

**LLC OR TRUSTEE DECLARATION
REQUIRED PRIOR TO SIGNING
FIRPTA CERTIFICATION OF NONFOREIGN STATUS**

Section 1445 of the Internal Revenue Code (the “Code”) provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. If Seller is an entity or a trustee of a trust, Seller will not be able to provide Buyer with the appropriate FIRPTA Certification of Nonforeign Status UNLESS its tax advisor first makes a determination on whether or not Seller is a “disregarded entity” or whether the trust is a “grantor trust” for tax purposes. *In order for Seller to have filed its last federal income tax return, its tax advisor would have been required to ascertain the facts and arrive at a decision on (i) whether the Seller-Entity was a “disregarded entity” or (ii) whether the Seller-Trustee was a trustee of a “grantor trust”.* Therefore, Seller hereby certifies that it has consulted with its tax advisor and the following information is provided to Buyer (through escrow) after consultation with its tax advisor:

1. Legal title to the U.S. real property interest is in the name of: _____
_____ (hereinafter referred to as the “**Legal Owner**”).
(This answer must be consistent with the preliminary title report.)

* * * * *

LLC

A disregarded entity may not certify that it is a transferor of a U. S. real property interest, as the disregarded entity is NOT the transferor for U. S. tax purposes, including Code §§897, 1031 and 1445. Rather, the owner of the disregarded entity is treated as the transferor of property and must provide a certificate of non-foreign status to avoid withholding under Code §1445. Therefore, in order for a selling entity to determine how to sign the FIRPTA Certification of Nonforeign Seller for Buyer, Seller’s tax advisor must determine whether or not the Seller is a “disregarded entity” under Treasury Regulation §1.1445-2(b)(2)(iii).

2. Legal Owner hereby certifies that it has consulted with its tax advisor and after such consultation, both the Legal Owner and its tax advisor has determined that the Legal Owner is: (check & initial one of two choices.)

____ [] A disregarded entity defined in Treasury Regulation §1.1445-2(b)(2)(iii) and the owner of the disregarded entity is _____
_____ (the “**Transferor**”).

____ [] NOT a disregarded entity defined in Treasury Regulation §1.1445-2(b)(2)(iii) and, therefore, filed a separate federal income tax return Form _____.

* * * * * **OR** * * * * *

TRUST

The person that should sign the FIRPTA Certification of Nonforeign Status under Code §1445 depends on whether or not the trust constitutes a “grantor trust” under Code §§671– 679. If the trust is a “grantor trust”, then the grantor of the trust is deemed the owner of the trust assets for income tax purposes and that person should sign the FIRPTA Certification. On the other hand, if the trust is NOT a “grantor trust”, then the Trustee is deemed the owner of the trust assets for tax purposes and the trustee should sign the FIRPTA Certification. Therefore, in order for a selling trustee to determine how to sign the FIRPTA Certification of Nonforeign Seller for Buyer, Seller’s tax advisor must determine whether or not the trust is a “grantor trust” under Code §§671-679.

3. Trustee, as the Legal Owner, hereby certifies that Trustee has consulted with its tax advisor and **after** such consultation, both the Legal Owner and its tax advisor have determined that the Legal Owner is: *(check & initial one of two choices.)*

____ [] A “grantor trust” under IRC §§671-679 and the owner of the trust assets is _____
_____ (the “Transferor”).

____ [] NOT a “grantor trust” under IRC §§671-679. Therefore, the Legal Owner is NOT
a disregarded entity and filed a separate federal income tax return Form _____.

* * * * *

Under penalties of perjury, I declare that I have examined this certification; and to the best of my knowledge and belief, it is true, correct and complete. I further declare that I have authority to sign this document on behalf of **Legal Owner**.

Signed: _____

Print Name: _____

Title: _____

Dated: _____