buyer shall be responsible for and repair any damage caused to the Property caused by the inspection of the Property by Buyer and its agents and consultants. Buyer further shall repair and restore any damage to the Property caused by or occurring during Buyer's testing and return the Property to the same condition as existed prior to such entry. Prior to Buyer's commencement of any investigative activities on or within the Property, Buyer is self-insured with respect to or arising out of any such investigative activities. Such policy of self-insurance shall have liability limits of not less than Two Million and No/100 Dollars ($2,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability.

3. **DOCUMENT INSPECTION CONTINGENCY:** Seller shall provide Buyer with any documents relating to the Property (the "Diligence Documents") listed on Exhibit "A", attached hereto and incorporated herein by reference, within three (3) business days of the Effective Date. Buyer shall be responsible for obtaining all other documents listed below that have not been provided to Buyer. Except as otherwise expressly provided for in Section 5 of this Addendum, Buyer acknowledges that Seller, the Trustee and the Trustee's agents and professionals make no representation or warranty regarding the accuracy of any information and materials provided to or made available by Seller to Buyer pursuant to this Section 3. Buyer shall independently confirm and verify all information related to the Property deemed relevant for Buyer's purposes.

4. **ENERGY SERVICES AGREEMENT:** In connection with the Energy Services Agreement entered into between the Debtor and Nevada Solar Solutions IV, LLC as the service provider under the terms of NV Energy's SolarGenerations Program with an effective date of September 16, 2013 and Placed in Service Date of January 31, 2014, and related documents, Seller shall file with the Bankruptcy Court a motion and/or stipulation for the assumption and assignment, rejection, termination or other modification of the Energy Services Agreement.

5. **SELLER REPRESENTATION:** Seller represents and warrants to Buyer that Seller is not a person or entity with whom Buyer is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, "Anti-Terrorism Laws"), including persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List.

6. **CONDITION OF PROPERTY:** BUYER ACKNOWLEDGES AND AGREES THAT, PRIOR TO THE CLOSING DATE, BUYER WILL HAVE MADE ITS INDEPENDENT INVESTIGATION OF THE PROPERTY AND CONDITIONS ASSOCIATED THEREWITH IN ORDER TO BECOME FAMILIAR

WITH THE CONDITION THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5 OF THIS ADDENDUM, BUYER UNDERSTANDS AND AGREES THAT SELLER, THE TRUSTEE AND THE TRUSTEE'S AGENTS AND PROFESSIONALS ARE NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, INCOME DERIVED FROM THE PROPERTY, PHYSICAL CONDITION, THE STRUCTURAL INTEGRITY OF ANY IMPROVEMENTS, THE CONFORMITY OF THE IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS (INCLUDING, BUT NOT LIMITED TO ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR WHICH MAY BE PROVIDED TO BUYER), ZONING OR BUILDING CODE REQUIREMENTS, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS (INCLUDING, WITHOUT LIMITATION, ACCESSIBILITY FOR HANDICAPPED PERSONS), SOIL CONDITIONS, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITIONS, THE SUFFICIENCY OF ANY UNDERSHORING, THE SUFFICIENCY OF ANY DRAINAGE, WHETHER THE PROPERTY IS LOCATED WHOLLY OR PARTIALLY IN ANY FLOOD PLAIN OR FLOOD HAZARD BOUNDARY OR SIMILAR AREA, THE EXISTENCE OR NON-EXISTENCE OF UNDERGROUND STORAGE TANKS, ANY OTHER MATTER AFFECTING THE STABILITY OR INTEGRITY OF THE LAND OR THE IMPROVEMENTS, THE AVAILABILITY OF PUBLIC UTILITIES AND SERVICES FOR THE PROPERTY, THE FITNESS OR SUITABILITY OF THE PROPERTY FOR ANY INTENDED USE, THE POTENTIAL FOR FURTHER DEVELOPMENT OF THE PROPERTY, OR THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE PROPERTY, OR ANY OTHER MATTER OR THING WHATSOEVER REGARDING THE PROPERTY. BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT, UPON CLOSING, SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY "**AS IS, WHERE IS, WITH ALL FAULTS.**" BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER, THE TRUSTEE AND TRUSTEE'S AGENTS AND PROFESSIONALS ARE NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES OR REPRESENTATIONS PERTAINING TO THE PROPERTY MADE OR FURNISHED BY SELLER, THE TRUSTEE AND TRUSTEE'S AGENTS AND PROFESSIONALS, ANY MEMBER, MANAGER OR EMPLOYEE OF SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SUCH WARRANTY, GUARANTY OR REPRESENTATION IS SPECIFICALLY SET FORTH IN SECTION 5 OF THIS ADDENDUM. BUYER REPRESENTS AND COVENANTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR ABOUT OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON THE SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES, THE TRUSTEE, THE TRUSTEE'S AGENTS OR PROFESSIONALS, WITH RESPECT THERETO.

7. **SELLER DISCLAIMER; BROKER DISCLAIMER:** Buyer acknowledges that, except as otherwise expressly stated herein, neither Seller, the Trustee, the Trustee's agents and professionals nor any broker have made any warranty or representation with respect to any of the following; (a) the legality of the present or any possible future use of the Property under any Federal, state, or local law; (b) pending or possible future action by any government entity or agency which may affect the Property; (c) the physical condition of the Property, including but not limited to soil conditions, the structural integrity of the improvements, and the presence or absence of fungi or wood destroying organisms; (d) the accuracy or completeness of income and expense information and projections, of square footage figures, and of the texts of leases, options, and other agreements affecting the Property; (e) the possibility that leases, options or other documents exist which affect or encumber the Property and which have not been provided or disclosed by Seller; or (f) the presence or location of any hazardous materials as defined under either applicable Federal or state law, underneath the surface of the Property, on or about the Property, including, but not limited to, asbestos, PCBs, other toxic, hazardous or contaminated

substances, and underground storage tanks. **Regarding (f) above, Seller further recommends that Buyer seek independent professional counsel to determine presence and/or location of hazardous materials.** Buyer agrees that investigation and analysis of the foregoing matter is Buyer's sole responsibility and that Buyer shall not hold Seller, the Trustee, the Trustee's agents and professionals or Broker responsible therefore.

8. **BUYER'S DISCLOSURES:** Buyer hereby represents to Seller as of the close of escrow that Buyer is not a person or entity with whom Seller is restricted from doing business with under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto (collectively, "Anti-Terrorism Laws"), including persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List.

9. **GENERAL AGREEMENTS OF BUYER AND SELLER:**

a) Further Assurances Prior to Closing. Seller and Buyer shall, prior to the Closing Date, execute any and all documents and perform any and all acts reasonably necessary, incidental or appropriate as required by the Bankruptcy Court to effect the purchase and sale and the transactions contemplated in the Agreement.

b) Meaning of Terms. When necessary herein, all terms used in the singular shall apply to the plural and vice versa; and all terms used in the masculine shall apply to the neuter and feminine genders.

c) Paragraph Headings. The heading of the several paragraphs of the Agreement are inserted solely for convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any term of provisions hereof.

d) Severability. If any provisions of the Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

e) Further Assurances on or After Closing. Each party hereto agrees to do all acts and things and to make, execute and deliver such written instruments as required by the Bankruptcy Court to carry out the terms and provision of the Agreement. This Section regarding further assurances shall survive closing.

f) Other Parties. Nothing in the Agreement shall be construed as giving any person, firm, corporation or other entity, other than the parties hereto, their successors and permitted assigns, any right, remedy or claim under or with respect to the Agreement or any provision hereof.

g) Counterparts. The Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts together shall constitute one agreement.

h) Facsimile Signatures. Buyer and Seller each (i) has agreed to permit the use, from time to time and where appropriate, of telecopied signatures sent via facsimile or digitally reproduced signatures sent via email in order to expedite the transaction contemplated by the Agreement, (ii) intends to be bound by its respective telecopied signature sent via facsimile or digitally reproduced signature sent via email, (iii) is aware that the other party will rely on the telecopied signature send via facsimile or digitally reproduced signature sent via email, and (iv) acknowledges such reliance and waives any defenses to the enforcement of documents and notices effecting the transaction contemplated by the Agreement based on the fact that a signature or notice was sent by telecopy or email.

i) Entire Agreement. The Agreement (including all Exhibits attached hereto) supersedes all prior agreements and communications between Buyer and Seller and constitutes the entire contract between the parties hereto. The Agreement may not be modified except by an instrument in writing signed by the party to be charged.

j) Waivers. No waiver of any breach or any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

k) Assignments. Buyer may not assign the Agreement without the prior written consent of Seller and approval by the Bankruptcy Court.

l) No Recordation. No memorandum or other document relating to the Agreement shall be recorded without the prior written consent of Seller which may be withheld in Seller's sole and absolute discretion.

10. **LIMITATION OF LIABILITY**: Without limiting Section 14 of the Conditional Offer, Buyer acknowledges and agrees that neither Buyer nor its successors or assigns shall have any recourse against Seller's related entities or any partner, officer, director, employee, person, firm, agent or representative acting or purporting to act on behalf of Seller and/or its entities, the Trustee, the Trustee's agents and professionals (the "Seller Related Parties"), even if the matters giving rise to such recourse arise from or are attributable to the joint, concurrent or comparative negligence of the Seller related parties or any person acting or purporting to act on behalf of Seller or Seller Related Parties.

11. **RELEASE OF SELLER:** WITHOUT LIMITING SECTION 14 OF THE CONDITIONAL OFFER, TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER (AND ANYONE CLAIMING BY, THROUGH OR UNDER BUYER) HEREBY FULLY AND IRREVOCABLY RELEASES SELLER, THE TRUSTEE, THE TRUSTEE'S AGENTS AND PROFESSIONALS, THEIR MEMBERS, PARTNERS, EMPLOYEES AND AGENTS, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, PARTNERS, EMPLOYEES AND AGENTS (COLLECTIVELY, THE "RELEASED PARTIES"), FROM ANY AND ALL CLAIMS THAT BUYER MAY NOW OR HEREAFTER HAVE AGAINST THE RELEASED PARTIES FOR ANY COST, LOSS, LIABILITY, DAMAGE, EXPENSE, ACTION OR CAUSE OF ACTION, WHETHER FORESEEN OR UNFORESEEN, ARISING FROM OR RELATED IN ANY WAY TO THE PROPERTY, EXCEPT FOR CLAIMS AGAINST SELLER BASED UPON SELLER'S EXPRESS REPRESENTATIONS, WARRANTIES OR INDEMNITIES CONTAINED IN SECTION 5 OF THIS ADDENDUM OR IN ANY DOCUMENTS DELIVERED BY SELLER TO BUYER IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESS TERMS AND PROVISIONS INCLUDING, WITHOUT LIMITATION, THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION. WITH RESPECT TO THE RELEASE SET FORTH HEREIN RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, BUYER HEREBY SPECIFICALLY ACKNOWLEDGES THAT SUCH RELEASE IS MADE WITH THE ADVICE OF COUNSEL AND WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE CONSEQUENCES AND EFFECTS OF SUCH RELEASE AND THAT SUCH RELEASE IS A MATERIAL PART OF THE AGREEMENT. UPON CONSUMMATION OF THE CLOSING HEREUNDER, THE FOREGOING RELEASE SHALL BE DEEMED TO BE RESTATED AND MADE AGAIN ON THE CLOSING DATE. THE PROVISIONS OF THIS SECTION ARE MATERIAL AND INCLUDED AS A MATERIAL PORTION OF THE CONSIDERATION GIVEN TO SELLER BY BUYER IN EXCHANGE FOR SELLER'S PERFORMANCE HEREUNDER.

12. **SURVIVAL**: Notwithstanding anything to the contrary in the Agreement, the provisions contained in Sections 2, 6, 7, 10 and 11 of this Addendum shall survive delivery and recordation of the Deed or the termination of the Agreement for any reason.

13. **ATTORNEY'S FEES:** In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, the prevailing party shall be entitled to recover all of its costs, including the costs of arbitration, and reasonable attorney's fees in addition to any other relief to which such party may be entitled.

14. **FOREIGN INVESTOR DISCLOSURE:** Seller and Buyer agree to execute and deliver any instrument, affidavit or statement, and to perform any act reasonably necessary to carry out the provisions of the Foreign Investment in Real Property Tax and regulations promulgated thereunder.

15. **DEED:** On the Closing, Seller shall transfer the Property pursuant to a grant, bargain and sale deed, in the form attached hereto as Exhibit "B", and incorporated herein by reference.

16. **NON-DEFAULT**: Notwithstanding anything to the contrary in the Agreement:

    a) Failure of the conditions to Buyer's obligations set forth in Sections 6 (a) through (e) of the Conditional Offer;
    b) Failure of Seller to provide any diligence items regarding the Property, including as set forth in the Section 8 in the Conditional Offer; or
    c) Failure of Title Company to issue a Title Policy;

shall not constitute a default of Seller under the Agreement and in the event of any of the foregoing, Buyer's sole and absolute remedy shall be to either (i) waive the unsatisfied conditions and proceed to Closing without offset or reduction in the Purchase Price, or (ii) terminate the Agreement and receive a return of the EMD.

17. **CONDITIONS TO SELLER'S OBLIGATIONS**: The conditions set forth in this Section 17 are solely for the benefit of Seller and may be waived in writing only by Seller. At all times, Seller has the right to waive in writing any condition. Such waiver or waivers must be in writing delivered to Buyer. If any conditions set forth in Sections 17(a) through (c) are not satisfied on or before the Closing Date, and Seller has not waived the unsatisfied conditions in writing, Seller has the right to seek the remedies set forth in the Conditional Offer, Section "Default/Remedies". In the event that the conditions required in Sections 17(d) are not satisfied on the Closing, Buyer shall not be in default hereunder and Seller shall only be entitled to terminate this Agreement and the EMD shall be returned to Buyer. The following conditions must be satisfied not later than 5:00 p.m. (Pacific Time) on the Closing Date or such other period as may be specified below:

    a) Purchase Price. Buyer shall have deposited cash, or other immediately available funds, in the amount equal to the Purchase Price, plus Buyer's share of any closing costs, subject to prorations and adjustments as provided in the Agreement.
    b) No Default. Buyer shall not have committed a default of the Agreement or breached its representations, warranties and covenants set forth in the Agreement.
    c) Representations and Warranties. All of Buyer's representations and warranties as set forth in the Agreement shall be true and correct and any conditions and covenants to be performed by Buyer shall have been satisfied.
    d) Bankruptcy Court Approval. The Bankruptcy Court shall have approved the sale of the Property to Buyer in all respects, including, without limitation, as set forth in Section 1.B. of this Addendum, Section 6(e) of the Conditional Offer and the approval of the Sale Order as a Final Order.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Addendum to Conditional Offer to Purchase 2900 North Torrey Pines Drive, Las Vegas, NV 89108

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the Effective Date.

SELLER:

Bankruptcy Estate of Calvary Community Assembly of God, Inc.,
a Nevada nonprofit corporation

By: Kavita Gupta, Trustee
Kavita Gupta, solely in her capacity as the Chapter 11 Trustee for the Bankruptcy Estate of Calvary Community Assembly of God, Inc., and not individually

Approved as to form on behalf of Seller:

By: Don Martin for (Bar # 6736)
Ogonna Brown, Counsel for Chapter 11 Trustee

BUYER:

Clark County, a Political Subdivision of the State of Nevada

By: Lisa Kremer
Lisa Kremer, Director of Clark County Real Property Management

Approved as to form on behalf of Buyer:

Mary Anne Miller
County Counsel for District Attorney

Addendum to Conditional Offer to Purchase 2900 North Torrey Pines Drive, Las Vegas, NV 89108

EXHIBIT "A"
DILIGENCE DOCUMENTS

Seller shall provide the following due diligence materials to Buyer.

1. Preliminary Title Report and Exceptions, prepared by Fidelity National Title, dated April 30, 2018

2. Phase 1 Environmental Site Assessment dated May 25, 2018, prepared by AES Due Diligence, Inc.

3. Property Condition Assessment dated May 25, 2018, prepared by AES Due Diligence, Inc.

4. Appraisal Report dated January 23, 2018, prepared by Britton-Adamo Group/ROI Appraisal

5. CoStar Summary of Religious Facility and School Sales in Las Vegas Market since January 2015

6. Assessor's Parcel Map

7. Trustee's Letter of Intent Form

8. Trustee's Purchase Agreement and Escrow Instructions Contract Form

9. Construction plans which can be viewed at the Property

10. List of post-petition repairs for the Property

EXHIBIT "B"
FORM OF GRANT, BARGAIN AND SALE DEED

(see attached)

Addendum to Conditional Offer to Purchase 2900 North Torrey Pines Drive, Las Vegas, NV 89108

APNs: 138-14-601-005, 006, 013 and 014 **Recording Requested by and when recorded, return to:** **Mail Tax Statements to:**	SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

Grant, Bargain and Sale Deed

THIS INDENTURE WITNESSETH: That for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, The Bankruptcy Estate of Calvary Community Assembly of God, Inc., a Nevada nonprofit corporation, does hereby grant, bargain, sell and convey to:

Clark County, a Political Subdivision of the State of Nevada,

all that real property, bounded and described as follows:

SEE EXHIBIT "A"

SUBJECT TO:

1. All general and special taxes for the fiscal year.
2. Covenants, conditions, restrictions, reservations, rights, of way and easements of record.

Together with all tenements, hereditaments and appurtenances, including easements, water and mineral rights thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Addendum to Conditional Offer to Purchase 2900 North Torrey Pines Drive, Las Vegas, NV 89108

Witness this ____ day of ____________________________, 2018.

Bankruptcy Estate of Calvary Community Assembly of God, Inc.,
a Nevada nonprofit corporation

By: ____
Kavita Gupta, Chapter 11 Trustee for the Bankruptcy Estate of Calvary Community Assembly of God, Inc., and not individually

STATE OF _______________)
) ss.
COUNTY OF ______________)

On this _ day of __________________, 2018, before me, personally appeared Kavita Gupta, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signatures on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

____
Notary Public

EXHIBIT "A"
TO GRANT, BARGAIN AND SALE DEED

LEGAL DESCRIPTION

APNs: 138-14-601-005, 006, 013 and 014

[to be attached by escrow agent/title company]

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

EXHIBIT "B"
LOCAL RULE 6004 DISCLOSURES

The following chart summarizes the information required to be disclosed pursuant to Local Rule 6004(b), including, but not limited to, certain material terms of the proposed Purchase Agreement. The Trustee refers all parties to the Purchase Agreement, a copy of which is attached to the Gupta Declaration as **Exhibit "1"**. In the event of a conflict between the summary below and the Purchase Agreement, the terms of the Purchase Agreement shall prevail.

Local Rule	Disclosure
6004(b)(1)	*"A copy of the proposed purchase agreement, or a form of such agreement substantially similar to the one the debtor reasonably believes it will execute in connection with the proposed sale."* A copy of the Purchase Agreement is attached to the Gupta Declaration as **Exhibit "1"**.
6004(b)(2)	*"A list of all lien holders with an interest in the property to be sold under the sale motion"* A list of all liens asserted against the Property is in the Preliminary Title Report attached to the Gupta as **Exhibit "2"**.
6004(b)(3)	*"A copy of a proposed form of sale order"* The proposed Sale Order is attached to the Motion as **Exhibit "A"**.
6004(b)(4)	*"A request, if necessary, for the appointment of a consumer privacy"* N/A
6004(b)(5)	*6004(b)(5) "The sale motion must highlight material terms, and shall indicate the location"* The material terms of the Purchase Agreement are highlighted and cited in the Motion, ¶¶ 19, 24, 31.
6004(b)(6)(A)	*6004(b)(6)(A) "If the proposed sale is to an insider, as defined in 11 U.S.C. § 101, the sale"* N/A
6004(b)(6)(B)	*"If a proposed buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment, the sale motion must disclose the material terms of any such agreements."* N/A
6004(b)(6)(C)	*"The sale motion must highlight any provisions pursuant to which an entity is being released or claims against any entity are being waived or otherwise satisfied."* N/A
6004(b)(6)(D)	*"The sale motion must disclose whether an auction is contemplated, and highlight any provision in which the debtor has agreed not to solicit competing offers for the property subject to the sale motion or to otherwise limit the marketing of the property."* N/A

Local Rule	**Disclosure**
6004(b)(6)(E)	*"The sale motion must highlight any deadlines for the closing of the proposed sale or deadlines that are conditions to closing the proposed transaction."* Due Due Diligence Period expires December 26, 2018; deadline for the close of Escrow is January 10, 2019, but no later than fifteen (15) days after Due Diligence Period expires, offer contingent upon due diligence.
6004(b)(6)(F)	*"The sale motion must highlight whether the proposed purchaser has submitted or will be required to submit a good faith deposit and, if so, the conditions under which the deposit may be forfeited."* Purchaser paid a $50,000 earnest money deposit to Fidelity, currently held in escrow with Fidelity. County is entitled to receive a full refund of its earnest money deposit from Fidelity in the event the County unilaterally elects to cancel the purchase transaction relating to the Property for any reason during the Due Diligence Period, which refund will not require the Trustee's approval. *See* Purchase Agreement, p. 2, § 5, **Exhibit "1"** to Gupta Decl.
6004(b)(6)(G)	*"The sale motion must highlight any provision pursuant to which a debtor is entering into any interim agreements or arrangements with the proposed purchaser, such as interim management arrangements (which, if out of the ordinary course, also must be subject to notice and a hearing under 11 U.S.C. §363(b)), and the terms of the agreements."* N/A
6004(b)(6)(H)	*"The sale motion must highlight any provision pursuant to which a debtor proposes to release sale proceeds on or after the closing without further court order, or to provide for a definitive allocation of sale proceeds."* No provision of the Purchase Agreement provides for a release or allocation of the Purchase Price. However, the Trustee proposes to distribute the sale proceed pursuant to a plan confirmed by the Bankruptcy Court. See Motion, ¶ .
6004(b)(6)(I)	*"The sale motion must highlight any provision seeking to have the sale declared exempt from taxes under 11 U.S.C. § 1146(a), and the type of tax (e.g., recording tax, stamp tax, use tax, or capital gains tax) for which the exemption is sought. It is not sufficient to refer simply to 'transfer' taxes and the state or states in which the affected property is located."* N/A
6004(b)(6)(J)	*"If the debtor proposes to sell substantially all of its assets, the sale motion must highlight whether the debtor will retain, or have reasonable access to, its books and records to enable it to administer its bankruptcy case."* N/A
6004(b)(6)(K)	*"The sale motion must highlight any provision pursuant to which the debtor seeks to sell or otherwise limit any rights to pursue avoidance claims under Chapter 5 of Title 11 of the United States Code."* N/A
6004(b)(6)(L)	*"The sale motion must highlight any provision limiting the proposed purchaser's successor liability."* N/A

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

Local Rule	Disclosure
6004(b)(6)(M)	*"The sale motion must highlight any provision by which the debtor seeks to sell property free and clear of a possessory leasehold interest, license or other right."* The Assets will be sold free and clear of all liens, claims and encumbrances. *See* Motion, Section IV.C
6004(b)(6)(N)	*"The sale motion must highlight any terms with respect to credit bidding pursuant to 11 U.S.C. § 363(k)."* N/A
6004(b)(6)(O)	*"The sale motion must highlight any provision whereby the debtor seeks relief from the fourteen (14) day stay imposed by Fed. R. Bankr. P. 6004(h)."* N/A

Lewis Roca ROTHGERBER CHRISTIE
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996