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12 Proposed Counsel for Grant Lyon as Chief Restructuring Officer
of Debtors and Debtors-in-Possession

13 UNITED STATES BANKRUPTCY COURT

14 CENTRAL DISTRICT OF CALIFORNIA

15 NORTHERN DIVISION

16
17
18 In re:

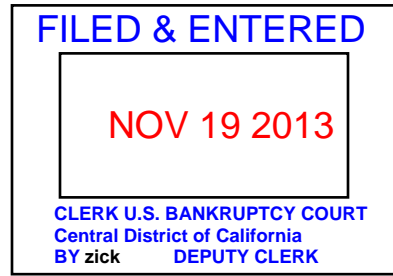
19 NESBITT PORTLAND PROPERTY,
20 LLC; NESBITT BELLEVUE PROPERTY
21 LLC; NESBITT LYNNWOOD
22 PROPERTY LLC; NESBITT EL PASO
23 PROPERTY LP; NESBITT DENVER
24 PROPERTY LLC; NESBITT
25 COLORADO SPRINGS PROPERTY
26 LLC; NESBITT LIVONIA PROPERTY
27 LLC; NESBITT BLUE ASH PROPERTY
28 LLC;

Debtors.

Case No.: 9:12-bk-12883-RR
[Chapter 11]

Jointly Administered with Case Nos.: 12-12884-RR;
12-12888-RR; 12-12889-RR; 12-12890-RR; 12-
12891-RR; 12-12894-RR; 12-12895-RR

**ORDER: (A) APPROVING THE SALE OF
SUBSTANTIALLY ALL ASSETS OF
DEBTORS; (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF
CERTAIN CONTRACTS; AND (C)
GRANTING OTHER RELATED RELIEF**



1 This matter is before the Court on the motion (the “Motion”)¹ of the Chief Restructuring
2 Officer (the “CRO”) on behalf of the above-captioned debtors and debtors in possession (the
3 “Debtors”) for the entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the
4 United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007 and 9014 of the
5 Federal Rules of Bankruptcy Procedure (as amended from time to time, the “Bankruptcy
6 Rules”), and Rules 2002-1, 6004-1(b) 9013-1-4 of the Local Rules of Bankruptcy Practice and
7 Procedures of the Bankruptcy Court for the Central District of California (the “Local Rules”) and
8 Article IV.E. of the *Third Amended Consensual Joint Plan of Reorganization for Debtors*
9 *Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the Secured Lender and by the*
10 *Debtors* [Docket No. 456] (the “Plan”): (a) approving the sale of substantially all of the
11 Debtors’ assets free and clear of liens, claims, encumbrances, and other interests, pursuant to the
12 Agreement of Purchase and Sale (the “Purchase Agreement”), in the form attached to the Motion
13 as Exhibit B, between the Debtors, as Sellers, and ES Feeholder, LLC, as Purchaser (the
14 “Purchaser”); (b) approving the assumption and assignment of certain of the Debtors’ executory
15 contracts and unexpired leases related thereto; and (c) granting related relief; and the Court
16 having reviewed the evidence presented in support of the relief requested by the CRO in the
17 Motion; and it appearing that the Court has jurisdiction over this matter; and it further appearing
18 that the legal and factual bases set forth in the Motion establish just cause for the relief granted
19 herein; and after due deliberation thereon,

20 **THE COURT HEREBY FINDS AND DETERMINES THAT:**

21 **Jurisdiction, Final Order and Statutory Predicates**

22 A. The Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C.
23 §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N)
24 and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and
25 1409.

26
27
28 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 B. This Order constitutes a final and appealable Order within the meaning of 28
2 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent
3 necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure,
4 as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just
5 reason for delay in the implementation of this Order, and expressly directs entry of judgment as
6 set forth herein.

7 C. The statutory predicates for the relief requested in the Motion are sections 105(a),
8 363(b), (f), and (m), and 365 of the Bankruptcy Code and Bankruptcy Rules 2002(a)(2), 6004(a),
9 (b), (c), (e), (f) and (h), 6006(a), (c) and (d), 9007 and 9014.

10 D. On October 4, 2013, the Court confirmed the Plan and entered the *Findings of*
11 *Fact, Conclusions of Law and Order Confirming Third Amended Consensual Joint Plan of*
12 *Reorganization for Debtors Pursuant to Chapter 11 of the Bankruptcy Code Proposed by the*
13 *Secured Lender and by the Debtors* [Docket No. 456] (the “Confirmation Order”), pursuant to
14 which the Court approved certain procedures for the Debtors with their professionals (including
15 specifically the CRO as designated in the Plan) to, among other things, market and provide
16 notice of a sale of the Debtors’ assets and potential assignment of executory contracts and
17 unexpired leases.

18 E. In accordance with the Plan and Confirmation Order, the exercise of business
19 judgment by the CRO constitutes the exercise of such business judgment by and on behalf of the
20 Debtors.

21 F. The findings of fact and conclusions of law set forth herein constitute the Court’s
22 findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to
23 this proceeding pursuant to Bankruptcy Rule 9014.

24 G. To the extent any of the following findings of fact constitute conclusions of law,
25 they are hereby adopted as such. To the extent any of the following conclusions of law
26 constitute findings of fact, they are hereby adopted as such.

27 H. In the absence of a stay pending appeal, the Purchaser will be acting in good faith
28 pursuant to section 363(m) of the Bankruptcy Code in closing the transaction contemplated by

1 the Purchase Agreement (defined below) at any time on or after entry of this Order, and cause
2 has been shown as to why this Order should not be subject to the stay provided by Bankruptcy
3 Rules 6004(h) and 6006(d).

4 **Notice of the Sale and the Cure Amounts**

5 I. Actual written notice of the Motion, the Sale, the assumption, assignment and sale
6 of the Executory Contracts and Leases and a reasonable opportunity to object or be heard with
7 respect to the Motion and the relief requested therein has been afforded to all known interested
8 persons and entities, including, but not limited to the following parties (the "Notice Parties"): (a)
9 Unites States Trustee; (b) the Secured Lender and its counsel; (c) Hilton; and (d) any party
10 known to be directly affected by this Motion including all non-Debtor parties to each of the
11 Executory Contracts and Leases that the Debtors propose to assume and assign to the Purchaser
12 (each a "Contract Counterparty" and collectively, the "Contract Counterparties").

13 J. On November 8, 2013, the Debtors served the Cure Notice upon the Purchaser
14 and the Contract Counterparties: (i) that the Debtors seek to assume and assign certain Executory
15 Contracts and Leases on the date of closing (the "Closing Date"); and (ii) of the relevant cure
16 amounts. Pursuant to Fed. R. Bankr. P. 6006(c), the Court finds that the service of such Cure
17 Notice was good, sufficient and appropriate under the circumstances and no further notice need
18 be given in respect of establishing a cure amount for the Executory Contracts and Leases. The
19 Purchaser and the Contract Counterparties have had an opportunity to object to the cure amounts
20 set forth in the Cure Notice.

21 K. In accordance with Article V of the Plan, the Debtors served a notice of rejection
22 to counterparties to contracts and unexpired real property leases that are not being assumed by
23 the Purchaser and are being rejected (the "Rejection Notice"). The Rejection Notice provided
24 notice of the rejection of the contracts or leases and stated what the Debtors' believe to be the
25 rejection damage. The Rejection Notice also stated that the counterparties must file a proof of
26 claim for the rejection damages whether such counterparties agree or disagree with the stated
27 amount on the Rejection Notice for the rejection damages on or before the later of (a) thirty dates
28

1 after the effective date of the rejection and (b) thirty days after the Effective Date (as defined in
2 the Plan).

3 L. The CRO has articulated good and sufficient reasons for the Court to grant the
4 relief requested in the Motion regarding the sales process.

5 M. The Cure Notice provided the Purchaser and the Contract Counterparties with
6 proper notice of the potential assumption and assignment of the Executory Contracts and Leases
7 and any cure amount relating thereto, and the procedures set forth therein with regard to any such
8 cure amount to satisfy the provisions of 11 U.S.C. § 365 and Fed. R. Bankr. P. 6006.

9 N. As evidenced by the affidavits of service previously filed with the Court, proper,
10 timely, adequate, and sufficient notice of the Motion and Sale has been provided in accordance
11 with the Plan, Confirmation Order and sections 102(1), 363 and 365 of the Bankruptcy Code and
12 Bankruptcy Rules 2002, 6004, 6006 and 9014. The notices described in paragraphs I through K
13 above were good, sufficient and appropriate under the circumstances, and no other or further
14 notice of the Motion, Sale, or assumption, assignment of the Executory Contracts and Leases is
15 required.

16 **Good Faith of the Purchaser**

17 O. The Purchaser is not an “insider” of the Debtors, as that term is defined in section
18 101(31) of the Bankruptcy Code.

19 P. The Purchaser is purchasing the Purchased Assets in good faith and is a good faith
20 buyer within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to
21 the full protection of that provision, and otherwise has proceeded in good faith in all respects in
22 connection with this proceeding in that, inter alia: (a) the Purchaser recognized that the Debtors
23 were free to deal with any other party interested in acquiring the Purchased Assets; (b) the
24 Purchaser complied with the provisions in the Plan and Confirmation Order; (c) the Purchaser
25 agreed to subject its bid to the competitive bidding procedures set forth in in the Plan; (d) the
26 Purchaser in no way induced or caused the chapter 11 filing of any of the Debtors; (e) all
27 payments to be made by the Purchaser and other agreements or arrangements entered into by the
28 Purchaser in connection with the Sale have been disclosed; (f) the Purchaser has not violated

1 section 363(n) of the Bankruptcy Code by any action or inaction; (g) no common identity of
2 directors or controlling stockholders exists between the Purchaser and any of the Debtors; and
3 (h) the negotiation and execution of the Purchase Agreement and any other agreements or
4 instruments related thereto were at arm's-length and in good faith.

5 **Highest or Best Offer**

6 Q. Prior to selecting the Purchaser as the Winning Bidder under the Plan, JLL at the
7 direction of the CRO solicited offers to acquire the Purchased Assets from a wide variety of
8 parties, including the Nesbitt Bidder. In doing so, the CRO afforded potential bidders due
9 diligence access to provide any such potential bidders an opportunity to submit a qualified bid.

10 R. The Purchase Agreement constitutes the highest or best offer for the Purchased
11 Assets, and will provide a greater recovery for the Debtors' estate than would be provided by any
12 other available alternative. The CRO's determination that the Purchase Agreement constitutes
13 the highest or best offer for the Purchased Assets was a reasonable exercise of the CRO's
14 business judgment, and followed the sales process approved by this Court in the Plan and
15 Confirmation Order.

16 S. The Purchase Agreement represents a fair and reasonable offer to purchase the
17 Purchased Assets under the circumstances of these chapter 11 cases, and was in conformance
18 with the procedures set forth in the Plan and approved in the Confirmation Order. No other
19 person or entity or group of entities has offered to purchase the Purchased Assets for greater
20 economic value to the Debtors' estate than the Purchaser.

21 T. The Nesbitt Bidder submitted a Qualified Bid that was materially less than the
22 Winning Bidder, and agreed with the CRO that an open auction was not required. The Nesbitt
23 Bidder remains outstanding as a Back-Up Bid, subject to the right of the Secured Lender to
24 submit a Credit Bid.

25 U. Approval of the Motion and the Purchase Agreement and each of its exhibits, and
26 the consummation of the transactions contemplated thereby is in the best interests of the Debtors,
27 their creditors, their estates and other parties in interest.

28

1 V. The CRO has demonstrated compelling circumstances and a good, sufficient, and
2 sound business purpose and justification for the Sale.

3 **No Fraudulent Transfer**

4 W. The consideration provided by the Purchaser pursuant to the Purchase Agreement
5 is fair and adequate and constitutes reasonably equivalent value and fair consideration under the
6 Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the
7 District of Columbia.

8 **Validity of Transfer**

9 X. The Debtors and CRO have full corporate power and authority to execute and
10 deliver the Purchase Agreement and all other documents contemplated thereby, and no further
11 consents or approvals are required for the Debtors to consummate the transactions contemplated
12 by the Purchase Agreement, except as otherwise set forth in the Purchase Agreement.

13 Y. The transfer of each of the Purchased Assets to the Purchaser will be as of the
14 closing date a legal, valid, and effective transfer of such assets, and vests or will vest the
15 Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear
16 of all liens and Claims (as defined below) (collectively, "Liens") accruing, arising or relating to
17 any time prior to the Closing Date, except for Permitted Encumbrances and liabilities explicitly
18 assumed under the Purchase Agreement (the "Assumed Liabilities").

19 **Section 363(f) is Satisfied**

20 Z. The Purchaser would not have entered into the Purchase Agreement and would
21 not consummate the transactions contemplated thereby (by paying the Purchase Price and
22 assuming the assumed liabilities) if the sale of the Purchased Assets to the Purchaser, and the
23 assumption, assignment and sale of the Executory Contracts and Leases to the Purchaser, were
24 not, except as otherwise provided in the Purchase Agreement with respect to the Assumed
25 Liabilities, free and clear of all Liens and Claims (as defined below) of any kind or nature
26 whatsoever, or if the Purchaser would, or in the future could (except and only to the extent
27 expressly provided in the Purchase Agreement and with respect to the Assumed Liabilities), be
28 liable for any of such Liens or Claims (as defined below), including, but not limited to, Liens or

1 Claims (as defined below) in respect of the following: (1) all mortgages, deeds of trust and
2 security interests; (2) any pension, welfare, compensation or other employee benefit plans,
3 agreements, practices and programs, including, without limitation, any pension plan of any
4 Debtor; (3) any other employee, worker's compensation, occupational disease or unemployment
5 or temporary disability related claim, including, without limitation, claims that might otherwise
6 arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as
7 amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the
8 Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Worker
9 Adjustment and Retraining Act of 1988, (g) the Age Discrimination and Employee Act of 1967
10 and Age Discrimination in Employment Act, as amended, (h) the Americans with Disabilities
11 Act of 1990, (i) the Consolidated Omnibus Budget Reconciliation Act of 1985, (j) the California
12 Labor Code; (k) state discrimination laws, (l) state unemployment compensation laws or any
13 other similar state laws, or (m) any other state or federal benefits or claims relating to any
14 employment with any of the Debtors or any of their respective predecessors; (4) any bulk sales or
15 similar law; (5) any tax statutes or ordinances, including, without limitation, the Internal
16 Revenue Code of 1986, as amended; (6) any environmental law(s); and (7) any theories of
17 successor liability.

18 AA. The Debtors may sell the Purchased Assets free and clear of all Liens and Claims
19 (as defined below) against the Debtors, their estates or any of the Purchased Assets (except for
20 any Assumed Liabilities under the Purchase Agreement) because, in each case, one or more of
21 the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those
22 holders of Liens or Claims (as defined below) against the Debtors, their estates or any of the
23 Purchased Assets who did not object, or who withdrew their objections, to the Sale or the Motion
24 are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those
25 holders of such Liens or Claims who did object fall within one or more of the other subsections
26 of section 363(f) and are adequately protected by having their Liens and/or Claims (as defined
27 below), if any, in each instance against the Debtors, their estates or any of the Purchased Assets,
28 attach to the cash proceeds of the Sale ultimately attributable to the Purchased Assets in which

1 such creditor alleges an interest, in the same order of priority, with the same validity, force and
2 effect that such creditor had prior to the Sale, subject to any claims and defenses the Debtors and
3 their estates may possess with respect thereto.

4 **Assumption and Assignment of the Executory Contracts and Leases**

5 BB. The assumption and assignment of the Executory Contracts and Leases pursuant
6 to the terms of this Order is integral to the Purchase Agreement and is in the best interests of the
7 Debtors and their estates, creditors and other parties in interest, and represents the reasonable
8 exercise of sound and prudent business judgment by the CRO, on behalf of the Debtors.

9 CC. The amounts necessary to cure all monetary defaults and pay all actual pecuniary
10 losses under the Executory Contracts and Leases under sections 365(b)(1)(A) and (B) and
11 365(f)(2)(A) of the Bankruptcy Code (the “Cure Amounts”) have been set forth in the Cure
12 Notice, filed by the Debtors. Any disputed Cure Amounts have been resolved by this Court.

13 DD. Pursuant to the terms of the Purchase Agreement, the Purchaser will: (i) cure
14 and/or provide adequate assurance of cure of any monetary default existing prior to the Closing
15 Date under any of the Executory Contracts and Leases, within the meaning of section
16 365(b)(1)(A) of the Bankruptcy Code; (ii) provide compensation or adequate assurance of
17 compensation to any party for actual pecuniary loss to such party resulting from a default prior to
18 the Closing Date under any of the Executory Contracts and Leases, within the meaning of section
19 365(b)(1)(B) of the Bankruptcy Code; and (iii) provide adequate assurance of its future
20 performance under the relevant Executory Contracts and Leases within the meaning of sections
21 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

22 **Compelling Circumstances for an Immediate Sale**

23 EE. It is essential that the Sale of the Purchased Assets occur within the time
24 constraints set forth in the Purchase Agreement. Time is of the essence in consummating the
25 Sale.

26 FF. Given all of the circumstances of these chapter 11 cases and the adequacy and fair
27 value of the purchase price under the Purchase Agreement, the proposed Sale of the Purchased
28

1 Assets to the Purchaser constitutes a reasonable and sound exercise of business judgment by the
2 CRO, on behalf of the Debtors, and should be approved.

3 GG. The consummation of the transaction is legal, valid and properly authorized under
4 all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a),
5 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections
6 have been complied with in respect of the transaction.

7 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND**
8 **DECREEED THAT:**

9 **General Provisions**

10 1. The relief requested in the Motion is granted and approved, and the Sale
11 contemplated thereby is approved as set forth in this Order.

12 2. All objections to the entry of this Order or the relief granted herein and requested
13 in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved
14 pursuant to the terms hereof, if any, are hereby denied and overruled on the merits with
15 prejudice.

16 **Approval of the Purchase Agreement**

17 3. The Purchase Agreement and all other ancillary documents, and all of the terms
18 and conditions thereof, are hereby approved.

19 4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized
20 and empowered to take any and all actions necessary or appropriate to (i) (a) consummate the
21 Sale of each of the Purchased Assets to the Purchaser pursuant to and in accordance with the
22 terms and conditions of the Purchase Agreement, or (b) alternatively, if the Purchaser does not
23 close on the Sale of the Purchased Assets pursuant to the terms of the Purchase Agreement,
24 consummate the Sale of each of the Purchased Assets to the Secured Lender if the Secured
25 Lender submits a Credit Bid that is higher and better than a Qualified Bid by the Nesbitt Bidder,
26 in which case the Secured Lender will be deemed to be the Purchaser with respect to the
27 provisions of this Order, or the Nesbitt Bidder pursuant to and in accordance with the terms and
28 conditions of the Purchase Agreement with the Nesbitt Bidder, in which case the Nesbitt Bidder

1 will be deemed to be the Purchaser and the Purchase Agreement with the Nesbitt Bidder will be
2 deemed to be the Purchase Agreement with respect to the provisions of this Order, (ii) close the
3 Sale as contemplated in the Purchase Agreement and this Order, and (iii) execute and deliver,
4 perform under, consummate, implement and close fully the Purchase Agreement, together with
5 all additional instruments and documents that may be reasonably necessary or desirable to
6 implement the Purchase Agreement and the Sale, as may be reasonably necessary or appropriate
7 to the performance of the obligations as contemplated by the Purchase Agreement and such other
8 ancillary documents.

9 5. This Order shall be binding in all respects upon the Debtors, their estates, all
10 holders of equity interests in any Debtor, all holders of any Claim(s) (whether known or
11 unknown) against any Debtor, any holders of Liens or Claims against or on all or any portion of
12 the Purchased Assets, all Contract Counterparties, the Purchaser and all successors and assigns
13 of the Purchaser, the Purchased Assets and any trustees, if any, subsequently appointed in any of
14 the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of
15 any of the Debtors' cases. This Order and the Purchase Agreement shall inure to the benefit of
16 the Debtors, their estates, their creditors, the Purchaser and their respective successors and
17 assigns.

18 **Transfer of the Purchased Assets**

19 6. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy
20 Code and Article IV of the Plan, the Debtors are authorized to transfer the Purchased Assets on
21 the Closing Date. Such Purchased Assets shall be transferred to the Purchaser upon and as of the
22 Closing Date and such transfer shall constitute a legal, valid, binding and effective transfer of
23 such Purchased Assets and, upon the Debtors' receipt of the Purchase Price, shall be free and
24 clear of all Liens and claims, including, without limitation, all "claims" within the meaning of
25 sections 101(5), 102(2) and 105 of the Bankruptcy Code, and all interests, encumbrances, rights
26 of setoff, recoupment, netting and deductions ("Claims"), except Assumed Liabilities under the
27 Purchase Agreement. Upon the Closing, the Purchaser shall take title to and possession of the
28 Purchased Assets subject only to the Assumed Liabilities. Pursuant to section 363(f) of the

1 Bankruptcy Code, other than with respect to the Assumed Liens and Assumed Liabilities, the
2 transfer of title to the Purchased Assets and the Executory Contracts and Leases shall be free and
3 clear of (a) any and all Liens, (b) any and all liabilities, and (c) any and all Claims including,
4 without limitation, any and all claims pursuant to any successor or successor in interest liability
5 theory; provided, however, that the Purchaser shall not be relieved of liability with respect to the
6 Assumed Liabilities, including any obligations accruing under the Executory Contracts and
7 Leases from and after the Closing. All Liens and/or Claims shall attach solely to the proceeds of
8 the Sale with the same validity, priority, force and effect that they now have as against the
9 Purchased Assets, subject to any claims and defenses the Debtors and their estates may possess
10 with respect thereto.

11 7. On or before the Closing Date, the Debtors shall transfer all business,
12 employment and other records that are kept or maintained in the ordinary course of business by
13 the Debtors and their agents in connection with the operation of the Debtors' businesses. In
14 addition, the Debtors shall cooperate fully with Purchaser in (i) effectuating the transfer to the
15 Purchaser of all transferable licenses and permits, including liquor license, or all necessary
16 documentation to effectuate such transfers to the extent permitted by applicable law and (ii) the
17 obtaining of any new or replacement licenses by Purchaser; provided, however, that Purchaser is
18 authorized to continue to operate under the Debtors' liquor licenses until, as applicable, the
19 transfer of any such liquor license to Purchaser has been effectuated or Purchaser has obtained a
20 new or replacement liquor license.

21 8. Except as expressly provided by the Purchase Agreement with respect to
22 Assumed Liabilities and Permitted Encumbrances, all persons and entities holding Liens, Claims
23 or interests in all or any portion of the Purchased Assets arising under or out of, in connection
24 with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors'
25 business prior to the Closing Date or the transfer of the Purchased Assets to the Purchaser,
26 hereby are forever barred, estopped and permanently enjoined from asserting against the
27 Purchaser or its successors or assigns, their property or the Purchased Assets, such persons' or
28 entities' Liens or Claims in and to the Purchased Assets. On the Closing Date, each creditor is

1 authorized and directed to execute such documents and take all other actions as may be deemed
2 by the Purchaser to be necessary or desirable to release Liens or Claims on the Purchased Assets,
3 if any, as provided for herein, as such Liens or Claims may have been recorded or may otherwise
4 exist.

5 9. To the fullest extent permitted by applicable law, neither the Purchaser nor its
6 affiliates, successors or assigns shall, as a result of the consummation of the transactions set forth
7 in the Purchase Agreement: (i) be a successor to the Debtors or the Debtors' estates; (ii) have, *de*
8 *facto* or otherwise, merged or consolidated with or into the Debtors or the Debtors' estates; or
9 (iii) be a continuation or substantial continuation of the Debtors or any enterprise of the Debtors.
10 Except for the Assumed Liabilities, the Purchaser shall not assume, nor be deemed to assume, or
11 in any way be responsible for any liability or obligation of any of the Debtors and/or their estates
12 including, but not limited to, any bulk sales law.

13 10. All persons and entities that are in possession of some or all of the Purchased
14 Assets on the Closing Date are directed to surrender possession of such Purchased Assets to the
15 Purchaser or its assignee on the Closing Date.

16 11. A certified copy of this Order may be filed with the appropriate clerk and/or
17 recorded with the recorder to act to cancel any of the Liens, Claims and other encumbrances of
18 record.

19 12. If any person or entity which has filed statements or other documents or
20 agreements evidencing Liens on, Claims or interests in, all or any portion of the Purchased
21 Assets shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing
22 and executed by the appropriate parties, termination statements, instruments of satisfaction,
23 releases of liens and easements, and any other documents necessary or desirable to the Purchaser
24 for the purpose of documenting the release of all Liens or Claims, which the person or entity has
25 or may assert with respect to all or any portion of the Purchased Assets, the Debtors are hereby
26 authorized and directed, and the Purchaser is hereby authorized, to execute and file such
27 statements, instruments, releases and other documents on behalf of such person or entity with
28 respect to the Purchased Assets.

1 13. With respect to the transactions consummated pursuant to this Order, this Order is
2 and shall be sole and sufficient evidence of the transfer of title to the Purchaser, and the sale
3 transaction consummated pursuant to this Order shall be binding upon and govern the acts of all
4 persons and entities, including, without limitation, all filing agents, filing officers, title agents,
5 title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative
6 agencies, governmental departments, secretaries of state, federal and local officials, and all other
7 persons and entities who may be required by operation of law, the duties of their office, or
8 contract, to accept, file, register or otherwise record or release any documents or instruments, or
9 who may be required to report or insure any title or state of title in or to any lease; and each of
10 the foregoing persons and entities is hereby directed to accept this Order as sole and sufficient
11 evidence of such transfer of title and shall rely upon this Order in consummating the transactions
12 contemplated hereby.

13 14. The provisions of this Order authorizing the sale of the Purchased Assets free and
14 clear of Liens, other than Assumed Liabilities, shall be self-executing, and neither the Debtors
15 nor the Purchaser shall be required to execute or file releases, termination statements,
16 assignments, consents, or other instruments to effectuate, consummate and implement the
17 provisions of this Order; provided, however, that the Debtors, the CRO and the Purchaser, and
18 each of their respective officers, employees and agents are authorized and empowered to take all
19 actions and execute and deliver any and all documents and instruments that either the Debtors or
20 the Purchaser deem necessary or appropriate to implement and effectuate the terms of the
21 Purchase Agreement and this Order.

22 **Executory Contracts and Leases**

23 15. The Debtors are authorized and directed to assume and assign the Executory
24 Contracts and Leases to the Purchaser free and clear of all Liens and Claims, as described herein.
25 The payment of the applicable Cure Amounts (if any) by the Purchaser shall (a) effect a cure of
26 all defaults existing thereunder as of the Closing Date, (b) compensate for any actual pecuniary
27 loss to such non-Debtor party resulting from such default, and (c) together with the assumption
28 of the Executory Contracts and Leases by the Purchaser, constitute adequate assurance of future

1 performance thereof. The Purchaser shall then have assumed the Executory Contracts and
2 Leases and, pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtors of
3 such Executory Contracts and Leases shall not be a default thereunder. After the payment of the
4 relevant Cure Amounts by the Purchaser, neither the Debtors nor the Purchaser shall have any
5 further liabilities to the Contract Counterparties other than the Assumed Liabilities.

6 16. Any provisions in any Executory Contract or Lease that prohibits or conditions
7 the assignment of such Executory Contract or Lease or allows the party to such Executory
8 Contract or Lease to terminate, recapture, impose any penalty, condition on renewal or extension
9 or modify any term or condition upon the assignment of such Executory Contract or Lease,
10 constitute unenforceable anti-assignment provisions that are void and of no force and effect. All
11 other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the
12 assumption by the Debtors and assignment to the Purchaser of the Executory Contract or Lease
13 have been satisfied. Upon closing, in accordance with sections 363 and 365 of the Bankruptcy
14 Code, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the
15 Debtors under the Executory Contract or Lease.

16 17. Upon closing and the payment of the relevant Cure Amounts, if any, the
17 Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable
18 Executory Contract or Lease and the Debtors shall be relieved, pursuant to section 365(k) of the
19 Bankruptcy Code, from any further liability under the Executory Contract or Lease, except to the
20 extent of claims covered by the Debtors' existing insurance policies.

21 18. Upon the payment of the applicable Cure Amount, if any, the Executory Contracts
22 and Leases will remain in full force and effect, and no default shall exist under the Executory
23 Contracts and Leases nor shall there exist any event or condition which, with the passage of time
24 or giving of notice, or both, would constitute such a default.

25 19. There shall be no rent accelerations, assignment fees, increases (including
26 advertising rates) or any other fees charged to the Purchaser or the Debtors solely as a result of
27 the assumption and assignment of the Executory Contracts and Leases.

28

1 20. Other than as provided in this Order, pursuant to sections 105(a), 363 and 365 of
2 the Bankruptcy Code, all Contract Counterparties are forever barred and permanently enjoined
3 from raising or asserting against the Purchaser any assignment fee, default, breach or claim or
4 pecuniary loss, or condition to assignment, arising under or related to the Executory Contracts
5 and Leases existing as of the Closing Date or arising by reason of the Closing.

6 21. The Purchase Agreement and any related agreements, documents or other
7 instruments may be modified, amended or supplemented by the parties thereto and in accordance
8 with the terms thereof, without further order of the Court, provided that any such modification,
9 amendment or supplement does not have a material adverse effect on the Debtors' estates.

10 22. All contracts and leases listed on Exhibit C to the Purchase Agreement are
11 deemed rejected. Counterparties to such contracts and leases must file a proof of claim for the
12 rejection damages whether such counterparties agree or disagree with the stated amount on the
13 Rejection Notice for the rejection damages on or before the later of (a) thirty dates after the
14 effective date of the rejection and (b) thirty days after the Effective Date (as defined in the Plan).

15 **Other Provisions**

16 23. Effective upon the Closing Date and except as otherwise provided by stipulations
17 filed with or announced to the Court with respect to a specific matter, all persons and entities are
18 forever prohibited and permanently enjoined from commencing or continuing in any manner any
19 action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or
20 other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, with
21 respect to any (a) Lien or Claim arising under, out of, in connection with or in any way relating
22 to the Debtors, the Purchaser, the Purchased Assets, or the operation of the Purchased Assets
23 prior to the Closing of the Sale, or (b) successor liability, including, without limitation, the
24 following actions: (i) commencing or continuing in any manner any action or other proceeding
25 against the Purchaser, its successors or assigns, assets or properties; (ii) enforcing, attaching,
26 collecting or recovering in any manner any judgment, award, decree or order against the
27 Purchaser, its successors, assets or properties; (iii) creating, perfecting or enforcing any Lien or
28 Claim against the Purchaser, its successors or assigns, assets or properties; (iv) asserting any

1 setoff, right of subrogation or recoupment of any kind against any obligation due the Purchaser
2 or its successors or assigns; (v) commencing or continuing any action, in any manner or place,
3 that does not comply or is inconsistent with the provisions of this order or other orders of the
4 Court, or the agreements or actions contemplated or taken in respect thereof; or (vi) revoking,
5 terminating or failing or refusing to renew any license, permit or authorization to operate any of
6 the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

7 24. Except for the Assumed Liabilities or as otherwise expressly set forth in the
8 Purchase Agreement, the Purchaser shall not have any liability or other obligation of the Debtors
9 arising under or related to any of the Purchased Assets. Without limiting the generality of the
10 foregoing, and except for the Assumed Liabilities provided in the Purchase Agreement, the
11 Purchaser shall not be liable for any claims against the Debtors or any of its predecessors or
12 affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or
13 character, including, but not limited to, any theory of antitrust, environmental, successor or
14 transferee liability, labor law, *de facto* merger or substantial continuity, whether known or
15 unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent,
16 with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date,
17 including, but not limited to, liabilities on account of any taxes arising, accruing or payable
18 under, out of, in connection with, or in any way relating to the operation of any of the Purchased
19 Assets prior to the Closing Date. The Purchaser has given substantial consideration under the
20 Purchase Agreement for the benefit of the holders of any Liens or Claims. The consideration
21 given by the Purchaser shall constitute valid and valuable consideration for the releases of any
22 potential claims of successor liability of the Purchaser, which releases shall be deemed to have
23 been given in favor of the Purchaser by all holders of Liens or Claims against or interests in the
24 Debtors or any of the Purchased Assets.

25 25. The transactions contemplated by the Purchase Agreement are undertaken by the
26 Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the
27 Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization
28 provided herein to consummate the Sale shall not affect the validity of the Sale (including the

1 assumption and assignment of the Executory Contracts and Leases), unless such authorization
2 and such Sale are duly stayed pending such appeal. The Purchaser is a good faith buyer within
3 the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full
4 protections of section 363(m) of the Bankruptcy Code.

5 26. Notwithstanding the provisions of Bankruptcy Rule 6004 and Bankruptcy Rule
6 6006 or any applicable provisions of the Local Rules, this Order shall not be stayed for fourteen
7 (14) days after the entry hereof, but shall be effective and enforceable immediately upon entry,
8 and the fourteen (14) day stay provided in such rules is hereby expressly waived and shall not
9 apply. Time is of the essence in approving the Sale, and the Debtors and the Purchaser intend to,
10 and are authorized to, close the Sale as soon as practicable.

11 27. No bulk sales law or any similar law of any state or other jurisdiction applies in
12 any way to the Sale.

13 28. Pursuant to section 1146(a) of the Bankruptcy Code and the Confirmation Order,
14 any transfers of property pursuant to the Purchase Agreement, including the recording of any
15 mortgages or liens or amendments thereto, shall not be subject to any document recording tax,
16 stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer
17 tax, mortgage recording tax, or other similar tax or governmental assessment in the United States
18 (including any state, municipality, or county), and based upon the entry of the Confirmation
19 Order and this Order, the appropriate state or local governmental officials or agents shall forgo
20 the collection of any such tax or governmental assessment and accept for filing and recordation
21 any of the foregoing instruments or other documents without the payment of any such tax,
22 recordation fee, or governmental assessment. For the avoidance of doubt, the foregoing
23 exemption includes sales and use taxes or any similar government assessment.

24 29. The failure specifically to include any particular provision of the Purchase
25 Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being
26 the intent of the Court that the Purchase Agreement be authorized and approved in its entirety
27 except as otherwise expressly provided by in this Order.

28

1 30. The Court shall retain jurisdiction to, among other things, interpret, implement,
2 and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments
3 thereto and any waivers and consents thereunder and each of the agreements executed in
4 connection therewith to which the Debtors are a party or which has been assigned by the Debtors
5 to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in
6 any way to the Sale.

7 31. All time periods set forth in this Order shall be calculated in accordance with
8 Bankruptcy Rule 9006(a).

9 32. To the extent that this Order is inconsistent with any prior Order or pleading with
10 respect to the Motion in these chapter 11 cases, the terms of this Order shall govern.

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24 Date: November 19, 2013



Robin L. Riblet
United States Bankruptcy Judge

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled: **ORDER: (A) APPROVING THE SALE OF SUBSTANTIALLY ALL ASSETS OF DEBTORS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS; AND (C) GRANTING OTHER RELATED RELIEF** was entered on the date indicated as Entered on the first page of this judgment or order and will be served in the manner stated below:

1. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF) Pursuant to controlling General Orders and LBRs, the foregoing document was served on the following persons by the court via NEF and hyperlink to the judgment or order. As of November 19, 2013, the following persons are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email addresses stated below.

Brian D Fittipaldi on behalf of U.S. Trustee United States Trustee (ND)
brian.fittipaldi@usdoj.gov

Fredric Glass on behalf of Creditor Fair Harbor Capital, LLC
fglass@fairharborcapital.com

Jeffrey S Goodfried on behalf of Creditor HLT Existing Franchise Holding, LLC
jgoodfried@perkinscoie.com, cmallahi@perkinscoie.com

Jonathan Gura on behalf of Debtor Nesbitt Bellevue Property, LLC, a Delaware Limited Liability Company
jon@susigura.com, kim@susigura.com

Jonathan Gura on behalf of Debtor Nesbitt Blue Ash Property, LLC
jon@susigura.com, kim@susigura.com

Jonathan Gura on behalf of Debtor Nesbitt Colorado Springs Property, LLC
jon@susigura.com, kim@susigura.com

Jonathan Gura on behalf of Debtor Nesbitt Denver Property, LLC, a Delaware Limited Liability Company
jon@susigura.com, kim@susigura.com

Jonathan Gura on behalf of Debtor Nesbitt El Paso Property, L.P.
jon@susigura.com, kim@susigura.com

Jonathan Gura on behalf of Debtor Nesbitt Livonia Property LLC
jon@susigura.com, kim@susigura.com

Jonathan Gura on behalf of Debtor Nesbitt Lynnwood Property, LLC, a Delaware Limited Liability Company
jon@susigura.com, kim@susigura.com

Jonathan Gura on behalf of Debtor Nesbitt Portland Property, LLC, a Delaware Limited Liability Company
jon@susigura.com, kim@susigura.com

Richardo I Kilpatrick on behalf of Creditor Wayne County Treasurer
rkilpatrick@kaalaw.com, wjackson@kaalaw.com

Raymond F Moats on behalf of Creditor Gordon Food Service
colcaecf@weltman.com

Zachary Mosner on behalf of Creditor Washington State Taxing Agencies
bcumosner@atg.wa.gov

Bertrand Pan on behalf of Creditor ES Noteholder, LLC
bertrand.pan@dlapiper.com

Bertrand Pan on behalf of Interested Party ES Feeholder, LLC
bertrand.pan@dlapiper.com

Marion I Quesenbery on behalf of Creditor Triple B Corporation dba Charlie's Produce
marion@rjlaw.com

Terrel Ross on behalf of Interested Party TR Capital Management, LLC
tross@trcmllc.com

Joseph M Sholder on behalf of Debtor Nesbitt Bellevue Property, LLC, a Delaware Limited Liability Company
sholder@g-tlaw.com

Joseph M Sholder on behalf of Debtor Nesbitt Blue Ash Property, LLC
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Joseph M Sholder on behalf of Debtor Nesbitt Portland Property, LLC, a Delaware Limited Liability Company
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Ariella T Simonds on behalf of Interested Party Windsor Capital Group, Inc.
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Peter Susi on behalf of Debtor Nesbitt Blue Ash Property, LLC
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Peter Susi on behalf of Debtor Nesbitt Portland Property, LLC, a Delaware Limited Liability Company
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United States Trustee (ND)
ustpreion16.nd.ecf@usdoj.gov

Michael G Wilson on behalf of Creditor Consumers Energy Company
mgwilson@cmsenergy.com

Service information continued on attached page

2. SERVED BY THE COURT VIA UNITED STATES MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States mail, first class, postage prepaid, to the following persons and/or entities at the addresses indicated below:

Service information continued on attached page

3. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an Entered stamp, the party lodging the judgment or order will serve a complete copy bearing an Entered stamp by United States mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following persons and/or entities at the addresses, facsimile transmission numbers, and/or email addresses stated below:

Service information continued on attached page