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6
7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9 In re
10 MORTGAGES LTD.,
11 Debtor.

Chapter 11
Case No. 2:08-bk-07465-RJH

MOTION TO SELL REAL PROPERTY

**Real Property located at the southwest corner of
Miller Road and McDowell Road in Scottsdale,
Arizona consisting of approximately 14.29 acres
known as PDG Los Arcos**

**Hearing Date: July 19, 2011
Hearing Time: 10:00 a.m.**

15 ML Manager LLC (“ML Manager”), requests that the Court enter an order
16 authorizing ML Manager as the manager for PDG LA Loan LLC and the agent for certain
17 Pass-Through Investors to sell the real property located at the southwest corner of Miller
18 Road and McDowell Road in Scottsdale, Arizona, consisting of approximately 14.29 acres
19 known as PDG Los Arcos property, as more specifically described in the Sale Agreement
20 (“Property”), to Mark-Taylor Capital LLC, an Arizona limited liability company,
21 (“Purchaser”) for the price of \$6.4 million (“Purchase Price”) and on the terms set forth in
22 the proposed Agreement of Sale and Purchase and Escrow Instructions (“Sale
23 Agreement”) which is attached as Exhibit A or upon better terms as reasonably
24 determined by ML Manager. The Sale Agreement has a contemplated closing of mid-
25 December, 2011.
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1 Borrower PDG Los Arcos, LLC defaulted on its loan with Mortgages Ltd. The
2 unpaid principal balance on the loan (Loan No. 859305) is about \$23.9 million. Interest
3 and fees also are due. ML Manager held a deed of trust sale and foreclosed on the
4 Property. The guarantors are Richard J. and Molly L. Sodja and suit has been brought on
5 the guaranty and on the deficiency. Pursuant to the Official Investors' Committee's First
6 Amended Plan confirmed by the Court, PDG LA Loan LLC was formed on the effective
7 date and the fractional interests in the note and deed of trust which were held by the MP
8 Funds were transferred into PDG LA Loan LLC. Subsequently some of the pass-through
9 investors transferred their interests into PDG LA Loan LLC. At the time of the trustee
10 sale, certain Pass-Through Investors had not transferred their fractional interests ("Pass-
11 Through Investors"). As a result, 86.489% of the interest in the real property is owned by
12 PDG LA Loan LLC and the rest is owned by the Pass-Through Investors in the loan.

13 ML Manager retained the services of Cassidy Turley at BRE Commercial, a
14 leading real estate brokerage firm, to widely market the property for sale. After
15 completing substantial marketing efforts, Purchaser made an offer of \$6.4 million and ML
16 Manager entered into the Sale Agreement with Purchaser for that price, subject to the
17 regular contingencies for ML Manager. Purchaser has deposited \$250,000 and opened
18 escrow at Lawyers Title Insurance Company. Because the property has already been fully
19 marketed, this is not proposed to be an auction and no higher and better bids are being
20 solicited. The contingencies include approval by the investors in the Loan LLC and the
21 applicable MP Funds and Bankruptcy Court approval. One of the contingencies is the
22 waiver or the exercise of the right to compete by the exit financier which has already been
23 waived. Another contingency is the rezoning of the Property. An additional deposit of
24 \$150,000 has been deposited prior to the expiration of the feasibility period. The Purchase
25 Price is to be paid in cash at closing. This is an arms-length, negotiated sale between
26 unrelated parties. The anticipated closing is mid-December, 2011.

1 Even though the debt will not be paid in full, ML Manager believes that this price
2 reflects the current market value of the Property and that it is unlikely in the foreseeable
3 future to get a higher amount for the Property. ML Manager believes that this sale is in the
4 best interest of the investors in the Loan LLC and the Pass-Through Investors and is a
5 valid exercise of its business judgment consistent with any fiduciary responsibilities.

6 Due to the actions pending in the Bankruptcy Court and District Court by certain
7 investors, ML Manager believes that it is prudent to seek Bankruptcy Court approval of
8 the sale. An order approving the sale and authorizing the sale by ML Manager of 100% of
9 the interest in the real properties will insure a smooth closing and will aid in the
10 implementation of the Plan.

11 Under the Operating Agreement of Loan LLC, since this event is a Major Decision,
12 ML Manager must seek approval of the sale from the investors in the Loan LLC and the
13 MP Funds investors. Approval must be obtained by a majority of the investors' dollars
14 voting. The voting process will start shortly and by the time the parties get to a sale
15 hearing the results will be known to ML Manager. If approved ML Manager asserts it has
16 the authority and ability to go forward with the sale of the Loan LLC interests.

17 ML Manager, as the agent for the Pass-Through Investors, has the authority and
18 ability to engage a broker, enter into a sale agreement and to sell the real estate on behalf
19 of the principals. ML Manager as the agent will execute the documents on behalf of the
20 Pass-Through Investors since it holds the irrevocable power of attorney coupled with an
21 interest to do so. ML Manager will include language in the Sale order authorizing ML
22 Manager to execute any and all such documents on behalf of the Pass-Through Investors.

23 ML Manager asserts that the Court has retained and reserved jurisdiction in the
24 Plan for such a matter as this, including sections 9.1(e), (g) and (h) of the Plan among
25 others, and has the authority to approve the sale under Section 105 of the Bankruptcy
26 Code, among other sections, as an order in aid of implementation of the Plan. As the

1 Court has noted at several prior sale hearings, there is a close nexus between the sale
2 motion and the bankruptcy because the relief requested is an important part of the Plan.
3 *See, State of Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th
4 Cir. 2005). The Plan specifically called for the creation of the ML Manager to manage the
5 Loan LLCs and to step into the role as manager of the MP Funds and agent of non-
6 transferring pass through investors. The relief requested by ML Manager affects the
7 amount of money that the investors will receive and the pay down of the exit financing.
8 Accordingly, the Bankruptcy Court retains post-confirmation jurisdiction.

9 As is customary ML Manager does propose to pay the closing costs, real property
10 and any commission as set forth in the Sale Agreement at the closing out of the gross sale
11 proceeds. ML Manager also proposes to pay the exit financier, and to the extent that it has
12 been paid then to repay the replacement loans to the other Loan LLCs, from the Loan
13 LLC's portion of the sale proceeds pursuant to the Loan Agreement and the Interborrower
14 Agreement and to create and use the Permitted Reserves pursuant to the Loan Agreement.

15 Pursuant to the Allocation Model which has been approved by this Court, ML
16 Manager will propose to disburse the net sale proceeds attributable to the Pass-Through
17 Investors subject to what amount should be charged back or allocated to the Pass-Through
18 Investors as their fair share of the expenses, including exit financing. Also pursuant to the
19 Allocation Model, ML Manager will propose to distribute net sale proceeds attributable to
20 the ownership interest to the Loan LLC pursuant to its agreements, the Plan, Confirmation
21 Order, and Interborrower Agreement.

22 WHEREFORE, ML Manager LLC requests that the Court enter an order
23 authorizing and approving the sale as set forth above, and for such other and further relief
24 as is just and proper under the circumstances.

1 DATED: June 24, 2010

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FENNEMORE CRAIG, P.C.

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By /s/ Cathy L. Reece
Cathy L. Reece
Keith L. Hendricks
Attorneys for ML Manager LLC

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**AGREEMENT OF SALE AND PURCHASE
(Los Arcos Crossing)**

This Agreement of Sale and Purchase (this "Agreement") is made effective as of January 11, 2011, by and among PDG LA Loan LLC, an Arizona limited liability company ("PDG"); ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners listed on Exhibit "A" attached (with PDG, the "Owners"); (collectively, "Seller"); and Mark-Taylor Capital L.L.C., an Arizona limited liability company ("Buyer"). Seller and Buyer may herein be referred to collectively as "the parties" or individually as "a party."

RECITALS

A. The Owners are the owners of the real property located in Maricopa County Arizona, and described on Exhibit "B" attached hereto (the "Land").

B. PDG was formed pursuant to the Official Committee of Investors First Amended Plan of Reorganization dated March 12, 2009 in the Chapter 11 Proceedings in In re: Mortgages Ltd., Case No. 2:08-bk-07465-RJH which was confirmed by the Bankruptcy Court ("Court") on May 20, 2009 ("Approved Plan"), pursuant to which persons holding fractional interests ("Fractional Interests") in a loan (the "Loan") made by Mortgages Ltd., an Arizona corporation (now known as ML Servicing Company, Inc.) ("ML") could elect to assign and transfer such Fractional Interests to consolidate such Fractional Interests to the extent possible in a single entity.

C. Pursuant to the Approved Plan, the Agent was designated as successor agent to ML under certain agency agreements ("Agency Agreement") wherein the Agent was given a power of attorney to act for the Owners, and the Agent is acting under this Agreement pursuant to the power of attorney, as the Agent of the Owners.

D. Buyer desires to enter into an agreement to acquire the Land from Seller, and Seller is willing to enter into an agreement with Buyer regarding the purchase of the Land, on the terms and conditions set forth herein.

AGREEMENT

In consideration of the covenants and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Agreement to Sell and Purchase.

1.1 Property. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, subject to the terms and conditions of this Agreement, all of Seller's right, title and interest in the Land, consisting of approximately 14.29 acres, located at the southwest corner of Miller Road and McDowell Road, in Scottsdale, Arizona, together with all of Seller's right, title

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and interest in and to (i) all buildings, structures and improvements located thereon; (ii) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) all land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; (v) any pre-paid impact fees, school fees and other development fees; (vi) any plans, and (vii) and any other rights, privileges and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such Land (collectively, the "Property"). However, the Property does not include any rights of Seller, Agent or the Owners as against any borrower or guarantor of a loan that was previously secured by the Property, or any rights to the extent related to other property.

1.2 Contingencies.

(a) Notwithstanding any provision to the contrary contained herein, the obligations of Seller to sell the Property to Buyer, and the obligations of Buyer to purchase the Property from Seller, are contingent upon the satisfaction of each of the following contingencies (collectively, the "Contingencies"):

(i) Seller's lender under the Exit Financing Loan dated June 11, 2009 has the right to compete to acquire the Property from the Seller under Section 6.11(a) of the Exit Financing Loan Agreement. Seller's lender must have failed to exercise or must have waived the right to compete (the "Lender Approval");

(ii) the members of PDG ("Members") must have approved the sale of the Property for the Purchase Price specified herein as required by Section 5.4(h) of the Operating Agreement of PDG (the "Members Approval"); and

(iii) if Seller deems it necessary, Seller must have obtained the approval of the Court by final order with respect to the sale to Buyer for which no stay order pending appeal has been ordered, which order is sufficient for the Title Insurer (described below) to issue the Title Policy (described below).

(b) Seller will attempt to satisfy the Contingencies by taking such action as it deems appropriate; provided, however, Seller shall not be in default hereunder if any of the Contingencies is not satisfied.

(c) If all of the Contingencies have been satisfied prior to the end of the period commencing on the Effective Date and ending 50 days after the Effective Date (the "Contingency Period"), then Seller shall notify Buyer in writing of such satisfaction (the "Contingency Satisfaction Notice"), and this Agreement shall continue in full force and effect. If the Contingencies have not been satisfied prior to the end of the Contingency Period, then Seller shall immediately notify Buyer in writing that the Contingencies have not been satisfied, whereupon either party may terminate this Agreement by written notice to the other party. Upon any such termination, Escrow Agent (defined below) shall return the Deposit (defined below) to Buyer, and Seller and Buyer shall have no further obligations hereunder, except as expressly provided herein.

2. Opening of Escrow. Within two (2) business days after both parties have executed this Agreement, the parties will establish an escrow with Lawyers Title Insurance Company, 4677 South Lakeshore Drive, Suite C-9, Tempe, Arizona 85282; Attention: Laura Radmer; Telephone: (480) 897-8488 ("Escrow Agent"). Upon delivery to the Escrow Agent of this executed Agreement, Escrow Agent is instructed to open an escrow and deliver copies of the executed Agreement to Buyer and Seller. "Opening of Escrow" shall occur when Escrow Agent accepts this Agreement by execution of the Agreement and Consent by Escrow Agent provided at the end of this Agreement and the date of Opening of Escrow shall be the "Effective Date". This Agreement, and the exhibits attached hereto, shall constitute escrow instructions to Escrow Agent in connection with this transaction, but the parties agree to execute such supplemental instructions, not inconsistent with this Agreement, as Escrow Agent may reasonably require. Escrow Agent shall advise Buyer and Seller in writing of the Opening of Escrow, the Effective Date, and other critical dates under this Agreement. By accepting this escrow, Escrow Agent agrees to the terms of this Agreement as they relate to the duties of Escrow Agent. Escrow Agent is hereby authorized and instructed to file, if necessary, Internal Revenue Service Form 1099-B, Proceeds from Real Estate, Broker, and Barter Exchange Transactions, as required by Section 6045(e) of the Internal Revenue Code of 1986.

3. Purchase Price; Deposits.

3.1 Purchase Price. The purchase price for the Property shall be Six Million Four Hundred Thousand Dollars (\$6,400,000) (the "Purchase Price"). The Purchase Price shall be payable as follows:

(a) Buyer shall deposit with Escrow Agent the amount of Two Hundred Fifty Thousand Dollars (\$250,000) (the "Initial Deposit") by wire transfer, cashier's check, or other readily available funds, within two (2) business days after the Effective Date. Prior to the expiration of the Feasibility Period (described below), unless this Agreement is terminated by Buyer prior to the expiration of the Feasibility Period, Buyer shall deposit with Escrow Agent an additional One Hundred Fifty Thousand Dollars (\$150,000) (the "Additional Deposit"). To the extent deposited into escrow, the Additional Deposit and the Initial Deposit are individually and/or collectively referred to as the "Deposit".

(b) Buyer shall pay the balance of the Purchase Price, subject to any adjustments as provided in Section 12, to Seller at Close of Escrow (as defined below) in cash by wire transfer, cashier's check or other readily available funds.

(c) Buyer shall receive a credit against the Purchase Price in the amount of \$833 for each day that the Closing occurs prior to September 21, 2011.

3.2 Deposit. The Deposit includes all interest earned thereon. The Deposit shall be held in an interest bearing, federally insured account by Escrow Agent pending consummation of this transaction.

4. Property Documents; Existing Lease. Within ten (10) days after the Opening of Escrow, Seller will make available to Buyer for review and copying the following documents to the extent they are in Seller's possession: all permits, approvals, plats, plans, specifications,

certificates, surveys, engineering reports (including, without limitation, any geotechnical reports), studies, environmental reports, appraisals, leases, permits, contracts, improvement plans, utility plans, architectural plans and elevations, construction bids and/or estimates and other materials relating to the condition or development of the Property (collectively, the "Property Documents"). Seller makes no representation or warranty that (i) the Property Documents provided will constitute all information which exists concerning the Property or that such information will be sufficient in itself to permit an adequate analysis of the Property or (ii) the Property Documents are complete, current or accurate. If the Property Documents include any leases or other agreements that continue in effect after the Closing, then Buyer shall assume all of Seller's obligations under such leases and agreements if Buyer does not terminate this Agreement as provided for in Section 5 of this Agreement prior to the expiration of the Feasibility Period. Seller discloses that a portion of the Property is subject to that certain Ground Lease, dated June 11, 1996, between C&H Properties II as Lessor and Autozone, Inc. as Lessee, which lease was recorded as document number 96-0409373, records of the County Recorder of Maricopa County, Arizona. (the "Autozone Lease"). Buyer shall purchase the Property subject to, and shall assume all of the obligations of the Lessor under, the Autozone Lease by assignment and assumption agreement executed at Closing in a form reasonably satisfactory to Seller and Buyer.

5. Feasibility Period; Rezoning.

5.1 Feasibility. During the period commencing on the Effective Date and ending sixty (60) days thereafter (the "Feasibility Period"), Buyer will determine whether the Property is suitable for Buyer's acquisition. If Buyer determines, in its sole discretion, that the Property is not suitable for Buyer's acquisition, then Buyer may terminate this Agreement by giving written notice of termination to Seller and Escrow Agent prior to the expiration of the Feasibility Period. If no such written notice is given to Seller and Escrow Agent prior to the expiration of the Feasibility Period, then Buyer will be deemed to have elected to waive its right to terminate this Agreement pursuant to this Section, and the Deposit shall be non-refundable to Buyer except as expressly provided in this Agreement. If this Agreement is terminated pursuant to this Section, Escrow Agent shall return the Deposit to Buyer not later than the second business day after such termination, and the parties shall have no further obligations hereunder, except as expressly provided in this Agreement.

5.2 Rezoning. Buyer's obligations hereunder are contingent upon Buyer, at Buyer's sole cost and expense, obtaining from the City of Scottsdale (the "City") final and unappealable approvals, including without limitation design review, zoning, use permits, subdivision and site plan approvals and ordinances, necessary for Buyer's proposed development of the Property as a multifamily rental apartment community containing approximately 300 units (the "Proposed Project") with stipulations, conditions and restrictions acceptable to Buyer, in Buyer's sole discretion (the "Approvals"). Buyer shall provide Seller with its initial submittal package for the City, and Seller shall have ten (10) days in which to object, with written explanation, to any matters set forth therein, after which Buyer and Seller shall meet in good faith to resolve any such objections. Seller's failure to object within such time period shall be deemed approval of the items submitted to Seller. Buyer will keep Seller informed of the progress of the Approvals process and shall submit to Seller for review any request from the City or submittal from Buyer that would substantially change the number of units or alter the

fundamental land use of the Proposed Project. Seller acknowledges that Buyer may be required to provide for limited retail uses on the Property in conjunction with the Approvals. Buyer agrees to communicate the time and place of any site plan review or other material meetings with the City no later than 3 business days prior to the meeting, and to share all material plans, plan changes and comments and the status of Approvals generally at least monthly.

. Seller agrees to sign such documents as are reasonably required of Seller in connection with the Approvals and shall cooperate with Buyer's efforts to obtain the Approvals, but shall not be obligated to incur any expenses in doing so. If Buyer is unable to obtain the Approvals on or before September 12, 2011 (the "Rezoning Period"), then Buyer may cancel this Agreement by providing written notice to Seller at any time prior to the expiration of the Rezoning Period, in which event the Deposit shall be returned to Buyer and neither party shall have any further obligations hereunder, except as expressly provided herein. If Buyer fails to file its re-zoning application for the Proposed Project on or before April 30, 2011, Seller shall have five (5) business days thereafter to terminate this Agreement by written notice to Buyer and Escrow Agent. If Buyer fails to obtain the approval of the Scottsdale Planning Commission of its rezoning application for the Proposed Project on or before August 15, 2011, Seller shall have five (5) business days thereafter to terminate this Agreement by written notice to Buyer and Escrow Agent. In the event of termination under this Section 5.2, the Deposit shall be returned to Buyer, and neither.

Buyer shall have the right to extend the Rezoning Period for three (3) consecutive periods of thirty (30) days each (each, an "Extension Period"). Buyer may exercise the right to extend for each Extension Period by giving written notice to Seller and Escrow Agent of such extension and depositing with Escrow Agent the amount of \$50,000 for each extension (the "Extension Payment"), not later than five (5) days prior to the then scheduled end of the Rezoning Period. The amount of \$25,000 of each Extension Payment is non-refundable to Buyer, shall be immediately released to Seller upon deposit with Escrow Agent and shall not apply to the Purchase Price. The remaining \$25,000 of each Extension Deposit shall remain in Escrow, shall be considered part of the Deposit and shall be applied to the Purchase Price at Closing. In the event of any such Extension, the Closing Date shall be extended for a corresponding time period.

5.3 Maintenance of Property. From the Effective Date until the Closing or earlier termination of this Agreement, Buyer shall keep the Property free of weeds and trash and shall keep the trees on the Property trimmed.

6. Buyer's Access. Buyer and Buyer's representatives will have the right, from and after the Effective Date and continuing through the Closing or earlier termination of this Agreement, to enter upon the Property for the sole purpose of inspecting the Property and making surveys, engineering tests and other investigations, inspections and tests (collectively, "Investigations"). Any entry upon the Property and all Investigations will be at the sole risk and expense of Buyer and Buyer's representatives. Buyer must:

6.1 promptly repair any damage to the Property resulting from any such Investigations and replace, refill and regrade any holes made in, or excavations of, any portion of the Property used for such Investigations so that the Property will be in the same condition that it existed in prior to such Investigations;

6.2 fully comply with all laws applicable to the Investigations and all other activities undertaken in connection therewith;

6.3 provide Seller advance notice of any entry onto the Property so as to permit Seller to have a representative present during all Investigations undertaken hereunder;

6.4 take all actions and implement all protections necessary to ensure that all actions taken in connection with the Investigations, and the equipment, materials, and substances generated, used or brought onto the Property, pose no threat to the safety or health of persons or the environment, and cause no damage to the Property or other property of Seller or other persons;

6.5 if this Agreement is terminated, then promptly after such termination, furnish to Seller, at no cost or expense to Seller, copies of all surveys, soils, engineering and environmental reports, which Buyer will obtain with respect to the Property. Buyer makes no representation or warranty that any such documents are complete, current or accurate;

6.6 maintain or cause to be maintained, at Buyer's expense, a policy of commercial general liability insurance, with a combined single limit of not less than \$1,000,000.00 general liability and \$2,000,000.00 excess umbrella liability, insuring Buyer and Seller, as additional insured, against injuries or damages to persons or property that may result from or are related to (i) Buyer's and/or Buyer's representatives' entry upon the Property, (ii) any Investigations or other activities conducted thereon, and (iii) any and all other activities undertaken by Buyer or Buyer's representatives upon the Property, in such forms and with an insurance company reasonably acceptable to Seller, and deliver a copy of such insurance policy or certificate evidencing such policy to Seller prior to the first entry on the Property;

6.7 not allow the Investigations or any and all other activities undertaken by Buyer or Buyer's representatives to result in any liens, judgments or other encumbrances being filed or recorded against the Property, and Buyer must, at its sole cost and expense, promptly discharge of record any such liens or encumbrances that are so filed or recorded (including, without limitation, liens for service, labor or materials furnished); and

6.8 indemnify, defend and hold Seller harmless from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including without limitation, attorneys' fees and disbursements), suffered or incurred by Seller and arising out of or in connection with (i) Buyer's and/or Buyer's representatives' entry upon the Property, (ii) any Investigations or other activities conducted thereon by Buyer or Buyer's representatives, (iii) any liens or encumbrances filed or recorded against the Property as a consequence of the Investigations or any and all other activities undertaken by Buyer or Buyer's representatives, or (iv) any and all other activities undertaken by Buyer or Buyer's representatives upon the Property, except, in all cases, as result from the negligent or intentional acts of Seller or its authorized agents.

6.9 Notwithstanding anything in this Agreement to the contrary, the representations and indemnities set forth in this Section 6 survive any termination of this Agreement.

7. Title Review.

7.1 Status of Title. As soon as possible after Opening of Escrow, Escrow Agent shall provide Buyer and Seller with a commitment ("Title Report") of the title to the Property for issuance of an ALTA extended coverage owner's policy of title insurance, disclosing all matters of record which relate to the title to the Property, and Escrow Agent's requirements for both closing the escrow created by this Agreement and issuing the policy of title insurance described herein. At such time Escrow Agent delivers the Title Report (and any amended Title Report adding additional title exceptions), Escrow Agent shall also cause legible copies of all instruments referred to in the Title Report or amended Title Report to be furnished to Buyer. Buyer shall have until the expiration of the Feasibility Period (the "Title Review Period") to object in writing to any matter shown in the Title Report. If Buyer fails to object within the Title Review Period, the condition of title to the Property as reflected in the most recent Title Report issued to Buyer shall be deemed approved by Buyer. If Buyer does object to any matter disclosed in the Title Report, Buyer shall deliver a written notice of such objection (an "Objection Notice") to Seller and Escrow Agent within the Title Review Period. All matters in the Title Report to which Buyer does not object in an Objection Notice, and any matters subsequently approved by Buyer as provided herein, are referred to as "Approved Exceptions".

7.2 Right to Object to Title Report Amendments. If the Title Report is amended prior to the Closing to show any additional exceptions to title (other than items created by Buyer), Buyer shall be entitled to object thereto by delivering an Objection Notice to Seller and Escrow Agent within five (5) days after Buyer receives such amendment, said notice to specify in reasonable detail the basis for Buyer's objection. If Buyer fails to deliver notice of Objection to any matter set forth in any amendment to the Title Report within the time period prescribed above, Buyer shall be deemed to have approved such additional matter.

7.3 Right to Cure. If Buyer timely delivers any Objection Notice, Seller may deliver a written notice (a "Response") to Buyer and Escrow Agent within five (5) days after receipt of such Objection Notice, which Response may state any actions that Seller intends to take and their anticipated effect on the matters to which Buyer has objected. If the Response does not state an intention to remove each matter to which Buyer has objected, or if Seller does not deliver a Response within such time period, Buyer shall deliver to Seller and Escrow Agent within five (5) days after the expiration of the period for Seller's Response, a written notice (a "Reply") stating Buyer's election either (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposit or (b) to waive Buyer's objections. If Buyer fails to make a timely election pursuant to the preceding sentence, Buyer shall be deemed to have elected to waive Buyer's objections and accept the condition of title to the Property as reflected in the most recent Title Report issued to Buyer. If the Response states the intention to remove the matters objected to, Buyer shall not be required to send a reply, but if any objection that Seller has agreed to cure is not satisfied to Buyer's reasonable satisfaction on the Closing Date, Buyer shall have the right, as its sole remedies, either (a) to terminate this Agreement, in which event Buyer shall be entitled to the return of the Deposit, or (b) to proceed with this transaction and waive such objection by written notice. In the event that Buyer waives an objection, the item with respect to which the objection was made shall be deemed to be an Approved Exception. Notwithstanding anything contained herein to the contrary, it shall be a condition of Buyer's obligations hereunder that all monetary liens and encumbrances, except for real property

taxes and assessments not yet due and payable, shall be released from the Property on or before the close of escrow. After the Effective Date, Seller shall not take any action that would result in any new title exceptions on the Property.

7.4 Amendment to Title Report Issued Shortly Before Closing. If an amendment to the Title Report is issued shortly before the Closing Date, the Closing Date shall be extended if (and to the minimum extent) necessary: (a) to provide Buyer the period contemplated by Section 7.2 hereof to deliver an Objection Notice; (b) to provide Seller the period contemplated by Section 7.3 hereof to deliver a Response, if Buyer delivers an Objection Notice; and (c) to provide Buyer the period contemplated by Section 7.3 hereof to deliver a Reply, if Seller fails to deliver a Response or delivers a Response which does not include a commitment to remove all of the matters to which Buyer has objected.

7.5 Survey. As part of the Property Documents, Seller will provide Buyer with copies of any existing surveys of the Property that Seller has in its files. Buyer may, at its own expense, update the existing survey(s) or obtain a new survey of the Property for the purpose of obtaining an extended coverage title insurance policy (the "Survey"). The Survey shall be certified to Buyer, the Title Insurer and Seller. Buyer shall provide Seller and Escrow Agent with copies of such Survey.

7.6 Condition of Closing. It shall be a condition of Buyer's obligations hereunder that at the Closing, the title insurer ("Title Insurer") for Escrow Agent shall deliver to Buyer an ALTA extended coverage owner's title insurance policy (the "Title Policy") or the unconditional commitment of Title Insurer to issue such policy with a limit of liability in the amount of the Purchase Price, insuring that fee simple title to the Property is held by Buyer subject only to (a) the printed exceptions normally contained in such policy, (b) the Approved Exceptions and any exceptions which are approved by Buyer in writing or deemed approved by Buyer pursuant to Section 7, and (c) any interests (such as deeds of trust or mortgages) which may be granted by Buyer. Seller shall be responsible for the cost of a standard coverage title insurance policy; Buyer shall be responsible for any additional cost of extended coverage. Seller will cooperate with Buyer's efforts to obtain such title insurance coverage, including any endorsements requested by Buyer.

8. Conditions to Closing.

8.1 Buyer's Conditions. Notwithstanding anything to the contrary contained in this Agreement, Buyer's obligation to purchase the Property is expressly conditioned on the following:

- (a) Seller's representations and warranties contained herein shall be materially true and accurate.
- (b) Seller will not be in default of this Agreement.
- (c) Title Insurer will be irrevocably and unconditionally committed to issue the Title Policy to Buyer, subject to only the matters described in Section 7.6.

If any of the conditions set forth in subsections (a) or (b) above are not satisfied on the Closing Date, Buyer shall be entitled to the remedies prescribed under either Section 14 or Section 18.2 below, as applicable. If the condition set forth in subsection (c) above is not satisfied on the Closing Date, and such inability is not the result of Seller's intentional acts, then Buyer may terminate this Agreement by giving written notice of termination to Seller, in which event Escrow Agent will return the Deposit to Buyer, and the parties shall have no further obligations hereunder, except as expressly provided herein.

8.2 Seller's Conditions. Notwithstanding anything to the contrary contained herein, Seller's obligation to sell the Property is expressly conditioned on the following:

(a) Buyer's representations and warranties contained herein shall be materially true and accurate.

(b) Buyer will not be in default of the Agreement.

If any of such conditions are not satisfied on the Closing Date, Seller may terminate this Agreement by giving written notice of termination to Buyer. If Seller terminates this Agreement for the reasons stated in subsections (a) or (b) above, Seller shall be entitled to the remedies prescribed under Section 18.1 below.

9. Transfer of Title. At the Close of Escrow, Seller will convey title to the Property to Buyer by a special warranty deed in the form attached hereto as Exhibit "C" (the "Deed") and will execute a Blanket Assignment and Bill of Sale ("Blanket Assignment") in the form attached hereto as Exhibit "D".

10. Closing Date. The closing of the transaction contemplated by this Agreement (the "Close of Escrow") will occur on or before ten (10) days after Buyer obtains the Approvals, but not later than ten (10) days after the expiration of the Rezoning Period (the "Closing Date").

11. Closing Documents.

11.1 Seller's Obligations. Subject to compliance by Buyer with the provisions of Section 11.2 hereof, at the Closing Seller will:

(a) execute, acknowledge, and deliver the Deed and the Blanket Assignment;

(b) deliver a certification that it is not a "foreign person" in the form required by 26 U.S.C. 1445;

(c) deliver such settlement statements, affidavits, and agreements that are not inconsistent with the provisions of this Agreement as the Escrow Agent may require or request, in form and substance reasonably acceptable to Seller, in order to consummate the transactions contemplated by this Agreement; and

(d) provide for payment out of the Purchase Price or deliver such amounts required to be paid by Seller pursuant to Section 12.1;

11.2 Buyer's Obligations. At the Closing, Buyer will:

(a) deliver the Purchase Price, less the amount of the Deposit, to the Escrow Agent for distribution to Seller, by wire transfer or immediately available funds;

(b) deliver any additional amounts required to be paid by Buyer pursuant to Section 12.1; and

(c) deliver such settlement statements, affidavits and agreements as the Title Company may require or request, in form and substance reasonably acceptable to Buyer, in order to consummate the transactions contemplated by this Agreement.

11.3 Mutual Obligations. All documents must be deposited by the applicable parties with Escrow Agent in sufficient time to permit Escrow Agent to close the escrow on the Closing Date.

12. Closing Costs and Prorations. The following are to be apportioned as of the Closing Date and charged or paid to Seller or Buyer, as applicable, with Buyer being deemed to be the owner of the Property on the Closing Date:

12.1 Apportionments. Seller will pay the fee for the standard coverage owner's portion of the Title Policy; one-half of Escrow Agent's escrow fee; and recording fees with respect to release of any liens or encumbrances. Buyer will pay one-half of Escrow Agent's escrow fee; recording fees with respect to the Deed and the Affidavit of Real Property Value; and the cost of the Title Policy in excess of the cost of a standard coverage owner's policy of title insurance, plus the cost of any title endorsements Buyer may request. Real property taxes will be prorated as of the Closing Date. Seller shall pay all general and special assessments existing as of the Closing Date. If the Closing Date shall occur before the tax rate is fixed for the then-current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation.

12.2 Post-Closing Reconciliation. If any of the apportionments or prorations (including the apportionment of taxes on the basis of the tax rate for the preceding year) required above cannot be calculated accurately on the Closing Date or are miscalculated, then they shall be calculated or recalculated as soon as possible after the Closing Date. Either party owing the other party a sum of money based on such subsequent apportionments or prorations shall promptly pay said sum to the other party outside of escrow within ten (10) days after receipt of an invoice therefor. There shall be no further adjustments of such apportionments or prorations after the first anniversary of the Closing Date.

13. Damage or Condemnation. If, prior to the Close of Escrow, all or any portion of the Property is damaged or destroyed by casualty or becomes the subject of any pending or threatened eminent domain proceeding (or any transfer in lieu thereof has occurred), then Buyer may terminate this Agreement by giving written notice of termination to Seller within 20 days after Buyer's receipt of written notice of such damage, destruction or pending or threatened

eminent domain proceeding, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after such termination and the parties will have no further obligations hereunder, except as expressly provided herein. If Buyer fails to give notice or termination during the foregoing 20-day period, Buyer shall be deemed to have elected to waive its right to terminate, the parties shall proceed with the purchase and sale transaction described herein, and all rights, claims, benefits, insurance proceeds, or other consideration relating to the damage, destruction or eminent domain proceeding shall be assigned and transferred to Buyer at Close of Escrow. Seller shall not finalize the amount of any casualty claim or accept any condemnation valuation or award relating to the Property without Buyer's written consent.

14. Seller Representations and Warranties. Seller hereby represents and warrants to Buyer the following:

14.1 Agreements. Except for the Property Documents (including the Autozone Lease) and any matters that are disclosed in the Title Commitment, to Seller's knowledge, there exist no contracts, operating arrangements, leases, licenses, or other agreement relating to the Property that will remain in effect and be binding on the Property after the Close of Escrow

14.2 Bills. At Closing, to Seller's actual knowledge, there shall be no unpaid bills or claims in connection with any work contracted by or on behalf of Seller on the Property.

14.3 Claims. Except for any notices that are provided to Buyer as part of the Property Documents, to Seller's knowledge, Seller has not received any uncured written notices or demands from any state, municipal or county government or agency thereof with regard to the Property, including, without limitation, any notices of any violations of any laws or ordinances. To Seller's actual knowledge, there are no actions, suits, claims, assessments, or proceedings pending or overtly threatened which, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use and enjoyment or value of the Property or any part thereof, or which could in any way interfere with the consummation of the transaction contemplated by this Agreement.

14.4 Non-Foreign Person. Seller is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto.

14.5 Power and Authority. Subject to the satisfaction of the Contingencies set forth in Section 1.2(a), Seller has full power and authority to enter into this Agreement and all documents executed pursuant to this Agreement, and to perform its obligation in accordance with the terms and conditions hereof and thereof.

For purposes of this Section 14, the phrases "Seller's knowledge", "Seller is not aware of" and similar terms mean the actual knowledge of Mark Winkleman without the duty of inquiry or investigation. The matters set forth in this Section constitute representations and warranties by Seller that will be true and correct as of the date hereof and on the Closing Date and will, subject to Section 17, survive the Closing Date for a period of six months.

Notwithstanding any contrary provision of this paragraph, the representations, warranties and covenants of Seller set forth in this Section shall not apply to the extent that any matter or condition is caused by the act or acquiescence of Buyer, its affiliates, employees, agents, contractors, subcontractors or representatives, or to the extent Buyer has actual knowledge of any inaccuracy in any such representation, warranty or covenant at the time of the Closing. If Seller becomes aware of any change in the representations, warranties or covenants of Seller set forth in this Section 14 after the date hereof (whether arising before or after the date hereof), or if Seller becomes aware of any facts or circumstances that cause any of such representations and warranties to become materially false or incorrect, Seller shall give prompt written notice (a "Change Notice") to Buyer, which shall specifically reference this Section and the representation and warranty being modified. Buyer shall have ten (10) days following its receipt of a Change Notice within which to terminate this Agreement by written notice to Seller and if the modification to the representations, warranties or covenants are not the result of Seller's intentional acts, such termination shall be Buyer's sole remedy. In the event of such termination, Escrow Agent shall return the Deposit to Buyer and neither party shall have any further obligations hereunder, except as expressly provided herein. Buyer's failure to terminate this Agreement within the ten (10)-day period as provided above shall be deemed acceptance of the matters disclosed in the Change Notice and an election by Buyer to proceed with the purchase of the Property notwithstanding the Change Notice. If Buyer elects (or is deemed to have elected) to proceed with the purchase of the Property after receipt of a Change Notice, then Buyer shall be deemed to have assumed all risk of and released Seller from all liability for the matter(s) specified in such Change Notice, and Seller's representations, warranties and covenants under this Section 14 shall thereafter be deemed to have been modified as provided in the Change Notice.

15. Buyer Representations and Warranties. Buyer covenants, represents and warrants to Seller as follows:

15.1 Power and Authority. Buyer has full power and authority to enter into this Agreement and all documents executed pursuant to this Agreement, and to perform its obligations in accordance with the terms and conditions hereof and thereof.

15.2 No Violation. Execution of this Agreement and all documents executed pursuant to this Agreement by Buyer, and performance by Buyer of each and all of its obligations hereunder, will not breach or violate any other agreement, court order or other arrangement by which Buyer is bound.

15.3 Compliance. All necessary and appropriate action on the part of Buyer which is required for the execution, delivery and performance of this Agreement has been fully and effectively taken.

15.4 Financial Ability. Buyer has, or will have prior to closing, the financial ability to perform Buyer's obligations under this Agreement.

16. "As-Is," "Where-Is," and "With All Faults".

16.1 Seller Inducements. To induce Seller to accept this Agreement, Buyer acknowledges that, except as expressly set forth in this Agreement: (i) no understandings, representations or promises of any kind have been made to induce the execution of this Agreement; (ii) Buyer has not relied on any oral agreement, statement, representation or other promise; (iii) Seller has made no express or implied warranties concerning the condition of the Property or the fitness or suitability of the Property for Buyer's intended use; and (iv) Buyer acknowledges and agrees that the Property is being sold and transferred by Seller to Buyer in its present "AS-IS," "WHERE-IS," and "WITH ALL FAULTS" physical condition without warranty of any kind. No salesman, broker, agent or employee of Seller has any authority to modify the terms of this Section or any authority to make any representation or agreement not contained in this Agreement and no person on behalf of Seller is authorized to make any future oral agreement upon which Buyer may rely to cancel, change or modify any portion of this Agreement.

16.2 Additional Buyer Warranties. Buyer represents and warrants that, except as expressly set forth in this Agreement: (i) Buyer is a knowledgeable, experienced and sophisticated purchaser of real estate and that it is relying solely on its own expertise and that of Buyer's consultants in purchasing the Property; (ii) Buyer is, or as of the end of the Feasibility Period will be, familiar with the Property; (iii) Buyer is relying solely upon, and as of the end of the Feasibility Period, will have conducted, its own independent inspection, investigation and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including without limitation, physical inspections, environmental assessments, analysis of any and all matters concerning the condition of the Property and its suitability for Buyer's intended purposes, and review of all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the use, occupancy or enjoyment of the Property; (iv) Seller is not liable or bound in any manner by any oral or written statements, representations, warranties, or information pertaining to the Property furnished by any real estate broker, agent, employee, servant or other person, unless the same are specifically set forth or referred to herein; and (v) Buyer acknowledges that the Purchase Price reflects the "as is" nature of this sale and any faults, liabilities, defects or other adverse matters that may be associated with the Property. Buyer has fully reviewed the representations, warranties, disclaimers and waivers set forth in this Agreement with its counsel and understands the significance and effect thereof. Buyer acknowledges and agrees that the representations, warranties, disclaimers and other agreements set forth in this Agreement are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without such representations, warranties, disclaimers and other agreements set forth in this Agreement. Buyer further acknowledges and agrees that regardless of the outcome or contents of any inspection or assessment of the Property Buyer may undertake, Seller has no obligation whatsoever to cure any faults, defects or other adverse conditions affecting the Property, whether or not disclosed in any such inspection or assessment or in any disclosures by Seller. The covenants, representations and warranties contained in this Section 16 shall expressly survive the Closing without limitation.

16.3 Release. Except as expressly provided in this Agreement and in the Deed, Buyer or anyone claiming by, through or under Buyer, hereby fully and irrevocably releases Seller, its managers, members, agents, representatives, any of its respective beneficiaries,

shareholders, officers, affiliates, parent entities, subsidiary entities, employees, heirs, successors and assigns (collectively, the "Seller Parties"), from any and all claims that it may now have or hereafter acquire against the Seller Parties, for any cost, loss, liability, damage, expense, action or cause of action, whether foreseen or unforeseen, arising from or related to any errors or omissions on or in the Property, the presence of hazardous materials, or any other conditions (whether patent, latent or otherwise) affecting the Property, except for claims against Seller based upon any obligations, liabilities, representations and warranties of Seller expressly provided in this Agreement, or any documents delivered by Seller in accordance with Section 11.1. Buyer further acknowledges and agrees that this release will be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to known and suspected claims, damages, and causes of action. The provisions of this Section 16.3 will survive the Closing and delivery of the Deed. Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit all of the Seller Parties from any such unknown losses, damages, liabilities, costs and expenses.

17. Survival. The covenants, representations or warranties made by Seller and Buyer, respectfully, in Sections 14, 15, and 16 are made as of the Opening of Escrow and as of the Close of Escrow and shall survive the Closing, except that any claim for breach of warranty by either party must be asserted within six months after the Closing or be forever barred.

18. Remedies.

18.1 Seller's Remedies. If Buyer fails to deposit the Purchase Price in accordance with the terms of this Agreement, or to timely close escrow as required hereunder, or fails to perform any of its other obligations under this Agreement, which failure is not cured within three (3) business days after written notice from Seller, Seller shall be entitled, as Seller's sole and exclusive right and remedy hereunder, to terminate this Agreement by giving written notice of termination to Buyer, in which event Seller shall be entitled to receive the Deposit as liquidated damages and as consideration for acceptance of this Agreement. Notwithstanding anything mentioned herein to the contrary, Seller hereby waives any claim for consequential, special, punitive, exemplary or similar damages against Buyer. Buyer and Seller agree that based upon the circumstances now existing, known and unknown, it would be impractical or extremely difficult to establish Seller's damages by reason of default by Buyer. Accordingly, Buyer and Seller agree that it would be reasonable at such time to award to Seller "liquidated damages" equal to the amount of the Deposit in the event of a default by Buyer.

18.2 Buyer's Remedies. Upon a breach or default by Seller hereunder, which default is not cured within three (3) business days after written notice from Buyer, Buyer shall be entitled, as its sole remedies for Seller's default hereunder, to exercise one of the following remedies: (i) terminate this Agreement, in which event Escrow Agent will return the Deposit to Buyer not later than the second business day after such termination; (ii) proceed with the transaction and waive the default; or (iii) seek specific performance of Seller's obligations hereunder within forty-five (45) days after the purported default. Notwithstanding anything

mentioned herein to the contrary, Buyer hereby waives any claim for consequential, special, punitive, exemplary or similar damages against Seller.

18.3 Cancellation Fees. Upon the effective cancellation of this Agreement, the defaulting party shall be responsible for any escrow cancellation charges charged by Escrow Agent.

19. Brokerage Commission. If and only if the Closing hereunder occurs, Seller agrees to pay a commission to Cassidy Turley/BRE Commercial, in an amount and on terms set forth in a separate agreement with Seller. Except for the foregoing commission payable to the foregoing broker, each party represents and warrants to the other that such party has not dealt with any broker or finder in connection with the transaction contemplated in this Agreement. Except for the foregoing, each party shall indemnify, defend and hold harmless the other party against and from any and all claims, commissions, or other compensation, damages, liabilities and expenses, (including, without limitation, reasonable attorney fees and disbursements) arising out of any and all claims made by any other broker or finder with whom the indemnifying party has dealt, or has allegedly employed, in violation of the warranty contained in this Section.

20. Notices. All notices, demands and requests under this Agreement must be in writing, and will not be effective unless given to the other party by prepaid registered or certified mail, return receipt requested, by nationally recognized commercial overnight courier service, by hand-delivery with a signed acknowledgement of receipt by the receiving party, or by confirmed facsimile transmittal (if a facsimile number is given below), addressed as follows:

20.1 If addressed to Seller:

ML Manager LLC
14050 N. 83rd Avenue, #180
Peoria, Arizona 85381
Attn: Mark Winkleman
Facsimile: (623) 234-9575
Telephone: (623) 234-9562
Email: mwinkleman@mtgltd.com

with a copy to:

Fennemore Craig, P.C.
3003 North Central Avenue
Suite 2600
Phoenix, Arizona 85012
Attention: Mark A. Nesvig
Facsimile: (602) 916-5672
Telephone: (602) 916-5472
Email: mnesvig@fcclaw.com

20.2 If addressed to Buyer:

Mark-Taylor Capital L.L.C. and Archstone
6623 North Scottsdale Road
Scottsdale, Arizona 85250-4421
Attention: Scott Taylor
Facsimile: (480) 991-9138
Telephone: (480) 991-9111
Email: _____

with a copy to:

Poli & Ball, PLC
2999 N. 44th Street, Suite 500
Phoenix, Arizona 85018
Attention: Peter G. Santin
Facsimile: 602-840-4411
Telephone: 602-808-5818
Email: santin@poliball.com

20.3 Copies of all notices, demands and requests shall also be delivered to
Escrow Agent:

Lawyers Title Insurance Company
4677 South Lakeshore Drive, Suite C-9
Tempe, Arizona 85282
Attention: Laura Radmer
Telephone: (480) 897-8488
Facsimile: (480) 897-8522
Email: lradmer@ltic.com

or at such other address or facsimile number as any party may hereafter designate by written notice to all other parties. The effective date of all notices shall be three (3) days following transmittal by prepaid registered or certified mail, return receipt requested, one (1) day after transmittal by nationally recognized commercial overnight courier service, upon receipt by hand-delivery with a signed acknowledgement of receipt by the receiving party, and upon transmission by facsimile (transmittal confirmed); if receipt of such notice is not accepted or is not possible due to a change in address or facsimile number for which the sending party did not receive notice, the effective date of such a notice shall be the date of attempted delivery.

21. Miscellaneous.

21.1 Additional Documents. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

21.2 Time for Performance. The time for performance of any obligation or other action under this Agreement shall be deemed to expire at 5:00 P.M. (M.S.T.) on the last day of the applicable time period provided for herein. If the time for the performance of any

obligation under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding day that is not a Saturday, Sunday or legal holiday.

21.3 Risk of Loss. The risk of loss or damage to the Property until the Close of Escrow shall be borne by Seller.

21.4 Time of Essence. Time is of the essence of each and every provision and each obligation of this Agreement.

21.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

21.6 Assignment. Buyer may assign its rights and obligations under this Agreement to an affiliate of Buyer that Buyer controls, is controlled by or is under common control with, upon written notice to Seller, or to an unaffiliated third party, subject to Seller's prior written approval. Upon any such assignment, the assignee will be deemed the "Buyer" for all purposes and entitled to exercise all rights and privileges under this agreement as such. No such assignment shall relieve Buyer of any of its obligations under this Agreement.

21.7 Entire Agreement. This Agreement and any schedules and exhibits attached thereto constitute the entire agreement between the parties. All terms and conditions contained in any other instruments previously executed by the parties in connection with the Property are superseded hereby and merged herein. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, personal representatives, successors and assigns.

21.8 Attorney Fees. If suit is brought by any party to this Agreement to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, expenses and court costs.

21.9 Broker Disclosure. Buyer discloses that one or more of the principals of Buyer is licensed as a real estate broker in the State of Arizona. Seller discloses that one or more of the principals of Seller may be licensed as a real estate broker or salesperson in the State of Arizona.

(Signatures of the parties appear on the following page.)

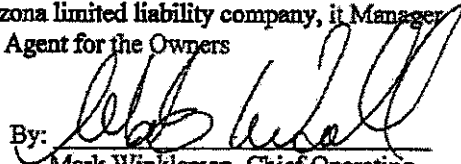
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

SELLER:

LA

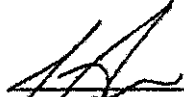
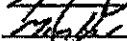
PDG LOAN ~~LA~~ LLC, an Arizona limited liability company

By ML MANAGER LLC,
an Arizona limited liability company, its Manager
and as Agent for the Owners

By: 
Mark Winkelman, Chief Operating Officer

BUYER:

MARK-TAYLOR CAPITAL L.L.C.,
an Arizona limited liability company

By: 
Its: 

AGREEMENT AND CONSENT BY ESCROW AGENT

The undersigned hereby agrees to (i) accept the foregoing Agreement of Sale and Purchase as instructions to the undersigned, (ii) act as Escrow Agent under said Agreement in consideration of its fees normally charged in such transactions, and (iii) be bound by said Agreement in the performance of its obligations as the Escrow Agent.

Dated this 13th day of January, 2011.

Lawyers Title Insurance Company

By: _____

Its: _____

EXHIBIT "A"
NAMES OF OWNERS OF LAND

PDG LA Loan LLC, an Arizona Limited Liability Company, as to an undivided 86.489% ownership;

Morris A. Kaplan, Trustee of Carolyn's Interiors Ltd., Profit Sharing Plan & Trust dated October 4, 1990, as to an undivided 0.191% ownership;

Tony Christensen and Jonna Christensen, husband and wife, as community property with right of survivorship, as to an undivided 0.419% ownership;

Jodi Farber, Custodian for Alexa Farber Olds, under The Uniform Gift to Minors Act, as to an undivided 0.055% ownership;

Kevin Goff and Ki Ngo, as joint tenants with right of survivorship, as to an undivided 0.209% ownership;

Bear Tooth Mountain Holdings Limited Partnership, an Arizona limited liability partnership, as to an undivided 2.092% ownership;

Cornerstone Realty & Development, Inc. Defined Benefit Plan and Trust dated January 1, 2004, and any amendments thereto, as to an undivided 0.105% ownership;

AJ Chandler 25 Acres, L.L.C., an Arizona limited liability company, as to an undivided 2.092% ownership;

Queen Creek XVIII, L.L.C., an Arizona limited liability company, as to an undivided 2.092% ownership;

WCL859305 LLC, an Arizona Limited liability company, as to an undivided 2.092% ownership;

First Trust Company of Onaga, Custodian FBO Laura Martini IRA Acct # TWOXXXXX, as to an undivided 0.003% ownership;

Brett M. McFadden, a single man, as to an undivided 1.046% ownership;

First Trust Company of Onaga, Custodian FBO Lorinda S. McMullen IRA #41021XXXXX, as to an undivided 0.046% ownership;

Morley Rosenfield, Trustee of The Morley Rosenfield, M.D. P.C. Restated Profit Sharing Plan, as to an undivided 0.559% ownership;

Robert G. Roden, Trustee of The Robert G. Roden Living Trust dated October 1, 2004, and any amendments thereto, as to an undivided 1.380% ownership; and

Verma Kataria Mortgage Investment L.L.C., an Arizona limited liability company, as to an undivided 1.130% ownership.

EXHIBIT "B"
LEGAL DESCRIPTION

PARCEL NO. 1:

The East 58.00 feet of the West 678.00 feet of the North 886.14 feet of the Northeast quarter of the Northwest quarter of Section 2, Township I North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 65.00 feet thereof; and

EXCEPT that portion described in Docket 6974, Page 195, records of Maricopa County, Arizona; and

EXCEPT any portion lying South of the Westerly extension of the Northerly boundary of the following described land:

That part of the Northwest quarter of Section 2, Township I North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona described as follows:

BEGINNING 65 feet South and 40 feet West of the Northeast corner of the Northeast quarter of the Northwest quarter of said section;

THENCE South 821.23 feet;

THENCE South 88 degrees 52 minutes West, a distance of 450.23 feet to the TRUE POINT OF BEGINNING;

THENCE continuing West, a distance of 151.34 feet;

THENCE North 276.14 feet;

THENCE North 88 degrees 52 minutes East, a distance of 151.54 feet;

THENCE South 276.14 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 2:

That part of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point South 00 degrees 12 minutes 40 seconds West, 65 feet and North 88 degrees 52 minutes 30 seconds East, 30 feet from the Northwest corner of said Northeast quarter of the Northwest quarter of Section 2;

THENCE North 88 degrees 52 minutes 30 seconds East, along a line parallel to and 65 feet South of the North line of said Section 2, a distance of 619.00 feet to the centerline of an access road running South and the TRUE POINT OF BEGINNING;

THENCE continuing North 88 degrees 52 minutes 30 seconds East, along said parallel line, 633.76 feet to a point which is 65 feet South and 40 feet West of the Northeast corner of said Northwest quarter of Section 2 and the Northeast corner of this parcel, said point being on the West line of Miller Road;

THENCE South 00 degrees 25 minutes 20 seconds West along said West line of Miller Road, a distance of 541.41 feet to a point;

THENCE South 88 degrees 52 minutes 30 seconds West along a line parallel with and 606.41 feet South of the North line of said Section 2, a distance of 390.82 feet to a point; THENCE South 00 degrees 12 minutes 40 seconds West, 3.64 feet;
THENCE South 88 degrees 52 minutes 30 seconds West, 240.88 feet; more or less, to a point on the centerline of an access road running North and South through said Northeast quarter of the Northwest quarter of Section 2, said point being South 00 degrees 12 minutes 40 seconds West, 545.00 feet from the TRUE POINT OF BEGINNING;
THENCE North 00 degrees 12 minutes 40 seconds East, 545 feet along the centerline of said access road to the TRUE POINT OF BEGINNING;
EXCEPT the East 200 feet of the North 150 feet thereof; and
EXCEPT the West 189 feet of the North 150 feet thereof.

PARCEL NO. 3:

That portion of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northwest corner of the Northeast quarter of the Northwest quarter of said Section 2;

THENCE North 88 degrees 52 minutes 30 seconds East along the Northerly line of Section 2, a distance of 155.01 feet to the TRUE POINT OF BEGINNING;

THENCE North 88 degrees 52 minutes 30 seconds East, a distance of 465.00 feet; THENCE South 00 degrees 12 minutes 40 seconds West along a line parallel to the Westerly line of said Northeast quarter of the Northwest quarter of Section 2, a distance of 398.12 feet;

THENCE South 88 degrees 45 minutes 00 seconds West, a distance of 208.62 feet to a point;

THENCE South 01 degrees 15 minutes 00 seconds East, a distance of 211.39 feet; THENCE

South 88 degrees 52 minutes 30 seconds West, a distance of 416.79 feet to a point in the, Westerly line of said Northeast quarter of the Northwest quarter of Section 2, said point being distant South 00 degrees 12 minutes 40 seconds West, 610.02 feet from the Northwest corner of said Northeast quarter;

THENCE North 00 degrees 12 minutes 40 seconds East, a distance of 420.00 feet; THENCE North 88 degrees 52 minutes 30 seconds East along a line parallel to the Northerly line of said Section 2, a distance of 155.01 feet;

THENCE North 00 degrees 12 minutes 40 seconds East, a distance of 190.02 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 4:

That part of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at a point South 00 degrees 12 minutes 40 seconds West, 65 feet, and North 88 degrees 52 minutes 30 seconds East, 30 feet from the Northwest corner of said Northeast quarter of the Northwest quarter of Section 2;

THENCE North 88 degrees 52 minutes 30 seconds East, along a line parallel with and 65 feet South of the North line of Section 2, a distance of 590.00 feet to the intersection of the South line

of McDowell Road, and the West line of an access-road running North and South through said Northeast quarter of the Northwest quarter of Section 2;
THENCE South 00 degrees 12 minutes 40 seconds West, along the West line of said access road, 545.00 feet to the TRUE POINT OF BEGINNING;
THENCE South 85 degrees 52 minutes 30 seconds West along a line parallel with and 545.00 feet South of McDowell Road, 203.22 feet;
THENCE North 01 degrees 15 minutes 00 seconds West, 211.39 feet to a point;
THENCE North 88 degrees 45 minutes 00 seconds East, 208.62 feet to a point on the West line of the access road referred to above, said point being North 00 degrees 12 minutes 40 seconds East, 211.90 feet from the TRUE POINT OF BEGINNING;
THENCE South along the West line of said access road, South 00 degrees 12 minutes 40 seconds West, 211.90 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 5:

The South 40.00 feet of the North 926.14 feet of the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;
EXCEPT the East 40.00 feet thereof; and
EXCEPT those portions described in Docket 4551, Page 142; Docket 7623, Page 517; and Docket 9325, Page 334, records of Maricopa County, Arizona.

PARCEL NO. 6:

That portion of the real property in the Northeast quarter of the Northwest quarter of Section 2, Township 1 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:
BEGINNING at the Northwest corner of the Northeast quarter of the Northwest quarter of said Section 2;
THENCE North 88 degrees 52 minutes 30 seconds East along the Northerly line of Section 2, a distance of 155.01 feet;
THENCE South 00 degrees 12 minutes 40 seconds West along a line parallel to the Westerly line of said Northeast quarter of the Northwest quarter of Section 2, a distance of 190.02 feet;
THENCE South 88 degrees 52 minutes 30 seconds West, a distance of 155.01 feet to a point in aforesaid Westerly line of the Northeast quarter, distant South 00 degrees 12 minutes 40 seconds West 190.02 feet from the POINT OF BEGINNING;
THENCE North 00 degrees 12 minutes 40 seconds East, 190.02 feet to said POINT OF BEGINNING;
EXCEPT any oil, gas, and other minerals as reserved in Instrument recorded in Document No. 98-571155.

EXHIBIT "C"

WHEN RECORDED MAIL TO:

SPECIAL WARRANTY DEED

For the consideration of Ten Dollars, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, PDG LA Loan LLC, an Arizona limited liability company, and ML Manager LLC, an Arizona limited liability company as agent ("Agent"), as attorney-in-fact for those individual owners ("Owners") listed on Exhibit "B" attached ("Grantor"), does hereby convey to _____ ("Grantee"), the following real property together with all of Seller's right, title and interest in and to (i) all buildings, structures and improvements located thereon; (ii) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, well rights, water rights, and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) land lying in the bed of any highway, street, road or avenue, opened or proposed, in front of or abutting or adjoining such tract or piece of land; and (v) any other rights, privileges and benefits appurtenant to or used in connection with the beneficial use and enjoyment of such property:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

SUBJECT TO all general and special real property taxes and other assessments, reservations in patents, water rights, claims or title to water and all easements, rights of way, covenants, conditions, restrictions, reservations, declarations, encumbrances, liens, obligations, liabilities and other matters as may appear of record, any and all conditions, easements, encroachments, rights of way or restrictions which a physical inspection or accurate ALTA survey of the Property would reveal, and the applicable municipal, county, state or federal zoning and use regulations affecting the Property.

AND the Grantor hereby binds itself and its successors and assigns to warrant and defend the title in Grantee, its successors and assigns, as against all acts of the Grantor herein and no other, subject to the matters above set forth.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

DATED this _____ day of _____, 2010.

GRANTOR

**PDG LA LOAN LLC, an Arizona limited liability
company**

**By ML MANAGER LLC,
an Arizona limited liability company, its Manager
and as Agent for the Owners listed on Exhibit A
attached**

**By: _____
Mark Winkleman, Chief Operating
Officer**

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Mark Winkleman, known by me to be the Chief Operating Officer of ML Manager LLC, an Arizona limited liability company, the Manager of PDG LA LOAN LLC, an Arizona limited liability company, on behalf of the company and as Agent for the Owners listed on Exhibit B attached.

Notary Public

My Commission Expires:

**EXHIBIT A
TO THE SPECIAL WARRANTY DEED**

Legal Description of the Property

PHX/2375127.5/28149.001

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**EXHIBIT B
TO THE SPECIAL WARRANTY DEED**

List of Owners

PHX/2375127.5/28149.001

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EXHIBIT "D"
TO PURCHASE AND SALE AGREEMENT

BLANKET ASSIGNMENT AND BILL OF SALE

THIS BLANKET ASSIGNMENT AND BILL OF SALE (the "Assignment") is given as of _____, 2010, by PDG LA Loan LLC, an Arizona limited liability company; and ML Manager LLC, an Arizona limited liability company as agent ("Agent") for those individual owners ("Owners") listed on Exhibit "A" attached ("Assignor") for the benefit of _____, its successors and assigns ("Assignee").

RECITALS

A. Assignor and Assignee entered into that certain Agreement of Sale and Purchase, dated _____, 2010 (the "Agreement"), whereby Assignor agreed to sell and Assignee agreed to purchase that certain real property located more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. In connection with the foregoing transaction, but excluding any rights of Assignor as against any borrower or guarantor of any loan that was secured by the Property, Assignor desires to transfer and assign to Assignee, without representation or warranty, on the terms and conditions set forth below, all of Assignor's right, title and interest in all rights, materials and/or claims relating to Property or the use, entitlement or development thereof, including, without limitation: (i) all permits, licenses, applications, approvals, and any other authorizations issued by governmental entities or quasi-governmental entities; (ii) all entitlements, subdivision agreements and other agreements relating to the development of Property; (iii) all plats, plans, drawings, designs, engineering materials, studies, reports and other documents relating to any improvements to or serving the Property; (iv) all water and sewer taps and hookup connections relating to the Property; (v) all development rights benefiting the Property; (vi) all guarantees, warranties, indemnities, and covenants under any and all contracts and agreements with contractors, subcontractors, suppliers and other persons and entities providing labor, services or materials in connection with the design, construction and installation of any improvements to or serving the Property, (vii) any pre-paid impact fees, school fees and other development fees, and (viii) any plans, to the extent that they are assignable (collectively, the "Assigned Items") but reserving to Assignor any such Assigned Items to the extent related to other property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as set forth below.

AGREEMENT

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by reference as agreements of Assignor and Assignee.

2. Assignment. Subject to the limitations stated herein, Assignor hereby assigns and transfers unto Assignee, all of Assignor's right, title and interest in and to the Assigned Items without representation or warranty of any kind.

3. No Assumption of Obligations. Assignee does not assume any duties or obligations of Assignor to be performed, paid or complied with under or with respect to any of the Assigned Items arising prior to the date of this Assignment.

4. Binding Effect. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

5. Counterparts. This Assignment may be executed in one or more counterparts each of which shall be deemed an original instrument and all of which combined shall constitute one and the same instrument.

(Signatures appear on the following page.)

IN WITNESS WHEREOF, Assignor have executed this Assignment as of the date set forth above.

ASSIGNOR:

PDG LA LOAN LLC, an Arizona limited liability company

**By ML MANAGER LLC,
an Arizona limited liability company, it Manager
and as Agent for the Owners listed on Exhibit A
attached**

**By: _____
Mark Winkleman, Chief Operating
Officer**

**EXHIBIT A
TO BLANKET ASSIGNMENT AND BILL OF SALE**

List of Owners

PHX/2375127.5/28149.001

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**EXHIBIT B
TO THE BLANKET ASSIGNMENT AND BILL OF SALE**

Legal Description of the Property

PHX/2375127.5/28149.001

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**FIRST AMENDMENT TO
AGREEMENT OF SALE AND PURCHASE**

DATE: April 13, 2011
BUYER: MARK-TAYLOR CAPITAL L.L.C.
SELLER: PDG LA LOAN LLC and ML MANAGER LLC, as agent
TITLE COMPANY: LAWYERS TITLE OF ARIZONA, INC.

RECITALS:

A. Buyer and Seller have previously entered into that certain Agreement of Sale and Purchase effective as of January 11, 2011 (the "Agreement"), which Agreement is the subject of Title Company's Escrow No. 1733947 and provides for Seller's sale to Buyer of the real property described therein (the "Property"). The Agreement has been terminated.

B. Buyer and Seller now wish to reinstate the Agreement and to further amend the Agreement and, in consideration of the mutual covenants contained herein, hereby agree as follows, all capitalized terms having the same meaning as in the Agreement unless otherwise defined herein:

AMENDMENTS AND AGREEMENTS:

1. **Seller's Contingencies.** Seller has obtained the Lender Approval and the Contingency described in Section 1.2(a)(i) of the Agreement has been satisfied. Seller shall have until May 18, 2011 to satisfy the remainder of the Contingencies described in Section 1.2(a).
2. **Extension.** The Feasibility Period as described in Section 5.1 shall end on May 13, 2011.
3. **Rezoning Extensions.** Pursuant to Section 5.2:
 - i) The deadline for Buyer's filing of its re-zoning application for the Proposed Project is hereby extended to May 20, 2011.
 - ii) The deadline for Buyer's obtaining the approval of the Scottsdale Planning Commission for the Proposed Project is hereby extended to October 13, 2011.
 - iii) The Rezoning Period shall end on November 18, 2011.
4. **Court Order.** Seller will provide Buyer with copies of any pleadings that Seller files with the Court in connection with Seller's efforts to obtain the Court order provided for

under Section 1.2(a)(iii) of the Agreement and copies of any objections filed by parties in connection with Seller's request for the Court order. Seller will provide Buyer with notice of any Court hearings relating to the request for the Court order provided for under Section 1.2(a)(iii) of the Agreement.

5. Reaffirmation. Except as specifically modified or amended herein, the terms and conditions of the Agreement are hereby reinstated and confirmed; in the event of any conflict, the terms of this Amendment shall control.

6. Counterparts. This Amendment may be executed in counterparts, which when taken together shall constitute one original instrument. . Delivery of an executed counterpart of this Amendment by facsimile or electronic mail to the other party and Title Company shall be effective as delivery of a manually executed counterpart of this Amendment.

SELLER:

PDG LA LOAN LLC, an Arizona limited liability company

By: ML MANAGER LLC, an Arizona limited liability company, its Manager and as Agent for the Owners

By: 

Mark Winkleman,
Chief Operating Officer

BUYER:

MARK-TAYLOR CAPITAL L.L.C.,
an Arizona limited liability company

By: 

Its: _____

TITLE COMPANY:

Acknowledged and accepted:

LAWYERS TITLE OF ARIZONA, INC.

By: 
Its: _____

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